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CHALLENGES AND STRATEGIES FOR INCORPORATING INDIGENOUS LAWS AND HISTORIES ACROSS LEGAL EDUCATION CURRICULUM

Annette Gainsford, Alison Gerard and Emma Colvin¹

Introduction

Embedding Indigenous perspectives in legal education can pose a number of challenges for law schools. As Larissa Behrendt observes, '[w]e cannot create a place of subversion and transformation within the academy without creating a culturally safe place.'²

Although Indigenous strategies in higher education at a national and institutional level provide strategic intent, these strategies fall short of offering knowledge and advice on how Indigenous content can be embedded. For Indigenous academics, students and guest lecturers, cultural safety is a pivotal element and consideration. Building cultural safety into the inclusion of Indigenous perspectives across legal education is an authentic way to prepare students for the legal profession and is central to any transformation in higher education.

More than a decade ago, the Indigenous Higher Education Advisory Council led Universities Australia to adopt a whole-of-sector approach to

1 We acknowledge the traditional custodians of the lands on which this book chapter was written, particularly the lands of the Wiradyuri and Ngunnawal. We acknowledge Aboriginal and Torres Strait Islander peoples as the sovereign peoples of this land that we now call Australia. We express our gratitude and respect to the Elders-in-Residence across our respective university campuses for their guidance as part of our professional development in the areas of curriculum, research and governance.

2 Larissa Behrendt, 'Indigenous Storytelling: Decolonizing Institutions and Assertive Self-Determination: Implications for Legal Practice' in Jo-Ann Archibald Q'um Q'um Xiiem, Jenny Bol Jun Lee-Morgan and Jason De Santolo (eds), *Decolonizing Research: Indigenous Storywork as Methodology* (Zed Books, 2019) 175 quoted in Amy Thunig and Tiffany Jones, '“Don't Make Me Play House-N***er”: Indigenous Academic Women Treated as “Black Performer” within Higher Education' (2021) 48 *Australian Education Research* 397, 415.

embedding Indigenous perspectives in curricula and implementing an Indigenous graduate attribute for all courses.³ These Guiding Principles and Best Practice Framework⁴ documents from 2011 were supplemented by two Indigenous Strategies in 2017–2020 and 2022–2025. The progress of these recommendations has been slow, particularly for law schools.⁵ Australian approaches to embedding Indigenous perspectives in legal education vary considerably, with mixed outcomes.⁶ A common obstacle is the default attitude and expectation of law schools that Indigenous academics will take on the role of Indigenous curriculum development.⁷ However, Indigenous legal academics frequently find the interface between the Indigenisation of curriculum and their research program far from their chosen path as law academics.

Examining the ways that law schools can influence transformational change in embedding Indigenous perspectives brings into focus two levers that we explore in this chapter. The first lever encompasses the institutional strategies that can support law schools to fulfil their commitments. Most universities should now have their own Indigenous curriculum policy or education strategy, but many are not properly embedded in governance frameworks or adequately resourced. The second lever involves the potential role of the legal profession admission standards. Despite repeated calls over many decades for legal education to include various forms of cultural awareness and cultural competence,⁸ there is no requirement to demonstrate professional capabilities to work effectively with and for Indigenous peoples and communities before graduation or for admission as a legal practitioner. This silence puts Australia at odds with legal education standards in Canada⁹ and

3 Marcelle Burns, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12(1) *International Education Journal: Comparative Perspectives* 226, 228.

4 Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (October 2011) 4 <www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Compet#.XGXB-OJKgb0>.

5 Marcelle Burns, Anita Lee Hong and Asmi Wood, *Indigenous Cultural Competency for Legal Academics Program* (Final Report, 2019) <https://ltr.edu.au/resources/ID14-3906_Burns_FinalReport_2019.pdf>.

6 Alison Gerard, Annette Gainsford and Kim Bailey, 'Embedding Indigenous Cultural Competence: A Case Study' in Kevin Lindgren and Francis Kunc (eds), *The Future of Australian Legal Education: A Collection* (Thomson Reuters, 2018) 323.

7 Burns, Lee Hong and Wood (n 5) 18.

8 See *Royal Commission into Aboriginal Deaths in Custody* (National Report, 1991) vol 1, 295.

9 Scott Franks, 'Sustaining Progress in Indigenous Legal Education', *The Canadian Bar Association* (11 October 2022) <<https://nationalmagazine.ca/en-ca/articles/the-practice/legal-education/2022/sustaining-progress-in-indigenous-legal-education>>.

