

USING SUSTAINABILITY TO INFORM RENEWAL OF THE LLB FOUNDATION CURRICULUM: KNOWLEDGE SKILLS AND ATTITUDES FOR THE FUTURE

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The discipline standards for law have coincided with a renewed focus nationally on student learning in higher education. In addition to threshold learning outcomes, higher education nationally and internationally is seeking to foster sustainability education. In this paper, we chart the evolution of an explicitly designed first year law program as it has used the conceptual approach of sustainability in tandem with the discipline standards to recalibrate the balance of lawyering skills, legal method and analysis, and reflectivity in the first year curriculum. Early uptake of transition pedagogies in the program's original 2005 design gives the authors some six years of experience on which to reflect, concerning student learning and the structure of and approach to curriculum design. This case study of curriculum renewal illustrates the tools and philosophy that underpin a refresh of the first year law curriculum seeking to engage in a bigger conceptual project, with the discipline standards in mind.

I. INTRODUCTION

In 2004 a small group of staff from the Townsville and Cairns campuses of James Cook University undertook a comprehensive review of the first year of the undergraduate law degree.¹ Engaging with the emerging literature on the importance of the first year experience to transition students to university studies, the team embarked on an ambitious program to develop an explicitly designed, holistic program which would integrate student support, content and skills.² Although not aware of it at the time, the first year program introduced in 2005, could fairly be described as a second generation first year experience.³

To the original design team, the new program would revolutionise the law students' experience. Retention rates would rise while fail rates would drop; students' skill levels at the end of first year would be vastly improved; students would be in a position to successfully complete the remaining years of their degree; and importantly, first year teachers would stop being blamed for all of the 'shortfalls' of the second, third and final year students.

While the first year team can certainly lay claim to improvement in some of these areas and making the learning experience more relevant, more explicit, more scaffolded and aligned for the first year student, the reality is that creation of the *perfect* student learning experience is an elusive, if not unachievable, goal. Yet despite the difficulties involved in sustaining a cohesive

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¹ For an overview of the first year experience design process see Lisa Westcott and Mandy Shircore 'The Experience of a Small Regional Law School in Preparing Students for a Journey through Law' [2006] *James Cook University Law Review* 81.

² Kerri-Lee Krause et al, *The First Year Experience in Australian Universities: Findings From a Decade of National Studies*, Australian Government, Department of Education, Science and Training (2005) Centre for the Study of Higher Education, University of Melbourne; Sally Kift, 'Organising First Year Engagement Around Learning' (Paper presented at the Inaugural Pacific Rim – First Year in Higher Education Conference: Dealing with Diversity, Melbourne, 14-16 July 2004) 2.

³ Second generation FYE is referred to as the stage in the development of FYE programs where the transition programs and transition pedagogies were more closely integrated into the curricula. See S Kift, K Nelson, J Clarke, 'Transition Pedagogy: A Third Generation Approach to FYE: A Case Study of Policy and Practice for the Higher Education Sector' (2010) *The International Journal of the First Year in Higher Education* 1, 1-20.

first year program, we continue to aim for something close to that ideal. For the evolution of the first year program does not start and end with its original design. It needs to be ‘enhanced by regular evaluation that leads to curriculum development and renewal designed to improve student learning’.⁴

The most recent evaluation of the first year program has been informed by a number of imperatives outside the transition pedagogies: refresh of all curricula at JCU in terms of its strategic intent and the consequent LLB refresh; contemporary themes in higher education nationally, of sustainability, Indigenous perspectives and internationalisation; and the threshold learning outcomes for law. This wider context has required a new strategy for curriculum design in the first year, beyond decisions focussing just on what skills and what content to include.

While there is now an almost overwhelming variety of indicia that require representation within a law curriculum, this article describes how the first year law team at JCU is approaching its curriculum design to deal with this complexity.⁵ In doing so the article introduces the philosophical foundations for the JCU first year program, and the contemporary issues that require resolution. It then shows how the use of a thematic or conceptual approach to curriculum design, through sustainability education, can resolve the challenges of complexity required of the LLB and also provide an overarching narrative around the first year of law to engage our students in the learning of law. It demonstrates how the discipline standards for law can assist in articulating the progression of student learning through the first year law degree and provide, by way of example, a detailed examination of how sustainability education and discipline standards are being incorporated to develop foundation literacy skills. Finally the article concludes that in the vast array of policies, standards and goals of the contemporary higher education agenda, an organizing focus for the first year curriculum can be a useful device (for both students and teachers) to promote coherence and understanding.

II. BACKGROUND TO THE FIRST YEAR PROGRAM

The original aim of the first year team was to develop a fully integrated first year educational package that implemented (across all subjects) constructive alignment of learning outcomes, content, teaching settings and assessment practices. By replacing two existing introductory subjects with four new introductory law subjects and introducing contract law into the first year curriculum, a range of skill development was carefully situated within each subject. Varied assessment tasks were designed to scaffold skill development and encourage the development of broadly based legal, technological, critical and emotional literacy of students. First year coordinators were appointed and a greater emphasis was placed on pastoral care and student engagement.⁶

In identifying the skills to be developed throughout the first year program, some attention was paid to the broad university graduate attributes, however greater emphasis was placed on what teachers within the school considered a completing first year student should be able to achieve. These included such skills as a capacity for directed self-learning, reading for comprehension, written and oral communication skills, interpersonal communication skills and teamwork, legal

⁴ Referred to as one of the six first year curriculum principles. See Sally Kift, *Articulating a Transition Pedagogy to Transition and Enhance the First Year Student Learning Experience in Australian Higher Education*, (Final Report for ALTC Senior Fellowship Program, Australian Council of Learning and Teaching, August 2009) 41.

⁵ This is part of a bigger project ‘Systematising Curriculum Design in the School of Law’ funded as an individual project through the JCU curriculum refresh - ‘Australia’s University for the Tropics’ through funding provided by the Department of Education, Employment and Workplace Relations Diversity and Structural Adjustment fund.

