

ARE THERE SIGN POSTS AT THE ENTRY GATE? HOW UTILISING GRADUATE QUALITIES, THRESHOLD LEARNING OUTCOMES FOR LAW AND INHERENT COURSE REQUIREMENTS MIGHT IMPACT ON SATISFACTORY COMPLETION OF A LAW COURSE

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ABSTRACT

As academics, we interact regularly with students with documented disabilities under the *Disability Discrimination Act 1992* (Cth) who present with Disability Access Plans ('DAPs') which state that adjustments to teaching and assessment methods may be required. We also encounter students who do not provide DAPs, but nevertheless experience significant difficulties in undertaking skills components of their studies due to issues such as stress, anxiety, procrastination, concerns about participating in public speaking, concerns about participating in small group work and difficulty meeting deadlines in a timely manner.

In this paper, we consider, first, the legal framework surrounding discrimination within the area of education, and then discuss the higher education regulatory framework including graduate attributes and Threshold Learning Outcomes. In 2013 a Statement of Inherent or Core Course Requirements for the Bachelor of Laws and Legal Practice Degree was developed by Flinders Law School as a pilot for an institution-wide project. We go on to explore the impact that this Statement may have in preparing students for the challenges they can expect in their law studies, and particularly in undertaking practical skills components of those studies, whether encountered within substantive subjects or during work placements or during participation in a legal clinic as an enrolled student or a volunteer.

Legal skills are now taught in many law schools and in every practical legal training course. This Statement and our experiences in developing it may therefore be of wider assistance in providing guidance for other law schools and practical legal training providers as they begin to develop their own models. It may also be of assistance to other disciplines where courses involve competency in explicit skills components.

I. INTRODUCTION†

Law schools across Australia are in the process of embedding and implementing their institutions' Graduate Attributes (or Graduate Qualities) and the recent Threshold Learning Outcomes for Law across their law degree courses. This brings an increasing focus on ensuring professional and legal skills are taught in a scaffolded way, that students are given opportunities to develop 'a broad and cohesive skills set over the course of the degree' and that these are

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explicitly assessed.¹ Some law schools go further and offer degree courses that incorporate not only a Bachelor of Laws (LLB) but also the necessary practical legal training components to allow graduates immediate qualification for admission to practice without the need for further study.²

Whether or not legal educators should be focusing on producing ‘work ready’ future lawyers, whether they should be training students to ‘think like a lawyer’ (whatever that might mean) or whether the purpose of legal education is to ‘develop a critical understanding of law and legal institutions’, is contested.³ As a law degree is of general application, it is often argued that it is not the role of law schools generally to ‘pre-empt’⁴ decisions of employers or admissions authorities. While many students who graduate from law school will never seek admission or go on to hold a current practising certificate, for those who do wish to enter legal practice, completing their law degree is only the first stage in their journey towards becoming qualified for admission as a legal practitioner. Students enter their law studies expecting that satisfactory completion will entitle them to apply for admission, whether immediately⁵ or after completion of further training, even if they never intend to seek to do so. Graduates from law schools offering LLB or JD degree courses cannot seek admission without completing a further qualification such as a Graduate Diploma or Graduate Certificate of Legal Practice from a practical legal training provider. Graduates from law schools offering LLBLP courses do not require further qualifications for admission.

Prospective students require clear information at an early stage about what will be expected of them during their studies and what will be required to satisfactorily complete the degree or course in which they are enrolled. Students must be able, before they enrol, to assess whether they are in a position to satisfy those requirements, rather than coming unexpectedly to an impasse later in their studies.

In our roles as Director of First Year Studies/Faculty Disability Academic Advisor (Leiman) and Associate Dean (Professional)/Director of Professional Programs (Ankor), we, like many other law academics, regularly interact with students with documented disabilities under the *Disability Discrimination Act 1992* (Cth) (‘DDA’) who present with Disability Access Plans (‘DAPs’), which state that adjustments to teaching and assessment methods may be required. We also encounter students who do not provide DAPs, but nevertheless experience significant difficulties in undertaking skills components of their studies due to issues such as stress, anxiety, procrastination, concerns about participating in public speaking, concerns about participating in small group work and difficulty meeting deadlines in a timely manner. As a pilot for an institution-wide project, in 2013 we developed a *Statement of Inherent or Core Course Requirements for the Bachelor of Laws and Legal Practice Degree* (‘the Statement’) offered by Flinders Law School.