Aotearoa (New Zealand).¹⁰ Legal professional accreditation standards ‘are strong drivers of the content in law curriculum’ and could thus mandate change in law schools.¹¹ For universities without a robust Indigenous curriculum framework—centrally or within the law school—the development of legal profession admission standards may provide direction and guidance on quality standards for curriculum development and ongoing professional development for legal practitioners.¹²

In the first part of this chapter, we substantiate our use of ‘cultural safety’ and examine its critical importance in the process of embedding Indigenous perspectives in Australian law schools. We then closely examine an institutional strategy that can support law schools to decolonise their curricula. Finally, we examine how industry standards have developed in the health profession to capture key learnings and offer pathways for developing professional admissions standards in law. These will serve to guide law schools—and hold them accountable—in embedding Indigenous perspectives by using culturally safe practices.

Cultural Safety in Legal Education

One of the key challenges in incorporating Indigenous perspectives into legal education is the consideration of staff and students’ cultural safety. This also includes Indigenous community or industry stakeholders who partner in the design, development, and delivery of legal education. The term ‘cultural safety’ was originally coined by Māori nurse, anthropologist and writer Irihapeti Ramsden and is now widely used in the scholarship on teaching and learning.¹³ However, there is ambiguity and at times, discord about what is meant by ‘cultural safety’. Often, ‘cultural safety’ will appear in policies and guidelines but will not be defined. Where definitions are outlined, there are different perspectives on what cultural safety means.¹⁴

Maryann Bin-Sallik observed 20 years ago that challenges to ‘formal Indigenous participation within the higher education sector . . . have revolved around issues of “cultural safety”’.¹⁵ She is clear that there is a ‘moral obligation’ to provide a culturally safe space for teaching and research at

10 ‘New Tikanga Māori Requirements’, *New Zealand Council of Legal Education* (Web Page) <<https://nzcle.org.nz/>>.

11 Burns, Lee Hong and Wood (n 5) 22.

12 Burns, Lee Hong and Wood (n 5) 22.

13 BJ Newton, ‘Creating Cultural Safety as an Aboriginal Teacher in a Class of Non-Aboriginal University Students’ (2021) 74 *Australian Social Work* 4.

14 See Burns (n 3) 226 for a discussion of these definitions in professions.

15 Maryann Bin-Sallik, ‘Cultural Safety: Let’s Name It!’ (2003) 32 *The Australian Journal of Indigenous Education* 21.

universities.¹⁶ She advocates using the term ‘cultural safety’ as a movement away from Western notions of equal opportunity and asserts that cultural safety ‘is a term that all cultural groups can relate to and it does not have connotations of special treatment’.¹⁷

We recognise that terminology is always in flux. Language is powerful and can reproduce inequality.¹⁸ We continue to use ‘cultural safety’ in this work because we draw on literature that defines and uses this term, and we believe that it captures the inherent requirements for transformation, as stated by Larissa Behrendt at the beginning of our chapter. In any case, we believe the underpinning concepts that inform cultural safety have much in common with other definitions, such as cultural humility and cultural competence. Acknowledging that further work needs to be done on defining cultural safety and how it is used in the context of teaching and learning in higher education, for this chapter, we have centred on Robyn Williams’ definition¹⁹ to encapsulate how we see cultural safety being potentially operationalised in the classroom. Williams’ definition of cultural safety centres Indigenous identity and considers culturally unsafe practices as anything that is experienced as an assault on identity. A culturally safe environment provides social and emotional safety, a shared commitment to respect one another and a mutual understanding of how to work together.²⁰

It has long been documented that law schools can be sites of cultural tension and outright hostility for Indigenous academics and students.²¹ Despite movements to address this—for example, through the work of the Indigenous Cultural Competency for Legal Academics Program (‘ICCLAP’)²²—and positive changes whereby Indigenous students in Australian law schools have enjoyed greater participation and success in recent years, Indigenous students continue to have culturally unsafe experiences. Melanie Schwartz found that such experiences result in

alienation and ‘imposter syndrome’—an intrusive feeling of non-belonging; and a related issue of the need for more institutional regard for the complex

16 Maryann Bin-Sallik, ‘Cultural Safety: Let’s Name It!’ (2003) 32 *The Australian Journal of Indigenous Education* 25.

17 Maryann Bin-Sallik, ‘Cultural Safety: Let’s Name It!’ (2003) 32 *The Australian Journal of Indigenous Education* 27.

18 Aileen Moreton-Robinson, *The White Possessive: Property, Power and Indigenous Sovereignty* (University of Minnesota Press, 2003).

19 Robyn Williams, ‘Cultural Safety: What Does It Mean for Our Work Practice?’ (2008) 23 *Australian and New Zealand Journal of Public Health* 213.

20 Robyn Williams, ‘Cultural Safety: What Does It Mean for Our Work Practice?’ (2008) 23 *Australian and New Zealand Journal of Public Health* 213. See also Anne Eckermann et al., *Binang Gooj: Bridging Cultures in Aboriginal Health* (University of New England, 1994).

21 Asmi Wood and Nicole Watson, ‘Mirror, Mirror on the Wall, Who Is the Fairest of Them All?’ (2018) 28(2) *Legal Education Review* 16.

