Academics and assessment: The forgotten meat in the sandwich in the current Higher Education environment?

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Abstract: This paper reports on qualitative research into academics perceptions of assessment in an Australian law school. Some of the key concerns of academics teaching a professional degree course in the current higher education environment, in particular as it impacts on their assessment practices and student learning, are highlighted and discussed. Academics’ perceptions of the importance of teaching and assessing graduate skills are also discussed in the context of the literature. This paper highlights that in the context of the current higher education environment there is a real risk that the gap between the rhetoric and reality will continue to widen, having consequences for the student, the academic, and higher education outcomes generally.

I INTRODUCTION

The Bradley Review of Higher Education¹ states that both more money and more students from diverse backgrounds² will be necessary for Australia to effectively compete in the global market. Assessment is a factor which by its very nature, as a learning driver for graduates, must figure strongly in any consideration of the agenda to widen participation in

² Ibid; Deputy Prime Minister The Hon Julia Gillard MP Minister for Education. Minister for Employment and Workplace Relations, Address to the Universities Australia Annual Higher Education Conference (2010) <http://www.deewr.gov.au/Ministers/Gillard/Media/Speeches/Pages/Article_100303_102842.aspx> at 22 March 2010: ‘Indicative data from DEEWR suggests that universities have responded quickly to the new system and suggest that over enrolment in universities will reach 7.5 percent, an increase of around 45,000 students since 2008. And what’s more, applications data show that demand for university is increasing fastest among low SES applicants. In January, 2010 the number of low SES applicants increased by 9.8 percent on January 2009, compared to a 8.2 percent increase in the number of medium SES applicants and 5.4 percent in high SES applicants. While this shift can be explained by poor employment outcomes among the young, one of the tragic impacts of the global recession, this shift will be reinforced by our substantial low SES loading, which DEEWR estimates will be worth $540 per student this year rising to $1500 in 2012’. 
higher education. The Government response has seen the establishment of the Tertiary Education Quality and Standards Agency (TEQSA)\(^3\) and budgetary responses focusing on equity, access, sustainability, research and quality teaching. Funding of higher education is to be driven by the market as determined by students’ choice, without a cap on domestic undergraduate enrolments and this is to be linked with exacting targets set by government who will attempt to apply rigorous quality assurance standards to universities.\(^4\) The drive to increase student numbers aged 25-34 to 40% by 2020 includes encouraging students who would previously not have considered university education. Therefore, diverse backgrounds, first in the family, regional and remote, Indigenous and low socio-economic communities (up to 20 %) become the focus.\(^5\) With this comes the correlated need to retain and progress these students to produce ‘quality’ and engaged graduates, ‘work ready,’ at the end of the education process. For law schools this requires adopting a legal practice orientation and a broader curriculum, to engage a more diverse student body catering for differing career options for an uncertain future. This is all in a climate in which government spending over the past decades has lagged, with a lot of catch up spending needed to claw back international credibility.\(^6\) The education system becomes a commodity by which government accountability to its taxpaying constituents is used to argue a right to expect value for each dollar spent\(^7\), a very seductive, and on the face of it, reasonable argument. However, it becomes the duty of academics and universities to ensure that the substantive role of genuine learning, education and research is not buried under a mountain of numbers and questionable accountability evaluations.

This raises the question of the very business of learning and at the heart of learning is the lecturer/student relationship. It is well known that student learning is driven by assessment and is the most important factor when it comes to determining whether the graduate has reached a satisfactory quality standard.\(^8\) More specifically, ‘[a]ssessment is the most powerful lever teachers have to influence the way students respond to courses and

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\(^3\) TEQSA was established by the government in response to the Bradley Report on Higher Education Recommendation 20; See, Gillard above n 2, ‘an independent national regulatory body will be responsible for regulating all types of tertiary education. TEQSA will register providers, carry out evaluations of standards and performance, protect and quality assure international education and streamline current regulatory arrangements. It will join together the regulatory activity currently undertaken in the states and territories with the quality assurance activities currently undertaken by the Australian Universities Quality Agency (AUQA). In so doing it will reduce the number of regulatory bodies from 9 (all states and territories plus AUQA) to one.’

\(^4\) Don Anderson, Richard Johnson and Bruce Milligan, ‘Quality assurance and accreditation in Australian higher education: an assessment of Australian and international practice’ (EIP 00/01, Centre for Continuing Education, The Australian National University 2000) noted a regulatory bodies’ ‘...purpose would be to ensure, for the institutions themselves, for the Australian Government and the general public, and for students, that degrees are of a sound standard in which the Australian people may have confidence and pride. Its methods would include audits of institutions’ quality practices and for this purpose an independent agency would be needed.’ Executive summary, x.

\(^5\) Bradley above n 1, Recommendations 2 and 4.

\(^6\) Ibid.

\(^7\) Denise Chalmers, ‘A review of Australian and international quality systems and indicators of learning and teaching’ (V1.2, Carrick Institute for Learning and Teaching in Higher Education Ltd, 2007): ‘Higher education is now more than ever seen as an economic commodity, with increased interest in linking employment outcomes to higher education (employment and graduate destinations). This in turn has led to interest from governments and funding agencies in measuring the employability of students through measures of learning and their employment outcomes’ 69.

behave as learners.\(^9\) However, Boud has stressed that ‘[t]here is probably more bad practice and ignorance of significant issues in the area of assessment than in any other aspect of higher education.’\(^10\) Student experience of assessment and thus their attitude to learning is also a vital component in students’ evaluation of both academics and the institution. Recent research that analysed existing qualitative data from the national Course Experience Questionnaire (CEQ) on students’ experience of higher education found that assessment was a key factor in determining the quality of students’ learning experience.\(^11\) However, the drive for assessment of learning, as part of the public accountability requirements, can lose sight of the need to balance assessment for learning which is essential if students are to improve skills and graduate as successful contributors to their chosen field.\(^12\) Deputy Prime Minister Gillard acknowledges that the market will be driven by student choice in the ‘new student centred system and that this will impact on institutional behaviour’ in a new form of popularism.\(^13\) This must be closely linked to questions concerning assessment; the academics that set assessment and how in the climate of higher education the factors outlined in this paper may well coalesce in having a major impact on assessment and thus student learning.

Corporatisation of education across the globe pressures universities to meet many stakeholder demands and thus exerts pressure on academics to be many things to many people.\(^14\) The move from education for the intellectual elite to the masses has created increasing student numbers in times when Australia is lagging far behind other OECD countries in its expenditure on education.\(^15\) This, together with the demand for quality graduates and student retention, when students are often first in the family and from diverse and minority socio-economic backgrounds, places an almost overwhelming burden on the aging and reducing number of academics.\(^16\) These demands in the new competitive environment have a number of repercussions for academics.\(^17\) Most significantly a time pressure factor from ‘…ongoing bureaucratisation of universities (and the attendant needs for accountability…); and the rise in the consumerist ethos of students …has meant that the

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\(^9\) G Gibbs, ‘Using assessment strategies to change the ways that students learn’ in S. Brown and A. Glasner (Eds) (ed), In Assessment Matters in Higher Education: Choose and Using Diverse Approaches \(1999\) 44, 41.
\(^10\) David Boud, ‘Assessment and learning – unlearning bad habits of assessment’ (Paper presented at the Effective Assessment at University, University of Queensland, 4-5 November 1998 ).
\(^11\) G Scott, ‘Accessing the Student Voice: Using CEQuery to Identify What Retains Students and Promotes Engagement in Productive Learning in Australian Higher Education’ (Department of Science Education and Training 2005)
\(^13\) Gillard, above n 2.
\(^14\) Ron Oliver – Engaging first year students using a Web-supported inquiry-based learning setting. (2008) 55 Higher Education 285-301; Ron Dearing, 'Report of the National Committee of Inquiry into Higher Education' (Secretaries of State for Education and Employment, Wales, Scotland, and Northern Ireland 1997): 69, ‘The health of higher education depends entirely on its staff, whether academic, professional or administrative. There is concern among staff that they have received neither the recognition, opportunities for personal development, nor the rewards which their contribution over the last decade merits. Over the next 20 years, the roles of staff are likely to change, as they undertake different combinations of functions at different stages of their careers. To support and prepare staff for these new working patterns, more focused and appropriate training and staff development activities will be needed.’; See e.g., Cath Lambert, Andrew Parker and Michael Neary, ‘Entrepreneurialism and critical pedagogy: reinventing the higher education curriculum’ (2007) 12(4) Teaching in Higher Education 525 .
\(^15\) Bradley above n 1.
paperwork alone (such as new course proposals, course outlines, reading guides, assessment guides and course evaluations) has increased dramatically.\(^{18}\)

