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THE REAL DEAL: USING AUTHENTIC ASSESSMENT TO PROMOTE STUDENT ENGAGEMENT IN THE FIRST AND SECOND YEARS OF A REGIONAL LAW PROGRAM

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I INTRODUCTION

Recent reports into university students' experiences indicate that student engagement with on-campus life is decreasing.[1] The last decade has seen full-time students progressively spending fewer days on average on campus and fewer hours in class each week. The *First Year Experience in Australian Universities* report stated that this trend is attributed to a significant rise in the proportion of full-time students engaged in paid employment.[2]

A key question, then, is how universities can effectively engage with students who are increasingly absent from campus in order to provide the type and kind of relationship that fosters learning. One strategy promoted by the literature is the use of assessment to leverage student engagement with their studies, with the teacher and

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        The authors would like to thank the participants in the study, including the first- and second-year academics and the law students, who freely and generously gave their time and experiences, which form the basis of this article.
[1]   Richard James, Kerri-Lee Krause and Claire Jennings, *The First Year Experience in Australian Universities: Findings from 1994 to 2009* (Griffith University, 2010) 11; Australian Council for Education Research, *Doing More for Learning: Enhancing Engagement and Outcomes — Australasian Survey of Student Engagement* (2010) 3. There are also several independent studies carried out by universities on the increased lack of engagement by students: see, eg, Lillian Corbin, Kylie Burns and April Chrzanowski, 'If You Teach It, Will They Come? Law Students, Class Attendance and Student Engagement' (2010) 20 *Legal Education Review* 13.
[2]   James, Krause and Jennings, above n 1, 42.

with each other.[3] Within the context of law schools there have been calls for more engaging, authentic assessments.[4]

Three preliminary questions are relevant here. Firstly, what does it mean to be 'engaged' from the perspective of a student? Secondly, what is 'authentic assessment' and how is it linked to student engagement? Thirdly, what are the specific learning and teaching outcomes being sought within the discipline of law, which assessment should demonstrate'?

'Student engagement' has been defined in a range of ways, including 'the time spent on campus or studying, to in- and out-of-class learning experiences that connect students to their peers in educationally purposeful and meaningful ways'.[5] 'Authentic assessment' is 'a form of assessment in which students are asked to perform real-world tasks that demonstrate meaningful application of essential knowledge and skills.'[6] These concepts will be discussed in detail in this article.

The essential knowledge and skills which graduating law students should possess have most recently been framed by the *Standards Statement for the Bachelor of Laws* as six 'Threshold Learning Outcomes' (TLOs). In December 2010, the Council of Australian Law Deans endorsed the six TLOs for the Bachelor of Laws:

- TLO 1: knowledge;
- TLO 2: ethics and professional responsibility;
- TLO 3: thinking skills;
- TLO 4: research skills;
- TLO 5: communication and collaboration; and
- TLO 6: self-management.[7]

The TLOs use language consistent with the outcomes and benefits associated with student engagement and authentic assessment. The relevance of this point is that the TLOs signal the importance of student engagement and the importance of legal education as it relates to how it will be used after university.

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[3] Ibid 29.
[4] Sally Kift, 'Organising First Year Engagement around Learning: Formal and Informal Curriculum Intervention' (Paper presented at the Inaugural Pacific Rim First Year in Higher Education Conference: Dealing with Diversity, Melbourne, 14–16 July 2004).
[5] James, Krause and Jennings, above n 1, 39.
[6] Jon Meuller, *Authentic Assessment Toolbox* (2011) <http://jonathan.mueller.faculty.noctrl.edu/toolbox/whatisit.htm#looklike>.
[7] Australian Learning and Teaching Council, *Learning and Teaching Academic Standards Project: Bachelor of Laws — Learning and Teaching Academic Standards Statement* (Department of Education, Employment and Workplace Relations, 2010). The TLOs are the result of the task set by the Australian Qualifications Framework Council, *Australian Qualifications Framework* (1st ed, 2011) <http://www.aqf.edu.au/Portals/0/Documents/Handbook/AustQuals%20FrmwrkFirstEditionJuly2011_FINAL.pdf>, which anticipated that outcomes would be described for each level of qualification.

This article considers the existing literature on student engagement and authentic assessment and the way it has been applied and experienced at an Australian regional law school. Specific issues considered include the students' choice of whether or not to use authentic assessment (as opposed to more traditional assessment); their experiences of that use; and how ensuing discussion of those experiences has led to fine-tuning of the use of authentic assessment as a means of student engagement.

II Linking Student Engagement with Authentic Assessment

The literature clearly links authentic assessment with engaging students in the learning process. Sacks identified the link between student engagement and an authentic teaching and learning environment:

> If an experience seems real, the beneficial effects on students are likely to be several. Students have more interest in the subject matter, and are better motivated to learn. They work harder, and pay closer attention to what is happening. They tend to learn things at a deeper level, and thus to remember them longer.[8]

Ramsden identified that the link between 'engagement' and 'assessment' also had an impact upon the quality of learning:

> Assessment plays a key role in determining the quality of student learning. If students perceive that their learning will be measured in terms of reproducing facts or implementing memorised procedures and formulae, [in pursuit of that goal] they will adopt approaches that prevent understanding from being reached.[9]

Rogers stated that students will not achieve a 'deep learning approach' unless they have been 'internally motivated to learn to satisfy their own interest or curiosity'.[10] The implication is that to be engaged requires a motivation from within the student. Meyers asserted that one method of engaging students was through the use of authentic assessment.[11] According to Brill and Park, one of

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8   Howard R Sacks, 'Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility' (1968) 20 *Journal of Legal Education* 291, 294, quoted in Anne Hewitt, 'A Critique of the Assessment of Professional Skills' (2007) 17 *Legal Education Review* 143, 148.

9   P Ramsden, *Learning to Teach in Higher Education* (Routledge, 1992) 67, 182, quoted in Nicolette Rogers, 'Improving the Quality of Learning in Law Schools by Improving Student Assessment' (1993) 4 *Legal Education Review* 113 at 115. Rogers reported findings similar to Ramsden and concluded that 'more important than any other contributor to the learning process is our assessment strategies'.

