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in Creating Cohesion

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ASSESSABLE MOOTS IN ADMINISTRATIVE LAW: THE ROLE OF STUDENT FEEDBACK IN CREATING COHESION

NIAMH KINCHIN*

I INTRODUCTION

Teaching any law subject is inevitably a struggle to reconcile theory with practice, but administrative law offers its own particular challenges in this regard. Despite its potentially rich subject matter and its ability to intersect with other areas of law, a lack of perceptible cohesion and a ‘disconnect’ with the ‘real world’ continues to vex students and teachers of administrative law alike. Understanding how merits review, judicial review and other accountability mechanisms ‘fit together’, and how they interact with the various judicial and quasi-judicial institutions as well as primary and delegated legislation and government policy, can be a herculean task. Students often find connecting the theory and principles of administrative law with ‘real life’ legal and social situations confounding, which is exacerbated by the fact that administrative law does not deal with one cohesive subject matter or legislative scheme but crosses a variety of subject matters, the only unifying factor being government regulation. Further, principles of judicial review and the framework for merits and judicial review can prove conceptually challenging and students can find the material dry and uninteresting. Whilst this affliction is by no means unique to administrative law, when combined with issues of cohesion and disconnect, administrative law presents distinct pedagogical challenges for its teachers.

The challenges that administrative law poses for its teachers and learners have not been overlooked in legal education scholarship. Common to this research is recognition of the need to ‘contextualise’

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administrative law, or place it in the 'real world'.¹ Methods suggested include the use of topical issues that can help place administrative law in a historical, political and socio-economic context,² express incorporation of indigenous content,³ investigation of the work of citizen advocate services and the utilisation of clients through clinical legal education.⁴ Might mooting, a rite of passage for all law students, help students contextualise administrative law through an understanding of how a matter proceeds through the levels of review? Could mooting help create the elusive connection between theory and practice? This paper reports upon on a three-year pilot of an assessable moot that was introduced into the subject Administrative Law at the University of Wollongong in 2016.⁵ Structured student feedback provides an insight into the pedagogical and administrative challenges and successes of assessable moots in promoting a skills-based, student-centred learning experience that encourages the development of advocacy skills *and* substantive knowledge that may be transferred to professional practice.

II MOOTING AS ASSESSMENT IN LEGAL EDUCATION

Mooting's legacy is that it has offered students of law a dynamic learning experience through problem-based and experiential learning long before other disciplines began to turn their attention to student-led, active-learning pedagogies as alternatives to the traditional lecture.⁶ Moots are a form of experiential learning, or 'learning through experience', because they simulate real-world practice by requiring students to answer a problem question through a simplified 'mock trial' delivery. Kolb defines experiential learning as 'the process whereby knowledge is created through the transformation of experience. Knowledge results from the combination of grasping and transforming experience.'⁷ Kolb's Experiential Learning Theory comprises a cycle of four elements, which can be adapted to the moot as a form of learning. The first two stages of the cycle, which are part of what Kolb describes as 'grasping knowledge', are concrete experience, which is participation in, and observation of the moot, and Reflective

¹ See, eg, Graeme Orr, 'Teaching Public Law: Content, Context and Coherence' (2015) 25 *Legal Education Review* 299.

² Michael Head, 'Deep Learning and Topical Issues in Teaching Administrative Law' (2007) 9 *Legal Education Review* 159, 160.

³ Alexander Reilly, 'Finding and Indigenous Perspective in Administrative Law' (2009) 19(2) *Legal Education Review* 271.

⁴ Jenny Gibbons, 'Whose Access to Whose Justice', (2018) 27(2) *Nottingham Law Journal* 48.

⁵ This project was conducted under University of Wollongong Ethics Approval 2016/383.

⁶ In his paper 'Why Do We Moot? Exploring the Role of Mooting in Legal Education', Andrew Lynch chronicles the history of mooting from its beginnings as an educative practice in the English Inns of Court in medieval times. See Andrew Lynch, 'Why Do We Moot? Exploring the Role of Mooting in Legal Education' (1996) 7 *Legal Education Review* 67, 68.

⁷ David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Pearson Education, 2nd ed, 2015).

observation, which involves students reflecting on how the moot impacted their understanding of the subject and advocacy more broadly. The second two stages can be labelled 'transformation' and include abstract conceptualization, where the student transforms the knowledge he or she has gained into new ideas, or new conceptions of previously held ideas, and draws conclusions about the way the moot has impacted their legal skills and substantive knowledge of administrative law. Finally, active experimentation involves the student applying what they have learned to other mooting activities or real-world advocacy by experimenting with different behaviours. For students, the opportunity to have a 'direct encounter with the phenomena being studied rather than merely thinking about the encounter, or only considering the possibility of doing something about it',⁸ is an extremely valuable way to prepare for advocacy and problem-solving within the legal profession.

Moots are also an example of a 'constructivist-learning environment',⁹ because they link 'what is learned' to 'how it is learned'.¹⁰ Constructivism focuses upon the interaction of the learner with his or her environment, the individual's 'learning goal' being central to what is learned.¹¹ Lebow describes the seven primary values of constructivism as collaboration, personal autonomy, generativity, reflectivity, active engagement, personal relevance and pluralism.¹² Pivotal to constructivism are collaborative groups, which students use to test their own understanding and to examine the understandings, or alternative views, of others.¹³ Mooting, which is based upon collaborative groups (ie 'teams'), is a form of constructivism because mooting is not about getting the 'right answer', but to 'see how the students use the authorities that do exist in support of their argument, how they organise this material both individually and as a team, how they research the problem, and how they present it and respond to questions from the Bench.'¹⁴

Savery and Duffy identify eight 'instructional principles' of constructivism, which provide practical steps for ensuring that students interact with their environments in an authentic way and maintain ownership of the task whilst providing opportunities to test knowledge. These instructional principles of constructivism are interwoven into the following discussion as a way to explain the format and design choices of the mooting assessment.

⁸ Lenore Borzak, *Field Study: A Sourcebook for Experiential Learning* (1981, Sage Publications) 9.

⁹ John Savery and Thomas Duffy, 'Problem Based Learning: An Instructional Model and Its Constructivist Framework' (1995) 35(5) *Educational Technology* 31–8.

¹⁰ *Ibid.*

¹¹ *Ibid.* 32.

¹² David Lebow, 'Constructivist Values for Instructional Systems Design: Five Principles Toward a New Mindset' (1993) 41(3) *Educational Technology Research and Development* 4, 5.

¹³ *Ibid.*

¹⁴ Lynch, *Why Do We Moot?* (n 6) 80.

III FORMAT AND DESIGN OF THE MOOTING ASSESSMENT

The fundamental objective underpinning the design of the mooting assessment was to transform students' experience of administrative law from an appreciation of the theory and law, to an appreciation of the theory and law in a practical, advocacy-based context. If the moots were to be successful in exposing students to the 'real life' practices of administrative law, they needed to be designed in a way that encouraged an understanding of the nature and chronology of an administrative law matter.

Although each moot team was to present their moot on a particular topic, each moot problem question was based upon facts that formed part of a single hypothetical scenario. The hypothetical scenario involved a chronologically ordered sequence of events, which constituted a single administrative law matter that concerned a single client. Each of the moot problem questions was one part of the overarching hypothetical scenario, reflecting Savery and Duffy's first instructional principle of constructivism ('IPC'), which is to 'anchor all learning activities to a larger task or problem'.¹⁵ The moots were presented not as stand-alone problems, but as part of a 'narrative' that linked the facts of the scenario to administrative law cases, law and principles.

