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LAW STUDIES AND INDIGENOUS STUDENTS' WELLBEING: *CLOSING THE (MANY) GAP(S)*

ASMI WOOD*

I INTRODUCTION

This article examines Indigenous law students' participation and wellbeing in tertiary education.¹ As recent research has clearly demonstrated, maintaining wellbeing is a challenge for the majority of law students.² But, in addition to the usual challenges of student life, the wellbeing of Indigenous law students is affected by factors including, but not limited to, health, economic status, access to quality secondary education (including Legal Studies in years 11 and 12), and recognition of the special community responsibilities that Indigenous students typically have. Indigenous students often also carry additional burdens because of what are referred to as 'inter-generational effects' — their parents' (or carers') economic and social issues, family financial instability, poor education across generations and correspondingly low commitment to education.³

* Asmi Wood teaches at the Australian National University (ANU) College of Law and also works with Indigenous law students as an academic adviser. He dedicates this article to the late Professor Phillipa Weeks, who led the Indigenous support programme at the ANU College of Law. The author would firstly and most profoundly like to thank Dr Michelle Sanson for her very substantial help. The author also acknowledges the comments and suggestions made by Anne Hewitt and Professor Molly O'Brien as well as the constructive comments made by the blind referees. All errors and omissions, however, remain the sole responsibility of the author.

¹ The use of the collective proper noun term 'Indigenous' to refer to Australian Aboriginal and Torres Strait Islander Peoples in this context does not have universal approval in Australia. Many people prefer the specific use of customary traditional names such as Aranda, Kamilaroi or Wik peoples. Others prefer the use of the broader term, Aboriginal or Torres Strait Islanders. While the term Indigenous serves as a useful shorthand in this article, it is not an ideal term.

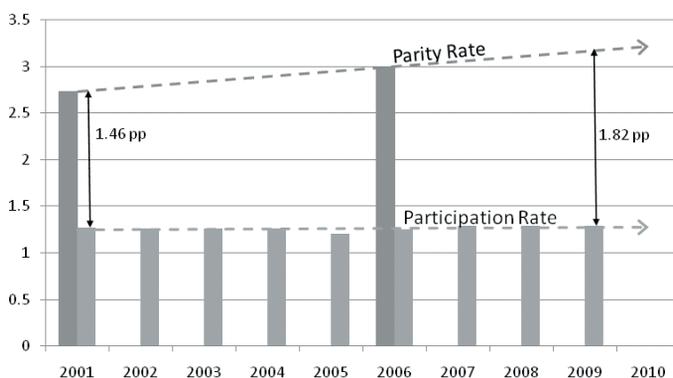
² Massimiliano Tani and Prue Vines, 'Pointers to Depression in the Legal Academy and the Profession?' (2009) 19 *Legal Education Review* 3, 6.

³ Wayne Swan, *The Intergenerational Report 2010: Australia to 2050* (2010) Treasury (Cth), [6.3.1] <http://www.treasury.gov.au/igr/igr2010/report/html/07_Chapter_6_A_sustainable_society.asp> notes that:

Disadvantage can be persistent and passed across generations. Indigenous Australians, in particular, tend to experience multiple forms of disadvantage that can be passed to future generations.

In 2008, the *Bradley Review* found that Indigenous students are ‘vastly under-represented in higher education’.⁴ There appears little doubt as to the accuracy of this finding. In 2007, Indigenous participation in tertiary education was only 1.3 per cent, while Indigenous people made up 2.7 per cent of the general population.⁵ This means that the Indigenous participation ratio in tertiary education is 0.59 (where 1 represents parity),⁶ as shown in Table 1 below.

Table 1: ABS Census Data (2006, extrapolated) and Selected Higher Education Statistics (DEEWR, 2009)⁷



The *Bradley Review* affirmed the ‘significant knowledge capital and human capital’ that Indigenous people bring with them.⁸ Yet the government’s ‘Higher Education Performance Funding’ program, based on that report, does not indicate specific targets for Indigenous participation in higher education. It includes a general target that 40 per cent of all Australians between 25 and 34 years of age should have a tertiary education by 2025,⁹ and explicitly states that access to higher education for students from low socio-economic backgrounds

⁴ Denise Bradley et al, *Review of Australian Higher Education: Final Report* (2008) Department of Education, Employment and Workplace Relations (DEEWR), 28, 32 <http://www.deewr.gov.au/HigherEducation/Review/Documents/PDF/Higher%20Education%20Review_one%20document_02.pdf> (*‘Bradley Review’*).

⁵ Ibid.

⁶ Ibid.

⁷ Asmi Wood, ‘The Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People’ (Paper presented at the AIATSIS National Indigenous Studies Conference, ANU Canberra, 19–22 September 2011). <<http://www.aiatsis.gov.au/research/conf2011/Day2.html>>.

⁸ *Bradley Review*, above n 4, 32.

⁹ DEEWR, *An Indicator Framework for Higher Education Performance Funding* (December 2009) 3 <<http://www.deewr.gov.au/HigherEducation/Documents/HIEDPerformanceFunding.pdf>>.

and rural and remote areas should be increased.¹⁰ Indigenous people are statistically more likely to fall within the category of low socio-economic background, and to come from rural or remote areas of the country, so they are implicitly part of this focus. However, given their history of under-representation, specific attention is warranted. As a matter of general principle, the target rates for Indigenous Australians should be the same as that for all Australians. This target is, however, unlikely to be achieved until the existing obstacles to Indigenous success are addressed.

The differences between Indigenous attainment and median equivalent 'mainstream levels' are loosely termed 'gaps', a familiar concept in Australia with government's Indigenous policy focus on 'Closing the Gap'. This article focuses on closing the many gaps Indigenous students wishing to study law face, which could promote not only Indigenous law student participation but also wellbeing. Indeed, the under-participation of Indigenous students in tertiary education is itself a factor that significantly impacts on wellbeing among Indigenous law students. Because Indigenous students often lack the peer support network that is available to students of different cultures more proportionately represented in law school cohorts, they face the additional burden of social isolation.¹¹

Part II of this article examines the higher education context, including the broader educational and learning environment for Indigenous students and, in particular, Indigenous law students. It looks not only at their under-participation but also at the factors inhibiting Indigenous student success in law school. Part III provides a case study, from the Australian National University (ANU) College of Law, of institutional support for Indigenous law students, and discusses its success and future challenges. Part IV concludes by identifying the lessons from the ANU experience that may be applicable to other law schools.

II THE HIGHER EDUCATION CONTEXT FOR INDIGENOUS AUSTRALIANS

It is important, at the outset, to recognise that the under-representation of Indigenous students in higher education has not occurred — and does not occur — in a vacuum. Instead, it is a phenomenon precipitated by a particular cultural, political and historical context in Australia. Examining under-representation in isolation risks attributing fault to intrinsically dysfunctional

¹⁰ DEEWR, 'Closing the Gap in Indigenous Higher Education' (Media Release, 14 April 2011) <http://www.deewr.gov.au/Ministers/Evans/Media/Releases/Pages/Article_110414_171523.aspx>.

¹¹ Generally, however, Indigenous wellbeing appears to improve with education: Robin Armstrong, *University Education and Economic Well-Being: Indian Achievement and Prospects* (Indian and Northern Affairs Press, 1990).