22 Burns, Lee Hong and Wood (n 5).

lives of Indigenous students, including cultural or family obligations and high levels of stress in students' personal lives.²³

Fernando and Bennett highlight the risk of secondary trauma to Indigenous students because of the curriculum content.²⁴ For Newton,²⁵ cultural safety is critical for First Nations educators, not just students. There is a risk of trauma to staff, and we need to consider the cultural safety of both staff and students. Newton provides her perspective as an Aboriginal woman teaching mainly non-Aboriginal social work students. She notes that she started by feeling vulnerable in the classroom but developed a 'safe and collaborative learning and teaching experience'.²⁶ In creating culturally safe spaces, we need to reconsider subtle expectations placed on Indigenous staff to share their personal stories when the same expectations are not presumed of non-Indigenous staff.²⁷ It is evident that a culturally safe working and learning space is vital in the process of Indigenous education curricula generally, with many documented examples of unsafe cultural practices in law schools in particular, including some experiences of these practices shared by other authors in this book.²⁸ Although examples of culturally unsafe practices are numerous and transforming law schools may be a lengthy process, the goal should always be to make law schools 'safer'.²⁹ We next examine how this can be achieved through institutional and school-level strategies for decolonising legal education.

Institutional and Law School Strategies to Decolonise Legal Education

Currently, law schools in Australia are investigating ways to 'transform' legal education to counteract the dominant Western curriculum. This transformational change comes with a number of challenges that involve the workload and cultural safety of Indigenous academics.³⁰ Whole-of-university

23 Melanie Schwartz, 'Retaining Our Best: Imposter Syndrome, Cultural Safety, Complex Lives and Indigenous Student Experiences of Law School' (2018) 28(2) *Legal Education Review* 1, 2.

24 Terrina Fernando and Bindi Bennett, 'Creating a Culturally Safe Space When Teaching Aboriginal Content in Social Work: A Scoping Review' (2019) 72(1) *Australian Social Work* 47, 50.

25 Newton (n 13).

26 Newton (n 13) 4.

27 Thunig and Jones (n 2).

28 See Chapter One: Introduction by Heather Douglas and Nicole Watson and Chapter Two: Evidence Given by Eddie Cubillo to the Yoorrook Justice Commission by Eddie Cubillo and Jaynaya Dwyer.

29 Jeff Cornthassel and Virginia Drywater-Whitekiller, 'Learning on and From the Land: Indigenous Perspectives on University Land-Based Learning Pedagogies' in Cornel Pewewardy, Anna Lees and Robin Zape-tah-hol-ah Minthorn (eds), *Unsettling Settler Colonial Education: The Transformational Indigenous Praxis Model* (Teachers College Press, 2022) 99.

30 See Burns, Lee Hong and Wood (n 5) 17.

approaches have been found to contain the potential to eliminate direct pressure on faculties and academics. In 2019, the final report of the ICCLAP highlighted that university-wide strategies and faculty commitment were critical success factors for including Indigenous cultural competency in curricula.³¹ The report states that ‘Indigenous cultural competency must become core university business’.³² Notably, only half of Australia’s law schools responded to the Indigenous-led ICCLAP survey. Another survey of Indigenous cultural competency undertaken about the same time by two non-Indigenous University of New South Wales (UNSW) law academics had a response rate of 90 per cent.³³

Institutional strategies to support the decolonising of legal education take on many different forms across Australian universities. One such strategy is the embedding of an Indigenous graduate attribute, which was identified as a critical success factor in the ICCLAP report. Of the Australian law schools that participated in the ICCLAP survey, only two universities include an Indigenous graduate attribute in their courses. One university that includes an Indigenous graduate attribute as a university-wide strategy is the University of Technology Sydney (‘UTS’). It states that ‘UTS graduates will have knowledge of Indigenous Australian contexts to inform their capability to work effectively for and with Indigenous Australians across their professional discipline’³⁴ through the inclusion of an Indigenous course intended learning outcome. Implementation of the Indigenous graduate attribute is further supported by the Indigenous Graduate Attribute Curriculum Framework approved by the UTS Academic Board in March 2022. The framework was developed in alignment with the Australian Qualification Framework criteria of knowledge, skills and application. This includes ‘knowledge of cultural, historic and contemporary contexts that influence the lives of Indigenous Australians’; skills to ‘examine the nature of the profession and critically reflect on the intersection between Indigenous Australian engagement, experience and achievement within the profession’; and application of ‘knowledge and skills relating to Indigenous Australian contexts to inform capabilities to work for and with Indigenous Australians within a professional context’.³⁵

31 Burns, Lee Hong and Wood (n 5) 17.

32 Burns, Lee Hong and Wood (n 5) 19.

33 Harry Hobbs and George Williams, ‘The Participation of Indigenous Australians in Legal Education, 2001–18’ (2018) 42(4) *University of New South Wales Law Journal* 1294.

