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Oral communication skills discourse and higher education pedagogy: the underexplored role of students' spoken language in the global law classroom

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Abstract

This article investigates regulatory frameworks influencing oral communication in the global law classroom. It proposes a policy analysis through the lenses of pedagogical theory. Recent educational research investigating the roles of spoken language in the university classroom identifies oral communication as both a learning outcome and a pedagogical tool for learning. Although classroom interaction and discussions are essential pedagogical tools to learning and assessment in law schools worldwide, the role of disciplinary classroom spoken language is underexplored in the higher education literature. This discussion is particularly relevant as the rise of generative AI has highlighted the importance of verbal communication, with experts suggesting different forms of oral examination as effective alternatives for student assessment. While challenges related to law students' spoken language have been reported globally, this article examines the discourse surrounding spoken language in Australian legal education as a case study of the global classroom. It seeks to uncover the sources, characteristics and underlying discourses surrounding oral communication skills in national policy, accreditation requirements, and university learning outcomes. This article concludes with brief recommendations for practice and future research.

Keywords: Oral communication skills; higher education policy; Australian legal education; higher education pedagogy.

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Introduction

In the higher education literature, oral communication is recognised as both a pedagogical tool for learning, facilitating classroom interactions and discussions, and a learning outcome, reflected in students' communication skills.[1] This article argues that policy references to 'communication skills' development should be interpreted as encompassing both aspects, even though the notion of oral communication as a pedagogical tool is often implied or absent in such documents. Recognising the policy-laden nature of higher education globally[2], we proceed in four steps. Initially, we (1) clarify the dual role of oral communication skills as a tool for learning and as a learning outcome, drawing on insights from the higher education (HE) academic literature, particularly in their potential relationship to generative AI in education. In what follows, we identify these elements within the policies regulating legal education in Australia, particularly: (2) national regulatory policies; (3) law accreditation requirements; and (4) program learning outcomes. The goal is to investigate how oral communication skills are framed within these policy documents, examining the sources and characteristics of oral communication skills in these regulatory frameworks. In practical terms, we argue that if the Council of Law Deans' 2020 Australian Law School Standards[3] are to be widely adopted in Australia, both aspects of oral communication skills – as a tool for learning and as a learning outcome – must be considered by educators and stakeholders, in order for oral communication skills to be effectively embedded in the curriculum.

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[1] Heron, M. (2019). Making the case for oracy skills in higher education: practices and opportunities. Journal of University Teaching and Learning Practice, 16(2), 1-16; Dippold, D., & Heron, M. (2021). Meaningful teaching interaction at the internationalised university: Moving from research to impact. Routledge; Thwaite, A., Simpson, A., & Jones, P. (Eds.). (2023). Dialogic Pedagogy: Discourse in Contexts from Pre-school to University. Routledge; Heron, M., Baker, S., Gravett, K., & Irwin, E. (2023). Scoping academic oracy in higher education: knotting together forgotten connections to equity and academic literacies. *Higher Education Research & Development, 42*(1), 62–77. https://doi.org/10.1080/07294360.2022.2048635; Spencer, R. (2022). "Hell is other people": rethinking the Socratic method for quiet law students. *The Law Teacher, 561*, 90-104, DOI 10.108003069400.2021.2005305.

[2] Magnússon, G., & Rytzler, J. (2022). Towards a Pedagogy of Higher Education: The Bologna Process, Didaktik and Teaching. Routledge.

[3] Council of Law Deans. (2020). Australian Law School Standards – with Guidance Notes. Available at: <https://cald.asn.au/wp-content/uploads/2023/11/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>, accessed on August 24, 2024.

This is a timely discussion as Australian higher education institutions react to the 2024 Australian Universities Accord Final Report (henceforth *Universities Accord*)[4]. This 12-month review report of the country's higher education system – which in Australia encompasses universities and other diploma providers – includes recommendations to improve the quality of tertiary education and create a long-term reform plan for the higher education sector 'to meet Australia's future skills needs'[5]. One of the Accord's key findings, under the generic skills rubric, is that:

> Australia's economy not only needs greater numbers of tertiary educated graduates, these graduates must have the right mix of skills. In addition to discipline-specific knowledge and technical skills, graduates need the *transferable generic skills* sought by employers. Australian workers now need to be digitally literate, creative, collaborative, *good communicators*, and able to solve complex problems. Our tertiary education providers must *teach these skills more effectively*, together with our school system, employers and the wider community.[6]

The Universities Accord emphasises the importance of increasing the number of university graduates in Australia and equipping them with key generic skills, including those that enable students to become 'good communicators'. Furthermore, it asserts that higher education institutions must teach these skills 'more effectively'. This implies that there are effective methods for teaching these skills and that current teaching practices in the higher education sector are not sufficiently 'effective'. The Universities Accord language reflects a broader employability discourse in higher education, according to which graduates are expected to possess a mix of discipline-specific and generic skills to meet workforce demands[7]. While it points to the importance of transferable generic competencies – including graduates being 'good communicators' – it does not explicitly clarify whether this includes oral communication skills.

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[4] Australian Government Department of Education. (2024). Australian Universities Accord Final Report. Available at: <https://www.education.gov.au/australian-universities-accord/resources/final-report>, accessed on August 24, 2024.