From this context it can be discerned that there are a series of areas where the perceptions of academics are important to consider in relation to their impact on higher education, in particular in the training of law graduates. As ‘[t]he complex interrelationships amongst students, lecturers, institutions and professions draw together at the point of assessment’\(^{19}\) the focus of this paper is at the critical juncture of assessment. The aim of the research project was to gather and analyse data in the formative years (for learners, teachers and program designers) of an undergraduate law program. From this grounded research approach evidence was sought that enables reflection and improvement in relation to the design of law assessments. A principal objective of the project was to illuminate understanding of how different assessment practices engage and motivate law students leading to improved retention/progression and acquisition of graduate attributes.

The research project discovered a number of factors weighing on academics when it came to their perceptions of assessment that may impact on how assessment is set and managed, and thus the types of learning outcomes for graduates. This paper highlights some of these key areas of tension found in the research undertaken. Matters such as how assessment is perceived; the specific issues associated with a professional law degree - in particular when assessing graduate attributes and skills; use of IT, and other evaluations were discovered and are reported in this paper. These perceptions of the group of 13 academics from an Australian law school, aid in understanding further where the tensions exist for academics and thus assessment and student learning. The perceptions held, while reflecting a range of positions, highlight the need for further research to assess whether an ability to overcome some of the concerns can be achieved in order to genuinely improve graduate quality through assessment. The implications for student engaged learning and quality graduates, if they are not met, are considerable.

II METHODOLOGY

The study focused on assessment practice: how academics approach assessment from their personal value perspective; the creation of assessments and actual assessment of students. It also looked at their perceptions of students in the assessment process and the impact on assessment of their work environment. The study was conducted using a qualitative research method and involved a pre-interview survey of the academics, followed by half-hour semi-structured interviews, information obtained from course evaluations and a student focus group. The pre-interview survey addressed key aspects around assessment of graduate attributes and skills, motivation for types of assessment instruments and learning objectives. The semi-structured interview was then conducted with all 13 subjects to follow up on aspects highlighted by the survey. Areas addressed included the purpose of assessment and what factors influence assessment design. Student evaluation data was also mined in particular for qualitative feedback addressing issues relating to assessment practices and a student focus group dealing with student perceptions of their assessment experience was held. Sample questions from these instruments are included in Table A. Ethical clearance from the


\(^{19}\) Mark Barrow, 'Student assessment and knowing in contemporary Western societies' (Paper presented at the International Conference of the Higher Education Research and Development Society of Australasia, 2004).
University Office of Research and Higher Degrees, was approved prior to undertaking the research and all participants voluntarily consented to be involved in the research. The academics surveyed are all course leaders in first and second year core undergraduate curriculum courses in the LLB programme and they work across two campuses.

The research method adopted a grounded theory approach to the collection of data, focusing on linking emergent data with concepts and theory. This approach employs the ability to observe and compare participant’s data to determine what is happening for the person in this domain and to draw tentative conclusions where possible rather than testing a specific hypothesis. The researchers were included as instruments in their own research along with the other ten academics involved. The methodology and the review of the data are based on qualitative research principles such as reflexivity and concern for the consideration of human behaviour in a contextualised manner. The sample of respondents is thus not claimed to be statistically relevant but rather the research is aimed to share qualitative data providing insights to law academics and assessment in an Australian law school.

Table A. Sample of types of Questions

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<tr>
<th>Academics written survey</th>
<th>Academics follow up interview</th>
<th>Focus group questions for students</th>
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<tr>
<td>How important do you believe it to be that the following identified graduate qualities are encouraged through the development of assessment items?</td>
<td>covered matters such as:</td>
<td></td>
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<td>a) discipline expertise; b) professional practice; c) global citizenship; d) scholarship; e) lifelong learning.</td>
<td>What do you believe is the most important purpose of assessment?</td>
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<td>Participants were asked for any specific ways they develop students’ awareness of these graduate qualities as part of their assessment practices as well as their view on whether there were other qualities not covered?</td>
<td>To what extent do you believe that assessment in the law program should prepare students for professional practice?</td>
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<td>A list of 10 key skills was provided and participants were asked to rank these in order of importance. They were then asked to indicate any specific ways they developed any of these skills or attributes in their assessment?</td>
<td>How important do you think graduate attributes and skills and in particular disciplinary knowledge are to your development of assessment items?</td>
<td></td>
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<tr>
<td>Questions concerning the integration of the skills within a course and the level at which they are assessed were also included.</td>
<td>How confident are you in your capacity to assess graduate attributes and skills?</td>
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<tr>
<td>Whether academics believe that students are aware of how the assessment items develop graduate skills and/or attributes and which of these are being developed?</td>
<td>What are the factors that most influence you when assessing students – ie Faculty goals in pass rates? A duty to the profession to ensure students have an appropriate skill level, student reaction, other?</td>
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III RESULTS OF THE RESEARCH

A. How is Assessment Perceived by Academics?

The survey and interview demonstrated that factors impacting on academics follow on to assessment and thus to the production of quality graduates. To move towards a genuine quality graduate the literature has demonstrated that engaging, skill rich, assessment needs to be set and assessed well by academics.21 However, the environment in which this is to occur is often not conducive to assessment that may demand more of the academics time and skills. The impact on academics carries across to the students, who in large numbers no longer have the benefit of being known as individuals by staff members. For many students the on-campus experience is a mass one with lectures of many hundreds of students and tutorials of 30 if they are lucky. Even the usual two hour a week lecture and tutorial is considered a Rolls Royce model. In the law school the subject of this study (a post 2007 law school) it is not uncommon to have 60 students in a classroom. As a consequence the school has moved to 3 hour seminars with larger classes, no longer holding 3 to 5 tutorial groups with 20 students each. For the large number of off-campus students the school caters for, the education process can be alienating and isolating and academics are therefore tasked with overcoming this and engaging such students through the use of ever changing new technologies.

So what are the academics perceptions of the reality as opposed to the rhetoric of higher education? How do they see their role in the new competitive environment and most importantly how does this impact on key activities such as assessment?

Assessment is one of those things, it’s usually always done under a tight timeframe, like especially at the end of the year when you’ve got to turn them all around and have them back in. So you want to do the right thing by students and give them enough time to read their work fairly, but when you’re running to a tight timeframe you almost think, I’m not marking this as best as I could.

Resourcing: what will address the [assessment needs] in the most efficient way, given constraints on academic time. i.e., to get the most effect with the lightest hand.

...I could think of this really good assessment for ... law, but it's totally labour intensive and there's no recognition given to that in the workload over someone who sets multiple choice tests. So I think the system totally works against having the best assessment outcome.

As well as driving student engagement, assessment also functions to measure and verify required forms of student learning for courses and degree programs. These required forms of learning include the development of specific disciplinary knowledge as well as competencies, attributes and skills identified by university policy, university stakeholders, such as employer groups, and professional accreditation bodies. As can be seen from Table B our research highlighted the skills which academics ranked as most important. It is argued that these are the areas in which the academics tend to focus assessment and thus skill development. Assessments that engage in creative, interactive and teamwork skills, are seen as more resource intensive for academics and thus tend to fair less favourably when it comes to assessment practices.

Table B. Importance of skills as ranked by 13 law academics.