⁶ Kate Galloway and Rachel Bradshaw, ‘Responding to Changed Parameters of the Law Student: A Reflection on Pastoral Care in the Law School’ (2010) *Journal of the Australasian Law Teachers Association* 101.

research, problem solving, legal method and reasoning, critical analysis, value clarification and ethical awareness.⁷ While continued reflection and evaluation of the first year program has confirmed that these broad skills remain relevant, the first year team has struggled with determining the appropriate level required for first year students and how these skills fit more broadly within the degree as a whole. As discussed below, with the adoption of discipline threshold learning outcomes ('TLOs') in law and the introduction of the new quality assurance agency⁸ the first year group has a new framework within which to place and monitor these aspects of the first year program.

One of the most significant and original features of the first year program involved the horizontal alignment across all three first semester subjects of skills, teaching and learning settings, assessment and context / content through four common modules. The four modules included Ethical Orientation to the Law and to the Study of Law, Governance as a Conceptual Tool (Sources of Law), Governance through Adjudicative Law and Governance through Law in its Legislative Mode. Each of the subjects adopted the modules and (as closely as possible) taught the modules at the same time. So for example, during the exploration of Governance through Adjudicative Law, the subject *Legal Institutions and Processes* dealt with an overview of the judiciary, judicial reasoning, the court system and access to adjudication was undertaken. At the same time *Legal Research, Writing and Analysis* focused on skills in finding, researching and citing cases and preparation of case notes. In *Contract Law I* judicial activism was considered with, for example, the history of estoppel used to reinforce students' understanding of the development of equity and the doctrine of precedent. Aligning the context / content in this way encouraged the students to view the law as a unified discipline, and to appreciate that the law operates from a range of different perspectives and on varying levels, thus reinforcing concepts and ideas and enhancing understandings.⁹

While sustaining and improving pastoral care initiatives, skills development and assessment practices across the first year program has remained a high priority over the six years of the program's operation, maintaining horizontal alignment of content has proved difficult with changing staff and changing emphases. In the penultimate review of the first year program it was considered that content/context alignment had become contrived and had lost its meaning. Consequently while explicit alignment continued to be referred to in one of the subjects, the common use of modules across the first year subjects had been withdrawn from the program.

In part this reflects one of the primary challenges in sustaining the first year program; maintaining focus on the philosophy and methodology of the program curriculum in the face of multiple staff changes and a lack of buy-in from academic staff outside the first year. The present review of the first year program has sought to address these issues through the two contemporary issues in the law school: the discipline standards for law, and the refresh of the law school curriculum in terms of sustainability.

III. CONTEMPORARY CURRICULUM ISSUES

The Tertiary Education Quality and Standards Agency (TEQSA) established in June this year 'will be required to undertake evaluations of the quality of providers, provide information about

⁷ Westcott and Shircore, above n 1, 93.

⁸ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) as amended by *Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011* (Cth).

⁹ Westcott and Shircore, above n 1.

the quality of higher education and provide independent advice on standards, quality and regulation'.¹⁰ As part of the new regulatory structure, the Department of Education, Employment, and Workplace Relations (DEEWR) has mandated that discipline communities develop clearly articulated learning outcomes for their students. Assessment of performance against the defined standards 'must be efficient, transparent, sustainable and include external peer review'.¹¹ For the law degree, such a foundation has been achieved through the discipline standards.

The development of TLOs for law was completed by Kift, Israel and Field in late 2010.¹² The TLOs for law are said to 'represent what a graduate is expected to know, understand and be able to do as a result of learning'.¹³ The six TLOs cover (1) knowledge, (2) ethics and professional responsibilities, (3) thinking skills, (4) research skills, (5) communication and collaboration, and (6) self-management. The discipline scholars have provided explanatory notes which include the background of each TLO and guidance on terminology. The notes 'are intended to help stakeholders understand the meaning of the TLOs, and allow program coordinators and academics to develop and refine their curricula by stimulating ongoing discussion and reflection'.¹⁴ Discipline Scholar, Professor Sally Kift, together with the newly formed national network of associate deans (or equivalent) of teaching and learning in law, has also commissioned a series of good practice guides to provide guidance on the meaning and implementation of the standards.

In the JCU law curriculum refresh, the TLOs have been seen as an opportunity to integrate the entire degree within a clear framework. In addition, because they are not prescriptive (a criticism levelled by some¹⁵) this has provided the opportunity to interpret them to provide our own measure of what our students' capabilities would be. As Kift, Israel and Field point out,

Law schools may use a variety of ways to structure the learning environment to ensure graduates achieve the knowledge and skills set out in the TLOs to the requisite minimum/threshold standard. The activities which students undertake as part of their learning will doubtless be designed by each law school in the context of their own institution's learning and teaching mission and goals.¹⁶

The TLOs have provided us with a basis for review of the first year program, primarily around skills reflected in TLOs 2-6.¹⁷ While this has been a useful focus, the challenge has remained of how to design a distinctive curriculum that meets these requirements as well as Council of

¹⁰ Department of Education, Employment, and Workplace Relations, 'Developing a Framework for Teaching and Learning Standards in Australian Higher Education and the Role of TEQSA' (Discussion Paper, June 2011) 5 <http://www.deewr.gov.au/HigherEducation/Policy/teqsa/Documents/Teaching_Learning_Discussion_Paper.pdf>

¹¹ Department of Education, Employment, and Workplace Relations, 'Transforming Australia's Higher Education System' (2009) 32 <<http://www.deewr.gov.au/HigherEducation/Pages/TransformingAustraliasHESystem.aspx>>.

¹² Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academics Standards Project; Bachelor of Laws Learning and Teaching Academics Standards Statement*, Australian Learning and Teaching Council (December 2010) <http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf>

¹³ Ibid 9.

