

# Designing Reflective Assessment for Effective Learning of Legal Research Skills in First Year

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*Abstract—A primary aim of legal education should be to produce a reflective student who will become a reflective practitioner. This article considers the potential for achieving effective learning for students of law through the use of reflective assessment in first year. First, we discuss the importance of teaching reflective practice in the first year context. Second, we outline our developing framework for effective assessment design of reflective practice in the first year of legal education, and then critically evaluate one element of that framework. We conclude that reflective practice is an effective way of enabling students to be involved in a genuine learning experience of legal research skills in the first year of their legal education.*

## Introduction

Ensuring that law students become life long learners by making certain that they have the ability to transfer knowledge to new problems and contexts is a central goal of legal education (Thomas, 2000). The Australian Law Reform Commission recognised this when it concluded that legal education should focus on what lawyers need to be able *to do*, rather than concentrating on what they need *to know* (ALRC, 2000). Reflective practice is acknowledged as an essential aspect of being a life-long learner (Brockbank & McGill, 1998), and as life-long learning skills are critical for lawyers in the fast-paced, ever changing world of contemporary legal practice, an ability to engage in reflective practice is something that lawyers need to be able to do. Reflective practice is therefore often identified as an expected graduate attribute of law graduates (see for, example, QUT, 2001a).

This paper examines the use of reflection in assessment design to facilitate student learning in the first year of legal education. First, we discuss the importance of reflective practice in the first year experience, and particularly in the context of legal education. Second, we outline our developing framework for the assessment of reflective practice in first year law, and then discuss, and critically evaluate, one key element of that framework; namely how reflective practice is presented to the students. The evaluation involves consideration of a survey of students in a first year foundational legal research skills unit at QUT – LWB143: *Legal Writing and Research*. We conclude that incorporating reflective practice in assessment design in first year law is an effective way of creating a genuine and authentic learning experience of legal research skills. We recommend that those involved with unit and assessment design in first year law units consider adopting reflective journals to both support student learning and to provide students with a positive way of demonstrating their learning, particularly in the context of legal research skills. We further recommend that, to ensure that it is an effective tool

for student learning, reflective assessment in this context should incorporate the principles of presentation and design put forward in this paper.

### **The importance of reflective practice in the first year experience**

Reflective practice for the purposes of legal education can be defined in terms of a student's capacity to reflect on their own strengths and weaknesses, to learn from constructive criticism and to practice critical reflection by monitoring their own work performance and interpersonal interactions (QUT, 2001a). Schon's seminal work evidences the critical impact of reflective practice (Schon, 1987). Brockbank and McGill suggest in discussing Schon's reflective practitioner in the higher education context "making reflective practice accessible to student learners, enables the latter to become more conscious of their own approaches to their learning and thereby promotes critically reflective learning via reflection on their practice and learning about their learning" (Brockbank and McGill, 1998). Moon's definition of reflective practice is as follows (1999, 99):

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

Currently, reflective practice is recognised in many universities as an expected graduate attribute of law students (see for example QUT (2001b)). However, whilst legal subjects throughout an undergraduate law degree might incorporate, perhaps, a reflective journal assessment piece or reflective questions as part of a take-home exam, rarely are the skills of reflective practice taught explicitly to students, particularly at the first year level. Mack et al also note that there is surprisingly little in the literature "dealing specifically with (reflective practice) in legal training" (Mack et al, 2002, 223); and Kift has commented that the literature generally has little regard "to the mechanics of such a process." (Kift, 1997, 71). (This has been noted as a problem in other contexts and disciplines also (Russell, 2005)).

A possible explanation for the low take-up of explicit teaching and assessment of reflective practice in law, and particularly in first year, is perhaps the relatively heavy emphasis on learning foundational content – content such as statutory interpretation, the structure of the legal system, contracts law and torts. Certainly, legal education might, more generally, be seen as a 'technical rational' education which is not conducive to inculcating reflective skills (Maughan, 1996, 2). Our position, however, is that the first year of legal education is a critical time to introduce students to reflective practice, and the context of legal research skills, in particular, is a most apt environment in which to achieve this introduction effectively.