It is well known that assessment has a direct impact on students study habits. However, in higher education there can often be a considerable disjunct between how

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24 Boud, above n, 10; Timothy Jowan Curnow and Anthony J. Liddicoat, 'Assessment as learning: Engaging students in academic literacy in their first semester' (Paper presented at the ATN Assessment Conference: Engaging Students in Assessment, University of South Australia, 2008).
academics see assessment and how students see it. James et al\textsuperscript{25} propose that academics first consider the content that has to be taught, then how they should do that and lastly how they can prove, through assessment, that they have succeeded in having students understand the content. So predominately the academic sees assessment as a way of proving the student has digested the material contained in the course content and it is focused on assessment ‘of’ rather than ‘for’ learning. This perspective was at times supported by our research and summed up by some law academics within the law school when they state assessment is to ... test the students understanding of the material. However, some academics go further and require assessment to be ‘for’ learning, demonstrating that skills needed for later use in the workforce have been gained along with discipline knowledge. And some academics acknowledge that the assessment should develop the ideal skills of the student for their professional practice in fact giving it a ‘double duty’, \textsuperscript{26} see Table C.

Others academics, however, question how much graduate attributes do in reality drive assessment:

\textit{To be honest I am not sure about the extent to which examiners think about the attributes when developing assessment. I think the assessment flows from the way in which they prepare the course. It may or may not be that attributes are taken into account in preparation of the course. I think they should be taken into account, but I suspect that people choose different assessment items for all sorts of reasons that may not be attributable to attributes, because their teaching style is the way in which the course has been written.}

Interestingly one academic saw assessment as deflecting students from engaging in deep learning:

\textit{Well personally if I was really teaching students I wouldn’t have any assessment at all. I actually hate assessment because students are so focused on their marks rather than learning and so focused on what’s the assessment in this course, what do I have to do to get through it – minimum – that they totally miss engaging with the course content.}

This view is perhaps an acknowledgement that for many students they often first look at what are the assessment tasks and so what content will be assessed. Once they know what they have to learn they decide on the best study approach to achieve this, rather than taking the learning to a deeper level. However, such an approach supports the notion that assessment drives student learning and therefore has the task to ensure that ‘quality’ graduates are the outcome.

This leads to the question of exactly what are the attributes that assessment should be directed toward in producing a ‘quality’ law graduate. In an undergraduate law degree the emphasis has been on learning the theory with the skills to come later in professional practice training. With professional degrees this can be the cause for some lack of clarity, particularly in the context in which higher education is placing greater emphasis on generic skill attainment in quality graduates.\textsuperscript{27}

\textsuperscript{25} R James, C McInnis & M Devlin 2002, Assessing Learning in Australian Universities, (Melbourne: Centre for the Study of Higher Education and the Australian Universities Teaching Committee).

\textsuperscript{26} Boud, above n. 10.

\textsuperscript{27} Professor William Ford, ‘Review of Australian Higher Education: Questions For Discussion Cald Submission to Bradley Review’ (Council of Australian Law Deans, ‘Learning Outcomes: Legal education can be better developed through measuring learning outcomes that have been derived from Graduate Attributes statements
Table C - What is the most important purpose of assessment?

<table>
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<th>Content based</th>
<th>Content/ skills</th>
<th>Content/skills/ Graduate attributes</th>
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<td>‘...assessing competency of the students.’</td>
<td>‘The key thing about assessment is testing that students have gained knowledge of a topic and also that they know how to apply it. ... to use it in their workplaces.’</td>
<td>‘...the purpose of assessment for me is to actually engage the students in things that are actually important for me, and the main one is critical thinking. I think that if a student goes through a university degree and doesn’t know how to critically question and think about something, then the university has failed that student. So I’m driven by those qualities that I want to have the student obtain, and you know that’s what my assessment is driven by. So the purpose for me of assessment, that is most important, is helping the students expand their knowledge, their engagement with the world around them, the lifelong learning process and you know obviously showing that they understand the content to a sufficient level to progress to the next stage, to show that they have learnt something.’</td>
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<td>‘...it’s really to see whether the students have fully grasped the principles of the course.’</td>
<td>‘...probably make sure that the students have absorbed everything that they’re supposed to have learned during the semester. But not only that, but also to equip them for further on when they are out in practice and just to see that not only have they learned but if so have they picked up skills to be able to research and for correct critical thinking and things like that.’</td>
<td>‘...I think that we should deliver certain practical elements to reassure people that they are learning a degree that is useful, that will prepare them at least to some extent for professional life afterwards.’</td>
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<td>‘To test the students understanding of the material that they have been taught, ... to test that they actually get the information and that we can say – this student understands this subject and they are ready to move to the next subject of their degree.’</td>
<td>‘I was very driven by what skills can this course give these students and how can I move the assessment towards that.’</td>
<td>‘I think the idea of what they will be doing in practice should drive the assessment.’</td>
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<td>‘... to see that what you have taught has been absorbed and processed, that they’ve understood.’</td>
<td>‘... it’s paramount that we should be preparing students for professional practice.... I think it might even be less than half actually go into practice not everyone who does a law degree obviously ends up in professional practice. So what I think is it’s better that assessment prepare them, well give them all the skills. So we teach them how to research, we teach them how to write, we teach them how to think.’</td>
<td>‘I think assessment... should cover not only the practical, I mean not only the knowledge of the law, but also the application of the law in real world situations.’</td>
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| ‘assessment is the way by which we judge whether a student’s understood the important principles in the course...’ | ‘I do believe this is really important and I think that it can run alongside all of the courses learning objectives as well as the assessment. It often seems to be the small things, like timeliness, punctuality, being able to follow instructions appropriately to fill out the right forms. All of these things – they may sound minor – but they’re absolutely essential for a lawyer.’ | ‘...I do think the law degree needs to be seen as preparation for practice whether or not you end up being a practitioner and so it should prepare you for practice. The assessment or certainly a large chunk of it should be designed around what you are likely to

and processes that encompass the full range of qualities that will lead to the production of law graduates who not only know how to think like lawyers, but who also know how to perform like lawyers and conduct themselves as lawyers should.’ 4-5.
‘I think that any assessment piece is the building block of developing a technique and giving a structured approach as to how they are going to develop a skill.’

‘...they will need to be able to access the relevant law and interpret that law appropriately. So those research skills are, in a way, just as vital as understanding – if you learn a lot of black letter law, by the time you get through it could be redundant.’

‘...any sort of assessment should have a theoretical application and also a practical application that students are doing in the area they decide. They should be writing a letter of advice, drafting documents that make them ready for professional practice.’

B Satisfying the Profession v Keeping the Institution Happy.

Legal Practitioner’s Admission Boards accredit university courses for the purpose of qualifying people to be admitted to practice in a paper based process that assesses against national rules for prerequisites or core subjects in law courses. These were set up by the Council of Chief Justices in 1994 under mutual recognition arrangements that specify 12 academic content areas—the ‘Priestley 12’—that must be covered by a law graduate. The profession also nominates people to serve on Faculty Advisory Boards or review teams when invited by universities.28 With lower entry requirements and greater higher education competition between institutions, less money and more pressure, academics are expected to progress a greater number of graduates suitable for professions that have external professional degree requirements in the belief that everyone can be taught if only the academic knows how to bring out the best in the student.

...preparation for professional practice in a law program is a significant feature of the pedagogy of learning ... but it’s also important for institutional purposes because without accreditation this program doesn’t run. The universities just do not run law programs that aren’t accredited for professional admission.