The following discussion explains the format of the mooting assessment over the three years of the pilot.

A The First Year of the Pilot

In the first year of the pilot students were paired into teams of two and at the beginning of the semester each team was given a topic and a week for the presentation of their moot. All of the moots' problem questions related to a single hypothetical scenario about an application for a disability support pension. Seven different topics and seven different problem questions were incorporated into the assessment. As well as reflecting the need to 'anchor all learning activities to a larger task or problem', the integration of the moots with an overarching hypothetical scenario 'support[s] the learner in developing ownership of the overall problem or task', which is Savery and Duffy's second IPC. By situating the moots into a detailed fact scenario involving one 'client', the students took the role of advocate and adopted the problem as their own.

Students had a number of weeks to work with their groups to create their written and oral submissions for either the respondent or the Applicant. Students were provided with some resources (ie reading and lecture material) but were also expected to research on their own. In this period, students were engaged in self-directed learning, developing 'strategies for identifying learning issues and locating, evaluating, and learning from resources relevant to that issue',¹⁶ which 'encourage[s]

¹⁵ Savery and Duffy, *Problem Based Learning* (n 9) 3.

¹⁶ *Ibid* 9.

testing ideas against alternative views and alternative contexts' within the group, and 'give[s] the learner ownership of the process used to develop a solution'.¹⁷

Each team was required to create and 'lodge' written submissions at least two days before the moot, which were made available to the other students in the class one day prior. Although standard formatting rules applied, (ie AGLC and the expectation of an attached list of authorities) templates were provided. The template for the merits review moots were based on an example of a Statement of Facts and Contentions used in the Commonwealth Administrative Appeals Tribunal and the judicial review templates were based on an Application for Judicial Review from the Federal Court. The purpose of templates was to ensure that the moots were authentic (Savery and Duffy's third IPC: 'design an authentic task') by reflecting the complexity of the environment the students would be able to function in at the end of the learning (ie Savery and Duffy's fourth IPC: 'design the task and the learning environment to reflect the complexity of the environment they should be able to function in at the end of learning').

These IPC's are also evident in the design of the oral presentation of the moots, which were held during the first half of the subject's weekly two-hour seminar, the week after the lecture for the relevant topic was presented. Each student had 10 minutes to present his or her oral submission. Seminar leaders acted as adjudicators, their role to support and challenge the student's thinking¹⁸ through asking questions from 'the bench', which reflected the sixth IPC: 'design the learning environment to support and challenge the learner's thinking'. The final 'answer' played a minor role in both the learning experience and assessment of the work.¹⁹

An important objective of the moot was the engagement of *all* students in the entirety of the assessment. By requiring teams to moot on different but interconnecting topics during seminars, the rest of the class would be able to observe and learn from the moot. The 'all student' character of the moot turned what might be perceived as a summative assessment into a formative one,²⁰ and exposed all students undertaking the subject to the whole administrative law matter through peer observation, further anchoring 'all learning activities to a larger task or problem'.

¹⁷ Savery and Duffy's seventh and fifth IPCs.

¹⁸ Ibid.

¹⁹ Lynch, *Why Do We Moot?* (n 6) 80.

²⁰ In their article on 'formative mooting', Mary Keyes and Michael Whincop argue that traditional mooting is not formative but summative because students do not get an opportunity to incorporate feedback into the assessment. See Mary Keyes and Michael Whincop, 'The Moot Reconceived: Some Theory and Evidence on Legal Skills' (1997) 8(1) *Legal Education Review* 1. However, compare to Keith Kendall who argues that mooting is already formative in nature through a 'dialogue between mooters and the bench during oral argument, which is made up primarily of questions from the bench, but does involve some commentary...Student responses to such feedback — in other words, how effectively they can immediately incorporate this feedback into their presentations — influences their grade for the task.' See Keith Kendall, 'Mooting in an Undergraduate Tax Program' (2011) 10(1) *Journal of the Australasian Law Teachers Association* 109, 117.

The assessment of the moot task was based on a group mark out of 25. Adding the marks obtained by senior counsel and junior counsel together and dividing the result by two produced the total mark for the team.

The following discussion of the format and design of the second and third year of the pilot focuses on *changes* made to the moot assessment. Reasons and analysis for changes are discussed in the 'Findings' section of the paper, below.

B The Second Year of the Pilot

In the second year, the moots were removed from the seminar and scheduled across the semester according to teacher and student availability. The removal of the moots from the seminar meant that the 'whole class' peer observation was no longer a viable element of the assessment. A structured peer review element was introduced as an alternative. Prior to the reviewed moot, students were asked to familiarise themselves with a moot scenario and substantive content for one topic that was different to their own. During the 'reviewed moot', students were asked to take note of the substance of each team's arguments, the delivery of the moot by individual team members and the way that those team members answered questions from the bench. After the moot, each student was asked to complete a peer review feedback sheet and email it to the subject coordinator by 5pm the next calendar day.

In the second year of the pilot students also mooted on a topic about an application for a disability support pension. Two small changes to the written and oral submissions occurred in this year. First, the use of the specific templates was abandoned for a 'generic' moot template. Second, in the oral component of the moot the students now spoke for seven and a half minutes each. Both of these changes carried across to the third year of the pilot.

Assessment of the moot task was based on a group mark out of 30. The adjudicator awarded the senior counsel and junior counsel a team mark for written submissions and an individual mark for oral submissions, questions from the bench and peer review.

C The Third Year of the Pilot

In the third year of the pilot significant changes were made to the structure of the moot. First, all students now mooted within a three-week period. However, instead of mooted on different topics, the students mooted on the same topic, which was based upon facts that formed part of a single hypothetical scenario about a worker's compensation matter. Second, the remaining problem questions, which comprised the overarching hypothetical scenario, were integrated into seminars in the form of class discussion and problem-solving exercises. The hypothetical scenario remained a chronologically presented administrative law matter, which correlated with weekly topics and were framed in a way that asked students to form legal arguments in a

group work context. Students were encouraged to present their legal arguments as practice moots.

The way that the students participated in these problem-based exercises was marked as class participation ('CP'). Instead of a separate CP mark for overall participation in the subject, the mark for CP was directly linked to the mooting scenario and weekly problem questions. In other words, the way the students contributed to the group discussions about that week's mooting problem, engaged in problem-solving and participated in the practice moots formed the basis of their CP marks. This moot/CP model (ie 'integrated CP model') allowed all students to benefit from understanding how an administrative law matter proceeded through grounds of review without passively observing other students' moots.

Crucially, the 'integrated CP model' ensured that the moots remained both formative and constructivist in nature, because they became 're-anchored' to a larger task or problem. Keyes and Whincop suggest that by splitting a mooting assessment into two (in their case a directions hearing and a main hearing) the moot becomes formative because there is an opportunity to provide feedback prior to the final assessment.²¹ The ability to provide students with meaningful feedback prior to the main hearing in the Keyes/Whincop model resonates with the integrated CP model because students had an opportunity to learn the subject matter through the creation of legal arguments and advocacy practice *prior* to their own moot, in a way that linked the topics cohesively.

Assessment of the mooting task was based on a group mark out of 35. The adjudicator awarded the senior counsel and junior counsel a team mark for written submissions and an individual mark for oral submissions and questions from the bench. An individual mark was awarded for CP.