¹⁴ Ibid 11.

¹⁵ Joachim Dietrich, 'Law Threshold Lowers the Bar', *The Australian* (Sydney) 30 March 2011, <<http://www.theaustralian.com.au/higher-education/opinion-analysis/law-threshold-lowers-the-bar/story-e6frgcko-1226030258554>>.

¹⁶ Kift, Israel and Field, above n 12, 9.

¹⁷ Ibid 10.

Australian Law Deans Standards,¹⁸ (the 26) JCU graduate attributes,¹⁹ calls for increased emphasis on statutory interpretation,²⁰ contemporary evidence about the state of law students' wellbeing and its link to the way in which law is taught,²¹ and JCU's own focus on development of curricula in line with its 'tropical agenda' and its 14 themes for refresh of curricula university-wide.²² Attempting to map a curriculum that encompasses this increasingly complex array of elements has therefore become progressively more difficult and it became clear we needed a means to generate a more streamlined approach to curriculum. We found this within the framework of the institution-wide refresh of curricula.

Over the past two years, JCU has undertaken a university-wide refresh of curricula to align them more explicitly with the university's strategic intent. The primary driver has been the representation in curricula of the university's mission as the 'university for the tropics', but under this overarching theme lie 14 curricular dimensions²³ – three of which are conceptual approaches to discipline learning in their own right: sustainability, embedding Indigenous perspectives, and internationalisation.

Through two faculty projects, the LLB has been able to work to enhance its approaches to embedding Aboriginal and Torres Strait Islander perspectives, and to derive an understanding of the tropics that promises to impart some meaning for the discipline.²⁴ These ideas are being consolidated within the School of Law's own project to refresh its curriculum through a systematic approach to curriculum design.²⁵ Importantly however, a key feature of this refresh that is inspiring the first year program re-design, is the use of a conceptual theme that informs all teaching in the LLB and around which a narrative arc can provide students with a context for their learning of an otherwise atomistic learning experience.

In terms of the tropics, the curriculum refresh is founded on concepts surrounding the 'tropics of the imagination' and the discourses traditionally associated with the tropics. The *idea* of the tropics is a European one, often associated with the exotic but importantly also associated with a history of colonisation and empire, claims on environmental resources through land use and trade, and cultural dispossession.²⁶ A critical approach to these experiences, common within the tropical world, reveals the importance of sustainability in thinking about legal systems and their

¹⁸ Council of Australian Law Deans, *CALD Standards for Australian Law Schools* (formally adopted at CALD meeting 2009/3, Canberra, 17 November 2009).

¹⁹ James Cook University *Graduate Attributes – Undergraduate* <http://www.jcu.edu.au/policy/allatoh/JCUDEV_007031.html>.

²⁰ Law Admissions Consultative Committee *Statement on Statutory Interpretation*, 26 February 2010 <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=087B95D9-CC74-9539-0806-CAB072CB3E8A&siteName=lca>

²¹ Norm Kelk et al, *Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers* (Brain and Mind Institute, 2009) <<http://www.cald.asn.au/docs/Law%20Report%20Website%20version%204%20May%202009.pdf>>

²² James Cook University Curriculum Refresh, <<http://www.jcu.edu.au/curriculumrefresh/about/index.htm>>, funded by the Department of Education, Employment and Workplace Relations through its Diversity and Structural Adjustment fund. The project is titled: 'Australia's University for the Tropics'.

²³ Ibid.

²⁴ James Cook University Curriculum Refresh, 'Walking Forward Together: Design and Implementation of Reconciliation Principles with the Faculty of Law, Business and Creative Arts' <http://www.jcu.edu.au/curriculumrefresh/projects/JCUPRD1_066177.html>; Kate Galloway, 'Refreshed in the Tropics: Developing Curriculum using a Thematic Lens' (2011) *Journal of the Australasian Law Teachers Association* (forthcoming).

²⁵ James Cook University Curriculum Refresh, 'Systematising Curriculum Design in the School of Law – A Preliminary Investigation of Distinctiveness of Law Programs in Selected Australian Universities' <http://www.jcu.edu.au/curriculumrefresh/projects/JCUPRD1_066167.html>.

²⁶ Galloway, above n 24.

laws – sustainability of governance, of community, of environment and of the economy. It is this framework that we are using to inform our curriculum in the LLB and importantly, the foundation first year program. Adoption of this conceptual framework in particular, is supported by a number of factors.

First, the JCU Law School carried out a preliminary investigation of Australian LLBs in law schools of (roughly) equivalent demographic and size, to conclude that sustainability is the particular curricular theme that would facilitate development of a distinctive LLB and likewise reflect JCU's tropical charter. The 'tropics' itself provides a rich thematic foundation that can in turn inform this conceptual approach to curriculum.²⁷

Secondly, it was considered that sustainability as a concept could capture the other refresh themes of Indigenous perspectives and internationalisation – thus resulting in an alignment of both JCU-specific foci and contemporary issues in higher education.

Thirdly, and importantly, the theme likewise captures what might be considered broadly as twin strands of the JCU LLB – commercial law and social justice. At a staff retreat to consider curriculum, it was agreed that sustainability had the breadth of application to bring together the otherwise diverse interests and expertise of staff within the Law School.

The inclusion of sustainability in the JCU refresh dimensions aligns with an international movement towards sustainability education. Higher education first expressed a commitment to environmental sustainability in 1990 in what is known as the Talloires Declaration:

Universities have a major role in the education, research, policy formation, and information exchange necessary to make these [sustainability] goals possible. Thus, university leaders must initiate and support mobilization of internal and external resources so that their institutions respond to this urgent challenge.²⁸

Since 2002, the UN Decade of Education for Sustainable Development ('DESD') has led the agenda in sustainability education as an international goal.²⁹ The framework for thinking about sustainability education can be summed up in a statement by UNESCO:

What if education systems prepared learners to enter the workforce as well as handle a crisis, be resilient, become responsible citizens, adapt to change, recognize and solve local problems with global roots, meet other cultures with respect, and create a peaceful and sustainable society?³⁰

In the Australian context, the Australian government's adoption of sustainability education has the goal that at the end of the DESD, 'the Australian community will have the understanding, knowledge, skills and capacity to contribute to sustainable development and will embrace the intrinsic value of sustainability as a national aspiration.'³¹

²⁷ Ibid.