Barrow’s29 research has highlighted a little understood problem when it comes to university degrees with professional qualification hurdles such as law. In such a mix where the degree is not the ‘work-ready’ entitlement to entry to a profession but a further clinical professional hurdle exists,30 the role of the ‘theory’ lecturer at the institutional level is

28 Ibid, 93; Gary Davis et al, ‘Learning and Teaching in the discipline of Law: Achieving and sustaining excellence in a changed and changing environment’ (Council of Australian Law Deans (CALD), 2009) ‘Beyond broader university-specified Graduate Attributes, in relation to legal education in Australia, the curriculum is required to meet the accreditation standards of the profession. That means that law schools are required to place a strong focus on knowledge of the Priestley 11 content areas.’ 54; CALD (with the assistance of a report compiled by Dr Chris Roper as consultant also available on the CALD website: http://www.cald.asn.au/legal_educ.html), moved toward the adoption of standards aimed at enhancing the quality of Australian law schools in all of their diverse endeavours, and to do so by assisting all Australian law schools to strive for and reach a clearly articulated set of standards. That adoption took place in principle at the CALD Meeting held on 4 March 2008. The Standards for Australian Law Schools.

29 Barrow, above n 19.

30 Anderson, Johnson and Milligan, above n 4: So for instance the College of Law course (providing training in practical aspects of a legal office, as a substitute for articles) remains the principal means of satisfying the final
perceived to be diminished by the student. Barrow’s research shows that an assessment regime in this context tends only to demonstrate students have ‘absorbed, and could restate, the discourse of the discipline’ and ‘this leads to limited expectations of the expertise of the academic.’

This could have major impacts on a discipline such as law where academics may still see themselves (quite correctly) as ‘experts’ in their field. This also presents issues in the climate of the CALD statement in their submission to the Bradley Review concerning the ability to demonstrate quality learning outcomes in a measured way and that ‘[t]hrough this process, the focus for lecturers will shift from content knowledge and transmission roles to a responsibility for ensuring the achievement of broad and transparent outcomes consistent with graduate attributes.’ Learning activities will be scaffolded to engage students in well-structured and varied tasks.

No doubt a disjunct in perceptions can lead to stressors for both the academic and the student. Academic perceptions in some cases, in our research, aligned with Barrow’s findings and the fact that professional skills training is seen as separate, something that comes after the degree with the clinical legal education course:

"...practical skills are something to be acquired in the professional practice course undertaken after the law degree: I didn’t feel that my law degree prepared me for professional practice. It provided a lot of theory... but much of it wasn’t practical. But then its purpose wasn’t to be practical, it was to deliver the theory and general knowledge in relation to the areas of law and the practical element came with either practical training, legal practical training later, or professional practice at its junior stages."

"...but not everyone who does a law degree obviously ends up in professional practice. So what I think is it’s better that assessment prepare them, well give them all the skills. So we teach them how to research, we teach them how to write, we teach them how to think. Then they can adapt to professional practice and learn what they might need to do to you know go down to court. We can’t teach them all that because it changes all the time."

Students in this study confirmed this clear distinction:

"I think assessment is more content driven in law... I don’t know that they test our skills."

"..to me legal skills are taught in the legal professional year. What we are doing now is just having our heads crammed with knowledge."

"In any law subject you are applying your basic knowledge, concepts and principles to a practical life situation and in exams it’s the same thing. You know, here’s a case study, what’s the issue, identify the issue, ... what’s the law, how would you apply it and what’s your conclusion."

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registration requirements in NSW. The alternative is the UTS course, which incorporates these matters into the undergraduate course. 93.

31 Barrow, above n 19.
32 Ibid.
33 Ford, above n 27, 4.
34 Barrow above n 19: ‘This disjunction between the institution and the world of work is recognised by the students who diminish the role of the lecturer as a result.’
However, students within this study give greater acknowledgment to those academics whose assessment develops the ‘know how’ and ‘problematises their relationship with the ways of knowing of the discipline.’

This reflects the literature that student engagement comes through collaborative integrated learning. Studies indicate that to engage students, assessment must provide some or all of the following: opportunities for ‘active’ learning; collaboration between students; tasks that are perceived by students to be authentic; opportunities for student reflection, and; opportunities for students to manage their own learning processes. Barrow’s study suggests where there is preparation for work through both skill and discipline attainment, students become engaged. The following range of responses to questions on what they found useful in assessment practice supports this:

Doing the exercises in class helped a lot .... (Hands on learning).

The lectures ... in the computer labs where we were taught to track down cases and legislation which directly related to our assessment at the time.

...to relate the course material to real life

Working through examples is very helpful to me.

Excellent use of online interaction via second life very beneficial.

Some academics reported, seeing the need for work-ready skills to be incorporated in learning and assessment:

I think we do need to make sure that students are prepared for professional practice. The other issue is once they’ve graduated from their degree they are expected to do some professional training, whether that be with a law firm or with a legal practice course. So to some extent students get practical training there, but I think we should have some practical training within the law degree.

I think it [professional practice] is a significant component. I think it’s very important that they learn where it can be used in professional practice – not just in a legal practice, but also if they are going to work for a government agency, or for an academic institution, or for a company, you know the broader definition of professional practice.

...there’s obviously difference between theoretical and academic law, and practice law. ... any sort of assessment should have a theoretical application and also a practical application.

The following comments from students on one course’s assessment clearly identified these skills:

35 Ibid.
37 Biggs, above n 8; Scott, above n 11.
We used team work, interpersonal skills, academic and professional literacy, oral and written communication... problem solving... creativity and enterprise... cultural literacy... ethics... Management, planning and organisational skills.²⁹

The latent struggle over the student, between the professional body that limits the power of the institution and the authority of the academic to award the student the immediate status of ‘practising lawyer’ may lead to unacknowledged tensions and uncertainties in the role and purpose of the legal academic. If this remains largely in the unconscious its impact on the stated aim of bodies such as CALD and assessment practice as well as the student/lecturer relationship remains unacknowledged.

The demands by the profession, institution and government meet at the juncture of the academic who is left wondering why they stay. Many are not. The incomes do not maintain parity and the things that made that acceptable to academics are being eroded, such as not being tied to a desk, but being treated as a professional independent worker who could be trusted to get the job done. In a professional degree qualification such as law there is an obligation on academics not only to the institution of the university but also as officers of the court. Law academics have a professional obligation to uphold the standards of the profession and make sure the graduates have the knowledge and skills to carry out their work. This creates a tension when academics are being required to achieve a certain level of progression and retention of students within the university institution. Academics interviewed indicated that this disjunct in demand is a cause for concern:

...the faculty goals and the pass rate is totally relevant, a duty to the profession to ensure students have an appropriate skill level should be relevant, but the faculty goals work directly in opposition to that.

Some academics interviewed (See Table D) indicated they took their obligation to the profession as a higher standard to follow:

A duty to the profession, absolutely, I don’t want to have students that are incapable of carrying out the skills that are going to be necessary to be a legal practitioner and those are a whole range of duties to the profession.

Further institutional constraints and directions have an impact on how much time and effort an academic can spend on teaching and assessment. The CALD Report ‘Learning and Teaching in the discipline of Law’ indicates ‘[i]n terms of driving curriculum and teaching via Graduate Attributes, a common perception was of this typical response pattern from academics: one-third of staff enthusiastically embracing change; one-third willing to go along; and one-third involved in rejection, active resistance or spoiling behaviour.’ For instance perceptions that research is of higher importance to the institution than teaching will need considerable reframing if Bradley and Gillard’s visions for teaching and graduates are to be achieved. A theme supported by comments in our research:

³⁹ Statements from student focus group.
⁴⁰ Anderson, Johnson and Milligan, above n 4: ‘Professional associations loom large in the operations of many professional faculties, and in accrediting for the purposes of registration, most appear to focus more on inputs—curriculum content, student staff ratios, contact hours, resources and equipment and so on—than outcomes.’
⁴¹ See, Ford , above n 27.
⁴² See Anderson et al above n 4.
⁴³ Davis et al, above n 28, 61.
... in developing assessment items one also has to be mindful of student numbers and the reality that the time spent writing articles would be rewarded and the time spent marking assessment isn’t within the system. And I think that develops, that drives the assessment items more than graduate attributes and skills.

