Chapter 15

Promoting Student Well-being and Resilience at Law School

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Introduction

15.1   University can be a psychologically distressing place for students,[1] particularly those studying law. Legal academics have been concerned about this for some time.[2] In the United States, in particular, it has been found that symptoms of psychological distress rise significantly for students in their first year of law (compared to levels in the general population at that time), and persist throughout the degree to post-graduation.[3] Recognised symptoms include depression, obsessive compulsive behaviour, feelings of inadequacy and inferiority,[4] anxiety, hostility, paranoia, and social alienation. Many students experience law school as an isolating, adversarial and competitive environment, which impacts negatively on their values and motivation.[5]

15.2   In 2009, the Brain and Mind Research Institute (BMRI) of the University of Sydney empirically established that Australian law students also suffer disproportionately high levels of psychological distress.[6] The BMRI found that more than one third (35.2 per cent) of law students suffered high to

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1   C Leahy et al, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Tertiary Students: Cross-Sectional Study' (2010) 44 *Australian and New Zealand Journal of Psychiatry* 608. This study of 955 students at the University of Adelaide found that 48% were psychologically distressed. Law students were worst affected (58%), followed by mechanical engineering (52%), medicine (44%) and psychology (40%). For Canada, see J Rybak, 'Pushing Students to go to University May Lead to Depression' (2008) <http://oncampus.macleans.ca/education/2008/04/28/student-depression>.

2   A Watson, 'The Quest for Professional Competence: Psychological Aspects of Legal Education' (1968) 37 *Cincinnati Law Review* 93; S Daikoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association, 2004).

3   G Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) 2 *American Bar Foundation Research Journal* 225; A Iijima, 'Lessons Learned: Legal Education and Law Student Dysfunction' (1998) 48 *Journal of Legal Education* 524.

4   P Lake, 'When Fear Knocks: The Myths and Realities of Law School' (1999–2000) 29 *Stetson Law Review* 1015.

5   K Sheldon and L Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being' (2004) 22 *Behavioural Science and Law* 261; K Hall, M Townes O'Brien and S Tang, 'Developing a Professional Identity in Law Schools: A View From Australia' (2011) 4(1) *Phoenix Law Review* 19, 21; G Hess, 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 52 *Journal of Legal Education* 75.

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

very high levels of psychological distress.[7] By contrast, only 17.8 per cent of medical students, and 13.3 per cent of the general age matched population, suffered such elevated distress.[8] According to the BMRI, the results for law students indicated 'a much higher level than expected of reported psychological distress and risk of depression on all measures used'.[9]

Further, studies conducted by individual law schools in Australia tend to confirm the findings of the BMRI. For example, Tani and Vines' 2009 analysis of a study at the University of New South Wales supports the existence of disproportionately high levels of depressive illness in law students;[10] and a study at the Australian National University in 2009–2010 has made some preliminary findings that the first year of legal education contributes to higher stress and distress levels in students.[11]

Psychological distress levels in the practising legal profession are also high. According to the BMRI report, almost one in three solicitors (31 per cent), and one in six barristers (16.7 per cent),[12] experienced high to very high levels of psychological distress. The Legal Services Commissioner for Queensland has identified emotional distress as a factor in 30 per cent of the disciplinary matters dealt with by his Commission.[13] James' study of graduates from the University of Newcastle in 2006 also found that lawyers experience high levels of stress.[14] This corresponds with data from the United States, where lawyers have been described as 'sit[ting] at the unenviable zenith of depressed professionals'.[15] In the United States, lawyers are 3.6 times more likely to suffer from a major depressive disorder than the rest of the employed population, as well as being at greater risk for heart disease, alcoholism and drug use.[16] In one sample of practising

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7   Ibid 11.
8   Ibid 12.
9   Ibid 37.
10   M Tani and P Vines, 'Law Students' Attitudes To Education: Pointers to Depression in the Legal Academy and the Profession?' (2009) 19 *Legal Education Review* 3.
11   Hall, Townes O'Brien and Tang, above n 5.
12   Kelk et al, above n 6, 12.
13   J Britton, 'Lawyers, Emotional Distress and Regulation' (Speech delivered at the Bar Association of Queensland Annual Conference, Gold Coast, Queensland, 6–8 March 2009) 1.
14   C James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education' (2008) 18 *Legal Education Review* 123.
15   T Peterson and E Waters Peterson, 'Stemming the Tide of Law Student Depression: What Law Schools Need to Learn From the Science of Positive Psychology' (2009) 9 *Yale Journal of Health, Policy, Law & Ethics* 357, 358.
16   Ibid.

lawyers, researchers found that 70 per cent were likely to develop alcohol-related problems over the course of their lifetime, compared with just 13.7 per cent of the general population.[17] Alcoholism or chemical dependency is the cause of the majority of disciplinary cases in the United States,[18] and a growing dissatisfaction with legal practice results in up to 40,000 lawyers leaving the profession annually.[19]

15.5   Psychological distress in law students is therefore an important issue, which needs to be addressed by legal educators. How should this be done? In this chapter we recognise the significant role that legal education can play in the promotion of mental health and well-being in law students (and, consequently, in the mental health of the legal profession). The chapter acknowledges that the problems of psychological distress amongst law students and practitioners are connected to the way law and legal culture are taught,[20] and experienced.

15.6   In United States law schools, blame has been attributed to factors as varied as fierce competition for grades and the singular emphasis on achievement;[21] use of the Socratic method that 'exalts criticism over imagination';[22] academic insistence on linear thinking at the expense of student creativity and personal values;[23] and legal formalism 'associated with a form of education that

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17   C Beck, B Sales and G Benjamin, 'Lawyers Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practising Lawyers' (1995) 10 *Journal of Law and Health* 1, 51, cited in Peterson and Peterson, above n 15, 358. See also Kelk, above n 6, 2.

18   R Allan, 'Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?' (1997) 31 *Creighton Law Review* 265, 268.

19   D Jones, 'Legally Unhappy: Experts Worry About Growing Tide of Lawyers Abandoning Careers', *Pittsburgh Post-Gazette* (Pittsburgh), 4 May 2005, E1, cited in Peterson and Peterson, above n 15.

20   Britton, above n 13, 3; R Stuckey et al, *Best Practices For Legal Education: A Vision and Road Map* (Clinical Legal Education Association, 2007).

21   See D Culp, 'Law School: A Mortuary for Poets and Moral Reason' (1994) 16 *Campbell L Review* 61, 69; Hess, above n 5; both cited in Peterson and Peterson, above n 15. See also I Nordmo and A Samara, 'The Study Experiences of the High Achievers in a Competitive Academic Environment: A Cost of Success?' (2009) 19(3) *Issues in Educational Research* 255.

22   H Erlanger and D Klegon, 'Socialization Effects of Professional School' (1978) 13 *Law & Society Review* 11, 14. Note, however, that the Carnegie Commission report on legal education praises the Socratic method as a 'signature pedagogy' of legal education, one which should remain the cornerstone of it: W Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (2007) 74–75, cited in Peterson and Peterson, above n 15.

23   See Culp, above n 21, 62; S Daicoff, 'Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 *American University Law Review* 1337, 1407; Hess, above n 5, all cited in Peterson and Peterson, above n 15. See also Benjamin, above n 3; Sheldon and Krieger, above n 5.

emphasises doctrines and cases and minimises external factors such as justice, social policy, and politics, [and] imagines law as an autonomous discipline existing apart from all others … not at all interdisciplinary'.[24] Many of these are encompassed in the phrase 'thinking like a lawyer'. The 'controlling and autonomy-denying features of legal education',[25] excessive workload, very limited staff–student interaction, and unbalanced development of students' interpersonal skills have also been suggested as causative.[26] Others have pointed to the fostering of certain personality traits that lead to unhappiness, such as defensiveness and pessimism,[27] perfectionism, and a documented decline in intrinsic motivation and contact with social networks over the school year.[28]

Even allowing for likely differences in the use and interpretation of the Socratic method in Australia, and the fact that United States students study law as postgraduates whereas the most prevalent model in Australia is that of combined degrees undertaken simultaneously by school leavers (thus fostering a more interdisciplinary balance), these are sobering thoughts. We consider the implications further below. Workload, whilst consistently heavy in law schools, seems on its own to be an insufficient explanation, given the findings in all studies of comparatively better psychological health in medical students.[29]

A recent survey of the top 75 law schools in the United States,[30] indicated that, whilst they are genuinely aware of the issue of elevated distress, and typically provide mental health counselling and similar support, as well as some pastoral care measures, very few have taken a proactive stance and developed preventative programs. In this chapter, first, we suggest that the legal academy, as a community, must take responsibility for acting

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24 J Stefancic and R Delgado, *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds* (Duke University Press, 2005) 35, cited in Peterson and Peterson, above n 15.