[5] ibid 17.

[6] ibid 12, our emphasis.

[7] Hora, M., Smolarek, B., Martin, K., & Scrivener, L. (2019). Exploring the Situated and Cultural Aspects of Communication in the Professions: Implications for Teaching, Student Employability, and Equity in Higher Education. American Educational Research Journal, 56(6), 2221–2261; Boden, R., & Nedeva, M. (2010). Employing discourse: universities and graduate 'employability'. Journal of Education Policy, 25(1), 37-54.

Although the mention of communication could be interpreted as encompassing both written and spoken forms, the main text leaves the oral dimension implicit rather than overt.

The Universities Accord's glossary explicitly includes verbal communication under generic skills ('such as analytical, social, written and verbal communication, creativity and learning skills'[8]). However, it remains unclear what is encompassed under the verbal communication skills rubric or how these skills can be taught 'effectively' in disciplinary classrooms. In the next section, drawing on the academic literature, we propose a tentative definition of oral communication skills that encompasses their dual role – as both a tool for learning and a learning outcome – and examine how this understanding can guide effective classroom practices.

This is particularly significant in the global higher education landscape, where the United Nations Educational, Scientific and Cultural Organisation highlights 'communication skills' as essential soft (or life) skills for 21st-century university graduates[9]. Often listed alongside skills such as critical thinking, creativity, collaboration, teamwork, mediation, numeracy, and technological literacy[10], we argue that communication skills are meta-skills that underpin the development and performance of all these other skills.

Communication skills are particularly relevant in the context of ongoing dialogue about what the future of legal education might look like in an ever-changing technological landscape. On the one hand, the emergence of generative AI (genAI) has increased the interest in spoken language, not only as a pedagogical tool and outcome, but also as a means of student evaluation.[11]

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[8] Australian Government Department of Education (n 4) 354.

[9] UNESCO. (2016). Unpacking Sustainable Development Goal 4: Education 2030 Guide. Available at https://unesdoc.unesco.org/ark:/48223/pf0000246300, accessed on January 07, 2025.

[10] Binkley, M., Erstad, O., Herman, J., Raizen, S., Ripley, M., Miller-Ricci, M., & Rumble, M. (2012). Defining Twenty First Century Skills. In Griffin, P., McGaw, B., & Care, E. (ed.). Assessment and Teaching of 21st Century Skills, pp. 17-66, Springer.

[11] Lodge, J. (2024). The evolving risk to academic integrity posed by generative artificial intelligence: Options for immediate action. Tertiary Education Quality and Standards Agency. Available at: <https://www.teqsa.gov.au/about-us/news-and-events/latest-news/addressing-risk-genai-award-integrity>, accessed on August 19, 2024; Ward, M.; O'Riordan, F.; Logan-Fleming, D.; Cooke, D., Concannon-Gibney, T.; Efthymiou, M.; & Watkins, N. (2023). Interactive oral assessment case studies: An innovative, academically rigorous, authentic assessment approach. Innovations in Education and Teaching International, DOI: 10.1080/14703297.2023.2251967.

Innovative assessment methods such as oral examinations (also referred to as viva examinations, viva voce, or interactive orals[12]) offer exciting possibilities as students are required to expose ideas orally and therefore show proof of understanding of content combined with generic skills. These assessment types relying on spoken language also promise plagiarism-proof alternatives compared to other assessment types.[13] However, they also present significant challenges, particularly when evaluating students' spoken language skills in the classroom.[14]

Concomitantly, the legal professions demand proficient communication skills in both written and spoken language. As linguist and law professor Peter Tiersma noted, '[o]ur law is a law of words. Words are also a lawyer's most essential tools'[15]. If language is indeed among the most essential tools required by the legal professions, it must be explicitly taught to students. In this regard, we align with Steel's argument that such skills should be an integral part of every law student's education:

> Traditional legal communication skills must still be learned. (…) the ability to verbally articulate a logical argument, the ability to respectfully listen and respond in non-emotional ways remain key skills for a lawyer. (…) Law schools and the profession are now recognising the need to provide soft skills and life skills alongside the analytical aspects of university study.[16]

In supporting a model in which law students learn both legal content and generic skills, this article expects to contribute to the discussions of oral communication skills development in the increasingly interactive law

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[12] Sotiriadou, P.; Logan, D.; Daly, A.; & Guest, R. (2020). The role of authentic assessment to preserve academic integrity and promote skill development and employability. Studies in Higher Education, 45:11, 2132-2148, DOI: 10.1080/03075079.2019.1582015.

[13] Biggs, J.; & Tang, C. (2011). *Teaching for quality learning at university*: what the student does (4th edition), McGraw-Hill/Society for Research into Higher Education/Open University Press.

[14] Steel, A.; Laurens, J.; & Huggins, A. (2013). Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning. In *UNSW Law Journal 36*(1) 30-55.

[15] Tiersma, P. (2000). Legal Language. The University of Chicago Press, 1.

