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ARE WE THERE YET? INDIGENOUS CULTURAL COMPETENCY IN LEGAL EDUCATION

MARCELLE BURNS*

I INTRODUCTION

Over the past decade there has been numerous reports which have highlighted the need for Indigenous cultural competency (ICC) to be embedded in the higher education sector. The *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People (Behrendt Review)*,¹ together with Universities Australia's Indigenous cultural competency project,² recommended that ICC be developed across the higher education sector, as one measure to promote Indigenous student success. Universities Australia's *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* recommends that Indigenous knowledges and perspectives be embedded in university curricula and that ICC be included as a 'formal graduate attribute or quality'.³ To

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I wish to acknowledge and thank the many people who contributed to ICCLAP — especially the reference groups, evaluators and workshop participants — this work is a collective effort. While I seek to faithfully represent the views of the workshop participants, all errors are my own. I also acknowledge the contributions of the ICCLAP Project Team, and the valuable support and research assistance from Robert Vidler, Bob Kirk, Fiona Murray and Janelle Speed. Thanks to the anonymous peer reviewers for their feedback and comments. I acknowledge all First Nations as the traditional sovereign owners and custodians of Country.

¹ Australian Government, 'Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People' (Final Report, Department of Education and Training, July 2012) xxi, recommendation 32 <<https://www.education.gov.au/review-higher-education-access-and-outcomes-aboriginal-and-torres-strait-islander-people>> ('Behrendt Review') 'that universities continue to develop and implement a range of strategies to improve the cultural understanding and awareness of staff, students and researchers within their institution, including the provision of cultural competency training'.

² Universities Australia, *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (October 2011) <<https://www.universitiesaustralia.edu.au/ArticleDocuments/376/GuidingPrinciplesforDevelopingIndigenousCulturalCompetencyinAustralianUniversities.pdf.aspx>>; Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (October 2011) <https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Compet#_V_WbwMI0VnE>.

³ Universities Australia, *Guiding Principles*, above n 2, recommendations 1 and 2.

achieve this goal the *Guiding Principles* recognise the need for ‘training teaching staff in Indigenous pedagogy for teaching Indigenous Studies and students effectively, including developing appropriate content and learning resources, teaching strategies and assessment methods.’⁴ The *Behrendt Review* endorsed Universities Australia’s cultural competency project, recommending the inclusion of ICC as part of developing ‘quality teaching’ of Indigenous perspectives and to support an Indigenous graduate attribute.⁵ Most recently Universities Australia’s *Indigenous Strategy 2017–2020* recommends developing ICC in senior staff and that universities increase the ‘cultural capabilities of graduates’.⁶ To this end Universities Australia recommends that:

By 2020, universities commit to have plans for, or have already in place, processes that ensure all students will encounter and engage with Aboriginal and Torres Strait Islander cultural content *as integral parts of their course of study*.

This will give all Australian university graduates in the future the chance to develop their capabilities to work with and for Aboriginal and Torres Strait Islander people and communities.⁷

Significantly the need to build ICC in both staff and students has been identified as a critical element towards meeting this objective, equipping both staff and students with the foundational knowledge and skills to develop effective working relationships with Indigenous peoples. Attaining ICC is intended to achieve two core goals: improving Indigenous student outcomes in higher education; and improving professional service delivery to Indigenous communities in the long term. In the context of legal education these goals are underscored by two uncomfortable truths. Firstly from the 1230 Indigenous students commencing LLB programs between 2003 and 2012 — only one in three Indigenous law students completed their degree during that time.⁸ This data suggests that although the numbers of Indigenous law students (and therefore Indigenous law graduates) have significantly grown, there has been little change from the overall *completion rates* reported by Lavery in 1993.⁹ Secondly there is a growing body of

⁴ Ibid recommendation 4.

⁵ Behrendt Review, above n 1, 96.

⁶ Universities Australia, *Indigenous Strategy 2017–2020*, 30.

⁷ Ibid (emphasis added).

⁸ Australian Government, *Completion Rates of Aboriginal and Torres Strait Islander Students in Law 2003–2012*, obtained by the Project Team (copy on file with author). From a total of 1230 commencing Indigenous law students there were 394 completions over this time. These numbers did not include law schools with less than five graduates as exact numbers were not recorded in the data.

⁹ Daniel Lavery, ‘The Participation of Indigenous Australians in Legal Education’ (1993) 4 *Legal Education Review* 177, 182 reports a 25 per cent completion rate for Indigenous law students. I also acknowledge the work of Heather Douglas, ‘The Participation of Indigenous Australians in Legal Education 1991–2000’ (2001) 24 *University of New South Wales Law Journal* 485 who reported that in 2000 there were 256 Indigenous law students, and that 118 Indigenous students had graduated from LLB programs between 1991–2000. While Douglas suggests that the completion rates for Indigenous law students had improved from the previous

evidence that Indigenous peoples are reluctant to seek assistance from mainstream legal services due to a perception that they are not culturally appropriate, and past experiences of racism and discrimination.¹⁰ These facts highlight the acute need for ICC to be incorporated into legal education to both support Indigenous student success and to ensure that future legal professionals are able to provide culturally sensitive legal services for First Peoples. Despite this evident need however law schools have been slow to respond to calls to embed ICC in legal education, with Universities Australia identifying only one pilot program for ICC in law,¹¹ and the *Behrendt Review* finding two pilot projects to embed ICC in law.¹²

The Indigenous Cultural Competency for Legal Academics Program (ICCLAP) was designed to meet this gap in legal education. In 2013 the former Australian Government Office for Learning and Teaching put out a call for projects to address the recommendations of the *Behrendt Review*.¹³ The Project Team,¹⁴ who are all members of the National Indigenous Research and Knowledges Network (NIRAKN),¹⁵ saw this as an opportunity to collaborate with other Indigenous law academics and legal service providers to conceptualise what ICC means in the context of legal education. The project was funded for a period of two years, concluding in April 2018.¹⁶

decade, the most current national data does not support this view, however it is noted that some universities have better completion rates than others.

¹⁰ Senate Finance and Public Administration References Committee, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) 25, 28; Productivity Commission, 'Access to Justice Arrangements' (Inquiry Report No 72, Productivity Commission, 5 September 2014) 766; Senate Legal and Constitutional Affairs References Committee, *Access to Justice* (2009) 137 [8.3]; Fiona Allison, Chris Cunneen and Melanie Schwartz, Submission No 19 to Senate Finance and Public Administration References Committee, Parliament of Australia, *Inquiry into Access to Legal Assistance Services*, 2015, 7.

¹¹ Universities Australia, *Guiding Principles*, above n 2, 29.

¹² Behrendt Review, above n 1, 97–8. These programs were Edith Cowan University's ICC which included law and psychology; and University of Newcastle's project on ICC in business and law.

¹³ Ibid xxi, recommendation 32 'that universities continue to develop and implement a range of strategies to improve the cultural understanding and awareness of staff, students and researchers within their institution, including the provision of cultural competency training'.

¹⁴ The project was undertaken by Ms Marcelle Burns (Project Leader, Lecturer, University of New England), Associate Professor Asmi Wood (Australian National University), Professor Anita Lee Hong (Director, Oodgeroo Unit, Queensland University of Technology), Professor Larissa Behrendt (Professor of Law and Director of Research, Jumbunna Indigenous House of Learning, University of Technology (Sydney)) and Professor Mark McMillan (Deputy PVC Indigenous Education and Engagement, RMIT – formerly University of Melbourne).

¹⁵ National Indigenous Research and Knowledges Network (NIRAKN) is funded as a special initiative of the Australian Research Council (Grant ID SR 120100005), see *National Indigenous Research and Knowledges Network* <<http://www.nirakn.edu.au>>.

¹⁶ Support for the project has been provided by the Australian Government Department of Education and Training. The views expressed in this article do not necessarily reflect the views of the Australian Government Department of Education and Training.

The project adopted Universities Australia's definition of ICC being:

Student and staff knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with the proficiency to engage and work effectively in Indigenous contexts congruent to the expectations of Indigenous Australian peoples ... Cultural competence includes the ability to critically reflect on one's own culture and professional paradigms in order to understand its cultural limitations and effect positive change.¹⁷

ICCLAP's core objectives 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 to support the embedding of ICC in legal curriculum;
- foster a community of practice committed to incorporating ICC in legal education.

The project's approach was informed by Indigenous knowledges and the need to establish 'relatedness' across a range of stakeholder groups to create a shared vision and language around the project's aims and objectives. Given the diversity of First Peoples the project team recognised that there was no one-size-fits all approach to embedding ICC and therefore did not set out to develop a model curriculum. Rather the project's approach was to develop a set of guiding principles to support the incorporation of ICC in legal education. A secondary objective of the project was to create external drivers to support our individual efforts to embed ICC, given the Project Team's collective experience that our minority and relatively low status within law schools meant that our ability to influence curriculum was limited, and that our work on incorporating Indigenous content in curriculum were not always sustained over time.