Indigenous communities and their reluctance or inability to participate in Western institutions. However, as the following analysis demonstrates, this conclusion is not accurate.

It was not until 1965 that Mr Kumantjayi Perkins became the first Indigenous man to graduate from an Australian university.¹² Subsequently, and since the gradual removal of legal, policy and practical barriers to Indigenous participation in the tertiary sector, the growth in the number of Indigenous graduates and postgraduates has been phenomenal. The catalyst for this growth in participation — or, at least, the removal of the biggest psychological and legal barrier to Indigenous participation — was perhaps the 1967 referendum. In that historic referendum, approximately 90 per cent of eligible voters agreed to the constitutional amendment repealing s 127, which, among other things, removed legal impediments to collecting statistical information on Indigenous peoples.¹³ However, it should also be noted that about 10 per cent of eligible voters voted against the proposition,¹⁴ suggesting that while goodwill towards Indigenous people at the time was overwhelming it was not unanimous. This is still the case. A minority remain opposed to remedial action to redress historical injustices against Indigenous peoples, just as some are still opposed to the positive discrimination used to redress the under-participation of women in the workplace. Some of these anti-Indigenous views expressed in Australia are documented in Hansard.¹⁵

As the exclusion of Indigenous people from the mainstream has gradually eased, Indigenous communities and individuals have vigorously moved towards righting historical imbalances, indicating a high degree of resilience, determination and strength within the community. ‘Success’ in this struggle, as it relates to legal education, is defined as increased participation, engagement and retention of Indigenous law students, resulting in increased numbers of Indigenous Australians holding a Bachelor of Laws. This, of course, sets aside obvious arguments about privileging English law and language over Indigenous laws and languages. There is an obvious need for Indigenous Australians to develop their competence in Indigenous

¹² See Australian Broadcasting Corporation (ABC), *Fire Talker: The Life and Times of Charlie Perkins* (2011) <<http://www.abc.net.au/programsales/s2850343.htm>>.

¹³ Tony Blackshield and George Williams, *Australian Constitutional Law and Theory* (Federation Press, 3rd ed, 2002) 1306.

¹⁴ *Ibid.*

¹⁵ Commonwealth, *Parliamentary Debates*, Senate, 18 June 1997, 4464–5 (Ron Boswell).

laws alongside competency in 'white fella's law'.¹⁶ Change cannot be achieved from the outside: it is only through using mainstream laws and the legal system that Indigenous laws and rights can achieve greater recognition.

A The Broader Educational and Learning Environment for Indigenous Students

A problem many contemporary Indigenous students face, from their earliest experience with the Western educational system, is a form of negative cultural stereotyping. Very low expectations of Indigenous performance in mainstream education are common. This can result in a form of cultural dissonance, permitting Indigenous students to be singled out as the 'other' and adversely affecting their educational success. Just as the first female law students experienced harassment and disrespect toward their opinions from male professors,¹⁷ so too does the vanguard of Indigenous law students experience stereotyping in higher education. In some instances, Indigenous law students have been known to decline learning and assessment adjustments offered to them, because it further entrenches their feeling of being less worthy, and their belief that a successful outcome will be denigrated because they received 'special treatment'.

A key contributing factor to Indigenous students' (relatively poor) wellbeing levels and disadvantage in education appears to lie in some part with the lingering effects of inter-generational neglect, such as is the case with the so-called 'Stolen Generations'.¹⁸ This neglect, broadly speaking, manifests itself as disengagement or 'social disconnect'.

¹⁶ Alan Pope, *One Law for All? Aboriginal People and Criminal Law in Early South Australia* (Aboriginal Studies Press, 2011) 41; Lisa Strelene, *Compromised Jurisprudence* (Aboriginal Studies Press, 2nd ed, 2009) 8; Irene Watson, 'Some Reflections on Teaching Law: Whose Law, Yours or Mine?' (2005) 6(8) *Indigenous Law Bulletin* 23; Loretta Kelly, 'A Personal Reflection on Being an Indigenous Law Academic' (2005) 6(6) *Indigenous Law Bulletin* 19; H Morphy, *Ancestral Connections: Art and an Aboriginal System of Knowledge* (University of Chicago Press, 1991).

¹⁷ Catharine MacKinnon, 'Feminism in Legal Education' (1989) 1(1) *Legal Education Review* 85, 93. See also Lucinda Finley, 'Womens' Experience in Legal Education: Silencing and Alienation' (1989) 1(1) *Legal Education Review* 101, which refers to the classroom comments of female law students being swallowed up by a 'black hole' — comments which, when repeated by a male student, suddenly earned a reaction such as 'what a brilliant remark': at 101.

¹⁸ ABC, 'Stolen Generations', *Background Briefing*, 2 July 2000 (Tom Morton) <<http://www.abc.net.au/rn/talks/bbing/stories/s148775.htm>>; Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) <http://www.hreoc.gov.au/pdf/social_justice/bringing_them_home_report.pdf>. The equivalent phenomenon in North America is referred to as the 'Residential Indian Schools Program'.

It is not uncommon for Indigenous students entering higher education to be part of the Stolen Generations or to have family members who were. The impact on the lives of these family members permeates the upbringing of children, who are exposed to the depression and alcoholism that often results from the loss of a person's cultural identity.¹⁹ Such disadvantage, including widespread substance abuse and violence in the home; impact upon children's wellbeing and educational prospects; and, if little is done to help the children overcome the psychological impediments, ill-treatment will only continue into the next generation, albeit in more subtle ways.

The parents of many Indigenous law students were told from an early age that they were substandard or, to use an Australian colloquialism, 'thick'. They were told they were fit to be only domestic servants in the case of women, or stockmen or drovers in the case of men, and were trained exclusively for these roles. The messages we receive as children are enmeshed in the adult persona. How can it then be expected that these people, as adults and parents, can foster an educationally supportive and motivating home environment?

There is a fundamental obstacle to Indigenous engagement with higher education — the underlying tension between Indigenous knowledge systems and Western legal and cultural systems. Indigenous legal knowledges can, for example, include aspects of secrecy;²⁰ encompass, involve or be contingent on kinship and other special relationships;²¹ include ancestral knowledges in a manner unfamiliar to Western knowledge traditions;²² and be constructed as oral traditions through specific elders, in languages with syntax, grammar and structures completely alien to the English tradition.²³ University modes of transmitting knowledge — that is, competency-based learning in the Western tradition, where legal knowledge and skills are acquired and certified before the individual can enter practice — may also be unfamiliar to some Indigenous students. These modes contrast with, say, the model of an Indigenous understudy who learns and practises law under the guidance of an elder lawperson in the Indigenous tradition.

These contrasting teaching and learning models can also, in some cases, form a cultural — or, perhaps more accurately, a psychological — barrier. Because of this difficulty, Indigenous students may sometimes have to be reassured that 50 per cent, or a 'pass' mark, is a sufficient basis to continue taking law classes. In the university context, students are not expected to master the subject material in

¹⁹ HREOC above 18, 164.

²⁰ Ian Keen, *Knowledge and Secrecy in an Aboriginal Religion: Yolngu of North-East Arnhem Land* (Oxford University Press, 1994).