²⁸ University Leaders for a Sustainable Future *Talloires Declaration* (1990) <http://www.ulsf.org/talloires_declaration.html>. Also see overview in Debby Cotton et al, 'Revolutions and Second-best Solutions: Education for Sustainable Development in Higher Education (2009) 34 *Studies in Higher Education* 719.

²⁹ (From 2005-2014) UNESCO *Education for Sustainable Development* <<http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-sustainable-development/>>.

³⁰ Ibid.

³¹ Department of Sustainability, Environment, Water, Population and Communities, *UN Decade of Education for Sustainable Development* <<http://www.environment.gov.au/education/decade/index.html>>.

While higher education has ostensibly been part of sustainability education since the signing of the Talloires Declaration, the movement has recently started to gain wider momentum in Australia. Earlier this year for example, the ALTC in conjunction with the University of Western Sydney launched a website featuring resources for learning and teaching in sustainability education to achieve the goal that ‘Australian graduates should be leaving university with a solid understanding of sustainability, as well as the capacity to face real world problems’.³²

While the UN and Australian declarations appear to focus on sustainable ‘development’, it is recognised that the ambit of ‘sustainability education’ is much wider. According to Sterling, sustainability education is a ‘broad term that suggests a holistic educational paradigm concerned with the quality of relationships rather than product, with emerging rather than predetermined outcomes.’³³ Blewitt and Cullingford highlight the transdisciplinarity of the concept of ‘sustainability’ that in and of itself, is ill-defined. They identify ‘technological, philosophical, economic, social, ecological, political and scientific dimensions’ to the concept that allow us to go ‘beyond the rules and perspectives of single subject disciplines’.³⁴

This transdisciplinarity has been identified as a barrier to uptake of sustainability education – because of institutional and disciplinary norms and the lack of common language with which to discuss sustainability, amongst other things.³⁵ Likewise, Sterling highlights the diverse approaches to interpreting and defining sustainability education, identifying a range of tensions within debate about sustainability education.³⁶

In terms of sustainable *development*, law has been central to the very construction of the idea.³⁷ This has however provided some limitations on the way in which sustainability education is interpreted within the discipline. While certain *subjects* may be considered appropriate manifestations of this theme (such as climate change law or environmental law), concerns remain about ‘the implications of melding a sustainability approach with the underlying values, purpose and content of legal education.’³⁸ In particular, Varnava, Lowther and Payne pose the question of whether it is appropriate to embed one ‘correct’ understanding of the world into curriculum. In response, they argue that law is not itself value-free: that it is imbued with ‘ideals of service, compassion and professional service to society’.³⁹

They do however suggest a framework for thinking around sustainability other than as a ‘taken-for-granted “good”’ – through considering issues that centre around critical thinking, power discourses in the law and more contextual and justice-based approaches to thinking about law.⁴⁰ In a similar vein, Cotton and Winter canvass ‘sustainability pedagogies’ that have ‘emerged from

³² ALTC Learning and Teaching Sustainability, *Sustainability Resources for Learning & Teaching in Higher Education* <<http://sustainability.edu.au/>>

³³ Stephen Sterling ‘An Analysis of the Development of Sustainability Education Internationally: Evolution, Interpretation and Transformative Potential’ in John Blewitt and Cedric Cullingford (eds), *The Sustainability Curriculum: The Challenge for Higher Education* (Earthscan, 2004) 43, 43.

³⁴ John Blewitt, ‘Introduction’ in John Blewitt and Cedric Cullingford (eds), *The Sustainability Curriculum: The Challenge for Higher Education* (Earthscan, 2004) 1, 2.

³⁵ Cotton et al, above n 28, 721; Ibid, 2.

³⁶ Sterling, above n 33, 52-53.

³⁷ Tracey Varnava, Jason Lowther and Simon Payne, ‘Sustainability – Is it Legal? The Benefits and Challenges of Introducing Sustainability into the Law Curriculum’ in Paula Jones, David Selby and Stephen Sterling (eds) *Sustainability Education: Perspectives and Practice Across Higher Education* (Earthscan, 2010), 133.

³⁸ Ibid 140.

³⁹ Ibid.

⁴⁰ Ibid.

education compartmentalized as about in and for the environment.’⁴¹ Such pedagogies are learner-centred, and may include problem-based learning, group discussion, opportunity for self-reflection and critical thinking.⁴²

For the first year program in the JCU LLB, even a broad view of sustainability provides a dual focus for curriculum design. First, it provides a thematic or conceptual lens through which to view foundation subjects particularly in light of the overarching concept of the tropics. Secondly, it offers a cohesive pedagogy that aligns with our existing approaches, including transition pedagogies.⁴³ As a ‘thematic lens’ sustainability, itself a representation of the concept of the tropics, offers a rich framework for a contextual approach to learning the discipline content⁴⁴ that is considered so central to the LLB.⁴⁵

In this way, sustainability offers inspiration and a practical means by which to redefine our distinctive first year program within a conceptual framework. In adopting this key ‘thematic lens’ in tandem with a structural focus on the TLOs, the re-design process is taking shape in a way that will more naturally meet the multitude of contemporary curriculum imperatives.

