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# EQUITY, DIVERSITY AND STUDENT ENGAGEMENT IN A LAW SCHOOL — A CASE STUDY APPROACH

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## I INTRODUCTION

Tertiary institutions in recent years have been characterised by increasing diversity in their student populations.<sup>1</sup> The Commonwealth Government has actively encouraged this increasing diversity.<sup>2</sup> At the same time, universities have been attempting to respond to new issues in assessing student learning. Various factors, not least of these being larger and increasingly diverse student populations, have converged to challenge accepted ideas and practice in higher education assessment. James, McInnis and Devlin highlight the changing nature of students' 'backgrounds, abilities, expectations and engagement with the learning process' and the resulting imperative for

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<sup>1</sup> See Elizabeth Handsley, Gary Davis and Mark Israel, 'Law School Lemonade — Or, Can You Turn External Pressures Into Educational Advantages?' (2005) 14(1) *Griffith Law Review* 108, 111.

<sup>2</sup> For example the Commonwealth Government actively encourages overseas students to study in Australia. See Austrade <[http://www.austrade.gov.au/overseas/layout/0,0\\_S3-1\\_CUSTXID002-2\\_-3\\_-4\\_-5\\_-6\\_-7\\_00.html](http://www.austrade.gov.au/overseas/layout/0,0_S3-1_CUSTXID002-2_-3_-4_-5_-6_-7_00.html)> at 1 November 2006. Note also that the Commonwealth Government has stated its commitment to better participation and success of Indigenous students at tertiary level. See *Achieving Equitable and Appropriate Outcomes: Indigenous Australians in Higher Education* (2005) <[http://www.backingaustraliasfuture.gov.au/publications/achieving\\_equitable\\_outcomes/1.htm](http://www.backingaustraliasfuture.gov.au/publications/achieving_equitable_outcomes/1.htm)> at 1 November 2006. See also Anthony O'Donnell, 'Thinking "Culture" in Legal Education' (1996) 7(2) *Legal Education Review* 135. This encouragement of increasing diversity is reflected globally. See Cruz Reynoso and Cory Amron, 'Diversity in Legal Education: A Broader View, a Deeper Commitment' (2002) 53(4) *Journal of Legal Education* 491.

universities to recognize and respond to these changes.<sup>3</sup> Guidelines for responding to these changes are often framed for particular student groups. For example, the Department of Education, Training and Youth Affairs (DETYA)<sup>4</sup> commissioned a report that looked at ‘the important, but contentious issue of alternative assessment for Aboriginal and Torres Strait Islander people studying at the tertiary level’.<sup>5</sup>

Griffith Law School undertook a project from 2003–2005 to review assessment policies and practices to ensure that they were taking into account difficulties experienced by students from equity target groups. These groups consisted of: (1) Indigenous students; (2) students with disabilities, especially those with hidden disabilities such as mental health or learning difficulties;<sup>6</sup> (3) students from low socio-economic (SES) backgrounds; and (4) international students.<sup>7</sup> The Griffith Law School, in line with the mission statement of Griffith University as a whole, is committed to ensuring that staff and students can achieve success without being held back by barriers arising from unequal treatment or indirectly discriminatory practices.

<sup>3</sup> Richard James, ‘A New Era in Assessing Student Learning’ in Richard James, Craig McInnis, and Marcia Devlin (eds), *Assessing Learning in Australian Universities* (2002) <<http://www.cshe.unimelb.edu.au/assessinglearning/01/index.html>> at 1 November 2006. We note that the term ‘engagement’ has been used in different ways. We have used ‘engagement’ in terms of forming the identity as a law student. Another study has used the term in a narrower and more academic sense. See Patrick O’Day and George Kuh, ‘Assessing What Matters in Law School: The Law School Survey of Student Engagement’ (2006) 81 *Indiana Law Journal* 401. That study refers to engagement as ‘the combination of time and energy students devote to educationally sound activities and the policies and practices that law schools use to induce students to take part in such activities’ (Ibid, 405). The O’Day and Kuh approach talks throughout about how law schools can add value to students’ education whereas we suggest that the law school environment can either hinder or assist student engagement, which will then affect how students learn and perform.

<sup>4</sup> Now known as the Department of Education, Science and Training.

<sup>5</sup> Peter Christensen and Ian Lilley, *The Road Forward? Alternative Assessment for Aboriginal and Torres Strait Islander Students at the Tertiary Level* (1997) Department of Employment, Training, and Youth Affairs <[http://www.dest.gov.au/sectors/higher\\_education/publications\\_resources/profiles/archives/the\\_road\\_forward.htm](http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/archives/the_road_forward.htm)> at 1 November 2006.

<sup>6</sup> Judith Waterfield and Bob West, *SENDA Compliance in Higher Education: An Audit and Guidance Tool for Accessible Practice Within the Framework of Teaching and Learning* (2002) (A HEFCE funded Project Improving Provision for Disabled Students 1999–2002). This document includes an appendix setting out and defining hidden disabilities.

<sup>7</sup> Six equity target groups have been defined by DETYA and prioritised by universities. See Commonwealth Department Education Science and Training <[http://www.backingaustraliasfuture.gov.au/fact\\_sheets/10.htm#b](http://www.backingaustraliasfuture.gov.au/fact_sheets/10.htm#b)> at 5 November 2006. The first three groups listed in the present project (Indigenous, Low SES, Disabilities) are rated as high priority by Griffith (priority is established through consideration of the University’s performance against previously determined goals). Griffith’s fourth equity target group, with medium priority, is People from Non-English Speaking Backgrounds. This project chose to focus specifically on International students within this target group, because a number of students in this group had already advised the Law School of a range of issues of concern.

While change at the institutional level requires a planned approach aligned with core University values, the specifics of change are often implemented at the faculty or school level.<sup>8</sup>

To this end, the Law School undertook a strategic planning exercise that provided stimulus for the project reported here. The Griffith Law School Equity Sub-Committee is committed to implementing strategies and objectives that meet the University's equity goals,<sup>9</sup> and further the Law School's values of diversity and inclusiveness, social justice and collegiality — values which are important for all law schools. The project reflects this commitment. The project involved collection of qualitative data through consultation with academic staff, students from equity groups, and other key stakeholders such as the University's Student Equity Services. Semi-structured interviews were utilised, rather than surveys or questionnaires, as interviews allowed students to express their experiences in a manner that written surveys would not permit. The data were then analysed using a 'bottom-up' rather than a 'top-down' approach, as discussed later in the Methodology section, allowing findings to be generated from the data, without categories being imposed and assumed at the outset. Data from the interviews were then collated into case studies, together with recommended outcomes based upon the findings. The case studies were disseminated internally within the Law School, and were later made available to other elements within the University.<sup>10</sup>

The interviews revealed that in discussing aspects of assessment, students were often framing their comments in terms of their experiences of engagement with the Law School. Student engagement has had a high profile in the United States for some time;<sup>11</sup> its increasing profile in Australia in recent years can be linked to the growing importance of performance indicators for tertiary institutions, particularly as they relate to persistence and retention. Definitions of engagement commonly refer to identifying as part of a group with a common purpose (commitment to learning) and

<sup>8</sup> Craig McInnis, 'Renewing Policy and Practice: Frameworks for Institutional, Faculty and Department Action' in Richard James, Craig McInnis and Marcia Devlin, *Assessing Learning in Australian Universities* (2002) [1] <<http://www.cshe.unimelb.edu.au/assessinglearning/02/index.html>> at 1 November 2006.

<sup>9</sup> Griffith Law School Equity Sub-Committee Mission Statement <[http://www.griffith.edu.au/school/law/content07\\_equityhome.html](http://www.griffith.edu.au/school/law/content07_equityhome.html)> at 1 November 2006. The Law School's Equity Committee is a sub-committee of the University's Equity Committee.

<sup>10</sup> The case studies are available on the Griffith Law School Equity Website. <[http://www.griffith.edu.au/school/law/content07\\_equityassessment.html](http://www.griffith.edu.au/school/law/content07_equityassessment.html)> at 1 November 2006.

