IMPLEMENTING THE SELF-MANAGEMENT THRESHOLD LEARNING OUTCOME IN AUSTRALIAN LEGAL CURRICULA: INSIGHTS FROM SELF-DETERMINATION THEORY

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ABSTRACT

In 2010, six Threshold Learning Outcomes (TLOs) for law were developed by the Australian Learning and Teaching Council’s Discipline Scholars: Law. The final of these outcomes, TLO 6, concerns self-management. This thesis examines strategies for implementing self-management in Australian legal education by first contextualising the development of TLO 6 in light of other relevant national and international developments in higher education, and secondly, analysing this learning outcome through the lens of Self-Determination Theory (SDT), an influential branch of educational psychology.

It is argued that the central concept of autonomous self-regulation in SDT provides insights into factors that are relevant to law students’ capacities for long-term self-management, which is reinforced by analysis of the literature on law students’ distress. Accordingly, curriculum design that supports students’ autonomy may simultaneously promote students’ self-management capacities. The discussion of theoretical and practical perspectives on autonomy supportive curriculum design in this thesis thus illuminates potential pedagogical approaches for the implementation of TLO 6 in Australian legal curricula.
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<th>Description</th>
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<tbody>
<tr>
<td>ALTC</td>
<td>Australian Learning and Teaching Council</td>
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<tr>
<td>ANU</td>
<td>Australian National University</td>
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<td>AQF</td>
<td>Australian Qualifications Framework</td>
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<td>ATN</td>
<td>Australian University Technology Network</td>
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<tr>
<td>BMRI</td>
<td>Brain and Mind Research Institute</td>
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<tr>
<td>CALD</td>
<td>Council of Australian Law Deans</td>
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<tr>
<td>CRA</td>
<td>Criterion-Referenced Assessment</td>
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<tr>
<td>DASS</td>
<td>Depression, Anxiety and Stress Scales</td>
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<tr>
<td>ERA</td>
<td>Excellence in Research for Australia</td>
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<tr>
<td>Go8</td>
<td>Group of Eight</td>
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<td>GPG</td>
<td>Good Practice Guide</td>
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<td>JD</td>
<td>Juris Doctor</td>
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<td>LLB</td>
<td>Bachelor of Laws</td>
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<td>LTAS</td>
<td>Learning and Teaching Academic Standards</td>
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<td>MLS</td>
<td>Melbourne Law School</td>
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<tr>
<td>RQF</td>
<td>Research Quality Framework</td>
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<td>SDT</td>
<td>Self-Determination Theory</td>
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<td>SOS</td>
<td>Subject Overview Spreadsheet</td>
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<tr>
<td>TEQSA</td>
<td>Tertiary Education Quality and Standards Agency</td>
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<td>TLO</td>
<td>Threshold Learning Outcome</td>
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<tr>
<td>UNSW</td>
<td>University of New South Wales</td>
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<tr>
<td>UTS</td>
<td>University of Technology, Sydney</td>
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STATEMENT OF ORIGINAL AUTHORSHIP

The work contained in this thesis has not been previously submitted to meet requirements for an award at this or any other higher education institution. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made.

Signed: ____________________________

Date: ______________________________

21 MARCH 2013
ACKNOWLEDGEMENTS

This thesis was inspired by the groundbreaking work of my supervisors, Associate Professor Rachael Field and Professor Sally Kift, both of whom played a pivotal role in the development of the Threshold Learning Outcomes for law in 2010. Additionally, Rachael’s 2011 Australian Learning and Teaching Council Fellowship on stimulating strategic change in legal education to address high levels of psychological distress in law students raised my awareness and inspired me to further investigate the potential contributing factors – and antidotes – to law students’ elevated levels of psychological distress. This thesis reflects my strong interest in, and appreciation for, the excellent work my supervisors have done on these and related issues in the field of legal education, and my passion for further contributing to this field.

From the outset, my principal supervisor, Rachael, has been an outstanding source of support, encouragement, guidance, and constructive feedback – and indeed epitomises the autonomy supportive ethos espoused in this thesis. Sally’s support, expertise in the field of legal education, and detailed, thoughtful feedback have also been invaluable. I would also like to acknowledge my mother’s commitment to education generally, and my education in particular, and the inspiration that her passion for writing and teaching have provided. Finally, I would like to thank my husband, David Revitt, who has been a constant source of support, understanding, good humour, wisdom and joy throughout this process.

Anna Huggins
Sydney, March 2013
CHAPTER 1: INTRODUCTION

1.1 Background and Context

In 2010, six Threshold Learning Outcomes (TLOs) for law were developed by the Australian Learning and Teaching Council’s (ALTC) Discipline Scholars: Law. The final of these outcomes, TLO 6, concerns self-management, which is a relatively new concept for legal education in Australia. This thesis examines the origins of the TLOs and possible meanings of self-management, and presents theoretically-informed analyses of TLO 6 and strategies for its implementation in legal education. Importantly, the concept of self-management encompasses more than students simply managing time and workloads, and complying with assessment instructions and deadlines. Whilst these skills are critical for success at law school and in the workforce, self-management also entails developing emotional intelligence and resilience, maintaining motivation, coping with stress, uncertainty and difficult situations, and engaging with ongoing personal and professional development. Critically, it is argued that the development of these capacities in law students should be a shared responsibility of both law teachers and students.

This Chapter outlines the background of, and context for, this research on the self-management TLO (section 1.1), the discussion of which will be expanded upon and extended in Chapter 2. Section 1.2 describes the scope and significance of the

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research, and section 1.3 presents the research objectives, questions and methodology that will be employed in this thesis. Finally, an outline of the remainder of the thesis is provided in section 1.4.

The development of a TLO for self-management reflects a number of important trends in Australian legal education, and in national and international higher education more broadly. First, in recent decades there has been ongoing and increasing emphasis on learning and teaching generic skills.\(^3\) In its 1999 *Managing Justice* report, the Australian Law Reform Commission (ALRC) called for a stronger focus in Australian legal education on ‘what lawyers need to be able to do’, rather than its current emphasis on ‘outmoded notions’ of what ‘lawyers need to know’.\(^4\) The ALRC advocates ‘increased emphasis on broad professional skills development’, stating that:

\[\ldots\text{ properly conceived and executed, professional skills training should not be a narrow technical or vocational exercise. Rather, it should be fully informed by theory, devoted to the refinement of the high order intellectual skills of students, and calculated to inculcate a sense of ethical propriety, and professional and social responsibility.}\(^5\)\]

Developing pedagogical strategies for TLO 6 reflects the importance of high level professional skills associated with self-management in legal curricula, and contributes towards addressing a long-standing reform agenda for Australian legal education.\(^6\)

One of the things ‘lawyers need to be able to do’ in contemporary practice is demonstrate self-management in terms of, inter alia, time management, stress management, resilience and emotional intelligence. During consultation with the profession on the development of the TLOs, a senior executive of a State-level peak professional body said that ‘Self-management is fundamental to surviving and

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\(^{5}\) ALRC, above n 4, 151 (citations omitted).

thrusting in any type of legal practice – from policy to commercial’. Historically, the development of these types of knowledge, skills, and qualities has not been a focus of traditional legal education, but, as will be described in detail in Chapter 2, this landscape is changing.

Secondly, the salience of self-management in law is underscored by the disproportionately high levels of psychological distress experienced by both students and practitioners of the law. The publication of the Brain and Mind Research Institute’s (BMRI) Courting the Blues monograph in 2009 provided comprehensive empirical evidence that, alarmingly, more than one-third of the surveyed law students from Australian universities experience high levels of psychological distress. Recent empirical research at a number of individual Australian law schools reveals similar trends, suggesting that aspects of the legal education experience may contribute to widespread distress levels amongst law students in Australia, as in the United States. Spurred by these research findings, there is increasing awareness and concern about law students’ elevated distress levels amongst members of the Australian legal academy and the broader legal community.

7 Quoted in Kift, Israel and Field, above n 2, 23.
9 Kelk et al, above n 8.
10 Ibid 11–2.
For example, one of the outcomes of Associate Professor Rachael Field’s ALTC Fellowship, awarded in 2010, was the creation of the Wellness Network for Law, which is a growing community of legal academics, law students and members of the profession committed to ameliorating distress and promoting wellbeing in the law.\textsuperscript{13} The Tristan Jepson Memorial Foundation has also played a pivotal role in raising awareness about mental health issues in the legal profession.\textsuperscript{14}

The trends in law students’ distress emphasise the importance of developing and strengthening law students’ emotional intelligence, resilience, and self-management capacities as part of their legal education experience. Learning, teaching, and assessing self-management provides an opportunity for Australian law schools to address and alleviate the high levels of distress experienced by law students. This thesis will address this issue by discussing and proposing a range of theoretically-informed curricular strategies for the development of law students’ self-management capacities and competencies. These skills once mastered may assist with student wellbeing and retention through to graduation and will also be transferable to graduates’ working lives.

Against this backdrop, the inclusion of self-management as one of six TLOs for the Bachelor of Laws (LLB) degree articulated in 2010 was not completely unexpected. The ALTC Discipline Scholars for law, Professors Sally Kift (then Queensland University of Technology (QUT)) and Mark Israel (University of Western Australia), assisted by Associate Professor Rachael Field (QUT), articulated the six law TLOs as part of the ALTC’s 2010 project on Learning and Teaching Academic Standards (LTAS).\textsuperscript{15} The final TLOs articulated for the Bachelor of Laws degree are described in the \textit{Standards Statement for the Bachelor of Laws} (‘\textit{Standards Statement}’) under six headings: (1) knowledge; (2) ethics and professional responsibility; (3) thinking skills; (4) research skills; (5) communication and collaboration; and (6) self-management.\textsuperscript{16} The primary concern of this thesis is TLO

\begin{footnotesize}
\begin{enumerate}
\item See Tristan Jepson Memorial Foundation, \textit{Wellness Network} (6 December 2011) \texttt{<http://www.tjmf.org.au/wellness-network/>}. Within six months of calling for members, more than 50 members of the Australian legal community, the vast majority of whom are law academics, had joined the Wellness Network for Law (email from Rachael Field to Anna Huggins, 24 August 2012).
\item See Tristan Jepson Memorial Foundation (13 January 2013) \texttt{<http://www.tjmf.org.au/>}.
\item Kift, Israel and Field, above n 2.
\end{enumerate}
\end{footnotesize}
6 on self-management, which states that:

Graduates of the Bachelor of Laws will be able to
a. learn and work independently, and
b. reflect on and assess their own capabilities and performance, and make use of
feedback as appropriate, to support personal and professional development.\footnote{17}

Importantly, the \textit{Standards Statement} articulates \textit{minimum} threshold standards for
the LLB degree, which law schools are ‘expected to meet or exceed’,\footnote{18} and, as will
be elaborated in section 2.2.3, includes \textit{Notes on the TLOs} to provide further
guidance on their interpretation and implementation.\footnote{19}

The TLOs have received widespread support from key stakeholders. Most
significantly, the discipline standards statements have been identified as external
reference points in a current legislative instrument\footnote{20} clarifying aspects of the
Australian Government’s new Higher Education Standards Framework under the
\textit{Tertiary Education Quality and Standards Agency Act 2011} (Cth). The
Government’s Tertiary Education Quality Standards Agency (‘TEQSA’) has been
tasked with, inter alia, overseeing a standards-based quality assurance framework for
higher education providers in Australia.\footnote{21} In Chapter 3, the Threshold Standards
instrument outlines the requirements for higher education ‘Provider Course
Accreditation Standards’ pursuant to s 58(1)(c) of the \textit{TEQSA Act}. Relevantly, as
part of these accreditation standards, a higher education provider must have ‘robust
internal processes for design and approval of [a] course of study’, which includes
‘taking] account of external standards and requirements, e.g. published discipline
standards, professional accreditation, input from relevant external stakeholders, and
comparable standards at other education providers’.\footnote{22} In other words, in accrediting a
course such as the LLB, a higher education provider must ensure that the processes

\begin{footnotes}
\item[17] Ibid 22.
\item[18] Ibid 9.
\item[19] Kift, Israel and Field, above n 2.
\item[20] \textit{Higher Education Standards Framework (Threshold Standards) 2011} (Cth) (‘the Threshold
Standards instrument’).
\item[21] \textit{Tertiary Education Quality and Standards Agency Act 2011} (Cth) s 3(b)(i) (‘the \textit{TEQSA Act}’).
\item[22] \textit{Higher Education Standards Framework (Threshold Standards) 2011} (Cth) Ch 3, s 1.2. Note,
however, that the Higher Education Standards Panel is reviewing the Threshold Standards in 2013.
The wording of the current consultation papers suggests that the reference to the discipline standards
in the Threshold Standards instrument will not be recommended for removal as part of the Panel’s
review of the Higher Education Standards Framework: see Australian Government Higher Education
for course design and approval have taken into account external standards and requirements, the first listed example of which is the published discipline standards, which in law means the Standards Statement articulating the TLOs. Thus, the TLOs constitute a reference point for Australian education providers in accrediting their law degrees under the TEQSA regime.

The TLOs have also been approved by the Council of Australian Law Deans (CALD): in November 2010, CALD endorsed the Standards Statement as ‘an appropriate statement of the Threshold Learning Outcomes that are required of Bachelor of Law graduates from any Australian university’.

Further, the Legal Admissions Consultative Committee considered adopting the TLOs as requirements for admission to legal practise, but has opted to retain the Priestley 11 core subjects as admission requirements at this stage. Law graduates’ ability to self-manage is also highly regarded by legal employers: for example, during the stakeholder consultation process for the development of the law TLOs, representatives of the legal profession indicated that they regarded the need for law graduates to have the types of emotional intelligence incorporated in self-management as ‘critical to professional practice’.

Self-management as it is currently articulated in TLO 6 is a relatively new concept for legal education in Australia, which is likely to continue to grow in importance in light of the inclusion of the Standards Statement as an external reference point in TEQSA’s Higher Education Standards Framework, and support from CALD as the leading national representative body of Australian law schools, and the legal profession. In this context, a deeper understanding of the concept of self-management and the proposal of a theoretical lens through which this issue can be analysed is salient and timely. On a practical level, it is desirable to direct attention to developing pedagogical strategies to promote and demonstrate students’ acquisition of TLO 6 on self-management. This thesis will thus address an important gap in the extant literature by providing both a theoretical framework and practical

23 Kift, Israel and Field, above n 2, 7.
25 Kift, Israel and Field, above n 2, 23.
pedagogical suggestions for the implementation of the self-management TLO.

The practical contribution of theoretically-informed approaches to learning, teaching, and assessing self-management has the potential to extend beyond the LLB. The Government’s Australian Qualifications Framework, discussed further in section 2.3.1, requires graduates to acquire learning outcomes that are similar to self-management for the award of Bachelors, Bachelor Honours and Masters degrees.26 This in part explains why other disciplines have also developed a TLO on self-management (or equivalent). For example, the Disciplines of Accounting and Engineering have developed a TLO on self-management, whilst Geography has a TLO on ‘self-directing and collaborating’ and the final TLO for Health, Medical and Veterinary Science expects graduates to be able to ‘reflect on current skills, knowledge and attitudes, and plan ongoing personal and professional development’.27 Additionally, TLOs for the Juris Doctor (JD) have also been developed by the Associate Deans’ Law Network.28 There is potential, therefore, that the self-management strategies proposed for TLO 6 for the LLB in this thesis will be relevant and transferable to other disciplines and the JD.

Especially in a context in which some law teachers resist the need to address law students’ distress and emotional wellbeing as part of legal education,29 it is desirable that pedagogical strategies for implementing the self-management TLO are theoretically-informed and rigorous. To illuminate the development of such strategies, this research will build on recent research that utilises Self-Determination

29 See, eg, Kath Hall, ‘Do We Really Want To Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools’ (2009) 9 Queensland University of Technology Law and Justice Journal 1.
Theory (SDT), which is an influential branch of educational and positive psychology that provides a theoretical and practical fit with legal education research. This has been demonstrated in a number of important American studies by Sheldon and Krieger in 2004 and 2007, and Manning in 2011, as well as Australian research by Larcombe et al in 2012, all of which will be revisited in detail in section 3.3. Significantly, although a number of recent legal education studies have applied SDT, this thesis and scholarly publications that I have written or contributed to during the course of my candidature, are the first to utilise SDT as a lens for analysing the self-management TLO, highlighting an original contribution of this thesis.

As will be argued in Chapter 3, a central theme in SDT is autonomous self-regulation, which is maintained by intrinsic and self-determined extrinsic motivation, and the satisfaction of the basic psychological needs of autonomy, competence, and relatedness. Based on an explication of the congruence between these factors examined in SDT and the aims of the self-management TLO, the salience of promoting autonomous self-regulation in legal education will be established. This will lay the foundation for the proposal of theoretically-informed, autonomy supportive strategies for implementing TLO 6 in Australian legal curricula in Chapter 4. The theory of autonomy support, which is part of the SDT meta-theory, posits that people thrive when they feel and perceive that others support their autonomy, particularly when there is a situation in which individuals have unequal power. Accordingly, a range of curricular strategies, informed by the findings of

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32 Larcombe et al, above n 11.
SDT research, that law teachers can implement to support students’ autonomous self-regulation36 – the provision of meaningful rationales, acknowledgement of perspectives and feelings, use of non-controlling language, choice provision, and nurturing students’ inner motivational resources – will be explored from a legal education perspective. Findings from the educational psychology literature based on SDT indicate that the implementation of such strategies will not only enhance students’ psychological wellbeing, but also facilitate their engagement and academic achievement.37 Thus, it will be argued that although law teachers cannot give students a greater sense of autonomous self-regulation, they can nonetheless take practical steps to provide optimal conditions for law students to experience and develop their capacities for autonomous decision-making and action.38 To complement the theoretically-grounded discussion in Chapter 4, and to inform the practical pedagogical implementation of these strategies, detailed examples of how each of the interpersonal conditions of autonomy support can be incorporated into legal curricula are provided.

1.2 Scope and Significance

This thesis will focus on curricular strategies for promoting self-management in legal education that are informed by SDT, and in particular the theory of autonomy support and its five interpersonal conditions. There may well be a number of other legitimate approaches to self-management that do not fall within the theoretical framework provided by SDT. These are not within the scope of this thesis and will not be considered. Thus, this discussion of pedagogical strategies for self-management does not purport to be exhaustive. Rather, its aim is to contribute to the extant literature by providing theoretically-supported analysis of proposed strategies for learning, teaching, and assessing self-management through the lens of SDT.

Further, this thesis will focus on curricular, rather than co-curricular, approaches to self-management. This is because the formal curriculum provides a normative

environment that accesses all students. In addition to university-wide support programs for student wellbeing and mental health issues, many Australian law schools have implemented a range of co-curricular and pastoral care strategies to address issues relating to law students’ wellbeing and self-management capacities. These may include ‘peer mentoring, peer-assisted learning programs, [law] student organisations and activities, specifically targeted support groups, … academic advising and referrals, and free counseling for issues directly or indirectly related to stress and mental health’.39 Whilst acknowledging the vitally important role played by these initiatives, as a means for incorporating self-management into Australian legal education they are largely ad hoc, formative and disparate. Most significantly, if such initiatives are the only ways in which self-management is promoted in law schools, they will not reach and benefit all students. This thesis will, by contrast, focus on approaches to self-management in the formal legal curriculum. Kift, Nelson and Clarke state that the ‘curriculum, broadly conceived’ has the potential to act as an ‘academic and social organizing device’ and the ‘glue that holds knowledge and the broader student experience together’.40 While I endorse this conceptualisation of curriculum, for the purposes of this thesis, I will utilise Field and Watson’s differentiation between ‘curriculum, meaning the formal taught program of study’, ‘co-curricular, meaning programs explicitly linked with, but not part of, the formal curriculum’, and ‘pastoral care, covering interventions and support that are not specifically connected to the formal curriculum’.41 As Lawrence Krieger, a US authority on humanising legal education, notes in relation to initiatives to promote law students’ wellbeing:

Curriculum integration is important. Although extracurricular programs, orientation meetings, and such are useful, and may be more easily adaptable for this purpose at first, we should be wary of relying on such venues. Otherwise we perpetuate the institutional message that creating health and well-being in the profession, and in the lives of law students, is not important enough to merit inclusion in the curriculum.42

41 Watson and Field, above n 39, 394.
Similar arguments can be compellingly applied to the need for curriculum integration of self-management-related strategies. A curricular focus is also appropriate in the context of being able to assure graduates’ acquisition of the TLOs if they are adopted for use by law schools as part of meeting their requirements under TEQSA’s quality assurance framework. Accordingly, the pedagogical strategies for self-management that I will discuss in this thesis are relevant to the formal taught program of study in law schools. The inclusion of measures to support law students’ wellbeing and self-management capacities in the formal curriculum reinforces to students that their wellbeing matters. Additionally, where relevant I will discuss self-management strategies for law school studies that law students can implement outside of law school classes to deepen their engagement with, and mastery of, curriculum content and skills.

Further, it is acknowledged that there is a need to analyse and understand effective pedagogical approaches to self-management to inform strategies for implementing TLO 6 as a program learning outcome. Kift, Israel and Field state that graduates’ attainment of all of the TLOs will ‘most likely be facilitated in a structured and integrated, whole-of-curriculum approach through learning, teaching and assessment’. Similarly, Marychurch argues that a whole-of-curriculum approach to TLO 6 is required:

The level of student autonomy needs to be gradually increased throughout the degree, such that by graduation students are able to demonstrate that they are both capable of learning and working independently, and of constructively reflecting on their own performance and utilising feedback from others to proactively address the areas of their lives that need attention or development.

Although this thesis will focus on discrete pedagogical strategies that fall within the parameters of SDT’s theory of autonomy support, and can be implemented by individual law teachers, the importance of whole-of-curriculum oversight, coordination and integration of the development of law students’ self-management capacities cannot be overstated. As will be discussed in section 2.2.3.1, curriculum mapping of the sequential development of self-management knowledge, skills, and

43 Ibid 127.
44 Kift, Israel and Field, above n 2, 9.
attitudes to ensure both ‘horizontal spread and vertical progression’ is critical for avoiding potential gaps in, and overlapping, repetitious, coverage.46 Exploring options for structured, incremental, and systematic treatment of self-management in Australian legal curricula provides an excellent opportunity for further research.

In terms of the significance of this research, the discussion in this thesis has the potential to make important scholarly and practical contributions. This research spans the fields of legal education and educational psychology, and makes novel contributions to both fields. Except for sole- and co-authored scholarly works I have written or co-written during my candidacy,47 as noted above, this is the first legal education research to provide theoretically-informed analysis and practical discussion of the implementation of TLO 6. Additional original contributions of the discussion in this thesis are situating the development of the TLOs in their broader historical and pedagogical contexts, and providing a comprehensive overview of the extant Australian literature on law students’ distress. From an educational psychology perspective, an original contribution of this thesis is the application of SDT to a new domain, namely, pedagogical strategies for self-management in legal education. The inclusion of numerous examples of proposed pedagogical strategies for self-management in Chapter 4, and particularly the extended examples, provide valuable guidance on the practical implementation of TLO 6.

1.3 Research Objectives, Questions and Methodology

The central objectives of this research are to contextualise the development of the self-management TLO, and analyse it through the lens of SDT, to achieve the following objectives:

(1) to understand the origins of the TLOs, and how TLO 6 fits with other developments in Australian and international legal education, and in the national and international higher education sectors;

(2) to illuminate the concept of self-management and what it entails;

47 See above n 1.
(3) to evaluate the appropriateness of SDT as a theoretical framework for analysing TLO 6;

(4) to revisit the current articulation of TLO 6 and propose theoretically-informed revisions as required; and

(5) to aid the identification and analysis of a range of theoretically-supported legal pedagogical strategies that promote the aims of the self-management TLO.

Although desirable, it is beyond the scope of this thesis to empirically measure the extent to which the pedagogical strategies espoused in this research promote self-management in law students once incorporated as curricular strategies; as discussed in section 5.2, this presents a valuable opportunity for future research.

In order to achieve the abovementioned objectives, this thesis will address the following research questions:

1. What is self-management and why is it relevant to legal education? To what extent does it reflect or diverge from recent trends in Australian and international legal education and the higher education sector more broadly?

2. Does SDT provide a suitable theoretical framework for analysing the self-management TLO and its implementation in Australian legal curricula? If so, what insights into legal pedagogical strategies for self-management can be provided by this theory?

3. Based on the analysis in (2), what learning, teaching, and assessment strategies for self-management, informed by SDT, may be appropriate for legal curricula? What are some of the practical steps that will need to be taken for their implementation and integration in Australian law schools?

The exploration of each of these three groupings of research questions will align approximately with the scope of discussion in Chapters 2, 3 and 4, respectively. The methodology that will be employed in this thesis is largely literature-based, applying conceptual, theoretical and analytical frames informed by SDT to the practical issue of implementing pedagogical strategies for self-management in legal curricula.
1.4 Thesis Outline

This thesis will proceed as follows. Chapter 2 outlines the background to the development of TLO 6, canvassing issues that are pertinent to Australian legal education and the broader higher education context, as well as providing a literature review of psychological distress amongst Australian law students. This Chapter will also explore different meanings of self-management in other relevant contexts to elucidate potential foci for integrating this learning outcome into legal education. Chapter 3 explicates a foundational theoretical framework based on SDT to inform the analysis and discussion in this thesis; after examining the five sub-theories of SDT, an argument concerning the relevance of a central concept – autonomous self-regulation – and its constituent elements (inner motivational resources, and autonomy, competence, and relatedness) to self-management is presented. Research on law students’ distress suggests that a disconnection from internally-endorsed motivations, and a lack of autonomy, competence, and relatedness are contributing factors to law students’ distress, reinforcing the suitability of a theoretically-informed framework based on SDT for this thesis. Chapter 4 elaborates the theoretical underpinnings of autonomy supportive curriculum design from SDT, which informs the discussion of a range of curriculum design strategies that satisfy the five empirically-supported interpersonal conditions of autonomy support foreshadowed in section 1.1 above. For each of the five interpersonal conditions of autonomy support, an extended practical implementation example is considered in detail. Chapter 5 then concludes this thesis, outlines its research limitations, and suggests opportunities for further research.
CHAPTER 2: BACKGROUND TO THE SELF-MANAGEMENT THRESHOLD LEARNING OUTCOME

2.1 Introduction

Before proceeding with a discussion of the theoretical framework provided by SDT and analysing a range of pedagogical strategies for self-management through this lens, it is useful to canvas the history and possible meanings of the self-management TLO. Accordingly, the first part of this Chapter (section 2.2) will examine the background to the TLOs, including the TLO on self-management, and the second part of this Chapter (section 2.3) will discuss varying conceptualisations of self-management. Informed by these understandings, a working definition of self-management that will underpin discussion in the rest of this thesis will be articulated in section 2.3.3. Thus, this Chapter provides an important foundation for considering the applicability and relevance of SDT as a theoretical framework for self-management, which will be addressed in depth in Chapter 3.

It is a central premise of section 2.2 that the development of the TLOs generally, and TLO 6 in particular, reflect wider trends occurring in legal education, and in Australian higher education more broadly, in recent decades. First, in subsection 2.2.1, it will be argued that the growing body of empirical evidence on law students’ elevated levels of psychological distress both reflects some of the origins of TLO 6, as well as confirms its potential importance in terms of contributing to the amelioration of law students’ distress. Secondly, in subsections 2.2.2 and 2.2.3, the impact of a number of trends in the Australian legal education and wider higher education sectors on the development and implementation of the TLOs will be considered. These trends include: a plethora of reports advocating legal curricular reform; tension between privileging prescribed areas of knowledge versus generic skills development; the proliferation of law schools in a context of chronic funding shortages for legal education and a strong emphasis on research outputs in Australia; a global shift towards standards- and outcomes-focused curricula.

48 See above nn 11 and 12.
49 For an overview, see, eg, Kift, above n 3, 6–11.
50 See, eg, ALRC, above n 4; Weisbrot, above n 4, 23; Huggins, Kift and Field, above n 1, 192–3.
emphasising graduate outputs rather than teacher inputs;\textsuperscript{52} and the importance of a whole-of-curriculum approach to developing key learning outcomes.\textsuperscript{53} In section 2.3, possible meanings of self-management, informed by examining comparable standards under the Australian Qualifications Framework, international standards that are equivalent to the TLOs, and in law school graduate attribute statements, as well as discourses on emotional intelligence and resilience, will also be considered. An understanding of the contextual background to the development of TLO 6 elucidates its meaning and purposes, and provides valuable preliminary insights to inform its implementation in legal education.

2.2 The Contextual Background to the Development of the TLOs for Law
The discussion in this subsection will begin with an overview of the Australian literature on law students’ elevated levels of psychological distress and the role this has played in the development of TLO 6 (section 2.2.1), before exploring how the development of the TLOs generally aligns with a number of other recent trends occurring in Australian legal education (section 2.2.2). Then, in section 2.2.3, the law TLOs will be contextualised with reference to a number of issues that affect all disciplines in the Australian higher education sector.

2.2.1 Australian Trends in Law Students’ Distress
An important contextual issue that directly informed the inclusion of a TLO on self-management in the Standards Statement, and was discussed at length in the stakeholder consultation for the development of TLO 6, is the need to address law students’ elevated levels of psychological distress.\textsuperscript{54} The following comment in the Notes on TLO 6 in the Standards Statement acknowledges the importance of law students’ wellbeing, emotional intelligence and resilience:

Legal employers have identified the need for graduates to have emotional intelligence — the ability to perceive, use, understand, and manage emotions. The TLOs encourage the development of emotional intelligence by attending to both self awareness (TLO 6) and the need to communicate and work with others (TLO 5). In the LTAS project’s consultations with the profession, this element of the TLO was acknowledged as critical to professional


\textsuperscript{53} See, eg, Kift, above n 3, 16–20.

\textsuperscript{54} Huggins, Kift and Field, above n 1, 191–2.
practice because it incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need.  

Thus, some of the purposes of TLO 6 are to reduce law students’ high levels of psychological distress and bolster resilience and wellbeing amongst law students and graduates.

Disproportionately high levels of psychological distress, including depression, anxiety, and substance abuse, have been consistently documented in decades of research on American law student samples. Questions about whether these trends were an American phenomenon, and due to ‘differences in demographics, pedagogy and culture’ may not apply to Australian law students, began to be empirically addressed with the publication of the BMRI’s Courting the Blues monograph in 2009. This study provided empirical evidence that Australian law students experience psychological distress and a risk of depression at ‘a much higher level than expected … on all measures used’. The law student sample included 741 students from 13 Australian universities; of these, 35.2% experienced high levels of psychological distress, compared with 17.8% of medical students and 13.3% of people aged 18–34 in the general population. This influential Australian research thus confirmed long-documented trends in the US regarding the negative impacts of legal education on students’ psychological wellbeing.

Recent empirical research conducted at a number of individual Australian law schools supports the trend of heightened distress levels amongst law students documented in the BMRI’s Courting the Blues report, confirming that distress amongst Australian law students is widespread. Research conducted by Townes O’Brien, Tang and Hall at the Australian National University (ANU) analysed

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55 Kift, Israel and Field, above n 2, 23.
56 See, eg, Benjamin et al, above n 8; Dammeyer and Nunez, above n 12; Sheldon and Krieger, above n 8; Pritchard and McIntosh, above n 12.
58 Kelk et al, above n 8.
59 Kelk et al, above n 8, 37.
60 Ibid 12.
61 See above n 11.
survey responses from two groups of first year law students from 2009–10,⁶² the survey results indicate that by the end of the first year of law school law students experienced ‘more symptoms, or greater intensity of symptoms, of depression and stress, compared with both beginning-of-[first]-year students and young Australian adults generally’.⁶³ It is concerning that, by the end of the first year, almost one-third of law students indicated they were experiencing ‘moderate’ to ‘extremely severe’ symptoms of depression.⁶⁴ The findings of recent research conducted by Larcombe et al at Melbourne Law School (MLS) similarly found that approximately 30 per cent of students (their sample included both JD and LLB students across all years of their degree) experienced moderate to extremely severe depression or anxiety.⁶⁵

Both the ANU and MLS studies employed the same research instrument, the short-form version of the Depression, Anxiety and Stress Scales, known as DASS-21.⁶⁶ Recent research conducted at Monash University Law School used the full length DASS, which contains 42 questions rather than 21, and found that by the end of the first year of law school, more than 15 per cent of law students sampled reported symptoms indicative of moderate to severe levels of depression.⁶⁷ The authors also found an increase in self-reported physical health problems such as colds, flus, headaches and muscle tension by the end of the first year, confirming trends identified in Pritchard and McIntosh’s study of law students at the University of Denver College of Law.⁶⁸ In terms of depression, the results are lower than those reported in the ANU and MLS studies, as well as in the BMRI report, and may reflect positively on a range of curricular and co-curricular initiatives designed to ‘act as … preventative mental health initiatives’ that Monash University Law School has implemented in recent years.⁶⁹ By contrast, a recent study of students across various disciplines at the University of Adelaide alarmingly found that ‘there were more law and mechanical engineering students classified as psychologically distressed than there were not’, with 58 per cent of law students experiencing

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⁶² Townes O’Brien, Tang and Hall, above n 11, 154.
⁶³ Ibid 161.
⁶⁴ Ibid 159.
⁶⁵ Larcombe et al, above n 11, 11.
⁶⁶ Townes O’Brien, Tang and Hall, above n 11, 156; Larcombe et al, above n 11, 7–8.
⁶⁷ Lester, England and Antolak-Saper, above n 11, 48.
⁶⁸ Ibid; see also Pritchard and McIntosh, above n 12, 739.
⁶⁹ Lester, England and Antolak-Saper, above n 11, 47–8.
Unlike the ANU, MLS and Monash studies, this research employed the K10 screening instrument, which was also used in the BMRI’s Courting the Blues report; differences in the research instruments used may partially account for the variance in results between law schools. Collectively, these recent empirical studies suggest that, despite differences in measured levels of law student distress at various institutions, the trend of elevated distress levels amongst Australian law students is widespread and concerning. It is notable, however, that all of the Australian universities that have conducted their own studies on law students’ distress—the ANU, Monash University, the University of Adelaide and the University of Melbourne—are Group of Eight, research-intensive universities. The different groupings of Australian universities, of which the Group of Eight is one, will be described in section 2.2.2.2 below; for present purposes, it is sufficient to raise as an opportunity for future research the issue of whether trends in law students’ distress are occurring to a similar extent at other types of universities.

Significantly, both American and Australian research suggests that law students commence law school with average or above average levels of wellbeing, and that it is during the first year of law school that elevated symptoms of psychological distress begin to appear. Whilst some American research indicates that people who have certain types of personality preferences ‘self-select into the law’, the above studies indicate that for many students there is something that occurs at law school that triggers or aggravates any pre-existing susceptibilities to elevated distress levels. It is concerning that law students’ elevated symptoms of distress developed in their first year of law school continue throughout their law degrees and into their careers.