[16] Steel, A. (2022). Re-Thinking Assessment in Law. In Gibbon, H.; Golder, B.; Lixinski, L.; Nehme, M.; & Vines, P. (eds.). Critical Legal Education as a Subversive Activity. Routledge, 80.

classroom, particularly in view of the possible impact of genAI on classroom and assessment practices in the coming years. To do so, in the following section, we discuss the materials and methods used in this study. We begin by introducing the theoretical framework of higher education pedagogy, with a particular focus on the roles of spoken language as a pedagogical tool for learning and as a learning outcome. We explain the document selection process, detailing the criteria and methodology for selecting the documents for analysis, which include higher education frameworks, accreditation documents, and university-level outcomes. Our analysis particularly emphasises how policy frames the role of spoken language and the possible impacts to pedagogical practices. In the findings section, we present the key findings of the document analysis and discuss their implications for future research in legal education.

Materials and Methods

Higher education pedagogical research emphasises the importance of spoken language in the increasingly interactive university classroom, where students actively participate in discussions, group work, presentations, and role play activities.[17] The scholarship on spoken language in the classroom adopts various terminologies such as *classroom interaction*[18], *dialogic education*[19], and *dialogic pedagogy*[20]. In this contested field, some elements appear to be unanimous in supporting students' oral communication skills development, among which we highlight the importance of appropriate class size, timely feedback, appropriate class activities, and clear rubrics.[21] It is our view that two research-based perspectives on students' spoken language in the classroom are

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[17] Heron, M., Baker, S., Gravett, K.; Doherty, C.; Kettle, M.; May, L., & Caukill, E. (2011). Talking the talk: oracy demands in first year university assessment tasks. Assessment in Education: Principles, Policy & Practice, 18(1), 27–39.

[18] Dippold & Heron (n 1).

[19] Wegerif, R. (2013). Dialogic: Education on the internet age. Routledge; Heron, M. (2023). Dialogic dimensions of seminars in higher education. In Thwaite, A., Simpson, A., & Jones, P. (Eds.). *Dialogic Pedagogy: Discourse in Contexts from Pre-school to University.* Routledge.

[20] Thwaite et al. (n 1); Matusov, E. (2009). Journey into dialogic pedagogy. Nova Science Publishers.

[21] Doherty, C.; Kettle, M.; May, L., & Caukill, E. (2011). Talking the talk: oracy demands in first year university assessment tasks. Assessment in Education: Principles, Policy & Practice, 18(1), 27–39.

particularly relevant to the higher education context and serve as the lenses through which we analyse policy: dialogic teaching and oracy education.

Dialogic teaching, as proposed by Robin Alexander, emphasises the importance of classroom interactions that facilitate student engagement, dialogue, and the co-construction of academic knowledge[22]. This approach views spoken language as a tool for fostering deeper understanding and critical thinking through meaningful exchanges. This is how we see spoken language as a pedagogical tool. The second perspective, oracy education, focuses on the explicit development of students' spoken language skills. Oracy education involves the systematic teaching of listening and speaking skills, ensuring that students are equipped to articulate their thoughts clearly and effectively engage in academic discourse (Heron, 2019).[23] We agree with Heron and colleagues that the Oracy Skills Framework (OSF) could be helpful to university educators in understanding spoken language skills in terms of their physical, linguistic, cognitive, and social and emotional dimensions.[24] This article aims to examine how spoken language is addressed in official regulatory documents concerning these two perspectives, which we argue should be incorporated into references to oral communication skills.

This analysis is relevant as in recent decades higher education scholars have criticised 'employability agendas', which have influenced policies and teaching practices in higher education globally.[25] One example of the university sector aiming to meet the needs of the market is visible in graduate outcomes lists, that is, the statement of attributes a university graduate is expected to possess upon graduation. As a result, the development of graduates' communication skills has gained increasing attention in national and university educational policies. These skills are included in universities' publicised lists of 'core abilities and values a university community agrees all its graduates should develop as a result of successfully completing their

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[22] Alexander, R. (2020). *A Dialogic Teaching Companion*. Routledge. For discussions of dialogic teaching in the university classroom, see also Heron, M., & Wason, H. (2023). Developing dialogic stance through professional development workshops. Innovations in Education and Teaching International, 1–13.

[23] Heron (n 1).

[24] ibid.

[25] Hora et al. (n 7); Tomlinson, M., & Anderson, V. (2021). Employers and graduates: the mediating role of signals and capitals. Journal of Higher Education Policy and Management, 43(4), 384-399, DOI: 10.1080/1360080X.2020.1833126; Rees, S. (2019). Re-imagining employability: an ontology of employability best practice in higher education institutions. Teaching in Higher Education, 1-16.

university studies' (Barrie et al., 2009, p. 1).[26] These desired graduate attributes or outcomes are based on the idea that individuals who complete their education should possess a set of valuable skills and attributes that are sought after in the labour market.[27]

To examine the Australian context, at the macro policy level we analysed the official national discourse on oral communication and spoken language within two key national policy frameworks influencing Australian higher education: the 2013 Australian Qualifications Framework (AQF), and the 2021 Higher Education Standards Framework (Threshold Standards). Then, we considered legal accreditation by analysing the Legal Profession Uniform Admission Rules (henceforth *Admission Rules* or *accreditation requirements*), which define the standards for accrediting Australian law programs. Finally, we examine to what extent university documents, such as program learning outcomes, align with the macro-level discourse and national requirements on oral communication skills. This article's main findings reflect how the employability discourse is present in – and pedagogical concerns absent from – official policy regulating program and course outcomes of university classrooms.

