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Teaching for the 21st Century: Indigenising the Law Curriculum at Uwa

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TEACHING FOR THE 21ST CENTURY: INDIGENISING THE LAW CURRICULUM AT UWA

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I INTRODUCTION

The Law School and the School of Indigenous Studies at the University of Western Australia (UWA) have embarked on a project to 'Indigenise' the UWA Juris Doctor (JD) degree. For the purposes of the project, 'Indigenise' is defined as the incorporation of Indigenous[1] knowledges, cultures and experiences throughout the JD in a way that is consistent with our Principles of Indigenisation (see Part IV below).

The project began in 2018, and it is expected to take five years to develop the initial curriculum across all units of the JD. This article examines key features of the project in the context of the broader complexities of Indigenisation of curriculum. These features are: (1) an equitable and ongoing partnership between Indigenous and non-Indigenous peoples; (2) a set of best practice principles for Indigenisation; (3) a culturally competent approach; (4) a whole-of-degree basis for curriculum change; and (5) an iterative and supported process for curriculum development and delivery.

The term 'cultural competency' can be fraught and requires exploration (see Part V below). For now it is sufficient to note that the Indigenisation Project has adopted a definition of cultural competency that consists of three key understandings. First, cultural competency is a journey not a destination; a lifelong active learning process, not a passive state of being. Second, an understanding of Indigenous peoples and contexts, along with the ability to relate to peoples and contexts in accordance with best practice principles. This must include local peoples and contexts (that is, engagement with the Indigenous peoples

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1 The UWA School of Indigenous Studies uses the word 'Indigenous' to emphasise solidarity and connectedness with Indigenous peoples of the globe. In order to acknowledge the diversity and sovereignties of Indigenous peoples, any Indigenous person quoted or referred to is identified by the specific Indigenous nation or nation(s) from which they come the first time that their work is referenced, provided their specific affiliation was able to be ascertained. If the specific affiliation could not be ascertained or if the person uses a more general term to describe themselves, then the appropriate general term (eg, Aboriginal, Torres Strait Islander, Indigenous) is used.

on whose Country an organisation exists). Third, an ability to articulate and critically engage with one's own cultural and professional contexts.

The structure of this article is reflective of the process-oriented approach taken to the project as a whole, or to put this another way, the 'how' informs the 'what'. The 'what' of Indigenous content within any given unit arises from, and sustained by, the processes put in place by the larger project and the partnership between Indigenous and non-Indigenous peoples that underpins it. Parts III - V of this article deal with the importance of that partnership; the principles against which our content is measured; and the ways in which we are developing the cultural competence of our staff and students. These matters are placed in a broader context of their relevance to higher education and to the working environments of the 21st century (Part II). In this regard it is noted that the project is informed by a broad knowledge-base which includes decades of work on cultural competency, including in relation to curriculum development outside of law schools. The legal academy is a relative newcomer to Indigenisation, and there is much to be learned from experiences in other knowledge-disciplines as well as from work done across professional contexts.

The final two sections focus more specifically on the implementation of Indigenous content within our JD degree. Consistent with a process-oriented approach, curriculum is not pre-determined but emerges from the expertise of Indigenous and non-Indigenous peoples working together, informed by a culturally competent approach and measured against best practice principles. Parts VI and VII discuss how this is achieved across the degree and at an individual unit level.

II THE BROADER CONTEXT OF INDIGENISATION

The importance of incorporating Indigenous content into curriculum has been repeatedly emphasised in higher education reports and policy documents.[2] This has led to the following recommendation in the *Universities Australia Indigenous Strategy 2017–2020*:

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[2] 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) especially recommendations 18 and 32 <https://www.education.gov.au/review-higher-education-access-and-outcomes-aboriginal-and-torres-strait-islander-people>; Australian Government, 'Review of Australian Higher Education' (Final Report, Department of Education and Training, 2008) chapter 3.2 <https://www.mq.edu.au/__data/assets/pdf_file/0013/135310/bradley_review_of_australian_higher_education.pdf>; Universities Australia, *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (October 2011) (*Best Practice Principles*) <https://www.universitiesaustralia.edu.au/ArticleDocuments/376/Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities.pdf.aspx>; Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (October 2011) (*Best Practice Framework*) <https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous- Higher-Education/Indigenous-Cultural-Compet#.V_WbwMl0VnE>.

> 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.[3]

The recent 2019 report of the *Indigenous Cultural Competency for Legal Academics Project* (ICCLAP) recommended the incorporation of Indigenous Cultural Competency (ICC) into law curriculum,[4] and the Council of Australian Law Deans has formed a working party to support this.[5] In this regard, the historic approach to Indigenous content in law curriculum — which has largely consisted of an optional 'Indigenous peoples and the law' unit along with limited content scattered through the rest of the degree — is insufficient to create culturally competent professionals. As former WA Chief Justice Wayne Martin has commented, there is a 'need for the effect of our laws upon Aboriginal people…to be an embedded and integral component of each and every course taught in the law school.'[6]

The recognition of the importance of Indigenisation across higher education is reinforced by recognition within the legal community of the necessity of better engagement with Indigenous peoples. Over the last 30 years there has been a steady stream of recommendations relating to the need for the legal sector to work with Indigenous peoples to create programs that increase cultural understanding.[7] A recent iteration of this is found in the Law Council's *Justice Project* report:

> Ongoing cultural competence training, informed and led by Aboriginal and Torres Strait Islander people and organisations, should be provided to: lawyers, judicial officers, police, corrections and broader justice system professionals who work with Aboriginal and Torres Strait Islander peoples…Aboriginal and Torres Strait Islander organisations should be appropriately resourced to engage in this work.[8]

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

4 *ICCLAP Final Report* (2019), vii <https://ltr.edu.au/resources/ID14-3906_Burns_FinalReport_2019.pdf>.

5 This was one of the ICCLAP recommendations.

6 Chief Justice Wayne Martin AC, 'The 90th Anniversary of the Law School at the University of Western Australia' (UWA, Nedlands, 22 June 2017) 9–10.

7 *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991), recommendation 96; Standing Committee on Law and Justice, Parliament of New South Wales, *The Family Response to the Murders in Bowraville* (Report 55, November 2014) xiii; Australian Law Reform Commission, *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 10.19; *Record of the Investigation into the Death of Ms Dhu* (reference number: 47/15) 134–8. For overviews of cultural training in legal contexts, see Terri Farrelly and Bronwyn Carlson, 'Towards Cultural Competence in the Justice Sector' (Indigenous Justice Clearinghouse, June 2011); Vanessa Cavanagh and Elena Marchetti, 'Judicial Indigenous Cross-cultural Training: What is Available, How Good is it and Can it be Improved?' (2016) 19(2) *Australian Indigenous Law Review* 45.

8 *The Justice Project: Final Report* (Law Council of Australia, August 2018) 21.

Much of the legal sector has also adopted Reconciliation Action Plans (RAPs),[9] including the Federal Circuit Court, which was the first court to do so. In the words of Chief Judge Alstergren:

> It is imperative that the Court and its staff continue to develop cultural competency and an understanding of the needs of Aboriginal and Torres Strait Islander peoples. This will ensure that our approach to providing various services, and more broadly, providing equal access to justice, is appropriate and informed.[10]

Other law firms and law-related bodies with a RAP include Herbert Smith Freehills, Ashurst, DLA Piper, King & Wood Mallesons, MinterEllison, Community Legal Centres NSW, the Law Society of WA, the Law Society of Queensland, the Family Court of Australia, the Federal Circuit Court, Queensland Magistrates Courts, the Australian Federal Police, KPMG, and the Victorian Bar.[11]

Increased cultural understanding (including in relation to Indigenous peoples) has also been highlighted as a key skill for the legal workplaces of the future,[12] and contributes to the development of other key skills, such as empathy and an ability to work across global intercultural contexts.[13] Thus, inadequate Indigenous content within law curriculum can be out-of-step with professional contexts. This is particularly the case in relation to equipping graduates to meet the increasingly culturally informed expectations of law firms involved in reconciliation processes:

> At Herbert Smith Freehills we seek to create a safe space where the aspirations of our Aboriginal and Torres Strait Islander clients can be expressed and supported. We want to empower our clients to navigate their own pathways towards a better future.
>
> Our guiding principles to ensure cultural legitimacy in all of our RAP relationships are to:
>
> - listen carefully to Aboriginal and Torres Strait Islander voices before we speak or act;
> - speak out in support of Aboriginal and Torres Strait Islander led solutions and empowerment; and

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9 A Reconciliation Action Plan is a strategic plan that sets out how an organisation will contribute to reconciliation. See *Reconciliation Australia*, 'What is a RAP?' <https://www.reconciliation.org.au/reconciliation-action-plans/>.

10 Federal Circuit Court, *Reconciliation Action Plan May 2019–May 2021* <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/corporate-information/reconciliation-action-plan>.