70 Leahy et al, above n 11, 611, 613.
71 K10 stands for Kessler Measure of Psychological Distress: ibid 609.
72 Kelk et al, above n 8, 10.
73 Benjamin et al, above n 8, 240; Sheldon and Krieger, above n 8; Townes O’Brien, Tang and Hall, above n 11, 159–60; Lester, England and Antolak-Saper, above n 11, 48; Pritchard and McIntosh, above n 12, 739; Alan Reifman, Daniel McIntosh and Phoebe Ellsworth, ‘Depression and Affect Among Law Students During Law School’ (2001) 2 Journal of Emotional Abuse 93, 102.
as legal professionals.\textsuperscript{76} Indeed, Soonpaa’s study of first, second and third year law students at the Texas Tech University School of Law found that third year students displayed significantly higher stress levels than their first year counterparts.\textsuperscript{77} Further, as documented in the \textit{Courting the Blues} report, 31\% of solicitors experience high levels of psychological distress, a figure that is more than double the rate of 13\% for the general population over 17 years of age.\textsuperscript{78} Interestingly, the proportion of surveyed barristers experiencing psychological distress was significantly lower than that for solicitors at 16.7\%, which is still higher than the rate of distress in the general population.\textsuperscript{79} In a similar vein, the results of a 2007 survey of over 7500 Australian professionals found that ‘respondents from the legal professions particularly, were more likely to report moderate to severe symptoms of depression when compared with the total sample’.\textsuperscript{80} As with law students’ distress, it appears that Australian trends align with the high levels of dissatisfaction, distress, and psychopathology amongst practising legal professionals documented in a significant body of US literature.\textsuperscript{81} Thus, the deleterious effects of legal education on some law students’ wellbeing appear to be enduring, accentuating the benefits of a preventive approach. As the focus of this thesis is pedagogical strategies for self-management in legal education, a detailed analysis of the literature on the incidence and potential causes of distress amongst members of the legal profession is beyond the scope of this research. It is notable, however, that trends in law students’ distress appear to persist beyond graduation; concomitantly, the effective development of law students’ self-management capacities at law school may play a role in ameliorating distress levels in law school and in the profession.

\textsuperscript{76} Kelk et al, above n 8, 12; Benjamin et al, above n 8, 246; Colin James, ‘Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education’ (2008) 18 \textit{Legal Education Review} 123, 124–5; Colin James, ‘Seeing Things as We Are. Emotional Intelligence and Clinical Legal Education’ (2005) 8 \textit{International Journal of Clinical Legal Education} 123, 124–6.


\textsuperscript{78} Kelk et al, above n 8, 12.

\textsuperscript{79} Ibid.


The recent Australian research on the incidence and putative causes of law students’ psychological distress detailed above adds weight to the importance of pedagogical strategies for self-management in law schools. The empirical findings in the above studies provide valuable guidance for developing pedagogical strategies for learning, teaching, and assessing self-management. First, such a framework should take into account, and seek to address and mitigate, law students’ disproportionately high distress levels. Secondly, self-management strategies that address these issues should begin to be taught in the first year of law school, and consolidated and deepened throughout the law degree, as the first year is a pivotal juncture in the formative cognitive and emotional experiences of law students. Thirdly, these strategies should seek to utilise the findings in the extant literature about the factors linked to law student wellbeing to equip students with the inner resources and understandings to promote greater resilience, coping capacity, self-regulation and wellbeing throughout their law degrees. This issue will be explored further in section 3.3 below, where empirical research on law students’ distress is analysed to distil factors that may be contributing to law students’ distress and their correlations with the factors examined in SDT.

2.2.2 Recent Developments in Australian Legal Education that are Pertinent to the Implementation of the TLOs

Whilst increasing awareness regarding law students’ high levels of psychological distress contributed to the development of TLO 6, a range of other factors in Australian legal education have been pertinent to the development the TLOs generally. This subsection will provide an overview of a number of influential reports that have acted as catalysts for legal education reform (section 2.2.2), discuss the continuing influence of the Priestley 11 core content areas as part of a wider, ongoing debate about the appropriate focus on content and skills in legal curricula (section 2.2.2.1), and canvas the significance of other factors, including the growing number of law schools, funding shortages, and the prevailing research culture, for legal education reform, including in relation to implementing the TLOs (section 2.2.2.2).
Since the 1970s, many changes to legal education in Australia and elsewhere have been advocated, with varying levels of implementation and success. Before considering a number of these developments in greater depth, a brief overview of recent reforms to the Australian legal education landscape will be provided, with an emphasis on developments that are relevant to the TLOs initiative.

Traditionally, law in Australia has been taught using the lecture-tutorial model, the focus of learning was on the transmission of doctrinal legal knowledge from the law teacher to students, and assessment of student learning typically involved a single, high-stakes examination based on applying legal rules to hypothetical fact scenarios. The first major report critiquing traditional legal education practices was the *Pearce Report* in 1987, which ten years later was hailed as the ‘most comprehensive and significant investigation undertaken of Australian legal education’. The impact of this report was described by McInnis and Marginson seven years later as follows:

> Perhaps most important, the Pearce Report generated a climate of debate, discussion, critical thinking, self-evaluation and continuous improvement which has served law schools well since 1987 – especially given that such an approach has become mandatory throughout higher education.

Overall, McInnis and Marginson concluded that, although the reforms catalysed by the publication of the *Pearce Report* were significant, they were no more so than the broader changes to higher education that were attributable to the incumbent Labor

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85 Pearce, Campbell and Harding, above n 84.


Government’s reforms of higher education.\textsuperscript{88} Thus, the McInnis and Marginson report was, in itself, another important publication charting the various influences on the changing landscape of Australian legal education.

The next significant review of legal education was the \textit{Managing Justice} report,\textsuperscript{89} published by the Australian Law Reform Commission in 1990. As will be elaborated in section 2.2.2.1 below, a chief recommendation of this report was greater emphasis on students’ acquisition of high level generic skills, including professional and ethical values, ‘[i]n addition to the study of core areas of substantive law’.\textsuperscript{90} Another recommendation in the \textit{Managing Justice} report was that there should be a further national discipline review of Australian legal education, along the lines of the \textit{Pearce Report}, but narrower in scope and with a focus on emerging issues, including, inter alia: the implications of an unprecedented expansion in numbers of law schools and students on the quality and diversity of legal education; the appropriate balance between liberal and professional education in legal curricula; the teaching of professional skills and the role of clinical programs; and evaluating the resource base for law schools.\textsuperscript{91} Accordingly, in 2003, Richard Johnstone and Sumitra Vignaendra published the \textit{Learning Outcomes and Curriculum Development in Law} report,\textsuperscript{92} which, as stated in its front matter, was intended to be a ‘stocktake’ rather than a ‘review’ of Australian legal education.\textsuperscript{93} The authors commented on a number of trends evidenced across Australian law schools, particularly in relation to the LLB program:

...[A]t most law schools, there has been a significant trend towards teaching legal skills, and at a growing number of law schools, there has been either a formal or informal infiltration of professional legal training. Most law schools now give greater weight to legal theory and ethics teaching and a growing number of law schools have a strong commercial law focus, and increasingly “an international focus”. Many law schools also express a greater commitment to reducing class sizes; however, funding constraints have frustrated some law schools’ efforts in this area.\textsuperscript{94}

The \textit{Pearce} and McInnis and Marginson, \textit{Managing Justice}, and \textit{Learning Outcomes and Curriculum Development in Law} reports have played significant roles in both

\textsuperscript{88} Ibid vii.
\textsuperscript{89} ALRC, above n 4.
\textsuperscript{90} Ibid 29.
\textsuperscript{91} Ibid 156–8.
\textsuperscript{92} Johnstone and Vignaendra, above n 82.
\textsuperscript{93} Ibid 3.
\textsuperscript{94} Ibid 455.
mapping the terrain of legal education in Australia, and providing important catalysts for reform. The development of the TLOs for law can thus be viewed as a further recent development in a decades’ long-trend towards modernising Australian legal curricula, including by placing a greater emphasis on the development of generic skills.

2.2.2.1 The Continuing Influence of the Priestley 11

Legal education’s staunch loyalty to substantive content areas constitutes one of a number of significant obstacles to the full realisation of the reform agendas detailed above. Since 1992, the content of Australian law subjects has been shaped by the adoption of uniform national academic requirements for admission to legal practise, commonly known as the ‘Priestley 11’.95 This refers to eleven prescribed ‘areas of knowledge’ – criminal law and procedure, torts, contracts, property, equity, company law, administrative law, federal and state constitutional law, civil procedure, evidence, and ethics and professional responsibility96 – that the Consultative Committee of State and Territory Law Admitting Authorities agreed that students are required to have studied before admission to legal practise. According to Keyes and Johnstone, the Priestley 11 requirements are one indication of the legal academy’s subservience to the legal profession, which continues despite the fact that approximately half of all law graduates do not go on to practise law.97

In 2000, the Australian Law Reform Commission’s Managing Justice report criticised, and advocated a shift away from, the Priestley Committee’s ‘solitary preoccupation with the detailed content of numerous bodies of substantive law’,98 noting the increasing relevance of internationalisation, processes and teamwork in contemporary legal practise. The Commission instead recommended a greater emphasis on the development of high order professional and problem-solving skills

95 Keyes and Johnstone, above n 51, 544.
98 ALRC, above n 4, 149–50.
as part of a suite of reforms recommended to promote a healthy legal culture.99 As previously indicated, the TLOs thus respond to a long-standing Australian legal education reform agenda predicated on the notion that legal education should be re-orientated around ‘what lawyers need to be able to do’, rather than exclusively and anachronistically on ‘what lawyers need to know’.100

A further challenge to legal education’s preoccupation with the Priestley 11 areas of knowledge again arose recently in the context of the TLOs. As mentioned in section 1.1 above, in 2011, the Law Admissions Consultative Committee considered a proposal for adopting the TLOs as describing the requisite attributes of a law graduate, and integrating the present eleven academic requirements in shorter or alternative forms as ‘compulsory elements of the “fundamental areas of legal knowledge” required by ... TLO 1’.101 One of the rationales behind this proposed course of action was streamlining the criteria for evaluation, assessment or accreditation of law schools, particularly in light of the TLOs’ relevance to TEQSA’s ‘evaluation, assessment or accreditation’ requirements.102 Ultimately, however, the Committee recommended against the adoption of the TLOs as a part of the requirements for admission to legal practise, stating:

While there is lingering doubt about whether and what TLOs will be deployed for the purpose of evaluation, assessment or accreditation by Government agencies or universities, it certainly seems premature to adopt the TLOs set out in Schedule 1 as additions to, or substitutes for, the present academic requirements for admission.103

This suggests that the Committee has not unequivocally foreclosed the possibility of revisiting this issue. More strident opposition to the proposal was expressed by the New South Wales Legal Profession Admission Board, which claimed that the TLOs would require new skills, which have hitherto not been expected of law graduates, to be admission requirements, and would mean that many competent and successful members of the profession would probably fail to satisfy aspects of the TLO requirements, such as the ability to ‘collaborate effectively’ under TLO 5.104

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99 Ibid 151; Huggins, Kift and Field, above n 1, 193.
100 ALRC, above n 4, 126 (emphasis in original); Weisbrot, above n 4, 23; Huggins, Kift and Field, above n 1, 192–3.
101 LACC, above n 24, 2.
102 Ibid 1.
103 Ibid 2.
104 Ibid 2–3.
Arguably, however, if some practising members of the profession are unlikely to meet the minimum threshold-level outcomes described in the TLOs, this is cause for concern and strengthens the case for explicitly addressing the development of such skills and competencies in legal education.

It is clear, therefore, that whilst the TLOs have received ‘broad support from members of the judiciary and practising profession, representative bodies of the legal profession, law students and recent graduates, [and] Legal Services Commissioners’, as well as being endorsed by CALD, some prominent members of the Australian legal community are more hesitant, if not overtly critical, about the TLOs and their potential implications for legal education. It is worth reiterating, however, that even though the TLOs currently will not be utilised in relation to legal admission requirements, they are a reference point for ‘the standards regulation and auditing of law schools’ by TEQSA. More broadly, the development and implementation of the TLOs can be contextualised as part of a wider and ongoing debate about the appropriate balance between legal content and generic professional skills in Australian and international legal education.

2.2.2.2 The Significance of the Proliferation of Law Schools, Funding Shortages, and the Prevailing Research Culture for Legal Education Reform

A number of other recent developments in Australian legal education, including the sharp increases in the numbers of law schools and students, chronic underfunding of law schools, and a strong and increasing emphasis on measuring and ranking the research outputs of individuals, faculties and institutions, are also relevant to the ease with which implementing the TLOs can be achieved. There has been a marked growth in the number of Australian law schools in alignment with the massification of Australian higher education, and widening participation agendas in recent decades, which are important contextual factors when considering legal education.

105 Huggins, Kift and Field, above n 1, 183.
reforms such as the implementation of the TLOs. Whilst there were six law schools in 1960, by 1975 there were 12, and in early 2013 there are 36 Australian law schools.\textsuperscript{110} Ensuring the continuing quality of education across an increasing range of higher education providers is one of the aims of the new TEQSA regime detailed in section 2.2.3 below.

As a result of the growth in the number of law schools in recent decades, there is now a diversity of legal educational contexts in Australia. There are four main groupings of Australian Universities, and, correspondingly, four main groups of Australian law schools.\textsuperscript{111} The Group of Eight (Go8) is a coalition of eight research-intensive universities (namely, the University of Adelaide, the Australian National University, the University of Melbourne, Monash University, the University of New South Wales, the University of Queensland, the University of Sydney, and the University of Western Australia), which markets itself as the group of ‘Australia’s Leading Universities’.\textsuperscript{112} The Australian University Technology Network (ATN) is a group of five Australian universities (Curtin University of Technology, the University of South Australia, RMIT University, the University of Technology, Sydney, and Queensland University of Technology) that focus on practical, ‘real world’ research and teaching approaches.\textsuperscript{113} The group of Australian Innovative Research Universities (IRU), which consists of Flinders University, Griffith University, La Trobe University, Murdoch University, the University of Newcastle, James Cook University, and Charles Darwin University, were all founded as research universities during the 1960s and 1970s, and have formed a coalition to promote research concentrations, knowledge-sharing, and investment across these universities.\textsuperscript{114} Finally, the Regional Universities Network, consisting of Central Queensland University, Southern Cross University, the University of Ballarat, the University of New England, the University of Southern Queensland, and the University of the Sunshine Coast, was formed in 2011 to increase the profile of the

\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
requirements and contributions of Australia’s regional universities. A number of other Australian law schools are unaligned with these four main groupings.

Law degrees are offered at all of these types of universities, which vary in terms of, inter alia, geographical locations, student demographics, mission statements and relative emphasis on research and teaching. Further, there is a growing range of types of law degrees on offer in Australian law schools. Some universities offer Bachelor of Laws degrees, Bachelor of Laws combined degrees, Juris Doctor degrees, combined Bachelor of Laws and Practical Legal Training degrees, or a combination thereof. Accordingly, throughout this thesis, a range of pedagogical strategies for the implementation of the self-management TLO will be proposed, providing a number of options from which law schools might choose, and facilitating the adoption of tailored strategies that are an appropriate fit for their institution, students and delivery modes.

An additional and related factor that has high salience in terms of prospects for curricular reform is ongoing funding shortages, which have been a feature of Australian legal education since the introduction of the Australian Government’s Relative Funding Model in 1990. Under this model, the discipline of law is uniquely placed at the very bottom end of a scale of Commonwealth contribution, with student contributions towards their education at the highest percentage end. As noted by CALD in a submission to the Australian Government’s Review of Higher Education Base Funding in 2011, ‘[L]aw students alone of all classes of student are asked to pay more than is spent to educate them’. This context is critical to understanding the obstacles faced in implementing the self-management TLO, like other important reforms, in legal education. In an environment in which legal education is chronically under-resourced, the pressures associated with maintaining appropriate class sizes, limited teacher time and resources, and

115 Ibid.
116 Kift, Israel and Field, above n 2, 8.
118 Ibid 1.
119 Ibid.
increasing reliance on sessional teaching staff pose significant challenges to implementing an integrated and incremental approach to the development of self-management knowledge, skills, and values throughout legal curricula. Indeed, as Keyes and Johnstone note, ‘[o]f all the factors ... impeding reforms to legal education, [lack of resourcing] is the most severe and the most difficult to overcome’. This has implications for TLO 6 as the integrated implementation of this learning outcome throughout the curriculum will require investments of time, energy and resources from most law school staff, suggesting that staff too may need to exercise self-management as part of this reform process.

The relative priority given to research and teaching also has significant implications for legal education reform. Whilst the Pearce Report has been recognised for stimulating interest in teaching in legal education, and there has been growing interest in, and faculty support for, legal education research and scholarship in recent years, a competing force has been the inexorable push towards ‘quality, accountability and standards’ in Australian higher education institutions, particularly with regards to research outputs. Recent government initiatives including the Research Quality Framework (RQF), which was superseded by the Excellence in Research for Australia (ERA) Initiative, have contributed to a greater emphasis on research outputs, measurements and rankings, with the ostensible aims of increasing ‘productivity, excellence and relevance’ across all university disciplines. Such initiatives are arguably part of a broader trend in which ‘universities have been drawn into the public-sector management revolution’. Underpinned by principles from neo-liberal economics, accounting and human resources management, this research management system ‘pursues goals, applies incentives, makes measurements, encourages competition and requires accountability’. Even though

120 Keyes and Johnstone, above n 51, 556.
121 Huggins, Kift and Field, above n 1, 216; Marychurch, above n 45, 16.
122 See, eg, McInnis and Marginson, above n 87, 163.
123 Keyes and Johnstone, above n 51, 553–4.
127 Ibid 33.
128 Ibid 33.
the ERA’s journal ranking system has been disbanded, its legacy persists in the pressures on academic staff to consistently publish in the top-ranked journals, and to compete for and attract highly competitive research funding, success in which is given strong weight in law school hiring and promotion practices. In this context, legal education research and reform initiatives, which have historically been sidelined, if not actively disparaged, by many members of the legal academy, have again been marginalised by some law schools and law academics as they do not strongly align with the prevailing research and ranking imperatives. For this and related reasons, Marychurch opines that achieving ‘sufficient buy-in’ for an integrated, whole-of-curriculum approach to implementing TLO 6 will be ‘challenging’ in the current climate.

Thus, the proliferation of law schools in a context of chronic funding shortages and highly prescriptive research imperatives for law academics present real, but not insurmountable, challenges to the types of extensive curricular reform that may be required to comprehensively and systematically ensure that Australian law graduates have well-developed capacities for self-management by the end of their law degrees.

2.2.3 The Development of the TLOs for Law as a Reflection of Broader Trends in Australian Higher Education

Whilst the discussion in section 2.2.2 above has focused on recent trends in Australian legal education, the development of the TLOs for the discipline of law also reflects broader changes occurring in the Australian higher education sector. The following discussion will examine the establishment of TEQSA and the increasing emphasis on standards- and outcomes-based education in Australia, which provide the immediate context for the ALTC project leading to the articulation of the TLOs. Then in section 2.2.3.1, the benefits of a whole-of-curriculum approach to implementing TLO 6, premised on congruence of learning outcomes between individual subjects and the educational goals of the program as a whole, will be

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129 On the issue of the arguably disproportionate emphasis on research grants in Australian law schools, see, eg, Jeffrey D Goldsworthy, ‘Research Grant Mania’ (2008) 50(2) *Australian Universities Review* 17.
130 Keyes and Johnstone, above n 51, 552.
131 Marychurch, above n 45, 23.
presented, paving the way for an overview of some of the critiques of outcomes-focused education generally, and TLO 6, in particular, in section 2.2.3.2.

Two drivers for reform are particularly pertinent to understanding the development and significance of the TLOs for law: the establishment of an independent quality and assurance agency for the Australian higher education sector; and a shift towards universities demonstrating standards-based outputs rather than inputs. Both of these developments were recommended as part of a broad suite of reforms to the Australian higher education sector to promote its continuing national and international relevance, standing and competitiveness in the 2008 Bradley Review of higher education.\textsuperscript{132}

As recommended by the Bradley Review, the Australian Government has recently developed a new Higher Education Quality and Regulatory Framework, which includes TEQSA.\textsuperscript{133} The \textit{TEQSA Act}, which commenced operation on 29 July 2011, outlines the functions and roles of TEQSA.\textsuperscript{134} As described in s 3(b)(i) of the \textit{TEQSA Act}, one of TEQSA’s roles will be to oversee a new standards-based quality assurance framework for Australian higher education providers. This standards-based approach reflects the Bradley Review’s recommendations that the higher education sector shift away from a predominant focus on ‘inputs and processes’ towards a framework oriented to ‘assuring and demonstrating outcomes and standards’.\textsuperscript{135}

What, then, are the key components of an educational system premised on ‘outcomes and standards’? The difference between inputs and outcomes is aptly described by Fisher:

\begin{quote}
Under traditional “inputs” measures, the role of the [teacher] is to deliver information to students by covering course content. This traditional measure does not “provide for, warrant,
\end{quote}

\textsuperscript{132} Bradley et al, above n 52.
\textsuperscript{134} \textit{Tertiary Education Quality and Standards Agency Act 2011} (Cth).
\textsuperscript{135} Bradley et al, above n 52, 115, 137.
or reward assessing whether student learning has occurred or is improving”. Under “outcomes” measures, the role of the [teacher] is not to deliver information but to design effective learning experiences so that students achieve the course outcomes and to monitor student learning in order to continuously improve their experiences.\textsuperscript{136}

An outcomes approach implies a shift away from the recent emphasis on inputs in Australian legal education, which has been heavily influenced by the prescribed areas of knowledge represented by the Priestley 11. In terms of demonstrating standards, all students who meet specified benchmarks should be assessed and graded accordingly, rather than relative to other students in their cohort. Standards-based assessment is facilitated by a criteria-referenced assessment approach, whereby students are assessed according to the extent to which they achieve the predisclosed educational objectives of the subject, and can be distinguished from norm-referenced assessments, by which students are assessed on their performance relative to other students in the subject cohort.\textsuperscript{137} To the extent that some law schools still utilise norm-referenced assessment practices, such as applying a bell curve in differentiating students’ grades relative to each other,\textsuperscript{138} the TEQSA regime’s emphasis on assuring and demonstrating outcomes and standards necessitates revisiting some of the traditional learning, teaching, and assessment strategies in legal education.

It should be noted that some prominent members of the legal academy have expressed strong concern about, and even opposition to, the new TEQSA framework. Amongst the most vocal of these is Professor David Dixon, the Dean of the University of New South Wales (UNSW) Faculty of Law, who has described TEQSA, and the Act it is designed to implement and enforce, as ‘overreaching, excessive and ill-informed’.\textsuperscript{139} Amongst other critiques, Professor Dixon is particularly concerned about the ‘burden of compliance’ that the TEQSA Act and the

\begin{itemize}
  \item \textsuperscript{136} Janet W Fisher, ‘Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students’ (2011) 35 Southern Illinois University Law Journal 225, 236–42 (citations omitted).
  \item \textsuperscript{137} Stuckey et al, above n 52, 243–5.
\end{itemize}
agency it establishes will create for universities, including law school staff.\textsuperscript{140} The Deans of Monash and Wollongong Law Schools have also expressed similar concerns about the ramifications of some aspects of the new system.\textsuperscript{141} This suggests that despite the Australian Government’s aims of increasing the quality of national higher education provision through the establishment of TEQSA, processes for administering and enforcing this regime will likely result in increased administration and reporting burdens for law school and other university staff, which may create further strain for law academics who ‘are increasingly asked to do more with the same or less resources’.\textsuperscript{142}

Against this backdrop, the Australian government commissioned the ALTC to run aspects of the LTAS Project in 2010 to facilitate the development of discipline-specific academic standards in anticipation of the establishment of the TEQSA regime. Throughout 2010, discipline scholars across a number of broad fields of education engaged in extensive stakeholder consultation and feedback processes, and were assisted by international experts, to develop these academic standards. Reflecting the preferred focus on graduate outputs rather than inputs,\textsuperscript{143} these academic standards were described in terms of minimum/threshold learning outcomes that all graduates are expected to acquire throughout their degrees.

As was foreshadowed in section 1.1, the law Discipline Scholars, Professors Sally Kift (then of QUT) and Mark Israel (University of Western Australia), assisted by Project Officer Rachael Field (QUT), led the consultation and drafting processes for the law TLOs. Significantly, the final six TLOs articulated for the LLB and set out in the Standards Statement are designed to be read and implemented holistically. In the Standards Statement, each TLO is also accompanied by explanatory materials regarding the background and terminology of the TLO, which provide general points that may need to be considered in designing learning, teaching, and assessment.

\textsuperscript{141} Ibid 16.
\textsuperscript{142} Marychurch, above n 45, 23. See also Paula Baron, ‘Thriving in the Legal Academy’ (2007) 17 \textit{Legal Education Review} 27, 35–44.
\textsuperscript{143} Bradley et al, above n 52, 115, 137.
approaches. The accompanying *Notes on the TLOs* provide further guidance on their interpretation and implementation. The guidance materials included in the *Standards Statement* and *Notes on the TLOs* are intended to provide broad guidelines only, leaving the design of specific curriculum approaches to each law school.

Further guidance is also provided by several Good Practice Guides (GPGs) on the TLOs that have been commissioned under the auspices of the Law Assistant Deans (Learning & Teaching) Network, which was created as part of the LTAS Project in 2010. Judith Marychurch, the Associate Dean (Teaching & Learning) at the University of Wollongong Law School, prepared the GPG for TLO 6. This GPG seeks to assist law schools and educators in implementing TLO 6 by:

- providing a concise summary of existing research and good practice in the area
- synthesising the key considerations to be taken into account in determining how to implement TLO 6, and
- identification of the areas in which further work is needed.

In addition, Marychurch has developed a standards rubric for TLO 6 as part of Beverly Oliver’s ALTC Assuring Graduate Capabilities project. This rubric is available online for subscribers to Oliver’s Assuring Graduate Capabilities Ning website. Both these resources constitute valuable practical reference points for law schools and teachers seeking to develop and implement pedagogical approaches for self-management. This thesis will be informed by, but go further and deeper than, the self-management GPG and rubric by critically analysing the concept of self-management and its articulation in TLO 6 through the lens of SDT, and providing specific and in-depth guidance on strategies for its implementation in Australian legal curricula.

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144 Kift, Israel and Field, above n 2.
145 Huggins, Kift and Field, 2011, 201.
147 Marychurch, above n 45.
148 Ibid 1.
2.2.3.1 A Whole-of-Curriculum Approach to Incorporating the TLOs into Legal Curricula

The Australian developments that culminated in the articulation of the TLOs for law detailed in section 2.2.3 are part of a broader global shift towards outcomes-focused education in recent decades.\(^\text{150}\) As noted by Stuckey et al, ‘Scotland, Northern Ireland, and England and Wales have made a transition to outcomes-focused systems of legal education, both in law schools and in the graduate programs operated by professional organisations’ \(^\text{151}\) In part motivated by the advocacy of Stuckey et al for the adoption of outcomes-focused education in the United States in their influential *Best Practices for Legal Education* report in 2007, the American Bar Association has also moved towards supporting an outcomes-based approach in accredited law schools.\(^\text{152}\) Whilst the discussion in this thesis will be predominantly focused on theoretically-informed curricular strategies for the implementation of the self-management TLO in the Australian context, it is useful to keep this broader global context of increasing emphasis on measuring the attainment of student outcomes in mind.

Applying outcomes-focused educational paradigms, it is considered optimal to adopt a ‘whole-of-curriculum’ approach to learning, teaching, and assessing outcomes-based curriculum objectives.\(^\text{153}\) The adoption of such an approach is one of the intentions behind the TLOs, which is reflected in the following comment of the drafters of the law TLOs in the *Standards Statement*:

…[W]ithin the range of diverse programs developed by the various law schools, graduates’ acquisition of the TLOs will most likely be facilitated in a structured and integrated, whole-of-curriculum approach through learning, teaching and assessment.\(^\text{154}\)

This raises the question of how a ‘structured and integrated, whole-of-curriculum approach’ to implementing TLO 6 can best be achieved in practice. Ideally, to facilitate systematic and comprehensive development of students’ self-management capacities throughout the Bachelor of Laws degree, self-management or a localised

\(^{150}\) Stuckey et al, above n 52, 45–7.

\(^{151}\) Ibid 45.


\(^{154}\) Kift, Israel and Field, above n 2, 9.
variation of this concept would be included in law schools’ statements of program-level learning outcomes. Law schools’ clear articulation of educational goals as statements of outcomes, which reflect the knowledge, skills, and values that graduates of a particular law school are expected to acquire over the course of their law degree, is strongly endorsed in the Best Practices for Legal Education report. It is also advocated in the Carnegie Report, which calls for ‘greater institutional intentionality’, which occurs when a ‘law school … become[s] intentional about its own aims, educational processes, and identity’. Significantly for Australian law schools, statements of course learning outcomes describing students’ ‘knowledge, skills, application of knowledge and skills, and generic learning outcomes’ are now required by TEQSA’s Threshold Standards instrument ‘to facilitate comparability with AQF qualifications’. As an illustration of how the TLOs can inform individual law schools’ course learning outcomes, self-management was included as one of twelve program learning outcomes, developed through an extensive process of consultation with relevant stakeholders as part of the UNSW Faculty of Law’s recent curriculum review process, reflecting an institutional commitment to developing law students’ capacities for personal and professional development. As the UNSW Law experience suggests, in order to achieve maximum buy-in and support from faculty staff, the development of statements of outcomes at the program level needs to be based on genuine consultation with staff, alumni, students, and other relevant members of the professional community.

The next step in a whole-of-curriculum approach to achieving educational goals is the alignment of statements of outcomes at the program level with the articulation of goals at the individual subject level. Learning outcomes for each individual subject can be derived from the program learning outcomes, but will necessarily be

155 For examples of graduate attribute statements that reflect variations on the self-management theme, see the discussion in section 2.3.2 below.
156 Stuckey et al, above n 52, 40–55.
157 Sullivan et al, above n 82, 182.
158 Higher Education Standards Framework (Threshold Standards) 2011 (Cth) Ch 4, s 1.2.3.
160 See also Stuckey et al, above n 52, 49.
161 Ibid 55–9.
more specific to reflect the focus of each particular subject.\footnote{162} A self-management-related learning outcome for the LWB150: Lawyering and Dispute Resolution unit developed by Associate Professor Rachael Field and James Duffy at QUT provides one example of this:

> At the completion of this unit you should be able to: ...
> 5. Reflect on your own performance, assume responsibility for your own learning and display resilience...

Once the subject learning outcomes, that is the educational outcomes that students will have acquired and be able to demonstrate by the completion of the subject, have been clearly articulated, appropriate assessment approaches that measure the extent to which students are achieving the subject outcomes can be designed.\footnote{164} Such approaches can be both formative, providing non-assessed feedback to help students improve their performance, and summative, providing ‘evaluative feedback’ typically in the form of a grade.\footnote{165} Somewhat counter-intuitively, the final step in a whole-of-curriculum approach is the planning and development of learning and teaching strategies that prepare students to achieve the subject learning outcomes.\footnote{166} Such a process, which necessarily involves commitment from a significant proportion of staff in the faculty, promotes congruence between the assessment and outcomes of individual subjects and the educational goals of the program as a whole.\footnote{167}

It is beneficial to have programmatic oversight of the learning, teaching, and assessment of learning outcomes so that both staff and students ‘know when, where, and how each desired outcome will be accomplished in the overall program of instruction’.\footnote{168} A curriculum map is an effective tool for identifying which learning outcomes are addressed and assessed in each subject, and for providing an overview of any gaps and overlaps in the treatment and development of learning outcomes throughout the degree program. A sophisticated curriculum map reveals the extent of

\footnote{162} Fisher, above n 136, 236–42.
\footnote{163} Rachael Field and James Duffy, ‘Lawyering and Dispute Resolution: LWB150 Workbook, Semester 1, 2012’ (Queensland University of Technology Faculty of Law, February 2012) (copy on file with author) 4.
\footnote{164} Fisher, above n 136, 237.
\footnote{165} Ibid 239.
\footnote{166} Ibid.
\footnote{167} Stuckey et al, above n 52, 93.
\footnote{168} Ibid 93.
alignment of assessment with both subject learning outcomes and program learning outcomes. It may also reflect a vertical progression or sequence of student learning of the same learning outcome across different subjects, designated by descriptions such as ‘emergent, developing, advanced’ or ‘introduced, practised and mastered’. The Subject Overview Spreadsheet (SOS) curriculum mapping software developed at the Teaching & Learning Centre of the Faculty of Business at the University of Technology Sydney (UTS) is one example of curriculum mapping software that possesses such functionality and has recently been used in curriculum mapping exercises by, inter alia, UNSW and UTS Law Schools. Curriculum mapping provides a mechanism for ensuring that the learning, teaching, and assessment of law graduates’ acquisition of self-management capacities and competencies is appropriately ‘integrated, contextualised, sequential and incremental’ across the law curriculum.

The desirability of a whole-of-curriculum approach to implementing the self-management TLO is a particularly pertinent issue to address as a number of discrete suggestions for curricular strategies that promote the aims of the self-management TLO, as analysed from the perspective of SDT, are presented and discussed in the following chapters. There is a risk, however, that one or more of such strategies may be adopted by some law teachers in an ad hoc, piecemeal fashion, which will be insufficient for supporting student acquisition of this important learning outcome throughout the law degree. The importance of programmatic congruence and oversight of the learning, teaching, and assessment of self-management should thus be borne in mind whilst reading the following discussion, particularly the proposed pedagogical strategies in Chapter 4.

2.2.3.2 Critiques of Outcomes-Focused Education and TLO 6

Despite the widespread adoption of outcomes-based educational practices in legal education in the common law world, such practices are not without critics. As

169 Johnstone, above n 153, 15.
171 Johnstone, above n 153, 15.
172 See above n 150.
identified by Lynch, general trends in these critiques include that, inter alia: an emphasis on student learning outcomes is ‘anti-theoretical and anti-scholarly’; identifying and assessing student learning outcomes may undermine academic autonomy and create an uneven workload distribution; a system premised on all students achieving specified outcomes creates perverse incentives to ‘teach to the test’; and a focus on skills outcomes may compel less emphasis on teaching legal analysis. Whilst there is some merit in such criticisms, the aims of outcomes-focused education of increasing institutional accountability, improving student learning outcomes, and improving the quality of higher education provision are equally meritorious. Arguably, these criticisms may, at least partially, reflect a resistance to change on behalf of some law academic staff, who may be, in some cases inadvertently, perpetuating ‘the law school culture of competition and conformity’. Irrespective of their perceived merits and demerits, expectations of standards- and outcomes-based education are now built into the TEQSA Threshold Standards requirements, and Australian legal education providers must consider their approach to implementing these new imperatives.

In addition to critiques of standards- and outcomes-focused education in general, some law teachers may have concerns about the extent to which broad learning outcomes, such as self-management, are measurable and an appropriate focus for legal education and assessment. Anecdotal evidence suggests that some law teachers may consider the development of personal and professional qualities, including self-management, as difficult to measure and assess in an academically rigorous yet meaningful way. Medical education, both in Australia and internationally, has been grappling with these issues for many years, and experience in that field suggests that it is not only possible to develop pedagogical strategies for personal development and related concepts, but that aspects of personal development such as ‘self-reflection, empathetic reflection and reflective communication’ can be

173 Lynch, above n 152, 981.
174 Ibid 985–90.
175 Ibid 990–7.
176 Ibid 997–1000.
177 Ibid 1000–4.
179 See generally Higher Education Standards Framework (Threshold Standards) 2011 (Cth).
180 See, eg, Dietrich, above n 106.
assessed using practical and replicable measuring instruments.\textsuperscript{181} While acknowledging that learning, teaching and assessing self-management is a novel challenge for legal education that requires creative approaches, in my opinion, the potential benefits of self-management for the wellbeing of law students and the professionals they will become outweigh the challenges of pedagogical implementation. The high incidence of psychological distress amongst law students and the intended role of TLO 6 in addressing some of these concerns confirm the importance of integrating pedagogical approaches for cultivating self-management knowledge, skills, and attitudes into legal curricula.