Findings

According to the 2003 Higher Education Support Act, higher education in Australia is regulated by the federal government. Australia's main regulatory body is the Tertiary Education Quality and Standards Agency (TEQSA).[28] TEQSA is responsible for ensuring the quality of all higher education providers in Australia, including public and private universities. It does this through one legal instrument and one educational framework. These are respectively the

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[26] Barrie, S., Hughes, C., & Smith, C. (2009). The National Graduate Attributes Project: integration and Assessment of Graduate Attributes in Curriculum. Australian Learning and Teaching Council, 1.

[27] Yorke, M., & Knight, P. T. (2006). Embedding employability into the curriculum. The Higher Education Academy.

[28] Australian Government. (2011). Tertiary Education Quality and Standards Agency Act 2011. Available at: <https://www.legislation.gov.au/C2011A00073/latest/text>, accessed on August 24, 2024.

2021 Higher Education Standards Framework[29] and the Australian Qualification Framework[30].

From a legal perspective, TEQSA's role is to register higher education providers and ensure their courses meet the Higher Education Standards Framework 2021 (also referred to as Threshold Standards)[31]. Prepared by the national Department of Education, Skills and Employment, the Threshold Standards stipulate that the learning outcomes of all Australian university qualifications must be consistent with their field and course level, ranging from bachelor to doctoral degrees (Item 1.4.1, Threshold Standards)[32]. In its Learning Outcomes and Assessment section, item 1.4.2., the terms 'skills' and 'generic skills' appear for the first time in the Australian higher education regulatory environment. It determines that:

2. The specified learning outcomes for each course of study encompass *discipline-related and generic outcomes*, including:

    a. *specific knowledge and skills* and their application that characterise the field(s) of education or disciplines involved

    b. *generic skills* and their application in the context of the field(s) of education or disciplines involved

    c. *knowledge and skills required for employment and further study* related to the course of study, including those required to be eligible to seek registration to practise where applicable, and

    d. skills in independent and critical thinking suitable for life-long learning.

3. *Methods of assessment* are consistent with the learning outcomes being assessed, *are capable of confirming that all specified learning outcomes are achieved* and that grades awarded reflect the level of student attainment.[33]

The differentiation between 'specific knowledge and skills' and 'generic skills' is noteworthy. The section begins by distinguishing discipline-related and generic outcomes, which are respectively characterised in items a. and b, so that 'specific knowledge and skills' refers to discipline-related outcomes, while 'generic skills' pertain to generic outcomes. Interestingly, item c. states that

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[29] Australian Government. (2021). Threshold Standards 2021. Available at: <https://www.legislation.gov.au/F2021L00488/latest/text>, accessed on August 24, 2024.
[30] Australian Qualifications Framework Council (n 34) 50.
[31] Australian Government (n 29).
[32] ibid 6.
[33] ibid 6, our emphasis.

such learning outcomes also include knowledge and skills required for registration (or accreditation), which are analysed below. In this first legal reference to skills development, however, there is a lack of determination as to whether Australia's higher education standards include communication skills as part of 'specific knowledge and skills' or 'generic skills'. Whatever the case, it is stressed that the application of such knowledge and skills will take into account the field of education or discipline involved. Also, it is prescribed that assessment methods will be consistent with the learning outcomes and capable of assessing them.

In supplementing the possible meanings of the Threshold Standards, the analysis of another national framework is helpful to better understand the role of oral communication in the Australian higher education context. The Australian Qualification Framework (AQF) wording supports the view that communication skills are to be recognised in the general understanding of skills. This national framework includes overarching specifications for regulated tertiary qualifications in Australia. According to the AQF:

> skills refer to what a graduate can do. They can be described in terms of kinds and complexity and include cognitive skills, technical skills, *communication skills*, creative skills, interpersonal skills and generic skills.[34]

This reference explicitly states that communication skills form part of the broad 'skills' category. However, from this description, one piece of information remains missing, and one uncertainty arises. First, it is not explicitly addressed whether *oral* communication skills are part of 'communication skills'. Second, it is unclear whether or to what extent communication skills are distinct from generic skills.

These distinctions are particularly relevant as TEQSA regulates Australian higher education providers – and ensures their quality – based on the AQF. TEQSA assesses whether the design of course components supports the achievement of overall learning outcomes and aligns with the AQF expected learning outcomes. This article deals with Bachelor of Law degree courses located at AQF's Level 7. The first reference to communication skills in the Level 7 criteria for a bachelor's degree establishes that:

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[34] Australian Qualifications Framework (2013, 2nd edition) 50, our emphasis.