11 Reconciliation Action Plans can be searched and accessed on the Reconciliation Australia website <https://www.reconciliation.org.au/reconciliation-action-plans/who-has-a-rap/>.

12 *Futures Summit: Background Paper* (Law Council of Australia, 13 September 2018) 27–8.

13 For a discussion of the skillset of lawyers of the future, see Michael Legg, 'New Skills for New Lawyers: Responding to Technology and Practice Developments' in *The Future of Australian Legal Education* (Thomson Reuters 2018).

- always act in partnership with Aboriginal and Torres Strait Islander individuals, organisations and communities.[14]

The legal sector is far from alone in its recognition of the importance of improved relationships with Indigenous peoples. The past few decades have seen a quiet revolution across Australian workplaces, with public and private sector organisations embedding Indigenous engagement into working environments through RAPs or other engagement strategies. Such strategies commonly require building respect for Indigenous peoples (including through increased cultural understanding), forming relationships with Indigenous peoples, and creating opportunities for Indigenous peoples. The changed relationships created by the mainstreaming and embedding of Indigenous engagement has led to both private and public sector organisations advocating for a rights-based approach that values Indigenous peoples as sovereign peoples. This is exemplified by support of the *Uluru Statement from the Heart* from 14 leading Australian organisations including Rio Tinto, Herbert Smith Freehills, Australian Rugby League Commission, and KPMG.[15] Their joint statement of support, which was addressed to Indigenous peoples, read in part:

> Thank you for your invitation to walk with you in a movement of all Australian people for a better future.
>
> We recognise the Uluru Statement from the Heart as an historic mandate to create a fuller expression of Australia's nationhood.
>
> …
>
> In a spirit of reconciliation, we look forward to working with and supporting you, as a matter of national priority, to develop and enact specific proposals in relation to Voice, Treaty and Truth.
>
> We call upon our people, industry colleagues and fellow Australians to join us in this important national dialogue.[16]

There can be a lingering perception in law schools that Indigenous cultural competency will only really matter to students who intend to work in community legal centres, not-for-profit organisations, or the public service. However, a defining feature of Indigenous engagement in Australia is the degree to which it is has been embraced by the private sector. Thus, the Business Council of Australia (BCA) has formed a Business Indigenous Network to share knowledge about how to best engage with Indigenous peoples that is constituted by companies from a wide range of fields including banking, mining, telecommunications,

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14 Herbert Smith Freehills, *Elevate Reconciliation Action Plan* (September 2018–September 2021) 6 <https://www.herbertsmithfreehills.com/file/28551/download?token=tMkRZxhb>.

15 'Australian Organisations Unite to Support the Uluru Statement From the Heart' *BHP* (News Release, 29 May 2019) <https://www.bhp.com/media-and-insights/news-releases/2019/05/australian-organisations-unite-to-support-uluru-statement-from-the-heart>.

16 Ibid.

insurance, accounting, computing, aviation and law.[17] The 2016 BCA *Indigenous Engagement Survey* found that 90 per cent of companies surveyed had Indigenous engagement activities, with the top activity being cultural awareness.[18] In the words of the co-leads of *Arrilla Indigenous Services*, Catherine Hunter and Shelley Reys AO (Djiribul): 'the past decade has seen a "seismic shift" in corporate Australia's engagement with Indigenous Australia.'[19]

III AN EQUITABLE PARTNERSHIP

The UWA Indigenisation of the JD project (the Indigenisation Project) is a partnership between the Law School and the School of Indigenous Studies. The Law School is led by Dean Natalie Skead, and the School of Indigenous Studies (SIS) is led by Palyku professor Jill Milroy, Pro Vice-Chancellor (Indigenous Education). Professor Milroy is responsible for the UWA Indigenous portfolio, which includes supporting Indigenous students and staff; developing Indigenous curriculum; strengthening relationships with Indigenous communities and organisations; and fostering excellence in Indigenous research.

The Indigenisation Project is led by me as an Aboriginal (Palyku) law academic, and is overseen by a reference group that brings considerable Indigenous and non-Indigenous expertise to the project.[20] The UWA Law School is situated on the land of the Whadjuk Noongar people, and Noongar cultural expertise is provided by Dr Richard Walley whose role in the project includes designing a Noongar cultural program.

Equitable partnerships between Indigenous and non-Indigenous peoples are vital to the success of any Indigenisation project. An absence of such partnerships has led to two mutually reinforcing outcomes that are fatal to the sustainable success of Indigenisation — first, the positioning of Indigenous ways of knowing, being and doing as 'less than' those of the West, and second, exploitative relationships with Indigenous peoples.

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17 Law firms represented on the network are Allens Linklaters, Ashurst, Clayton Utz, Corrs Chambers Westgarth, Gilbert + Tobin, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison, Norton Rose Fullbright. See <https://www.bca.com.au/business_indigenous_network>.

18 Business Council of Australia, *2016 Indigenous Engagement Survey Summary Report* (December 2016) <https://www.bca.com.au/2016_indigenous_engagement_survey>.

19 Quoted in KPMG *Reconciliation Action Plan* (February 2017–February 2020) 2.

20 In addition to UWA Indigenous and non-Indigenous staff and students, the reference group comprises Dr Richard Walley (Cultural Advisor); Rhys Davies (Partner, DLA Piper), Dennis Eggington (CEO, WA Aboriginal Legal Service), Hon Wayne Martin AO (former Chief Justice of WA); Gavin McLean (UWA Aboriginal law graduate); and Dr Irene Watson (Pro Vice Chancellor Aboriginal Leadership and Strategy, University of South Australia), and a representative from the Indigenous Legal Issues Committee, Law Society of Western Australia.

A *Equitable Engagement with Indigenous Knowledge Systems*

1 *The Need for Epistemological Equality*[21]

The denigration of Indigenous ways of knowing, doing and being lies at the heart of the settler-coloniser's claim to the soil, expressed in an Australian context through terra nullius and elsewhere through like doctrines. In education contexts, terra nullius-style thinking can manifest through a failure to deal with Indigenous knowledges (and laws) as the products of a different but equal system. As Geonpul scholar Aileen Moreton-Robinson has written; Indigenous peoples have often been positioned as 'native informants' whose knowledges are to be interpreted through the knowledge-ways of the West such that Indigenous peoples are the known but not the knowers.[22] This can result in curriculum which produces a false sense of inclusion in that it engages only with knowledge *about* Indigenous peoples generated by non-Indigenous peoples, rather than with Indigenous peoples, knowledges and systems. This is an issue which has arisen across multiple educational contexts and focuses attention on whose knowledges and perspectives are really being taught under the banner of Indigenous content. In some instances, this has resulted in the 'spelling out' of what constitutes an Indigenous source. For example, the Canadian First Nations Education Steering Committee and First Nations Schools Association offer the following definition of 'Authentic First Peoples texts':

> Authentic First Peoples texts are historical or contemporary texts that:
>
> - present authentic First Peoples voices (ie, are created by First Peoples or through the substantial contributions of First Peoples);
> - depict themes and issues that are important within First Peoples cultures (eg, loss of identity and affirmation of identity, tradition, healing, role of family, importance of Elders, connection to the land, the nature and place of spirituality as an aspect of wisdom, the relationships between individual and community, the importance of oral tradition, the experience of colonization and decolonization); and
> - incorporate First Peoples story-telling techniques and features as applicable (eg, circular structure, repetition, weaving in of spirituality, humour).[23]

Or, to give an Australian legislative example:

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[21] The term 'epistemological equality' is one that has been used in the context of Indigenising social work curriculum. See Susan Young et al, 'Getting it Right: Creating Partnerships for Change: Developing a Framework for Integrating Aboriginal and Torres Strait Islander Knowledges in Australian Social Work Education' (2013) 22(3-4) *Journal of Ethnic and Cultural Diversity in Social Work* 179.

[22] Aileen Moreton-Robinson, 'Whiteness, Epistemology and Indigenous Representation' in Aileen Moreton-Robinson (ed), *Whitening Race Essays in Social and Cultural Criticism (*Australian Studies Press, 2004) 75.

[23] First Nations Education Steering Committee and First Nations Schools Association *Authentic First Peoples Resources* (2011).