²¹ François Dussart, *The Politics of Ritual in an Aboriginal Settlement: Kinship, Gender, and the Currency of Knowledge* (Smithsonian Institution Press, 2000).

²² Morphy, above n 16.

²³ R Dixon, *The Languages of Australia* (Cambridge University Press, 1980).

any particular course completely, or to achieve a near 100 per cent mark, before being invited to take the next course, as is the case in some Indigenous teaching traditions where complete mastery is required before further levels of learning may be undertaken.²⁴ Although this method of teaching was also present in the ancient common law, where law was learned by the apprentice at the side of his master, it has given way to competency-based learning in the West. Another way of expressing this approach is that time, wiser than any human judge, is necessary both to allow custom to develop and to allow humans to understand and acquire the wisdom to apply custom with fairness and equity.

Such different approaches to teaching can adversely affect learning outcomes for many Indigenous students, particularly those from non-Westernised, non-English speaking backgrounds. While most Indigenous students are not unfamiliar with Western teaching traditions, Indigenous mentors can help by reminding Indigenous students that their university lecturers will not tell them individually that, having 'passed', they are ready to move on to the next step. It is also important that mentors sensitise Indigenous students to the fact that their teachers' behaviour does not imply disrespect or an absence of care.

Urbanised Indigenous students, on the other hand, are likely to feel few of these particular reservations or tensions but may be more likely to interpret the ignorance of Indigenous ways by their teachers and colleagues as a combination of disrespect or racism. For some students, these tensions play out from the earliest stages of education in primary school, through to adult education. The tension is compounded, in many instances, by the cumulative effects of inter-generational disadvantage. Mentoring can help dispel some misunderstandings and thus to improve student performance.

These fundamental obstacles cannot be addressed in the legal education context alone. So as not to promote a 'deficit model', it is noted that law schools can contribute to Indigenous student efficacy if Indigenous perspectives and principles are embedded in the law degree.²⁵ This approach can benefit the faculty, the university and, importantly, the pedagogy, and can assist all law graduates to gain an understanding of Indigenous cultural diversity.

However, universities cannot directly address other barriers to entry that accumulate for Indigenous students throughout primary

²⁴ Ross Drake, *Wisdom of Customary Law* <<https://3386131232883764947-a-1802744773732722657-s-sites.googlegroups.com/site/westofmoorabbin/pdf/WisdomofCustomarylaw.pdf>> expresses this idea reasonably as: '[c]ustom grew to perfection by continual usage from time ... (Dreaming) and was more "perfect" and "excellent" than any written law'.

²⁵ See, eg Carwyn Jones, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum' (2009) 19(2) *Legal Education Review* 257.

and secondary education, and which result in both low participation and completion rates for Indigenous law students. Although addressing educational disadvantages in primary and secondary schooling is important, there is a broader need to increase recognition of the importance and value of Indigenous culture, and to make Indigenous issues a concern for the broader Australian community. This could contribute to Indigenous people wishing to enter law school feeling valued and supported as students, on par with their peers. There has been some progress in this regard, such as the apology by former Prime Minister Kevin Rudd; awards of compensation by the courts to members of the Stolen Generations; the increasing adoption of reconciliation plans by corporate and community organisations; the regular inclusion of ‘Welcome to Country’ in public events; raising of Aboriginal flags; and national broadcasting of traditional stories, footage, opinions and perspectives. Learning and understanding by mainstream law students about legal developments relating to Indigenous people, such as the recognition of native title, the use of circle sentencing, and acknowledgement of traditional punishments, should also help Indigenous students to feel less alienated in the legal education environment. Teaching and learning these topics will also encourage non-Indigenous law students to have positive attitudes towards the Indigenous legal tradition, and their Indigenous peers. But this is yet to happen and there is still a long way to go.

However, if we look positively to the future, as society becomes more engaged with Indigenous issues and cultures, Indigenous students are less likely to be marginalised in the education system. Indigenous educational levels will improve at the primary and secondary levels, putting Indigenous students in a better position to enter tertiary education. In addition, as the law itself increasingly recognises Indigenous cultures and traditions, Indigenous law graduates will have greater opportunity to use their legal training in relevant areas; for example, in Indigenous property, both physical and intellectual (as seen by the growing interest in Indigenous art and traditional medicine).

B *The Indigenous Law Student Experience*

Given the literature which suggests that ‘mainstream’ law students have significant wellbeing issues,²⁶ one would expect Indigenous students, many of whom arrive at law school with far fewer social and family support structures,²⁷ to face greater or, at least, equivalent

²⁶ Richard James, Kerri-Lee Krause and Claire Jennings, *The First Year Experience in Australian Universities: Findings from 1994 to 2009* (University of Melbourne, 2010) 65 (*‘First Year Experience Report’*).

²⁷ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 26–30 [23.1] <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol3/>>.

issues. Paradoxically, however, evidence suggests that Indigenous students are more likely to enjoy and benefit from the university experience.²⁸ The *First Year Experience Report* notes that:

Indigenous students emerge as highly motivated and optimistic in their outlook. Fewer Indigenous students agree with the statement 'university has not lived up to my expectations (four per cent compared with 17 per cent). They are focused on using a university education to develop their talents (90 per cent compared with 76 per cent). They are also far more positive about the value of orientation programs in getting them off to a good start (59 per cent compared with 44 per cent).²⁹

Indigenous law students, therefore, tend to have positive approaches to university, which may offset the challenges arising from the 'gaps' they experience, identified below.

However, identifying the gaps Indigenous law student experience is made more difficult by a lack of information on key issues. In discussing support available for 'mainstream' law students,³⁰ Castan et al state that 'there has been very little exploration of the expectations and aspirations of students commencing a law degree'.³¹ Likewise, Indigenous law students' expectations and aspirations have also not been explored. This information gap should be addressed if services to support Indigenous students are to be properly targeted. Anecdotally, however, in addition to the reasons mainstream students study law, Indigenous students are also motivated to study and understand Western law, sometimes seen as the main tool for their oppression and dispossession.³² Law is also seen as the tool used to isolate Indigenous peoples,³³ and to deprive them of their lands, languages, cultures and dignity. On a more positive note, Indigenous students are motivated by a desire to help reduce crime and violence among their peoples; to develop means and ways of keeping young people out of the cycle of gaol and recidivism; and to act as role models in order to promote the love for education, learning and wisdom. These altruistic motives often create a very strong incentive for students to work hard and to succeed against significant barriers and, sometimes, even against the odds.

What is desperately needed for long-term planning, however, is statistically reliable and comprehensive datasets on Indigenous

²⁸ Ibid.

²⁹ *First Year Experience Report*, above n 25, 67-68. The percentage comparisons are as against 'mainstream' students.

³⁰ It is conceded that this is likely to be a contested term. For the purposes of the article, however, the general law student body in Australian universities is meant.

³¹ Melissa Castan et al, 'Early Optimism? First-Year Law Students' Work Expectations and Aspirations' (2010) 20 *Legal Education Review* 1, 1.

³² See also Heather Douglas, "'This Is Not Just about Me": Indigenous Students' Insights about Law School Study' (1998) 20 *Adelaide Law Review*, 315, 317-21 for some excerpts on this point taken from student interviews.

