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From law school to practice: conflict in Australian University mental health management and law student employability

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ABSTRACT

Extensive research shows that both law students and lawyers suffer from statistically increased mental ill health. Despite the research, there is a disconnect between support for law students struggling with mental ill health and the accreditation guarantee that students have adequate preparation for legal practice. This article reviews Australian universities' claims providing both employment-ready graduates and mental health support for their students. However, when Australian universities grant ongoing extensions for law students who suffer from mental ill health, the university fails to provide these students sufficient preparation to perform an inherent requirement of legal practice: a demonstrated ability to adhere to strict deadlines. As such, a University may fail to meet its own claims of employment focus in the context of legal education for this cohort of graduates. With increased discussion relating to student mental ill health and the Covid-19 pandemic, there is an opportunity to better address mental ill health in law students. The article provides an immediate solution for Australian jurisdictions, using existing Australian university learning outcome framework. This solution can provide a framework for other jurisdictions that require accredited law school graduation as part of law licensure to better promote mental health and wellbeing before entering practice.

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1. Introduction

Mental ill health in law students is an often-studied concern, with research showing that both law students and lawyers suffer from statistically increased mental ill health. Despite the statistically increased rates of mental ill health in law school, little change has been made to embed mental health support

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specifically for law students or practitioners within legal professional frameworks. Despite accreditation, Australian law schools fail to sufficiently support students who suffer from ongoing mental ill health with the tools and education required to be an effective legal practitioner leaving them under prepared for legal practice.

Australian law schools, (like other law schools around the world) as part of their larger Universities, have made a commitment to produce employment-ready graduates.[1] In Australia, as well as globally, substantial research also shows that both law students and legal practitioners are at a higher risk of mental ill health than the general population. The article argues that Australian University practice of providing long-term academic adjustments in the form of ongoing extensions to deadlines for students with mental health conditions fails to sufficiently prepare these students for work in legal practice. In fact, it evidences that chronic use of extensions by some students may leave those students unable (or at a minimum, ill-prepared) to perform the inherent requirements of legal practice. This failing by universities to prepare law students for legal practice is in direct contradiction to Universities' overt promise of graduate employability.

For purposes of this article, mental ill health is a condition clinically diagnosed by a health care professional, and includes anxiety, depression, bipolar disorder and schizophrenia. This condition, when clinically diagnosed, can drive student use of study adjustments during University, including on-going extension deadlines as one of the most common in Australia. Upon graduation however, lawyers are subject to meeting strict deadlines as part of their legal practice. In the transition between University and practise, applicants to the practise of law must acknowledge that they can meet the requirements of legal practice, inclusive of adherence to strict deadlines. Australian Universities, however, do not currently provide students who have used long term academic adjustments, specifically extensions, with either the knowledge or the skills to be able to manage those licensing requirements in admission to, and within the practise of law.

This conflict between employability and mental health support for students is a critical matter for law students, law schools, the profession of law, and the general public. Law students rely on their law school and the greater University to provide an accredited legal education that will prepare students for practise. The profession of law relies on law schools to adequately prepare new practitioners. Clients and the public rely on the reputation of the legal academy to protect their legal rights. The analysis in this article urges Australian law schools to better prepare students for practise, in light of mental health concerns. Further, this concern is broader than just Australian law schools, and the interim solution suggested for Australia may be applicable in other jurisdictions which require graduation from an accredited law school requirement prior to legal practice.

This article begins with an examination of Universities' promise of employability in section two. Section three considers heightened mental ill health in

law students and lawyers. Section four review Australian University's specific legal requirements for addressing mental ill health when framed as a legal disability at University, as well as noting that deadline extensions are often granted as an adjustment. In section five, the article then examines the specific instance of admission to practise law in light of extensions provided to those students with long term mental ill health adjustments, using the Australian state of Victoria as an example, and demonstrates the inherent requirement to meet deadlines for the admission and practise of law. Section six compares the mismatch between a University employability claim and the effects of ongoing extensions on law students' employability as a legal practitioner. In section seven, the article suggests an immediate solution utilising the existing University learning outcome framework. The article does not argue that extensions for students should be eliminated in a law course, but rather students who use consistent extensions during study need education and support to manage employment and licensure concerns relating to chronic use of extensions. Specifically, to meet University's self-imposed claims of employability, those institutions must provide law students with an institutional approach to (1) concrete information relating to the differing legal structures between university mental health adjustments and admission to practise requirements, (2) provide sufficient information so that law students who expect to practise understand mental ill health disclosure requirements and how to manage such requirements and (3) disclose that long-term adjustments available to students given their mental health condition may affect their ability to practise law.[2] To accomplish this, Australian law schools can use existing regulatory structures such as the Threshold Learning Outcomes (TLOs) framework, designed to provide minimum learnings for law graduates. In conclusion, the article urges Universities and the legal profession to more broadly consider the conflict between employability and mental health support in light of student-centred practice needs.

2. Law school promise of employability

The study of law at an accredited University is designed to produce practising lawyers. In many jurisdictions, for example Australia, Canada, the UK and the US, aspiring legal practitioners must graduate from an accredited law school before applying for certification to practice law.[3] In these jurisdictions, the study of law at an accredited University is one key pre-requisite to the licensed practice of law or be admitted to practise law.

Universities currently focus on student employability as a key metric. In Australia, the government subsidises many of the University placements.[4] Twenty years of such government funding policies drive student employability as a key performance measure for Australian universities. The 2009 higher education funding model change increased the pressure on universities to respond

to changes "in the skill needs of the labour market" (Kemp and Norton 2014, p. 3). Since then, the transition from study to employment has been an increasingly important metric for universities in recruiting students. Australian Universities promote themselves on the basis of the employment rates of their graduates to drive increased enrolment numbers and revenue (Harvey *et al.* 2017, pp. 13, 19–20).[5]

In 2020, another financial requirement placed on universities more closely linked higher education and employability outcomes. As explained by then Education Minister Tehan, "[t]he performance-based funding model that has been finalised makes an explicit link between funding and one of the key goals of every university: to produce job-ready graduates with the skills to succeed in the modern economy" (see Tehan 2019). Graduate employment outcomes now account for 40% of additional funding to universities for students through the Commonwealth Grant Scheme (see Department of Education, Skills and Employment n.d., 2019; Ferguson 2021, p. 8).[6] This weighting is twice the amount given to the other identified criteria: student success, student experience and increased participation by lower socio-economic, Indigenous and remote students (Department of Education, Skills and Employment 2019). While there has been discussion of change in higher education policy and funding with a change in government, to date there has been no movement to step back from job ready graduate focus (Department of Education, Skills and Employment n.d.).[7]

Whether higher education institutions should be concerned with this increasing focus on employability as a performance measure is outside the scope of this paper. The aim of this article is not to evaluate the merits of vocationalism versus professionalism within the funding models of legal education.[8] Rather, it is to highlight that employability is a key concern for universities and point out the unaddressed dilemma in how a university, through its accredited law school, promises employability in law on one hand, yet fails to prepare a subset of law students for employment as legal practitioners on the other (Thornton 2017, p. 102).[9] This subset of law students is not a negligible amount of students. As the following section demonstrates, the research on law student mental health solidifies the claim that a sizable cohort of students suffer from mental ill health during law school. Further, according to some of the research, there is a legitimate claim that law schools may even have contributed to creating such ill health.

