Training for Better Decisions: Designing a Computer-mediated Distance Education Subject for Tribunal Members

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The post-war expansion of government programs has seen the establishment of numerous tribunals to make decisions, or to hear appeals from government decisions, in areas as diverse as planning, migration and guardianship. At the same time, the need to regulate occupational groups has led to a proliferation of industry-specific disciplinary tribunals. All of these can be considered to be administrative tribunals,[1] although no clear line separates them from "court- substitute" tribunals which adjudicate disputes relating to private rights and liabilities.[2]

While there are no general entry-level qualifications required for appointment to administrative tribunals, a great deal is asked of the members. In many tribunals, members combine the roles of investigator and adjudicator, and some are also expected to be skilled in alternative dispute resolution processes. Effectiveness as a tribunal adjudicator requires the ability to identify the issues, elicit information, evaluate evidence, interpret and apply legislation, precedents and policy, and to communicate reasons for decision.[3] Kathryn Cronin has observed, "such an array of skills and roles is not easily combined in the one person".[4] Many of the required skills, values and knowledge will need to be learned or improved after appointment.[5]

Despite widespread agreement that members of administrative tribunals should be trained for their role, no clear model for providing the training has emerged. The Australian Law Reform Commission (ALRC) has recently reported that, while tribunals are endeavouring to provide induction training for new members and

some continuing professional education for existing members, "there is a need for greater comprehensiveness, coherence and coordination".[6] The existing system under which individual tribunals arrange their own in-house training programs is costly.

Costs can be reduced if tribunals integrate their programs and share educational resources. The Canadian Council of Administrative Tribunals (CCAT)[7] has indicated that the starting point for devising an effective national approach to tribunal training is to distinguish between the common or generic skills and knowledge required of all tribunal members, and other learning needs that are specific to a particular tribunal. The training model proposed by the CCAT is based on this functional distinction:

> For subjects that are tribunal-specific, they are best delivered by the tribunal. For some subjects common to all tribunals, such as principles of administrative justice, generic training may be most efficient. This also provides consistency in practice.[8]

In Australia the ALRC and the Administrative Review Council (ARC) have also recognised that there are certain core skills required for tribunal members, and that training programs should be based on recognition of the common features.[9] University law schools can assist in the delivery of generic training for tribunal members. The ALRC has recently observed that some universities already have the required expertise and infrastructure for learner support, and have the economies of scale to provide cost-effective training.[10]

This article reflects upon the experience of Monash University in developing a new graduate law subject for members of administrative tribunals, called "Decision Making for Tribunal Members".[11] The subject gives a broad introduction to the role of tribunal members, the framework of legal regulation in which they operate, and the legal and ethical requirements for administrative adjudication. The learning activities for the subject are designed to develop core skills of statutory interpretation, use of precedents, identification of issues, analysis of problems and writing reasons for decisions. The intended student group is people currently serving as tribunal adjudicators, including those who have legal qualifications.[12]

Overcoming the Obstacles to Common Training

The impetus for developing the subject came from a discussion at the 1998 National Forum of the Australian Institute of Administrative Law at a workshop session on Tribunals and Training. One of the tribunal heads observed that there were two major obstacles to greater cooperation by tribunals in the delivery of training: the geographic dispersion of tribunal members and the specialist nature of tribunal practice.

Geographic Dispersion of Learners

From our perspective as educators, these obstacles were by no means insuperable. Geographic dispersion of the learner group could be addressed by delivering training via distance education, provided that the mode of delivery was suited to the educational objectives. Although some of the core skills identified by the ARC might require some face-to-face teaching (for example, inter-personal communication), many of the areas of learning relating to the process of adjudication could be studied at a distance.

We saw a number of benefits for tribunal members in developing the subject for delivery by distance education. Members, whether studying locally or at a distance, would appreciate the convenience of being able to study at home or at work, at times that suited themselves. Through computer conferencing and group activities undertaken via the Internet, they could enjoy collegial interaction with members of their own and other tribunals.

Diversity of Learning Contexts

The second obstacle to generic training identified at the AIAL workshop was the diverse and specialised nature of tribunal practice. The problem was how to teach generic skills and knowledge in a way that would satisfy the learners' need to see the practical application to their own tribunal context. Our proposed solution was to design learning activities that require students to formulate their own problem and then to solve it by applying their newly learned skills and knowledge. The students are the experts at identifying the current issues and problems facing their tribunal.

Requiring them to devise a problem would ensure that students were working on problems that they had themselves identified as significant and relevant. For example, a problem-based activity designed to promote learning of skills and principles of statutory interpretation would instruct the students to begin as follows:

1 Take a statute under which you have a decision making function.

2 Identify a provision which, when applied to a set of facts invented by you, is ambiguous, unclear, or which appears to produce an unjust or unreasonable result.

We expected that requiring students to formulate and answer problems of their own devising would promote the transfer of skills from one problem to another. Stephen Nathanson points out that law students sometimes fail to see that problem-solving skills that they use in one legal context can be applied to another.[13] He recommends that teachers build into the design of learning activities devices for reminding students to make the necessary connections.[14] The exercise of formulating a problem would promote transfer by prompting students to review their experience and construct factual scenarios in which their new learning could be applied.