IV. A REDESIGNED FIRST YEAR PROGRAM

The first step for renewal was a renegotiation of the goals of the first year program:

The first year in the JCU LLB will foster students’ capacity to stay and succeed by connecting them with the discipline of law through a focus on development of students’ academic and professional skills in the context of an understanding of the law as a sustainable system in its own right, that plays a vital role in sustaining society and community, the economy and the environment.

This overarching aim for the first year was then broken down into the threshold learning outcomes as interpreted through the thematic lens of sustainability, relevant to the first year of the LLB.

A. Sustainability Aligned

As described above a defining feature of the first year program had been its horizontal alignment in the first semester around key modules.⁴⁶ In redesigning the program, it was agreed by the first year team that by embedding sustainability within the existing structure to support and give meaning to each subject itself, a refreshed context for the alignment would be achieved. To avoid the difficulties that had occurred previously with the horizontal alignment, less emphasis will be placed on ensuring modules and content are delivered at the same time across the subjects (which

⁴¹ Debby Cotton and Jennie Winter, ‘It’s Not Just Bits of Paper and Light Bulbs: A Review of Sustainability Pedagogies and Their Potential for Use in Higher Education’ in Jones, Selby and Sterling (eds), *Sustainability Education: Perspectives and Practice Across Higher Education* (Earthscan, 2010), 39, 41.

⁴² Ibid.

⁴³ Kift, above n 4.

⁴⁴ H Lynn Erickson, *Concept-based Curriculum and Instruction: Teaching Beyond the Facts* (Sage, 2002); Galloway, above n 24.

⁴⁵ Christine Parker and Andrew Goldsmith, ‘“Failed Sociologists” in the Market Place: Law Schools in Australia’ (1998) 25 *Journal of Law and Society* 33; Nickolas J James, ‘A Brief History of Critique in Australian Legal Education’ [2000] *Melbourne University Law Review* 37; Margaret Thornton, ‘The Demise of Diversity in Legal Education’ (2001) 8 *International Journal of the Legal Profession* 37; Gary Davis, Report to Council of Australian Law Deans on International Conference on the Future of Legal Education, *Council of Australian Law Deans* (April, 2008) <<http://www.cald.asn.au/docs/FutureOfLegEdConfRptSummy.doc>>; Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1.

⁴⁶ See also Westcott and Shircore, above n 1.

was too manufactured), instead the modules will be used as a common basis through which to view sustainability as described below. Additionally, the thematic lens has provided the context through which second semester subjects can be integrated into the overall first year program alignment – where they had previously sat as separate units, lacking any specific scaffolding. Expanding and refining alignment in this way ensures that the first year is an explicit comprehensive *program*, a feature that has attracted positive student feedback in the past. The first year team also recognises that for the program to remain true to its goals, sessional staff who come in and out of the program, will need to be provided with the training and support to understand and appreciate both our concept of sustainability and the relevance of the curriculum design.

Importantly, taking sustainability education as our approach allows us to incorporate development of students’ academic and professional skills and our commitment to student centred learning as part of a cohesive approach to curriculum. This broad concept of sustainability means that the first year program is not limited to teaching *content* about sustainability.

Table 1 provides an overview of how sustainability will be embedded within the existing modules of the first year program.⁴⁷ Using the existing structure, sustainability enhances the linking of subjects in the way originally envisaged by the first year program.

Table 1 Horizontal Alignment - Semester 1

	Ethics	Governance as a conceptual tool	Judiciary	Legislature
Institutions & Processes	Situating oneself as an ethical being, part of the local and the global community and part of the legal profession of the future The importance of critique and reflection in learning for transformation	The role of legitimacy in governance and how this is sustained through the law as a system: what are the institutions of sustainable governance? Critique of legitimacy from an Indigenous perspective	Critical analysis of the role of the judiciary in contributing to the sustainability of the legal system and the law itself	Critical analysis of the role of the parliament [and executive] in contributing to the sustainability of the legal system and the law itself
Research, Writing & Analysis	Exploring the fundamental role of effective personal and professional communication as a cornerstone of the legal system	Exploring primary sources of law as a tool of governance. An overview of differing approaches to adjudication, representing the ideals of governance for promoting community interaction with the legal system as sustainable	Exploring the means and effect of judicial decision-making and the rules of precedent designed to ensure certainty and consistency in the common law as inherent features of sustainable governance.	Understanding the inherent instability and uncertainty as to the law as a consequence of the inherent ambiguity of language utilised in legislation, through an introduction to the rules surrounding its interpretation

⁴⁷ Ibid.

		governance.		
Contract Law 1	Making the link between ethics and the profession, and the ethics of the individual – in the context of private law making.	The sources of law and their relevance to contract law. Focus on contract law as a form of private law making and the role of various forms of governance in sustaining relationships in this private domain.	Analysis of the role of the judiciary in maintaining and sustaining private law making through study of the common law and equitable development of contract law.	Focus on the role of the legislature in sustaining the viability, efficacy and fairness of contractual relationships – through Statute of Frauds; introduction of Competition and Consumer Act etc..

In terms of scaffolding students’ engagement with ideas of sustainability, assuming a full time load commenced in semester one, curriculum is designed to engage students in a variety of concepts and content that are viewed through their capacity to contribute to (or inhibit) sustainability of governance and of private law-making (through contract law):

- Developing awareness of the self as an ethical being within a connected society – local and global – on a path to entry into a profession ideally embodying principles of justice and service
- Governance as a means of sustaining civil society through concepts such as rule of law and separation of powers, and through continuity of institutions and processes
- The role of courts and parliament in regulating society, environment, economy and governance itself
- The ambiguity, uncertainty and nuance of the language of the law expressed by the courts (through the doctrine of precedent) and the parliament (through legislative drafting and statutory interpretation) as an integral part of the process of the law
- The importance of effective communication in successful study and practice of one’s principles and how to communicate effectively in a variety of contexts
- Seeing the application of these principles within the law of contract as a case study in how the law sustains private enterprise and the market, through developing a consistent body of principle via the courts and parliament

In semester two, the foundation subjects have to date been more fragmented in terms of content – not lending themselves to the degree of alignment illustrated in Table 1 above. Indeed there has to date been none of the ‘modular alignment’ that had occurred in the first semester and the first year team has perceived that the program has lost some distinctiveness and strength as a consequence. Part of the present curriculum review has therefore sought a means of developing a meaningful strategy for alignment. The outcome now is a more aligned design, centred around particular aspects of sustainability providing both scaffolding from semester one, and a degree of alignment within semester two. While the two foundation subjects have been represented in three modules that seek to categorise the broad topics they cover in their existing iteration – through now through a sustainability focus – *Contract Law 2* embeds the concepts of these subjects within its own modular structure.