<sup>11</sup> This can be seen through the widespread use of the National Survey of Student Engagement as a tool for quality improvement. See Jim Cleary and Ivan Skaines, 'Student Engagement as a Quality Indicator at the University of Newcastle' (2005) <<http://auqa.edu.au/>> (follow links to 'Quality Frameworks', and choose 2005 proceedings) at 5 November 2006.

to an active connection to the activity.<sup>12</sup> For this project, students' experiences of engagement refers to how they formed their identity as a Law student and how closely their experiences matched their expectations. A bottom-up analysis of the data revealed (1) ways in which assessment policies and practices could be improved; (2) how engagement was perceived by students; and (3) what the Law School could do to promote student engagement (which may then impact on their perceptions of assessment practices). The findings therefore are reported in two ways. Firstly, we address the issue of assessment policies and practices and their responsiveness to student needs, and make suggestions as to how such policies and practices can be improved. Secondly, we discuss student engagement amongst the equity target groups mentioned above, and make suggestions for improvements that will assist such students in closing the gaps that prevent them from fully benefiting from their educational experiences. As discussion of these issues will demonstrate, initiatives to accommodate one particular group of students often have the additional benefit of assisting students across the board in engaging better with their law school experience.<sup>13</sup>

## II BACKGROUND

The Griffith Law School has operated from the outset with a strong social justice orientation<sup>14</sup> and actively promotes diversity and inclusiveness. Efforts to recruit students from non-traditional backgrounds<sup>15</sup> generate certain expectations among prospective and

<sup>12</sup> For a discussion of engagement as it applies generally in the higher education lexicon, see Kerri-Lee Krause, 'Engaged, Inert or Otherwise Occupied? Deconstructing the 21st Century Undergraduate Student' (Paper Presented at the James Cook University Symposium: Sharing Scholarship in Learning and Teaching: Engaging Students, Townsville, 21–22 September 2005). For an expanded discussion of engagement in a law school, see Stuart Vernon, 'Something Old, Something New: Confronting Poor Retention Among First Year Law Students by Restructuring Aspects of the Teaching and Learning Experience' (2002) 36 *Law Teacher* 44; and Sally Kift, 'Organising First Year Engagement Around Learning: Formal and Informal Curriculum Intervention' (Paper Presented at the Eighth International First Year in Higher Education Conference, Melbourne, 14–16 July 2004) <[http://www.fyhe.qut.edu.au/FYHE\\_Previous/Papers04/Sally%20Kift\\_paper.doc](http://www.fyhe.qut.edu.au/FYHE_Previous/Papers04/Sally%20Kift_paper.doc)> at 1 November 2006.

<sup>13</sup> Reynoso, above n 2, discuss the values of promoting cultural diversity at law school.

<sup>14</sup> Griffith Law School Homepage <<http://www.griffith.edu.au/school/law/>> at 1 November 2006.

<sup>15</sup> Griffith University offers a number of targeted 'recruitment' programs. For example: Uni-Reach, an outreach program involving 10 partner secondary schools identified as 'disadvantaged' in the Griffith University catchment area (see Griffith University Student Services <<http://www.griffith.edu.au/student-services/>> at 1 November 2006). The 'Tertiary Education Experience' also provides various activities to assist secondary students with disabilities in understanding what university has to offer. The Gumurrii Indigenous Support unit offers special admission to Indigenous students.

current students. These include, but are not limited to, expectations about the manner in which these students will be accommodated and supported academically and socially, and expectations about what the University will provide for them.

Like many law schools struggling to support a diverse student group, the Law School was aware, partly on the basis of a series of issues and problems brought to the attention of its Equity Subcommittee, that while its policies and practices were inclusive of some forms of difference (eg, observable physical disabilities), there were still many areas where policies and practices were falling short of inclusiveness (eg, mental illness and cultural obligations). Having recognised the need for change, the Law School proposed to address the identified weakness through the project reported on here. Other educational institutions<sup>16</sup> have developed approaches which have sought to alter radically the kind of mono-cultural structures and environments historically associated with tertiary education. The project reported on here recognises that many of the recommendations suggested will not radically change the nature of the law school or university. Rather the recommendations seek to ameliorate the unfairness that exists as a result of traditionally mono-cultural structures. In spite of the recognised limitations of this approach, this is an important project.

McInnis notes that change at the institutional level requires a planned approach that is in line with its articulated core values, ‘however, the diversity of assessment practices across fields of study means that the specifics of change need to be implemented and managed at the level of faculty and department’.<sup>17</sup> He suggests that identifying the need for change could come from:

local research [including] analysis of data from existing student feedback surveys as well as purpose-designed surveys and focus groups of student perceptions of assessment practices ... [and] surveys and focus group interviews with staff [to] reveal patterns of shared concerns that would not otherwise be known...<sup>18</sup>

For this project, focus groups comprised of small numbers of students and individual interviews were seen as the best way to elicit student and staff perceptions, considering, among other factors, the small cohorts within the aforementioned Law School equity target groups. (Even though numbers of students within these groups

<sup>16</sup> For example Batchelor Institute of Indigenous Tertiary Education near Darwin, Australia. See also Cathryn McConaghy, *Rethinking Indigenous Education: Culturalism, Colonialism and the Politics of Knowing* (2000) especially chapter 8.

<sup>17</sup> McInnis, above n 8, 1.

<sup>18</sup> McInnis, above n 8, 2.

have grown over the last decade, they still represent only a small percentage of the total cohort.)<sup>19</sup>

In order to recognize and respond to the changing nature of students, it is important not only to understand their experiences, but also to discover how their experiences at university match their expectations. Various pre- and post-graduation surveys are available that can provide universities with a comprehensive inventory of student experience, for example the College Student Expectations Questionnaire (CSXQ) and the College Student Experiences Questionnaire (CSEQ).<sup>20</sup> One limitation of quantitative instruments such as these, however, is that they elicit responses to a limited set of questions rather than allowing students to articulate their experiences. Many studies that deal with students' experiences do so in terms of cognitive gains; student integration into the academic, social and political fabric of the institution; and the 'match' between institution and student. Harrington and Lindy argue that as most of these studies are quantitative in nature, 'a new paradigm is required to elucidate and respond to the characteristics, desires, expectations, needs, and demands of today's [university] student'.<sup>21</sup> The alternative qualitative research methodology that Harrington and Lindy propose was designed to focus particularly on how universities could address the match between first year student expectations and experiences as this affected student perceptions and, ultimately, student retention.

The present study was also motivated by the desire to understand the student experience. However, student satisfaction rather than retention was the primary concern, as the participating students were generally well advanced in their tertiary studies. In a competitive tertiary environment, improving student satisfaction levels is an issue for all universities, and the Griffith Law School is no exception.<sup>22</sup> Improving conditions for equity groups is likely to have

<sup>19</sup> In 2005, the final year of this project, Indigenous students numbered 38 (2.83% of total Law cohort) compared to 13 (1.93%) in 1997. The actual number of Hidden Disability students is unknown, as this figure is incorporated in *total* Disability student numbers, which were 68 (5.07%) in 2005 compared to 12 (1.78%) in 1997. Similarly, actual numbers of NESB students cannot be determined, as this is incorporated in *total* Overseas figures. In 1997, International students numbered 5 (0.74%), all of whom were from non-English speaking countries. The number of International students grew to 36 in 2004 (3.07%), of whom 16 were from non-English speaking countries. In the fourth equity target group, Low SES, there were 119 (8.87%) in 2005 and 70 (10.39%) in 1997.

<sup>20</sup> Referred to in Charles Harrington and Ingrid Lindy, 'The Use of Reflexive Photography in the Study of the Freshman Year Experience' (1999) 1(1) *Journal of College Student Retention* 13, 15. The questionnaires are authored by C R Pace, *College Student Expectations Questionnaire* (3<sup>rd</sup> ed, 1990)

<sup>21</sup> Harrington, above n 20, 14.

<sup>22</sup> An independent 'Course Experience Questionnaire' survey of graduates compiled by the Graduate Careers Council of Australia attests to the outstanding satisfaction rates of Griffith Law School graduates, and the school is keen to maintain its ranking as Australia's leading public university Law School. See *Good Universities Guide* (2006).

a ‘snowballing effect’<sup>23</sup> and can have a positive flow-on effect for all students, so there are pragmatic as well as equitable reasons for reviewing assessment practices.<sup>24</sup> In concurrence with Harrington and Lindy, it was acknowledged that student expectations ‘have much deeper meaning and significance to students than can be obtained via traditional quantitative means’, and that it is important to enable students to articulate the issues they encounter as well as to investigate the impact of these issues.<sup>25</sup> The issues presented could then be critically examined to determine areas in which the Law School was already meeting student expectations, and areas where student expectations were not adequately addressed.

The full case studies developed from the project present particular issues in the voices of the students, discuss the issues, suggest ways to address them and include annotated bibliographies.<sup>26</sup> This article draws upon those case studies in order to illustrate the issues and concerns identified by students from equity target groups. It then proposes various measures for addressing those issues.

### III METHODOLOGY

Participants in the project included 10 academic staff of the Griffith Law School, 16 law students from equity groups, and Student Equity Services staff. The latter, as stakeholders in the project, provided accounts of issues and problems they had encountered in their work with students; Equity Services staff also made initial contact with students from some equity target groups, seeking their interest for involvement in the project.<sup>27</sup> The researcher chosen to conduct and analyse the interviews was from outside the Law School with a background in education rather than in law. This meant that she was unknown to participants, who therefore felt more certain of the confidentiality of the interviews. (Indeed, breach of confidentiality by Law School staff was one of the issues raised by Indigenous students). The researchers hoped that as a result students would be more likely to speak frankly and explain their experiences in detail, especially on matters which they felt had not been resolved successfully when brought to the attention of

<sup>23</sup> Heather Douglas discusses this in terms of Indigenous student enrolments at both Canadian and Australian universities in Heather Douglas, ‘Indigenous Australians and Legal Education: Looking to the Future’ (1996) 7(2) *Legal Education Review* 225.

<sup>24</sup> The Griffith Law School has been consistently ranked in the top three law schools in the country for the past five years, with an improved cohort and better retention rates (internal Griffith Law School statistics). See *Good Universities Guide* (2006).

