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INDIGENOUS CULTURAL COMPETENCY IN LAW

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Since the early 1990's there have been repeated calls for the improvement of service delivery to Indigenous communities by raising the cultural understanding and awareness of professionals. The Royal Commission into Aboriginal Deaths in Custody found that professional services provided to Indigenous communities largely operated in a 'neo-colonial framework' and that professionals were mostly ignorant of Indigenous cultural values and worldviews, histories and contemporary circumstances, and lacked practical skills and strategies for working effectively with Indigenous peoples.[1] Over the past thirty years the need for legal professionals to become culturally competency have been repeated in numerous reports and inquiries.[2] In the higher education sector the need for graduates to attain Indigenous cultural competency (ICC) as an integral part of their university studies has also been promoted by the former Indigenous Higher Education Advisory Council, Universities Australia, and both the *Bradley* and *Behrendt* reviews.[3] However until recently there has been limited evidence to show that these calls had been taken up by law schools or that ICC has been embedded into legal education. There is also strong evidence to suggest that the completion rates for Indigenous law students are significantly lower than their non-Indigenous counterparts.[4] Therefore the need for ICC (or its many variations) to be embedded in legal education and practice is regarded as essential to Indigenous student success, and to build ICC in all students – with a view to improving service delivery to Indigenous communities in the long term.

The Indigenous Cultural Competency for Legal Academics Program (ICCLAP) was designed to address this apparent gap in legal education. Led by a team of Indigenous legal academics - the project's core aims were to consult with Aboriginal and Torres Strait Islander legal services, key stakeholders and legal academics to conceptualise what ICC means in the context of legal education; identify knowledge gaps, professional development needs, and guiding principles for embedding ICC; develop workshops and resources for legal academics; and foster a community of practice to support the embedding of ICC in

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1 Commonwealth, Royal Commission into Aboriginal Deaths in Custody National Report (1991) ('RCIADIC').

2 See Burns, Young, Nielsen this issue.

3 See Burns this issue.

4 See Burns this issue.

law curricula. This special focus edition on ICC in law was initiated by the ICCLAP project team to promote scholarship on approaches to embedding ICC in legal education and practice and to provide resources for academics and practitioners engaging in this work.

The articles in this collection provide a rich and varied scholarly analysis of issues relating to embedding of ICC in both law curricula and the legal profession. Thematically these articles outline the ICCLAP research process and outcomes; and reflections on changes in law schools and practice since 2005. The need for ICC is elaborated, with a focus on Indigenous student experiences and a framework for ICC in an Aboriginal community controlled legal service. They also explore conceptual approaches to developing ICC in curricula; and practical examples of how ICC has been incorporated into law units in different ways. The collection concludes with a call for reform to legal professional accreditation standards to include ICC to ensure that lawyers can meet their ethical and professional responsibilities to Indigenous peoples.

'Are We There Yet? Indigenous cultural competency in legal education' by Marcelle Burns outlines the research methodology, process and key findings of the ICCLAP project. It canvasses some of the key debates on how ICC is conceptualised and taught (including whether ICC is appropriate terminology), the danger of becoming a 'knowers' (as opposed to learners) in this context, and the potential for ICC to re-centre whiteness. Barriers and constraints to embedding ICC are identified together with strategies and guiding principles for the inclusion of ICC in curricula. Importantly the findings highlight the need for Indigenous community engagement in developing curriculum, place-based learning, and for law programs to be conceptualised within a framework of legal pluralism. Engaging students in critical self-reflection is also emphasised as necessary practice to build ICC, and generating an understanding of the historical, social and cultural contingency of what constitutes law and legal knowledge in the Australian context. These themes are also elaborated on in a number of other contributions to the special edition.

The article by Asmi Wood and Ron Levy 'A Mini-public of Academics: Experimenting with Deliberative Democracy and Indigenous Cultural Competency in Legal Education' discusses the ICCLAP program's use of a deliberative democracy process to engage legal academics and professionals in developing strategies and guiding principles to support the embedding of ICC in law. It discusses how the norms of deliberative democracy processes – especially inclusivity, cooperation, open-mindedness, and reflectivity – informed the ICCLAP deliberative process and were effective in garnering a high level of support for the project's goals and strategies to move this work forward. The article notes that the high proportion of Indigenous participation in the mini-public was essential to correct the 'general voicelessness of Indigenous people in law schools and the legal system'. The authors conclude that the ICCLAP mini-public was effective because the participants regarded the outcomes as 'legitimate in the sense of being

duly consultative and democratic, inclusive of many perspectives (especially, but not only, Indigenous) and premised on robust pedagogical theory and experience'.