A further way of demonstrating the transferability of skills and knowledge is to enable students to share their answers. The provision of many examples helps students not just to apply their new learning but to distinguish situations where it is necessary from those where it is not.[15] If students work on self-devised problems, their answers could form a rich store of varied examples. This would be a valuable learning resource which fellow students could access from a database on the Internet. Naturally, the learning activities should be designed to discourage disclosure of confidential or restricted information, and students should have the opportunity to ask for their answers to be kept private.

To share student answers is a departure from standard university practice. Generally law teachers are reluctant to allow students unmediated access to the answers of other students because of the risk of plagiarism, or fear that errors and misconceptions may spread. Plagiarism is not a concern where each learner is addressing a unique problem; nor is the spread of errors a significant concern where the focus of the activity is on process rather than outcome. Tribunal members read decisions of other

members in the course of their work, and have to make their own assessment of the quality of others' reasoning. Errors and misconceptions can be addressed in feedback to the individual learner, and raised in a general way in an online tutorial.

Planning the Subject

We decided that the proposed subject should focus on teaching generic skills and knowledge that learners would apply to actual or simulated problems arising from their own tribunal context, that their answers would be shared, and that the subject would be delivered by distance education. We were confident that with these design features, we could largely overcome the obstacles of geographic dispersion of learners and the diverse and specialised nature of tribunal practice.

The decision to deliver our subject by distance education required no compromise in quality. A wide variety of law subjects are already offered for external study by a number of Australian law schools,[16] and are widely regarded as equivalent to qualifications awarded for on-campus study.[17] Particularly when supported by appropriate use of computer technology, distance education can provide a rich learning environment that is in no way inferior to the quality offered by many on-campus courses.[18]

The Web offers the potential to improve student learning in various ways: it supports interaction (teacher to student and student to student), enables students to work collaboratively, provides free access to a vast array of primary and secondary materials, and allows flexible sequencing of teaching materials by means of hypertext and links.[19]

To make effective use of this potential requires a restructuring of the traditional university model of teaching.[20] Laurillard suggests the following 3-step approach: first, analyse the learning activities that students will be given; second, analyse the strengths and limitations of the various educational media; and third, select the combination of media that will facilitate the learning activities.[21] This approach ensures that educational considerations will determine the choice of media and not *vice versa*.

THE EDUCATIONAL DESIGN

Selecting Content and Objectives

The first step in developing the subject was to determine what the subject matter or curriculum was to be. Adult education theory holds that adults are motivated to learn when they experience gaps in their knowledge that learning will satisfy. So analysis of the learners' needs is the starting point for developing a curriculum for tribunal members.[22]

We found little published evidence of what tribunal members perceive their learning needs to be. No one in Australia has undertaken a multi-tribunal analysis of member learning needs, like the one completed by the Canadian Council of Administrative Tribunals (CCAT).[23] In January 1998 the CCAT's Training Committee undertook a national survey of Chairs and tribunal members, asking them to identify and prioritise areas of training need.[24] The 160 survey respondents (among whom were 50 Chairs) identified the following training needs:

- As areas of high importance, they listed conduct of a hearing; fairness and natural justice; decision-making; administrative law; evidence; ethics; conflict of interest; and statutory interpretation.
- As areas of medium importance, they identified computer skills; mock hearings; gender/cultural sensitivity; and structure and function of government.[25]

Ramsden suggests a range of other sources that can be used in defining the content of a new subject.[26] These include recognised knowledge lacunae and learning needs identified in reports of review bodies. The ARC's *Better Decisions* report set out a list of the skills and abilities that had been suggested as "necessary or desirable" for members of administrative tribunals.[27] Without endorsing the list, the ARC proposed that tribunals jointly specify "a minimum set of core skills and abilities required of an effective tribunal member".[28] These specifications could then be used as the starting point for developing courses and training activities.[29] The ALRC has since endorsed the ARC's recommendation.[30] Until very recently, however, there has been no national forum or peak body for Australian administrative tribunals to co-ordinate the specification process.[31]

Ultimately our selection of subject content was based on the Canadian survey findings, the list of skills and abilities in the ARC's *Better Decisions* Report, and our reflection on the nature of the activities that tribunal members are required to undertake in order to perform their adjudicative role effectively. This was informed by our own experience as tribunal members,[32] and of teaching Administrative Law to undergraduate law students. We decided to proceed in an experimental way, designing a subject and offering it on a pilot basis. We would then modify our curriculum and objectives after obtaining evaluative feedback from a selected group of tribunal members enrolled in a pilot offering of the course, other persons with responsibilities for tribunal training, and an external academic assessor.

Learning objectives are frequently organised in a hierarchy, stated as broad aims at course level and becoming more specific at subject and unit level.[33] We started by formulating the subject aims and objectives, and broke them down into more specific and concrete objectives for each topic unit. This exercise helped us to identify what was common or generic, to discriminate between core and peripheral material, to make explicit the links between topics, and to re-assemble the topics as a coherent whole.

IMPLEMENTING THE DESIGN

Problem-based Learning

Biggs' "constructive alignment" model proposes that teaching and learning activities should be selected that are most likely to elicit the kinds of student performance specified in the subject objectives.[34] We selected a variety of learning approaches to serve different objectives or aspects of the subject, including keeping a professional journal, analysis of a case, reflective writing exercises, online investigation and reporting, asynchronous computer conferencing and problem- based learning.