> Aboriginal people should be recognised as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage.[24]

Within legal curriculum, native title is sometimes pointed to as constituting Indigenous content. But it is possible to teach native title in a way that does not engage with Indigenous perspectives. As law academic Nicole Graham has written:

> The conflation of Indigenous land laws and Indigenous perspectives on Anglo-Australian property law with the law of native title … obscures the fact that native title is a category of Anglo-Australian property law … Indigenous and non-Indigenous legal scholars and Indigenous communities alike have argued that, since its institution in Australian law, the law of native title is increasingly inconsistent with the distinctive and core features of Indigenous-Australian land laws because it replaces the integrity of those laws with a fragmentation or 'particularisation' of them.[25]

Engagement with Indigenous knowledges as part of different but equal knowledge systems moves curriculum beyond echo chamber approaches that do little more than reflect the underlying jurisprudential narrative of the settler-state back at itself, and into meaningful dialogues. These dialogues can inform the law and policy contexts of the future, and are certainly informing professional contexts. Or as Herbert Smith Freehills has put it, in articulating their support for the *Uluru Statement from the Heart*: 'First Nations voices matter and should be heard.'[26]

2 *Deficit Discourses*

A lack of equitable engagement with Indigenous knowledges can produce curriculum informed by deficit discourses. To be clear, not every discourse that acknowledges Indigenous disadvantage is one of deficit. A deficit discourse is one that speaks of disadvantage as if that is all Aboriginal people are and which expressly or implicitly regards disadvantage as a function of Aboriginality. Deficit discourses situate Indigenous people as 'the problem', ignoring the barriers created by structural, explicit and unconscious bias. In the words of Yawuru man and Federal Senator Patrick Dodson:

> [W]oven through [Australian history] … is an alarming virulent dynamic that has persisted on the non-Aboriginal side, enabling it to reject the legitimate status of who and what the Aboriginal people are, what we represent and what rights and interests we might enjoy.
>
> For successive Australian governments, whether colonial, federal, territory or state …our intertwined histories have been about their solutions to us as the problem!
>
> The problem of our being here.
>
> The problem of our disposal!

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24 *Aboriginal Cultural Heritage Act 2003* (Qld) s 5(b).

25 Nicole Graham, 'Indigenous Property Matters in Real Property Courses at Australian Universities' (2009) 19 *Legal Education Review* 289, 295.

26 Above n 15.

> The problem of our assimilation!
>
> And the problem of having us appreciative of all that governments have done 'for our own good'.[27]

The rationale for the Indigenisation of curriculum is sometimes framed in terms of Indigenous disadvantage — either the disadvantage of Indigenous students (Indigenisation will result in a curriculum that is more relevant to a disadvantaged group and will thereby assist them in their legal studies) or that of Indigenous peoples more broadly (Indigenisation will better equip future lawyers to assist their disadvantaged Indigenous clients).

It is true that more Indigenous lawyers are needed and that there are concomitant benefits to Indigenous peoples and communities. In this context, the Indigenous Higher Education Advisory Council has noted that

> a distinguishing feature of Indigenous peoples' participation in higher education is that the public good is as important as the private good …[participation] is not only important for the development of the individuals concerned but also important for Indigenous community capacity building.[28]

It is also true that non-Indigenous law graduates should be equipped with the skills that will enable them to be effective advocates for Indigenous clients — although it is also worth noting the changes in the Indigenous client base. The rise of Indigenous business means many of the Indigenous clients of the future will be corporate clients. In this regard, the continuing growth and success of the Indigenous business sector — which contributed between $2.2 and $6.6 billion to Australia's GDP in 2016[29] — will have multiple implications for the law, including through the connection between business and Indigenous empowerment. Indigenous businesses are 100 times more likely to employ Indigenous people than non-Indigenous businesses;[30] provide opportunities for other Indigenous businesses; [31] invest into their communities and are places of healing and connection to culture.[32]

While Indigenisation of curriculum will certainly benefit Indigenous peoples, to suggest that the reason for Indigenisation is to address Indigenous disadvantage is to descend into deficit. Such an approach fails to acknowledge the well-recognised value that Indigenous peoples bring to the academy:

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27 Patrick Dodson, 'Beyond the Mourning Gate: Dealing with Unfinished Business' (Canberra, 12 May 2000) 9–10 <https://aiatsis.gov.au/publications/presentations/beyond-mourning-gate-dealing-unfinished-business>.

28 *Best Practice Framework* (n 2) 18.

29 Price Waterhouse Coopers, *The Contribution of the Indigenous Business Sector to Australia's Economy* (April 2018) iii.

30 *Commonwealth Indigenous Procurement Policy* (Australian Government, 2015) 2.

31 Price Waterhouse Coopers (n 29) iii.

32 Ibid i-ii, 20; Supply Nation, *The Sleeping Giant: A Social Return on Investment Report on Supply Nation Certified Suppliers*, (2018) ('*Sleeping Giant'*) 5.

> Aboriginal and Torres Strait Islander people … make a unique contribution to Australian universities, sharing insight and knowledge from our country's first cultures with the wider Australian community.
>
> This greatly enriches the intellectual and cultural depth of a university education for staff, students and community.
>
> By better embracing the talent and resources of Aboriginal and Torres Strait Islander people, all of us will prosper.[33]

Or, in the words of High Court Justice Michelle Gordon: 'The need for each of us to "establish, enhance and maintain relationships with the Aboriginal and Torres Strait Islander community and organisations" is not some one-way street. We all benefit.'[34]

An approach founded in deficit also ignores the role of the law and legal institutions in creating and perpetuating exclusion. In so doing, it directs attention away from critical engagement with the law and towards an un-nuanced understanding of law as a value-neutral system in which the rule of law protects everyone to the same degree. Such an understanding is manifestly not reflective of reality. A succession of inquiries, reports and inquests have identified problems with bias against Indigenous peoples in legal contexts, including at structural levels.[35] In this way, a deficit-based approach to Indigenisation not only fails to acknowledge the benefits to all students of critical engagement with the law, but the benefit to everyone of fairer laws and institutions. As Professor Larissa Behrendt (Eualeyai and Kamillaroi) has commented:

> The way to measure the effectiveness and fairness of our laws is to test them against the way in which they work for the poor, the marginalised and the culturally distinct. It is not enough that they work well for the rich, well-educated and culturally dominant. … By valuing laws, policies and practices that work best because they achieve an equality of outcome, society begins to understand that extending the protections of a democratic society to those who are marginalised does not disadvantage another sector; it actually makes everyone better off.[36]

Finally, a deficit-based approach is out of step with the values of modern legal workplaces and of many non-Indigenous clients, who are investing considerable time, effort and resources into building relationships with Indigenous peoples. These relationships are focussed on a strengths-based approach that recognises the value of Indigenous peoples and knowledges as well as the transformational potential of these equitable partnerships across entire sectors. To give an example from the legal sphere:

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33 Universities Australia (n 3) 18.

34 Quoted in Victorian Bar, *Reconciliation Action Plan* (February 2017–February 2020).

35 See references at nn 7 and 8.

36 Larissa Behrendt, 'Law Stories and Life Stories: Aboriginal Women, the Law and Australian Society' (2005) 20(47) *Australian Feminist Studies* 245, 253.

> Everything we do in relation to our RAP is done in partnership with Aboriginal and Torres Strait Islander peoples. We know self- determination is critical and support Aboriginal and Torres Strait Islander led solutions.
>
> We proudly work with others in the legal profession on sector-wide initiatives, recognising that we share many common goals and challenges and can achieve more together.
>
> We also collaborate with our clients – learning from those who are leaders in reconciliation, and supporting those who are at earlier stages of their journey by sharing what we have learned.[37]

3 *Erasing Indigenous Sovereignties*

A final way in which a lack of equitable engagement can manifest is through situating First Peoples as one of many social groups, rather than the prior occupiers of the soil. Indigenous peoples are those who were here before; all others are those who came after, and all those who came after benefited, or inherited the benefits of, Indigenous dispossession. An understanding that best practice engagement is founded in dealing with Indigenous peoples as First Peoples is well understood across contemporary Indigenous engagement frameworks:

> We recognise that our mines exist on land that belonged to Indigenous Australians for a nearly unimaginable stretch of time before European settlement of this continent. We recognise that they hold profound connections to, and vast knowledge of, the country where they have lived since before the dawn of history. And we recognise that they hold both statutory land rights as well as inalienable human rights over that country. This recognition flows from our respect for them, their culture and their continuity in this land.[38]

The erasure of Indigenous peoples' status as First Peoples is a particularly unhelpful approach in legal contexts where Indigenous peoples' unique position gives rise to unique rights in domestic and international law, and founds contemporary conversations around such matters as sovereignty, treaty, and Constitutional change. Reducing Indigenous peoples to one group among many marginalised peoples within settler-colonial states obscures the basis of these rights and dialogues. It is unfortunate therefore that such an approach is present in the Australian Learning and Teaching Council (ALTC) Threshold Learning Outcomes (TLOs) for law, which only acknowledge Indigenous perspectives as one set of perspectives among the many that form part of the broader context of the law (other perspectives listed include social justice, gender-related issues, cultural and linguistic diversity, and commercial or business environments).[39] In the words of

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[37] DLA Piper *Reconciliation Action Plan* (July 2019–July 2022) 7 <https://www.dlapiper.com/en/australia/aboutus/in-australia/reconciliation-action-plan/>.

[38] Rio Tinto, *Reconciliation Action Plan* (2016–2019) 14 <http://www.riotinto.com/documents/Reconciliation_Action_Plan_2016_2019.pdf>.