This article will outline ICCLAP's activities and key findings on ICC in legal education. Part I will commence by outlining the ICCLAP research process. This will be followed by a review of literature on ICC in Part II. Part III will discuss the key findings of the project including the current state of play of ICC in legal education, barriers and constraints to embedding ICC, critical success factors for incorporating ICC at both the institutional and school level, and guiding principles for ICC in law. The conclusion in Part IV will canvass possible future directions for ICC in law and ongoing debates in progressing this work.

¹⁷ Universities Australia, *Guiding Principles*, above n 2, 3.

II RESEARCH METHODOLOGY

The project's methodology was informed by an Indigenous knowledges approach with 'relatedness' central to Indigenous ways of knowing, being and doing.¹⁸ 'Relatedness' emphasises the interconnectedness of all living things and also 'a relation between things or events' — in a causal sense.¹⁹ Indigenous knowledges also embrace diversity and promote co-existence, with over 200 First Nations occupying the Australian continent pre-colonisation.²⁰ A broad view of Indigenous knowledges was taken which according to Nakata is not limited to 'cultural' knowledge but also includes knowledge of racism, colonialism and knowledges that are generated in response to external pressures — both positive and negative — at the 'cultural interface'.²¹ As a group of Indigenous legal academics the project team's collective knowledge of the 'cultural interface' between Indigenous and non-Indigenous legal systems and the unequal power relationships between First Nations' and mainstream law — brought Indigenous knowledges directly to bear on this work.

The concept of relatedness was built into the research design in a number of ways. Firstly, reference groups were established for the project: one national and one local reference group (based in Armidale where the lead institution is situated). These reference groups were comprised of high-level stakeholders including key influences and enablers,²² and local community members to ensure grassroots views were incorporated into the project's work, modelling ICC at the local level. The reference groups provided advice and guidance on the project's aims and objectives; feedback on project plans; and analysis and interpretation of key findings. Secondly relatedness was built with key stakeholders through the *ICCLAP Consultation Workshop* held in September 2016 which brought together Indigenous and non-Indigenous legal academics, legal service providers, and peak organisations to discuss the critical question of what ICC means in the context of legal education. A total of 23 people participated in the workshop — 70 per cent of whom were First Peoples — ensuring that Indigenous knowledges and expertise were privileged in the discussions. The consultation workshop process was also designed to

¹⁸ Karen Lillian Martin, *Please Knock Before You Enter: Aboriginal Regulation of Outsiders and the Implications for Researchers* (Post Pressed, 2008) 97–8.

¹⁹ Ibid 69–87; Aileen Moreton-Robinson, 'I Still Call Australia Home: Indigenous Belonging and Place in a White Post-Colonizing Society' in Sarah Ahmed et al (eds), *Uprootings/Regroundings: Questions of Home and Migration* (Berg, 2003) 23; Irene Watson, 'Kaldowinyeri – Munaintya: In the Beginning' (2000) 4 *Flinders Journal of Law Reform* 3.

²⁰ Watson, above n 19; Ambelin Kwaymullina, 'Aboriginal Nations, the Australian Nation-State and Indigenous International Legal Traditions' in Irene Watson (ed), *Indigenous Peoples as Subjects of International Law* (Routledge, 2017) 5.

²¹ Martin Nakata, 'The Cultural Interface' (2007) 36(S1) *Australian Journal of Indigenous Education* 7, 10.

²² Deborah Southwell et al, 'Strategies for Effective Dissemination of Project Outcomes' (Report, Carrick Institute for Learning and Teaching in Higher Education, 2005) 18.

incorporate the views of both ‘early adopters’ and potential users in the design of the ICCLAP in order to build commitment to the project’s aims and to promote implementation and embedding.²³ Proceedings of the workshop were recorded and transcribed with key themes identified and written up in the *ICCLAP Consultation Workshop Report 2016*.²⁴

Thirdly the *Indigenous Cultural Competency in Law: Deliberating Future Directions Workshop* held in September 2017 brought together key stakeholders to identify barriers and constraints, critical success factors and guiding principles for embedding ICC in law. The workshop was facilitated using a deliberative democracy process which was designed to build relatedness between academics, legal professionals and Indigenous support staff, nurturing a community of practice committed to embedding ICC in legal education. A deliberative democracy approach was adopted because the norms of the process — inclusivity, open-mindedness, reflectiveness, and informed decision making²⁵ — were compatible with the project’s methodology. Deliberative democracy processes are also regarded as effective in engaging participants in formulating policy and practices that are more likely to be implemented and sustained in the long term, emphasising a high degree of participation, ‘high quality discussion, and co-operation’.²⁶ Relatedness was established through the active engagement of workshop participants in small and large group discussions designed with the intention of developing shared understandings and commitment to the project’s goals across a range of stakeholders — Indigenous and non-Indigenous, academic and professional staff, the legal profession and the academy. Although originally intended for legal academics, the participation of staff from Indigenous support units, government legal offices and international academics, added a broader range of perspectives to the workshop deliberations. The deliberative democracy approach was also adopted to avoid some of the concerns about knowledge-based approaches to ICC — as explained in the literature review in Part II below. A total of 52 people participated in the workshop — representing 26 of out of the 39 universities with law programs — with 34 per cent of attendees being Indigenous — thus constituting a significant and influential proportion of the group.²⁷ Presentations from leading Indigenous lawyers and academics were featured at the workshop, helping to stimulate reflection and guide discussion. Pre-readings were given to

²³ Ibid 20.

²⁴ ICCLAP, *Consultation Workshop Report* (ICCLAP, 2016) (*‘ICCLAP Consultation Report’*). The project’s research was subject to ethics approval from the University of New England’s Human Research Ethics Committee (HE15-099).

²⁵ Ron Levy and Graham Orr, *The Law of Deliberative Democracy* (Routledge, 2016) 22–3.

²⁶ Janette Hartz-Karp and Michael K Briand, ‘Institutionalising Deliberative Democracy: Theoretical and Practical Challenges’ (2009) 24(1) *Australasian Parliamentary Review* 167, 169–70.

²⁷ For further discussion on the ICCLAP deliberative democracy process see Ron Levy and Asmi Wood (this edition).

participants including the *ICCLAP Consultation Workshop Report*.²⁸ Small group discussions were summarised and entered into the *WhatDoYouThink* software platform.²⁹ This information was then ‘themed’ and collated into reports distributed to attendees at the conclusion of each day. The *ICCLAP Indigenous Cultural Competency in Law: Deliberating Future Directions Final Participant Report 2017*³⁰ consolidates the key findings of the workshop, which will be discussed in Part III below. Feedback on the workshop was very positive with participants stating that it met or exceeded their expectations and that the workshop outcomes were likely to be acted on in the future.³¹ The iterative research process was intentionally designed to engage potential users and adopters at multiple stages throughout the project to promote adoption and adaptation.³²

In addition to these workshops, research activities of the project included an online survey of law schools conducted in July 2017 to gather baseline data on the current state of ICC in law programs. Survey results were subsequently distributed through the Council of Australian Law Deans. The *ICCLAP Law School Survey Report 2017*³³ summarises the key findings of the survey, which are also set out in Part III below.

Indigenous law students were also surveyed on the advice of the national reference group which recognised that students’ views were important to developing our understanding of their experiences of legal education. The survey was conducted between December 2016 and February 2017, however the response rate to this survey was very low and therefore the data cannot be seen to be representative of Indigenous law students overall. The project did not have sufficient resources to conduct alternate research methods (eg focus groups), so no specific data on the views of current Indigenous law students was gathered. We found however that with the presence of a number of Indigenous lawyers and academics at the ICCLAP workshops, discussion inevitably turned to their experiences of legal education, providing some insights into the Indigenous law student experience, which informed the ICCLAP findings (which will be discussed in Part III below). The *Future Directions Workshop* also identified the need for further research to determine if Indigenous law students continue to

²⁸ Pre-readings also included Nicole Watson’s seminal article: Nicole Watson, ‘Indigenous People in Legal Education: Staring into a Mirror Without Reflection’ (2005) 6(8) *Indigenous Law Bulletin* 4.

²⁹ Developed by Practical Evolution LLC.

³⁰ ICCLAP, *Indigenous Cultural Competency in Law: Deliberating Future Directions Workshop – Final Participant Report 2017* (ICCLAP, 2017) (*‘ICCLAP Future Directions Report’*).

³¹ ICCLAP, *Future Directions Workshop - Participant Feedback Forms* (unpublished – copy on file with author) Day 2: 27/30 and 28/30 respectively.

³² Jo McKenzie et al, ‘Dissemination, Adoption and Adaptation of Project Innovations in Higher Education’ (Report, University of Technology Sydney, 2005) 121–6.

³³ ICCLAP, *Law School Survey Report* (ICCLAP, 2017) (*‘ICCLAP Law School Survey Report’*).

experience isolation, racism and discrimination in their legal studies, as reported by Douglas in 2001.³⁴

A literature review of ICC was conducted to identify theoretical concerns and practical approaches to embedding ICC in different contexts (given the dearth of specific information in relation to law). The literature review revealed substantive critiques of ICC and also problematised some of the conventional approaches to teaching ICC. This critique informed the subsequent approaches of the project, particularly with respect to the academic workshop. Key issues identified in the literature review will be set out in Part II below.