In this paper, we consider first the legal framework surrounding discrimination within the area of education, and then discuss the higher education regulatory framework including graduate attributes and Threshold Learning Outcomes. We then go on to explore the impact that the Statement we have developed may have in preparing students for the challenges they can expect in their law studies, and particularly in undertaking practical skills components of those studies, whether encountered within substantive subjects, during work placements, or while participation in a legal clinic as an enrolled student or a volunteer.

1 Norman Witzleb and Natalie Skead, ‘Mapping and Embedding Graduate Attributes Across the Curriculum’, in Sally Kift et al (eds) *Excellence and Innovation in Legal Education* (Lexis Nexis, 2011) 31, 39.

2 For example, Flinders Law School offers a Bachelor of Laws and Legal Practice (LLBLP); Newcastle Law School offers a LLB + Diploma of Legal Practice (DLP).

3 See, for example, Robert J Condin, ‘“Practice Ready Graduates”: A Millennialist Fantasy’ (University of Maryland Legal Studies Research Paper No. 2013-48, 2013); see also Molly Townes O’Brien, Stephen Tang and Kath Hall, ‘Changing our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum’ (2011) 21 *Legal Education Review* 149, 152.

4 Australian Disability Clearinghouse of Education and Training *ADCET Fact Sheet: Employment: Can students be excluded from a course if they are unlikely to gain employment?* <<http://www.adcet.edu.au/View.aspx?id=4022>>.

5 For graduates of the LLBLP from Flinders University or from graduates of the LLB+DLP from University of Newcastle.

Legal skills are now taught in many law schools and in every practical legal training course. The Statement and our experiences in developing it may therefore be of wider assistance in providing guidance for other law schools and practical legal training providers as they begin developing their own models. It may also be of assistance to other disciplines where courses involve competency in explicit skills components.

II. DISCRIMINATION LAW FRAMEWORK

Disability is defined in the *Disability Discrimination Act 1992* (Cth) as follows:

“*disability*”, in relation to a person, means:

- (a) total or partial loss of the person’s bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person’s body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.⁶

Discrimination can be either direct⁷ or indirect.⁸ Direct discrimination can occur if ‘reasonable adjustments’ for the person with the disability are not made and this failure has the effect of treating that person ‘less favourably than a person without the disability ... in circumstances that are not materially different.’⁹ Requiring a person with a disability to comply with a requirement or condition that they cannot comply with because of their disability can amount to indirect discrimination,¹⁰ although this will not be the case ‘if the requirement or condition is reasonable, having regard to the circumstances of the case.’¹¹

Reasonable adjustment is defined in section 4:

[A]n adjustment to be made by a person is a *reasonable adjustment* unless making the adjustment would impose an unjustifiable hardship on the person¹² (emphasis in original) and ‘all relevant circumstances of the particular case’ are to be considered when determining whether unjustifiable hardship exists.¹³

Part 2 Division 1 of the *DDA* is entitled ‘Discrimination at work’. Employers are prohibited from discriminating against applicants, potential employees, and employees.¹⁴ ‘Qualifying bodies’ are prohibited from refusing or failing to confer a qualification on the ground of that person’s disability,¹⁵ but only in relation to the exercise of a power under a Commonwealth law.¹⁶ There are two exceptions in Division 1: ‘inherent requirements’¹⁷ and ‘unjustifiable

⁶ *Disability Discrimination Act 1992* (Cth) s 4.

⁷ *Ibid* s 5.

⁸ *Ibid* s 6.

⁹ *Ibid* s 5(2).

¹⁰ *Ibid* s 6(1), (2).

¹¹ *Ibid* s 6(3).

¹² *Ibid* s 4.

¹³ *Ibid* s 11.

¹⁴ *Ibid* s 15.

¹⁵ *Ibid* s 19.

¹⁶ *Ibid* s 12(6).

¹⁷ *Ibid* s 21A.

hardship'.¹⁸ The 'inherent requirements' exception applies only where the aggrieved person 'works for another person'.¹⁹

Part 2 Division 2 of the *DDA* is entitled 'Discrimination in other areas', and covers a variety of areas including education. Division 2 also contains an 'unjustifiable hardship' exception²⁰ but (unlike Division 1) does not contain an equivalent to the 'inherent requirements' exception.