Problem-based learning was our principal method for teaching the core skills of analytic reasoning, statutory interpretation, problem-solving and writing reasons for decision. In this approach the focus of student learning is on the problems they are likely to encounter in professional life, rather than on the assimilation of academic knowledge abstracted from context.

Problem-based learning is highly regarded in constructivist

theories of education.[35] The central tenet of constructivism is that knowledge is constructed by the learner, not transmitted by the teacher. Learners construct meaning by relating new information to what they already know or believe. Teachers facilitate learning by helping students to make connections between the new information and the students' prior knowledge.

Adult education theory also strongly supports the anchoring of learning activities in an "authentic" task or problem based in the learner's own experience. According to Knowles, the educator's first task is to persuade the adult learner that it is worth investing the time and effort to learn. Presenting tribunal members with problems from their own practice will promote their readiness to learn.[36] Knowles suggests further that the analysis of life experience is central to adult learning; and that teaching methods that draw upon the learner's workplace experience are therefore most effective.[37]

We envisaged that the students would attain the subject objectives by completing the learning activities. While the subject was heavily text-based, we did not expect that the learning would occur through reading and assimilating instructional material. The text was designed as a resource that would enable students to undertake the problem-based activities. Additional resources were provided via online links, and students could search the library catalogue on the Web. Requests for books and photocopied articles could also be submitted by email to the University's Flexible Library Service for external students. In addition, most students would have access to some resources at their tribunal workplaces.

By designating the key learning activities as assessable, we could align our assessment methods with our learning objectives.[38] Since the learning activities required students to demonstrate competence in the core skills and knowledge, their answers would provide a valid measure of their attainment of the objectives.

Opportunities for Interaction

Opportunities for interaction with teachers and fellow students are highly desirable features of an integrated learning environment. Goldring reports that students studying law off-campus place a high value on contact with other students and teachers.[39] An internal training needs survey conducted by the Administrative Appeals

Tribunal (Cth) in 1992 showed that, among the benefits that members hoped for from professional training was"'exchanging experience with peers".[40]

We decided against including a compulsory face to face component, as this would impose substantial costs on interstate students. Instead we incorporated interactive features into the subject by use of the Internet. We designed learning activities that would encourage or require students to interact with each other and the teacher by email, by sharing their answers to activities and by participating in online conferencing. A different topic unit was scheduled for each week of the semester, with a related series of open-ended questions for online discussion. The questions for discussion were posed by the teacher, by the students and by "visiting experts". Among the visiting experts were tribunal members, academic commentators and others who could inject fresh perspectives on the weekly topic area.

One-to-one interaction among students can be promoted by setting learning activities for them to complete in pairs. Paired activities break down the isolation of students and also provide opportunities for formative self-assessment and peer assessment. As well as promoting collaborative study, paired activities model co-operative work practices. We provided one paired activity at an early stage in the program. Students were asked to obtain their study partner's feedback on a draft answer to a problem-based activity, and to report on the revisions that they had made to the draft in response to the feedback.

Encouraging Reflective Practice

Along with an emphasis on the professional knowledge base and competence in practice, contemporary approaches to professional education place value on prompting students to reflect on their professional role and experiences.[41] Since professionals acquire much of their competence through practice, educational theorists have become interested in the reflective process by which professionals learn from experience.[42] Fostering the cycle of action and reflection is seen as a means of enabling professionals to adapt to external change, to reappraise their values and to become life-long learners.

We provided activities to prompt students to reflect upon their

professional role and what they had learned from particular experiences in their tribunal practice. Over a period of four consecutive weeks, students made entries in a professional journal, recording each step in the process of reaching a decision in an actual case from their tribunal practice. Journal entries were kept privately, although students were invited to share their reflections on the general issues, dilemmas and solutions that arose. At the end of the four weeks, they used the journal entries to prepare a statement of reasons for the decision. As a final activity, they were asked to review their journal entry and to write a short essay reflecting upon what they had learned in the process of making the decision.

Reflective practice was also encouraged by in-text activities and questions inserted into the print materials, and by the questions posed by the teacher and visiting expert for online discussion.

The process of reflection in action required by these activities challenges students' understandings of what counts as knowledge and how one learns it.[43] It challenges the epistemology of technical rationality that accompanied the shift of professional education from the apprenticeship system to the universities.[44] It also demands a degree of introspection, self-evaluation and frankness that some students may find uncomfortable. The student response was a matter that would require careful monitoring in the evaluation process.

DESIGNING THE WEB-BASED LEARNING ENVIRONMENT

To support the online delivery of the subject we used Interlearn, a program developed by Monash University's Centre for Higher Education. As Interlearn had been developed for the delivery of CHED's professional education course in higher education, its functions had been designed specifically to support online delivery of professional education courses.

The Interlearn site structure features a password-guarded personal worksite for each student. The personalised home page consists of a subject map with links to each of the thirteen weekly topics. Each topic site provides instructions for the learning activities, links to online resources and a dialogue box for online submission of the student's response. When the student completes the activities for a topic and submits them online, the title of the topic

in the subject map changes colour and displays a tick, to provide a record of work completion.

A series of buttons on the side of the home page provide links to student and teacher email and phone contact details, a resources page, a news page, online discussion forum and activity search. The activity search function enables students to search a database of student answers to the learning activities, by selecting from drop-down boxes the student's name and the number of the activity. The activities that would be available to be searched were clearly indicated, and students were given the opportunity to request that their answers be kept private.

