

# RE/WRITING SKILLS TRAINING IN LAW SCHOOLS — LEGAL LITERACY REVISITED

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In law, language is not mere style; it is itself the law.<sup>1</sup>

## INTRODUCTION

This article proposes an interdisciplinary, theoretically informed approach to literacy and language skills in legal education. Both of the authors are legal scholars and law teachers with backgrounds in English studies and literary theory, and we bring these perspectives to bear on the perennial problem of introducing both developmental and remedial language tuition into law schools. The article is informed by a model of language and literacy which views written legal communication skills as the acquisition of competence in, and initiation into, the codes of a culture of specialist discursive practices. That is, it holds that law is made in its languages, rather than that law is a concrete given which language merely describes or articulates, and it views literacy critically and contextually, rather than as a virtue measured against a fixed and objective standard. The article proceeds from a synthesis of recent scholarship from a number of disciplines, including professional studies, sociology, education, teaching English as a second language, linguistics and, of course, law.<sup>2</sup>

Our research was informed by a perceived need to put legal writing skills and literacy in the context of current salient issues in higher education. In particular, the authors are interested in how literacy and writing skills can be used to advance the principle of

democratic participation in higher education. We argue that, to help achieve this objective, law schools should promote, and be perceived to promote, diversity in the student body, especially by addressing the needs of those students who face linguistic, cultural, socioeconomic or other barriers to legal education. Other issues addressed by the model of legal literacy pedagogy we propose here include the current rhetoric of “quality” in teaching and learning and its intersection with emergent funding pressures; and the need to accommodate the increasingly diverse career outcomes of law graduates. This latter issue involves balancing the writing needs of students who enter traditional professional careers with those of students who view their law degrees as generalist qualifications for the purpose of entering other careers.

The second part of the article — “Integrating Legal Writing Skills into a Law School Curriculum” — deals with theoretical issues fundamental to literacy and writing skills in the tertiary context, with a special emphasis on legal education. Here we survey the literature on writing skills training in the tertiary context generally. We note that, despite some conflict about the effectiveness of this kind of education, the consensus is that it is an invaluable component of tertiary education, so long as it is taught in an integrated, critical and holistic context. We conclude that there is a strong case to be made for integrated, critical writing skills education, perhaps more so in law than in many other university disciplines. In the third part of the article — “Teaching Integrated Legal Writing Skills” — we survey issues which arise in the delivery of writing skills education, such as appropriate modes of teaching, staffing, assessment and teaching materials.

Finally, in “Remedial Writing Tuition — Is it the Job of Law Schools?” — we look briefly at a question increasingly confronting law schools given both the expansion in their numbers and demographic and economic pressures on student supply. This is the appropriate delivery of so-called remedial tuition to students whose literacy skills are so impoverished as to put them at risk of not successfully completing their studies. The explicit approach of the authors is to view the writing needs of these students as different from, but also continuous with, the needs of all students entering a professional discourse community. The article will argue that *all* students need to learn the following skills<sup>3</sup>:

- the general rules of discourse and argumentation that are

- specific to university writing (these discursive modes also entail considerable cultural, ethnographic and ideological frames, which tend to make them less accessible to certain groups of students, especially overseas or non-English speaking background students<sup>4</sup>);
- the disciplinary modes of discourse specific to legal education;
- the indistinguishability of achieving cognitive competence and linguistic competence within a discipline; the complex relationship between the writing skills required of legal education and of legal practice;
- the relationship between reading behaviour and writing skills.

## INTEGRATING LEGAL WRITING SKILLS INTO A LAW SCHOOL CURRICULUM

### *“Pericles and the Plumber” — Beyond the Content/Skills Dichotomy*

The starting point of this article is the tenet of the so-called “third wave” of legal education Australia: that differentiating between “skills” and “knowledge” is trite and misleading. The complex, variable and contested goals of legal education can all be defined as skills.<sup>5</sup> Unfortunately, because of its perennial attractiveness, we want briefly to exhume the “Pericles and the plumber” dichotomy, albeit only to characterise it as untenable. The issue of whether any skill should be taught necessarily raises questions about the mission and role of a law school as part of a university. Unfortunately, attempts to define that mission too often rest upon a dichotomy postulated between the university as a scholarly institution with intellectual educational goals, and as an institution the purpose of which is to equip students with skills for the workplace. Understood in these terms, arguments about teaching legal writing skills are bound to be highly contentious. Our starting point is that law is largely a practice of language, both spoken and written. We argue that there are ways in which legal writing, as it is currently practised in law schools, is not meeting the needs of legal graduates or their potential employers. Nor is it adequately theorised to account for its role in university education. As our research shows, students, employers, and other stakeholders appreciate that legal writing skills is not a simple or instrumental

exercise, even though our experience is that many legal educators do not.

### *Why Teach Writing Skills? Legal Culture as Textual Practice*

This part of the article looks first at why teaching writing skills is a necessary part of legal education, and, secondly, at *how* legal writing skills can be taught effectively. We consider that our theoretically-informed appraisal of the reasons for teaching writing skills will provide an informed and effective model of the place of the written word within legal practice and institutions, including law schools.

#### *Law and written language*

To be a lawyer is to write — a great deal. To participate meaningfully within a legal community requires legal “literacy”. In other words, expertise in law is not just knowledge of the law — it requires competence in the norms, conventions and contexts of writing that constitute legal literacy. Conversely, the lack of legal expertise is a form of illiteracy. A problem our research identified is that inability to participate in the norms and conventions of specialist disciplinary modes of writing is not viewed as illiteracy, only as lack of disciplinary expertise. It is a basic argument of this article that to be expert (in the law) is to be literate in that discipline.

Unfortunately, expertise tends to be a concept that evokes extreme responses. Too often it is either uncritically valued, or simplistically denounced. One scholar characterises the traditional dichotomy in approaches to expertise as a tension between cognitive studies of expertise (which tend to valorise and defend expertise) and sociological studies of expertise (which are generally critical if not opposed to expertise).<sup>6</sup> This tension is apparent in debates over the application of competition policy to the legal profession, for example. On the one hand, lawyers argue that their expertise — the special knowledge and practical skills which they possess — is a valuable cognitive resource that benefits the community, and that the autonomy and integrity of that expertise must be retained. On the other hand, it is asserted that expertise should not entail special privileges, and that it is always in danger

of succumbing to elitism and inaccessibility. In these debates what is often overlooked is that expertise is a process of mastering the codes of entry into, and acquiring acceptance within, a disciplinary culture.<sup>7</sup>