25 K M Sheldon and L S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) *Personality and Social Psychology Bulletin* 883, 884.

26 Benjamin et al, above n 3.

27 Daicoff, 'Lawyer Know Thyself', above n 23, 1380; J Satterfield, J Monahan and M Seligman, 'Law School Performance Predicted by Explanatory Style' (1997) 15 *Behavioural Science and Law* 95, 103–104; M Seligman, P Verkuil and T Kang, 'Why Lawyers Are Unhappy' (2005) 10 *Deakin Law Review* 49, 53. All cited in Peterson and Peterson, above n 15.

28 Iijima, above n 3, 526–527. See also Sheldon and Krieger, above n 5, 275–276. All cited in Peterson and Peterson, above n 15.

29 Kelk et al, above n 6, 12.

30 As ranked by US News and World Report in 2008. Survey conducted by and reported in Peterson and Peterson, above n 15, 371–375.

to reduce levels of psychological distress in law students by changing aspects of the way we teach law.[31] Second, we establish a number of critical reasons that support this argument. Third, we explore the literature on well-being, including resilience, and consider how it might be enhanced. Finally, we argue for the adoption of a range of innovative curricular and co-curricular strategies to support the use of legal education as a tool for the promotion of resilience and well-being, and provide some examples of good practice.

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> First and final year students: see Chapter 8. Whole-of-curriculum design: see Chapter 1

We note that considerable attention has been devoted to studying the first tertiary year,[32] highlighting the critical importance of creating a sense of belonging through involvement, engagement and connectedness with students' university experience.[33] Kift, Nelson and Clarke advocate a 'third generation' whole-of-institution transformative approach to curriculum,[34] using 'curriculum' in its broadest sense to mean the 'academic and social organising device', and the 'glue that holds knowledge and the broader student experience together'.[35] Whilst we fully endorse that approach, we argue that much can still be done at the more localised and immediate level to improve well-being, meeting the challenge of being both effective and achievable, without requiring a total replacement of the law school curriculum. We differentiate here for convenience between curriculum, meaning the formal taught program of study, co-curricular, meaning programs explicitly linked with, but not part of, the formal curriculum, and pastoral care, covering interventions and support that are not specifically connected to the formal curriculum. All the changes we suggest are pastoral care in its broadest sense, that is, they are changes in praxis that promote the

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31 K Hall, 'Where to Start: The Importance of Psychological Well-being in Australian Law Schools' (2009) 9(1) *QUT Law and Justice Journal* 1.

32 See, eg, R James, K L Krause and C Jennings, *The First Year Experience in Australian Universities: Findings from 1994–2009* <http://www.cshe.unimelb.edu.au/research/experience/first_year.html>; V Tinto, 'Taking Retention Seriously: Rethinking the First Year of College' (Speech delivered at the annual meeting of the American Association of Collegiate Registrars and Admission Officers, Minnesota, 15 April 2002); M Upcraft, J Gardner and B Barefoot, *Challenging and Supporting the First Year Student* (Jossey-Bass, 2005).

33 Queensland University of Technology, 'First Year Experience Program: A Sense of Belonging' (Issues Paper No 3, Queensland University of Technology, 2002).

34 S Kift, K Nelson and J Clarke, 'Transition Pedagogy: A Third Generation Approach to FYE — A Case Study of Policy and Practice for the Higher Education Sector' (2010) 1(1) *The International Journal of the First Year in Higher Education*, 1, 4.

35 C McInnis, *Signs of Disengagement? The Changing Undergraduate Experience in Australian Universities* (Centre for Studies in Higher Education, 2001) 11; quoted in Kift, Nelson and Clarke, above n 34, 10.

well-being of students, allowing them to thrive, learn, work and contribute to the fullest.

A case for promoting law student well-being through legal education

Mental illness and psychological distress are often considered, particularly in the popular media, to be private issues that relate to individuals.[36] Law students too, tend to view them as stigmatising and prejudicial to employment prospects, so are reluctant to seek help.[37] The BMRI report emphasises, however, that the psychological health of law students is not a problem that individuals should be left to manage on their own. Rather, mental health is 'a problem for communities;'[38] and the mental health of law students is a problem that must be addressed by the legal academy as a community.[39] This approach is important for a number of reasons, and we outline some of the more significant ones here.

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Given the evidence discussed above, legal educators have a clear ethical duty to work to ameliorate student distress. It is our responsibility to create positive learning experiences for our students, and to 'do no harm' through legal education. Our relationship with students is akin to a fiduciary[40] one, involving a level of trust that the power of the fiduciary will be used for the benefit of the person bestowing that trust.[41] At the very least, we have a legal duty to warn students, and arguably a more demanding duty of care based on foreseeability of the risk of harm.

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We also have a significant impact on the development of our students' professional identity as lawyers.[42] We owe a moral duty to our profession, and to society, to equip our students with a positive professional identity that affirms their role in society as custodians of the rule of law and promoters

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36   Kelk et al, above n 6, 43.
37   Ibid 20.
38   Ibid 43.
39   Hall, above n 31.
40   R Schuwerk, 'The Law Professor as Fiduciary: What Duties Do We Owe to Our Students' (2003–2004) 45 *South Texas Law Review* 753.
41   See *Hospital Products v United States Surgical Corp* (1984) 156 CLR 41, 96. For commentary on the case and for confirmation of its significance see R Meagher, J Heydon and M Leeming, *Meagher, Gummow and Lehane's Equity: Doctrines and Remedies* (LexisNexis Butterworths, 4th ed, 2002) 157.
42   Hall, Townes O'Brien and Tang, above n 5, 35–42.

of social order and justice. Our influence on students at law school has the potential, therefore, both to impact on positive cultural change in legal practice,[43] and also to reduce the high levels of psychological distress in legal practitioners.

15.12   Finally, there is shared concern within the higher education sector and government, about low levels of student engagement. Student engagement is critical to a sense of belonging and well-being at law school,[44] yet the AUSSE data demonstrates that, across the sector, universities under-perform on a range of engagement scales. For example, on a matrix of 1–100, universities in 2009 scored 37.9 for active learning; 22.2 for student/staff interactions; 25.0 for enriching education experiences; and 53.1 for the provision of supportive learning environments.[45] These low figures of student engagement must be addressed if student well-being is to be promoted at law school.

Promoting well–being and building resilience

15.13   In this section we explore some of the research on well-being, to provide an evidence base for designing interventions and modifying current law school practice. There appears to be a general consensus amongst researchers that about 50 per cent of a person's happiness is genetically pre-determined, 10 per cent is based on external circumstances, and up to 40 per cent is within personal control and can be altered through intentional activities.[46] According to positive psychologists, well-being is affected by individual traits, subjective experience, and institutions and communities.[47] Resilience is a subset of well-being. The essential components of well-being are pleasure, engagement, and meaning. Research has confirmed that pursuing any of

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43   C Samford, S Blencowe and S Condlln (eds), *Educating Lawyers for a Less Adversarial System* (Federation Press, 1999).

44   J Howieson and W Ford, 'Teaching and Learning Skills: Increasing a Sense of Law School Belongingness' (in Proceedings of the 16th Annual Teaching and Learning Forum: Student Engagement, Perth, Australia, 30–31 January 2007) <http://lsn.curtin.edu.au/tlf/tlf2007/refereed/howieson.html>.