3. Research on law student mental health and wellbeing

Law students report higher levels of psychological stress than the general population (Levit and Linder 2008; Tani and Vines 2009; Field *et al.* 2015; Soh *et al.* 2015; for recent research, see McLafferty *et al.* 2022). In addition, many empirical findings demonstrate that first-year law students report higher levels of

psychological stress than university students do overall (Larcombe and Fethers 2013; Appleby and Bourke 2014, p. 462; see also Sheldon and Kreiger 2004). Moreover, law student psychological stress appears to be even higher than legal practitioner stress, which is also higher than other professions.[10]

Although concern about mental health in law students has been ongoing for decades, widespread attention to mental health concerns for Australian law students from law schools and professional bodies began with the 2009 study *Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers* (Kelk *et al.* 2009; Larcombe and Fethers 2013). This study surveyed 741 law students at 13 universities, and 924 solicitors and 756 barristers practising within Australia. The study "revealed high levels of psychological distress and risk of depression in the law students and practicing lawyers who participated, when compared with Australian community norms and other tertiary students", as well as a general reluctance to seek help for mental health issues (Kelk *et al.* 2009).[11]

Over the past decade, a variety of additional studies of Australian law students at Monash University, Australian National University, the University of Adelaide, the University of Melbourne and the University of Western Australia have followed and reported similar elevated rates of mental ill health in law students.[12] Findings in this space are also consistent with research relating to the mental health of law students in the United States that spans more than 40 years (see Benjamin *et al.* 1986; Dammeyer and Nunez 1999, pp. 71–73; Pritchard and McIntosh 2003; Sheldon and Kreiger 2004; Soonpaa 2004; Sheldon and Kreiger 2007; Flynn *et al.* 2017).

Globally, there has been discussion on preventative wellbeing education as the primary response to mental ill health in the legal profession. Some level of wellbeing education has developed in both law schools and the legal profession. The ever-growing body of scholarship on wellbeing in legal education, much of which derives from US law schools and academics, not only reports on empirical studies of law student populations; it also traverses issues involving potential causes of psychological distress among law students, and challenges faced at the school level, by academics and practical legal training providers, as well as reports on a variety of strategies and interventions trialled to assist in improving law student wellbeing (see, e.g. Field *et al.* 2016; Marychurch and Sifris 2019; Strevens and Field 2020). While the ultimate cause of psychological distress has yet to be determined, scholars have argued that they include "characteristics of legal education" affecting students, including the adversarial nature of law school and the reduction in autonomy,[13] student engagement and motivation (Sheldon and Kreiger 2004; Kelk *et al.* 2009; Tani and Vines 2009; Field and Kift 2010; Townes O'Brien *et al.* 2011). Other studies indicate that some of the anxiety and stress experienced by law students may be related to factors external to the university, such as direction from parents, low interest in the materials studied, belief that higher marks are needed for employment,

and other factors largely beyond the university's control (Tani and Vines 2009, p. 24).[14]

The current response from the law academies with accredited law schools calls on law schools to act, including by increasing efforts to bolster law students' general resilience to the challenges of law school, as well as to improve student access to university-wide resources. An array of evidence-based resiliency-focused initiatives by law schools and individual legal academics have been trialled and documented. The literature argues that students need a sustained and consistent exposure to resilience and strong mental health skills throughout their law degree and practise. Generally, proposed solutions fall into one of two categories: (1) awareness raising and education (Kelk *et al.* 2009, p. viii); and (2) implementation of interventions, which include (a) curriculum, assessment and feedback design; (b) altering or expanding the student–teacher relationship and learning environment; and (c) the introduction of extracurricular wellness activities (see, e.g. Hess 2002; Kelk *et al.* 2009, p. 45; Field and Kift 2010, p. 68; Appleby and Bourke 2014; Skead and Rogers 2014, p. 587; Skead and Rogers 2016; National Task Force on Lawyer Well Being 2017, p. 36; Scott 2018).

In Australia, the Council of Australia Law Deans (CALD) 2013 published *Good Practice Guidelines* for promoting law student wellbeing, which provides the only institutional approach to addressing mental health. The guidelines are a set of 10 non-mandatory recommendations for practice, and encourage law schools to develop resilience in students, as well as to prepare students for normal law school stressors. Both *Courting the Blues* and CALD's *Good Practice Guidelines* also call for the formal evaluation of such interventions in future studies (Kelk *et al.* 2009; Council of Australian Law Deans 2013, p. 7).[15]

This article acknowledges the importance of additional student resiliency development for students. As students increasingly work and study, their free time and ability to develop resiliency techniques lessen; factors not directly addressed in this article. After the transition from Covid-19 pandemic to an endemic, students return to a new balance between work and study incorporating a blurred working, study and online presence.[16] With this shift, there is an opportunity to directly address mental ill health as a critical part of the law school curriculum. It is imperative that Universities, as the first point of contact for legal training, substantively address mental health in the student body. Yet, the Universities response to legal requirements enshrined in disability laws do not comport with student employability in the legal sector.

Of importance to this article, the specific adjustments made in a university setting under Australian disability laws negatively affect certain law student employment readiness. As the following section outlines, disability laws require universities to provide these academic adjustments. Requiring universities to provide academic adjustments under the relevant circumstances safeguards many students' access to higher education, critical to having a diverse legal profession. However, commonly offered adjustments, such as ongoing

extensions, directly contradict the Australia universities' promise of employability for law graduates desiring to enter a traditional legal career, and no amount of resilience training will change that contradiction.[17]

4. Universities' legal requirements to address law student mental ill health in Victoria

Accredited law schools within universities are subject to anti-discrimination legislation to various degrees. In Australia, universities are subject to anti-discrimination legislation, which governs the treatment of students who declare a disability. Because of the large number of Australian Universities based in Victoria, and because Australian legal practice is regulated at a state level, this article reviews Victoria's anti-discrimination law as an example. Generally, Victoria's anti-discrimination legislative framework and duties are in line with obligations in statute at the federal level and operate in parallel to it.[18] In Victoria, the base provision of mental health support for students who suffer from mental ill health (amounting to a disability) in law school is safeguards prohibiting discrimination, codified within the *EOA*.[19] For purposes of the act, a disability includes both a mental or psychological disease or disorder, or a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder (*EOA* s 4).[20] Victoria is the only jurisdiction in 20 years to refit its legislation in an effort to "address systemic discrimination and promote substantive, rather than formal, equality" that encompasses both proactive and reactive measures (Allen 2021, p. 462; Explanatory Memorandum, Equal Opportunity Bill 2010 (Vic), p. 2). The *EOA* promotes substantive equality for persons with a disability (inclusive of a mental health disability) against discrimination when it occurs (among others), in their educational institution (*EOA* (n 2) pt 4 div 3).