The following table shows the marking criteria for each element of the mooting assessment. The table is based on the third year of the assessment.

²¹ Ibid.

Table 1
Mooting Assessment Marking Criteria

MARKING CRITERIA	Mark
Written submissions (team mark) knowledge and understanding of the subject matter ability to develop ideas and think critically problem-solving skills written communication skills	10
Questions from the bench (individual mark) ability to develop ideas and think critically oral communication skills	5
Speaking ability and delivery of arguments (individual mark) knowledge and understanding of the subject matter ability to develop ideas and think critically oral communication skills	10
Class participation (individual mark) knowledge and understanding of the subject matter ability to develop ideas and think critically problem-solving skills oral communication skills	10
TOTAL	35

D Overview of Format and Design

The mooting assessment was ‘authentic’,²² because it was designed to replicate ‘real-world’ legal problems. Lynch points to the situated learning aspect of mooting,²³ as supporting a constructivist approach because mooting involves ‘practices of the culture’ such as oral court presentation, legal research, and formation of a case plan and writing of briefs. By designing the mooting assessment to meet subject outcomes through integration across the subject, it was hoped that the constructivist, experiential nature of mooting could help students understand how an administrative law matter proceeds through the levels of review to create a connection between theory and practice. This ‘integrative approach provided an ‘opportunity for and support reflection on both the content learned and the learning process’,²⁴ by modelling reflective thinking throughout the semester-long learning process and supporting the students reflect on the strategies for learning, as well as what was learned.²⁵

²² Lev Vygotsky et al (eds), *Mind in Society: The Development of Higher Psychological Processes* (Harvard University Press, 1978) 79–91.
²³ Lauren Resnick, ‘Introduction’ in Lauren Resnick (ed), *Knowing, Learning, and Instruction: Essays in Honour of Robert Glaser* (Routledge, 2016) 1.
²⁴ Savery and Duffy’s eighth IPC.
²⁵ Savery and Duffy, *Problem Based Learning* (n 9) 36.

Table 2
Overview of Assessment Structure by Year

Year	Number of Students	Team Composition	Location & Time	Peer Review or Observation	Seminars	Moot Topic
2016	189	2 students	During weekly seminar	Peer observation	Moot presented in second half on 2-hour seminar. Other students observed the moot.	Disability support pension (Cth)
2017	243	2 students	Outside of seminar – time & day nominated by student & subject coordinator	Peer review	Unrelated to moot assessment.	Disability support pension (Cth)
2018	240	2 students	Outside of seminar – time & day nominated by student & subject coordinator	No	Seminar used to discuss and present practice moots on problem questions that formed part of the overarching hypothetical moot scenario.	Workers compensation (Cth)

Table 3
Substantive Content by Year: Topics as Moot Problems or Seminar Problem Questions

	Ombudsman, anti-corruption	Nature & framework of merits review	Procedure, evidence & the role of policy in merits review	FOI & reasons	Jurisdictional limitations & standing	Considering Irrelevant Matters, Failing to Consider Relevant Matters, Unreasonableness	Unauthorised Decision Making & Statutory Purpose	Hearing rule	Bias
Moot Problem Question		2016	2017	2016, 2017	2016, 2017	2016, 2017, 2018	2016, 2017	2016, 2017	2016, 2017
Seminar Problem Question	2018	2018	2018	2018	2018		2018	2018	2018

IV METHODOLOGY

The pilot ran for three years (2016, 2017 and 2018), over three semesters of teaching. The purpose of running the pilot over a three-year period was to enable the development of the assessment in response to issues and opportunities as they arose.

Most of the students participating in the assessment were in the second year of their law degree and had no prior experience in mooting. All participating students were based at the Wollongong campus and attended at least some of the course in person (ie weekly seminars).

At the end of each semester feedback was sought from students through an anonymous online questionnaire that was administered through the university digital learning platform, Moodle. Students were asked a number of closed questions and were provided with an opportunity for general comment. Consultation and observation from teaching staff was also used to evaluate and develop the assessment. Student responses to each question, including comments, are reported and analysed in the following section. Responses to closed question are stated as percentages in the form of graphs. The number of respondents in each survey is provided in Table 6, below.

Some mention should be made about the nature of student feedback and how comments were chosen. It is widely accepted that student feedback or evaluations are an important tool of quality assessment and assurance for curriculum and teaching. Student evaluations have ‘direct impacts on teaching quality by affecting changes which help to improve teaching practices; helping staff to refine the way they teach and how they teach’.²⁶ They are *at least* ‘multidimensional, quite reliable, reasonably valid, relatively uncontaminated by many variables often seen as sources of potential bias, and are seen to be useful by students, faculty, and administrators.’²⁷ However, enthusiasm for student evaluations must be tempered with concerns about potential inbuilt bias (eg, gender, seniority, discipline and position in degree can all impact evaluation),²⁸ and students ‘not knowing what they don’t know’ in the sense that perceptions are not akin to that of teachers.²⁹ Considering these issues, the comments that have been chosen to represent student feedback fall into one of two categories. First, the comment either contributed to design improvement or was an effective measure of performance because it clearly expressed a challenge and/or suggested

²⁶ The University of Queensland, ‘Student Surveys of Teaching & Learning Quality: An Issues Paper to Contextualise Current Practices in Higher Education’, *Institute for Teaching and Learning Innovation* (Issues Paper, January 2017) <https://itali.uq.edu.au/files/1288/Discussion-paper-Survey-Issues-Paper_Jan2017.pdf>.

²⁷ See Herbert Marsh, ‘Students’ Evaluations of University Teaching: Research Findings, Methodological Issues, and Directions for Future Research’ (2007) 11(3) *International Journal of Educational Research* 253.

²⁸ Kenneth Feldman, ‘Identifying Exemplary Teachers and Teaching: Evidence from Student Ratings’ in Raymond Perry and John Smart (eds), *The Scholarship of Teaching and Learning in Higher Education: An Evidence-Based Perspective* (Springer Netherlands, 2007) 93, 97–8.

²⁹ Marsh, *Students’ evaluations of University teaching* (n 28) 253.

a viable alternative. For examples, see the student comments in Topic 4.1 ‘All student engagement: Peer review and timing of moots’. Second, the comment expressed a misunderstanding or misapprehension that demonstrated that students don’t always ‘know what they don’t know’ and which gave the opportunity for greater insight into the assessment design and objectives. For example, see the student comments in Section 4.2 ‘Topic allocation and seminar integration’.

