

BARRIERS TO ENTRY INTO LAW SCHOOL: AN EXAMINATION OF SOCIO-ECONOMIC AND INDIGENOUS DISADVANTAGE

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I INTRODUCTION

Until the early 1970s, the Australian legal profession was almost exclusively the domain of white men from privileged backgrounds. Since then, there has been a steady rise in the number of women entering the legal profession, both in Australia and in other western democracies.¹ However the number of legal practitioners from other social groups that have been traditionally excluded has remained persistently low. This includes lawyers from low socio-economic status ('low SES') backgrounds and Indigenous lawyers.

The main barrier to people from disadvantaged backgrounds entering the legal profession is the need to be accepted into and then complete law school. This article follows the journey of low SES and Indigenous students into university study, examining the barriers that discourage such students from entering law school in the first place. It then examines some of the problems that these students, especially Indigenous students, face once they commence their studies. The experiences of Indigenous students differ from those of other students from disadvantaged backgrounds, and this article examines both the barriers that are common to disadvantaged groups and those that are unique to Indigenous students. Finally, this article examines the main strategies that

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¹ There is a considerable body of literature on the feminisation of the legal profession, including analysis of why the influx of women into the profession has failed to change the gender inequalities. Australian research includes: Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press, 1996); Rosemary Hunter, 'Talking Up Equality: Women Barristers and the Denial of Discrimination' (2002) 10(2) *Feminist Legal Studies* 113; Iain Campbell, Sara Charlesworth, and Jenny Malone, 'Part-Time of What? Job Quality and Part-Time Employment in the Legal Profession in Australia' (2012) 48(2) *Journal of Sociology* 149; Terry Hutchinson and Heather Skousgaard, 'Women in the Queensland Legal Workplace: A Snapshot' (2008) 13(1) *Deakin Law Review* 37.

universities have used to overcome barriers to entry by disadvantaged groups. It is shown that some of the strategies relied upon to increase diversity are based on false common-sense assumptions rather than empirical evidence.

II UNDER-REPRESENTATION OF LOW SES AND INDIGENOUS STUDENTS IN HIGHER EDUCATION

Common law countries retained traditional apprenticeship routes into the legal profession until the middle of the 20th century. Australia was no exception, and until the 1960s most lawyers entered the profession as articled clerks.² Weisbrot argues that the availability of apprenticeships, as well as other routes such as attending university or a college of advanced education, studying part-time, or sitting an Admission Exam, increased diversity within the Australian legal profession.³ However, in other jurisdictions the apprenticeship system was seen as privileging lawyers with family and personal connections, and preventing diversity.⁴ It seems likely that this was also the case in Australia. Family connections were a strong feature of the Australian legal community until the mid-1970s. A survey of NSW legal practitioners conducted in 1978 showed that 40% of barristers and 50% of solicitors had legally qualified relatives.⁵ A survey of Victorian practitioners conducted in the same year showed that nearly 40% of lawyers had another lawyer in their family, and 13% had two or more lawyer relatives. Fifteen percent of practitioners had lawyer fathers, whereas lawyers accounted for only 0.3% of the male workforce.⁶

² Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No. 89 (Commonwealth of Australia, 2000) 115.

³ David Weisbrot, 'Recent Statistical Trends in Australian Legal Education' (1990) 2 *Legal Education Review* 219.

⁴ Angela Melville and Frank H Stephen, 'The More Things Change, the More they Stay the Same: Explaining Stratification within the Faculty of Advocates, Scotland' (2011) 18(3) *International Journal of the Legal Profession* 211; Marc Galanter and Simon Roberts, 'From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century' (2008) 15(3) *International Journal of the Legal Profession* 143, 154.

⁵ Roman Tomasic and Cedric Bullard, *Lawyers and their Work in New South Wales: Preliminary Report* (Law Foundation of New South Wales, 1978).

⁶ Margaret Hetherington, *Victoria's Lawyers – Second Report of a Research Project on Lawyers in the Community* (Victoria Law Foundation, 1981).