34 ‘Graduates Attributes’, *University of Technology Sydney* (Web Page) <www.uts.edu.au/research-and-teaching/learning-and-teaching/uts-model-learning/graduates-attributes>.

35 ‘Graduates Attributes’, *University of Technology Sydney* (Web Page) <www.uts.edu.au/research-and-teaching/learning-and-teaching/uts-model-learning/graduates-attributes>, and see Australian Qualifications Council, *Australian Qualifications Framework* (Australian Qualifications Framework Council, 2nd ed, 2013) <<https://www.aqf.edu.au/framework/australian-qualifications-framework>>.

The Indigenous Graduate Attribute Curriculum Framework provides a guide for individual faculties to develop curricula according to national and institutional priorities. It is also aligned with the courses' accreditation process to provide governance and proper oversight on quality and compliance and to ensure the cultural safety of curriculum content and assessments. University-wide support for embedding Indigenous content in different law courses is reinforced by the role of Associate Dean of Indigenous Teaching and Learning, held currently by Annette Gainsford, the lead author of this chapter. The Associate Dean carries the university-wide Indigenous graduate attribute portfolio and leads a centralised Indigenous Teaching and Learning Team. The team comprises six education academics who provide faculty outreach support and all of the institutional frameworks and resources housed in the Office of the Pro-Vice-Chancellor of Indigenous Leadership and Engagement.

This form of institutional support assists the law school in designing and developing Indigenous graduate attribute content for embedding in law courses, with the university-wide and centralised focus relieving some of the Indigenous curriculum tensions within the law school. The benefits of such an approach include institutional governance and accountability that enable a consistent and transparent methodology to embedding Indigenous content in law courses. This ensures that the specific curriculum is informed and supported by a framework that is designed to enable constructive alignment among the Indigenous course's intended learning outcome, the Indigenous graduate attribute content, and the assessment that is needed to ensure that the Indigenous graduate attribute is achieved. This learning and teaching scaffold enables students to graduate with professional capabilities to work with and for Indigenous Australians when they graduate from law school.

To support the Indigenous graduate attribute process, the centralised Indigenous Teaching and Learning Team facilitates professional development workshops for faculty academics, including the Indigenous Cultural Capability Workshop and the Culturally Safe Indigenous Teaching and Learning Practices Workshop. This approach applies the directive from Universities Australia's *Indigenous Strategy 2022–2025* and learning from the ICCLAP report that professional development is crucial to the success of embedding Indigenous cultural competence.³⁶ Both professional development workshops are facilitated by Indigenous academics and involve Indigenous teaching and learning pedagogies such as yarning circles. Professional development is further supported through the International Indigenous Community of Practice, founded and led by one of this chapter's authors, Annette Gainsford, where academics can join seminars and learn from others.

36 Burns, Lee Hong and Wood (n 5) 19.

Professional development opportunities are specifically aimed at increasing the capacity of academics to design, develop and deliver Indigenous graduate attribute-focused content. This university-wide strategy empowers the law school to work collaboratively with the Indigenous Teaching and Learning Team on Indigenous curriculum and access professional development on culturally safe subject delivery. This centralised method again alleviates some of the workload pressure for Indigenous academics in faculties and enables the law school to produce graduates with the knowledge and skills to work with and for Indigenous Australians across the legal profession. In the next section, we review how industry standards can further support law schools to embed Indigenous perspectives in curricula.

Leveraging Industry Standards to Embed Indigenous Perspectives

In the foreword to *Indigenous Legal Judgments*, Megan Davis writes that ‘[l]aw reform is about imagination’.³⁷ It ‘requires you to imagine that the world *can* change. It requires a leap of faith that the institutions built to deliver the change can deliver, even those institutions that have let down our people and abandoned our people.’³⁸ In re-imagining this transformational path for higher education, we also note the sage warning of Alison Whittaker in her contribution to *Indigenous Legal Judgments*: ‘It’s very easy to reveal the structural racism of settler law—it’s very hard to imagine a way out of it that doesn’t replicate that structure.’³⁹ In this section, we imagine how law accreditation bodies can mandate Indigenous content in higher education programs and make Indigenous cultural competence a standard for admission as a legal practitioner. We begin by determining where we are now to map the path to structural change.

Australian Law School Standards and Indigenous Perspectives

Despite repeated calls over many decades for legal education to include various forms of cultural awareness and cultural competence,⁴⁰ there is no requirement to demonstrate Indigenous cultural competence before graduation or admission as a legal practitioner. This absence puts Australia at odds with legal education standards in Canada and now Aotearoa

37 Megan Davis, ‘Foreword’ in Nicole Watson and Heather Douglas (eds), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021) xvi.

