

# REVIEW OF THE MELBOURNE LAW SCHOOL'S INDIGENOUS STUDIES PROGRAMS

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*We acknowledge and pay respect to the Peoples of the Kulin nations, to their Elders past and present and their laws and customs and acknowledge them as the traditional owners and custodians of the law and land on which the University and Law School stand.*

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In particular, we thank past and present Indigenous students for their time and frankness in our discussions. Their views have been most significant in our Recommendations.

We have benefited greatly from the work of a range of scholars whose work over many years has reflected on the issues addressed in this report. This work is reflected in the Bibliography. We have found the work of the Indigenous scholars involved in the Indigenous Cultural Competency for Legal Academics Program particularly helpful.

We are very grateful to all the Law School staff who have given us considerable time and the benefit of their experience in promoting support for Indigenous students, research, teaching and advocacy within the Law School. Their views have greatly assisted the formulation of our Recommendations.

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Finally we are very grateful to Professor Jacinta Ruru who reviewed our Draft Report. As a senior Indigenous scholar, her insights and experience obtained in both her written report and our discussions with her have contributed greatly to our thinking and our Final Report.

## 1. INTRODUCTION

In February 2019 the Dean of the Melbourne Law School, Professor Pip Nicholson asked us to review and report on aspects of the Melbourne Law School's teaching, research and engagement programs in relation to Indigenous peoples. In particular, we were asked to examine and report on the following:

1. How to improve indigenous student recruitment and pathways to MLS, including the contribution MLS might be able to make to both the BA Extend and BSc Extend and through the undergraduate programs at UOM. It is not envisaged that MLS selection criteria are reviewed as a part of the Project. MLS notes that it has work to do on making the accessibility of MLS to indigenous students explicit (the availability of CSPs and scholarship support, for example).
2. How to build a program of indigenous student support at MLS which enables our indigenous students to thrive, while realising their diverse aspirations. I anticipate that your recommendations will have implications for MLS's communications to prospective students, which need development as noted above.
3. How to seed diverse indigenous student aspirations.
4. Curriculum changes to both attract and inspire our indigenous students (and non-indigenous students). More particularly, counsel is sought on what adaptations might be needed for the compulsory curriculum (this may need to be a separately dealt with); elective offerings; travelling subjects; teaching on-country; and work integrated learning.
5. How, as an institution, it might better support and communicate existing and future indigenous legal issues-focused research, recognising that this will form an integral part of how MLS is perceived by prospective indigenous students and academic recruits.
6. How to engage with and benefit from its indigenous alumni.
7. How best to meet the ongoing challenge of recruiting indigenous academics.

In the course of our review we have spoken to a range of students, staff and others with knowledge and experience in relation to Indigenous legal education, research and law. These consultations are set out at the end of this Report. Our draft Report has been reviewed by Professor Jacinta Ruru from the University of Otago and her comments have been incorporated into this Final Report.

Australia's Indigenous legal systems are the oldest jurisprudential traditions in the world.<sup>1</sup> The *Mabo*<sup>2</sup> judgement acknowledged the continued existence of Indigenous legal systems in Australia. The Melbourne Law School sits and operates on the lands of the Wurundjeri people of the Kulin Nations. Its reputation is as the leading Law School in Australia and among the best in the world. It is an institution of Anglo-Australian law. It is a place of knowledge and legal knowledge. It is a public institution with civic obligations.

The existences of two laws and traditions of legal thought is a framework that authorises the rights and responsibilities of people and gives shape to their aspirations. This is true of both Aboriginal and Anglo-Australian law and legal thought. The complex environments where these systems of law are continually operating are both independent of each other and yet dependent on each other for function and efficacy. How do these existences of law relate to each other – and be in relation with each other? How do Indigenous peoples and the Melbourne Law School conduct lawful relations?

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<sup>1</sup> Professor William Mc Neil *Introduction and Welcome to ICCLAP Worksop* SCU 2019

<sup>2</sup> *Mabo v Queensland (No 2)* (1992) 175 CLR 1

How should the Melbourne Law School, an institution of Anglo-Australian law, respond to and meet its obligations of conduct?<sup>3</sup>

The Uluru statement from the heart embodies these propositions: “Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs.” “(T)he ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished and co-exists with the sovereignty of the Crown.” “With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia’s nationhood.”<sup>4</sup>

It is necessary for the Melbourne Law School as an institution of law to understand its unique place in the context of the meeting of two laws and legal systems. This jurisprudential tradition must be central and embedded within all the Melbourne Law School activities. It requires recognising the bi-jural nature of law in Australia and how that should frame the way the Melbourne Law School proceeds in renegotiating its relationship with Indigenous peoples and the fundamental change that this requires of the Law School as an institution. Further, because of its status as the leading law school in the nation, the Melbourne Law School has both an obligation and an opportunity to provide leadership in legal education fora to bring about change.

The challenges in bringing about change should not be underestimated. However, the Law School, as an institution of law, should welcome the obligations to lead change.

These are the guiding principles underpinning our consideration of issues in this report.

The University’s Reconciliation Action Plan 3 emphasises “the need to foster an environment in which the relationship between Aboriginal and Torres Strait Islander peoples and their fellow Australians is characterised by a deep mutual respect, leading to positive change in our nation’s culture and capacity” (p. 5).

The Melbourne Law School *Divisional Development Plan 2019 -2022* presents the Melbourne Law School strategy, plans and targets in the context of the University’s overall strategy, goals and targets. Each of the targets and activities in the Plan will contribute to the goal of using “research, teaching and learning and engagement resources” to contribute to Indigenous development and well-being and to develop the strength and depth of the relationship between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians. We endorse the Melbourne Law School Plan and our comments in this report are designed to develop the principles that underly the Plan and to identify some additional matters that will expand and complement the work the Law School is currently undertaking.

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<sup>3</sup> We acknowledge the work of Professor Mark McMillan, Associate Professor Shaun McVeigh and Associate Professor Ann Genovese in the formulation of this fundamental principle.

<sup>4</sup> *Uluru Statement from the Heart* [https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru\\_Statement\\_From\\_The\\_Heart\\_0.PDF](https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF)

## 2. RECRUITMENT AND PATHWAYS

Attracting Indigenous students to the Melbourne Law School requires the Law School to be a place to which Indigenous students want to come. Dr Nicole Watson puts this idea in terms of Indigenous students “see(ing) themselves reflected in their education”.<sup>5</sup> Further, in our discussions for this review one interviewee struggled to find a positive answer to the question: “Why would a prospective Indigenous Law Student come to the Melbourne Law School?” Both of these propositions emerged in various ways in our discussions and investigations and underpin our approach in this report. Both indicate that attracting Indigenous students requires more than a change to selection criteria.

While we address issues relating to recruitment and pathways for students into the Law School in this part of the report, we cannot emphasise enough that this is only one part of broader issues for attention which we have detailed elsewhere in this report. In particular, we note that retention and completion rates are as important as student numbers admitted to any degree. This has implications for access schemes, how assessments of student capacity are made and the provision of appropriate academic, social and cultural support programs provided by the Law School. Care needs to be taken to ensure that increasing student numbers by freeing up access, does not lower retention and completion rates.<sup>6</sup>

There are currently 10 Indigenous students enrolled in programs in the Law School: 8 Melbourne Juris Doctor students, 1 Melbourne Law Masters’ student (with another commencing in 2020) and 1 Ph D student. The Law School seeks to increase these numbers and this section considers ways in which this might be achieved.

### JURIS DOCTOR

As a graduate degree the JD presents inherent difficulties and challenges for recruitment: it takes longer to complete two degrees than combined degrees at other institutions, there is no non-degree entry into the JD, there is a lack of flexibility in delivery of courses and course structure, it is difficult to compete with other Law Schools in recruitment of school leavers, the Melbourne Law School has a reputation as an elite (and elitist) institution that is seen as unwelcoming, being ‘the best’ is not an adequate point of difference to overcome this perception.

Building an environment that is attractive to and safe for prospective Indigenous students, resolving the seeming conflict between an elite institution and an accessible, safe and supportive one that is welcoming and engaged with Indigenous peoples and developing a strategy to tell that story are essential elements for increasing the number of applicants and therefore JD students. Recruitment and pathways is one part of that strategy.

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<sup>5</sup> Nicole Watson, ‘Indigenous People in Legal Education: Staring into a Mirror without Reflection’ (2005) 6(8) *Indigenous Law Bulletin* 4

<sup>6</sup> Harry Hobbs and George Williams “The Participation of Indigenous Australians in Legal Education, 2001-18” (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) note the poor but improving record of most Law Schools in relation to retention and completion although they do not make definitive findings about the causes. In particular at p23 they note that ANU had a 100% retention rate in 2010 and “Newcastle Law School reports a retention rate of around 90%”. Melbourne Law School has retention/completion rate of around 80% on a very low base: Melbourne Law School *Melbourne Indigenous JD Student Profile 2008-2018* (March 2018)

There are currently 8 Indigenous JD students at the Melbourne Law School. This number is well short of the critical mass of students necessary to build a supportive and collegial community of students and to present the Melbourne Law School as a destination of choice for prospective Indigenous law students and considerably less than some other Law Schools.<sup>7</sup> The number of students recruited each year appears to be relatively static and therefore little progress is being made in increasing Indigenous student numbers. The following University targets are noted: population parity (currently 3%) by 2050; a headcount target of 1000 indigenous students by 2030 (the Melbourne Law School target unspecified). The Law School has adopted the population parity -3% by 2050.<sup>8</sup> There do not appear to be interim targets in the Law School documents. Hobbs and Williams have identified the absence of targets for Indigenous students in legal education programs as inconsistent with recent practice<sup>9</sup> and note that only Newcastle University Law School has adopted targets which are being met while UNSW has adopted informal targets.<sup>10</sup>

The Melbourne Law School records indicate that since the JD replaced the LLB as the primary law degree, 5 Indigenous applications were incomplete/not assessed for admission, (possibly after discussion with Law School admissions staff). All other applicants have been offered a place in the JD. The data suggests that these applicants met the admission requirements of an assessment of Law Schools Admission Test (LSAT) score and results in all tertiary study, applied consistently across all applicants either generally or after consideration of the Graduate Access Melbourne (GAM) criteria.<sup>11</sup> This suggests that increasing the number of enrolments is primarily one of increasing the number of suitably qualified applicants who want to study at the Melbourne Law School. To do this the Melbourne Law School must present itself as a place to which indigenous students want to come and where they will thrive so that retention and completion are not compromised. The following discussion therefore is directed at increasing numbers of applicants without reducing retention and completion rates but should not be seen in isolation from the other issues raised in this report.

### Prospective students' perceptions of the Melbourne Law School/Why come to MLS

We have not conducted direct research on this issue but have had extensive discussions with current students and recent graduates and staff. Our comments are based on those discussions.

There are two categories of prospective Indigenous students: University of Melbourne undergraduates and other prospective Indigenous applicants whether school leavers, undergraduates or graduates from other institutions. The current Indigenous JD cohort includes students from both categories.

The reputation of the Melbourne Law School has been identified as both a positive and a negative: the Melbourne Law School is 'the best', 'the top law school' – a reason to come to the Melbourne Law School. However, the range of comments made about the Melbourne Law School include that it is seen as 'a lion's den', has 'a reputation for elitism', there is 'an issue of privilege', there is 'a reluctance to tell people that I'm attending MLS', there is too much 'emphasis on corporate law, 'corporate firms see it as their training ground,' 'the building is forbidding'.

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<sup>7</sup> Ibid pp15-17

<sup>8</sup> Melbourne Law School *Divisional Indigenous Plan 2019-2022*

<sup>9</sup> Such as Universities Australia 2017 targets: Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) p32

<sup>10</sup> Ibid p33

<sup>11</sup> See below for discussion of these criteria.

On the other hand, a number of students and others have noted that once within the Melbourne Law School the picture is somewhat different. There are some supportive staff, non-Indigenous students are interested and engaged, some efforts are being made in relation to curriculum and some academics are doing interesting research. It is more than just a 'corporate training ground' but this is the perception from the outside. There were many comments about the positive impact of the Wallpaper Photographic project in teaching spaces on students.

Thus the narrative from outside the Melbourne Law School as an elitist and corporate focused Law School is not entirely accurate but it is the narrative.

It has also been suggested that the Melbourne Law School as an institution has an unresolved tension/conflict between its high status and quest to be number one and creating an environment that is accessible, safe and supportive (and all the other elements that entails) for Indigenous students. We do not think that these are necessarily inconsistent but there is no overarching narrative that binds the two together for the benefit of prospective students. Resolving this conundrum might well enhance the Law School's reputation.

### Current entry requirements

The current requirements for admission into the Melbourne Law School JD<sup>12</sup> involve an assessment of an applicant's academic performance in all previous tertiary studies and Law School Admission Test (LSAT) score and essay in order to establish an applicant's capacity to complete the JD. Students who demonstrate capacity to complete are offered a place (either Commonwealth Supported Place (CSP) or fee paying) in ranked order until places are exhausted. A number of places are reserved for suitably qualified applicants who apply through Graduate Access Melbourne (GAM).

If they have sat the LSAT, applicants can then apply through GAM if

- They are of Aboriginal or Torres Strait Islander descent; and
- identify as a person of Australian Aboriginal or Torres Strait Islander heritage and are accepted as such by the community in which they have been or are associated.
- Indigenous status is confirmed through Murrup Barak.
- Other GAM grounds include personal difficulties and socio-economic disadvantage. Some Indigenous students also apply under these grounds.

GAM applicants provide some information in writing in support of their GAM application, although this is not required if the only ground for the application is their Indigenous status.

Indigenous applicants apply via GAM on the basis of their Aboriginal or Torres Strait Islander status and sometimes include additional categories of low socio economic and/or personal difficulties, rural background or medical/disability criteria.<sup>13</sup> GAM applicants' capacity to complete the course is considered in light of the LSAT score, tertiary study results and GAM factors. Over time, and with the benefit of analyses of results and performance of students in the JD, the Law School has developed considerable expertise in evaluating capacity to complete the course based on the predictive value of LSAT scores and tertiary study results and consideration of the GAM factors. This is reflected in the retention and completion rates for Indigenous students.

If offered a place in the JD, all Indigenous students are offered a CSP and a scholarship although the quantum of scholarships varies according to the scholarship granted.<sup>14</sup> We note that there is no

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<sup>12</sup> <https://law.unimelb.edu.au/study/jd#entry-requirements>

<sup>13</sup> Melbourne Law School *Melbourne Indigenous JD Student Profile 2008-2018* (March 2018)

<sup>14</sup> These matters are considered further below.

information about guaranteed CSPs or Scholarship support or other support for Indigenous students on the relevant pages of the Law School website. This is crucial information and should be rectified when the website overall is revised. It should also form the basis of communication with Melbourne undergraduates and prospective applicants from elsewhere.