Of the five mechanisms employed within the *EOA* to promote substantive equality, the focus of this discussion is the obligation of an educational institution to make reasonable adjustments for persons with a disability.[21] The language of the statute requires action. Section 40 of the *EOA* specifies that educational institutions *must make reasonable adjustments* for persons with a disability, if required, so that they can "participate in or continue to participate in or derive or continue to derive any substantial benefit from an educational program of an educational authority" (*EOA* (n 2) s 40(1)).[22]

The Supreme Court characterises reasonable adjustments as a "positive obligation" (*Owners Corporation OC1-POS539033E v Black* (2018) 56 VR 1, 5 [14] (Richards J)). The Victorian Civil and Administrative Tribunal (VCAT) describes reasonable adjustments as an "explicit requirement" (*AB v Ballarat Christian College* [2013] VCAT 1790, [165] (Member Wentworth)) that must "cater for the disability" (*Bevilacqua v Telco Business Solutions (Watergardens) Pty Ltd* [2015] VCAT 269, [207]). According to the Attorney-General in

testimony, this positive obligation was designed to "more effectively address systemic discrimination experienced by people with disabilities" (Victoria Legislative Assembly 2010, p. 787). This obligation is interpreted using "the broadest operation" that the language of the legislation permits (*Owners Corporation OC1-POS539033E v Black* (2018) 56 VR 1, 5 [59] (Richards J)).

The obligation of universities to provide reasonable adjustments triggers once the student establishes their disability (*Muller v Toll Transport Pty Ltd (2)* [2014] VCAT 472, [66] (Senior Member Megay)). Reasonable adjustments need not be made if the student does not need them; or, when the person cannot adequately participate in or derive any substantial benefit from the educational programme or service even after the adjustment is made (*EOA* (n 2) s 40(2)). In order for universities to make reasonable adjustments, the student must provide information concerning their disability and that they require a reasonable adjustment (*Muller v Toll Transport Pty Ltd (2)* [2014] VCAT 472, [66] (Senior Member Megay); *Dziurbas v Mondelez Australia Pty Ltd* [2015] VCAT 1432, [140] (Member Dea)).[23]

As provided in s 40(3), a determination of the reasonableness of the adjustment includes a list of "all relevant facts and circumstances", such as:

(a) the person's circumstances, including the nature of his or her disability; and
(b) the nature of the adjustment required to accommodate the person's disability; and
(c) the effect on the person of making the adjustment, including the effect on the person's ability to—
    (i) achieve learning outcomes;
    (ii) participate in courses or programmes;
    (iii) work independently; and

(d) the effect on the educational authority, staff, other students or any other person of making the adjustment, including—
    (i) the financial impact of making the adjustment;
    (ii) the number of people who would benefit from or be disadvantaged by making the adjustment; and
(e) the consequences for the educational authority of making the adjustment; and
(f) the consequences for the person of not making the adjustment; and
(g) any relevant action plan made under Part 3 of the *Disability Discrimination Act 1992* of the Commonwealth; and
(h) if the educational authority is a public sector body within the meaning of section 38 of the *Disability Act 2006*, any relevant Disability Action Plan made under that section.

There is no precise formula for determining reasonableness. VCAT considers such a determination to be a balancing test (*AB v Ballarat Christian College* [2013] VCAT 1790, [170]–[174] (Member Wentworth)).[24] Common law on the matter is scarce. In *Testart v Phoenix* [2014] VCAT 699 [142]–[144], VCAT noted that the failure to provide an educational institution timely notice of a disability requiring an adjustment may make the adjustment unreasonable. Finally, ss 40(4)–(5), 41–43 identify exceptions to the making of adjustments.

To address the legal requirements of disability support, students seeking academic help with mental health issues are most commonly offered assistance through a centralised university disability support team. University practice of providing individual academic adjustments to students with acknowledged (registered) mental health issues is similar across institutions. A student registers with the particular university's disability service team. University personnel evaluate the impact of the student's condition on their studies. Where relevant, the university identifies the provision of adjustments or additional services in an effort to improve the student's ability to participate in university life.[25] These adjustments are communicated to the law school. Across Victoria, academic adjustments primarily include extensions on assessment due dates, special consideration, alternative assessments and mental health support services.[26] Educators are required to make the identified adjustments for those students in their classes.

Mental ill health adjustments by universities are not discipline specific. As a recent example, during Covid-19 pandemic, all students faced many challenges to their education and mental health.[27] Universities generally made blanket adjustments to teaching and assessment delivery methods, as well as the endemic challenges facing the population generally. There has been research data on the effects of covid on student mental health as well as research on changing learning and professional responsibilities, but as of the drafting of this article, there is little specific research relating to law students' mental health during Covid-19 (Blake *et al.* 2022; Fore and Stevenson 2023).

Yet, law students with ongoing mental health conditions face specific challenges when attempting to enter into legal practice, and have not been adequately prepared for the lack of accommodation in legal practice. The following section discusses admission requirements to clarify the different hurdles faced by some persons with mental health conditions when attempting to enter legal practice.

5. Admission requirements in Victoria and effects of admission policy on students with adjustment plans

In addition to a variety of specific professional practice requirements, an Australian licensed solicitor or barrister is required to meet standards of

competence and diligence, both at initial application and on an annual basis (*Legal Professional Uniform Law 2014* ss 296–7). Similar to many jurisdictions, all legal practitioners must hold practising certificates issued by their state or territory licensing board prior to legal practice. When holding a practising certificate, legal practitioners have a professional responsibility to the court and their clients, and are bound by the principles of professional conduct.[28] As part of the application for legal licensure, an applicant must demonstrate that they have completed all the requirements to practise, as well as submit to certain character reviews.[29] These requirements are similar to many countries' requirements for licencing legal practitioners.

The majority of Australian lawyers are subject to the regulations of a state-enacted version of the "Uniform Law".[30] Relevant state law encompasses the *Legal Profession Uniform Law 2014*, *Legal Professional Uniform Admission Rules 2015* and the *Legal Professional Uniform General Rules 2015* (Baron 2019, p. 28).

For the purposes of this paper, two portions of the application for a practising certificate are relevant: graduation from an accredited law school[31] and a determination of whether a candidate is a fit and proper person. Having discussed mental health in accredited law schools, we now specifically address the fit and proper person determination in light of mental ill health adjustments in law schools.

5.1. "Fit and proper person" in light of mental ill health

One portion of the admissions process is reporting on whether the candidate is a "fit and proper person" for the practice of law. This requirement is common across jurisdictions licensing legal professionals. For example, similar requirements can be found in the states and provinces of Canada, the US, the UK and a variety of other jurisdictions.[32] Again, we consider Victoria, Australia as an example of how the courts and governing bodies address this requirement in Australia.

In Australia, a review of a person's suitability to practise law occurs at the stage of initial application to practise as well as during the application for the renewal of licence on an annual basis. The applicant must be found to be both eligible and suitable to be licensed to practise law, requirements that are deemed by statutes to be necessary to "protect the administration of justice and the clients of law practices" (*Legal Professional Uniform Law 2014* s 15).[33]

To explore the disclosure requirements and impact of incidents of mental ill health and mental health treatment on this fitness finding, consider the example of the Victorian Legal Services Board and Commissioner (VLSB) admission rules (Victorian Legal Services Board 2015). Under the Law Admissions Consultative Committee Disclosure Guidelines for Applicants for Admission to the Legal Profession, an applicant must satisfy the admitting authority that

they are a fit and proper person to be admitted to the legal profession. The policy includes guidance on matters relating to a person's suitability to practice (Victoria Legal Services Board 2021, para 1.2). The duty of disclosure rests squarely on the applicant to "disclose to your Admitting Authority any matter that could influence its decision about whether you are 'currently of good fame and character' and 'a fit and proper person'" (Victorian Legal Admissions Board 2019 [34]). Failure to disclose relevant information, if subsequently discovered, "can have catastrophic consequences. You might either be refused admission, or struck off the roll, if you have been admitted without making a full disclosure" (Victorian Legal Admissions Board 2019; see also Wyburn 2008).

