MLS Reconciliation and Recognition Policy

Approved by MLS Executive Committee 15 December 2017
1. **Aim**

The objective of this policy is to set out Melbourne Law School’s reconciliation and recognition commitments. It provides the background and justification for the particular goals enumerated in the MLS Reconciliation Action Plan (MLS RAP), and provides principles to guide the implementation and evaluation of those commitments.

2. **Policy Statement**

MLS is committed to building and supporting responsible relations between Indigenous and non-Indigenous Australians and between their respective laws and legal traditions. In particular, MLS acknowledges the enduring importance of Indigenous law, and the longstanding use of Australian law to coerce and dispossess Indigenous peoples, including by undermining the continuity and autonomy of their communities. MLS aims to support respectful engagement and dialogue between Indigenous and non-Indigenous peoples; to facilitate and contribute to informed public and scholarly debate where Indigenous interests are at stake; to ensure that Indigenous laws, cultures and experiences are appropriately reflected in the activities of the law school; and to create an environment that welcomes and supports Indigenous peoples, recognises and responds to their contributions and perspectives, and assists them to achieve their goals. To achieve these aims it is the policy of MLS to:

1. Recognise and pay respect to the Wurundjeri peoples as traditional owners of the land on which the Law School stands, in our teaching, learning, research and engagement activities;

2. Recognise and reflect, in our teaching, learning, research and engagement activities, Indigenous laws and legal traditions;

3. Recognise and reflect, in our teaching, learning, research and engagement activities, Indigenous experiences of, and engagement with, Australian law;

4. Recognise and reflect indigenous perspectives, knowledges and laws in the daily life of the law school community, including in our management and professional practices;

5. Establish and maintain partnerships and collaborative relationships with Indigenous peoples and their institutions;

6. Prioritise, in MLS planning and strategy, the attraction, support and retention of Indigenous JD, Masters, and RHD students, and recognise the distinctive perspectives and external responsibilities of Indigenous students and the diversity of the Indigenous student body;

7. Prioritise, in MLS planning and strategy, the attraction, support and retention of Indigenous staff including recognition of the distinctive perspectives and external responsibilities of Indigenous staff members and the diversity of Indigenous staff;
8. Adopt and maintain, in furtherance of these goals, a Reconciliation Action Plan (MLS RAP), an Indigenous Student Recruitment and Retention Plan, an Indigenous Staff Workforce Action Plan, and other rules and procedures as necessary;

9. Incorporate this policy in the Melbourne Law School Strategic Plan;

10. Refer matters relating to this policy, the MLS RAP and related rules and procedures to the Reconciliation and Recognition Committee, which will make recommendations of principle or policy on any of these matters to the Associate Deans, Deputy Dean, Dean, or to any other MLS committee as appropriate;

11. Report regularly to the Melbourne Law School on Reconciliation and Recognition policies, procedures and activities, including at Departmental Meetings as appropriate.

3. Context

The University of Melbourne’s establishing statute provides that ‘it is a public-spirited institution with a mission that encompasses learning and teaching, research and knowledge transfer, all of which exist for public benefit.’ More particularly, the University has a legislative obligation to:

‘use its expertise and resources to involve Aboriginal and Torres Strait Islander people of Australia in its teaching, learning, research and advancement of knowledge activities and thereby contribute to-

(i) realising Aboriginal and Torres Strait Islander aspirations; and
(ii) the safeguarding of the ancient and rich Aboriginal and Torres Strait Islander cultural heritage. .’

Like other public institutions, the University of Melbourne is empowered by a state that was established through colonisation and which could not function were it not for the assets it accrued through the appropriation of Indigenous resources. The legitimacy of public institutions is contingent on the proper involvement of Indigenous peoples in their governance and the proper recognition of and support for Indigenous peoples’ own governance institutions and law. Indigenous peoples have historically been excluded from public governance, including from higher education institutions, and have further been prevented from taking up opportunities offered by these institutions because of their social and economic exclusion.