10   Rogers, above n 9, 114.

11   N Meyers, 'How to Use 5 Curriculum Design Principles to Align Authentic Learning Environments, Assessment, Students' Approaches to Thinking and Learning Outcomes' (2009) 34(5) *Assessment and Evaluation in Higher Education* 565.

the indicators for 'engaged learning' is that assessments occur in authentic circumstances; that is, assessments have relevance to how the student will be using the assessed knowledge and skills once they have completed their formal education.[12]

The *Australasian Survey of Student Engagement* (AUSSE) did not directly correlate authentic assessment with student engagement, but did find a link between student engagement and 'enriching education experiences'.[13] Examples of enriching education experiences included degrees which incorporated workplace experience, internships or work-integrated learning.[14]

III STUDENT ENGAGEMENT

A *What Is 'Student Engagement'?*

Student engagement has been surveyed in the United States since the mid-1990s.[15] More recently, it has gained a profile in Australia,[16] particularly because of its association with institutional performance measures such as retention and progression of students.[17] The importance of student engagement is shown by its use as an indicator to measure the quality of learning and teaching in universities by the Australian Council for Education Research (ACER).[18] ACER

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[12] Jennifer M Brill and Yeonjeong Park, 'Facilitating Engaged Learning in the Interaction Age Taking a Pedagogically-Disciplined Approach to Innovation with Emergent Technologies' (2008) 20(1) *International Journal of Teaching and Learning in Higher Education* 70, 70.

[13] Australian Council for Education Research, above n 1, 25.

[14] Ibid 27. Indeed, in legal education, the most authentic assessment is the use of legal clinics. Legal clinics have been used for many years to consolidate legal knowledge and to allow final-year students to gain pre-practice experience: see Ben Boer, 'Australasian Law Teaching Clinic' (1989) 1(1) *Legal Education Review* 145; John H Wade, 'Preparing Lawyers for the Twenty First Century' (1992) 3(1) *Legal Education Review* 173; Jeff Giddings, 'Circle Game: Issues in Australian Clinical Legal Education' (1999) 10(1) *Legal Education Review* 33.

[15] A national survey of student engagement is carried out annually in the US: see *National Survey of Student Engagement* (2011) <http://nsse.iub.edu/>. The National Survey of Student Engagement (NSSE) was developed in the mid-1990s in the US to obtain data on undergraduate student engagement in both the US and Canada: see Australian Council for Educational Research, *Overview* (2011) Australasian Survey of Student Engagement <http://ausse.acer.edu.au/index.php?option=com_content&view=article&id=35:what-is-the-national-survey-of-student-engagement-nsse&catid=7:the-ausse-survey-instruments&Itemid=7>.

[16] See, eg, Elizabeth Stevens et al, 'Equity, Diversity and Student Engagement in a Law School — A Case Study Approach' (2006) 16 *Legal Education Review* 1, 3; K Krause and H Coates 'Students' Engagement in First-Year University' (2008) 33(5) *Assessment and Evaluation in Higher Education* 493; Kerri-Lee Krause, 'Engaged, Inert or Otherwise Occupied? Deconstructing the 21st Century Undergraduate Student' (Paper presented at James Cook University Symposium 2005 — Sharing Scholarship in Learning and Teaching: Engaging Students, James Cook University, Townsville/Cairns, 21–22 September 2005).

[17] Stevens et al, above n 16; Corbin, Burns and Chrzanowski, above n 1.

[18] James, Krause and Jennings, above n 1, 35.

carries out the AUSSE at 35 universities to provide those institutions with data to monitor and enhance education.[19] The 2010 AUSSE, *Doing More for Learning: Enhancing Engagement and Outcomes — Australasian Survey of Student Engagement* defined 'student engagement' as 'students involvement with activities and conditions likely to generate high-quality learning, [which] is increasingly understood to be important for superior education.'[20]

The *First Year Experience in Australian Universities Report* conceptualised 'engagement' as a function of 'the time, energy and resources students devote to activities designed to enhance their learning at university'.[21] The Report considered two activities to measure engagement: time spent on campus or studying; and learning experiences that connect students to their peers.[22] It concluded that students who more frequently interacted with their peers and academics were more likely to be engaged with their own learning.[23] The benefits of interaction with peers and academics have been reported by individual universities, including increased attendance at lectures.[24]

While focus on the importance of student engagement in higher education has grown in recent years, student engagement with campus life has decreased. The *First Year Experience in Australian Universities Report*[25] indicated that proportionally fewer students are attending lectures and tutorials or engaging with peers on a regular basis. In the context of first- and second-year law programs, particularly, this disengagement may have a significant impact on student retention.[26]

At the course or unit level, engagement involves the actions and responsibilities of both parties involved in the learner–teacher relationship — the academic and the student. For the student's part, it requires some initiating action, followed by a continuation of those activities. Academics are responsible for offering a range of activities with which the student can engage; for example, lectures. The academic is also responsible for offering assessment that is designed to maximise possibilities for engagement. This article focuses on authentic assessment as the activity the academic (law teacher) can offer to potentially maximise student engagement.

[19]   Australian Council for Education Research, above n 1.
[20]   Ibid 3.
[21]   See James, Krause and Jennings, above n 1, 35 and also discussed in more detail in the earlier report on the first year experience, Kerri-Lee Krause, Robyn Hartley, Richard James and Craig McInnis, *The First Year Experience in Australian Universities: Findings from a Decade of National Studies* (University of Melbourne, 2005) 31. Both reports are referred to because of their breadth of individual content.
[22]   Krause, Hartley, James and McInnis, above n 21, 31.
[23]   Ibid 87.
[24]   Corbin, Burns and Chrzanowski, above n 1.
[25]   James, Krause and Jennings, above n 1, 71.
[26]   Krause, Hartley, James and McInnis, above n 21, 43.

B *Why is Student Engagement so Important?*

Student engagement is an important issue for at least four reasons. Firstly, students are increasingly absent from campus. As discussed above, the research confirms that 21st century students are spending less time on campus because of employment and family commitments. This in turn reduces their ability to fully and effectively engage with their university commitments.[27]

Secondly, students are different from students of the past. Today's students have grown up in an 'interaction age', in which the internet and social networking has become increasingly important. Students use of and interaction with technology is vastly different to that of their predecessors.[28]

Thirdly, law schools have to compete to attract (and retain) students. In Australia, there are 33 law schools, with students paying over $8000 each year for four years.[29]

Finally, legal practice is in the midst of significant change, both in regional and global contexts.[30] These changes include the globalising economy; increased access to and use of information technologies; and an emerging workforce that has been influenced by these technologies. Prospective lawyers therefore need to engage fully with the value and relevance of 'legal education', not simply for the duration of their degree, but also as lifelong learners as they qualify and move into the practice of law.