<sup>25</sup> Harrington, above n 20, 14.

<sup>26</sup> Griffith Law School Equity Website, above n 10.

<sup>27</sup> All participants were required to provide informed consent according to Human Research Ethics Committee guidelines.

Law School staff members previously. It was also recognised that some students whose disabilities were hidden may want to maintain their anonymity within the Law School, while some International students may have felt constrained in making any complaints about the Law School to staff members, given that staff have considerable power over them in terms of their results, continuation of visas and so on. Further, the researcher was able to identify issues that might have gone unremarked or been taken for granted by a Law School 'insider'.

The academic staff who indicated their interest in the project were interviewed first, in order to elicit their experiences and identify their areas of concern. These interviews were unstructured and began with a general prompt asking staff to talk about their experiences and concerns with assessment practices. The interviews were transcribed and then analysed for emerging themes. Equity staff were then interviewed to elicit the general and particular concerns that had been revealed to them by students.

These areas of concern nominated by Equity staff and academics, and discussed in the remainder of this paper, were then incorporated into the interview prompts for students to ensure that matters already identified as issues of concern were covered. The student interviews were semi-structured, prompting students to talk about: their experiences in the Law School; assessment policies, practices and procedures they had encountered, including any that had been problematic; and suggestions for changes to assessment policies, practices or procedures.

Fourteen students from across the four equity target groups<sup>28</sup> were interviewed in person, and another two responded to the interview prompts via email. Given the diversity of students participating in this project, it was necessary to recruit them in different ways. Indigenous students were initially approached by the Law School's Indigenous support lecturer who, after speaking with the students and explaining the proposed research, then passed on to the researcher the names and contact details of students who were willing to participate. The researcher then contacted the identified students by telephone to arrange interviews. Students from low SES backgrounds were initially approached by Equity Services staff who similarly explained the proposed research and forwarded to the researcher the contact details of interested students. The manager for Student Equity Services initiated contact with students with a disability; in this case interested students then contacted the researcher by phone or email and interviews were arranged. International students were advised of the research by flyers and through electronic notice board notices on subject homepages. The flyer explained the nature of the proposed

<sup>28</sup> The students were from both Griffith Law School campuses — Nathan and Gold Coast.

research and asked interested students to contact the researcher, who then arranged interviews.

Interviews were conducted on campus.<sup>29</sup> Most of the interviews were on an individual basis; two interviews were conducted as small focus groups with two students in each. Interviews were audiotaped, transcribed, and notes were made of emerging themes.

The areas of concern were identified within individual interviews by taking a ‘bottom-up’ approach to the data; that is, by looking closely at what was talked about by students and working upwards into categories from this, rather than determining what categories might or should be in the data and then looking for instances in the interviews. Areas of concern were then identified within equity groups, then across equity groups. These were then amalgamated into case studies, depicting information about the specific experiences and dilemmas of students from each equity target group. (The researchers recognize that while findings from such a small sample size may not represent the whole equity target group, they illuminate the issues present within those groups nonetheless.) This way of presenting the data was chosen to make the accounts accessible to teaching staff, as case studies in the voices of students could convey authenticity and so encourage staff to read, relate to, recognize and reflect on predicaments they may have encountered already, or prepare them for situations they would be likely to face in their teaching. Care was taken to ensure anonymity: any material used from interviews in case studies for circulation to staff or in wider publication of results was modified to ensure that the students could not be identified (by using pseudonyms, changing the gender in reporting, making particular statements into general ones, disguising course identifying information and campus and so on).<sup>30</sup> The four case studies, along with a discussion of the particular issues they raise, are presented below. This is followed by a discussion of the issues common to all equity target groups and proposed recommendations for improving practice.

<sup>29</sup> There was one exception, where the student chose to meet at a more convenient site closer to home.

<sup>30</sup> In only one case was there the possibility of a student being identified; this student was sent a copy of the case study and then gave agreement for the material to be used.

## *A Indigenous Students*

### *1 Case Study*

Law is a really racist environment to be in. The lecturers always seem surprised to find that the student body is as conservative as I'm saying it is but they are also supportive when issues are brought to their attention. The Law School may have more blatant problems, but they're also the only ones addressing them properly — it's the only school where they go to such an extent to try to make Indigenous students comfortable and to try to redress all the complaints.

Because aspects of the curriculum can be so confronting or so personal for Indigenous students, I've got into heaps of debates with other students and staff during the semester. The content is one issue, and then assessment of it is another. Sometimes the lecturers get it wrong, and sometimes it's in the tutorials where things come to a head. Most of the comments come from land claims and racism and whether or not people consider Aboriginal and Torres Strait Islander people are getting a fair chance both within our legal system and just within society in general. They lack the understanding of the connection between society and how it is today, and the law. This is a really confronting thing for a lot of people. I'd end up in a debate with them and they'd tell me I was being argumentative because I couldn't just let it go. A few students understand our situation, but the majority of students say, no it looks pretty fair to me!

In lectures or tutorials it can be bad enough, but it's worse in small, student-supervised work groups. Sometimes the tutorials can be just as bad if the tutor allows racist comments to go without remark. I hate working in those groups because there is always backlash, like just recently from the lecture that the Indigenous Lecturer gave. Everybody else in the group is white — there's no other black person in my group. The lecturer had made statements in that lecture that they didn't like; now that's fine if they didn't like the lecture, but don't whinge to me about it, talk to the lecturer. It felt like people were trying to make me responsible for what was said, so I hate group work because it means I have to sit there and endure crappy comments. I'll still avoid ones where they try to Indigenise the curriculum because that's where you get it, that's where I get myself into trouble and it's a really big source of emotional distress for me.

The course websites can be another source of racist comments: on the discussion page there have been racist

comments that were really hurtful. They were up there with their names and proud to say it! I don't know how the University could address it proactively because everybody's entitled to their opinion, but unless they make an executive decision to remove those comments they remain.

Theoretically and on paper, Law assessment practices are responsive to my needs but in practice, possibly no. Attendance requirements are one concern, where attendance is compulsory, but you have to attend to family obligations. Part of being a family for us is being part of a bigger family, which involves a lot more commitments, and that can mean missing attendance or being late for assignments. At Uni I was under a lot of stress and I didn't want to go to class. Now I have to come up with doctor's certificates for why I was away and I can't get them. We shouldn't need to present medical certificates if we don't turn up at tutes. Even in the workplace you usually don't need medical certificates until after three days. And why should my medical information be made available to academic staff? Sometimes it can be quite personal. It wouldn't be so bad if you could hand the certificates in to someone you didn't know, in student administration or something, and if necessary they could issue a form to give to your lecturer.

Another assessment problem is that there's not always an opportunity in exams or assignments for me to explore Indigenous aspects of an issue. I managed to bring in Indigenous land rights to a question that wouldn't seem to have it on the face of it. I work very hard to make Law policies responsive to my needs. But more guidelines could have been given so other students could see those possibilities. Perhaps it would be better to have compare and contrast assessments, inviting cross-cultural comparisons for students who wouldn't necessarily think to make those comparisons.

There could be the option to do individual assessment instead of group assessment in some cases, or oral exams. Other institutions have a variety of exam techniques, such as on your feet before a subject convenor, which would suit me because I can vocalise better than I can put it on paper. It's still the same knowledge. Exams are a bit of an issue for a lot of students. Last semester I failed one exam because of outside factors. I applied for a supplementary and I did well on it. But sups can only be recorded as pass or fail. That's not fair: there were mitigating circumstances for the first exam mark, and I knew my work, and I demonstrated that in the sup.

Another issue is the participation mark, which is pretty subjective and it disadvantages the students who don't like to speak publicly. I know in Law practice you need to speak publicly, but in 1st, 2nd, 3rd year Law you're still learning skills, and it's nice not to be penalised if you don't have those skills. And then there are cultural factors. Some Indigenous people appear to take a more subservient role; there are issues of what you are asked to say and what you are expected to respond to. Maybe the tutors need to be made aware that in some cultures, women or younger people don't feel it's appropriate to speak unless they're asked. Maybe also if a tutor goes around and asks people for their opinions, rather than outright questioning to see if you know the right answer, you can't make a mistake and then you're being invited to be part of the group.

