



LAWS11065 Constitutional Law

Term 3 - 2021

Profile information current as at 05/05/2024 04:15 pm

All details in this unit profile for LAWS11065 have been officially approved by CQUniversity and represent a learning partnership between the University and you (our student). The information will not be changed unless absolutely necessary and any change will be clearly indicated by an approved correction included in the profile.

General Information

Overview

LAWS11065 Constitutional law examines the organization, source and limits of Commonwealth and State powers, and the relations between the three branches of government at Commonwealth and State levels. In this unit you will examine State and Commonwealth constitutions and constitutional systems; the constitution and operation of the legislature, executive and judiciary; the relationship between the different institutions of government and the separation of powers; and the relationship between the different levels of government. This unit meets the LPAB requirements for federal and state constitutional law.

Details

Career Level: *Undergraduate*

Unit Level: *Level 1*

Credit Points: 6

Student Contribution Band: 10

Fraction of Full-Time Student Load: 0.125

Pre-requisites or Co-requisites

Co-requisite LAWS11057

Important note: Students enrolled in a subsequent unit who failed their pre-requisite unit, should drop the subsequent unit before the census date or within 10 working days of Fail grade notification. Students who do not drop the unit in this timeframe cannot later drop the unit without academic and financial liability. See details in the [Assessment Policy and Procedure \(Higher Education Coursework\)](#).

Offerings For Term 3 - 2021

- Online

Attendance Requirements

All on-campus students are expected to attend scheduled classes – in some units, these classes are identified as a mandatory (pass/fail) component and attendance is compulsory. International students, on a student visa, must maintain a full time study load and meet both attendance and academic progress requirements in each study period (satisfactory attendance for International students is defined as maintaining at least an 80% attendance record).

Website

[This unit has a website, within the Moodle system, which is available two weeks before the start of term. It is important that you visit your Moodle site throughout the term. Please visit Moodle for more information.](#)

Class and Assessment Overview

Recommended Student Time Commitment

Each 6-credit Undergraduate unit at CQUniversity requires an overall time commitment of an average of 12.5 hours of study per week, making a total of 150 hours for the unit.

Class Timetable

[Regional Campuses](#)

Bundaberg, Cairns, Emerald, Gladstone, Mackay, Rockhampton, Townsville

[Metropolitan Campuses](#)

Adelaide, Brisbane, Melbourne, Perth, Sydney

Assessment Overview

1. **Written Assessment**

Weighting: 40%

2. **Group Work**

Weighting: 10%

3. **Take Home Exam**

Weighting: 50%

Assessment Grading

This is a graded unit: your overall grade will be calculated from the marks or grades for each assessment task, based on the relative weightings shown in the table above. You must obtain an overall mark for the unit of at least 50%, or an overall grade of 'pass' in order to pass the unit. If any 'pass/fail' tasks are shown in the table above they must also be completed successfully ('pass' grade). You must also meet any minimum mark requirements specified for a particular assessment task, as detailed in the 'assessment task' section (note that in some instances, the minimum mark for a task may be greater than 50%). Consult the [University's Grades and Results Policy](#) for more details of interim results and final grades.

CQUniversity Policies

All University policies are available on the [CQUniversity Policy site](#).

You may wish to view these policies:

- Grades and Results Policy
- Assessment Policy and Procedure (Higher Education Coursework)
- Review of Grade Procedure
- Student Academic Integrity Policy and Procedure
- Monitoring Academic Progress (MAP) Policy and Procedure – Domestic Students
- Monitoring Academic Progress (MAP) Policy and Procedure – International Students
- Student Refund and Credit Balance Policy and Procedure
- Student Feedback – Compliments and Complaints Policy and Procedure
- Information and Communications Technology Acceptable Use Policy and Procedure

This list is not an exhaustive list of all University policies. The full list of University policies are available on the [CQUniversity Policy site](#).

Unit Learning Outcomes

On successful completion of this unit, you will be able to:

1. Explain and discuss key constitutional law principles such as Australian federalism, the constitution and operation of the legislature, executive and judiciary, the relationship between the different institutions of government and the doctrine of separation of powers, constitutionalism, rule of law, parliamentary sovereignty, the relationship between the different levels of government, and responsible and representative government
2. Research case law and demonstrate critical thinking in applying case law, and key provisions and legal principles of the Australian Commonwealth Constitution, State constitutions, and statutes, to constitutional law issues and problems
3. Critically examine, evaluate, and explain the theoretical and actual operation and relationship of the Australian legislature, executive, and judiciary, at both federal and state levels.