2.3 Conceptualisations of Self-Management

In the preceding sections of this Chapter, the background to the TLOs, both from discipline-specific and wider higher education perspectives, has been canvassed to situate the TLOs in their broader context. A further important preliminary issue before proceeding with an analysis of the self-management TLO through the lens of SDT is the meaning of self-management. This section will thus explore a range of possible meanings of self-management, which can provide insight into the aspects of this concept that can be meaningfully emphasised in legal education. Guidance around this topic can be sourced from, inter alia, the Australian Qualifications Framework (AQF), the JD TLOs, and international standards that are similar to TLO 6, existing statements on employability skills and graduate attributes for Australian law students, and the discourses surrounding emotional intelligence and resilience.

These articulations of self-management-related concepts variously privilege two key themes – professional qualities and personal qualities. As these qualities are related, and arguably inseparable, it is argued that the personal, emotional and psychological dimensions of self-management should not be overlooked in implementing TLO 6. In the subsections that follow, these concepts will be explored and will inform the development of a working definition of self-management that will be utilised throughout this thesis.

2.3.1 The AQF and International Equivalents to TLO 6

Insights into what self-management entails are provided by the AQF and international standards that are similar to TLO 6. The LTAS project used the award level descriptors in the AQF as a starting point for the development of the TLOs.\textsuperscript{182}

The AQF provides a ‘single comprehensive national qualifications framework’ for Australian education and training.\textsuperscript{183} Relevantly, TLO 6 aligns with the ‘application of knowledge and skills’ requirements of the AQF for a Bachelor degree (Level 7), which states that ‘Graduates … will demonstrate the application of knowledge and skills … with responsibility and accountability for own learning (sic) and professional practice and in collaboration with others within broad parameters’.\textsuperscript{184}

For the Bachelor Honours degree (Level 8), the AQF specifies that ‘Graduates at this level will apply knowledge and skills to demonstrate autonomy, well-developed judgement, adaptability and responsibility as a practitioner or learner’.\textsuperscript{185} Also, many law schools in Australia now offer a JD degree instead of, or in addition to, undergraduate LLB offerings.\textsuperscript{186} The JD is classified as a Masters Degree (Extended) (Level 9) for the purposes of the AQF, which relevantly specifies that graduates will:

[D]emonstrate the application of knowledge and skills:
- with creativity and initiative to new situations in professional practice and/or for further learning
- with high level personal autonomy and accountability
- to plan and execute a substantial research-based project, capstone experience and/or professionally focused project.\textsuperscript{187}

The AQF minimum specifications above, which are predominately focused upon qualities of initiative, autonomy and accountability demonstrated in professional contexts, provide insights into the way TLO 6 has been framed, as well as alternative wording that sheds light on the types of things it is intended to cover.

The sophisticated and higher level self-management skills required of JD graduates are reflected in the JD TLOs, which were developed by the JD Sub-committee of the

\textsuperscript{182} Kift, Israel and Field, above n 2, 3.
\textsuperscript{183} AQF, above n 26, 9.
\textsuperscript{184} Ibid 46.
\textsuperscript{185} Ibid 48.
\textsuperscript{187} AQF, above n 26, 58.
Associate Deans’ Law Network, and endorsed by CALD in March 2012.\footnote{JD Sub-committee of the Associate Deans’ Law Network, above n 28.} Relevantly, the JD version of TLO 6 states that:

Graduates of the Juris Doctor will be able to:

(a) Learn and work with a high level of autonomy, accountability and professionalism; and
(b) Reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.\footnote{Ibid 4.}

This higher level articulation of TLO 6 for the JD that introduces the expectation of a ‘high level of autonomy, accountability and professionalism’, which is not specified as a requirement in TLO 6 for the LLB, sheds light on capacities that may also be expected to be developed, albeit to a lesser extent, by undergraduate LLB students. It is important to emphasise that both the LLB and JD versions of TLO 6 are minimum standards, and that law schools are free to exceed the minimum requirements they set.\footnote{As previously noted, the Notes of the TLOs were drafted to assist law schools, seeking to respond to the TLOs within the diversity of their various remits, to interpret and implement the TLOs: Kift, Israel and Field, above n 2.} A proposed rewording of TLO 6 for the LLB, informed in part by the wording of TLO 6 for the JD, will be considered in section 3.4 below. Significantly, CALD’s endorsement of the JD TLOs suggests their likely adoption by some law schools, and consequently some of the pedagogical strategies for self-management I propose for the LLB as part of this thesis may be transferable to the JD context, although they may need to be scaled up to reflect the higher level expectations of JD graduates.

Notably, the drafting process for the law TLOs was also informed by the work of similar projects outside Australia.\footnote{Kift, Israel and Field, above n 2, 22–3.} For example, the United Kingdom’s Quality Assurance Agency includes a similar standard to TLO 6 in their \textit{Subject Benchmark Statement: Law} in 2007:

\textbf{7.2 Autonomy and ability to learn}
A student should demonstrate a basic ability, with limited guidance, to:

\begin{itemize}
  \item act independently in planning and undertaking tasks in areas of law which they have already studied
  \item be able to undertake independent research in areas of law which they have not previously studied starting from standard legal information sources
  \item reflect on their own learning, and to seek and make use of feedback.
\end{itemize}\footnote{United Kingdom Quality Assurance Agency (QAA), \textit{Subject Benchmark Statement: Law} (2007) 3 <http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/Law07.pdf>.}
This articulation underscores the professional aspects of self-management related to task management, independent planning and research, and reflective practice, and highlights the potential for a two-way knowledge sharing process regarding the development and implementation of the law TLOs and other similar international standards for legal education. Significantly, however, the AQF, the JD TLOs, and equivalent international standards to TLO 6 do not foreground the personal, emotional and psychological dimensions of self-management, which, it is argued, are an indispensable part of ‘personal and professional development’ under part (b) of TLO 6.

2.3.2 Statements on Employability Skills and Graduate Attributes for Law Students

Statements on employability skills and graduate attributes for law students provide a further useful reference point for considering possible meanings of self-management under TLO 6, including from emotional and psychological perspectives. In 2002, the Australian Chamber of Commerce and Industry and the Business Council of Australia collaborated to develop an ‘Employability Skills Framework’ identifying eight key employability skills.¹⁹³ Employability skills are defined as ‘skills required not only to gain employment, but also to progress within an enterprise so as to achieve one’s potential and contribute successfully to enterprise strategic directions’.¹⁹⁴ Self-management is one of the eight employability skills identified under the Framework and is described as ‘skills that contribute to employee satisfaction and growth’.¹⁹⁵ This definition reflects the importance of employees’ motivations, purpose fulfillment and personal development for work performance. More specifically, the Employability Skills Framework’s description of self-management includes:

- Having a personal vision and goals;
- Evaluating and monitoring own performance;
- Having knowledge and confidence in own ideas and visions;
- Articulating own ideas and visions; and
- Taking responsibility.¹⁹⁶

¹⁹⁴ Ibid 3.
¹⁹⁵ Ibid 7.
¹⁹⁶ Ibid 9.
To a greater extent than the wording used in the AQF, the JD version of TLO 6, and equivalent international standards, the articulation in the Employability Skills Framework emphasises personal, emotional intelligence-type\(^{197}\) qualities, such as having a personal vision and goals and taking responsibility.

Most Australian universities have adopted statements of graduate attributes that substantively replicate the Employability Skills Framework.\(^ {198}\) This is part of a broader trend towards promoting skills and outcomes in legal education described earlier in this Chapter.\(^ {199}\) For example, as noted earlier, UNSW Law School has recently adopted a program learning outcome on self-management as one of its 12 program learning outcomes, which encompass, replace, and exceed the previous graduate attributes statement, and indicate the outcomes all graduates are expected to be able to demonstrate by the completion of their LLB degree.\(^ {200}\) A number of Australian law schools have also integrated variations on the self-management concept into their graduate attributes statements. For example, the graduate attribute statement at the UTS Law School refers to ‘self and cooperative management’, including ‘understand[ing] and manag[ing] emotions regarding themselves and others’, its counterpart at La Trobe University Law School describes ‘commitment to personal and professional self-development’, the University of Western Australia Law School refers to ‘effective personal skills and competent relational skills’, Murdoch University Law School makes reference to the ‘ability to cope with uncertainty and adapt to change’,\(^ {201}\) and QUT Law School expects graduates to ‘practise critical reflection’ as part of an ‘interpersonal focus’\(^ {202}\) underpinned by intra-personal self-awareness. Key themes emerging from these graduate attribute articulations include emotional intelligence, personal development, communication skills, resilience and self-regulation.

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\(^{197}\) See the discussion of emotional intelligence in section 2.3.3 below.

\(^{198}\) Kift, above n 3, 6.

\(^{199}\) ALRC, above n 4; Christensen and Kift, above n 6; Bradley et al, above n 52.

\(^{200}\) Steel, above n 159.


\(^{202}\) Christensen and Kift, above n 6, 216.
Fostering these types of skills in law students aligns with one of the purposes behind TLO 6. As noted in the *Notes on the TLOs*:

Legal employers have identified the need for graduates to have emotional intelligence – the ability to perceive, use, understand, and manage emotions. ... as critical to professional practice because it incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need.  

As emotional intelligence and resilience are explicitly identified as some of the aims of the self-management TLO in the *Notes*, it is pertinent to expand upon the meaning of these related concepts. The salience of these concepts to self-management is underscored by the disproportionately high levels of psychological distress experienced by many law students, which reinforces the desirability of an approach to self-management that foregrounds the emotional and psychological dimensions alongside practical academic and professional dimensions.

### 2.3.3 Emotional Intelligence, Resilience and a Working Definition of Self-Management

The concepts of emotional intelligence and resilience are frequently linked with self-management and provide insights into the affective dimensions of this concept. Perhaps the most influential definition of ‘emotional intelligence’ in the scientific community is by Salovey and Mayer, who define emotional intelligence ‘as the subset of social intelligence that involves the ability to monitor one’s own and others’ feelings and emotions, to discriminate among them and to use this information to guide one’s thinking and actions’. They describe ‘emotionally intelligent individuals’ as people who ‘accurately perceive their emotions and use integrated, sophisticated approaches to regulate them as they proceed towards important goals’. An individual’s ability to emotionally self-regulate as they stay on track working towards important goals is highly relevant to effective and sustainable self-management.

Daniel Goleman popularised the concept of emotional intelligence with his 1995

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203 Kift, Israel and Field, above n 2, 23.
204 James, above n 76, 132.
206 Ibid 201.
book, *Emotional Intelligence: Why It Can Matter More Than IQ*. His discussion of this concept further illuminates the centrality of self-management to emotional intelligence, and vice versa. In a 2011 article, Goleman argues that beyond intelligence, success requires mastery in four domains: ‘self-awareness’, ‘self-management’, ‘social awareness’ and ‘relationship management’. Social awareness and relationship management most likely fall within the ambit of TLO 5: Communication and Collaboration, which incorporates notions of ‘effective, appropriate and persuasive’ communication for diverse audiences, and the ability to collaborate effectively. Thus, these elements of Goleman’s conceptualisations of emotional intelligence and mastery will receive less attention here. In relation to self-awareness and self-management, Goleman says:

*Self-awareness* (awareness of your internal states) and *self-management* (management of those states) are the basis for *self-mastery* and high performance. Competencies like managing emotions, focused drive to achieve goals, adaptability and initiative are based on self-management.

In a previous article published in the *Harvard Business Review* in 2000, Goleman breaks self-awareness and self-management down into specific sets of competencies:

**Self-awareness**
- **Emotional self-awareness**: the ability to read and understand your emotions as well as recognize their impact on performance, relationships, and the like.
- **Accurate self-assessment**: a realistic evaluation of your strengths and limitations.
- **Self-confidence**: a strong and positive sense of self-worth.

**Self-management**
- **Self-control**: the ability to keep disruptive emotions and impulses under control.
- **Trustworthiness**: a consistent display of honesty and integrity.
- **Conscientiousness**: the ability to manage yourself and your responsibilities.
- **Adaptability**: skill at adjusting to changing situations and overcoming obstacles.
- **Achievement orientation**: the drive to meet an internal standard of excellence.
- **Initiative**: a readiness to seize opportunities.

There are numerous synergies between these concepts and the self-management TLO, including:

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209 Kift, Israel and Field, above n 2, 10.
210 Goleman, above n 208, 12 (emphasis in original).
212 Ibid 95.
(a) The capacity to ‘learn and work independently’ under part (a) of TLO 6 relates most obviously to the concepts of conscientiousness, achievement orientation, and initiative from Goleman’s description of self-management competencies, however, arguably all of the above listed competencies contribute to the ability to work and learn autonomously and independently.

(b) Law graduates’ abilities to ‘reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development’ under part (b) of TLO 6 most clearly relates to Goleman’s self-awareness competencies of emotional self-awareness, accurate self-assessment, and the self-management competencies of conscientiousness and adaptability. Again, all of Goleman’s above listed qualities are relevant to personal and professional development in a broad sense.

Thus, TLO 6 can be viewed as encompassing both self-awareness and self-management using Goleman’s nomenclature. Similarly to Goleman, I argue that self-awareness, which can be cultivated by reflective practice, a focus of section 4.2.5.1 below, is a precursor to effective self-management. For the purposes of analysing TLO 6 and proposing pedagogical strategies for its implementation, I will treat both self-awareness and self-management as part of TLO 6: Self-management.

In the GPG for TLO 6, Judith Marychurch articulates the link between emotional intelligence and self-management in this way: ‘Students who are capable of reflecting on their own learning, work, behaviour, attitudes and feelings will have higher levels of emotional intelligence, which is valued by employers’. In terms of the implementation and integration of TLO 6 as part of a holistic curriculum approach, Marychurch suggests that students need to develop the capacity to:

- Work with requirements of subjects to develop appropriate study plans and strategies (building the capacity to undertake and deliver on professional projects or undertakings)
- Recognise, guided by self-reflection and feedback from others, areas of research strength and weakness, or areas where further development is needed, both in substantive knowledge or skills, and personally
- Identify areas where support is needed, whether learning support, mentoring, professional support, collegial or personal support

Marychurch, above n 45, 10.
• Develop a sense of empowerment such that recognition of the need for support and action to seek such support, is seen as a natural, appropriate and positive response to challenges
• Strengthen emotional intelligence, including self-awareness.²¹⁴

Like Goleman’s descriptions of self-awareness and self-management competencies above, Marychurch’s description highlights the vital interplay between emotional intelligence and self-management capacities.

A related, and arguably equally relevant, concept is resilience. Resilience is not simply the capacity to cope well under pressure, but also the ability to ‘respond and endure, or develop and master in spite of life stressors and adversity’.²¹⁵ As Watson and Field note, ‘[t]he concept is two-dimensional, involving the exposure to adversity and positive adjustment outcomes of that exposure’.²¹⁶ As with emotional intelligence, the concept of resilience is particularly pertinent in legal education because, as was elaborated in section 2.2.1, law students and graduates suffer disproportionately high levels of psychological distress compared to their age matched peers. Additionally, given the current highly competitive job market, and the fact that there are fewer legal graduate jobs than there are graduates,²¹⁷ external pressures of finding and keeping law-related employment will be issues that many law graduates will face. A myriad of other types of personal and professional adversity may also affect law students and graduates, emphasising the importance of being able to bounce back from adversity as part of self-managing through the various stages of a legal career.

Similarly to Goleman above in relation to emotional intelligence, Watson and Field have identified six characteristics of resilient individuals:

• social competence – includes flexibility, empathy, communication skills, sense of humour
• problem solving skills – ability to think abstractly, reflectively and flexibly
• autonomy – strong sense of independence and internal locus of control
• sense of purpose and future – belief that one can have some degree of control over one’s environment
• personal characteristics – creative problem solving, ability to gain positive attention, optimistic even in the midst of adversity, meaningful life, and ability to be autonomous
• family conditions – age of opposite sex parent, less than four siblings, little separation from primary care taker, alternative caretakers, shared family values, confident, structure and

²¹⁴ Ibid.
²¹⁶ Watson and Field, above n 39, 398 (citations omitted).
²¹⁷ Lee, above n 97.
rules
• environmental support – several mentors outside the family throughout their development
• self-concept – keen understanding of self and experience of being helpful.\textsuperscript{218}

Notably, with the exception of family conditions, each of these qualities is susceptible to development and enhancement, indicating that an individual’s capacity for resilience can be cultivated and strengthened.\textsuperscript{219}

The foregoing discussion has reinforced the importance of emotional intelligence and resilience to understanding and implementing the self-management TLO. Thus, in addition to focusing on the more academic and pragmatic aspects of TLO 6, a focus on the affective and psychological components of self-management will be integrated throughout this thesis. Based on this discussion, a working definition of self-management incorporating emotional intelligence and resilience concepts is the knowledge, skills, and attitudes required so that individuals can exercise choice regarding how they relate to their internal processes, including emotions, and their external surroundings, to stay on track for the purposes being served. Significantly, a capacity for self-management defined in this way encompasses skills and understandings that are relevant to law students’ professional and personal lives, reflecting the focus on both of these domains in part (b) of TLO 6. Further insights into the conditions that need to be fulfilled in order for individuals to exercise and develop their self-management capacities will be elaborated upon in the discussion of the theoretical framework based on SDT in Chapter 3, and proposed strategies for autonomy supportive curriculum design in Chapter 4.

2.4 Conclusion
This Chapter has examined the historical and contextual background to the TLOs, indicating that the development of a self-management TLO in legal education is one aspect of broader issues and reforms affecting the higher education sector in Australia and internationally. The trends canvassed include: a nascent yet important body of scholarship confirming that, like their American counterparts, Australian law students’ experience elevated levels of psychological distress; the impact of a number of influential reports advocating legal education reform; an increasing

\textsuperscript{218} Watson and Field, above n 39, 399.
\textsuperscript{219} Ibid 398–9.
curricular emphasis on generic skills, which at times may be in tension with the traditional emphasis on privileging prescribed areas of knowledge; the expansion in the number of Australian law schools and students correlating with chronic funding shortages and a university research culture which effectively marginalises many legal education reform efforts; a growing global preference for standards- and outcomes-focused curricula; and a concomitant valuing of whole-of-curriculum approaches to ensuring graduates’ acquisition of key learning outcomes. These trends appear to be becoming increasingly entrenched, suggesting that it is timely for law schools to consider whole-of-curriculum approaches to implementing self-management learning outcomes.

The second part of this chapter provided further background discussion of possible meanings of self-management with reference to comparable Australian and international statements of learning outcomes, and discourses on emotional intelligence and resilience. The discussion in this part informed the articulation of my working definition of self-management, which encompasses personal, emotional, and psychological qualities that are inseparable from the academic and professional dimensions of self-management, and will inform discussion throughout this thesis. The need to incorporate personal and affective dimensions in approaches to self-management is confirmed by the high incidence of psychological distress levels experienced by both students and practitioners of the law, the redress of which is one of the aims of TLO 6. The illumination of the background to TLO 6 and clarification of the meaning of the key concept of self-management in this Chapter paves the way for the introduction of a theoretical framework based on SDT in Chapter 3.
3.1 Introduction

In this Chapter, the key tenets and principles of SDT will be presented, and their relevance to TLO 6 analysed, to inform the theoretical framework for this thesis. It will be argued that SDT provides an apt theoretical framework for discussing curricular strategies to promote law students’ self-management capacities because: (1) it identifies key factors and conditions for personal and professional wellbeing, satisfaction, and growth supported by robust empirical research that align with the elements of TLO 6; and (2) its applicability to legal education is confirmed by recent American and Australian studies, including empirical research indicating that the absence of the factors and conditions examined in SDT have been identified as contributing factors to law students’ distress. A central premise of this argument is that SDT’s key concept of autonomous self-regulation, which is maintained by intrinsic motivations and goals and self-determined extrinsic motivation, as well as satisfaction of the basic psychological needs of autonomy, competence, and relatedness, provides empirically-validated insights into factors that promote personal and professional development and wellbeing, and thus constitutes an appropriate basis for analysing the self-management TLO and proposing pedagogical strategies for its implementation in legal education. It is implicit in this argument that, in order to provide deep and lasting foundations for success and wellbeing, self-management must have ‘foundations in personal maturity’, 220 which SDT helps to provide. This is particularly salient if TLO 6 is intended to encompass elements of emotional intelligence, resilience, professionalism, and academic engagement and achievement as discussed in Chapter 2. Significantly, the core personality traits that have been empirically demonstrated to underpin these qualities are all located within the domains of SDT discussed below.

This Chapter will proceed as follows. First, the core tenets of SDT will be outlined, including the five main sub-theories of human behaviour and motivation it encompasses, and the distillation of the key concept of autonomous self-regulation (section 3.2). Secondly, a detailed discussion of how each of the factors supporting autonomous self-regulation – the inner motivational resources of intrinsic and autonomous motivations and goals (section 3.2.1) and satisfaction of the basic psychological needs of autonomy, competence, and relatedness (section 3.2.2) – simultaneously contribute to the fulfilment of the aims of the self-management TLO is presented. Additionally, the extent to which SDT provides a theoretical and practical fit with legal education research as demonstrated in a number of important American and Australian studies will be examined, and the inseparability of the key factors studied in SDT from professionalism explicated (section 3.2.3). Thirdly, an argument will be made in section 3.3 that the absence of the inner motivational resources and basic psychological needs examined in SDT are amongst the factors that are empirically correlated with law students’ elevated distress levels. Finally, reform of the current wording of TLO 6: Self-Management based on the theories of SDT discussed in this chapter will be proposed in section 3.4. The discussion in each of these sections will revolve around, and add weight to, the central premise of this Chapter that the sources of human thriving according to SDT are also the personal qualities and environments that support self-management.

### 3.2 The Core Tenets of SDT

Over more than four decades, SDT has been applied in hundreds of studies testing and overwhelmingly supporting its key claims. An overarching tenet of SDT – referred to as the ‘organismic-dialectic meta-theory’\(^\text{221}\) – is that human beings are active organisms that are inherently oriented towards growth, adaptation and development, yet vulnerable to amotivation and psychological ill-being in unsupportive situations and environments.\(^\text{222}\) That is, ‘the dialectic between the active human organism and the social context’\(^\text{223}\) is a central concern of the SDT meta-theory. In terms of the implementation of TLO 6 in legal education, this relates

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\(^{222}\) Ibid 175.

to the interplay between the internal needs, values and motivations of law students, and the extent to which they experience the law school environment as supporting or undermining these.

Beneath the overarching meta-theory, SDT incorporates five sub-theories of motivation and human behaviour – Cognitive Evaluation Theory, Organismic Integration Theory, Causality Orientations Theory, Basic Needs Theory, and Goal Content Theory – an overview of which will be provided below. The first sub-theory, Cognitive Evaluation Theory, examines the factors that facilitate or forestall an individual’s intrinsic motivations, which refers to activities that are engaged with due to the interest and/or enjoyment a person derives from them. In this theory, enjoyment is considered ‘a by-product of full immersion in an activity’, rather than a hedonic approach characterised by instantaneous gratification. Interest describes the attraction of an individual towards a particular activity, and can again be contrasted with hedonic activities that are pursued for self-interested reasons. Cognitive Evaluation Theory evaluates the effects of autonomy supportive, controlling or amotivating environments on intrinsic motivation. In particular, the effects of social contexts and factors such as ‘rewards, interpersonal controls, and ego-involvements’ may have on actions that are internally motivated by enjoyment and interest are a chief concern of this sub-theory. Significantly, SDT proponents contend that the fulfilment of the basic psychological needs of autonomy, competence, and relatedness (for an explanation of these concepts, see the discussion of Basic Psychological Needs sub-theory below) ‘form the energetic basis for the development and maintenance’ of intrinsic motivation. This suggests that promoting law students’ subjective experiences of autonomy, competence, and relatedness at law school may facilitate their intrinsic motivation for studying and

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225 Ryan and Deci, above n 37, 660–1; Manning, above n 31, 2.
226 Vansteenkiste, Niemiec and Soenens, above n 224, 107.
227 Ibid.
228 Deci et al, above n 223.
practising law. The importance of intrinsic motivation, and its salience to the aims of the self-management TLO, are discussed further in section 3.2.1.

A second and related sub-theory is Organismic Integration Theory, which examines the ‘properties, determinants and consequences’ of extrinsic motivation. Extrinsic motivations are reasons for acting that are primarily predicated on external recognition, and are typically a means to an end. Significantly, when interest and enjoyment, as conceptualised in the description of Cognitive Evaluation Theory above, are absent, extrinsic motivations may be important for the maintenance of a range of socially important tasks. A core tenet of this sub-theory is that extrinsic motivations can be internalised to varying degrees, to the extent that they are ultimately experienced as autonomous. It is recognised that, as people age, a range of personal and professional duties and obligations can occupy significant proportions of an individual’s time; the extent to which people can relate these duties and obligations to personally meaningful criteria thus becomes important. The capacity to cultivate internal reasons for acting for previously extrinsically-motivated behaviours has been well-supported in numerous SDT studies, including in the realm of educational psychology. These studies indicate that self-endorsed extrinsic motivation leads to the same types of heightened engagement, improved learning quality and enhanced performance as intrinsic motivation. Ultimately, this sub-theory asserts that extrinsic motivations can be integrated to such an extent that people have a sense of autonomy and volition as they act and also regulate themselves (i.e. self-manage) in the pursuit of those goals, which may be highly relevant for students who lack intrinsic motivations for studying law.

230 Deci et al, above n 223.
231 Ibid.
232 Vansteenkiste, Niemiec and Soenens, above n 224, 112–3.
233 Ryan and Deci, above n 37, 661–5.
234 Niemiec, Ryan and Deci, above n 221, 180.
236 Manning, above n 31, 7.
The processes of ‘internalization’ are thus an important focus of Organismic Integration Theory, which presents an ‘internalization continuum’ spanning amotivation, external regulation, introjected regulation, identified regulation, integrated regulation, and intrinsic motivation. To summarise these types of motivation in brief: (1) amotivation refers to individuals who lack intentionality for engaging in tasks and activities; (2) external regulation describes individuals who are solely extrinsically motivated by, for example, punishments and rewards; (3) introjected regulation occurs when individuals have partially internalised extrinsic motivations as they ‘gain pride and self-esteem, or ... avoid feelings of guilt and shame’ from engaging in certain activities; (4) identified regulation describes situations in which individuals recognise the personal value and significance of an extrinsically-motivated activity and, consequently, engage volitionally with it; (5) integrated regulation describes the synthesis of the value and significance of an extrinsically-motivated activity with reference to other internally endorsed values and goals to facilitate alignment between various aspects of self; and (6) intrinsic motivations are, as described above, engaged with due to personal enjoyment and interest. Similarly to the discussion of intrinsic motivation in Cognitive Evaluation Theory above, the interpersonal conditions of autonomy, competence, and relatedness are believed to facilitate the internalisation of extrinsic motivations. That is, internalisation of extrinsic motives is more likely to occur if individuals perceive that they have a choice (autonomy), are able to perform the relevant activity (competence), and feel connected with the authority figure (for example, parents and teachers) who is advocating the activity (relatedness).

Importantly for the argument in this thesis, there is a distinction between autonomous and controlled motivations along the internalisation spectrum in Organismic Integration Theory. As Vansteenkiste, Niemiec and Soenens explain:

Autonomous motivation involves the regulation of behavior with the experiences of volition, psychological freedom, and reflective self-endorsement; the behavior has an internal perceived locus of causality. ... Controlled motivation, in contrast, involves the regulation of behaviour

Vansteenkiste, Niemiec and Soenens, above n 224, 113.
Ibid 115.
Vansteenkiste, Niemiec and Soenens, above n 224, 120; Niemiec, Ryan and Deci, above n 221, 181.
Niemiec, Ryan and Deci, above n 221, 179.
with the experiences of pressure and coercion to think, feel, or behave in particular ways; the behavior has an external perceived locus of causality.\textsuperscript{243}

Thus, identified, integrated and intrinsic regulation and motivation have an internal locus of causality and are autonomously motivated, with concomitant benefits for ‘persistence, performance, social functioning, and physical and psychological wellness’.\textsuperscript{244} Conversely, external regulation and introjected regulation are examples of controlled motivation, which do not aid, and may indeed forestall, the aforementioned benefits of autonomous reasons for acting.\textsuperscript{245} Theoretically, there is a distinction between intrinsic motivation, and integrated and identified regulation, as the latter two are still pursued as means to ends, rather than for their inherent enjoyment value.\textsuperscript{246} Thus, technically, intrinsic motivation does not represent the final stage of the internalisation process because this type of motivation does not originate as extrinsic motivation which is subsequently internalised.\textsuperscript{247} In practice, however, the difference between these constructs is negligible,\textsuperscript{248} and a number of studies refer to identified, integrated and intrinsic forms of regulation collectively as an ‘autonomous motivation composite’,\textsuperscript{249} which may be described as ‘autonomous self-regulation’.\textsuperscript{250} A key argument of this thesis is that \textit{autonomous self-regulation, in which individuals are positively motivated by an internal endorsement of their reasons for acting, is vital for law students’ long-term self-management capacities.} Accordingly, the interlinkages between intrinsic, integrated and identified self-regulation and law students’ self-management capacities and wellbeing will be explicated in sections 3.2.1 and 3.3.1 below, respectively, and integrating the interpersonal conditions that support law students’ autonomy into pedagogical practices for legal education will be discussed in detail in Chapter 4.

A third sub-theory of SDT is Causality Orientations Theory, which explores an individual’s personality preferences for, and tendencies to orient towards, autonomy

\textsuperscript{243}Vansteenkiste, Niemiec and Soenens, above n 224, 118.
\textsuperscript{244}Ibid 120.
\textsuperscript{245}Ibid.
\textsuperscript{246}Ryan and Deci, above n 237, 73.
\textsuperscript{247}Vansteenkiste, Niemiec and Soenens, above n 224, 117.
\textsuperscript{248}Olle Th.J Ten Cate, Rashmi A Kusurkar and Geoffrey C Williams, ‘How Self-Determination Theory can Assist Our Understanding of the Teaching and Learning Processes in Medical Education’ (2011) 33 Medical Teacher 961, 963.
\textsuperscript{249}Ryan and Deci, above n 237, 73.
\textsuperscript{250}Niemiec, Ryan and Deci, above n 221, 181.
supportive, controlling or amotivating environments.251 There are three types of causality orientations assessed as part of this sub-theory:

[T]he autonomy orientation in which persons act out of interest in and valuing of what is occurring; the control orientation in which the focus is on rewards, gains, and approval; and the impersonal or amotivated orientation caused by anxiety concerning competence.252

This sub-theory is largely concerned with individuals’ personality preferences, which are beyond the direct scope of this inquiry into pedagogical practices for self-management in legal education. As indicated above, the steps that can be taken to increase the autonomy supportive nature of law school environments will, however, be a primary concern of the discussion in Chapter 4.

Fourthly, Basic Psychological Needs Theory, which can be considered a ‘unifying principle within SDT’,253 examines the extent to which personal and social events satisfy fundamental human needs and therefore contribute, to varying degrees, to psychological wellbeing and success in various domains.254 As will be explored further below, this sub-theory focuses on the basic psychological needs of autonomy, competence, and relatedness, and whether particular environments support or thwart these needs.255 To briefly foreshadow the more detailed discussion in section 3.2.2, autonomy refers to the subjective experience that an individual’s behaviour is self-governed, volitional, and congruent with that person’s true beliefs, values, and interests,256 competence describes an individual’s sense of ability, capability, and mastery in relation to tasks and challenges,257 and relatedness refers to the experience of meaningful and reciprocal connections with key others.258 The need for autonomy is satisfied in ‘autonomy-supportive’, rather than ‘controlling’, environments, the need for competence is supported in ‘well-structured’, rather than ‘chaotic and demeaning’, environments, and the need for relatedness is supported in ‘warm and responsive’, rather than ‘cold and neglectful’ environments.259

Significantly, SDT research shows that the subjective perception of fulfilment of

251 Ryan and Deci, above n 31, 665; Manning, above n 31, 2.
252 Deci et al, above n 223.
253 Vansteenkiste, Niemiec and Soenens, above n 224, 131.
254 Ryan and Deci, above n 37, 656–659, 666–669.
255 Deci et al, above n 223.
256 Ibid; Niemiec, Ryan and Deci, above n 221, 176.
257 Krieger, above n 220, 172.
258 Niemiec, Ryan and Deci, above n 221, 176; Krieger, above n 220, 172.
259 Vansteenkiste, Niemiec and Soenens, above n 224, 131–2.
each of the basic needs of autonomy, competence, and relatedness promotes experiences of wellbeing and thriving, a finding which has been replicated in countries with both individualistic and collectivistic cultures. The relevance of each of these concepts to the self-management TLO will be examined in section 3.2.2 below, and the importance of autonomy supportive environments which promote students’ autonomous self-regulation in relation to their legal education will be explored in depth in Chapter 4.

Finally, Goal Content Theory posits that the focuses of various goals will have differential impacts on wellbeing. This sub-theory contrasts intrinsic goal contents, such as personal growth, meaningful relationships, community contribution and physical health that are associated with higher levels of psychological wellness and adjustment, with extrinsic goal contents, such as attractive appearances, financial affluence, and fame, which are more likely to be associated with ill-being. It is hypothesised that intrinsic goal contents promote an ‘inward orientation’ that facilitates the fulfilment of the needs of autonomy, competence, and relatedness, whereas extrinsic goal contents are conducive of an ‘outward orientation’ that distracts time and energy away from basic need fulfilment. Accordingly, need-supportive contexts encourage the prioritisation of intrinsic over extrinsic goals. Although it is possible to have intrinsic goals contents in situations in which people feel heteronomously compelled to act, and extrinsic goal contents in situations in which people experience volition and free choice, SDT’s research has demonstrated that there tends to be a link between intrinsic goal contents and autonomous motives and extrinsic goal contents and controlled motives. In other words, the pursuit of intrinsic goal contents and autonomous self-regulation are often interconnected. Intrinsic goal contents will be addressed as part of the discussion of inner motivational resources in section 3.2.1 below, and explored further in Chapter 4.

260 Ryan and Deci, above n 37, 656–659, 666–669.
261 Vansteenkiste, Niemiec and Soenens, above n 224, 141.
262 Deci et al, above n 223.
263 Vansteenkiste, Niemiec and Soenens, above n 224, 145 (emphasis in original).
264 Ibid 146.
265 Ibid 147.
The remaining sections of this thesis will draw upon aspects of all five of these sub-theories, however, in the interests of clarity and simplicity I will refer to them collectively as SDT. In order for this to constitute a coherent theoretical base, I will distil these five sub-theories into one primary domain of inquiry, *autonomous self-regulation*, with a number of interrelated sub-domains. As foreshadowed in the discussion of the Organismic Integration sub-Theory above, a particular focus of this discussion of implementing the self-management TLO in legal education will be the concept of autonomous self-regulation, encompassing intrinsic and autonomous motivations and goals, and supported by satisfaction of the basic psychological needs of autonomy, competence, and relatedness. One or more of these factors is studied in each of the five sub-theories outlined above, suggesting that autonomous self-regulation is a common thread linking the sub-theories. Significantly, autonomous self-regulation has been repeatedly demonstrated to conduce ‘engagement and optimal learning in educational contexts’,267 which reflect some of the core aims of the self-management TLO. A growing corpus of evidence also demonstrates that environments that are supportive of students’ needs for autonomy, competence, and relatedness sustain intrinsic and autonomous motivation, and facilitate ‘autonomous self-regulation for learning, academic performance and wellbeing’.268 Thus, a primary theme in the discussion that follows concerns strategies for supporting law students’ autonomous self-regulation through autonomy supportive curriculum design. It will be argued that pedagogical strategies that cultivate law students’ autonomous self-regulation provide theoretically-informed options for the implementation of TLO 6. As will be expanded upon in the subsections below, supporting law students’ autonomous self-regulation promotes the aims of the self-management TLO, indicating the appropriateness of harnessing insights from SDT to aid the implementation of TLO 6.