[39] Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws: Learning and Teaching Academics Standards Statement' (Report, Australian Learning and Teaching

Irene Watson (Tanganekald and Meintangk Boandik) and Marcelle Burns (Gomeroi-Kamilaroi):

> The ALTC standards perpetuate a virtual terra nullius whereby Aboriginal Peoples' law is not given full or equal recognition within the state. If legal education is to contribute to creating a more inclusive social order it needs to, at the very least, critique the existing conditions that maintain such dominance and recognise that Aboriginal Peoples' have 'knowledge' of law, grounded in their own epistemologies, that are valid perceptions of 'fact or truth'.[40]

Indigenous perspectives have much to offer the TLOs, which require, among other things, that graduates will have learnt about 'the principles and values of justice and of ethical practice in lawyers' roles'.[41] The Indigenisation of curriculum can play a vital role in the achievement of these and other outcomes. However, the 'virtual terra nullius' of the TLOs should not be looked to as an appropriate framework for the incorporation of Indigenous content into law; rather, curriculum should be Indigenised according to best practice standards, which requires the recognition of First Peoples *as* First Peoples.

B *Equitable Engagement with Indigenous Peoples*

The disproportionately heavy workload of Indigenous university staff is well recognised.[42] Research conducted by Christine Asmar and Aboriginal academic Susan Page has found that Indigenous academics perform 'a wide range of cultural awareness-raising professional development roles' and 'regularly provide academic advice to other students —and even staff —from courses being "indigenised" across their whole institutions.'[43] Asmar and Page use the term 'Indemic' to describe the position of Indigenous academics whereby 'Indigenous' (culture, identity, community) and 'Endemic' (institutional norms and practices) results in Indemic academic work.[44] They note that:

> [Indigenous academics'] strong commitment to culture and community comes directly up against endemic institutional responses to their work — and to their very ways of being … many Indigenous-specific activities — such as community work, cultural awareness work, and Indigenising curricula - all tend to be unrecognised and unrewarded.[45]

Council, December 2010) 8; Council of Australian Law Deans, Juris Doctor Threshold Learning Outcomes (March 2012) 7.

40 Irene Watson and Marcelle Burns, 'Indigenous Knowledges: A Strategy for Indigenous Peoples' Engagement in Higher Education' in S Varnham, P Kamvounias and J Squelch (eds) *Higher Education and the Law* (Federation Press, 2015) 1, 5.

41 Kift, Israel and Field (n39) 3.

42 Universities Australia (n 3) 29.

43 Christine Asmar and Susan Page, 'Indigenous Cultural Competency in the Post-Bradley Era: Who Will do the Work' *Campus Review* (12 October 2009).

44 Susan Page and Christine Asmar,'Beneath the Teaching Iceberg: Exposing the Hidden Dimensions of Indigenous Academic Work' (2008) 37 *The Australian Journal of Indigenous Legal Education* 109, 115–6.

45 Ibid 115.

Part of the reason for the lack of recognition of the Indigenous workloads has been under-valuing of expertise that Indigenous peoples bring to the academy. Juliana McLaughlin and Sue Whatman have detailed how this can manifest within projects aimed at incorporating Indigenous perspectives into curriculum:

> the next phase of the project was to hire an Indigenous lecturer, at the lowest level of academic appointment, and to encumber that junior academic with a full teaching load and responsibility for EIP [embedding Indigenous perspectives] across the entire faculty. Watson (2005) noted the ironic paradox —that none of the non-Indigenous legal 'experts' already within the academy had the expertise to successfully embed Indigenous perspectives into their own legal teaching practice, yet an Indigenous practitioner with the necessary expertise could only be appointed as a 'junior' academic, yet over-burdened with a senior academic workload.[46]

For Indigenous academics, there is the very real prospect that involvement in the Indigenisation of curriculum will be deleterious to their career and their overall well-being. It can result in a disproportionately heavy workload which is not recognised or rewarded, and any research opportunities that emerge from the process may not flow to Indigenous peoples:

> The four large [Indigenisation] projects generated over 80 publications (including conference papers and journal articles), yet not one project team co-published with Indigenous staff from the Oodgeroo Unit. Additionally, most of the publications avoided any thoughtful discussion about the complexity of embedding Indigenous perspectives, examination of problematic power relations, nor expressed a sense of ongoing commitment to continue …There are concerning implications for the recognition of intellectual property and Indigenous control over knowledge production about Indigenous perspective while ever such products of academic endeavour are so prevalent in the academy.[47]

To the extent that Indigenous academics are being asked to offer advice in the absence of a formal position of authority — or to take sole responsibility for addressing discrimination at structural, explicit and unconscious levels — they are being placed in the unenviable and highly stressful position of having all of the responsibility and none of the power. This dynamic can also include Indigenous students, who frequently recount the experience of being put in a position of responsibility for matters that should have been handled by the teacher:

> Key concerns highlighted were: the inability of academics to provide culturally safe learning environments for Indigenous students, especially during class discussions on Indigenous legal issues; and Indigenous

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46 Juliana McLaughlin and Susan Whatman, 'The Potential of Critical Race Theory in Decolonising University Curricula' (2011) 31(4) *Asia Pacific Journal of Education* 365, 372.

47 Juliana McLaughlin and Susan Whatman, 'Embedding Indigenous Perspectives in University Teaching and Learning: Lessons Learnt and Possibilities of Reforming / Decolonising Curriculum' (Proceedings 4th International Conference on Indigenous Education, 2007).

students being 'put on the spot' in class and looked upon as an authority on everything Indigenous.[48]

Finally, students and staff are not the only Indigenous peoples who will be involved in an Indigenisation project. Relationships will extend beyond the university to Traditional Owners, to Indigenous communities and organisations, and to Elders and other Indigenous peoples who share their expertise and lived experience with the academy. There is a long history of appropriation and exploitation of Indigenous knowledges,[49] and there remains a need for far greater understanding of the ethical frameworks that apply to dealing with Indigenous peoples and knowledges to best practice standards, including relation to the protection of Indigenous cultural and intellectual property (ICIP) and the principle of free, prior and informed consent.

The knowledge and legal systems of Indigenous peoples have always been founded in the principle of reciprocity. But the academy's interactions with Indigenous peoples have historically often been exploitative rather than reciprocal. Equitable partnerships between Indigenous and non-Indigenous peoples and knowledges allow for the building of the genuinely reciprocal relationships that will sustain success within and beyond Indigenisation projects. They will also model the behaviour that is increasingly expected within working environments, including by many of the law firms — and the clients — of the present and future.

IV BEST PRACTICE PRINCIPLES

The development of UWA JD curriculum — and the Indigenisation project as a whole — are underpinned by a set of best practice principles. In this regard, both the principles and the entire Indigenisation Project are informed by a number of sources. First, the collective expertise of the Reference Group. Second, reports, policies and research in higher education contexts, including past cultural competency projects at UWA and elsewhere.[50] Third, best practice guidelines and protocols relating to engaging with Indigenous peoples and knowledges.[51] Fourth, the impact of Indigenous engagement upon 21st century working environments (referred to throughout this paper).

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48 ICCLAP (n 4) 17.

49 Linda Smith, *Decolonising Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd ed, 2012); Terri Janke and Company, *Indigenous Knowledges: Issues for protection and management*, (Australian Government, 2018).

50 See generally n 2; there is an examination of past projects in the *Best Practice Framework*.

51 This includes: Australia Council for the Arts, *Protocols for Working with Indigenous Artists* (2007) <http://www.australiacouncil.gov.au/about/ protocols-for-working-with-indigenous-artists>; Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *Guidelines for Ethical Research in Indigenous Australian Studies* (2012) <http://aiatsis.gov.au/research /ethical-research/guidelines-ethical-research -australian-indigenous-studies>; AIATSIS, *Guidelines for the ethical*

While this is a large collection of sources, there is a convergence of principle. Thus, one of our principles is to 'centre Indigenous voices as the primary sources of their own knowledges, cultures, laws, and experiences'. The importance of this (and of equitable partnerships) has long been by spoken of by Indigenous peoples, and this wisdom is now informing a range of fields. To offer a selection of examples:

The Closing the Gap Partnership Agreement:

> [This] is an historic Agreement that embodies the belief of all its signatories that shared decision making with Aboriginal and Torres Strait Islander community controlled representatives in the design, implementation and monitoring of the Closing the Gap framework is essential to achieve their shared goal to close the gap in life outcomes between Indigenous and non-Indigenous Australians.
>
> Aboriginal and Torres Strait Islander self-determination is recognised as key to achieving changes in the lives of Aboriginal and Torres Strait Islander people and this Agreement embodies that intent.[52]

The Universities Australia Indigenous Strategy 2017–2020:

> Through this strategy, the members of Universities Australia endorse the following principles:
>
> - That universities are accountable to Aboriginal and Torres Strait Islander people on education and the use of Indigenous knowledge and cultures.
> - That true partnerships between universities and the Aboriginal and Torres Strait Islander communities within and outside the university are essential to deliver the best outcomes,
> - That such partnerships should be conducted in a spirit of reconciliation which gives voice to Indigenous people in decision making that affects Indigenous communities.[53]

KPMG Reconciliation Action Plan 2017–2020:

> We believe that our role is not to determine the future of Indigenous Australia but to support and partner with Indigenous communities so they can determine and create their own future.[54]

Law Council of Australia Justice Project:

> Commonwealth, state and territory governments should respect the right of self-determination for Aboriginal and Torres Strait Islander people, including through meaningful engagement in policy development and

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publishing of Aboriginal and Torres Strait Islander authors and research from those communities (2015) <http://aiatsis.gov .au/aboriginal-studies-press/getting-published /ethical-publishing-guidelines>; National Health and Medical Research Council, *Ethical Conduct in Research with Aboriginal and Torres Strait Islander Peoples and Communities: Guidelines for Researchers and Stakeholders* (Commonwealth of Australia, 2018); National Health and Medical Research Council, *Keeping Research on Track II: A Guide for Aboriginal and Torres Strait Islander Peoples About Health Research Ethics* (Commonwealth of Australia, 2018).