The ICCLAP workshops provided a rich source of qualitative data from participants on their views about ICC in legal education and practice. In many ways, the views of participants also reflected the literature on ICC with a number of common concerns articulated about ICC terminology and practices. The triangulation of data from these different sources gives validity to the research findings and enhances their reliability.³⁵ These findings are also supplemented by the *Law School Survey* which provides baseline data on the current level of inclusion of ICC in legal education (and conversely raises questions about ICC's exclusion). Collectively this research produces insights into the barriers, constraints and institutional blockages to embedding ICC in law. It also sets out some critical success factors and guiding principles for moving this work forward.

III LITERATURE REVIEW

As the primary goal of the project was to support the embedding of ICC in legal education, this literature review outlines the key areas of scholarship as they relate to the project's aims. It will begin with a survey of key teaching and learning projects with a legal or Indigenous focus. A review of ICC literature will follow including substantive critique of ICC programs and lessons for future approaches.

A Teaching and Learning Projects in Law

A review of teaching and learning projects in law showed an awareness of low numbers of Aboriginal and Torres Strait Islander law students and high attrition rates amongst this cohort, however there is limited analysis of this problem, and no specific strategies articulated to address this issue. These projects do however provide some basic building blocks upon which to create inclusive learning environments for Indigenous students, and to build ICC in all students. This section will outline the key approaches identified by teaching and learning projects in law, and how they can be extended to include ICC in legal curricula.

³⁴ Douglas, above n 9.

³⁵ Maggie Walter, 'The Nature of Social Science Research' in Maggie Walter (ed), *Social Research Methods: An Australian Perspective* (Oxford University Press, 2006) 3, 23.

The *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* reported that in 2006 and 2007 Indigenous law students comprised only 1.6 per cent of all law students, being significantly under-represented in law programs at the time.³⁶ The project also reported high attrition rates for Indigenous law students, estimated at 75 per cent.³⁷ Factors seen to contribute to poor attrition rates included, inter alia, ‘cultural clash’, ‘cultural difference’, and a ‘perception by Indigenous people that law schools are not places for them’.³⁸ Scholarships and pre-law programs were identified as measures being introduced to reduce Indigenous attrition.³⁹ While the report noted a need for law schools to accommodate diverse student needs and academic backgrounds, and that some law schools had introduced graduate attributes relating to Indigenous perspectives,⁴⁰ no direct connection was drawn between Indigenous student retention and curriculum.

More recently a number of projects have recognised the importance of including generic cultural awareness and cultural competency in law curriculum to support global legal practice,⁴¹ and clinical legal education programs (CLE).⁴² In relation to global practice, cultural awareness is defined as having an understanding of different legal systems, traditions, and cultures, and an awareness of politics, commercial and cultural values, including Indigenous rights.⁴³ In the context of CLE it was found that dealing with clients from diverse backgrounds (including Indigenous clients) can be challenging for both students *and their clinical supervisors*, and that ‘exposure to multiple perspectives, including Indigenous perspectives’, builds students understanding of how the law operates in context.⁴⁴ These projects provide a platform upon which to build Indigenous perspectives and ICC into curricula.

The *Bachelor of Laws: Learning and Teaching Academic Statement* also flagged the potential to include Indigenous perspectives in legal curricula, recognising that ‘[a]s a discipline, law is informed by many perspectives (including Indigenous perspectives) and is shaped by the broader contexts in which legal issues arise’.⁴⁵ Although the standards

³⁶ Susanne Owen and Gary Davis, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Council of Australian Law Deans, 2009) 19.

³⁷ Ibid 32, based on research conducted by Lavery, above n 9.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid 51, 56.

⁴¹ Duncan Bentley and Joan Squelch, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice – Final Report* (Office for Learning and Teaching, 2012) 168.

⁴² Adrian Evans et al, *Strengthening Australian Legal Education by Integrating Clinical Experiences: Identifying and Supporting Effective Practices – Final Report* (Office for Learning and Teaching, 2013) 14.

⁴³ Bentley and Squelch, above n 41, 168–72.

⁴⁴ Evans et al, above n 42, 14.

⁴⁵ Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws: Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010) 8.

have been criticised for their ‘silence’ on Indigenous issues,⁴⁶ and the absence of Indigenous knowledges (as opposed to perspectives) and law,⁴⁷ the standards are broadly framed and therefore do not necessarily limit the inclusion of Indigenous knowledges and ICC. For example, *TLO 1: Knowledge* includes knowledge of the ‘broader context in which legal issues arise’, which the explanatory notes to the standards state may be extended to include ‘Indigenous perspectives’.⁴⁸ There is also potential to include Indigenous knowledges and ICC in TLOs on *Ethics and Professional Responsibility*; *Thinking Skills* (including critical analysis); *Research Skills*; *Communication and Collaboration* (including the ability to effectively communication with legal and non-legal audiences, and for appropriate communication to address the needs of the intended audience); *Self-Management* (which includes the ability to ‘reflect on and assess their own capabilities and performance’).⁴⁹ Importantly the inclusion of Indigenous knowledges in legal education is essential to shifting unequal power relationships between First Peoples and the Anglo-Australian legal system, and offers the opportunity for law students to ‘critically reflect on one’s own culture and professional paradigms in order to understand its cultural limitations and effect positive change’.⁵⁰

The *Curriculum Renewal in Legal Education* project explored ways to improve the capstone experience for law students, including by ‘enhancing students’ capacity to engage with diversity’, through teaching students general cultural competency skills.⁵¹ The project also recognised that law schools can contribute to building cultural competency in students ‘by acting as role models and promoting diversity in the law school community, for example, by employing and recruiting non-traditional staff and students’, providing additional supports to students likely to face discrimination in the workforce, and by developing curriculum that is inclusive of all students.⁵²

This overview shows that while teaching and learning projects in law have recognised the importance of inclusive curriculum to support the diversity of law students and the need to develop generic cultural competency skills, they have not explicitly addressed the concerns of Indigenous peoples. For Indigenous law students and communities these objectives can be realised through the incorporation of Indigenous knowledges and ICC into law programs. To date teaching and learning projects in law have not engaged with the question of how this might

⁴⁶ Phillip Rodgers-Falk, *Growing the Number of Aboriginal and Torres Strait Islander Law Graduates: Barriers to the Profession* (Department of Education and Training, 2012) 15–19.

⁴⁷ See generally Irene Watson and Marcelle Burns, ‘Indigenous Knowledges: A Strategy for First Nations Peoples Engagement in Higher Education’ in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (Federation Press, 2015) 41.

⁴⁸ Kift, Israel and Field, above n 45, 12–13.

⁴⁹ Ibid 12.

⁵⁰ Universities Australia, *Guiding Principles*, above n 2, 9.

⁵¹ Sally Kift et al, *Curriculum Renewal in Legal Education – Final Report* (Office for Learning and Teaching, 2013) 12, 51.

⁵² Ibid 51–2 (citations omitted).

be done. The insights from teaching and learning projects with an Indigenous focus provide some insight into these issues and have informed the approaches taken by the ICCLAP project.

B *'Aboriginal Education is Everybody's Business'*⁵³

The need for ICC has been highlighted in the majority of Indigenous teaching and learning projects, with ICC being seen as fundamental to achieving a whole of university approach to supporting Indigenous student success.⁵⁴ Developing ICC across the university community is also seen as essential to challenging the old paradigm of Indigenous 'deficit' (in need of support), to recognising peoples' assets and strengths and moving towards Indigenous excellence.⁵⁵ ICC is necessary to support the embedding of Indigenous knowledges (IK) in curriculum as a step towards achieving ICC for all students,⁵⁶ and to build the capacity of universities to engage with Indigenous communities and Elders.⁵⁷ Importantly the *Can't Be What You Can't See* project, noted that the inclusion of IK and hence ICC, needs to be 'properly integrated with meaning, purpose, perspective and context',⁵⁸ signalling the need for *discipline specific approaches* to embedding IK and ICC in curricula.

Indigenous learning and teaching projects also expressed a number of concerns with the way ICC is currently conceptualised and taught. Some projects have rejected the terminology ICC preferring, 'inter-cultural capabilities',⁵⁹ or 'cultural responsiveness',⁶⁰ as better reflecting the 'cultural interface'⁶¹ that occurs in cross-cultural learning relationships. More recently 'cultural empathy' has been used to mark a shift away from knowledge-based approaches to ICC.⁶² The *Creating Cultural Empathy* project criticised knowledge-based ICC training (learning about Indigenous peoples) on a number of grounds, including:

- 'assuming that culture is static' and not acknowledging the diversity within groups;
- 'assuming an endpoint (a "competence") is achievable';

⁵³ Stephen Kinnane et al, *'Can't Be What You Can't See': The Transition of Aboriginal and Torres Strait Islander Students into Higher Education – Final Report* (Office for Learning and Teaching, 2014) 12.