The "Fit and Proper Person Policy" notes that issues relating to mental health matters are covered specifically by the Board's "Mental Health Policy" (Victorian Legal Services Board 2020, para 1.6; 2021, para 1.6). The VLSB "Mental Health Policy" sets out the Board's "approach to lawyers with mental health conditions" (Victorian Legal Services Board 2021, para 1.1). It specifies three common ways the Board can be notified of a relevant mental health condition: by direct reporting to the Board, through a disclosure by applicants when applying for or renewing certificates, or through evidence of mental health issues arising from complaints and other regulatory activities. The Board makes clear that there is no requirement to disclose a managed mental health condition, but that the direct approach provides a good opportunity "for lawyers to raise possible mental health issues before they start to negatively affect the lawyer's capacity to engage in legal practice and/or lead to complaints against the lawyer" (para 4.2.1). For applicants, they "may raise mental health issues with the board" in the application process (para 4.3.1).[35]

The policy "is to encourage such lawyers to voluntarily seek appropriate treatment and to only require disclosure where the mental health condition affects the lawyer's ability to carry out satisfactorily the inherent requirements of legal practice" (para 1.1). Section 1.2 clarifies and strengthens this position and is set out in full:

> The Board will treat lawyers with mental health conditions fairly and sensitively. The Board is not concerned with those who are effectively managing mental health conditions and there is no requirement to disclose in this instance. Nor does the Board require disclosure where lawyers have mental health conditions that have no impact on their capacity to engage in legal practice. The Board is only concerned with mental health (or, indeed, other) conditions that affect a lawyer's ability to carry out satisfactorily the inherent requirements of legal practice.

While the VLSB "Mental Health Policy" does not define "inherent requirements of legal practice", further guidance is provided in s 4.3.7, noting that a lawyer will be considered by VLSB as "unable to carry out satisfactorily the inherent requirements of legal practice by reason of his or her mental health condition" where their condition:

- is characterised by significant disturbance of thought, mood, perception or memory (including alcoholism and drug dependence); and
- without management, has and continues to, or is likely to continue to, adversely affect the lawyer's capacity to engage in legal practice. (para 4.3.7)

The concept of "inherent requirements" finds its origins in international labour and human rights law.[36] In Australia, the High Court engaged with this concept in *Qantas Airways v Christie* (1998) 193 CLR 280, 294 [34] (Gaudron J) in which the term was described as embodying something "essential to the position" or a defining characteristic of the work.[37] It is not "peripheral" (*X v The Commonwealth* (1999) 200 CLR 177, 208 [102] (Gummow and Hayne JJ)). The Australian Human Rights Commission describes "inherent requirements" as "those fundamental requirements that cannot be changed or altered" (Australian Human Rights Commission 2010, p. 12). Relevant factors in making this determination include one's physical ability to undertake the work and the surrounding context involved in one's employment (see *Qantas Airways Limited v Christie* (1998) 193 CLR 280; *X v Commonwealth* (1999) 200 CLR 177). This includes one's ability to work without posing a risk to the health and safety of the individual or other employees (*X v The Commonwealth* (1999) 200 CLR 177, 200).[38] However, inherent requirements of one's employment are not restricted to performing physical tasks (*X v The Commonwealth* (1999) 200 CLR 177 (Gummow and Hayne JJ)).

While no codified list or authority outlines inherent requirements in the context of work as an Australian legal practitioner, several courts have discussed the matter in the context of admission to practice by borrowing interpretations from employment law matters. For example, Carmody J in *Doolan v Legal Practitioners Admissions Board* [2016] QCAT 98 [44] broadly described an inherent requirement is "an integral intrinsic, natural or innate one", in line with the interpretation provided by Gummow and Hayne JJ, in *X v Commonwealth of Australia* (1999) 200 CLR 177 [102] (Gleeson CJ, McHugh, Gummow, Kirby, Hayne and Callinan JJ) as "an essential, as distinct from a peripheral, characteristic of employment".

However, Kirby J's dissenting opinion in that case proffered another interpretation of "inherent requirements" – as "intrinsic necessities that are "permanent and inseparable elements, qualities or attributes" (footnote omitted) of the particular employment" (*X v Commonwealth of Australia* (1999) 200 CLR 177 [150]). This characterisation led Carmody J to note that the concept of inherent requirements "may actually have a more limited role and scope primarily related to health matters for the purposes of practising certificates" (*Doolan v Legal Practitioners Admissions Board* [2016] QCAT 98).

In attempting to assign further meaning to this concept, in *Doolan v Legal Practitioners Admissions Board* [2016] QCAT 98, Carmody J explained that

> despite the vagueness of its scope and practical content, I take the concept 'inherent requirements of legal practice' as encompassing, in addition to mental balance and emotional stability, characteristics such as honesty, candour, competence, discretion, respect for society, the authority of the law, the judiciary and the profession, integrity, trustworthiness, judgment, reliability, morality and confidentiality, plus a broad array of other important attributes too many to mention here. Taking personal responsibility for competently and diligently meeting a client's needs and demands has to be among them. The high quality of legal services the profession aspires to cannot be delivered if there is a deficiency or breakdown in the lawyer-client relationship due to misunderstanding or other reason. ([47])

In an earlier ruling of these proceedings, the court held that when determining whether one can "satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner … the Court's primary concern is not the best interests of the appellant but the interests of the administration of justice and the protection of the public generally, especially consumers of legal professional services" (*Doolan v Legal Practitioner's Admission Board* [2013] QCA 43 [21]).

The courts and admitting bodies have consistently focused on the notion that the determination of fitness is to protect the public and the courts, and is not meant to be punitive to an applicant or holder of a practising certificate (*NSW Bar Association v. Murphy* (2002) 55 NSWLR 23 at 113; *Law Society of SA v Rodda* (2002) 83 SASR 541). It also needs to be said that a mental illness or impairment is not of itself a bar to admission or practice as a legal practitioner. Rather, the test is whether the applicant (or practitioner) is able to satisfactorily carry out the inherent requirements of practice as a legal practitioner. This, of course, must be assessed in the light of the applicant's mental health (*Doolan v Legal Practitioner's Admission Board* [2013] QCA 43 [22*]*).

As discussed in *Law Society of SA v Rodda* (2002) 83 SASR 541, the question of fitness is not addressing the punishment, reform or rehabilitation of the applicant. Instead, the question relates to the broader reputation and standing of the legal profession. The current legal system is predicated on the fact that the public can rely on the legal professional as an officer of the court, and in the administration of justice – this reliance is placed on a specific licensed individual. Thus, the fitness determination takes into account "whether public confidence and trust in the legal profession would be eroded" were the applicant in question to hold a practising certificate (pp. 60–61).