52 *Partnership Agreement on Closing the Gap* (2019–2029) 2 <https://nacchocommunique.files.wordpress.com/2019/03/partnership-agreement-on-closing-the-gap-2019-202973948.pdf>.

53 Universities Australia (n 3) 11.

54 KPMG (n 19) 5.

implementation. Community controlled organisations should be supported to play a leading role in improving access to justice for Aboriginal and Torres Strait Islander peoples. The priorities contained in the Redfern Statement and the Blueprint for Change should be recognised as the preferred frameworks for working with this group.[55]

Community Legal Centres NSW, Reconciliation Action Plan 2018–2020

CLCNSW has a strong commitment to improving access to justice for Aboriginal and Torres Strait Islander peoples. We know that a crucial step for this goal is firstly acknowledging the dispossession of Aboriginal and Torres Strait Islander peoples from their lands, languages and cultures. We also know that a non-Indigenous organisation such as CLCNSW, that wishes to contribute towards improving the lives and futures Aboriginal and Torres Strait Islander peoples, can only do so by working under guidance and in partnership with Aboriginal and Torres Strait Islander peoples. It is critical that we consult, engage, and design our services, and our work, in a way that encourages Aboriginal and Torres Strait Islander peoples to work with us.[56]

Oxfam Australia, Aboriginal and Torres Strait Islander Cultural Protocols:

Aboriginal and Torres Strait Islander people should be recognised as the primary guardians and interpreters of their cultures. Representation of Aboriginal and Torres Strait Islander cultures should reflect their cultural values and respect their customary laws.[57]

AIATSIS Guidelines for Ethical Research in Indigenous Australian Studies:

Aboriginal and Torres Strait Islander peoples have distinctive languages, customs, spirituality, perspectives and understandings that derive from their cultures and histories. Research that has Indigenous experience as its subject matter must reflect those perspectives and understandings.[58]

Ashurst Reconciliation Action Plan November 2018–November 2020:

We … take very seriously the need to approach the work we do to support reconciliation from a position of listening to Aboriginal and Torres Strait Islander Australians. The Uluru Statement from the Heart that was gifted to the Australian people in 2017 is a call for action arising from one of the most significant consultation processes with Aboriginal and Torres Strait Islander Australians that has ever taken place in Australia. The call made by Aboriginal and Torres Strait Islander communities is for both constitutional change and structural reform; it is a call for empowerment, truth-telling, and a better future for all Australians. We heed this call.[59]

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55 Law Council of Australia, *Justice Project: Final Report* (August 2018) 21.

56 Community Legal Centres NSW, *Reconciliation Action Plan* (2018–2020) 4 <https://www.clcnsw.org.au/resource/reconcilitation-action-plan-2018-2020>.

57 Oxfam Australia, *Aboriginal and Torres Strait Islander Cultural Protocols* 4 <https://www.oxfam.org.au/wp-content/uploads/2015/11/2015-74-atsi-cultural-protocols-update_web.pdf>.

58 *Guidelines for Ethical Research in Indigenous Australian Studies* (n 51) 8 <https://aiatsis.gov.au/research/ethical-research/guidelines-ethical-research-australian-indigenous-studies>.

59 Ashurst, *Reconciliation Action Plan* (November 2018–November 2020) 6 <https://www.ashurst.com/en/about-us/responsible-business/corporate-responsibility/>.

A *The Principles of Indigenisation*

The incorporation of Indigenous knowledges, cultures and experiences throughout the Juris Doctor (JD) degree is to be done so as to:

1. Embody a strengths-based approach that acknowledges the value and resilience of Indigenous peoples, knowledges, laws and cultures.
2. Engage with Indigenous knowledges as the product of larger Indigenous knowledge systems which are different to, but not less than, Western knowledge systems.
3. Present an accurate and nuanced reflection of Indigenous realities, including by recognising the diversity of Indigenous Australia.
4. Engage with intersectional experiences in relation to Indigenous peoples who are: children, the elderly, women, LGBTIQA+; living with a disability; living in poverty; and/or living remote and regional locations.
5. Encourage critical thought and reflection upon structural exclusion and explicit and unconscious bias in Anglo-Australian laws, legal actors and legal institutions.
6. Be sensitive to cultural protocols (for instance, protocols relating to images of deceased persons) and ethical protocols (for instance, protocols relating to ethical research).
7. Centre Indigenous voices as the primary sources of their own knowledges, cultures, laws, and experiences.
8. Be informed as to, and respect, protect and promote understanding of, Indigenous Cultural and Intellectual Property rights.
9. Articulate the value of Indigenous knowledges, cultures and experiences to understanding of concepts of law and justice, as well as to legal professional practice.
10. Be sensitive to the lived, multi-generational exclusion experienced by Indigenous students, their families and peoples.
11. Ensure that content incorporated into individual units is both directly relevant to that unit and able to be dealt with appropriately within the available curriculum space.
12. Ensure all teachers are trained in inclusive teaching before delivering content and are given ongoing support, including in the form of opportunities to share and improve their learning in this area.
13. Employ a range of teaching and learning strategies to enhance student engagement and recognise different ways of learning.

14. Be integrated horizontally and vertically, so that all units contain Indigenous content and that content taught later in the degree connects to, and builds upon, earlier content.

15. Foster positive learning environments that enable all students to achieve their potential.

V A CULTURALLY COMPETENT APPROACH

Persistent misunderstandings of what it means to be culturally competent have resulted in 'cultural competency' becoming a fraught term. In the words of Professor Marion Kickett (Balardong Noongar):

> my experience with individuals who believe they are 'culturally competent' is that the individual is not culturally safe as they believe they have reached a place where they do not need to learn anymore as they know it all. Some believe they even know more than an Aboriginal person; they become quite paternalistic and sadly they don't even know they are.[60]

The approach described by Professor Kickett is one which embodies disrespect rather than respect. At the heart of engaging well across cultural boundaries is the ability to interrogate one's own cultural context and through so doing, understand the limitations of one's own, culturally-based perspective. The Universities Australia *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities (Best Practice Principles)* define cultural competency as:

> 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.[61]

And further:

> 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.[62]

The Indigenisation Project is founded in an understanding of cultural competency consistent with the definition provided by the *Best Practice Principles* and informed by the sources drawn upon for this project. As such, cultural competency consists of three key elements. First, an understanding that it is a journey not a destination; a lifelong active learning process, not a passive state of being. Second, an understanding of Indigenous peoples and contexts, along with the

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60 Veronica Goerke and Marion Kickett, 'Working Towards the Assurance of Attributes for Indigenous Cultural Competency: The Case for Alignment of Policy, Professional Development and Curriculum Processes' (2013) 12(1) *The International Education Journal: Comparative Perspectives* 61, 66.

61 *Guiding Principles* (n 2) 3.

62 Ibid.

ability to relate to peoples and contexts in accordance with best practice principles. This must include an understanding of local peoples and contexts —that is, it must include engagement with the Indigenous peoples on whose Country an organisation exists. Third, cultural competency requires an ability to articulate and critically engage with one's own cultural and professional contexts.

We have defined cultural competency as working in accordance with best practice principles (rather than meeting Indigenous expectations) in recognition of situations where Indigenous peoples or communities have supported projects in circumstances where they were not informed of the risks. Working in accordance with best practice principles of course includes meeting Indigenous expectations, but those expectations should be informed ones. In this regard, universities and academics hold an important responsibility to ensure they have sufficient awareness of ethical frameworks, including in relation to dealing with ICIP, such that they can properly inform as to risks.