We decided against putting all the instructional materials online. The subject is text-intensive, and we anticipated that students would prefer to read it in print. It was acknowledged that this would restrict the potential of online teaching for flexible sequencing of instructional material through the use of hypertext.[45] However print media can also provide opportunities for students to choose their own route through the materials, by providing self-navigational aids such as tables of contents and cross-referencing.

The resources page provides links to a rich variety of online primary and secondary sources, including statutes, cases, articles, conference papers, *Halsbury's Laws of Australia* and tribunal websites. Direct hypertext links to selected resources are also provided from the online instructions for learning activities in the student's worksite.

EVALUATION

The subject was delivered during 2001 as a pilot offering to a group of 19 students, drawn from seven different State and Commonwealth tribunals across four states.[46] They were of diverse professional and disciplinary backgrounds, and included six students with legal training. Most were members of tribunals but five were case management staff whose responsibility was to prepare a case for hearing by a tribunal member, even, in some cases, to the extent of identifying what if any further evidence should be sought (either at a hearing or in another way) or preparing all or part of a draft decision. Among tribunal members, some held full time life appointments, while others held full time, part time and sessional fixed term appointments.

The subject was evaluated by both external and internal methods. External sources of evaluation included comments from the heads (or nominees) of four major tribunals who reviewed the printed materials, and evaluative feedback from an external academic assessor who had access to the online worksites and discussion forum as well as the printed materials.[47] Internal feedback mechanisms included:

- a review of how students performed in the assessable activities and discussion forum
- analysis of the students' comments and queries to the subject teacher throughout the course
- feedback comments sought informally about half way through the subject
- final assessable activity, which asked students to reflect on what they had learned
- evaluation questionnaires completed by students at the end of the subject.

External Evaluation

The external academic assessor commented on the high standard of written materials, which represented a major synthesis of administrative and other laws pertaining to tribunal work, and the practical focus of the assessment activities. She suggested that the satisfactory/unsatisfactory assessment scheme, appropriate for a non-award professional skills course, was less suitable for setting appropriate quality benchmarks where the subject is offered for credit in a postgraduate award course.

Comments provided by the tribunal heads on the written materials illustrated the diversity of the tribunals and of their positioning in relation to this subject, given the variation in levels and areas of training they provide to members. For example, some tribunals have trained members mainly on areas of law and legislation relevant to their decision- making, others have focussed on tribunal related skills training such as conducting hearings and writing decisions, while others have also trained members on public service conduct requirements. A major benefit of the subject was the sharing of information and making contacts between members of different tribunals.[48]

Internal Evaluations

The subject evaluation questionnaire, completed by 10 students, showed that students were very happy with the subject content, teaching methods, study guide and activities. Completing the subject enhanced their ability to perform their functions as tribunal members, and stimulated their interest in further study. Some commented, however, that their workloads meant that they could do no more than complete minimum subject requirements. Even lawyers who had previously studied administrative law benefited from the focus on tribunal issues and updating of systematic administrative law knowledge. In particular, the students found that the subject provided them with an overall legal framework for understanding the context of and guiding principles for their function, including the relationship of tribunals to the court system, to the federal system of government, and, especially for federal tribunals, their positioning within the executive, between law and administration. This provided a framework within which to make sense of the separate more specialised training provided by the tribunals themselves.

Overall, the use of online delivery enabled this subject to be delivered to an important target group for whom this sort of specialised education would not otherwise be accessible. For most students, the key element which enabled them to take the subject was its flexible delivery. Some aspects of flexible delivery, however, were not seen as advantages. Students would have preferred to include some interactive discussion, whether face to face, by telephone linkup, or by some other method. They found the on-line discussion forum not completely satisfactory for class discussion, as contributions could not be edited or deleted by the contributor, and its asynchronous nature made ongoing discussion disjointed. The very flexibility of being able to do the subject at their own pace meant that meaningful class discussion was hard to achieve.

MAJOR ISSUES IN SUBJECT DESIGN/TECHNOLOGY

Several areas of subject design and implementation are considered in more detail as they generally pose a challenge in distance or online education, and in this subject. They include the use of the on line components, the problem of making effective use

of the discussion forum, the use of the activity search function, and the role of assessment activities.

1 On-line components/interface

The first challenge for students was coming to grips with the technical interface, in ensuring both that students' computers were running the necessary software to provide access to all subject facilities, and that all students had the confidence and familiarity with computers to use all the functions necessary for their own subject participation. Some students had effective computer help provided by their tribunals, while others, especially sessional members, had to deal with these challenges on their own home computers with only the phone and email help provided by the University. Problems relating to running the necessary software were resolved during the first two to three weeks. What remained were problems of slow internet access for some members using home computers and a modem, which made access to the on-line components of the subject slow and discouraged their use. This is a reminder that to be effective, on line education requires student access to computer equipment well above minimum standards.

Some limitations arose from the software used for the subject. The Interlearn software used did not retain text formatting applied by the student in their word processor when the text was copied into the student work-site or posted to the discussion forum. This problem can be improved by clear instructions to students or improvements to the software. The discussion forum software did not permit students to delete or edit contributions they had made, which meant they could not revise or improve upon their contributions. This operated to deter contributions which were not the result of detailed and formal thought, which made the discussion forum rather less spontaneous than it was intended to be.