Table 4
Number of Survey Respondents per Year

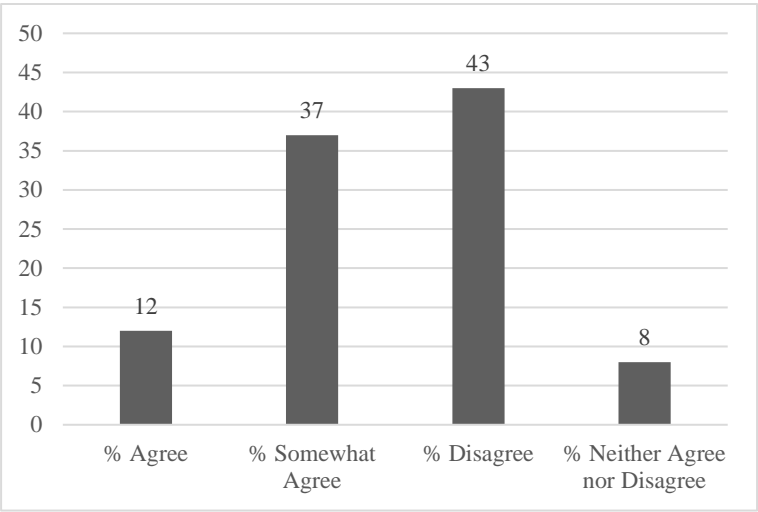
YEAR OF SURVEY	NUMBER OF RESPONDENTS
2016	51
2017	98
2018	55

V FINDINGS

A ‘All-Student’ Engagement: Peer Review and Timing of the Moots

A primary objective of the moots was to draw upon the chronological and interconnected nature of the different scenarios to encourage a learning experience for all students, whether they were presenting in a given week or not. As mentioned above, in the first year the moots were held during the weekly seminar, which allowed the rest of the class to observe the moot. At the end of the semester, students were asked to indicate whether they thought that this arrangement enhanced their knowledge of the subject:

Figure 1
Observing other students undertaking the mooting assessment enhanced my knowledge of the subject (2016)



The results in the first year were almost evenly split between those who agreed or 'somewhat agreed' (25 students) and those who disagreed or felt ambiguous about the beneficial effect of peer observation (26 students). It is noted that only six students firmly agreed with the proposition. Student comments revealed why some did not find peer observation an effective model.

It was difficult to watch other members present and at the same time try to understand their topic. When students have difficulties presenting, it is detrimental to the understand (sic) of the topic for the class.

Anonymous student 2016

I felt that I personally did not gain knowledge from watching other people in the moots. They took up a lot of class time that could have been spent actually learning the topics. I felt like they should have been shorter. Half of our lessons were wasted listening to the moots and having no knowledge that what the other students were saying was correct.

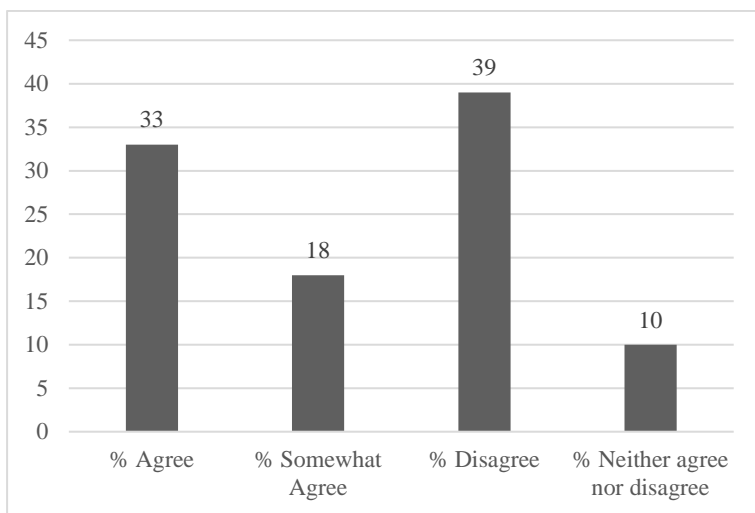
Anonymous student 2016

The primary concern amongst students appeared to be that the potential benefit of observing other students' moots was contingent on the quality of the moot. Although all students were expected to have completed the readings and to have viewed the lecture for the relevant topic before the moot, some students felt that they could not easily judge whether the issues discussed in a particular moot were substantively correct.

Students were also asked to rate how they felt about the moots being held within seminar time.

Figure 2

The mootings assessment would be more effective if it was held outside of the seminar time (2016)



A slim majority of students (26) felt it would, or may, be better to hold the moots outside of the weekly seminar. Some of the students' comments illuminated concerns that the moots took away from time to learn substantive content.

However, it may be a beneficial possibility to perform the moots outside of the seminar. Despite the fact that it covered that weeks (sic) topic — the rest of the classes (sic) understanding in the topic was not thoroughly covered in the one hour provided. Furthermore, it was not guaranteed that students would pay attention to the moots which occurred (sic) after their own — focus was placed elsewhere during the first hour of each seminar.

Anonymous student 2016

Given the moots occurred at the start of the seminar and the content of that week had not been discussed yet, it made it more difficult to follow the moots as although the readings and lecture had been completed, I personally gain great value from the seminar discussion in terms of understanding each topic. In this sense it may be better to hold the moot in the second half, however I understand people want to get it out of the way and that seminar discussion is enhanced by reference to the moot that has just occurred. For this reason some thought should be given to holding the seminar outside of class time.

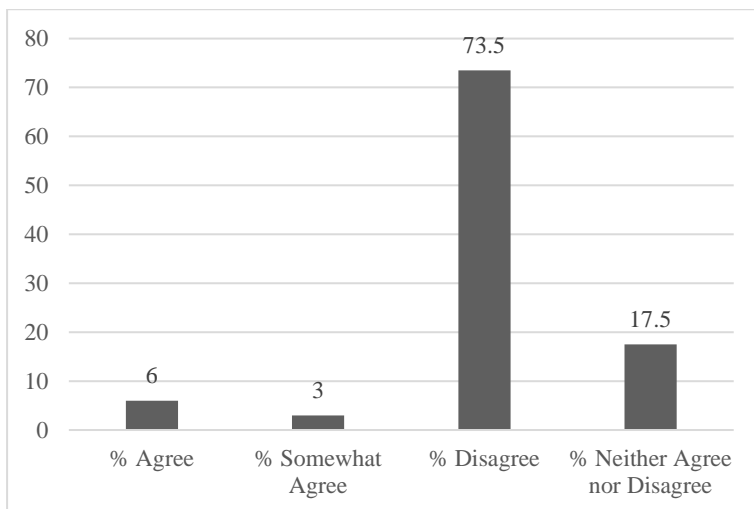
Anonymous student 2016

Considering that the density and conceptual difficulty of some of the content of administrative law was an issue that motivated the introduction of the moots in the first place, the concerns expressed by the students were valid. Although the results were relatively even, taking into consideration concerns about peer observation, it was not clear that the moots were the best way to utilise seminar time.

In response to this feedback, in the second year of the pilot the moots were removed from the seminar and scheduled across the semester according to teacher and student availability. Like the first year, students were asked to rate how they felt about holding the moots during seminars.

Figure 3

The mooting assessment would be more effective if it was held inside the seminar time (2017)



Only nine students agreed or somewhat agreed with the proposition. A strong majority of the students (72) felt that the moots should be kept outside of the seminar, which was considerably higher than when the students actually mooted during the seminar the year before.

This semester we have had torts group presentations during seminar time, and they took away valuable teaching/practical learning time. In such a content dense subject that I think we really needed the whole seminar for knowledge clarification/consolidation and practical application. As admin. law is content dense also, I would be worried about taking away seminar time for the moot.

Anonymous student 2017

I thought it was really good that we did the moot outside of seminar time, because I feel like there was so much to cover in the seminar time already, that taking half an hour or so out of most weeks to watch the moots would mean that we would miss that valuable time.