There are also three pathways into the JD for which the LSAT is not required:

- Melbourne Chancellor's Scholars : ATAR or equivalent of 99.90 or above with an undergraduate degree from the University of Melbourne – results in a CSP;
- Graduate Degree Packages: ATAR or equivalent of 99.80 or above and you must commence the JD within 18 months of completing your undergraduate degree – results in a CSP;
- Guaranteed Fee place: ATAR or equivalent of 99.00 or above and at least a 75% weighted average in an undergraduate degree from the University of Melbourne. These students may sit the LSAT and apply in the usual way if they wish to be considered for a CSP.

These pathways are unlikely to assist most Indigenous applicants to gain entry without sitting the LSAT.

### Increasing the applicant pool

As indicated above, we see increasing the pool of suitably qualified applicants as a major challenge for the Law School. Central to increasing the applicant pool is changing the face the Melbourne Law School presents to the world in relation to Indigenous knowledges, law, people, students, curriculum and scholarship. This requires a multi-pronged response, many elements of which are dealt with elsewhere in this report and a number of which the Melbourne Law School already has in train.<sup>15</sup> However, there are a number of specific steps that the Melbourne Law School might consider in the short term as well as longer term changes to the way it operates that might affect recruitment of students. For example, our discussions revealed a sense that there are not enough Research Centres or courses that are of interest to Indigenous students. Students said that some subjects (eg Property) attempt to engage Indigenous Knowledges and laws but there needs to be engagement across the board. We have addressed this issue in more detail under Curriculum.

### Pathways

Many interviewees identified the need for the Melbourne Law School to increase its visibility in the undergraduate program at the University. These suggestions include more law related subjects in the undergraduate curriculum, greater visibility of Melbourne Law School academics in the undergraduate program, early contact with Indigenous undergraduate students and establishing mentor relationships between interested students, Indigenous JD students and Melbourne Law School staff. Establishing links with the Colleges in which undergraduate students reside as well as with Murrup Barak and the BA and BSc Extended programs might also be helpful.

Highlighting research opportunities at the Melbourne Law School and the JD including Ph D opportunities/resources leading to employment at the Melbourne Law School is one example of a pathway that might be developed. Similarly, information in relation to job opportunities in the profession, Indigenous organisations or government and the support the Melbourne Law School can provide is another. Emphasis on Alumni stories and achievements in this regard is important. Involving Alumni and students in these activities as well as Indigenous academic staff may overtime

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<sup>15</sup> For example see Melbourne Law School *Divisional Indigenous Plan 2019-2022*

address the problem of the Law School's reputation as uninviting, elitist and not a place where Indigenous students can see themselves reflected. A strategy in relation to this should be developed.

### Recruitment beyond the University

Recruitment beyond the University undergraduate program is challenging. General improvements to the website, curriculum, research and staff profile may assist here. This is really a pre-condition to making the Melbourne Law School a place of choice for Indigenous law students. Further, expansion of the Masters program and building relationships with Indigenous organisations may also bring the JD to potential students' attention. Pro-actively, in conjunction with the senior Indigenous Fellow, the Melbourne Law School might identify target groups from outside the University of Melbourne: for example, in Indigenous organisations, by age, geographic location, employment and devise a strategy for recruitment including tailoring support packages for prospective students. It has also been suggested that the Melbourne Law School needs a presence in Communities and schools, linking with the University recruitment efforts in schools. This would provide opportunities to explain and expand on the option of pathways to the JD degree. This work would best be undertaken by Indigenous staff.

### Alternative entry pathways

In addition to the pathways discussed above, whether via the Melbourne undergraduate program or for applicants from outside Melbourne, it is important to explore whether alternative pathways to the current GAM entry should be considered.

Most Law Schools in Australia provide for alternative entry for Indigenous students as a way of increasing the number of Indigenous students' studying of law. These programs include formal pre-law programs such as at the University of New South Wales, a pre-law and mentoring program at Charles Darwin University and pre-University one year study programs at the University of Adelaide and Bond University<sup>16</sup> as well as special entry via a GAM type program or specific entry requirements for Indigenous students. The University of Western Australia, which has an exclusively graduate law degree, has range of criteria for Indigenous entry<sup>17</sup>. We now consider some of these options.

As an exclusively graduate degree, the JD presents specific challenges in relation to alternative entry pathways and some of those used for undergraduate degrees may not be appropriate. The current use of the LSAT provides a common measure against which the capacity of all applicants can be measured (and where relevant) ranked and it appears that the experience of the Law School is that the LSAT, together with tertiary results, provides a reasonable measure of capacity to complete the degree. Law School Admission Council studies show that the LSAT together with the GPA is "the most robust predictor of academic performance in the first year of law school".<sup>18</sup> We understand Law School data shows the LSAT (especially when combined with Tertiary results) has been a reasonable predictor of success. The LSAT also provides a common measure of capacity where applicants tertiary study varies across disciplines and institutions. Together these selection tools enable selection of a similarly academically qualified cohort of students who are assessed as having the capacity to complete the JD at the level at which it is taught. This assessment includes the availability of academic, social and cultural support. The importance of the experienced members of

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<sup>16</sup> Many of these are referred to in Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) pp 27-28

<sup>17</sup> <http://www.sis.uwa.edu.au/courses/law>

<sup>18</sup> Law Schools Admission Council *LSAT Technical Report 16-01 March 2016*

the Selection Committee applying these criteria should not be underestimated in assembling the student cohort.

It has been suggested both in some of our consultations and other fora in the Law School that it is reasonable to assume the LSAT is a barrier for prospective students.<sup>19</sup> We found no empirical evidence to support that view nor did our consultations indicate it was a widespread issue. Only one of the current or former students we consulted indicated that the LSAT was a deterrent to studying law at the Melbourne Law School. One student saw it as a positive – a test of their ability. We think that some empirical data, at least from Melbourne undergraduates during their study, be obtained prior to any decision being made in relation to use of the LSAT.

Even if the LSAT is a barrier, there may be considerable downsides to any alternative entry programs which do not adequately compensate for the predictive value of the LSAT or the LSAT in conjunction with tertiary results. We urge caution in any moves to remove the LSAT requirement for a number of reasons.

The first and most important of these is how the Law School would ensure rigorous application of proven criteria that measure capacity to complete the course successfully. What clear alternative academic criteria can be established against which a student's capacity to complete the JD can be judged? Will these criteria mean additional burdens for students? If less predictive criteria are applied then what additional support might be required, what is the nature and cost of that support and can it be guaranteed? If selection is less predictive and supports cannot be guaranteed then there will be an impact on retention and completion, with an even greater personal impact in terms of accumulation of CSP debt as well as on self-esteem. In other words, it is important that the Law School does not set up students to fail.<sup>20</sup> A further issue is whether the removal of the LSAT for Indigenous students implies an indigenous deficit model for Indigenous students. We agree with Ruru that the focus should be on students' positives such as the leadership potential of Indigenous students<sup>21</sup> but there needs to be a balance to ensure students, with the relevant support, can thrive and succeed in the Melbourne JD. We note the usefulness of Ruru's suggestions in relation to developing programs for working with Indigenous students to prepare for the LSAT.

In our view, other barriers to entry identified in our report should be addressed before alternatives to the LSAT implemented. If consideration is given to removing the LSAT requirement there should be a thorough analysis of alternatives and their predictive value involving those with extensive experience at Selection and the development and application of criteria for measuring capacity. Consideration could be given to having both an LSAT and non-LSAT based entry with the latter involving additional requirements for applicants.

We now examine some alternative pathways for consideration in the short and long term.

### Scope for guaranteed pathways

There are a number of guaranteed pathways into the JD at present and a pathway for Indigenous applicants could be added to these. This (together with better quantum, targeting and publicising of

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<sup>19</sup> Kirsty Gover *Memorandum on IJD LSAT for Consideration by RRC 030818*

<sup>20</sup> See Jacinta Ruru *Response to Confidential Draft of Review of Melbourne Law School's Indigenous Studies Program* October 2019. The Law School's experience in the LLB was that when the selection process was varied and academic criteria became more rigorous the retention and completion rates improved. Thus, the numbers of students were low compared to other Law Schools but the retention and completion rates were higher.

<sup>21</sup> Ruru *ibid*

scholarships) may attract more interest from among the University's undergraduates. However, we note that retention and completion are as important as recruitment and any guaranteed pathway would need to ensure that the criteria established provided a reasonable measure of capacity so that retention and completion are not compromised. Otherwise the change may be counterproductive. It is important that students have the capacity to thrive and succeed in the JD with the support programs available to them.

In the absence of the LSAT it may be that any guaranteed pathway would require a high average in tertiary study or a high ATAR/ENTER score either of which might not have a significant impact on the number of successful applicants. However, consideration might be given to devising some criteria for a guaranteed pathway for Indigenous students in these terms and linking that with performance in tertiary study at Melbourne.

As the University of Western Australia JD has some equivalence with the Melbourne JD, we include their entry rules for Indigenous applicants as an example. The current guaranteed entry requirement is an ATAR equivalent of 97.<sup>22</sup> Other entry standards for Indigenous JD applicants<sup>23</sup> vary only slightly from the main entry requirements: for example the WAM required is 65% and the GPA is 5.5 whereas the WAM and GPA for Indigenous Assured Entry is 60% and 5.0 respectively. We do not suggest that these standards are appropriate for the Melbourne JD, rather we use them to point to the relativity between general entry standards and Indigenous entry standards. Applying a similar ratio to Melbourne may not necessarily result in a sizable increase in the number of Indigenous applicants. This points to the difficulty in establishing a guaranteed pathway that varies too greatly from the general admission requirements: how to attract an increasing number of students without diverging too far from general admission criteria. We do note that there are other avenues identified

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<sup>22</sup> <http://www.sis.uwa.edu.au/courses/law>

<sup>23</sup> To be considered for admission to this course an applicant must have—

(1)(a) a bachelor's degree, or an equivalent qualification, as recognised by UWA;  
and;

(b) the equivalent of a UWA weighted average mark (WAM) of at least 65 per cent; or  
the equivalent of a UWA grade point average (GPA) of at least 5.5\*.

(2) To be considered for admission to this course an indigenous applicant must have—

(a) met the general admission requirements under 4.(1);

or

(b)

(i) a bachelor's degree via the UWA Indigenous Assured Entry Pathway; and

(ii) the equivalent of a UWA weighted average mark (WAM) of at least 60 per cent; or

(iii) The equivalent of a UWA grade point average (GPA) of at least 5.0\*;

or

(c)

(i) an Advanced Diploma in Indigenous Legal Studies of this University; and

(ii) the equivalent of a UWA weighted average mark (WAM) of at least 65 per cent;

or

(d)

(i) a bachelor's degree, or an equivalent qualification, as recognised by UWA; and

(ii) a School of Indigenous Studies Law Admission Test score.

<https://www.uwa.edu.au/study/courses/juris-doctor#admission-requirements>

at UWA but these require specific programs at the undergraduate level and or testing.<sup>24</sup> We consider these below.

We foresee difficulty in developing appropriate criteria for both a guaranteed pathway and minimum tertiary study standards which might provide an alternative to the LSAT although it is not impossible. Again, the problem may be that the level of achievement in tertiary study would be set so high that it would not result in an increase in applicants. These are matters of detail for the Law School to consider if it is to pursue this pathway.

We do not preclude further work being undertaken by the Law School on what might be an appropriate guaranteed pathway or alternatives to the LSAT.

### Pre-law programs

Pre-law programs are often seen as an alternative pathway into a law degree. These take many forms. The UNSW program<sup>25</sup> is the most well known in Australia. The Native Law Centre at the University of Saskatchewan in Canada<sup>26</sup> has also had a program for many years.

The UNSW program is a four-week intensive program for both school leavers and mature aged potential applicants for law. It both tests students for suitability for law and prepares them for the study program once they commence the degree. Success in the program together with some other factors will determine whether or not a student is offered a place. UNSW also runs a 'one week residential program' called the Winter School Outreach Program for high school students from years 10-12.<sup>27</sup> Feedback on these courses is positive both in the way they prepare students for the sometimes alien environment of the law classroom and also as a means of building bonds among indigenous students. Research shows that 30% of the Indigenous intake into the LLB have participated in the Winter Program.<sup>28</sup> Another example is Charles Darwin's Indigenous Pre-Law and Mentoring program which involves prospective students in Court visits, oral presentations and debates and based on performance, students are offered places.<sup>29</sup>

The Native Law Centre program is recognised by most Canadian law schools. It is not an alternative to the LSAT which almost all Canadian Law Schools<sup>30</sup> use but is complementary to it. It will sometimes be used to determine whether to offer a place, be a condition for an offer, or be encouraged because of its positive impact in preparing students for law school and also building

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<sup>24</sup> The SIS Law Admission Test: Indigenous students with an undergraduate degree will be required to undertake the following for admission into the post-graduate Juris Doctor.

1. A test that assesses potential Students' abilities to problem solve and analyse a case
2. An evaluation of the applicant's academic transcript from their undergraduate degree. Applicants are required to have a GPA of 5
3. An interview with SIS's Testing Panel comprising academic and Student Services Staff
4. An evaluation of the applicant's Curriculum Vitae, which includes professional, community and academic achievement

<http://www.sis.uwa.edu.au/courses/law>

<sup>25</sup> <https://www.handbook.unsw.edu.au/undergraduate/courses/2019/ATSI7002/>

<sup>26</sup> <https://www.usask.ca/plsnp/>

<sup>27</sup> Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) p27.

<sup>28</sup> *ibid*

<sup>29</sup> *Ibid* p28

<sup>30</sup> McGill Law School does not require the LSAT because it is an English language test and the Law School is a bilingual program.

relationships. It is an eight-week intensive Property law course that incorporates a range of skills training, introduction to law as well as substantive comparative and First Nations property law. It will generally be recognised as fulfilling the Property Law requirement in the relevant law degree. As all Universities only offer a graduate law degree it is appropriate for students from a variety of Universities to participate in the course. This is not the case in Australia where most law degrees are undergraduate degrees and the Pre-Law programs are primarily directed at those courses.

While these programs are attractive, the Melbourne Law School would need to consider a range of issues before embarking on use of existing pre law courses including: whether any of the existing programs are appropriate for the Melbourne Law School JD applicants, particularly given that the UNSW course and other Universities' programs are primarily aimed at first year University students (whether school leavers or mature aged students) rather than graduates. The regulatory requirement for Master level subjects in the JD may prevent participation in any of the Australian programs for credit. The reliability of any of the existing programs as a predictor of success at the post-graduate level would need to be tested. Consideration would need to be given to the cost/benefit ratio in the Law School developing its own course. The impact on requiring students to take on additional pre Legal Method and Reasoning study or the impact on students not participating in the broader LMR classes would need to be considered.

The availability of some orientation to what has been described by one student as the 'annihilating discourse' of western law and the law school experience should be considered but separated from entry requirements. Care needs to be taken about imposing additional burdens on Indigenous students. Finding that balance is difficult. Some adaptation of LMR might be helpful for students in building relationships with other Indigenous first year JD students and this could be considered as part of the curriculum review including the possibility of a compulsory Indigenous law/legal traditions subject. Care needs to be taken not to add to the academic or time burden on Indigenous students. We do not consider that this should be an alternative entry pathway.