Sally Kift has argued that it would be an almost impossible task for any law school to predict future changes to the profession fully, and to incorporate those changes into the curriculum.[31] Rather, the role of the law school should be to engage students in the teaching and learning process while providing the content of the curriculum.

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[27] See Lisa Westcott and Mandy Shircore, 'The Experience of a Small Regional Law School in Preparing Students for a Journey through Law' (2006) 13 *James Cook University Law Review* 81, 85, citing Craig McInnis and Robyn Hartley, *Managing Study and Work: The Impact of Full-Time Study and Paid Work on the Undergraduate Experience in Australian Universities* (Department of Education, Science and Training, 2002); Kift, 'Organising First Year Engagement around Learning', above n 4.

[28] Brill and Park, above n 12, 71.

[29] The estimated cost of attending law school is based on calculations of fees charged at the University of Southern Queensland and the University of Queensland.

[30] Richard Susskind, *The End of Lawyers: Rethinking the Nature of Legal Services* (Oxford University Press, 2008); Thomas D Morgan, *The Vanishing American Lawyer* (Oxford University Press, 2010); Stephen Mayson, *Law Firm Strategy: Competitive Advantage and Valuation* (Oxford University Press, 2007); Laura Empson (ed), *Managing the Modern Law Firm: New Challenges, New Perspectives* (Oxford University Press, 2007). See also Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1; Council of Australian Law Deans, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Charged and Changing Environment* (2009) <http://www.cald.asn.au/docs/altc_LawReport.pdf>.

[31] Kift, 'Organising First Year Engagement around Learning', above n 4, 1.

Through the process of engagement, students are more likely to experience a positive and fulfilling approach to the accumulation of the 'legal content' in their law degree. It is this aspect that needs to be sustained into the future to empower students to develop and add to their own lifelong, continuing legal education.

Students need to be aware of their role in engagement, and to be given opportunities to practise that engagement as undergraduates. If a student is motivated to learn — for example, if their curiosity prompts them to read broadly — by engaging in discussion and reflection, deep learning will result. Engagement enables students to see meaning and relevance in the subject matter.[32] Assessment is one opportunity for students to become engaged.

IV Assessment

Jones provides a series of indicators that relate to the existence of engaged learning. The indicators include: that teachers and students need to share a vision for engaged learning in which students assume the responsibility for learning; that students are motivated to learn and are energised by that learning; that tasks should be authentic, challenging and multidisciplinary; and that assessments be based in authentic performance.[33] Evident from this list is that engagement occurs when students participate in activities; authentic learning tasks and authentic assessment are included.

The choice of assessment (whether or not it is authentic) and its purpose are likely to be a reflection of the particular academic's philosophical and pedagogical approach to legal education. From the literature, there are three key conceptions of legal education: law as a liberal education; law as a training course for lawyers; and 'a mixed model that adopts an approach of intellectual training in the context of university with the expectation that most students will practise law'.[34] Of course, other more mundane factors will also play a part in individual academics' choice and perceived purpose of assessment. For example, limited resources may prompt an academic to choose assessment methods that allow for efficient marking processes.

In her study of a group of QUT law students and their motivation for studying, Nicolette Rogers found that '[a]ssessment was ranked the primary motivation for learning by a total 70 per cent of the students surveyed'.[35] For students, assessment defines the actual

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[32] P Ramsden, *Learning to Teach in Higher Education* (Routledge, 1992) 67, 182.
[33] Beau Fly Jones, *Designing Learning and Technology for Educational Reform* (North Central Regional Educational Laboratory, 1994).
[34] Lyndal Taylor, 'Skills Skills — Kind Inclusion and Learning in Law School' [2001] *University of Technology, Sydney Law Review* 8, 12.
[35] Rogers, above n 9, 118.

curriculum; students will learn only what they think they will be tested on.[36]

Given the centrality of assessment to student learning, assessment design that motivates students to learn as well as developing desirable disciplinary and professional graduate outcomes is key. Anne Hewitt has argued that, 'to improve education and student learning in "dramatic ways", assessment must be appropriately designed and implemented.'[37] In her article, she noted the limitations of traditional methods of assessment to assess skills such as professional and ethical judgement.[38]

The *Learning and Teaching Academic Standards Project: Bachelor of Laws — Learning and Teaching Academic Standards Statement* may be a useful guide to the choice of assessment because of its clear provision of the learning principles upon which legal education is based:

> In a changing and dynamic world, contemporary Australian legal education places an emphasis on the ability of law graduates to think analytically and creatively in approaching and generating solutions to legal issues, and to demonstrate an appreciation of the principles and values of justice and ethical practices. … The Bachelor of Laws provides a comprehensive foundation in the sources of law and fundamental areas of legal knowledge, together with the development of other relevant knowledge, skills and dispositions.[39]

The Statement adds that a law degree assists graduates to enter diverse professional and vocational fields. In this way, the law degree is recognised as a qualification that is more than preparation for working in a law office.

Clearly, assessment must be able to provide the appropriate mechanisms to deliver these outcomes.

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[36] Paul Ramsden, *Learning to Teach in Higher Education* (Routledge Falmer, 2nd ed, 2003) 182. See also Donna Cooper, 'Assessing What We Have Taught: The Challenges Faced with the Assessment of Oral Presentation Skills' (Paper presented at the 28th Higher Education Research and Development Society of Australasia Annual Conference, Sydney, 3–6 July 2005) 124, 125.

[37] Hewitt, above n 8, 143.

[38] Ibid 145.

