

A CRITERION-REFERENCED ASSESSMENT RUBRIC ON REFLECTIVE PRACTICE DESIGNED FOR A CLINICAL LEGAL EDUCATION CONTEXT

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ABSTRACT

The criterion-referenced assessment of clinical legal education is challenging due to the community raising diverse legal problems and law students demonstrating a wide range of skills. Clinical legal education may be harnessed by a whole-of-curriculum approach to assessing reflective practice using a criterion-referenced assessment rubric. The incremental reflective practice rubric is grounded in a conceptualisation of reflective practice and has been designed for two incremental clinical legal education experiences — an early immersion in a foundation course and a subsequent experience in an elective course. The rubric is applicable to reflection-for-practice, reflection-in-action and reflection-on-action, and is appropriate for written and oral assessment tasks.

I INTRODUCTION

The criterion-referenced assessment¹ of clinical legal education is challenging because the community raises diverse real legal problems and law students are expected to demonstrate a wide range of skills in the clinic. One way of harnessing the criterion-referenced assessment of clinical legal education is to use reflective practice. The significant value of reflective practice in legal education was acknowledged at the beginning of the twenty-first century and reinforced in 2010.² Reflective practice is incorporated in TLO 6: Self-management,³ which requires law graduates to be able to ‘reflect on and assess their own capabilities and performance’.⁴

In the context of Australian legal education, two criterion-referenced assessment rubrics on reflective practice have previously been published. One of these rubrics is based on the concept of reflective practice and the other is based on a four-step approach to reflective practice. This journal article explores these two rubrics and makes a novel contribution to the field of legal education by developing an incremental reflective practice rubric.

II USING THE CLINICAL LEGAL EDUCATION CONTEXT TO INFORM CRITERION-REFERENCED ASSESSMENT

Clinical law teachers who develop and renew clinical legal education are naturally concerned with determining how to assess clinical skills. Aligning learning outcomes, teaching and

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1 It is universally accepted in higher education that assessment is important because it drives student motivation: David Boud and Nancy Falchikov, *Rethinking Assessment in Higher Education: Learning for the Longer Term* (Routledge, 2007) 15.

2 Sharon Christensen and Sally Kift, ‘Graduate Attributes and Legal Skills: Integration or Disintegration?’ (2000) 11(2) *Legal Education Review* 207, 216; Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010) 10.

3 *Ibid.*

4 Kift, Israel and Field, above n 2, 22–3.

assessment is considered ‘best practice’.⁵ Ensuring this alignment in a clinical legal education context, is challenging because the community raises diverse real legal problems and law students are expected to demonstrate a wide range of skills in a clinic. Both of these challenges are considered below, and have driven the criterion-referenced assessment of reflective practice in a clinical legal education context.

A Appreciating that the Community Raises Diverse Real Legal Problems

The community raises diverse real legal problems in a clinical legal education setting. The partnership between the University of the Sunshine Coast Law School and the Suncoast Community Legal Service provides an insight into the number and nature of real legal problems.⁵

In 2013–2014, the Suncoast Community Legal Service provided face-to-face legal advice on 2365 problems, telephone advice on 186 problems, 1752 information activities, opened 47 cases, closed 38 cases and offered 25 community legal education presentations.⁷ The 2013–2014 year boasted a record breaking 137 volunteer lawyers.⁸ Most significantly, compared to the previous year, the number of opened cases more than doubled and the provision of face-to-face legal advice increased by 24 per cent. Overall, all of the workload data increased in the 2013–2014 year, representing an increase in access to justice for the Sunshine Coast community.⁹

Part of the way through the 2013–2014 year, the University of the Sunshine Coast (USC) Law School dedicated a full-time law teacher to the Suncoast Community Legal Service and clinical legal education (in November 2013). Further, approximately 100 foundation law students commenced clinical legal education at the USC Law School, in February 2014. The next annual report will better reflect the partnership between the Suncoast Community Legal Service and the USC Law School over a full year.