38 Megan Davis, ‘Foreword’ in Nicole Watson and Heather Douglas (eds), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021) xvi.

39 Nicole Watson and Heather Douglas, ‘Introduction’ in Nicole Watson and Heather Douglas (eds), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021) 4.

40 *Royal Commission into Aboriginal Deaths in Custody* (National Report, 1991) vol 1; Burns, Lee Hong and Wood (n 5).

(New Zealand).⁴¹ As Eddie Cubillo writes, ‘Aboriginal and Torres Strait Islander laws and jurisprudence [are] excluded from the Priestley 11’.⁴²

The ICCLAP, led by Marcelle Burns and referred to previously, was initiated to promote the inclusion of Indigenous cultural competence in legal education. The goal of the program was to consult with legal academics and stakeholders to identify knowledge gaps and professional development needs, develop guiding principles, pilot some modules and resources and establish a practice community in legal education. The ICCLAP’s initial finding was that ‘there was little evidence to show that ICC [Indigenous cultural competency] had been incorporated into Bachelor of Laws Programs’.⁴³ The ICCLAP Final Report acknowledged that legal accreditation standards drive content, and stakeholders proposed that peak bodies be lobbied, champions among lawyers and judges be identified, and Closing the Gap targets include Indigenous cultural competence to ensure that Indigenous perspectives are embedded in law curricula.⁴⁴ The ICCLAP ultimately recommended that a working party be established to ‘develop a strategy to lobby legal admissions authorities and professional associations to include ICC in legal accreditation and academic standards’.⁴⁵ This working party was underway as of 2023.

We note two further developments since the ICCLAP concluded that are relevant to accreditation standards in legal education. The first is the redrafted Priestleys project initiated by the Law Admissions Consultative Council (‘LACC’). The Prescribed Areas of Knowledge, published by the LACC and known as the ‘Priestley 11’, lists the subjects and areas of knowledge that must be included for the accreditation of law degrees across Australia. In 2018–19, the LACC sought to lead a process of redrafting the Priestley 11 requirements to more closely align them with the Threshold Learning Outcomes for law degrees and the Tertiary Education and Quality Standards Authority (‘TEQSA’)⁴⁶ standards generally.⁴⁷ At the time, teams of teachers who could assist in the redrafting were identified, and they developed new learning outcomes to replace the Priestley 11. It is unknown who assisted in the redrafting and whether any of the academics were Aboriginal and Torres Strait Islander people. In the new draft, Indigenous content was included in constitutional and property law. The LACC proposal was deferred in 2020, with the LACC website stating that this occurred as the Council of Australian Law Deans (‘CALD’) was undertaking its own review of the curriculum.⁴⁸

41 Franks (n 9); ‘New Tikanga Māori requirements’ (n 10).

42 Eddie Cubillo, ‘Indigenous Programs at Law School’ (July 2022) *Law Institute Journal* 30, 31.

43 Burns, Lee Hong and Wood (n 5) 10.

44 Burns, Lee Hong and Wood (n 5) 10.

45 Burns, Lee Hong and Wood (n 5) 10.

46 TEQSA is the regulator of tertiary education in Australia.

47 Law Admissions Consultative Committee, *Redrafting the Academic Requirements for Admission* (Legal Services Council, 2019) 2.

48 Cubillo (n 42) 34.

The second notable development was the redrafted CALD Australian Law School Standards.⁴⁹ In 2020, the standards were updated in consultation with the Working Party on First Peoples Partnership,⁵⁰ an initiative established to fulfil a recommendation of the ICCLAP. The revised standards include specific reference to the following:

- curriculum, expressed as ‘Aboriginal and Torres Strait Islander perspectives on and intersections with the law’⁵¹; and
- library resourcing, namely, ‘primary and secondary comparative material from other legal systems, including oral artefacts from Aboriginal and/or Torres Strait Islander legal systems, which are the subject of study in the Law School and are adequate to support the School’s teaching and research programs’.⁵²

The CALD standards also now include a series of explanatory notes that foreground the Universities Australia recommendations relating to Indigenous cultural competency as a graduate attribute and reference the ICCLAP report, the ‘Behrendt Report’⁵³ and Universities Australia frameworks.⁵⁴ They also assert that assessment strategies must exist and draw attention to employment strategies specifically for Indigenous staff. Additionally, in terms of consultation, Aboriginal and Torres Strait Islander knowledge-holders are specifically mentioned, alongside other industry bodies. Despite these two developments, law is still far from other disciplines such as health, where industry requirements mandating Indigenous perspectives in the curriculum are in place. We now turn to examine these professions to determine what they might offer us to accelerate the commitment to embedding Indigenous perspectives and improving the professional capabilities of law graduates and lawyers to work effectively for and with Indigenous peoples.