Part 2 Division 2A of the *DDA* is entitled 'Disability Standards', and has the potential to 'exclude or limit the operation of' state or territory laws 'capable of operating concurrently with' the *DDA*. Section 31 allows the Minister to formulate disability standards in relation to any of the areas mentioned in Division 1 or 2. Part 2 of the *DDA* will not apply where 'a person acts in accordance with a disability standard'.²¹

The *Disability Standards for Education 2005* were formulated in 2005 and appear to exclude or limit the operation of state legislation prohibiting discrimination in the area of education.²² It is not unlawful to fail to comply with the Disability Standards if 'compliance would impose unjustifiable hardship on the provider'.²³ 'Disability' is defined in terms identical to that of the *DDA*.²⁴ The Disability Standards are expressed to 'clarify and elaborate the legal obligations [under the *DDA*] in relation to education'.²⁵ Their objects are similar to those expressed in the *DDA*:²⁶

The objects of these Standards are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Education providers cannot lawfully discriminate against a student with a disability, and cannot refuse to admit students to their courses, or subject them to any other detriment on the basis that the student has a disability, nor design curriculum likely to exclude students with a disability.²⁷ They must treat prospective students with a disability '*on the same basis* [emphasis in original] as a prospective student without a disability'²⁸ at admission and enrolment;²⁹ in enabling students to participate;³⁰ when designing their courses and programs;³¹ and in providing access to support services.³² The making of reasonable adjustments is crucial in whether or not a student with a disability has been treated on the same basis as a student without disabilities.³³ It is important to note that if the adjustments requested by students will compromise either the inherent requirements or components of the course or program being studied, or its academic integrity, then education providers may decline to make them.³⁴ It is important that:

information about entry requirements, the choice of courses or programs, progression through those courses or programs and the educational settings for those courses or programs is

¹⁸ Ibid s 21B.

¹⁹ Ibid s 21A(3).

²⁰ Ibid s 29A.

²¹ Ibid s 34.

²² Ibid s 13(3A).

²³ *Disability Standards for Education 2005* (Cth) s 10.2.

²⁴ Ibid s 1.4.

²⁵ Ibid Introduction.

²⁶ *Disability Discrimination Act 1992* (Cth) s 3.

²⁷ Ibid s 22.

²⁸ *Disability Standards for Education 2005* (Cth) s 2.2.

²⁹ Ibid s 4.2.

³⁰ Ibid s 5.2.

³¹ Ibid s 6.2.

³² Ibid s 7.2.

³³ Ibid see for example ss 2.2, 4.1, 4.2(3), 5.1, 5.2(2), 6.2(2), 7.2(5)-(6).

³⁴ Ibid s 3.4(3).

accessible to the student and his or her associates in a way that enables the student, or associates, to make informed choices.³⁵

III. LAW SCHOOLS AND PRACTICAL LEGAL TRAINING PROVIDERS

Law schools and practical legal training providers are both ‘education providers’ for the purposes of the *DDA* and the Disability Standards.³⁶ They therefore must ensure all students are treated on ‘the same basis’ at admission and enrolment;³⁷ in provision of opportunities for participation;³⁸ in course and curricula design;³⁹ and in the ability to access support services.⁴⁰ These obligations should be taken carefully into account where courses include compulsory skills components. Information about specific competencies or skills that students will be required to demonstrate to progress through either a LLB, LLBLP, GDLP or similar must be accessible to all prospective students prior to enrolment.⁴¹ The design of activities such as oral advocacy exercises, client interviews, and negotiations should take into account participation requirements of students with a disability.⁴² Substitute activities may need to be offered.⁴³ Out of classroom activities and extra-curricular activities such as mooting competitions⁴⁴ need to be considered carefully in order that they include rather than exclude students with disabilities. Course designers and subject coordinators must consider how students with disabilities can participate in ‘any relevant supplementary programs’ such as court visits, rounds tours, work placements or internships.⁴⁵