Anonymous student 2017

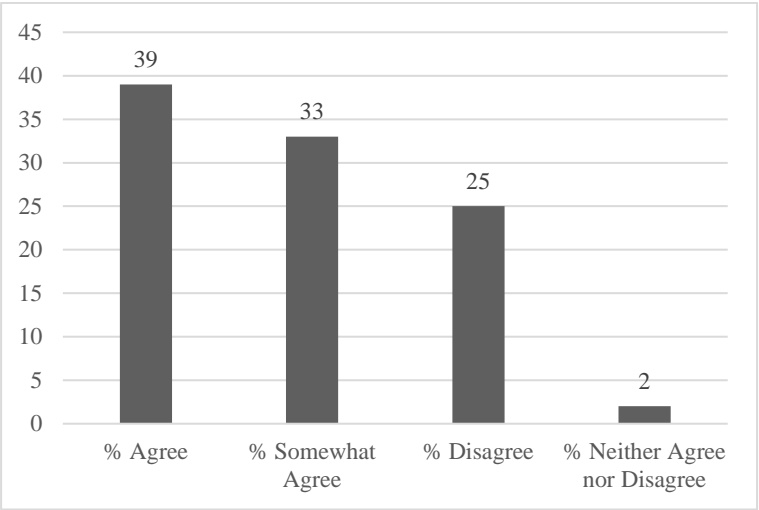
However, removing the moots from the seminars also meant removing the peer-observation component from the assessment. This created a concern that the moots would no longer be anchored to ‘to a larger task or problem’,³⁰ and would limit the student’s opportunity for reflective observation. As a response, a structured peer review element was introduced into the assessment in the second year. Peer review allows students to take responsibility for their own learning and builds

³⁰ Savery and Duffy’s first IPC.

confidence through experience in the ‘essential task of allowing students to become self-learners’.³¹

Again, students were asked about the benefits of observing other students’ mootings.

Figure 4
Observing other students undertaking the mooting assessment enhanced my knowledge of the subject and was a worthwhile exercise (2017)



A stronger majority (71 students) agreed outright that observations of other moots enhanced their knowledge of the subject and were a worthwhile exercise. Twenty-seven students either disagreed or were ambiguous about the proposition. Despite it being peer *review* rather than peer *observation*, student comments reflected similar concerns about the benefit of observing moots in regards to learning substantive content. Common to the feedback was that students felt that whilst they learnt much about the practice of mooting and advocacy, they learnt less about the topic itself. It is likely, therefore, that the addition of the words ‘was a worthwhile exercise’ had the effect of prompting students to comment on the benefits of observation in relation to the development of advocacy skills and familiarisation with the process of mooting. It is unlikely that the higher results reflected a greater appreciation of the substantive content of the moots as the students now only observed one other topic.

³¹ Keith Oldfield and Mark Macalpine, ‘Peer and Self-assessment at Tertiary Level — An Experiential Report’ (1995) 20(1) *Assessment & Evaluation in Higher Education*, 125.

Peer reviewing helped me to critically evaluate and think about others' advocacy skills but i learnt nothing about the topic from watching someone else moot (perhaps that is just my learning style though).

Anonymous student 2017

I found that during the peer assessment I was more focused on how my peers were speaking and how they were responding to questions than gaining a better understanding of their allocated topic.

Anonymous student 2017

The only reason that observing other students didn't really enhance my knowledge was because the participant in the moot I watched were unsure of their topic so I did not gain any knowledge of the topic.

Anonymous student 2017

After the first two years of the pilot a number of concerns remained. It was unclear whether students were learning about the substantive content of the whole subject from the observation of other moots. There was little doubt that they were fully engaged with their allocated topic, but the moot was designed to encourage learning in other topics also. Was this really being achieved? Whilst useful for increasing the students' appreciation of a moot's structure, procedures and advocacy skills, peer observation and review did little to enhance the student's substantive knowledge because it was overly dependent on observing student's self-motivation to adequately prepare and too exposed to the detrimental effects of a poorly executed moot.³² Peer observation will certainly be beneficial in circumstances where the focus is on advocacy skills but where, as in this case, the primary objective was student engagement with, and understanding of, substantive content, its benefits are questionable.

Exacerbating this concern was the fact that in the second year, students were only observing one other moot, which meant that they were no longer exposed to the full chronology of the hypothetical administrative law matter. The move away from the in-class peer observation model negatively impacted the ability of the students to situate the moots in a larger hypothetical problem, which further weakened the integrative nature of the assessment as students were not able to appreciate the whole hypothetical scenario, or the 'larger task or problem'.

These issues were addressed in the third year through the introduction of the integrated CP model, which was described in the 'Format and Design of the Mooting Assessment' section, above. The integration of the mooting assessment into the weekly seminars in the

³² Cf Andrew Lynch, 'Packing Them in the Aisles: Making Use of Moots as Part of Course Delivery' (1999) 10(1) *Legal Education Review* 83. Although Lynch experienced a number of similar issues with peer observation, he concludes: 'Overall, I would suggest that the experience of spectating moots at UWSM has been a valuable one. It is educationally sound and, despite student protestations at the time and the occasional sleeper in the audience, the survey results indicate that there are benefits to be gained by those students who are prepared to devote a little preparation and energy to making the most of their spectating role.'

form of group problem-solving and practice moots, which were assessable for CP, ensured that the nature of the moot assessment remained experiential. It was integral to the assessment design that the student's experience of the moot was still anchored to the *whole* subject. The students were able to use the seminars to reflect on how the moot affected their understanding of the subject and to transform that knowledge into new conceptions of administrative law (ie, Kolb's 'abstract conceptualisation').

B *Topic Allocation and Seminar Integration*

In the first two years of the pilot, students were allocated different topics across the semester. A number of the students' comments in these first two years reflected a perceived difference between the level of difficulty of the moots, based on topic.

As the weeks went on the facts and the grounds for review got more complex and harder to argue in the moot...I feel like the earlier the week you had the less complex it was, therefore this may be perceived as an advantage over students who were towards the end of the session.

Anonymous student 2016

I think the moot gives an unfair advantage to some students in the exam because different students have focused on different topics in more depth and some of the weeks might not be assessed in the final exam...Student's (sic) also wouldn't prioritise a topic if they know it is not going to be assessed in their individual assessment.

Anonymous student 2017

The perception of advantage based on topic was overstated, but understandable. Student comments demonstrated little appreciation of the potential disadvantage of performing moots in the first or second week of the assessment, regardless of the perceived 'difficulty' of the topic. Further, a presumption that moots on merits review is 'easier' than judicial review is misleading because although merits review is more 'facts-focused', presenting legal arguments on law and fact rather than on legal principle can be alien to law students. 'Difficulty' of topics will also tend to be highly subjective. Comments regarding different topics having a higher benefit in the exam were based on assumptions about exam topics and a lack of understanding about exam design or how marking moderation.

That said, it is acknowledged that moots on topics about judicial review will likely assist students appreciate broad principles of statutory construction and the way the relevant statutory scheme interacts with the common law. It is for this reason that judicial review topics are to be preferred for the moot over more discrete topics such as standing and merits review.

Some student comments also expressed concerns that by performing the moot on only one topic, the moot was not particularly helpful in other topics, despite the peer observation and review elements in the first two years.

The moot was only helpful in addressing the material of the specific week that you were allocated to.

Anonymous student 2017

It was a really good way to learn about a certain topic in an indepth (sic) manner, but the whole notion of admin law is really bewildering and swamps you quickly so i think maybe a moot regarding 2+ topics conjoined may assist this?