Reflective practice should be taught and assessed in first year law for many reasons. Here, we identify only a few. First, as we noted in our introduction, reflective practice is acknowledged as being central to creating life-long learners. Related to life-long learning skills are attributes such as self-direction, and independent learning – all of which are critical characteristics for achieving success in the study of law at tertiary level. It is important, then, at least to introduce students to the development of such skills in their first year. Second, reflective practice can also assist students at a foundation level in terms of academic performance skills. For example, the process can enhance students' organisational skills (Rees et al, 2005, 8), and also promote the development of higher order critical analysis skills, to quickly enhance the skill base they bring from secondary school, or from work-experience or other non-tertiary contexts. Third, the introduction of reflective practice to first year students can teach them, from an early stage, to be able to take an holistic view of their academic progress (Rees et al, 2005,

8). As Fernsten and Fernsten put it, “through reflection students learn to scrutinise their own performance, come to terms with what went wrong as well as what went well, contemplate strategies to enhance their success in future work and take responsibility for their learning.” (2005, 303-304). Fourth, it is important to introduce students to reflective practice in their first year because it helps them in the process of starting to construct their legal professional identity (Lindsay, 2006; Hunt, 2006); and this in turn promotes higher levels of engagement, connection with the discipline and deeper learning. Finally, reflective practice in first year can work towards creating a community of practice through encouraging the acknowledgement and sharing of experiences as law students. The support of peer relationships and connections developed in this way is critical, we think, to ensuring a positive and healthy journey through the rigours, stresses and demands of the degree.

The legal research skills context is particularly apt for achieving an effective introduction to reflective practice for students because legal research is a process students must accept as cyclical and oftentimes, especially in the early stages of skill development, problematic. That is, legal research needs to be acknowledged by students as a process that almost never occurs in a straight line, but rather is one where answers are not always obvious, or found quickly or simply. The subject area, therefore, provides a strong hook on which to hang the introduction of reflective practice processes. As Kift comments, “reflection is a metacognitive skill in which greater awareness of, and control over, the student’s learning process is generated.” (1997, 68). For learners of legal research skills in their first year of law, who report in class that they often feel ‘out of control’ and exasperated by the legal research process, reflective practice can be used as a tool to normalise the frustrations of their learning experience and to help students make sense of that experience.

### **A Framework for Effective Reflective Learning of Legal Research Skills in First Year**

From the literature examined above and our own experience, a framework for designing reflective assessment is emerging. We have written previously about this emergent framework in the context of ‘real world’ workplace learning (McNamara and Field, 2007). The framework involves four steps: firstly, providing students with instruction on reflection; secondly, intervening in the student’s reflective practice by creating structures and protocols to help students to reflect; thirdly using criterion referenced assessment to enhance the design of reflective assessment, and fourthly providing feedback on the students’ reflection. While the design of the reflective assessment in LWB143 follows this overall framework, the scope of this paper does not allow for the framework to be analysed in full and this paper will concentrate on the first step, the presentation of reflective practice to students.

When designing reflective activities for effective learning for first year law students it is important to acknowledge that students may have limited experience of reflective practice, and may even be sceptical about its value, or its relevance to tertiary legal education (Brodie & Irving, 2007). For effective learning to occur through reflective activities, the ability to engage in reflective practice cannot be assumed but must be taught (Russell, 2005). Students need to be shown what reflective practice is and how to write reflectively for the purposes of their assessment. In addition, it is important that the value of reflection, and its significance to effective learning in legal contexts, is made explicit to students at the beginning of the semester (Ramsden, 2003; Kift, 1997). Stuckey (2007) suggests that law students who are required to complete reflective assessment be given materials on the value of reflective thinking. The presentation of reflection to first year law students should therefore make clear to students the value of reflective practice as well as explaining how to engage in reflective practice and reflective writing.