The relationship between language and legal expertise, like the relationship between language and any knowledge, activity or practice, is complex and not easily described. Certainly literacy in law entails learning the particular conventions and mores that distinguish legal writing. The language of the law “is neither simply the ‘vehicle’ for conveying the knowledge of the subject, nor is it the ‘glass’ through which the knowledge is perceived”.<sup>8</sup> Writing cannot be divorced from the knowledge it expresses. Law is not reducible to written authorities, although this is often how it is taught in law schools. Rather, the making of law involves “giving written authorities meaning in the context of disputes over what they mean in and for particular situations”.<sup>9</sup> To learn the language of the law, and of the legal cultures in which the law exists, requires a teaching environment that is critical and reflective, as well as instrumental. The model of legal writing we advocate here is entirely consistent both with models of contemporary best practice in legal education found in such places as the MacCrate Report<sup>10</sup> and *The Quiet (R)evolution*,<sup>11</sup> and with the educational mission statements typical of the handbooks of law schools in Australia and North America. The stated goals of the University of Sydney Law School, for example, include the production of graduates with “a high level of critical and analytical ability”, and the fostering of an educational environment which involves the “integrated teaching of the law”.<sup>12</sup>

### *Linguistics, genre and discourse theory*

[B]ecause law is performed in the saying of what it is for a specific context, every legal writer “makes” law in a sense.<sup>13</sup>

An important starting point in any discussion of legal writing is to identify what we mean when we talk about legal language or legal text. In contemporary linguistics there has been ongoing debate about what counts in the study of “text” — legal or otherwise. There has been a general trend away from a focus on the formal, grammatical qualities and regularities of textual practice, to a view of language and writing as a material and socially situated performance with social, cultural, institutional, disciplinary and

ideological dimensions.<sup>14</sup> These approaches to the analysis of written language may be called discourse or genre studies.

What, then, are the genres of legal writing? It is important to understand genre not as a recipe-like description of the characteristics or rules of writing, but as an analysis of what it is that facilitates communication in any act of writing and/or speaking.<sup>15</sup> In other words, understanding writing means going beyond the words on the page to recognise the material and interactive qualities of genre — or what has been called “genre as social action”.<sup>16</sup> According to this model, communication is a dynamic event, involving not one but a multiplicity of languages. It is at the intersection of this rather messy entanglement of signs and texts that meaning is produced. Writers have used concepts like place, manners, etiquette and ceremonial to refer to the importance of the surrounding context and the rich inter-textuality of the communication event.<sup>17</sup>

These observations are particularly telling in law — the genres of legal discourse being explicitly concerned with issues of power and authority. Genre cannot be viewed as separate from “the social realities and processes which it contributes to maintaining (and could be used to subvert); nor can it be seen as separate from the people ... who ‘use’ it, analyse it, and then, perhaps, teach others to use it”.<sup>18</sup> This view of law has special reverberations for legal education, raising questions of the ethics, propriety and responsibility involved in teaching legal writing. Learning the techniques of legal writing constitutes a rite of passage into the legal discourse community. In this way writing is not just cognitive, but is also a process of socialisation, and a process of empowerment, initiation and technologisation in which law schools need to acknowledge they play a part.

### *Writing skills and critical consciousness*

These considerations complicate the pedagogical issues involved in teaching generic legal writing skills. If legal literacy involves negotiating a dialogue between different levels of textuality, at a basic level it requires a capacity simultaneously to use text effectively in practical circumstances, and also to be aware of its contingency, its political and ideological functionality, and its generic conventionality.<sup>19</sup> The challenge of facilitating student critique of legal discourse — whilst equipping those same students

to be competent practitioners within the generic and discursive practices of the law — which is what the legal profession demands of law schools — is a very real one.

However, developing instrumental and critical forms of knowledge need not be inconsistent objectives. Indeed, recent research suggests that disciplinary expertise is in fact correlative with a perspective that is deep, complex, and critical. A study by Cheryl Geisler of the discursive practices of scientists in the United States of America reveals two related features.<sup>20</sup> First, from the perspective of writing, the use of metadiscourse<sup>21</sup> varies with the readership anticipated by the author. In particular, less metadiscourse appears to be deployed for lay audiences than for specialist audiences. Use of metadiscourse points to uncertainties, inferences and perspectival or contextual limitations that are acknowledged by the authorial voice. It “enables readers to determine the appropriate level of certainty to grant the claims the text contains”.<sup>22</sup> It forces readers to be discriminating in how they sift and analyse the information presented. The Geisler study found that *advanced* writing, within the discipline of science at least, tends to be more rather than less tentative and self-reflective. Accordingly, teaching effective writing skills turns out to be a process of arming students with increasingly critical and deconstructive powers in relation to language.

The second finding of the study was that readers who were more experienced and expert tended to resist and subvert the role created for them. In the move from lay knowledge to expert knowledge, there is an increasing awareness and cognisance of context, and more critical engagement with the metadiscourse. An earlier study quoted by Geisler concludes as follows:

Our data *suggest* that as students enter and move through the university they develop a basic understanding of the role of human agents in the construction of knowledge as well as a basic familiarity with the linguistic conventions for expressing those relationships. But it appears that it's only as students enter the more specialised sub-community of science that they begin to recognise that scientific knowledge, too, is interpretive, subjective and attributable.<sup>23</sup>

So expertise in both reading and writing seems to entail less certainty, and far more caution, about words and language. Geisler divides this expertise into two categories — knowledge of content, and knowledge of rhetorical process. Expertise is constituted by the dynamic interaction of activities within these spaces. But

importantly, there is a *temporal* disjunction in the acquisition of these skills:

[Expertise is] the interaction of a relatively early developing problem space of domain content and a later developing problem space of rhetorical process. In the domain content problem space, experts develop the abstractions that enable them to go beyond everyday understanding. But it is through the rhetorical problem space that they develop the reasoning structures that enable them to bring those abstractions to bear upon the contexts in which they work.<sup>24</sup>

The relationship between the relatively naive literacy developed by secondary schools, and the expert literacy cultivated by tertiary education, is what in fact facilitates expertise. Geisler's argument highlights the naivete of the claim, made by opponents of teaching legal writing in law schools, that writing skills are not the responsibility of universities, but of secondary education:

Literacy in the early [school] years ...is predominantly concerned with building a naive representation of the domain content problem space. Stripped of metadiscourse, texts neglect the rhetorical dimension of expertise, making the problem space of rhetorical process absolutely indistinguishable from the problem space of domain content.<sup>25</sup>

While secondary education fails to produce professional competence, it nonetheless generates recognition that expert fields of knowledge exist. Individuals "will already know that domains of knowledge exist that they do not and cannot understand, and they will thus be willing to look to professionals in these domains and thus guarantee them their likelihood."<sup>26</sup> The plausibility of this theory is enhanced in the United States, where professional education takes place in graduate schools, after generalist education has been completed. Moving from lay to expert competency involves a reappraisal of text, especially of the metadiscursive elements of text which students are encouraged to ignore in schools, where the emphasis is on texts which are autonomous and unproblematic. At tertiary level:

Texts are now seen to have authors, to make claims, to be acts that can be understood only within a temporal and interpersonal framework. Some issues are hot, some issues irrelevant, some issues settled. Some authors are credible; some discredited; some irrelevant. People write texts not simply to say things, but to do things: to persuade, to argue, to excuse.<sup>27</sup>

Well-known law and literature scholar James Boyd White makes a similar argument in explaining the inaccessibility of the cultural syntax of legal discourse for non-experts.<sup>28</sup> Another study

of the reasoning techniques of lawyers concluded:

[Expert readers seek first the *context* (parties, type of court, date, judge), then take a brief *overview* (length, holding, summary of facts) before *rereading* analytically, and finally, *synthesizing* (merging facts, issue, rule, and rationale) and *evaluating* the decision. Interestingly, novice readers tend to ask how the result flowed from the law.<sup>29</sup>

The same study cites the following “expert” evaluation as typical: “I knew Cardozo wouldn’t let ... that schmuck get away with that”.<sup>30</sup>

Legal writing teacher Philip Meyer argues plausibly that the skills of reading, analysis, evaluation and writing required by legal education — what he calls the “paradigmatic mode” of thinking — involve a marked shift from the “narrative mode” of everyday thinking, which is less abstract, less theoretical and less analytical.<sup>31</sup> Meyer asserts that in Western popular culture in the late twentieth century, we think in images rather than words, and in stories rather than analytically.