Alignment of Learning Outcomes, Assessment and Graduate Attributes



Alignment of Assessment Tasks to Learning Outcomes

Assessment Tasks	Learning Outcomes		
	1	2	3
1 - Written Assessment - 40%	•	•	•
2 - Group Work - 10%	•	•	•
3 - Take Home Exam - 50%	•		•

Alignment of Graduate Attributes to Learning Outcomes

Graduate Attributes	Learning Outcomes		
	1	2	3
1 - Communication	•	•	•
2 - Problem Solving	•	•	•
3 - Critical Thinking	•	•	•
4 - Information Literacy		•	•
5 - Team Work			
6 - Information Technology Competence			
7 - Cross Cultural Competence		•	
8 - Ethical practice			

Graduate Attributes	Learning Outcomes		
	1	2	3
9 - Social Innovation			
10 - Aboriginal and Torres Strait Islander Cultures			

Alignment of Assessment Tasks to Graduate Attributes

Assessment Tasks	Graduate Attributes									
	1	2	3	4	5	6	7	8	9	10
1 - Written Assessment - 40%	•	•	•	•						
2 - Group Work - 10%	•	•	•	•				•		
3 - Take Home Exam - 50%	•	•	•				•	•		

Textbooks and Resources

Textbooks

LAWS11065

Prescribed

Australian Constitutional Law: Foundations and Theory

3rd revised edition (2012)

Authors: Ratnapala, Suri & Crowe, Jonathan

Oxford University Press

South Melbourne , VIC , Australia

ISBN: 9780195519037

Binding: Paperback

[View textbooks at the CQUniversity Bookshop](#)

IT Resources

You will need access to the following IT resources:

- CQUniversity Student Email
- Internet
- Unit Website (Moodle)

Referencing Style

All submissions for this unit must use the referencing style: [Australian Guide to Legal Citation, 4th ed](#)
For further information, see the Assessment Tasks.

Teaching Contacts

Constance Lee Unit Coordinator

c.y.lee@cqu.edu.au

Schedule

Week 1 - 08 Nov 2021

Module/Topic	Chapter	Events and Submissions/Topic
Introduction to Australian Constitutional Law: Constitutions and Constitutionalism We begin by looking at the structure of the unit, what we plan to cover, assessment activities and engagement with each other. In terms of content, students are introduced to the Australian constitutional system, covering both Commonwealth and state constitutions. More broadly, we will examine what a constitution is and the philosophical ideal of constitutional law, namely, constitutionalism. We will discuss the central tenets of constitutionalism and its rationale.	Ratnapala and Crowe, <i>Australian Constitutional Law and Theory: Foundations and Theory</i> (3rd Ed) (Oxford University Press, 2012) Chapters 1 and 2. Constance Y Lee, "Calvinist Natural Law and Constitutionalism" (2014) <i>Australian Journal of Legal Philosophy</i> 39(1) 1.	Tutorial 1

Week 2 - 15 Nov 2021

Module/Topic	Chapter	Events and Submissions/Topic
Interpreting Commonwealth Powers In the second week, we turn to examine the Australian constitutional framework. This builds on knowledge you accrued in Introduction to Law and Statutory Interpretation. We begin by revisiting the tripartite separation of powers (horizontal) before delving into the constitutional reality of this separation. We go on to explore the constitutional development of the separation between the three arms of government to examine the practical realities of this ideal.	Ratnapala and Crowe, <i>Australian Constitutional Law and Theory: Foundations and Theory</i> (3rd Ed) (Oxford University Press, 2012) Chapters 6 and 10.	Tutorial 2

Week 3 - 22 Nov 2021

Module/Topic	Chapter	Events and Submissions/Topic
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Legislative Power I: Economic Powers

In keeping with the structure of the Constitutional text of Australia, we turn to examine the legislative Heads of Powers (HOP's).

HOP's are located in s 51 of the Constitution are concurrent powers which are common to Commonwealth and State Parliaments. However, powers of the states to make laws in respect to these subject matters are severely restricted due to other constitutional provisions.