49 Council of Australian Law Deans, *Australian Law School Standards with Guidance Notes* (2020) <<https://cald.asn.au/wp-content/uploads/2024/04/Australian-Law-School-Standard-s-v1.3-30-Jul-2020.pdf>>. No active certification process exists for the Standards.

50 Council of Australian Law Deans, *Working Party on First Peoples Partnership—Terms of Reference* (2020) <<https://cald.asn.au/first-nations-peoples/>>.

51 Council of Australian Law Deans, *Working Party on First Peoples Partnership—Terms of Reference* (2020) 5.

52 Council of Australian Law Deans, *Working Party on First Peoples Partnership—Terms of Reference* (2020) 9.

53 The Behrendt Report was a sector-wide report recommending that universities build the Indigenous cultural competence of staff and students. See Larissa Behrendt et al., *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People* (Final Report, 2012) <<https://www.education.gov.au/aboriginal-and-torres-strait-islander-higher-education/review-higher-education-access-and-outcomes-aboriginal-and-torres-strait-islander-people>>.

54 Larissa Behrendt et al., *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People* (Final Report, 2012) 17–18.

Learning from Other Disciplines and Professions

Professional industry bodies in health are contributing to significant changes not only in curriculum and accreditation requirements for universities but also in the regulation of health practitioners. The National Registration and Accreditation Scheme was established over a decade ago to ensure that health practitioners Australia-wide were subject to the same education, training and quality control standards.⁵⁵ Known as the ‘National Law’, the scheme is hosted by the state of Queensland and is adopted in each state and territory.⁵⁶

Following Indigenous-led advocacy and coordination, amendments to the National Law in October 2022 introduced a new objective to ‘build the capacity of the Australian health workforce to provide culturally safe health services to Aboriginal and Torres Strait Islander Peoples’.⁵⁷ It also introduced a new guiding principle that the National Law ensure the development of ‘a culturally safe and respectful health workforce’ that is responsive to Indigenous peoples’ health needs and ‘contributes to the elimination of racism in the provision of health services’.⁵⁸ These reforms are then operationalised through national boards, such as the Nursing and Midwifery Board of Australia. The principal regulator for health professions, the Australian Health Practitioner Regulation Agency (‘AHPRA’), works in concert with national boards to ensure that practitioners have the appropriate training and qualifications to practice.

The reforms to the National Law, which centre the capacity building of the health workforce to deliver culturally safe and respectful health services, are the culmination of Indigenous-led whole-of-sector approaches that offer insights for the legal profession and legal education. During 2016–17, the Aboriginal and Torres Strait Islander Health Strategy Group was formed as a strategic partnership among key stakeholders, including Indigenous health leaders, experts and organisations and leaders from national boards, accreditation authorities, and AHPRA.⁵⁹ The Aboriginal and Torres Strait

55 Queensland, *Parliamentary Debates* (Legislative Assembly, 12 October 2022) 2636 (YM D’Ath, Minister for Health and Ambulance services) 2636.

56 Council of Australian Governments, *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (2008) <<https://www.ahpra.gov.au/documents/default.aspx?record=WD10%2F36&dbid=AP&checksum=NwgooGtzb6JjNBIEP9Lhg%3D%3D>>.

57 *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld) s 3(2).

58 *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Qld) s 3A(2)(a)(aa) (i) and (ii).

59 AHPRA and National Boards, *The National Scheme’s Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020–2025* (2020) <<https://www.ahpra.gov.au/About-Ahpra/Aboriginal-and-Torres-Strait-Islander-Health-Strategy/health-and-cultural-safety-strategy.aspx>>.

Islander Health Strategy Group privileges self-determination and is a joint decision-making body, as distinct from an advisory body.⁶⁰ It developed two significant documents to direct the sector's approach.

First, in 2018, the National Scheme Aboriginal and Torres Strait Islander Health Strategy—Statement of Intent⁶¹ was signed by 15 national health practitioner boards, AHPRA, accreditation authorities and Aboriginal and Torres Strait Islander health sector experts and organisations. The Statement of Intent outlined a common vision and values statement on achieving health equity between Indigenous and non-Indigenous Australians by 2031. While noting the absence of an agreed national definition of cultural safety, it defined cultural safety as ‘the individual and institutional knowledge, skills, attitudes and competencies needed to deliver optimal health care for Aboriginal and Torres Strait Islander Peoples’.⁶² This reflects the principles outlined in Ramsden’s definition discussed earlier in this chapter.

The second major contribution of the Strategy Group was *The National Scheme’s Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020–2025* (*Health and Cultural Safety Strategy*) aimed at eliminating racism from health care. This five-year strategy was the cornerstone of efforts to amend the National Law.⁶³ This strategy was written by Indigenous leadership business ABSTARR Consulting, which engaged with Aboriginal and Torres Strait Islander organisations and representatives throughout the strategy’s development.⁶⁴ The *Health and Cultural Safety Strategy* is endorsed by over 40 organisations, including the accreditation authorities that oversee education and training for future health practitioners and those regulating all current practitioners. The Strategy Group provides continued oversight of the strategy.⁶⁵

A baseline definition of cultural safety produced by the Strategy Group, in collaboration with the National Health Leadership Forum,⁶⁶ appears in the

60 APHRA and National Boards, *The National Scheme’s Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020–2025* (2020) 5.