45   Australian Council of Educational Research, *Engaging Students for Success: Australasian Student Engagement Report* (2009) <http://www.acer.edu.au/research/projects/australasian-survey-of-student-engagement-ausse/>.

46   See, eg, S Lyubomirsky, K Sheldon and D Schkade, 'Pursuing Happiness: The Architecture of Sustainable Change' (2005) 9 *Review of General Psychology* 111, 116; D Lykken, *Happiness: The Nature and Nurture of Joy and Contentment* (St Martin's Press, 2000). Cited in Peterson and Peterson, above n 15, 393–94.

47   S Gable and J Haidt, 'What (and Why) is Positive Psychology?' (2005) 9 *Review of General Psychology* 103, 108. Cited in Peterson and Peterson, above n 15, 390.

these three contributes to life satisfaction, but that the happiest people are those who experience all three together.[48] Importantly, positive emotions are not just psychological effects, but can also be significant causes of positive outcomes such as increased productivity and better workplace performance.[49]

Peterson and Seligman have developed a classification of character strengths and virtues (VIA),[50] intended to be a counterpart to the American Psychological Association's Diagnostic and Statistical Manual of Mental Disorders (DSM).[51] The VIA identifies 'six virtues' said to enable human thriving, based on research across multiple cultures. These are summarised in **Figure 15.1** below.

15.14

Figure 15.1   Values in Action (VIA): Character Strengths

Virtues	Strength / Action	
Wisdom & Knowledge Creativity & Curiosity Love of learning & Perspective	• Cognitive Strength: The acquisition and use of knowledge • ACTION: Mastering new skills and bodies of knowledge, innovative, thinking things through, broad interests	**Values in Action (VIA)**
Courage & Bravery Authenticity & Persistence	• Emotional Strength: Accomplish goals despite adversity • ACTION: Speaking the truth, being genuine, embracing challenge, persistence, energy, excitement	
Humanity & Social Intelligence Kindness & Love	• Interpersonal Strength: Tending to and befriending others • ACTION: Valuing close relationships with others, empathy, good deeds	
Justice & Fairness Leadership & Teamwork	• Civic Strengths: Underlie healthy community life • ACTION: Treating people equally, organizing group activities, working well in teams	
Temperance and Self-Regulation Forgiveness & Modesty	• Strengths that protect against excess • ACTION: Forgiving those who have done wrong, exercising restraint, self-discipline, prudence	**Character Strengths**
Transcendence Appreciation of Beauty & Excellence Gratitude & Hope	• Strengths that forge connections and provide meaning • ACTION: Expecting the best and working to achieve it, appreciating excellence, gratitude, humour, spirituality	

48   Peterson and Peterson, above n 15, 391.
49   S Lyubomirsky, L King and E Diener, 'The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?' (2005) 131 *Psychological Bulletin*, 803, 846. Cited in Peterson and Peterson, above n 15, 391.
50   C Peterson and M Seligman, *Character Strengths and Virtues: A Handbook and Classification* (Oxford University Press, 2004) 29–30.
51   American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed, 2000). The American Psychological Association's Diagnostic and Statistical Manual of Mental Disorders, now DSM IV, is widely used in Australia, including in mental harm aspects of personal injury litigation.

15.15   Resilience is part of well-being, and is indicative of resources that guard against the development of psychiatric disturbances.[52] It has been said that '[m]ore than education, more than experience, a person's level of resilience will determine who succeeds and who fails'.[53] Werner and Smith refer to it as 'the self-righting tendencies within the human organism'.[54] Resilience is 'the capacity to respond and endure, or develop and master in spite of life stressors and adversity',[55] or 'the ability to respond actively and positively … to bounce back'.[56] The concept is two-dimensional, involving the exposure to adversity and positive adjustment outcomes of that exposure,[57] going beyond just the capacity to cope well under pressure. Table 15.1 shows a compilation of key characteristics of resilient individuals.[58] Note the parallels with the 'six virtues' discussed above. Note also that all except family conditions are malleable, that is, may be developed or enhanced.

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52   O Friborg et al, 'A New Rating Scale for Adult Resilience: What are the Central Protective Resources Behind Healthy Adjustment?' (2003) 12(2) *International Journal of Methods in Psychiatric Research* 65.

53   D Becker, 'The Resilience Inventory: Seven Essential Skills for Overcoming Life's Obstacles and Determining Happiness' (2002) *Harvard Business Review* 47.

54   E Werner and R Smith, *Overcoming the Odds: High Risk Children from Birth to Adulthood* (Cornell University Press, 1992).

55   B Mandleco and J Peery (2000) 'An Organizational Framework for Conceptualizing Resilience in Children' (2000) 13 *Journal of Child and Adolescent Psychiatric Nursing* 99–111, quoted in B Munro and J Pooley, 'Differences in Resilience and University Adjustment Between School Leaver and Mature Entry University Students' (2009) 21 *The Australian Community Psychologist* 50, 51.

56   J Christiansen, J L Christiansen and M Howard, 'Using Protective Factors to Enhance Resilience and School Success for At-Risk Students' (1997) 33 *Intervention in School and Clinic* 86, 87.

57   S Luthar and D Cicchetti, 'The Construct of Resilience: Implications for Interventions and Social Policies' (2000) 12 *Development and Psychopathology* 857.

58   Table compiled by TL Durham from: B Benard, 'Applications for Resilience'(Paper presented at National Institute on Drug Abuse Conference, Washington DC, 1994); C Rak and L Patterson, 'Promoting Resilience in At-Risk Children' (1996) 74 *Journal of Counselling and Development*, 368–373, both cited in T Durham, 'This Too Shall Pass: Academic Resilience After a Perceived Failure', Doctor of Education thesis submitted (paper defended January 21 2009) to graduate degree program in Educational Leadership & Policy Studies, School of Education and the Graduate Faculty of the University of Kansas, USA, 8–9.

Table 15.1   Characteristics of resilient individuals

Traits	Characteristics
Social competence	Includes flexibility, empathy, communication skills, sense of humour
Problem solving skills	Ability to think abstractly, reflectively and flexibly
Autonomy	Strong sense of independence and internal locus of control
Sense of purpose and future	Belief that one can have some degree of control over one's environment
Personal characteristics	Creative problem solving, ability to gain positive attention, optimistic even in midst of adversity, meaningful life, and ability to be autonomous
Family conditions	Age of opposite sex parent, less than four siblings, little separation from primary care taker, alternative caretakers, shared family values, confident, structure and rules
Environmental support	Several mentors outside the family throughout their development
Self-concept	Keen understanding of self and experience being helpful

Ungar argues convincingly that resilience is best understood as 'both the capacity of individuals to navigate their way to the psychological, social, cultural and physical resources that sustain their well-being, and their capacity individually and collectively to negotiate for these resources to be provided and experienced in culturally meaningful ways'.[59] This suggests a very proactive and dynamic psychological process, operating across multiple domains. Recent work has tried to identify means by which resilience might be created or stimulated in individuals and groups, focusing on preventative interventions, and we turn to this below.[60]

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59   M Ungar, 'Resilience Across Cultures' (2008) 38(2) *British Journal of Social Work* 218.
60   L Comfort, A Boin and C Demchak (eds), *Designing Resilience* (Pittsburgh University Press, 2010) 15.

15.16   Self–determination theory maintains that well-being is correlated with intrinsic motivation, or performing tasks and activities because they are inherently gratifying. It posits basic psychological needs of competence, autonomy, and relatedness.[61] Sheldon and Krieger found that 'autonomy support [for law students] predicted … higher subjective well-being … better graded performance … and more self-determined motivation to pursue the upcoming legal career'.[62] Volunteering is an expression of self-determination or autonomy, as well as being intrinsically rewarding, which may explain why it is consistently correlated with increases in well-being.[63] These findings all have relevance for the Peer Assisted Learning (PAL) case study below.