5.2. Meeting deadlines as inherent requirement of legal practice

An "inherent requirement" of legal practice is a practitioner's ability to meet statutory and contractual deadlines on behalf of a client. The inherent requirement to meet deadlines leaves little room for consideration of a practitioner's mental health. For example, in Australia, like other jurisdictions, there are specific deadlines set out in the statute of limitations, requirements to contest

probate, meeting contractual and litigation deadlines.[39] Significant negative effects to clients can occur when deadlines such as statutes of limitation are missed, contractual deadlines have been bypassed or court filings are delayed, and such missed deadlines can trigger findings of misconduct on the part of a legal practitioner.[40]

Clients who have retained a lawyer can presume that person is managing such deadlines on their behalf. A practitioner's failure to meet regulatory, statutory and legal deadlines may be deemed professional misconduct (*Legal Services Commissioner v Battiato (Legal Practise)* [2012] VCAT 1279 (21 August 2012); *Legal Services Commissioner v Burgess (Legal Practise)* [2015] VCAT 526 (24 April 2015); *Legal Services Commissioner v Morgan (Legal Practise)* [2009] VCAT 100 (3 February 2009); *Burgess v McGarvie* [2013] VSCA 142 (14 June 2013)).[41] As noted in *Doolan v Legal Practitioners Admissions Board* [2016] QCAT 98 above, an inherent requirement of practice is "taking personal responsibility for competently and diligently meeting a client's needs and demands" without considering the best interests of the practitioner, but rather the client, the public and the administration of justice (*Doolan v Legal Practitioners Admissions Board* [2016] QCAT 98, quoting Carmody). In Victoria, even non-urgent matters must be moved along by counsel, and repeated and extended communication delays fall short of competence and diligence and lead to disciplinary actions (*Legal Services Commissioner v Galatas (Legal Practise)* [2013] VCAT 214 (21 February 2013); *Legal Services Commissioner v Battiato (Legal Practise)* [2012] VCAT 1279 (21 August 2012); *Legal Services Commissioner v Burgess (Legal Practise)* [2015] VCAT 526 (24 April 2015); *Legal Services Commissioner v Morgan (Legal Practise)* [2009] VCAT 100 (3 February 2009); *Burgess v McGarvie* [2013] VSCA 142 (14 June 2013)).[42]

For many deadlines in legal practice, there is no procedure or practice for accommodation of extensions for practitioners failing to meet a deadline.[43] Contractual deadlines, statutes of limitation, contesting an estate, and court filing and responses have legal force, with no adjustment or extension process available to account for the physical or mental ill health of legal counsel.[44] In some instances, the court system allows for a process of requesting extensions in certain filings.[45] However, such leniency is solely at the discretion of the court and need not be granted. Additionally, such extension requests may have a negative impact on the reputation of counsel or negatively affect the client when denied.[46] Thus, there is no guarantee that a practitioner or client can organise an extension; nor is there a procedure for ongoing extensions based on mental ill health. Rather, meeting statutory and regulatory deadlines is an inherent requirement of practice.

6. Concern in the mismatch between extensions and employability

As demonstrated, common academic adjustments in Australia given to law students with registered mental health conditions include consistent deadline

extensions. Yet, there is no indication that law schools provide institutionally organised advice to its law students about the potential effects of an adjustment plan allowing for long-term and repeated extension deadlines on students' disclosure requirements for admission, and their ability to meet the inherent requirements of legal practice discussed.[47] Further, there is no indication that there is transparency for students about the conflict between using such learning adjustments throughout law school to assist with mental health management and disclosure requirements for obtaining a practising certificate. Lack of advice and transparency prevents student development of self-management skills prior to entering the legal profession.

If a student's adjustment plan allows for automatic deadline extensions or completing alternative assessment tasks, the student is arguably required to disclose their inability to meet deadlines or perform assigned work relevant to the practice of law to an admitting body. If disclosure was required, the disclosure might require additional information provided to the admitting authority, and may lead to questions about the applicant's ability to meet inherent requirements of legal practice. In review of the examples provided by the Victorian Legal Admissions Board, a temporary[48] adjustment plan for a student suffering from a temporary mental health disability is unlikely to be disclosable for admission purposes because it does not cause concern for the admitting authority. However, for students with a long-term adjustment plan, the student must consider whether it, and the underlying mental health condition that adjustment plan addresses, are properly disclosable in an application for a practising certificate.[49]

This failure to support student self-management, as well as driving a potential disclosure or arguable failure to meet the inherent requirements of a practising lawyer is highly problematic in a higher education climate where universities now measure the value of their degree (at least in part) by the ability of its students to find employment as a legal practitioner after graduation.

7. Addressing mismatch for better employability results

Australia's mismatch between the university's provision of adjustments and guarantee of employability for law students requires a solution specific to law students. A solution must recognise competing legal requirements relating to disability support in universities and the expectations in legal employment. This article posits that there is a need for Australian universities and their associated law school to explicitly address what a law student receiving long-term academic adjustments because of their mental health condition must know about the future practice of law, from a self-management perspective as well as disclosure requirement to professional bodies despite University claims to produce employment-ready graduates.[50]

This article is not the first to call for change. For years, academics across jurisdictions have consistently called on law schools to address the mental health concerns affecting law students (see, e.g. Field and Kift 2010, p. 67; Appleby and Bourke 2014, p. 462).[51] Arguably, legal education already reduces students' autonomy, engagement and motivation (Seligman 2004; Seligman *et al.* 2005; Tani and Vines 2009). Some academics argue the onus to address mental ill health falls to the educational institution because the psychological distress in law students is a teaching and learning issue (Dresser 2005), whereas others claim it is the ethical imperative that demands an institutional response (Kelk *et al.* 2009, pp. 48–49; Duncan *et al.* 2020, p. 69). Many law schools have responded, in part, by implementing awareness-raising campaigns and providing some resiliency training to law students.

However, this article is unique in noting that the separation between a law school's resiliency education and the lack of specific consideration of employment readiness requirements in legal practice for students with long-term mental health conditions leaves an unacceptable gap that is largely driven by a university's own commitment to produce employment-ready graduates. While we analyse Australia's University sector directly, similar challenges are present in other jurisdictions' legal education. We posit this matter has not been directly addressed for the following reasons: there is limited data on both the number of law students seeking accommodation during study, as well as the number of legal professionals or clients affected by legal professional ill health and failure to meet deadlines.[52]

While there are many differing ways to address mental ill health for law students and lawyers, this article provides one narrow and immediately accessible change to address this mismatch in the current Australian system.[53]

Within Australian legal study, there is an existing regulatory framework of Threshold Learning Outcomes (TLOs).[54] Created in 2010 as part of the Learning and Teaching Academic Standards project, the TLOs are a set of six student focused outcomes expected to be met in each accredited Bachelor of Laws degree.[55] When taken together, the TLOs represent what a graduate is expected to know, understand and be able to do as a result of learning or, in the words of the Australian Qualifications Framework (AQF), the "set of knowledge, skills, and the application of the knowledge and skills a person has acquired and is able to demonstrate as a result of learning".[56] TLOs 1 through 5 are directed at the specific legal skills and knowledge necessary for the practice of law, and TLO 6 (self-management) provides the necessary direction for legal practitioners to manage their career path (Council of Australian Law Deans (2013), pp. 22–23).