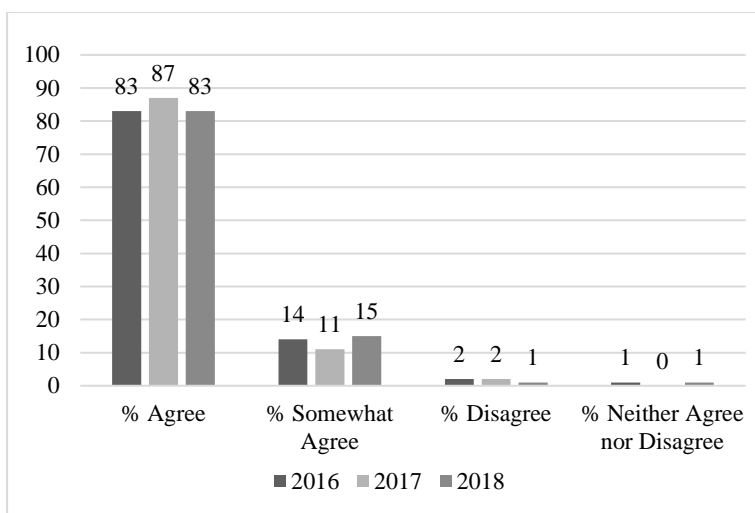
Anonymous student 2017

In the third year of the pilot all students mooted on the same topic within a three-week period and as discussed above, the remainder of the topics were integrated into the seminars as chronological problem questions/practice moots, which were assessed for CP.

In all three years of the pilot the students were asked to rate how they felt the moot impacted their understanding of their topic, and of the subject overall.

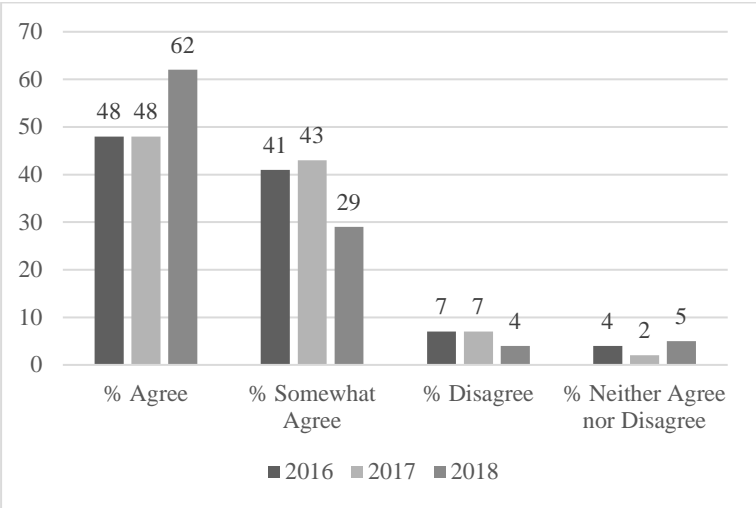
Figure 5

The mooting assessment enhanced my knowledge of my allocated topic



It is unsurprising that in each year of the mooting pilot, a substantial majority of the students (43 students in 2016, 86 students in 2017, 45 students in 2018) felt that the moots enhanced their knowledge of their allocated topic. However, the majority of students who clearly felt that the mooting assessment enhanced their knowledge of the subject overall was, also understandably, lower.

Figure 6
The mootings assessment enhanced my knowledge of the subject



It is interesting to note that the results for 2016 and 2017 are very similar (50 students agree or somewhat agree, six students disagree or ‘neither’ in 2016; 97 students agree or somewhat agree, nine students disagree or ‘neither’ in 2017), despite the fact that in 2017 the students were only viewing one other moot, and therefore, one other topic. This supports the conclusion that students were commenting on the benefit of learning advocacy skills *and* substantive knowledge. In 2018, a jump of 15 per cent in the number of students who clearly agreed that the assessment enhanced their knowledge of the subject overall (34 students agreed, 16 somewhat agreed) is most likely explained by the integration of the mootings scenarios into the seminars. The linking of the scenarios to class participation allowed for a return to the exposure and interaction of the chronology of an administrative law matter.

The opportunity to practice mootings scenarios during seminars, not just by answering questions but also by allowing students to present their cases in a legitimate adjudicative setting, was paramount to allowing myself, and from what I heard, others, to understand what was required of us in future mootings experiences, as well as in helping instil a sense of comfort and confidence in what was a previously alien topic.

Anonymous student 2018

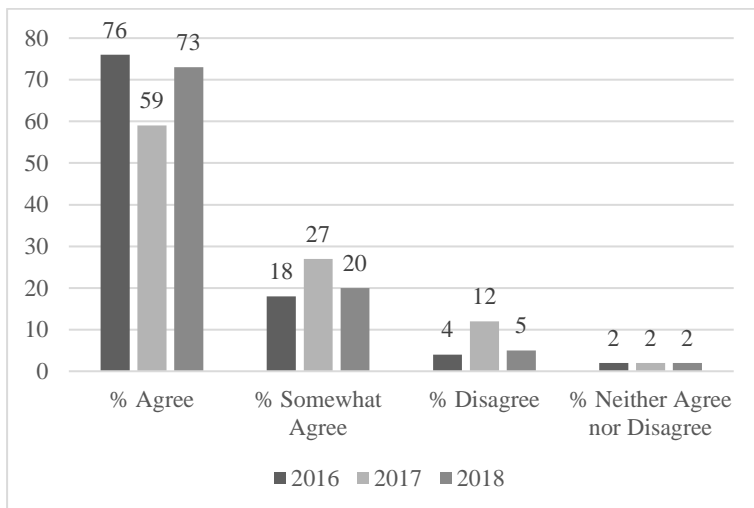
C Oral Submissions, Advocacy Skills and Questions from the Bench

In each year of the mootings assessment pilot, students were asked to make oral submissions, which included being questioned about their submissions from the ‘bench’. Questions from the bench are an integral part of mootings because it gives the adjudicator the chance to test the capacity of the students to respond to legal and factual issues in a

flexible and dynamic way. In each year of the pilot students were asked whether they considered the questions ‘fair’.

Figure 7

The questions from the bench were fair



Although a clear majority of students (48 students in 2016, 84 students in 2017, 51 students in 2018) in each year agreed or somewhat agreed that the questions were fair (which is, it is acknowledged, an ambiguous term), a common theme amongst the comments was a perceived inconsistency in the level of difficulty of the questions asked.

Found that one person in the group always got given a really difficult question from the bench, which was a little unfair.

Anonymous student 2016

I feel like some adjudicators were nicer than others. While I appreciate having tougher questions and adjudicators etc I feel like this resulted in some people being marked harsher than others.

Anonymous student 2017

I received the hardest/ most difficult question in the room, which was agreed amongst all of us. Although I managed to think a solid/ confident answer up on the spot this was not reflected in my mark. My comment said 'good confident answer to my question' however I got 7/10 for my answer. My mooting partner whose question was much easier and less challenging to answer received the same mark. Very unfair marking here.

Anonymous student 2018

The perception of fairness and consistency based upon an individual student's assessment of the difficulty of the question is unreliable. The fact that an individual student did not understand a question does not mean that it was more difficult than other questions. It may be that other students understood the question, or that the adjudicator's questioning style made the question appear difficult, or straightforward. Similar to

a courtroom where the individual judge interacts dynamically with the parties, subjectivity and variation in adjudication style and types of questions asked are inevitable. Importantly, not only does the interaction with the adjudicator preserve the authenticity of the task,³³ the complexity of the environment that the students must function in at the end of the learning is ensured.³⁴ Whilst it may be true that some questions are more difficult than others, self-awareness by the adjudicator and marking moderation will generally help counteract any actual negative impact on marks.