3.2.1 Inner Motivational Resources in SDT and the Self-Management TLO

In this and the following subsection, the links between autonomous self-regulation and self-management will elaborate how the elements of autonomous self-regulation (intrinsic, integrated and identified motivations, and intrinsic goal contents, as well

267 Niemiec and Ryan, above n 34, 133.
268 Ibid.
as the basic psychological needs of autonomy, competence, and relatedness) are relevant to legal education and contribute to the aims of the self-management TLO. First, the significance of inner motivational resources for developing an individual’s self-management capacities will be examined. This discussion will build on the concepts of intrinsic, integrated, and identified motivations from Organismic Integration Theory, and intrinsic goals from Goal Content Theory. For ease of reference, ‘inner motivational resources’ will be used as an umbrella phrase to encompass these related concepts, except where reference to the individual concepts allows for greater clarity and depth of analysis.

SDT research has demonstrated that having intrinsic and autonomous motivations for behaviour supports psychological health and wellbeing. As summarised by Kasser:

...[S]tudies show that more extrinsically and less intrinsically-oriented people report more depression, more anxiety, more conduct disorders, more personality disorders, more substance abuse problems, more narcissism, more physical health symptoms, and more experiences of unpleasant emotions. Importantly, this panoply of psychological problems associated with an extrinsic orientation towards life has been documented by a variety of researchers.

As noted above, intrinsic motivation is associated with a person’s inherent enjoyment and interest in an activity, the pursuance of which stems from an ‘internal locus of causality’. Law students who are intrinsically motivated may, for example, enjoy ‘thinking like a lawyer’, and find genuine interest in particular areas of law and their societal implications. Integrated motivation, which is a type of internalised extrinsic motivation, describes situations in which an individual perceives the relevance of an activity to his or her other self-endorsed motivations and goals. For example, a student may wish to study law because he or she is passionate about protecting human rights, which is congruent with his or her abiding values and interests. Identified motivation is also a type of internalised extrinsic motivation, albeit less internalised than integrated motivation, that is associated with activities that express an individual’s core beliefs and values, facilitating an ‘experience of meaning in daily activities’, even if those activities are not

269 Krieger, above n 220, 173; Ryan and Deci, above n 37, 661–665.
271 Ryan and Deci, above n 37, 655.
272 Niemiec and Ryan, above n 34, 138.
experienced as inherently enjoyable or interesting.273 Thus, a student who dislikes the process of studying contract law may willingly engage with this learning task if they perceive the relevance of mastery of contract law to their future career as a legal professional. Identified motivation may have particular salience for long-term goals that require delayed gratification, such as completing a law degree and/or achieving significant career goals. Importantly, intrinsic, integrated and identified motivations all have an internal perceived locus of causality, meaning that they are autonomously and internally sourced.274 SDT research has empirically demonstrated that people who are motivated by internally-endorsed factors are more likely to be focused, energetic and diligent towards their pursuits, and to persevere in the face of setbacks and challenges.275 It would appear that these are exactly the types of personal qualities that the self-management TLO aims to promote, underscoring the desirability of fostering these types of internal motivations in legal education.

The extant literature indicates that intrinsic motivations are relevant to students’ self-management of their learning and work as described in part (a) of TLO 6, and their levels of academic achievement. For example, an Australian study by Larcombe, Nicholson and Malkin published in 2008 found that 88% of high achieving first year law students at the University of Melbourne (those who received a final grade of 80% or above) nominated ‘interest and aptitude’ as a reason for choosing to undertake their law degree, reflecting a positive relationship between intrinsic motivation and academic success.276 In a national survey of first year students in Australian universities across diverse disciplines, Krause et al similarly found that two intrinsic motives, namely ‘studying in a field that really interests me’ and ‘developing my talents and creative abilities,’ were more likely to be nominated as reasons for their course choice by high achieving students who achieved an overall mark of 70% or higher in their first semester of university.277 In addition to these studies in Australian university contexts, the link between intrinsic motivation and

273 Ibid.
274 Ibid 135.
academic achievement has been repeatedly demonstrated in a range of social psychology studies involving students in diverse educational settings,\textsuperscript{278} suggesting that these findings have broad applicability.

Thus, given the benefits of intrinsic and autonomous motivations to law students’ academic engagement, achievement and persistence, it is suggested that cultivating these types of motivation is a useful facet of an educational approach to developing self-management. In terms of the elements of TLO 6, students who are strongly motivated by either intrinsic or autonomously-endorsed reasons for acting are more likely to ‘learn and work independently’ as required under part (a). They are also likely to be inspired to make constructive use of feedback, and identifying and acting upon intrinsic and autonomous motivations is a type of reflective practice which aids ‘personal and professional development’, both of which are specified under part (b). Thus, encouraging law students’ connections with these types of internally-endorsed reasons for acting contributes to the fulfilment of the aims of TLO 6.

In addition to intrinsic and autonomous motivations, it is suggested that fostering law students’ connections with intrinsic goal contents is also relevant to implementing TLO 6. If autonomous versus controlled reasons for acting constitute the “why” of motivation, intrinsic versus extrinsic goal contents constitute the “what” of motivation.\textsuperscript{279} As flagged in the discussion of Goal Content Theory above, SDT research has empirically demonstrated that there are four types of intrinsic goal contents that promote human thriving and wellbeing: namely, self-understanding/personal growth, intimacy with others, community contribution, and physical health.\textsuperscript{280}

It is argued that the intrinsic goal contents of self-understanding/personal growth and community contribution, in particular, are salient considerations for self-management, and its implementation in legal education. First, self-understanding and


\textsuperscript{280} Vansteenkiste, Niemiec and Soenens, above n 224, 145; Krieger, above n 220, 172.
growth refer to the importance an individual places on ‘learning, personal growth, insights into one’s self, and a life of purpose’.\(^{281}\) It can be measured by the extent to which people have insights into why they do the things they do.\(^{282}\) I propose that self-understanding and growth is pivotal to effective and sustainable self-management, particularly in relation to part (b) of TLO 6 requiring graduates to ‘reflect on and assess their own capabilities and performance … to support personal and professional development’. Significantly, the more an individual experiences a sense of meaning and purpose in relation to an activity, the more likely they are to voluntarily expend greater energy and effort in the direction of that pursuit, enhancing self-management and performance.\(^{283}\) Secondly, intimacy with others relates to the importance of close and trusting relationships with various people; in the context of implementing TLO 6, an appropriate focus of this type of goal could be the cultivation of warm and responsive relationships between teachers and students in classroom settings. Strategies teachers can employ to facilitate the creation of this type of classroom environment will be canvassed as part of the discussion of acknowledging students’ perspectives and feelings, which is an element of autonomy supportive curriculum design, in section 4.2.2.1 below.

Thirdly, helping and community values refer to an altruistic desire to contribute to the betterment of the lives of individuals, the community and society.\(^{284}\) Although arguably beyond the ambit of TLO 6, and more squarely within the domain of TLO 2: Ethics and Professional Responsibility, such values have been repeatedly empirically demonstrated to promote personal and professional wellbeing, satisfaction and growth,\(^{285}\) and are consequently relevant to the aims of TLO 6. It should be noted that a degree of overlap between the TLOs is not necessarily problematic, and was anticipated by the drafters of the TLOs, who note that ‘it is expected that graduates would demonstrate a broad and coherent assimilation of the TLOs across the identified knowledge and skills’.\(^{286}\) Finally, whilst acknowledging

\(^{281}\) Krieger, above n 220, 172.
\(^{282}\) Kasser, above n 270, 36.
\(^{284}\) Ibid 172.
\(^{286}\) Kift, Israel and Field, above n 2, 9.
the vital importance of physical health for personal and professional success, explicit instruction on health related matters is arguably beyond the purview of the formal legal curriculum, and will not be a focus here. Thus, the intrinsic goal contents of self-understanding, positive relationships, and community values can be seen as integral to a broad understanding of the phrase ‘personal and professional development’ in TLO 6. Accordingly, encouraging students to reflect upon their goal contents in the context of their legal education and their prospective careers is also a useful strategy as part of a suite of approaches for cultivating students’ inner motivational resources to enhance self-management.

It is important to note that a focus on intrinsic goal contents can be cultivated in legal education. In educational research applying SDT, Vansteenkiste, Lens and Deci have shown that framing activities in terms of serving the attainment of intrinsic rather than extrinsic goals ‘promotes deeper processing of the learning material, greater conceptual understanding of it, and both short-term and long-term persistence at relevant learning tasks’, which are clear harbingers of academic engagement and achievement. Moreover, such qualities are pertinent to the self-management TLO, particularly the requirement in part (a) that graduates ‘learn and work independently’.

Extrinsic goal contents also deserve attention in relation to self-management as they have the potential to negatively impact the core qualities this learning outcome entails. Examples of heteronomous aspirations include financial success, power/influence, attractive/stylish physical appearances and popularity/fame. Research has shown that a focus on both intrinsic and extrinsic goals relates positively to the attainment of these goals; significantly, however, attainment of intrinsic aspirations relates positively to psychological health, whilst attainment of extrinsic aspirations relates positively to measures of ill-being. This is understood to be because attainment of intrinsic goals directly satisfies the basic psychological needs of autonomy, competence, and relatedness. By contrast, a focus on extrinsic

287 Vansteenkiste, Lens and Deci, above n 278, 28.
goals is often linked with ‘interpersonal comparisons, contingent approval, and acquiring external signs of self-worth’, all of which tend to be associated with sub-optimal wellbeing, life satisfaction and performance.\textsuperscript{289} This is supported by Abbey, Dunkel-Schetter and Brickman’s empirical research indicating that law students with intrinsic motivations for pursuing a career in law experienced greater overall happiness with their lives than students with extrinsic motivations.\textsuperscript{290}

It is important to note that working towards and enjoying extrinsic rewards such as high grades, large salaries and other status symbols are not inherently problematic; rather, it is the relative priority an individual places on intrinsic versus extrinsic motives that appears to be pivotal to their satisfaction and wellbeing.\textsuperscript{291} External rewards may be a welcome bonus and recognition of activities performed well, but it is when they become a person’s primary reason for acting, at the expense of their true values and interests, that the negative consequences described above are at greater risk of occurring.\textsuperscript{292} SDT researchers propose two reasons for this: (1) a disproportionate focus on extrinsic goals can be seen as a ‘distraction’ of an individual’s time and energy away from the types of intrinsic and autonomous motivations outlined above;\textsuperscript{293} and (2) working towards, and attainment of, extrinsic goals will likely produce life experiences characterised by ‘frustration, irritation, and stress’,\textsuperscript{294} and may therefore contribute to ‘greater levels of unhappiness and psychopathology’.\textsuperscript{295}

Thus, in addition to sharing psychological insights about the sources of constructive motivation, I will argue in Chapter 4 that law students may benefit from reflecting upon the content of their goals, and the implications this may have for their autonomous self-regulation as part of their long-term self-management. More broadly, I propose that a salient concern of pedagogical approaches to self-
management should be strengthening law students’ connections with intrinsic motivations and goals, facilitating their internalisation of extrinsic motivations so that law students experience greater volition and autonomy in relation to their law school studies and future careers.

3.2.2 Basic Psychological Needs in SDT and the Self-Management TLO

When students perceive that their basic psychological needs for autonomy, competence, and relatedness are being fulfilled, they are more likely to autonomously self-regulate, and self-manage. In the words of influential SDT researchers, Niemiec and Ryan, ‘when students’ basic psychological needs for autonomy, competence, and relatedness are supported in the classroom, they are more likely to internalize their motivation to learn and to be more autonomously engaged in their studies’. 296 Thus, the satisfaction of law students’ constructive needs for autonomy, competence, and relatedness sustain the intrinsic and autonomous motivations described above, and facilitate autonomous self-regulation for academic engagement, achievement and wellbeing. 297 As indicated above, the Basic Psychological Needs sub-theory of SDT posits that the fulfilment of the three basic psychological needs for autonomy, competence, and relatedness are universally required for human wellness and thriving. 298 In this theory, needs are defined as the ‘innate psychological nutriments that are essential for ongoing psychological growth, integrity, and well-being’, 299 and thriving denotes a ‘positive life experience’ characterised by, inter alia, ‘positive mood/affect, life satisfaction, and sense of meaning’. 300 In this subsection, an argument explicating the interlinkages between each of these basic needs and self-management will be presented.

The first of these needs is autonomy, the subjective experience that one’s behaviour is self-governed, volitional, and congruent with one’s true beliefs, values, and interests. 301 In SDT literature, autonomy has been defined as ‘endorsing one’s actions at the highest level of reflection’. 302 The opposite of autonomy is

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296 Niemiec and Ryan, above n 34, 139.
297 Ibid 133.
298 Niemiec, Ryan and Deci, above n 221, 176.
299 Deci and Ryan, above n 279, 229 (emphasis in original).
300 Krieger, above n 220, 171.
301 Ibid; Niemiec, Ryan and Deci, above n 221, 176.
302 Sheldon et al, above n 266, 475 (citations omitted).
‘heteronomy, or the experience of feeling controlled or pressured to think, feel, or behave in certain ways’.\(^{303}\) Autonomy allows for external influences that are self-endorsed and thus can be contrasted with independence, which connotes freedom from the influence of external forces.\(^{304}\) Autonomy can also be thought of as being analogous to authenticity\(^{305}\) and genuineness.\(^{306}\) For example, the autonomy of participants in Sheldon et al’s 2001 study was measured by asking whether their choices ‘expressed my true self’ and ‘were based on my true interests and values’,\(^{307}\) which relates to the authenticity and genuineness of the participants’ actions with reference to their core beliefs, values and interests.

Of the three basic psychological needs, autonomy is considered to be the ‘master need’.\(^{308}\) Krieger notes:

> We may also consider autonomy the most important of the three basic psychological needs, since people must have a well-defined sense of self, feel intimately connected to themselves, and express their core values in daily life in order to function in a consistent way and with a sense of security and grounding.\(^{309}\)

Moreover, as will be elaborated in section 3.3.2 below, there is growing empirical support for the proposition that autonomy is a salient factor in promoting law students’ wellbeing. As argued by Niemiec, Ryan and Deci, a sense of autonomy is integral to effective self-regulatory processes;\(^{310}\) similarly, I propose that it is vital to understanding and achieving self-management as described in TLO 6. Functioning in a consistent way that is coherent with one’s true values, endorsed at a high level of reflection, both predicts and reflects a capacity for self-management.

The second fundamental psychological need is competence, which refers to an individual’s ‘experience of effective interactions with the environment’\(^{311}\) and their

\(^{303}\) Niemiec, Ryan and Deci, above n 221, 176.
\(^{304}\) Manning, above n 31 2–3.
\(^{306}\) Krieger, above n 220, 119.
\(^{307}\) Sheldon et al, above n 288, 328.
\(^{309}\) Krieger, above n 220, 174.
\(^{310}\) Niemiec, Ryan and Deci, above n 221.
\(^{311}\) Ibid 176.
sense of ability, capability, and mastery in relation to tasks and challenges.\textsuperscript{312} For example, as will be used as an illustration of providing meaningful rationales to support law students’ autonomy in section 4.2.1.1 below, mastery of the threshold concepts for law, including uncertainty and legal reasoning, has been described as ‘transformative and integrative: once understood, they enable students to coherently integrate what were previously seen as unrelated aspects of a subject, providing a new way of thinking’ about the subject, discipline, and even the world.\textsuperscript{313} As previously mentioned, the sources of an individual’s motivations and aspirations (intrinsic versus extrinsic) plays a pivotal role in the energy, effort, and enthusiasm channelled towards a task, which in turn predict competence when coupled with ability and experience.\textsuperscript{314} Competence can be seen as fundamental to an ability to ‘learn and work independently’ and engage in ‘personal and professional development’ as described in parts (a) and (b) of TLO 6.

The third basic need is relatedness, describing the experience of meaningful and reciprocal connections with key others.\textsuperscript{315} This includes a sense of being able to rely on and trust others, and/or provide care to others.\textsuperscript{316} Relatedness is particularly pertinent to TLO 5: Communication and Collaboration, which incorporates notions of ‘effective, appropriate and persuasive’ communication for diverse audiences, and the ability to collaborate effectively.\textsuperscript{317} However, the focus of TLO 5 as reflected in the Standards Statement is law graduates’ capacities to communicate and collaborate with others.\textsuperscript{318} Whilst this is undeniably a vital skill for law graduates to possess, it will not be a focus of this thesis, and its predominant concern with curricular strategies for self-management. In part reflecting the interrelatedness of the TLOs,\textsuperscript{319} TLO 6 likely encompasses aspects of peer-to-peer relatedness, however the discussion in this thesis will focus on teacher-student relatedness. In particular, law teachers’ creation of a socio-emotional climate in law classrooms that facilitates an

\textsuperscript{312} Krieger, above n 220, 172.


\textsuperscript{314} Krieger, above n 220, 175.

\textsuperscript{315} Niemiec, Ryan and Deci, above n 221, 176; Krieger, above n 220, 172.

\textsuperscript{316} Niemiec, Ryan and Deci, above n 221, 177; Ryan and Deci, above n 37, 658–659.

\textsuperscript{317} Kift, Israel and Field, above n 2, 10.

\textsuperscript{318} Ibid.

\textsuperscript{319} Ibid 9.
optimal learning environment that is supportive of students’ experiences of autonomy, competence, and relatedness, and thereby autonomous self-regulation and self-management will be explored in depth in section 4.2.2.1. It will be argued that it is not just what a law teacher communicates to students but importantly how they teach it that determines their effectiveness as an educator, their rapport with their students, and students’ concomitant engagement with their learning in that subject.\textsuperscript{320}

Significantly, as Niemiec and Ryan note, evidence from the educational psychology literature based on SDT confirms that ‘teachers’ support of students’ basic psychological needs for autonomy, competence, and relatedness facilitates students’ autonomous self-regulation for learning, academic performance, and wellbeing\textsuperscript{,321} reinforcing SDT’s suitability as an analytical framework for self-management. Thus, to conclude this and the preceding subsection, the elements of autonomous self-regulation in the form of the inner motivational resources and basic psychological needs identified by SDT are directly relevant to the elements and aims of TLO 6. It will therefore be argued in Chapter 4 that autonomy supportive curriculum design, which promotes law students’ autonomous self-regulation, is an appropriate focus for pedagogical strategies for self-management in Australian legal curricula.

3.2.3 SDT’s Fit With Legal Education Research and Professionalism

Further to the links between the factors of autonomous self-regulation and self-management articulated above, SDT’s suitability as a theoretical framework for this thesis is reinforced by its recent applications in legal education research, and its connections with professionalism. First, SDT provides a theoretical and practical fit with legal education research as demonstrated in a number of important American and Australian studies.\textsuperscript{322} SDT was applied to law student populations in two influential US studies by Sheldon and Krieger in 2004 and 2007;\textsuperscript{323} as will be discussed further below, the results of both studies indicate that there are empirical correlations between the factors measured in SDT – goals, motivations, values,

\textsuperscript{321} Niemiec and Ryan, above n 34, 133.
\textsuperscript{322} Sheldon and Krieger, above n 8; Sheldon and Krieger, above n 30; Krieger, above n 220; Larcombe et al, above n 8.
\textsuperscript{323} See above nn 8 and 30.
universal needs, and autonomy supportive environments\textsuperscript{324} – and law students’ wellbeing. It is also currently being employed in a further study of thousands of lawyers in various US states being conducted by Sheldon and Krieger which seeks to examine the factors influencing ‘lawyers’ values, purposes, satisfaction and emotional health’.\textsuperscript{325} SDT also informed Manning’s article on autonomy supportive feedback practices for law school assessment tasks, highlighting its applicability as a theoretical framework for legal education research on curricular innovation.\textsuperscript{326} Recent Australian qualitative research conducted by researchers at MLS ‘add[s] support’ to the findings of existing SDT research on law students’ wellbeing from the US by providing evidence of the direct relationship between students’ perceptions that their needs for experiences of autonomy, competence, and relatedness are not being fulfilled and high levels of self-reported psychological distress.\textsuperscript{327} This thesis similarly applies SDT to legal education research, but in relation to the new domain of analysing TLO 6 on self-management.

Secondly, professionalism and ethical behaviour are also highly relevant to autonomous self-regulation and self-management. As is compellingly argued by Krieger, people who are intrinsically and authentically motivated will, in addition to being empirically shown to enjoy improved psychological health and life satisfaction, demonstrate greater consistency, congruence and integrity, which are inseparable from professionalism.\textsuperscript{328} In other words, people who are motivated to act due to their inherent enjoyment or interest in the activity or because they believe in the purpose of the activity are, due to their internal locus of reference, far more likely to act in ways that are consistent with professional behaviour. By contrast, people who make extrinsically motivated choices premised on the hope of external rewards, are likely to be less fulfilled and satisfied in their work, and consequently at risk of a range of negative consequences that accompany dissatisfaction, including unprofessional and unethical behaviour.\textsuperscript{329}

\textsuperscript{324} The 2004 study examined the first of these three factors and the 2007 study included the last two listed factors: Krieger, above n 220, 184.
\textsuperscript{325} Ibid 187–8.
\textsuperscript{326} Manning, above n 31. See also Ryan and Deci, above n 31, 3.
\textsuperscript{327} Larcombe et al, above n 8, 27.
\textsuperscript{329} Krieger, above n 328, 428–430.
In a 2011 article, Krieger calls for further research into law students’ and lawyers’ ethical and professional formation/propensities to employ SDT. He says:

I have found, after conducting research applying SDT to law student populations, that it is exceptionally well-suited for a systematic inquiry into professional traits and qualities. In this article, I propose that SDT can be a powerful new tool for understanding attorney motivation and behavior, and that it can answer core questions regarding ethics and professionalism. I suggest that SDT is particularly suited to such research because it has both the necessary conceptual breadth and well-established measures to empirically study character formation and many of its attendant features—including integrity, psychological health, constructive interpersonal relations, altruistic values, and other traits underlying ethical and professional behavior.

Whilst the skills and attitudinal components of ethics and professional responsibility are ostensibly within the ambit of TLO 2, the TLOs are designed to be read holistically and there is a clear overlap between the types of ethical and professional propensities described in TLO 2 and the capacity to reflect on and assess one’s capabilities and performance to support personal and professional development as described in TLO 6. I suggest that SDT is an appropriate theoretical framework for a deeper understanding of self-management for similar reasons to those described by Krieger. To summarise his quote above, SDT provides a framework for systematic inquiry into professional traits and qualities, law students’ and lawyers’ motivation and behaviour, character formation and attendant features such as integrity, psychological wellbeing, constructive interpersonal relations and altruistic values. In addition to underpinning ethical and professional behaviour, such factors are integral to a meaningful inquiry into self-management as they predict personal and professional wellbeing, satisfaction and growth. As Krieger notes further, SDT ‘employs empirical measures to determine causes of, and contributions to, positive aspects of human experience, including positive mood/affect, life satisfaction, sense of purpose, and effective performance’. It is difficult to imagine effective and sustainable self-management that neglects these aspects of human experience.

330 Krieger, above n 220, 170.
331 Ibid.
332 Krieger, above n 42, 171.
3.3 The Relevance of the Factors Examined in SDT as Contributing Factors to Law Students’ Distress

In this section, I will outline Australian and American research on law students’ distress and identify common themes emerging from this literature which further confirms that SDT is an appropriate conceptual and practical fit for this research examining law students’ wellbeing and capacities for self-management. Specifically, there is a growing body of literature indicating that law students’ privileging of extrinsic over intrinsic values, motivations, and goals, and lack of autonomy, competence, and relatedness, may be contributing to elevated levels of psychological distress. This reinforces the relevance and appropriateness of SDT in terms of conceptualising and promoting law students’ wellbeing, autonomous self-regulation, and self-management capacities.

It was mentioned in section 2.2.1 above that the issue of law students’ distress was the subject of lengthy discussion in the consultation process for the development of TLO 6, which is reflected in the special mention of emotional intelligence, resilience and self-management as ‘critical to professional practice’ in the Notes on the TLOs. The research on the incidence and putative causes of law students’ psychological distress canvassed below, some of which directly informed discussions in the TLO deliberations, ‘adds weight to the importance of learning, teaching, and assessing self-management in law schools’. Thus, it is appropriate that pedagogical strategies for self-management seek to utilise the findings in the extant literature about the factors linked to law student wellbeing to equip students with the inner resources and understandings to promote greater resilience, coping capacity and self-regulation throughout their law degrees.

There is likely to be a multiplicity of factors that contribute to the steep declines in law students’ wellbeing, beginning in the first year of law school. Watson and Field provide a concise summary of the factors that have been identified in American literature as potentially contributing to law students’ distress:

333 Kift, Israel and Field, above n 2, 23.
334 Huggins Kift and Field, above n 1, 191–2.
335 Sheldon and Krieger, above n 8, 280.
In United States law schools, blame has been attributed to factors as varied as fierce competition for grades and the singular emphasis on achievement; use of the Socratic method that ‘exalts criticism over imagination’; academic insistence on linear thinking at the expense of student creativity and personal values; and legal formalism ‘associated with a form of education that emphasises doctrines and cases and minimises external factors such as justice, social policy, and politics, [and] imagines law as an autonomous discipline existing apart from all others … not at all interdisciplinary’. Many of these are encompassed in the phrase ‘thinking like a lawyer’. The ‘controlling and autonomy-denying features of legal education’, excessive workload, very limited staff–student interaction, and unbalanced development of students’ interpersonal skills have also been suggested as causative. Others have pointed to the fostering of certain personality traits that lead to unhappiness, such as defensiveness and pessimism, perfectionism, and a documented decline in intrinsic motivation and contact with social networks over the school year.336

Despite some differences, there are sufficient similarities between the US and Australian legal education systems for these concerns to resonate in an Australian context. One difference between the two systems is that legal education in America is typically offered as a three-year graduate degree and most law schools in Australia offer four–five year undergraduate law degrees, with students often studying another degree simultaneously. Thus, it is important to isolate the impacts of studying law from the impacts of concurrently studying in another discipline; further research at Australian universities to illuminate this issue is warranted. However, this landscape is changing with the increasing offerings of graduate-level JD degrees at Australian law schools.337 Similarities between the US and Australian legal education systems include a ‘predominant focus on doctrinal legal theory and analysis, emphasis on “thinking like a lawyer”,’ 338 and privileging of academic grades and honours as the chief predictors of subsequent success’.339 These similarities suggest that the research findings on law students’ distress are readily transferable across these two jurisdictions.

Whilst intuitively many of Watson and Field’s above listed concerns about the elements of legal education that may contribute to law students’ heightened distress levels ring true, there is a relative paucity of literature that empirically links such factors to the observed symptoms, with some notable exceptions. In the following

337 See, eg, Cooper et al, above n 186.
338 Note, however, the increasing emphasis in recent decades on teaching generic skills described in section 2.2.2.1 above.

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subsections, I will focus on studies employing empirical research methodologies that provide insight into the factors contributing to law students’ distress and identify themes emerging from this literature. In particular, it will be argued that the extant empirical evidence supports the contention that law students’ shifts in emphasis away from intrinsic motivations, values and goals, and perceived lack of autonomy, competence, and relatedness, are factors that are contributing to their elevated distress levels. This further highlights the relevance of SDT as a theoretical lens through which to examine pedagogical strategies to support law students’ wellbeing and self-management capacities.

3.3.1 Changes in Law Students’ Values, Motivations, and Goals

The extant literature indicates that the values, motivations, and goals of many law students shift during the course of their legal education, with deleterious consequences for law students’ wellbeing. In particular, a greater privileging of extrinsic relative to intrinsic motivations and goals occurs for many students as they progress through their law degrees, which corresponds with the discussion of the significance of intrinsic and autonomous reasons for acting for wellbeing in section 3.2.1 above. Concomitantly, pedagogical approaches that nurture law students’ inner motivational resources may help to arrest declines in law students’ psychological wellbeing, and simultaneously foster law students’ capacities for autonomous self-regulation and self-management.

Sheldon and Krieger’s groundbreaking 2004 study correlated declines in subjective wellbeing in first year law students in two different US universities with changes in both the reasons law students are motivated to pursue their goals and the content of those goals. Their research instruments measured the “why” of motivation – defined as ‘autonomous versus controlled reasons for acting’ – and the “what” of motivation – described as goals aspired to on the basis of intrinsic values such as ‘emotional intimacy, community contribution, and personal growth’, or extrinsic values such as ‘financial success, appealing appearance, and social popularity’. 340 In relation to the ‘why of motivation’, the results in both university samples indicated that by the end of first year, students had shifted away from self-determined,

autonomous motivations for pursuing their law school goals, such as personal interest or enjoyment, and felt more ‘controlled by others’ desires and dictates’. This suggests that many law students begin to disconnect from motivations based on an internal locus of reference during the first year of legal education. Regarding the ‘what of motivation’, the authors found emphasis on intrinsic goal contents diminished in both first year samples, exemplified by a decline in community service values and greater valuing of appearances. For example, declines in law students’ interest in pro bono and public interest oriented practise as they progress through their degree have been documented in numerous studies. Significantly, these changes in law students’ motivations and values during the first year of law school correlated with steep declines in self-reported levels of positive affect and life-satisfaction, as well as strong increases in negative affect. It is also noteworthy that students from one of the law schools evidenced ‘less valuing of all kinds’ by the middle of the second year of legal education, appearing to support concerns about a “numbing” of values and emotions’ as a by-product of learning to think like a lawyer. Thus, this study, which has been very influential in informing subsequent discussions and research on law students’ wellbeing, highlights three shifts in perspectives that occur during the first eighteen months of law school: (1) a shift away from relatively autonomous to more controlled motivations for pursuing law school studies; (2) a shift away from intrinsic goal contents, and greater privileging of extrinsic aspirations, related to legal education; and (3) a gradual diminishing of all kinds of valuing. Such shifts signal dissonance with one’s original value system, motivations for studying law, and intrinsic/altruistic goal

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341 Ibid 273.
342 Sheldon and Krieger, above n 8, 281.
343 For an overview see Tamara Walsh, ‘Putting Justice Back into Legal Education’ (2007) 17(1) Legal Education Review 119, 120. At least two studies, including Walsh’s, have found that law students’ interest in these types of work does not necessarily diminish during their degrees: at 120, 133.
345 Ibid 274.
346 Ibid 282.
347 See, eg, the preliminary findings of Allen and Baron’s research employing similar research methodologies to determine whether the outcomes identified in Sheldon and Krieger’s 2004 study are relevant in an Australian legal education context: Allen and Baron, above n 57, 286.
348 Sheldon and Krieger, above n 8, 273.
349 Ibid 281.
350 Ibid 274.
aspirations, suggesting that it is important for law students’ wellbeing that they retain connection with their authentic values, motivations, and goals at law school.\textsuperscript{351}

Recent empirical Australian research supports the link between law students’ emphasis on extrinsic rewards and distress levels. In their 2009 study, Tani and Vines analysed data collected from 2528 students from ten disciplines at UNSW about their ‘attitudes to their experience and expectations of their university education’.\textsuperscript{352} The authors sought to identify specific aspects of law students’ attitudes towards their studies that differed from students from other disciplines and may therefore illuminate potential reasons for the elevated levels of psychological distress, including depression, among law students.\textsuperscript{353} The authors found that relative to students from all other faculties – including from the medical faculty which also offers professional studies with similarly high entrance score requirements, workloads, and prospects for subsequent financial success\textsuperscript{354} – students from the law faculty are more influenced by external factors, suggesting a relative lack of autonomy. Amongst other things, law students were more likely to have chosen their degree for external reasons, including to please their parents and because of its future career prospects, and demonstrate a preoccupation with getting high grades.\textsuperscript{355} In each of these instances, the emphasis is on an external locus of reference – parents, future employers, and teachers – and may signify a lack of alignment with one’s intrinsic values, interests and goals. Tani and Vines also found that law students were more likely to value their university’s reputation,\textsuperscript{356} which could indicate an intrinsic prioritising of the quality and culture of the institution, but in the context of the other responses, seems likely to again reflect a strong emphasis on what future employers may think about them and the value of their degree. Law students were also less motivated by learning and intrinsically interested in the content of their degree than students from other disciplines.\textsuperscript{357} As this research was conducted at one

\textsuperscript{351} See also Krieger, above n 292, 273.
\textsuperscript{352} Massimilano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ 19(1) Legal Education Review 3, 3.
\textsuperscript{353} Ibid 4.
\textsuperscript{354} Ibid 8.
\textsuperscript{355} Ibid 12–25.
\textsuperscript{356} Ibid.
\textsuperscript{357} Ibid.
Go8 university, an interesting opportunity for future research is to examine whether law students from other types of universities have similar attitudes.

Based on these findings, Tani and Vines suggest that low personal autonomy, strong competitiveness and lack of deep social connectedness are factors that may be linked to the high incidence of depression among law students. In their conclusion, they state: ‘Since lack of autonomy and lack of social connectedness are major risk factors for depression, these are obvious areas for law schools to focus their attention on when designing and conducting legal education’.  

Although strategies to facilitate social connectedness between law students are, as previously indicated, primarily within the ambit of TLO 5: Communication and Collaboration and beyond the scope of this thesis, curricular strategies that are purposefully designed to increase students’ intrinsic and autonomous motivations for their studies may foster law students’ resilience and ameliorate their distress, and thus constitute an appropriate focus for implementing TLO 6.

A recent study by a team of researchers at MLS adds further nuance to the findings of Sheldon and Krieger’s and Tani and Vines’ studies outlined above. Larcombe, Malkin and Nicholson undertook two surveys of LLB and JD students at MLS in 2007–2008 and 2011, respectively – the first was a ‘Studying Law Survey’ and the second was a ‘Wellbeing Survey’. The ‘Studying Law Survey’ was administered to commencing LLB students at the beginning of Semester 1, 2007, with a 96 per cent participation rate, and commencing JD students at the beginning of Semester 1, 2008, with a 97 per cent participation rate. Then, in Semester 2, 2011, a second ‘Wellbeing Survey’ was administered to both LLB and JD students, which had a 37 per cent participation rate; of these, JD students were over-represented, with more than 40 per cent of each JD year level participating. The authors found that LLB students nominated extrinsic reasons, defined as ‘financial’, ‘professional status’, ‘parental advice’, ‘best option available’, and ‘achieved required marks’, for their
course choice more frequently than JD students, suggesting that the findings in Tani and Vines’ study may be particularly applicable to LLB cohorts.\textsuperscript{364} Significantly, however, Larcombe, Malkin and Nicholson also found that there was a consistent increase in the frequency with which extrinsic reasons for pursuing law studies were nominated by both experienced LLB and JD students, defined as those who had completed at least five law subjects,\textsuperscript{365} compared with commencing students in both programs.\textsuperscript{366} This supports the findings of Sheldon and Krieger’s 2004 study that intrinsic reasons for studying law, defined in Larcombe, Malkin and Nicholson’s study as ‘social justice’, and ‘interest and aptitude’,\textsuperscript{367} are ‘becoming increasingly overwhelmed’ by extrinsic motivations as students progress through their law degrees.\textsuperscript{368}

Like both Sheldon and Krieger’s and Tani and Vines’ studies, Larcombe, Malkin and Nicholson’s data provides further confirmation of the connection between high levels of psychological distress, particularly depression, and students’ privileging of extrinsic reasons for studying law, such as parental advice and law being the best option available.\textsuperscript{369} Moreover, the authors found that students who did not nominate intrinsic motivations for studying law, such as interest and aptitude, were at three times the risk of being severely or extremely depressed.\textsuperscript{370} This adds further support to the contention from SDT, particularly Organismic Integration Theory, that prioritising extrinsic motivations is likely to undermine an individual’s psychological wellbeing. Thus, the literature canvassed above reinforces the premise that nurturing inner motivational resources is invaluable for law students’ wellbeing, as well as facilitating the development of their capacities for autonomous self-regulation and self-management.