⁵⁴ Ibid 3.

⁵⁵ Ibid 8.

⁵⁶ Ibid 71.

⁵⁷ Ibid 59.

⁵⁸ Ibid 71 (emphasis added).

⁵⁹ Ken Nobin et al, *Relationships are Key: Building Intercultural Capabilities for Indigenous Postgraduate Coursework Students and their Teachers* (Office for Learning and Teaching, 2013) 55.

⁶⁰ Kerryn McCluskey and Kathleen Felton, *Improving Educational Outcomes and Opportunities for Indigenous Students Begins at the Cultural Interface in the Classroom – Final Report* (Office for Learning and Teaching, 2015) 15.

⁶¹ See Nakata, above n 21.

⁶² Toni Wain, *Creating Cultural Empathy and Challenging Attitudes Through Indigenous Narratives – Final Report* (Office for Learning and Teaching, 2013) 10.

- ‘using broad population-level data or knowledge-based information about cultural groups to assist in decision-making’, leading to ‘essentialism or stereotyping’;
- ‘focusing on difference obscures structural power imbalances’; and
- ‘disempowering Indigenous people by recognising disadvantage for a population’ which inadvertently labels that population as disadvantaged.⁶³

These concerns have been reiterated by other Indigenous teaching and learning projects which have questioned whether cultural ‘competency’ is attainable,⁶⁴ stressing the need for ICC programs to be ongoing,⁶⁵ and recognising that ICC is a ‘a process, not an event; a journey, not a destination; dynamic, not static; and involves the paradox of knowing’.⁶⁶ Another key concern is that some cross-cultural communication strategies can promote ‘othering’ and stereotypes, which may obscure individuality and diversity within cultural groups.⁶⁷ Similar critiques of ICC were also revealed in the ICC literature review and consultation workshop which will be discussed below.

C Pedagogical Approaches

Indigenous learning and teaching projects articulate a number of pedagogical approaches that directly respond to the problematics of ICC they describe. A number of key elements have emerged from these projects, which can be summarised as follows:

- Developing cultural self-awareness and understanding of how one’s culture influences identity and worldview;⁶⁸
- Critical reflection upon one’s own culture and profession;⁶⁹
- Challenging assumptions, stereotypes, and awareness of unconscious bias;⁷⁰
- Privileging Indigenous voice and Indigenous knowledges;⁷¹

⁶³ Ibid (citations omitted).

⁶⁴ McCluskey and Felton, above n 60, 13.

⁶⁵ Kinnane et al, above n 53, 71.

⁶⁶ Rob Ranzijn et al, *Disseminating Strategies for Incorporating Australian Indigenous Content into Psychology Undergraduate Programs Throughout Australia* (Australian Learning and Teaching Council, 2008) 19.

⁶⁷ McCluskey and Felton, above n 60, 13 (citations omitted).

⁶⁸ Nobin et al, above n 59, 56.

⁶⁹ Wain, above n 62, 10; Juliana McLaughlin, Susan Whatman and Camille Nielsen, *Supporting Future Curriculum Leaders in Embedding Indigenous Knowledge on Teaching Practicum – Final Report* (Office for Learning and Teaching, 2014) 43.

⁷⁰ Wain, above n 62; McCluskey and Felton, above n 60.

⁷¹ Wain, above n 62, 5; Nobin et al, above n 59, 39; Janet Mooney, Lynette Riley and Deirdre Howard-Wagner, *Indigenous Online Cultural Teaching and Sharing: Kinship Project – Final Report* (Department of Education and Training, 2017) 19; Mattie Turnbull, *Creating an Accessible and Effective Pathway for Regional and Isolated Aboriginal and Torres Strait Islander People to Tertiary Study Using Block-Release Study Mode – Final Report* (Office for Learning and Teaching, 2014) 13.

- Local place-based community engagement;⁷²
- Two-ways learning approaches.⁷³

Two projects highlighted how Indigenous narratives provide an effective way of bringing Indigenous voices into curriculum, and privileging Indigenous knowledges and expertise.⁷⁴ The *Indigenous Online Cultural Teaching and Sharing: Kinship* project found that ‘narrative content’ is an effective way to teach non-Indigenous students and a method for engaging with a variety of Aboriginal perspectives, and involving Aboriginal people in the process of knowledge production, validating Aboriginal expertise and identity, leading to social transformation.⁷⁵ The *Creating Cultural Empathy* project also used narratives to ‘stimulate dissonance’ (‘psychological discomfort from incompatibility between behaviours and beliefs’), leading participants to recognise their unconscious biases in a non-threatening environment, and providing ‘triggers for encouraging self-reflection on assumptions and values, as well as broader issues of social justice’.⁷⁶ The use of narratives also provides opportunities for transformative learning ‘more likely to build cultural empathy, and improve the capacity of professionals to work with people from other cultures’.⁷⁷

The lessons from Indigenous teaching and learning projects influenced the ICCLAP approach and in particular our decision to adopt a deliberative democracy process for the *Future Directions Workshop*. This approach was designed to engage participants in active discussion on critical issues impacting on the incorporation of ICC in legal education, rather than knowledge-based learning ‘about’ Indigenous peoples. The workshop featured ‘narrative content’ from Indigenous lawyers and academics which privileged Indigenous voices and expertise, stimulating self-reflection for non-Indigenous participants in a non-threatening and supportive environment. It also fostered rich dialogue about the barriers and constraints to embedding ICC from a range of perspectives, generating better understanding of the structural and individual impediments to effecting positive change, as well as the broader social justice context of this work. The intercultural and intersectional nature of these discussions provided a unique opportunity for two-way transformative learning, building ICC in the process. This learning crystallised in the formulation of critical success factors and guiding principles to support the embedding of ICC in curriculum.

⁷² Brydie-Leigh Bartleet et al, *Enhancing Indigenous Content in Arts Curricula Through Service Learning with Indigenous Communities – Final Report* (Office for Learning and Teaching, 2014) 110.

⁷³ Michelle Dickson, *Creating a Collaborative Learning Community for Aboriginal and Torres Strait Islander Health Promotion Students – Enhancing Access, Progression and Learning in Higher Education* (Office for Learning and Teaching, 2014) 6.

⁷⁴ Wain, above n 62, 10–11; Mooney, Riley and Howard-Wagner, above n 71, 18–19.

⁷⁵ Mooney, Riley and Howard-Wagner, above n 71, 18–19.

⁷⁶ Wain, above n 62, 10–11 (citations omitted).

⁷⁷ Ibid.

Indigenous teaching and learning projects have generated a significant discourse on ICC and alternative approaches to improving the capacity of universities to support Indigenous students, and better equip their staff and graduates with the knowledge and skills to work more effectively with Indigenous peoples. This discourse provides insights into the complexities involved in programs to build ICC. These complexities also emerged in the literature review conducted by the ICCLAP project, and significantly changed the direction of the project from our original plan. The Project Team notes however that we have continued to use the ICC terminology, as it was already bolted into the project's 'branding'. We also note that the discursive and contested nature of the subject matter makes it inevitable that hitherto accepted terminology may fall quickly out of favour.

D *Indigenous Cultural Competency in Legal Education*

While there has been an increasing focus on embedding ICC in curriculum over the past ten years, there is limited evidence to show that ICC has been incorporated into legal programs to a significant degree. A closer examination of key literature showed that the (former) Indigenous Higher Education Advisory Council's report *Principles and Practices of Cultural Competency: A Review of the Literature* found only two law and justice programs which included Indigenous content (but not necessarily ICC) into curriculum, one of which had since been substantially reduced.⁷⁸ Similarly, the *Good Practice Report: Innovative Indigenous Teaching and Learning* does not cite any research into teaching Indigenous knowledges in the legal context.⁷⁹

At the commencement of this project there was limited evidence to show that ICC had been incorporated into LLB programs. Indeed the claim was made in 2005 that legal education was fundamentally racist!⁸⁰ Outside of some minimal inclusion of Indigenous knowledges within the Priestley Eleven,⁸¹ further engagement with Indigenous knowledges was 'largely limited to later year electives'.⁸² The need to build ICC in legal academics and lawyers working for legal aid, was also recognised.⁸³ Developing 'cultural awareness' in the teaching of

⁷⁸ Ellen Grote, 'Principles and Practices of Cultural Competency: A Review of the Literature' (Literature Review, Indigenous Higher Education Advisory Council, August 2008) 32–6. These programs were Griffith University's Indigenous Law Program and QUT's Bachelor of Justice program. IHEAC reports that at the time of writing two key units in QUT's Justice program had been removed.

⁷⁹ Nerada White, Jack Frawley and Thi Kim Anh Dang, *Good Practice Report: Innovative Indigenous Teaching and Learning* (Office for Learning and Teaching, 2013).

⁸⁰ See especially 'Special Focus Edition: Racism in Legal Education' (2005) 6(8) *Indigenous Law Bulletin*.