[39] Australian Learning and Teaching Council, above n 7, 11. The approach endorsed by the Council of Australian Law Deans (CALD) is consistent with the emerging broader role for lawyers seen by leading law schools globally: see, eg, David B Wilkins, 'Lawyers as Leaders' (Paper presented at the 4th International Law and Ethics Conference, Stanford University, California, 10–12 June 2010). CALD's move to embrace the TLOs is also consistent with recent international reports on the importance of skills: see, eg, William Sullivan et al, *Educating Lawyers: Preparation of the Profession of Law* (Jossey-Bass, 2007) (the '*Carnegie Report*'), cited in Kift, '21st Century Climate for Change', above n 30, 7. Kift notes that central to the model for legal curriculum development is the concept of 'practical apprenticeship' — that is, students learning through participation in circumstances akin to practice, including case studies and clinics: at 15.

V AUTHENTIC ASSESSMENT

> Whatsoever one would understand what he hears, must hasten to put into
> practice what he has heard.
>
> — St Gregory the Great

Authentic assessment is not a new concept: as early as 1968,
Howard R Sacks was discussing the benefits of an authentic teaching
and learning environment.[40] It is also seen as an effective way of
contextualising the law and legal theory.[41]

As discussed in Part II, for assessment to be considered authentic,
it must be 'a form of assessment in which students are asked to
perform real-world tasks that demonstrate meaningful application
of essential knowledge and skills'.[42] It also 'entails utilising tasks
as closely related as possible to those that would be involved in
the profession to which the degree is orientated.'[43] Donna Cooper
asserts, simply, that assessment is authentic where it 'replicates what
students will be required to do in the work place'.[44] A more nuanced
definition is provided by Guilikers, Bastiaens and Kirschner:

> [a]n assessment requiring students to use the same competencies, or
> combinations of knowledge, skills and attitudes that they need to apply
> in the criterion situation in professional life.[45]

Authentic assessment broadens the role of assessment beyond
simply grading students to incorporate social, cognitive and reflective
processes of learning.[46] Authentic assessment is based on criteria that
have been developed or negotiated with students to ensure that they
understand the nature of the task and how it will be marked. It ensures
that students have opportunities to develop the critical thinking and
problem-solving skills needed in professional situations, as well as
the cognitive and performance skills relating to graduate attributes.
Common to these definitions is that authentic assessment relates to
the 'real world' and includes not simply knowledge but also skills.
Further, it emphasises the integrated and coherent use of what has
been learned.[47]

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[40] Sacks, above n 8, 294.
[41] Kift, 'Organising First Year Engagement around Learning', above n 4.
[42] Meuller, above n 6.
[43] Mark A Baron and Floyd Boschee, *Authentic Assessment: The Key to Unlocking
Student Success* (Technomic Publishing, 1st ed, 1995); Grant Wiggins, *Educative
Assessment: Designing Assessments to Inform and Improve Student Performance*
(Jossey-Bass Education, 1st ed, 1998).
[44] Cooper, above n 36, 216.
[45] J Gulikers, T Bastiaens and P Kirschner, 'A Five-Dimensional Framework for
Authentic Assessment', (2004) 52(3) *Educational Technology Research and
Development* 67, 69.
[46] Ibid.
[47] Meuller, above n 6.

The notions of integration, coherency and the real-world context of authentic assessment reflect the learning outcomes recently identified by the Australian Learning and Teaching Council. For example, they reflect attributes to be achieved through TLO 3: 'thinking skills' — specifically, the definition of 'critical analysis', which was defined to include the practice of reviewing texts or arguments and being able to identity hidden biases and prejudices. [48]

The notes on TLO 3 describe the complexity of authentic, real-life situations — situations that are not neatly categorised as 'legal problems' but which are bundled together with non-legal issues, just like the problems lawyers face in practice. The contextual approach of authentic assessment can present students with complex challenges like these, and thus prepare them for real-life practice.

Mueller suggested that authenticity is a continuum that includes, to varying degrees, elements of performing a task, real-life situations, or construction or application of knowledge.[49] By comparison, traditional assessment involves merely selecting a response, contrived situations, or recall or recognition of knowledge. Mueller's ranking of 'knowledge' as an aspect to be assessed is consistent with the TLOs, one of six of which relates expressly to 'knowledge'; that is, TLO 1: 'knowledge' ('fundamental areas of legal knowledge'). Within that TLO, knowledge is to be viewed within broader contexts, including principles and values of justice.[50]

Poikela also included the elements of 'reflection and social knowing' as part of authentic assessment.[51] The TLOs — specifically, TLO 2: 'ethics and professional responsibility', and TLO 6: 'self-management' — incorporate 'reflection' as key aspects of the learning and teaching process.

The literature reveals the elements of authentic assessment and the indicators for student engagement. What is the reality of using authentic assessment as a means of student engagement?

VI METHODOLOGY

This part of the article reports on a study carried out on law academics with responsibility for teaching in the first and second years of a regional law program. The scope of the study considered the following topics: learning and teaching standards; student engagement; graduate attributes and skills; lifelong learning; the purpose of assessment; authentic assessment; and feedback and marking criteria. Student engagement and authentic assessment form

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[48]   Australian Learning and Teaching Council, above n 7, 18.
[49]   Meuller, above n 6.
[50]   Australian Learning and Teaching Council, above n 7, 12.
[51]   Meuller, above n 6, citing E Poikela, 'Developing Criteria for Knowing and Learning at Work: Towards Context-Based Assessment' (2004) 16(5) *Journal of Workplace Learning* 267.

the basis of this article; the remaining topics of the study have been explored in separate articles.[52]

The principles of the study included: to carry out the research in accordance with ethical research principles; to rely on the current legal education literature to inform the research instruments; to take a collaborative research approach within the law school with fellow first- and second-year academics; and to use the findings of the study as a means to provide feedback within the law school and to improve learning and teaching practices.

The study was based upon grounded theory.[53] One of the key purposes of the study was to obtain the reflections and the perspective of both law academics and students on aspects of learning and teaching in the first and second years of the Bachelor of Law program.

The study used a qualitative research method[54] that drew upon the following sources: (1) a pre-interview survey of the law school academics; (2) a follow-up semi-structured interview with those academics; and (3) a law student focus group.

The methodology for the research relied upon a legal education literature review. Out of that review, questions were developed for data collection instruments (the survey, interview and focus group) seeking input on the following: perceptions and reflections on assessment in terms of student engagement; graduate attributes and skills; lifelong learning; the purpose of assessment; authentic assessment; and feedback and marking criteria.

Sample questions that formed part of the pre-interview survey are in Table 1.