Moon (1999) enunciates some fundamental principles of presentation of reflection to students. These principles are that students should be told what reflection is, why reflection is important in the particular learning context, how reflection is different from more traditional types of learning, and that the use of the first person is appropriate. Examples should be given of good and poor reflective writing, students should talk about what reflection is and should practice reflective writing so that feedback can be provided. To encourage students to commence reflective writing, a 'starting exercise' can be developed to eliminate the blank page. Moon (2006) has also identified a number of tools that can be used to help students to think and write reflectively, for example concept maps, "post-it" notes and cartoons. These principles would appear to be relevant to first year law students, particularly in terms of engaging students with this approach to learning and assessment, and we have adopted them in designing instruction on reflection in LWB143.

### **Evaluating the Framework – Presentation of Reflection to Students**

We now turn to consider some of the theoretical assertions made in the framework above about the design of reflective assessment and its value in teaching legal research skills at the first year level. We do this through consideration of student responses to a survey regarding one component of the framework – namely, the presentation of reflection to students (further evaluation of the framework will occur in 2008).

#### *The Pedagogical Context: LWB143 – Legal Writing and Research*

The context for our analysis of student reactions to our approach to presenting reflective practice is a core first year unit in the Bachelor of Laws at QUT Law School - *Legal Writing and Research* (LWB143). The purpose of the unit is to teach introductory legal research, analysis and writing skills. These skills are identified as fundamental for the completion of the law degree, and are also considered necessary for skilled legal practice in diverse professional contexts (Cuffe, 2006, 3). It is an aim of the unit to ensure that "by the end of the students' first year, they are able to use these skills to perform tasks required in legal study and practice, and have the ability *to reflect* and to continue to develop research writing and analysis skills in the future" (Cuffe, 2006, 3).

In *Legal Writing and Research*, the lectures focus on unit purposes and requirements, research methodologies, problem-solving skills and writing skills. Tutorials allow time for practical individualised instruction in small group (20 students), interactive, discursive sessions. The unit has a number of innovative elements to its design for teaching legal research skills. For example, all tutorials occur in a computer lab so research skills can be explicitly modeled to students and they experience hands-on active learning opportunities. More particularly, the unit's design incorporates *reflection* as a significant element of both delivery and assessment. In 2007, students were given specific instruction on reflective practice and reflective writing in their week five tutorial. A copy of the teaching materials provided to tutors is included as Appendix A.

#### *Student Responses to the Presentation of Reflection*

The evaluation of the presentation of reflection in LWB143 was achieved through a survey of 118 internal students in tutorials using a one minute paper with open ended questions. This represents approximately 1/5 of internal students enrolled in the subject. The survey results

were collated according to the thematic responses to the open ended questions. Where appropriate statistics were generated from the themes that emerged. The questions asked in the survey were:

- Have you had previous experience in reflective writing?
- Did you find the information in relation to reflective practice given to you in week 4 to be helpful? If so what aspects of the information provided were helpful?
- Do you believe that thinking reflectively will help you to learn?

In relation to the first question, 58% (68/118) of students indicated that they had some prior experience of reflective writing, mostly at high school in senior English. However the reflective writing required of them previously was not as extensive as that in LWB143. Some students who did have experience in reflective writing indicated that they while they had been required to write reflectively they had not been taught how to do so. The following is a typical response:

“I have had some experience previously in reflective writing but this was mostly in high school, where we would reflect on assignments done in subjects such as economics and history. It required you to think about how you approached the task and how you could improve in the future and also the quality and availability of sources used. While this was a requirement, it was not widely taught how to do a good job of reflective writing and was generally an afterthought, done at the last minute.”

In relation to the second question, 80% (87/109) of students found the information given to them in LWB143 in relation to reflective practice to be helpful. The overwhelming feedback was that the most useful aspect of the instruction given on reflective practice was the examples of good and poor reflective writing. Students responded that the examples demonstrated how to write reflectively, the amount of detail required and the way in which to relate the reflections to the substantive work. The examples of reflective writing were most useful to students who did not have any, or only limited, experience of reflective writing, or who had not previously been taught how to write reflectively. The examples gave students a concrete idea of what was expected of them in reflective writing. The following responses typify many of the positive responses:

“I did find the information from week 4 to be helpful. The diagram with the process of reflective writing outlined was very helpful, especially in conjunction with the examples of 'poor' and 'good' reflective writing.”