Nicole Watson and Asmi Wood's article 'Mirror, Mirror on the Wall, Who is the Fairest of Them All?' provides a reflection on the extent of change within legal education and practice since Watson's seminal article from 2005, 'Indigenous Peoples in legal education: staring into a mirror without reflection'.[5] Watson canvasses many positive developments over the last fourteen years, with increasing numbers of Indigenous lawyers, academics and judicial officers, however also argues that many challenges persist and that 'cultural change' within law schools remains elusive. Wood also highlights changes in legal education and how Indigenous led teaching is making a positive contribution to legal curriculum, but that opposition to embedding Indigenous content in curriculum is perhaps more subtle, concluding that legal education largely reflects 'an integrationist model with Indigenous students required to accept Anglo-Australian versions of truth, law, justice and what is good, while being expected to supress their own ontologies'. Woods argues that this situation is harmful to both Indigenous and non-Indigenous students who are required to 'internalise legal fictions'. For Wood and Watson these factors highlight the need for further research on the experience of Indigenous peoples as law students and also in the legal profession.

The importance of ICC to legal practice is under-scored in the article by John Rawnsley, David Woodroffe, Eloise Culic, James Richards and Lauran Clifton, 'Cultural Competency in a Legal Service and Justice Agency for Aboriginal Peoples'. It outlines a framework for developing ICC in an Aboriginal community controlled legal service – the North Australian Aboriginal Justice Agency (NAAJA). The core motivation for developing the framework was an expressed need from the Aboriginal communities where NAAJA operates for lawyers to 'understand "us" and "our [Aboriginal] ways"'. The article outlines the fundamental principles adopted by NAAJA's cultural competency framework which emphasises accountability, personal commitment and reflective practice as integral to good lawyering when working with linguistically and culturally diverse clients. The authors report that the framework has had a positive impact with lawyers better equipped to understand the communities they serve, how a lack of ICC can have a detrimental impact on their clients, and improved collaboration between Indigenous and non-Indigenous staff. They also argue that developing ICC should start in legal education with 'reflective' ICC practice integrated into law curricula, together with ongoing continuing professional development for legal practitioners. It also identifies that the legal profession lags behind other helping professions (like health), which include ICC in professional accreditation standards.

Melanie Schwartz's article 'Retaining Our Best: Imposter Syndrome, Cultural Safety, Complex Lives and Indigenous Student

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5 http://www.austlii.edu.au/au/journals/IndigLawB/2005/1.html.

Experiences of Law' discusses her findings from a survey of Indigenous law students at the University of New South Wales. The survey found that despite many positive gains, Indigenous law students often feel alienated and isolated, and experience 'imposter syndrome' (a sense of not belonging) within law schools which are perceived as elitist institutions. Indigenous law students also expressed a need for Indigenous issues to be both included and treated sensitively in curricula, with Indigenous students often carrying the burden of 'speaking up' where Indigenous issues were not presented in a balanced or sensitive way. Schwartz also reports that Indigenous law students often feel there is limited understanding within law schools of the complex lives they lead, with many juggling family responsibilities, mental health issues, and financial stress, highlighting the need for greater flexibility to enable them to complete their degrees. While only a relatively small sample, the findings of this survey echo the seminal work of Heather Douglas from the 1990s, suggesting that there is still much to do to make law schools more responsive to the needs of Indigenous students.

Conceptual frameworks for embedding ICC were also explored in a number of contributions. Annette Gainsford's article 'Connection to Country – Place-based Learning Initiatives Embedded in the Charles Sturt University Bachelor of Law' discusses how ICC has been embedded across the whole curriculum, supported by a comprehensive institutional strategy and resources. At CSU the importance of place-based learning and building relationships with local Wiradyuri elders and communities is central to developing ICC in both academic staff and students, providing opportunities for exploring Indigenous worldviews, protocols and reflecting on stereotypes and cultural bias. Gainsford concludes that a place-based learning approach has been valuable in promoting two-way learning and developing partnerships to ensure institutional accountability to local Aboriginal communities.

Kate Galloway's article 'Indigenous Contexts in the Law Curriculum: Process and Structure' sets out a conceptual framework for curriculum designed to incorporate Indigenous contexts at the meta, macro and micro level. This includes law teachers understanding of the role of law in constructing relationships between governments and Indigenous peoples at the local level (meta); the outward looking structure of the curriculum with Indigenous contexts scaffolded and aligned throughout the curriculum and embedded in final year units (macro); and the ethical foundation of connection to people and place based on Yunkaporta's 'relationally responsive pedagogy' (macro). Galloway discusses the importance of student-centred approaches to validate students' experiences, and how the iterative nature of this work requires both an institutional commitment and ongoing reflective practice to decolonise universities and the law.