⁸¹ The 'Priestly Eleven' are the prescribed areas of legal knowledge that are required for admission as a legal practitioner, see Law Admissions Consultative Committee (LACC), *Model Admission Rules 2015*, sch 1.

⁸² A J Wood, 'Incorporating Indigenous Cultural Competency Through the Broader Law Curriculum' (2013) 23 *Legal Education Review* 57, 63.

⁸³ Marcelle Burns, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12(1) *International Education Journal*:

criminal law had been explored,⁸⁴ together with the embedding of 'Indigenous perspectives' in a range of subjects including administrative law, property, business, foundational units and environmental resources law respectively.⁸⁵ While offering good examples of how Indigenous content and perspectives can be incorporated into legal education, these examples mostly predate the current move towards embedding ICC in curricula.

A few notable contributions have recently been added to the literature on ICC and law. Charles Sturt University's approach to embedding ICC is outlined by Browne who notes 'presently there is very little Indigenous content and even less community Elders' perspectives addressing histories, challenges and cultural requirements' in legal education.⁸⁶ An example of teaching ICC in torts is discussed by Gerard, Gainsford and Bailey.⁸⁷ The University of Newcastle's strategies for Indigenising law curriculum are examined by Maguire and Young, offering approaches for embedding ICC.⁸⁸ The appropriateness of ICC is questioned by Hamman who argues that 'cultural humility' is a more transformative learning framework, and that self-reflective, life-long learning is needed.⁸⁹ Given the limited literature on ICC in law, we will now explore the ICC literature more generally and the lessons it offers for approaches to embedding ICC in legal education.

E *The Danger of 'Culture'*

The ambiguous nature of culture and the lack of definitional clarity of what constitutes ICC, has according to Hollinsworth led to 'widely disparate understandings and theoretical underpinnings of the

Comparative Perspectives 226; Loretta Kelly et al, 'Legal Practitioners Working More Effectively with Aboriginal Clients: Promising New Cultural Competency Training by Legal Aid NSW' (2013) 8(5) *Indigenous Law Bulletin* 3.

⁸⁴ Thalia Anthony and Melanie Schwartz, 'Invoking Cultural Awareness Through Teaching Indigenous Issues in Criminal Law and Procedure' (2013) 23 *Legal Education Review* 31.

⁸⁵ Alexander Reilly, 'Finding an Indigenous Perspective in Administrative Law' (2009) 19 *Legal Education Review* 271; Nicole Graham, 'Indigenous Property Matters in Real Property Courses at Australian Universities' (2009) 19 *Legal Education Review* 289; Heron Loban, 'Embedding Indigenous Perspectives in Business Law' (2011) 5(2) *e-Journal of Business Education and Scholarship of Teaching* 11; Gary D Meyers, 'Two Examples of Incorporating Indigenous Issues in Law School Curricula: Foundation Year Courses and Electives in Environmental/Natural Resources Law' (2008) 7(9) *Indigenous Law Bulletin* 6.

⁸⁶ Kim Victoria Browne, 'Rural Lawyers and Legal Education: Ruralising and Indigenising Australian Legal Curricula' (Paper presented at the International Conference on Education and E-learning, Singapore, 26–27 September 2016) 51.

⁸⁷ Alison Gerard, Annette Gainsford and Kim Bailey, 'Embedding Indigenous Cultural Competence in a Bachelor of Laws at the Centre for Law and Justice, Charles Sturt University: A Case Study' (Paper presented at the Australian Academy of Law, Future of Legal Education Conference, Sydney, 11–13 August 2017).

⁸⁸ Amy Maguire and Tamara Young, 'Indigenisation of Curricula: Current Teaching Practices in Law' (2015) 25 *Legal Education Review* 95.

⁸⁹ Evan Hamman, 'Culture, Humility and the Law: Towards a More Transformative Teaching Framework' (2017) 42 *Alternative Law Journal* 156.

concept'.⁹⁰ ICC is often confused with related concepts including cultural awareness, cultural sensitivity, cultural safety, cross-cultural communication and cultural proficiency.⁹¹ Given this ambiguity Hollinsworth argues that attempts to promote ICC may lead to 'racialism' (the failure to recognise the diversity within racialised groups); 'essentialism' (the belief that categories of people share an inherent and immutable 'essence'); and 'culturalism' (the oversimplification of culture into a list of facts and presumed values).⁹² Therefore ICC carries an inherent risk because it may create a misplaced viewpoint, and provide a (false) sense of security for workers who are anxious about dealing with 'others' or are frightened of being perceived as racist.⁹³ He concludes that:

Without acknowledge the interpenetrating, hybrid and fluid factors that construct and shape our identities, cultural competency degenerates into essentialized traits that reinforce stereotypes and prevent genuine engagement.⁹⁴

In psychology Wendt and Gone argue that an emphasis on cultural competencies is closely associated with 'psychological essentialism',⁹⁵ which infers that 'social distinctions have deeply rooted biological underpinnings' that are seen as 'historically invariant and culturally universal'.⁹⁶ They argue in the context of multiculturalism, such essentialism may:

simplistically accentuate the injuries of race, reduce complex cultural processes to reified within-group traits, presume greater within-group than between-group differences, and prioritise professional protection from racism over cross-cultural understanding.⁹⁷

Pon suggests that ICC constitutes a form of 'new racism' due to its tendency to 'otheriz[e] non-whites by deploying modernist and absolutist views of culture, while not using racialist language'.⁹⁸ Lopez also stresses the need for students to understand that culture is a dynamic concept and not an immutable characteristic.⁹⁹

⁹⁰ David Hollinsworth, 'Forget Cultural Competence; Ask for an Autobiography' (2013) 32 *Social Work Education* 1048, 1049.

⁹¹ Ibid.

⁹² Ibid 1051.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Dennis C Wendt and Joseph P Gone, 'Rethinking Cultural Competence: Insights from Indigenous Community Treatment Settings' (2011) 49 *Transcultural Psychiatry* 206, 209.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Gordon Pon, 'Cultural Competency as New Racism: An Ontology of Forgetting' (2009) 20 *Journal of Progressive Human Services* 59.

⁹⁹ Antoinette Sedillo Lopez, 'Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic' (2008) 28 *Washington University Journal of Law and Policy* 37, 46.

F *Re-centring Whiteness*

Another problem is the potential for ICC to re-centre ‘whiteness’ which has been described by Moreton-Robinson as ‘an invisible regime of power that secures hegemony through discourse and has material effects in everyday life.’¹⁰⁰ Pon argues ‘without considerations of power, cultural competency overlooks how knowledge of cultural others is created’ and how ‘meanings and perspectives relating to the “other” are often caught up in discourses that uphold whiteness as the default standard’.¹⁰¹ Fisher-Borne, Cain and Martin argue that ICC’s focus on the ‘other’, whilst maintaining whiteness as the ‘locus of normalcy’, carries the assumption that ‘learning a group’s history is seen as sufficient, with little need to strive for social justice to eliminate oppression’.¹⁰² Dunn also suggests ‘providers must acknowledge that social/cultural values which privilege certain groups (ie White people) may translate into personal values and behavior that are discriminatory and unconsciously exclusionary’.¹⁰³ For Pon, attempts to define culture may simply perpetuate stereotypes, which without considerations of the power inherent in such an exercise may resemble new forms of racism involving ‘a shift away from racial exclusionary practices based on biology to practices based on culture’.¹⁰⁴ Pon therefore suggests that the focus should be self-reflexive ‘grappling with racism and colonialism’, rather than ICC.¹⁰⁵ Hollinsworth advocates an auto-biographical approach, emphasising that ‘the most important source of cultural information about the client *should come from the client*’.¹⁰⁶ Fisher-Borne, Cain and Martin suggest that ‘cultural humility’ offers a better alternative to ICC because it ‘challenges us to ask difficult questions instead of reducing our clients to a set of norms we have learned in a training or course about ‘difference’.’¹⁰⁷

G *Becoming ‘Knowers’, Not Learners*

Another potential problem occurs where ICC programs produce ‘knowers’, not ‘learners’. For Goerke and Kickett there is a real risk of individuals assuming cultural knowledge which may lead to paternalism. According to McLaughlin, if ICC is just about the

¹⁰⁰ Aileen Moreton-Robinson, ‘Whiteness, Epistemology and Indigenous Representation’ in Aileen Moreton-Robinson (ed), *Whitening Race: Essays in Social and Cultural Criticism* (Aboriginal Studies Press, 2004) 75.

¹⁰¹ Pon, above n 98.

¹⁰² Marcie Fisher-Borne, Jessie Montana Cain and Suzanne L. Martin, ‘From Mastery to Accountability: Cultural Humility as an Alternative to Cultural Competence’ (2014) 34 *Social Work Education* 165.

¹⁰³ Ardys McNaughton Dunn, ‘Culture Competence and the Primary Care Provider’ (2002) 16 *Journal of Pediatric Care* 105, cited in Fisher-Borne, Cain and Martin, above n 102.