³³ Lewis Yerloburka O'Brien, *And the Clock Struck Thirteen* (Wakefield Press, 2007) 178.

law students. This would assist in the informed formulation of appropriate education policy. Systematic collation and analysis of base information would provide an objective basis for sensible and targeted policy development for planners at all levels.

The relatively poor state of knowledge on the key issues surrounding Indigenous legal education compounds the problems discussed above, since policy-makers are basing projects on incomplete and possibly inaccurate data. Judging by the current low levels of Indigenous participation in legal education, it is not unreasonable to conclude that inadequately or poorly informed assumptions have led to faulty policies being implemented.

Because of this ‘information gap’, much of the following analysis will be based on raw data regarding Indigenous students which is informally available at the Indigenous Support Centres (ISCs) at various universities, and in the possession of individual university staff members who deal directly with Indigenous students.

C The ‘Gaps’

The gaps experienced by Indigenous law students, from the beginning of their law degrees through to graduation, may be characterised as an educational gap; an authenticity gap; a financial gap; a psychosocial support gap; and a recognition gap. These are considered below.

1 Educational Gap

It is well-known that schools in rural and remote areas, and in low socio-economic areas, produce lower quality education outcomes than well-resourced and private schools in affluent areas. Talented Indigenous students have the capacity to overcome poorer quality education but motivation to do so has to come from within. Often, families without a history of higher education do not encourage their children in that direction. The education gap that widens through primary and secondary education is felt strongly when Indigenous students enter law school. The transition to first-year law student is difficult enough for educationally-prepared students, let alone those who have to develop academic literacy skills rapidly on top of legal skills and substantive legal knowledge.

The government has come some distance in recognising the root causes of this educational gap. In its latest initiative, it has appointed a committee led by a prominent Indigenous legal academic to provide a report that will ‘propose a strategic framework to enable government ... to ensure parity in the sector’.³⁴ This is a positive move which should be strongly endorsed.

³⁴ DEEWR, ‘Closing the Gap in Indigenous Higher Education’, above n 10.

2 *Authenticity Gap*

For law students, the disjuncture between the concept of a rule of law society and what Morton-Robinson describes as how the 'intersection between race and property [law] continues to play a definitive role in constructing and affirming indigenous dispossession'³⁵ is a continuing conflict. For those who have never experienced dispossession and alienation in one's own home, this is difficult to understand. But to go to law school and learn about the rule of law and, at the same time, the continuing challenges of establishing native title, and the ongoing lack of recognition of Indigenous customary law, creates an inherent tension for Indigenous law students. Resolving such tension would likely improve retention and completion rates of Indigenous students.³⁶

3 *Financial Gap*

Indigenous students' initial optimistic and positive outlook to university study is often tempered by financial hardship. In some cases, Indigenous students have no family or other support structures to fall back upon. These factors are often compounded by a sense of social isolation and problems of settling down, often in a very different social and cultural setting than that to which they are accustomed. Cumulatively, the effect on Indigenous students' experience is a 'range of interrelated pressures'³⁷ to which other students may not be subject.

DEEWR funds ISCs in universities. These ISCs support undergraduate Indigenous students in a variety of ways, largely determined by agreement between the funder and the university. The successes in Indigenous tertiary education can, in some ways, be attributed to the ISCs. As noted in Table 1 above, however, participation has plateaued at a very low level. It is time to examine alternatives to ISCs or, better still, a means of augmenting the programs run by ISCs.

4 *Psychosocial Support Gap*

Many law students benefit from a comprehensive support network of family and friends that meets their emotional, social, mental and even spiritual needs. This support enables students to maintain confidence in their ability to succeed, to persevere when things go wrong, and to seek help when appropriate. Indigenous

³⁵ Aileen Moreton-Robinson, 'The Possessive Logic of Patriarchal White Sovereignty: The High Court and the Yorta Yorta Decision' (2004) 3 *Borderlands e-journal* 2, [22] <http://www.borderlands.net.au/vol3no2_2004/moreton_possessive.htm>.

³⁶ *Bradley Review*, above n 4, 27–39.

³⁷ *Ibid.*

law students are more likely to have incomplete networks, and most law schools do little to fill the support gap, such as by facilitating connections with academic staff. Fortunately, universities often have Indigenous centres for learning, which can serve to some extent as psychosocial support.

5 *Recognition Gap*

There is very little understanding about the ‘holistic’ Indigenous law student. Students are generally viewed only as students, without recognising that they are whole people with vast diversity in their lives outside of university. Indigenous law students, particularly those from rural and remote areas, have significant community responsibilities. For example, they may be called upon to read over documents that have been received by other members of the community, to help explain their contents and draft a response. The concept of ‘family’ is broader than the Western concept, and these law students may be culturally obliged to return to their community for two or more weeks to observe rituals to mourn the death of community elders. Few law schools recognise these pressures on Indigenous law students. Few have learning and assessment adjustments in place and, as a consequence, Indigenous law students either fail the semester or withdraw and have to start again the following semester. There would be nothing to stop law schools from ‘freezing’ assessment items that have been completed before the community responsibility arose, allowing the Indigenous student to complete the remainder of the subject and assessment when it is next offered.

In essence, these gaps mean that Indigenous students often experience lower levels of wellbeing even before commencing law studies.³⁸ This is arguably compounded by the range of other stressors faced by all law students.³⁹ Indigenous law students also face huge expectations; carry the burdens of history; endure a lack of family support, alienation, financial difficulties, and often living far from home; must, in some cases, endure unwelcome comments from colleagues and unsympathetic staff; and are expected to settle quickly in a new environment with unfamiliar surroundings. These factors, collectively, put an even greater strain on Indigenous students’ general wellbeing.

³⁸ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) vol 3, 26–30 [23.3].

³⁹ Massimiliano Tani and Prue Vines, ‘Pointers to Depression in the Legal Academy and the Profession?’ (2009) 19 *Legal Education Review* 3, 7–8.

III PROVIDING INSTITUTIONAL SUPPORT: A CASE STUDY FROM THE ANU COLLEGE OF LAW

The ANU College of Law (the College) has a targeted support program for Indigenous students, which could well serve as a model for similar programs in other law schools. It should be noted at the outset that the ANU has a unique Indigenous demographic, which may also modify the experience of incoming students. Indigenous parents in the Australian Capital Territory (ACT) — the ANU's main but not exclusive catchment area — are likely to be better educated than the national average, are usually well employed and, therefore, are reasonably well placed to support their children during their studies. They are more likely to encourage their children's engagement in the tertiary sector. Therefore, the overall national picture of Indigenous wellbeing and educational achievement is likely to be more pessimistic than is the ANU's experience.

The ANU's ISC is known as the *Tjabal Centre*. This centre provides campus-wide support to ANU's Indigenous students. In addition, however, the College funds and runs an independent, dedicated Indigenous Support Scheme (the Scheme), which aims to foster and improve Indigenous participation in the College and the legal fraternity more broadly. The College has appointed an Indigenous academic adviser to act as its primary contact and liaison person in all matters related to Indigenous students, and to be responsible for both academic and pastoral support for the Indigenous law student cohort. The creation of the Scheme was an initiative of the late Professor Phillipa Weeks. Professor Weeks, who grew up with Indigenous people around her,⁴⁰ formed the view that the absence of Indigenous students in the College law cohort was unfortunate for reasons of equity but also because mainstream students were deprived of the benefits that an Indigenous presence would bring to the student body.