While the real legal problems are multifarious, they can be categorised into three broad areas of law. The break-down for the 2013–2014 year is as follows: 37 per cent family law problems, 33 per cent civil law problems, and 8 per cent criminal law problems.¹⁰ The depth of these areas of law solidifies the need for law clinics to surpass the criterion-referenced assessment of discipline knowledge and capitalise on the criterion-referenced assessment of skills or threshold learning outcomes (TLOs),¹¹ for example, reflective practice, in the context of clinical legal education.

B Expecting Law Students to Demonstrate a Wide Range of Skills

Clinical legal education presents law students with the opportunity to conduct numerous tasks and thus showcase a wide range of skills. Some of the tasks include conducting client interviews; drafting letters, applications and other legal documents; performing legal research and making telephone inquiries. In an Australian legal education context, law skills were

⁵ Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007) 235.

⁶ Other Australian law schools have benefited from being in partnership with community legal services. For example, Monash University, University of New South Wales, Murdoch University and Newcastle University: Sebastian De Brennan, ‘Rethinking Pro Bono: Students Lending a Legal Hand’ (2005) 15 *Legal Education Review* 25, 25.

⁷ Suncoast Community Legal Service Inc, *30th Annual Report 2014* (Suncoast Community Legal Service Inc, 2014) 20.

⁸ *Ibid.*

⁹ *Ibid.* Note that the Suncoast Community Legal Service Inc Annual Report 2013–2014 did not include figures on the number of disadvantaged and underrepresented clients that it assisted during the year.

¹⁰ *Ibid.* 21.

¹¹ Kift, Israel and Field, above n 2, 10. The Australian Learning and Teaching Council’s Learning and Teaching Academic Standards Project identified six TLOs for a Bachelor of Laws including TLO 1: Knowledge; TLO 2: Ethics and professional responsibility; TLO 3: Thinking Skills; TLO 4: Research Skills; TLO 5: Communication and Collaboration; TLO 6: Self-management. The TLOs are the minimum standards expected of a law graduate. As the discipline knowledge changes from case-to-case in clinical legal education, TLO 1 should be avoided as the sole basis for teaching, scaffolding and assessing clinical legal education.

captured in the TLOs in 2010, and include thinking skills, research skills, communication skills and collaboration skills and self-management.¹² The criterion-referenced assessment of all of the TLOs in a clinical legal education course is onerous for clinical law teachers, and one approach for tackling this challenge is to focus on reflective practice, which falls within the realm of self-management.

There is limited integration and criterion-referenced assessment of reflective practice in first year law courses and courses that are heavily content-based.¹³ As noted above, clinical legal education demands that law students demonstrate a wide range of skills rather than being heavily laden in content, and the discipline knowledge depends on the diverse nature of the real legal problems raised by the community. As such, clinical legal education readily lends itself to the integration and criterion-referenced assessment of reflective practice.¹⁴

III ASSESSING REFLECTIVE PRACTICE IN A CLINICAL LEGAL EDUCATION CONTEXT

A *Identifying the Benefits of Assessing Reflective Practice*

There are several benefits of integrating and assessing reflective practice.¹⁵ In a clinical legal education context, some of the benefits of reflective practice include appreciating professional responsibility and the application of ethical values; supporting the development of knowledge and skills; improving problem-solving skills; enhancing experiential learning; encouraging deeper learning; understanding feedback; planning career goals; and transitioning law students to the legal profession.¹⁶

B *Developing 'Emotional Intelligence'*

In addition to these benefits, integrating reflective practice into clinical legal education develops a student's 'emotional intelligence',¹⁷ which has been defined as the 'ability to perceive, use, understand, and manage emotions'.¹⁸ Developing 'emotional intelligence' is critical to handling the stresses confronting law students and legal practitioners, particularly in light of high rates of psychological distress and depression in these populations.¹⁹ Accordingly, the need to assess reflective practice in an Australian undergraduate law program has received greater attention in the 21st century.²⁰

¹² Ibid.

¹³ Judith McNamara, Rachael Field and Natalie Cuffe, 'Designing Reflective Assessment for Effective Learning of Legal Research Skills in First Year' (Paper presented at First Year in Higher Education Conference, Hobart, Tasmania, 2008) 2.

¹⁴ Regarding reflective practice as a benefit to a law clinic, see Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws) Reflective Practice* (Australian Learning and Teaching Council, 2013) 5.