There are four main ways in which a culturally competent approach is manifested throughout the Indigenisation Project.

First, it is reflected in many of the Principles of Indigenisation.

Second, a Noongar cultural program designed by Dr Richard Walley is being embedded into the JD. This program will include cultural activities across each level of the degree that increase in complexity as the degree progresses, so that students can build on their prior learning. The program began in 2019 with a river walk along the banks of *Derbarl Yerrigan* (Swan River) for incoming JD students. The walk was divided into four stations where students learned of Noongar culture and history from different Noongar speakers, and concluded in the Law School courtyard. The courtyard and adjoining Law Library features artwork commissioned from Dr Richard Walley that depicts Noongar language and cultural concepts. This artwork forms part of the cultural teachings during the river walk and also provides students with a point of interaction with Noongar culture throughout their degree, with much of the daily life of law students centring on the courtyard and the library.

Third, a culturally competency is reflected in the foundational Indigenous curriculum (discussed under Part VI).

Fourth, it is embodied in the inclusive teaching training program for staff (discussed below).

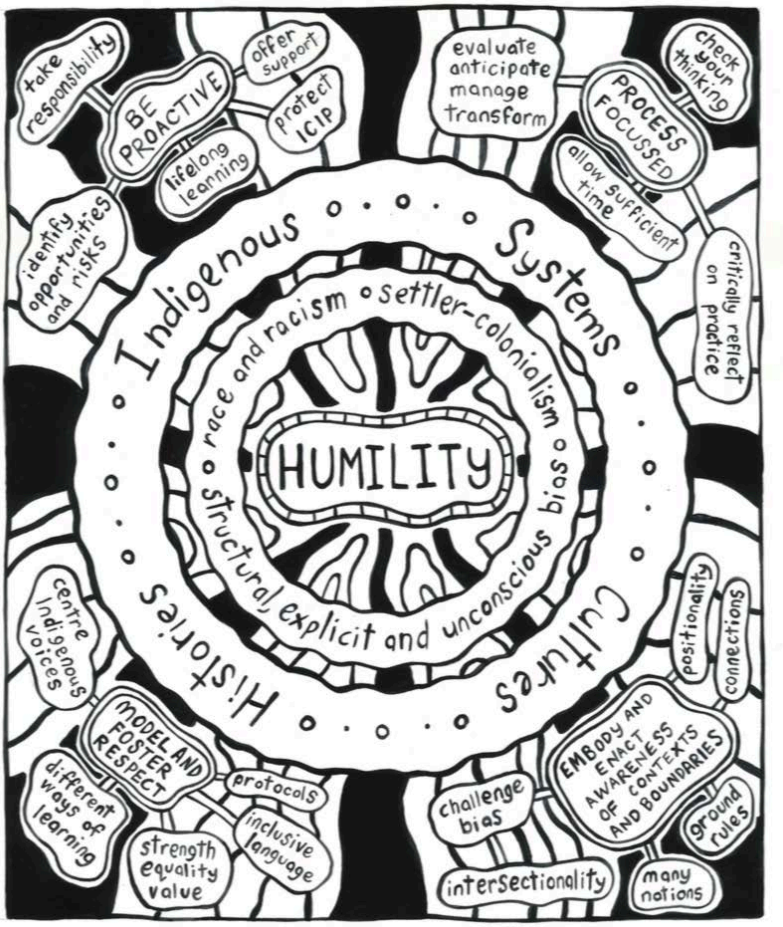
A *Inclusive Teaching and Indigenous Peoples*

One of the Principles of Indigenisation is that 'all teachers are trained in inclusive teaching before delivering content and are given ongoing support, including in the form of opportunities to share and improve their learning in this area.'

Prior to teaching Indigenous content, staff attend a cultural session with Dr Richard Walley to gain an understanding of Whadjuk Noongar culture and knowledge. Staff also undertake a three-day intensive on Inclusive Teaching and Indigenous Peoples that is designed and

delivered by myself. Other training and development opportunities are being continually created as the Indigenisation project progresses.

The content of the Inclusive Teaching and Indigenous Peoples intensive is shown in the painting on the next page, which I created to represent the learning journey of the intensive.



1 *Humility*

The need for an approach grounded in humility when working across cultural contexts is a point that has been made many times over. In this regard, the concept of 'cultural humility' has long been part of the Indigenous health sector:

> Cultural humility is a lifelong journey of self-reflection and learning. It involves listening without judgement and being open to learning from and about others. It involves learning about our own culture and our biases…It is an overarching principle that is threaded through our learning and *acts as the process by which change can occur*.[63] [emphasis added]

[63] National Aboriginal Community Controlled Health Organisation (NACCHO) 'Aboriginal Health Canada and Australia: Cultural #Safety #Humility #Awareness #Sensitivity #Competence' (News Alert 10 April 2017) <https://nacchocommunique.com/2017/04/10/aboriginal-health-canada-and-australia-cultural-safety-humility-awareness-sensitivity-competence/>.

In relation to Indigenising tertiary curriculum, a Canadian project has identified the need for 'professional humility', which is defined as 'being aware that we cannot know everything. It opens up our minds and hearts to accepting other ways of doing, knowing, and being so that we naturally create a shared learning space.'[64]

It follows that 'humility' does not refer to an emotional state of being (although this can be part of it) but to a set of processes — or to put this another way, professional behaviours — that enable individuals and organisations to work respectfully across cultural contexts. It is the opposite of the approach demonstrated by the individuals who 'do not need to learn anymore as they know it all. Some believe they even know more than an Aboriginal person.'[65] Consistent with cultural competency, humility is not a passive state, but a series of active processes whereby individuals maintain a constant awareness of their cultural and professional contexts and the ways in which those contexts both inform and limit their understanding of the contexts of others (including power relations). Thus, the Canadian Indigenization Project offers the following suggestions for teachers:

> Here are some ways that you can bring humility into your practice:
>
> - Ask your questions with the understanding that some of the work required to answer them is yours.
> - Ask whose truths are valued and represented in your curriculum and discipline, what counts as knowledge, and why this is.
> - Be aware of the space you take and the space you give. 'Make space, take space' (Janey Lew, personal communication, 2017) entails giving yourself time to explore and appreciate Indigenous worldviews and taking the time to understand and disrupt beliefs and misconceptions.[66]

As the artwork above shows, humility lies at the core of inclusive teaching. It radiates outwards from the centre, representing the processes that will carry teachers through their learning journey to enacting culturally competent behaviours. This journey does not end with the intensive but continues through the project and beyond:

> Indigenization is relational and collaborative and involves various levels of transformation, from inclusion and integration to infusion of Indigenous perspectives and approaches in education. As we learn together, we ask new questions, so we continue our journey with curiosity and optimism, always looking for new stories to share.[67]

2 *Settler-Colonialism, Structural Explicit and Unconscious Bias, Race and Racism*

The denigration of Indigenous ways of knowing, doing and being lies at the heart of the settler-coloniser's claim to the soil. As Deane and Gaudron JJ stated in *Mabo (No 2*), the

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64 Bruce Allan et al , *Pulling Together: A Guide for Teachers and Instructors* (2018) 16 <https://opentextbc.ca/indigenizationinstructors/>.

65 Marion Kickett n 60.

66 Allan et al (n 64) 16.

67 Ibid ix.

> official endorsement, by administrative practice and in the judgments of the courts, of [terra nullius] … provided the environment in which the Aboriginal people of the continent came to be treated as a different and lower form of life.[68]

The characterisation of Indigenous peoples and knowledges as 'less than' has formed the dominant environment (context) through which laws, policies, knowledges and attitudes have been formed about Australian Indigenous peoples for most of the past few hundred years. This context of dispossession is an artificial one, both because it is based on a false premise and because it denies the truth (and value) of human diversity. In the words of Emeritus Professor Leroy Little Bear (Blackfoot):

> No matter how dominant a worldview is, there are always other ways of interpreting the world. Different ways of interpreting the world are manifest through different cultures, which are often in opposition to one another. One of the problems with colonialism is that it tries to maintain a singular social order by means of force and law, suppressing the diversity of human worldviews.[69]

But to the degree the context of dispossession has been normalised and naturalised, it continues to influence thought and behaviours, including through unconscious bias. This is why the creation of an informed critical awareness begins with material which speaks to the ability to articulate and critically engage with one's own cultural and professional contexts. Otherwise, there is a danger of knowledge about Indigenous peoples being interpreted through a past (artificial) context, resulting in at best in a superficial understanding, and at worst in a distortion of the knowledge.

This portion of the intensive draws on multiple sources, connecting Western knowledges on settler-colonialism; structural, explicit and unconscious bias; and race and racism with the deep knowledges and lived experiences of Indigenous peoples.[70] It includes an examination of deficit discourses, stereotypes, privilege, saviourism and intersectionality. But the primary reference point is how these concepts and ideas inform and are informed by the context of dispossession. In this regard, while there is much insight to be gained through material

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68 *Mabo v Queensland* (No 2) 175 CLR 1, 108–9.