The Scheme commenced in 1990 and has operated continuously to date. It has two components: (a) Indigenous admission (the alternative entry scheme); and (b) provision of academic and pastoral support to indigenous students who have enrolled.⁴¹ Each of these components will be discussed below. This discussion makes reference to data collected by the College which has been de-identified. However, it must be acknowledged that the sample size is small and is not randomised. The results are, therefore, not statistically significant at a determinable confidence level. Nonetheless, in

⁴⁰ Michael Coper, *Phillipa Weeks 1953–2006: A Tribute*, Australian National University (ANU) <http://epress.anu.edu.au/public_sector/mobile_devices/pr01.html>.

⁴¹ ANU College of Law, *LLB and JD Handbook* (2011) <http://law.anu.edu.au/Publications/llb/2011/LLB_JD_Handbook_2011.pdf>.

the absence of more accurate data regarding Indigenous students' experiences, this data can provide important insights.

A Admission Processes for Indigenous Students

Indigenous admission is available through both the standard entry processes or through an alternative entry scheme. The College does not set a 'quota' in its alternative entry scheme. Instead, it ensures that strict entry standards (which assess Indigenous law applicants individually for suitability for law studies) are coupled with flexible intake criteria (including recognition of work experience, seniority in the workplace, published work, advocacy work, community or public service, or excellence in sport or music). In some ways, this is not unlike the tertiary entrance model in North American institutions.⁴² This model has helped both recruitment and retention of Indigenous students in the College.

The College has also taken steps to increase the avenues for its intake of Indigenous law students by forming strategic long-term relationships with high schools, colleges, VET and other educational institutions committed to increasing Indigenous participation in secondary education. Sensitising young Indigenous students, as early as practical (at present, in years 9 and 10), of the possibility of a future university education; contacting and following the progress of such interested young students; encouraging delinquent students to consider education more seriously as a path to both respect and a better future; inviting students on to campus for tours, camps, celebrations and functions; and encouraging university students to bring their siblings, Indigenous cousins and neighbours onto campus, are means that may encourage Indigenous students to translate a secondary education into a university education. As the ANU is situated in the national capital, it is also in a position to work with the Australian Public Sector and the Australian Defence Forces, which encourage universities to provide information to their staff (through their human resources sections) about university open days and other information sessions. This option allows the ANU to provide interested Indigenous public servants the opportunity of one-on-one contact with Indigenous staff at the College to explore possibilities for further education and also for accessing employer support that can help them gain better skills and qualifications.

B Pre-Study Support

Indigenous students are offered the option of arriving in Canberra a little earlier than the scheduled start of the academic year to allow

⁴² Heather Douglas, 'The Participation of Indigenous Australians in Legal Education 1991–2000' (2001) 24(2) *UNSW Law Journal* 32, 42.

for a period of acclimatisation.⁴³ Pastoral support helps to reduce problems with loneliness, substance abuse or new students simply not knowing how to engage in an academic or social sense with their new environment. Students from language backgrounds other than English also benefit from early contact with other Indigenous families of their own or, at least, a similar language and cultural background who are also living in Canberra. Together with ongoing pastoral support, these community contacts also greatly help reduce alienation among our Indigenous student cohort.

As part of the process of familiarising new students with Canberra, they are introduced to Indigenous and mainstream services, including Indigenous health and legal services. We also assist our students to access affordable housing and help with arranging transport to university. We encourage parents or guardians to accompany students to Canberra. Students' families facing financial difficulties can be helped by easing the burden of some of their children's additional expenses. For example, students who have dental or health issues are helped through contacts with private service providers, who often provide these urgent services pro bono.

C Creating a Safe Space

Anecdotal evidence suggests that 'internal' language, cultural and other differences between Indigenous peoples from the various parts of the continent have not created significant barriers to Indigenous support and hence to individual students' success at law school. However, the College has endeavoured to create a 'safe space' by permitting Indigenous staff to mentor Indigenous students, which creates physical and 'virtual' space for Indigenous students to air matters of subjective concern. The College has allowed Indigenous staff the freedom to conduct culturally-appropriate sessions and events to enable Indigenous students to discuss a range of relevant contemporary issues such as identity, colour, race, stereotyping both outside and within the Indigenous community, and external and internal racism and sexism. These sessions are an important part of the support programme and, in 2009 and 2010, involved almost all Indigenous students — both those who identify as 'Indigenous' and also, importantly, those who do not. The opportunity to participate in these sessions appears to help those who seek to explore issues and resolve conflicts — such as, between identity and family, and peer pressures — in a safe, non-judgemental environment.

⁴³ For a more general survey and examination of formal pre-law programs, see *ibid* 40. According to Daniel Lavery, 'The Participation of Indigenous Australians in Legal Education' (1993) 4 *Legal Education Review* 177, 182, there were no pre-law programs for Indigenous students in 1991.

On the other hand, there are also still some serious misconceptions among many non-Indigenous students, including that some ‘Indigenous students’ are ‘taking the place (of their race)’ in law school. These sentiments are not endorsed by the College, but are addressed — again, in a non-confrontational manner — with a view to increasing the cultural competence and understanding of mainstream students about Indigenous matters. This is achieved both formally and informally. Formally, the issues are addressed through the early-year courses, broadly described here as legal history and legal ethics classes, in which students are invited to discuss Indigenous issues openly in the context of the reception and the development of the common law in Australia and its related issues. The students are encouraged to be open and frank and are reminded that the class is meant to engage positively with their views in order to promote deeper and better cultural understandings. Latter-year courses, for example, those that include aspects of native title or specific courses examining race in the light of the Constitution, international legal aspects of Indigenous rights, or the role, if any, for customary law, also provide mainstream students the opportunity to engage with, critique and become further acquainted with Indigenous legal issues.

Students are, however, unfortunately not the only ones espousing crude and unsophisticated views of Indigenous involvement in European institutions. Once again, examples to illustrate this point are taken from published sources for the protection of individual students and are not in any way meant to imply that the ANU is free from these shortcomings. Loretta Kelly notes that, even as late as the mid-1990s, Indigenous perspectives were excluded from core law subjects,⁴⁴ the omission of which Irene Watson characterises rightly as ‘critical’.⁴⁵ Nicole Watson relates one way in which such exclusion can lead to humiliating experiences in an anecdote where a senior lecturer jokingly insinuated that sacred Aboriginal land, now housing a brewery, was made sacred by that facility and how the subsequent laughter horrified her.⁴⁶ She also notes rightly that even ‘being a teacher of the legal system that facilitated the invasion of one’s people, and remaining sane, is no easy feat’.⁴⁷ What has transpired in the intervening period is the emergence of courageous and brilliant, pre-eminent scholars such as Aileen Morton-Robinson and others as positive role models. By setting such high standards of scholarship and creativity for their own research and publications,

⁴⁴ Kelly, above n 16.

⁴⁵ Irene Watson, above n 16.