3.3.2 Autonomy and Law Students’ Distress

Furthermore, although extant research has not established direct causal links between aspects of legal education and law students’ distress, a common thread in much of

\begin{itemize}
  \item \textsuperscript{364} Ibd 84.
  \item \textsuperscript{365} Ibd 75.
  \item \textsuperscript{366} Ibd 82–3.
  \item \textsuperscript{367} Ibd 79–80.
  \item \textsuperscript{368} Ibd 85.
  \item \textsuperscript{369} Ibd 86.
  \item \textsuperscript{370} Ibd.
\end{itemize}
the extant research appears to be law students’ loss, or perceived loss, of autonomy and authenticity as they progress through their law degrees.\textsuperscript{371} Employing the definition of autonomy outlined in section 3.2.2 above, this means that some law students may perceive that their actions are not self-governed, volitional, and congruent with their true beliefs, values and interests. Similarly, a loss of authenticity may reflect that students do not perceive their choices as expressing their true selves.\textsuperscript{372} Krieger comments that, in the process of learning to think like a lawyer, ‘[l]aw students run the substantial risk of losing contact with aspects of their authentic selves, such as their conscience and underlying values’.\textsuperscript{373} Hess similarly argues that ‘[f]or some students, “learning to think like a lawyer” means abandoning their ideals, ethical values, and sense of self’.\textsuperscript{374} This is consonant with Grover’s description of ‘fragmentation’, whereby law students, and particularly those from minority backgrounds,\textsuperscript{375} relinquish ‘vital aspects of the self’, including their ‘spirituality’, ‘collegiality and capacity for intimacy’, ‘personal ethics’, ‘work ethic’\textsuperscript{376} and ‘perspective’ as they pursue the ideal of becoming a lawyer.\textsuperscript{377} Such fragmentation necessarily comes at a cost to individual law students’ ‘psychological integration’, which underpins emotional and psychological wellbeing.\textsuperscript{378} Iijima similarly argues that law school encourages students to sever their ‘interconnections’, or connections with others, and ‘intraconnections’, or connections with aspects of their ‘emotional, spiritual and physical’ selves.\textsuperscript{379} In a similar vein, the discussion below indicates that a common theme in the empirical

\begin{itemize}
  \item Contra James Hedegard, ‘The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Amongst First-Year Law Students’ (1979) \textit{American Bar Foundation Research Journal} 791. Hedegard concludes that ‘Not only did individual law students retain the distinctive temperament qualities they brought to law school, but these qualities may also have become more distinctive while in law school’: at 862 (emphasis in original).
  \item Sheldon et al, above n 288, 328.
  \item Krieger, above n 42, 119.
  \item Grover argues that, in the face of burdensome workloads, law students learn to cut corners by, for example, skim reading, which is a habit that did not characterise their work ethic prior to law school: Susan Grover, ‘Personal Integration and Outsider Status As Factors in Law Student Well-Being’ (2008) 47 \textit{Washburn Law Journal} 419, 428–9.
  \item Ibid 420, 423–30.
  \item Ibid 422, citing Krieger, above n 42, 122.
\end{itemize}
research examining factors contributing to law students’ distress is a lack of autonomy and authenticity, including alignment with one’s intrinsic motivations, values, thinking styles, personality preferences, and morality. In the discussion that follows, I will canvas research discussing the potentially deleterious impact of legal education on each of these domains.

It should be noted that some law students’ subjective experiences of lack of autonomy and authenticity are arguably part of a broader trend in which undergraduate students believe that external forces, rather than their own internal choices, control their lives.380 People who do not experience control or mastery over their environment are, in general, ‘more likely to be depressed and anxious and cope poorly with stress’.381 It is also recognised that psychological wellbeing is a very complex phenomenon and that many interconnected factors contribute to each individual’s mental health.382 Lack of autonomy and authenticity is not necessarily the sole, or even the main, contributing factor to any individual law student’s psychological distress, however, the research discussed below indicates that it is an important variable, a greater understanding of which may meaningfully inform effective curricular strategies that law schools can adopt to ameliorate distress levels, and promote wellbeing and self-management.

3.3.2.1 Changes in Thinking Styles, Decision-Making Preferences and Morality

Extant research suggests that changes in law students’ thinking styles, decision-making preferences and morality, which represent aspects of their autonomous and authentic selves, are correlated with declines in psychological wellbeing. Townes O’Brien, Tang and Hall present preliminary empirical findings indicating that the deleterious effects of legal education on law students begin in the first year of law school and may be attributable to changes in thinking styles.383 The authors analysed survey responses from two groups of law students (one group was surveyed at the end of the first year of law school (n = 214) and the second group was surveyed at

381 Ibid 157.
382 Dammeyer and Nunez, above n 12, 72.
383 Townes O’Brien, Tang and Hall, above n 11; Hall, Townes O’Brien and Tang, above n 11.
the beginning (n = 174) and end (n = 81) of the first year of law school) at the ANU from 2009–10. As previously discussed in section 2.2.1, the results were consistent with prior research indicating that the first year of legal education contributes to, among other things, higher levels of stress and distress amongst law students. The authors also measured law students’ preferences for rational styles of thinking, which are ‘conscious and deliberative’, versus experiential styles of thinking, which are ‘based on effortless intuition’. Students from the end of first year sample scored significantly higher on measures of rationality and lower on experientiality than the beginning of first year samples. The authors comment:

Even though our data is insufficient to demonstrate with certainty that ... a shift [in thinking styles] occurs or that law school plays a causal role, we believe there is sufficient evidence to support the hypothesis that a change towards, or a reinforcement of, rational thinking styles can occur in law school. In our experience, emphasizing the rational mode while neglecting the experiential mode of thinking is consonant with the approach to legal material that law teachers often refer to as thinking like a lawyer.

It is notable that there appears to be a ‘trade-off’ in thinking styles that occurs in the first year, suggesting that ‘for some students the legal educational process leads to an undervaluation or under-use of previously favoured experiential modes of thinking’. Although the authors do not discuss their results in this way, I suggest that for those students with a natural predisposition towards experiential modes of processing information, a disconnection from this predisposition during the first, and presumably subsequent, years of law school may signify the ‘fragmentation’ of this aspect of their authentic preferences. The dominant thinking modes that students enter law school with presumably reflect their ways of making sense of the world and operating within it. To the extent that law students with a preference for experiential modes of processing information disconnect from this in favour of the rational modes of thinking that are privileged and rewarded in law schools, their autonomy and authenticity may be compromised. In a similar vein, Larcombe, Malkin and Nicholson question whether Townes O’Brien, Tang and Hall’s findings

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384 Townes O’Brien, Tang and Hall, above n 11, 154.
385 Ibid 161.
388 Hall, Townes O’Brien and Tang, above n 11, 39 (emphasis in original).
390 Grover, above n 376, 420.
indicate that changes in thinking styles have a direct impact on students’ psychological health, or whether the impacts stem from changes in students’ intrinsic and autonomous values and motivations.\textsuperscript{391}

American research supports the proposition that there is a shift in law students’ thinking styles, decision-making preferences, and morality in the first year of law school. In the early 1990s, Guinier et al found that both male and female students at the University of Pennsylvania Law School reported becoming ‘less emotional’, more objective and conservative, and caring less about others as a result of their legal education.\textsuperscript{392} A 1991 study by Janoff found that individuals who began law school with an ethic of care – a decision-making preference privileging interpersonal harmony and relationships – had, by the end of first year, shifted to a rights orientation – a decision-making preference premised on justice, fairness, and logical analysis of rights and duties.\textsuperscript{393} In the late 1970s, Hedegard found that law students at Brigham Young University became less interested in intellectual, philosophical and introspective inquiry, and scientific abstractions, during the first year of law school.\textsuperscript{394}

More recently, a significant empirical study published by Mertz in 2007 recorded and analysed the language used in a full semester of contract law classes at eight different American law schools with diverse teachers and teaching styles.\textsuperscript{395} Mertz found that, in the process of training students to think like lawyers, the learning process linguistically shapes students’ thinking styles and morality. In learning to engage in dispassionate legal analysis and argue issues from multiple viewpoints, Mertz claims that students are compelled to alter their previous sense of conscience, morality, and empathy for human suffering.\textsuperscript{396} In relation to autonomy, Mertz describes a profound loss of authenticity: \textsuperscript{397}

\begin{footnotesize}
\textsuperscript{391} Larcombe, Malkin and Nicholson, above n 360, 73.
\textsuperscript{394} Hedegard, above n 371, 835–7.
\textsuperscript{395} Elizabeth Mertz, The Language of Law School: Learning to ‘Think Like a Lawyer’ (Oxford University Press, 2007).
\textsuperscript{396} Ibid 5–6, 135.
\textsuperscript{397} Ibid 135–7.
\end{footnotesize}
Law students … under[go] a quiet process in which their very selves are decentered through and in speech; … [they] are encouraged to separate inner opinion[,] and feelings from the discursively defined legal personae they are learning to embody … mov[ing] away from emotion, morality, and context as they create new selves anchored in legal discourse.  

Thus, it appears that there is a connection between some law students’ disconnection from autonomous and authentic aspects of themselves, including their thinking styles, decision-making and moral preferences, and declines in wellbeing, confirming the appropriateness of a focus on curriculum design that supports students’ autonomy as a means of simultaneously addressing psychological wellness and self-management.

3.3.2.2 Lack of Autonomy Support

The importance of autonomy support to law students’ wellbeing is further reinforced by a 2007 study by Sheldon and Krieger,\(^{399}\) and Larcombe et al’s recent research at MLS.\(^{400}\) Sheldon and Krieger’s three-year longitudinal study examined the impact of ‘autonomy supportive’ versus ‘controlling’ law school contexts on law students’ psychological wellbeing. The authors examined three features of an autonomy supportive legal education environment: (a) a degree of choice provision ‘within the constraints of the task and situation’; (b) if no choice is possible, the provision of a meaningful rationale; and (c) taking students’ perspectives into account, evidenced by an interest in, and respect for, their viewpoints.\(^{401}\) Controlling law school environments, by contrast, adopt a top-down approach, denying students opportunities to exercise self-agency.\(^{402}\) Sheldon and Krieger’s research found a positive correlation between students’ perception of autonomy support within their law school, the satisfaction of their psychological needs, and the positive flow-on consequences this has for their ‘self-determined career-motivation’, subjective wellbeing and academic achievement.\(^{403}\) In the words of the authors:

> These results suggest that, to maximize the learning and emotional adjustments of its [sic] graduates, law schools need to focus on enhancing their students’ feelings of autonomy. Why? Because such feelings can have trickle-down effects, predicting changes in students’ basic

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398 Ibid 135.
399 Sheldon and Krieger, above n 30.
400 Larcombe et al, above n 11.
401 Sheldon and Krieger, above n 30, 884.
402 Ibid.
403 Ibid 892.
need satisfaction and consequent psychological wellbeing, effects that may also carry forward into the legal career.\textsuperscript{404}

Importantly, maximising students’ learning and emotional adjustments is also central to the aims of the self-management TLO. In autonomy supportive environments, law students have opportunities to articulate their viewpoints, make choices for which they take responsibility, and internalise the rationales behind components of their law school experience that are beyond their control. These qualities are integral to self-management.\textsuperscript{405} More detailed discussion of the features of autonomy supportive legal education environments, and pedagogical approaches teachers can adopt to foster students’ capacities for autonomous self-regulation, will be a focus of Chapter 4.

Larcombe et al’s recent qualitative research at MLS provides Australian evidence regarding law students’ perceptions of a lack of perspective taking on the part of some law teachers, including in relation to the range of commitments that some students are juggling,\textsuperscript{406} and insufficient course flexibility in relation to course structure indicating a ‘perceived lack of choice provision and/or meaningful rationale’.\textsuperscript{407} The authors conclude that there is ‘considerable support’ for the proposition that many MLS students, including those who are satisfied with studying law, perceive the law school environment to be controlling, rather than autonomy supportive, which has negative ramifications for students’ experiences of autonomy, competence, and relatedness, and is also correlated with high levels of self-reported psychological distress.\textsuperscript{408} This underscores the importance of a focus on legal curricula and law school cultures in order to address law students’ wellbeing. The links between autonomy, law students’ wellbeing, and self-management thus further demonstrate the importance of autonomy supportive practices in legal education.

3.3.3 Competence and Law Students’ Distress

In addition to the significance of a lack of nurturance of inner motivational resources and loss of autonomy and authenticity for law students’ mental health, SDT research

\begin{footnotes}
\footnote{\textsuperscript{404} Ibid 894.}
\footnote{\textsuperscript{405} Huggins, Kift and Field, above n 1, 103.}
\footnote{\textsuperscript{406} Larcombe et al, above n 11, 22–3.}
\footnote{\textsuperscript{407} Larcombe et al, above n 11, 27–8.}
\footnote{\textsuperscript{408} Ibid.}
\end{footnotes}
provides empirical evidence that undermining an individual’s subjective experiences of competence will have detrimental impacts upon their wellbeing.\textsuperscript{409} As discussed in section 3.2.2 above, according to SDT, competence refers to an individual’s ‘experience of effective interactions with the environment’\textsuperscript{410} and their sense of ability, capability, and mastery in relation to tasks and challenges.\textsuperscript{411} This does not necessarily equate with achievement, which connotes external validation, but based on anecdotal evidence I would suggest that many law students conflate the two. This argument is informed by American and Australian empirical research on law students’ experiences which shows that: (1) most law students and members of the practising profession have a strong ‘achievement orientation’;\textsuperscript{412} (2) relative to students from other faculties, law students are more influenced by external factors than other students, including placing a disproportionate emphasis on attaining high grades;\textsuperscript{413} and (3) many law students place increasing value on extrinsic rewards as they progress through their law degrees.\textsuperscript{414} Thus, law students value competence and achievement highly, and are likely to measure the former via external indicators of the latter. Accordingly, in the apparent absence of research that distinguishes between law students’ experiences of competence and achievement at law school, and documents any differential impacts of these factors on law students’ wellbeing, the following discussion will assume that many law students perceive they lack competence when they fail to achieve as highly as they would like, and will use the words competence and achievement interchangeably.

With the exception of recent research conducted by Larcombe et al at MLS discussed below, there are few extant empirical studies directly correlating law students’ experiences of academic competence at law school with their subjective wellbeing. Larcombe et al’s research supports the findings of SDT studies in other diverse settings regarding the direct relationship between competence and wellbeing – that is, when individuals’ basic psychological need for competence is thwarted, negative implications for subjective wellbeing result.\textsuperscript{415} In discussing the following

\begin{footnotes}
\footnotetext[409]{Ryan and Deci, above n 37, 656–9, 666–9.}
\footnotetext[410]{Niemiec, Ryan and Deci, above n 221, 176.}
\footnotetext[411]{Krieger, above n 220, 172.}
\footnotetext[412]{Daicoff, above n 74, 26–7.}
\footnotetext[413]{Tani and Vines, above n 352, 12–25.}
\footnotetext[414]{Sheldon and Krieger, above n 8, 279–80; Larcombe, Malkin and Nicholson, above n 360, 92.}
\footnotetext[415]{Larcombe et al, above n 11, 13–4; Ryan and Deci, above n 37, 656–9, 666–9.}
\end{footnotes}
research which predominantly focuses on students’ experiences of competence in their law school environment, it will thus be inferred that law students’ subjective experiences of lack of competence and achievement may be contributing to the high incidence of psychological distress among this population. The strength of this inference would be buttressed by further research on this issue.

Despite the relative dearth of empirical studies examining the relationship between academic achievement and law students’ distress, numerous commentators have identified the ‘fierce competition for grades and the singular emphasis on achievement’ at law schools as possible contributing factors to law students’ high levels of stress and distress. As Gerald Hess observes:

A primary stressor is the grading and ranking system. Most students come to law school with records of high academic achievement. They hope to repeat that success but fear that they will not. For many the fear is realized. Grades can produce a profound loss of self-esteem. The significance of grades becomes inflated because students get so little feedback during the semester that grades are the only indicator of their performance. Further, competition for good grades and high class rank is intense because students perceive the stakes to be so high. Grades and class rank are significant gatekeepers to the reward system during and after law school...

As with the other discussion in the subsections of 3.3, the analysis that follows will be based on empirical studies that illuminate issues related to law students’ experiences of competence at law school. My analysis suggests that law students’ desires for high grades and top class rank, which may be unrealistic for many if a bell curve or other mechanisms to distribute students’ grades are utilised, contribute to law students’ stress levels, and may be causative of, or exacerbate any pre-existing vulnerability to, psychological distress.

Two qualitative studies from the US document the decline in competence levels experienced by some students at law school. An article published by Krauskopf in 1994 describes the results of surveys of both students and faculty at nine Ohio Law Schools, which had the aim of examining differences between male and female law

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417 Hess, above n 374, 78.
students’ experiences. Of particular interest to this discussion of competence were the law students’ responses to the following statement: ‘Before law school I thought of myself as intelligent and articulate, but often I don’t feel that way about myself now’. Although a majority of law student respondents disagreed with this statement, it is concerning that 41 per cent of women, and 41 per cent of females from minority backgrounds, agreed with this statement, whilst 16.5 per cent of males agreed with this statement. Similar findings were reflected in the results of a survey of 860 students at the University of California, Berkeley, in 1988, which had an ‘extraordinary’ response rate of 78%. Homer and Schwartz report the following results regarding students’ perceptions of self and the institution that are relevant to their subjective experiences of competence at law school:

- Nearly a third (31%) of all female respondents said they only sometimes or rarely felt as competent as others, in comparison to similar responses from only 11% of the men.
- A majority (51%) of all women agreed with the statement that although they felt intelligent and articulate prior to law school, they did not feel that way at Boalt [Hall School of Law]. Only 29% of men agreed with this description.
- Fifty percent of the women responding felt confident that their talents were respected in law school, compared to over 70% of the men.
- Seventy-seven percent of all women felt unsure of themselves when a professor disagreed with them, in comparison to 57% of the men.
- Nearly 40% of all women said they lost confidence when they were in class, compared to 21% of all men.

As this survey was conducted in the US almost 25 years ago, the gendered trends reflected in this data may not be replicated to a similar extent in contemporary Australian law school environments. However, both Krauskopf’s and Homer and Schwartz’s studies raise interesting questions about the gendered and ethnic dimensions of competence in law schools, which provide a rich opportunity for future research. Both studies also suggest that many students and particularly women, including those from minority backgrounds, lose confidence regarding their intelligence through their experiences at law school. This accords with Lake’s suggestion that many law students experience an ‘imposter syndrome’, by which

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419 Ibid 328.
420 Ibid.
422 Ibid 33.
423 Ibid.
they make unfavourable comparisons about their own intelligence, knowledge, and education compared with other students.\textsuperscript{424} Law students’ needs for competence in their law school environment would seem to be inevitably undermined by such experiences, and likely to be accompanied by concomitant declines in subjective wellbeing.

Two recent Australian studies by Larcombe et al at MLS confirm both: (1) law students’ desire for competence, as measured by high grades and class rank; and (2) the relationship between perceived lack of competence and heightened psychological distress. The two surveys – the ‘Studying Law Survey’ and the ‘Wellbeing Survey’ – and the profiles of the respondents for the first of these studies by Larcombe, Malkin and Nicholson were detailed in section 3.3.1 above. These surveys included two questions that were relevant to students’ expectations of their law school competence as reflected in academic results and cohort position: (1) ‘What is the lowest mark you would be happy with for a law assignment?’ and (2) ‘What is your level of agreement with the statement “I expect my results to be in the top one-third of my class”?’.\textsuperscript{425} In relation to the first of these questions, a significant percentage of commencing students in both cohorts (17 per cent of commencing JD students and 25 per cent of commencing LLB students) expected to receive a mark in the 80-100 range, which is ‘an unrealistic expectation at MLS where typically only 5-15 per cent of results in compulsory courses/units are in this band’.\textsuperscript{426} These findings are in alignment with an older but oft-cited US study from 1968, which provided qualitative evidence of students defining law school success as finishing ‘near the top’ of their class, rather than ‘passing’ or ranking in the ‘middle of the class’.\textsuperscript{427} Interestingly, whilst experienced LLB and JD students, defined as those who had completed at least five law subjects,\textsuperscript{428} evidenced more realistic expectations of the marks they would be happy with than their commencing student counterparts,\textsuperscript{429} responses to question (2) suggest that many students maintained high, and in some cases unrealistic, expectations about their class rank. Whilst 41.1 per cent of

\textsuperscript{425} Larcombe, Malkin and Nicholson, above n 360, 87.
\textsuperscript{426} Ibid.
\textsuperscript{427} Silver, above n 416, 1202.
\textsuperscript{428} Larcombe, Malkin and Nicholson, above n 360, 75.
\textsuperscript{429} Ibid 87.
commencing LLB students expected to be ranked in the top one-third of their class, 53.4 per cent of experienced LLB students evinced this expectation.430 This was evidenced by students ‘agreeing’ or ‘strongly agreeing’ with the statement ‘I expect my results to be in the top one-third of my class’.431 For JD students this trend was even more pronounced with 45.8 per cent of commencing, and 61.4 per cent of experienced, JD students expecting to be in the top third of their class.432 Thus, it appears that students place higher academic expectations on themselves, even if these expectations are unrealistic based on their past law school grades and cohort position, as they progress through their law degrees.433

When correlating these results with their other data, the authors found that more than 50 per cent of students experiencing severe or extreme symptoms of depression expected to be ranked in the top third of their class.434 This suggests that some law students’ high expectations may be contributing to their distress.435 It also raises questions about whether these students are failing to moderate their expectations in light of their psychological distress and its implications for their learning,436 and whether law schools are providing sufficient guidance to assist students with managing their expectations. Notably, research by Satterfield, Monahan and Seligman in the US has shown that, unlike for other undergraduate disciplines where an optimistic explanatory style is correlated with achieving high grades, higher achieving law students tend to have a more pessimistic outlook, which can predispose people to depression.437 Daicoff summarises the potential links between a pessimistic explanatory style, law school performance and depression succinctly:

The fact that the higher achieving law students tend to exhibit a more pessimistic outlook on life suggests that success in law school is associated with personality traits that predispose one to develop depression. It also suggests that pessimism may be inadvertently encouraged by the law school grading process. In this way, law school might foster the development of depressive, pessimistic attitudes.438

430 Ibid 89.
431 Ibid 87, 89.
432 Ibid 89.
433 Ibid 89.
434 Ibid 89.
435 Ibid 90.
436 Ibid 90.
438 Daicoff, above n 74, 144.
Further research conducted by Larcombe and her colleagues at MLS provides additional evidence of an inverse relationship between law students’ depression, anxiety and stress, and, inter alia, their sense of ‘environmental mastery’, which was measured using the Ryff’s Wellbeing scale. Environmental mastery is defined as ‘the capacity to manage effectively one’s life and surrounding world’, which clearly aligns with the definition of competence from SDT regarding individual’s experience of effective interactions with the environment and their sense of ability, capability, and mastery in relation to tasks and challenges. Larcombe et al found that as environmental mastery, self-acceptance and positive relationships with others increased, MLS law students’ correlative scores for depression, anxiety and stress, measured using the DASS-21 research instrument, decreased. The reverse was also true: students with low levels of environmental mastery, self-acceptance and positive relationships with others scored high on measures of psychological distress.

On this issue, the authors conclude that it is ‘plausible that students’ sense of competence is undermined by law school assessment and grading practices’, suggesting that pedagogical reforms to address and ameliorate these aspects of the law school experience are warranted. The findings in this study also provide evidence of the relationship between law students’ psychological wellbeing and experiences of relationships with others, which will be the focus of the next subsection discussing the issue of relatedness at law school.

Thus, the extant literature documents declines in subjective experiences of competence for many law students as a result of law school teaching, assessment, and grading practices, which has negative flow-on consequences for law students’ psychological wellbeing. This research strengthens the appropriateness of using SDT’s concept of autonomous self-regulation, which is sustained by experiences of a range of factors, including competence, in relation to this discussion of law students’ wellbeing and self-management capacities. As will be argued in Chapter 4, pedagogical strategies to support law students’ experiences of competence as part of autonomy supportive curriculum design, which may include letting students into the

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440 Ibid 8.
441 Niemiec, Ryan and Deci, above n 221, 176; Krieger, above n 220, 172.
442 Larcombe et al, above n 11, 13–4.
443 Ibid.
444 Larcombe et al, above n 11, 27.
‘secrets of success’ by teaching threshold concepts (see section 4.2.1.1), may be implemented to support the aims of TLO 6, including in particular the requirements of part (b) that graduates of the LLB be able to ‘reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development’.

3.3.4 Relatedness and Law Students’ Distress

In addition to intrinsic and autonomous motivations and goals, and autonomy and competence, experiences of relatedness play a pivotal role in law students’ wellbeing. The significance of interpersonal relationships for law students’ wellbeing has been examined in a number of American and Australian empirical studies, and there is evidence that issues pertaining to relatedness within and beyond the law school environment may affect law students’ wellbeing. For example, American research by Pritchard and McIntosh, and Abbey, Dunkel-Schetter, and Brickman, indicates that law students with strong social relationships with friends and family, and supportive intimate relationships, are likely to be better insulated from the stress and psychological distress many students experience at law school. Australian qualitative research by Stallman also documents the negative consequences of highly competitive behaviours between law students on students’ stress levels and psychological wellbeing. However, the focus of this discussion regarding the contributing factors to law students’ distress will be relatedness at law school – that is, in relation to teacher-student and student-student relationships.

Compared to the US literature on law students’ experiences of autonomy and competence, there are fewer studies that consider the interlinkages between law teacher-student relatedness and wellbeing. A 1977 study by Carrington and Conley is one exception. This study examined a number of factors that contributed to law student distress and alienation, which is, according to the authors, characterised by

445 See, eg, Lester, England and Antolak-Saper, above n 11, 49; Pritchard and McIntosh, above n 12, 741; Abbey, Dunkel-Schetter and Brickman, above n 290, 273–4. See also discussion in Tani and Vines, above n 352, 28–9.
446 Pritchard and McIntosh, above n 12, 741.
an ‘essential attitude of ... disinterest or disengagement’. The authors surveyed 185 students at the University of Michigan Law School and found a sub-group of this population could be described as ‘sociable’ and desired greater personal contact with faculty, peers, and members of the legal profession than they had received at law school up until that point. The authors concluded that such students ‘find the law school to be an unduly lonely place’, which is a harbinger of emotional distress. In a similar vein, recent research by Lester, England and Antolak-Saper at Monash University found that law students with high levels of ‘interpersonal connectedness’ evidenced higher self-reported levels of positive affect, and fewer symptoms of ‘depression, stress and symptoms of physical ill-health’, by the end of the first year of law school. The authors comment that: ‘...[I]t appears that feeling connected to peers, academic staff and professional staff within the faculty contributes to resilience and provides protection relating to mental and physical wellbeing’.

As foreshadowed earlier, research conducted by Larcombe et al at MLS provides further evidence of an inverse relationship between law students’ depression, anxiety and stress (measured using the DASS-21 research instrument), and, inter alia, their ‘positive relationships with others’. This variable, which was measured using the Ryff’s Wellbeing scale, is defined as ‘high quality, satisfying relationships with others’, and clearly intersects with SDT’s conceptualisation of relatedness as encapsulating the experience of meaningful connections with key others. As previously mentioned, Larcombe et al found that as environmental mastery, self-acceptance and positive relationships with others increased, students’ correlative scores for depression, anxiety and stress decreased, and vice versa. Moreover, a majority of students in both the LLB (83 per cent) and JD (53 per cent) programs at MLS felt that the ‘law school did not encourage students to form healthy and

451 Ibid, 897.
452 Lester, England and Antolak-Saper, above n 11, 49.
453 Ibid.
454 Larcombe et al, above n 11, 13–4.
455 Ibid 8.
456 Niemiec, Ryan and Deci, above n 221, 76; Krieger, above n 220, 172.
supportive relationships with each other and other members of the law school community. Accordingly, a major theme emerging from students’ suggestions for reform was teachers engaging with, and taking more interest in, students, both within and outside the classroom, and demonstrating greater empathy and understanding in relation to the multiple and often conflicting demands upon students. Further exploration of potential pedagogical strategies that could enhance relatedness between law teachers and students, with a focus on facilitating student self-management as part of an autonomy supportive curriculum, will be a focus of section 4.2.2.1.

The research outlined in the preceding subsections suggests that the four factors that sustain autonomous self-regulation – intrinsic and autonomous motivations and goals, and autonomy, competence, and relatedness – are also factors that are empirically correlated with law students’ wellbeing. Specifically, the absence of each of these factors in law school environments appears to be contributing to law students’ elevated distress levels. As ameliorating law students’ distress is one of the aims behind the self-management TLO, it makes sense to develop curriculum strategies for self-management that simultaneously support students’ autonomous self-regulation.

Whilst each of the abovementioned empirical studies highlights changes that may occur for some law students during the course of their legal education, it is worth remembering that the majority of law students do not experience elevated symptoms of psychological distress as a result of studying law, and may not experience the trends outlined above. Further, there may be other contributing factors to law students’ distress beyond the factors that are examined in SDT that are worthy of examination and redress. Notwithstanding this, the extant research documents that a significant number of law students experience changes in, and disconnections from, their intrinsic and autonomous motivations and goals, and lack of support for the basic psychological needs for autonomy, competence, and relatedness. Conversely, it will be argued in Chapter 4 that encouraging law students to identify, cultivate, and

458 Ibid 17.
460 See discussion in section 2.2.1 above.
stay connected with the intrinsic and autonomous motivations and goals, and authentic thinking styles, decision-making preferences, and moral codes that they came to law school with may promote students’ perceptions and experiences of autonomous self-regulation. Moreover, providing students with tools and opportunities to experience competence and relatedness at law school will be supportive of their wellbeing and capacities to effectively self-manage. The challenge, it would seem, is for legal educators to continue their traditional enterprise of teaching students to think like lawyers, coupled with an appropriate emphasis on legal skills, whilst encouraging them to stay connected with other important parts of themselves that make them whole as human beings and may help to insulate them from unnecessary distress. As Dvorkin, Himmelstein and Lesnick stated in 1981, ‘[w]hat is needed is a way of bringing together mastery with aspiration, intellect with experience, rigor with value, pragmatism with idealism, competence and skill with caring and a sense of meaning’.461 Similarly, I suggest that it is desirable to explicitly encourage and promote internally-endorsed reasons for acting, autonomy, authenticity, competence, and relatedness, within law schools, without compromising the teaching of necessary legal content and skills,462 as a partial antidote to law students’ disproportionately high levels of psychological distress and as a platform for encouraging students’ development of their self-management capacities. Importantly, in addition to assisting with the amelioration of some law students’ distress, such an approach has great potential to support and enhance all law students’ psychological wellbeing, including in preparation for the demands of practise.

Given the demonstrated links between the factors examined in SDT and law students’ capacities for autonomous self-regulation, and its theoretical and empirically-based insights into the core qualities that reflect and predict wellbeing and self-management, SDT is employed as a theoretical framework for this thesis. In particular, in Chapter 4, SDT will provide a frame for identifying and analysing pedagogical approaches to self-management that support students’ autonomous self-

regulation. Some of the links between the factors studied in SDT and self-management that I have articulated above are intuitive and conceptual at this point and would benefit from empirical validation through further research. Such empirical research would strengthen the case for legal pedagogical strategies that cultivate the key factors studied in SDT to support students’ self-management capacities.

3.4 A Proposed Enhancement of the Current Wording of TLO 6 from the Perspective of SDT

A critique of the current wording of TLO 6: Self-Management in the Standards Statement from the perspective of SDT suggests that minor additions can be made to the wording of this learning outcome to further reflect and promote its aims of sustained personal and professional development and growth. It should be noted that the TLOs for the Bachelor of Law degree were, in essence, the product of a drafting exercise performed by a national committee in a tight timeframe, resulting in a consensus statement that included some compromises on wording. Further, as outlined above, the TLOs are articulated as minimum/threshold standards, which allow and encourage diversity in their interpretation and implementation, aided by the guidance provided in the Notes on the TLOs. Recognising these pragmatic constraints, and the suitability and appropriateness of drafting national TLOs through such a consensus process, the critique proposed here is largely theoretical to reflect the insights and perspectives offered by SDT.

It is proposed that the key SDT concepts of intrinsic and self-determined motivations and goals, and autonomy, competence, and relatedness should be reflected in the wording of TLO 6. Notably, competence is, arguably, currently encapsulated in the wording of part (b) of TLO 6 that graduates of the LLB will be able to ‘reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development’. As previously indicated, relatedness is a primary focus of TLO 5, and thus does not need to be explicitly referred to again in TLO 6. Intrinsic motivations and autonomy are not explicitly addressed in the current articulation of TLO 6, and it is proposed that

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463 Email from Law Discipline Scholar, Professor Sally Kift, to Anna Huggins, 14 October 2011.
464 It is arguable, however, that the Notes on the TLOs enable this interpretation: see Kift, Israel and Field, above n 2, 22–3.
Rewording to reflect these key concepts is desirable on theoretical grounds, as well as in terms of providing clearer guidance to law schools about the types of issues that should be addressed in legal curricula to promote law students’ sustainable self-management capacities.

Accordingly, the following wording is proposed, with changes indicated in italics:

Graduates of the Bachelor of Laws will be able to

a. Learn and work autonomously, and

b. Reflect on and assess their own motivations, capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

As articulated, this proposed reformulation of TLO 6 would continue to constitute a minimum learning outcome, which individual law schools would be able to exceed as they see fit.

It is noteworthy that the word ‘intrinsic’ was deliberately omitted from the proposed rewording above. This is because, although SDT research provides empirical validation of the benefits of intrinsic motivations and goals for wellbeing, and personal and professional development, it is not a realistic or appropriate role for law schools to attempt to ensure that all graduates will be primarily guided by internal reasons for acting. It is, however, arguably appropriate for law schools to encourage students to reflect upon, and gain further insights into, their motivations; any shifts in priorities that may or may not occur as a result of such reflection is then a matter for individual students. The discussion in the following Chapter will include suggestions for pedagogical strategies that will promote students’ acquisition of the types of knowledge, skills, and attitudes described in this proposed rewording of TLO 6.

The inclusion of the concept of autonomy in the proposed rewording of TLO 6 replaces the former reference to learning and working ‘independently’, and aligns with the centrality of this concept in other equivalent national and international standards. It is suggested that learning and working autonomously, according to an SDT-informed understanding of the word, includes, but goes beyond, working
independently. As described in section 3.2.2, independence connotes freedom from the influence of external forces, whereas autonomy allows for external influences that are self-endorsed. Autonomy also encompasses acting in accordance with one’s true beliefs, values, and interests, and reflectively self-endorsing one’s actions, which extends well beyond simply acting independently of external influences. The specific reference to autonomy in the relevant AQF articulations for the LLB and JD, TLO 6 for the JD, as well as in equivalent international standards, reinforces the centrality of this concept to self-management. The discussion that follows draws upon materials previously canvassed in section 2.3.1, but, in contrast to the preceding discussion which related these equivalent standards to TLO 6 generally, the focus here will be on the significance of the references to autonomy in these standards, which bolster the arguments for the proposed rewording above.