69 Leroy Little Bear, 'Jagged Worldviews Colliding' in Marie Battiste (ed) *Reclaiming Indigenous Voice and Vision* (UBC Press, 2012) 77.

70 Sources include: Robin DiAngelo, *White Fragility* (Penguin, 2018); Judy Atkinson, *Trauma Trails, Recreating SongLines* (Spinifex Press, 2002); Jerry Kang et al, 'Implicit Bias in the Courtroom' (2012) 59 *UCLA Law Review* 1124; Sarah Maddison, *The Colonial Fantasy* (Allen and Unwin, 2019); Aileen Moreton-Robinson, 'I Still Call Australia Home: Indigenous Belonging and Place in a White Postcolonising Society', in Sarah Ahmed et al, (eds), *Uproot-ings/Regroupings: Questions of Postcoloniality, Home and Place* (Berg, 2004) 23; Bruce Pascoe, *Convincing Ground* (Aboriginal Studies Press, 2007); Irene Watson, 'Re-Centring First Nations Knowledge and Place in a Terra Nullius Space' (2014) 10(5) *AlterNative* 508; Patrick Wolfe, 'Settler-Colonialism and the Elimination of the Native' (2006) 8(4) *Journal of Genocide Research* 387.

on race, care needs to be taken to ensure Indigenous sovereignty is not erased through suggesting Indigenous exclusion can be understood through racial frameworks alone. Obscuring the context of dispossession obscures the basis of Indigenous peoples' unique rights and of the policy frameworks such as the engagement frameworks that inform workplace contexts. And it shifts attention from the sovereignty conversations (including the treaty conversations) that are necessary to realise the hope being voiced across many of the environments in which graduates will operate, of walking together into a better future.

3 *Indigenous Worldviews, Systems and Histories*

This section of the intensive begins with an examination of characteristics of Aboriginal systems of thought and law, drawing on the works of Elders and other critical Indigenous thinkers.[71] It discusses Indigenous conceptions of reality as holistic, animate, and non-linear, but makes it clear that the way in which these principles are put into practice differs across different Indigenous nations. In this way, this portion of the intensive engages with what Tjalaminu Mia (Menang, Goreng, Wadjari Noongar) has described the 'difference and sameness' of Aboriginal peoples:

> Aboriginal people are the first people of country in the many lands that make up Australia, but we have distinct cultural and spiritual autonomy over particular areas of country. Regional diversity between Aboriginal groups is clear to us, though many of our groups share *koondarm* — Dreaming storylines.[72]

The systems of the Aboriginal nations of Australia began in the Dreaming and to the extent that the Dreaming stories tell of a holistic, animate and non-linear world, there is a shared foundation for Aboriginal systems and thought. However, the ways in which these concepts are understood and implemented in any given homeland is highly adapted to and through the circumstances and perspectives of particular Aboriginal nations.

Material on Indigenous worldviews and systems is also used to inform the analysis of Indigenous experiences of the settler 'rule of

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[71] While the sources are too numerous to be listed in full, to give an indication of some of the works drawn upon: Mary Graham, 'Some Thoughts about the Philosophical Underpinnings of Aboriginal Worldviews' (2008) 45 *Australian Humanities Review* 181; Vicki Grieves, *Aboriginal Spirituality, Aboriginal Philosophy: The Basis of Aboriginal Social and Emotional Wellbeing* (Cooperative Research Centre for Aboriginal Health, 2009); Linda Payi Ford, *Aboriginal Knowledge Narratives and Country: Mari Kunkimb Putj Putj Marrideyan* (Post Pressed, 2010); Max Dulumunmun Harrison, *My People's Dreaming* (HarperCollins, 2013); Sally Morgan, Tjalaminu Mia and Blaze Kwaymullina (eds), *Heartsick for Country: Stories of Love, Spirit and Creation* (Fremantle Press, 2008); Margaret Turner, *Iwenhe Tyerrtye: What it Means to be an Aboriginal person* (IAD Press, 2010); Kathleen Wallace, *Listen Deeply, Let These Stories* In (IAD Press, 2009); Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2014).

[72] Tjalaminu Mia, 'Kepwaamwinberkup (Nightwell)' in Sally Morgan et al (eds), *Heartsick for Country: Stories of Love, Spirit and Creation* (Fremantle Press, 2008), 184, 187.

law'. For example, a non-linear perspective has profound implications for what constitutes 'history' (in the sense of being of the 'past').[73] The history portion draws on a range of ethically published sources, including audio visual sources, to engage teachers with Indigenous voices speaking to their experiences and the experiences of their ancestors.

4 *The Processes of Inclusive Teaching*

The final portion of the intensive focuses on a series of practical processes which facilitate the creation of inclusive teaching environments in relation to Indigenous peoples and knowledges. As the artwork shows, these processes are not 'stand-alone' but are informed by, and applied within the contexts of, the learning that has gone before. The use of processes outside of this larger understanding can lead to results opposite to that which is desired. A prime example of this is a failure to recognise differences in cultural communication styles. Teachers who are have not examined their own contexts or learned of Indigenous contexts may seek to 'model respect' for students through Western-style communication methods, such as sustained eye contact. This can also be a means by which student engagement with curriculum is measured. But in many Australian Aboriginal cultures, sustained eye contact is disrespectful and non-verbal communication is valued. This is why protocols —including from the legal and government sectors — highlight the importance of developing an awareness of Aboriginal communication methods. For example:

> The use of body language is an integral part of communication for many Aboriginal people… Direct eye contact may be taken as a sign of aggression, rudeness or disrespect; lowered eyes and talking in a quiet manner may be seen as respectful behaviour.[74]

> In Aboriginal and Torres Strait Islander cultures, extended periods of silence during conversations are considered the 'norm' and are valued. Silent pauses are used to listen, show respect or consensus. The positive use of silence should not be misinterpreted as lack of understanding, agreement or urgent concerns.[75]

Thus, a lack of understanding of contexts not only fails to create inclusive classrooms but models behaviour that may be incongruent with the expectations that professional environments have of law graduates.

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[73] I have written to this in the context of Constitutional change in: Ambelin Kwaymullina, 'Recognition, Referendums and Relationships: Indigenous Worldviews, Constitutional Change and the "Spirit" of 1967' in Simon Young, Jennifer Nielsen and Jeremy Patrick (eds), *Constitutional Recognition of First Peoples in Australia: Theories and Comparative perspectives* (Federation Press, 2016) 29.

[74] Legal Services Commission of South Australia, *Different Ways of Communicating* <https://lsc.sa.gov.au/dsh/ch03s04.php>.

[75] Queensland Health, *Communicating Effectively with Aboriginal and Torres Strait Islander People* <https://www.health.qld.gov.au/__data/assets/pdf_file/0021/151923/communicating.pdf>.

This part of the intensive is practical in focus, with existing curriculum critically examined to identify instances of exclusion and opportunities for transformation. Much of this includes reflecting upon the connections between law and stories.

There are many ways in which law academics are storytellers, not least because during the course of a teaching career we will generate multiple works of structured short fiction in the form of hypothetical fact scenarios. But legal storytelling extends beyond hypotheticals. In our reading lists; our tutorial questions; our lectures; our assessment; in the very language that we use to describe people and the world and the behaviours that we enact in our classrooms — what stories do we tell, and about whom do we tell them? Whose voices speak, and whose don't? Whose realities are accurately represented (or represented at all), and whose aren't? And in this regard, to whom do we offer the beauty and the promise of the law, and to whom do we deny it?

Our choices have implications which extend far beyond the creation of inclusive teaching environments into the proper functioning of the rule of law. Professor Larissa Behrendt, examining how harmful narratives about Aboriginal women influence their treatment by the courts, has written that one of the most important ways to investigate the connection between law and storytelling is to 'critique the ways in which negative stereotypes in popular culture and broader society find themselves captured in laws and policies.'[76] As she notes

> the ways in which stories in popular culture portray Aboriginal women — the stereotypes that are generated about us — can find their way into legal analysis in a way that sees those stereotypes reinforced and our rights unprotected.[77]

In the worst of situations, the stereotypical stories known about Indigenous peoples can shape assumptions that contribute to terrible consequences. In this regard, Coroner Ros Fogliani has stated in relation to the 2014 death of Ms Dhu in custody following 'unprofessional and inhumane treatment' that:

> while I do not find that any of the … police were motivated by conscious deliberations of racism in connection with their treatment of Ms Dhu …it would be naïve to deny the existence of societal patterns that lead to assumptions being formed in relation to Aboriginal persons.[78]

Stories can also be sites of engagement and transformation. Nicole Watson (Birri-Gubba people, Yugambeh language group) has suggested that reading Indigenous literature will 'spur scholars to build meaningful vehicles for change; vehicles that are rooted not in what lawyers think Indigenous people need, but what Indigenous people believe they need.'[79] And engaging in a culturally competent way with

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[76] Allan et al (n 64) 247.
[77] Ibid 247.
[78] *Record of the Investigation into the Death of Ms Dhu* (n 8) 161.
[79] Nicole Watson, Justice in Whose Eyes? Why Lawyers Should Read Black Australian Literature (2014) 23(1) *Griffith Law Review* 44, 55.