IV. HIGHER EDUCATION REGULATORY FRAMEWORK

The Tertiary Education Quality and Standards Agency (‘TEQSA’) is the national regulator of higher education in Australia, and is tasked with providing ‘quality assurance of tertiary education against agreed standards.’⁴⁶ The Australian Qualifications Framework (‘AQF’) ‘provides the standards for Australian qualifications’, including qualifications at level 7 (Bachelor Degree) Level 8 (Bachelor Honours Degree, Graduate Certificate and Graduate Diploma).⁴⁷ The objects of the establishment of TEQSA in 2011 included:

- (a) to provide for national consistency in the regulation of higher education; and
- (b) to regulate higher education using:
 - (i) a standards-based quality framework; and
 - (ii) principles relating to regulatory necessity, risk and proportionality; and
- (c) ...; and
- (d) ...; and
- (e) ..., and
- (f) to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia.⁴⁸

Made pursuant to s 58(1) of the *Tertiary Education Quality And Standards Agency Act 2011* (Cth), the *Higher Education Standards Framework (Threshold Standards) 2011* (Cth)

³⁵ Ibid s 4.3(c).

³⁶ *Disability Discrimination Act 1992* (Cth) s 4; *Disability Standards for Education 2005* (Cth) s 2.1.

³⁷ *Disability Standards for Education 2005* (Cth) s 4.2.

³⁸ Ibid s 5.2.

³⁹ Ibid s 6.2.

⁴⁰ Ibid s 7.2.

⁴¹ Ibid s 4.3(c).

⁴² Ibid s 5.2.

⁴³ Ibid s 5.3(e).

⁴⁴ Ibid s 5.3(f).

⁴⁵ Ibid ss 6.2–6.3.

⁴⁶ Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws: Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010), 1.

⁴⁷ Australian Qualifications Framework Council, *Australian Qualifications Framework* (2nd ed, 2013), 9.

⁴⁸ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) s 3.

(‘Threshold Standards’) sets out the responsibilities of education providers to provide information, support and equitable treatment to students.⁴⁹ These include obligations to provide ‘current, accurate, adequate and openly accessible information for prospective and enrolled students on all matters relating to their studies’ and including information on ‘content and assessment for each unit’ and ‘availability of student support’.⁵⁰ To meet Provider Course Accreditation Standards, education providers must ensure that admission criteria for a particular course are ‘appropriate for the ... required learning outcomes’, and ‘ensure that students have ... adequate skills to undertake the course of study successfully’.⁵¹ They must also ensure that ‘assessment tasks ... provide opportunities for students to demonstrate achievement of the expected learning outcomes’,⁵² standards are ‘benchmarked against similar accredited courses’,⁵³ and that they can demonstrate that students who complete the course of study have ‘attained key graduate attributes’.⁵⁴

V. GRADUATE ATTRIBUTES FOR LAW STUDENTS AND THRESHOLD LEARNING OUTCOMES FOR LAW

Graduate attributes (or graduate qualities) are those that a university expects will have been developed by their graduates at completion of their studies, and shape more detailed educational aims and learning outcomes specified for each degree and in turn each subject within that degree. These qualities can be a key measure for potential employers in assessing what they should be able to expect if they employ a graduate from a particular university. While the terminology varies across institutions, it commonly includes ‘personal development’ graduate attributes such as: ‘independent learner’, ‘problem solver’, ‘effective communicator’, ‘responsible’,⁵⁵ ‘professionalism’, ‘lifelong learning’;⁵⁶ ‘personal and intellectual autonomy’, ‘ethical, social and professional understanding’, ‘communication’,⁵⁷ ‘who are knowledgeable, who can apply their knowledge, who communicate effectively, who can work independently, who are collaborative, who value ethical behaviour’, and ‘who connect across boundaries’.⁵⁸ As Witzleb and Skead have identified, moving ‘to a law degree that explicitly maps and embeds [graduate attributes] and skills is a complex and challenging task’.⁵⁹ Citing the work of the ALRC,⁶⁰ the Carnegie Report⁶¹ and Kift,⁶² they go on to note that ‘[t]eaching of skills and inculcation of values in the context of the discipline content and across the curriculum provide the preferred environment for the development of professional capabilities and attitudes.’⁶³

In 2010, Professors Sally Kift and Mark Israel were appointed by the Australian Learning and Teaching Council as Discipline Scholars and given the task of producing a statement of minimum learning outcomes for the Bachelor of Laws degree program in light of the descriptors in the AQF.⁶⁴ The Threshold Learning Outcomes they have developed for the Bachelor of Laws (TLOs)⁶⁵ degree state six expected minimal threshold standards of performance for law

49 *Higher Education Standards Framework (Threshold Standards) 2011* (Cth) ch 1 s 6.