“Yes. My problem with reflective writing is I'm not sure what the reader wants to see exactly, so the information in week 4 was a good guide.”

In addition to showing the students how to approach writing reflectively, the examples also served another important purpose in showing students how to use reflection to learn from their experiences. In order to successfully learn from experience, one must reflect not just on successful strategies but also on unsuccessful strategies. The use of examples of reflection on an unsuccessful research strategy helped students to realise the importance of reflecting on unsuccessful strategies.

“The information was useful because it clearly pointed out in reflection, nothing is wrong. It is all about your experiences during a process. What difficulties did you face and how did you try to solve it or correct the mistake. The most important aspect of the information provided is the clear process of reflection.”

The best evidence that the presentation of reflection resulted in more effective learning is an improvement in the depth of student reflection as evidenced in the research records. Some

students indicated that they improved the reflective entries previously made in their research records as a direct result of the week 4 information. One student responded:

“Yes. I went back to some of my earlier entries and altered the wording a little. Before week 4 & week 5 tutorials I was simply reporting my results without demonstrating that I was thinking about how to get the best results or why I made the changes I did when researching.”

The response to the third question was the most definitive and perhaps the most surprising. Of students surveyed, 88% (106/120) believed reflective thinking helps them to learn. Students value reflective thinking as a way to help them to realise their mistakes and avoid repeating them in the future. One student responded:

“Definitely. Reflective thinking is important so that we can learn from mistakes and avoid making the same mistakes and do better next time. During the reflective process we can discover new issues which we did not address.”

It is worth noting that while nearly all students indicated that they believed reflective thinking would help them to learn, their responses also indicated that some did not believe that reflective writing is a valuable learning tool, particularly where what is required is extensive. This is exemplified by the following two comments:

“I believe thinking reflectively will help me to learn, however, writing down those reflective thoughts honestly seems like a waste of time.”

“I think that reflective writing in small doses is OK, in large doses it is a complete waste of time.”

### **Implications for the Proposed Design Framework**

It is apparent from our survey results that overwhelmingly, students do recognise the value of reflective practice. However, because our survey was conducted after students had been taught the principles of reflection it is not clear whether this positive attitude reflects a pre-existing belief or was one formed as a result of the reflective activities in 143. Even if it is not necessary to explain the value of reflective practice to students, it will continue to be important to explain why it is valuable in the particular context in which it is being used.

It is apparent from our survey that the assertions in the literature that law students have limited experience of reflective practice are justified. While more than half the first year students surveyed had some experience in reflective writing, most had not been explicitly taught what reflective practice is or how to write reflectively. This result confirms the fundamental principle of the first step of the framework that it is essential when requiring students to engage in reflective practice, particularly those in the first year of their legal education, to explain what it is and to demonstrate both reflective practice and reflective writing. This is the case even where students do have some experience of reflective writing. In particular, providing examples of good and poor reflective writing is essential when giving students instruction on reflective writing. The examples assist students to understand how to write their reflections and how the reflections relate to the substantive activity. Even students who have experience of reflective writing will benefit from examples of how to write reflectively in the context required.

One important implication from our survey results in relation to the design of reflective assessment is that the number of questions should be limited so that the reflective writing is not onerous for students. In LWB143 students are given specific questions to answer, they are not faced with the blank page of some reflective journals. However some students indicated

that the number of reflective questions was burdensome and did not assist them to reflect on their research process. This response is consistent with findings in other studies that suggest that students dislike reflective writing and find the paperwork involved to be time-consuming (Rees & Shephard, 2005). Therefore, a potential disadvantage of this guided approach is that the number of questions and the directed nature of the questions may detract from the students' ability to reflect deeply on the issues that were important to their own learning experience. What is important is that students engage in reflective practice, the writing is merely a means of focussing student attention on the need to reflect and for students to demonstrate that they have engaged in reflective practice. Students should have time to reflect deeply on relevant matters rather than to take a surface approach to a large number of minor issues.