15.17   Optimism is widely accepted by researchers as an accurate predictor of happiness, resilience, high motivation, and job success.[64] Pessimism is known to be a significant cause of depression and learned helplessness.[65] Yet it has been suggested that legal education may in fact pre-select for, favour and reward, and consequently produce, pessimists.[66] Across almost all occupations, optimistic individuals perform better than their pessimistic counterparts. The one exception is law. A 1997 study at the University of Virginia Law School concluded that 'explanatory style[67] scores significantly predicted GPA [grade point average], showing that more pessimism related to higher achievement … Students scoring in the pessimistic and midrange of explanatory style significantly outperformed optimistic students'.[68]

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61   Sheldon and Krieger, above n 25. Cited in Peterson and Peterson, above n 15, 13.
62   Ibid 884.
63   S Meier and A Stutzer, 'Is Volunteering Rewarding in Itself?' (Discussion Paper No 1045, Institute for the Study of Labor (IZA), March 2004) 2.
64   J Girgus and M Seligman, 'Learned Helplessness in Children: A Longitudinal Study of Depression, Achievement and Explanatory Style' (1986) 51 *Journal Of Personality & Social Psychology* 435; M Seligman, *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment* (Free Press, 2004) 117. Discussed in Peterson and Peterson, above n 15, 393–401.
65   Satterfield, Monahan and Seligman, above n 27, 103–104; C Peterson and M Seligman, 'Causal Explanations as a Risk Factor for Depression: Theory and Evidence' (1984) 91 *Psychological Review* 347, 369; C Peterson and L Barrett, 'Explanatory Style and Academic Performance Among University Freshmen'(1987) 53 *Journal of Personality and Social Psychology* 603.
66   Peterson and Peterson, above n 15, 395–401. The research on optimism summarised in this part is taken from this source.
67   Optimism and pessimism are frequently measured by testing explanatory style, or 'the habitual way an individual explains the causes of events', Satterfield, Monahan and Seligman, above n 27, cited in Peterson and Peterson, above n 15, 397.
68   Satterfield, Monahan and Seligman, above n 27, 98.

Why might this be? And what conclusions should we draw from it about seeking to change law students' emotional outlook and well-being? We noted above that use of the Socratic method and law school emphasis on 'thinking like a lawyer' have been blamed for high rates of depression. This is supported in a study by Mertz[69] of first year contract law classes in eight different American law schools, taught by academics with widely differing backgrounds and teaching styles. She found that in all the classes, students were taught to 'think like lawyers' by discounting their own moral values, setting aside their own feelings of empathy and compassion, and substituting a strictly analytical and strategic mode of thinking. This resulted in students becoming analytically and emotionally detached.

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Yet analytical thinking, the ability to look for flaws in argument or evidence, to be rigorous, meticulous, questioning and critical, is a foundational skill for all lawyers. Given the University of Virginia findings that explanatory style was not predictive of other success measures used, including class participation ratings, participation in legal assistance programs, moot court performance, and law journal membership,[70] we suggest that curricula need to balance analytical thinking with alternative approaches, to include opportunities for moral and creative thinking, community service, volunteering, and the like, which are aligned with assessment and contribute to GPA. The current prioritising of the adversarial model needs to be tempered, to allow for a broad, diverse and balanced law school experience.

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In the following sections we discuss first, selected curriculum renewal strategies for promoting well-being, followed by examples of co-curricula and pastoral care interventions, all of which provide opportunities for many of the well-being values and characteristics described above to be experienced, reinforced, and/or developed. These strategies and examples build on the evidence base discussed, seeking ways to promote a balanced law school experience that promotes autonomy, active involvement and engagement, and engenders a sense of connectedness and community. All of the interventions suggested here attempt to draw these diverse strands together to challenge the culture and practices of Australian law schools, and promote positive and achievable strategic change, without losing the essence of good legal education.

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69   E Mertz, *The Language of Law School: Learning to 'Think Like a Lawyer'* (Oxford University Press, 2007) 4. Discussed in Peterson and Peterson, above n 15, 379–380. See also L Krieger, 'Human Nature as a Guiding Philosophy' (2008) 47 *Washburn Law Journal* 247, 266–267.

70   Ibid.

Curriculum renewal strategies for promoting law student resilience and well-being through legal education

15.20　Curriculum renewal to promote resilience and well-being in law students must address the competitive, isolating and adversarial learning environment of law school and in its place create a learning environment that is motivating, engaging and supportive. The curriculum is a critical point of learning engagement and influence with students.[71] A number of reports on legal education have suggested that significant opportunities exist to renew the curriculum.[72] It has been specifically noted, however, that legal academics have not capitalised on the opportunities presented by the curriculum to address psychological distress in law students.[73]

15.21　The creation of a motivating, engaging and supportive environment at law school does not require a complete redesign and overhaul of the current curriculum. Rather, legal education can be used as a positive tool for the promotion of student resilience and well-being through the implementation of a range of simple, yet strategic, changes. In this section we outline some relatively straightforward and easy-to-implement ideas for renewing the content of legal education, for renewing how legal education is delivered to students, and for renewing assessment and feedback practices in legal education. These strategies will work towards improving student resilience and promoting psychological well-being.

RENEWING CURRICULUM CONTENT

Curriculum renewal: see discussion in Chapter 1, particularly at 1.34

15.22　In order to renew the content of the legal curriculum it is necessary to challenge, at least to some extent, the 'technical rational'[74] notion of legal education. It is this approach that can be said to lead to an isolated, adversarial and competitive learning environment. The BMRI report called for a greater emphasis on positive and collaborative lawyering through less

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71　S Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1.

72　R Johnstone and S Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (AUTC)* (2003); W Sullivan et al, above n 22; Stuckey et al, above n 20.

73　Hess, above n 5.

74　D Schön, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1983); D Schön, *Educating the Reflective Practitioner* (Jossey-Bass, 1987).

adversarial approaches to legal problems and problem solving.[75] The National Alternative Dispute Resolution Advisory Council (NADRAC) has also called for the education of law students to include a stronger focus on dispute resolution and non-adversarial practice.[76] The Victorian Law Reform Committee[77] and the New South Wales Attorney General have made a similar call.[78]

15.23   Renewing the curriculum in the ways we suggest here will also mean that law schools are meeting the requirements of the newly developed Threshold Learning Outcomes[79] (TLOs) for law. The TLOs have been widely endorsed as representing what students 'ought to know and be able to do' when they leave law school. Curriculum reform focused on promoting the well-being of law students will work, in particular, towards addressing TLO 6 which concerns self-regulation and personal and professional development. The need for an ethical and justice orientation in students who thrive at law school will also be met by addressing TLO 2 which concerns ethics and professional responsibility.

15.24   Two possible curriculum content strategies are: first, to introduce a first year unit on Alternative Dispute Resolution (ADR) and non-adversarial legal practice that engages students at the beginning of their degree with the real potential of positive, interests-based and principled legal practice, rather than positional and competitive practice; and second, to include non-adversarial content ideas and motifs for each of the Priestly 11 core curriculum units for law (the core units that are required for admission to legal practice).[80] These outcomes will ensure that non-adversarial content is positively integrated, embedded and reinforced across the law curriculum [81] leading to a more balanced student experience.

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75 Kelk et al, above n 6, 46–47.

76 NADRAC, 'The Resolve to Resolve: Embracing ADR to Improve Access to Justice in The Federal Jurisdiction' (Report, September 2009) 62 [Recommendation 4.4].

77 Law Reform Committee, Parliament of Victoria, *Alternative Dispute Resolution and Restorative Justice* (2009) 161 [Recommendation 38].

78 Letter from New South Wales Attorney-General John Hatzistergos to Australian Universities, 17 May 2010.

79 S Kift, M Israel and R Field, *Bachelor of Laws: Learning and Teaching Academic Standards Statement* (ALTC Learning and Teaching Academic Standards Project, 2010) <http://www.altc.edu.au/standards/published>.

80 Law Admissions Consultative Committee (LACC), *Schedule 1: Prescribed Academic Areas of Knowledge* (2009) Law Council of Australia <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=30440CF8-1C23-CACD-222E-59CF362D9B5A&siteName=lca>.

81 K Douglas, 'The Teaching of ADR in Australian Law Schools: Promoting Non-Adversarial Practice in Law' (2011) *Australasian Dispute Resolution Journal* (forthcoming).