50 *Ibid* ch 1 s 6.3.

51 *Ibid* ch 3 s 3.1.

52 *Ibid* ch 3 s 5.1.

53 *Ibid* ch 3 s 5.5.

54 *Ibid* ch 3 s 5.6.

55 University of Wollongong, see <<http://www.uow.edu.au/about/teaching/qualities/index.html>>.

56 University of Southern Queensland, see <<http://policy.usq.edu.au/documents.php?id=13420PL>>.

57 University of Sydney, see <<http://www.itl.usyd.edu.au/graduateattributes/>>.

58 Flinders University, see <<http://www.flinders.edu.au/graduate-qualities/>>.

59 Witzleb and Skead, above n 1, 31, 34.

60 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000).

61 W Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (the ‘Carnegie Report’) (Jossey Bass, 2007).

62 Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1.

63 Witzleb and Skead, above n 1, 31, 37–8.

64 Sally Kift, Mark Israel and Rachael Field, above n 46, 3.

65 *Ibid*.

graduates, adding an additional layer of detail to more generic institutional graduate qualities. The TLOs for law are ‘broader than the existing academic requirements for entry into the legal profession’,⁶⁶ namely the Priestley 11.⁶⁷ Developed in consultation with professional and regulatory stakeholders,⁶⁸ like graduate attributes, TLOs have been linked to future employability of graduates.⁶⁹ The TLOs have been endorsed by the Council of Australian Law Deans,⁷⁰ and will guide the design of curricula and the structure of learning environments and activities within the various law degrees. They include *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*.

A scan of various LLB offerings suggests that a number of law schools are now embedding various skills into their curricula, possibly as a result of the move towards graduate attributes and the TLOs.⁷¹ The inclusion of skills teaching requires of students a different range of capacities than may be required to successfully complete another academic degree and thus the impact of Clause 3.4(3) of the *Disability Standards* will be of particular relevance for these schools as well as their teaching staff.

VI. INHERENT REQUIREMENTS: FOR STUDY OR FOR EMPLOYMENT?

‘Inherent requirements’ for the purposes of issues surrounding discrimination at work and the exception contained in s 21A, are not defined in the *DDA*, but in the view of the Australian Human Rights Commission, they need to be determined in the circumstances of each job and may include:

- the ability to perform the tasks or functions which are a necessary part of the job productivity and quality requirements
- the ability to work effectively in the team or other type of work organisation concerned
- the ability to work safely.⁷²

In the education context, it might be argued that inherent course requirements (such as those to which Clause 3.4 might apply) are those fundamental skills and abilities a student must be able to achieve to demonstrate essential learning outcomes and competencies of the course they wish to complete. Broadly, these may be categorised as: observations skills, communication skills, motor skills, behavioural and social skills, intellectual skills.

When educational institutions set out to develop statements of inherent requirements for their courses, Watts et al caution that, ‘the tertiary education sector must also clarify the limits of its responsibilities and seek discussions as appropriate’ with ‘the general community, the various professional and trade associations and state and federal legislatures’.⁷³ They go on to note:

in encouraging the universities to articulate the inherent requirements of their courses, it will ultimately also be necessary to examine the inadvertent role the universities may have

⁶⁶ Witzleb and Skead, above n 8, 31, 36.

⁶⁷ See Law Admissions Consultative committee, *Uniform Admission Rules 2008, Schedule 1: prescribed Areas of Knowledge* (2008) Law Council of Australia <http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUmiformAdmissionRules2008.pdf>.

⁶⁸ Kift, Israel and Field, above n 46, 11.

⁶⁹ Anna Huggins, ‘The Threshold Learning Outcome on self-management for the Bachelor of Laws degree: A proposed focus for teaching strategies in the first year curriculum’ (2011) 2(2) *The International Journal of the First year in Higher Education*, 23, 25.

⁷⁰ Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (2013), 4 <<http://www.cald.asn.au/media/uploads/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Ameneded%20to%20March%202013.pdf>>.