2 Discussion forum

Use of the discussion forum was the least satisfactory aspect of the subject. While all students read the forum, only about one third regularly contributed to it and engaged in discussion. Although the standard of the contributions made was uniformly high, it was not really used as intended for informal, open and friendly student-student discussion of the subject and surrounding issues. Among the factors mentioned by students as limiting their contribution to

the forum were: slow modem access, lack of time, the fact that contributions were not assessable and therefore not essential, or because they didn't know the other students well enough. Where students were running behind the nominal class schedule (as most were at some stage), the discussion had often moved on before they could contribute. One student felt the discussion was often too technical in relation to tribunals with which they were not involved.

While students who do not contribute benefit from reading postings (just like students who listen but do not contribute to class discussion in a face-to-face class), their limited participation represents a significant lost opportunity in a professional and expert group of students. Not only do non- participants not offer their experience and perspectives to others, but they also miss the opportunity for more active learning and engagement with their peers. Students in face to face classes also listen to discussion without contributing and continue to learn, but the literature suggests that it is possible to get better participation in on-line discussion groups because they allow better for reflective participation and student-student interchange than face to face classes.[49]

How can more extensive student use of the discussion forum be encouraged? The external factors such as slow access and lack of time (meaning only minimal requirements are completed) could only be addressed by making participation in the forum assessable, for example by requiring 4 or more posts of substance over the course. However, this would inhibit the informality of the forum and probably limit its use for student-student discussion. To encourage participation rather than requiring it means the motivational and inhibiting factors must be dealt with.[50] This would include coming to terms with the online medium for discussion, as well as factors internal to the student group, the subject environment and software such as the group not knowing each other well and thus being unable to build up trust in each other necessary for discussion, the permanence of contributions, and the timing problems arising from different progress rates through the subject.

The online medium for teaching has specific characteristics, and in particular, as it is text-based, "social cues are absent and, as humans are used to the high bandwidth of face-to-face communications, this can cause problems."[51] In particular, the nature of the online environment requires an instructional model

whereby the teacher acts as

> facilitator who is one of the participants and whose role is to guide and support the learning process. … [this] engenders a radical shift in the power and interaction structures in the classroom as the students must accept the responsibility for their own [learning], and the instructor must relinquish a certain amount of control over the process.[52]

Taking this sort of responsibility can be challenging for the students, and the presenter needs to assist students to understand and undertake this path.

Trust

Student reluctance to take responsibility for their learning may be manifest as reduced participation in the discussion forum, or as reluctance to take risks by making postings which show uncertainty. When students either do not use the forum or post only when they have thoroughly prepared and are sure of their material, the forum is not fulfilling its potential as a place for student discussion, questioning and learning. Without knowledge of and trust in each other, the group cannot develop the confidence which will enable self- protective behaviours to be discarded. In an electronic context, lack of participation by many students exacerbates this problem, as students cannot get to know non-participants, and therefore could not feel confident about the audience or comfortable contributing. By contrast, in a face-to-face class, the non-participants can be seen and their non-verbal communication is available to the class.

Where students are spread across the country and cannot meet in person, knowledge and trust in each other can only be built through the electronic forum. Specific training on the potential and importance of the forum is important, but requiring students to actually engage with the forum and the group is vital. This could be done through an assessable exercise early in the semester which requires introducing oneself and engaging (through more than one posting) in discussion with other students on an issue in the course of direct relevance to them, which carried some (significant but not too heavy) marks. This would ensure all students could see the "voices" of all the other students, and may build some confidence in the group.

The permanence of contributions may have inhibited informal participation. A student who is diffident may be uncomfortable in a

permanent discussion forum where they may have been prepared to participate in a face to face verbal discussion because of its transience. The ability to edit or delete contributions would alter the written record of the forum and could be confusing. Building trust in fellow students is the best solution to this problem, as well as giving clear instructions about how the presenter can delete postings on request where appropriate.

Timing

Last, but not least, is the problem of timing. Many students may have felt that they needed time to reflect before contributing, but once they had taken this time, found that the moment for that topic had passed, or else could not find time to return to the point as well as keeping up with class work and their employment. Some of the features which make flexible education attractive to busy professionals can also make it difficult to achieve effective class discussion. Students are generally very busy with their professional and other obligations, and value the ability to control their own study timing, but this means that they are not all ready to discuss the same topic at the same time, and many had moved on by the time others reached the topic. However, although they did not utilise the discussion forum to its potential, the students commented that they wanted better class discussion, and more opportunities for personal interaction.

Trying to schedule a regular weekly time for class discussion online would not solve the problem as it would severely reduce the timing flexibility students valued so highly. This is already limited to some extent by the due dates for assessable activities, but further inflexibility is not desirable. An alternative is better education about the potential advantages of asynchronous on line communication in this context. Students can learn that the ability to run multiple discussion threads within a class, which need not be contemporaneous and to which students can contribute when it suits them is a major advantage, not a disadvantage, of online discussion groups which is not achievable in a face to face context.[53] Where the reality for many tribunal members is heavy and variable workloads which make any work above the required assessment activities difficult to achieve, contributions to the discussion forum have to be made when the student is immersed in the relevant material, or later in responses to discussion. Given workloads of professional

postgraduate students, probably the best one can aim for is to offer a tailored discussion forum with clear aims and functions for those who are able to take advantage of it.