RENEWING CURRICULUM DELIVERY

15.25   Curriculum renewal strategies centred on teaching delivery practices can be used to promote psychological well-being in law students by working to better engage students, and by motivating and supporting student learning. Student engagement has been noted as critical to making quality learning outcomes possible for students, and also important for achieving student success and retention.[82]

> Retention of students: see Chapter 12

Kift and Field have argued that 'to facilitate student engagement relevantly and strategically, universities must take account of the reality of diverse commencing cohorts' varying external contextual life factors'.[83] This means that students' complex life matrices need to be considered when designing engaging curriculum delivery approaches. Those matrices often includes factors such as 'students' educational, linguistic and socio-cultural background and experiences, their paid work and other life commitments, and their perceptions of the relevance of university learning to achieving their personal future career goals'.[84] In addition intentional curriculum delivery design that is engaging should motivate and empower students to learn, provide a positive learning climate, and encourage students to be active in their learning.[85]

15.26   Possible teaching delivery strategies that are engaging, empowering, motivating and active include: blended and flexible delivery models, reflective practice approaches, and the implementation of a conversational framework in the classroom. Blended and flexible delivery approaches take account of students' different learning styles and preferences, and empower students with choice as to when, where and how they will learn.[86] Motivation of students

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82   S Kift and R Field, 'Intentional First Year Curriculum Design as a Means of Facilitating Student Engagement: Some Exemplars' (Paper presented at the 12th Pacific Rim First Year in Higher Education Conference, Townsville, Queensland, 29 June 2009). See also V Tinto, 'Taking Student Retention Seriously: Rethinking the First Year of University' (Speech delivered to the ALTC FYE Curriculum Design Symposium, Queensland University of Technology Brisbane, 5 February 2009).

83   Kift and Field, above n 82, 1.

84   Ibid. See also K L Krause, 'On Being Strategic About the First Year' (Speech delivered at the Queensland University of Technology First Year Forum, Brisbane, 2006); K L Krause, 'First Year Engagement: What Role Does Curriculum Play?' (Speech delivered at the ALTC FYE Curriculum Design Symposium, Brisbane, 2009).

85   Kift and Field, above n 82, 2.

86   R Field, 'Favourable Conditions for Effective and Efficient Learning in a Blended Face-To-Face/Online Method' in H Goss (ed), 'Balance, Fidelity, Mobility: Maintaining the Momentum?' (Proceedings of the 22nd Annual Conference of the Australian Society for Computers in Learning in Tertiary Education, Brisbane, 4–7 December 2005) 205–214.

can also be achieved through the learning communities and opportunities for interaction available in both the classroom and also online.[87]

Reflective practice approaches can engage students and work to promote student mental well-being by supporting students to controlling feelings of helplessness, uncertainty, anxiety and stress.[88] McNamara et al consider the sense of helplessness that many law students experience as 'comparable to the feelings of uncertainty and confusion that make up Schön's "indeterminate zones" of professional work'.[89] Schön's work establishes that reflective practice can help people to cope with 'indeterminate zones'.[90] Reflective practice does this by supporting the development of emotional intelligence and coping skills. This is because, as Kift comments, 'reflection is a metacognitive skill in which greater awareness of, and control over, the student's learning process is generated'.[91]

15.27

Laurillard's 'conversational framework', that is the use of iterative dialogue as a key to effective learning and teaching methods, brings the benefits of active, flexible and reflective practices together through conversational activity that is 'discursive, adaptive, interactive and reflective'.[92] This conversational framework sits well with current discursive teaching practices, such as tutorial discussions, that are already common in many law schools. However, reframing such learning methods by reference to Laurillard's theory can work to improve the effectiveness of student engagement and thereby promote student well-being at law school.

15.28

RENEWING ASSESSMENT AND FEEDBACK PRACTICES

The achievement of good assessment and feedback practice is a key strategy for promoting student well-being because 'for most students, assessment

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> Assessment strategies: see generally Chapter 10

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87 R J Wlodkowski, 'Motivation and Diversity: A Framework for Teaching' in M Theall (ed), *Motivation from Within: Approaches for Encouraging Faculty and Students to Excel* (Jossey-Bass, 1999) 8.

88 S C Segerstrom, 'Perceptions of Stress and Control in the First Semester of Law School' (1996) 32 *Willamette Law Review* 593.

89 J McNamara, R Field and C Brown, 'Learning to Reflect in the First Year of Legal Education: The Key to Surviving Legal Education and Legal Practice' (Paper presented at the 12th Pacific Rim First Year in Higher Education Conference, Townsville, Queensland, 29 June 2009). See also, D Schön, *The Reflective Practitioner*, above n 74.

90 See also D Schön, *Educating the Reflective Practitioner*, above n 74.

91 S Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8 *Legal Education Review* 43, 68.

92 D Laurillard, *Rethinking University Teaching: A Conversational Framework for the Effective Use of Learning Technologies* (RoutledgeFalmer, 2nd ed, 2002) 86–89.

requirements literally define the curriculum'.[93] Indeed, Brown and Knight have said that assessment is 'at the heart of the student experience'.[94] Therefore, assessment strategies capitalise on the fact that assessment is a critical point of contact, influence and engagement with students. This is particularly important for the many law students who tend to centre their learning on assessment tasks.[95]

15.30　　Assessment practice in law can be positively harnessed to better engage, motivate and support students in their learning, and thereby address the high levels of psychological distress in law students. Assessment practice should feed forward and feed back to students. It should let students into the secrets of successful assessment in law. A range of positive approaches to achieving this exist. Kift and Field have canvassed a number of these possibilities in relation to the first year curriculum,[96] which have resonance with assessment in the latter years of the law degree also. The following paragraphs have been adapted from that work.[97]

15.31　　Kift and Field have proposed three key assessment design strategies that address student anxiety around assessment, support student resilience, and promote student mental well-being. The first is to design assessment that is clear about what is expected of students. The second is to design assessment that engages students by scaffolding and integrating assessment within the curriculum. The third is to design assessment to encourage students to be independent learners.[98]

15.32　　Designing assessment that is clear about what is expected of students promotes student well-being because 'uncertainty about assessment causes student anxiety'.[99] It is therefore important to intentionally design assessment so to alleviate foreseeable student anxiety, particularly in the first year of the law degree. 'In particular, students should be assisted in understanding the nature of the tasks set, and the type and standards of evidence required to

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93　R James, C McInnis and M Devlin, 'Assessing Learning in Australian Universities' (Report, Centre for the Study for Higher Education for The Australian Universities Teaching Committee, September, 2002) 7.

94　S Brown and P Knight, *Assessing Learners in Higher Education* (Kogan Page, 1994) 12.

95　R Field and S Kift, 'Addressing the High Levels of Psychological Distress in Law Students Through Intentional Assessment and Feedback Design in the First Year Law Curriculum' (2010) 1(1) *International Journal of the First Year in Higher Education* 65.

96　Field and Kift, above n 82.

97　With the permission of the authors.

98　Field and Kift, above n 95, 69–72.

99　Ibid 69.

prove their achievements.'[100] A simple strategy can be adopted to achieve this: assessment should be designed so that it is clear to students about what is expected of them. Clarity, consistency in assisting students to understand both academic languages and conventions, and also assessment standards, are critical points in implementing this strategy.

Kift and Moody have made the following suggestions to guide assessment design so that it is explicit to students about assessment expectations:

- Explaining the meaning, and then consistently using, particular verbs in assessment tasks: for example, words such as 'explain' or 'discuss';

- Consistently naming assessment tasks across a degree program and explicitly clarifying what is expected in terms of the presentation of assessment tasks in a scholarly way: for example, how to write, research, or present orally in law;

- Assisting students to make use of examples and model answers;

- Explicitly advising students about referencing expectations;

- Teaching students how to work in groups or teams productively; and

- Modeling and providing structured opportunities for practising self and peer assessment.[101]

Designing assessment so that it is clear about the standards expected of students is also important to alleviating student anxiety and promoting student well-being. Providing clear, well written, consistent criterion referenced assessment (CRA) sheets, whilst crucial, is only the first step in this process. The way in which the criteria are going to be applied to the students' work should be explained in 'dialogue' with students;[102] and this should be followed with an opportunity to discuss and practise the application of the criteria prior to submitting assessment. In this way, the student cohort will 'achieve a shared understanding of the performance criteria and standards'.[103] Further, for example, expectations of tertiary academic writing can be demonstrated to students by 'correcting' a written piece assessment on the big screen in a lecture theatre, using the track

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100 Ibid.