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[52] Refer to Pauline Collins, Toni Brackin and Caroline Hart, 'The Rocky Rhetoric and Hard Reality: The Academic's Dilemma Surrounding Assessment' (2010) 20 (1 & 2) *Legal Education Review* 157.

[53] See Anselm L Strauss and Juliet M Corbine, *Grounded Theory in Practice* (Sage Publications, 1997); Anselm L Strauss, *Qualitative Analysis for Social Scientists* (Cambridge University Press, 1987); Barney G Glaser, *Doing Grounded Theory: Issues and Discussions* (Sociology Press, 1998).

[54] The study was guided by design criteria discussed by Joseph A Maxwell, *Qualitative Research Design: An Interactive Approach* (Sage Publications, 2nd ed, 2005). The study relied upon other sources to assist with how the limited qualitative data could be dealt with, including Lyn Richards, *Handling Qualitative Data: A Practical Guide* (Sage Publications, 2005); Johnny Saldana, *The Coding Manual for Qualitative Researchers* (Sage Publications, 2009). The latter texts assisted with coding the data and determining preliminary themes from the semi-structured interviews with both the law school staff and the students.

Table 1: Sample of Academic Pre-Interview Survey Questions

> Rate on a scale of 1–10 (1 being 'not important'; 10 being 'very important') features that might lead to the engagement of students.
>
> 1. How important do you consider presenting students with opportunities for active learning?
> 2. How important do you consider providing opportunities for student reflection as a feature of engaged learning?
> 3. How important do you consider providing students with opportunities for managing their own learning process?
> 4. How important do you consider student engagement as an accurate measure of student learning?
> 5. How important do you rate the importance of the development of specific disciplinary knowledge?
> 6. How important do you rate the importance of developing competencies, attributes and skills?

The questions that formed the basis of the follow-up semi-structured interviews are in Table 2.

Table 2: Sample of Academic Follow-Up Semi-Structured Interview Questions

> 1. What is your understanding of authentic assessment?
> 2. Do you think authentic assessment improves student engagement and learning? If so, how?
> 3. Do you have some examples of authentic assessment you use that you can describe?

The questions that formed the basis of the questions for the students' focus group questions are in Table 3.

Table 3: Sample of Student Focus Group Questions

> 1. What do you see as the purpose of assessment?
> 2. How do assessments within courses across the program relate directly to course learning objectives described in each course specification and the materials?
> 3. Can you describe an assessment item you most enjoyed or found most stimulating? And why was this?

Ethics approvals for the above instruments were obtained from the University Office of Research and Higher Degrees prior to carrying out the research. Appropriate standards of confidentiality, privacy and anonymity were maintained.

A pilot of the pre-interview survey was carried out with three academics and adjustments were made. The finalised pre-interview survey was then sent out to the 13 first- and second-year law academics. All academics responded. The follow-up semi-structured interviews were then carried out with the 13 participating first- and second-year academics. The law school comprises 18 staff in total. In contrast, the participation rate from the students was considerably lower; only eight students participated, out of a possible 190.

All interviews were conducted by an independent interviewer funded from a learning and teaching grant. Transcripts of the interviews were written up as de-identified documents and made available to the researchers.

The qualitative nature of the study and the small numbers of participants involved has imposed limitations upon the data. Accordingly, this article cannot extend its conclusions beyond the immediate context of the study; however, it does provide the basis for the further study of staff perceptions about student engagement and authentic assessment.

VII FINDINGS FROM THE STUDY

A *How Important Do Academics Consider Student Engagement within the Learning Process?*

The results from the pre-interview survey completed by the 13 first- and second-year academics provided the following results (based on the ratings): 10 academics considered that 'opportunities for active learning' were important. Seven academics considered that 'opportunities for student reflection' were a feature of engaged learning. Again, seven academics considered that students should have opportunities for managing their own learning process. On the importance of 'engagement as an accurate measure of student learning', six academics stated it was; four stated it was somewhat important; and three were not sure.

In contrast, academics appeared to rate the importance of 'development of specific disciplinary knowledge' highly, with 11 academics stating that this was very important; the remaining two stating that it was somewhat important. Similarly, 12 academics ranked the 'development of competencies, attributes and skills' as very important, while the remaining academic ranked it as 'somewhat important'.

The results of the survey show that the academics ranked some elements of teaching above others. For example, the academics ranked providing students with discipline knowledge and developing competencies and skills for lawyers higher than the need for a more 'interactive' relationship that provided opportunities for active learning through authentic tasks, student reflection, and allowing

students to manage their own learning. This may be for a number of reasons, including the academics' own legal education experiences, which may have emphasised acquisition of knowledge at the expense of interaction and engagement; and the academics' philosophical approaches to legal education.

B *What Was the Purpose of Assessment Used by Academics at the Australian Regional University?*

Academics used a range of methods to assess first- and second-year law students, including written assignment papers, multiple choice tests, reports on court decisions, oral presentations, open book exams, take home exams and videoed debates.

Academics were asked what they considered to be the purpose of an assessment. Their responses revealed a range of reasons for assessing students, as well as each academic's own philosophical rationales for 'legal education'. The emphasis upon law as a liberal education was reflected in the following statement:

> The most important [purpose] is helping the students expand their knowledge, their engagement with the world around them, the lifelong learning process and … showing that they understand the content to a sufficient level to progress to the next stage.

This philosophical standpoint was also evident in participant's ambivalence about the importance of assessment for students:

> I actually hate assessment because students are so focused on their marks rather than learning and focussed on what's the assessment in this course, what do I have to do to get through it — minimum — that they totally miss engaging with the course.

Another theme that emerged was the view that assessment in law should focus on training students for the law profession:

> To equip them for further on when they are out in practise [sic] and just to see that not only have they learned but if so have they picked up skills to be able to research and for correct critical thinking.

Given the broad focus on critical thinking, this participant's response may reflect more of a 'mixed-model' perspective on the purpose of assessment as a component of legal education:

> People need to be benchmarked and they need to progress and they need to come out at the end and say they've learnt these things, we need to be able to tick the appropriate boxes. So the purpose of assessment for me is to actually engage the students in things that are actually important for me, and the main one is critical thinking. I think that [if] a student goes through a university degree and doesn't know how to critically question and think about something then the university has failed that student.