3   Activity search function

The software activity search function allowed students to look at the work which other students had posted for assessable activities. Almost all students used it.[54] This function was an important element in the subject's educational basis, because assessment was based on selection and analysis of problems from each student's own tribunal practice. The activity search function gave students access to a range of different approaches to solving problems, and could be used to raise different perspectives and generate ideas for solving their own problem, and thus more fully explore the possibilities.

Some of these benefits were not available to the first students to post on any particular activity, and many students posted their activities only as they became due for assessment. The activity search function in Interlearn (unlike the discussion forum) allows draft activities to be saved, and edited at any time, so even those who posted early could revise their activities in light of others' work. For future offerings of the subject, a bank of selected examples is now available for reference by students. A side benefit was that this function provided a mechanism for students to learn more about other tribunals, and reflect on similarities and differences in dealing with issues.

Students who used this function to look at others' work found that it stimulated their thinking, presenting a different perspective or emphasis, and it gave a guide to the depth of analysis required for the activities. Its use could be improved by requiring draft activities to be posted a week before the due date for submission for assessment, to allow all students the opportunity to benefit from this aspect of learning. Although requiring fixed dates for assessment activities reduces student flexibility, it ensures more scope for effective class interaction through the online interface, as well as ensuring students progress through the course. The tension between maximising student flexibility, and stricter scheduling requirements to facilitate interaction is a consistent theme in analysing the benefits and disadvantages of this subject.

One of the assessable activities required students working in

pairs to comment on each other's work before submitting it for assessment. Some pairs worked very well and provided useful feedback, while others had timing problems or found the feedback was not valuable, sometimes because of disciplinary differences or lack of experience. More education about constructive feedback could help with this exercise, though the timing problems are difficult to resolve.

4   Assessment and activities

The aim of the assessable exercises was to allow students to demonstrate their competence in the skills and knowledge covered by the subject. Activities were graded satisfactory/ unsatisfactory. Where an activity was not completed satisfactorily, feedback was given and the student had to rework and resubmit until satisfactory completion was achieved. There were several reasons for choosing this scheme. First, many of the students were new to law study and postgraduate work, and had no knowledge of the methods or standard of assessment. Secondly, almost all students were adult professionals returning to study in fields related to their own expertise and it was seen as inappropriate to be grading their performance in areas related directly to their field of professional expertise, at least in an education re-entry, foundational subject. Thirdly, this scheme reflects the desired learning process for adults, where the aim is for all students to attain competence in understanding the subject, rather than to comparatively rank performances as is usually required for undergraduates. Finally, given the diversity among the student group in age, level of experience, position within tribunals, professional practice, disciplinary background, and previous amounts and areas of tribunal related training, no realistic expectation of student performance could be formulated in advance. Instead, this knowledge has to be acquired through experience with the students in the delivery of the course. This assessment system allowed provision of feedback to assist students' learning experiences without judging their relative performances.

The importance of encouraging reflection in adult professional learning has been mentioned above.[55] Some students found the assessment activities which required reflection upon their own work or on their experience of the subject itself difficult. Some felt that they were being asked for their feelings or reactions, not

necessarily understanding the role of reflective learning, which suggests the need for better explanation of the reflective learning process. Several students regarded the subject workload as unevenly distributed over the two main modules. While this is partly true, it also reflected the fact that some (but not all) tribunals had trained their members and staff in some of the decision-making skills covered in the second module, which built on the basic principles and theories covered in the first.

ADVANTAGES AND CHALLENGES OF ONLINE DISTANCE EDUCATION FOR PROFESSIONAL STUDENTS

Students commented that it was an excellent subject that should be a prerequisite for all tribunal members. They regarded it as interesting, enjoyable and very useful for tribunal functions. They saw the distance mode as fundamental in allowing them access to the subject, as most could not have undertaken the subject had it required on campus attendance, given their work and other commitments. The main disadvantage they saw was the minimal face to face contact with the presenter and other students, although some tribunals had multiple members from one location undertaking the subject, and they operated informal discussion groups themselves. Overall, however, the advantages of being able to access the subject outweighed the disadvantages. One student even decided to undertake a law degree after taking the subject.

Improved Communication

Future challenges for further development of the subject include the exploration of ways to improve informal communication, either through the online elements of discussion forum, email and activity search, or by other means such as telephone linkups or facilitating self-tutorial groups in cities with multiple students. Because of the diversity of experience and background students bring to the subject, but the similarity of their professional decision-making functions, there is enormous scope for synergistic benefit from broader discussion among students. The scope for better class communication (whether online or verbal) would be improved if all students used the discussion forum on a particular topic within the same week or two, but any requirement for work to be undertaken (relatively) contemporaneously would undermine student

flexibility. Asynchronous discussion allowing a number of different threads of discussion maximises the potential of the online medium, but challenges students to adjust to a new teaching and communication mechanism at the same time as adjusting to new subject matter and returning to study.

Resources of Tribunals and Their Members

Broader challenges arise from the resource position of tribunals, and the positions of full, part time and sessional members. Although some tribunals have provided support to members undertaking the subject through a contribution towards fees, few have offered assistance in the form of study leave. Given current tribunal workloads, it may be unrealistic to expect full time members to undertake a subject without making provision for study leave. The relatively insecure positions of members on sessional appointments limits the likelihood that they will invest in specifically tribunal related professional development, and the tribunal may also be less committed to ongoing training of sessional members.