Section 51(xx) has become a massive source of power for the Commonwealth to regulate economic activity.

Ratnapala and Crowe, *Australian Constitutional Law and Theory: Foundations and Theory* (3rd Ed) (Oxford University Press, 2012) Chapters 12-13.

Tutorial 3

Week 4 - 29 Nov 2021

Module/Topic	Chapter	Events and Submissions/Topic
Legislative Power II: International Powers Like the rest of s 51 HOP's, s 51(xxix) is a legislative power held concurrently by the Commonwealth and the states. This particular HOP allows the Commonwealth Parliament to regulate 'external affairs' which has been broadly interpreted by the HC as encompassing: geographical power; treaty power and international relations power. Unlike external affairs power, the defence power outlined in section 51(vi) allows the Commonwealth Parliament "to make laws for the peace, order and good government of the Commonwealth" with respect to national defence. This an elastic power which applies more broadly in wartime than in peacetime. The federal executive has control over day-to-day operations regarding military and defence.	Ratnapala and Crowe, <i>Australian Constitutional Law and Theory: Foundations and Theory</i> (3rd Ed) (Oxford University Press, 2012) Chapter 14.	Tutorial 4

Study Break - 06 Dec 2021

Module/Topic	Chapter	Events and Submissions/Topic
Break Week		No tutorial

Week 5 - 13 Dec 2021

Module/Topic	Chapter	Events and Submissions/Topic
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Conflict of Laws

The Constitution of Australia provides processes for resolution where there is a conflict between Commonwealth and State laws.

This week, we will discuss the three (3) main ways in which the conflict between Commonwealth and State governments regarding the concurrent powers listed in s 51 may arise.

Ratnapala and Crowe, *Australian Constitutional Law and Theory: Foundations and Theory* (3rd Ed) (Oxford University Press, 2012) Chapter 11 (especially 263-273).

Tutorial 5

Case Note Due: Week 5 Friday (17 Dec 2021) 10:00 am AEST

As the Commonwealth law must be within power in order to be valid, this is the first limb to be overcome. If this is the case, s 109 provides a mechanism for resolving the conflict. Under s 109, the Commonwealth law prevails to the extent of inconsistency.

Week 6 - 20 Dec 2021

Module/Topic	Chapter	Events and Submissions/Topic
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Intergovernmental Immunities

The relationship between Commonwealth and State governments is a crucial feature of Australia's constitutional system. If we refer to the tripartite separation of powers between legislative, executive and judicial powers; we can refer to this as a vertical separation of powers embodied in the constitutional ideal of federalism.

Due to the balance of powers between Commonwealth and state governments, which can be fragile, the Australian constitutional system provides for resolution in case of conflict between Commonwealth and state statutes (as seen last week).

Ratnapala and Crowe, *Australian Constitutional Law and Theory: Foundations and Theory* (3rd Ed) (Oxford University Press, 2012) 285-291.

Tutorial 6

In addition to a process for resolution of conflict, the Constitution also provides for **immunities** that the Commonwealth and state governments possess against interference with one another's executive decisions.

Study Break - 27 Dec 2021

Module/Topic	Chapter	Events and Submissions/Topic
Break Week		No tutorial

Week 7 - 03 Jan 2022

Module/Topic	Chapter	Events and Submissions/Topic
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Executive Power

The second power in the horizontal separation of powers is executive power. Executive power is vested in the Queen and is exercisable by the Governor-General as the Queen's representative pursuant to s 61. By virtue of s 61, Australia remains a constitutional monarchy with the Queen as our formal Head of State. The convention of responsible government underlies this section of the Constitution of Australia which holds that the Governor General acts on the advice of the Ministers who are, in turn, responsible to the Parliament.

Ratnapala and Crowe, *Australian Constitutional Law and Theory: Foundations and Theory* (3rd Ed) (Oxford University Press, 2012) Chapter 3.

Tutorial 7

We will discuss the practical application of s 61 and its commitment to the constitutional ideal of responsible government in this lecture.