Table 2 Horizontal Alignment, Semester 2

	Ethical orientation to law	Law and persons	Law and the state
Law, Society & Change	Build on the concept of critique (from semester 1), to better understand law as	Critical examination of the law’s construction of the individual by looking at	Critical examination of globalisation and its interaction with the law in

	deriving from and influencing context of society; recognition of importance of critique of implicit assumptions contradicting its claims to objectivity as means of sustaining governance, society, and environment	cases and legislation through ideological lens/es as a means to understand the power of the law vis-à-vis the citizen	terms of sustainability locally and globally; introduction to green thought and critique of 'sustainable development'; justice and ideology and critique of adversarialism through exposure to ADR
Legal Concepts	Introduce idea of legal concepts (enduring) v substantive legal regulation (perishable) as means of dealing with complexity of 21 st century contexts – understanding the ethical positioning of the practitioner in terms of playing a role within the legal system to derive sustainable solutions	Critical examination of the role of key concepts in construction of the law including legal personality, liability, fiduciary obligations and property – and the limitations inherent in these concepts as tools for sustainability of markets, communities, environment	Critical appraisal of concepts of governance, sovereignty and legal process on sustainability of society, community and environment

Curriculum in this semester builds on the concepts and approaches of the first semester curriculum and as with semester one, *Contract Law 2* is used to provide a substantive law context for the application of principles and concepts introduced in the companion subjects. It also ensures ongoing engagement with specific legal knowledge and general legal skills. While not following the modular approach of the other two subjects, it forms an integral part of the semester 2 program:

- Building on self-awareness of the ethical self to encompass the idea of law as an ideological construct embodied in a number of legal concepts that we need to apply to solve the problems of the 21st century and beyond.
- Examining the power that the law has to construct the person and a series of concepts that regulate behaviour and relationships, including an applied examination of these ideas through contract law termination and remedies.
- Examining the limitations of the law where we understand the individual as part of a global society – through both an appreciation of the nature of the state, globalisation, green thought and legal process, including an applied examination of these ideas at a national level through contract law vitiating factors.

What emerged out of this reconsideration of the way in which we taught the *content* in these subjects ie through a thematic lens, was that we were already addressing many of the TLOs in terms of skills that are likewise representative of the concept of sustainability. The task that then followed was to interpret our curriculum through the TLOs to assess both the extent to which we had encompassed these skills within our program and how they contributed to the sustainability approach of the curriculum overall.

B. Threshold Learning Outcomes in terms of Sustainability

Having started as a program embodying student-centred learning, it has not been difficult to embed sustainability education principles within the skills focus of the curriculum. The

program’s particular focus on critical thinking and ethical and emotional literacy align both with sustainability principles and with the TLOs.

As an integrated and aligned curriculum, the first year program has always sought to use ‘content’ as a context within which to learn a range of skills.⁴⁸ The shift in perspective that has occurred, introduces a *conceptual* basis (ie sustainability) from which to teach both content and skills ‘to prepar[e] students and provid[e] the information and knowledge to achieve a just and sustainable society’.⁴⁹ Accordingly, the skills embedded in the first year program are conceived of as part of that conceptual framework. Cortese calls for ‘[t]he *process of education* [to] emphasize active, experiential, inquiry-based learning and real-world problem solving on the campus and in the larger community’⁵⁰ and the development of skills of critical thinking, ethical and emotional literacy are the foundation for this.

Using the TLOs as a tool for curriculum (re-)design has provided a ready means by which to re-examine our approach to skills development. What we have observed is that while we had previously identified that skills such as critical thinking, legal analysis and problem solving were foundation skills to be developed, the TLOs’ broad drafting has prompted us to group such skills within the relevant TLO. This has resulted in a more coherent and explicit curriculum design. (See Table 3 below.)

Table 3 Skills Emphasis & Level of Structure Provided, by Subject

TLO	Institutions & Processes	Research, Writing & Analysis	Contract Law 1	Law, Society & Change	Legal Concepts	Contract Law 2
Ethics	Self-awareness	Communication	Professional context	Law as power	Traditional concepts in future society	Professional context
Thinking	Critical	Analysis	Legal problem solving	Critique through ideology	Analysis	Legal problem solving
Research	Assessing information sources	Locating and utilising cases and statutes	Locating and utilising cases, statute	Locating secondary sources	Locating secondary sources	Locating and utilising cases
Communication (written)	Structuring writing	Foundation literacy	Professional literacy	Academic writing	Academic writing	Professional literacy
Self-management	Embedded pastoral support; time management skills; study skills; integrated student mentor program – all in a highly structured way			Embedded pastoral support; time management skills; study skills; integrated student mentor program – in a somewhat less structured way, promoting development of student autonomy		

Of all the skills embedded into the first year program, the one that has attracted the most concern is written communication. In spite of expectations that students come to university highly literate, literacy has been identified as a concern at University-wide level.⁵¹ This concern is likely to

⁴⁸ See generally, Paul Ramsden, *Learning to Teach in Higher Education* (Routledge, 2nd ed, 2003).

⁴⁹ Anthony D Cortese, ‘The Critical Role of Higher Education in Creating a Sustainable Future’ (March-May 2003) *Planning for Higher Education* 15, 17.