The AQF award level descriptors that informed the development of TLO 6 explicitly refer to autonomy in describing students’ acquisition of self-management related competencies. As previously mentioned, TLO 6 aligns with the ‘application of knowledge and skills’ requirements of the AQF for a Bachelor degree (Level 7), which states that ‘Graduates at this level will apply knowledge and skills to demonstrate autonomy, well-developed judgement and responsibility: [1] in contexts that require self-directed work and learning; and [2] within broad parameters to provide specialist advice and functions’.

Similarly, for the Bachelor Honours degree (Level 8), the AQF specifies that ‘Graduates at this level will apply knowledge and skills to demonstrate autonomy, well-developed judgement, adaptability and responsibility as a practitioner or learner’.

The references to autonomy in each of these AQF award level descriptors strengthen the argument that it is appropriate to include autonomy in the proposed rewording of TLO 6 articulated above.

Although the wording of TLO 6 for the LLB does not expressly refer to autonomy, the JD version of TLO 6: Self-Management does:

Graduates of the Juris Doctor will be able to:
(a) Learn and work with a high level of autonomy, accountability and professionalism;

465 AQF, above n 26, 47 (emphasis added).
466 Ibid 50 (emphasis added).
and
(b) Reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.\(^{467}\)

The drafters of the TLOs for the JD used the wording of the TLOs for the LLB as their starting point but rearticulated them using language that conveys the higher order outcomes expected of graduates of a Masters Degree (Extended), which, as mentioned above, is the AQF award level descriptor for the JD degree.\(^{468}\) This suggests that the inclusion of the reference to autonomy in the TLOs for the JD, and its absence in the TLOs for the LLB, may have been intentional to reflect the differential outcomes expected of graduates of both degrees. However, given that TLO 6 for the LLB aligns with the ‘application of knowledge and skills’ requirements of the AQF for a Bachelor degree (Level 7), which does include explicit reference to graduates’ capacities to ‘apply knowledge and skills to demonstrate autonomy, well-developed judgement and responsibility...’,\(^{469}\) it is arguably appropriate that this concept is explicitly referred to in TLO 6 for the LLB as well.

Furthermore, the international standards that informed the development and wording of TLO 6 also refer to autonomy.\(^{470}\) For example, in the United Kingdom’s Quality Assurance Agency’s Subject Benchmark Statement: Law published in 2007, one of the benchmarks, the full text of which is included in section 2.3.1 above, is headed ‘7.2 Autonomy and ability to learn’.\(^{471}\) According to the text for law schools accompanying this statement, autonomy and ability to learn are ‘perhaps the key features of graduateness’.\(^{472}\) Similarly, one of the generic competencies identified by the European Tuning Project, which also informed the development of TLO 6, is ‘Ability to work autonomously’.\(^{473}\) The references to autonomy in each of these standards emphasises the centrality of this concept to self-management, as well as the desirability of the proposed rewording of TLO 6 for the LLB including explicit reference to autonomy.

\(^{467}\) JD Sub-Committee of the Associate Deans Law Network, above n 28, 4 (emphasis added).
\(^{468}\) Huggins, Kift and Field, above n 1, 183–4.
\(^{469}\) AQF, above n 26, 47 (emphasis added).
\(^{470}\) Kift, Field and Israel, above n 2, 22.
\(^{471}\) QAA, above n 192, 3 (emphasis added).
\(^{472}\) Kift, Israel and Field, above n 2, 50.
\(^{473}\) Kift, Israel and Field, above n 2, 51.
3.5 Conclusion

This Chapter has discussed the suitability of SDT as a theoretical framework for analysing the self-management TLO, and strategies for its implementation in legal education. After presenting the five sub-theories of SDT, the central concept of autonomous self-regulation, supported by intrinsic or internally-endorsed reasons for acting, and satisfaction of the basic psychological needs of autonomy, competence, and relatedness, was distilled. It was argued that autonomous self-regulation is inseparable from, and facilitates, successful, long-term self-management, underscoring its relevance and appropriateness as a theoretical framework for analysing TLO 6. SDT’s aptness as a theoretical framework for this thesis was further reinforced by an overview of its applications in research involving law students, lawyers, and legal education, and its ability to account for professionalism, which can be seen as part of ‘personal and professional development’ under TLO 6.

The Chapter’s earlier analysis was fortified by an examination of American and Australian research on law students’ distress which confirmed that an absence of the factors that contribute to autonomous self-regulation can have deleterious consequences for law students’ psychological wellbeing. This discussion of law students’ distress and its putative causes strengthens the case for addressing self-management in legal education, as well as providing insights into potential foci for pedagogical strategies for self-management that are supportive of law students’ wellbeing. It is suggested that legal curriculum design that specifically addresses the factors supporting autonomous self-regulation may serve to attenuate law students’ distress by providing them with both the outer environment and opportunities to cultivate the inner resources that promote wellbeing and self-management.

Based on this analysis, proposed revisions to the wording of TLO 6 were suggested as threshold requirements. Specifically, it was argued that inclusion of explicit reference to the concepts of autonomy and motivation are fitting to reflect an SDT-informed conceptualisation of self-management. The inclusion of a word derived from ‘autonomy’ in this proposed revision is congruent with the centrality of this concept in equivalent national and international standards to TLO 6. In the following Chapter, it will be argued that implementation of the proposed, slightly modified version of TLO 6 can be achieved through adopting pedagogical strategies that
support students’ autonomous self-regulation, and thereby encourage law students’ cultivation of internal reasons for acting, and satisfaction of the basic needs for autonomy, competence, and relatedness.
CHAPTER 4: CURRICULUM DESIGN INFORMED BY SELF-DETERMINATION THEORY

4.1 Introduction: Autonomy Supportive Curriculum Design as a Focus for Implementing the Self-Management TLO

Intentional and strategic approaches to curriculum design are required for the effective development of law students’ self-management knowledge, skills, and attitudes.\textsuperscript{474} This Chapter proposes possible curriculum design strategies for the learning, teaching, and assessment of the self-management TLO that support law students’ autonomous self-regulation. In particular, it will be argued that law students’ autonomous self-regulation, supported by intrinsic and autonomous motivations and goals, and experiences of autonomy, competence, and relatedness, is facilitated by autonomy supportive curriculum design. Building on the examination of key aspects of SDT in Chapter 3, it is proposed that the adoption of a range of curriculum design strategies that promote law students’ perceptions of autonomy support in the law school environment will facilitate higher levels of student engagement, wellbeing and academic achievement, as well as the cultivation of law students’ self-management capacities.

Although law teachers cannot give students greater capacities for autonomous self-regulation, they can nonetheless take practical steps to provide optimal conditions for students to experience autonomous decision-making and action.\textsuperscript{475} The theory of autonomy support, which is part of the broader meta-theory provided by SDT, particularly the Basic Psychological Needs sub-theory, will be employed in this Chapter to provide a framework for considering curriculum design strategies that support law students’ autonomy. This theory posits that people thrive when they feel and perceive that others support their autonomy, particularly when there is a situation in which individuals have unequal power.\textsuperscript{476} Based on this theory, a range of curricular strategies that law teachers can implement to support students’ autonomy are considered. These strategies are premised on five interpersonal conditions of autonomy support identified in SDT literature: the provision of

\textsuperscript{474} Huggins, Kift, and Field, above n 1, 184.
\textsuperscript{475} Reeve and Jang, above n 38, 210, 217.
\textsuperscript{476} Su and Reeve, above n 35, 159–60.
meaningful rationales; acknowledgement of perspectives and feelings; use of non-controlling language; choice provision; and nurturing students’ inner motivational resources. Findings from the educational psychology literature based on SDT indicate that the implementation of such strategies will not only enhance students’ psychological wellbeing, but also facilitate their engagement and academic achievement. For each of these interpersonal conditions, the following discussion will consider: (1) its pertinence to curricular strategies for self-management; and (2) an extended example of its practical implementation in legal curricula. The examples will be chosen on the basis of the extent to which they are well-documented in the extant legal education literature and, most importantly, satisfy the relevant interpersonal condition of autonomy supportive curriculum design. It is acknowledged that there may be other examples that were not selected that also meet these criteria; further analysis of a broader range of these examples constitutes an opportunity for future research.

Importantly, although autonomy support appears to be most directly relevant to the basic psychological need of autonomy, the five autonomy supportive interpersonal conditions examined in this Chapter support all the factors that maintain autonomous self-regulation. To highlight some examples, all of which will be expanded upon below, intrinsic and autonomous motivations and goals are cultivated when students’ inner motivational resources are nurtured. Offering choices allows students to exercise autonomy, particularly when their needs for competence and relatedness are simultaneously supported. The provision of meaningful rationales lets students into the secrets of success at law school, laying the foundation for experiences of competence. Acknowledging perspectives and feelings and using non-controlling language are both strategies that law teachers can employ to enhance students’ experiences of teacher-student relatedness. It is not suggested, however, that each of the five interpersonal conditions relates exclusively to one particular factor supporting autonomous self-regulation. Rather, the synergistic effect of satisfying all of the five interpersonal conditions supports the motivations, goals, and needs that

478 For an overview of this literature see Manning, above n 31, 3. See also Ryan and Deci, above n 37, 665, 672.
underpin students’ autonomous self-regulation. As argued in Chapter 3, when students autonomously self-regulate, this is likely to be a strong predictor of their capacities for sustained self-management.

This Chapter will be structured as follows. First, the benefits of autonomy supportive practices in educational contexts from the perspective of SDT will be articulated in section 4.2. Secondly, a detailed consideration of the relevance of each of the interpersonal conditions of autonomy support from SDT to implementing TLO 6 in legal education, supplemented by extended discussion of a practical example, will be provided in sections 4.2.1 to 4.2.5.1. Specifically, the extended example for providing meaningful rationales addresses the teaching of threshold concepts (section 4.2.1.1), the example of acknowledging perspectives and feelings addresses facilitating a positive socio-emotional climate for class discussions (section 4.2.2.1), the example of using non-controlling language addresses providing feedback that is informational, provides rationales and affirms competency (section 4.2.3.1), the example of offering choices addresses inviting student input into subject design (section 4.2.4.1), and the example of nurturing inner motivational resources addresses reflective practice (section 4.2.5.1). Thirdly, in section 4.3, an array of potential concerns about adopting autonomy supportive curricular practices, including possible implications for both law teachers and students, will be canvassed.

4.2 The Benefits of Curriculum Design Strategies that Promote Students’ Autonomous Self-Regulation

To reiterate, according to SDT, autonomy support is when one person speaks and acts in ways that enhance another’s ‘internal perceived locus of causality, volition, and perceived choice during action’. In an educational context, autonomy support refers to nurturing and enhancing an individual’s ‘inner endorsement’ of their engagement with educational activities. Importantly, whilst teachers cannot give their students autonomy, they can cultivate the interpersonal conditions that: (i)

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480 Su and Reeve, above n 35, 160.
481 Reeve and Jang, above n 38, 210.
provide students with opportunities to exercise their autonomy; and (ii) facilitate students’ perceptions of autonomy support.\textsuperscript{482}

In a recent meta-analysis, Su and Reeve demonstrated empirical support for a number of interpersonal conditions that contribute to subjective perceptions of autonomy support: (1) the provision of meaningful rationales; (2) the acknowledgement of perspectives and feelings; (3) the use of non-controlling language; (4) offering choices; and (5) nurturing inner motivational resources.\textsuperscript{483} Providing meaningful rationales involves a person in authority clearly explaining to an individual why engaging with a task is personally beneficial to them; this is particularly important when no choice is possible.\textsuperscript{484} Acknowledging perspectives and feelings occurs when people in positions of authority acknowledge and respect the viewpoints and feelings of subordinates.\textsuperscript{485} The use of non-controlling language describes the way in which meaningful rationales and acknowledgements of perspectives and feelings are communicated. The offer choices condition is satisfied when individuals are presented with a number of options, which they are encouraged to choose between, and in situations in which demonstrating initiative is encouraged.\textsuperscript{486} Finally, nurturing inner motivational resources refers to the activation of another’s ‘interests, intrinsic motivation, autonomy, competence, relatedness, sense of challenge, and intrinsic goals’ during engagement with a task.\textsuperscript{487} In the following discussion, a range of legal curricular strategies for self-management will be analysed through the lens of these five interpersonal conditions of autonomy support.

The interlinkages between the elements of autonomous self-regulation and the factors that appear to be contributing to law students’ distress were outlined in section 3.3 above. Educational psychology research applying SDT provides empirical evidence that the benefits of an autonomy supportive curriculum extend beyond promoting students’ wellbeing. In autonomy supportive environments, law

\textsuperscript{482} Ibid.
\textsuperscript{483} Su and Reeve, above n 35, 162.
\textsuperscript{485} Sheldon and Krieger, above n 30, 884; Deci et al, above n 484, 124.
\textsuperscript{486} Su and Reeve, above n 35, 162; Katz and Assor, above n 479.
\textsuperscript{487} Su and Reeve, above n 35, 162 (citations omitted).
students have opportunities to express their views, take responsibility for their choices, and internalise the rationales behind aspects of their law school experience that are beyond their control; as was argued in Chapter 3, these qualities are integral to self-management and the implementation of the self-management TLO.\textsuperscript{488} Additionally, autonomy supportive instruction has a number of other advantages, including an increased likelihood that students will be motivated towards deep learning and mastery, facilitating improved engagement, creativity and academic performance.\textsuperscript{489} Positive outcomes in terms of law students’ wellbeing, self-management capacities, and academic engagement and achievement underscore the salience of promoting students’ autonomy, and perceptions of autonomy support, within law school environments. Thus, irrespective of the extent to which law schools utilise the TLOs as an external reference point in meeting their requirements under the TEQSA regime, the benefits of autonomy supportive curricula are nonetheless likely to appeal to both law teachers and students.

It should also be noted that there are many synergies between the strategies espoused in this Chapter and other long-established ideas and principles regarding good teaching practice in higher education. To take one notable example, Ramsden’s influential ‘six key principles of effective teaching in higher education’ – ‘(1) interest and explanation’, ‘(2) concern and respect for students and student learning’, ‘(3) appropriate assessment and feedback’, ‘(4) clear goals and intellectual challenges’, ‘(5) independence, control and engagement’, and ‘(6) learning from students’\textsuperscript{490} – closely mirror the five interpersonal conditions of autonomy support outlined above. These links, and other connections between autonomy supportive practices and the works of influential learning and teaching scholars, will be expanded upon below. The significance of this is that autonomy supportive strategies represent good learning and teaching practice, and will be of academic benefit to \textit{all} students, not just those who suffer from psychological distress.

At least partially in response to the research canvassed above, there is a growing body of literature advocating the importance and desirability of autonomy supportive

\textsuperscript{488} Huggins, Kift and Field, above n 1, 201.
\textsuperscript{489} For an overview of literature on this point see Manning, above n 31, 4 n 19. See also Ryan and Deci, above n 37, 672; and Niemiec and Ryan, above n 34, 136.
\textsuperscript{490} Paul Ramsden, \textit{Learning to Teach in Higher Education} (RoutledgeFalmer, 2\textsuperscript{nd} ed, 2003) 93–99.
instruction in legal education. Perhaps most notably, supporting student autonomy was included as one of the ‘best practices for delivering instruction’ in the influential *Best Practices for Legal Education* report; this will be discussed further below, particularly in section 4.2.4. In the following discussion, I will contribute to this extant literature by exploring a range of curricular strategies that are supportive of law students’ autonomous self-regulation, which may facilitate their experiences of subjective wellbeing and develop their capacities for self-management. It is suggested that the range of curriculum approaches that law teachers can implement to promote law students’ autonomy reinforces the aptness of the proposed rewording of TLO 6 for the LLB outlined in section 3.4 including explicit reference to autonomy.

### 4.2.1 Providing Meaningful Rationales

As stated above, providing meaningful rationales concerns clearly explaining to an individual why engaging with a task is personally beneficial to them; this is particularly important when no choice is possible. If students have intrinsic motivation for learning a particular topic or skill, the provision of rationales may strengthen their inherent interest or enjoyment in this learning task. Articulating meaningful rationales is particularly important, however, when students’ motivation for engaging in a learning task falls somewhere along the continuum of internalised extrinsic motivation outlined in section 3.2 above. Thus, students’ motivation for engaging in a learning task may be predominantly externally driven to, for example, achieve high marks, or reflect introjected regulation in which students pursue learning to satisfy egoistic feelings of gaining pride or reducing guilt. If the value of engaging in a learning task is explained to students in a way they can relate to, it is more likely that they will internalise the usefulness of their engagement with this task, shifting their reasons for acting towards more autonomous types of self-regulation such as identified and integrated regulation. As previously discussed, this facilitates students’ self-management of their learning.

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491 See, eg, Vines, above n 305, 9–10; Tani and Vines, above n 352, 31; Huggins, Kift and Field, above n 1, 200–7; Manning, above n 31, 13; Krieger, above n 292, 259–60; Stuckey et al, above n 52, 113–4.

492 Stuckey et al, above n 52, 113–4.

493 Deci et al, above n 484, 124; Su and Reeve, above n 35, 161–2.
One of the ways in which curriculum design can be harnessed to support student autonomy is by clearly articulating what is expected of students in assessment tasks. Explicitly articulating the academic ‘language, conventions and standards’ expected of students in a given assessment task allows students to focus their efforts and learning. Providing students with a criterion-referenced assessment (CRA) sheet before the assessment is due, when accompanied by ‘dialogue’ that explicitly explains how these marking criteria will be applied, can alleviate uncertainty and facilitate self-regulated learning. Explaining the relative importance of the various criteria allows students to appropriately focus their efforts, and encourages them to be ‘metacognitive, or reflective, independent learners’. The timely provision of CRAs provides students with opportunities to practice meeting criteria before they are summatively assessed, including through self-assessing their work. Communicating expectations around assessments is autonomy supportive as it provides students with a meaningful rationale about how they will be assessed, and allows them to self-manage their time and study approaches accordingly.

There is, however, an important caveat here. Too much scaffolding of learning and assessment, and fine-grained, atomised prescriptions in CRAs, can actually subvert the learning process. Such supports may be appropriate in the first year of law school in which students are learning how to study law for the first time, especially as many students have come from highly scaffolded environments at school and through individual coaching. To support students’ genuine capacities for autonomy and self-management, it is important that such scaffolds are progressively removed throughout the law degree. Thus, while the provision of detailed CRAs may be a useful pedagogical strategy in the early years of the law degree as students encounter

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494 Huggins, Kift and Field, above n 1, 203.
497 Hunter Schwartz, Sparrow and Hess, above n 495, 158.
500 Ibid 390.
legal analysis and problem solving, legal research and writing and other formative legal skills for the first time, less detailed CRAs may be sufficient and appropriate for later year students who may be expected to have internalised the basic principles of the discipline.\textsuperscript{501} As the theory of autonomy support suggests, it is beneficial if the rationale behind the original provision of detailed CRAs and other learning scaffolds, and the learning aims associated with decreasing reliance on such supports as the law degree progresses, are clearly articulated and explained to students. Through the provision of rationales, it can be anticipated that any student stress associated with decreased use of learning scaffolds may be partially defused.

Law teachers’ provision of meaningful rationales to students through effective feedback on assessed work also supports student autonomy. In addition to written feedback on individual assignments that ‘correct[s] errors, explain[s] technical points, and giv[es] positive encouragement’, ‘tacit understandings about disciplinary content and academic literacy skills’ can be communicated to students either individually or as a class.\textsuperscript{502} This can be achieved through discussions of how criteria were applied and exemplar student work, and providing examples of how previous students have acted upon feedback to improve their performance in subsequent assessment tasks.\textsuperscript{503} Providing students with clear rationales for the marks they receive on assessment tasks and avenues for future improvement aligns with Ramsden’s third principle of effective teaching concerning appropriate assessment and feedback practices.\textsuperscript{504} Effective feedback facilitates students’ development as self-regulated, autonomous learners, and promotes their ability to ‘reflect on and assess their own capabilities and performance’ and to ‘make use of feedback as appropriate’ as required under the self-management TLO.\textsuperscript{505} More detailed guidance on autonomy supportive feedback for law assessments that, inter alia, provides meaningful rationales and uses non-controlling language, is provided in section 4.2.3 below.

\textsuperscript{501} Ibid 391.
\textsuperscript{502} ASKe, above n 496, 2; Huggins, Kift and Field, above n 1, 204; Hunter Schwartz, Sparrow and Hess, above n 495, 159–60.
\textsuperscript{503} Huggins, Kift and Field, above n 1, 204.
\textsuperscript{504} Ramsden, above n 490, 3.
\textsuperscript{505} Huggins, Kift and Field, above n 1, 203–204.
4.2.1.1 Extended Example of Providing Meaningful Rationales: Teaching Law Threshold Concepts

The teaching of law threshold concepts provides an example of how to practically implement the autonomy supportive interpersonal condition of providing meaningful rationales in legal education. Meyer and Land, who have been instrumental in developing academic understanding of threshold concepts, offer the following description of threshold concepts:

A threshold concept can be considered akin to a portal, opening up a new and previously inaccessible way of thinking about something. It represents a transformed way of understanding, or interpreting, or viewing something without which the learning cannot progress. As a consequence of comprehending a threshold concept there may thus be a transformed internal view of subject matter, subject landscape, or even world view. This transformation may be sudden or it may be protracted over a considerable period, with the transition to understanding proving troublesome.506

Thus, threshold concepts are vital for disciplinary understanding and mastery, but due to their ‘troublesome’ nature, students may fail to grasp the nuance and complexity of such concepts without clear and explicit instruction.507 Accordingly, providing meaningful rationales for both the importance of learning threshold concepts, as well as how to learn such concepts, supports students’ autonomous self-regulation as learners in the discipline of law.

Meyer and Land identify a number of defining characteristics of threshold concepts, which allow them to be distinguished from other key concepts in a discipline, of which there may be many. First, threshold concepts are ‘transformative’, in the sense that once a threshold concept has been understood, it may catalyse a paradigm shift in a student’s perception of a topic, subject, and/or discipline.508 Secondly, they are ‘irreversible’, meaning that once a student has crossed this liminal threshold, it is difficult to forget or ‘unlearn’ the new understanding.509 Thirdly, threshold concepts are ‘integrative’, as they reveal the interconnections between different aspects of a

508 Meyer and Land, above n 506, 7.
509 Ibid 7.
Finally, threshold concepts may possibly, although not necessarily, be ‘bounded’, in the sense that the concept has boundaries which border other conceptual areas, and ‘troublesome’, as some students find them difficult to grasp, and the development of their understanding of the concept may never reach maturity, or may take a long time in doing so.511

In a recent Australian research project funded by the then ALTC and lead by Professor Gerlese Akerlind, a group of law teachers from four Australian universities (the ANU, the University of Sydney, UTS, and QUT) engaged in a process of first identifying a number of key disciplinary concepts for law, which included uncertainty, thinking like a lawyer, the rule of law, the doctrine of precedent, and legal reasoning.512 After lengthy debate, the group selected one threshold concept – legal reasoning – which satisfied the criteria of being transformative, integrative, troublesome, and irreversible, and was agreed to be the ‘central threshold concept for law’.513 Providing meaningful rationales regarding learning the threshold concept of legal reasoning is an example of autonomy supportive curriculum design that has particular salience for the first year of legal education, in which the foundational concepts of legal reasoning are taught.

A significant contribution of the ALTC research project lead by Akerlind is that it proposed a model for teaching the threshold concept of legal reasoning based on breaking the concept down into its constituent elements, and providing a number of different scenarios that vary one element of legal reasoning, whilst keeping the other elements constant, to allow students to understand the importance of each aspect of legal reasoning.514 This model is based on the Variation Theory of Learning developed by Ference Marton and colleagues, which posits that students’ lack of understanding of a disciplinary concept may have origins in their failure to perceive ‘key features or aspects of the concept/practice’.515 A series of four legal scenarios based on variations of the potential offence of speeding in a vehicle, which were designed to elucidate different aspects of legal reasoning, are included in the

510 Ibid 7–8.
511 Ibid 8.
512 Akerlind et al, above n 313, 2.
513 Ibid; Akerlind et al, above n 507, 14–5.
514 Akerlind et al, above n 507, 18.
515 Ibid 2–3.
appendices to Akerlind, McKenzie and Lupton’s publicly available project report, as is an assessment template that tests students’ understanding of the elements of legal reasoning. The outcomes of preliminary workshops and assessments utilising these curriculum design strategies were, according to the project authors, ‘encouraging for demonstrating the value of Variation Theory for improving student learning’ of threshold concepts.

Whilst acknowledging the value of Variation Theory in this context, the perspective of autonomy support in SDT offers further additional insights into ways to optimise students’ understanding of this important conceptual hurdle. Understanding the threshold concept of legal reasoning is an example of a learning task over which students of the law have little choice; the extent to which students self-regulate in relation to this task is therefore likely to be mediated by their autonomous endorsement of its value. It is suggested that to help students notice the variation in the features of legal reasoning, it is beneficial to contextualise each feature by highlighting its relevance to the operation of the legal system as a whole, and therefore its personal relevance to students in their law studies and future careers. More broadly, articulating to students that legal reasoning is an important threshold concept, the mastery of which will have implications for their success (that is, contributing to the fulfilment of their basic psychological need for competence according to SDT) at law school and if they choose to enter the legal profession, may help them to internalise the utility of engaging with this critical learning task. Importantly, in order for students’ internalisation processes to move towards the autonomous end of the regulation spectrum, rationales that support students’ needs for autonomy, competence, and relatedness should be privileged, whilst rationales based on external and controlled reasons for acting, such as achieving higher marks in law exams, should be avoided. Thus, it is suggested that whilst clarifying and explicitly drawing students’ awareness to the features of threshold, and many other key, concepts in law is an invaluable pedagogical strategy, its value may be enhanced by providing personally meaningful and autonomy-supportive rationales for this learning to facilitate students’ volitional self-management.

517 Ibid 62–70.
518 Ibid 28.
4.2.2 Acknowledging Perspectives and Feelings

Acknowledging students’ perspectives and feelings is another autonomy supportive curricular strategy that can be harnessed to implement the self-management TLO in legal education. There are some aspects of the law school experience, including but not limited to high workloads, voluminous readings, complex materials, and multiple assessments due in close proximity, that may not always align with students’ ‘preferences and natural inclinations’.⁵¹⁹ When students express feelings such as boredom, disinterest, overwhelm, anxiety, and make comparisons with what other law teachers are asking, saying and doing, some law teachers may react with ‘counter-directives’ and assertions of power that stifle such criticisms, undermining students’ experiences of feeling heard and understood.⁵²⁰ By contrast, students’ perceptions of autonomy support may be enhanced when they are allowed to express negative affect, and when teachers empathise with their perspectives and welcome such feedback as an opportunity to transform a task from something that students experience as being imposed upon them to one that they willingly engage with as they understand and endorse its relevance to their personal interests and goals.⁵²¹ For example, early year students may complain to a teacher about having too much reading to do. An autonomy supportive response could be for the teacher to actively listen and empathise with the students about their workloads, and motivate them by assuring them that reading legal materials gets easier with practice and that being able to read, comprehend, and distil pertinent issues from a significant volume of materials is an invaluable skill in most legal work environments. In this way, students may experience that their feelings were heard and validated, yet may respond to their reading workload differently if they have a renewed understanding of its relevance and utility to their studies and careers.

Creating opportunities for law students to provide feedback on the learning and teaching environment throughout each subject also allows students to exercise and develop their self-management capacities and reflects law teachers’ willingness to

⁵²⁰ Ibid.
⁵²¹ Ibid.
consider their students’ perspectives and feelings. Curriculum design strategies that demonstrate law teachers’ willingness to consider their students’ perspectives and feelings include involving students in decisions about one or more of the following: optional subject content, pace of classes and time devoted to particular topics, assignment types and deadlines, classroom policies including appropriate use of laptops, the range of learning activities to be utilised during classes, and student preferences regarding assessment feedback. Such strategies are also relevant to the interpersonal condition of autonomy support of choice provision discussed in section 4.2.4 below.

Further, law teachers can solicit students’ opinions via informal, anonymous feedback questionnaires administered during the semester. The design of such feedback sheets can be simple, including, for example, three to five questions that focus on specific aspects of the subject experience, such as ‘instructional technology, simulation exercises, … course materials’, new forms of assessment, or teaching style and approach. Such feedback can be collected through administering simple one-page questionnaires with a combination of likert-scale and short response questions, and for large lecture cohorts, using online learning tools such as Survey Monkey. The questions can be framed in a way so that, in addition to any critiques of the lecturer’s teaching practices and the subject’s design, students take responsibility for suggesting strategies that could assist their own learning of, and engagement with, the subject materials. Teaching staff can then report back to students on the main themes identified in subject feedback within one week of its collection, and discuss ‘the adjustments they and students can make to improve learning’.

An example of this on a larger scale is the UNSW Law School’s recent survey of all LLB and JD students which sought students’ perspectives on assessment methods.

524 See, eg, Hess, above n 522; Angelo and Cross, above n 522, 330–3; Huggins, Kift and Field, above n 1, 204–5; Hunter Schwartz, Sparrow and Hess, above n 495, 174.
525 Hunter Schwartz, Sparrow and Hess, above n 495, 174.
527 Angelo and Cross, above n 522, 330 (emphasis added).
This project was led by the Associate Dean of Education, Associate Professor Alex Steel. As part of a university-wide Assessment Project at UNSW in 2012, all LLB and JD students were invited to participate in the UNSW Law School Student Assessment Survey during the final examination period at the end of Semester 1, 2012. The aims of the survey were to: (1) provide an empirical basis for understanding the student experience of assessment, as well as an opportunity for students to provide feedback to inform the future development of curriculum and assessment in the Law School; (2) create a benchmark against which innovations and refinements of assessment practices can be tested by follow up surveys; and (3) inform further academic research into best practice approaches to assessment in the teaching of law. In addition to complementing the aims of the UNSW Assessment Project, the survey findings helped to inform aspects of UNSW Law School’s 2011-2013 Curriculum Review.

The survey was administered online via Survey Monkey and students were invited to participate via email. Student participation was entirely voluntary and anonymous, and the survey had ethics approval. The survey contained 81 questions, which were a mixture of forced choice likert scale responses to statements, open-ended text based answers to questions, and multiple choice single answer questions. The survey items were developed based on a literature review and survey items utilised in a previous survey of UNSW law students in the mid-1970s to promote comparative data analysis. The 81 questions used in the 2012 survey spanned six key topic areas: (1) class participation; (2) group work; (3) legal problem questions; (4) essays; (5) examinations; and (6) general assessment and feedback questions. A total of 332 LLB and JD students started the survey and, of these, 267 students answered all 81 questions. Two hundred and eight LLB students began the survey, representing approximately 12% of current LLB students. By contrast, 106 JD students participated in the survey, constituting approximately 18% of current students. The findings provide valuable insights into students’ perspectives on law school

\[528\] Laurens, Huggins and Steel, above n 1.
\[529\] UNSW Human Research Ethics Committee, application and approval no 12 058.
\[531\] 1708 students enrolled in the Bachelor of Laws degree were invited to participate via email.
\[532\] 581 students enrolled in the Juris Doctor degree were invited to participate via email.
assessments, which will be discussed in a forthcoming article.\textsuperscript{533} Significantly from the perspective of SDT, such practices may simultaneously provide students with an opportunity to articulate their viewpoints and demonstrate their ability to ‘reflect on and assess their own capabilities and performance’ as reflected in part (b) of the self-management TLO. It may also enhance students’ sense of agency and autonomy in their learning environment, and reinforce that learning is a shared responsibility between teaching staff and students.

\textbf{4.2.2.1 Extended Example of Acknowledging Perspectives and Feelings: Facilitating a Positive Socio-Emotional Climate for Class Discussions}\textsuperscript{534}

The discussion in this extended practical implementation example will be premised on law teachers’ creation of a socio-emotional climate in law classrooms that acknowledges students’ perspectives and feelings, and thereby facilitates students’ experiences of autonomy, competence, and relatedness, and thus their capacities for autonomous self-regulation. The way a law teacher teaches and communicates with students in a classroom context to create a positive emotional milieu can be said to play an integral role in students’ motivation to learn and work independently, and reflect on and assess their own capabilities and performance under TLO 6. As Gibbs and Habeshaw observe:

The emotional tone you set through your teaching, and the attention you pay to the emotional well-being of your students, are likely to be at least as important as the learning and teaching methods you adopt and the skills you develop.\textsuperscript{535}

The creation of a positive learning environment also intersects with Ramsden’s second and fifth principles of effective teaching, which call for demonstrating respect for students and student learning, and creating a learning environment that encourages students’ independence, control and active engagement, respectively.\textsuperscript{536} Thus, this extended example is based on research identifying the particular personal and interpersonal qualities and teaching strategies that effective law teachers utilise to cultivate a warm, supportive atmosphere in their classrooms, and the flow-on

\textsuperscript{533} Laurens, Huggins, and Steel, above n 1.

\textsuperscript{534} This subsection constitutes an adapted version of part of the author’s contribution to a co-authored article that is forthcoming in the \textit{University of New South Wales Law Journal}: Steel, Laurens and Huggins, above n 1.

\textsuperscript{535} Graham Gibbs and Trevor Habeshaw, \textit{Preparing to Teach: An Introduction to Effective Teaching in Higher Education} (Technical and Educational Services Ltd, 1989) 43.

\textsuperscript{536} Ramsden, above n 490, 94–8.
effects this can have for law students’ engagement, motivation, pursuit of academic excellence, and wellbeing.

The discussion in section 3.2.2 indicated that the third basic psychological need that nurtures intrinsic motivation and facilitates internalisation of extrinsic motivations, as well as supporting academic engagement, achievement, and wellbeing, is relatedness. As Niemiec and Ryan argue, ‘[p]eople tend to internalize and accept as their own the values and practices of those to whom they feel, or want to feel, connected, and from contexts in which they experience a sense of belonging’. Thus, the cultivation of teacher-student relatedness in law school classrooms will help to encourage law students’ openness to learning generally, including learning related to the aims of TLO 6.

One significant issue in relation to relatedness between law teachers and students in law school classrooms is the way in which class discussions are facilitated and conducted. Class discussions are a common feature of tutorials in most Australian law schools, and in addition some law schools run interactive seminar style lectures. Students’ contributions to such discussions are commonly assessed, although the assessment weighting is often relatively low (in the order of 5-20%). Such discussions, which for the purposes of this subsection will be referred to as class participation, have the potential to facilitate deep learning outcomes for students as they involve students in the creation of knowledge in the learning environment, and, as Tinto argues, student understanding is enhanced in environments in which they share a process of inquiry in a ‘positive, connected manner’. In line with the predictions of SDT detailed above, empirical studies have shown that, in addition to improving learning, the amount and quality of interactions between students and teachers have emotional and personal benefits for students, underscoring the potentially positive cognitive and emotional outcomes of well-facilitated class

537 Niemiec and Ryan, above n 34, 139.
538 Ibid.
539 Steel, Laurens and Huggins, above n 1.
discussions. This relates to Laurillard’s conceptualisation of a ‘conversational framework’, which is based on ‘iterative dialogue’ that is ‘discursive, adaptive, interactive and reflective’, and is considered good learning and teaching practice, including in relation to designing ‘approaches to enable student acquisition of the self-management TLO’.