¹⁵ Regarding the benefits of reflective practice, see Judith McNamara and Rachael Field, 'Designing for Reflective Practice in Legal Education' (2007) 2(1) *Journal of Learning Design* 66, 68; McNamara, Cockburn and Campbell, above n 14, 5.

¹⁶ Ibid.

¹⁷ Colin James, 'Seeing Things as We are: Emotional Intelligence and Clinical Legal Education' (2005) 6 *International Journal of Clinical Legal Education* 123, 124.

¹⁸ Kift, Israel and Field, above n 2, 10.

¹⁹ Anna Huggins, Sally Kift and Rachael Field, 'Implementing the Self-management Threshold Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox' (2011) 21 *Legal Education Review* 183; Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis, 2014) 270; Colin James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education' (2008) 18 *Legal Education Review* 123, 123.

²⁰ McNamara and Field, above n 15, 68; Kelley Burton and Judith McNamara, 'Assessing Reflection Skills Using Criterion-Referenced Assessment' (2009) 19(1&2) *Legal Education Review* 171.

IV USING A CRITERION-REFERENCED ASSESSMENT RUBRIC ON REFLECTIVE PRACTICE IN A CLINICAL LEGAL EDUCATION CONTEXT

A *Identifying the Benefits of a Criterion-referenced Assessment Rubric*

A criterion-referenced assessment rubric on reflective practice provides a basis for assessing reflective practice. It is a useful resource for augmenting a shared understanding between clinical law teachers and students on what reflective practice encompasses and how it is assessed (transparency); guiding a dialogue between clinical law teachers and students about reflective practice; demonstrating how students can progress their ability to engage in reflective practice; guiding clinical law teachers on how to make marking judgements on student reflective practice; ensuring greater consistency in marking (reliability); promoting the alignment between learning outcomes and assessment tasks (validity); facilitating feedback, self-assessment and peer-assessment.²¹ The benefits of criterion-referenced assessment rubrics certainly justify why designing, implementing and refining criterion-referenced assessment rubrics gained momentum as a worthy assessment theme in legal education in the 21st century.²²

B *Contrasting Criterion-referenced Assessment from Norm-referenced Assessment*

Criterion-referenced assessment necessitates student work to be marked against explicit criteria, rather than being marked against other student work on a bell-curve.²³ The latter approach to marking is commonly known among clinical law teachers as norm-referenced assessment, and is criticised for creating competitive rather than collaborative law students; decreasing law student motivation; and being unfair to law students.²⁴ Not surprisingly, all Australian universities that support a law school endorse criterion-referenced assessment as contrasted to norm-referenced assessment; and seven Australian university assessment policies explicitly promote the use of criterion-referenced assessment rubrics.²⁵ Further, criterion-referenced assessment is regarded as best practice in legal education.²⁶

V EVALUATING THE EXISTING CRITERION-REFERENCED ASSESSMENT RUBRICS ON REFLECTIVE PRACTICE

An informal survey of Australian legal education literature, identified two criterion-referenced assessment rubrics on reflective practice.²⁷ Developing rubrics on reflective practice is a relatively new phenomenon in Australian legal education as the rubrics were extracted as appendices in the 2013 *Good Practice Guide (Bachelor of Laws) Reflective Practice*; and were

21 Kelley Burton, 'Designing Criterion-Referenced Assessment' (2006) 1(2) *Journal of Learning Design* 73, 78.

22 Stuckey, above n 5, 278; Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1) *Legal Education Review* 1, 23.

23 D Royce Sadler, 'Specifying and Promulgating Achievement Standards' (1987) 13(2) *Oxford Review of Education* 191, 192; Burton, above n 21, 73; Kelley Burton and Natalie Cuffe, 'The Design and Implementation of Criterion-referenced Assessment in a First Year Undergraduate Core Law Unit' (2005) 15 *Legal Education Review* 159, 159; Stuckey, above n 5, 243.

24 *Ibid.*

25 Based on the assessment policies derived from each university website on 10 March 2015. The seven university assessment policies that support the development of rubrics are the Australian National University, Edith Cowan University, Griffith University, James Cook University, University of Notre Dame, University of Sydney and University of the Sunshine Coast. Regarding the proliferation of law schools, see David Barker, 'An Avalanche of Law Schools: 1989 to 2013' (2013) 6 *Journal of the Australasian Law Teachers Association* 153.