⁵⁰ Ibid 19.

⁵¹ A Literacy and Numeracy body was initiated in 2008 and receives funding to research literacy and numeracy initiatives and strategies across the University. See for example, Clifford Jackson, Pauline Taylor and Raoul Adam, ‘Practical Challenges and Possibilities for the Integration of Academic Literacy in a First Year Subject’ (Paper presented at Australian Teacher Education Association Conference, Townsville, 4-7 July 2010) 1.

increase over time as the recommendations of the Bradley Review⁵² will require the first year program to cater to a more diverse student body with a range of differing needs.⁵³ How the renewed first year program, with its emphasis on sustainability education and TLO's, is approaching foundation literacy is considered in the next section.

C. Skills in Context: The Literacy Issue

Written communication skills, together with legal research and problem solving were just some of the primary skills that have been incorporated in the first year program since its inception.⁵⁴ These skills have been taught in context, using activity-based learning, within at least one of the three horizontally aligned subjects undertaken by law students in semester 1.⁵⁵ Cotton⁵⁶ describes this as part of sustainability pedagogy and, although this was not the focus initially, it affirms this approach within the conceptual framework of sustainability.

Legal Research, Writing & Analysis has been the vehicle by which legal research and writing skills were to be explored, developed and enhanced, particularly through referencing exercises, assessment and the use of reflective journals.

In its original design, the importance of referencing, conformity with style guides and issues of plagiarism were explored with students in lectures and workshops. These were assessed within the first four weeks so as to be timely and emphasise the importance of ensuring that students' on course assessment in their first semester subjects complied with the referencing style employed in the Law School. Students were then assessed on referencing again at the end of the semester in a bid to reassert the importance of this particular aspect of legal writing and identify areas in which they needed to improve before the start of second semester and, ultimately, their progression into the second year.

In contrast to this detailed and prescriptive approach to referencing, written communication was not taught explicitly although it was assessed. Of course, writing skills are assessed within all subjects in relation to on course assessment, but it was envisaged that *Legal Research, Writing & Analysis* would provide an opportunity for student development in this area. As such, students were expected to provide fortnightly reflective journals of approximately 250 words. Students were provided with extensive feedback in relation to their writing style, spelling, grammar, argument construction and the development and expression of ideas. Comments were also made to encourage critical thinking and logical reasoning.⁵⁷ It was anticipated that students would learn from this detailed feedback and thus their writing and critical thinking skills would progress over the course of their first semester.

Although positive outcomes were initially experienced,⁵⁸ staff reflection on the use of reflective journals revealed that as a learning tool they were not as effective as they could perhaps be, in terms of promoting literacy development. We suspect that one of the predominant reasons for

⁵² Department of Education, Employment and Workplace Relations, *Review of Australian Higher Education Final Report* (2008)

<http://www.deewr.gov.au/HigherEducation/Review/Documents/PDF/Higher%20Education%20Review_one%20document_02.pdf>

⁵³ Jackson, Taylor and Adam, above n 51, 2.

⁵⁴ Cortese, above n 49, 19.

⁵⁵ Ibid 94.

⁵⁶ Cotton et al, above n 28.

⁵⁷ Joanne Roebuck, Lisa Westcott and Dominique Thiriet, 'Reflective Narratives: A Useful Learning Activity and Assessment for First Year Law Students' (2007) *The Law Teacher* 4, 44.

⁵⁸ Ibid.

this is that students received two marks per journal (five were submitted, totalling 10 marks and 10% of their overall grade) and these two marks were achieved regardless of the competency of writing and notwithstanding the lack of improvement in writing from the previous journal. It seems that employing this structure means that writing skills are unlikely to develop as envisaged. Further, the role of legal writing and its importance within the legal system was not explicitly emphasised.

In accordance with a desire to utilise scaffolded learning tools that correlate with an explicit teaching practice, it was agreed that *Legal Research Writing & Analysis* would embed literacy into its existing curriculum, with second semester subjects building on this foundation). The members of the first year team envisaged that the embedding of literacy skills in this subject could be achieved in a manner that accords with the new thematic lens of sustainability so that students are able to understand the importance of legal literacy within the context of the legal profession and legal institutions. This ‘bigger picture’ approach would enable students to see the need to improve their literacy skills as well as provide the methods for that development.

To emphasise the importance of literacy to the first year students, the re-designed *Legal Research Writing & Analysis* will teach this explicitly through the use of an authentic learning environment.⁵⁹ Students will be required to ‘refresh’ their literacy skills in the early stages of the semester through a specifically designed module within the subject that will address three distinct aspects identified as areas of concern. . It was necessary to take this ‘blended’ approach because the content within this subject, which involves some introductory concepts, legal research skills and the rules of precedent and statutory interpretation, could not be condensed any further, In addition, placing this module on-line provides a flexible learning environment for students that involves explicit teaching that is also timely. It also provides tutors with the capability of identifying at an early stage specific issues that need to be addressed with the class as a whole and ‘at risk’ students.

The first area to be explored within the literacy module will involve a ‘refresh’ of basic reading and writing skills that are identified as being common problematic areas. Demonstrations of poor writing and effective writing and practical exercises will be provided so that students are able to reflect upon their own skill levels. Upon completion of this aspect of the module, students will undertake a low-value assessment (within the first four weeks), which will provide feedback as to whether any students need to be referred to specific reading and/or writing workshops run by the university. Such referrals are necessary for two reasons. The first is that this approach also acknowledges that, whilst tutors are likely to be skilled academic and/or professional writers, they are not trained educators in this field. Secondly, students referred to these resources are likely to need dedicated support provided in a workshop environment that has a small class size. This is resource intensive and, as it is unlikely to involve any legal context, existing student-focused workshops run by teaching and learning are the most suitable setting in such circumstances.