## 2 Responding to Indigenous Students

The particular assessment issues raised by Indigenous students concern a number of matters that are sometimes in conflict. Students suggested that the relative weighting of assessment items was inappropriate, noting that they were generally too heavily weighted on written assessments, without sufficient emphasis on oral presentation. Students suggested that the questions themselves were often problematic. For example, they noted that often assessment items deal with culturally confronting issues or alternatively do not provide opportunities to bring Indigenous issues into assessment.<sup>31</sup> Generally, Indigenous participants in the research project expressed problems with peer assessment where it was utilised in the context of group projects, and with the assessment of tutorial participation. Although students suggested that they might be comfortable with oral assessment in the context of a limited audience, assessment of small group participation caused them concern. Teachers in tutorials will usually not understand the complex rules that some Indigenous people abide by in relation to when and to whom it is appropriate or necessary to speak. In white classrooms, silence is not valued in

<sup>31</sup> In other studies, Indigenous students have emphasised the importance of making the content of courses relevant. See Heather Douglas, ' "This is not Just About Me": Indigenous Students' Insights About Law School Study' (1998) 20(2) *Adelaide Law Review* 315, 328, 347 and See also Sean Brennan, et al, 'Indigenous Legal Education at UNSW' (2005) 6(8) *Indigenous Law Bulletin* 26, 28. Note however that not all commentators agree on the best approach to teaching Indigenous students, see Christine Nicholls, Vicki Crowley and Ron Watt, *Theorising Aboriginal Education: Surely Its Time to Move on?* (2004) Education Australia Online Archive (2004) <<http://edoz.com.au/educationaustralia/archive/features/abed1.html>> at 5 November 2006.

the way that it is in many Indigenous communities.<sup>32</sup> A student, who from their own perspective remains appropriately silent, may receive lower tutorial participation marks. This may impact on their final grade. The conditions of assessment also created other difficulties that often ignored the impact of the students' actual life experiences. An assessment regime that relies on attendance and is inflexible about due dates ignores the particular family and community obligations and commitments experienced by many Indigenous students.<sup>33</sup> The requirement for medical certificates was often a problem and students noted inconsistencies amongst staff in the provision of special consideration.<sup>34</sup>

Suggested improvements to assessment policies and practices include:

- Alternative assessment opportunities such as 'on your feet before a subject convenor'; oral delivery of assessment item;<sup>35</sup>
- Broader choice of exam/assignment questions in order to avoid cultural confrontation;<sup>36</sup>
- Providing guidelines for students to make cross-cultural comparisons in assessment items and providing the opportunity for students to draw on their knowledge as an Indigenous person;
- Review of the requirement for medical certificates in the context of attendance requirements;<sup>37</sup> and
- Ensuring that a full range of grades is available where students have to repeat or undertake supplementary assessment for reasons beyond their control.

### 3 *Improving Student Engagement*

Griffith University, like a number of other universities, has a published commitment to improve retention and success rates of

<sup>32</sup> See Heather McRae, et al, *Indigenous Legal Issues* (2003) 520.

<sup>33</sup> Phil Falk, 'Law School and the Indigenous Student Experience' (2005) 6(8) *Indigenous Law Bulletin* 9.

<sup>34</sup> Falk notes the poor health of many Indigenous people leading to extended obligation for students; see Phil Falk, *Ibid.* Christensen, above n 5, have discussed many of the issues involved in alternative assessment for Indigenous students, along with specific recommendations for addressing Indigenous students' tertiary assessment needs.

<sup>35</sup> These suggestions may seem surprising given that many commentators, especially in relation to evidence giving in court and police interrogations, have reported that Indigenous people often experience extreme discomfort when required to deliver information orally especially when subjected to cross-examination, see for example Michael Cooke, 'Aboriginal Evidence in the Cross-Cultural Court-Room' and Diana Eades, 'Aboriginal English on Trial: The Case for Stuart and Condren' in Diana Eades (ed), *Language in Evidence* (1995). However, Indigenous students often suggest that they would feel more able to convey their knowledge of a subject to an examiner in oral form in preference to a formal writing task such as an academic essay or exam. See also Christensen, above n 5, recommendations 11 and 12.

<sup>36</sup> Christensen, above n 5, recommendation 2.

<sup>37</sup> Falk, above n 33, 9.

Indigenous students.<sup>38</sup> As part of this commitment, most Australian universities have established Indigenous support units<sup>39</sup> to provide some of the support needed by Indigenous students. Although such support units are very important, law schools must also work to develop a positive learning environment.<sup>40</sup> The Indigenous students in this research suggested that generally where members of staff have demonstrated blatant racism it is usually addressed quickly and efficiently. While this timely response suggests a supportive environment, sometimes this has been neutralised by other issues. For example, racist comments from students, in class or on electronic noticeboards, appear to be condoned when not addressed by Law School staff.

In this context, suggestions to maximize the educational experiences of Indigenous students include the following:

- Educating staff and students on inclusiveness and racism;<sup>41</sup>
- Monitoring by staff of racist comments in class and on electronic bulletin boards and learning resources, together with the development of guidelines for usage that ensure appropriateness of postings;
- Prior to surrendering students to their own devices for purposes of small group work, initiate team building exercises to acquaint students with the means of fostering a beneficial group dynamic, and to explain objectives of the exercise; and
- Wider consultation with Indigenous staff and students about the impact of culturally confronting curriculum, and staff training to ensure that academic content is inclusive in an appropriate way.<sup>42</sup>

<sup>38</sup> Like many other Law Schools, Griffith University actively recruits Indigenous students and provides an alternative entry program. In relation to these students especially it would be unethical not to actively support their success. See Heather Douglas, 'The Participation of Indigenous Australians in Legal Education 1991–2000' (2001) 24(2) *UNSW Law Journal* 485, 493 for a discussion of alternative entry schemes at Australian universities. For the Griffith University statement see: *University Equity Strategy* (2001) Griffith University Equity Website <[www.gu.edu.au/equity/pdf/equity\\_strat\\_feb01.pdf](http://www.gu.edu.au/equity/pdf/equity_strat_feb01.pdf)> at 1 November 2006. UNSW also has a long-term commitment to this issue. See also Brennan, above n 31 which sets out the UNSW current commitment to Indigenous student success. See also Carolyn Penfold, 'Indigenous Students Perceptions of Factors Contributing to Successful Law Studies' (1996) 7(2) *Legal Education Review* 155 for a discussion of previous research about Indigenous students at UNSW Law School.

<sup>39</sup> The Griffith University Indigenous support unit is called the Gummurri Centre.

<sup>40</sup> See Brennan, above n 31, 28.

<sup>41</sup> Suggestions for educating staff and students are included as recommendations 6 and 3 respectively by Christensen, above n 5.

<sup>42</sup> A similar suggestion is included as recommendation 7a in: Christensen, above n 5.

## B *Students with a Hidden Disability*

### 1 *Case Study*

I have three issues concerning my hidden disability: small groups, medical certificates and disclosure. Small group participation is an ongoing problem in that treatment for my medical condition affects my attendance. In week 2 this semester I had surgery; I could keep up with assignments but could not participate in small groups on a weekly basis. Even though I was always able to get letters from doctors and from Disability Services, and lecturers were reasonably sympathetic, they still couldn't give marks for participation, they could only allow that I'd missed the attendance, so I just had to forego that 5 or 10%: there's no choice, and that can be the difference between grades. I find that a problem with assessment procedures, that even with very legitimate reasons for not coming there's no way of making up that mark at all. I don't think anybody with a disability is trying to get out of work or get an easy ride, and I'm not looking for people just to give me a tick for no effort, but alternative assessment would be a really fair proposal.

Getting the medical certificates is not always practical, and it shouldn't be necessary for an ongoing, chronic condition. I spend half my life at doctors' surgeries as it is. I need to take a lot of drugs, with different side effects, one of which is nausea. So some days I can't get up first thing in the morning, I'm so nauseous. Now if you've got an 8 o'clock tutorial and you wake up feeling like crap, you don't want to go and get a certificate for that. Going into surgery, whilst the anaesthetist was there smiling at me, I had a pink form on my chest asking the surgeon can you please fill this in because I've missed a tutorial, and he couldn't do it because he was scrubbed up!

Then there was another difficulty with assessment: a Law elective required weekend workshops. On one of those weekends, we had a major piece of assessment and if you weren't able to turn up on that weekend you weren't able to do the subject. It was a group thing where other students had to mark you; it wasn't something you could do differently, or at another time. I came in and did it, with stitches following surgery, on prescribed strong painkillers, because I had no choice. There was no flexibility there whatsoever. Another student wasn't able to come because she was ill, and at this stage she's failed the subject even though she had a certificate; she's awaiting the outcome of an appeal.

It's interesting, this word 'hidden'. I hadn't come across it until I got the letter from Disability Services about this project and I wasn't sure if I was in the category. I suppose I am; you can't see my medical condition, people think I'm well, most people wouldn't have a clue. I've been here four years and when I enrolled I did register with Disability Services, but I'd never been to see them, or disclosed my disability to lecturers, before this semester. I'd always managed without that, but this semester my condition worsened. Twelve years ago I was diagnosed HIV positive, but this semester I was diagnosed with bowel cancer, which takes me from HIV to full blown AIDS. I've had three lots of surgery this semester, and I've also had to deal with the change of medical status, a diagnosis that has also affected me quite a bit emotionally. I've maintained a full time load throughout it, though.

Although I was not required to disclose my condition to my lecturers, I felt obliged to. First I went to Disability Services and presented them with the documentation, and they gave me a generic letter to present to academic staff. However, I didn't think that form letter would carry any weight, particularly with lecturers who had known me for a number of years and didn't know I had a 'hidden' disability. I also didn't want lecturers thinking I was getting some unwarranted advantage — so with the generic letter I took an explicit letter from my doctor to back it up, which completely defeated the purpose. There could be a system where Disabilities Services 'flagged' people, say on a scale of seriousness from 1 to 5, with chronic illness at 5. The scaling would help lecturers to take you seriously and realise it's not frivolous, and is legitimate and requires flexibility (within reason of course), as opposed to somebody who may be a 1. If this was a standard practice, students like myself wouldn't feel compelled to disclose their condition to lecturers if they didn't want to.