We are all affected by the seismic shift of popular culture from a print-based culture to a post-literate, technologically based, oral and visual story culture. We process information almost exclusively via imagistic narratives.<sup>32</sup>

This means that basic skills like identifying and applying legal principles to facts, or analogising (comparing) the application of legal principles in different cases, do not necessarily come naturally to students. This is partly a function of the features that distinguish writing from speech. The qualities that mark legal writing — analysis, linearity, relatively complex relationships between grammatical items, nominalisation and abstraction — are all made possible and structured by the technology of writing.<sup>33</sup>

At the level of teaching methodology, the foregoing discussion highlights the link between the need for the integrated teaching of writing skills and critical consciousness. The research suggests that expert reading and writing skills are acquired only by close interaction with expert texts of the kind students are expected to emulate in an environment which fully actuates and utilises the complex communicative functionality of those texts. Great care has to be taken not to ignore, simplify or bowdlerise the complex, especially metadiscursive, elements of the discipline-specific language. Because becoming expert in the language of a discipline is one and the same thing as acquiring knowledge of its content,

*integrated* teaching in writing skills is vital. In the words of one writer:

...critical consciousness becomes possible only *through* the performance: full genre knowledge (in all its subtlety and complexity) only becomes available *as a result of having written*. First comes the achievement or performance, with the tacit knowledge implied, and then, through that, the meta-awareness which can flower into conscious reflexive knowledge.<sup>34</sup>

This kind of approach to legal pedagogy provides a perfect context for reconceiving the teaching of inter-subjective and professional ethics in law.<sup>35</sup> Although this article does not directly address the issue of legal ethics and its place in legal skills education, ethics are an ineluctable part of legal writing. An invitation to theorise the connection is implicit in the MacCrate Report<sup>36</sup>. Further work on the model of legal writing skills teaching we propose will involve theorising why and in what form ethics should be explicitly incorporated into legal writing skills teaching.

### *Is it possible to teach writing?*

A number of writers have suggested that because of the elaborate linguistic strategies of writing and reading inherent in expertise, and because of the broader linguistic elements of purpose, audience, and context (recalling the description above of genre as social action), writing skills simply cannot be taught in universities. If legal writing is performative and contextual, Freedman asks whether “the complex web of largely tacitly understood social, cultural and rhetorical features to which genres respond [can] ever be explicated fully, or in such a way that can be useful to learners?”<sup>37</sup>

More significantly, it has been argued that attempts to teach writing skills, especially in a professional discipline like law, in the decontextualised environment of a university, can lead to alienated and counter-productive educational practices. Specific reasons for this danger are set out below.

### *Ignorance of language*

Freedman, proceeding on structuralist assumptions, observes that “the rules for our language have not yet been described adequately even by the most sophisticated linguists.”<sup>38</sup> And “the rules that are known are simply too complex and too numerous to be explicitly taught in the context of writing or language instruction

(as opposed to a course devoted to linguistics or discourse theory)".<sup>39</sup> This caveat would seem to apply *a fortiori* to highly complex academic and professional discursive practices such as legal writing.

### *Language is acquired rather than learnt*

Some researchers assert that most rules of writing are acquired rather than explicitly learnt, and that the two processes tend to be mutually exclusive.<sup>40</sup> In fact, some experiences in Teaching English as a Second Language suggest that the attempt to learn elements of writing can be counter-productive.<sup>41</sup>

### *Culture-specific teachers*

It is imperative that teachers of legal writing be intimately familiar with the language activities that constitute the law.<sup>42</sup> Where teachers who are *not* members of the relevant writing community attempt to explain the rules for a specific genre, there is a danger they will not understand "the complex rhetorical role of some features of the discourse" — for example, the function of specialised terminology, the citation of authority, or the appropriate tactical use of the passive voice.<sup>43</sup>

### *University writing vs professional writing*

Are the workplace and academic contexts such fundamentally different discourse communities that attempts explicitly to teach the discursive practices of the former within university are futile? There are three main ways in which writers have asserted that workplace and university practices are incommensurately different.

First, as the principles of plain legal language explain, good writing is directed towards its audience. It is no secret that university students who succeed write according to the expectations, and often the personal predilections, of their teachers (who are, after all, the audience). Even where legal teaching involves enacting hypothetical "real life" roles (for example, in moots, or mediation/negotiation workshops) the role play is always mediated by the teacher-student relationship.

Second, the teacher-student relationship centres around *learning*, and the centrality of learning and its assessment to university culture is vital to what counts as good writing. As a result, to put it very crudely, the kind of writing valued at

university is what might be called epistemic rather than instrumental. Because student learning is the focus of the writing, the best writing is that which is written to display its knowledge and mastery of the discipline (it is, in other words, “knowing made manifest for inspection”<sup>44</sup>). These differences present themselves in various ways — for example, in the different ways in which evidence is cited or authority is used in university and workplace writing. While the principles of plain legal language apparently accommodate shifts between university and workplace cultures (the central exhortation in both contexts is to “write for your audience”), students who are highly competent at university will not necessarily be so in a workplace context, where the audience and the culture, and consequently the writing expectations, are different.

Third, because the cultures in which writing is produced are different, there are a plethora of other ways in which workplace and university writing differ. For example, issues of professional ethics do not arise in student writing. Similarly, the university imperative to produce original work and not to plagiarise tends not to arise in professional writing. In legal workplaces the use of precedents and circulation of draft documents amongst staff members in an often extensive process of redrafting and editing means that collaboration is the rule rather than the exception.