> Graduates at this level will have well-developed cognitive, technical and communication skills to select and apply methods and technologies to: analyse and evaluate information to complete a range of activities; analyse, generate and transmit solutions to unpredictable and sometimes complex problems; transmit knowledge, skills and ideas to others.[35]

This criterion is framed as attributes graduates will possess at the end of their course of studies. Also, it specifies that graduates are expected to have 'well-developed … communication skills' to accomplish a variety of activities, including information analysis, problem-solving, and transmission of knowledge, skills and ideas. This is an instrumental qualification according to which communication skills are expected to serve specific purposes. It is still unclear from official documents whether 'oral' communication skills are included in these descriptions, although it seems probable to assume they are. In noting the 'attributes' language, in which such skills are described in the future tense, as skills graduates 'will have well-developed', the focus in the Australian Qualification Framework is on the result or product of communication skills, not in the process of developing them.

Further in the document, the AQF Level 7 qualification type descriptor provides more elements to understand the relationship between knowledge and skills in bachelor's degrees. While using language similar to the general level descriptor, the AQF Level 7 qualification type descriptor states that, in terms of knowledge:

> Graduates of a Bachelor Degree will have a broad and coherent body of knowledge, with depth in the underlying principles and concepts in one or more disciplines as a basis for independent lifelong learning.[36]

It also states that:

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[35] ibid 47.
[36] ibid 48.

> Graduates of a Bachelor Degree will have: (…)
> communication skills to present a clear, coherent and
> independent exposition of knowledge and ideas.[37]

In the two extracts, there is a clear distinction between knowledge and skills. On the one hand, the AQF highlights that communication skills will serve the purpose of presenting knowledge and ideas, with knowledge representing the 'underlying principles and concepts' of a discipline. This is the second explicit articulation of the performative purpose of communication skills, which are to be expected in relation to the demonstration of 'clear, coherent and independent exposition of knowledge' (principles and concepts) and ideas. This is relevant in that these skills are not expected to be an end in itself, but rather to serve disciplinary purposes, to serve the purpose of displaying knowledge acquired. These disciplinary purposes are analysed in the following sections in the context of the law accreditation requirements.

A clear discursive distinction emerges between discipline-specific knowledge and generic skills in the analysis of the above regulatory documents. This distinction is stressed by the Threshold Standards requirement that learning outcomes must include 'knowledge and skills required for employment and further study related to the course of study, including those required to be eligible to seek registration to practise where applicable'[38]. At this regulatory level, through the analysis of the AQF and the Threshold Standards, it is unclear what is included under the 'communication skills' umbrella term. While it could be assumed that communication skills encompass verbal language, its specificities are unclear. This abstract characterisation of communication skills has prompted the current examination of law accreditation requirements to understand how spoken communication is framed in our field.

Although each state in the Australian federation is responsible for accrediting law courses and admitting graduates to the legal profession, they follow the 2015 Australian Uniform Admission Rules requirements, set by set by the Law Admissions Consultative Committee, an advisory body established by the Australian Council of Chief Justices. The Admission Rules require three years of full-time study of law to complete the specified academic qualifications. Before we turn to the specified academic qualifications in the Admission Rules,

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[37] ibid 48.
[38] Australian Government. (2021). Threshold Standards 2021 6.

a list of legal topics known as Priestley 11, it is important to bear in mind that the Legal Profession Admission Rules have two objectives:

> (a) specifying the academic qualifications prerequisite and practical legal training prerequisite for admission, (b) accrediting law courses and providers of practical legal training.[39]

These objectives present a crucial distinction between accrediting law programs (or 'courses') and accrediting providers of practical legal training. To them apply, respectively, academic qualification prerequisites (Schedule 1) and practical legal training prerequisites (Schedule 2).

The Admission Rules identify the academic qualifications necessary for completing a legal tertiary academic course in Australia, which include the equivalent of at least three years of full-time study in a law course accredited by the Board. The Admission Rules' Schedule 1 lists the 11 prescribed areas of knowledge in which an applicant for admission must have demonstrated a satisfactory level of understanding and competence in. These are: Criminal Law and Procedure, Torts, Contracts, Property, Equity, Company Law, Administrative Law, Federal and State Constitutional Law, Civil Dispute Resolution, Evidence, and Ethics and Professional Responsibility. In other words, Schedule 1 determines the content that law programs must cover as part of their degrees. These 11 compulsory subject areas are known as the Priestley 11.

Notably, Schedule 1 exclusively lists academic areas of knowledge without any mention of skills. According to the Admission Rules, students must 'acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1' (Clause 5(1)(c)). The Priestley 11, with its doctrinal content areas arising out of a 1982 report on legal education, has been criticised for its traditional, textbook-based approach to legal teaching and learning.[40] It disregards the expectations set in the 2021 Higher Education Standards Framework and the 2015 Australian Qualification Framework. The absence of any mention of skills in Schedule 1 highlights a

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[39] Law Admissions Consultative Committee. (2015). Legal Profession Uniform Admission Rules.
[40] Galloway, K.; Castan, M; & Steel, A. (2022). Hacking the Priestleys. In Gibbon, H.; Golder, B.; Lixinski, L.; Nehme, M.; & Vines, P. (eds.). *Critical Legal Education as a Subversive Activity*. Routledge, p. 127-146.

sole focus on knowledge and content, neglecting the development of other generic or specific skills.