⁷¹ Examples are: UniSA Law School (legal drafting, negotiation, trial and civil litigation notebooks, critical incident reports, regular presentations); Melbourne Law School (Transactional law); QUT Law School (‘a unique balance between theory and practice’).

⁷² Human Rights and Equal Opportunity Commission, *Frequently Asked Questions: Employment*, (19 February 2003) <www.hreoc.gov.au/disability_rights/faq/Employment/employment_faq_1.html#questions>.

⁷³ Owen Watts et al, ‘Guidelines and Procedures to assist Universities to Examine the Inherent Requirements of their Courses (when accommodating students with Disabilities and/or medical conditions)’ (Report, Department of Education Training and Youth Affairs and Curtin University (2000) Volume 1, 13.

unwittingly assumed as the ‘gate-keepers’ for the professions. That role has occurred when the universities may have previously discouraged entry into a course on the basis that, due to a student’s disability and/or medical condition, he/she may not find employment in his/her chosen profession.⁷⁴

Finding employment as a legal practitioner in the legal profession is at minimum a three-step process. The first step is satisfactory completion of the relevant academic requirements, such as an LLB or JD plus a GDLP or GCLP, or an LLBLP. Achieving these qualifications is a statement to society that the graduate possesses the relevant legal knowledge, skills and competence necessary to undertake the role of lawyer. The second step is procedural – being admitted to practice, as a legal practitioner in the relevant jurisdiction. This second step requires the applicant for admission to satisfy the admitting authority that they possess not only the relevant and necessary educational qualifications, but also that they are of good character and are a fit and proper person to be admitted and enrolled as a barrister and/or solicitor. Admission is a statement to the wider world that the person is an officer of the Court, with all of the responsibilities and duties that brings, and is subject to regulation by the relevant legislative schemes and professional bodies, such as that jurisdiction’s law society or bar association and legal practitioners’ disciplinary processes. The third step is, of course, practical – obtaining that first ‘real job’ as a barrister or solicitor – which is particularly challenging in the current economic climate.

While many LLB graduates do not seek admission and never intend, or do, practise as a barrister or solicitor, where their law degree has been accepted as sufficient to entitle graduates to seek admission as a legal practitioner without the need for further training⁷⁵ they nevertheless have the qualifications necessary to take the second procedural step towards employment in the profession should they wish to do so. In this context, both the education provider and the admitting authority explicitly assume the role of gatekeeper in these first two steps, safeguarding the community and warranting quality standards of the profession. In the context of a law degree that does not immediately qualify a graduate for admission, the question that arises is whether, if the degree explicitly includes the teaching of skills, the university also acts as a gatekeeper for employment, having held out that its graduates possess those skills. As law schools reinterpret curricula to include skills, any existing statements of inherent requirements suitable for traditional academic degrees focusing primarily on Priestley 11⁷⁶ core subjects may require adaptation to include requirements that would previously have been relevant only to degrees providing students with access to admission. This can also inform the ongoing wider debate about the appropriate balance between content and skills within twenty-first century legal curricula.

If, at the commencement of their studies or at some stage during the course of those studies, law students cannot meet any inherent requirements particularly in relation to skills components, then it is important that they are made aware of the implications this may have in relation to the completion of their degree and their potential admission as soon as possible. While beyond the scope of this paper, it may also be worth considering whether failure by an institution to provide this information clearly to students prior to enrolment, or as soon as possible thereafter, may trigger a claim for breach of the Disability Standards and therefore the *DDA*, while also potentially amounting amount to misrepresentation or to ‘misleading or deceptive conduct’ sufficient to engage the provisions of the *Australian Consumer Law*.⁷⁷

74 Ibid.

75 As in the case of the Flinders Law School’s LLBLP – see Rule 2.4(b) of the *Rules of the Legal Practitioners Education and Admission Council 2004* (SA).

76 See Law Admissions Consultative committee, *Uniform Admission Rules 2008, Schedule 1: prescribed Areas of Knowledge (2008)* Law Council of Australia <http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUniformAdmissionRules2008.pdf>.

77 *Competition and Consumer Act 2010* (Cth) sch 2 *Australian Consumer Law* s 18(1).