26 Stuckey, above n 5, 278.

27 Note that in an international clinical legal education literature context, a criterion-referenced assessment rubric for a reflective portfolio was located: Rachel Spencer, 'Holding up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' (2012) 17–18(2) *International Journal of Clinical Legal Education* 181, 213. The criteria and performance standards on this rubric echo critical thinking and communication skills, rather than reflective practice.

originally published in 2009 and 2013.²⁸ In chronological order, the first rubric was based on conceptualisations on reflective practice²⁹ and was developed for a reflective court report in a final year undergraduate law course. It will be referred to as the concept rubric. The second rubric was based on a four-step model of reflection — reporting and responding; relating; reasoning and reconstructing.³⁰ It will be labelled as the four-step rubric, and was originally developed for a reflective and iterative design artefact in a second year fashion studies course.³¹ Both of these rubrics were designed for written reflective assessment tasks.

As the label suggests, the concept rubric clarifies reflective practice. In particular, engaging in reflective practice goes beyond merely setting out what happened and why it happened. It requires a law student to make logical connections between new and previous knowledge; question assumptions and values underpinning previous knowledge; solve inconsistencies between expectations from previous knowledge and the experience in practice; show an awareness of contextual considerations and not merely a personal perspective; use literature and previous knowledge to support alternative options or solutions instead of following practices because of habit; identify strengths and weaknesses in previous understanding; and suggest a way forward for dealing with weaknesses.³² The concept rubric is grounded in the plethora of literature on reflective practice.³³

As noted above, the four steps in the four-step rubric include reporting and responding; relating; reasoning and reconstructing.³⁴ The first step requires ‘[d]escribing highly relevant incidents and issues, with perceptive observations of the situation; explained why these were relevant, noteworthy, puzzling, or troubling’.³⁵ The second step requires ‘[m]aking clear, insightful connections between the incidents and issues and your own personal skills, experiences, values and beliefs. Addressed questions such as: Have I seen or encountered this before? Were the circumstances the same/different? In what ways is this challenging?’.³⁶ The third step requires ‘[i]nsightfully considering, from different perspectives, how the incidents and issues could be explained, by referring to own knowledge and experience and relevant theory and literature’.³⁷ The fourth and final step requires ‘[c]onsidering other possible responses to the incidents and issues; describing what has been learned and noting any questions that remain unanswered’.³⁸ One of the salient features of the four-step rubric is its linear approach to reflective practice, which is not so evident in the concept rubric.

28 The first rubric was originally published in Burton and McNamara, above n 20, 171. The second rubric was originally published in McNamara, Cockburn and Campbell, above n 14, 21. The second rubric is largely based on the work of Mary Ryan and Michael Ryan, ‘Theorising a Model for Teaching and Assessing Reflective Learning in Higher Education’ (2012) 32(2) *Higher Education Research and Development* 244, 254; Michael Ryan and Dean Brough, ‘Reflections around Artefacts: Using a Deliberative Approach to Teaching Reflective Practices in Fashion Studies’ (2012) 5(1) *Journal of Learning Design* 1, 1. The two existing rubrics have not been reproduced in this paper to preclude copyright issues.

29 The conceptualisations of reflective practice will not be reproduced here, but three of the key conceptions underpinning the rubric were derived from Jack Mezirow, ‘On Critical Reflection’ (1998) 48(3) *Adult Education Quarterly* 185, 185; Tom Bourner, ‘Assessing Reflective Learning’ (2003) 45 *Education and Training Journal* 267, 268; Jennifer A Moon, *A Handbook of Reflective and Experiential Learning* (Routledge, 2004) 82. Classic works in field of reflective practice include John Dewey, *How we think* (Prometheus Books, 1933); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1983); David Boud, Rosemary Keogh and David Walker, ‘Introduction: What is Reflection in Learning?’ in David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (Kogan Page, 1985) 9, 11; Donald Schön, *Educating the Reflective Practitioner* (Jossey-Bass Publishers, 1987) 12.