The place of traditional legal education and its influence upon guiding assessment choices is evident in response to the question: 'What factors do you take into account and what ultimately motivates you in determining assessment items for your course/courses?'

Law as authentic training for practice was evident in these responses:

> The desire to assess students in real life situations that they will confront when they begin to practice [sic].

> Ability to apply the legal concepts in the course material to an everyday practical problem.

Law as liberal education possibly motivated the following methods of teaching:

> My own enthusiasm and desire for students to learn something useful and to, in particular, learn how to question and think critically. Also to learn lifelong skills by being self-directed, sufficient and motivated. I like to challenge students to go outside comfort zones.

> The extent to which the assessment will allow students to show the knowledge and skills they have in their area; interesting assessment; optional assessment or flexibility in assessment; fair assessment.

However, the comments by academics below suggest that assessment might serve purposes other than 'law as liberal education' or 'law as training for practise'. This is evident in the phrases 'a source of self-reflection'; teaching as 'a process in its own right'; and 'position in course sequence':

> Assessment must build knowledge of the course; allow the student to find new knowledge for themselves beyond areas we have directly covered; involve some problem solving; provide opportunity for appropriate communication style; a source of self-reflection.

> Balancing the need for assessment as a formative tool and using assessment as a teaching process in its own right.

> The basic content of the course; its location in the program, including its year level and position in course sequence through the program; the skills being developed in the course; student workload; resourcing.

The purpose of assessment as related in some way to 'engagement' was reflected in less than half of the responses.

C *How Do Academics Use Authentic Assessment?*

As part of the study, three questions were asked of academics in the follow-up semi-structured interviews that related directly to authentic assessment:

1. What is your understanding of authentic assessment?

2. Do you think authentic assessment improves student engagement and learning? If so, how?
3. Do you have some examples of authentic assessment you use that you can describe?

From the pre-interview survey, five academics in the first- and second-year courses had not previously heard of authentic assessment. Of this same group, all nominated that they would like to attend workshops on the area, and to make further individual investigations. All of the academics offered their understanding of the phrase, authentic assessment. The comments below indicate that the academics had an instinctive understanding of the term:

> Assessment that is based on practical legal problems.

> Relating to the real world.

> Where students are given realistic contexts and authentic settings and set real-life learning tasks.

> Reflects activities that the student will have to be competent at in their workplace.

> It also involves assessment that engages the student in an active participation in real life experience — making it memorable and meaningful.

> Real world examples or problems.

The comments below indicated that the academics understood the concept of 'authenticity' and that they perceived an alignment with learning and teaching objectives:

> That the assessment tests the knowledge learnt and how it will be applied. That it is genuinely absorbed.

> Assessment that corresponds to the knowledge or information being taught and that genuinely attempts to ensure that students learn, retain, understand and can apply that knowledge or information … [A]ssessment with a practical basis.

> Assessment that genuinely aims to develop learning objectives as opposed to assessment that is structured because it is the usual way we do it or that it is traditional.

> That it is based in real life contexts related to the discipline being assessed which necessarily means that a multiplicity of outcomes, across discipline content, greater world perspectives, skills and attributes are assessed.

The pre-interview survey revealed that two-thirds of the academics considered that it was important that assessment tasks were perceived to be authentic in order to engage with students; only one academic stated that authentic tasks were not important at all in seeking to engage with students. This suggested that academics, even though they may not be aware of the literature on authentic

assessment, intuitively formed a link with its use to improve student engagement.

In response to the question, 'do you think authentic assessment improves student engagement and learning?', a third of the academics thought that authentic assessment did achieve this end. The reasoning behind the impact was expressed during the semi-structured interviews in terms such as:

> If a student believes that they are learning something that is useful and relevant to their later work and skills, they may be more motivated to learn.

Academics were asked to nominate examples of where authentic assessment had been used in the first- and second-year law programs. A number of examples were given, including court visits; advocacy exercises; essays requiring comparison between different legal traditions; oral debates; problem-based questions using legal files; and work-based assessment for an employer.

Given the broad definition of 'authentic assessment', each of the assessment items could be considered as being related to 'real world' experience. Lawyers do attend court, advocate and debate on behalf of clients, maintain legal files, problem-solve and prepare materials for their employer. The use of skills was also at the core of each assessment.

D   *What Do Students Think about Assessment?*

Law students from the study offered a range of perspectives on assessment in the first- and second-year of their law programs. Their perspectives ranged from viewing assessment as only testing acquired knowledge, to a broader view in which both knowledge and skills were being built.

> Assessment is more content driven in law. I don't know that they test our skills.

> What we're doing now is just having our heads crammed with knowledge which of course there's a lot to acquire in law and you can't acquire legal skills if you don't have it. It's your foundation.

The following response may indicate that, while the student saw assessment as largely content-focused, they also saw their degree from a broadly developmental perspective:

> The assessment has forced me to … analyse the content, see how it's all linked in together and probably form questions as a result of doing that.

When law students were asked to identify their 'favourite assessment', they chose assessments that enabled displays of knowledge, application of skills, and opportunities for finding new information. For example, an assessment that allowed students to

comment on a case which left open a key legal question elicited this response:

> It let me look at all sorts of things and really go into it to a depth that I wanted to go into it.

Assessment requiring a written counter-argument to what the student had previously presented orally led to this response:

> It was a real challenge. I had to come up with a convincing argument that I really sort of inherently didn't really believe in and see if I could convince somebody else.

To varying degrees, the study revealed some use of authentic assessment by academics, and some acknowledgement by both staff and students that it was a useful means of improving student engagement and learning.

VIII Negative Experiences of Authentic Assessment as a Means of Student Engagement

There appeared to a strong perception by academics in the study that students did not fulfil their role of engaging actively with the authentic assessment as had been anticipated (or hoped for).

Two key issues were apparent from the study: firstly, the perception that students opted for 'passive' assessment over 'authentic' assessment; and secondly, that students were ultimately motivated only by 'GPA'.