As stated in its two main objectives, however, the Admission Rules determine the prerequisites not only for accrediting law courses, but also for accrediting providers of practical legal training. Practical legal training is a compulsory prerequisite for admission to the legal profession, after students have graduated (or in the document language, obtained 'academic qualifications'). While elements of practical legal training may be integrated into the law program at some universities, often practical legal training is done as a postgraduate program, or by supervised workplace experience that complies with the Admission Rules.[41]

What follows, therefore, is that legal training is not part of law degrees (AQF Level 7), but is further training conducted after graduation, corresponding to an AQF Level 8, or postgraduate degree. The Admission Rules make it explicit that practical legal training 'is a level appropriate for at least a Level 8 Qualification under the Australian Qualifications Framework' (Schedule 2, Part 3, Clause 7(2)). Level 8 corresponds to Bachelor Honours Degree qualifications of the Australian Qualifications Framework, which is a level higher than Bachelor Degree.[42]

Interestingly, in the prerequisites for legal training, the Admission Rules mention not only knowledge but also skills. While this article is interested in the Level 7 accreditation requirements, the skills referred to in relation to legal training are relevant to the discussion about law graduates' oral communication skills. As mentioned, there is a clear differentiation between academic qualifications and practical legal training prerequisites in the law Admission Rules. These prerequisites are outlined in Schedule 1 and Schedule 2, respectively.

While Schedule 1 only lists the Priestley 11, or the eleven legal disciplines that must be taught to undergraduate students, Schedule 2, which applies solely to practical legal training, meaning training that takes place after graduation from an accredited institution, lists many 'skills'. According to Australian law accreditation requirements, therefore, it is as if graduates are expected to learn

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[41] Hawkins, M. (2008). Questions and Answers: Australian Legal Education and Bar Admissions. In *The Bar Examiner*, February 2008.
[42] Australian Qualifications Framework Council (n 34) 50

legal *content* during their undergraduate studies and other *skills* during their practical legal training. Graduates are, therefore, expected to perform these skills or 'competencies' during the practical legal training required for entry-level admission into the profession. While these rules do not apply to the accreditation of law courses, a brief overview of these skills is provided below, as they relate to the graduate attributes and program outcomes analysed in the following sections of this article.

Interestingly, Schedule 2 of the Admission Rules outlines the oral communication skills expected from law graduates after completing practical legal training. Entry-level lawyers must 'demonstrate competency in 10 areas before being considered eligible for admission and, subsequently, being licensed to hold themselves out to the community as legal practitioners'.[43] Schedule 2 lists a set of values and practical skills, divided into three main sections. It lists three Compulsory Practice Areas (Civil Litigation Practice, Commercial and Corporate Practice, and Property Law Practice), eight Optional Practice Areas (such as Administrative Law Practice and Criminal Law Practice), and four skills. These are the four skills included in Schedule 2: Lawyer's Skills, Problem Solving, Work Management and Business Skills, and Trust and Office Accountings. Under Lawyer's Skills, the Admission Rules present details of what 'oral communication skills' are expected from entry level lawyers. Each skill and practice area has specific competency standards composed of descriptors, elements and performance criteria. The performance criteria are presented as a checklist, indicating tasks that a graduate must have completed during practical legal training. The performance criteria make explicit references to communication 15 times. However, it is not always clear whether the document refers to written or oral communication, or both. Focus will now be directed towards the lawyer's skills, as they contain the most explicit references to oral communication.

The elements and performance criteria for Lawyer's Skills indicate that 'an entry-level lawyer should be able to demonstrate *oral communication*, legal interviewing, advocacy, negotiation, dispute resolution, letter-writing and drafting skills'[44]. This section also provides detailed performance criteria for

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[43] ibid., and see Hawkins (n 41) at p. 14.
[44] Law Admissions Consultative Committee. (2015). Legal Profession Uniform Admission Rules, our emphasis.

three elements: communicating effectively, cross-cultural awareness, and interviewing clients, which are presented below in Table 1:

Table 1: Lawyer's Skills Elements & Performance Criteria

Element	Performance criteria
	The lawyer has competently:
1 Communicating effectively	• identified the purpose of a *proposed communication*, the most effective way of making it, and the content of the *proposed communication*. • *presented* thoughts, advice, and submissions *in a logical, clear, succinct and persuasive manner*, having regard to the circumstances and the person or forum to whom they are made.
2 Cross-cultural awareness	• identified and appropriately dealt with *verbal and non-verbal aspects of cross-cultural communication*. • taken any follow-up action in accordance with good practice. • demonstrated awareness of *difficulties of communication* attributable to cultural differences; their possible effect on a client's dealings with lawyers, the police, courts, government and legal agencies; and the desirability of *cross-cultural communications* training for all lawyers.
3 Interviewing clients	• prepared for the interview properly, having regard to relevant information available before the interview and all known, relevant circumstances. • conducted, participated in conducting or observed, the interview, using *communication techniques* appropriate to both the client and the context. • ensured that the client and lawyer have both obtained all the information which they wanted from the interview in a timely, effective and efficient way, having regard to the circumstances. • ensured that the lawyer and client left the interview with a common understanding of the lawyer's instructions (if any) and any future action that the lawyer or client is respectively to take.