30 Ryan and Ryan, above n 28, 254; Ryan and Brough, above n 28, 1; McNamara, Cockburn and Campbell, above n 14, 21.

31 Ibid.

32 Burton and McNamara, above n 20, 187. The plethora of literature underpinning the development of the concept rubric includes Mezirow, above n 29, 185; Bourner, above n 29, 268; Moon, above n 29, 82.

33 Ibid.

34 Ryan and Ryan, above n 28, 254; Ryan and Brough, above n 28, 1; McNamara, Cockburn and Campbell, above n 14, 21.

35 McNamara, Cockburn and Campbell, above n 14, 21.

36 Ibid.

37 Ibid.

38 Ibid.

There are several similarities between the performance standards on the four-step rubric and the concept rubric. For example, both rubrics require a student to make logical connections between new and previous knowledge; show an awareness of contextual considerations; and use literature and previous knowledge to support alternative options or solutions. However, unlike the four-step rubric, the concept rubric requires a law student to question assumptions and values underpinning previous knowledge; identify strengths and weaknesses in previous understanding; and suggest a way forward for dealing with weaknesses. When determining whether to apply the concept rubric or the four-step rubric, clinical law teachers could consider the type of reflective practice to be assessed, and the assessment tool for reflective practice.

A *Assessing 'Reflection-on-action', 'Reflection-in-action' or 'Reflection-for-action'*

Three types of reflective practice include 'reflection-on-action', 'reflection-in-action' and 'reflection-for-action'.³⁹ 'Reflection-on-action' requires the reflective practice to occur after the action. In a clinical legal education context, an example of 'reflection-on-action' occurs when a law student completes a reflective journal after their experience in a community legal service. In contrast to 'reflection-on-action', 'reflection-in-action' requires a greater proximity between the reflective practice and action. An example of 'reflection-in-action' in a clinical legal education setting occurs when a clinical law teacher opens a dialogue with a law student immediately after a law student has interviewed a client, but before the law student observes a local legal practitioner providing advice on the real legal problem. 'Reflection-for-action' occurs before 'reflection-in-action' and 'reflection-on-action', and an example includes a conversation between a clinical law teacher and law student before the law student makes a follow-up telephone inquiry with a client. In chronological order, reflective practice includes 'reflection-for-action', 'reflection-in-action' and 'reflection-on-action'; and these conceptions provide guidance to clinical law teachers on when to integrate reflective practice in assessment tasks.

The concept rubric discussed above, which is founded on the conceptualisations of reflective practice, centres on the process of reflective practice rather than the product of reflective practice. Fittingly, the concept rubric may be utilised for 'reflection-for-action', 'reflection-in-action' and 'reflection-on-action'. The concept rubric is a useful resource for clinical law teachers interested in assessing reflective practice in their clinical legal education course.

The four-step rubric discussed above is materially different from the concept rubric in that it requires a structured approach (four-step model) to reflective practice. The four-step rubric is more apt for 'reflection-on-action', where the reflective practice occurs after clinical experience. While there may be some scope for the four-step rubric to apply to 'reflection-for-action', it possibly has less relevance to 'reflection-in-action' where the reflective practice is more organic. The four-step rubric continues to be a useful resource for clinical law teachers seeking to assess reflective practice in a clinical legal education course.

B *Assessing Written or Oral Reflective Practice*

Clinical law teachers may draw on a diverse range of assessment tools for reflective practice. The most prevalent tool for assessing reflective practice is a journal. Alternative assessment tools include e-portfolios, wikis, blogs, notebooks, diary entries, court reports, mind maps, oral

39 Rachel Spencer, 'Private Lives: Confronting the Inherent Difficulties of Reflective Writing in Clinical Legal Education' (2014) 21(2) *International Journal of Clinical Legal Education* 70, 71; Soile Pohjonen and Sari Lindblom-Ylänne, 'Challenges for Teaching Interaction Skills for Law Students' (2002) 36(3) *Law Teacher* 294, 296.

presentations and videos.⁴⁰ These assessment tools could be further characterised as requiring written or oral reflective practice, and so the assessment tool chosen may set some parameters for the expected structure and communication of the reflective practice.