¹⁰⁴ Pon, above n 98, 59.

¹⁰⁵ Ibid.

¹⁰⁶ Hollinsworth, above n 90, 1052 (emphasis added).

¹⁰⁷ Fisher-Borne, Cain and Martin, above n 102.

dominant group getting knowledge, then it is a problem.¹⁰⁸ As McLaughlin states, to become a ‘culturally competent’ professional:

Requires ongoing engagement with Indigenous peoples and perspectives ‘to jar you out of your default position.’ Without these perspectives, ‘doing Indigenous Knowledge’ becomes just another exercise in colonization (taking over IK, possessing it, and deciding how and when it should appear, if at all).¹⁰⁹

The potential for ICC program to produce ‘knowers’ has led several commentators to emphasize the need for ICC to be ongoing, rather than a one-off, program. This is consistent with the early literature on ICC which describes ICC as a ‘journey’ or ‘developmental process’.¹¹⁰ Fisher-Borne, Cain and Martin have noted that building ICC is ‘an ongoing process without a finite endpoint’.¹¹¹ Lopez states it is: ‘not possible to become completely “culturally competent” ... Working on cultural knowledge, intercultural communication skills, and self-awareness is a lifelong journey’.¹¹²

H *Internationalisation and ICC*

While parallels have been drawn between ICC and internationalisation, significant differences and challenges have also been identified. One common problem is the unwillingness of Australian universities to change their Eurocentric education models.¹¹³ Engagement with Indigenous knowledges is however seen as an important pre-condition to becoming a globally minded citizen, with Wesley stating:

in our globalized world, without a commensurate awareness – and competency – with the local, (that is Indigenous cultural competencies) our graduates will miss the fundamental building block for the transformation required to enable them to be truly global citizens.¹¹⁴

According to Davis, another risk associated with globalisation is the ‘universalising or essentialising of Indigenous culture and heritage at the expense of acknowledging its place-based and localized nature’.¹¹⁵

¹⁰⁸ Juliana McLaughlin, ‘“Crack in the Pavement”: Pedagogy as Political and Moral Practice for Educating Culturally Competent Professionals’ (2013) 12(1) *International Education Journal: Comparative Perspectives* 249.

¹⁰⁹ Ibid 260.

¹¹⁰ Terry L Cross et al, *Towards a Culturally Competent System of Care* (Georgetown University Child Development Center, 1989) 13.

¹¹¹ Fisher-Borne, Cain and Martin, above n 102.

¹¹² Lopez, above n 99, 67.

¹¹³ Michael Wesley, ‘We Must Look to Asia to Change Our Teaching Models’, *The Australian* (Sydney), 26 October 2011, 29, cited in Veronica Goerke and Marion Kickett, ‘Working Towards the Assurance of Graduate Attributes for Indigenous Cultural Competency: The Case for Alignment Between Policy, Professional Development and Curriculum Processes’ (2013) 12(1) *International Education Journal: Comparative Perspectives* 61, 67.

¹¹⁴ Ibid.

¹¹⁵ Michael Davis, ‘Indigenous Knowledge: Beyond Protection, Towards Dialogue’ (2008) 37(S1) *Australian Journal of Indigenous Education* 25, cited in Goerke and Kickett, above n 113, 67.

For Goerke and Kickett these critiques under-score the need for distinct graduate attributes on global CC and ICC, and also highlight the need to respect the localised nature of Indigenous knowledges, through engagement with Indigenous communities.¹¹⁶

I Summary

The literature on embedding of ICC in different disciplinary contexts reveals some of the complexities of this work. Some key lessons for ICC pedagogy that can be learnt from this literature are:

- The dynamic nature of culture needs to be understood to avoid the potential for stereotyping.
- An understanding of whiteness and the power implicit in the process of knowledge production is necessary to avoid re-centring whiteness and to avoid perpetuating colonial domination.
- There is a danger of becoming a ‘knower’ in this context.
- Cultural humility and cultural empathy offer alternative approaches which guard against paternalism and presuming more knowledge than someone from an Indigenous cultural group.
- ICC requires meaningful engagement with community and awareness of the place-based nature of Indigenous knowledges.
- ICC should not be conflated with broader cultural competency programs focusing on globalisation or internationalisation. Engagement with the local Indigenous knowledges may however support the attainment of competencies to work in a diverse global context.
- Moving towards ICC is an ongoing, lifelong journey. There is no endpoint.

These concerns were also echoed at the ICCLAP workshops which will be discussed below.

IV ICCLAP KEY FINDINGS

A *The Current State of ICC in Legal Education*

The *ICCLAP Law School Survey* results provide a snapshot of the current state of ICC in legal education. A total of 20 out of 39 law schools responded to the survey, representing 51 per cent of law schools in Australia. To a certain extent the survey depended on respondents having some knowledge of what ICC means, which as already shown, is a term open to interpretation. The findings provide some insights into the extent to which ICC is presently included in law curricula. The key findings from the survey are:

¹¹⁶ Goerke and Kickett, above n 113, 68.

- Eighteen law schools reported that their university and school supports the inclusion of ICC in curriculum—(n18 and n20).
- Two law schools currently include ICC in their graduate outcomes, and six law schools include ICC as a course learning outcome (n20).
- Ten law schools include ICC in their core units (n20). The most common core units including ICC were property, constitutional law, criminal law and procedure, and foundational law units.
- Eleven law schools include ICC in elective units (n19). The most common elective units including ICC were Indigenous peoples and the law; family and children’s law; criminal law electives; human rights and law/society/culture units.
- Fourteen law schools indicated that they have access to support for embedding ICC in curricula, which primarily takes the form of Indigenous expertise, financial support and staff training (n14).
- There are currently 233 Aboriginal and Torres Strait Islander under-graduate students, and 25 post-graduate students in law across ten schools (some schools did not provide comparable data).
- There are eleven Aboriginal and Torres Strait Islander academics employed at nine universities (n20 and n17 respectively).¹¹⁷

The responses to the *Law School Survey* reveal that although only a small number of law schools have adopted ICC as a graduate attribute or course learning outcome, a significant proportion of schools are already taking steps to incorporate ICC into their law programs. However given the response rate, the results suggest there is significant scope to improve the inclusion of ICC in law curricula. For almost 50 per cent of law schools there is no data available.

B *What Does ICC Mean in the Context of Legal Education?*

The *Consultation Workshop* explored the question of what ICC means in the context of legal education, using Universities Australia’s definition of ICC as the starting point for discussion. At the outset concerns were raised about whether ‘competency’ is the appropriate terminology to be used in this context due to the impossibility of becoming fully ‘competent’ in a culture different to one’s own.¹¹⁸ Alternatives such as ‘cultural humility’, ‘cultural inclusion’ and ‘cultural intelligence’ were discussed. This concern was also reflected in the literature on ICC (see Part III above).

Despite the terminology employed however, there was broad support for legal education to be more inclusive of Indigenous knowledges and law, and communication skills for working with

¹¹⁷ *ICCLAP Law School Survey Report*.

¹¹⁸ *ICCLAP Consultation Report*, 3.

Indigenous peoples. A number of core elements were identified to promote ICC in legal education, including:

- Understanding that culture is impacting on every communication at some level.
- Engaging respectfully with Indigenous peoples in legal spaces.
- An appreciation of Indigenous diversity to avoid stereotyping.
- Actively seeking the views of Aboriginal peoples and communities, rather than assuming a level of understanding and imposing that view.¹¹⁹

In the legal context cultural competency is primarily about fostering meaningful cross-cultural dialogue, with the *process being more important than the nomenclature*.¹²⁰ There was also a strong perception that legal academics do not necessarily view Aboriginal legal systems as equal, leading to the marginalisation of Indigenous law in legal education.¹²¹ Therefore an emphasis on legal pluralism and the need to ‘disrupt’ the culture of Anglo-Australian law were seen as important for developing ICC.¹²²

C Views of Indigenous Legal Service Providers

Aboriginal and Torres Strait Islander legal service providers expressed a strong preference to be able to employ Indigenous lawyers, seeing this as essential to providing culturally appropriate legal services.¹²³ Pathways for Indigenous students and graduates to enter these services are needed to achieve this goal.¹²⁴ It was also acknowledged that Indigenous graduates may choose to pursue careers outside the community legal sector, so there is also a need to build the capacity of non-Indigenous lawyers to do this work.¹²⁵ In the view of legal services, there were a number of areas where non-Indigenous lawyers lacked capacity to work with Indigenous communities, with one participant stating: ‘It’s such a chasm between these people and the clients that they are serving’. Key areas requiring attention were:

- Lack of knowledge of Aboriginal societies and connection to community.
- Need to understand Aboriginal decision making and dispute resolution processes.
- The ability to take instructions from communities rather than individuals.

¹¹⁹ ICCLAP Consultation Report, 3.

¹²⁰ ICCLAP Consultation Report, 3 (emphasis added).

¹²¹ ICCLAP Consultation Report, 4.

¹²² ICCLAP Consultation Report, 9.