A *Students Chose the Most Traditional Assessment*

One academic who had incorporated authentic assessment into a course found that students, when given a choice of an authentic assessment over a 'traditional assessment', selected the latter. The academic commented on the value of authentic assessment:

> It definitely improves learning not only regarding the outcomes for the assessment item itself but throughout a course and degree program. Students understand better why they are doing what it is they are doing by real world exposure. As for engagement, I would have thought 'yes', but my experience with [the court visit] … I'm in a bit of a quandary because I've set a particular piece of assessment for students to have an option. Whether they sit at home and read through cases and write a case not [sic] on it or they can go and visit a court and I would have thought students would have jumped at the chance of doing a piece of assessment that actually took them into a courtroom environment and got them to sit down and comprehend what was going on and write that down and talk about perspective and I was disappointed at the number of students who took up that option.

In terms of assessment and engaging students and what it is that engages students, I'm at a loss … They did not engage, despite the fact they expressed excitement at the option, and chose to do the more passive assessment option, analysing three District Court decisions.

The comment reveals that authentic assessment as a method of promoting student engagement may require the identification of other aspects in order to be effective.

B *The Ultimate Motivation of Students is to Achieve 'Results'*

A second issue associated with the use of authentic assessment to engage students with learning and teaching is the perception that students are motivated solely by the grade point average:

There is a useful vocational attribute to [authentic assessment]. However overall no matter what the assessment is the thing that unfortunately mostly motivates students is just their mark — a desire to have a certain high grade point average. An example is one student presenting themselves to me at the beginning of the course and stating 'I am here to get a 6'. Motivating students in a world that rewards grading and marks rather than self-improvement and learning is always an uphill battle for committed academics.

C *Discussion of Findings*

The study showed that the choice and purpose of assessment reflected, to some extent, each academic's view of the purpose of legal education.[55]

The choice of assessment type by some academics was based on the idea that legal education is a training ground for practice. We do not question the validity of that view, but suggest that broader purposes for assessment might be also considered; that is, to engage students and to achieve particular learning and teaching outcomes.

There was a strong perception by academics in the study that, for undergraduate students, marks were the predominant motivation throughout their degrees, since high marks would lead to the best choice of jobs. Developing the ability to demonstrate a particular skill, attitude or attribute was considered less important to achieving this goal. If this perception has any foundation, it challenges the traditional view of legal education as a liberal education and vocational agendum.[56] Certainly, feedback from academics suggested that, while students may be more engaged by authentic assessment tasks, other factors or influences may need to be identified in order

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[55] Taylor, above n 34, 8.
[56] Ibid.

to improve the use of authentic assessment as a means of triggering student engagement.

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IX POSSIBLE FACTORS AFFECTING THE ASSESSMENT CHOICE OF LAW STUDENTS

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In response to the survey findings, three factors have been identified. Firstly, the resource-intensive nature of authentic assessment needs to be recognised. Secondly, authentic assessment needs to be integrated with the skill being developed, and thirdly, authentic assessment needs to be supported with a structured (or scaffolded) approach.

The *Learning and Teaching Academic Standards Project: Bachelor of Laws — Learning and Teaching Academic Standards Statement* supports the proposition that the teaching of skills be given greater emphasis in law schools.[57] Authentic assessment, with its references to the workplace and 'the real world' is one method by which these skills can be taught and assessed.

A *Authentic Assessment Can Be Resource Intensive*

Developing skills is resource-intensive — both in terms of students' and academics' time. This fact needs to be acknowledged and factored into both funding and assessment. Given the varied commitments on academic staff, teaching resources are limited. Any assessment method must consider the full costs, time and resource demands of the assessment, and whether these can be appropriately met by the institution and the academic staff.[58]

If authentic assessment is to be used as a means of fostering student engagement, universities and academics must recognise that additional resources are needed to support its use. Conversely, academics need to be supported to develop authentic assessment tasks that are less time- and resource-intensive.

B *Authentic Assessment Needs to Be Integrated with the Skill Being Developed*

The point at which skills are taught within a law program needs to be carefully considered. This may be a key factor in the success or failure of authentic assessment as a means of increasing student engagement.

A law student needs to be able gain basic skills and knowledge before they can acquire more complex skills. In order to prepare a

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[57]   Australian Learning and Teaching Council, above n 7. See also Cooper, above n 36, 124.

[58]   Hewitt, above n 8, 149.

law program that emphasises the development of skills, academics should understand how a first-year law student moves from being a 'fresher', or 'novice', to becoming an 'expert'.

Stefan Krieger's study into the development of a particular legal skill (legal reasoning), found that achieving 'professional expertise' involved a progression through four distinct levels.[59] The levels included the 'novice', who is at the early stages of acquiring expertise or basic competencies; the 'intermediate', who is above the novice level but below a sub-expert; the 'sub-expert', who has a generic knowledge but inadequate specialised knowledge of the area; and, finally, the 'expert', who acquires a specialised knowledge of the area.[60]

The research is important for a number of reasons. It suggests that there is pedagogical significance associated with the structuring of a law program to include ongoing development of learning opportunities. In the context of using authentic assessment to increase student engagement, Krieger's findings support the use of authentic assessment (and learning) as an important and necessary means by which students can apply their legal knowledge and fully develop their legal reasoning skills. Roger Burridge et al have written:

> A properly integrated assessment structure can also help create (or maintain) an authentic environment in which to practice relevant professional skill, thereby increasing the perceived relevance of the skills.[61]

In our study, some students noted their 'accidental' opportunities for authentic learning through personal circumstances:

> A lot of the stuff I'm already learning through the course I've been able to put into our business. So for me at the moment it's got an extremely practical application and I really enjoy that and I think sometimes I've wondered whether some of the younger students straight out of school get the benefit of being able to apply some of that given that lots of the stuff is experientially based.

Here, the student gained an unexpected chance to acquire expertise and, therefore, an opportunity to advance to the next developmental stage, but only because of their particular circumstances. The effective use of authentic assessment cannot be *ad hoc* or idiosyncratic, based on the chance that an individual's circumstances will foster engagement. Authentic assessment should be offered to all students consistently. It needs to be appropriate to the year level (developmental stage) of the law student, and it needs

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[59] Stefan H Krieger, 'The Development of Legal Reasoning Skills in Law Students: An Empirical Study' (2006) 56 *Journal of Legal Education* 332.

[60] Ibid 333.

[61] Roger Burridge, Dr Karen Hinett and Abdul Paliwala (eds), *Effective Learning and Teaching in Law* (Stylus Publishing, 1st ed, 2002) 52, 55.

to be supported by sufficient reference to content that may or may not have been acquired through authentic assessment.