Indigenous voices speaking to their lived realities is one of the means through which 'societal patterns that lead to assumptions' — which is to say, structural and unconscious bias — can begin to be challenged and disrupted.

VI WHOLE-OF-DEGREE BASIS

There are clear benefits to Indigenising curriculum on a whole of degree basis. While this is true of any degree, it is particularly the case with courses such as law that largely comprise compulsory units with associated prerequisite requirements. This makes it possible to achieve true horizontal and vertical integration. Content can be incorporated into every level of the degree, ensuing students engage with a range of Indigenous content across each level. Content can also be built in depth and complexity as the degree advances, relying on student learning in earlier prerequisites for any given unit. This has the added benefit of breaking down the siloed nature of law curriculum, allowing teaches to highlight connections between different subject areas across the degree.

It is the nature of the law that it changes and proliferates. Law teachers, particularly in the core units, have limited time and space to teach the law to the standard required to properly equip students to become legal professionals. When Indigenous content is taught on an ad hoc basis, it can be very difficult to explore meaningfully the material within the available curriculum space. When content is incorporated into all units and mapped across the curriculum, however, teachers can rely on students' prior learning to explore issues in far greater depth. In addition, teachers are relieved of the pressure of attempting to convey more information than can reasonably be included within the time/space constraints. Indeed, a past problem with Indigenisation has been teachers attempting to teach content that requires more attention than they can give it, resulting in superficial treatment of complex issues. It can also result in teachers making errors because they did not have the time to do the research necessary to give them an appreciation of what was required to teach the content well. The cost of this tends to fall most heavily upon Indigenous students who are put in the position of correcting errors or of providing curriculum for their fellow students — or their teachers — from their own knowledge. This is why it is one of our Principles of Indigenisation that we 'ensure that content incorporated into individual units is both directly relevant to that unit and able to be dealt with appropriately within the available curriculum space.'

Underpinning and informing Indigenous material across the degree is the foundational Indigenous content incorporated into our introductory law unit. This unit runs as a two-week intensive prior to the commencement of semester. The foundational Indigenous content reflects the two key elements of cultural competency and consists of four modules. The first module is taught by Dr Richard Walley and other Noongar speakers with the remaining modules taught by myself.

Module 1 is Noongar cultures, histories and worldviews. This comprises the river walk discussed above. The walk takes place on the morning of first day of the unit, and so the students' introduction to the Law School is through an on-Country experience where they engage with the ancient cultures and knowledges born of Noongar peoples and land.

Module 2 is Indigenous legal systems, which follows after the river walk. Here, students learn of principles informing Indigenous legal systems, using the 'difference and sameness' approach described above. They then engage in comparative analysis using an area of Anglo-Australian law that is based on principles opposite to those underlying Indigenous legal systems (intellectual property law). This also informs an understanding of how ideas and values shape law and legal systems.

Module 3 deals with structural, explicit and unconscious bias. Students are introduced to these concepts before exploring a real-life case study where they identify and interrogate the operation of structural, explicit and unconscious bias in a legal context.

Module 4 consists of an introduction to Indigenous experiences of the settler-colonial 'rule of law'. As the importance of this history has been persistently emphasised in law reform reports, the concept of law reform is used as a framing device to discuss the relevance of the past to the present, and to examine how and why law is changed. This module also uses a comparative approach that explores legal continuity and change from an Indigenous non-linear perspective.

The foundational Indigenous content ran for the first time in 2019 and has been well received by students.

VII AN ITERATIVE AND SUPPORTED PROCESS

As all teachers know, curriculum development takes time. This is especially the case when teaching areas with which we have no prior familiarity or limited familiarity. Like many of my colleagues, I vividly remember the early days of a teaching career: the sleepless nights; the desperate scramble to assemble resources; the constant lurking fear that I was getting something wrong (perhaps *everything* wrong); and the moments of panic when students presented me with bizarre 'what if' legal scenarios to which I did not know the answer. I quickly learned that it's quite useless to say, 'that would never happen'; the next question is inevitably 'but what if it did?'. Back in those days, I once encountered another early career academic who told me that she had just delivered the worst law lecture of all time in corporations law. I said that she couldn't possibly have, because *I* had delivered the worst law lecture of all time in administrative law the week before.

The Indigenisation of curriculum will require teachers to deal with material with which many will have little or no familiarity. This does not just include teachers who have never before dealt with Indigenous content. A culturally competent approach will require a re-evaluation of past methods and sources to meet best practice standards. The

teaching of Indigenous content in this way is complex and the learning journey is lifelong. It is unwise and unfair to ask teachers to Indigenise their content without sufficient support. And teachers are well aware of the need for expert input. A survey conducted by Phil Rodgers-Falk (Nygemba) at Griffith University found that

> Ninety-one per cent of Griffith Law School academic staff interviewed indicated that they would like assistance from ATSI [Aboriginal and Torres Strait Islander] academics in developing ATSI perspectives for curriculum and teaching methods.[80]

Moreover, with the push for Indigenous content gathering speed across all teaching sectors, this need for support is reflected across the primary and secondary school spheres. In this regard, the National Aboriginal and Torres Strait Islander Curricula project has identified teacher's reasons for the current lack of inclusion of Indigenous content in schools as including:

- Fear — of their own limited knowledge, or of doing something wrong.
- Navigation — of existing repositories, and to identify quality resources within these.[81]

The Indigenisation project adopts an iterative, supported process for the UWA JD program. Before curriculum development begins, teachers undertake the cultural and inclusive teaching training discussed above. As part of this, I undertake an assessment of a unit, measuring Indigenous content (if any exists) against our Principles of Indigenisation and also identifying opportunities for inclusion of Indigenous material. Teachers then work closely with me to develop culturally competent content.

Once the initial Indigenous curriculum within a unit has been taught once, the unit is workshopped to develop curriculum further. The workshop includes taking into account feedback from students, including through formal mechanisms such as student unit and teaching surveys but also through discussions with the UWA Law Student Society and with Indigenous students. This process of examination and development will continue throughout the project.

It is worth noting that the concern expressed by primary and secondary school teachers as to navigating data and identifying quality resources applies equally to the tertiary sector.[82] There has been a long history of misappropriation of Indigenous knowledges and distortion of Indigenous realities. And while there are now many ethically published Indigenous works that can be used to enrich curriculum, these sources

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80 Phillip Rodgers-Falk, *Growing the Number of Aboriginal and Torres Strait Islander Law Graduates: Barriers to the Profession* (Department of Education and Training, 2012) 6.

81 Australian Government, Curricula Project <https://www.indigenous.gov.au/teaching-guides/curricula-project>.

82 Ibid.

may not be easy for teachers to find. For example, while law teachers may be able to locate works by Indigenous law academics, they are less likely to be able to navigate the extensive body of Indigenous commentary that is found in sources such as Elder narratives, life histories, publications by Indigenous communities or organisations, and websites of Traditional Owners or Indigenous organisations. Part of my role in the project involves connecting teachers with these resources. Over time as the project continues, resource guides will be developed that can be used in future curriculum.

VIII CONCLUSION

The intersecting requirements of higher education policy and the expectations of 21st century workplaces mean that the question for law schools is no longer so much *whether* law curriculum will be Indigenised, but rather *when* and *how*. These requirements also mean it is critically important that curriculum is designed and delivered to best practice, culturally competent standards. In so doing, Indigenisation projects open up pathways to new dialogues and new futures. As such, there seems no better way to end this article than with some of the Indigenous voices of the future, in the form of an extract from the *Imagination Declaration* issued by the Garma Youth Forum to the Prime Minister and Education Ministers in 2019:

> When you think of an Aboriginal or Torres Strait Islander kid, or in fact, any kid, imagine what's possible. Don't define us through the lens of disadvantage or label us as limited.
>
> Test us.
>
> Expect the best of us.
>
> Expect the unexpected.
>
> Expect us to continue carrying the custodianship of imagination, entrepreneurial spirit and genius.
>
> Expect us to be complex.
>
> And then let us spread our wings, and soar higher than ever before.
>
> We call on you and the Education Ministers across the nation to establish an imagination agenda for our Indigenous kids and, in fact, for all Australian children.
>
> We urge you to give us the freedom to write a new story.[83]

[83] SBS, The Imagination Declaration of the Youth Forum read at Garma 2019, 5 August 2019 <https://www.sbs.com.au/nitv/nitv-news/article/2019/08/05/imagination-declaration-youth-forum-read-garma-2019>.