### Other alternatives to the LSAT

We referred earlier to the UWA alternative entry provisions, particularly its guaranteed entry rules. We also referred to the alternative discretionary scheme operated through the School of Indigenous Studies. This essentially has four parts – an aptitude test, evaluation of the applicant's academic transcript, requiring a GPA of 5, an evaluation of the applicant's CV and an interview.<sup>31</sup> It is not clear how rigorous the test is, how the interview is conducted, what information it is designed to elicit or against what criteria it is to be assessed. We do not have data about the predictive impact of this entry pathway. Investigation of this pathway might be useful both as a predictor of success as well as the mechanics of implementation. We stress again that it is important to call on the experience of staff in selection when assessing these alternatives.

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<sup>31</sup> The SIS Law Admission Test: Indigenous students with an undergraduate degree will be required to undertake the following for admission into the post-graduate Juris Doctor.

1. A test that assesses potential Students' abilities to problem solve and analyse a case
2. An evaluation of the applicant's academic transcript from their undergraduate degree. Applicants are required to have a GPA of 5
3. An interview with SIS's Testing Panel comprising academic and Student Services Staff
4. An evaluation of the applicant's Curriculum Vitae, which includes professional, community and academic achievement

<http://www.sis.uwa.edu.au/courses/law>

We note that almost all Canadian Law Schools require the LSAT to be completed<sup>32</sup> and then each Law School has its own program for selecting First Nation students in which the LSAT plays a role. As indicated above, a number of these involve use of the Pre-Law program. Assessments are normally done on the documents and may take into account a range of factors. Osgoode Hall Law School and Dalhousie University Schulich School of Law provide two different examples. Osgoode takes community service and experience into account when assessing applications on the basis of an applicant's capacity to complete the course.<sup>33</sup> This is similar to the method of most Law Schools. Dalhousie takes a different approach and may use interviews but it is not the norm.<sup>34</sup> They reserve a number of places in their program for Mi'kmaq and offer a four week pre-law program prior to the commencement of the academic year and may require participation in the Native Law Centre Pre-law program.

We present these two examples to assist in developing thinking around any changes. As indicated above, the LSAT remains as one of the selection tools for almost all Canadian Law Schools.

We note the application process for Indigenous applicants for the MD at Melbourne has recently been changed to remove GAMSAT and to include an interview. It is unclear whether the interview also replaces the MMI (Multiple Mini Interview) that is part of the overall selection process and assesses a range of attributes not covered in the GAMSAT. The interview is conducted by Professor Sandra Eades (Associate Dean (Indigenous) MDHS) and Professor Steve Trumble (Head of Department of Medical Education). There are 6 Indigenous first year students in 2019 and 7 expected in 2020. We have sought information about the conduct and impact of this changed process but have not received the information at the time of writing. The following information would be useful in assessing the impacts of removal of the GAMSAT in terms of increased applicants and the usefulness of interviews in assessing capacity:

- What is the interview directed to – for example, suitable personality, motivation, academic background, academic capacity and how is this measured?
- What elements of the interview compensate for the absence of GAMSAT data re capacity?
- Do students participate in the Multi Mini Interview process?
- Are there any minimum academic requirements for example, H2 average in relevant tertiary study?
- Is there any data on the academic progress of students accepted without a GAMSAT?

There are a range of other measures that MDHS has implemented that our discussions indicate may also have contributed to the increase in student numbers including: the appointment of Ngaree Blow as Lecturer in Aboriginal and Torres Strait Islander Health, allocated Indigenous student support officer role in the faculty (Kim Stevenson's Team), presenting to students during MB Tuesday lunches, MDHS students receiving \$500 bursary at the start of the year (before census) to help financial strain, MDHS Indigenous website/landing page and scholarship opportunities to attend

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<sup>32</sup> McGill Law School does not require the LSAT because it is an English language test and the Law School is a bilingual program.

<sup>33</sup> "Students wishing to be reviewed as an Indigenous candidate must provide documentation that corroborates their identification and connection with their Indigenous community. More specifically, documentation corroborating service, involvement, or leadership within their community, on Indigenous issues, or within Indigenous circles, will be strongly considered during the review of their file. In our experience, those markers of solidarity and ability to be supportive of others within their community correlate with academic and extracurricular success in law school. The committee's decision to admit a candidate ultimately depends on its judgment of the candidate's ability to successfully complete law school. The Admissions Committee strongly endorses the Native Law Centre Summer Program at the University of Saskatchewan prior to entering the Law School." <https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools/osgoode-hall-law-school>

<sup>34</sup> <https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools/dalhousie-university>

Australian Indigenous Doctor's Association (AIDA) conference. It has been suggested that it is the package rather than any one thing that has led to the increase in student numbers and there is yet to be data on academic progress.<sup>35</sup>

In relation to predictors of success in medical schools in Australia a recent longitudinal study confirmed the value of using multiple tools and concluded that "GPA remains an important performance predictor across the curriculum whereas GAMSAT is predictive in the early (pre-clinical) years, and a semi-structured panel interview is predictive in the later (clinical) years".<sup>36</sup> We note that this appears to be consistent with the LSAC Report on predictive value referred to above.

Use of interviews as a selection tool is not universally supported. The key question is how any interview is designed to inform the selection process and whether it has any predictive value, that is, can it be used as a predictor in place of the LSAT and how can an interview displace any assumptions about capacity based on a tertiary study record absent an aptitude test such as the LSAT?

As indicated above, we do not preclude any of these developments but urge caution in replacing the current criteria in the absence of empirical data in relation to the barriers presented by the LSAT and the effectiveness of any alternative in predicting capacity to successfully completing the JD.

### Scholarships and financial support

The current scholarship program provides important support for students. Scholarship sources include specific Indigenous scholarships, GAMS scholarships and general University scholarships. Students can also access funding throughout their courses for specific activities such as international exchanges.

It seems that all students have some support although the quantum varies from student to student. All Indigenous students receive a CSP place. Scholarship support should be for the life of the course and this should be known and clear from commencement. Additional support may be needed for students undertaking unpaid clerkships or internships as the time spent on these eats into their capacity to undertake paid work.

The Law School should aim to fund every student to attend the National Indigenous Legal Conference at least once. Therefore the Law School may need to raise additional funds to support travel, exchanges, clerkships and internships. Further fund raising for scholarships and related funding may be necessary, especially if student numbers increase.

Recent issues in relation to the timing of scholarship payments have been addressed so that payments commence in January. This should become regular practice. It seems that not all scholarship holders benefitted from this change in policy, suggesting that administrative details require better oversight.

Perhaps the most important aspect of scholarships here is that their availability needs to be well publicised and used directly as part of recruitment. At least they should be included on the website so that prospective students know there will be financial support. There should be capacity to create specific financial packages as a way of attracting prospective students. If student numbers grow it will be necessary to attract more financial support for students. This should be an on-going part of the Indigenous strategy.

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<sup>35</sup> The Law School has at least some of these other measures in place.

<sup>36</sup> Sladek, R.M., Bond, M.J., Frost, L.K. *et al.* Predicting success in medical school: a longitudinal study of common Australian student selection tools. *BMC Med Educ* 16, 187 (2016).

## LLM AND PH D RECRUITMENT AND PATHWAYS

Hobbs and Williams have noted the low numbers of Indigenous students engaged in Masters or Ph D programs across almost all institutions (the exceptions being ANU and QUT).<sup>37</sup>

Our discussions have indicated that recruitment at all levels is affected by the presence or otherwise of leading Indigenous scholars and mentors at various institutions/law schools. Therefore, in addition to recruitment of Indigenous academics, the Melbourne Law School needs to develop other strategies for recruitment of LLM and Ph D students.

Ph D recruitment and pathways are considered elsewhere but they are relevant here because establishing pathways to doctoral study for prospective JD students has been identified by interviewees as an important aspect of recruiting JD students from the University's undergraduates and honours students.

Efforts should be made to ensure that any prospective higher degree students in the JD cohort are encouraged and supported to embark on these programs. Pathways for Doctoral studies and academic careers for Indigenous law graduates should be identified and negotiated with flexibility.

The Melbourne Law School should join with University/other Faculty events for potential doctoral students to ensure that they are seen as a potential location for doctoral studies. In particular, as indicated in the 2019-2022 Plan, the Melbourne Law School should continue to partner with the Poche Centre on information and familiarisation programs around Masters and Ph Ds.

Efforts should be made to build relationships with Indigenous organisations locally and elsewhere and to recruit and support mature aged professionals from those Indigenous organisations for specific LLM subjects and provide financial support for study. These links might also create opportunities to join with other Faculties, especially Medicine, in designing specific cross disciplinary Masters subjects.

The Law School could work with other parts of the University to develop continuing professional development and on-site delivery of courses for Indigenous organisations in law related areas across the organisations core work such as child welfare or health. This might also be offered to a broader audience. We note that UBC Law School offers a certificate in cultural competency and this could be explored as a jointly offered professional certificate once further work has been done with the community on curriculum.<sup>38</sup> The creation of the Indigenous Knowledge Institute<sup>39</sup> at the University (to commence operation in January 2020) may provide the site for collaborations in this area including executive education, among other activities.

In relation to Melbourne Law Masters the Law School might consider a number of initiatives to attract students. These might include some of the following. If permitted, offer Commonwealth

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<sup>37</sup> Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) pp2, 15

<sup>38</sup> <http://www.allard.ubc.ca/indigenous-legal-studies-program/indigenous-cultural-competency-certificate>

<sup>39</sup> Duncan Maskell *Garma Speech* August 2019 <https://about.unimelb.edu.au/leadership/vice-chancellor/speeches/garma-speech>; The University of Melbourne *University launches global Indigenous Knowledge Institute* <https://www.alumni.unimelb.edu.au/news/university-launches-global-indigenous-knowledge-institute>

Supported Places for Masters' courses or single subjects; if this is not possible and in addition develop a financial strategy that allows significant or full fee remission for Masters' courses or single subjects for Indigenous students; enable graduate diplomas for those with and without a law degree; develop course rules that provide greater flexibility for participation of students without a Law degree; develop more exit points for single and multiple subject enrolments. Creating more flexibility may increase the pool of applicants and facilitate joint courses with other Faculties.

### CHANGING AND TELLING THE MELBOURNE LAW SCHOOL STORY

Our consultations suggest that the Melbourne Law School has a number of staff, curriculum, research and related activities occurring but little or none of these are known beyond the Melbourne Law School. In addition to changes recommended in this report, there is a need to better tell the whole Melbourne Law School story. This is particularly so in relation to recruitment for the JD as the Melbourne Law School works to change the external perception of its activities and reputation.

Therefore, the Melbourne Law School needs to develop a communication strategy around the Melbourne Law School as a place of choice for Indigenous students. The strategy should be developed in consultation with Indigenous scholars, students and communities and include a greater focus on research by and with Indigenous researchers and communities and better publicise this work. Further it should seek to increase the presence of Indigenous people, law and activities in the Law Building through Indigenous related events and publicising these across the Indigenous undergraduate student cohort and in the community. We note the importance of Indigenous academic staff in this regard but consider that a better aggregation of and publicity about research and other activities in the Law School is important nonetheless.

Increasing the Melbourne Law School visibility with undergraduate students might include targeting undergraduate students with tailored events around law; developing greater law offerings in the undergraduate program that give visibility of law academics and bring students into the Law building. As the curriculum process develops publicise both the process of curriculum development, content and teaching incorporating Indigenous knowledges and law, Indigenous perspectives and Indigenous critiques of law.

Consideration should be given to establishing a dedicated role/s for recruitment encompassing relationships with Murrup Barak, undergraduate and pathways programs, work with communities, publicity, LSAT support, linking the Melbourne Law School activities with prospective students and undergraduates, organising events to bring prospective students into the Law building, involving Alumni in these activities and working with the University in recruitment at the school level.

There should be a dedicated webpage for Indigenous student recruitment with information about entry, CSPs, scholarships, support and specific programs for Indigenous law students such as mentoring, internships, community based legal work, as well as information about Indigenous related research and other activities in the Law School, the Visiting Indigenous Scholars program and relationships with Indigenous scholars and research in other Universities.

Other initiatives suggested in this regard, particularly by Ruru, include doing more with Indigenous language and perhaps explore the possibility of giving the Law School building a Wurundjeri name; developing ways to value Indigenous students' connections and knowledge for example by developing relationships with students' and prospective students' families. Each of these are examples of Indigenous students being welcomed and supported by the Law School.

The capacity for any of these steps to increase numbers of applicants/students will depend on the range of other issues that are referred to in this report that will make the Melbourne Law School a place to which Indigenous students want to come.

## Recommendations

### *Juris Doctor*

As a graduate law degree the JD poses some specific limitations and challenges for recruitment as do some of the structural institutional issues referred to elsewhere in these recommendations. However, there are a number of initiatives that might increase the pool of possible applicants. Changes should focus on making the Melbourne Law School a place of choice for prospective Indigenous law students

- 2.1 Develop a strategy for publicising what makes the Melbourne Law School a place for Indigenous students
- 2.2 Better publicise the work by and with Indigenous researchers and communities including policy and scholarly work
- 2.3 Identify pathways for prospective JD students to employment or to research/academic career paths
- 2.4 Establish an Indigenous Law and Research Centre as focus (see Research recommendations)
- 2.5 Increase Melbourne Law School visibility with undergraduate students:
  - target undergraduate students with tailored events around law
  - increase the presence of Indigenous people, law and activities in the Law Building through Indigenous related events and publicising these across the Indigenous undergraduate student cohort and in the community
  - develop greater law offerings in the undergraduate program that give visibility of law academics and bring students into the Law building
  - be involved in schools and the community where student recruitment is discussed. We note the need and importance for Indigenous staff to undertake these tasks
  - engage with Indigenous students at Colleges and in the BA and BSc Extension programs and build relationships with Murrup Barak
- 2.6 Identify target groups from outside the University of Melbourne: for example in Indigenous organisations, by age, geographic location, employment and devise a strategy for tailoring support packages to attract prospective students
- 2.7 Develop the Scholarship program (including quantum and administration) so that
  - the value of scholarships increase to at least \$10,000 per annum for all students
  - that funds flow from January – ensuring that this occurs for all students and is managed so that there are no unintended consequences for other income support sources
  - Scholarship support is for the life of the course and this should be known and clear from commencement.
  - additional funding is sourced for students to support travel, exchanges, clerkships and internships.
  - aim to fund every student to attend the National Indigenous Legal Conference at least once.
  - further fund raising for scholarships may be necessary, especially if student numbers increase
  - publicise the availability of scholarship support and CSP places on the Law School JD recruitment website

- 2.8 As the curriculum process develops publicise both the process of curriculum development, content and teaching incorporating Indigenous knowledges and law, Indigenous perspectives and critiques of law
- 2.9 Identify pathways for Doctoral studies and academic careers for Indigenous law graduates
- 2.10 Develop Alumni relationship with biographies and experiences of the Melbourne Law School
- 2.11 Create a dedicated webpage for Indigenous student recruitment with information about entry, scholarships, support and specific programs for Indigenous law students such as mentoring, internships, community based legal work, etc.
- 2.12 Consider a dedicated role/s for recruitment encompassing relationships with Murrup Barak, undergraduate and pathways program, work with communities, publicity, LSAT support, linking Melbourne Law School activities with prospective students and undergraduates, organising events to bring prospective students into the Law building, involving Alumni in these activities. We note the need and importance for Indigenous staff to undertake some or all of these tasks.
- 2.13 Consider establishing a small working group to review the current selection criteria and its impact on recruitment and explore any alternatives that might increase the number of applicants while ensuring appropriate assessment of capacity to successfully complete the JD so that retention and completion are not affected.