Disclosure has disadvantaged me in the past. But it's the lecturers who are giving you the mark, and I wanted them to know that the condition that I've had is something which was quite relevant and did impact on my studies so reluctantly I decided to tell them I'm HIV positive, and then cop everything which comes from that from here on in. From my three lecturers I had three different reactions — one whom I scarcely knew became extremely sympathetic, you know, the puppy dog eyes; with another who was already very accommodating, it now feels different, which is an uncomfortable feeling. The third, an experienced lecturer, was exceptionally diplomatic, didn't bat an eyelid and hasn't treated me differently at all, just as though

I'd handed in a certificate saying I'd had the flu. While I don't want to go around advertising that I've got AIDS, I do think it's important that faculty staff are aware there's people with HIV doing Law and they do have certain problems and needs.

I don't disclose to other students, it scares the hell out of me telling people you interact with on a daily basis. So they just think if you're not at a lecture or tutorial, that you've slept in or you're lazy or something. Again, because it's a hidden disability, they build up a perception of you that is not necessarily accurate.

## 2 *Responding to Students With Hidden Disabilities*

Students with disabilities are a high DETYA priority equity target group<sup>43</sup> and in response Griffith University operates a multi-faceted Disabilities Support Program, available to all identified students, with support including 'alternative assessment'.<sup>44</sup> As the case study demonstrates, however, some students whose disabilities are hidden firstly may not be aware that they qualify for assistance, and secondly may be reluctant to request assistance if it involves self-identification to staff and/or fellow students. The particular assessment difficulties nominated by students who participated in this project include difficulties with long exams and problems with assessed participation. These difficulties related to concentration, dominating group members, and infringement of privacy if they are unable to complete tasks (some students in this group perceived a need or expectation to disclose their disability to other students). Compulsory assessed attendance was also sometimes a problem due to the scheduling of classes at unmanageable times.

Suggested improvements to assessment policies and practices include:

- Provision for leniency or flexibility with attendance/extensions for identified students;
- Allowing generic medical certificates for these students, or arranging for medical certificates to go to the Disabilities Officer rather than to lecturers/tutors;<sup>45</sup>
- Alternative assessment items such as an oral exam in lieu of small group participation mark; and
- Clearer provision for split exams.<sup>46</sup>

<sup>43</sup> Commonwealth Department of Education Science and Training, above n 7.

<sup>44</sup> Griffith Law School homepage, above n 14.

<sup>45</sup> The case studies recognize that there is a tendency for Law School staff to over-rely on medical certificates. It could be useful to allow a wider range of service providers to issue certificates on an annual basis, for chronic illnesses for example.

<sup>46</sup> This is a term used by one of the students, referring to the possibility of a 3-hour exam being sat in increments over a longer period.

These suggestions arise from the particular contexts of the students interviewed for this project, but as has been pointed out repeatedly, students with hidden disabilities are not a homogeneous group, and there will be no effective ‘all inclusive’ accommodations.<sup>47</sup> Rather, as a research team at the University of Kansas advises, an effective accommodation model will provide ‘a framework within which a student and disabilities specialist can work together to design the best accommodation strategies to support individual performance’.<sup>48</sup>

### 3 *Improving Student Engagement*

Some students with hidden disabilities may have been identified from the outset of their tertiary studies. In such cases, their expectations include assistance from Disabilities Officers through the Disabilities Support Program. Some may also be recipients of Equity Scholarships. While such students are likely to be aware of the support available, there are many others who may not be aware. As one student interviewed for this project lamented, ‘when you get into University there’s no equity. The fact that I have all these outside constraints means nothing’.

This gap between student expectations and institutional promises and the reality that students face has a number of implications. At the administrative level, the role of the Disabilities Officer needs to be clearly defined and communicated to students and staff alike, so that they know what matters can or should be dealt with by convenors or lecturers and what matters need referral. For example, the requirement to present detailed and specific medical certificates to teaching staff infringes privacy, whereas submission to a Disabilities Officer familiar with the student’s circumstances need not.<sup>49</sup> Closer liaison between Disabilities Officers and the Law School will also assist students to feel supported and accommodated, thus promoting their engagement.<sup>50</sup>

<sup>47</sup> There are general ‘best practices’ which can be adapted to individual circumstances, however, and a good example of this is Section 4 of Queensland University of Technology’s Students with Disabilities: *Code of Practice for Australian Tertiary Institutions* <[http://www.qut.edu.au/pubs/disabilities/national\\_code/code\\_4.html](http://www.qut.edu.au/pubs/disabilities/national_code/code_4.html) — anchor342863> at 1 November 2006.

<sup>48</sup> University of Kansas, *Ensuring Appropriate Accommodations for Students with Disabilities*, developed by: Mary Pat Gilbert, Winnie Dunn and Kathy Parker of the University of Kansas Medical Center, OT Education Department; Gwen Berry, Noelle Kurth and Daryl Mellard of the University of Kansas CRL, Division of Adult Studies <<http://das.kucr1.org/iam.html>> at 1 November 2006. To this end they have developed the Individual Accommodations Model (IAM).

<sup>49</sup> For detailed information on disclosure and confidentiality, see the staff development module developed by Noelle Kurth, *Individual Accommodations Model* <<http://das.kucr1.org/iam/modules.html>> (choose ‘Accommodations’) at 5 November 2006.

<sup>50</sup> This point is reinforced by University of Kansas, above n 48, who argue that increasing retention and completion rates for students with disabilities are not problems to be handled alone by an institution’s Disabilities Office. They have therefore developed separate materials for students, faculty, support services staff

At the teaching interface, improved communication will help to close the gap. Firstly, it is important to inform staff in general terms about the diversity of class cohorts to encourage understanding of different circumstances. Greater access to anonymous case studies such as these, and local, national and international research, will contribute to this understanding.<sup>51</sup> Individualised consultation between staff and students with disabilities to discuss issues is also recommended. While not all of the participants in this project were willing to disclose their disability to all their lecturers, neither did they want their circumstances ignored. The suggestion in the above case study, to create a register of students' level of disability to which staff could refer in cases of borderline grades, would provide a degree of privacy while still allowing problems to be addressed. Other students were keen for the opportunity to discuss their general and particular issues with staff, and interview data suggested that a support group for some students with disabilities would be a welcome forum.

### *C Students from a Low SES Background*

#### *1 Case Study*

'Kate' is a fourth year student, who was involved with the Uni-Reach program while in high school and has been able to realise her goal of enrolling in Law with the assistance of the Uni-Key program.<sup>52</sup> She now mentors other low SES background students in both of these programs.

It sometimes seems to me that there's not many poor people in Law School; there's hardly any people who went to public schools, mainly because it's like a high class profession — that's the image that's being conveyed to us. Studying at uni is expensive, but Law is much worse because of the cost of textbooks and photocopying. So the Law School can seem sort of exclusionary: unless you have the laptop and textbooks, money, car, support system, it increases your stress and therefore your ability to succeed.

and administrators, and made these readily available for download as well as presenting them as modules for staff development.

<sup>51</sup> See Queensland University of Technology, above n 47; University of Kansas, above n 48.

<sup>52</sup> All Uni-Reach students who are successful in securing a place at Griffith University are invited to take part in the Uni-Key Program < [http://www.griffith.edu.au/cgi-bin/frameit?http://www.griffith.edu.au/ua/aa/ss/equity/content\\_unikey.html](http://www.griffith.edu.au/cgi-bin/frameit?http://www.griffith.edu.au/ua/aa/ss/equity/content_unikey.html) > at 5 November 2006. Uni-Key is a support program designed to assist students make a successful transition to university study. Uni-Key offers a special Orientation Program, peer and mentor support and skill development workshops during students' first semester at university.

The cost of textbooks is huge — for example, \$180 for a set of two books for Contract Law which I used for one year and can't sell because there is a new edition! There's no real second hand textbooks available, for just that reason. I usually end up having to get a book loan. I've only just got that and got most of my reading materials so I'm probably already four weeks behind most of my cohort. Some of the books are on reserve in the library, but I don't have the time to sit in the library and read because my time is pretty tight juggling work and Uni so then you've got to get to them and photocopy them. Uni could have a scheme where they lend or hire us the textbooks for the semester. You spend a lot on photocopying. When we first started, the Law School handed out hard copies, but not any longer. Also, you have to print out legislation (because it's even more expensive to buy) because you need it in the open book exam. Then, I type up my own notes and print them (100 pages for the last exams). Maybe uni could provide more handouts, or for equity students, cheap photocopying.

When I started Law, I didn't have a computer, but then it wasn't too hard to find one on campus. Now it's always crowded and you can't be sure of getting one until late at night. After a while, I got a computer through the Equity scheme but it didn't have any programs on it, you had to take it to a computer shop and get them installed. In 2nd year, my parents bought me a computer which was great, but I couldn't afford internet access, so I still had to go on campus for that. My friend only has a really old one which doesn't have email or a printer, and that's a real struggle, and it means we can't email her when we're doing group work. The lecturers think that it's not their problem if we don't all have computers and internet access. It's annoying when lecturers don't put up the notes until an hour before the class, because then you have to find the money to print it out whereas if you're at home you can print it out for free.