The concept rubric focuses on the process of reflective practice rather than merely the product of reflective practice, and consequently, it may be applied to both written and oral reflective assessment tasks. In contrast, the four-step rubric emphasises a written product by explicitly referring to descriptions of incidents, issues and what was learned. Plausibly, the four-step rubric is more appropriate for written reflective assessment tasks rather than oral reflective assessment tasks. The concept rubric better appreciates the important dichotomy between reflective practice and communication skills, than the four-step rubric.⁴¹

With respect to written reflective assessment tasks, the four-step rubric expects descriptions of incidents, issues and what was learned. The four-step rubric requires descriptions for all passing grades including a high distinction. Descriptive writing may be appropriate for an early immersion in clinical legal education in the sense of a first year experience. However, higher levels of writing could be expected from law students undertaking a subsequent experience in clinical legal education. Higher levels of writing include analytical writing, persuasive writing and critical writing.⁴² There is scope to map each level of writing against a different passing grade on the four-step rubric, and thereby expect more from law students in a subsequent experience in clinical legal education.

In summary, the concept rubric is readily applicable to all three types of reflective practice, that is, reflection-for-action, reflection-in-action and reflection-on-action. In contrast, the four-step rubric is appropriate for reflection-on-action. The concept rubric is relevant to both oral and written reflective assessment tasks, while the four-step rubric pertains to written reflective assessment tasks. Clinical law teachers could take these considerations into account when making a decision on whether the existing rubrics on reflective practice are appropriate to satisfy their needs.

VI DEVELOPING AN INCREMENTAL REFLECTIVE PRACTICE CRITERION-REFERENCED ASSESSMENT RUBRIC

The key problem with the concept rubric and the four-step rubric is that they provide a rigid approach to assessing reflective practice. In particular, the existing rubrics do not support a first-year law student who achieves a high distinction for reflective practice in an early immersion in clinical legal education to refine their reflective practice skills in a subsequent clinical legal education experience. The concept rubric and the four-step rubric are at odds with the current Australian legal education literature, which endorses a ‘structured and integrated, whole-of-curriculum approach’⁴³ and a ‘contextualised, sequential and incremental’⁴⁴ approach to assessment, and thus the design of criterion-referenced assessment rubrics.

Developing a reflective practice rubric that gradually shifts the goal posts and enables a law student to incrementally develop their ability to engage in reflective practice from an early immersion to a later experience in clinical legal education, is a novel idea. A rubric that incrementally develops reflective practice requires a deeper and more fluid understanding of

40 Ibid; McNamara, Cockburn and Campbell, above n 14, 8; Burton and McNamara, above n 20, 180; Moon, above n 29, 159.

41 There may be no correlation between the ability to write and the ability to reflect: Barbel Pee et al, ‘Appraising and Assessing Reflection in Students’ Writing on a Structured Worksheet’ (2002) 36 *Medical Education* 575, 583; Jennifer Sumsion, ‘Reflection: Can we Assess it? Should we Assess it?’ (1996) 21 *Assessment and Evaluation in Higher Education* 121, 124; Boud and Falchikov, above n 1, 15.

42 Regarding these styles of writing, see The University of Sydney Learning Centre, *What is the Difference between Descriptive, Analytical, Persuasive and Critical Writing?* (24 November 2014) University of Sydney <http://sydney.edu.au/stuserv/learning_centre/help/analysing/an_distinguishTypes.shtml>.

43 Kift, Israel and Field, above n 2, 9; See also Anna Huggins, ‘Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law’ (2015) 38(1) *UNSW Law Journal* 264, 283.

44 Richard Johnstone ‘Whole-of-Curriculum Design in Law’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 1, 15.

reflective practice because the performance standard descriptors marginally increase between two experiences in clinical legal education. Further, such a rubric overcomes the key problem with the existing rubrics on reflective practice, which as mentioned above, have a rigid design.

A rubric that incrementally develops reflective practice is relevant to the clinical legal education experiences at, for example, the USC Law School. More specifically, first-year law students engage in clinical legal education in their foundation courses and subsequently have the opportunity to undertake electives on clinical legal education.⁴⁵

A criterion-referenced assessment rubric that incrementally develops reflective practice focuses on skills rather than discipline knowledge and thus appreciates that the community raises diverse real legal problems. Further, such a rubric is more manageable for clinical law teachers who instead of having to assess a wide range of skills could assess a law student's ability to reflect on the development of their skills. Consequently, a criterion-referenced assessment rubric that incrementally develops reflective practice is one way of tackling some of the assessment challenges that emerge in a clinical legal education context, and were discussed in Part II above.