⁴⁶ Nicole Watson, ‘Indigenous People in Legal Education: Staring into a Mirror without Reflection’ (2005) 6(8) *Indigenous Law Bulletin* 4.

⁴⁷ *Ibid.*

these scholars have no doubt made it much easier for a new generation of Indigenous scholars and teachers.

The active engagement in the College of Indigenous staff in teaching mainstream law subjects has thus been the key driver in this process of attempting to normalise Indigenous participation, perspectives and values in the legal community. It is a slow process but one that is well in train. Informally, all students can, and many do, approach the Indigenous academic adviser to discuss particular relevant issues of concern. Thus, mainstream students have also benefited from aspects of the Scheme, because it has provided them the opportunity to challenge their own preconceptions, or even prejudices, directly and in a safe space.

D *Financial Support*

In order to respond to anecdotal evidence that the cost of education is a significant barrier to education, some (but not a significant dollar amount of) direct financial support and scholarships are available to Indigenous students through the ANU. The money available is largely directed to those in their first year of study. Once students have successfully completed their first year, the College provides active assistance in helping Indigenous students to pursue cadetships and scholarships which are made available by outside organisations (and are usually available only to second- and later-year students who have an established academic track record at university). In our experience, cadetships reduce the time Indigenous students spend finding casual work and this financial stability often helps them to concentrate on their studies and thus improve their overall grades. Most post-first-year ANU Indigenous law students who have sought a cadetship or scholarship have been awarded one.

Community financial support is also available for purchasing books and material to help relieve some of the financial burden on parents and families. This support helps to reduce the financial impost of law studies in Canberra, which can otherwise have a disproportionate impact on other family members, and helps to reduce dependence on parental support for students' education. A financial burden on Indigenous families is not only potentially detrimental to current ANU Indigenous law students, but may also inhibit their younger siblings' future participation in tertiary education. At present, ANU staff work closely and directly with younger siblings to encourage them to consider studies in law or, more importantly, tertiary studies in general.

Jointly-sponsored scholarships (between the College and National Centre for Indigenous Studies (NCIS)) in promoting practical legal training and preparing Indigenous graduates for legal practice is another significant factor in attracting the best Indigenous students

to the College and also contributes to their high retention and success rates. Recent proposed changes to the Australian Research Council's funding for Indigenous research also bodes well for a research-intensive faculty.⁴⁸

E *Targeted Academic Support and Pastoral Care*

Initially, the focus of the College's program was on academic support. However, in the first eight years of the Scheme, there were no Indigenous law graduates from the College.⁴⁹ The College addressed this problem by altering the operation of the Scheme to ensure that it was more holistic and expanding the previously academic focus to include general support. Broadening the Scheme to encompass pastoral care at the College has meant that staff now also work with the families of Indigenous law students and provide a 24/7 point of contact in cases of emergencies. Working with families and extended families of law students has the advantage that College staff become aware of illnesses and sorry business⁵⁰ in students' families and are immediately able to intercede on behalf of these students with the College administration. In the past, it has been our experience that students too embarrassed to raise personal issues simply dropped out of university or failed their subjects. Regular and close contact with students' families also helps to guide students if they stray. This is sometimes an issue in their early years of freedom away from home or when some students appear not to devote sufficient time towards their academic work.

In the absence of family and other social supports, a student's ability to rely on university support structures becomes critical to their success. This is arguably where the ANU's targeted support program has had the greatest effect. Anecdotal evidence suggests that the ANU's policy of identifying periods and situations when Indigenous students are most likely to be in greatest need of support — such as during their early days at university, during periods of illness and illness in their families, or when students or their families are faced with sorry business — and delivering personalised support during these times without fanfare or embarrassment to individuals, has been central to the program's success. For this reason, the call

⁴⁸ Kim Carr, 'Support for Up-and-Coming Indigenous Researchers' (Media Release, 25 May 2011) <<http://minister.innovation.gov.au/Carr/MediaReleases/Pages/supp ortforupandcomingindigenousresearchers.aspx>>.

⁴⁹ In this period, however, the attrition or 'withdrawal' rate of Indigenous law students at the ANU College of Law fell from 78 per cent to approximately 28 per cent in 1999: Douglas, 'The Participation of Indigenous Australians in Legal Education 1991–2000', above n 42, 41.

⁵⁰ This is a euphemism to cover very serious illness and/or death in the extended family.

by some academics to advertise the Scheme in the ANU's marketing (to help attract other Indigenous students) has been resisted by Indigenous academics.⁵¹ Notwithstanding this, these are areas and effects on Indigenous students that have yet to be studied in a systematic and formal manner.

The mental health and wellbeing of 'mainstream' law students and practising lawyers is another issue of concern.⁵² Law students appear to suffer higher levels of stress (over 35 per cent) compared with medical students (17 per cent) or the general population (13 per cent).⁵³ Tani and Vines surveyed the literature to conclude that the first-year law cohort 'began to suffer depressive illnesses in quite high numbers within six to 12 months of beginning their studies'.⁵⁴ This effect is sometimes observable in the College's Indigenous cohort. Teachers who notice such changes among the Indigenous students can raise the matter with the Indigenous academic adviser who follows this up with the individual student. If necessary, such students are first urged to seek help from within the mainstream services. Students are also encouraged to keep their families informed and involved.

To a great extent, the capacity to provide individualised support within the ANU program is facilitated by the relatively small Indigenous student cohort. Individualised, case-by-case support remains important as the ANU's Indigenous law students are a group that is geographically, economically and socially diverse. They represent many different language groups, and are drawn from a variety of urban, rural and remote communities. For many students, only their indigeneity is common. However, while this personalised and targeted program has had considerable success, increasing Indigenous student numbers will make delivering the present level of support difficult to sustain. On the other hand, increasing numbers of Indigenous students would have compensating features; for example, reducing the alienation discussed above by creating a viable law school Indigenous community. A larger Indigenous cohort would also increase mainstream students' awareness of Indigenous issues. Tapping into peer mentoring and 'buddy scheme' processes could balance out the reduced individualised support from staff, create a

⁵¹ This opposition by Indigenous staff is primarily because there are a limited number of Indigenous students 'ready' for the current law programs. Most universities provide attractive incentives for students to 'sign up' but provide very little support once they get there: see, eg, Douglas, 'The Participation of Indigenous Australians in Legal Education 1991–2000', above n 42, 40.

⁵² See generally Melissa Castan et al, above n 31, 2.

⁵³ Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools' (2009) 9 *QUT Law and Justice Journal* 1, 2.

⁵⁴ Tani and Vines, above n 2, 6.

sense of pride that comes with making a positive contribution to the community, and would make the scheme self-sustaining.

F *Profiling Indigenous Culture and Events*

A variety of Indigenous-related conferences, symposia and courses have been held at the College, which has helped to broaden many mainstream students' understanding of Indigenous issues. These events are significant contributing factors to the success of Indigenous retention and academic success because they foster Indigenous students' sense of belonging, and pride and ownership of these important mainstream College events.⁵⁵ Paradoxically, a measure of the success of these initiatives to increase levels of mutual understanding and tolerance can be seen in the progressive decrease in the number of Indigenous students at the College who do not identify as such. At present, almost all Indigenous students tend openly to identify before they enter their final years and graduate.