It is noted that there was a considerable dip in the perception of the fairness of questions from the bench in 2017, which may have been impacted by the personal style of one of the adjudicators. In that year the subject was taught by three teachers, two of whom were long term faculty members and one who was a first-time sessional lecturer on leave from a large law firm. Anecdotally, the feedback from students was that this teacher's questioning style was intimidating and possibly not appropriate for second year law students who had not had experience in mootng before.

Some comments indicated that a few students struggled with issues that are prevalent in all advocacy settings, regardless of context. Examples include:

I was asked questions from the bench before I was allowed to finish a point, in which I would have answered the question within the next 1-2 sentences, therefore questions were asked to (sic) early.

Anonymous student 2017

I think it would have been beneficial to wait until the end of the moot to ask questions because the questions made it hard to get back into the flow of the content and were a little bit disruptive, but then again I can see how this would be effective in preparing students for future moots.

Anonymous student 2017

In regards to questions from the bench I was entirely thrown off track. I had prepared very well and knew every case from the topic. However, I was then asked a hypothetical question...which completely threw me. Firstly because I didn't understand the question as it was phrased incorrectly and secondly because I hadn't prepared for hypothetical scenarios that weren't in the facts.

Anonymous student 2018

Other students commented positively on the challenging nature of the questions:

I also believe that this form of assessment task has been the most effective in requiring me to understand deep-level knowledge in my moot topic area assigned for that week, as I needed to be across all issues to answer questions from the bench.

Anonymous student 2016

³³ Savery and Duffy's third IPC.

³⁴ Savery and Duffy's fourth IPC.

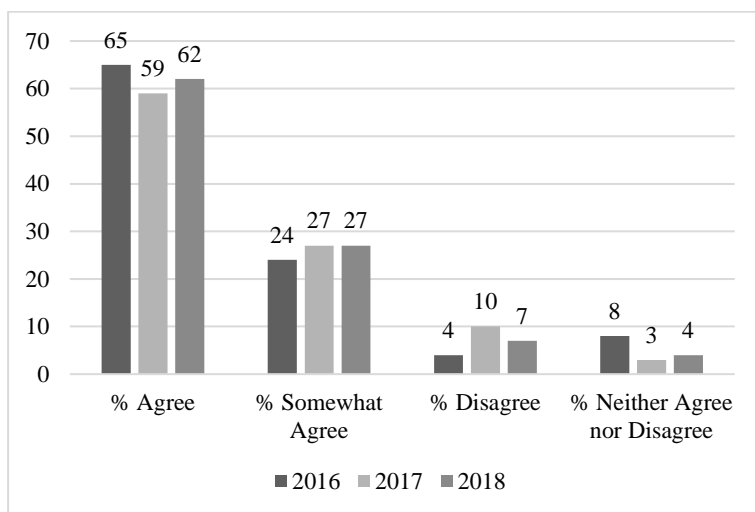
Questions were strict and we were approached like lawyers - good.

Anonymous student 2017

Overall, a majority of the students in each year (45 students in 2016, 85 students in 2017, 49 students in 2018) agreed or somewhat agreed that the moot enhanced their advocacy and mooting skills.

Figure 8

The mooting assessment enhanced my advocacy and mooting skills



One issue that potentially impacted both oral submissions and written submissions was the ability, or the lack thereof, to rebut arguments. The ability to rebut the other side's arguments had not been included in the assessment design due to time and administrative constraints. However, a small number of students made the comment that they would have liked the opportunity to rebut the other side's arguments.

Found it a little tricky being the respondent in the written submissions as we had no knowledge of what the appellants would argue. So we had to blindly rebut arguments we thought were possible. Was easier in the oral submissions as we had received the appellants' arguments so we had a better idea of what path the argument would take.

Anonymous student 2018

Allow students to respond to oral submissions by the opposing students rather than only their written submissions to be able to further demonstrate their understanding of the subject

Anonymous student 2018

D *Written Submissions*

Although some moots eschew written submissions, they are an important part of a moot assessment because they demonstrate the students' ability to research and present considered written legal arguments as a collaborative group.

In the first year of the pilot, tribunal and court-based templates were used for written submissions. Although they provided a sense of authenticity, some students found them confusing. Consequently, it was decided that they detracted from the objective of the task, which was to research and present written legal arguments, and were replaced with generic moot templates. Comments from students reflected some confusion about how to write 'good' submissions, which likely reflected the fact that most of the students were in their second year of law school and had not produced written legal arguments in this form before.

The written submission part confused me and I am not sure if that was because I didn't properly understand or if it wasn't fully explained.

Anonymous student 2016

More explanation of how to write written and oral submissions would have made this assessment much less stressful and would have allowed for better learning of the actual topic. It was difficult to figure out the correct way to structure these submissions and this detracted from the time we had to use the actual material effectively.

Anonymous student 2017

Although in every year of the pilot resources about moot and advocacy skills were made available to the students, some students still felt more direction was needed in regards to written submissions.

I also really think, and so do a lot of others that I had discussions with, that a lot more guidance is needed for the written submissions.

Anonymous student 2018

E *Group Work*

Group work assessments are a contentious issue for many university students. A common complaint about group work is that one or more students did not put in equal effort or 'brought the group down' by not being as capable as other members of the group. In the first year of the pilot the moots were marked as a group assessment and both team members received the same mark for all elements of the moot. Unsurprisingly, some students did not like the group marks.

group work and marking creates situations where students get significantly lower or higher marks due to partner performance, this is bad

Anonymous student 2016

It is acknowledged that there are disadvantages in marking as a group, especially when students can have no input into or control over

aspects of other student's work, such as oral advocacy. However, in each year of the mooting assessment students were able to choose their own team members, which should have helped alleviate issues with group dynamics.³⁵ In the second and third years of the pilot, students received an individual mark for the oral component of the moot and a group mark for written submissions. Whilst some students thought this arrangement worked well, others simply did not like group marks.

The marking method is good; the combined mark for written and singular mark for spoken reflects each individual contribution better than most group assessments.

Anonymous student 2018

I also felt that each individual should have done their own written submissions and received a mark for these and their own oral submissions and questions from the bench. Not really fair that someone else can bring you down or not put in the work and you are forced to pick up the slack.

Anonymous student 2018

The issue of group marks will continue to be a contentious one for many students. However, the ability to collaborate effectively in a group is an essential element of constructivism because it provides an opportunity to 'test our own understanding and examine the understanding of others as a mechanism for enriching, interweaving, and expanding our understanding of particular issues or phenomena'.³⁶ Group collaboration is also an essential skill of advocacy and it is therefore appropriate that the written submissions are marked as a group because students have an equal opportunity for input and effective communication, negotiation and collaboration.

VI WORKLOAD IMPLICATIONS FOR STAFF AND ADMINISTRATIVE ISSUES

Perhaps the greatest challenges of the mooting assessment, which were largely invisible to students, involved the administration of the moot and the management of workload implications for the staff involved.

Scheduling the moots in relation to when the relevant topic was taught and taking into account assessment deadlines, along with other administrative pressures proved challenging. In the first two years of the pilot, the moots were held the week after the seminar and lecture for the relevant topic. Although the students were expected to engage in their own reading and research (and had sufficient time to do so) some students felt that this was not enough time.

³⁵ See, eg, Lynch for his experience on the positive attitude students take to being able to choose their team members in group work situations. Lynch, Lynch, *Why Do We Moot?* (n 6) 87–8.