## **Conclusion**

This paper confirms that reflective practice is an effective method of involving students in a genuine learning experience of legal research skills at first year level. To be effective, the design of reflective assessment must satisfy the basic theoretical principles outlined in the framework proposed in this paper. That is, to achieve effective learning of legal research skills through reflective practice the design of legal research units in the first year should ensure that students understand the criteria for assessment of the reflective journal, that the process of reflective thinking is explained to students and is modelled by the learning facilitator by sharing extracts from her own reflective journal, students are provided with examples of good and poor reflective writing, students are required to complete activities designed to help their reflective practice skills, and students are supported in their reflective practice by the provision of examples of appropriate stimuli for reflection and related reading materials.

Reflective journals, that satisfy the conditions discussed above, are a valuable means of facilitating effective student learning of legal research skills in first year and of enabling students to demonstrate their learning through their assessment. In the legal education context, in particular, where opportunities for effective learning of reflection skills are relatively limited, the use of reflection in the first year experience in this way provides an opportunity to equip law graduates with skills that are relevant to the realities and rigours of their ensuing legal studies, and also of legal professional practice.

## References

- Australian Law Reform Commission (ALRC) (2000) *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89. Retrieved September 14, 2007, from <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>.
- Brockbank, A., & McGill, I. (1998). *Facilitating Reflective Learning in Higher Education*. Buckingham: SRHE/Open University Press.
- Brodie, P. & Irving, K. (2007). Assessment in work-based learning: investigating a pedagogical approach to enhance student learning, *Assessment & Education in Higher Education*, 32(1), 11-19.
- Cuffe, N. (2006). *LWB143 Study Guide*. Retrieved 12 February 2007, from <http://www.olt.qut.edu.au/law/LWB143>).
- Fernsten, L. & Fernsten J. (2005). Portfolio Assessment and Reflection: Enhancing Learning Through Effective Practice, *Reflective Practice*, 6(2), 303-309.
- Kift, S. (1997) Lawyering Skills: Finding Their Place in Legal Education, *Legal Education Review*, 8, 43.
- Lindsay, G.M. (2006). Constructing a Nursing Identity: Reflecting on and Reconstructing Experience, *Reflective Practice*, 7(1), 59.
- Mack, K., Mullins, G., Sidford, J. & Bamford, D. (2002) Developing Student Self-Reflection Skills Through Interviewing and Negotiation Exercises in Legal Education, *Legal Education Review*, 13, 221.
- McNamara, J. & Field, R. (2007) Designing Reflective Assessment for Workplace Learning in Legal Education, ATN Evaluation and Assessment Conference (2007). 29-30 November 2007.
- Maughan, C. (1996). Problem Solving Through reflective Practice: The Oxygen of expertise or Just Swamp Gas? *Web Journal of Legal Issues*, 2. Retrieved April 7, 2006, from <http://webjcli.ncl.ac.uk/1996/issue2/maughan2.html>.
- Moon, J. A. (1999). *Reflection in learning and professional development*. London: Kogan Page Limited.
- Moon, J. A. (2006). *Learning Journals: A Handbook for Reflective Practice and Professional Development*. London and New York: Routledge.
- Ramsden, P. (2003). *Learning to teach in higher education*. (2<sup>nd</sup> ed.). London: Routledge Falmer.
- Queensland University of Technology (QUT). (2001a). *Embedding Graduate Attributes in Law: Large teaching and Learning Grant: Outline of Graduate Attributes Program in Law*. Retrieved February 1, 2006, from <http://oltfile.qut.edu.au/download.asp.rNum=168381&pNum=138516&fac=law&OLT>.
- Queensland University of Technology (QUT). (2001b). *List of Compulsory LLB Units and Explicit Skills*. Retrieved February 1, 2006, from <https://olt.qut.edu.au/law/LAWGRADUATE/sec/index.cfm?fa=displayPage&rNum=138522>.
- Rees, C.E., Shephard, M. & Chamberlain, S. (2005). The utility of reflective portfolios as a method of assessing first year medical students' personal and professional development. *Reflective Practice*, 6(1), 3-14.
- Russell, T. (2005). Can reflective practice be taught? *Reflective Practice*, 6(2), 199-204.
- Schon, D (1987) *Educating the reflective practitioner: toward a new design for teaching and learning in the professions* San Francisco: Jossey-Bass.
- Stuckey, R. (2007). *Best Practices for Legal Education*. Clinical Legal Education Association. Retrieved September 18, 2007, from [http://law.sc.edu/faculty/stuckey/best\\_practices/best\\_practices.pdf](http://law.sc.edu/faculty/stuckey/best_practices/best_practices.pdf).
- Thomas, A.M. (2000). Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy. *Widener Law Review*, 6, 49.