Week 8 - 10 Jan 2022

Module/Topic	Chapter	Events and Submissions/Topic
Judicial Power of the Commonwealth This week, we look at the third of the horizontal heads of power, namely, judicial power. The constitutional power of the courts to decide 'matters' is contained in Chapter III (ss 75-78), which is the reason they are commonly referred to as Chapter III courts. The High Court has set out several key elements required for a power to be deemed 'judicial.' We will consider the key elements of the definition of judicial power. This week is also a great opportunity to contemplate the role of the judiciary on a normative level. It is the arm of government which is tasked with guarding the basic rights of citizens. This nature of this role sheds light on what the judiciary needs in order to properly fulfil its constitutional function.	Ratnapala and Crowe, <i>Australian Constitutional Law and Theory: Foundations and Theory</i> (3rd Ed) (Oxford University Press, 2012) Chapters 7-9.	Tutorial 8

Week 9 - 17 Jan 2022

Module/Topic	Chapter	Events and Submissions/Topic
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Judicial Power of the States

Further to last week's examination of the nature of the judiciary and the constitutional protections it enjoys at the Commonwealth level, we go on to consider judicial independence at the state level.

Traditionally, the separation of powers was loosely upheld at the state level and did not strictly apply by virtue of State constitutional texts. State parliaments have plenary powers including the power to override their own constitutions.

However, in recent years, the protections of judicial independence in states have seen as necessary extensions of Commonwealth judicial power. Instead of deriving their power from state constitutions, several High Court decisions have found that the doctrine of 'institutional integrity' warrants constitutional safeguards for judicial independence at state level.

Ratnapala and Crowe, *Australian Constitutional Law and Theory: Foundations and Theory* (3rd Ed) (Oxford University Press, 2012) 132-147.

Constance Y Lee, "Constitutional Silences and the Doctrine of Institutional Integrity" Chapter 9 in Ananian-Welsh and Crowe, *Judicial Independence in Australia* (Federation Press, 2016).

Tutorial 9

Constitutional Law Reflective Blog
Due: Week 9 Friday (21 Jan 2022)
10:00 am AEST

Week 10 - 24 Jan 2022

Module/Topic	Chapter	Events and Submissions/Topic
Constitutional Rights I: Express Rights Constitutional rights (unlike statutory or common law rights) cannot be overridden by either the legislature or the judiciary. These rights often take the form of immunities for individuals or groups of individuals against government action. There are two types of rights conferred by the Constitution: express rights and implied rights. Express rights refer to those constitutional rights which are explicitly stated in the constitutional text. This week, we will consider the nature of constitutional rights (more broadly) as well as aspects and examples of express constitutional rights . We will discuss case law relating to s 51(xxxi): The right to compensation for any acquisition of property by the Commonwealth, s 92 The right to freedom of interstate trade, commerce and intercourse and s116: the express right to freedom of religion, <i>inter alia</i> .	Ratnapala and Crowe, <i>Australian Constitutional Law and Theory: Foundations and Theory</i> (3rd Ed) (Oxford University Press, 2012) Chapter 15.	Tutorial 10

Week 11 - 31 Jan 2022

Module/Topic	Chapter	Events and Submissions/Topic
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Constitutional Rights II: Implied Rights

This week, we turn our focus to **implied constitutional rights**. These are rights at the High Court has found are implied or incidental to the express provisions of the Constitution. We will consider the rationality of 'necessary implications' - those implications which are necessary for a constitutional provision to be effective and 'contextual implications' - those implications that play a key role by virtue of context.

Ratnapala and Crowe, *Australian Constitutional Law and Theory: Foundations and Theory* (3rd Ed) (Oxford University Press, 2012) Chapter 15.

Tutorial 11

We will examine the most significant implied constitutional right which is the qualified freedom of political communication as upheld by the High Court in the seminal 1992 cases: *Nationwide News v Wills* and *ACTV v Commonwealth*.