61 ‘Aboriginal and Torres Strait Islander Health Strategy—Statement of Intent’, *AHPRA & National Boards* (Web Page) <www.ahpra.gov.au/About-Ahpra/Aboriginal-and-Torres-Strait-Islander-Health-Strategy/Statement-of-intent>.

62 ‘Aboriginal and Torres Strait Islander Health Strategy—Statement of Intent’, *AHPRA & National Boards* (Web Page) <www.ahpra.gov.au/About-Ahpra/Aboriginal-and-Torres-Strait-Islander-Health-Strategy/Statement-of-intent>.

63 ‘Aboriginal and Torres Strait Islander Health Strategy—Statement of Intent’, *AHPRA & National Boards* (Web Page) <www.ahpra.gov.au/About-Ahpra/Aboriginal-and-Torres-Strait-Islander-Health-Strategy/Statement-of-intent>.

64 Ann Cheffers, ‘First Nations-led Health Strategy Makes Cultural Safety Priority One for Indigenous Patients’, *ABSTARR Consulting* (Web Page, 3 March 2020) <<https://abstarr.com/first-nations-led-health-strategy-makes-cultural-safety-priority-one-for-indigenous-patients/>>.

65 APHRA, *Aboriginal and Torres Strait Islander Health Strategy* (Web Page) <www.ahpra.gov.au/About-Ahpra/Aboriginal-and-Torres-Strait-Islander-Health-Strategy.aspx>.

66 The National Health Leadership Forum comprises leading Aboriginal and Torres Strait Islander health and wellbeing organisations and members.

Health and Cultural Safety Strategy. Cultural safety is defined in the Strategy as follows:

Cultural safety is determined by Aboriginal and Torres Strait Islander individuals, families and communities. Culturally safe practise is the ongoing critical reflection of health practitioner knowledge, skills, attitudes, practising behaviours and power differentials in delivering safe, accessible and responsive healthcare free of racism.⁶⁷

This definition appears alongside several guiding principles and requirements that set out what health practitioners must do to ensure that the provision of health services is culturally safe and respectful. This includes acknowledging the impacts of colonisation and systemic racism and their far-reaching effects on the health of individuals and communities, addressing their own biases, privileging self-determination and fostering a safe work environment.

Nursing and midwifery were the first to implement the cultural safety objectives in their professional codes of conduct.⁶⁸ The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives ('CATSINaM') was particularly active in lobbying for the government to embed cultural competency and safety in the National Law.⁶⁹ In 2018, CATSINaM produced a joint statement with the Nursing and Midwifery Board of Australia ('NMBA') to stipulate that their codes 'must clearly communicate the requirement for cultural safety'.⁷⁰ The codes of conduct now contain the following definition of cultural safety:

[The] **Cultural safety** concept was developed in a First Nations' context and is the preferred term for nursing and midwifery. Cultural safety is endorsed by the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM), who emphasise that cultural safety is as important to quality care as clinical safety. However, the 'presence or absence of cultural safety is determined by the recipient of care; it is not defined by the caregiver' (CATSINaM, 2014, p. 97¹). Cultural safety is a

67 AHPRA and National Boards (n 59) 9.

68 Eleanor Milligan et al., 'Achieving Cultural Safety for Australia's First Peoples: A Review of the Australian Health Practitioner Regulation Agency-Registered Health Practitioners' Codes of Conduct and Codes of Ethics' (2021) 45 *Australian Health Review* 398.

69 AHPRA and National Boards (n 59) 19. For a review of the criticisms and success stories in embedding Indigenous perspectives in nursing and midwifery, see Claudia Virdun et al., 'Working Together to Make Indigenous Health Care Curricula Everybody's Business: A Graduate Attribute Teaching Innovation Report' (2013) 46(1) *Contemporary Nurse* 97.

70 NMBA, 'NMBA and CATSINaM Joint Statement on Culturally Safe Care', *Nursery and Midwifery Board Ahpra* (February 2018) <www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Position-Statements/joint-statement-on-culturally-safe-care>.