#### *LLM and Ph D Recruitment and Pathways*

- 2.14 Join with University/other Faculty events for potential doctoral students. In particular, as indicated in the 2019-2022 Plan, continue to partner with the Poche Centre on information and familiarisation programs
- 2.15 Recruit and support mature aged professionals for specific LLM courses and provide financial support for study
- 2.16 Consider joining with other Faculties, especially Medicine, in designing specific cross disciplinary Masters subjects.
- 2.17 Explore continuing professional development and on-site delivery of courses for Indigenous organisations.
- 2.18 In relation to Melbourne Law Masters:
  - if permitted, offer Commonwealth Supported Places for Masters' courses or single subjects;
  - develop a financial strategy that allows significant or full fee remission for Masters' courses or single subjects for Indigenous students;
  - enable graduate diplomas for those with and without a law degree;
  - develop course rules that provide greater flexibility for participation of students without a law degree; develop more exit points for single and multiple subject enrolments; and develop joint subjects with other Faculties aimed at Indigenous students.
- 2.19 See also the Recommendations under Research and Staff Recruitment

### 3. STUDENT SUPPORT AND ASPIRATIONS

There are many factors that combine to ensure indigenous students' successful completion of their JD. Supporting students culturally, personally and academically as well as developing aspirations, experiences and career opportunities are crucial to enabling successful completion of the JD.

Hobbs and Williams have recently surveyed Australian Law Schools and identify the range and variety of support programs that Law Schools provide ranging from dedicated Indigenous support officers to mentoring programs with the profession.<sup>40</sup> The *Indigenous Cultural Competency for Legal Academics Program (ICCLAP)*<sup>41</sup> has also surveyed law Schools and conducted a range of workshops exploring ideas around support for Indigenous students. Details of their work is considered elsewhere in this Report. While each Law School is different and requires support that is tailored to the institution and the particular Indigenous student cohort, the work undertaken by other Law Schools both in Australia and elsewhere should be a fruitful source of ideas in this area.

The key issue for the Melbourne Law School is how to construct the support relationship, identifying what is required to create a safe cultural space, the different kinds of support needed and how to provide it. Crucial areas of support include financial, (dealt with elsewhere) aspirational, pastoral, academic and cultural support.

#### Student Support

For the past 4 years the Indigenous Studies Community Project has provided the guide for support. While there were changes in 2019, aspects of the Project remained the guide, particularly for the Academic skills unit. This project's objectives, structure and activities cover many of the elements necessary for adequate support for Indigenous students identified elsewhere: structured academic support through the Legal Skills Unit, mechanisms that help build a sense of community among Indigenous JD students including mentoring of early year students, links into support and well-being services, assistance with paid work opportunities as well career related activities such as work placements. Many aspects of the project were positively commented upon by students, including the availability of paid research work, bringing students together, working with Murrup Barak on ITAS tutors. The success of the program as currently configured required/s a designated position to undertake a variety of the tasks. That position was not in place in 2019. The Senior Indigenous Fellow position is not one that can take on all the tasks although the Senior Fellow currently undertakes some of the them informally, particularly through events and links with communities and the profession. The various elements of the project provide a basis for building support for students across a variety of activities although it might be organised differently.

While we encountered a range of views there seemed to be a generally held view that pastoral and personal support and academic skills should be separated. This is partially the pattern in 2019. The Early Academic Guidance for Legal Education (EAGLE) has continued its work with JD students and is seen as very helpful. Suggestions have been made that there might be an effort to encourage Indigenous JD students to become tutors as a way of building the group through the EAGLE program. There is a need to ensure that students access these opportunities and do not fall through the cracks, but support offered is viewed very favourably.

We note that the role Assistant Dean (Teaching and Learning) is important in a number of ways. This is a role that manages teaching and learning issues in the JD. We also note the recent creation of

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<sup>40</sup> Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) pp28-29.

<sup>41</sup> Marcelle Burns, Anita Lee Hong and Asmi Wood *Indigenous Cultural Competency for Legal Academics Program: Final Report 2019* (Australian Government Department of Education and Training)

the role of Associate Dean (Indigenous Recognition). This is a senior role that covers all Indigenous related programs within the Law School, including but not limited to support for Indigenous JD students.

Our discussions indicated that having a person of some seniority to manage student relationships with Murrup Barak and others is valuable. It is also seen as important to have a senior person involved in some well-being matters and able to make decisions beyond the usual range. We note that the Assistant Dean has the role of managing academic issues such as early contact with new students, course planning and the academic program more broadly. This includes organising ITAS tutors with Murrup Barak. It is unclear who has responsibility for putting students in the same subject streams where appropriate. It is also unclear how the Assistant Dean's academic related work fits with enrichment, the integrated learning team and extra-curricular activities for students. The Assistant Dean has also taken on some well-being tasks at least as the first point of call, referring students to relevant people and services.

Anything that brings the student group together is seen as very positive, especially integrating students into the group from the start of their course. This might require particular attention in the early weeks of semester (unless there is some sort of pre-law initiative). Efforts should be made to hold regular events with students/alumni/staff throughout the semester. Students indicated that the availability of a dedicated space would be very helpful. It would provide a place for the group to meet and also a safe place while in the law building. Consideration would need to be given to whether this is primarily a social or study place and this may vary as the student cohort changes. Putting students in the same subject stream was viewed very positively, although it was pointed out that not all students may want this. Other comments relating to support and student success included: lack of flexibility in course arrangements, inability to undertake *Comparative Indigenous Rights* because of the lack of recording of other classes, lack of information about ITAS tutors for electives, not all scholarship holders received early release of funds, need for a single person to deal with Faculty issues such as extensions, perhaps a need for a dedicated person to deal with pastoral issues. At QUT for example there is a dedicated Indigenous staff member who deals with all pastoral issues as well as assisting with recruitment. We note that the relevant QUT Faculty is much larger than the Melbourne Law School and this may not be possible for the Melbourne Law School. Some variations of this approach are included in Hobbs and Williams.<sup>42</sup>

Some of these and other comments and complaints go to the need for a co-ordinating framework. Some of this co-ordination should sit with the Associate Dean (Indigenous Recognition) and some with the Assistant Dean. It is important that these two roles have clearly delineated tasks and their activities are coordinated. If there is adequate co-ordination the tasks can be readily undertaken by a range of people. The role of the relevant course Director also needs to be integrated here. There needs to be some clear information about the various roles that people play so that in the absence of a single point of contact students are clear about where to go. We don't see the Associate Dean as that person as that role should be more an overseeing and co-ordinating role that drives policy and programs rather than as a student contact point. A number of people commented on the importance of relationships between students and more senior staff and this should also be a factor in designing support mechanisms. The model in Medicine has been mentioned where Professor Sandra Eades is a very senior person who is supported by well qualified more junior Indigenous staff to work in support, recruitment and related areas as well as Indigenous related scholarship. This involves a commitment to building the Indigenous workforce, both Academic and professional, and should be examined as part of the development of the strategy for Indigenous employment.

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<sup>42</sup> Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) pp28-29.

On-going links with Murrup Barak should be maintained and a designated person have responsibility for this relationship. This would encompass ITAS tutoring already undertaken by the Assistant Dean but also include more frequent engagement particularly in relation to recruitment. Students could also play a role in this. In the short term the relationship could be coordinated across the Associate Dean, the Assistant Dean and the Senior Indigenous Fellow.

While recognising that students will have varying interests and aspirations a number of areas for improvement have been identified including mentoring, more alternatives to corporate clerkships as well as problems associated with the lack of payment for clerkships. Expanding community and profession links, especially through an Alumni network might address some of these issues.

The elements of adequate support are in place but require better and clearer coordination centred on contact and relationships with students. In the longer term consideration should be given to employing an Indigenous person to be involved in support, planning, and recruitment. Any dedicated position/s need to be backed by clear job descriptions and delineation of responsibilities.

### Developing and Supporting Student Aspirations

Students have varied aspirations, interests and needs. Not all students want to be practising lawyers and the range of strategies to seed and support students' aspirations need to take account of this. However there are general activities that can support and develop aspirations across interests by creating environments in which students can explore the range of possibilities and develop clearer career pathways. The Senior Indigenous Fellow has been engaged in work in this area and should be supported in this work.

A program should be developed that encourages greater engagement with recent graduates, both indigenous and non-indigenous. This might take a number of forms including informal events such as lunches or dinners, more formal workshops on current issues, developing a mentoring program with recent graduates as well as more senior lawyers (both Indigenous and non-Indigenous) and opening up pathways into legal and non-legal organisations as well as research opportunities. This might include specific mentoring or practice-based work with law firms undertaking legal work for Indigenous groups and communities. (See Section 8)

Encouraging Alumni to be involved with students as well as other activities at the Melbourne Law School will also develop familiarity with career options as well as provide support and mentorship. (See Section 7)

While involvement with Tawirri should be encouraged and supported, some students have suggested that Tawirri is a little distant from them. Involvement will be useful for some students.

Students have identified the availability of research work as Research Assistants as important for a number of reasons. This provides an income in a flexible environment which can be adjusted to fit with the demands of their study. It can also help to develop students' interests in research and particular subject matter. In some circumstances this could be a pathway to higher degree study and possibly employment. Involving students in the proposed research centre would be important.

Community building, not just among students but involving Alumni whether practising lawyers or involved in other work and Indigenous legal scholars can have a range of benefits including developing aspirations and clarifying career pathways. More interconnectedness between the Melbourne Law School and other institutions in New Zealand, Canada and even other Australian Universities is important. We would see developing links with Indigenous legal institutions and scholars elsewhere as an important aspect of aspiration building. For example, encouraging and

possibly funding visits by students to other jurisdictions and also bringing students and lawyers and legal scholars from elsewhere might be an important element of this work. One example of such a program is the Indigenous Cultural program run by Jumbunna at UTS to New Zealand.

## Recommendations

- 3.1 Retain the substance of the objectives, structure and activities of the Indigenous Studies Community Project
- 3.2 Continue to provide structured academic support through the Legal Skills Unit, perhaps developing later year students as tutors and learning community leaders
- 3.3 Develop mechanisms that build a sense of community among Indigenous JD students including mentoring of early year students, links into support and well-being services, assistance with paid work opportunities as well as career related activities such as work placements including the availability of paid research work
- 3.4 Pastoral and personal support and academic skills should be separated.
- 3.5 Use the Assistant Dean as a senior person to manage relationships with Murrup Barak, academic and professional staff on matters relating to Indigenous students but also consider coordinating and coordinated roles for the Associate Dean and Senior Indigenous Fellow.
- 3.6 The Assistant Dean to continue as the first contact on well-being until a further appointment is made.
- 3.7 The Assistant Dean should continue to manage academic issues such as early contact with new students, course planning, organising ITAS tutors with Murrup Barak ensure that attention is given to putting students in the same/suitable subject streams where appropriate.
- 3.8 Clarify the roles of the Assistant Dean, Associate Dean and Senior Indigenous Fellow in relation to enrichment, the integrated learning team and extra-curricular activities for students.
- 3.9 Develop activities that bring the student group together especially integrating students into the group from the start of their course but also including
  - holding regular events with students/alumni/staff throughout the semester
  - providing a dedicated space in the building for students
  - ensuring flexibility in both course planning and management of student needs eg class recordings as required
  - ensuring adequate dissemination of information
- 3.10 Develop a co-ordinating framework for tasks involving the Associate Dean, the Assistant Dean and the Senior Indigenous Fellow and the JD Course Directors across all Law School activities
- 3.11 Work towards building the Indigenous workforce along the model in Medicine led by Professor Sandra Eades supported by well qualified more junior Indigenous professional (and academic) staff to work in support, recruitment and related areas.
- 3.12 Develop and manage on-going links with Murrup Barak
- 3.13 Develop specific mentoring program, more alternatives to corporate clerkships, consider a scheme for payment for clerkships, expanding community and profession links, especially through an Alumni network and links with legal firms undertaking work for Indigenous Communities.
- 3.14 Encourage greater engagement with recent graduates, both indigenous and non-indigenous including informal events such as lunches or dinners, workshops, a mentoring program with recent graduates as well as more senior lawyers (both Indigenous and non-Indigenous) and pathways into legal and non-legal organisations as well as research opportunities.
- 3.15 Encourage Alumni to be involved with students as well as other activities at the Law School
- 3.16 Develop mechanisms to ensure that students are employed as Research Assistants
- 3.17 Involve students in Law School initiatives such as curriculum review and ensure payment for this work.
- 3.18 Encourage involvement in the Visiting Indigenous Scholar and Elder in Residence programs.

3.19 Encourage interconnectedness between the Melbourne Law School and other institutions in New Zealand, Canada and other Australian Universities

## 4. CURRICULUM

“...law schools will never be level playing fields until Indigenous students can see themselves reflected in their education.”<sup>43</sup>

With this comment Dr Nicole Watson amplifies the centrality of curriculum in Indigenous students' experience of law school.

For this reason alone the manner and form of curriculum change is the first order issue. Curriculum content and delivery are fundamental to the Melbourne Law School meeting its obligations in relation to Indigenous laws and achieving its stated goal of “building and supporting responsible relations between Indigenous and non-Indigenous Australians and between their respective laws and traditions”.<sup>44</sup> This in turn is the basis for the policy and program development designed to achieve the range of goals in the Melbourne Law School Indigenous Development Plan 2019-2022. The key issue is what that means for curriculum development, content, how it is achieved and the way it is delivered.

It is fundamental to all its work for the Melbourne Law School to acknowledge Indigenous law as the oldest jurisprudential tradition in the world.<sup>45</sup> In particular, curriculum must acknowledge the bi-jural nature of law in Australia, especially post *Mabo*, the operation of two systems of law, both independent of each other and yet dependent on each other for function and efficacy. In doing this curriculum must value Indigenous knowledges and laws and centre it within the Melbourne Law School learning environment. It needs to recognise the pluralist nature of law in Australia. Curriculum change is not just treating indigeneity as a subject but as a complex set of relationships between two laws engaging with each other in their conduct and practice. It involves the contemporary and future practice of a relationship between peoples and laws.<sup>46</sup>

In addressing Dr Watson's experience, curriculum needs to recognise Indigenous peoples' lived experience of colonisation but needs to move away from a deficit model of Indigenous experiences to incorporate Indigenous knowledges, laws and culture.<sup>47</sup> This should emphasise the positive contribution of Indigenous knowledges, laws and culture to the Australian legal system and society more broadly and focus on the idea of Indigenous leadership in this context.<sup>48</sup> In this way curriculum plays a key role in providing a safe and productive learning space for Indigenous law students, reflecting their lived experiences of colonisation and its effects, particularly, but not only, legal colonisation and the nature of the relationship of legal systems. In doing this, a changed curriculum also has the effect of producing culturally capable graduates and legal practitioners with capabilities to engage with Indigenous clients, communities and organisations as well as contribute to the broader society through informed political and legal debate, policy and reform. These principles should underpin curriculum reform.