VII. INHERENT REQUIREMENTS FOR SKILLS WITHIN A LAW DEGREE: A CASE STUDY

The LLBLP at Flinders Law School embeds practical legal skills throughout the degree, with client interviewing and negotiation being taught and assessed as early as first year. The law school has developed the following *Flinders Law School Statement of Inherent Requirements for the LLBLP* ('the Statement'). It is important to note that the Statement does not apply only to those students wishing to exit with an LLB.

Staff can use the Statement to assess whether, in light of the nature of the academic and skills requirements of their subject, requests by students with DAPs for specific 'reasonable adjustments' of teaching and/or assessment methods can be agreed to, or whether these are likely to compromise 'the academic requirements of the course or program, and other requirements or components that are inherent in or essential to its nature.'⁷⁸

The preamble to the Statement is set out below.

Flinders Law School offers a Bachelor of Laws and Legal Practice [LLB/LP] degree which meets external South Australian Legal Practitioners Education and Admissions Council accreditation requirements and provides graduates with the necessary qualification to be admitted as a legal practitioner in South Australia. Key legal practice skills are embedded and assessed in compulsory subjects throughout the LLB/LP degree.

Flinders Law School is committed to facilitating the integration of students with disabilities into the University community. Students with disabilities may be provided with accommodations in teaching and/or assessment methods provided such accommodations do not compromise academic and technical standards. The inherent (or 'core') requirements of a course are the fundamental skills and abilities that students must be able to achieve in order to demonstrate the essential learning outcomes of the course. This document provides prospective students with realistic information about these requirements so that they can make an informed judgement about their ability to fulfil them before enrolling in the course.

The LLB/LP degree has inherent requirements in four main categories:

- communication skills
- motor skills
- intellectual, conceptual, integrative and quantitative abilities
- behavioural and social skills.

The *Statement* goes on to define in more detail what is required under each of these four categories and why they are inherent requirements.

Communication Skills

The core communication skills for this course are:

- 1 The ability to clearly effectively and independently communicate in writing a knowledge and application of legal principles;
- 2 The ability to clearly effectively and independently communicate orally a knowledge and application of legal principles;
- 3 The ability to use effective oral and written communication to interact with others including the lay public, courts, government and other authorities and members of the legal profession, to a professional standard using language that is appropriate to the audience and context;
- 4 The ability to read, analyse and comprehend complex written legal and other material.

They are a core requirement of the course because the LLB/LP provides the qualification for admission as a solicitor in South Australia. Therefore, a student must be able to communicate appropriately, both orally and in writing, not only in relation to academic exercises, but also to demonstrate the competencies required of a legal practitioner. Those competencies include, amongst others, the skills of interviewing, oral and written negotiation, and court advocacy.

Motor Skills

⁷⁸ *Disability Standards for Education 2005* s 3.4(3).

⁷⁹ *Disability Standards for Education 2005* Part 7 and *Disability Discrimination Act 1992* (Cth) s 8.

The core motor skills for this course are:

- 1 The ability to physically attend on campus when required.

They are a core requirement of the course because the LLB/LP provides the qualification for admission as a solicitor in South Australia. It is accredited for that purpose by the South Australian Legal Practitioners Education and Admissions Council as an on-campus course, and is not therefore available online.

Behavioural and Social Skills

The core behavioural and social skills for this course are:

- 1 The behavioural and social attributes that enable a student to participate in a complex learning environment;
- 2 The ability to take responsibility for his or her own participation and learning;
- 3 The ability to deal with uncertainties in a constructive and professionally appropriate manner;
- 4 The ability to contribute to the learning of others in a collaborative learning environment, showing interpersonal skills and an understanding of the needs of other students;
- 5 The ability to work effectively both as individuals and as members of teams;
- 6 The ability to interact in a professional manner with others including students, staff, members of the lay public, courts, government authorities and members of the legal profession;
- 7 The ability to operate ethically and responsibly within any contextual framework;
- 8 The emotional health to utilise his or her intellectual abilities fully and to manage in stressful and emotionally traumatic situations;
- 9 The ability to recognise personal limitations and when and where to seek assistance or professional advice and support.

They are a core requirement of the course because the LLB/LP provides the qualification for admission as a solicitor in South Australia. Therefore, a student must be able to manage him- or herself and relationships with others not only in relation to academic exercises, but also to demonstrate the competencies required of a legal practitioner.