Further, Indigenous Australians are a constitutive group in the formation of the Australian state. They have a legal and moral status that pre-dates, and so is fundamentally distinct from, that of the Australian settler public. While Indigenous Australians are typically disadvantaged relative to other groups and have maintained distinctive cultural practices and ways of life, these features on their own do not account for

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1 Melbourne University Act, 2009, Preamble.
their particular claims and entitlements. The legal and moral rights of Indigenous Australians cannot be conflated with those of other cultural minorities, nor with those of other persistently disadvantaged communities. The distinctive claims of Indigenous peoples emerge from their long history as self-governing peoples and include the right to be properly represented in public governance and the right to govern themselves through their own institutions. The authority and influence of public institutions should be reshaped to more closely approximate that which Indigenous peoples, as sovereign and self-governing peoples, would have agreed to in a just partnership with settler peoples and settler governments. Taken together, the pre-state existence of indigenous self-governing nations, their historic exclusion from public governance and the distinctiveness of Indigenous experiences, knowledges and cultures, mean that MLS must develop a distinctive set of relationships and protocols to guide its commitments to Indigenous people in and out of the Law School.

For MLS, this entails reworking the institution, in its culture, priorities and day-to-day work, so that it can properly respect and give effect to the perspectives, experiences and aspirations of Indigenous peoples and properly acknowledge the value of their contributions to knowledge generation and intellectual inquiry. As is stated in the 2008 Review of Australian Higher Education Report:

‘Indigenous people do not come empty handed to Australia’s higher education system but bring significant strengths, both in knowledge capital and human capital that enriches higher education in Australia. . . . as the academy has contact with and addresses the forms of Indigenous knowledge, underlying assumptions in some discipline areas may themselves be challenged. 2

The particular history of legal education in Australian must also be taken into account. As in other settler societies, Australian law schools have neglected and denigrated Indigenous law. They have also played an instrumental role in facilitating the transmission of concepts and ideologies that have enabled law to coerce and dispossess Indigenous communities. Notoriously, within living memory, Australian law worked to control every aspect of the lives of Indigenous peoples, including by dictating where they could live and travel, whom they could marry and whether or not they could raise their own children. It denied to Indigenous Australians the basic political rights extended to other citizens, including most prominently, the right to vote in federal and state elections. For the duration of settlement, the competency of Indigenous peoples to decide and act on the fundamentals of their personal and public lives was routinely denied by Australian law. The legacy of systematic exclusion and paternalism persists today, and Australian law still permits interventions to be made in the lives of Indigenous Australians that would not be tolerated if directed to non-indigenous communities. Understandably many indigenous peoples distrust settler institutions and have a profound scepticism about the capacity of these entities to either reflect on or respond effectively to their concerns and aspirations.

Given this history, it is MLS’ responsibility to earn the respect of Indigenous peoples,3 and foster better ways of understanding the relationships between settler and Indigenous law, by facilitating Indigenous involvement in Law School business and enabling Indigenous peoples to make better use of MLS’ resources and influence to achieve their goals. The Law School has an essential part to play in encouraging respectful and informed public and scholarly debate about the place of Indigenous peoples in Australia’s legal system, and about the importance of Indigenous laws and legal traditions.

3 RAP 2, p 4
It is especially important, for example, that the Law School demonstrate intellectual leadership in debates that implicate law’s impact on Indigenous peoples. Recent examples include proposals to recognise Indigenous peoples in the federal constitution, and the possibility of a Victorian or national state-Indigenous treaty. Concrete legal issues like these animate public discourse in a way that brings to light misinformation and bias within the national population, and inflames contestation about Australian legal history and the legitimacy of the Australian state. It is squarely within the Law School’s remit to take positive steps to ensure that these debates are well-informed and include proper representation of the views of Indigenous peoples. This accords with the University’s core legislative objectives, which include; ‘providing programs and services in a way that reflects principles of equity and social justice’.4 ‘promoting critical and free enquiry, informed intellectual discourse and public debate within the University and in the wider society’.5