101 S Kift and K Moody, 'Harnessing Assessment and Feedback in the First Year to Support Learning Success, Engagement and Retention' (Paper delivered at ATN Assessment Conference, RMIT University, Melbourne, 2009) 3 <http://emedia.rmit.edu.au/conferences/index.php/ATNAC/ATNAC09/paper/view/96/15>.

102 ASKe, *Adopting a Social Constructivist Approach to Assessment in Three Easy Steps!* (2007) <http://www.brookes.ac.uk/aske/documents/SocialConst.pdf>. ASKe, *Improve Your Students' Performance in 90 Minutes!* (2008) <http://www.brookes.ac.uk/aske/documents/ASKe%20Intervention.pdf>.

103 Field and Kift, above n 95, 70.

changes function;[104] or students might be provided with an assessment piece by a student from a previous year along with the marking criteria and be asked to assess it.[105]

15.33   Designing assessment that engages students is the second strategy suggested by Field and Kift to promote student well-being. Field and Kift claim that 'student engagement can help reduce stress and anxiety around assessment in the first year',[106] however, this can also be said to be true across all year levels of the law degree. In order to engage students, assessment should be designed so as:[107]

- to scaffold and integrate assessment tasks and objectives across and within the law degree;

- to support students' development of crucial assessment literacies and their discipline competence;

- to take account of the timetabling of assessment pieces across each year of the law degree to support students in managing their academic workload;

- to provide — particularly in the early years of the law degree, a high challenge with high support;[108]

- to be cumulative and increasing in complexity and challenge over time to progressively increase the challenge of assessment;[109]

- to take account of the necessary resources and opportunities that are required to support student knowledge and skill development.

15.34   The third assessment design strategy suggested by Field and Kift to promote student well-being through relieving anxiety around assessment involves designing assessment to encourage students to be independent learners.[110]

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104 A Healy, *Education Case Study* (2008) <http://www.altcexchange.edu.au/book/articulating-transition-pedagogy-education-case-study-dr-annah-healy-queensland-university-tech>.

105 D Gleeson, *Science (Biology) Case Study* (2008) <http://www.altcexchange.edu.au/book/articulating-transition-pedagogy-%E2%80%93-science-biology-case-study-assprof-dawn-gleeson-university-m>.

106 Field and Kift, above n 95, 70.

107 Ibid 70–71.

108 Australian Council for Educational Research (ACER), *Engaging Students for Success: Australasian Student Engagement Report* (2009).

109 D Nicol, *Transforming Assessment and Feedback; Enhancing Integration and Empowerment in the First Year* (2009) The Quality Assurance Agency for Higher Education <http://www.enhancementthemes.ac.uk/documents/firstyear/First_Year_Transforming_Assess.pdf>, 6.

110 Field and Kift, above n 95, 71–72.

Field and Kift believe that 'students who are independent and self-confident in their learning are more likely to be able to cope with the stresses of tertiary study'.[111] They suggest using assessment design to encourage students to be independent learners by:

• designing authentic assessment tasks that motivate students;

• encouraging self-reflection on the learning process; and

• providing students with opportunities to take control of their own learning.[112]

Some practical examples of these design approaches include:

• designing tasks that replicate and model the real world of work and practice;

• designing assessment that connects with students in cultural and relational ways;[113]

• using online environments for written assessment;[114]

• focusing on case studies which represent the common domains of the practice of a particular discipline;[115]

• integrate reflection by requiring students to complete a self-reflection cover sheet for each written assignment, on which they rephrase the assignment question and self-assess their performance, including an estimate of the grade they expect;[116]

• design assessment to provide students with choice and enable them to take control of aspects of their own learning — for example, in relation to topic, timing of submission, method, weighting, or assessment criteria.

As well as assessment design, intentional feedback design is critical in   15.35
promoting student well-being. This is because, as Field and Kift argue, feedback is central to both supporting student learning, and also to clarifying

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111 Ibid 70.

112 Ibid.

113 S Kift, 'The Next, Great First Year Challenge: Sustaining, Coordinating and Embedding Coherent Institution-Wide Approaches to Enact The FYE As "Everybody's Business"' (Paper presented at 11th Pacific Rim First Year in Higher Education Conference, Hobart, 2008).

114 A Bone, *Commentary on First Year Curriculum Case Studies: Assessment Perspective* (2008) ALTC <http://www.altcexchange.edu.au/system/files/BoneCommentary_20Nov09_FIN.pdf>.

115 K Nelson, *Information Technology Case Study* (2008) ALTC <http://www.altcexchange.edu.au/system/files/Nelson_IT_CaseStudy_14Dec09.pdf>.

116 Nicol, above n 109.

expectations and reassuring students.[117] Three simple strategies can be employed to ensure that the provision of feedback is a positive tool for promoting student well-being. First, students should be explicitly taught to understand the nature of feedback at tertiary level and how to use it effectively.[118] Second, feedback design should be mindful of the timing of feedback. Third, feedback design should be mindful of the way in which feedback is provided.[119]

Some practical examples to assist with achieving these strategies include:[120]

- reducing reliance on written feedback;

- aligning staff and student feedback expectations by explaining and reaching agreement about the purpose of feedback;

- identifying where, when, and what types of feedback students can expect;

- providing specific examples of how feedback has been used previously by other students to improve their performance in subsequent assessment;

- incorporating into assessment tasks the completion of a template in which students describe the feedback they received previously, and how they have applied it to the current task;

- encouraging peer discussion in small groups about feedback and how it will be used to improve subsequent assessment tasks;

- providing feedback on draft (rather than final) assessment tasks, requiring students to demonstrate in the final assessment how the feedback was used to improve the work;

- providing oral feedback via an audio mp3 file;

- providing high quality generic feedback quickly to students via online environments (Race suggests that trends in performance and key feedback areas can be anticipated);[121]

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117 Field and Kift, above n 95, 72. M Yorke, 'Increasing the Chances Of Student Success' in C Rust (ed), *Improving Student Learning: Diversity and Inclusivity* (Oxford Centre for Staff and Learning Development, 2005) 35–52.

118 Field and Kift, above n 82, 72.

119 Ibid 72–74.

120 Ibid.

121 P Race, 'Putting Feedback Right: Getting Better Feedback to More Students in Less Time' (Paper presented at Designs on Assessment Conference, Leeds Metropolitan University, 27 July 2009) <http://flap.teams.leedsmet.ac.uk/conference-23rd-june-2009>.

- engaging students by asking them to identify three specific areas on which they would like feedback, and then addressing those aspects;[122]

- posting examples of good student assessment tasks online for students to compare their own submissions against;[123]

- allowing students the opportunity to 're-write and re-submit' part of their assignment one week after receiving feedback, with additional marks available;

- providing feedback that includes a focus on successes, rather than mistakes;[124]

- providing a range of feedback options and allowing students to select their preferred mode;[125] and

- providing formative feedback without marks (as grades often hamper student engagement with qualitative feedback) — then making summative marks available after the formative feedback has been read.[126]

Co-curricula and pastoral care interventions to promote law student well-being and resilience

A range of co-curricula and pastoral care strategies already exists in Australian tertiary institutions,[127] including peer mentoring, peer-assisted learning programs, student organisations and activities, specifically targeted support groups, sporting, recreational and community activities, academic advising and referrals, and free counselling for issues directly or indirectly related to stress and mental health. Information for university staff and students on mental health and well-being is also available. For example, acting on   15.36

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122 D Nicol, 'Principles of Good Assessment and Feedback: Theory and Practice' (REAP International Online Conference on Assessment Design for Learner Responsibility, 2007) <http://www.reap.ac.uk/reap07/Portals/2/CSL/keynotes/david%20nicol/Principles_of_good_assessment_and_feedback.pdf>

123 Nicol, *Transforming Assessment and Feedback*, above n 109.

124 Leeds Metropolitan University First Level Assessment and Feedback Project (FLAP), *Designing First-Year Assessment and Feedback: A Guide for University Staff* (2009) <http://www.leedsmet.ac.uk/0906016-36503_Designing_1st_Assessment_LoRes.pdf>.