Krieger's research also suggests that law students need to be tested again and again on the same materials as they progress through the law program. As students progress through the developmental stages, they are tested repeatedly on the same subject matters, but in an increasingly real-world context and with an increasing ability to apply what they have learned.

In our study, academics expressed impatience with what was perceived to be students' inability to grasp the significance and relevance of what they had learned:

> Many students miss the connections between what is taught … and what is required understanding and thus what is learned. This is because they are not either doing sufficient foundation learning and developing an understanding and or extracting information on a need to know, need to pass, basis only and or not making the connections between various pieces of information they may be separated by any number of pages in for example their introductory booklets. They can't see the forest for the trees. The more information you give them the harder it becomes for them to extract the essence.

> Some students are learning but without appreciating that they are learning.

> The meaning becomes evident once their learning is put to the real test in practice and in life in general. [W]hen being put to the test, outside of immediate assessment requirements at University, students appreciate why they did it: 'Oh that's why we did it at University. I should have paid more attention.' Mature aged students appreciate this a lot more from the outset.

This supports Krieger's approach that students need to be assessed and reassessed on the same knowledge but in a way that builds on that knowledge and its use in different contexts as the student advances. This approach presupposes an 'integrated' or 'holistic' structuring of assessment in a law program — it is within such a structure that authentic assessment might more effectively sit.

Clair Hughes has stated that:

> students can then progress sequentially and progressively from assessment tasks that have been firstly formative or developmental through to assessment tasks that become increasingly complex to including analysis and evaluation.[62]

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[62] Clair Hughes, 'The Modification of Assessment Task Dimensions in Support of Student Progression in Legal Skills Development' (2009) 19 *Legal Education Review* 133, 139. Hughes stated:

> In authentic, real-life contexts, students undertake actual tasks with varying levels of supervision depending on ethical, legal and safety factors. The value of such learning and assessment experiences can be determined by the extent to which students are involved in real situations, engaging with real problems, in real time frames.

Hughes made it clear, however, that she was not advocating that 'students should be limited to lower-level cognitive tasks in the early years of a law program. Rather, it suggests a useful sequence of activities for systematic skill development.'[63]

There is some support for Krieger's developmental, integrated and cohesive approach to acquiring legal skills in the study. When the academics were asked about the level of integration of assessment across other courses in the law program, seven replied that they wanted assessment to be integrated; for example:

> That the development of skills and discipline should be progressive and incremental from first to final year studies.

> That the assessment should have some relationship to each other.

Students also expressed concerns where they had not taken a full-time 'enrolment pattern', and so had had to 'fill the gaps' to catch up where there was assumed knowledge between courses. A precarious balancing of interests may be needed to support students who want to enrol part-time (in light of university strategic goals to provide flexibility). Students should be discouraged from enrolling in a program piecemeal, as opposed to engaging with a program that is integrated in terms of assessment and the development of skills.

C *The Need for Structure/Scaffolding*

Authentic assessment needs to be offered in conjunction with a structured approach and guidance. From Ingham and Boyle's research into the learning-style patterns among first-year students, it is evident that students have a strong desire for structure in their learning environment and that they prefer to work with an authority figure.[64] The need for structure can be met by guides and checklists created by both academics and by students with the assistance of academics.[65]

Ingham and Boyle's findings provided useful insights into the use of authentic assessment. For example, students' responses to the use of authentic assessment in one course expressed the need to have an opportunity to practise and become familiar with a particular task before being assessed on it:

> People who have never done [the type of assessment] need the opportunity to do one first, to learn from it before they are assessed on it.

With reference to assessment more broadly, students from the study consistently expressed a keenness for 'exemplars and

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[63] Ibid.

[64] Joanne Ingham and Robin A Boyle, 'Generation X in Law School: How These Law Students Are Different from Those Who Teach Them' (2006) 56 *Journal of Legal Education* 281, 286.

[65] Ibid 292.

templates'. They 'liked the structured approach to the use of ILAC [issue; law; application; conclusion]'. They wanted to know how to structure an assignment. One student commented:

> I want a good example of how this should be done and then I model myself on that.

The literature suggests that law student performance is improved through the use of structured and guided approaches. For example, where students are given a practice exam similar to the actual exam (enabling learning through practice), as well as feedback and explicit instructions on strategies, learning improves.[66]

Students might need to prepare an outline of how to approach authentic assessment task before actually completing it. The academic can provide clear guidance on how to complete the outline (for example, through headings) and the outcomes to be achieved. This supports students' need for guidance and structure. In turn, students can provide details on how they intend to carry out the task. This provides students with the opportunity to have input into the assessment task, to obtain early feedback and guidance, and to have a mark (appropriately weighted) for having completed the formative task.

Ingham and Boyle's research also indicated that students learn best while learning alone, rather than in pairs or groups. Only 10 per cent were peer-oriented.[67] This does not necessarily mean that group work should not be used as part of authentic assessment — that would result in students never extending themselves. Rather, an academic might explain to students why group work is 'authentic', in that they will need to work in teams in practice and working in groups at university may assist in developing interpersonal skills to manage working with others after graduation.

X   CONCLUSION

Student engagement is important for a number of reasons: the costs of poor retention and progression rates; competition among universities for students; the increasing number of students who may be physically absent, but still need to be academically engaged; and the need to create an environment in which students can gain necessary skills for employability. Universities need to actively and successfully engage with students and, conversely, to be able to identify those students who are disengaging from university life.

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[66]   Andrea A Curcio, Gregory Todd Jones and Tanya M Washington, 'Developing an Empirical Model to Test Whether Required Writing Exercises or Other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance' (2007) 57 *Journal of Legal Education* 195, 201.

[67]   Ingham and Boyle, above n 64, 286.

Law students and academics need to be on the same side in order to enjoy the most effective 'engagement' outcomes.

Specifically, there needs to be more opportunity for academics' education and training on student-centred learning, student engagement and authentic assessment. Resources need to be allocated appropriately so that academics can use authentic assessment and encourage students to opt for it over more traditional forms of assessment. Authentic assessment needs to be appropriately structured and supported by academics to maximise its benefits. Finally, assessing legal knowledge and skill development needs to take into account the developmental stage of students to be effective within an integrated law program.