While it is difficult to generalise, open and proud engagement of Indigenous students in the broader law school community has resulted in mainstream students greatly benefiting from Indigenous perspectives, from their self-effacing and even 'wacky' humour, their resilience, their courage, and their tremendous spirit of forgiveness, tolerance and accommodation. This visible, positive contribution by Indigenous students has helped to remove the disrespect that mainstream students can have and which can sometimes accompany 'special support schemes'⁵⁶ and non-contextualised Indigenous content.⁵⁷ In the longer-term, increased levels of understanding of Indigenous issues will also place the College in a favourable position to continue incorporating Indigenous cultural competencies in the broader law curriculum, a strategic objective of Universities Australia.⁵⁸

⁵⁵ For the positive effect of the *Aboriginal Law Bulletin* on Aboriginal student numbers and completion rates at the University of NSW law school, see Heather Douglas, 'Indigenous Australians and Legal Education: Looking to the Future' (1996) 7 *Legal Education Review* 225, 246–7.

⁵⁶ Douglas, "This Is Not Just about Me", above n 32, 331.

⁵⁷ Irene Watson, above n 16. See also Nicole Watson, above n 46, 12. As further support for the assertion that increasing Indigenous student and staff numbers improve mutual respect, it is noted that an Indigenous law teacher was nominated and awarded the ANU Vice-Chancellor's teaching award in 2010. Nominations and support for the award came entirely from the mainstream law student cohort.

⁵⁸ Universities Australia is Australia's peak body for universities: see Part III(H) for Universities Australia, *Indigenous Cultural Competency in Australian Universities Project* (2010) <<http://www.universitiesaustralia.edu.au/page/policy---advocacy/Indigenous-issues/cultural-competency/>>.

⁵⁹ ANU College of Law, *LLB and JD Handbook*, above n 41.

G Program Outcomes

By 2010, 30 Indigenous students had completed their law degrees at the ANU (21 female and nine male).⁵⁹ Of these, eight students (three male and five female) graduated with honours degrees. Of the Indigenous males who graduated, seven were Juris Doctor (JD) students,⁶⁰ while the number of Indigenous female JDs was just over half the overall number of female graduates. Historically, the majority of Indigenous students have also been mature-aged (that is, students not arriving at university directly after completing their secondary education).

Among the early intake of Indigenous law students at the College, the majority were JD students. This factor has future implications, as discussed at Part III(H) below. On the other hand, in recent years, for a number of reasons — including the difficulty of getting time off work, increased direct education and opportunity costs, and better educational outcomes at the secondary level — the balance has begun shifting in favour of school-leavers enrolling in the LLB programme.

In 2010, the ANU had 17 full-time Indigenous law students, 15 of whom identified as such on the ANU forms. The other two had parents who were known to the ANU Indigenous community but chose not to identify formally. While the university generally does not support non-identifying students through its special programs, the College does not take this view and staff are allowed to work with non-identifying students. This policy pays dividends in the longer term. Even non-identifying students actively participate in the life of the Indigenous law community and can greatly help promote mutual understanding in the College. Several of these students have topped classes and taken out prizes for law subjects and thus helped to overcome stereotypes.

The special College entry standards, together with strong ongoing support measures, avoid the problem of setting up Indigenous law students for failure. It also engenders a high level of confidence that, on graduation, all Indigenous students will be academically on par or better than their non-Indigenous counterparts. These support mechanisms have, in recent times, resulted in success — an almost 100 per cent retention and completion rate for Indigenous law students.⁶¹ Generally speaking, the yardstick for 'success' for Indigenous students is no different to the College's measure for non-Indigenous law students. Success is broadly defined as passing the

⁶⁰ The terms LLB(G) and JD are used interchangeably; although, strictly speaking, this is not a precise use of these terms. See below Part III(H) for a description of the ANU LLB(G) program.

⁶¹ The equivalent statistics for mainstream students are not readily available. Students may 'drop out' of law, while others transfer in from other faculties and universities, for many reasons, not necessarily related to their law studies.

requisite law courses with the best possible results and with a view to gaining admission to practise law in an Australian jurisdiction.

The College encourages Indigenous students with the requisite grades to consider working towards an honours degree, either with Indigenous or non-Indigenous supervisors. This is an offer that is increasingly being taken up, and is a trend which bodes well for the future Indigenous engagement in higher degrees by research (HDR) programs. Nationally, in 2010, according to Minister Kim Carr, Indigenous PhDs represented only 0.5 per cent of completions.⁶² The ANU does better with respect to Indigenous HDR enrolments and completions. The College also has the highest cohort of Indigenous PhD students, which, in 2010, was 4 per cent of PhD enrolments,⁶³ eight times the national figure

Some important factors contributing to the success of the ANU in attracting and retaining Indigenous students at a postgraduate level in law is the physical co-location of the NCIS with the College. The NCIS is led by the 2010 Australian of the Year, law Professor Mick Dodson, who actively teaches and supervises all students and mentors Indigenous and NCIS students. His presence, and Indigenous postgraduate scholarships, have also attracted top Indigenous HDR law students to the College.

As mentioned, while the number of Indigenous students at the ANU is too small to be statistically significant, given the relatively small overall numbers of law students nationally, the ANU has nonetheless arguably made a significant overall contribution to legal education among Indigenous students. The law school has achieved ‘parity’ in academic staff at the College. This largely reflects the presence of senior Indigenous staff in the NCIS and the College employing Indigenous lawyers in practice as sessional teachers. Anecdotally, in the past, the absence of Indigenous lecturers and material created a perception of ‘how on earth could I have thrived while I could not see myself reflected in the learning environment?’ Such perspectives are a significant contributing factor towards poor retention and completion rates — Irene Watson formally and eloquently makes this point.⁶⁴

While it is much too early to celebrate, the College has nonetheless had a high degree of success. Population parity in the ACT, which has an Indigenous population of about 1.3 per cent,⁶⁵

⁶² Carr, above n 48.

⁶³ ANU College of Law data, 2010.

⁶⁴ Irene Watson, above n 16.

⁶⁵ Indigenous Higher Education Advisory Council, *National Indigenous Higher Education Workforce Strategy* (DEEWR, 2011) 10.