A recent Australian study confirmed some of the problems identified above. The authors of the study observed a course on case histories of financial analysis in a business studies program in a tertiary institution<sup>45</sup> The course required students to write up their own case history and analysis, and present their findings in a role play, simulating the advice given by a professional business consultant. The study found that even though the course tried to be “workplace-like” in the written and other skills it required of students, for the reasons discussed above the university context fundamentally shapes and constrains the writing of students. Interestingly though, the study found a number of benefits in explicitly teaching writing and other skills.<sup>46</sup> It found that at the levels of stance, ideology and value students did participate meaningfully in a process that enculturated them in the mores of the disciplinary community for which they sought to be credentialled, notwithstanding the serious limitations on simulation revealed by a genre perspective.<sup>47</sup>

## *Plain Legal Language and Quality Legal Writing*

Before answering some of the questions raised about the effectiveness and practicability of writing skills teaching, we will briefly examine the current mainstream reformist model of writing and communication in legal education — the plain legal language movement. We consider that there are serious deficiencies inherent in defining teaching legal writing skills in terms of teaching plain language. In simple terms, these are:

- Plain legal language focuses on the formal qualities of documents (mainly grammar, lexicon, syntax, organisation and design). It provides an inadequate account of the performative nature of communication — that is, an appreciation that the texts which make up the communication event are not just the words on the page, but include generic factors (discussed in “Linguistics, genre and discourse theory”, above) like social context, institutional and ideological function, and so on. In particular, plain legal language has nothing to say about what James Boyd White refers to as the “cultural syntax” of law — the unstated or invisible conventions within which the language of the law operates and takes on meaning, and which cannot be reduced to issues of vocabulary or sentence structure.<sup>48</sup>
- Plain legal language emphasises writing as an end “product” rather than a “process”<sup>49</sup> — as a theory of legal communication it does not have a great deal to offer about teaching writing method and composition. Accordingly, it cannot deal with the cause of poor legal writing, only the symptoms.
- Exhortations to teach plain legal language at university simplify the different functions of language within universities and the workplace (see the discussion above, which suggests that an important criterion of merit in university writing is the display of learning, an objective not shared with workplace writing). Ironically, the more instrumental function of plain legal language in the workplace suggests that it might be a more appropriate environment for inculcating principles of plain legal language. This is not to suggest, however, that there is no place for plain legal language at university.
- Plain legal language clings to an idealistic notion of democratic participation in law — law is comprehensible so long as it is clear and accessible. In its “championing of the average reader’s

common sense over lawyerly sophistication,<sup>50</sup> it ignores the complex reading and writing strategies that constitute expertise (for example, use of metadiscourse and critical reading practices) and which cannot be reduced to the principles of plain legal language.<sup>51</sup> Indeed, the nature of expertise is something that plain legal language proponents implicitly deny.

The real issue in our opinion is the need to formulate criteria for *quality* in legal writing, and we cavil with plain legal language only for the purpose of clarifying that goal. Given the fraught relationship between legal writing as an historical, culturally situated and disciplinary set of practices, and attempts to redefine these practices (of which plain legal language is the most powerful example), there is an inevitable tension between what might usefully be called the mimetic and normative conceptions of legal writing. It is a vexed question that many writers evade. For example, early in a recent overview of developments in legal writing education in a major American law review, the authors comment: “Law schools should not only teach students to write legal discourse in its analytical and persuasive forms, but they should also teach law students to write that discourse *well*.”<sup>52</sup> However, they completely omit to define or explain what they mean by quality in writing.

It is important to bear in mind that quality in any writing, but especially in the expert writing of professional communities, is literacy (where literacy is understood as expertise rather than competence). The conventions that determine merit arise within the community. But such communities also interact with other groups in society — in particular their lay readership. Because of the complex and contested nature of quality, we developed criteria of quality by reference to a number of sources:

- the principles of clarity, appropriateness, accessibility and equity advocated by the proponents of plain legal language;
- the requirement that legal writing skills be contextualised (in relation to both academic and professional literacy requirements);
- input from the University of Sydney Law School’s stakeholder<sup>53</sup> and students;<sup>54</sup>
- the results of an overview and assessment of writing skills programs in Australia and overseas;<sup>55</sup>
- recognition that presently the Australian legal system does not

cater to the diversity of the Australian community.

### *Possibilities*

What, then, are the possibilities for teaching writing? Genre and discourse theory, while questioning the nexus between understanding generic and discursive forms and being able to reproduce them, nonetheless seems to accept not only the importance of teaching writing, but also that written skills should be taught within a pedagogical relationship by a professional who is differentiated from students and whose status in the learning process is authoritative (although not authoritarian).<sup>56</sup>

None of the concerns raised above is new, though they tend to be brushed aside in discussions of legal writing training. It is necessary to remember that traditional classroom instruction in writing is not decontextualised — in fact, it occurs in a highly developed context, some features of which may be inimical to the explicit teaching of writing skills. If effective writing skills are to be taught, there needs to be acknowledgment of the systemic nature of the differences between the discourse communities of university and the workplace, and the fact that students will always be mediating between the role of student, and the role of lawyer or other professional.<sup>57</sup> Consistently with the educational strategies outlined above, our report recommended the adoption of an integrated legal writing skills model in which writing skills tuition is taught in a way which is critical and addresses the inherent tensions in legal education in the university context.

### TEACHING INTEGRATED LEGAL WRITING SKILLS

This part of the article will look at possible approaches to delivering writing skills tuition which is consistent with the model of legal literacy outlined above. Specifically, it attempts to combine the theoretical commitments in “Integrating Legal Writing Skills into a Law School Curriculum”, above, with the lessons from the available pedagogical literature on effective teaching of writing within disciplinary modes and genres. A number of principles can be distilled from the available literature, which are discussed in the rest of this section.

The starting point is the imperative of moving beyond simple description of identified generic qualities, which inevitably

drastically simplifies and changes the qualities of the textual form being taught.<sup>58</sup> Instead, educationalists advocate a model that moves from description to interpretation and ultimately explanation. In the words of one writer, teaching materials designed on this basis “do not simply promote the awareness of the linguistic system underlying a particular genre but also offer genre-specific explanation as to why certain features of language realise specific values in individual genres”.<sup>59</sup> This approach is consistent with the theoretical approach taken above in relation to law as language — law is constitutive, performative and contextual, and cannot be reduced to a simple “recipe” of features or rules. Unfortunately, research into these aspects of student literacy is largely absent across all academic disciplines.<sup>60</sup> Nonetheless, there is a considerable quantity of educational literature that throws light on teaching methodologies and resources appropriate to achieving these broader objectives.

### *Process Rather than Product Focussed Teaching*

A great deal of recent scholarship on teaching writing has highlighted the need for writing to be taught as a process rather than a product. That is, consistent with the tenets of genre theory discussed above, writing is an act the performance of which is indistinguishable from the textual product.<sup>61</sup> What this means in practice is that the process of writing — drafting, reviewing (both self- and peer-review) and editing — should be incorporated into the teaching. This can take numerous forms, including:

- Encouraging or requiring students to keep a reading journal in which to record thoughts, observations, concerns, criticisms, etc as they read. This promotes close and critical reading of materials, and also helps inculcate an awareness of the nexus between summation, reproduction and expression in written form, and skills of reading, comprehension and analysis. In particular, the use of a journal as a heuristic device could be helpful in avoiding the tendency of students “to summarise or paraphrase what is read, encouraging in its place the recording of “one’s responses to what is said.”<sup>62</sup>
- Either requiring students to submit, or providing them with the option of submitting, an outline or a first draft of work. The purpose of the draft would not be for evaluation and assessment,

but for the provision of critical commentary and advice.