While recent reports[56] have established the need for tribunals to be engaged with the professional development of their members to ensure quality of decision-making, they have not taken account of the tensions which arise from the different types of tribunal appointments. Fixed term appointments can be short term and non-renewal is always possible. Sessional appointments can be used to attract staff with the expertise the tribunal needs, but can also operate to transfer the risk of a downturn in appeals from the tribunal to the member, whose rostered work will diminish. These appointment practices may tend to undermine a tribunal's performance of its obligation to assist in developing its members' expertise, although the need for professional development of staff is no less. A subject like this provides an avenue for relatively inexpensive development of staff in fundamental principles relevant to their job, but the support of tribunals is needed to encourage staff to undertake development by clear demonstration that it is regarded as worthwhile.

Diversity of Tribunals

As noted above, the diversity of tribunals in Australia makes it

difficult to find common ground so as to attain efficiencies in training members. Not only are functions, procedures, types of appointment and qualifications of members different, but tribunals vary greatly in the amount and nature of training they provide to members. This subject treads the limited common ground of the fundamental and essential legal aspects of tribunal work which provides the framework for the more specialised training needed for each tribunal. For the tribunals themselves it provides the advantages of a tertiary level qualification and subject which would be beyond the means of any tribunal to provide for itself, and on which tribunals can rely to ensure their members have competence in and understanding of basic legal aspects of tribunal work. Even for tribunals which provide help with fee payments and possibly some paid study leave to undertake the subject, training through such a course is much less expensive than developing specialised training which may only be used once or occasionally. The provision of basic legal training for members frees tribunals to concentrate their training efforts on issues of current local concern, such as changes in their legislation, the role of performance management for tribunal members, and the role and content of an ethical code of conduct for members.

CONCLUSION

Education for tribunal members in fundamentally important legal frameworks has previously been left up to each individual tribunal, and has been unsystematic and variable in extent and quality. This subject provides a coherent, academically rigorous, high quality education and qualification for members of tribunals. This contributes to the aim of improving the quality of tribunal decision-making (thereby protecting all parties to decisions from appeals or challenges) by ensuring members know the basic legal framework, rules and principles within which their decision-making must be performed. This subject is now part of an award sequence which provides students with the opportunity to improve their formal qualifications through study directly relevant to their practice.

Australian law schools are well placed to contribute to the professional education of tribunal members. The absence until recently of a national peak body for Australian tribunals has led to lacunae in the provision of common training programs. Australian

universities have the expertise to develop attractive subjects, and the educational infrastructure to support learners whether studying locally or at a distance. The provision of university-based programs will promote consistency in professional standards, and prepare members for a broader role within the tribunals sector.

1   The functions of occupational disciplinary tribunals are not penal but protective of the public: *New South Wales Bar Association v Evatt* (1968) 1 KB 244, at 278: J Forbes, *Disciplinary Tribunals* 2nd ed (Sydney: Federation Press, 1996) para 12.24 and footnote 98.

2   Example of the latter are Small Claims, Residential and Retail Tenancies and Anti-Discrimination Tribunals.

3   The Administrative Review Council listed the skills and experience that had been suggested as being necessary or desirable for tribunal members ARC, *Better Decisions: Review of Commonwealth Merits Review Tribunals* Report No 39 (Canberra: AGPS, 1995) paras 4.8 - 4.14.

4   Kathryn Cronin, Professional Education for Tribunals, paper delivered to Third Annual AIJA Tribunals Conference, Melbourne, 9 June 2000, at 3.

5   Australian Law Reform Commission, *Managing Justice: A review of the federal civil justice system* Report No 89 (Sydney: ALRC, 2000) para 2.207.

6   *Id* para 2.210.

7   The CCAT is a national association representing members and staff of administrative tribunals in federal, provincial and territorial jurisdictions.

8   CCAT, *Discussion Paper on First Principles and Goals for the Training and Continuing Education of Tribunal Adjudicators* (Ottawa: CCAT, 1999) 2.

9   ALRC, *Managing Justice*, *supra* note 5, para 3.93; ARC, *supra* note 3.

10   ALRC, *id* paras 2.213-14.

11   The authors were members of the project team responsible for developing the subject as a co-production of Monash University's Faculty of Law and the Centre for Higher Education and Development. CHED's Dr Peter Jamieson, Dr Len Webster, Associate Professor David Murphy and Joanne Becker provided valuable advice on the educational design of the subject and how to exploit the features of the Interlearn program.

12   It should not be assumed that lawyers appointed to administrative tribunals possess the required skills and knowledge. They are trained in the adversarial processes of court-based adjudication, which differs significantly from administrative adjudication.

13   S Nathanson, Developing Legal Problem-Solving Skills (1994) 44 *Jnl of Legal Educ* 215, at 226-27.

14   *Id* at 227.

15   Diana Laurillard, *Rethinking University Teaching: a framework for the effective use of educational technology* (London: Routledge, 1993) 18.

16   For a list, see the website for the Open University's International Centre for Distance Learning <http://www-icdl.open.ac.uk/>.