Practical examples of embedding ICC in curricula are an important contribution to this collection. Annette Gainsford and Alison Gerard's article 'Using Legislation to Teach Indigenous Cultural Competence in an Introductory Law Subject' shows how ICC can be fostered through

teaching statutory interpretation in a first year core law unit. It provides a case study using the *Aborigines Protection Act* 1909 (NSW) to develop skills in statutory interpretation, using the law as the 'hook' to raise students awareness of the legislative intent and the historical and contemporary impacts of the 'protection' acts on Aboriginal peoples and communities. Developed in consultation with local Aboriginal elders (who also gave guest lectures on the topic) the authors found that this approach was a positive experience for students, generating high level discussion, engagement and a relational connection with local Aboriginal people. They also found that foregrounding legal skills to the introduction of Indigenous content was a 'protector factor' against potential student resistance.

Responding to students' resistance and the importance of reflective teaching is also highlighted in the article by Marcelle Burns and Jennifer Nielsen 'Dealing with the "Wicked" Problem of Race and the Law: A Critical Journey for Students (and Academics)' which discusses their approaches to teaching a unit on race and the law at Southern Cross University. While the aim of the unit was to prompt students to think critically about the ongoing significance of race to law (and law to race), the authors found that while the predominantly non-Indigenous cohort were comfortable discussing historical examples of racism against the Indigenous or immigrant 'other', they responded negatively to the unit's content on whiteness in the contemporary workplace. Burns and Nielsen give a frank discussion of how they used an Indigenous knowledges approach based on relationality and reciprocity, and critical race and whiteness theory as praxis, to shift students to a more productive space where they could acknowledge how *we are all* implicated in socially constructed systems based on race. Indigenous concepts of relationality and reciprocity were also essential to fostering in students a sense of shared responsibility to combat racism in their personal and professional lives.

The call for the inclusion of ICC in legal professional accreditation standards is taken up in the article by Marcelle Burns, Simon Young and Jennifer Nielsen, 'The Difficulties of Communication Encountered by Indigenous Peoples: Moving Beyond Indigenous Deficit in the Model Admission Rules for Legal Practitioners'. This contribution argues that at present references to cultural competency (or its variants) within legal accreditation standards are merely optional and couched within a 'deficit discourse'. It reframes the need for ICC as part of the ethical and professional responsibilities of lawyers, rather than a response to an Indigenous 'problem'. The article draws upon the extensive literature that highlights the needs for lawyers to become more culturally competency, yet which have remained essentially unanswered for over twenty years. The article also canvasses important developments in the Canadian context where the Truth and Reconciliation Commission's calls to action have prompted responses from law schools and legal professional bodies to incorporate ICC in legal education and practice, and have deepened the conversation to how Indigenous legal traditions may also be included within legal

education. The article concludes that the failure of Australian legal education and practice to incorporate ICC in a meaningful way highlights the need to reform professional accreditation requirements to include ICC, which inevitably influence the content of legal education and professional development programs.

Together these contributions present a range of perspectives and approaches to embedding ICC in law, and in many ways highlight the complexity and challenges of engaging in this work. While debates continue about appropriate terminology and the conceptual framing of Indigenous inclusion in law, each article reinforces the need for better understanding of Indigenous peoples, law and cultures in legal education and practice. The articles also highlight an essential component of building ICC – namely greater reflection upon how Anglo-Australian law constructs knowledge about Indigenous peoples and the impact of laws (and legal actors) on First Peoples and communities. The challenges of growing a new generation of lawyers with greater understanding of Indigenous contexts, should not however over-shadow the real and evident need for lawyers to develop the knowledge and skills to work more effectively with Indigenous peoples. Engagement with this knowledge will also support the next generation of Indigenous law graduates whose deserve their experiences of law school to be more empowering and culturally safe than they currently are. As a growing number of legal educators and practitioners take up this challenge, we move towards a more just and equitable society which values Indigenous peoples, cultures and laws, as an essential part of the legal landscape in Australia. The contributions to this special edition demonstrate what can be achieved with a little imagination, creativity and a commitment to bridge the existing gaps in legal education and practice. The editors would like to thank the authors for their valuable and insightful contributions, which we hope will inspire more lawyers and legal academics to take up this challenging and rewarding work.

Marcelle Burns
Guest Editor