Week 12 - 07 Feb 2022

Module/Topic	Chapter	Events and Submissions/Topic
Constitutional Change In the last week, we examine the various ways for amending the Constitution. Section 128 provides a two step process for amending the constitution which is a relatively rigorous amendment process which has only been successfully utilised a handful of times. We will examine one of these instances, where the so-called 'races power' was changed by the 1967 Referendum to delete discriminatory reference to Indigenous people. Another way to effect constitutional change may be through judicial interpretation. As constitutional provisions are often vague, courts will inevitably be required to clarify their scope in applying the provisions to particular cases. Over time, the process of interpretation brings about important constitutional changes. This role of the judiciary to shape constitutional meaning is often controversial. We will end the week by discussing the 'Manner and Form' limitations on constitutional change at state level.	<p>Ratnapala and Crowe, <i>Australian Constitutional Law and Theory: Foundations and Theory</i> (3rd Ed) (Oxford University Press, 2012) Chapter 16.</p> <p>George Williams, "Removing Racism from Australia's Constitutional DNA" (2012) <i>Alternative Law Journal</i> 37, 151-155.</p>	<p>Tutorial 12</p>

Exam Week - 14 Feb 2022

Module/Topic	Chapter	Events and Submissions/Topic
Exam Week		

Assessment Tasks

1 Case Note

Assessment Type

Written Assessment

Task Description

This is a written assessment on the case set in the task sheet. The Assessment should refer to both cases and commentary on Constitutional law, and show a critical understanding of the relevant law, including connections to social, political and/or theoretical perspectives. You may draw on current political or historical events in the research paper.

Expected length is 2,500 words. Any material in excess of the word count will not be considered by the marker.

The task sheet is available on Moodle.

Assessment Due Date

Week 5 Friday (17 Dec 2021) 10:00 am AEST

Online, via Moodle

Return Date to Students

Feedback on Moodle and/or Gradebook approximately 2 weeks from submission.

Weighting

40%

Assessment Criteria

This paper will be assessed on:

Depth and breadth of research

Critical thinking skills

Writing skills

Coherence and structure of discussion/argument

Further details of assessment, including a rubric, will be provided on Moodle.

Referencing Style

- [Australian Guide to Legal Citation, 4th ed](#)

Submission

Online

Submission Instructions

Link on Moodle

Learning Outcomes Assessed

- Explain and discuss key constitutional law principles such as Australian federalism, the constitution and operation of the legislature, executive and judiciary, the relationship between the different institutions of government and the doctrine of separation of powers, constitutionalism, rule of law, parliamentary sovereignty, the relationship between the different levels of government, and responsible and representative government
- Research case law and demonstrate critical thinking in applying case law, and key provisions and legal principles of the Australian Commonwealth Constitution, State constitutions, and statutes, to constitutional law issues and problems
- Critically examine, evaluate, and explain the theoretical and actual operation and relationship of the Australian legislature, executive, and judiciary, at both federal and state levels.

Graduate Attributes

- Communication
- Problem Solving
- Critical Thinking
- Information Literacy

2 Constitutional Law Reflective Blog

Assessment Type

Group Work

Task Description

To complete this assessment, you will need to find another student to work with. A Moodle forum will be set up to facilitate this process. The latter part of this assessment allows you to display your ability to work with another student

in a team, and students should take the initiative to organise the pairings themselves. You will be placed into a pair by week 4 if you have not found someone to work with, so ensure that you inform your coordinator if you have found a partner.

A topic has been set in the Task Sheet for Assessment 2 on Moodle. Please read the instructions carefully.

There are two parts to this task. The first is for you (as individual students) to write a reflective blog on the constitutional issue outlined in the task sheet and based on the popular culture stimulus provided. The second part involves marking your partner's reflective blog and giving them feedback. Both your reflective blog and the grading of your partner's work must be submitted together in a single document but on separate pages. Please ensure that you submit in Word Format. Submit the feedback you prepared for the other student to Moodle. Ensure that your name and that of your partner appears on the document so it can be cross referenced by the unit coordinator. It should be clear to me who has graded the paper and who is the partner.

You will receive an individual grade for your work.

Further details on Moodle.

Assessment Due Date

Week 9 Friday (21 Jan 2022) 10:00 am AEST

Online (via Moodle)

Return Date to Students

Feedback will be supplied on Moodle and/or Gradebook approximately 2 weeks from submission.

Weighting

10%

Assessment Criteria

Collegiality, ability to assist others with their learning.

Writing and communication skills - write in an appropriate style.

Critical thinking abilities.

Further details of assessment details will be posted to Moodle.