³⁶ Savery and Duffy, *Problem Based Learning* (n 9) 32.

It would be better if we had learnt the content then had 3 weeks to prepare. I didn't understand the content when I taught myself but it was much clearer after my seminar. Unfortunately I only had 6 days after my seminar to develop my knowledge for my moot.

Anonymous student 2017

In the third year of the pilot, the moots were held across a three-week period. The lecture for the relevant topic was released one week before the written submissions were due. Again, some students felt that they did not have enough time to prepare their written submissions.

I found it unfair that we were assessed on topics learnt in Week 8 when the submissions were due on the Saturday at the end of week 8. This meant that in spite of the fact that we received the assessment in week 7, we were unable to do any substantial and well-thought out work on the assessment until after our classes in week 8, due to a lack of understanding about the topics.

Anonymous student 2018

The second administrative challenge involved written submissions and distribution. In the first two years the subject coordinator emailed each team separately with the opposing sides' written submissions. With cohorts of approximately 189 and 243 students respectively, this was a time-consuming task. In the third year, students were asked to send each other the submissions via Moodle, the online learning platform. However, the message system did not allow for attachments, which was an oversight that was only picked up close to the time for submissions.

The third administrative issue involved the scheduling of the moots. The first year of the pilot was the simplest in this regard as the moots were held inside seminars and students formed teams within their seminar group. In the second year written 'sign up' sheets were placed outside of the subject coordinator's office. Whilst this worked reasonably well, transferring the handwritten sheets to a database was time-consuming. In the third year an internet poll that produced its own spreadsheet was used. Besides a small number of issues involving student error this mainly worked, but was still a relatively cumbersome process.

Finally, teaching workload became more challenging once the moots were removed from the seminars in the second year of the pilot. Moots now took place outside of the seminar time and although marking of the oral components was undertaken during the moot, it was an unavoidably lengthy task, especially for sessional lecturers with large teaching loads.

VII CONCLUSION AND FUTURE DIRECTIONS

The Administrative Law moots were designed to expose students to 'real life' practices of administrative law in a way that encouraged an appreciation of the nature and chronology of an administrative law matter. The moots were also designed to ensure that all students were

engaged in the entirety of the moot assessment in order to encourage a sense of cohesion in the subject. Taking those objectives into consideration, the following discussion outlines future amendments to the assessment, which reflect ongoing challenges and opportunities, and finally, considers whether the moots were successful in creating cohesion in administrative law.

Timing

Whilst there is no intention to change the scheduling of the moots from outside of the weekly seminars (within a given block of time), student feedback regarding the adequacy of time to prepare has been taken on board. In 2019, written submissions were due three weeks after the topics had been lectured and discussed in seminars.

Questions from the Bench

In order to minimise overt inconsistencies between the adjudicators, in 2019 adjudicators were provided with ‘bench books’, which contained detailed guidance on procedure (eg, how many questions should be asked per student etc) as well as example questions. It is important, however, that there should be no attempt to ‘control’ how questions are asked in an environment that involves individual mooters and adjudicators engaged in a ‘conversation’.

Rebuttals

As Keyes and Whincop state, ‘A hallmark of good advocacy is the ability to demonstrate the weaknesses of an opponent’s case.’³⁷ In recognition of the importance of the rebuttal in increasing the authenticity of the moot, an oral rebuttal element was introduced in 2019. However, Keyes and Whincop warn that ‘If a student has a limited period of time, an unknown quantity of which will be occupied by questions, a student is at a loss to know how much to say in response to the opponent’s case.’³⁸ Taking into account concerns around time constraints and the need to ensure quality of arguments, the moot teams now comprise three students, instead of two. Two team members make submissions on identified issues and a third team member rebuts the arguments of the other team, based on both their written and oral submissions. The purpose of this configuration is to encourage closer group collaboration and ensure authenticity of the legal ‘argument’, as well providing students with the opportunity to test ‘ideas against alternative views and alternative contexts’.³⁹

Resources and Training

Common to the feedback from students across all three years of the pilot was a concern that they were not provided with enough information about the procedures and expectations of mooting. In 2019, this concern was somewhat addressed through the provision of greater

³⁷ Keyes and Whincop, *The Moot Reconceived* (n 20) 23.

³⁸ Ibid.

³⁹ Savery and Duffy’s seventh IPC.

online resources and a submission writing workshop that was embedded in a seminar. From 2020 onwards, resources and training will be bolstered by a face-to-face/recorded lecture dedicated to mooting and advocacy skills.

A New Campus

In 2018, UOW's law school commenced at its new campus in Liverpool, in South Western Sydney ('SWS'). In 2019, the first group of SWS law students undertook administrative law. As the SWS cohort was comprised of only 27 students, the decision was made to utilise video conferencing in order to provide the SWS students with the opportunity to moot against their Wollongong counterparts. The objective of using videoconferencing instead of face-to-face moots was to encourage inclusivity across the campuses and to challenge the SWS students to engage with other students beyond their own small (and tight-knit) group. The video conference moots brought some technical challenges but were overall successful in counteracting the siloing that can occur when students study the same degrees across different campuses.

Workload Implications

A number of administrative measures have been implemented in order to help keep workload and administration manageable. These measures include:

- Increasing the mooting teams to three students, which has significantly reduced the number of moots required; and
- No longer requiring teachers to give written feedback on the oral component of the moot. Feedback will be given orally to individual students at the conclusion of the moot; and
- Further streamlining of the moot scheduling procedure. Alternative online scheduling tools will be trialled in order to find the most efficient and least time-consuming option.

Were the moots successful in creating cohesion in administrative law? In answering this question, we need to understand whether the moots were a worthwhile exercise that introduced students to a dynamic, engaging way to study and importantly, to *understand* administrative law in a cohesive way that connects what is learnt from the page and in lectures to what happens in the 'real world'. Frankly, this is difficult to quantify. An analysis of student results, based on final exams, provides no real difference between the years prior, during and after the moot pilot. However, exam results cannot provide a valuable insight into outcomes that they were not designed to assess and are influenced by a various unrelated factors that impact student performance, including lecture delivery, reading materials, and students' academic motivation, collaboration, and personal issues.

The most reliable determinant of the success, or otherwise, of the pilot, are the participant students. In the first two years of the pilot 48 per cent of the students agreed that the mooting assessment enhanced

their knowledge of the subject. This figure jumped to 62 per cent in the third year, when the moot was restructured to optimise students' active engagement with the entirety of the hypothetical scenario. It is reasonable, but not conclusive, to hypothesise that the final incarnation of the assessment had a positive impact on students' overall understanding of administrative law in a way that encouraged a sense of cohesion in the subject. More conclusive is the observation that the majority of students' 'real life' advocacy skills in administrative law were enhanced by the assessment.⁴⁰

The Administrative Law moots are a work in progress, but student feedback provides encouragement that they are indeed, worthwhile.

The moot was a fantastic way to bring this curriculum to life, and personally, this really helped solidify my learning in this subject.

Anonymous student 2016

I think the moot experience is AMAZING for learning purposes — not only helps us learn the weeks content extensively, but helps to put it into context/practice, and assists in our practical learning as well.

Anonymous student 2017

Overall, I really enjoyed it. Definitely my favourite assessment this entire session and probably of my law degree. I recognise the benefits it imparted and am thankful for the structure.

Anonymous student 2018

⁴⁰ Eighty-nine per cent of students in 2016, 86 per cent of students in 2017, 89 per cent students in 2018.