The second aspect of this literacy module will provide an introduction to academic writing. This will focus on how to construct academic essays with a particular emphasis on structure, construction of arguments and use of appropriate evidentiary sources. This will also align with the research skills being taught in on-campus class activities in Legal Research, Writing & Analysis. These skills will be further enhanced in Legal Concepts and also Law, Society & Change, which are second semester subjects in first year, Both these subjects encourage and

⁵⁹ This was a key feature of the initial first year program, see Wescott and Shircore, above n 1, 6.

develop critical thinking and require analysis of secondary sources and are therefore apt to explore, encourage and enhance the development of academic writing skills.

The third aspect of the literacy module will involve an introduction to professional writing. The predominant focus of this is to encourage students to develop an understanding that writing style and content varies according to audience. For example, students will be provided with guidance on writing letters to clients and memos to supervisors. Such tasks will be embedded into the course by requiring students to write memos and letters in relation to precedent and statutory interpretation exercises in tutorials. This will also be aligned with other subjects, such as Contract Law so as to emphasise the importance consistently throughout the first year program and to encourage a harmonised approach to the development of these skills.

Regarding each of the three aspects of the literacy module, students will review, practise and further develop their abilities through tutorial tasks designed to align content within the subject with literacy-based exercises.⁶⁰ In light of this new emphasis on writing in Legal Research, Writing & Analysis, on-course assessment will also be scaffolded so as to encourage continued review, practise and improvement of these skills. Students will be required to provide a portfolio of five short writing exercises of approximately one thousand words, set in the context of them being trainees who must complete a wide variety of exercises for their supervisors and clients. Three of these exercises will be marked in accordance with a criteria grid and with feedback provided. Students will still be graded on content, such as their application of the rules of precedent, but a much greater emphasis will be placed on literacy within each exercise. The remaining two tasks, which fall between each assessed exercise, will be peer-reviewed within class by reference to the appropriate criteria grid so as to assist students in reflecting upon and assessing their own work. Current assessment for this subject involves tutors marking a 2,000 word essay on precedent and a 1,000 essay on statutory interpretation. It is anticipated that three shorter exercises of 1,000 words each will not increase the workload of individual staff members yet they will encourage a stronger focus on weekly writing tasks coupled with a more significant focus on comprehension, structure and expression of content.

In explicitly teaching literacy through dedicated on-line modules and then incorporating such scaffolded exercises and assessments into the structure of the subject, students will experience connectedness to the legal profession that they will eventually join. They should also understand that they cannot situate themselves within the legal community without an aptitude for communication in various forms. By requiring them to provide advice to clients, draft letters to the other side and prepare memos for their supervisors, students can appreciate the even 'bigger picture' beyond their role as a legal adviser and the need to be able to engage with the legal community. They will also be able to visualise that their advice is essential for the lay community to be able to engage with legal institutions and that governance cannot function successfully without their facilitation of this. In focusing on communication in this manner, the program aims to facilitate students' overall understanding of the legal community's role within and connection to sustainable governance.

V. CONCLUSION

⁶⁰ This takes a similar approach to that developed by the School of Education at James Cook University, which has recently introduced a literacy initiative. The School of Education utilises four phases in its literacy program, which will also be incorporated into the literacy project in the School of Law. The four phases are the 'awareness phase', 'diagnostic phase', 'support phase' and 'accountability phase'. See for example Raoul Adam, 'The Design and Implementation of a First Year Literacy Initiative for Pre-service Teachers: A Preliminary Review' (Paper presented at Australian Teacher Education Association Conference, Townsville, 4-7 July 2010).

The contemporary higher education context represents a complex layering of standards, goals and policy driven by government, the profession, the community and the very nature of 21st century life. Designing curricula that are not only able to meet these sometimes competing agendas but that are also transparent in the way they represent these elements, is no easy task.

In attempting to deal with this complexity in a way that delivers a cohesive, aligned and student-centred LLB curriculum, the first year program at JCU has used the concept of sustainability – and sustainability education in particular – as a thematic lens through which to make informed curriculum design decisions. Not only does this thematic or conceptual approach lend itself to selecting content that is taught, but perhaps most importantly, it provides a context within which students can learn about the nature and effect of the law on governance, community, economy and environment.

In terms of content, the curriculum introduces overtly ‘sustainable’ topics such as environmental law. But likewise, cornerstones of the legal system such as the rule of law, separation of powers and doctrine of precedent are taught in terms of their capacity to deliver sustainable governance. Contract law is presented through this lens also – illustrating that rules surrounding private law-making have developed in the context of sustaining the operation of the economy. Students’ introduction to the law then becomes an integrated learning experience through an aligned curriculum.

In teaching content in this way, thinking skills – particularly critical thinking skills – are inevitably embedded. This contextual approach to content requires questioning and analysis of the capacity of the law to deliver solutions to new problems. In providing this context, critical thinking and analysis can be taught explicitly in a way that is integrated into the essence of each subject and the program overall.

Likewise focussing on ethical literacy and understanding of the self as part of the institution of the law (or the legal profession) offers a contextual means by which to address other TLOs – notably ethics but also written communication. The latter skill becomes an essential component of sustainability of practice but also of the legal system and can be taught explicitly in this context. In terms of skills, the lens of sustainability therefore gives a focus and context for the TLOs elevating them from a more generic understanding of what a lawyer looks like, into a more focussed understanding of the role and responsibilities of the lawyer in a dynamic and uncertain local and global environment.

For our first year refresh, sustainability offers a conceptual means by which to link diverse elements of curriculum that provides students with a cohesive narrative surrounding what they are learning. Each subject becomes not a discrete knowledge domain, but part of a bigger project that feeds from first year throughout the law degree. While inevitably our curriculum is only ever a work in progress, sustainability has provided the vital ingredient with which to meet the challenge of ongoing improvement in student learning opportunities.