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<sup>43</sup> Nicole Watson, 'Indigenous People in Legal Education: Staring into a Mirror without Reflection' (2005) 6(8) *Indigenous Law Bulletin* 4

<sup>44</sup> Melbourne Law School *Reconciliation and Recognition Policy* December 2017, 2

<sup>45</sup> Professor William Mc Neil *Introduction and Welcome to ICCLAP Workshop* SCU 2019

<sup>46</sup> We acknowledge the assistance of Professor Mark McMillian in formulating these principles

<sup>47</sup> M. Burns, S. Young and J Nielsen "The Difficulties of Communication Encountered by Indigenous Peoples': Moving Beyond Indigenous Deficit in Model Admission Rules for Legal Practitioners" (2018) 28(2) *Legagl Education Review* 1-27

<sup>48</sup> See Jacinta Ruru *Response to Confidential Draft of Review of Melbourne Law School's Indigenous Studies Program* October 2019

John Borrows has written widely on the issue of Indigenous legal traditions and law curriculum. The following comment illuminates the centrality of Indigenous law in this context or, as he describes it - the entanglement of Indigenous law and Canadian law<sup>49</sup>:

“Indigenous legal traditions are vibrant sources of knowledge. They pragmatically assist in finding answers to complex and pressing legal questions and contain significant sources of authority. They are precedential, that is, standard setting, and generate criteria for making sound judgments. Indigenous law helps produce binding measurements through persuasion and compulsion, is attentive to ethical redress and remedial actions when harm has occurred, and facilitates genuine gift giving and bequests. Indigenous laws can be constitutional. They can support the creation of internally binding obligations. Indigenous peoples’ own legal systems also undergird the creation of intersocietal commitments with external bodies. Evidence of Indigenous laws’ force is found in various agreements related to consultation, accommodation, contractual matters, and treaties. Indigenous laws are also a key ingredient in protecting group and individual privileges and freedoms”<sup>50</sup>

The Melbourne Law School currently has a range of targets, goals and activities identified and in place which provide a basis for achieving its Development Plan goals in relation to curriculum. However, these are unlikely to achieve longer term change unless there is a fundamental change in the manner in which the Melbourne Law School relates to Indigenous peoples and laws. For curriculum, this requires a major review of the overall curriculum conducted in conjunction with Indigenous scholars, lawyers and communities as well as a program for implementation and maintenance of the curriculum changes. The discussion in this part is directed at these issues.

Considerable work has and is being done to centre and embed indigenous knowledges and law in legal education curricula. For example, in Canada, the Truth and Reconciliation Commission has recommended that legal education and the legal profession ensure appropriate cultural competency

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<sup>49</sup> John Borrows *Laws Indigenous Ethics* University of Toronto Press 2019, 21

<sup>50</sup> John Borrows ‘Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education’ (2016) 61 *McGill Law Journal* 795, 797–8 quoted in Kate Galloway “Indigenous Contexts in the Law Curriculum: Process and Structure” (2018) 28(2) *Legal Education Review* 331-354. Professor Irene Watson has written extensively on Indigenous law in the Australian context. See for example: Irene Watson and Michelle Burns “Indigenous knowledges: a strategy for first nations peoples engagement in higher education in S Varnham, P Kamvounias & J Squelch (eds) *Higher Education and the Law* Federation Press Sydney 2015 pp41-52; Irene Watson “What is the mainstream? Laws of First Nations People” in R Levy, M O’Brien and S Rice et al (eds) *New Directions for law in Australia: Essays in contemporary law reform* Australian National University Press 2017 Canberra pp 213-220

training.<sup>51</sup> This has led to extensive consultations between Law Societies, First Nations and Universities to map and plan for implementation of these recommendations.<sup>52</sup>

In Australia, we are aware that Council of Law Deans and the Law Admissions Consultative Committee have made some minimal changes to admission requirements<sup>53</sup> but the Indigenous Cultural Competency for Legal Academics Program has captured much of the current thinking and work relevant to Australian law schools and the legal profession.<sup>54</sup> While focusing on legal academics and curriculum, the flow on effects are in relation to producing culturally capable law graduates and lawyers, not just in relation to Indigenous knowledges and laws but more broadly.

### Inter-cultural capability

Incorporating Indigenous cultural competency into curriculum leading to inter-cultural capability might be done in a number of ways and each Law School will bring its own history, culture and relationships to the way in which it undertakes curriculum review and change. At its most basic, cases and materials involving Indigenous issues and Indigenous ‘perspectives’ is one way.<sup>55</sup> However, normally it will involve significantly more than this including “the content of Indigenous legal systems and the laws and institutions which comprise them”; “Indigenous peoples’ opinions and critiques of Anglo-Australian law”; and “the way in which Anglo-Australian laws impact the rights and interests of Indigenous peoples and communities”.<sup>56</sup> At its highest this should be seen as Indigenisation of the curriculum. Major curriculum change in this context requires all students to question the normative view of western law and develop their consciousness of their place as lawyers in relation to Indigenous knowledges, laws, colonisation and pluralist legal systems. One student in our consultations expressed this idea as ‘decolonising the curriculum’.

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<sup>51</sup> *Truth and Reconciliation Commission of Canada: Calls to Action* Truth and Reconciliation Commission of Canada 2015:

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

<sup>52</sup> For example: Council of Canadian Law Deans *Summary Responses of Canadian Law Schools to the Truth and Reconciliation Commission Report 2017-18* <https://cclcd-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf>; The Canadian Bar Association *Responding to the Truth and Reconciliation Commission’s Calls to Action* 2016; Letter from the Truth and Reconciliation Commission Implementation Committee *Law Faculty University of Toronto* <https://www.law.utoronto.ca/news/letter-truth-and-reconciliation-commission-implementation-committee>

<sup>53</sup> This is discussed further below.

<sup>54</sup> Marcelle Burns, Anita Lee Hong and Asmi Wood *Indigenous Cultural Competency for Legal Academics Program: Final Report* 2019 (Australian Government Department of Education and Training).

<sup>55</sup> On the limitations of Indigenous perspectives see for example: Alexander Reilly, "Finding an Indigenous Perspective in Administrative Law" (2009) 19(2) *Legal Education Review* 271; Kate Galloway "Indigenous Contexts in the Law Curriculum: Process and Structure" (2018) 28(2) *Legal Education Review* 331-354

<sup>56</sup> Linda Te Aho and Bradford Morse *Indigenous Cultural Competency for Legal Academics Program: Final Evaluation Report* 2018

We consider that the Melbourne Law School ultimately needs to undertake a fundamental curriculum review and rewriting and this is discussed further below.

### Indigenous Cultural Competency for Legal Academics

This research project conducted by leading Indigenous legal scholars provides a wealth of material in relation to curriculum development. Encompassing both the culturally competent manner of development as well as content, the project has informed and assisted our thinking in this area. It has drawn on material from North America and New Zealand which also provide useful insights.

The term cultural competency is not universally accepted. It is used to encompass the idea of building the “capacity of legal academics to incorporate Indigenous cultural competency into their individual courses and the overall curricula”.<sup>57</sup> Other terms that have been used include cultural literacy,<sup>58</sup> or “inter-cultural capabilities, cultural responsiveness or cultural empathy”.<sup>59</sup> In Canada the terms inter-cultural competence or inter-cultural capability have been used. We have adopted the Canadian term of inter-cultural capability but as ICCLAP Final Report notes, the nomenclature is less important than the substance of the process.<sup>60</sup>

ICCLAP has provided a forum for thinking through these curriculum issues and its *Report* as well as Workshops<sup>61</sup> and scholarship arising out of its work<sup>62</sup> provides a wealth of materials that might guide the Melbourne Law School in its Curriculum reforms. It is likely that it will continue to be a focal point for this work and it would be useful for the Melbourne Law School to have a presence in its work. We note that the Senior Indigenous Fellow is an integral part of the project advisory board.

We also note Universities Australia<sup>63</sup> and the Behrendt report<sup>64</sup> strongly support the incorporation of cultural competency into University curricula and provide valuable insights into how this might be achieved.

### Requirements for curriculum reform and inter-cultural capability

Each Law School will bring its own history, culture and relationships to the way in which it undertakes curriculum review and change. The Melbourne Law School, as a graduate law school, will bring a range of considerations that are different from the majority of Australian law schools but principles of curriculum development for inter-cultural capability are consistent.

We note that the Melbourne Law School is already undertaking or planning initiatives in this regard: development of indigenous material for incorporation into compulsory subjects, offering Indigenous-themed electives in the JD and MLM, LMR exploring legal issues associated with Indigenous people and Indigenous knowledge and involving Indigenous elders in the course. We also note the recent

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<sup>57</sup> Linda Te Aho and Bradford Morse *Indigenous Cultural Competency for Legal Academics Program: Final Evaluation Report 2018*

<sup>58</sup> Kate Galloway “Indigenous Contexts in the Law Curriculum: Process and Structure” (2018) 28(2) *Legal Education Review* 331-354, 334

<sup>59</sup> Linda Te Aho and Bradford Morse *Indigenous Cultural Competency for Legal Academics Program: Final Evaluation Report 2018*, 35

<sup>60</sup> Marcelle Burns, Anita Lee Hong and Asmi Wood *Indigenous Cultural Competency for Legal Academics Program: Final Report 2019* (Australian Government Department of Education and Training)

<sup>61</sup> ICCLAP *Consultation Workshop Report 2016*.

<sup>62</sup> (2018) 28(2) *Legal Education Review*

<sup>63</sup> Universities Australia *National Best practice framework for Indigenous cultural competency in Australian Universities* Canberra Australian Government, office for Learning and Teaching 2011; Universities Australia *Indigenous Strategy 2017-2020* 2017 Canberra Universities Australia

<sup>64</sup> Larissa Behrendt *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People Final Report 2012* Australian Government

development of new internship opportunities with Indigenous organisations and the proposed Indigenous Law and Policy Clinic – both of these involving the Senior Indigenous Fellow. Our discussions revealed a need for a greater offering of subjects in the JD involving Indigenous knowledge and laws. However, there was a suggestion that indigenous law was in silos and not incorporated across the curriculum. It is telling that students reported that the subject *Comparative Indigenous Rights* was described as the best subject studied in the JD and they “learnt more about Australian Aboriginal people than in any other subject.” Comments also indicate that considering cases involving Indigenous issues such as *Kartenyeri* are not helpful when there is no engagement with the Indigenous elements of the case or the relationship of laws entwined in it.

We note the work done to develop staff awareness and skills in Indigenous curriculum development and teaching. These are all important developments which should be supported, continued and expanded. In the short term an audit of current curriculum would be a useful base for any further developments planned. This may already be done but if not the new Associate Dean position could undertake this task.

Development of community relationships that would further on country learning opportunities and work integrated learning (such as the proposed clinical subject) should be encouraged. While these relationships would ideally be Victorian based, opportunities presented by the University’s relationship with the Yothu Yindi Foundation might also be explored. The Senior Indigenous Fellow and the new Associate Dean position should be charged with this work.

Opportunities for Indigenous students to travel, either within Australia or internationally should continue to be pursued and supported.

However, curriculum that adequately addresses Indigenous knowledges and laws as well as Indigenous peoples’ lived experience of western legal systems requires substantially greater change. This involves direct dealings with issues of colonisation and its consequences including dispossession of lands, policies and impacts of social, economic and political exclusion and the role of western law in these events and consequences. To be effective, there needs to be a whole of curriculum approach which includes Indigenous knowledges and ontology, legal pluralism and the fundamental relationship of legal systems, office and responsibility. Engagement with the Indigenous community at all levels is also a crucial aspect. ICCLAP has developed a range of guiding principles.<sup>65</sup> A number of Law Schools are also engaged in the process of revising or rewriting curricula to embed inter-cultural capability. Charles Sturt University Law program and University of Western Australia are two very different institutions from which the Melbourne Law School might learn. UWA calls this Indigenisation of the curriculum, CSU calls it embedding cultural competence. The University of Western Australia perhaps provides the most suitable model given that it is exclusively a graduate law qualification but the innovative work of other Law Schools should also be considered and adapted to the Melbourne Law School environment.

We consider that the Melbourne Law School needs a full curriculum revision that recognises the relationship between two legal systems and embeds inter-cultural capability. We suggest the language of Indigenisation of the Curriculum. The manner in which this is undertaken will be crucial to both its success and the reputation of the Melbourne Law School but needs to include senior Indigenous scholars, Indigenous lawyers, community members as well as senior members of the

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<sup>65</sup> Marcelle Burns, Anita Lee Hong and Asmi Wood *Indigenous Cultural Competency for Legal Academics Program: Final Report 2019* (Australian Government Department of Education and Training) 20 and 21

legal profession. It is the conduct of the relationship that underpins change that is most important. We have recommended that the task be undertaken by a Curriculum Commission however titled.

In the meantime, work on curriculum, organisation and delivery should continue, led by the Senior Indigenous Fellow in conjunction with the newly created Associate Dean position. One possibility is to model process, method and content to develop a first-year Indigenous law/legal traditions unit. This would be a compulsory unit. A number of Canadian Law Schools, for example the University of Windsor Law School have taken this approach. In the alternative or in addition consideration might also be given to a capstone subject around Indigenous Knowledge and Laws. Perhaps a particular subject, for example Principles of Public Law could be used as a trial for incorporation of Indigenous knowledges and laws in the curriculum.

Consideration might be given to developing a subject around Indigenous laws and perspectives that complements *Comparative Indigenous Rights*. This might include comparative Indigenous laws or focus on International law related issues such a DRIP and the Permanent Forum. The subject might be offered in a variety of formats, for example in the manner of Institutions in International Law and the Global Lawyer or in conjunction with other institutions in Canada, New Zealand or the USA. We note the new Treaty subject might be the basis for developing some of these approaches, allowing a changing curriculum but emphasising the nature and practice of the relationship of two legal systems and not just subject matter.

We note that the University's Indigenous Knowledge Institute has a role that goes beyond research. It will have resources that might support some of this extensive curriculum work and the Law School should seek to engage with the Institute in its curriculum development work.

We would encourage work on this while the broader curriculum review is established.

### Melbourne Law School Leadership

The work of ICCLAP and the responses to the Canadian Truth and Reconciliation recommendations suggest that any curriculum change must be supported by structural and institutional change to ensure that Indigenous knowledges and laws are core to the law curriculum rather than tangential. They and the Universities Australia reports indicate that any process should be both bottom up and top down. There is a need for leadership within the Melbourne Law School and beyond.

As the leading University law school and a public institution with civic obligations, the Melbourne Law School has a crucial leadership role (and obligation) in this sphere. Taking leadership in this way will signal that the Melbourne Law School understands and takes its obligations seriously. Leaders in Indigenous Medical Education (LIME) is an example of leadership in developing a nationwide community of practice in curriculum development and beyond in the medical sphere. This might be a model for the Melbourne Law School here. The Melbourne Law School might seek to involve alumni in this process.