Australian academics have previously argued that resilience and mental health literacy should be encompassed within TLO 6. As Appleby and Bourke argue, legal education institutions should consider inclusion of mental health literacy as part of their core curriculum, aligned with TLO 6

(self-management) (Appleby and Bourke 2014). We concur that using the framework of TLO 6 to specifically and formally address mental health matters will address, in part, the *Courting the Blues* proposal to formalise mental health interventions allowing for evaluation of efficacy.

When students are partners in learning, there is a stronger sense of control over aspects of learning. Such a sense of control, especially in a degree with little flexibility around study of core classes, is critical to better student health outcomes (Levit and Linder 2008, pp. 359–361). Additionally, student self-monitoring through feedback and self-reflection mechanisms teaches students to evaluate their own learning strategies (Field *et al.* 2015). Finally, providing knowledge of the mental health spectrum (from resiliency and happiness through to signs and effects of mental ill health) provides students with a deeper understanding of mental health broadly.

This article also posits that use of TLO 6 can provide a direct link to supporting law students under *EOA* s 40(3). When an "inherent requirement" of legal practice is "taking personal responsibility for competently and diligently meeting a client's needs and demands" without considering the best interests of the practitioner, but rather the client, the public and the administration of justice, it cannot be overemphasised that law students must be made aware of and acknowledge this particular standard for future practice and be fully aware of the critical factors of compliance (*Doolan v Legal Practitioners Admissions Board* [2016] QCAT 98, quoting Carmody).

One example of embedding education about inherent duties of legal practice, such as adherence to deadlines, would be the development of a tailored education module, coupled with academic support, to provide education relating to the fit and proper person standard and disclosure requirements for students intending to practise law and have used academic adjustments relating to extensions. A self-knowledge module, using TLO 6, can provide specific bridging skills to teach students to move from relying on adjustments to being able to meet the inherent requirements of legal practice through deadline management. Appleby and Bourke describe a short module embedded in the College of Law training, and this article expands on this training, urging expansion and earlier intervention for students (see Appleby and Bourke 2014).

Research shows that law students begin to suffer psychological stress in law school, before they enter the profession. Law school employability promises, as well as their accreditation, requires that law students are ready to enter the profession of law. That promise means law school must have clear training on the required compliance with accreditation standards, including fit and proper person and character requirements. Finally, as an aspirational point, students deserve to be treated as partners in their learning. Therefore mental health training must begin in law school, and embedding it into the curriculum is critical. Integration into TLOs will encourage scaffolding of learning through the law degree. For example, mental health training can be embedded in the first

year curriculum, then scaled into professional responsibility classes, and integrated into clinical education.

This article argues that, along with any resilience and mental health general training, a module that directly addresses legal deadlines in light of the fit and proper person standard will support law students in their transition to practice. Further, this article recommends that sudents demonstrate completion of tasks within a specific practice-oriented module. This demonstration of deadline-management should be required for those students who have received extension due to mental ill health. This task-based module might be employed in tandem with a university work-integrated learning opportunity (within a class, internship, clinical programme or related experience) specifically targeted to bridge the gap between the use of extensions in a typical university setting, and support students to transition away from the extension process before graduation. The module might include specific learnings and practice relating to time management, employment expectations in the legal profession, and relevant tools to assist with task completion prior to application for a practising certificate or employment.[57] Integration of clear goals and prompt feedback, tied to both TLO 6 and the "fit and proper person" requirement for practice would support student-centred self-management (Levit and Linder 2008, p. 367).

Increased student self-direction can also improve the goals of disability laws, including Victoria's *EOA*: student's ability to achieve learning outcomes, participate in courses or programmes, and work independently (*EOA* s 40(3)(c); Kelk *et al.* 2009; Field and Kift 2010; Sheldon and Kreiger 2004; Tani and Vines 2009; Townes O'Brien *et al.* 2011). Finally, upon completion of such a module, the student has demonstrable evidence that they can effectively meet deadlines in legal practice.[58]

Such use of TLO 6 addresses the disparate tensions between two existing regulatory systems – the disability regulatory system which applies to universities and the admitting body's stringent practice requirements, which are not subject to the legal accommodation requirements applied to the Universities.[59] Use of TLO 6 will support the idea of existing resiliency training in the curriculum, then scaffolded into specifically addressing the practicalities of legal practice and mental ill health management, aligning with the requirements of s 40(3)(c) of the *EOA* (n 2).[60] Further, use of the learning outcomes as an institutional framework aligns with connecting mental health support to employability as a key performance indicator of the universities.

This idea of embedding specific training on admission and practice standards into TLO 6 can be scaled to other jurisdictions by embedding similar language into the relevant education framework.[61] Or, a singular University can embed such a specific model or module into its teaching of professional responsibility. Finally, licensing bodies might mandate such education, and either require it be embedded into accredited law school education or set a a requirement for continuing education for early career practitioners.

8. Conclusion

The way in which mental health concerns are being addressed at the broader university level does not recognise issues unique to particular high risk student cohorts such as law students. This article argues that it is in the interest of law schools, as part of their commitment to create employment ready graduates, to directly address the tension between a high-stress learning environment generating additional anxiety for law students who need support and the future high-stress work environment that does not allow for the type of work/study adjustments that are provided to students while in school. This inherent tension need not be a barrier for students with mental health issues to access university support to enter into the profession of law. It is, however, a tension that must be explicitly recognised and addressed within the study of law. Currently, the Australian university-level accommodations fail to do so, thus also failing to meet universities' promise of employability within the law context.

It is past time to provide Australian students with clear guidance about the tensions in addressing mental health in law school, what needs to be reported to admissions bodies, and the effects of mental health support for law students when they move to practice. If considered in other jurisdiction, such guidance can serve to empower all law students with agency over their own mental health, as well as forward the university agenda of student employability. While this article provides a narrow and immediate solution to address the tension in Australia, we urge all universities, law schools, and the broader legal profession to consider whether law schools are providing sufficient support for the large number of law students who experience mental ill health.

Notes

1. See every Victorian law school's website that makes employability promises: (1) Australian Catholic University (2023a), (2) Deakin University (2023a), (3) La Trobe University (2023b), (4) The University of Melbourne (2023a), (5) Monash University (2023b), (6) RMIT University (2023b), (7) Swinburne University of Technology (2023b) and (8) Victoria University (2023a).
2. Such specificity will also support students to make informed choice about employment options in legal practice, ranging from gaining a practising certificate to other type of legal work, and perhaps prevent unintended stigmatisation of mental health issues (Victorian Legal Services Board 2021).
3. In Canada, consider the Canada National Committee on Accreditation national requirements 2018, 2.1(a)(7)(c) professional incompetency; (c)(1)(1.3) competency (Federation of Law Societies of Canada 2023). In the US, consider the ABA requirements for accreditation of law schools (American Bar Association 2023b).
4. In 2022, the Commonwealth Grant Scheme was extended to add additional student placements (Department of Education 2023).