- Requiring students to submit short writing exercises (which may be ungraded).<sup>63</sup>

The literature on legal writing programs in the United States suggests that the incorporation of these requirements, whilst an essential part of legal writing education, is enormously demanding on professional writing teachers.<sup>64</sup> So an important issue is the type of feedback or guidance given, and who provides it.

### *Integrated and Incremental Writing Skills Training*

Ideally, written legal skills should be identified as part of the overall educational objectives of the law school curriculum.<sup>65</sup> Their location within law subjects ought to be strategically selected to ensure that the writing tasks and structures are as appropriate as possible.<sup>66</sup> Accordingly, it makes sense to tailor genres to appropriate courses, and to introduce them incrementally. Students can begin by writing more objective writing tasks such as a research memorandum to a partner, and later work up to other voices, such as the persuasive voice of submissions to a court, the statutory voice of legislative drafting, the bureaucratic voice of a policy paper, the mediating voice of a letter to an opposing party negotiating dispute resolution, or the counselling voice of a communication with a client. More broadly, and consistent with the second part of this article — “Integrating Legal Writing Skills into a Law School Curriculum” — it is also imperative that it is made clear to students “how a writing assignment fits within a developmental sequence of assignments, one that tracks not only students’ acquisition of skills in legal analysis, but also their general socialisation into legal discourse”.<sup>67</sup>

### *Teachers*

A major resource issue is who delivers legal writing skills tuition. In the United States, two main models have emerged. In the first, where legal writing skills (often combined with legal research) is a separate (usually compulsory) course, the teaching is increasingly frequently done by specialist teachers (often with qualifications in English and/or composition rather than, or in addition to, law). It may also be done by members of the doctrinal faculty, student teaching assistants, or permutations of the three

kinds of teachers. The second involves members of the doctrinal faculty who may have an interest or specialisation in legal writing and legal skills more generally; they teach writing (and often other skills) integrated with a doctrinal course. Under an integrated model of teaching, there are essentially two options as to how allocation of teaching would occur:<sup>68</sup>

- Teachers of substantive law subjects incorporate legal writing into their regular classes.

#### *Advantages*

The advantage of this approach is that teachers have an opportunity to incorporate the importance of writing and discourse issues into all of their teaching. This approach is undoubtedly the most consistent with our theoretical position on the relationship between law and writing, outlined in “Integrating Legal Writing Skills into a Law School Curriculum”, above.

#### *Disadvantages*

The main disadvantage is that for reasons of institutional history and pedagogical culture some law teachers are disinclined to teach legal writing skills.<sup>69</sup>

Strong disincentives are provided by university traditions and the “publish or perish” ethos.<sup>70</sup> Understandably, academics may be reluctant to invest the time and effort necessary to come to grips with theories and practices of contemporary skills training. In addition, many teachers would not be theoretically equipped to teach writing competently, let alone in a manner that most effectively takes advantage of the opportunities that an integrated model presents.

It is also important that legal writing teaching be consistent throughout the faculty. Obviously the easiest way to achieve this is through the use of specialist writing teachers such as are used in many United States law schools. With a fully integrated model, in which writing skills are taught by regular faculty members, there is a danger that the style and content of writing tuition will vary widely, and also that the skills component will take a back seat to the doctrinal portion of the course,<sup>71</sup> unless quality control measures are put in place. The use of standardised teaching materials (for example, teaching modules)

and providing training to staff should help to obviate these problems.

- Specialist writing teachers teaching stand-alone classes on legal writing.

### *Advantages*

The main advantage of this approach is that quality and consistency in writing teaching is ensured.

### *Disadvantages*

On the other hand, such an approach runs the risk of reproducing all of the problems associated with legal writing education in many US law schools — including the separation of legal content from legal writing, usually leading to the devaluing of the latter as an intellectual activity, and the assumption by legal writing staff of de facto and often de jure inferior status — closed-end or revolving short-term contracts, low pay, and limitation or denial of a role in faculty governance.

## *Teaching Materials*

Effective legal writing teaching relies upon the development of imaginative, appropriate and critical written teaching materials. Mainstream legal education has focussed on appellate case law, and the appellate case method developed by Langdell in the United States has been incorporated into Australian legal teaching practice, albeit in a form influenced both by British tenets of legal education and local pedagogical mores. Common features include the use of large lecture groups<sup>72</sup> and the use of standard textbooks and appellate casebooks. Although the casebook genre, especially, has changed over the past fifteen years, the bulk of casebooks is still made up of extracts from appellate cases. Admittedly, casebooks continue to evolve, with an increasing inclusion of interdisciplinary materials, especially materials that encourage critical interaction with cases excerpted, and non-judicial legal documents (for example, excerpts from reports of parliamentary committees and law reform commissions). These developments are promising from the perspective of legal writing skills, because a major problem with the traditional casebook and textbook genres is that they present the law as objective, decontextualised and autonomous. Law teaching becomes an instrumental process of knowledge

transmission through the inculcation of principles located in significant cases. Appellate case law, taught in this way, is a genre which generally does not give students an appreciation of the dynamic quality of law, the way in which students (like any participant in legal discourse) are an active and transformative force in the making of law. The texts also often obscure the ways in which they assemble, edit and construct “the law”. The key result of all this for our purposes is that, while the use of the textbook/casebook will remain central to legal education, alone it is not sufficient for the acquisition of complex literacy skills in law.

Students need some exposure to a wider range of legal documents than appellate cases in order to be able to write in different genres, and also in order to learn the different voices required of legal writing. The increasing tendency of casebooks to contextualise appellate cases is encouraging. The use of more imaginative teaching materials was strongly advocated by most stakeholders we consulted, especially those outside traditional legal practice. The development of comprehensive teaching modules is a tenet of those US writing skills programs that represent themselves as “professionalized”. It is even more vital that such materials be developed where legal writing is integrated with substantive law courses and taught by regular faculty. In particular, the use of sample documents is advocated by many American legal writing teachers — especially where both good and bad versions of a particular genre are made available. To be an effective teaching tool sample documents must be accompanied by an explanation by teachers (preferably in the context of class discussion) of what it is about the genre, the skills it requires, and the culture in which it operates, that determines its quality as legal writing.<sup>73</sup>

### *Group Work*

There is general consensus among teachers of legal writing in the United States that writing skills are learnt most effectively in a small group environment.<sup>74</sup> The general premise is that writing in practice is usually collaborative, and so it is important “to reinforce the practice of writing more as a generative social activity than a private, individual activity”.<sup>75</sup> Group exercises are also useful in that they help students to “see how the choices they must make in any act of legal writing are rhetorical choices, choices that are best

made when fully informed by the social contexts surrounding any act of writing and by the conventions and practices of legal discourse”<sup>76</sup> In terms of plain legal language principles, it brings writers into contact, and indeed negotiation with, the readers of their texts. Small groups are obviously the teaching site most conducive to the process approach to writing teaching endorsed above. Students can revise their writing based on feedback and advice provided not only by their teacher, but by their peers.<sup>77</sup> Information technology may open up efficient and effective ways to employ this collaborative model in distance education mode and with larger groups of students.