Given the limitations of the four-step rubric as outlined in Part V above, this article takes a continuous improvement approach to the concept rubric by developing an incremental reflective practice rubric, which is illustrated in Table 1 below. Like the concept rubric, the incremental reflective practice rubric is founded on the conceptualisation of reflective practice; applies equally to 'reflection-for-action', 'reflection-in-action' and 'reflection-on-action'; and is relevant to both written and oral reflective assessment tasks. However, the incremental reflective practice rubric advances the concept rubric in three fundamental ways.

First, the incremental reflective practice rubric in Table 1 adopts a 'structured and integrated, whole-of-curriculum approach'⁴⁶ and a 'contextualised, sequential and incremental'⁴⁷ approach to assessing reflective practice. It does so by establishing performance standards for an early immersion in clinical legal education and marginally increasing the performance standards for a subsequent experience in clinical legal education.

Second, the incremental reflective practice rubric in Table 1 develops a performance standard for each of the four conventional passing university grades (high distinction, distinction, credit and pass), as well as, one performance standard for the failing grades (fail). This is a marked improvement on the concept rubric, which comprised only three performance standards for the passing grades (satisfactory, good to very good and excellent); and one performance standard

45 In the USC Law Clinic, all first year law students participate in legal practice under the close supervision of local legal practitioners and clinical law teachers in two foundation courses. In 2014, the USC Law School had 100 first year law students and in 2015, it had 125 first year law students. Subsequently, law students are given the opportunity to undertake electives on law clinic and advanced law clinic, and may also do a legal externship. Engaging all first year law students in clinical legal education is a reasonably novel approach and a stark difference to the traditional approach, whereby clinical legal education has typically been limited to a minority of final year law students or a capstone experience.

In the first semester, the first year law students are provided with an orientation of the Suncoast Community Legal Service and clinical legal practice. The first-year students interview a client in pairs; discuss the real legal problem with a local legal practitioner; and observe as the local legal practitioner provides advice on the real legal problem. Immediately after the client-interview experience, the USC Law Clinic's law teacher, who is also a practising lawyer, leads the student-pairs through reflective practice to construct meaning out of what occurred. At the end of the day, the law students share their insights through oral, group reflective practice and are given some time to complete a reflective journal. In the second semester, the first year students follow the same process, except that they conduct the client interview individually, rather than in pairs. The two foundation courses require first year law students to commit one day per semester (total of two days) to clinical legal education.

Subsequently, law students are given the opportunity to undertake electives on law clinic and advanced law clinic. These courses require students to commit one day per week in a semester to clinical legal education. Reflective practice continues to be a salient feature of the later clinical legal education law electives. In particular, the law students self-assess their skills; develop a learning contract with the USC Law Clinic's law teacher, who is also a practising lawyer; engage in individual and group reflective practice at the clinic; and later complete a reflective journal.

46 Kift, Israel and Field, above n 2, 9; See also Huggins, above n 47, 283.

47 Richard Johnstone 'Whole-of-Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 1, 15.

for the failing grades (poor). As the incremental reflective practice rubric canvasses reflective practice for an early immersion and subsequent experience in clinical legal education, it essentially elucidates two additional passing performance standards and incrementally distributes the conception of reflective practice over six performance standards.⁴⁸ The manner in which the conception of reflective practice was distributed across the six performance standards was informed by the three passing grades on the existing concept rubric, the need for each performance standard descriptor to represent a discernible achievement, and the need for the performance standard descriptors to incrementally develop reflective practice across each row in the table. The *italicised* words in Table 1 illustrate how the incremental reflective practice rubric advances the existing concept rubric.

Third, the incremental reflective practice rubric in Table 1 presents the best performance standard in the left-hand column and the worst performance standard in the right-hand column. In contrast, the concept rubric contained the worst performance standard in the left-hand column and the best performance standard in the right-hand column. In the author's experience, good practice currently suggests the reverse order is better, because the left-hand column receives greater attention than the right-hand column.