5. This emphasis on producing graduates who can access employment has been further institutionalised with the national Quality Indicators for Teaching and Learning (QILT) surveys. First administered in 2016, the QILT surveys provide students, as consumers of education, with information about employment outcomes and comparisons between university degrees. See QILT (n.d.).
6. There has been some debate as to the efficacy of these policies (Hare 2023).
7. We would be remiss in leaving the discussion of employability without commenting on the tremendous change that has faced law students in the last few years. While Covid-19 negatively affected student mental health, it also left lasting change to the law school environment. Students who started or had online studies have a different relationship to their campus. In Australia, many students study and work simultaneously, being told they can study anywhere at any time. Therefore students come to campus less and study in what little 'free time' they have, creating not only a poorer relationship with their University, but also increasing stressors by leaving no time for recovery.
8. For this discussion, see James (2017).
9. As Thornton (2017) explains, a focus on employability in university education appears to be a by-product of the governmental divestment in higher education such that those desiring to undertake university study bear the majority of the costs, becoming consumers first and students second.
10. As noted below, practitioner stress is higher than that of the general population. See Kelk et al. (2009).
11. In this study, psychological stress was measured using the Kessler Psychological Distress Scale (K10).
12. In Lester et al. (2011), psychological stress was measured using the Depression Anxiety and Stress Scales (DASS-21). The study's findings are one of the outliers of the group, reporting an increase of 15% as opposed to over 30% of greater psychological distress of law students. In Townes O'Brien et al. (2011), psychological stress was measured using the Depression Anxiety and Stress Scales (DASS-21). In Leahy et al. (2010, p. 611), psychological stress was measured using the Kessler Psychological Distress Scale (K10). In Larcombe et al. (2013), psychological stress was measured using the Depression Anxiety and Stress Scales (DASS-21). In Larcombe and Fethers (2013), psychological stress was measured using the Depression Anxiety and Stress Scales (DASS-21). In Skead and Rogers (2014), depression was measured using the Depression Anxiety and Stress Scales (DASS-21). In O'Loughlin et al. (2019), the findings are the second outlier of the group, reporting an increase of 12.5% as opposed to over 30% of greater psychological distress of law students. Note that the results are from after the first semester as opposed to at the end of the first year. See also Steele and Huggins (2016a, 2016b). These empirical studies at UNSW Law have evaluated the relationship between student learning, class participation, lifestyle and stress. See also Ferguson and Tang (2020). For a discussion of the methodologies employed by many of these studies, see Parker (2014). Despite similarly high rates of mental ill health, a 2010 study indicated only 12% of law students reports they received medical treatment for mental ill health (Leahy et al. 2010, p. 612).
13. Engaging students as partners in study, including understanding their mental health is critical, yet we also raise concerns about the time-poor nature of students. Critical discussions to improve wellness can be seen in Duffy et al. (2011) and Skead and Rogers (2016). Yet students are increasingly time poor with competition of work and study.

14. There are also indications that law students feel they lack autonomy in their studies. This ties to research reported in Seligman (2004) and Seligman et al. (2005, p. 54).
15. While the *Courting the Blues* study and *Good Practices Guidelines* are both available on the CALD website, there does not appear to be much supporting implementation material, reference to the study or guidelines on law school websites, or related research or teaching materials. See Council of Australian Law Deans (2023).
16. It is beyond the scope of this article to address specific matters relating to student mental ill health during the Covid-19 pandemic. Studies are emerging about the immediate effects of the pandemic. See, for example, Russell (2023), Li et al. (2021), Dingle et al. (2022) and Wang et al. (2020). However, there has not been enough research results to address the lingering effects on the current or future student bodies.
17. In fact, claiming that resilience can prevent mental ill health does not recognise the reality of high rates of mental ill health.
18. At the federal level, legislation addressing equal opportunity protections for persons with a disability includes the *Disability Discrimination Act 1992* (Cth) and the *Fair Work Act 2009* (Cth). However, the *Fair Work Act 2009* (Cth) does not contain the obligation to make reasonable adjustments.
19. Under s 4 of the *EOA*, 'disability' includes physical, psychological or neurological disease or disorder; and illness, whether temporary or permanent; and injury, including work-related injuries. The definition of 'disability' encompasses past, present and future disabilities, including ones surfacing because of a generic predisposition to a particular condition.
20. While this article does not directly address conditions where people may learn more slowly, those students with diagnoses relating to such diseases are also able to access long-term accommodations during their study, but may not be able to access similar accommodations in the workplace.
21. For a complete discussion, see Allen (2021). The other four include the objects clause, the definitions of direct and indirect discrimination, the definition of special measures, and the duty not to engage in discrimination, sexual harassment or victimisation.
22. The concept of 'reasonable adjustments' is addressed federally in the *Disability Discrimination Act 1992* (Cth). South Australia (*Equal Opportunity Act 1984* (SA) s 66) and the Northern Territory (*Anti-Discrimination Act 1992* (NT) s 24) also recognise the failure to reasonably accommodate a disability within legislation. Although the Australian Capital Territory (*Discrimination Act 1991* (ACT) s 4(d)(iii)) acknowledges that reasonable accommodation may need to be made in the object of the Act, it fails to discuss it further.
23. This holding was in the context of an employer–employee relationship. Dominique Allen (2021, p. 489) argued that not only employees, but also 'students and consumers—need to articulate what they need to perform the job or access education or a service'.
24. Relevant factors include effect on the institution (e.g. resources), need of student and effectiveness of adjustment.
25. While each university across Australia manages mental health support processes in its own way, a review of any university website reveals that wellness support and services include the opportunity for students to receive individual counselling or referrals for specialist treatment, join group or peer support groups, attend mental health and wellness workshops, and engage with the disability support team to receive academic adjustments and services. Additionally, many law educators incorporate modules addressing mental wellbeing, resilience and the legal profession within individual units.