The University of Melbourne has taken steps to order and integrate its commitments to Indigenous peoples. The University’s 2015-2020 Strategic Plan6 identifies the University RAP as one of the three key supporting plans. The University RAP records that the University’s ‘vision for reconciliation is for a holistic, inclusive and two-way relationship between Indigenous and non-Indigenous Australians based on mutual responsibility and respect’. In furtherance of this goal, the University accepts that a relationship with these attributes requires that each member of the University community develops an understanding of and deep respect for the cultures, knowledge and values of the many clans and language groups that make up Indigenous Australia’. This goal also appears as one of the University’s Graduate Attributes.7 Building on, and extending this general goal, MLS should adapt its practices to take account of the particular impact of law and legal education on the lives of Indigenous peoples, the particular institutional responsibilities that flow from this impact, and the promise it holds for better relationships in the future.

4 University of Melbourne Act 2009, s 2(iii).
5 University of Melbourne Act 2009, s 2(iii).
7 The Melbourne University Graduate: Graduate Attributes

http://provost.unimelb.edu.au/teaching-learning/the-melbourne-graduate. See also the CALD Juris Doctor Threshold Learning Outcomes 2012, p 6, which notes that ‘The CALD Standards refer to the ‘political, social, historical, philosophical, and economic context’ as examples of the broader, pluralist context within which legal issues arise. This list can easily be extended to encompass contexts that reflect, for example, social justice, gender-related issues, Indigenous perspectives, cultural and linguistic diversity, commercial or business environments, globalisation, public policy, moral contexts, and issues of sustainability.’ [emphasis added].

4. Reconciliation and Recognition Goals

We will know that we are on track to realising the goals of this policy if:

Goal 1:
Recognise and pay respect to the Wurundjeri peoples as traditional owners of the land on which the Law School stands, in our teaching, learning, research and engagement activities.

1.1
MLS has a specific protocol for Welcome to Country and Acknowledgement of Country; all staff members are aware of that protocol and use it whenever appropriate.

1.2
Each Orientation contains a Welcome to Country, or Tanderrum, offered by a Wurundjeri Elder as advised by the Wurundjeri Tribe Land and Compensation Cultural Heritage Council.

1.3
A formal Acknowledgment of Country is made at all MLS events where members of the public are present.

1.4
Most academic staff make an Acknowledgement of Country in the first class of each subject.

1.5
Reference to MLS’ protocol on Acknowledgements of Country is included in the JD and MLM teachers’ briefs and other communications with teachers as appropriate.

1.6
Reference to MLS’ protocol on Acknowledgements of Country is included in induction materials for academic and professional staff.

1.7
Student areas, teaching spaces and reception areas include artwork, objects of cultural safety, images and other visible features that reflect the histories, knowledges and law of Indigenous peoples and of the Wurundjeri people in particular.

1.8
Staff are encouraged to undertake cross-cultural training in the course of their employment.

1.9
All secret or sacred objects, Indigenous cultural heritage and Indigenous cultural knowledge held by MLS are managed in accordance with the University’s Aboriginal and Torres Strait Islander Cultural Heritage Policy.
Goal 2

Recognise and reflect, in our teaching, learning, research and engagement activities, Indigenous laws, legal systems and legal traditions, as well as Indigenous experiences of, and engagement with, Australian law.

2.1
The MLS Teaching and Learning framework includes opportunities for MLS students to work for and learn from Indigenous institutions and communities.

2.2
At least two Indigenous-themed JD electives or one JD elective and one JD Legal Research stream are offered in each academic year.

2.3
At least one Indigenous-themed MLM subject is offered in each academic year.

2.4
Indigenous-themed JD Electives are structured so that during the course of their degree, students have the opportunity to take a sequence of subjects dealing with Indigenous and settler legal histories; international and comparative law on Indigenous rights; and Australian Indigenous property and land rights; or equivalent.

2.5
All compulsory subjects in the JD Program address at least one assigned reading, teaching component or assessment task that invites students to consider Indigenous perspectives on materials addressed in that subject.

2.6
MLS adopts an Indigenous Research Framework, outlining goals and strategies for supporting and raising the profile of Indigenous research at the law school.

Goal 3

Establish and maintain partnerships and collaborative relationships with Indigenous peoples and their institutions.