71 CATSINaM, *Towards a Shared Understanding of Terms and Concepts: Strengthening Nursing and Midwifery care of Aboriginal and Torres Strait Islander Peoples* (CATSINaM, 2014).

philosophy of practice that is about how a health professional does something, not [just] what they do. It is about how people are treated in society, not about their diversity as such, so its focus is on systemic and structural issues and on the social determinants of health. Cultural safety represents a key philosophical shift from providing care regardless of difference, to care that takes account of peoples' unique needs. It requires nurses and midwives to undertake an ongoing process of self-reflection and cultural self-awareness, and an acknowledgement of how a nurse's/midwife's personal culture impacts on care. In relation to Aboriginal and Torres Strait Islander health, cultural safety provides a de-colonising model of practice based on dialogue, communication, power sharing and negotiation, and the acknowledgment of white privilege. These actions are a means to challenge racism at personal and institutional levels, and to establish trust in healthcare encounters (CATSINaM, 2017b, p. 11⁷²). In focusing on clinical interactions, particularly [the] power inequity between patient and health professional, cultural safety calls for a genuine partnership where power is shared between the individuals and cultural groups involved in healthcare. Cultural safety is also relevant to Aboriginal and Torres Strait Islander health professionals. Non-Indigenous nurses and midwives must address how they create a culturally safe work environment that is free of racism for their Aboriginal and Torres Strait Islander colleagues.⁷³

These detailed notions are then integrated into the code of ethics, alongside the professional standards and the code of conduct. Cultural safety has been the centrepiece of the reforms, which aim to make quality improvements to patient safety by directing a course of action for AHPRA, national boards and accreditation authorities that regulate current and future health practitioners.

Indigenous and non-Indigenous health leaders have developed a framework that recognises cultural safety as intrinsic to the health of individuals and communities and prioritises its realisation in governance frameworks that train future health professionals and regulate current practitioners. It also demonstrates the privileging of self-determination through governance structures that emphasise joint decision-making powers by using Indigenous organisations as a resource to provide leadership. CATSINaM has its own company, website, board of directors and strategic plan for 2023 to 2028. The Strategic Plan sets out the commitment of CATSINaM to leadership and

72 CATSINaM, *The Nursing and Midwifery Aboriginal and Torres Strait Islander Health Curriculum Framework (Version 1.0)* (2017).

73 CATSINaM, *Position Statement: Embedding Cultural Safety across Australian Nursing and Midwifery* (2017); NMBA, *Code of Ethics Midwifery* (2018) 17.

advocacy by enhancing stakeholders' understanding of culturally safe nursing and midwifery practice and investing in culturally safe education.⁷⁴ Additionally, CATSINaM is funded to support the Leaders in Indigenous Nursing and Midwifery Education Network with \$2.51 million from 2022–23 to 2025–26.⁷⁵ This forms part of the Closing the Gap implementation measures. There is no equivalent body in legal education or the legal profession, and this leadership work needs to be utilised to be effective and sustainable.

Conclusion

Progress in implementing the Universities Australia whole-of-curriculum approach to Indigenous cultural competence has been slow for legal education. This chapter has provided insights on two strategies to accelerate this transformation. First, strong institutional frameworks are critical to embedding Indigenous perspectives sustainably and to an appropriate standard. They can also alleviate the cultural workload of Indigenous academics in faculties and bolster cultural safety for academics, students and industry and community partners.

Second, cultural safety is central to the embedding of Indigenous perspectives in law curricula so that workplaces, classrooms and legal services can be experienced respectfully and without racism. Professional standards in law have a significant influence on legal curricula and thus have the potential to shape legal education to ensure that Indigenous perspectives are embedded authentically and in culturally safe ways to enable all graduates to work effectively with and for Indigenous peoples.

At this stage, legal education and the legal profession are a long way from developing a legal admission standard that reflects the professional capabilities that lawyers need to work with and for Aboriginal and Torres Strait Islander peoples. Engaging an Indigenous business such as ABSTARR to consult with individuals and communities could be a vital step. Drawing on the example from health, an Indigenous-led, whole-of-sector approach is required to create change. The health sector also shows the importance of developing a common definition of cultural safety early in the process. This cannot be retrofitted. What cultural safety means in the classroom and the profession needs to be developed through processes that privilege Indigenous experts and stakeholders. Given that law is heavily influenced by

74 'CATSINaM Strategic Plan 2023–2028', *CATSINaM* (Web Page) <https://dgc5bd.a2cdn1.secureserver.net/wp-content/uploads/2023/11/CATSINaM-Strategic-Plan-2023-2028_FINAL.pdf>.

75 'Closing the Gap Implementation Measures', *National Indigenous Australians Agency* (Web Page) <www.niaa.gov.au/indigenous-affairs/closing-gap/implementation-measures/leaders-indigenous-nursing-and-midwifery-education-network-linmen>.

accreditation standards, updating these standards will provide another impetus for law schools to embrace the embedding of Indigenous perspectives as core business. Current legal practitioners will then be subject to the same education and quality standards as future law graduates. Transformational change in legal education is only possible through culturally safe pathways. This chapter has explored the types of institutional approaches that can support and sustain change at multiple levels within universities.