¹²³ ICCLAP Consultation Report, 4–5; ICCLAP Future Directions Report, 10.

¹²⁴ ICCLAP Consultation Report, 5.

¹²⁵ ICCLAP Consultation Report, 5; ICCLAP Future Directions Report, 10.

- The ‘perverse adversarialism’ of the Anglo-Australian legal system was seen as a major barrier to building effective working relationships.¹²⁶

Work integrated learning programs were identified as valuable to developing cross-cultural understanding.¹²⁷ While this is just a snapshot of key issues identified by legal service providers, their views are also reflected in the key findings on pedagogy, curriculum and Indigenous knowledges below.

D *Indigenous Students Experiences of Law Schools*

With the presence of a number of Indigenous lawyers at the workshops discussion inevitably turned to their experiences of legal education. The following issues were highlighted:

- The inability of academics to provide culturally safe learning environments for Indigenous students, especially during class discussions on Indigenous legal issues.
- Indigenous students being ‘put on the spot’ in class and looked upon as an authority on everything Indigenous.
- Work placements were sometimes tokenistic with minimal learning outcomes for Indigenous students.¹²⁸

Indigenous support units were reported to provide culturally safe spaces for Indigenous students.¹²⁹ International study tours were highlighted as positive experiences, enabling students to build solidarity with the global Indigenous community. The *Future Directions Workshop* also identified the need for further research to ascertain if there has been a shift in Indigenous student experiences of alienation and racism as reported by Douglas and Rodgers-Falk.¹³⁰ Research conducted in collaboration with Indigenous students may provide valuable insights to inform pedagogical approaches to teaching ICC and ways to ensure cultural safety in the law classroom.

E *Indigenous Legal Academics*

The employment of Indigenous academics in law schools was seen as essential to teaching ICC in curriculum.¹³¹ However the low numbers of Indigenous legal academics, the isolation they often feel working ‘one-out’ in a law school, and the need for culturally safe work environments are critical factors that must be addressed to achieve this

¹²⁶ ICCLAP Consultation Report, 4.

¹²⁷ ICCLAP Consultation Report, 5.

¹²⁸ ICCLAP Consultation Report, 5–6.

¹²⁹ ICCLAP Consultation Report, 6.

¹³⁰ ICCLAP Future Directions Report, 12; see also Douglas, above n 9; Rodgers-Falk, above n 46.

¹³¹ ICCLAP Consultation Report, 7.

goal.¹³² Indigenous academics also reported experiencing ‘push back’ from students when teaching Indigenous content, carrying the emotional labour of challenging entrenched attitudes.¹³³ Stereotyping of Indigenous academics should also be avoided — they should not be ‘pigeon-holed’ into only teaching Indigenous content.¹³⁴

Indigenous legal academics also make valuable contributions to universities providing advice, expertise and mentoring to non-Indigenous staff, which must be acknowledged.¹³⁵ However this contribution may also be undermined because Indigenous academics are commonly employed at lower levels, feeling that their ‘voices are not always heard and respected, and the need to prove themselves’.¹³⁶ The high potential for burn-out was also raised. Recruitment and retention of Indigenous academics should be a priority, with appropriate support mechanisms in place to ensure a culturally safe work environment.¹³⁷

F *Critical Success Factors for Embedding ICC in Legal Education*

The ICCLAP workshops were instrumental in identifying critical success factors, barriers and constraints, and guiding principles to support the embedding of ICC in curriculum. Critical success factors prioritised at the *Future Directions Workshop* are:

- ICC is included in learning environment and pedagogical methods — co-designed with Indigenous peoples.
- ICC permeates lawyering, leading to changes in the Anglo-Australian legal system and better recognition of Indigenous law and sovereignty.
- Indigenous community feels sense of ownership of the curriculum and it is endorsed and supported by Indigenous specialists/contributors.
- ICC improves student learning outcomes, increases Indigenous enrolment, retention and completion rates in law programs.
- Supportive law school environment for Indigenous academics. There are more Indigenous academics in law schools, practising law and in positions of influence.¹³⁸

G *University Context*

At the university level, barriers to implementing ICC included a perception that ICC is not core business to the neo-liberal economic order; an institutional focus on commercial rather than social justice

¹³² ICCLAP Consultation Report, 7.

¹³³ ICCLAP Consultation Report, 9.

¹³⁴ ICCLAP Consultation Report, 7.

¹³⁵ ICCLAP Future Directions Report, 10, 19.

¹³⁶ ICCLAP Future Directions Report, 11; ICCLAP Consultation Report, 7.

¹³⁷ ICCLAP Future Directions Report, 19.

¹³⁸ ICCLAP Future Directions Report, 12.

outcomes; and funding cuts to Indigenous academic units.¹³⁹ Factors critical to the university environment for successful implementation of ICC are:

- University leadership fosters a culture where ICC is promoted and supported, including university-wide Indigenous strategies.¹⁴⁰
- ICC is included in university graduate attributes.¹⁴¹
- ICC is included in key performance indicators for staff, selection and promotion criteria, and professional developing programs.¹⁴²
- ICC is included in curriculum review and renewal processes.¹⁴³
- ICC is valued and is adequately resourced to ensure its sustainability.¹⁴⁴
- ICC is regarded as core university business.¹⁴⁵
- Engagement with Indigenous communities, for example by establishing a place-group of experts, or Elder in Residence programs.¹⁴⁶
- Universities commit to ‘truth-telling’ in partnership with Indigenous communities.¹⁴⁷

H Law Schools

A number of barriers were identified to the implementation of ICC within law schools, drawing upon the experiences of workshop participants at a number of law schools.

- Stubborn adherence to established law curriculum and reluctance to change.¹⁴⁸
- Perception that ICC is antithetical to core curriculum and not within the expertise of individual lecturers.¹⁴⁹
- Racism, ignorance and tokenism — perception that all law students share the same privileges.¹⁵⁰
- ICC positioned as an Indigenous issue for Indigenous people to solve.¹⁵¹
- Change fatigue and concern about workloads.¹⁵²
- The need to change the culture of law schools.¹⁵³

¹³⁹ *ICCLAP Future Directions Report*, 11.

¹⁴⁰ *ICCLAP Consultation Report; ICCLAP Future Directions Report*, 9.

¹⁴¹ *ICCLAP Future Directions Report*, 14.

¹⁴² *ICCLAP Consultation Report*, 8; *ICCLAP Future Directions Report*, 15, 21.

¹⁴³ *ICCLAP Future Directions Report*, 21.

¹⁴⁴ *ICCLAP Future Directions Report*, 9, 15, 17.

¹⁴⁵ *ICCLAP Future Directions Report*, 17.

¹⁴⁶ *ICCLAP Future Directions Report*, 8, 23.

¹⁴⁷ *ICCLAP Future Directions Report*, 16.

¹⁴⁸ *ICCLAP Future Directions Report*, 11.

¹⁴⁹ *ICCLAP Consultation Report*, 7–8, 10.

¹⁵⁰ *ICCLAP Future Directions Report*, 11.

¹⁵¹ *ICCLAP Future Directions Report*, 11.

¹⁵² *ICCLAP Consultation Report*, 8.

¹⁵³ *ICCLAP Consultation Report*, 7.

Critical success factors for the implementation of ICC within law schools were identified as:

- Strong leadership from Deans to ‘drive’ the embedding of ICC and manage resistance.¹⁵⁴
- Whole of school approach to ensure that ICC is incorporated and sustained across the curriculum.¹⁵⁵
- ICC is included in course learning outcomes.¹⁵⁶
- Review of curriculum to identify inclusion of ICC.¹⁵⁷
- Support for non-Indigenous academics to build their capacity to teach Indigenous content including generic and role specific training. Training to include critical self-reflection, recognising own cultural perspectives and limitations, cultural humility, and an awareness of unconscious bias.¹⁵⁸
- Access to Indigenous expertise which may take the form of mentoring from Indigenous colleagues; an Indigenous cultural authority to provide advice to schools (including Elders, academic discipline and pedagogy experts); and/or consultation with the university’s Indigenous centre.¹⁵⁹
- Resources including workload allocations which allow time to develop relationships with Indigenous communities.
- ICC evaluated both internally and externally by Indigenous experts.¹⁶⁰

It was also recognised that both ‘top-down’ and ‘bottom-up’ approaches are needed, as incorporating ICC may be more genuine where it is ‘intrinsically motivated’. A common view was that academics need to take responsibility to engage with Indigenous knowledges as they relate to their teaching, and to see this as an opportunity to contribute to justice: academics need to understand they have power to influence, and should use it.¹⁶¹

I *Guiding Principles*

The ICCLAP workshops identified guiding principles for incorporating ICC into law curriculum.

- Whole of curriculum approach — with ICC integrated and staged approach across the curriculum with knowledge applied to practical experience.¹⁶²

¹⁵⁴ *ICCLAP Consultation Report*, 7, 15.

¹⁵⁵ *ICCLAP Consultation Report*, 6–9; *ICCLAP Future Directions Report*, 9, 12.