Entry-level lawyers are expected to develop communication strategies tailored to the identified 'purpose, content and most effective approach' of the communication. The Admission Rules for entry-level lawyers highlight the importance of thoughts, advice and submissions to be presented 'in a logical, clear, succinct and persuasive manner'. The element of cross-cultural awareness requires entry-level lawyers to not only identify verbal and non-verbal aspects of communication, but also to demonstrate an understanding of the communication challenges that arise from cultural differences; an understanding that can be strengthened through desirable 'cross-cultural communications training for all lawyers'. Finally, in the interviewing clients element, there is reference to 'communication techniques', although no further detailed description of them are provided. In the explanatory notes for this section, it reads that in the 'Performance criteria for Element 2', 'difficulties of communication attributable to cultural differences includes difficulties of communication encountered by Indigenous people'. Notably, nowhere in Schedule 2 there is any explicit mention of listening or its role in communicative situations.

While the performance criteria outlined in Schedule 2 encompass spoken language, it is important to reiterate that these criteria specifically address the practical legal training competencies expected from entry-level lawyers and do not apply to university graduates. Furthermore, these criteria are not mandatory for accreditation. Our analysis has shown that, although communicative competencies are not explicitly listed as part of mandatory prerequisites for undergraduate programs, they are incorporated into Program Learning Outcomes (PLO) frameworks, which we will examine in the following section.

Despite the regulatory focus on legal knowledge or content in undergraduate accreditation requirements, Australian law schools appear to be moving beyond the limited scope of the Priestley 11 mandatory areas of knowledge. For instance, integrating skills and attributes into law Program Learning Outcomes (PLO) has been a common practice in Australia. Indeed, most Australian law schools have adopted the Law Threshold Learning Outcomes (TLOs).[45] This alternative framework 'set out levels of competence, skill and achievement that all graduates should have on graduation'[46]. While the Priestley 11 framework solely focuses on legal content, the TLOs prioritise the

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[45] See Steel (n 16).
[46] ibid 84.

skills and attributes necessary for a lawyer, with legal content being just one of the six outcomes, while legal doctrinal knowledge is implicit in all of them.

To address the ambiguity between broader higher education standards and the more limited requirements for legal education accreditation, we will provide a brief analysis of the PLOs at our institution. Below is the tenth program learning outcome for the Bachelor of Laws (LLB).

> PLO10: Demonstrate professional *communication skills*, for example: *Oral communication in adversarial and non-adversarial contexts*; Written communication in various formats and styles; *General presentation capacities*; Legal presentation capacities; *Empathetic listening skills*; Cross-cultural communication, including with Indigenous people.

The decision to investigate these PLOs stems from their broad impact on educational practices and the critical role that oral communication appears to play in legal education. It is notable that these program learning outcomes are closely related to employers' expectations, Australian higher education policy, and the explicit communication skills present in Schedule 2 prerequisites to entry into the legal profession.

There appears to be a mismatch between legal accreditation textbook-based, traditional knowledge and what law schools are trying to instil in their students.[47] The Bachelor of Laws PLO consistently emphasises the importance of oral communication, reflecting Schedule 2 requirements for entry-level lawyers. However, the broad nature of these outcomes poses challenges in understanding how students are expected to acquire these skills in practical terms, especially in the context of already busy curricular requirements. Despite these intentions, there appears to be a persistent gap between textbook-based, traditional legal education and the professional competencies that law schools seek to develop as per Priestley 11 requirements.[48] This disconnect may raise questions about whether current pedagogical approaches are adequately bridging theoretical knowledge with practical, profession-oriented skills, as discussed below.

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[47] ibid; see also Galloway et al. (n 40).
[48] ibid.

The articulation of PLO10 in the law program demonstrates a clear alignment with the expectations of employers and the evolving demands outlined in Australian higher education policy. The focus on 'professional communication skills' goes beyond classroom learning, embedding real-world application in adversarial and non-adversarial contexts, as well as cross-cultural scenarios. This mirrors the communication competencies required for legal professionals, as outlined in Admission Rules' Schedule 2, which emphasises the importance of both oral and written communication. The question remains of how to align this specific type of skill development, which takes class time, teacher training and specific resources, with a traditional curriculum which must also be covered thoroughly.

The PLO10's focus on presentation capacities and empathetic listening indicates a shift toward the development of graduates as communicators, while the traditional, textbook-based legal education may overlook these nuanced skills. The specific mention of listening skills, particularly with an emphasis on empathy, aligns closely with the Oracy Skills Framework (OSF), which stresses 'listening actively and responding appropriately' as key to social and emotional competence[49]. We claim these skills are also invaluable to law graduates in the context of mediation and alternative dispute resolution. Additionally, the focus on cross-cultural communication, especially with Indigenous peoples in the Australian context, further reinforces the importance of contextual, culturally responsive practice. These skills appear to be essential for legal professionals but are not explicitly foregrounded in traditional law curricula. This suggests that while law programs are attempting to build communication skills that meet professional and legal accreditation standards, more robust integration of these competencies into the curriculum is necessary to bridge the gap between policy and practice.