The potential learning benefits associated with class discussions may be undermined by obstacles that create dissonance and thereby corrode relatedness between law teachers and students. These potential obstacles can be described as both: (1) instructional, relating to the techniques a law teacher uses to facilitate class discussion and the assessment and grading methods adopted; and (2) socio-emotional, which describes a law teacher’s influence on the learning environment through the ‘emotional milieu’ created by the quality of their interactions with students. Whilst the literature on class discussion identifies many possible pitfalls with the former, including perceived bias and subjectivity on behalf of law teachers grading class discussions, and the risk that discussions will become side-tracked, stagnant, or confusingly unstructured, these instructional aspects of effective class participation, while important, will not be a focus here. Rather, consistently with this section’s focus on acknowledging law students’ perspectives and feelings, this discussion explores some of the potential socio-emotional risks associated with class participation as well as strategies law teachers can employ to ameliorate such risks. There are two related facets to this: (1) law students’ emotional experiences of class participation, including the anxiety experienced by some students as a result of mandatory participation assessment regimes; and (2) the related issue of law teachers’ interpersonal styles, rapport with their students, and acknowledgement of their perspectives, and the impact this has on both emotional and learning outcomes for students.

543 Huggins, Kift and Field, above n 1, 196.
544 Levy, above n 320, 51.
546 Stuckey et al, above n 52, 227; Levy, above n 320, 72–4.
One of the issues associated with class participation is that law students may feel anxious about speaking in front of the teacher and their peers, which may stem from a variety of personal, cultural, and class dynamic-related factors. It should be noted that a certain amount of nervousness or anxiety before speaking in public is a common experience for many people; this is not, in itself, problematic, especially as anecdotal evidence from students suggests that repeated practice at speaking in public commonly ameliorates the intensity of these symptoms. As discussed in Chapter 3, some commentators have identified ‘the way law and its culture are taught and ... the isolated, competitive environment that can exist at law school’ as potential contributing factors to law students’ high levels of distress.\(^{547}\) In American legal education literature, the stress and humiliation experienced by some law students as a result of the Socratic method, whereby students, who may be cold called, are repeatedly questioned about legal issues and reasoning and their application to hypothetical fact scenarios,\(^{548}\) has been pinpointed as contributing to heightened distress levels.\(^{549}\) In Australian legal education, the pure Socratic method is rarely used, yet some law teachers employ a pseudo-Socratic method, which adopts some elements of the pure approach. Whilst the criticisms of the pure Socratic method are thus largely inapplicable in the Australian context, some of the factors identified in the American literature as contributing to students’ distress in these types of law class discussions may nonetheless be relevant. These factors include that law students with introverted personality types,\(^{550}\) women,\(^{551}\) and students from non-English speaking and other minority backgrounds\(^{552}\) may be less likely to participate in class discussions, and may find such interactions particularly stressful when they do engage. If students are overwhelmed by anxiety about their class participation performance, it detracts from their ability to learn and retain

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547 James and Field, above n 107, 348.
549 For an overview of this literature, see, eg, Robert Schuwerk, ‘The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?’ (2004) 45 *South Texas Law Review* 753, 771 at n 42; Levy, above n 320, 54 n 14.
550 American research by Larry Richard applying the Myers-Briggs Personality Type Indicator found that 57% of all lawyers in the research sample population were introverts, whereas less than 25% of all American adults have that profile: Larry Richard, ‘The Lawyer Types: How Your Personality Affects Your Practice’ (1993) 79 *ABA Journal* 74–5.
552 For an overview of the American literature on the silencing and other negative effects of the Socratic method on minority students, see Mertz, above n 395, 178–183.
information, as well as potentially compounding elevated symptoms of psychological distress.\textsuperscript{553} In contrast, it is argued that it is autonomy supportive to facilitate law school class discussions in ways in which students feel their contributions are respected and supported, and which are likely to increase their intrinsic and self-determined motivations for engaging in this learning (and assessment) activity.

The socio-emotional climate of law classes can either contribute to or mitigate some law students’ anxiety about contributing to class discussions. The way in which a law teacher facilitates class participation is critical to accommodating students with different characteristics and preferences, and creating a safe learning environment where all students can experience deep learning. Importantly, the acknowledgement of students’ perspectives and feelings is critical to the creation of a positive socio-emotional climate that is supportive of law students’ wellbeing and deep learning. As Hess and Friedland argue, ‘teachers need to establish a social environment conducive to discussion and rapport with their students to facilitate student participation’.\textsuperscript{554} Simple strategies to achieve this include learning students’ names, encouraging student questions and expression of students’ personal viewpoints,\textsuperscript{555} seeking student feedback and input into aspects of their subject experience, and acknowledging students’ feelings, including expressions of negative affect, about various aspects of the subject. Research by Reeve that applies SDT suggests that if teachers empathise with students’ expressions of negative affect and use this as an opportunity to inspire students by explaining the learning rationale behind their adoption of class discussions as a pedagogical tool, this will promote students’ internalisation of the utility of engaging with this learning opportunity.\textsuperscript{556} In a related vein, Daggett advocates a ‘somewhat democratic’ dynamic within classes, where the teacher is responsible for maintaining appropriate structure and discipline, but avoids an authoritarian approach, which she argues is supportive of eliciting student contributions.\textsuperscript{557}

\textsuperscript{555} Ibid 62.
\textsuperscript{556} Reeve, above n 519, 170; Stuckey et al, above n 52, 218–9.
\textsuperscript{557} Lynn Daggett, ‘Using Discussion as a Teaching Method in Law School Classes’, in The Science
There are also a number of suggested strategies for facilitating class participation that may be seen as an *implicit* acknowledgement of law students’ perspectives and feelings derived from the above-mentioned literature on law students’ experiences of class participation. In particular, whilst law students are unlikely to directly express any feelings of embarrassment or humiliation as a result of class discussions, teachers operating with awareness and discernment can be alert to minimising psychologically difficult situations for students. When students do participate in class discussions, their perceptions of autonomy support will likely be enhanced when teachers validate students’ efforts to participate in class discussions and, where appropriate, praise their contributions.\textsuperscript{558} A related suggestion regards student comments that are incorrect or misleading. Although incorrect information needs to be clarified, providing valuable feedback both to the student who was speaking and the rest of the class, teachers can be mindful not to exacerbate any potential embarrassment experienced by the student who has said something inaccurate. Lynn Daggett suggests that, if possible, identifying a positive aspect of the students’ response as well as providing the corrective feedback can be a constructive way of dealing with this type of situation.\textsuperscript{559} In a similar vein, if a student is called upon to answer a question and they appear flustered or unable to answer that question, the teacher can simply call upon another student or ask for another volunteer so as to minimise the public embarrassment and/or humiliation experienced by the student.\textsuperscript{560}

Finally, making some allowances for students who for various reasons do not feel comfortable engaging in extemporaneous class discussions, such as creating on-line discussion forums, and providing some of the discussion questions for the following class in advance to allow students to reflect upon and pre-prepare their responses, may also be supportive of law students’ divergent backgrounds and preferences.\textsuperscript{561} Such options should not be seen as a way of allowing students to avoid oral skills development, which, among other benefits, has clear professional relevance for most

\textsuperscript{558} Ibid.
\textsuperscript{559} Ibid.
\textsuperscript{560} Stuckey et al, above n 52, 219.
\textsuperscript{561} Cooper Davis and Ehrenfest Steinglass, above n 553, 275.
legal career paths. Rather, they can be seen as part of a suite of complementary components of class participation which help to cater for students’ diverse needs.

Thus, law students’ perspectives and feelings, including both those that are expressed verbally and non-verbally, can be taken into account by teachers wishing to create a warm and supportive socio-emotional environment in law school classrooms. The adoption of such strategies, when combined with a confident and enthusiastic interpersonal teaching style, facilitates the creation of a positive and supportive learning environment where students have an optimal opportunity to experience the potential benefits of class participation whilst minimising its potentially deleterious psychological impacts. It is important to note that these strategies should not be confused with lowering standards expected of students; indeed, research suggests that students appreciate and respect teachers who set high standards for them. This conforms with Ramsden’s fourth principle of effective teaching, advocating the setting of clear goals and appropriate intellectual challenges.

Significantly, it is possible for law teachers to both learn to be more supportive and warm in their classroom interactions with students, and to become more self-reflective of the behaviours to privilege, and the behaviours to avoid, and foster an optimal socio-emotional climate for learning. Moreover, as well as being supportive of students’ wellbeing, the creation of a positive and supportive socio-emotional climate in law school classrooms may increase students’ intrinsic motivation, self-efficacy and academic achievement. This reinforces that whilst the instructional techniques for facilitating class participation are important, the way a law teacher engages and interacts with students is a pivotal variable in terms of the potential emotional and learning outcomes associated with this pedagogical approach. Thus, law teachers’ mindful facilitation of class discussions constitutes an example of an autonomy supportive curriculum strategy that contributes to the

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562 Hunter Schwartz, Sparrow and Hess, above n 495, 110.  
564 Ramsden, above n 490, 96–7.  
566 Levy, above n 320, 60; Hess, above n 374, 99.
satisfaction of students’ needs for autonomy, competence, and relatedness, enhances engagement learning, and may inspire students’ exercise of autonomous self-regulation and self-management.

### 4.2.3 Using Non-Controlling Language

A related autonomy supportive interpersonal condition is using non-controlling language. In addition to the importance of what law teachers say (for example, the provision of meaningful rationales), as was argued in relation to facilitating a positive socio-emotional climate for class discussions, how law teachers communicate their messages is critically important for students’ levels of motivation. One of the requirements of TLO 6 is that students ‘make use of feedback as appropriate to support personal and professional growth’. The central premise of the discussion in this subsection is that, in order to facilitate students’ capacity and willingness to make use of feedback, how that feedback is communicated to students is vital.

According to SDT, the use of informational, non-controlling language in educational environments is autonomy supportive and facilitates students’ autonomous self-regulation of learning.\(^{567}\) Non-controlling language allows students to perceive the relevance of the learning task to their inner resources and goals, and can be contrasted with controlling language by which students are pressured and coerced to do certain things.\(^{568}\) An example of non-controlling language is ‘you may want to begin with a statement of your overall thesis because it makes it easier for the reader to follow the argument’, rather than the more directive and controlling ‘state your argument first’.\(^{569}\) Informational language explains, rather than critically judges, the strengths and weaknesses in students’ work. It also affirms competency, as appropriate, to motivate students to adopt the mindset that their performance can be improved with further effort.\(^{570}\) An example of an information-rich, competence affirming feedback statement is, ‘This is a recitation of the facts, which doesn’t explain to the reader why the facts are significant—explaining the connection


\(^{568}\) Ibid 229.

\(^{569}\) This example is adapted from Manning, above n 31, 5.

between the law and facts can help accomplish this goal.\textsuperscript{571} The use of non-controlling, informational language thus supports intrinsic or autonomously-endorsed motivation for learning, the presence of which is a precursor for students’ sustained self-management.

The way a law teacher chooses their words when providing feedback can potentially undermine or support students’ autonomy.\textsuperscript{572} Notably, the provision of both formative and summative feedback constitutes a prominent opportunity for law teachers to employ non-controlling, informational language.\textsuperscript{573} For instance, building upon the previous extended example, if a teacher asks the class a question and a student provides an incorrect response, a typical response from the teacher may be to ignore the answer, dismiss it, or ask another student to provide the correct answer.\textsuperscript{574} Although such actions are not necessarily explicitly controlling or critical, they send an implicit message that the student’s response was inadequate; whilst this may be true, without understanding why their answer was inadequate and how they can improve it, some students may be demoralised and internalise an unspoken message that they are not smart enough.\textsuperscript{575} Lake’s description of the ‘imposter syndrome’, by which some law students ‘begin to feel that everyone in the room knows more than they do or is better educated or capable than they are’,\textsuperscript{576} has resonance here. By contrast, if a law teacher employs language in responding to this student that is non-controlling, informational and affirms competency, students are more likely to perceive that their lack of understanding is temporary and fixable, and reflect upon, internalise and act upon the feedback.\textsuperscript{577} For example, a response such as, ‘That is not the correct answer as it appears you did not consider the ratio from X case. However, you are on the right track in terms of issue identification,’ provides informational feedback in a non-controlling way, whilst identifying a positive aspect of the students’ response.\textsuperscript{578} Thus, subtle shifts in language use can contribute

\textsuperscript{571} Manning, above n 31, 5.  
\textsuperscript{572} Manning, above n 31.  
\textsuperscript{573} Ibid.  
\textsuperscript{574} Rosen, above n 570, 184.  
\textsuperscript{575} Ibid.  
\textsuperscript{576} Lake, above n 424, 1029.  
\textsuperscript{577} Manning, above n 424, 1029.  
\textsuperscript{578} Manning, above n 31, 22.  
\textsuperscript{578} Daggett, above n 557.
significantly to students’ perceptions of autonomy support, and their belief in their capacities to be autonomous, self-directed learners in their law school environments.

4.2.3.1 Extended Example of Using Non-Controlling Language: Providing Feedback that is Informational, Provides Rationales and Affirms Competency

As formative in-class oral feedback was discussed in the previous extended example, using non-controlling language in written formative feedback on summative law assessments will be elaborated in this example. This provides a further example of appropriate feedback, as espoused by Ramsden in his third principle of effective teaching.\(^{579}\) Similarly to the arguments presented above, Manning argues that autonomy supportive written feedback for law assessments has three key features: (1) it uses ‘non-controlling informational language’; (2) it ‘provid[es] rationales’; and (3) it ‘affirm[s] competency’.\(^{580}\) The provision of suggestions and reasons, rather than directives, allows students to understand the ‘why’ of what they are doing and implement feedback with a sense of agency.\(^{581}\) Ideally, feedback should also be specific to the context, rather than global or personal, and constructive criticism should employ language conveying that shortcomings in students’ work are ‘fixable with further effort’.\(^{582}\)

For example, some law teachers may write comments on students’ written assessments such as ‘No’, ‘Why?’ and ‘Good’.\(^{583}\) Whilst such practices are understandable given teacher time and resource constraints, ‘No’ is a controlling directive,\(^{584}\) and all three of these examples lack both information about the competencies expected, and a rationale explaining the value of attaining – or, in the case of ‘good’ work, the value of replicating – such competencies.\(^{585}\) By contrast, one example of feedback that is non-controlling, provides a rationale and affirms competency is:

\(^{579}\) Ramsden, above n 490, 96.
\(^{580}\) Manning, above n 31, 13.
\(^{581}\) Ibid.
\(^{583}\) Manning, above n 31, 13–20.
\(^{584}\) Ibid 14.
\(^{585}\) Ibid 14, 17, 19.
The scope of the question excluded consideration of this point, which means it wasn’t at issue; writing about only what is at issue demonstrates an ability to focus attention on what is important to the questioner, in this case a [law teacher], but in the future a judge or client, making it a useful skill for legal practice.\textsuperscript{586}

Such feedback is non-controlling as it provides information, allowing the student to evaluate the reasons provided and exercise agency to rectify the issue in the future. The rationale for the feedback is clear as it explains why focusing on the issues raised in the question is important in both law school assessments and legal practice, which promotes internalisation of the utility of acting on the feedback. Finally, it affirms competency – not by indicating that this aspect of the student’s work has reached a satisfactory standard when it has not – but rather by indicating that the failure to focus on the issues raised by the question is a problematic aspect of the student’s work that is ‘temporary, specific and fixable’.\textsuperscript{587}

Manning acknowledges the additional effort involved in providing autonomy supportive feedback and suggests the following practical strategies to minimise teachers’ workloads: the use of rubrics and comment keys using non-controlling, informational, and competency based language; cutting and pasting feedback into the ‘comment’ feature in word processing programs if student work has been submitted electronically; and/or recording oral feedback using a digital voice recorder.\textsuperscript{588}

Importantly, this style of feedback implicitly recognises that there is a shared responsibility on the behalf of: (1) law teachers to provide feedback that supports student autonomy; and (2) a concomitant responsibility on the behalf of students to reflect and act upon this feedback. Manning argues that the provision of autonomy supportive feedback has the potential to ameliorate the psychological distress many students experience at law school.\textsuperscript{589} In addition such feedback promotes students’ abilities to ‘learn and work independently’ and ‘make use of feedback as appropriate’ as described in TLO 6, making it an important platform of autonomy supportive curricular reform.

\textsuperscript{586} Ibid 15.
\textsuperscript{587} Ibid 22.
\textsuperscript{588} Ibid 16–17.
\textsuperscript{589} Ibid 20.
4.2.4 Offering Choices

Providing students with a degree of choice in relation to, and input into, curricular design is also supportive of students’ autonomy. As previously mentioned, one of the recommendations of Stuckey et al’s influential Best Practices for Legal Education report, published in the US in 2007, is ‘[s]upport[ing] student autonomy’. The authors note that:

Law schools and teachers that want to provide autonomy support should … involve students in curricular and other institutional decisions that affect students; give students as much choice as possible within the constraints of providing effective educational experiences; … and demonstrate in word, deed, and spirit that the point of view of each student is welcomed and valued.

As noted above, involving students in making decisions in relation to key aspects of their experience in a subject, such as the range of teaching and learning methods employed, types of assessment and marking criteria, time devoted to particular topics, and classroom procedures, can enhance students’ perceptions of autonomy support. According to Gibbs and Habeshaw, students learn well when they are given opportunities to make decisions that affect their learning, and take responsibility for their consequences. Similarly, allowing students to exercise choice in relation to appropriate aspects of their educational experiences encourages independence, engagement, and active control in line with Ramsden’s fifth principle of effective teaching. Further, as Tani and Vines note, the significance of giving students a choice in relation to assessments within a subject is greater than just facilitating marks maximisation; it may also foster their autonomy, and perceptions of autonomy support, through taking their perspectives into account, accentuating the synergies between this approach and acknowledging students’ perspectives and feelings discussed in section 4.2.2 above.

It is recognised that there are inherent constraints in legal education that limit the extent of choice and input students may have, including the requirements of the

590 Vines, above n 305, 9–10; Huggins, Kift and Field, above n 1, 202; Hunter Schwartz, Sparrow and Hess, above n 495, 91.
591 Stuckey et al, above n 52, 113–4.
592 Ibid 114.
593 Hunter Schwartz, Sparrow and Hess, above n 495, 259.
594 Gibbs and Habeshaw, above n 535, 42.
595 Ramsden, above n 490, 97–8.
596 Tani and Vines, above n 352, 31; Sheldon and Krieger, above n 30, 884.
Priestley's 11 core subjects, law teachers’ expert knowledge relative to their students, teacher workload and resource constraints, and institutional requirements that subject structures be approved prior to a subject being offered. Notwithstanding these limitations, providing students with some choice in relation to key aspects of their legal education experience whenever possible can support their engagement, motivation, and perceptions of autonomy support. Simple examples include allowing students to choose between a range of potential essay and presentation topics, providing students with the opportunity to decide which topics should be the primary focus of revision sessions, and allowing students to ‘set the agenda’ at the beginning of some classes by identifying the topics from the prescribed readings that require clarification.

The educational psychology literature applying SDT indicates that choice can be motivating or de-motivating, and that only choices that fulfill certain conditions are supportive of students’ autonomy. Specifically, motivating choices should be constructed in ways that are ‘relevant to students’ interests and goals (autonomy support)’, provide an optimal balance between number and complexity (competence support), and are supportive and non-threatening for students with collectivist and hierarchical orientations (relatedness support). For example, it is likely to be counter-productive to provide too much choice in relation to key aspects of a subject’s design to first year students, while later year students with a clearer sense of what they would like to do with their law degrees may have the capacity for, and appreciate, greater input and agency in relation to curriculum design. This relates to the previous discussion in section 4.2.1 about the decreased reliance on learning scaffolds as students progress through their law degrees.

SDT asserts that choice is most autonomy supportive when it is ‘relevant to students’ interests and goals’, but what if some law students, and particularly those in the early years of their law degrees, are not yet clear regarding their study- and career-related goals? If, as Tani and Vines’ research indicates, a significant proportion of

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597 Huggins, Kift and Field, above n 1, 202–3; Vines, above n 305, 9.
598 Hess, above n 523, 376.
599 Katz and Assor, above n 479.
600 Ibid 439.
602 Katz and Assor, above n 479, 439.
undergraduate law students are influenced by parental pressures, rather than intrinsic motivations, to study law, fostering students’ perceptions of the relevance of learning tasks appears to be an important precursor to choice provision. This is supported by Ramsden’s first principle of effective teaching regarding stimulating students’ interest, which includes explaining its future relevance, and empirical research applying SDT conducted by Assor, Kaplan and Roth, which found that fostering relevance was important for meaningful choice provision. Although the participants in Assor, Kaplan and Roth’s research were primary school-aged children, the findings of Tani and Vines and other research on law students’ motivations suggests that law students too may benefit from clarifying their interests and goals to enable informed and meaningful decision-making.

Providing students with opportunities to engage with authentic assessment tasks throughout their law degrees is an example of a pedagogical approach that facilitates informed choices and fosters law students’ autonomous self-regulation in relation to their law studies and future careers. Authentic assessment tasks can be defined as ‘assessment practices that are closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of university courses’. Like students across all disciplines, research indicates that law students value seeing explicit connections between what they are learning and being assessed upon, and their potential careers. Authentic educational experiences are likely to be perceived by many law students as career-relevant, stimulating engagement and motivation. Hunter Schwartz, Sparrow and Hess explain the appeal of authentic experiences in legal education in the following terms:

By situating students in their new roles as lawyers, authentic experiences explicitly connect law students’ new learning with their career aspirations. The concreteness of this link attracts students’ interest. Students develop the motivation to learn because the connection between what they are learning and what they want to be doing is direct and the consequences of not

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603 See discussion in section 3.3.1 above.
604 Ramsden, above n 490, 93.
606 Huggins, Kift and Field, above n 1, 201–2.
607 David Boud and Nancy Falchikov, Rethinking Assessment in Higher Education: Learning for the Longer Term (Routledge, 2007) 23.
608 Hunter Schwartz, Sparrow and Hess, above n 495, 32.
609 Field and Kift, above n 495, 205.
Examples of authentic assessment tasks in the early years of legal education include: preparing court documents; drafting legal correspondence; writing reports based on court observations and gaol visits;\(^\text{611}\) and in-class mock trial processes where students appeal on an issue of law or examine and cross-examine their opponent’s witness.\(^\text{612}\) Such tasks ‘bring the law alive’ for students\(^\text{613}\) and are autonomy supportive as they equip law students with experiences to make informed, self-endorsed choices in relation to their law degrees (for example, choice of electives) and prospective career paths. This aligns with the aims of TLO 6 generally, and part (b) referring to law graduates’ abilities to ‘reflect on and assess their own capabilities and performance … to support personal and professional development’ in particular.\(^\text{614}\)

The following example of authentic and reflective assessment in teaching legal research and writing is based on pedagogical strategies developed by Brendan Grigg at Flinders University, which were described as follows by Marychurch in the GPG for TLO 6. A detailed excerpt is reproduced here as it may provide valuable guidance on the mechanics of authentic assessment tasks in legal education.

In [the] Legal Research and Writing [subject], the three written assignments reflect the tasks that would be expected of a law clerk or recent law graduate in legal practice. The assessments authentically replicate the real world of work and legal practice. This subject is a first semester, first year subject. The assessments are expressly designed to convey the message that, at the outset, expectations in terms of legal skills are low, but these expectations are raised incrementally throughout the semester as students are taught key legal research and writing skills. In addition to online, non-graded pass quizzes on learning modules, students are required to complete three written assessments:

1. a memorandum to a senior partner [of a law firm] summarising a case and an indication of the relevance of the facts to a case scenario.
2. a case summary that includes preliminary elements of legal advice in relation to a problem scenario
3. a letter of advice to the client (to be settled and signed by the senior partner).

Assignments 2 and 3 incorporate a ‘legal research reflection diary’ where students are asked to reflect on the process of undertaking legal research. Students document their legal research path across all forms of primary and secondary research materials, both electronic and hard-

\(^{610}\) Hunter Schwartz, Sparrow and Hess, above n 495, 90.
\(^{611}\) Allan Chay and Frances Gibson, ‘Clinical Legal Education and Practical Legal Training’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 497, 505.
\(^{612}\) Kelley Burton, ‘Does the Summative Assessment of Real Work Learning Using Criterion-Referenced Assessment Need to Be Discipline-Specific?’ (Paper presented at the ATN Assessment Conference on Assessment in Different Dimensions, Royal Melbourne Institute of Technology, 19–20 November 2009); Huggins, Kift and Field, above n 1, 205–6.
\(^{613}\) Chay and Gibson, above n 611, 505.
\(^{614}\) Huggins, Kift and Field, above n 1, 206.
copy. They are asked to evaluate critically their successes, failures and discoveries in that task. The diary is worth 20 per cent of the grade for Assignment 2 and 50 per cent of the grade for Assignment 3.615

Criterion-referenced marking guides for these assessment tasks are provided to students, and reflect the incremental increases in expectations regarding students’ legal research and plain English writing skills as the subject progresses.616 Importantly, authentic assessment tasks such as this can be integrated into core and elective subjects, with increasing expectations of students’ developing skills and competence, and thus can be said to contribute to a whole-of-curriculum approach to integrating TLO 6.

Whilst the foregoing discussion was predicated on law students’ choices within individual subjects, particularly in the early years of their law degrees, providing students with choices to participate in a diverse range of learning experiences throughout the degree program allows students to tailor their program of study to meet their interests and needs, optimising the likelihood of autonomous self-regulation. The Australasian Survey of Student Engagement establishes a link between student engagement and ‘enriching education experiences’, examples of which include participating in practicum or internships, student exchange programs, and independent study or self-designed majors.617 In the context of Australian legal education, modes of enriching and experiential learning that are commonly embedded in curricula include:

...[C]linics or clinical placements, in which students have direct contact with and responsibility for “live” clients; internships/externships, in which student work in a legal practice or research role with a judge, firm, government department or non-profit organisation; and simulations or role-plays, in which students perform various professional roles and problem-solve in simulated “real-world” (either virtual or “mock”) environments.618

Clinical legal education programs, which allow students opportunities to gain firsthand insights into, and experience within, legal practise settings under supervised conditions, are particularly popular, with at least 20 Australian law

615 Marychurch, above n 45, 16.
616 Ibid.
schools offering some type of clinical program.\textsuperscript{619} Participating in a range of these types of learning experiences may assist students’ ability to self-manage their university studies, elective choices, and early career decisions by strengthening their autonomous self-regulation for their law school studies. The relevance of these types of experiences extends to students who do not intend to go on to practise law as gaining further insights into practise that transcend the knowledge gained through the ‘artificial constructs of university courses’\textsuperscript{620} may help to clarify whether any of a number of diverse career avenues may be an appropriate fit for them, as well as facilitating the development of generic, transferable skills. Thus, law schools that provide students with a range of choices in terms of elective offerings, legal clinics, exchange programs, and internships within their degree program will contribute to the satisfaction of students’ needs for autonomy support and provide opportunities for students to develop and exercise their self-management capacities.

4.2.4.1 Extended Example of Offering Choices: Inviting Student Input into Subject Design

As collaborative syllabus design, in which students exercise choice in relation to key aspects of a subject’s curricula, is not a common practice in many Australian legal education settings, the extended example in this subsection will elaborate on the process for collaborative syllabus design. The discussion that follows is a summary based on Professor Gerald Hess’s experiences using collaborative syllabus design at Gonzaga University School of Law in the US, more detailed guidance for which is provided in his 2011 article entitled ‘Collaborative Course Design: Not My Course, Not Their Course, but Our Course’.\textsuperscript{621} In Hess’s experience, student input into subject goals, teaching and learning methods, roles and responsibilities of the teacher and students, and the assessment regime can be a constructive and autonomy-supportive process, particularly for more experienced law students taking upper year


\textsuperscript{620} Boud and Falchikov, above n 607, 23.

\textsuperscript{621} Ibid.
law subjects. It is suggested that Hess’s approach constitutes good practice in this area.

The first step Hess employs is drafting the syllabus before the subject begins. Using an Australian legal education lexicon, the sections that Hess recommends the teacher completes at this stage are the subject times and locations, teacher/s’ contact details, prescribed and recommended resources list, list of topics that will be addressed in the subject, and prescribed weekly readings; students’ input on these aspects of the subject design is not invited. Under the remaining headings, Australian equivalents of which might be subject learning outcomes, teaching and learning methods, students’ roles and responsibilities, teachers’ roles and responsibilities, and assessment scheme, a blank space is left with an open-ended question to prompt students’ thinking about that aspect of subject design. Depending on the nature of the subject and the student cohort, suggestions under each of these headings could also be included, increasing or diminishing the extent of student responsibility in the design process. This relates to the previous discussion in section 4.2.1 about decreased reliance on learning scaffolds as students progress through their law degrees. The prompts under the various headings may be: (1) for subject learning outcomes, ‘what do you hope to get out of the course? What content and skills do you hope to learn?’, (2) for teaching and learning methods, ‘what methods should we use to achieve the goals of the course?’, (3) for students’ roles and responsibilities, ‘what do you expect of yourself and your fellow students?’, and (4) for the teacher’s roles and responsibilities, ‘what do you expect of me?’. More detailed guidance and prompts are, however, provided in relation to the assessment section. Hess includes a statement of assessment principles, an example of which is ‘the evaluation scheme should have these characteristics: multiple – more than one performance is graded; varied – more than one kind of evaluation method is used;

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622 Hess, above n 523, 380-4.
623 In Hess’s terminology, these are the ‘General Information, Materials, Schedule, and Course Guide portions of the syllabus’: ibid 380.
624 Ibid 380–1.
625 Ibid 381.
626 Ibid.
627 Ibid 381.
628 Ibid 382.
629 Ibid.
630 Ibid.
and fair – the directions and criteria are clear’. 631 Again, depending on the subject and students, the prompts may be open-ended, such as ‘what evaluation method should we use to assess student performance (tests, papers, problems, presentations, participation, other)?’, or based on a proposed assessment scheme, such as ‘see the next page for a proposed evaluation scheme. Do you have suggestions for changes in the proposal?’. 632 A further step would be to invite more experienced law students to participate in the drafting of the assessment criteria against which they will be evaluated. 633

The draft subject outline is then emailed to students several days in advance of the first class, accompanied by a request for students to read and respond to the prompts. Approximately 30-50 minutes of the first class is then dedicated to brainstorming, discussing and deciding upon the specified aspects of subject design. Based on the discussion in the first class, a revised subject outline is then prepared and emailed in advance of the second class, with a request for students to read it before class. In the second class, any outstanding revisions are made, before the subject outline is adopted for the subject. 634 Importantly, it needs to be clearly communicated to students that, after this time, the contents of the subject outline are no longer open for negotiation for the rest of the semester. 635

Whilst Hess acknowledges that this approach may not suit all teacher, student and subject configurations, 636 it provides students choice in ways that are motivating as the choices are: (1) constructed in ways that are ‘relevant to students’ interests and goals (autonomy support)’; (2) tailored to reflect the complexity that the student cohort is ready for (competence support); and (3) supportive and non-threatening for students, contributing to the creation of a collaborative and respectful classroom environment (relatedness support). 637 Further, there are institutional constraints in some law schools where subject outlines are required to be approved by committee

631 Ibid 382.
632 Ibid.
634 Ibid 382–3.
635 Ibid 377.
636 Ibid 367.
637 Ibid 439.
prior to the start of semester. Wherever possible, providing students with choice in these types of ways can be autonomy supportive and motivating for students, and provide a meaningful opportunity for students to exercise and develop self-management capacities in relation to their law school experiences.

4.2.5 Nurturing Inner Motivational Resources

Finally, legal curricula can be harnessed as sites for nurturing students’ inner motivational resources to sustain their autonomous self-regulation and self-management. Employing a similar approach to that adopted in section 3.2.1 above, in this section intrinsic and integrated/identified motivations will be addressed first, followed by intrinsic goal contents.

Curriculum design strategies can be harnessed to promote law students’ connections with their intrinsic and autonomous motivations for studying law. To recap the salient points from section 3.2.1, SDT research has demonstrated that having intrinsic and autonomous reasons for acting both predicts and reflects an individual’s psychological health and wellbeing. As previously indicated, intrinsic motivation is associated with a person’s inherent enjoyment and interest in an activity, the pursuance of which stems from an ‘internal locus of causality’. People who are motivated by intrinsic factors are more likely to be focused, energetic, and diligent towards their pursuits, and to persevere in the face of setbacks and challenges. The link between intrinsic motivation and academic achievement is well substantiated in the educational psychology literature, and Australian research has confirmed that intrinsic values and motivations are relevant to students’ success at law school. There is also a link between intrinsically-motivated behaviour and autonomy: the more a person chooses their primary activities (including studies and career) to align with their intrinsic interests and passions, the more they will experience the benefits associated with autonomous self-regulation. In other words, acting in accordance with one’s intrinsic motivations promotes a subjective experience of autonomy and agency.

638 Huggins, Kift and Field, above n 1, 202.
639 Krieger, above n 220, 174; Ryan and Deci, above n 37, 661–5.
640 Ryan and Deci, above n 37, 655.
641 Krieger, above n 22, 173.
642 For an overview see Vansteenkiste, Lens and Deci, above n 278.
There are a range of potential intrinsic satisfactions that law students may enjoy, or find interest in, at law school. The intrinsic rewards of studying law might include enjoying the challenge of problem solving, legal scholarship and advocacy, ‘setting a personal goal or benchmark and achieving it (not in competition with others)’, learning new skills, discovering new interests and passions, deriving satisfaction from producing high quality work, a love of learning, helping others, and enjoying working collaboratively. Students may also enjoy or find interest in the potential intrinsic rewards of legal practise including using one’s legal skills to solve a client’s problem; the efficient and fair resolution of disputes; facilitating due process; advocating for, and upholding, individual rights; promoting the rights of the disadvantaged; and helping businesses succeed. Law students interested in pursuing careers in various forms of non-adversarial practice may connect with intrinsic values such as promoting others’ psychological and emotional wellbeing, and facilitating the preservation and healing of relationships. Given the documented benefits of intrinsic motivation for, inter alia, law students’ wellbeing and academic achievement, nurturance of these types of internal interests and passions at law school is a worthy aim.

Whilst intrinsic motivation is the ideal, the reality is that not all law students are intrinsically motivated to study law, and many students shift from an emphasis on intrinsic to extrinsic motivations as they progress through their law degrees. As previously discussed, data from Tani and Vines’ research indicates that law students are, among other things, more likely to have chosen their degree for extrinsic reasons, including family pressures, the university’s reputation, and their future

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644 Abbey, Dunkel-Schetter and Brickman, above n 290, 275.
647 Daicoff, above n 645; Michael King et al, Non-Adversarial Justice (The Federation Press, 2009).
648 Daicoff, above n 646, 93.
649 See discussion in section 3.2.1 above.
650 See, eg, Tani and Vines, above n 352, 12–25; Larcombe, Malkin and Nicholson, above n 360, 79–86.
651 See, eg, Sheldon and Krieger, above n 8.
career prospects; are less inherently interested in the content of their degree; and place a stronger emphasis on getting high grades, than students from other disciplines. Additionally, not all students will find the study of law generally, or particular law subjects and readings, to be interesting and engaging all of the time.

What, then, can be done to activate and promote students’ inner motivational resources in relation to their law studies and future careers? The concepts of integrated and identified regulation from SDT are relevant here. To summarise the main points from section 3.2.1, identified regulation occurs when an individual perceives the relevance of an activity to his or her other self-endorsed aims and goals. For example, a student may have aspirations to be a family lawyer and may identify with studying property or tax law, or dispute resolution, with an understanding that mastery of that subject area is relevant to their future career competence. Integrated regulation is an even more autonomous type of motivation which describes activities that an individual may not necessarily intrinsically enjoy or find interesting, but that they associate with their core beliefs and values, facilitating an ‘experience of meaning in daily activities’. An example of this is a student motivated by a sustained commitment to working in an area of law that promotes the rights of a range of disadvantaged and vulnerable groups within society. Such a student may be motivated to pursue excellence in their law school studies if they have synthesised the value and significance of their law school studies to their broader values and aspirations.