3.1
The RRC or its representatives meets at least annually with representatives of the Wurundjeri Tribe Land and Compensation Cultural Heritage Council to discuss opportunities for collaboration and partnership and to seek their input on MLS’ reconciliation and recognition activities.
3.2
MLS supports the adoption of a Memorandum of Understanding between the University and the Wurundjeri Tribe Land and Compensation Cultural Heritage Council setting out protocols for participation, collaboration and partnership.

3.3
MLS collaborates with the Wurundjeri Tribe Land and Compensation Cultural Heritage Council in order to provide, where possible, an annual opportunity for Indigenous students in the JD, MLM and RHD programs to meet with Wurundjeri Elders.

3.4
MLS actively seeks out opportunities for partnership with Indigenous institutions, groups and individuals in the private and public sector.

Goal 4

Prioritise, in MLS planning and strategies, the attraction, support and retention of Indigenous JD, Masters and RHD students, including recognition of the distinctive perspectives and external responsibilities of Indigenous students.

4.1
MLS recognises and values in teaching and learning activities the distinctive and time-consuming external demands placed on Indigenous students at the Law School, including responsibilities to their communities, families and to Indigenous institutions.

4.2
MLS recognises and values in teaching and learning activities the distinctive contributions of Indigenous students to institutional and collegial life at the Law School, including formal and informal expectations that they will participate in activities involving Indigenous peoples’ issues, offer advice on such issues to fellow students and serve in leadership or representative roles where Indigenous interests are at stake.

4.3
MLS recognises and values in teaching and learning activities the need to respect and foster the breadth of Indigenous cultural practices, language and knowledges and recognises these by providing tailored support programs for Indigenous students.

Goal 5

Prioritise, in MLS planning and strategies, the attraction, support and retention of Indigenous staff including recognition of the distinctive perspectives and external responsibilities of Indigenous staff.
5.1
MLS recognises and values in appointments, workload allocations, and career development, the distinctive and time-consuming external demands placed on Indigenous staff at the Law School, including responsibilities to their communities, families and to Indigenous institutions.

5.2
MLS recognises and values in appointments, workload allocations, and career development, the distinctive contributions of Indigenous staff to institutional and collegial life at the Law School, including formal and informal expectations that they will participate in activities involving Indigenous peoples’ issues, offer advice on such issues to colleagues and students, and serve in leadership or representative roles in MLS and University business where Indigenous interests are at stake.

Goal 6

Adopt and maintain, in furtherance of these goals, a Reconciliation Action Plan, an Indigenous Staff Workforce Action Plan, an Indigenous Student Recruitment and Retention Plan and other rules and procedures as necessary; include reference to this policy in the Melbourne Law School Strategic Plan; refer matters relating to this policy, the RAP and related rules and procedures to the Reconciliation and Recognition Committee.

6.1
The Reconciliation and Recognition Committee meets at least quarterly.

6.2
The MLS Reconciliation and Recognition Policy is incorporated into the MLS Strategic Plan.

6.3
Reference to this policy is included in induction materials for academic and professional staff and in communications with incoming students.

6.4
The Reconciliation and Recognition Committee communicates regularly with students about MLS’ reconciliation and recognition activities and policies through the Committee’s website, in student newsletters, through the LSS Indigenous Students’ Representative and through the Committee’s student representatives as appropriate.

6.5
The Reconciliation and Recognition Committee’s website or other dedicated Law School website is maintained and updated in order to communicate the Law School’s reconciliation and recognition activities and policies to the Law School community and to the community at large.
Documents referenced

- The University of Melbourne Reconciliation Action Plan for 2015 – 2017 (RAP 2)
- The University of Melbourne Strategic Plan 2015-2020: Growing Esteem [date]
- The University of Melbourne Act 2009
- The Melbourne University Graduate: Graduate Attributes
- The Melbourne University Aboriginal and Torres Strait Islander Cultural Heritage Policy 2017
- CALD Juris Doctor Threshold Learning Outcomes 2012
- CALD Standing Committee for Legal Education, Promoting Law Student Well-Being Good Practice Guidelines for Law School 201?
- 2008 Review fo HE Report mentioned on pg