The incremental reflective practice rubric focuses on the process of reflective practice rather than the product, and is couched in content-generic terms. Consequently, it could be applied to other law courses and cross-disciplinary courses.

VII CONCLUSION

Assessing clinical legal education is challenging because the community raises diverse real legal problems and law students are expected to demonstrate a wide range of skills in clinic. One way of harnessing the assessment of clinical legal education is using reflective practice. There are numerous reflective practice assessment tools including e-portfolios, wikis, blogs, notebook, diary, court reports, mind maps, oral presentations and videos.

Table 1 presents the incremental reflective practice rubric, which enhances the previously published concept rubric. As the name suggests, the concept rubric is grounded in a conceptualisation of reflective practice. The concept rubric focuses on the process of reflection rather than merely the product of reflection; and as a result, is equally applicable to 'reflection-for-practice', 'reflection-in-action' and 'reflection-on-action'. Further, the concept rubric is readily applicable to both written assessment tasks and oral assessment tasks.

The incremental reflective practice rubric refines the concept rubric by aligning the number of performance standards with the number of university passing grades; and reversing the order of the performance standards so that the highest performance standard appears in the left-hand column. While these refinements may be considered superficial, the true value of the incremental reflective practice rubric lies in its incremental advancement of reflective practice from an early immersion in clinical legal education to a subsequent experience in clinical legal education.

The incremental reflective practice rubric in Table 1 was designed with clinical legal education in mind. It focuses on the process of reflective practice rather than the product, and is couched in content-generic terms. It may be applied to other fields of law, or even transcend the boundaries of law into other disciplines. It is hoped that the incremental reflective practice rubric is beneficial to clinical law teachers and will revive a dialogue about how to assess reflective practice using a criterion-reference assessment rubric.

⁴⁸ Regarding alternative assessment grading options such as graded; pass or fail; or a hybrid of graded and pass or fail, see Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Australian Government Office for Learning and Teaching, 2012) 23. No marks are explicitly provided on the incremental reflective practice rubric in Table 1, but the performance standards clearly allow for graded, pass or fail, or a hybrid assessment option.

Table 1: Incremental reflective practice criterion-referenced assessment rubric for an early immersion and subsequent experience in clinical legal education

The *italicised* words illustrate how the incremental reflective practice criterion-referenced assessment rubric advance the previously published concept rubric.

Reflective Practice: Relates to TLO 6 Self-management						
Early immersion	High Distinction	High Distinction	Distinction	Credit	Pass	Fail
Subsequent experience	<p>Makes <i>logical connections between new and previous knowledge.</i></p> <p><i>Questions assumptions and values underpinning pervious knowledge.</i></p> <p><i>Solves inconsistencies between expectations from previous knowledge and the experience in practice.</i></p> <p>Shows an awareness of <i>more than one of the contextual considerations</i> (historical, social, cultural, political).</p> <p>Uses <i>primary and secondary sources</i>, and previous knowledge to support <i>alternative options or solutions.</i></p> <p>Identifies strengths and weaknesses in previous understandings and suggests how the weaknesses have been addressed.</p>	<p>Makes <i>logical connections between new and previous knowledge.</i></p> <p><i>Questions assumptions and values underpinning pervious knowledge.</i></p>	Makes logical connections between new and previous knowledge.	Sets out what happened and why it happened.	Merely sets out what happened.	<p>Omits to set out what happened.</p>
	<p>Shows an awareness of <i>a contextual consideration</i> (historical, social, cultural, political).</p> <p>Uses <i>primary and secondary sources to support alternative options or solutions.</i></p> <p>Identifies strengths and weaknesses in previous understandings and suggests a way forward for dealing with weaknesses.</p>		Adapts or applies previous knowledge to a real world experience.	Approaches the experience and its rationale from a personal perspective.	Approaches the experience from a personal perspective.	<p>Omits to approach the experience from a personal perspective and does not show an awareness of contextual considerations.</p> <p>Omits to include the usual practices.</p>
			Considers alternative options or solutions.	Considers an <i>alternative option or solution.</i>	Follows practices because of habit.	<p>Omits to identify strengths in previous understanding.</p>