¹⁵⁶ *ICCLAP Future Directions Report*, 14.

¹⁵⁷ *ICCLAP Future Directions Report*, 20.

¹⁵⁸ *ICCLAP Future Directions Report*, 21–3.

¹⁵⁹ *ICCLAP Consultation Report*, 8–10; *ICCLAP Future Directions Report*, 9–14.

¹⁶⁰ *ICCLAP Future Directions Report*, 14.

¹⁶¹ *ICCLAP Consultation Report*, 7–11; *ICCLAP Future Directions Report*, 19.

¹⁶² *ICCLAP Consultation Report*, 6–9; *ICCLAP Future Directions Report*, 9, 12.

- Identify relevant learning outcomes and meaningful assessment tasks to ensure students achieve learning outcomes.¹⁶³
- Indigenous knowledges and ontological approaches are included in curriculum.¹⁶⁴
- Recognition that Indigenous knowledges are place-based, and the value of place-based learning.¹⁶⁵
- Engaging with Indigenous communities at the national, regional and local level. Need to build long term, mutually beneficial relationships with Indigenous communities, and ensure that Indigenous peoples can contribute to decision making, staff training, curriculum development and teaching (guest lectures).¹⁶⁶
- Law program is conceptualised within a framework of legal pluralism, which recognises Aboriginal legal systems and respect for diversity.¹⁶⁷
- Curriculum engages students in critical thinking and self-reflection — including critical reflection upon the presumed neutrality of law and legal positivism; the historical, social and cultural contingency of what constitutes law and legal knowledge; and awareness of the inherent biases in the Anglo-Australian legal system.¹⁶⁸

Teaching methods may include historical and comparative (international and interdisciplinary), values based (eg social justice, respect for diversity), critical race theory, narrative, and trauma informed approaches.¹⁶⁹ Work integrated learning with Indigenous communities and organisations provide transformative learning experiences which are effective in changing attitudes. Such programs must be done ethically, ensure cultural safety, and be adequately supported so as not to create a burden on communities or organisations. Indigenous and non-Indigenous ‘peer-to-peer relationships’ are effective at building cultural understanding, and promote two-way learning.¹⁷⁰ There is also potential to explore online learning and teaching of ICC.¹⁷¹

J Curriculum

The *Consultation Workshop* developed a list of the knowledge, attitudes and skills that need to be embedded into law curriculum to foster ICC in students. Essential content for curriculum includes:

¹⁶³ ICCLAP Consultation Report, 9; ICCLAP Future Directions Report, 9.

¹⁶⁴ ICCLAP Future Directions Report, 9–10, 14.

¹⁶⁵ ICCLAP Future Directions Report, 14, 16. See also Gainsford in this edition on the value of place-based learning.

¹⁶⁶ ICCLAP Future Directions Report, 9; ICCLAP Consultation Report, 6.

¹⁶⁷ ICCLAP Consultation Report; ICCLAP Future Directions Report, 9–10, 16.

¹⁶⁸ ICCLAP Consultation Report, 9, 19; ICCLAP Future Directions Report, 10, 17.

¹⁶⁹ ICCLAP Consultation Report, 9; ICCLAP Future Directions Report, 10, 15–17.

¹⁷⁰ ICCLAP Consultation Report, 5, 9.

¹⁷¹ ICCLAP Future Directions Report, 18.

- Understanding Indigenous experiences of colonisation (both historical and ongoing).
- An appreciation of the ‘lived experiences’ of Aboriginal and Torres Strait Islander peoples, including ongoing forms of colonialism, racism and inter-generational trauma.
- Key principles of Aboriginal culture.
- Understanding the role of ‘legal actors’ in historical and ongoing systems of oppression.
- Communication skills including the ability to take instructions from Aboriginal and Torres Strait Islander clients.
- Self-reflection on own culture, and understanding of cultural difference.
- Priestly 11 to include content relating to Indigenous peoples.
- Developing an understanding of the holistic needs of Indigenous clients — including legal, social, economic and health needs.

The full list of knowledge, skills and attitudes for ICC in curriculum is included in the *ICCLAP Consultation Report* (available at www.icclap.edu.au), together with the knowledge, skills and attitudes that academics need to embed ICC in curriculum.

K *Indigenous Knowledges*

While the inclusion of Indigenous knowledges in curriculum is seen as important, concerns were also expressed about the culturally appropriate use of Indigenous knowledges. A key issue is understanding the differences between Western and Indigenous concepts of knowledge, and the cultural specificity of legal knowledge. It needs to be acknowledged that Indigenous knowledges are place-based, and may be subject to rules about who has access to information which are at odds with Western knowledge and an ‘entitlement to know’.¹⁷² There must be recognition that Elders and community members are the owners of Indigenous knowledge, and must be consulted if Indigenous knowledges are to be used.¹⁷³ Remuneration should also be provided to Elders and Indigenous community members for their contributions to curriculum, teaching and community engagement. Protocols for the use of Indigenous knowledge are needed, including the culturally appropriate use of technology and media,¹⁷⁴ and resources on appropriate terminology and language.

¹⁷² *ICCLAP Consultation Report*, 10; *ICCLAP Future Directions Report*, 9, 14–16.

¹⁷³ *ICCLAP Consultation Report*, 10.

¹⁷⁴ See, eg, Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2nd ed, 2012); Terri Janke and Company, ‘Indigenous Knowledge: Issues for Protection and Management’ (Discussion Paper, IP Australia and Department of Industry, Innovation and Science, 29 March 2018) <<https://www.ipaustralia.gov.au/about-us/news-and-community/news/indigenous-knowledge-issues-protection-and-management>>.

Another concern was the tendency for Indigenous issues to be framed negatively within curriculum (eg high incarceration rates).¹⁷⁵ While students need to understand the lived experience of Indigenous peoples, *it is equally important that Indigenous knowledges and cultures are valued, and seen as holding the solutions, rather than simply being framed as the other.*¹⁷⁶ Valuing Indigenous cultures is also necessary to transform ‘deficit’ thinking and the characterisation of Aboriginal people as a problem or ‘special needs’ group, towards an expectation that all Australians should be educated about the First Peoples of this country.¹⁷⁷

V CONCLUSIONS

The ICCLAP project has articulated a vision for ICC in legal education, identifying existing barriers, critical success factors and guiding principles for implementing ICC in law curriculum. The project has also outlined the knowledge, skills and attitudes that need to be developed in staff and students to build ICC and improve their capacity for working with First Nations peoples. This vision has been developed in collaboration between Indigenous and non-Indigenous legal academics, legal professionals, peak organisations and support staff in the higher education sector. The key findings of the project emphasise the need for ICC in law to be developed in consultation with Indigenous communities at the local level, recognising the placed-based nature of Indigenous knowledges, and within a framework of legal pluralism.

The independent evaluation of ICCLAP noted that the workshop participants and key stakeholders saw the project as ‘highly necessary’, and therefore embraced the opportunity to work with the project team to develop strategies and principles to guide the incorporation of ICC in law.¹⁷⁸ The evaluation also found that, if anything, more time was needed for workshop participants to engage with the topics and with each other.¹⁷⁹ It also reported that:

A positive outcome not explicitly intended was the cathartic and liberating sharing of experiences, articulation of frustration, and in some cases, grievances, regarding the invisibility and marginalisation of Indigenous laws and values in legal education. This proved to be therapeutic for many participants.¹⁸⁰

This statement reflects the sentiments of many participants at the ICCLAP workshops, signaling the importance they placed on improving the capacity of lawyers to work with and for First Peoples, and reaffirming the urgent need to embed ICC in law programs. The

¹⁷⁵ *ICCLAP Future Directions Report*, 11.

¹⁷⁶ *ICCLAP Future Directions Report*, 9.

¹⁷⁷ *ICCLAP Future Directions Report*, 16, 20.

¹⁷⁸ Linda Te Aho and Bradford Morse, *ICCLAP Final Evaluation Report 2018*, 7. (At the date of publication this is not yet released. The report is held on file with the author.)

¹⁷⁹ *Ibid* 13.

¹⁸⁰ *Ibid* 14.

Law School Survey shows that while some progress has been made, there is still much work to be done. There are however promising signs that law schools are strengthening their efforts to incorporate ICC in legal education, as the emerging literature has shown. The project has also been successful in fostering a community of practice committed to embedding ICC in legal education and practice, with the contributions to this special focus edition evidence of renewed scholarship and action towards this goal.

However, as this research has shown, working towards ICC (or its many variations) is an ongoing journey, and therefore this work only represents some small footprints along the pathway towards more inclusive legal education for the benefit of both Indigenous students and communities, and for building ICC in all students. The research also highlights the need to move towards an expectation that all Australians should be educated about the First Peoples of this country, as the basis for building stronger and more equitable relationships based on mutual respect. While ICC may never be attained — we may never get there — greater inclusion of Indigenous knowledges and perspectives in legal curriculum will visibly demonstrate that Indigenous peoples and cultures are valued and indeed have much to offer legal education and practice in the Australian context.