Intellectual – conceptual, integrative and quantitative skills

The core intellectual – conceptual, integrative and quantitative skills for this course are:

- 1 The ability to read, analyse, comprehend and integrate complex written legal materials;
- 2 The ability to critically evaluate argument;
- 3 The ability to reason and to synthesize legal knowledge in order to solve legal problems;
- 4 The ability to use basic quantitative skills;
- 5 The ability to conceptualise and use knowledge appropriate to the situation.

They are a core requirement of the course because the LLB/LP provides the qualification for admission as a solicitor in South Australia. A graduate therefore must have comprehensive knowledge of key areas of current law, including new and developing areas of law; an ability to use legal knowledge to plan, analyse and think critically, logically and creatively, and an ability to apply legal knowledge and skills in academic, clinical and legal practice settings.

These core communication skills do not necessarily require a student (or a lawyer for that matter) to be able to speak. Students who are deaf may seek reasonable adjustments to enable them including using support services⁷⁹ such as Auslan interpreters where appropriate, although in practice this may pose challenges when assessing skills components such as client interviews and oral negotiations. It is important to note in this context the inclusion in the Statement of the qualifying words ‘must be able to communicate appropriately, both orally and in writing, not only in relation to academic exercises, but also to demonstrate the competencies required of a legal practitioner.’

The value of this Statement is becoming increasingly apparent as it is used to provide explicit guidance and direction when responding to student requests for reasonable adjustments

80 Ibid s 4.2.

to teaching and assessment methods. We have recently received a number of requests from first-year students, several of whom are enrolled in combined degrees or who may have already completed another degree, for adjustments to teaching or assessment methods that require 'spelling and grammatical errors to be disregarded as far as possible for marking purposes', or that seek to substitute written assessment for what would otherwise be oral advocacy exercises. Using the Statement, and specifically as it relates to core communication skills, has provided an opportunity to discuss with students what will be expected of them, why it is expected and why development and mastery of these skills are crucial for successful future professional practice as a barrister or solicitor. It is important that this level of information is provided to students as early as possible in their course of studies, so that they can make decisions about their future careers accordingly. Arguably, the Disability Standards suggest that consultation with the prospective student and discussion with them about whether reasonable adjustments are possible may be required *before* enrolment.⁸⁰

Students with anxiety and other stress-related conditions present particular challenges when enrolled in an LLBLP degree or other courses requiring competency in specific legal skills. Including the 'ability to deal with uncertainties in a constructive and professionally appropriate manner'⁸¹ as a core behavioural and social skill has been a helpful signpost for in class discussions in substantive subjects about uncertainty in legal outcomes and the role of lawyers in constructing arguments for their clients even though they can give no assurances of successful outcomes in litigation.

For practical legal training components, such as execution of land titles office settlements, where students are being assessed on their capacity to manage in stressful situations or to operate responsibly within external imposed timeframes, requests for accommodation that include negotiation of extended deadlines may not be appropriate. Without the Statement, discussions about why adjustments may or may not be reasonable or appropriate can occur removed from a close connection with future practice, and leave already-anxious students with a perception that staff are obstructive or harsh. Where students are undertaking work placements, or in the process of organising these, making clear to them the necessity for sufficiently robust emotional health to manage potentially challenging situations is an early warning for these future practitioners, alerting them to the necessity of caring for themselves by recognising personal limitations and seeking assistance, advice and support where appropriate. Explicitly recognising this as a core skill from the very beginning of a student's course of study (and assuming it is embedded as an assessable skill and competency via the graduate qualities or the threshold learning outcomes) has the potential to allow them time throughout the degree to consciously develop and practice this in the context of the discipline of law. In this way, the Statement operates as a guide in both the curriculum planning process and for teaching staff, as well as for students.

VIII. CONCLUSION

We believe that an explicit *Statement of Inherent or Core Requirements* for the law degree can be a powerful tool in making clear to students the expectations and challenges inherent in not only the study of law but in future professional legal practice or other employment. By clearly signposting this prior to enrolment, and referring to those signposts throughout the degree, particularly during the course of any practical skills training, clinic involvement or work placements, law teachers can prepare students better to consider whether they wish to seek admission as a legal practitioner and can assist admitting authorities with their responsibilities as gatekeepers for the profession.

⁸¹ *Flinders Law School Statement of Inherent Requirements for the LLBLP* (Flinders Law School, 2013) 4.