An impediment to small group teaching singled out by some critics is the issue of assessment: where students produce written work in an environment of close collaboration, how can teachers ensure that the work assessed is an individual’s own work, or that all authors contributed equally? Of course, there are a number of ways of dealing with this problem (such as asking students to divide marks among themselves). At a deeper level, the question itself is very revealing. It is loaded with individualistic assumptions about the nature of reading, writing and authorship. In addition, it naively dismisses the fact that “freeloading” is a routine part of the real world. Rather than artificially excluding the possibility of it at law school, perhaps a better strategy would be to help teach students skills to deal with it. This was a strategy endorsed by the stakeholders and students we consulted, both of whom want cooperative working skills to be part of law school education. Stakeholders, in particular, were acutely aware of the current disjunction between university and workplace practices in this regard.

### *Reading Skills*

Some theorists have investigated the relationship between writing and close, active reading skills.<sup>78</sup> They argue that readers who passively consume texts are unable to “imagine reading possibilities”<sup>79</sup> — a failure which almost invariably leads to poorly developed communication skills because of an inability to imagine their own writing as “read”. Reader response theory provides a structure for these ideas — it proposes that students can “become better writers by becoming more self-conscious and critical

readers”.<sup>80</sup> Pivotal to the theory is that meaning exists neither in the reader, nor in the writer, but in the encounter or transaction between the two. A fundamental part of the interest of these theorists is to avoid the tendency of students — where they are explicitly initiated into a discourse community — to paraphrase or imitate the text at a superficial level. In the legal context, Fajans and Falk provide a useful framework for the development of critical reading skills in relation to judicial opinions?<sup>81</sup>

### REMEDIAL WRITING TUITION — IS IT THE JOB OF LAW SCHOOLS?

Finally, one of the objectives of our research was to make recommendations about the most effective ways to assist those students who enter law school courses with serious writing deficiencies. In describing this kind of writing tuition, the term “remedial” is used with considerable caution. “Integrating Legal Writing Skills into a Law School Curriculum”, above, indicates that our approach to legal writing views legal language as a product of the professional community of lawyers which takes a special form in universities because of the particular demands, forces and histories operating within that context. Accordingly, our approach is that literacy is an expertise as much as it is a competency.

The notion of remedial literacy connotes for many people a focus on basic language and grammar teaching. This kind of education is obviously necessary for students with serious English language problems (especially where the student is a non-native English speaker from overseas, or is from a non-English speaking Australian background). However, where the purpose of the language teaching is to make the student literate in law, this approach must always be carefully coordinated with an integrated developmental approach to the language skills required by the law.<sup>82</sup> It is a case of realising that all students are novices when it comes to the specialised discursive practices of a tertiary discipline. For students who are at risk of failing the course because of poor written communication skills, becoming adept in the language requirements of law is “doubly difficult”.<sup>83</sup> One writer has helpfully described the strategy required in such cases as a combination of a “bottom up” approach (which focuses on grammar and the individual components of language) and a “top down” approach

(which looks at the more structural, macro-generic features of text).<sup>84</sup> The writer comments:

A major task confronting the curriculum developer, materials writer and classroom teacher is to sequence and integrate these strategies in ways which facilitate learning.<sup>85</sup>

Unfortunately, our experience is that there is a considerable body of opinion within law schools to the effect that they are not the proper place for remedial literacy teaching. Unlike US law schools, which are essentially graduate schools, Australia law schools cannot claim that undergraduate courses should have prime responsibility for teaching literacy. In Australia, most students matriculate from secondary education straight into a combined or straight law degree. Nonetheless, it is often claimed that law schools are not responsible for assisting students whose literacy levels are so low that they are in danger of not successfully completing law school. There are a number of points which need to be made in response:

- First, as discussed above, language teaching that initiates students into the discursive conventions of the law is something from which all students benefit, not just those with serious language problems. Accordingly, student literacy should be conceived of as requiring the acquisition by all students of varying degrees of the literacy levels required for them to perform satisfactorily, rather than by focussing on the existence of a separate category of students perceived to lack altogether the capacity to use academic language. Academic and discipline-specific literacy is not something with which any student arrives at university pre-equipped.
- Sydney University Law School has only very recently starting diagnosing those students with serious writing problems, and has discovered that the forces leading to the admission of those students into university are often beyond its control (for example, Higher School Certificate syllabi and University admission standards).
- There are serious issues of equity involved in not assisting students with language problems.
- Undergraduate students with language problems tend often (though not exclusively) to come from non-English speaking backgrounds. It is especially important in a discipline as traditionally monocultural as the law to admit as many

challenging perspectives and voices as possible. It is also important to realise that the law's cultural specificity constructs the heightened difficulties which legal literacy presents to clearly identifiable groups of students.

- Generally, there is a perception that with the gradual application of “user pays” principles to university funding in Australia, and competition by Australian universities on the international market for overseas students and research funding, both the perception and practice of quality in Australian universities is more imperative than ever before.

### *Conclusion*

In conclusion, we hope to have identified an important continuum between the developmental literacy skills training discussed under “Integrating Legal Writing Skills into a Law School Curriculum” and “Teaching Integrated Legal Writing Skills”, above, and the requirements of students whose literacy is so impoverished as to jeopardise their ability successfully to complete their legal studies. In particular, we have adopted an approach which views legal literacy as the enculturation of students into a professional discourse community. But it is also important to link these learning objectives to the *mission* of Australian universities — especially the achievement of *quality* in teaching and learning, and congruence with the *democratic* and *multicultural* aspirations of modern Australian society.

It is clear that many law faculties have placed the issue of legal literacy and written language skills in the too-hard basket — something which will go away when the world returns to the academic “Golden Age” of elite or meritocratic (rather than democratic) universities. The “problem” belongs to universities, not to our students. The principal response to date has been to tolerate evidence of student learning difficulties of two main kinds. The first group of problems is experienced by students from a range of backgrounds who are perceived as deficient in the intellectual capacity to study law successfully. The second manifests itself in unacceptably high failure rates among linguistically impoverished students (who are often overseas and NESB students), ignoring the equity problems implicit in this approach and the cost to the reputation of Australian universities as providers of increasingly

expensive (by international standards) tertiary education services in a highly competitive international market. The other widespread response to this latter phenomenon in some faculties has been effectively to compromise standards of competence in order to graduate students who are not passing because of these entry-level problems, which apart from other costs has a considerable cost in terms of academic staff morale. Finally, it is clear from the experience of the University of Sydney Law School and law faculties elsewhere in this country, as well as in other professional faculties, that equipping students with the language competencies they need to complete their studies successfully and function effectively in professional workplaces is an equity issue, and one that is critical if faculties are to respond to an increasingly culturally diverse clientele. An awareness of this issue will also need to inform curriculum design and assessment to a far greater extent than it does at present, and this will become particularly critical if the increasing momentum towards a “user pays” environment continues.