...it’s difficult to achieve recognition as good assessment because ... it’s relying on the student’s feedback and you’ll get feedback from the most happy ones and the most disgruntled ones, but you know objectively speaking, how can the system really reward good assessment practices? I don’t think it does, whereas if you spend that same time writing six journal articles people say – “Wow, what a productive member of staff, look at their publication list”. I think the time spent in this, even though it’s better for student outcomes, is not valued in the system.

The degree to which academics can meet the new demands in quality learning outcomes for graduate attributes and skills, the demands of the profession and the demands of the higher education institution for retention and progression can be seen, from Table D, to place conflicting loyalties on academics.

Table D. What are the factors that most influence you when assessing students – i.e. Faculty goals in pass rates? A duty to the profession to ensure students have an appropriate skill level, student reaction, other?

<table>
<thead>
<tr>
<th>Duty to the Institution</th>
<th>Half-way</th>
<th>Duty to the Profession</th>
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<tbody>
<tr>
<td>‘Well I’d like to say it’s a duty to the profession to ensure students have an appropriate skill level, but I’m very much aware of the pressure from the faculty that we’ve got to have a 20%, you know if we go over a 20% fail rate or pass rate then we’ve got to provide some sort of explanation. I’m not happy with that, I don’t think that’s academically sound but that’s the way it is.’</td>
<td>‘There is duty to the profession and to a number of entities; there is a duty to yourself and the student, but to the university and to the legal profession.’</td>
<td>‘I’m very conscious of a duty to the profession to ensure that the students have an appropriate skill level, ... we want to be quite careful to do a good job and to turn out competent students, who won’t embarrass us and the university later on and who won’t do a bad job – actually that’s the problem really – who won’t do a bad job and endanger the public that is clearly a very important priority to follow.’</td>
</tr>
<tr>
<td>‘I’m still most influenced by looking at what the desirable learning outcomes are, but you never actually develop those without an eye on the other things like professional accreditation and institutional demands. The institutional demands here quite clearly are faculty goals and pass rates. Those are necessarily incompatible with criterion referenced assessment, but we’re not unique in having those. My last institution we also used criterion referenced assessment, but we had to justify that you could get something that looked close to a bell curve.’</td>
<td>‘There is always faculty goals that ... you are suppose to get a certain percentage that are passes and a certain percentage of failures. Nobody denies that those pressures to have those sort of things, but for a lawyer, so far as I am concerned if you have got good students they come out as good students, but you should not just be churning out second or third rate students and passing them off as lawyers, the whole institution gets a mickey mouse image that is something I do feel strongly about’.</td>
<td>‘No I don’t think they’ve influenced me at all. I’m conscious of them and it’s a bit of a concern especially when you perhaps are required to ... meet those faculty goals and thresholds.’</td>
</tr>
<tr>
<td></td>
<td>‘...there are faculty guidelines, not really guidelines, but you do have to answer some questions if your standard is down statistically from others. I don’t think that means you change your marks but having said that there may well be good reasons for that I don’t think’</td>
<td>‘... I’m not really interested in faculty goals and what they think.’</td>
</tr>
</tbody>
</table>
‘In terms of faculty goals and pass rates... it is something that drives me it’s just a fact of life that... I’ve got to meet those pass rates.

it is a bad thing to identify that particular classes may have significant differences to other classes particularly at the same year level. If you can defend your marks great, if there is potentially a problem in your own expectations as opposed to others expectations on the same level there may be good reason to review things.’

‘I suppose the related thing, which isn’t a duty to the profession, so much as a sense that we’re in competition with other universities and we want to do a good job and be a competitive university, and a competitive law school, and have a degree that stands up well to comparisons with other uni’s.’

‘Faculty goals and pass rates, I’m quite resistant to that, but because there’s a big stick and I can get called before an examiners meeting to “please explain”, there is that pressure there to make it the easiest for myself. As a teacher we’re very nervous about appeals, we’re very nervous about complaints and these things will drive our assessment.’

‘I am concerned at the idea of faculty ...I don’t like the idea that you’re supposed to have a certain amount of high distinctions students and a certain number of students in each of the categories thereafter.’

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C. Skills and Graduate Attributes Assessment.

Various employer and higher education studies[^44] decry the lack of skills preparation of graduates in particular in the communication skills area. The CALD Report ‘Learning and

Teaching in the discipline of Law’ notes that ‘[o]nly a few law schools had really addressed the key issue of Graduate Attributes in relation to assessment, with Graduate Attributes being systematically mapped against topics and assessment tasks developed with clear and relevant criteria to indicate that students had demonstrated that they had achieved competence in the generic skills areas.’

Johnstone and Vignaendra demonstrate that students perceptions of assessment confirm the positioning of academics when setting assessment tasks, and that this is out of alignment with the intended goals of bodies such as CALD, where the goal is that:

[d]idactic and other traditional approaches will be supplemented by experiential learning placements, clinical opportunities and simulations, and e-learning. Space will be found for formative education that provides practice and feedback opportunities, a methodology more suited to the development and progressive enhancement of skills and attitudes than the summative approach characteristic of content delivery. By engaging students in critical thinking, guided group-work processes, building reflection skills and journal writing, using role plays and experiencing ethical decision-making dilemmas, not only will the law curriculum re-invigorated, but deeper learning in the areas of knowledge, skills and values will be promoted.

Table E. Figure 10.9 Frequency of experience of assessment methods – overall % of students that thought each of the following occurred regularly.

With many of the traditional forms of content-based assessment such as exams and essays based on standard form problems that are predictable and easily administered a

45 Davis et al, above n 28.
46 Richard Johnstone and Swnitra Vignaendra, ‘Learning Outcomes and Curriculum Development in Law: A Report commissioned by the Australian Universities Teaching Committee’ (AUTC, 2003), 257. See Table E.
47 Ford, above n 27, 4-5.
48 Johnstone et al above n 46, 257 as reproduced by Davis et al, above n 28.
superficial learning known as subject-based learning occurs. These assessments are in the main, assessments ‘of’ learning which ensure students have understood the material they have been presented with, rather than assessment ‘for’ learning. Biggs argues the standard lecture presentations concerned with content focus not only fail to engage learners but also focus on recall and repeat at a superficial learning level. Higher order learning outcomes do not result from this teaching focus and deep learning in which the student not only understands and comprehends the content but can apply it and evaluate it creatively is not achieved. However, the demand institutionally and professionally is that graduates not only be able to demonstrate that they possess skills that employers value, but that they are able to identify where in their undergraduate studies they learn those skills. The AUTC (2003), Learning Outcomes and Curriculum Development in Law Report together with the CALD report ‘Learning and Teaching in the discipline of Law’ indicate there is a preponderance of assessment types that are content-based and little in areas such as group, oral, mooting, reflective, peer and self assessment. Overall the academics in this research reflect the broader Australian experience of assessment in law schools, with an indicated preference to assess content rather than skills based assessment.

Assignments give the opportunity to assess written communication skills and problem-solving and literacy generally, as do exams; some of the other skills are not so easily assessed.

...for law in particular, a graduate attribute has to be written communication because that’s what their trade is. So that’s my big thing that I push, is they have to be able to research, they have to be able to find the issues and they have to be able to write and if they can’t do that they’re not going to be any good as a lawyer.

I think assessing some of them like oral presentations are left to a few courses because of the difficulty of assessing that in the context of the great number of external students that we have.

I think there is a tendency in our law programs to adopt methods of assessment somewhat blindly and a number of courses that have a 60% exam and a 40% assignment in it is too high.

Authentic assessment tends to redress this trend by duplicating experiences students are likely to be faced with in their profession and such assessments overcome some of the issues presented by Barrow. Engaging assessments that include skills often require team collaboration; oral presentations and use of portfolios or journals of reflection on the problem-solving relating to course content involving application of theory to practical examples:

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50 Biggs, above n 8.
51 D Laurillard (2002) Rethinking University Teaching: A conversational framework for the effective use of learning technologies (2nd ed.).
52 Davis et al, above n 28.
53 Johnstone et al, above n 46; See Table E; Davis et al, above n 28; These involve a movement away from prescription of content and towards broader skills related to professional and personal attributes, with collaborative professional learning processes used to achieve and sustain long term curriculum change.
54 See Table B.
An inquiring mind – curiosity. A desire to improve oneself and the world. I put the smorgasbord of topics on the table and invite students to engage with the topics that most engage them – to explore these further in their assessments. I try to maintain enthusiasm that will challenge and infect the students to want to know more – to move them beyond their comfort zone – sometimes this requires throwing out challenging topics or statements for students to respond to. I encourage student participation in the class room or on discussion boards by putting up weekly discussion topics concerning the area we are learning at the time.