⁶⁶ For the Indigenous population in the ACT see Australian Bureau of Statistics, *3238.0 — Experimental Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 1991 to 2021* (8 September 2009) <<http://www.abs.gov.au/ausstats/abs@.nsf/Products/145201833256C844CA25762A001CBB8A?opendocument>>.

has been exceeded over the past three years at the law school.⁶⁶ As a national university, however, the ANU's target should really be parity at the national figure. This level of 2.5 per cent of the undergraduate law student cohort has not yet been reached. To this end, the College's Reconciliation Action Plan has as a strategic aim of achieving national population parity for undergraduate Indigenous law students by 2016.⁶⁷

H *Future Challenges*

While the target of population parity for Indigenous law students is laudable, newer developments are making this goal even more difficult. This is because mature age and graduate students still make up a sizeable component of the law student intake at the ANU.⁶⁸ As a result, the Australian Quality Framework's 10-level scale, which places JD programs (once an undergraduate law program which used to be called the Graduate LLB (LLB(G)) at an AQF 9 or 'Masters level', potentially creates an added financial impost for students.⁶⁹

Some may assert that this new JD regime is no different to the limited number of undergraduate LLB places available for which competition is strong. While this is true, postgraduate Indigenous students (for good policy reasons) are precluded from participating in the alternative entry scheme; are not entitled to access DEEWR's Indigenous Tutorial Assistance Scheme; are not eligible to access university support schemes for undergraduate students; and must compete for the very limited number of funded or supported places or pay the full fee.⁷⁰ While these fees may appear modest in comparison to North American and European fee levels, they may still constitute a significant disincentive to tertiary education for many Indigenous students. The impact of such ongoing policy changes that do not directly consider these issues, or put in place compensating mechanisms, and which adversely affect the educational wellbeing of Indigenous students is to set the agenda back and reverse hard-won gains. It is time for policymakers to give specific consideration to Indigenous educational issues and, when policies have unforeseen

⁶⁷ ANU College of Law, *Welcome to the ANU College of Law* <<http://law.anu.edu.au/>>.

⁶⁸ *Bradley Review*, above n 4, 20. A higher percentage of Indigenous students take up graduate instead of undergraduate law, compared with mainstream students. This pattern appears to fit with the intake of Indigenous students nationally (as seen in the 'Broad Field of Education' categories), where there is a higher percentage of 'older Indigenous students' compared with the mainstream cohort: at 20.

⁶⁹ ANU College of Law, *Graduate Law: Guide to Coursework and Research Study* (2010) 5. The cost of tuition for domestic students in 2010 was \$2400 per 6-point course. ANU JD programs require the successful completion of 144 points, which equates to \$57 600 in total. There is a very limited number of Commonwealth-sponsored places in the programs each year.

⁷⁰ *Ibid.*

detrimental effects, to adjust those policies or put in place compensating measures to help ameliorate their effects.

Another future challenge is replicating the success of the ANU program in other law schools. In the case of ANU, the College leadership made it absolutely plain from the outset that it was committed to increasing retention and completion rates for the Indigenous cohort in law and made it clear that it was determined to succeed. With this unambiguous message from the Dean, there could have been no doubt that the College meant to face the difficult issues head-on. Among a staff of professional lawyers, in an environment that is largely deeply committed to law reform and social justice,⁷¹ the chances of success increase significantly. This is despite university-level solutions tending to be particularised and specific. This area clearly needs further attention, if the 'global' problems of Indigenous parity in the tertiary sector are to be addressed purposefully and strategically. It may be possible to aggregate successful program results from the various universities and abstract these individual solutions to help inform broader national policy settings. If such aggregation is possible, surely resources could be harnessed to implement, in each law school, the practical strategies that have proved successful in local programs initiated by far-sighted and courageous individuals.

IV CONCLUSION: WHAT LESSONS CAN OTHER LAW SCHOOLS TAKE FROM THE ANU EXPERIENCE?

In essence, the College's approach comprised: (a) support for the program at the highest levels; (b) strict but flexible intake standards; (c) high expectations of Indigenous students; (d) providing Indigenous students a welcoming, respectful and intellectually stimulating environment; (e) freedom and 'space' for all students to discuss difficult and confronting issues in a respectful and safe environment; (f) close support and monitoring of the Indigenous cohort, particularly during their early years; (g) strong general pastoral care, particularly during challenging periods for individuals; (h) ensuring concomitant benefits for mainstream students; and (g) autonomy (the program is run and managed almost entirely by Indigenous staff).

Of course, the lessons gleaned through particularised examples must be applied with some caution in other environments. What seems clear, however, is that commitment to redress disadvantage must come from the highest levels of the faculty and the university,

⁷¹ Michael Coper, 'Educating Lawyers for What? Reshaping the Idea of Law School' (2010) 29 *Penn State International Law Review* 25, 31; Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233, 233.

preferably backed up with the resources to match their commitments. While the broader problems themselves are well-known and discussed in the literature, there are clearly very specific issues that needed local resolution at the ANU. The College's approach is to deal with students as individuals on a case-by-case basis. Such a policy, however, is practical only while numbers are relatively small.

The understanding of these dynamics, particularly by those dealing directly both academically and administratively with Indigenous students, has served as a good base upon which mutually to engage in a respectful environment. Such interactions, for the most part, are spontaneous and genuine. That is, the practical and everyday support of the greater part of the College's staff for the Scheme, and the open and generous — albeit fair, tough and equitable — application of academic standards, has resulted in an Indigenous law cohort that is confident of the high standard of education it has received.

The presence in the College of Indigenous academic staff is also a positive feature and is an issue that many students, both Indigenous and non-Indigenous, have commented upon positively. On the negative side, however, such individualised delivery may not be the optimum use of resources and will become unsustainable as the number of Indigenous law students increases to parity levels and beyond. However, this is a welcome problem and one for the future. After all, a strategic aim of the Scheme is to do away with the need for such a program!

Notwithstanding the obstacles, it appears that Indigenous people, and their well wishers in the community, within tertiary institutions and law schools, have moved the Indigenous education agenda forward. Indigenous peoples are taking charge of their lives and working cooperatively with those who will see them as equal partners to help alleviate what is undeniably the cumulative effect of years of neglect.

Education is the means of transmitting knowledge from one person, group or civilisation to others within or without that context. It is a complex, multi-faceted process which assumes the engagement of healthy, intelligent students whose physical, emotional and other basic needs have been reasonably satisfied. A 'successful' legal educational outcome necessitates the successful construction of requisite knowledge, through a range of means, processes and exchanges. But the ultimate end is the ability to gain admission to practise law in an Australian jurisdiction and to do so as an ethical, socially conscious lawyer.

'Success' pre-supposes a desire by the recipient to learn, and teachers to teach, although this is not a simple one-way process. It is ultimately a relationship based on trust. Free and un-coerced learning also satisfies a learner desire for knowledge and a respect for the broader context in which this knowledge is constructed. This

is an issue that must ordinarily be addressed by Indigenous people themselves — but they should be afforded every facility to do so.

Successful learning, freely and genuinely in an inter-cultural and inter-civilisational context, is contingent on mutual respect. This respect has not always been forthcoming in the case of Indigenous students. This ‘respect gap’ must also be addressed, along with the other gaps identified in this article, so that educational outcomes overall can be enhanced. Law schools can clearly help with this process.

Some of the successful approaches to improving Indigenous participation and retention at the College have included taking steps to value Indigenous epistemologies and ways of learning, respecting Indigenous peoples, their cultures and expecting reciprocity. Policymakers must, however, first recognise the underlying reasons for the greater gaps in student learning outcomes and use their significant resources to provide both suitable policy settings and adequate financial support that addresses these gaps. As a starting point, it should be noted that the health, education and wellbeing, on average, of Indigenous students entering universities is perhaps not at par with that of the mainstream student cohort.

However, the greatest difficulty appears to be in the gap in recognising the real deficiencies — the gap in identification of the critical gaps. Generally speaking, the best results are likely to be obtained when the best, most accurate, available information is used in policy formulation. This way the central issues or gaps are correctly identified and the best available statistical information and resources are applied purposefully and in a strategic manner to closing the (many) gap(s).