I work 25 hours a week because I live out of home (there was nowhere to study there). I pay for my own car, rego and everything, which most of my friends' parents pay for. I had six months off work last year and was on Centrelink which didn't work because I was starving. Having to work is not taken into account if you have to organise tutes and stuff. You know, Thursday nights are no good for me, because if you don't work on a Thursday night you don't have any money or you might lose your job. I try to arrange work around Uni, but last semester they changed the lecture time after I'd arranged work, so I just had to skip the lecture to keep the job. With Law there's

not many choices for tutorial times, and if you miss tutorials you lose marks. Some lecturers are flexible, but most are not. You can tell which lecturers have been poor and struggling and which lecturers it doesn't really occur to. You know not to say to some lecturers, 'I have to work' because they'll say, 'Who cares?' so you tell them instead you have a clash with another subject. The need to work is a relevant factor — it needs to be considered, but not abused. If you have to work, you have to work to live. When I said that to one lecturer last year he said, 'That is not a valid excuse, you're at university, work at university full time, work around university'. Well, not everybody can do that.

Having to work interferes with other aspects of doing Law as well. I can't afford to do unpaid work experience, because (a) it is unpaid, and (b) it involves taking a month off my job, so I'd lose it. I have to work over exam time as well, as I can't afford not to, but I do make Uni a priority. Then, a lot of students are in competitions and on the student law association, which is really good for your CV. I haven't been on it at all because it takes up so much time, which is time I need for work. Besides, if you're elected to the executive, you must attend the Law Ball, and it's \$75 a ticket (and clothes on top of that). But people from the profession are at the Law Ball, so it's a good networking opportunity. What else? For moots and interviews, you have to dress up in suits. A lot of people don't have that; I certainly don't. I had an interview last week and I borrowed everything. Perhaps the Law School could hire suits for interviews.

How is it fair that someone who works 25 hours a week plus Uni is on the same par as someone who doesn't work at all, and is also able to do the extra things that look good on your CV? There are equity programs but that's on the outside of university, and there aren't many scholarships. The University needs to understand that when you get into University, there's no equity. We have student services and the Uni-Key program (I'm mentoring in it: the Uni-Key students get my advice on how to scam things, but there's no real money help; no discounts), but when you get into the nuts and bolts of the degree I'm like anyone else — and the fact that I have all these outside constraints means nothing. I'm disadvantaged because I have to work so much; one of my friends is a single mother so she's working, studying, bringing up a child and running a house; another student I know is trying to get by on a scholarship and help support his family, whereas other students have all the advantages because they live at home with all the

support that entails, financial and otherwise. There needs to be more understanding of different circumstances. The more the lecturers are aware of the make up of the Law body each year, the more understanding they will be of the need to be flexible.

## 2 Responding to Students from Low SES Backgrounds

Low SES students<sup>53</sup> in any facet of tertiary education face difficulties, financial and otherwise, arising from their circumstances. Law involves much greater expense, both direct and indirect, than other programs. Often students do not have internet access, or a suitable computer, or perhaps all recent texts and materials, which can be both more numerous and more expensive than for other degrees.

As this case study demonstrates, students from low SES backgrounds have a great need to be in paid employment to support themselves through university. It is also often the case that they work in employment sectors where they have little control over their work hours. Lack of flexibility by the university in this regard can impact on these students' attendance at lectures and tutorials, which has a twofold effect on assessment. Firstly, they will have less access to and participation in course delivery than other students, and secondly, their lack of attendance will cost them marks where attendance is weighted.

While some of the accommodations needed to support this target equity group are structural, and beyond the scope of teaching staff (for example, more flexible class scheduling or textbook hire schemes), others could be readily implemented. Suggested improvements to assessment policies and practices include:

- Creating a register of students for reference by staff in the case of borderline grades;
- Giving priority to identified students when signing up for groups;
- Provision for greater leniency or flexibility regarding tutorial attendance for identified students; and

<sup>53</sup> While low SES students are a discrete equity target group for Government as well as university purposes, it is acknowledged that low SES students are likely to be over-represented in other equity target groups as well, as this project found. See Louise Watson, et al, *Equity in the Learning Society; Rethinking Equity Strategies for Post-Compulsory Education and Training* (2000) <<http://www.ncver.edu.au/research/proj/nr8027.pdf>> at 1 November 2006 where they concluded that government equity strategies could be improved by targeting low socio-economic status (SES) students within all equity groups. See also, 'Student Diversity in the Law School: The Impact of Language, Socio-economic and Cultural Background on Students' Experience in the Law School' (Equal Opportunity Committee, Law School, University of Melbourne 1996).

- Alternative assessment items in lieu of the small group participation mark.

### 3 *Improving Student Engagement*

Assistance may be provided to enable some of these students to enter Law School,<sup>54</sup> and students admitted in this way are likely to be promised support through the transition to university<sup>55</sup> and may qualify for assistance in accessing a computer.<sup>56</sup> It is acknowledged that students from this target equity group may have had to overcome perceptions that Law School is exclusionary and not a place for them.<sup>57</sup> The difficulties encountered by these students once they get into their courses can then give rise to the disillusionment expressed in the case study above.

Recognition and acknowledgement by staff of the problems faced by this equity target group will go some way towards promoting students' engagement. Informing staff about their student cohorts will help to engender empathy for their circumstances and perhaps encourage greater flexibility when addressing their issues. It may be useful for staff to have more information and understanding of socio-economic issues. This is essentially a staff development matter, and access to these case studies will be part of that development.

## D *International Students*

### 1 *Case Study*

This account comes from a student who came from Korea in 2002 to study Law at Griffith University.

Studying Law in English was really hard at the beginning. First year I kind of struggled and I didn't know how to handle things. Writing the essay was difficult. Some of the people who read my essays were sometimes confused, they think they were not very logical. I grew up in a different culture and my thinking is based on different discourse, so there is some

<sup>54</sup> For example, the low SES students interviewed for this project were recruited through the Uni-Reach program, above n 15. Griffith University invites students contacted through this program to apply through the Special Admissions Scheme see <<http://www.griffith.edu.au/ua/aa/ss/equity/home.html>> at 1 November 2006.

<sup>55</sup> Uni-Key Program, above n 52.

<sup>56</sup> For example the Griffith University Equity Computer Scheme is a University equity initiative. Information Services (INS), Student Services and other elements and faculties of Griffith University have collaborated to provide a very limited number of superseded computers to severely financially disadvantaged students.

<sup>57</sup> See Portia Hamlar, 'Minority Tokenism in American Law Schools' (1983) 26 *Howard Law Journal* 433, 532 where she discusses the impact of this with regard to minority students in American law schools.

misunderstanding. On my first essay my lecturer thinks I don't know how to write it, there's no argument, they require some critical thinking. I go to Learning Assistance Unit, she give me some assistance but I don't think it is very helpful because I am doing very special subject. I think it's better for Law School to provide some assistance for International students. International students do need to have some background of Australian legal system to start with. Coming from Korea, we have civil codes system, we don't have a common law system so grasping the meaning of common law is very difficult! Studying Law needs a different way of study from what I studied before. In 2nd year I kind of got used to it, so it was knowing how to do it and making progress, and then 3rd year I have to do my best but I think I'm quite ready for it.

In 1st year, I should have contacted teachers more often. But I was brought up to be very independent so I thought I should work it out myself. That was my mistake. Before the exam and if I had some problems with my assignments, I talked to the lecturers and they were really helpful, understanding my situation and supporting me. First semester I passed everything with distinctions and credits, but second semester with Corporations Law which was quite heavy subject and doing that in 1st year with English problem was pretty hard. For the exam, I couldn't understand the question: it was like 2-pages long of question so it took me about an hour to figure out and then time was already up. Writing what you think and your knowledge is not difficult, I can do that. But writing some stuff I have to understand and then make progress and then write it, for example Corporations Law, that probably takes more time. So probably I need extra time for proofreading and to make sure the grammar is fine.

After that exam I didn't know how to deal with it; maybe I should have gone to professor and talk about it, like special consideration, but I didn't know that then. Later on I found out that if I have any problems with my exam or assignment then I can apply for special consideration. Course Guides mention things like special consideration, but say it is only given for exceptional cases. So unless you talk to the convenor you wouldn't know. And it doesn't make mention of International students. Maybe they don't want to present it as being special to Internationals; Australian students might then argue: 'International doesn't mean that they can not speak English — they took an exam and they passed so they are equal'. Taking an exam is just a minimum requirement to get into the

University, but studying Law is not just a language skill. You have to learn the politics, the culture, how they talk and new vocabulary because legal terminology is different. So it's a process of new culture and new environment plus the studying which is burdensome for most of the students.

I don't like that tutorials are only every other week. I'm paying up front \$7000 per semester and the contact hours I have, it's not really satisfying. It's certainly a disadvantage for me. We're using Blackboard more; I think convenors prefer electronic devices, they just read it and send it back, but it's sometimes easier to talk in person.