We recommend that the Melbourne Law School adopt and apply Universities Australia goals for cultural competency in Australian Universities.

Within the Melbourne Law School all JD course and subject goals, objectives and outcomes should be reviewed to ensure that they incorporate inter-cultural capability as an outcome. At a University level the Melbourne Law School should ensure that inter-cultural capability is a Graduate attribute and develop a strategy for achieving it if this is not already underway. These measures will underpin curriculum change so inter-cultural capability is a core requirement rather than an option or tangential to the teaching and learning environment.

Beyond the Law School and the University, the Law School, through the Dean, should work with CALD and other institutions to develop mandated inter-cultural capability criteria as a legal accreditation standard for Australian law courses. We understand that CALD already has a committee addressing this issue. An accreditation standard underpinning inter-cultural capability in the JD curriculum will ensure that it is central to curriculum development and teaching and learning.

At a broader level we consider that inter-cultural capability is a desirable attribute for all lawyers. Therefore, we recommend that the Melbourne Law School work with CALD, the Law Admissions Consultative Committee and relevant admission authorities under the Legal Profession Uniform Law<sup>66</sup> and the broader legal profession such as industry bodies (the Law Council of Australia and Law Societies), Judges and Indigenous lawyers and lawyers associations to mandate inter-cultural capability in the Priestley 11.<sup>67</sup>

We note that the Law Admissions Consultative Committee has been revising the Priestley 11.<sup>68</sup> We note the focus on Teaching and Learning Outcomes in the requirements for accreditation of law courses.<sup>69</sup> These outcomes could be expanded to include the requirement of inter-cultural capability, embedding inter-cultural capability into admission requirements. The next step would be to then extend inter-cultural capability into the broader legal profession through professional standards and continuing professional development. A project incorporating these principles is underway in Canada as a response to the Truth and Reconciliation Commission. (See Canada Model Code for of Professional Conduct). The Melbourne Law School can take a leadership role in this change.

The Law Admissions Consultative Committee has developed new descriptions of subject matter and the subjects Constitutional Law and Property include references to Indigenous Australians:

#### Constitutional Law

“(a) the broad theoretical basis, and the social and historical context, of Australian constitutional law, including the relationship between Aboriginal and Torres Strait Islander peoples and the Australian constitutions”<sup>70</sup>

#### Property

“(b) the principles of Indigenous Australian law that form the basis of Aboriginal and Torres Strait Islander claims to land”<sup>71</sup>

The goal should be to expand this into other subject areas. We note that the Law School has made significant submissions to the Law Admissions Consultative Committee in relation to the Priestley 11 and this work could be built on in relation to teaching and learning outcomes. As an alternative, consideration might be given to dealing with Indigenous content in a similar way to statutory interpretation, namely that there is a requirement across the course and each institution must establish that it is included in its curriculum.

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<sup>66</sup> *Legal Profession Uniform Law application Act 2014 (Vic)* and equivalents in other jurisdictions

<sup>67</sup> This is a recommendation of the ICCLAP Report

<sup>68</sup> Law Admissions Consultative Committee *Redrafting The Academic Requirements for Admission 2019*

<sup>69</sup> *ibid* 1; Attachment D

<sup>70</sup> *ibid* 8

<sup>71</sup> *ibid* 9

## Administrative arrangements

In both the short and long term, the Melbourne Law School needs to have administrative procedures in place to ensure adequate compliance with curriculum changes as well as staff training and commitment.

This overseeing/monitoring could be a role for the recently created Associate Dean position in conjunction with the relevant JD Director.

A further important administrative element is ensuring that curriculum development work, community engagement and training are adequately valued, for example by embedding them into the staff Performance Development Framework and promotion processes.

The goal of the following recommendations is to ensure that the curriculum embeds indigenous knowledges, laws, experiences and perspectives and broadens approaches to legal pluralism with a view to ensuring that “Indigenous students can see themselves reflected in their education”<sup>72</sup> and developing inter-cultural capability of staff and graduates.

## Recommendations:

4.1 Actively promote curriculum change and inter-cultural capability at the Melbourne Law School, the University and in the broader profession:

- adopt and apply Universities Australia goals for cultural competency in Australian Universities
- ensure that JD course and subject goals, objectives and outcomes incorporate inter-cultural capability as an outcome
- Ensure that inter-cultural capability is a Graduate attribute and develop a strategy for achieving it
- Lead the work with CALD and Law Admissions Consultative Committee to mandate inter-cultural capability as a legal accreditation standard for Australian law courses
- Lead the work with CALD and Law Admissions Consultative Committee to further develop Priestley 11 subject descriptions to include appropriate references to Indigenous knowledges, laws and experiences
- Lead the work with CALD, relevant admission authorities under the Legal Profession Uniform Law<sup>73</sup> and the broader legal profession such as industry bodies (the Law Council of Australia and Law Societies), Judges and Indigenous lawyers and lawyers associations to mandate inter-cultural capability in the Priestley 11
- Work with the broader legal profession to embed inter-cultural capability into the Model Admission Rules for Legal Practitioners, professional standards and continuing professional development. (See Canada Model Code for of Professional Conduct)

4.2 Short term activities:

- Review subject outcomes to ensure intercultural capability is an identified outcome.
- Continue the work undertaken by Kirsty Gover and Olivia Barr to provide curriculum material for incorporation into all compulsory subjects

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<sup>72</sup> Nicole Watson, ‘Indigenous People in Legal Education: Staring into a Mirror without Reflection’ (2005) 6(8) *Indigenous Law Bulletin* 4

<sup>73</sup> *Legal profession Uniform Law application Act 2014 (Vic)* and equivalents in other jurisdictions

- Identify electives in which Indigenous knowledges, laws and perspectives might be incorporated and provide support for that curriculum work
- Provide oversight of Reading Guides (particularly in compulsory subjects) to ensure that any changes are monitored and that the material remains in the curriculum. This might form part of the Associate Dean role in conjunction with the relevant JD Director.
- Link with University and community resources for training for teaching staff in the area of Indigenous curriculum and inter-cultural capability.
- Encourage and reward curriculum innovation and include curriculum development, undertaking the staff development and training in Performance Development Framework according to a value commensurate with the importance of the work
- Link with Alumni, Indigenous lawyers and Community in developing and teaching Indigenous related curriculum including on country curriculum
- Increase the subject offering of Indigenous related subjects in the JD and LLM and ensure that Indigenous students can enrol
- Investigate flexible learning and teaching modes in elective subjects including placements in relevant Indigenous organisations (in addition to the Legal Internships)
- Consider a compulsory First year subject on Indigenous Legal Traditions and/or a capstone subject incorporating Indigenous Knowledges and laws.
- Consider developing a subject around Indigenous laws and perspectives that complements *Comparative Indigenous Rights*. This might include comparative Indigenous laws or focus on International law related issues such as DRIP and the Permanent Forum. The subject might be offered in a variety of formats, for example in the manner of Institutions in International Law and the Global Lawyer or in conjunction with other institutions in Canada, New Zealand or the USA.
- Encourage and facilitate students, especially Indigenous students, to undertake exchanges to Institutions with strong Indigenous programs
- Develop a data base of best practice Indigenous curriculum from Australian and international law schools to assist both short and long term Curriculum development
- Establish a relationship with the Indigenous Knowledge Institute to support curriculum change and development both in the short and long term.

#### 4.3 Longer term activities

- Establish a Curriculum Commission to review all aspects of the JD curriculum and to rewrite the curriculum to acknowledge the obligations in the meeting of two legal systems and embed Indigenous knowledges, laws and perspectives (UWA calls this Indigenisation of the curriculum, CSU calls it embedding cultural competence – clarification of purpose is critical, and we recommend consideration of the language of Indigenisation).
- The composition and structure of the Commission is a matter for the Melbourne Law School and there are models in Australia and elsewhere to be drawn on. However we suggest the following as a starting point:
  - The Commission consist of an Advisory Board including senior indigenous legal scholars, indigenous and non-indigenous representatives of the legal profession, indigenous community and relevant community organisation representatives, experienced indigenous curriculum scholar/s, Indigenous and non-indigenous Melbourne Law School staff, and the Dean.
  - Dedicated staff, including Indigenous legal staff to undertake the work for the Commission

- In conjunction with the Advisory Board develop a strategy of consultation with students, including Indigenous students, Melbourne Law School academic staff, including Indigenous staff, indigenous lawyers, communities and community organisations

## 5. RECRUITING INDIGENOUS ACADEMICS

The presence of Indigenous scholars at the Melbourne Law School is fundamental to achieving goals and objectives across all areas of Melbourne Law School activity. Therefore this is also a first order priority. All our discussions confirm that it is this that attracts students and a critical mass of Indigenous scholars at all levels to a Law School.

We recognise there is a small pool of senior legal scholars from which the Melbourne Law School might recruit<sup>74</sup> and therefore the Melbourne Law School needs to develop a strategy that addresses the absence of Indigenous staff in the short term as well as a strategy to recruit more senior staff to lead its Indigenous programs and relationships. These relationships include the Melbourne Law School and its staff, the University, Indigenous scholars and students across the University and indigenous communities and organisations.

We consider that there are some key considerations in recruitment in both the short and long term. Twin strategies are required to recruit in the short and longer term and to focus on both junior and senior scholars. The strategy should include identifying and supporting Indigenous JD and MLM students as prospective doctoral students and staff. The strategies and processes need to be flexible to respond to any opportunities for recruitment that might arise.

Employment of the Senior Indigenous Fellow has been an important step in bringing Indigenous people into the law school. As an experienced lawyer and senior Indigenous man, the Fellow has created important connections with the community leading to initiatives in curriculum, advice on a range of issues for staff and important mentoring and support for JD students. His continued employment is crucial for the Melbourne Law School's next steps in relation to its Indigenous programs. It is also a good example of the flexibility required in recruitment.

In developing strategies for recruitment we suggest the Melbourne Law School establish a working group chaired by the Dean and substantially run through the new Associate Dean position. The group should include Indigenous lawyers and perhaps a senior scholar from elsewhere. The Melbourne Law School might draw on the experience of some senior Indigenous scholars in other Faculties at the University for the Working group, for example Professor Sandra Eades from Medicine. Consideration should be given to community representation or at the least consultation about the work of the group. The establishment of the group would signal the Melbourne Law School's seriousness in relation to recruitment but should not be the only steps taken. One on one recruitment discussions should continue where possible.

The Melbourne Law School should develop clear goals in a Performance Development Framework for prospective Indigenous staff including leadership, workload, support, and remuneration for senior and junior academics and ensure that appropriate value is given to Indigenous obligations and leadership in both the level of appointment, Performance Development Framework and promotion.<sup>75</sup> Our consultations indicate that scholars should not be overburdened with tasks that prevent focus on areas of work identified by them as of primary importance. This could then be the basis of negotiation with prospective staff.

A critical mass of staff is important whether a senior and junior scholar or some other mix.<sup>76</sup> The Melbourne Law School should establish a goal of at least two staff members initially with a strategy

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<sup>74</sup> Harry Hobbs and George Williams "The Participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42(4) *University of New South Wales Law Journal* (forthcoming) pp29-30, 32

<sup>75</sup> We note Ruru strongly endorses this approach.

<sup>76</sup> We note Ruru identifies the need for more than one staff member.

for increasing the number. Our consultations have identified Medicine as providing a model: Professor Eades provides senior leadership and enables other academic and professional staff to undertake their work. In particular here we note the importance of also recruiting Indigenous professional staff, a need also identified by Ruru. We consider that the development of the proposed Research Centre would also benefit from having a number of staff.

The Melbourne Law School should identify possible doctoral students/academics in the JD and develop packages to support them through post-doctoral studies and early years of employment. There may be a tension here as potential doctoral students will be attracted to Universities that have strong reputations and leadership in Indigenous scholarship. Packages should ensure flexibility in work load allocation to enhance doctoral success where Ph Ds are undertaken at the Melbourne Law School including both workload and financial support.

Financial support should be sufficient to ensure students can undertake their study without financial strain and also sufficient to match financial support offered elsewhere. Therefore the Melbourne Law School should develop a generous doctoral scholarship and support program and target indigenous lawyers and early career scholars across the country. We note that the Melbourne Law School has one dedicated Ph D scholarship per year, and APA Top up of \$10,000 for a graduate researcher. Our consultations suggest that this amount might need to be increased in consideration of the financial support offered by other institutions. We emphasise the need for flexibility in relation to support offered, especially where the candidate is mature aged perhaps with a range of family responsibilities. We note the early career Academic Fellowships which might also be useful as a bridge between work and study. We are aware of discussions with Graduate House in relation to housing for JD and higher degree students and this initiative should be pursued although it will not suit everyone. We add that the mantra 'tailored program for success' has been a useful guiding principle in the recruitment of PhD candidates through the Poche Centre, MDHS.

The availability of supervision by Indigenous scholars can be an important element in choice of institution for doctoral study. In the absence of indigenous academics the Melbourne Law School should establish partnerships with scholars in Australia and elsewhere to ensure Indigenous co-supervision of doctoral students is available. Funds may be required to ensure this is possible. In this regard and generally the possibility of offering joint Doctorates with comparable Universities in Canada (especially UBC and University of Victoria), New Zealand and the US should be explored. We understand that some work on this in other disciplines has been discussed and this should be built on by the Melbourne Law School.

Identify Indigenous lawyers and Indigenous scholars in law and other relevant disciplines for short term appointment/fellowships. This might be very valuable in conjunction with the Elder in residence program. The Melbourne Law School should also consider participating in the Jawun Development program (or similar program) which is supported by the University's Reconciliation Action Plan 2018-2022. Building these relationships may open up opportunities for engaging with potential doctoral students and scholars associated with Indigenous organisations. Participation in other initiatives such as the Goulburn Valley partnership and the Yothu Yindi Foundation partnership should also be encouraged. These relationships might form the basis of 'on-country' learning in the JD or staff development and training.

Our consultations indicate that the possibility of mentoring by senior Indigenous scholars attracts potential students at all levels to other institutions. The Melbourne Law School should establish a mentoring program of young scholars by senior staff and Indigenous academics from elsewhere. In this (and other) contexts the Visiting Indigenous Scholar program should be continued and regarded

as a high priority. Both international and local indigenous scholars should be encouraged to participate, including non-legal Indigenous scholars. The administration of the program should ensure flexibility about length of the residency and to ensure a regular flow of scholars.

We have consulted on and considered the possibility of recruiting a senior Indigenous scholar from outside Australia. We do not think this is an appropriate course if it is seen as a substitute for Australian Indigenous scholars. However, we consider the continuation and expansion of the Indigenous Scholar in Residence program is a more suitable way to harness this expertise as outlined above. A senior Indigenous scholar in residence who was a visitor for an extended period might be appropriate.