In the example above, PLO10 provides a possible framework for the development of oral communication abilities. These outcomes acknowledge the significance of oral communication in different legal contexts, recognising it as a critical competency for professional practice. However, the framing of these skills within the PLOs is broad and somewhat generic, which may present

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[49] Oracy Skills Glossary (OSG). (n/d). Available at: <https://oracycambridge.org/wp-content/uploads/2020/06/The-Oracy-Skills-Framework-and-Glossary.pdf>, accessed on August 24, 2024. See also: Mercer, N., Warwick, P., & Ahmed, A. (2017). An oracy assessment toolkit: Linking research and development in the assessment of students' spoken language skills at age 11-12. *Learning and Instruction*, *48*, 51-60.

challenges in translating these outcomes into practical learning experiences in the classroom. In practice, the development of oral communication skills may occur through activities such as moot court exercises, role-playing activities, and class presentations and discussions[50]. However, the general nature of the PLO leaves much to the discretion of educators, who must design course elements that effectively foster these skills.

In practice, the integration of oral communication skills within the PLO may lead to the suggestion of their relevance to assessment practices, such as vivas or oral examinations[51]. These assessment types offer a mechanism for evaluating students' ability to engage in real-time legal reasoning and argumentation[52]. However, by incorporating interactive oral examinations, instructors need to directly assess students' oral communication skills, ensuring that they are not only capable of producing written work but also capable of articulating and defending their legal reasoning verbally.

Discussion

Unlike the regulatory standards for tertiary education (AQF and Threshold Standards), the Australian law accreditation requirements do not include any provisions for communication skills – or any generic skills, for that matter. Law schools are accredited based on their coverage of the Priestley 11, the 11 traditional doctrinal content areas arising out of a 1982 report on legal education.[53] Despite the deep societal and technological changes of the last four decades, law accreditation requirements in Australia currently disregards the expectations set in the 2021 Higher Education Standards Framework and in the 2015 Australian Qualification Framework 2015, which regulate the higher education system. The absence of any mention of skills in Schedule 1, which determines what is to be taught by law programs, highlights a sole focus on knowledge and content, neglecting the development of other generic or specific skills. One way of overcoming this gap would be to include Schedule 2 as an accreditation requirement for all law schools. This would require substantial curricular reform and appropriate assessment strategies to evaluate skills that have traditionally been overlooked by traditional assessment models.

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[50] Dippold & Heron (n 1).
[51] Lodge (n 11); Sotiriadou et al. (n 12).
[52] Steel (n 16).
[53] Galloway et al. (n 40).

In examining our institution's PLO, which explicitly refers to oral communication skills, we reflect on its applicability to classroom practices and their potential impact on educators' approaches to developing students' oral communication skills in relation to spoken language seen as a tool for learning as well as a learning outcome (respectively, dialogic teaching and oracy education). Although these concepts are still underexplored in higher education research[54], there seems to be unanimous support for embedding these elements into the curriculum, which could be accomplished through the incorporation of some elements, such as having appropriate class size for skills development; integration of oral communication skills and content knowledge; timely feedback; appropriate class activities; and clear rubrics. Smaller class sizes can facilitate more personalised instruction, allowing students ample opportunities to engage in oral communication within a supportive environment. The use of clear rubrics is essential, as they provide transparent criteria for evaluating oral communication skills, thereby guiding students in their preparation and performance. Also, ongoing formative feedback throughout the courses may enable students to continuously improve their oral communication abilities.

In discussing implications for assessment practices, particularly in the context of viva or oral examinations as an alternative to written assessments compromised by the use of genAI tools, oral examinations have been suggested for evaluating students' understanding and ability to communicate complex ideas.[55] However, to effectively achieve these outcomes, assessment methods that specifically evaluate oral communication, such as presentations, moot courts, and viva exams need to ensure that these skills are carefully developed and assessed with specific class time dedicated to their development, in which case clear rubrics and ongoing feedback are again indispensable.

The findings reveal both alignments and gaps across regulatory policy and higher education pedagogical recommendations, which highlights the need for further micro-level research into classroom interactions in law schools. This area has received limited attention in legal research. While policy outlines the objectives for students' spoken language, micro-level research could provide insights into the realisation of such attributes or outcomes. Such studies would enhance our understanding of spoken language's role and impact in legal education and inform pedagogical practices. Official documents, such as governmental policy regulating higher education and university graduate

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[54] Dippold & Heron, 2021 (n 1); Heron et al., 2023 (n 1).
[55] Lodge (n 11); Sotiriadou et al. (n 12).

attributes and course outlines explicitly address the importance of these oral communication skills, but it is unclear how these skills are developed or enhanced in higher education. While disciplinary knowledge and generic outcomes are present in university documents, little is known about how oral communication is enacted in practice and in relation to disciplinary knowledge.[56]

Finally, we argue that if the Council of Law Deans' 2020 Australian Law School Standards[57] are to be widely adopted in Australia, both aspects of oral communication skills – as a tool for learning and as a learning outcome – must be considered by educators and stakeholders, in order for oral communication skills to be effectively embedded in the curriculum. The underdetermined nature of policy related to communication skills may lead to an uncertainty of what is expected from educators and students. While program and course learning outcomes may be helpful, more research is needed in the mechanisms of law classes to assess whether law courses are achieving their tertiary education expectations in relation to generic skills, and particularly to oral communication skills.

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[56] Heron et al., 2023 (n 1).
[57] Council of Law Deans (n 3).