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<sup>1</sup> JC Rideout & JJ Ramsfield, *Legal Writing: A Revised View* (1994) 69 *Washington Law Review* 35, at 43.

<sup>2</sup> This article is based on a report prepared by the authors for the Faculty of Law at the University of Sydney, and presented to the Faculty on 20 November 1996. The report proposed the introduction of an *integrated, incremental* legal writing skills program in the Faculty to address the specific needs of students with literacy “impoverishment”, as well as legal literacy more generally. *Integrated* legal skills programs combine learning and teaching in doctrinal subjects with learning and teaching of lawyering skills. The principal alternative model is stand-alone lawyering skills courses. *Incremental* lawyering skills programs like that proposed for Sydney teach lawyering skills at increasingly complex levels across the curriculum, with introductory materials taught at the beginning of the first year and the most advanced materials in the final year of the LLB degree. Part of the funding for the project was used to develop curricular initiatives in specific subjects, which are now in place, and the authors have extended the use of materials and approaches developed for the project into other areas of the curriculum in which they teach. The report is currently being considered by the Faculty’s Teaching and Curriculum Committee prior to its formal consideration by Faculty.

<sup>3</sup> See generally G Taylor et al, *Literacy Degrees* (Milton Keynes: Open Univ Press, 1988).

- <sup>4</sup> J Jones, Grammatical Metaphor Technicality in Academic Writing — an Explanation of ESL (English as a Second Language) and NS (Native Speaker) Student Texts, in F Christie ed, *Literacy in Social Processes* (Papers from the Inaugural Australian Systemic Functional Linguistics Conference, January 1990) 194; V Bhatia, *Analysing Genre — Language Use in Professional Settings* (New York: Longman, 1993) 39.
- <sup>5</sup> J Wade, Legal Skills Training: Some Thoughts on Terminology and Ongoing Challenges (Unpublished paper on file with the authors, 1994).
- <sup>6</sup> C Geisler, *Academic Literacy and the Nature of Expertise: Reading, Writing and Knowing in Academic Philosophy* (New Jersey: Lawrence Erlbaum Associates Inc, 1994) ch 3.
- <sup>7</sup> P Bourdieu, *Academic Discourse: Linguistic Misunderstanding and Professional Power* (Cambridge: Polity Press, 1994) 5.
- <sup>8</sup> Taylor, *supra* note 3, at 17.
- <sup>9</sup> L Greenhaw, ‘To Say What the Law Is’: Learning the Practice of Legal Rhetoric (1995) 29 *Valparaiso University Law Review* 861, at 866.
- <sup>10</sup> American Bar Association, Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Chicago: ABA, 1992).
- <sup>11</sup> M Le Brun & R Johnstone, *The Quiet (R)evolution — Improved Student Learning in Law* (Sydney: The Law Book Company Ltd, 1994).
- <sup>12</sup> Faculty of Law, Statement of Goals, 1988.
- <sup>13</sup> Greenhaw, *supra* note 9, at 873.
- <sup>14</sup> See, for example, M Halliday, Linguistic Perspectives on Literacy: A Systemic-Functional Approach, in F Christie ed, *Literacy in Social Processes* (Papers from the Inaugural Australian Systemic Functional Linguistics Conference, Deakin University, January 1990) 3; T Threadgold, Talking about Genre: Ideologies and Incompatible Discourses (1989) 3 *Cultural Studies* 101, at 102–103; A Freedman & P Medway, Locating Genre Studies: Antecedents and Prospects, in A Freedman & P Medway eds, *Genre and the New Rhetoric* (London; Bristol, PA: Taylor & Francis, 1994) 2. For analysis of legal texts, see C Beasley, Picking up the Principles: An Applied Linguistic Analysis of the Legal Problem Genre, Unpublished thesis submitted in partial fulfilment of MA (Applied Linguistics), August 1994; Rideout & Ramsfield, *supra* note 1, at 57–60; Bhatia, *supra* note 4, at 3.
- <sup>15</sup> See AJ Devitt, Intertextuality in Tax Accounting — Generic, Referential and Functional, in C Bazerman & J Paradis eds, *Textual Dynamics of the Professions — Historical and Contemporary Studies of Writing in Professional Communities* (Madison: The University of Wisconsin Press, 1991) 339.
- <sup>16</sup> CR Miller, Genre as Social Action, in A Freedman & P Medway eds, *Genre and the New Rhetoric* (London; Bristol, PA: Taylor & Francis, 1994).
- <sup>17</sup> See A Freedman, Anyone for Tennis?, in A Freedman & P Medway eds, *Genre and the New Rhetoric* (London; Bristol, PA: Taylor & Francis, 1994) 56–60. Greenhaw uses the term “rhetorical situation” to describe the complex dynamics generated by the environment, audience and exigencies which arise in legal writing, and to which the writer must respond appropriately: Greenhaw, *supra* note 9, at 874.
- <sup>18</sup> Threadgold, *supra* note 14, at 103.
- <sup>19</sup> See B Cope & M Kalantzic, Introduction: How a Genre Approach to Literacy Can Transform the Way Writing is Taught, in B Cope & M Kalantzic eds, *The Powers of Literacy: A Genre Approach to Teaching Writing* (London: The Falmer Press, 1993) 20; T Threadgold, The Genre Debate (1988) 21 *Southern Review* 315; Threadgold, *supra* note 14.
- <sup>20</sup> Geisler, *supra* note 6.
- <sup>21</sup> “Metadiscourse” is discourse about discourse, or discourse “that calls attention either to the relationship between the author and the claims in the text or to the relationship between the author and the text’s readers”: Geisler, *supra* note 6, at 11.
- <sup>22</sup> *Id.*