## Recommendations

- 5.1 Establish a working group to conduct search and discussions
- 5.2 Develop a strategy for employment involving clear goals in a Performance Development Framework including leadership, workload, support, and remuneration for senior and junior academics and ensure that appropriate value is given to Indigenous obligations and leadership in both the level of appointment, Performance Development Framework and promotion. Use this as a basis for targeted discussions with potential Indigenous academics.
- 5.3 Establish a goal of at least two staff members initially with a strategy for increasing the number.
- 5.4 Develop a strategy for employing Indigenous professional staff
- 5.5 Identify possible doctoral students/academics in JD and develop packages to support them through post-doctoral studies and early years of employment. Ensure flexibility in work load allocation to enhance doctoral success
- 5.6 Develop a generous doctoral scholarship and support program and target indigenous lawyers and early career scholars across the country. We note the dedicated Ph D scholarship each year and the APA Top up of \$10,000. We recommend that this top up be increased so that it is commensurate with financial support offered at other institutions. The early career Academic Fellowships should be maintained.
- 5.7 In the absence of indigenous academics establish partnerships to ensure Indigenous co-supervision of doctoral students.
- 5.8 Explore joint Doctorates with comparable Universities in Canada (especially UBC and University of Victoria), New Zealand and the US.
- 5.9 Identify Indigenous lawyers and Indigenous scholars in law and other relevant disciplines for short term appointment/fellowships. This might be very valuable in conjunction with the Elder in residence program. Consider participating in the Jawun Development program (or similar program) supported by the University's Reconciliation Action Plan 2018-2022.
- 5.10 Establish a mentoring program of young scholars by senior staff and Indigenous academics from elsewhere if required. In this (and other) contexts continue the Visiting Indigenous Scholar program as a high priority and encourage both international and local indigenous scholars to participate. Ensure flexibility in the program including non-legal Indigenous scholars.

## 6. SUPPORT AND COMMUNICATE RESEARCH

Major progress in relation to research is dependent upon the presence of a body of Indigenous scholars at the Melbourne Law School. These scholars might be both academic staff or visitors under various programs or projects. While they add to the body of research undertaken at the Melbourne Law School, they also provide opportunities for joint projects, the benefits of which are to both increase indigenous related research but more importantly to ground it in indigenous ontologies and control. Appropriate value needs to be given to the involvement of Indigenous researchers and communities in projects and to the work of non-indigenous researchers engaged in these research partnerships. Research partnerships enable the modelling of appropriate indigenous/non-Indigenous law relationships of respect. The Law School should aim to model best practice for research and this may involve some adjustment in the way it operates for example in relation to timing and the costs involved in developing and implementing research relationships. This reflects the fundamental change in the approach the Melbourne Law School needs to its relationship with Indigenous peoples, knowledges and law.

To facilitate this work the Melbourne Law School might consider increasing the funds available for indigenous related research, particularly involving indigenous researchers and communities, either as direct participants or as advisers. Having regard to the overall level of Indigenous related research, consideration might be given to prioritising Indigenous research projects from time to time when distributing its internal research funds or supporting applications for University funds. When Indigenous academic staff are recruited, consideration might be given to providing a specific research budget for Indigenous staff over and above (not instead of) other Melbourne Law School research opportunities.

Another mechanism for expanding research is to establish specific fellowships for Indigenous researchers. We note that Auckland Law School has a program of Fellowships: New Zealand Rutherford scholarships – a year long fellowship to investigate a specific issue. These could be used to attract scholars from other Universities, lawyers and people working in industry, government or community organisations to undertake research, ideally in conjunction with the Melbourne Law School researchers. Funds would need to be raised to support the fellowships but it would enable those who, for a variety of reasons are not in a position to undertake a Ph D to bring their expertise to the Melbourne Law School and contribute to its Indigenous research output. We note and encourage the expansion of the Indigenous Research Scholar in Residence Scheme and recruitment of Indigenous researchers under the early career Academic Fellowship scheme.

The Melbourne Law School already undertakes a wide range of indigenous related research, some in conjunction with Indigenous scholars and communities. It is also engaged in research associated projects, providing advice or research to communities and organisations. Little of this research is publicised or known. This contributes to the negative public perception of the Melbourne Law School. There needs to be a process for the collection of Indigenous related research or community based work that can be readily accessed via the website. This would include research and engagement activities and possibly internship, clerkship and clinical work in the JD or MLM as well as doctoral work. All research undertaken, including policy advice and submissions should be included on SSRN (as other law schools do). The new Associate Dean position could be responsible for this (perhaps in conjunction with the research office). This would help to increase the Melbourne Law School profile in relation to Indigenous research.

Consistent with but in addition to this idea, it has been suggested that the Law School could establish a Public Policy Clearinghouse on Indigenous Issues. This could be a public facing resource which could be both web-based and subscriber-based. There are many examples of these services.

One is the Protecting Knowledge clearinghouse that operates on email subscription. AIATSIS has a subscription based clearinghouse service in relation to native title issues but not broader public policy issues. This could also be established almost immediately.

The research website should also highlight the detailed requirements for the conduct of ethical research in relation to Indigenous peoples, knowledges and laws as an indicator of the Law School's understanding of the relationship between it as a scholarly institution and Indigenous peoples. This could be done through a link to the Australian Institute of Aboriginal and Torres Strait Islander Studies Research Ethics page.<sup>77</sup>

### Indigenous Research Centre

In the longer term, in consultation with Indigenous Communities and scholars, the Melbourne Law School should investigate establishing an Indigenous controlled and managed research centre. The Indigenous Law Research Unit at the University of Victoria, Canada provides one model for such a Centre. The Centre includes a focal point for research, consultancy, policy and advice work for communities with student involvement in this work. Jumbunna at UTS and the National Centre for Indigenous Studies at ANU are other examples. The Indigenous Law Research Unit at the University of Victoria is part of the Law School whereas the UTS and ANU Centres are University Centres. Although under the umbrella of the Melbourne Law School the Centre would be linked to broader University initiatives especially the Indigenous Knowledge Institute and other Indigenous Centres for example the Research Unit for Indigenous Language.

In establishing the Research Centre the Melbourne Law School should seek to model the relationship between two laws, including committing to principles of Indigenous self-determination in the establishment, conduct, management and work of the centre. For this reason, the Centre can only be established and led by Indigenous legal scholars at the Melbourne Law School. The detail of the Centre and its operation would be negotiated around the appointment of the Indigenous Director who would lead subsequent negotiations around establishment, management and agenda with Indigenous Communities, legal scholars and students.

The Centre should be established based on principles of Indigenous self-determination in management and control, under the Melbourne Law School umbrella but with independence consistent with Indigenous management and control. All Melbourne Law School Indigenous related research would be conducted through the Centre in consultation or jointly with other Melbourne Law School Research Centres. The Centre would undertake joint research across the University and other Institutions, consultancies and outward facing activities. It would be a site for Law School expertise across a range of fields of law. As with the University of Victoria Centre it would provide a site for advice and research for communities with direct student involvement.

Our consultations suggest that the existence of research centres (for example at UTS and ANU) led by leading Indigenous scholars is important in attracting Indigenous students and scholars at all levels.

The Centre could also provide the site for links with similar Research Units in Canada, US and New Zealand and possibly in Australia, facilitating exchanges, joint academic programs including doctoral

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<sup>77</sup> <https://aiatsis.gov.au/research/ethical-research>

programs and joint research programs. The University has had discussions with the University of Victoria, Canada and these could be pursued by the Melbourne Law School in conjunction with the University agenda.

Further, there would need to be a negotiated relationship with the University's Indigenous Knowledge Institute. However, this should be seen as providing opportunities for inter-disciplinary research and other joint programs.

In establishing the Research Centre the Melbourne Law School should seek to model the relationship between two laws, including committing to principles of Indigenous self-determination in the establishment, conduct, management and work of the centre.

## Recommendations

6.1 While major progress in this field is dependant upon a body of Indigenous staff, there are some initiatives that might be commenced in the short term:

- Provide an internal clearinghouse for Indigenous related research, policy work, teaching and learning and give Indigenous related research some prominence on the website
- Establish a public policy clearinghouse as both a web-based and email subscription-based service.
- Highlight visitors and facilitate joint research projects by providing resources in kind or directly,
- Establish specific Fellowships for Indigenous scholars
- Encourage and fund research projects that include Indigenous researchers at the University of Melbourne or other institutions
- Encourage and fund research relationships with Indigenous communities
- Ensure engagement and public value is adequately rewarded in the Performance Development Framework and promotion process

6.2 In the longer term, in consultation with the Indigenous Communities and scholars, establish an Indigenous controlled and managed research centre.

- Negotiate the establishment, management and agenda with Indigenous Communities, legal scholars. Indigenous staff required to lead these negotiations.
- Establish the Centre based on principles of Indigenous self-determination in management and control
- Establish the Centre under the Melbourne Law School umbrella but have independence consistent with Indigenous management and control.
- All the Melbourne Law School Indigenous related research would be conducted through the Centre in consultation and/or jointly with Melbourne Law School Research Centres. This would involve joint research, consultancies and outward facing activities
- Establish links to similar Research Units in Canada, US and New Zealand and possibly in Australia facilitating exchanges, joint academic programs including doctoral programs.
- Establish links to broader University initiatives including the Indigenous Knowledge Institute

## 7. ALUMNI

A greater engagement with Alumni may have a number of benefits for the Melbourne Law School and Indigenous students as Alumni provide important role models for students as well as providing important links between the Melbourne Law School and indigenous communities including legal communities. Therefore, the Melbourne Law School should consciously foster on-going relationships with Alumni

We understand that some Alumni have been involved in meetings and events with JD students recently and this contact should be encouraged. The Melbourne Law School should be proactive in maintaining relationships with their Alumni and calling on their expertise. The Melbourne Law School has a list of alumni. This should be checked and updated in a separate database. The Senior Indigenous Fellow and the new Associate Dean could work together to establish and maintain contacts.

Development of a program of events for Alumni that brings them into the Law School and engaging with JD students should be a priority. This could have a positive impact on JD students developing their career options as they see the wide range of activities that a law degree can lead to. Activities might include lectures by Alumni, informal events involving alumni and students and more formal events such as workshops, lectures, seminars and events around topical issues such as the Victorian Treaty process, the Uluru Statement and Constitutional Recognition.

Contact with Alumni might also raise possibilities for involvements in MLM study or teaching or taking up Indigenous Fellowships. The Senior Indigenous Fellow and Associate Dean might encourage staff to involve themselves with Alumni in teaching. It will also provide the Melbourne Law School with an opportunity to involve Alumni in some of the processes arising out of this report such as advisory bodies on curriculum development, as well as providing clinical placements, internships and clerkships.

Engagement with Alumni could allow for the development of Alumni profiles that can be used by the Melbourne Law School to tell its story in relation to Indigenous students with flow on benefits for recruitment. Negotiations in relation to stories, career, experience of law and of the Melbourne Law School could flesh out the Melbourne Law School story. This should only occur in the broader context of engagement in other activities.

### Recommendations

- 7.1 Update details of Alumni and contact them with proposals for engagement
- 7.2 Develop events that bring Alumni to the building as participants or attendees, especially events involving students such as guest lectures, seminars and workshops on topical issues such as Constitutional Recognition or the Victorian Treaty Process
- 7.3 Provide opportunities for regular involvement in teaching, research activities, advisory bodies and policy work being undertaken by Melbourne Law School academics in relation to topical issues
- 7.4 Negotiate with Alumni to develop profiles for inclusion on the website, photos in the building and in publications
- 7.5 Negotiate with Alumni in relation to mentoring students, providing clerkships and internships

## 8. RELATIONSHIPS, REVENUE AND ADVANCEMENT

Many of the recommendations in this report, although not all, may involve additional expenditure for the Law School. We do not want to make specific recommendations in relation to funding but rather indicate some approaches that might be taken.

We note that Advancement is the obvious site for fund raising but we do not think funding approaches should focus entirely on Advancement. To make any fundraising effective the Law School should develop narratives around change, activity and success. These should be done in partnership with Indigenous scholars and students and in accordance with appropriate protocols. However, the Law School approach and narrative might be focussed on both specific proposals and broader forward looking and aspirational goals rather in the manner of the Poche Centre in scope.

The focus of specific narratives for example might include a sponsored Chair in Indigenous Law which could be developed in conjunction with a recruitment strategy and funds to support the proposed Research Centre.

The Law School should also seek to use complementary resources. This involves optimising existing relationships and place based partnerships such as with the Yothu Yindi Foundation and the Goulburn Valley in all its activities including curriculum, on country learning, research and policy work. This might also attract co-investment from the University through Chancellery, the Indigenous Knowledge Institute and other University programs.

There is scope to develop in kind contributions. For example, the suggestion that Indigenous students be linked with law firms undertaking substantial work for Indigenous communities and organisations to provide mentoring, internships and clerkships. These would preferably be paid and might last for the life of the students' JD course or be short term.

We are mindful that many of our recommendations are long term. While the Law School will develop a long term strategy to achieve its goals, we see significant scope for change in the shorter term and therefore our recommendations are focused on both long term change and short term objectives.

## RECOMMENDATIONS

### 2. Recruitment and pathways

- 2.1 Develop a strategy for publicising what makes the Melbourne Law School a place for Indigenous students
- 2.2 Better publicise the work by and with Indigenous researchers and communities including policy and scholarly work
- 2.3 Identify pathways for prospective JD students to employment or to research/academic career paths
- 2.4 Establish an Indigenous Law and Research Centre as a focus (see Research recommendations)
- 2.5 Increase Melbourne Law School visibility with undergraduate students:
  - Target undergraduate students with tailored events around law
  - Increase the presence of Indigenous people, law and activities in the Law Building through Indigenous related events and publicising these across the Indigenous undergraduate student cohort and in the community
  - Develop greater law offerings in the undergraduate program that give visibility of law academics and bring students into the Law building
  - Be involved in schools and the community where student recruitment is discussed. We note the need and importance for Indigenous staff to undertake these tasks
  - Engage with Indigenous students at Colleges and in the BA and BSc Extension programs and build relationships with Murrup Barak
- 2.6 Identify target groups from outside the University of Melbourne: for example in Indigenous organisations, by age, geographic location, employment and devise a strategy for tailoring support packages to attract prospective students
- 2.7 Develop the Scholarship program (including quantum and administration) so that
  - the value of scholarships increase to at least \$10,000 per annum for all students
  - that funds flow from January – ensuring that this occurs for all students and is managed so that there are no unintended consequences for other income support sources
  - Scholarship support is for the life of the course and this should be known and clear from commencement.
  - additional funding for students to support travel, exchanges, clerkships and internships.
  - aim to fund every student to attend the National Indigenous Legal Conference at least once.
  - further fund raising for scholarships may be necessary, especially if student numbers increase
  - publicise the availability of scholarship support and CSP places on the Law School JD recruitment website
- 2.8 As the curriculum process develops publicise both the process of curriculum development, content and teaching incorporating Indigenous knowledges and law, Indigenous perspectives and critiques of law
- 2.9 Identify pathways for Doctoral studies and academic careers for Indigenous law graduates
- 2.10 Develop Alumni relationship with biographies and experiences of the Melbourne Law School
- 2.11 Create a dedicated webpage for Indigenous student recruitment with information about entry, scholarships, support and specific programs for Indigenous law students such as mentoring, internships, community based legal work, etc. Ensure that the webpage is easy to locate and is linked to both the Reconciliation page and the JD Entry page.
- 2.12 Consider a dedicated role/s for recruitment encompassing relationships with Murrup Barak, undergraduate and pathways program, work with communities, publicity, LSAT support,

linking Melbourne Law School activities with prospective students and undergraduates, organising events to bring prospective students into the Law building, involving Alumni in these activities. We note the need and importance for Indigenous staff to undertake some or all of these tasks.