Referencing Style

- [Australian Guide to Legal Citation, 4th ed](#)

Submission

Online

Submission Instructions

Online (to Moodle), and emailed to team members

Learning Outcomes Assessed

- Explain and discuss key constitutional law principles such as Australian federalism, the constitution and operation of the legislature, executive and judiciary, the relationship between the different institutions of government and the doctrine of separation of powers, constitutionalism, rule of law, parliamentary sovereignty, the relationship between the different levels of government, and responsible and representative government
- Research case law and demonstrate critical thinking in applying case law, and key provisions and legal principles of the Australian Commonwealth Constitution, State constitutions, and statutes, to constitutional law issues and problems
- Critically examine, evaluate, and explain the theoretical and actual operation and relationship of the Australian legislature, executive, and judiciary, at both federal and state levels.

Graduate Attributes

- Communication
- Problem Solving
- Critical Thinking
- Information Literacy
- Ethical practice

3 Take Home Paper

Assessment Type

Take Home Exam

Task Description

A take home paper will be released to students during exam week.

This paper will be similar to past invigilated exams, but will be sat at home within a limited timeframe and then submitted via Moodle.

More details about this assessment will be supplied on Moodle.

Assessment Due Date

During the University examination period (TBA)

Return Date to Students

Grades will be released on Certification of Grades date.

Weighting

50%

Assessment Criteria

The take-home examination will be set to take place in or around the standard examination week at the end of term. You will be advised of the exact date and time once the timetable for all law exams is published (towards the end of the teaching weeks).

The paper will be available during a limited time period (to be specified) and must be submitted (online via Moodle as an MS Word document) before this time period expires. Like normal examinations, no extensions of time are allowed for a take-home examination.

The examination will include problem questions and will be designed to assess your learning of the unit as a whole.

More details will be supplied via Moodle.

Referencing Style

- [Australian Guide to Legal Citation, 4th ed](#)

Submission

Online

Learning Outcomes Assessed

- Explain and discuss key constitutional law principles such as Australian federalism, the constitution and operation of the legislature, executive and judiciary, the relationship between the different institutions of government and the doctrine of separation of powers, constitutionalism, rule of law, parliamentary sovereignty, the relationship between the different levels of government, and responsible and representative government
- Critically examine, evaluate, and explain the theoretical and actual operation and relationship of the Australian legislature, executive, and judiciary, at both federal and state levels.

Graduate Attributes

- Communication
- Problem Solving
- Critical Thinking
- Cross Cultural Competence
- Ethical practice

Academic Integrity Statement

As a CQUniversity student you are expected to act honestly in all aspects of your academic work.

Any assessable work undertaken or submitted for review or assessment must be your own work. Assessable work is any type of work you do to meet the assessment requirements in the unit, including draft work submitted for review and feedback and final work to be assessed.

When you use the ideas, words or data of others in your assessment, you must thoroughly and clearly acknowledge the source of this information by using the correct referencing style for your unit. Using others' work without proper acknowledgement may be considered a form of intellectual dishonesty.

Participating honestly, respectfully, responsibly, and fairly in your university study ensures the CQUniversity qualification you earn will be valued as a true indication of your individual academic achievement and will continue to receive the respect and recognition it deserves.

As a student, you are responsible for reading and following CQUniversity's policies, including the [Student Academic Integrity Policy and Procedure](#). This policy sets out CQUniversity's expectations of you to act with integrity, examples of academic integrity breaches to avoid, the processes used to address alleged breaches of academic integrity, and potential penalties.

What is a breach of academic integrity?

A breach of academic integrity includes but is not limited to plagiarism, self-plagiarism, collusion, cheating, contract cheating, and academic misconduct. The Student Academic Integrity Policy and Procedure defines what these terms mean and gives examples.

Why is academic integrity important?

A breach of academic integrity may result in one or more penalties, including suspension or even expulsion from the University. It can also have negative implications for student visas and future enrolment at CQUniversity or elsewhere. Students who engage in contract cheating also risk being blackmailed by contract cheating services.

Where can I get assistance?

For academic advice and guidance, the [Academic Learning Centre \(ALC\)](#) can support you in becoming confident in completing assessments with integrity and of high standard.

What can you do to act with integrity?



Be Honest

If your assessment task is done by someone else, it would be dishonest of you to claim it as your own



Seek Help

If you are not sure about how to cite or reference in essays, reports etc, then seek help from your lecturer, the library or the Academic Learning Centre (ALC)



Produce Original Work

Originality comes from your ability to read widely, think critically, and apply your gained knowledge to address a question or problem