Both identified and integrated regulation are examples of relatively more autonomous motivations for pursuing legal education, and can be contrasted with external regulation, in which extrinsic motivations are the sole reason for acting, and external introjected regulation, in which activities are embarked upon to satisfy internal contingencies, such as ego identification with one’s performance. Similarly to intrinsic motivation, identified and integrated regulation have been empirically correlated with wellbeing, increased energy, diligence and perseverance.

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652 Tani and Vines, above n 352, 12–25.
653 Su and Reeve, above n 35, 162 (citations omitted).
654 Niemiec and Ryan, above n 34, 138.
655 Krieger, above n 220, 173.
656 Niemiec and Ryan, above n 34, 137–8.
in task engagement, and academic achievement.\(^{657}\) Thus, it is important that students cultivate intrinsic motivations, and/or synthesise and internalise extrinsic motivations for their law school learning. In the discussion that follows, strategies that relate to law students’ cultivation of these types of motivations are considered from the perspective of students’ independent learning. Then, in section 4.2.5.1, this topic is revisited from the perspective of reflective practice assessment tasks that law teachers may implement as part of legal curricula.

The first approach for nurturing inner motivational resources is an independent study approach, however, reflective practice tasks that are embedded in legal curricula, particularly in the first year of law school, could also be harnessed to encourage the adoption of this approach by law students. In particular, it is suggested that for optimal efficacy, Hunter Schwartz’s steps for invoking self-interest detailed below should be introduced to law students in class, and students can work through the steps either individually during class time, or in their own time as a set task. According to Hunter Schwartz, long-term self-regulated learning is assisted when students invoke self-interest by reflecting upon the connections between their learning and their inner motivational resources. Hunter Schwartz argues that one of the characteristics of expert learners is that they practice ‘self-regulated learning’, which allows law students to ‘learn more, learn better, and perform better than their peers’.\(^{658}\)

Self-regulated learning is a cycle consisting of three phases: (1) a ‘planning phase’; (2) a ‘monitoring and implementing phase’; and (3) an ‘evaluation phase’.\(^{659}\) A detailed discussion of this cycle is beyond the scope of this thesis but, importantly, enhancing students’ intrinsic and integrated/identified reasons for pursuing legal education and practice can play an important role in the planning phase of self-regulated learning.

When students connect with intrinsic and autonomous reasons for studying law, it can invoke and deepen their interest in the subject matter they are learning, paving the way for enhanced academic engagement, motivation and academic

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\(^{657}\) Krieger, above n 220, 173.

\(^{658}\) Hunter Schwartz, above n 548, 3.

\(^{659}\) Ibid.
achievement. As argued by Hunter Schwartz, perhaps the most important and effective components of the planning phase of self-regulated learning are ‘invoking self-interest and self-efficacy’. Invoking self-interest involves students consciously reflecting on why the learning task is important to them, which encompasses intrinsic, integrated and identified motivations in the SDT lexicon. By contrast, invoking self-efficacy refers to students recalling and drawing upon prior successful learning experiences to inform and reinforce their belief that they can succeed at the current learning task. A large number of studies have shown that students who are interested in the subject matter they are learning tend to be more engaged, try harder, and persist in the face of difficulties.

Hunter Schwartz suggests four ways law students can invoke self-interest. First, they may experience interest in ‘learning for its own sake’, which can include the love of learning something new, enjoying a stimulating learning experience/environment, and the satisfaction of mastering complex materials, which are all examples of intrinsic motivation. Secondly, students may find interest in the particular challenges and stimulation of learning at law school. For example, some students may connect with the excitement of advocacy and with reflecting with interest on what the law should be; again, these are examples of the intrinsic rewards of legal education. The third way students can invoke self-interest is through reflecting on the reasons they chose to attend law school in the first instance; law school learning and assessment tasks can be infused with greater meaning and significance when placed in their bigger picture context. This is an example of identified regulation discussed above. Finally, Hunter Schwartz suggests students can invoke self-interest by consciously reflecting upon how they may be able to use what they are learning in their personal or professional lives. Law students can consciously reflect upon the connections between their law school studies and their abiding beliefs and values, which can inform their internally-aligned choices and actions both at law school (for

661 Ibid.
663 Ibid 42.
664 Ibid 42.
665 Ibid 43.
666 Ibid 42–3.
667 Ibid 43.
example, choice of electives and early career decisions) and in their professional lives after law school. This is an example of integrated regulation, that is, internalising previously external reasons for acting by synthesising the value of the action with reference to other internally-sourced motivations and goals.\footnote{Ryan and Deci, above n 237.}

Thus, reflection upon intrinsic and autonomous reasons for studying law may facilitate law students’ interest in, and motivation towards, their law school learning. As such, the strategies for invoking self-interest described above are valuable tools for students seeking to enhance their motivation for independent learning and increase their capacities for sustained self-management at law school. In addition to these types of independent learning strategies to strengthen inner motivational resources, curricular strategies can also be harnessed, as will be expanded upon in the extended example in the following sub-section.

Before proceeding, however, it is useful to elaborate further on the relevance of intrinsic and extrinsic goal contents as part of an autonomy supportive curriculum that facilitates students’ acquisition of self-management skills and competencies. To reiterate the pertinent concepts from Chapter 3, a central premise of SDT is that human behaviour can be intrinsically motivated by internally-sourced values, interests and goals which support thriving, as well as extrinsically motivated by heteronomous interests, norms, pressures and purposes which, if given undue emphasis, may undermine wellbeing.\footnote{Ryan and Deci, above n 221, 175.} Key intrinsic goal contents of self-understanding/personal growth, intimacy with others, community contribution, and physical health were described in section 3.2.1, as were the heteronomous aspirations of affluence, power, attractive appearances, and fame. Data from Tani and Vines’ 2009 research, outlined in section 2.2.1, indicates that a significant proportion of law students, at least at one Australian university, are motivated by extrinsic goal contents such as attending a university with a prestigious reputation, getting high grades, and aiming to secure a prestigious, highly paid job.\footnote{Tani and Vines, above n 352, 12–25.} Additional potential extrinsic rewards of legal practise include financial affluence, status, power, working for prestigious firms, titles and, in the context of adversarial practise, winning
cases.\textsuperscript{671} These types of goal contents can be contrasted with the potential intrinsic rewards of law school and legal practise, based on interest and enjoyment, that were canvassed above.

Due to the correlations between law students’ wellbeing and prioritising of intrinsic over extrinsic goal contents,\textsuperscript{672} it is desirable for legal curricula to explicitly address and foster law students’ positive visions, premised on diverse and personally meaningful intrinsic goal contents, of the types of professional roles they may pursue after law school. Although the authors do not base their discussion on SDT, a similar approach is reflected throughout James and Field’s new first year law textbook, \textit{The New Lawyer}, and in particular in Chapter 1 which includes sections on the myths and realities of law school and legal practise, the range of types of professional roles that are available for people with legal training, and the importance of developing a positive professional identity.\textsuperscript{673} In terms of a specific in-class exercise, Krieger advocates the use of a ‘eulogies’ exercise to help students discern their intrinsic goals and values.\textsuperscript{674} Krieger describes this exercise, which he uses as part of the professionalism training he conducts at the Florida State University College of Law, as follows:

I ask participants to imagine a future time when they are retired and away from their current environment, perhaps travelling in a pleasant place. I have them imagine visiting a small, quiet gathering which then turns out to be a preview to their funeral. I then ask them to briefly write down the eulogies about themselves that, if they could attend their own funeral, they would like to hear from important others – their life partner or best friend, a respected lawyer or judge that has known them in practice, a member of another community they value during their life (church, neighbourhood, service club, etc.), and if time allows, their child or another young person that they would most like to be able to say about themselves – the things about which they feel best when looking back on their life.\textsuperscript{675}

In Krieger’s experience, the qualities that are usually a focus of students’ eulogies are intrinsic values and goal contents, relating to lives that are rich in personal understanding and growth, intimacy with others, and community contribution.\textsuperscript{676} He notes that ‘[n]o one thus far in my experience has drafted a eulogy focused on a luxurious home, high grade point average, law review membership, or extraordinary

\begin{footnotes}
\item \textsuperscript{671} Ibid.
\item \textsuperscript{672} See the discussion in section 3.2.1 above.
\item \textsuperscript{673} James and Field, above n 107, 4–39.
\item \textsuperscript{674} Krieger, above n 328, 453–6.
\item \textsuperscript{675} Ibid.
\item \textsuperscript{676} Ibid 436.
\end{footnotes}
income’. Krieger then connects this task with discussion of the qualities associated with professionalism, research on law students’ distress, and research based on SDT indicating the factors associated with optimal wellbeing. The promotion of these types of understandings in law classes, beginning in the first year, may serve as a valuable counterbalance to the strong extrinsic pressures many experience at law school. As well as contributing to an autonomy supportive law school experience, these types of approaches can simultaneously contribute towards law students’ ‘personal and professional development’ as required under part (b) of TLO 6.

4.2.5.1 Extended Example of Nurturing Inner Motivational Resources: Reflective Practice

An example of a learning and assessment task that helps students’ reflect on, and cultivate, their inner motivational resources as part of a curriculum that supports students’ autonomous self-regulation is reflective practice. Kift describes reflective practice as ‘a metacognitive skill in which greater awareness of, and control over, the student’s learning process is generated’. Moon’s definition is similar to Kift’s, but incorporates affective elements, which are also relevant to reflective practice for the purposes of TLO 6, particularly if my proposed working definition of self-management in section 2.3.3 is employed.

Reflection is a form of mental processing — like a form of thinking — that we use to fulfil a purpose or to achieve some anticipated outcome. It is applied to relatively complicated or unstructured ideas for which there is not an obvious solution and is largely based on the further processing of knowledge and understanding and possibly emotions that we already possess.

In terms of its applications to TLO 6, reflective practice has the capacity to help students make constructive use of feedback and deepen their self-awareness. Fernsten and Fersten argue that: ‘through reflection students learn to scrutinise their own performance, come to terms with what went wrong as well as what went well, contemplate strategies to enhance their success in future work and take responsibility for their learning’. This clearly aligns with part (b) of TLO 6 in which graduates

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677 Ibid 436.
678 Ibid 435.
680 Jennifer A Moon, Reflection in Learning and Professional Development (Kogan Page, 1999) 99.
are expected to be able to ‘reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development’. Further, as was mentioned in section 2.3.3, in the GPG for TLO 6, Marychurch elaborates on the importance of reflective practice for developing law students’ emotional intelligence and self-awareness:

Students who are capable of reflecting on their own learning, work, behaviour, attitudes and feelings will have higher levels of emotional intelligence, which is valued by employers. Reflective learning skills and emotional intelligence will support students, and ultimately graduates and professionals, to sustain a career in the legal profession in the long term. 682

Thus, reflective practice can be seen as an integral tool for achieving both the cognitive and affective aims of the self-management TLO.

The work of McNamara, Field and Cuffe,683 and McNamara, Field and Brown,684 provides guidance on a structured pedagogical process for reflective practice in legal education, commencing in the first year. First, it is necessary to explicitly articulate and explain the skills associated with reflective practice, and its value as a learning strategy,685 which aligns with the autonomy supportive practice of providing meaningful rationales to facilitate autonomous self-regulation described in section 4.2.1. Secondly, teachers should provide opportunities for students to practice reflection as a form of formative assessment before they are summatively assessed;686 this is particularly important when students are inexperienced at engaging with reflective practice, and may feel uncertain and/or sceptical regarding its value in legal education.687 Thirdly, the use of a criterion-referenced assessment rubric allows students to be intentional in approaching what is likely to be an unfamiliar task; examples of good practice in relation to CRAs are provided by

682 Marychurch, above n 45, 10.
685 Huggins, Kift and Field, above n 1, 212.
686 McNamara, Field and Cuffe, above n 683, 3; Huggins, Kift and Field, above n 1, 212.
Burton and McNamara,688 and through the website of the ALTC priority project, ‘Developing Reflective Approaches to Writing’.689 Fourth, law teachers’ constructive feedback on students’ reflections supports students’ learning and self-management skills,690 which will be further reinforced if the non-controlling, informational and competency affirming feedback techniques described in section 4.2.3 are utilised.

Although the discussion below will focus on individual examples of reflective practice-based assessment tasks, it is important to acknowledge the desirability of a stepped and integrated, whole-of-curriculum approach to reflective practice which nurtures law students’ inner motivational resources as part of a broader approach to learning, teaching, and assessing autonomous self-regulation and self-management. Waye and Faulkner describe ‘four levels of reflective writing’ – ‘descriptive writing, descriptive reflection, dialogic reflection and critical reflection’ – which were originally developed in the context of teacher education but are easily transferable to other disciplines.691 It was argued in section 2.2.3.1 above that curriculum mapping provides a mechanism for ensuring that pedagogical strategies for law students’ acquisition of self-management capacities and competencies is appropriately ‘integrated, contextualised, sequential and incremental’ across the law curriculum;692 similarly, ‘[a]n intentional sequencing of reflective practice for self-management learning should ... be mapped across the entirety of the law degree, starting with the fundamentals in first year and moving through intermediate to more advanced skilled behaviour in later years’.693

Law students’ inner motivational resources may be nurtured by reflective practice assessment tasks that encourage reflection upon the relevance of what they are

689 This project is lead by Dr Mary Ryan and Dr Michael Ryan of the Faculty of Education, QUT. See Queensland University of Technology, Developing Reflective Approaches to Writing (DRAW) (2011) <http://www.qut.edu.au/research/research-projects/developing-reflective-approaches-to-writing-draw>.
690 McNamara, Field and Cuffe, above n 683, 3; Huggins, Kift and Field, above n 1, 213.
692 Johnstone, above n 153, 15.
693 Huggins, Kift and Field, above n 1, 213–4.
learning in law school to their personal and professional lives. This is an appropriate and important focus for legal education, exemplified by the following statement in the influential Carnegie Report published in the US in 2007: ‘the values that lie at the heart of the apprenticeship of professionalism and purpose also include conceptions of the personal meaning that legal work has for practising attorneys and their sense of responsibility towards the profession’. Commonly used examples of assessments to support these aims are reflective essays and journals, and personal development portfolios or ePortfolios.

An authentic assessment task developed as part of an elective subject offered to first and later year students at QUT provides one example of reflective practice that aims to develop law students’ capacities to link their knowledge, experiences and skills with their emerging professional identities. In its first offering in 2011, the LWB150: Lawyering and Dispute Resolution unit developed by Associate Professor Rachael Field and James Duffy at QUT included a reflective practice assessment task focused on students’ developing positive professional identities. For this task, students were asked to conduct an interview of approximately 20 minutes with a legal professional practising in any area of law about ‘what being a legal professional means for them’. Alternatively, students could watch pre-recorded interviews provided on the Blackboard website. Students then engaged in ‘scholarly and informed reflection using the 4Rs reflective method’ about the extent to which they could relate the interview content to their ‘own skills, experience and knowledge’, and their nascent professional identities. As noted by Field and Duffy, student responses to the unit’s design were positive as reflected in the following sample of comments from the QUT administered student evaluations of

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694 Hunter Schwartz, above n 548, 43.  
695 Sullivan et al, above n 82, 132.  
696 See, eg, Waye and Faulkner, above n 691, 239.  
698 Ibid.  
699 Ibid.  
700 Ibid; see also Peter Wildermuth and Michael Ryan, Developing Reflective Approaches to Writing (DRAW) (3 October 2011) Queensland University of Technology <https://wiki.qut.edu.au/display/draw/Home>.  
701 Rachael Field and James Duffy, ‘LWB 150: Dispute Resolution and Lawyering – Assessment Item 1: Interview and Reflective Activity’ (Queensland University of Technology Faculty of Law, August 2011) (copy on file with author) 3–4; Field and Duffy, above n 697, 143.
the unit:

- Reading about the mental health of law students, interviewing a solicitor and engaging with the legal identity was simply brilliant.
- This subject provides an opportunity to think about and reflect on the whole of the purpose of lawyers. It helps you to have clarity about your path and I feel it has a bit of spiritual aspect, i.e. allowing you to connect with yourself in discovering yourself so that we can make better choices and not just be reactive to our changing environment and being influenced by external factors and becoming part of a rat race, losing oneself or losing one’s awareness. I really am happy that such units have been created in a law school. It shows the awareness of the need for such practice to be balanced and happy, and thus more productive.
- I personally learnt a lot about myself as it required a degree of self analysis. For instance, the reflective assignment was a personal challenge as it was out of my comfort zone. However, it was a very worthwhile exercise.  

In addition to these and other similar student evaluations of the unit suggesting that this reflective practice task was very well-received and perceived as beneficial, further research into the efficacy of this assessment task, including in terms of its impact on student wellbeing, would add weight to the students’ evaluations. From the perspective of SDT, such an assessment task stimulates students’ intrinsic and autonomous motivations and goals in relation to their law studies. This type of task may also assist students’ autonomous decision-making in relation to their law studies and early career decisions by providing insight into the types of career paths that may be an appropriate fit for them, providing an opportunity for students to develop and exercise their self-management capacities.

Facilitating students’ reflection upon the interests, values, and beliefs that informed their decision to attend law school in the first instance may also infuse their engagement with law school tasks with greater meaning. This may be particularly relevant for Australia’s growing number of JD students who, as discussed in section 3.3.1, may have more clearly articulated intrinsic motivations for studying law than their LLB counterparts. As the following examples demonstrate, such reflection can be grounded in assessment, reinforcing its value and importance to students. For instance, at the beginning of a subject entitled ‘The Legal Profession’

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702 Field and Duffy, above n 697, 150.
703 Ibid.
704 Su and Reeve, above n 35, 162.
705 Articulating reasons for wanting to study law is also a formal requirement in some law schools’ application processes.
706 Hunter Schwartz, above n 548, 42–3.
707 Cooper et al, above n 186.
708 Larcombe, Malkin and Nicholson, above n 360, 84.
offered at Walter F. George School of Law at Mercer University in the US, students are asked to write two assessments; the first of these is a reflective essay on ‘why they have chosen the law and what they hope to accomplish in their careers’.\(^\text{709}\) This reflective practice task can also ask students to draw upon their responses to prescribed books reflecting on a life in the law.\(^\text{710}\) One of the aims of this assessment task is to help students stay connected with their original motivations for attending law school;\(^\text{711}\) such reflection may help to counter law students’ tendencies to disconnect from intrinsic and autonomous motivations and values as they progress through their law degrees.\(^\text{712}\) At the end of the semester, students are required to submit a second reflective essay articulating ‘what they hope to accomplish as lawyers and people in their chosen careers’;\(^\text{713}\) this essay is intended to be informed by the subject’s content, which includes a strong focus on the importance of a professional identity premised on intrinsic motivations and values.\(^\text{714}\) Longan reports that many students ‘express that they feel more prepared to deal with the realities of practice because of the lessons they learned in the course’;\(^\text{715}\) further empirical measurement of the efficacy of these assessment practices would strengthen this claim. Thus, law teachers can explicitly encourage students to reflect upon the interests, values, and beliefs that brought them to law school, including through assessment, thereby nurturing students’ inner motivational resources and contributing to legal education environments that support self-management.

Finally, in terms of facilitating students’ reflections on internally-sourced values, Iijima provides an example of an assessment task at William Mitchell College of Law in the US in which students were asked to ‘write a credo discussing their personal values systems, the source of those values, and how those values will influence their legal careers’.\(^\text{716}\) Although Iijima does not report outcomes regarding the effectiveness of this assessment strategy, which is an opportunity for future research, such an assessment task aligns with Daicoff’s suggestion that ‘[L]awyers,


\(^{710}\) Ibid 692–3 n 146.

\(^{711}\) Ibid 693.

\(^{712}\) Sheldon and Krieger, above n 8.

\(^{713}\) Longan, above n 709, 695.

\(^{714}\) Ibid 691–2.

\(^{715}\) Ibid 695.

\(^{716}\) Iijima, above n 379, 535.
as early as law school, would be wise to identify and preserve their own individual “intrinsic values”, as they navigate the challenges of law school and the profession.’ 717 Thus, reflective practice can be harnessed as a tool to encourage students to reflect on, and strengthen their awareness of, their inner motivational resources. According to SDT, this will be supportive of students’ autonomous self-regulation, which, I argue, underpins effective self-management.

4.3 Potential Concerns Regarding Autonomy Supportive Practices in Legal Education

In the preceding sections, I proposed a range of pedagogical strategies that support law students’ autonomous self-regulation, which have the capacity to simultaneously promote students’ self-management capacities and wellbeing. There are, however, a number of understandable concerns that some law teachers may have in relation to implementing autonomy supportive practices in legal education. One concern legal educators may have in fostering law students’ autonomous self-regulation is that, for some students, this may mean not becoming lawyers. This is not necessarily problematic and is in line with current trends in which more law students are graduating from Australian universities than there are graduate positions available in legal practice. 718 Anecdotally, approximately half of all Australian law graduates do not go on to practise as legal professionals, and a recent study found that almost two-thirds of graduates were not practising law within four months of graduation. 719 In an environment in which student retention is a salient issue in Australian universities and law schools, 720 there may also be concern that promoting autonomy may have deleterious consequences for students’ progression through, and completion of, their studies. This seems unlikely in light of current trends in which demand for positions in Australia’s law schools remains strong despite the fact that many students do not go on to practise law, and may not aspire to do so. 721 The widespread perception of the value of the transferable skills in writing, problem solving, analysis, and research that a law degree provides may partially account for this. 722 Thus, fostering law

717 Daicoff, above n 645, 8.
718 Lee, above n 97.
719 Ibid.
721 Lee, above n 97.
722 Ibid.
students’ autonomous self-regulation in law schools may not necessarily impact the number of people who apply to study law, finish their law degrees and/or go on to practise, but it may enhance their psychological wellbeing and capacities for self-management in the process.

It is also acknowledged that in contemporary law school environments there are many time and resource constraints that may limit some law teachers’ capacities to operate as autonomously and flexibly as they may like, including in relation to curricular innovation. SDT recognises that one of the reasons teachers may be more likely to adopt a controlling, rather than an autonomy-supportive, teaching style is that there are numerous and increasing external pressures and expectations of accountability placed on them.\textsuperscript{723} Indeed, the TLOs themselves are an external reference point in TEQSA’s framework for standards regulation and auditing activities for Australian law schools; as noted in section 2.2.3, some leading members of the legal academic community are concerned that the TEQSA regime is, inter alia, compromising academics’ autonomy as professionals.\textsuperscript{724} As elaborated by Baron, additional constraints on academics include increased research expectations, teaching-related workloads, administrative loads, service expectations, and auditing of all activities in recent decades.\textsuperscript{725} Whilst a detailed critique of these practices and their implications for law teachers’ autonomy and wellbeing are beyond the scope of this thesis,\textsuperscript{726} the preceding suggestions should be read with this context in mind. Ideally, additional resources should be made available to law school staff to facilitate the development and adoption of a whole-of-curriculum approach to self-management that exceeds the minimum threshold requirements articulated in TLO 6.

It is also recognised that some law teachers, as well as some law students, may see curricular strategies to address law students’ distress and self-management capacities as beyond the purview of a rigorous legal education preparing students for the realities of legal practise.\textsuperscript{727} My response to this is three-fold. First, the TLOs have been adopted as an external reference point for law schools in achieving compliance

\textsuperscript{723} Niemiec and Ryan, above n 34, 140

\textsuperscript{724} See also ibid.

\textsuperscript{725} Baron, above n 142, 35–44. See also Richard Hil, \textit{Whackademia: An Insider’s Account of the Troubled University} (NewSouth Publishing, 2012).

\textsuperscript{726} See Baron, above n 142, for a more detailed discussion of these types of issues.

\textsuperscript{727} See generally Hall, above n 29.
with TEQSA’s Higher Education Standards Framework, suggesting that it is good practice for law academics to meaningfully engage with the minimum learning outcomes they describe. Secondly, the learning and academic benefits of autonomy supportive instruction, including improved engagement, creativity, and academic performance as outlined in section 4.2, may be of interest to law teachers and students, even if they do not feel particular resonance with addressing issues related to wellbeing and the psychological components of self-management. Thirdly, I endorse Watson and Field’s position that law teachers have a moral obligation to take steps to redress the high levels of distress experienced by law students. These authors claim that ‘legal educators have a clear ethical duty to work to ameliorate student distress. It is our responsibility to create positive learning experiences for our students, and to “do no harm” through legal education’.728 They further suggest that there is a relationship akin to a fiduciary one between law teachers and students, and possibly a tortious duty of care as well, implying that law teachers may have legal, as well as moral, duties to warn students and take other steps to address the contributing factors to law students’ distress.729 Thus, there are pragmatic, academic, and moral/legal imperatives for adopting autonomy supportive educational practices in Australian law schools.

4.4 Conclusion

This Chapter has discussed a range of curricular strategies that law teachers can implement to promote law students’ perceptions and experiences of autonomy support in the law school environment, which may facilitate higher levels of student wellbeing, engagement, and academic achievement.730 Importantly, providing students with opportunities to demonstrate autonomous and self-endorsed choices and actions allows students to develop and demonstrate their self-management capacities. In particular, it has been argued that the provision of meaningful rationales, acknowledging students’ perspectives and feelings, using non-controlling language, offering choices, and nurturing students’ inner motivational resources simultaneously satisfy the requirements of autonomy support from SDT and the elements of TLO 6. Numerous examples of how these interpersonal conditions can

728 Watson and Field, above n 39, 395.
729 Ibid.
730 Sheldon and Krieger, above n 30, 894.
be created in legal education were canvassed, with additional focus on the extended examples of teaching law threshold learning outcomes, facilitating a positive socio-emotional climate for class discussions, providing feedback that is informational, provides rationales and affirms competency, inviting student input into subject design, and reflective practice to nurture students’ connections with their inner motivational resources.

Based on the arguments presented in Chapter 3 regarding the synergies between the factors contributing to autonomous self-regulation and the aims of TLO 6, it is proposed that the autonomy supportive curricular strategies discussed in this Chapter provide theoretically-informed options for implementing the self-management TLO in legal education. The advantages of autonomy supportive curricula in terms of students’ wellbeing, engagement, academic achievement, and self-management are likely to outweigh any potential disadvantages, however, the importance of resources being made available to staff to support the development of a whole-of-curriculum approach is acknowledged. The discussion in this Chapter of the importance of autonomy supportive curricula in legal education, and the range of pedagogical strategies that can be utilised by law teachers to create this type of curriculum, strengthens the aptness of the proposed rewording of part (a) of TLO 6, as described in section 3.4 above, as a minimum standard which incorporates explicit reference to the critical concepts of autonomy and motivation.
CHAPTER 5: CONCLUSION

In the preceding chapters, I have presented cumulative arguments regarding the importance and desirability of intentional and strategic approaches to curriculum design to create legal education environments that support law students’ autonomous self-regulation and self-management capacities. In this Chapter, I will summarise the salient arguments from the preceding discussion (section 5.1), followed by a discussion of the limitations of this study and opportunities for further research (section 5.2) and concluding remarks (section 5.3).

5.1 Summary of Key Points

In Chapter 2, the development of the TLOs, and TLO 6 in particular, were situated as part of broader trends occurring in Australia and internationally. Perhaps most significantly, the growing body of Australian evidence regarding law students’ elevated psychological distress levels was overviewed; this evidence both helps to explain the inclusion of a self-management TLO as one of six TLOs for the LLB, and suggests that pedagogical strategies for ameliorating law students’ distress provide a useful starting point for considering learning, teaching, and assessment approaches for self-management. The development of the TLOs can also be viewed as a further development in a long-standing Australian and international legal education reform agenda, the progress with which has been slowed by resource constraints and competing research imperatives. The privileging of standards- and outcomes-focused education, and whole-of-curriculum approaches to developing key learning outcomes are global trends that further contextualise the TLOs. Thus, although a TLO on self-management is a new development for Australian legal education, viewed in context, it can be seen as an incremental, and arguably inevitable, development. It is timely, therefore, for Australian law schools to develop whole-of-curriculum approaches to implementing self-management learning outcomes.

Chapter 2 also built upon self-management discourses from comparable Australian and international statements of learning outcomes, and theories of emotional intelligence and resilience, to inform the working definition of self-management offered in this thesis – namely, the knowledge, skills, and attitudes required so that
individuals can exercise choice regarding how they relate to their internal processes, including emotions, and their external surroundings, to stay on track for the purposes being served. Importantly, this definition encompasses personal, emotional and psychological qualities that I have argued are inseparable from the academic and professional dimensions of self-management.

Based on an understanding of the origins of TLO 6 and a clarification of the meaning of self-management, the aptness of SDT as a theoretical framework for self-management was examined in Chapter 3. After outlining the core tenets of this theory, the central theme of autonomous self-regulation was distilled as being at the crux of the five sub-theories of SDT, and was argued to be indispensible for achieving the aims of the self-management TLO. This latter point was explicated by demonstrating the interlinkages between the elements of autonomous self-regulation – intrinsic motivations and goals, and autonomously-endorsed extrinsic motivation, and the basic psychological needs of autonomy, competence, and relatedness – and the elements articulated in parts (a) and (b) of TLO 6. The suitability of SDT for use in this thesis was further buttressed by considering its application in a number of other influential legal education studies, and its relevance to professionalism, which is arguably inseparable from long-term self-management. The argument that SDT, and particularly the concept of autonomous self-regulation, provides an apt theoretical lens for analysing TLO 6 was strengthened by examination of the literature on law students’ distress, which suggested that law students’ disconnections from intrinsic motivations and goals, and perceived lack of support for their needs for autonomy, competence, and relatedness in their law school environments, are contributing factors to law students’ distress. Based on this analysis, the following minor revisions to the wording of TLO 6 were proposed, with changes indicated in italics:

Graduates of the Bachelor of Laws will be able to
a. Learn and work autonomously, and
b. Reflect on and assess their own motivations, capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

The factors that support autonomous self-regulation are central to the elements of TLO 6, and may help to ameliorate law students’ distress, underscoring the desirability of intentional and strategic approaches to curriculum design to create
legal education environments that support law students’ autonomy. This was the central premise of Chapter 4. The theory of autonomy support from SDT identifies five indispensable interpersonal conditions for supporting students’ autonomy in educational environments: (1) the provision of meaningful rationales; (2) the acknowledgement of students’ perspectives and feelings; (3) the use of non-controlling language; (4) choice provision; and (5) nurturing students’ inner motivational resources. This Chapter discussed a range of curricular strategies aligning with each of these interpersonal conditions that law teachers can implement to promote law students’ perceptions and experiences of autonomy support in the law school environment, which may facilitate higher levels of student wellbeing, engagement, academic achievement, and self-management. For each interpersonal condition, a theoretical and practical analysis was followed by an extended example to provide guidance on practical implementation; these examples were: (1) teaching law threshold concepts as part of meaningful rationale provision; (2) facilitating a positive socio-emotional climate for class discussions as part of acknowledging students’ perspectives and feelings; (3) providing feedback that is informational, provides rationales and affirms competency as an instance of using non-controlling language; (4) inviting student input into subject design as part of choice provision; and (5) offering reflective practice-based assessments as part of nurturing students’ inner motivational resources. Thus, Chapter 4 presented a number of theoretically-informed options for supporting students’ autonomous self-regulation, and thereby developing their capacities for self-management. It also considered and countered possible objections to the integration of autonomy supportive practices in legal education, arguing that there are pragmatic, academic, and moral/legal imperatives for law schools to engage with, and be pro-active in addressing, the issues of law students’ distress and learning, teaching and assessing self-management. It is recognised, however, that law teachers’ efforts in this regard will be appreciably assisted by greater resource availability and supportive staff development.

731 Sheldon and Krieger, above n 30, 894.
5.2 Limitations and Opportunities for Future Research

There are a number of potential limitations to this study, many of which were identified in delineating the scope of this research in section 1.2 above. First, the analysis of TLO 6 in this thesis was predicated on understandings from SDT; whilst SDT is regarded as one of the world’s leading theories of motivation, it is not the only theoretical lens through which TLO 6 can be examined. Thus, in this sense, the range of pedagogical strategies for self-management identified in this thesis may not reflect the potential full gamut of learning, teaching, and assessment approaches. Analysis of the self-management TLO and strategies for its implementation from alternative theoretical perspectives therefore presents an opportunity for future research. In a related vein, as was acknowledged in section 4.1, there may be other examples of pedagogical strategies in addition to those presented in Chapter 4, that satisfy the interpersonal conditions of autonomy support; further consideration of their applications in legal education is encouraged.

Similarly, although the discussion in Chapter 4 tended to focus on discrete pedagogical approaches for self-management, it is important to reiterate that a ‘structured and integrated, whole-of-curriculum approach’ to this issue is required. As was discussed in section 2.3.1 above, such an approach can be facilitated by the alignment of program and subject learning outcomes for self-management with learning, teaching, and assessment approaches in individual subjects, coupled with programmatic oversight of the scaffolded development of self-management knowledge, skills, and qualities throughout the degree program. The adoption of individual pedagogical approaches for self-management in an ad hoc, piecemeal fashion is unlikely to be sufficient to support deep learning of this important learning outcome. Although general guidance on ‘assurance of learning data’, whereby evidence of student achievement of all aspects of a program learning outcome is collected at the end of a program of study is readily available, the development of a whole-of-curriculum approach to self-management in legal education, which as previously noted is uncharted territory in many law schools contexts, would benefit from further attention.

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732 Ten-Cate, Kusurkar and Williams, above n 248, 961.
733 Kift, Israel and Field, above n 2, 9.
734 See, eg, Romy Lawson et al, above n 170.
In addition, this thesis primarily focused on curricular, rather than co-curricular, approaches to self-management. Co-curricular approaches do, however, play an invaluable role in supporting students’ wellbeing and personal development, and a curricular focus should not necessarily be adopted at the expense of these co-curricular options. Rather, the efficacy of both types of approaches will be enhanced if they are seen as complementary and mutually reinforcing. Indeed, empirical evaluation of the efficacy of both curricular and co-curricular approaches to self-management would benefit from further research. Although the efficacy of providing meaningful rationales, acknowledging perspectives and feelings, using non-controlling language, offering choices, and nurturing students’ inner motivational resources for increasing students’ experiences of autonomy support has been well-documented in the educational psychology literature, further research into their effectiveness in the context of legal education and legal practice is warranted. In particular, empirical measurement of the efficacy of the proposed curricular strategies in terms of, inter alia, law students’ engagement and subjective wellbeing before and after the strategies’ implementation, would strengthen claims for their widespread adoption in law schools.

5.3 Concluding Remarks

It is hoped that this thesis will contribute to discussion and debate regarding theoretically-informed curricular approaches to self-management, add to the growing body of legal education research applying SDT, and emphasise the important benefits of autonomy supportive curriculum design. Taking steps to: (1) strengthen law students’ internal motivations for studying and practising law; (2) support law students’ needs for autonomy, competence, and relatedness; (3) foster wellbeing and ameliorate distress; (4) enhance academic engagement and achievement; and (5) produce graduates who have the personal and professional qualities to thrive in legal and non-legal careers are highly worthy aspirations for the Australian legal education sector, and will contribute to meeting and exceeding the minimum threshold requirements of TLO 6. By taking active steps to implement a whole-of-curriculum approach to self-management, law schools can simultaneously fulfil the aims of the

735 For an overview see Su and Reeve, above n 35, 160–2.
TLOs and their broader obligations to the wellbeing of their students and the professionals they will become. Commitment and leadership from law school staff, which may be aided by the availability of additional resources, will be necessary to integrate autonomy supportive strategies throughout legal curricula, yet the evidence suggests that the benefits of an autonomy supportive legal education environment for students, staff, and ultimately the legal profession and the broader community, will be worth this shift in approach.


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