- 2.13 Consider establishing a small working group to review the current selection criteria and its impact on recruitment and explore any alternatives that might increase the number of applicants while ensuring appropriate assessment of capacity to successfully complete the JD so that retention and completion are not affected.

#### *LLM and Ph D Recruitment and Pathways*

- 2.14 Join with University/other Faculty events for potential doctoral students. In particular, as indicated in the 2019-2022 Plan, continue to partner with the Poche Centre on information and familiarisation programs
- 2.15 Recruit and support mature aged professionals for specific LLM courses and provide financial support for study
- 2.16 Consider joining with other Faculties, especially Medicine, in designing specific cross disciplinary Masters subjects.
- 2.17 Explore continuing professional development and on-site delivery of courses for Indigenous organisations.
- 2.18 In relation to Melbourne Law Masters:
  - if permitted, offer Commonwealth Supported Places for Masters' courses or single subjects;
  - develop a financial strategy that allows significant or full fee remission for Masters' courses or single subjects for Indigenous students;
  - enable graduate diplomas for those with and without a law degree;
  - develop course rules that provide greater flexibility for participation of students without a law degree; develop more exit points for single and multiple subject enrolments; and develop joint subjects with other Faculties aimed at Indigenous students.
- 2.19 See also the recommendations under Research and Staff Recruitment.

### **3. Student Support and Aspirations**

- 3.1 Retain the substance of the objectives, structure and activities of the Indigenous Studies Community Project
- 3.2 Continue to provide structured academic support through the Legal Skills Unit, perhaps developing later year students as tutors and learning community leaders
- 3.3 Develop mechanisms that build a sense of community among Indigenous JD students including mentoring of early year students, links into support and well-being services, assistance with paid work opportunities as well career related activities such as work placements including the availability of paid research work
- 3.4 Pastoral and personal support and academic skills should be separated.
- 3.5 Use the Assistant Dean as a senior person to manage relationships with Murrup Barak, academic and professional staff on matters relating to Indigenous students but also consider coordinating and coordinated roles for the Associate Dean and Senior Indigenous Fellow.
- 3.6 The Assistant Dean to continue as the first contact on well-being until a further appointment is made.
- 3.7 The Assistant Dean should continue to manage academic issues such as early contact with new students, course planning, organising ITAS tutors with Murrup Barak ensure that attention is given to putting students in the same/suitable subject streams where appropriate.
- 3.8 Clarify the roles of the Assistant Dean, Associate Dean and Senior Indigenous Fellow in relation to enrichment, the integrated learning team and extra-curricular activities for students.

- 3.9 Develop activities that bring the student group together especially integrating students into the group from the start of their course but also including
- holding regular events with students/alumni/staff throughout the semester
  - providing a dedicated space in the building for students
  - ensuring flexibility in both course planning and management of student needs eg class recordings,
  - ensuring adequate dissemination of information
- 3.10 Develop a co-ordinating framework for tasks involving the Associate Dean, the Assistant Dean and the Senior Indigenous Fellow and the JD Course Directors across all Law School activities
- 3.11 Work towards building the Indigenous workforce along the model in Medicine led by Professor Sandra Eades supported by well qualified more junior Indigenous professional (and academic) staff to work in support, recruitment and related areas.
- 3.12 Develop on-going links with Murrup Barak
- 3.13 Develop specific mentoring program, more alternatives to corporate clerkships, consider a scheme for payment for clerkships, expanding community and profession links, especially through an Alumni network and links with legal firms undertaking work for Indigenous Communities.
- 3.14 Encourage greater engagement with recent graduates, both indigenous and non-indigenous including informal events such as lunches or dinners, workshops, a mentoring program with recent graduates as well as more senior lawyers (both Indigenous and non-Indigenous) and pathways into legal and non-legal organisations as well as research opportunities.
- 3.15 Encourage Alumni to be involved with students as well as other activities at the Law School
- 3.16 Develop mechanisms to ensure that students are employed as Research Assistants
- 3.17 Involve students in Law School initiatives such as curriculum review and ensure payment for this work.
- 3.18 Encourage involvement in the Visiting Indigenous Scholar and Elder in Residence programs.
- 3.19 Encourage interconnectedness between the Melbourne Law School and other institutions in New Zealand, Canada and other Australian Universities

#### 4. Curriculum

- 4.1 Actively promote curriculum change and inter-cultural capability at the Melbourne Law School, the University and in the broader profession:
- adopt and apply Universities Australia goals for cultural competency in Australian Universities
  - ensure that JD course and subject goals, objectives and outcomes incorporate inter-cultural capability as an outcome
  - Ensure that inter-cultural capability is a Graduate attribute and develop a strategy for achieving it
  - Lead the work with CALD and Law Admissions Consultative Committee to mandate inter-cultural capability as a legal accreditation standard for Australian law courses
  - Lead the work with CALD and Law Admissions Consultative Committee to further develop Priestley 11 subject descriptions to include appropriate references to Indigenous knowledges, laws and experiences
  - Lead the work with CALD, relevant admission authorities under the Legal Profession Uniform Law<sup>78</sup> and the broader legal profession such as industry bodies (the Law Council of Australia and Law Societies), Judges and Indigenous lawyers and lawyers associations to mandate inter-cultural capability in the Priestley 11

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<sup>78</sup> *Legal profession Uniform Law application Act 2014 (Vic)* and equivalents in other jurisdictions

- Work with the broader legal profession to embed inter-cultural capability into the Model Admission Rules for Legal Practitioners, professional standards and continuing professional development. (See Canada Model Code for of Professional Conduct)

#### 4.2 Short term activities:

- Review subject outcomes to ensure intercultural capability is an identified outcome.
- Continue the work undertaken to provide curriculum material for incorporation into all compulsory subjects
- Identify electives in which Indigenous knowledges, laws and perspectives might be incorporated and provide support for that curriculum work
- Provide oversight of Reading Guides (particularly in compulsory subjects) to ensure that any changes are monitored and that the material remains in the curriculum. This might form part of the Associate Dean role in conjunction with the relevant JD Director.
- Link with University and community resources for training for teaching staff in the area of Indigenous curriculum and inter-cultural capability.
- Encourage and reward curriculum innovation and include curriculum development, undertaking the staff development and training in Performance Development Framework according it a value commensurate with the importance of the work
- Link with Alumni, Indigenous lawyers and Community in developing and teaching Indigenous related curriculum including on country curriculum
- Increase the subject offering of Indigenous related subjects in the JD and LLM and ensure that Indigenous students can enrol
- Investigate flexible learning and teaching modes in elective subjects including placements in relevant Indigenous organisations (in addition to the Legal Internships)
- Consider a compulsory First year subject on Indigenous Legal Traditions and/or a capstone subject incorporating Indigenous Knowledges and laws.
- Consider developing a subject around Indigenous laws and perspectives that complements *Comparative Indigenous Rights*. This might include comparative Indigenous laws or focus on International law related issues such a DRIP and the Permanent Forum. The subject might be offered in a variety of formats, for example in the manner of Institutions in International Law and the Global Lawyer or in conjunction with other institutions in Canada, New Zealand or the USA.
- Encourage and facilitate students, especially Indigenous students, to undertake exchanges to Institutions with strong Indigenous programs
- Develop a data base of best practice Indigenous curriculum from Australian and international law schools to assist both short and long term Curriculum development
- Establish a relationship with the Indigenous Knowledge Institute to support curriculum change and development both in the short and long term.

#### 4.3 Longer term activities

- Establish a Curriculum Commission to review all aspects of the JD curriculum and to rewrite the curriculum to acknowledge the obligations in the meeting of two legal systems and embed Indigenous knowledges, law and perspectives (UWA calls this Indigenisation of the curriculum, CSU calls it embedding cultural competence). Clarification of purpose is critical, and we recommend consideration of the language of Indigenisation).
- The composition and structure of the Commission is a matter for the Melbourne Law School and there are models in Australia and elsewhere to be drawn on. However we suggest the following as a starting point:

- The Commission consist of an Advisory Board including senior indigenous legal scholars, indigenous and non-indigenous representatives of the legal profession, indigenous community and relevant community organisation representatives, experienced indigenous curriculum scholar/s, Indigenous and non-indigenous Melbourne Law School staff, and the Dean.
- Dedicated staff, including Indigenous legal staff to undertake the work for the Commission
- In conjunction with the Advisory Board develop a strategy of consultation with students, including Indigenous students, Melbourne Law School academic staff, including Indigenous staff, indigenous lawyers, communities and community organisations

## 5. Recruiting Indigenous academics

- 5.1 Establish a working group to conduct search and discussions
- 5.2 Develop a strategy for employment involving clear goals in a Performance Development Framework including leadership, workload, support, and remuneration for senior and junior academics and ensure that appropriate value is given to Indigenous obligations and leadership in both the level of appointment, Performance Development Framework and promotion. Use this as a basis for targeted discussions with potential Indigenous academics.
- 5.3 Establish a goal of at least two staff members initially with a strategy for increasing the number.
- 5.4 Develop a strategy for employing Indigenous professional staff
- 5.5 Identify possible doctoral students/academics in JD and develop packages to support them through post-doctoral studies and early years of employment. Ensure flexibility in work load allocation to enhance doctoral success
- 5.6 Develop a generous doctoral scholarship and support program and target indigenous lawyers and early career scholars across the country. We note the dedicated Ph D scholarship each year and the APA Top up of \$10,000. We recommend that this top up be increased so that it is commensurate with financial support offered at other institutions. The early career Academic Fellowships should be maintained.
- 5.7 In the absence of indigenous academics establish partnerships to ensure Indigenous co-supervision of doctoral students.
- 5.8 Explore joint Doctorates with comparable Universities in Canada (especially UBC and University of Victoria), New Zealand and the US.
- 5.9 Identify Indigenous lawyers and Indigenous scholars in law and other relevant disciplines for short term appointment/fellowships. This might be very valuable in conjunction with the Elder in residence program. Consider participating in the Jawun Development program (or similar program) supported by the University's Reconciliation Action Plan 2018-2022.
- 5.10 Establish a mentoring program of young scholars by senior staff and Indigenous academics from elsewhere. In this (and other) contexts continue the Visiting Indigenous Scholar program as a high priority and encourage both international and local indigenous scholars to participate. Ensure flexibility in the program including non-legal Indigenous scholars.

## 6. Support and communicate research

- 6.1 While major progress in this field is dependant upon a body of Indigenous staff, there are some initiatives that might be commenced in the short term:

- Provide an internal clearinghouse for Indigenous related research, policy work, teaching and learning and give Indigenous related research some prominence on the website
- Establish a public policy clearinghouse as both a web-based and email subscription based service.
- Highlight visitors and facilitate joint research projects by providing resources in kind or directly,
- Establish specific Fellowships for Indigenous scholars eg Auckland - NZ Rutherford scholarships – year long fellowship to investigate a specific issues.
- Encourage and fund research projects that include Indigenous researchers at the University of Melbourne or other institutions
- Encourage and fund research relationships with Indigenous communities
- Ensure engagement and public value is adequately rewarded in the Performance Development Framework and promotion process

6.2 In the longer term, in consultation with the Indigenous Communities and scholars, establish an Indigenous controlled and managed research centre.

- Negotiate the establishment, management and agenda with Indigenous Communities and legal scholars. Indigenous staff required to lead these negotiations.
- Establish the Centre based on principles of Indigenous self-determination in management and control
- Establish the Centre under the Melbourne Law School umbrella but have independence consistent with Indigenous management and control.
- All the Melbourne Law School Indigenous related research would be conducted through the Centre in consultation and/or jointly with Melbourne Law School Research Centres. This would involve joint research, consultancies and outward facing activities
- Establish links to similar Research Units in Canada, US and New Zealand and possibly in Australia facilitating exchanges, joint academic programs including doctoral programs.
- Establish links to broader University initiatives including the Indigenous Knowledge Institute

## 7. Alumni

7.1 Update details of Alumni and contact them with proposals for engagement

7.2 Develop events that bring Alumni to the building as participants or attendees, especially events involving students such as guest lectures, seminars and workshops on topical issues such as Constitutional Recognition or the Victorian Treaty Process

7.3 Provide opportunities for regular involvement in teaching, research activities, advisory bodies and policy work being undertaken by Melbourne Law School academics in relation to topical issues

7.4 Negotiate with Alumni to develop profiles for inclusion on the website, photos in the building and in publications

7.5 Negotiate with Alumni in relation to mentoring students, providing clerkships and internships

## CONSULTATIONS

### Students and former students

Tyson Holloway  
Audrey Packer Cook  
Kassie McAlear  
Art Pitchford  
Clinton Benjamin  
Karri Walker (Former student)

### Melbourne Law School staff

Mr Eddie Cubillo, Senior Indigenous Fellow Melbourne Law School  
Professor Pip Nicholson, Dean Melbourne Law School  
Professor Matthew Harding, Deputy Dean and Chair of the Melbourne Law School Reconciliation Committee  
Associate Professor Shaun McVeigh  
Professor Ian Malkin, Director, the Melbourne JD  
Professor Anna Chapman, Associate Dean, the Melbourne JD  
Professor Kirsty Gover, Associate Dean Indigenous Recognition  
Associate Professor Ann Genovese  
Dr Olivia Barr  
Associate Professor Chantal Morton, Director of the Office for Teaching and Learning in Law  
Ms Judith Marychurch Assistant Dean, Teaching and Learning  
Melbourne Law School Reconciliation and Recognition Committee including, Professor Matthew Harding, Dr Kylie O'Connell. Professor Ian Malkin, Professor Lee Godden, Mr Eddie Cubillo, Kate Doherty  
Mr Tim Goodwin, Barrister, Teaching Fellow 2019

### Other

Professor Mark McMillan Deputy Pro Vice-Chancellor RMIT  
Professor John Borrows University of Victoria Canada  
Professor Camille Cameron, Dean, University of Dalhousie Schulich School of Law  
Dr Ambelin Kwaymullina University of Western Australia  
Josh Cubillo, Manager Indigenous Programs, Faculty of Medicine, Dentistry and Health Sciences, University of Melbourne  
Participants in Indigenous Cultural Competency for Legal Academics Program Workshop, Southern Cross University July 2019 including: Dr Marcelle Burns, Dr Heron Loban, Ms Mary Spiers (Sub Dean Undergraduate Indigenous Studies ANU, Eddie Cubillo, Narelle Bedford, Annette Gainsford, Associate Professor Alison Gerard, Professor Simon Young, Associate Professor Jennifer Nielsen

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