So when I’m shaping a piece of assessment I try and ... have it so it’s relevant to the workplace and that’s what students want - they are wanting to know, how am I going to use this.

However, these types of assessment require more commitment of staff time and resources and in a climate in which academics are being asked to restrict their face-to-face contact time and cut down on casual tutors and marking contracts the needs of the student and the demands of the institution leave the academic who cares, between a rock and a hard place:55

Well, I’m in a bit of a quandary at the moment, because this year I’ve set one particular piece of assessment for students to have as an option. You know, they can make a choice as to whether they sit at home and read through cases and write a case note on it or they can go and visit a court and I would have thought students would have jumped at the chance of doing a piece of assessment that actually took them into a courtroom environment and got them to sit down and comprehend what was going on and write that down and talk about perspective and I was really disappointed at the number of students who took up that option. I think it comes back to the point of what is motivating students to do what they are doing at this point in time, in their undergraduate degree studies and unfortunately to the bulk of them it’s a means to an end.

My own enthusiasm and desire for students is to learn something useful and to, in particular, learn how to question and think critically. Also to learn lifelong learning skills by being self directed, sufficent and motivated. I like to challenge students to go outside comfort zones. This makes more work for me which is not what I first think about in setting assessment... but is becoming more the case.

Baron notes a heavy burden can be placed on an academics time with ‘the necessity to teach skills as well as content in courses; and the tendency to move away from doctrinal scholarship to the comparative, theoretical and sociological exploration of law.’56 Despite the fact that teaching and assessing skills requires perhaps greater resources and time commitments from academics, many still acknowledge that it is an important aspect to teaching in a professional degree qualification:

55 Greg Kearsley & Ben Shneiderman (1999) Engagement Theory: A framework for technology-based teaching and learning< http://home.sprynet.com/~gkearsley/engage.htm> viewed 12 February 2010, ‘Engagement theory is based upon the idea of creating successful collaborative teams that work on ambitious projects that are meaningful to someone outside the classroom.’
Graduate attributes and skills – it’s very helpful to have an idea of the kinds of skills and sort of qualities you are trying to develop and trying to encourage when you’re preparing assessment. So having those in mind beforehand and during the preparation of assessment, as well as during its marking and generally overall for the subject is quite important.

1. Acceptance of the Graduate Attributes.

The graduate attributes at the institutional level where this research was undertaken are identified as: discipline expertise, professional practice, global citizenship, scholarship and lifelong learning skills. The degree of importance accorded to each of these by the law academics indicates a preference for some at the expense of others.

Table F The percentage ranking of the 5 Graduate attributes as ‘very important’ by law academics in this research study.

<table>
<thead>
<tr>
<th>Percentage rankings</th>
<th>discipline expertise</th>
<th>professional practice</th>
<th>global citizenship</th>
<th>scholarship</th>
<th>lifelong learning</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>26.8</td>
<td>19.5</td>
<td>9.7</td>
<td>17</td>
<td>26.8</td>
</tr>
</tbody>
</table>

The skills identified by the law school as ideals for the graduates include discipline based knowledge and key skills for lawyers: ethical research and inquiry; problem-solving ability; academic and professional literacy; written and oral communication; interpersonal skills; teamwork; cultural literacy; management, planning and organisational skills; creativity, initiative and enterprise; sustainable practice; doctrinal knowledge. Some academics seem to feel a lack of ownership or affinity with the types of graduate attributes promoted by the institution. This factor was noted by Davies et al: ‘A strong theme emerging from the consultations within the regional meetings was not to discount the importance of the ‘ownership’ factor being present among the academics affected by, and charged with, implementing a Graduate Attributes process.’57 Our research uncovered similar needs where academics felt the graduate attributes were something being imposed on their course:

But I think there is a certain pattern that your course is supposed to conform to have these graduate attributes it doesn’t matter whether it is suitable or not suitable as long as your course has these 6 graduate attributes.

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57 Davies et al, above n 28, 60.
Graduate attributes are like sign posting they are very important to make sure students learn properly and come out in the real world with the knowledge. Certainly sometimes the one’s they use are not always the best they could be.

Well the problem with graduate attributes is that they are high-minded, very general statements that are bandied about, and ... students have little time to really deeply engage with them. And probably, you know, I feel that I need to more fully understand them – I understand them in a very general sense.

... graduate attributes and skills, some of them that I think that we have, seem to be a little bit far-fetched or difficult to relate back. I understand where they are going, but to actually reach that, I’m not sure that we’ve got there.

This uncertainty when it comes to graduate attributes, their applicability to the specifics of a law degree and also to the difference between skills and attributes can lead to lack of clarity for students. Academics in this study reflected a perception that students’ may lack an understanding of graduate attributes:

*They just focus on the assessment, and aren’t discerning about graduate skills, etc.*

*Some are, but most are not.*

*Some are; and have raised them. Most are not*

*Varies – depending on student & stage of their degree*

*It is not essential that students have a sense of how their skills and knowledge are being progressively developed, but it would be nice.*

*It is more important that students actually develop the skill; awareness of ... the specific skills to be developed in... programs; and ... how they are particularly mapped out in the LLB or JD, is secondary and would even be impressive. It would be rare even for most of the academic staff in any given university to have this awareness.*

*Students I believe see the courses as providing content rather than skills – They may see that they “know” an area without understanding that knowledge comes with certain skills/abilities.*

This view was supported by the student focus group although to some degree the students claimed this was due to lack of explicit information from academics on graduate attributes:

*..there are learning objectives in the study guide but we are not taken through those.*

*..there is no explicit talk about them*

*[X has] taken us through them, so I am aware of them*

*...and no one else has taken me through them.*
Implementing and assessing skills can seem an uncertain art when it comes to assessment, particularly in a higher education environment that imposes ‘retention and progression’ demands on academics, which, as the following statement demonstrates, can set up conflicting demands:

*I sometimes worry that I’m undermining the graduate attribute skills in completing assessment, because one of the graduate attribute skills is about research and also about initiative, and if I then enter in to moral discussions and email exchanges I am undermining the very attributes that we’re trying to create. And I think that you want to have students that are able to be pro-active, who are able to be a bit smart about carrying out an assignment, and about being able to research the assignment for themselves. … that’s a bit of an art in balancing those two needs.*

How an academic actually assesses the level of skill attainment seems heavily reliant on the academics own judgement which is in turn based on their experience. As the following quote demonstrates:

*I think in general there’s going to be an element of judgment rather than of scientific calculation in assessing whether you’ve actually promoted say the development of critical thinking skills. … but you have to rely on judgment as much as on hard calculation.*

Responses on how confident one is in assessing graduate attributes indicate it tends to be related in the mind of some academics to the number of years spent either teaching or in professional practice or both:

*Quite confident in that, because I have been a lawyer for umpteen years. I had my own law firm … I have been here for about [x] years. I think I am pretty good at assessing students and applying the graduate attributes.*

*Confident because I’ve been teaching for [x] years and I know I’m quite pedantic about written work.*

*I’ve got reasonably confident because I’ve been in the workforce for twenty-odd years and I’m still a practicing solicitor.*

While the art of assessing skills and graduate attributes would appear, from both our research, and from the literature, to be uncertain, the need for academics to grapple with the professional, institutional and government demands to retain and progress an increasing number of diversified students to achieve ‘quality’ graduates remains. This has led to the use of tools such as technology, for some seen as a panacea to the many issues and for others an added cause for stress, ultimately affecting assessment and student learning.