26. To review the provision of disability support services available to law students, the authors examined each applicable Victorian university's website. See Australian Catholic University (2023b); Deakin University (2023b); La Trobe University (2023a); The University of Melbourne (2023b); Monash University (2023a); RMIT University (2023a); Swinburne University of Technology (2023a); Victoria University (2023b).
27. See n 16 regarding Covid-19 and University student research studies.
28. See, for example, Victorian Legal Services Board + Commissioner (2020) for legal practitioners in Victoria. Each state has its own licensing board: the Australian Capital Territory Legal Practitioners Admission Board, the NSW Legal Profession Admission Board, the Northern Territory Legal Practitioners Admission Board, the Queensland Legal Practitioners Admissions Board, the South Australian Board of Examiners, the Legal Profession Board of Tasmania and the Legal Practice Board of Western Australia. Victoria and New South Wales both ascribe to the Uniform Law for the regulation of legal practice, available from Commissioner for Uniform Legal Services Regulation (2023). The Uniform Law governs admission to practise and the rules are coordinated by jurisdiction.
29. Candidates for a practising certificate in Australia must have graduated from a recognised law program, completed certain additional graduate courses, and provide information regarding their fitness for practise. Each state sets out separate requirements, which generally conform to the model legislation, the Legal Profession Model Bill (2006).
30. Lawyers in Australian states of New South Wales, Victoria and Western Australia are subject to the Uniform Law. The majority of practitioners in Australia are located in those jurisdictions (Commissioner for Uniform Legal Services Regulation 2023). See also Baron (2019, p. 29).
31. To apply for a practising certificate, an applicant must complete an accredited tertiary academic course. In Victoria, the Victorian Legal Admission Board oversees academic law courses. Currently, eight universities have accredited law programs in Victoria (Victorian Legal Admissions Board 2023). The Law Admissions Consultative Committee Accreditation Standards for Australian Law Courses were most recently amended in 2018 (Law Admissions Consultative Committee 2018). Students who complete their studies at an accredited law school in one state or territory can apply for a practising certificate in any other state or territory (*Legal Profession Uniform Admission Rules 2015*).
32. In Canada, consider Ontario's requirement that an applicant be of 'good character' (Law Society of Ontario n.d.); in the UK, the 'character and suitability' requirement for lawyers is governed by the Solicitors Regulation Authority and the Bar Standards Board, which are the regulatory bodies responsible for regulating the conduct of solicitors and barristers, respectively (Solicitors Regulation Authority n.d.). In the US, states generally require a 'character and fitness' requirement (American Bar Association 2023a). Consider also Standard 504 of the US accreditation of law schools, requiring students be notified of the bar admission requirements. For discussion, consider Woolley (2007).
33. Scholars and commentators continue to debate the proper balance between respecting an applicant's privacy and the need to protect the public by requiring some level of examination of applicants' mental health; some have called for the elimination of mental health disclosure requirements. See Baron (2019) 32–33, citing a variety of Australian and US articles, and noting that the Australian Law Students' Association called for the removal of mental health disclosures in May 2016.

34. This was updated March 2022 at https://www.lawadmissions.vic.gov.au/qualifications-and-training/suitability/disclosure-guidelines-for-applicants-for-admission-to-the.
35. We acknowledge that there is a significant challenge in determining precisely how many lawyers and applicants may suffer from mental ill health when the relevant medical data is confidential, and disclosure is only required when it will affect lawyers' ability to carry out their duties. Law students and lawyers may not know when mental ill health will affect their practice, yet the empirical evidence of mental ill health set out in studies raises cause for concern.
36. 'Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination' (*Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation*, opened for signature 25 June 1958, 362 UNTS 5181 (entered into force 15 June 1960) art 1(2)).
37. This case involved the dismissal of an airline pilot because of his age.
38. This case involved the dismissal of a soldier from the Australian Defence Force because of his HIV status. For further discussion, see Hirst (2000, pp. 105–109).
39. While there are additional deadlines in statute, see, for example, specific deadlines set out in *Civil Procedure Act 2010*, 26 Overarching Obligation to act promptly and minimize delay; the *Limitations of Actions Act 1958* (Vic) setting statute of limitations for various claims; *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*; 3.1 paramount duty to the court and administration of justice; 4.1.3 (prompt delivery of legal services); case law setting strict 21 day period to apply to set aside statutory demand, time to exercise a lease option, contract renewal, etc.
40. Noting that the opposition to the closing of an estate section (99 *Administration and Probate Act 1958)*; or the failure to prosecute a patent (request for extension of time based on error or omission, s 223(2)(a) *Patent Regulations 1991*) is time sensitive. Consider also torts and personal injury statutes of limitations; discussed in *Ramsay v Dr Tishler & Anor* Supreme Ct NSW 11599/97 (1998*)*.
41. Two levels of misconduct are explained in pt 5.4 s 295 of the Legal Profession Uniform Law.
42. Part 5.4 s 295 of the Legal Profession Uniform Law describes professional misconduct.
43. This article does not address whether such a normative view of 'disability adjustments' is appropriate in employment or study. Consider, for example, Taylor (2019). Further, the article does not address the issue of employer adjustments that might occur in employment. Rather, this article addresses solely the requirements within a practice certificate.
44. See n 39-40.
45. Probate and patent statutes of limitation (n 40) allow for discretionary extension by the court.
46. Extensions of time 'may' be granted upon application (n 39-40): *Civil Procedures Act 2010* (Vic). Excessive requests are not viewed favourably by the court and may affect the reputation of legal counsel.
47. While the bar for readmission for lawyers previously struck off the roles is significantly higher than that for admission, there is some relationship between the matters to be considered. For example, the tribunal in *Law Society NSW v Feerick* [2017] NSWCATOD 54 (3 March 2017) suggested that if a lawyer argues that their previous misconduct was attributable to mental issues and they have now been rehabilitated, such lawyer must demonstrate a sufficient reformation of character as to assure the public that they now have the good fame and character required of a member of the legal profession: *Feerick*, 43, discussed in Baron (209, pp. 44–45).

48. For this article, the distinction between temporary versus permanent mental health conditions is entirely by the examples provided by the admitting authority.
49. The authors could find no case law on this specific issue but believe it is a reasonable assumption after analysis of the admission requirements.
50. A single issue of temporary accommodation will not likely trigger disclosure to the admitting authorities, yet all students will benefit from consideration of licensure requirements.
51. See also Skead and Rogers (2014, p. 569) discussing a behavioural toolkit for students.
52. Data on mental ill health in both law students and legal professionals is, rightfully, confidential so extrapolating an exact number of lawyers facing mental ill health is challenging. As noted in section 3, by way of increasing mental health policies for admission to practice, and the inherent duties of law practice, the need to address this issue is significant regardless of the inability to access empirical data.
53. This article does not address solutions that might be implemented by accreditation bodies, legislation or other methods.
54. Learning outcomes are a government requirement under the Tertiary Education Quality and Standards Agency, AQF. Law, as an accredited program, has developed an overarching set of learning outcomes for the discipline.
55. For further background information on this undertaking, see Huggins et al. (2011).
56. See definition of 'learning outcomes' in Australian Qualifications Authority (2013, p. 97).
57. Students who need additional support can then work directly with their disability office if the scaffolded approach would not work for their particular circumstances. In any case, students should be informed about how such additional support may affect an application for a practising certificate.
58. There is some concern that law schools may have an affirmative duty to report to admitting boards those students whose disability accommodations have consistently shielded them from deadlines, in the same way that student academic misbehaviour is reported. See, for example, *In re Davis* (1947) 75 CLR 409, 420 (Dixon J) ('Fitness to practise law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges.').
59. The third regulatory requirement of general disability accommodations is outside the scope of this article.
60. Supporting students with an adjustment to achieve learning outcomes, participate in programs and work independently. Additionally, use of TLO 6 to embed mental health awareness and education into the curriculum can provide the law school staff with a structured method for their own education, awareness and training.
61. For example, the US directive from the American Bar Association requires accredited law schools provide students with the following: (a) A law school shall include the following statement in its application for admission and on its website: In addition to a bar examination, there are character, fitness, and other qualifications for admission to the bar in every U.S. jurisdiction. Applicants are encouraged to determine the requirements for any jurisdiction in which they intend to seek admission by contacting the jurisdiction. Addresses for all relevant agencies are available through the National Conference of Bar Examiners. (b) The law school shall, as soon after matriculation as is practicable, take additional steps to apprise entering students of the importance of determining the applicable character, fitness, and other requirements for admission to the bar in each jurisdiction in which they intend to seek admission to the bar (Rule 504). This ABA requirement could be further expanded to require specific scaffolded education.

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