125 Race, above n 121.

126 Nicol, *Transforming Assessment and Feedback*, above n 109.

127 Particularly, eg, in terms of the services provided by equity and disability support services: Kelk et al, above n 6, 44–45.

the BMRI research in early 2009, the Australian Law Students Association released a handbook on depression in Australian law schools, providing information for students and student associations about mental health and coping with stress.[128]

15.37   The legal profession too is very aware of the issue, and actively working to improve well-being in the profession which many of our graduates will join. Examples include the Resilience@law initiative sponsored by five elite law firms, and the Mental Health Working Group Forum run by New South Wales Young Lawyers, in conjunction with groups dedicated to fighting depression.[129] Both the New South Wales Law Society and New South Wales Bar Association provide information on mental health and treatment, such as free counseling, to their members. Large law firms report restructuring along team lines, introducing social and cultural activities at lunch times, more flexible and family-friendly working hours, meditation sessions in the office, and free or subsidised gym memberships, as further efforts to improve well-being.

In the next section we describe a range of good practice examples of current co-curricular and pastoral care interventions being implemented in Australian law schools to support student well-being and promote resilience. We argue that there is a compelling need to go beyond reactive solutions such as mental health counselling for students who are already distressed, by developing and implementing innovative preventative programs.

PEER ASSISTED LEARNING (PAL): A CASE STUDY

15.38   Peer assisted learning programs operate alongside the formal curriculum, in the sense that they usually focus on improving students' understanding of discipline specific content and skills in a particular subject. Most also have a significant mentoring component, whether formal or informal. There are various models, ranging from the fully paid to the fully voluntary. An increasing number of Australian law schools utilise PAL in some form, often limited to the first year of study.[130]

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128 Australian Law Students Association, *Depression in Australian Law Schools: A Handbook for Law Students and Law Student Societies* (2009) <http://www.alsa.net.au/education/depression-in-law-schools>.

129 Resilience@law:<http://www.collaw.edu.au/Research-and-Resources/Resilience-at-Law/>; <http://www.mindwise.org.au/videos/resiliencelaw>. Supporting organisations are: the Tristan Jepson Memorial Foundation, Beyond Blue, Black Dog Institute and the Positive Work Foundation.

130 For example, Queensland University of Technology, University of Wollongong, James Cook University, University of Tasmania, University of Newcastle and Macquarie University.

The program described here is a staff–student collaboration implemented at Macquarie University in 2010, called LAW-PAL. It draws on and incorporates much of the research on well-being discussed above. Macquarie Law School has a first year intake of around 500 Bachelor of Laws (LLB) students, consisting mainly of school leavers enrolled in combined degrees, but also including a substantial cohort of mature age distance students, and a smaller cohort of graduates. Unlike most PAL schemes, LAW-PAL is a genuinely grass-roots program, run by students for students, in partnership with one academic staff member. It grew out of the BMRI report. The program operates up to 22 one hour sessions per week, over 11 weeks, in six or seven core subjects per semester. For the initial pilot, six PAL leaders and two student co-ordinators were recruited. One semester later, 51 applicants vied for 25 leader positions, with a substantial number staying on into the next academic year. Competition for leader places remained strong in 2011.

PAL leaders are specially trained students who conduct weekly timetabled workshops or sessions,[131] complementing tutorials in a core subject. The sessions range in size from as few as eight students up to a maximum of 24. They provide opportunities for students to practise legal and generic skills and improve and reinforce their doctrinal knowledge by working collaboratively, since team and groupwork are strong features. PAL sessions are invariably interactive, utilising a variety of strategies and carefully planned activities and tasks to make learning fun and promote learner autonomy. Attendance at PAL is voluntary, and not assessable. LAW-PAL leaders are selected for their outstanding academic records, strong personal and interpersonal skills, and demonstrated evidence of altruism and community service. They are rigorously trained in facilitation skills, and familiar with theory on learning generally, peer assisted learning in particular, teamwork, leadership, and reflective practice.

LAW-PAL is a positive example of a program that aims to build and embed student communities of practice, supported by staff. Developing connectedness around shared learning, values and practices, maximises achievement. It facilitates the growth of support networks and a repertoire of learning and personal strategies and qualities, along with attitudinal change, that are transferable to legal practice, academic endeavour, and

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131 The PAL term is session, to differentiate between staff run tutorials and lectures, and student run PAL sessions.

personal life. Introduced from first year and continued through the entire core curriculum, it helps to integrate and mould diverse groups of students into a supportive community with shared values, one in which self help (autonomy) and interdependence (mutual support) are the norm — both prized and expected. This is a clear counter-point to the usual individualistic, competitive, high-stress law school climate discussed above. Close links have been established between LAW-PAL and industry bodies (top tier law firms) through the Resilience@Law project (referred to both above and below) and the Tristan Jepson Memorial Foundation.[132]

15.40   LAW-PAL adopts a cascading team-based model of peer leading and mentoring, in which 'tutoring'[133] is seen as developmental. LAW-PAL leaders (other than the first cohort) have the experience of being tutees as part of their apprenticeship for becoming leaders themselves.[134] In such a program, middle level students are enabled to mentor and lead those in the early stages of their degree, whilst also being mentored and led themselves by more senior students. The team structure is the key component of community building, promoting both vertical and horizontal interdependent support networks. PAL leaders work in pairs in the classroom, work closely as members of a subject team (usually four students), and also belong to the entire PAL team, consisting of all leaders, peer co-ordinators, and the academic staff co-ordinator. PAL learners (the students in the sessions) frequently work in small groups in the classroom, and are encouraged to continue working collaboratively in informal study groups beyond the PAL setting, applying techniques and lessons learned in PAL.

15.41   The LAW-PAL program includes online sessions, specifically catering for distance students. An online synchronous learning environment, coupled with an asynchronous learning network (ALN), was trialled in 2010. Some concern emerged as to whether the effort involved was justified in view of the small capacity (only six students online at one time) and uptake.

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132 Set up in memory of George and Marie Jepson's son, Tristan, a former UNSW law student. Tristan suffered from severe clinical depression and took his own life, aged 26, in 2004. The Foundation collaborated with the Brain and Mind Research Institute (BMRI) to produce the report cited in Kelk et al, above n 6.

133 Whilst the term 'peer tutoring' is widely used in the literature, it is avoided in the PAL context to differentiate PAL leaders (students) from staff tutors, as well as to make clear the separate roles and functions of each.

134 A Gartner and F Riessman, *Peer-Tutoring: Toward a New Model* (3 December 2009) ERIC Clearinghouse on Teaching and Teacher Education <http://www.ericdigests.org/1994/peer.htm>.

In 2011 it was decided to limit online PAL to the first year Foundations of Law subject.

Achieving cultural change is known to be difficult, but LAW-PAL has made significant progress. For example, in its first year of operation, it attracted 4010 student visits[135] representing 570 unique students. Of the 570 students, 121 only attended PAL in first semester, 252 only attended in second semester, and 197 attended in both semesters.[136] An exam preparation day run on a wet Saturday for two subjects attracted 140 and 120 students.

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The LAW-PAL program models how the student culture within a law school can be positively changed within one year. Students have reported increased engagement with the student Law Society and its activities, increased use of the student common room, more interaction with staff and with one another, a sense of solidarity as law students, and positive learning and social outcomes. Staff tutors report that they can see the difference in tutorials between students who have attended PAL and those who have not.

Qualitative feedback obtained from student evaluations includes:

'Great! I learned more here than during the lectures and tuts — hope you guys get rewarded'; 'always approachable, integrated teamwork, and made everyone feel welcome and involved'; 'very helpful to receive a student's view of the course'; 'group work & examples assisted with understanding'; 'enjoyed [it] much better than the lectures'; 'I like that they bother to know our names'; 'they feel like friends'; 'why didn't we have PAL years ago?'