*E. Technology in Assessment.*

The impact of the higher education sector competing in an open globalised market, together with encouragement for increased attendance from diversified student populations, means many universities have responded in a similar vein with their organisational changes.
and uptake of IT.\textsuperscript{58} With a diversified market including mature aged students looking for flexible lifelong learning opportunities to prepare them for uncertain futures there is a drive for virtual education to prepare quality students for a digitalised world.\textsuperscript{59} Students who are given inquiry based assessments incorporating digital literacy skills as opposed to subject-based assessments develop self-directed learning styles with the teaching style adapted to facilitative mentoring of a collaborative learning.

Collaborative student focused learning has often been touted as the cure for growing class numbers and workload demands for academics.\textsuperscript{60} This unfortunately is not often the experience of academics, with the demand now on the academic to become an expert mentor available to assist students one-on-one in a non-time constrained environment:\textsuperscript{61}

\begin{quote}
I find that I can spend an enormous amount of time dealing with one or two students, which I feel is not fair to the other students. It also detracts from my engagement with the substantive content and the discipline knowledge. Time that I could be spending on that; I am spending with a few students.
\end{quote}

With distance education, the student’s evaluation of the academic and their course often occurs through their perception of the teacher’s engagement with the student online and the provision of interactive resources. This is particularly of concern when the evidence shows that 60\% of academics in Australia are over the age of 45\textsuperscript{62} and further that engagement with and use of technology tends to decline with age.\textsuperscript{63} For older academics this is an extra burden as they have to adapt and learn the new technologies becoming an expert in order to provide interactive and educational virtual environments that can incorporate knowledge and skill training to produce the best graduates.\textsuperscript{64} Anderson et al note that ‘[s]uch perceptions underline the importance of providing all teachers with effective professional development so that they can confidently establish teacher presence online.’\textsuperscript{65}

\begin{itemize}
\item \textsuperscript{59} Peter Goodyear et al, 'Networked learning in higher education: Students’ expectations and experiences' (2005) 50 \textit{Higher Education} 473–508; Beverley Oliver and Veronica Goerke, 'Australian undergraduates’ use and ownership of emerging technologies: Implications and opportunities for creating engaging learning experiences for the Net Generation' (2007 ) 23(2) \textit{Australasian Journal of Educational Technology} 171: ‘Additionally, the teaching and learning styles that middle aged university teachers find intellectually stimulating are unlikely to maintain the interest of today’s "Net Genners” , 180-181.
\item \textsuperscript{60} M A Edwards & F Clear, ‘Supporting the collaborative learning of practical skills with Computer Mediated Communications technology,’ (2001) 4(1) \textit{Educational Technology and Society} 1436-4522; Martina A. Doolan and Trevor Barker, ‘Measuring The Effectiveness of StudyNet In The Context Of Online Learning Environments’ (Paper presented at the Computer And Learning, Belfast, April 8-10 2003).
\item \textsuperscript{64} R Smith and P Curtin, 'Children, computers and life online: Education and the cyber-world' in I. Snyder (ed), \textit{Page to screen: Taking literacy into the electronic era} (1997) 211.
\item \textsuperscript{65} Anderson et al., 2001 cited in Gail Wilson and Elizabeth Stacey, ‘Online interaction impacts on learning: Teaching the teachers to teach online’ (2004) 20(1) \textit{Australasian Journal of Educational Technology} 33, 35.
\end{itemize}
The changes in teaching practice for virtual teaching platforms encompass a whole new approach to teaching; some students expect academics to be continually available.\textsuperscript{66} The range of skills now extends across many capabilities such as: facilitator; technology expert; designer; manager/administrator; advisor/counselor; mentor; assessor and researcher.\textsuperscript{67} The later aspect does not mean pursuing ones research interests and obligations but rather researching new and engaging ways to deliver discipline content and skills learning in a virtual environment. Gillespie et al\textsuperscript{68} found in their study of work place stress that “…the introduction of new technologies (e.g. internet communication, web-based and on-line teaching) and software packages, increased their workload and contributed to stress.”\textsuperscript{69} Cownie\textsuperscript{70} indicates another downside of technology is the role it plays in ‘decreasing secretarial support as academics carry more and more ‘self-servicing’ duties, including writing and editing their own course materials on sophisticated publishing software platforms.

There is a need for structural changes such as adaptation to different student cohorts, in particular off-campus students in universities to adjust to the competitive pressure brought about by globalisation and technology.\textsuperscript{71} However, in this drive to incorporate technology into the learning environment academics still aim to create an engaging learning environment that adapts the available technology tools to the teaching needs: \textsuperscript{72}

... I’ve become a little more savvy ... in the next course I’m writing, about my ability to survive assessment and you know, making it a little easier on myself. I still probably haven’t gone to the full extent with that because I still have to value my teaching, that I’m actually teaching the student something so that is what drives me, but it will be to make sure it doesn’t kill me.

The saviour of technology is one which is problematic and adds its own challenges to effective teaching and demands on academics. Another concern in the area of assessment that was raised in the research and is closely linked to the pressures from the current higher education environment is the evaluation of teaching and its impact on assessment practices.

\textit{F. Evaluations}

As mentioned at the outset, the push for ‘quality’ graduates means the systemised language of accountability and number crunching comes into play. A plethora of testing instruments are introduced, no longer is trust placed in the academic to be professional in their assessment and grading of the student – more quality assurance testing has to occur to

\textsuperscript{66} M Bullen, ‘Participation and critical thinking in online university distance education’ (1998) 13(2) \textit{Journal of Distance Education} 1.

\textsuperscript{67} Gail Wilson and Elizabeth Stacey, 'Online interaction impacts on learning: Teaching the teachers to teach online' (2004) 20(1) \textit{Australasian Journal of Educational Technology} 33, 38.

\textsuperscript{68} Nicole Gillespie et al, 'Occupational Stress in Universities: Staff Perceptions of the Causes, Consequences and Moderators of Stress' (2001) 15(1) \textit{Work and Stress} 53..\textsuperscript{69}

\textsuperscript{69} Ibid.

\textsuperscript{70} Cownie, above n 56.


23
justify government expenditure of tax payers’ funds and to work as a carrot type incentive to inspire academics to ensure they produce ‘quality’ graduates.73 Further the student is often placed in the role of evaluator, and it is questionable just how well placed they are to make this judgment.74 Stress factors increase when the student evaluations are perceived to arise from poorly designed evaluation systems with perceptions that the highest ratings are based on ‘the entertainment value and ease of the course.’75 Much of the ‘quality’ assurance is largely dependent on the capability of the testing instrument to genuinely assess the graduates ‘quality’ or the teaching and learning outcomes:

Increases in competition for scarce resources and a decrease in the public’s trust in higher education practices have resulted in demands for campuses to demonstrate their productivity, effectiveness, and efficiency. Institutions have responded with a variety of data about student enrolment trends, student retention and graduation rates, job and career placement, and faculty workload studies. In turn, this frenzy of measurement is passed on to individual academics who face a range of accountability measures for all aspects of their performance: teaching evaluations.76

It seems when higher education is being induced to diversify its intake and accommodate difference, little is being done to acknowledge these differences in the evaluative tests, such as looking at cultural and socio-economic factors.77 Progression rates of students to graduations seemed to have improved. However, understanding the reasons for this is not so clear: it could be new and improved teaching; better or more motivated students or lower standards and pass rates. Whichever it is ‘[i]t would seem important that the institutions themselves have the means to understand what is happening in these new circumstances.’78 The following views clearly demonstrate the need for this information to be used wisely:

I am a bit against some of these things like take home exams. I have got concerns about whether they are done by students. I have concerns about assignments as to whether they are done by students. Students give you a brilliant assignment and then they sit the exam and they can’t even write English, it is obvious the same person hasn’t written the assignment.?... I don’t think that is going to achieve anything.