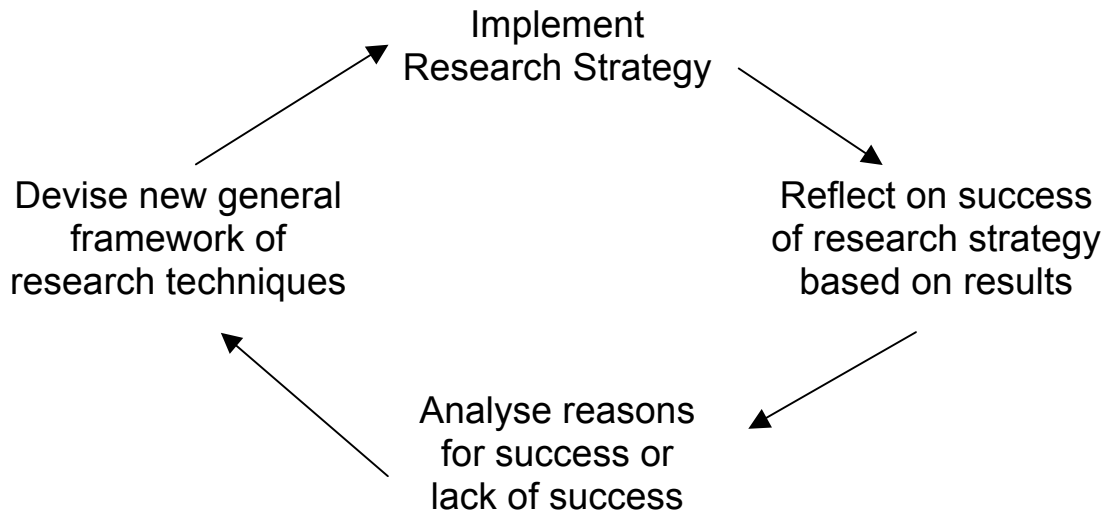


**Annexure A**  
**LWB143 WEEK 4 TUTORIAL - REFLECTION MATERIALS EXTRACT**

A simple definition of reflection is:

‘Reflection is a form of mental processing – like a form of thinking – that we use to fulfil a purpose or to achieve some anticipated outcome. It is applied to relatively complicated or unstructured ideas for which there is not an obvious solution and is largely based on the further processing of knowledge and understanding and possibly emotions that we already possess.’ (Moon, 1999)

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The original search was to simply use “child and photograph and privacy” as the search terms.

**Poor reflective writing**

The search that I used to find cases relevant to the topic resulted in over 300 cases most of which aren’t relevant. I abandoned that search string and started again.

**Good reflective writing**

The search that I used to find cases relevant to the topic resulted in over 500 cases most of which aren’t relevant. A quick look at some of the cases shows that they were about child pornography. While it seemed a good idea to include photograph and child as search terms these terms are relevant to child pornography and therefore I have obtained a lot of cases that discuss child pornography and not privacy. I modified my search by using “child and photograph” as the search terms and to include search for privacy in the catchwords. This gave me only 21 cases most of which were relevant to the topic. Where I know the general area of law in which I am looking for cases and can result in better results if I limit my search to that area of law.

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**Practice reflective question:**

In light of the experience you have had in the last 4 weeks in legal research in LWB143, reflect upon how legal research differs from research in other disciplines or research that you have undertaken for other purposes (eg at school). Consider how this difference impacts on your approach to legal research and to how you would go about answering a legal question. You should think about the research problem you have been set and how you have gone about finding an answer to the problem. You should also reflect on how your learning styles and existing research skills has impacted on your approach to and understanding of legal research.

A reflection by a student in a previous year was given to students as an example, however it cannot be reproduced for the purposes of this article for ethical reasons.