I like group work. I talk to other students before I start an assignment because it helps me to understand the meaning and to clarify my thinking. I can understand the literal meaning, but sometimes it's hard to understand what the lecturer wants me to do. In tutorials, because it is assessed everyone is keen to participate and talk. But for me, I had done the reading and had questions, but the idea is not fully defined and I couldn't express myself in refined manner, so it put me off so it was pretty hard to speak up. By 2nd year, I understood the legal matters better so I had more confidence to express myself and participate. I don't know how the lecturers can help us in the tutorial: I don't want to ask for special consideration because we should be the same and get our grades all the same; because I'm International I can't ask for certain time to speak. It would be wonderful if it was given! But that is too much to ask. Maybe there are too many students in the tutorials for participation. If the group that International students were in was smaller, about 10, then I would feel much better to speak up.

At the beginning of this semester there was an International students' luncheon and I was thinking wow, that's great, but I'd never had it in year one or two. If we'd had it earlier and we had some chance to speak to the Dean or the teacher in charge of the whole program then it would have been wonderful. I think it would be useful for staff to identify students. Some students, and this is International and Indigenous, have difficulty in talking to convenors but I think most Australian students are pretty assertive and when they have a problem even if it's small they just go and talk to them. Particular groups like Asians are not assertive, pretty shy, they don't know when it's appropriate to approach convenors, so considering that I think it would be great if they had a chance to talk to convenors in a special atmosphere like what I had at the beginning of semester. The lecturers might have 200 students so they don't

have opportunity to get to know them all, but an opportunity for International students to meet them would be great for them to improve their life at university academically, personally and culturally.

## 2 Responding to International Students

The difficulties faced by International<sup>58</sup> students in the Law School<sup>59</sup> include those faced by Non-English Speaking Background (NESB) students across all universities, particularly difficulties with academic writing (including written argumentative style) and difficulties expressing themselves in small groups.<sup>60</sup> Within law schools, however, these problems are exacerbated because of the specific language demands. Lack of familiarity with the Australian political and legal systems also causes problems for these students.

As with the responses suggested for other equity target groups in this project, some of the recommended accommodations are structural, and would need to come from the University. In particular, universities actively recruit International students and determine the entry language requirements. Greater support may need to be offered to them,<sup>61</sup> including assistance with academic writing. However, this assistance is likely to be of greater value if offered within programs (as opposed to being externalised, for example, generic writing clinics available through libraries), so that it is specific to the context of studying law.<sup>62</sup>

<sup>58</sup> For this project, International students were taken as a subset of the equity target group People from Non-English Speaking Backgrounds, above n 7.

<sup>59</sup> For an overview of the problems of studying in Australia faced by Asian students particularly, see Brigid Ballard and John Clanchy, *Studying in Australia* (1991). This text is useful both for staff who have had little experience teaching overseas students and for the students themselves to realise that their difficulties are neither unusual nor insurmountable. For a summary of the difficulties faced by overseas students studying Law, and a framework of practical aids in teaching Law to this cohort, see Norman Katter, 'Difficulties and Aids in the Study of Law by Overseas Students — A Cultural Perspective' (1989) *Spring Accounting Research Journal* 14.

<sup>60</sup> Students facing these problems could be assisted by directing them at the outset of their studies here to materials such as Teresa De Fazio, *Studying in Australia: A Guide for International Students* (1999); Aveline Pérez, *Studying in Australia: The Study Abroad Student's Guide to Success* (2002) <<http://www.services.unimelb.edu.au/elp/pdf/studyabroad.pdf>> at 1 November 2006.

<sup>61</sup> Julieanne Brienza, 'Academic Support Programs Find Favour with Law Students' (1998) 34(5) *Trial* 12, describes an educational movement that has been gaining esteem since the early 1990s at many American law schools.

<sup>62</sup> Colin J Beasley, 'Letter of the Law', in Glenda Crosling and Graham Webb (eds), *Supporting Student Learning: Case Studies, Experience & Practice from Higher Education* (2002) 145–153. See also, Cecil A Pearson and Colin J Beasley 'Facilitating the Learning of International Students: A Collaborative Approach' (Paper Presented at HERDSA Conference, Perth, 8–12 July 1996) <<http://www.herdsa.org.au/confs/1996/pearsonc.html>> at 1 November 2006.

Suggested improvements to assessment policies and practices include:

- Workshops to build communication skills for contributing in small groups;<sup>63</sup>
- Provide assistance with academic writing.<sup>64</sup> For law, this could be in conjunction with ELICOS (English language intensive courses for overseas students), as well as internally within the Law program;
- Greater choice of assessment instruments;
- Include assessment questions relevant to the culture/country where students will ultimately practice;
- Smaller tutorial groups to encourage participation; and
- Increase time limit for exams to allow for reading time and proofreading.

### 3 *Improving Student Engagement*

As the above section highlights, many of the problems faced by International students stem from their unfamiliarity with the Australian education system, and these problems are compounded for International students studying Law by the complexity of the subject matter, and their unfamiliarity with the Australian political and legal systems. Helping students to feel supported through these difficulties, and assuring them that the difficulties do diminish over time (for all students, as they develop a greater understanding of the legal system), will promote their engagement. For staff to be able to provide this support, however, they must also be supported to gain knowledge and experience relating to the teaching of International students.<sup>65</sup>

Teaching staff can be placed in a difficult predicament by their institution's recruitment and enrolment procedures, over which they have no control, but the consequences of which affect their classrooms profoundly. As participants in this project reported, they

<sup>63</sup> The Centre for the Study of Higher Education at Melbourne University has produced a guide to provide suggestions and advice for International students with little or no experience of the Australian university system. One of the five particular challenges it discusses is tutorial participation. *Advice for Students Unfamiliar with Assessment Practices in Australian Higher Education* <<http://www.cshe.unimelb.edu.au/assessinglearning/03/intstuds.html>> at 1 November 2006.

<sup>64</sup> See *Advice for Students Unfamiliar with Assessment Practices in Australian Higher Education*, above n 63 section on 'Unintentional Cheating' which advises students accustomed to replicating the words of experts in the field on the accepted ways of referencing others' ideas.

<sup>65</sup> Some universities provide this support in the form of workshops for staff. See, for example University of Liverpool, *International Students: Facts, figures and Support Services* < [http://dbweb.liv.ac.uk/cll/CPS\\_files/Timetable%5B5-6%5D.doc](http://dbweb.liv.ac.uk/cll/CPS_files/Timetable%5B5-6%5D.doc)> at 5 November 2006. See also the useful discussion section of Peter Renshaw and Simone Volet, 'South-East Asian Students at Australian Universities: A Reappraisal of Their Tutorial Participation and Approaches to Study' (1995) 22(2) *Australian Educational Researcher* 85.

assumed that if they passed the entrance language test (IELTS), they should be able to manage the Law program. They also expected that if they gained entry, they would receive relevant academic support if needed.

The reality is often somewhat different. Firstly, passing the IELTS test is not an indicator of ability to cope with the demands of (a) studying a different legal system, in (b) another cultural climate, in (c) another language. Secondly, lack of communication between recruiting offices and the law schools may mean that law schools are not adequately prepared for International students, and indeed Law staff may be ignorant of the fact that certain students are International. Even when staff become aware of the needs of this equity target group, time constraints usually mean that little additional assistance is offered, and only on an ad hoc basis.

There are, however, some effective ways of supporting this group of students without adding to the teaching load. Beasley notes that student engagement for all students can flow on from addressing the needs of this particular group.<sup>66</sup> As has been highlighted with other groups, and as the final paragraph in the above case study reinforces, students want to feel that their situation and problems are acknowledged. Awareness by staff of the problems faced by this equity target group will go some way towards promoting students' engagement with their education.

Attention to identified problems for this group is of particular concern because the reality is not matching what is promised. International students are fee paying students, and the University has a much more extensive set of institutional structures to recruit, track and support these students than it does for the other equity target groups in this project. Therefore, for this group, it is reasonable to expect that more could be done at the central level. The following needs to occur at the institutional and structural levels:

- Detailed and relevant pre-enrolment information available to prospective students in written materials and on relevant websites;
- Good management of the recruitment system, ensuring that students who are unable to cope with the challenges of legal study as International students are either (a) properly supported upon entry to the University in order to acquire necessary skills, or (b) not encouraged to enrol and then left to flounder;<sup>67</sup>

<sup>66</sup> Beasley, above n 62, 150 where the authors note that 'it also demonstrates that successful collaboration between subject specialists and language and learning professionals is advantageous not only for students experiencing difficulties, but also for the teaching staff. Indeed, it can lead, as it did in this case, to better curriculum design and teaching practices from which all students can benefit.'

<sup>67</sup> For a discussion of some of these issues, see Steven Freeland, Grace Li and Angus Young, 'Crossing the Language and Cultural Divide — The Challenges of Educating Asian Law Students in a Globalising World' (2004) 14(2) *Legal Education Review* 219.

- Good liaison between International Offices and Law Schools, which are most often housed in different University elements and otherwise function independently; and
- Identification of International students to Law staff (create a register or flag enrolment).