I think the whole problem is the University is just wanting student retention wanting a churning out, x number of students ... not the quality. I don’t think that should be...

Bradney has expressed concern with the impact of testing on the future of legal education, stating that ‘[a]udit invites academics to treat students as future employees and

73 Chalmers, above n 7, ‘There are concerns expressed by researchers and higher education institutions about the impact of national/sector performance indicators on the autonomy and diversity of institutions. While there are clear trends emerging of greater oversight and desire for standardised measures of learning and effectiveness at the national level, this trend should be interpreted cautiously. The more promising measures and indicators are those that are situated in institutional practice.’ 69.
74 Johnstone et al, above n 46, 335.
75 Gillespie et al, above n 68, 65.
77 Anderson, Johnson and Milligan, above n 4..
78 Ibid, 3.
seeks to treat academics as workers on an assembly line. The terms ‘inputs’ and ‘outcomes’ are frequently used in discussion, and there seems to be a growing move towards assessing outcomes rather than inputs, which understandably are seen as less valid indicators of standards. In Johnstone and Vignaendra’s thorough study they reflect an attitude by law academics that student evaluations are often used in staff reviews as a “stick” to “manage” teaching quality in schools… which only encouraged teachers to stick to tried and trusted methods such as straight lecturing and other forms of “spoon-feeding” in order to ensure that their student “ratings” were high enough to ensure their tenure or promotion. Just how this monitoring and response to feedback is to occur would seem to be largely left to individual institutions and in many cases the individual academic. Significantly, it is to be noted that interpreting the feedback in a useful way can be an uncertain art:

The other thing which is an institutional demand is student reaction. I don’t think it’s just a perception that universities often respond more favourably to student complaints than they do to academic demands. I’ve seen it too often and every academic is quite sensitive to student reaction. The only thing is that student reaction is the Tower of Babel and you get a lot of different voices, in a lot of different languages. So student reaction is taken seriously, the question is, how do we respond to that and that’s a difficult thing because different students say different things – better students say they don’t like it, most students say that’s okay, that suits me. You know, what do you do?

The Course Evaluation Questionnaire (CEQ) is widely used in Australia, however, it is only administered at the end of a degree and thus any data obtained suffers from a time-lag effect as far as opportunities to respond, particularly at a course level. These dilemmas for the academic are part of the changing dynamics and demands being placed on the tertiary education sector. The different models of evaluation used at the course level, programme level, institutional and national level can have variations in their theoretical underpinnings and design and ultimately impact on the approach an academic takes to assessment. Johnstone and Vignaendra conclude that any evaluation of teaching should include a wider focus than just the academic. It should take a holistic approach taking into account the environment within which the teaching occurs including the approaches taken by colleagues within the same school, the attitudes of senior managers within the school, the university’ policies towards teaching and the school, and the signals and resources from governments.

80 Anderson et al, above n 4, 6.
81 Johnstone and Vignaendra, above n 46.
82 Ibid., 335.
85 Johnstone et al, above n 46.
86 Ibid., 344.
IV. REFLECTIONS AND CONCLUSION

The solution to these interconnected dilemmas may well be to focus on changes to the environment and context in which the academic constructs assessment. Baron suggests there is a significant difference between mere survival as a law academic and thriving. She suggests that universities should focus on helping law academics thrive and proposes some practical suggestions to move towards this, such as promoting collegiality, practising time management strategies – including factoring in free ‘thinking’ time, having realistic expectations, utilising mentoring, having a supportive and alert management, maximising professional autonomy and development of the individual academic. This is all made problematic by the vision of increasing numbers of students needing greater teaching support, with an added consumer attitude that demands greater academic availability, while all the time faced with a ‘big-brother is watching you, institutional context.

Studies on academic satisfaction indicate clearly what is needed to improve alarming imbalances in work-life experience and stress and depression levels. However, little response seems to have occurred. In fact the demands and the rhetoric of the higher education ‘agenda-setters’ ideological commitment to a goal encompassing a free market seems to be driving in the opposite direction to all of the clues for improvement. Baron discusses the need for a creative life to bring about a ‘thriving’ person while a compliant life requires ‘adaptation and fitting in’ leading to a feeling of futility and that nothing really matters.

Universities are moving to more restrictions on academics ability to ‘play’ and access the thinking and creative time needed for genuine engagement:

...because we’ve got other commitments as academics called research and which unfortunately I do believe takes precedence over anything else that we do at university so as a time resource the more engaging you try and make the assessment for the students, the more resource intensive it is, for both the academics and the students.

The other thing that has been a factor in lightening assessment loads has been workload and that has been notoriously the case ...where the effect of demands for research on academics has actually encouraged those places to reduce the amount of assessment. Which, you know, the students generally like. But as to whether it brings them to the point where you want to – I don’t know.

Baron links a feeling of well being to a safe social environment. This is an environment in which leadership provides a warm, empathetic and attending aspect encourages academics to feel part of a collegial group who are free to communicate and participate in a ‘non-threatening’ atmosphere. Baron argues that if more attention was paid to the law academics well-being then this could have a positive effect on the law student and ultimately law practitioner. How academics deliver the teaching of law can have an impact on

87 Baron, above n 18, 47-52.
88 Gillespie et al, above n 68, 62.
89 Ibid.
91 Baron, above n18, 31.
this outcome. To avoid overwhelming amounts of depression in lawyers and law students in particular, teaching needs to allow for the expression of personal values and opinions and place ‘thinking like a lawyer,’ dominated by the positive law paradigm, into an overall perspective so that it can be used appropriately and not dominate the curriculum. Graduate attributes such as global citizenship invite more of this in the law curriculum but have a tendency to be undervalued by academics.

The following answers provide some hope as to the qualities some law academics wish to develop in their course objectives, perhaps with a view to respond to the need for solutions such as suggested by Baron:

*Students are required to deliver their oral submissions in front of other students. Student observers are encouraged to value any contributions given with the understanding that each student is informed by their personal environment (home, work etc ...); level of education; age; gender; cultural background etc..., and that we can learn from each other’s perspectives.*

(Self reflection and an ability to understand their own personality and its impact on conflict... Their own values for similar reasons and to overcome overwhelming amounts of depression suffered by lawyers.

*Being ‘creative’ & ‘innovative’ we are too focused on meeting end results with little room for these qualities. There is a fear of failure that squashes these qualities.*

Our research raised issues such as different values impacting the perceived purpose of assessment; what graduate attributes and skills, if any, in the latter case, should be assessed; the impact of institutional and professional demands on what assessments academics will provide, how they will use technology and the impact of evaluations on academics response in setting assessments. All of the factors demand individualised teasing out through further research, to more clearly discern the degree of influence each has on assessment and therefore learning outcomes for graduates. This study has demonstrated that there is a variety of approaches in response to the higher education context based on academics individual values. However, these responses are within a consistent range being presented in other studies. This reinforces the need to address these concerns.

Despite the hope, there is still a risk of widening the divide that exists between the rhetoric and the reality. Much of the bridging of this divide has been dependent on the good will of committed academics who value their profession and teaching and research enough to keep batting against the odds. However, the brink would seem to be looming closer for many, as the research indicates. Cownie advocates following the advice of Socrates and examining our lives as academics to determine what we want as individuals. Do we want to be consumed by ‘the greedy university’ or do we reject the long hours and settle for less

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93 Baron above n, 18, 35.
95 Refer Table F.
96 Gillespie et al, above n 68; Cownie, above n 56.
97 Cownie, ibid.
98 J Currie, P Harris and B Thiele, ‘Sacrifices in Greedy Universities: are they gendered?’ (2000) 12(3) Gender and Education 269.
promotion and job-satisfaction? These are real questions academics are now being forced to face as they are caught between the ‘rocky rhetoric and the hard reality’. The impact of these concerns on the focal point of assessment highlights the need for further research and consideration of the very real way in which the ‘rhetoric’ of higher education and the ‘reality’ at the coal face is perceived by those in it, thus effecting the ultimate product of higher education – the ‘quality’ graduate.