- <sup>23</sup> *Id* at 24.
- <sup>24</sup> *Id* at 84.
- <sup>25</sup> *Id* at 90.
- <sup>26</sup> *Id* at 91.
- <sup>27</sup> *Id* at 87.
- <sup>28</sup> See, for example, JB White, *The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education* (1983) 54 *Colorado Law Review* 143.
- <sup>29</sup> MA Lundeberg, *Metacognitive Aspects of Reading: Studying Understanding in Legal Case Analysis* (1987) 22 *Reading Res Q* 407, quoted in E Fajans & MR Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts* (1993) 78 *Cornell Law Review* 163, at 192.
- <sup>30</sup> *Id.* See also R Hyland, *A Defense of Legal Writing* (1986) 134 *University of Pennsylvania Law Review* 599.
- <sup>31</sup> P Meyer, ‘Fingers Pointing at the Moon’: New Perspectives on Teaching Legal Writing and Analysis (1993) 25 *Connecticut Law Review* 777, at 779.
- <sup>32</sup> *Id* at 782.
- <sup>33</sup> *Id* at 785–787. See also Halliday, *supra* note 14, at 6–12; W Ong, *Writing is a Technology that Restructures Thought*, in P Downing, S Lima, & M Noonan eds, *The Linguistics of Literacy* (Amsterdam; Philadelphia: John Benjamins Publishing Company, 1992) 307.
- <sup>34</sup> A Freedman, ‘Do As I Say’: The Relationship between Teaching and Learning New Genres, in A Freedman & P Medway eds, *Genre and the New Rhetoric* (London; Bristol, PA: Taylor & Francis, 1994) 206 (emphasis in original).
- <sup>35</sup> Le Brun & Johnstone, *supra* note 11, at 396–397.
- <sup>36</sup> American Bar Association, *supra* note 10.
- <sup>37</sup> Freedman, *supra* note 34, at 194.
- <sup>38</sup> *Id* at 197.
- <sup>39</sup> *Id* at 198.
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id* at 199.
- <sup>42</sup> See Greenhaw, *supra* note 9, at 892.
- <sup>43</sup> Freedman, *supra* note 34, at 199.
- <sup>44</sup> See A Freedman, C Adam, & G Smart, *Wearing Suits to Class: Simulating Genres and Simulations as Genre* (1994) 11 *Written Communication* 193, at 206.
- <sup>45</sup> See *id.*
- <sup>46</sup> See Threadgold, *supra* note 14.
- <sup>47</sup> Freedman, Adam, & Smart, *supra* note 44, at 220.
- <sup>48</sup> White, *supra* note 28, at 146.
- <sup>49</sup> See “Process Rather than Product Focussed Teaching”, below.
- <sup>50</sup> Hyland, *supra* note 30.
- <sup>51</sup> See Bhatia, *supra* note 4.
- <sup>52</sup> Rideout & Ramsfield, *supra* note 1, at 53 (emphasis added).
- <sup>53</sup> Law school stakeholders and students were consulted in two meetings held by the authors at the law school in 1996. Stakeholder representatives came from within the faculty (for example, the Director of Clinical Programs, the Chair of the Teaching and Curriculum Committee); from the peak bodies in the profession, such as the Bench, the NSW Bar, the Centre for Legal Education and the Law Foundation; and from a range of employment destinations for law graduates, ranging from private legal practice to community legal centres and “non-legal” employers in the public and private sectors.
- <sup>54</sup> Students consulted included recent graduates and representatives drawn from the current student body.
- <sup>55</sup> The writing skills programs or courses reported in the 1996 handbook of the following law schools were considered: Australian National University, La Trobe University, Monash University, Murdoch University, Newcastle University, Northern Territory University, Queensland University of Technology, Southern Cross University, University of Adelaide, University of Melbourne, University of New South Wales, University of Queensland, University of Tasmania, University of Technology Sydney.
- <sup>56</sup> Cope & Kalantzic, *supra* note 19, at 18.

- <sup>57</sup> B Kamler & R Maclean, 'You Can't Just Go To Court and Move Your Body': First-year Students Learn to Write and Speak the Law (1997) 3 *Law/Text/Culture* 176.
- <sup>58</sup> See Bhatia, *supra* note 4, at 145–146; C Candlin, et al, *Becoming a Psychologist: Contesting Orders of Discourse in Academic Writing*, 1996, draft paper, on file with the authors.
- <sup>59</sup> Bhatia, *supra* note 4, at 182.
- <sup>60</sup> Candlin, *supra* note 58.
- <sup>61</sup> See, for example, Rideout & Ramsfield, *supra* note 1, at 51–55.
- <sup>62</sup> Fajans & Falk, *supra* note 29, at 203. The authors point to the inadequacy of the “traditional outline, first draft, rewrite paradigm” as a model of writing. They argue that the significance of active, critical reading involving notetaking and the production of so-called “zero drafts” — a sort of “free writing” exercise — has not been sufficiently highlighted.
- <sup>63</sup> P Kissam, *Thinking (By Writing) About Legal Writing* (1987) 40 *Vanderbilt Law Review* 135, at 163–164.
- <sup>64</sup> See J Levine, 'You Can't Please Everyone So You'd Better Please Yourself': Directing (or Teaching In) a First-Year Legal Writing Program (1995) 29 *Valparaiso University Law Review* 611; M Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching In) a First-Year Legal Writing Program* (1995) 29 *Valparaiso University Law Review* 557.
- <sup>65</sup> Wade, *supra* note 5, at 8.
- <sup>66</sup> Freedman, *supra* note 34, at 206.
- <sup>67</sup> Rideout & Ramsfield, *supra* note 1, at 72–73.
- <sup>68</sup> These are not the only options, however.
- <sup>69</sup> For a report on the experience of regular members of a law faculty teaching separate first year writing courses in the United States, see A Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs and Essentials* (1985) 62 *Chicago-Kent Law Review* 23.
- <sup>70</sup> Wade, *supra* note 5, at 11.
- <sup>71</sup> LA Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses* (1995) 33 *Duquesne Law Review* 203, at 210; Levine, *supra* note 64, at 622; Boyer, *supra* note 69, at 30.
- <sup>72</sup> Wade, *supra* note 5, at 8–9.
- <sup>73</sup> A Hasche, *Teaching Writing in Law: A Model to Improve Student Learning* (1992) 3 *Legal Education Review* 267, at 284; A Campbell, *Teaching Advanced Legal Writing in a Law School Clinic* (1993) 24 *Seton Hall Law Review* 653.
- <sup>74</sup> See, in particular, D Braveman, *Law Firm: A First-Year Course on Lawyering* (1989) 39 *Journal of Legal Education* 501.
- <sup>75</sup> Rideout & Ramsfield, *supra* note 1, at 71.
- <sup>76</sup> *Id* at 72.
- <sup>77</sup> B Burke, *Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context* (1991) 52 *Montana Law Review* 373, at 409.
- <sup>78</sup> Fajans & Falk, *supra* note 29.
- <sup>79</sup> *Id* at 180.
- <sup>80</sup> *Id* at 181.
- <sup>81</sup> *Id* at 190–192.
- <sup>82</sup> See C Webb, L English, & H Bonanno, *Collaboration in Subject Design: Integration of the Teaching and Assessment of Literacy Skills into a First-year Accounting Course* (1995) 4 *Accounting Education* 335 — which describes an intensive workshop program run by the University of Sydney's Learning Assistance Centre for accountancy students. The article describes how the “remedial” focus of the workshop was adjusted to include “developmental” or discipline-focused aspects of writing for accounting purposes, because it became obvious to the organisers that the two could not be separated.
- <sup>83</sup> H Drury & C Webb, *Literacy at Tertiary Level: Making Explicit the Writing Requirements of a New Culture*, in F Christie ed, *Literacy in Social Processes* (Papers from the Inaugural Australian Systemic Functional Linguistics Conference, Deakin University, January 1990) 214.

<sup>84</sup> D Nunan, *Language Teaching Methodology* (New York: Phoenix ELT, 1995) 4, 66–67.

<sup>85</sup> *Id* at 4.