Within law schools themselves, the following recommendations would improve student engagement:

- Appoint one staff member as an International student liaison person;
- Introduce International students to key staff, and to each other, via a morning tea or lunch, early in each semester;
- Establish a staff/student support group;
- Provide an introductory course on the Australian political and legal systems; and
- Increase staff office consultation times if possible, allowing increased face-to-face consultation in lieu of electronic consultation.

#### IV COMMON ISSUES AND RECOMMENDATIONS FOR PRACTICE

A recurring theme in the student interviews across all equity target groups was the students' desire for recognition or acknowledgement by staff of their circumstances (as expressed in the final paragraph of the International case study, for example). Related to this theme was the desire expressed by students within equity target groups to meet other students in similar circumstances so they would not feel so isolated. It would appear from the case studies that this acknowledgement, alone, promotes a favourable orientation to studying in the Law School which then promotes student engagement.

The issue of assessment practices is somewhat more complex, especially as there are so many variable factors for the different groups, and as balance must be achieved 'between pedagogical considerations and catering to student demands'.<sup>68</sup> The participants in this project were not necessarily advocating that changes be made to accommodate the needs of their group exclusively, and it was often the case that they acknowledged that strategies to assist them would also assist other students, whether from equity groups or not. They were also adamant that accommodations should not lower assessment standards.<sup>69</sup>

Following is a synthesis of the recommendations made for staff for supporting students across equity target groups. The

<sup>68</sup> Adiva Sifris and Elsbeth McNeil come to this conclusion in their case studies. See Adiva Sifris and Elsbeth McNeil, 'Small Group Learning in Real Property Law' (2002) 13(2) *Legal Education Review* 189.

<sup>69</sup> Both of these concerns are in line with responses discussed by Christensen and Lilley in their surveys of Indigenous students, see Christensen, above n 5.

recommendations, premised upon discussions with both staff and students, include general suggestions to staff to endeavour to recognize student diversity and address it positively in assessment practices, as well as suggestions for specific changes to particular assessment policies and practices.

### *A Early in the Course*

Although it would be ideal if staff could learn more about the specific student cohort before each course begins, given increasing class sizes<sup>70</sup> and sizable teaching loads, this is probably not realistic for most teachers. However, where core teachers are aware or become aware of students with specific needs, clearly they should communicate with sessional staff about the importance of addressing those needs. It is probably more realistic for law schools to aim to ensure that teachers are generally aware of the issues faced by many students in equity target groups, and part of this research project is directed to this end. The case studies illuminated herein, together with other research material cited and discussed within this paper, should provide a useful resource to teachers in this regard.

A key issue for many of the students interviewed during the course of this project was that they felt that they could not talk to staff about their concerns. This can be addressed by actively promoting an open and approachable position from the outset. One way to foster this is to invite students from all equity groups, and those who feel they may be disadvantaged in any way, to identify themselves at an appropriate time. For example, the teacher in the first lecture or tutorial may make a statement such as the one that follows:

I recognise that some of you may have an illness or some sort of reason, perhaps a hidden disability or exceptional circumstances for not being able to complete an assessment item at a particular time... There are members of the Law School staff who are liaison officers for identified equity target groups ... If you would like to alert me to your circumstances or have me consider your situation, please feel free to contact me...

It is also important that students know the name and contact details of individuals they can talk to within the law school about specific equity related issues. For example, if there is an Indigenous support teacher in the law school, the teacher should advise the class early on. Not all students will have previously disclosed or identified

<sup>70</sup> Richard Johnstone and Sumitra Vigaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Higher Education Group, Department of Education, Science and Training 2003) 325–331. We note also that class sizes are increasing despite research which suggests that they should shrink, see Tracey Varnava and Roger Burridge, 'Revising Legal Education' in Roger Burridge, et al (eds), *Effective Learning and Teaching in Law* (2002) 18.

as an Indigenous person. Policies and procedures concerning assessment, especially in relation to extensions, special consideration applications, and deferred exam requests, should be clearly set out in course outlines and students should be made aware of this. At the commencement of each course, students should be reminded to be sensitive and empathetic to other students and to use online tools in a socially responsible way. Students should also be encouraged to form study/support groups.<sup>71</sup>

### *B Throughout the Course*

Although clearly teachers need to be conscious of the diversity of the student body, the case studies indicate they should be particularly conscious of racism and address the issue immediately and openly. In doing this teachers should be guided by relevant university policies, as well as any applicable legislation,<sup>72</sup> and should seek advice from appropriate staff members. For example, if there is an Indigenous support teacher, their advice should be sought. International students and students using note-takers may need to proceed at a slightly slower pace. In consideration of this, teachers also need to be conscious of the pace of delivery especially in lectures. With discretion, it may be useful to elicit comments from the class to ensure comprehension. Teachers should also be aware of the costs of printing for students and provide as much material as possible in printed form or minimally offer to provide printed copies on request.

The formation of tutorial groups should be monitored. If possible, Indigenous students should be placed together. One suggested arrangement is to place each student in a sub-group of two or three within the larger tutorial group. If there are presentations to be made it may be helpful to allow the first presentation to the larger group to be made by the sub-group rather than individually. Arranging students in smaller sub-groups will also allow for students greater opportunity to voice their ideas, and to build confidence before addressing the larger group.

### *C Assessment*

The students interviewed made a number of suggestions for making assessment more sensitive to the different situations of students. Some students suggested that if participation marks were allotted, this should be delayed for as long as possible, especially in first year classes. Most students agreed that the range of assessment options should be broad and some suggested that oral exams

<sup>71</sup> Although it will not always be possible to form close-knit study groups for a range of reasons, see the discussion in Handsley, above n 1, 121–122.

<sup>72</sup> For example, vilification provisions are contained in several pieces of Australian Anti-Discrimination Legislation.

may assist some students. Assessment options should provide opportunities for students to explore Indigenous or International aspects of an issue. 'Compare and contrast' assessments that invite cross-cultural comparisons would be suitable in this context. Some consideration should also be given to the scheduling of 'take-home' exams or assessments. For example single parents may not have access to child-care on weekends. Some students suggested that any requirement of a pass in exams in order to pass the subject should be reviewed.

Students suggested that a regular review of grounds for deferred exams should take place. For example is a deferred exam available for a mother whose child has been ill for an extended period? The rules for provision of medical certificates for absences should be considered. Some students may not want their class teachers knowing the details of their issues. It may be appropriate to lodge all medical certificates with a specific administrative officer. Many students were also keen to see suggested answers to problems so that they would develop a better understanding of how to proceed or where they went wrong.

Many of these suggested initiatives will not only accommodate one particular group of students but will often assist students in enhancing their legal education across the board.<sup>73</sup>

## V CONCLUSION

Since the conclusion of this project, the Griffith Law School has made a number of changes to its approach to teaching, learning and assessment. One of the issues that staff identified during the project was uncertainty about how to approach equity related issues when they arise. In response to this concern, the Equity Committee has developed Sensitivity Guidelines<sup>74</sup> which are made available to all staff. The guidelines endeavour to make staff aware of the diversity of the student cohort and encourage staff to be sensitive to the varied needs of students. The Guidelines explain the meaning of substantive equality and call attention to the law school's commitment to substantive equality. The Guidelines also provide contact details of appropriate staff to contact in order to obtain more information or advice and provide references to useful material. Staff have also been furnished with copies of the case studies<sup>75</sup> discussed in this article along with a bibliography of useful material. Law school

<sup>73</sup> This positive outcome in the context of an academic writing skills course is reported by Gem Cheong at the University of Newcastle, Australia, in Gem Cheong, 'Equity and Diversity: The Newcastle Approach' (1998) 12(3) *Higher Education Management* 75, 93.

<sup>74</sup> Relevant sections are available on the Griffith Law School's Equity Website, above n 10.

<sup>75</sup> These are available on the Griffith Law School's Equity Website, above n 10.

staff are encouraged (by an email from the Equity Committee at the commencement of the semester) to make a general statement to their students in an early class which outlines the Law School's commitment to inclusiveness in the classroom and the responsibility of all students to respect each other. The Equity Committee has developed and distributed power point slides for teachers to use in the classroom to convey this information. The slides also set out details of the staff members students should contact if they have concerns about equity issues. A more streamlined process for dealing with medical certificates is currently being developed. The Law School has also changed its policy so that students who are granted a supplementary exam pursuant to an award of special consideration will be eligible to receive the full range of grades.

The quality of legal education is measured by the experience of students.<sup>76</sup> If students are better able to engage with the law school environment their experience will improve. Unlike many suggestions put forward by other writers in this area,<sup>77</sup> this is not necessarily a call for more resources for teaching and learning (although they would always assist). The suggestions we have made here, which are largely coming at least indirectly from students, are practical, low-cost approaches that can improve engagement with the law school experience for all students. In short, the outcomes generated by this project have focussed on the need to be flexible in teaching, learning and assessment, as identified by students during the interviews conducted as part of this project.

<sup>76</sup> Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 38 *Sydney Law Review* 537, 564.

<sup>77</sup> *Ibid*; cf Handsley, above n 1, 129.