LAW-PAL leaders were also surveyed anonymously. Responses consistently emphasised the benefits to leaders themselves as well as to students. This is entirely consistent with the literature.[137] Leaders stressed increases for both groups in confidence, knowledge, graduate capabilities including problem solving, teamwork and leadership. Importantly, they also stressed well-being gains, such as: 'great friendships'; 'helping others'; 'became less anxious'; [observed students] 'expanding their network and building mutually

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135 A visit refers to attendance by a single student at a single PAL session.

136 Note that only three subjects were offered in first semester, one from each of the first three years. This expanded to six subjects in second semester, including a fourth year core subject. Anecdotal feedback from many later year students indicated that they would have attended had PAL been offered in their subjects.

137 K Topping, 'The Effectiveness of Peer Tutoring in Further and Higher Education: A Typology and Review of the Literature' (1996) 32(3) *Higher Education* 321–345; S Goodlad and B Hirst, *Peer Tutoring: A Guide to Learning by Teaching* (Nichols Publishing, 1989); D Boud, R Cohen and J Sampson, *Peer Learning in Higher Education* (Routledge, 2001).

beneficial relationships with other students'; 'many gained confidence and friendship'; 'students got reassurance from their peers and the opportunity to help others'; 'they all seemed to actually really enjoy attending'; 'they learned the value of other students as a resource'; 'friends'; 'developing a sense of community'; 'breaking down the competitive feeling of law school'; 'increasing participation in other extra-curricula activities'; 'a marked increase in the level of collaboration … feeds into friendship, support networks'. These are all factors that contribute to well-being, as discussed above.

15.43   As noted above, the initial LAW-PAL pilot was funded, with the budget including the payment of modest one-off honorariums to PAL leaders. To ensure sustainability and quality control, a new elective was developed, known as Leading Peer Learning. Commencing leaders enrol in the elective, where they are rigorously trained, frequently observed by student and staff co-ordinators for the purpose of formative feedback, attend classes with the staff co-ordinator as teacher to continue their learning, and are assessed. Following this, they are expected to undertake a pro bono semester, in keeping with the community service and altruism ethos that is central to this program. The benefits to both the PAL Leaders and Learners are plain, as discussed above (see volunteering). The possibility of attracting industry sponsorship for subsequent participation is being investigated, to retain talent in the program whilst avoiding the opportunity cost for students of constantly having to forgo paid employment.

PASTORAL CARE STRATEGIES TO PROMOTE WELL–BEING

15.44   In this final section, we examine selected examples of pastoral care programs that share a common aim of improving well-being. We note that the BMRI report contains recommendations[138] relevant to pastoral care, including:

- maintaining a focus on the known risk factors for distress;

- developing education programs, disseminating information and raising awareness of staff and students;

- preparing students for normal expected stresses;

- ensuring adequate levels of support services exist; and

- forming connections and working collaboratively with other interested groups including student organisations.

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138 Kelk et al, above n 6, 43–49.

The proactive examples in this section are intended to complement, not replace, normal day to day pastoral care engaged in by all empathetic academics at the individual student level, and by campus support services. The first is a student initiative in Australia, the second is a staff run program from the United States, and the last two are drawn from the positive psychology literature. All of these examples are simple to replicate, free or low cost, and draw on resources such as psychology departments and counselling services that are readily available in all universities. All that is needed is will, effort and imagination. Finally, we touch on the Resilience@Law initiative, operated by law firms for practitioners, in conjunction with the Tristan Jepson Memorial Foundation. All address the BMRI goals outlined above.

LawSmart[139] at Macquarie University

LawSmart is a free program organised by students as an adjunct to LAW-PAL. It is designed to educate law students at all stages of their study about mental health issues, and teach them proactive strategies to minimise and manage stress. It is delivered by psychologists from the university counselling and support unit. In 2010 it consisted of a series of voluntary one hour lunch time seminars, developed specifically for law. Topics included positive thinking; emotional intelligence (EQ); procrastination and time management, and life/law balance. In the second year, the same well-being topics were covered in a two hour 'Resilience Masterclass', and a two hour 'Academic Masterclass' was added, with presentations from law school academics. Attendance in the first year was low, but increased in the second year to fill two large seminar rooms. The success of LAW-PAL, and the clear affiliation between it and LawSmart mean that as the PAL community increases, related initiatives also prosper. The fact that it is a student initiative increases ownership. Feedback was positive.

15.45

The Supportive Practices[140] course at Vanderbilt University

This is an optional non-credit course incorporated into the first year curriculum. It began with about 30 students, and was extended in response to demand. Students meet one hour per week during first semester and part of the second, and are taught strategies for dealing with issues like stress, anxiety, and setting realistic performance expectations. Students are given readings from positive psychologists such as Krieger.

15.46

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139 LAW PAL Website: <http://www.muls.org/law-pal/>.
140 Discussed in Peterson and Peterson, above n 15, 374–5.

Signature strengths, and practicing gratitude

15.47   The next two examples are empirically tested interventions,[141] which could be incorporated into a positive psychology program for law students. 'Signature strengths' refers to character strengths from the Values In Action (VIA) set discussed above, that are particularly strong in a given individual. These are identified using a survey instrument, and participants are required to utilise their top five strengths in a new and different way every day for one week. Individuals who completed this exercise were found to be significantly happier and less depressed than the control group using a placebo exercise, and the benefits persisted at the one month, three month, and six month follow-ups.[142] 'Practicing gratitude' requires individuals to write down a short list of things they are grateful for, every day or every week. In one study, participants wrote down five things once a week for 10 consecutive weeks. At the end, the gratitude groups were happier, more optimistic, and reported fewer health problems (such as headaches) than the control groups who wrote about neutral or negative topics.[143] In both these exercises, participants were even more likely to remain happier the longer they continued the exercise.[144]

Resilience@Law

15.48   Five major law firms[145] and the New South Wales College of Law, supported by the Tristan Jepson Memorial Foundation, collaborated to 'take a leadership role in raising awareness and understanding of the nature and impact of stress, depression and anxiety across the legal profession'. The four objectives are: awareness and education; removing the stigma of mental ill-health; promoting self care strategies; and informing law students, lawyers and partners about treatment and support resources available to them. In 2010 they launched a very confronting DVD,[146] in which senior and junior members of top tier firms spoke openly and honestly about their personal struggles with depression, alcohol abuse, and suicide attempts.

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141 Ibid 393–394.

142 M Seligman et al, 'Positive Psychology Progress: Empirical Validation of Interventions' (2005) 60 *American Psychologist* 410.

143 R Emmons and M McCullough, 'Counting Blessings Versus Burdens: An Experimental Investigation of Gratitude and Subjective Well-Being in Daily Life' (2003) 84 *Journal of Personality & Social Psychology* 377.

144 Satterfield, Monahan and Seligman, above n 27, 418–419.

145 Allens Arthur Robinson, Blake Dawson, Clayton Utz, Freehills, and Mallesons Stephen Jaques. The quote is taken from the jacket of the DVD 'resilience@law'.

146 For further information, contact the Collage of Law via their resilience@law webpage: <http://www.collaw.edu.au/Research-and-Resources/Resilience-at-Law/>.

Conclusion

It is our strong belief that student emotional well-being is a whole-of-law school, indeed, a whole-of-sector, community responsibility. Emotional and mental health is a major issue that cannot be ignored, impacting as it does on every aspect of students' lives and learning. We have noted above the importance of involvement, engagement and connectedness, and suggested strategies by which this may be achieved, both within and outside the classroom. The literature on well-being offers many useful insights that can inform the design of preventative interventions, and confirms that the well-being of our students is something we, and they, can actively work to improve. We have argued that achievable strategies exist which can be implemented immediately at quite local levels to improve well-being. Selected evidence-based examples of curricular, co-curricular and pastoral care interventions have been offered as models which others may wish to replicate or adapt to their own contexts.

15.49