17   Goldring, *supra* note 39, at 95.

18   *Id* at 116; Robyn Benson & Melissa de Zwart, The Experience of Online Learning: Evaluating the Effectiveness of an Innovation in Web-Based Legal Education in Sims, O'Reilly and Sawkins eds, *Learning to Choose: Choosing to*

Learn, Proceedings of the 17th Annual Conference of the Australasian Society for Computers in Learning in Tertiary Education (Lismore, NSW: Southern Cross University Press, 2000) 425-34.

[19] JE Zanglein & KA Stalcup, Te(a)chnology: Web-Based Instruction in Legal Skills Courses (1999) 49 *J of Legal Educ* 480-503.

[20] Laurillard, *supra* note 15, ch 10.

[21] *Id*, ch 10.

[22] MS Knowles, *The Modern Practice of Education: Anragogy versus Pedagogy* (NY: Association Press, 1970, 1980) 64-65.

[23] Although some tribunals have surveyed the learning needs of their own members: the Administrative Appeals Tribunal conducted such a survey in 1992, discussed in ALRC, Discussion paper 62 *Review of the Federal Civil Justice System* (Sydney: ALRC, 1999) para 3.121.

[24] CCAT, *supra* note 8.

[25] *Id* at 12.

[26] Paul Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) 136.

[27] ARC, *supra* note 3.

[28] *Id,* paras 4.15-4.17

[29] *Id.*

[30] ALRC, DP 62, *supra* note 23, paras 115-3.116.

[31] The Council of Australasian Tribunals, established in June 2002, may take on this role in future.

[32] Pam O'Connor was a member of the Social Security Appeals Tribunal (SSAT) from 1985-87 and 1989-93, and Beth Gaze was a member of the Student Assistance Review Tribunal from 1990-94 and has been a member of the SSAT since 1995.

[33] Ramsden, *supra* note 26, at 129-34.

[34] John Biggs, Enhancing teaching through constructive alignment (1996) 32 *Higher Educ* 347-64.

[35] For example, JR Savery & TM Duffy, Problem Based Learning: An Instructional Model and its Constructivist Framework, in BW Wilson ed, *Constructivist Learning Environments: Case Studies in Instructional Design* (Englewood Cliffs, NJ: Educational Technology Publications, 1996).

[36] Knowles, *supra* note 22, 64-65.

[37] *Id* 66-67; Boud et al contend that learning can only occur if the learner's experience is engaged at some level: David Boud, Ruth Cohen & David Walker eds, *Using Experience for Learning* (Buckingham, UK: Open University Press, 1993) 8.

[38] Biggs' model of "constructive alignment" requires that the assessment activities should measure student attainment of the learning objectives: Biggs, *supra* note 34.

[39] John Goldring, Coping with the Virtual Campus: Some Hints and Opportunities for Legal Education (1995) 6 *Legal Educ Rev* 91-116 at 110.

[40] L Armytage, cited in ALRC, *supra* note 5, para 3.121

[41] Hazel Bines, Course Delivery and Assessment, in Hazel Bines & David Watson eds, *Developing Professional Education*, (Buckingham UK: The Society for Research into Higher Education and Open University Press, 1992) 57-67, at 61.

[42] On reflection-in-action, see Donald Schon, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) and D Boud, R Cohen & D Walker eds, *Using Experience for Learning* (London: SRHE and Open University Press, 1993).

[43] Donald A Schon, Knowing-in-Action: The New Scholarship Requires a New Epistemology (1995) *Change* November/December, 27-34.

[44] *Id.*

[45] For discussion of the possibilities the Web offers for flexible sequencing, see, Zanglein and Stalcup, *supra* note 19, at 492-93.

[46] Eighteen of the students completed the course, one after some months delay due to personal reasons. One student deferred participation due to workload.

[47] The authors express their gratitude to Ms Robin Creyke, Reader in Law at the Australian National University, for acting as the external assessor.

[48] Honourable Justice Murray Kellam, President, Victorian Civil and Administrative Tribunal, Developments in Administrative Tribunals in the last two years, paper presented at the Public Law Weekend at the Centre for International and Public Law (Canberra: Public Law Weekend, 11 November 2000) 5.

[49] L Harasim, Online education: A new domain, in R Mason & A Kaye eds, *Mindweave: Communication, computers and distance education* (Oxford: Pergamon Press, 1989) 50, 54.

[50] R Oliver & A Omari, Using online technologies to support problem based learning: Learners' responses and perceptions (1999) 15 *Australian J of Educucational Tech* 58, at 73.

[51] M Collin & Z Berge, Facilitating Interaction in Computer Mediated Online Courses (Background paper, 1996)<http://www.emoderators.com/moderators/flcc.html>at "Disadvantages".

[52] *Id*, at "The Role of the Instructor when teaching in the CC environment".

[53] To see these aspects as advantages requires students themselves to be able to learn to take advantage of such unconventional learning methods. Other valuable aspects of the forum are the ability to sort contributions by thread, author, or date, and to see all, or only unread contributions, and to have a discussion extending over time which can become deeper as students learn more about the subject.

[54] One student felt that looking at other students' work before completing her own was not legitimate. However, students were analysing problems they had identified for themselves, so access to others' activities could not lead to unfair copying.

[55] See text accompanying note 40 *supra*, and following.

[56] See reports listed at notes 3 and 5 above.