The apprenticeship system began to decline in the late 1960s, and since then most lawyers have entered the profession after completing a university degree followed by a period of practical legal training.⁷ At first glance, it might be expected that this change would have diminished the influence of social background upon becoming a legal practitioner. However, the need to be admitted into university as the first step towards a legal career has in fact created a new barrier to practicing law. This barrier appears to be the main reason why low SES groups are under-represented in the Australian legal profession.

University education was first offered in Australia at the University of Sydney in 1850. Prior to this, the sons of the Australian elite were sent to secondary schools and universities in England. Universities were established in Melbourne in 1853, Adelaide in 1874 and Hobart in 1890. Until the 1950s, law teaching in universities was only small-scale and largely adjunct to the profession. For instance, from its founding in 1883 through to the 1950s, the University of Adelaide only produced 100 graduates, and in 1949 it only had one full-time teacher.⁸ Until the end of World War II, university education was devoted to the reproduction of an elite class,⁹ and little attention was paid to the social origins of students.¹⁰

After World War II, universities started to receive Federal funding which lessened their dependence on student fees, donations, and funding from the State governments. It was during this era that Australians began to perceive education as a means to improving an individual's life chances.¹¹ In the 1950s, the Federal government introduced scholarships based on merit that exempted recipients from tuition fees and paid a living allowance. Nevertheless, during the 1950s the majority of university students

⁷ Clerkships are no longer available in most Australian jurisdictions. Australia has never had the equivalent of a bar exam. Instead, most law students proceed into the profession after completing an undergraduate Bachelor of Laws (LLB) degree. It is also possible to enter the profession with a recognised postgraduate qualification, and some law schools have focused on providing postgraduate degree programmes aimed at students intending to enter legal practice. In addition to formal qualifications, admission into the profession also requires the completion of an approved practical legal training course. For the most part, this consists of a postgraduate diploma course or its equivalent, although a few law schools integrate the practical legal training component into the undergraduate teaching. Andrew Goldsmith and David Bamford, 'The Value of Practice in Legal Education' in Fiona Cownie (ed), *Stakeholders in the Law School* (Hart Publishing, 2010) 157, 174.

⁸ Sarah Williams, 'History of the Adelaide Law School' <<http://blogs.adelaide.edu.au/law/1985/01/19/history-of-the-adelaide-law-school/>>.

⁹ Trevor Gale and Deborah Tranter, 'Social Justice in Australian Higher Education Policy: An Historical and Conceptual Account of Student Participation' (2011) 52(1) *Critical Studies in Education* 29.

¹⁰ Donald S Anderson and Aat Emile Vervoorn, *Access to Privilege: Patterns of Participation in Australian Post-Secondary Education* (ANU Press, 1983).

¹¹ *Ibid.*

came from upper middle-class and wealthy families.¹² A survey conducted in the late 1960s found that the majority of university students enrolled in law, engineering, medicine and teaching came from high SES families. Fifty percent of students' fathers were classified as professionals or managers compared to seventeen percent of the overall male population. Nineteen percent of students' fathers had a university education compared to just two percent of the overall male population.¹³

The demand for university education remained relatively low until the late-1960s and early 1970s, when the first wave of 'baby boomers' started to complete secondary education. For the first time, the number of students completing secondary school outstripped the availability of university positions.¹⁴ In 1972, Australia's first Labor Federal government in 20 years came to power. It abolished university fees and introduced a means-tested assistance scheme for all full-time students. The total number of students enrolling at university increased dramatically, and since then the number of students in university education has continued to increase unabated. In the 1950s, only four percent of 17 to 22 year olds had higher education qualifications. This had increased to 32% in 2002, and to 59% in 2006.¹⁵

The expansion of higher education in the 1970s, however, produced no change in the SES profile of university students including those studying law.¹⁶ A South Australian study showed that from 1974 to 1984, students from the highest third SES group were twenty times more likely to study medicine or law than students from the bottom third SES group. Students from the highest group were also five times more likely to apply for admission to these faculties.¹⁷ A survey conducted at Monash University revealed that in 1982, 70.5% of law students had fathers with professional or paraprofessional backgrounds.¹⁸ A study of students entering law schools in Victoria, NSW, and the ACT in 1986 showed that 36% had fathers with tertiary degrees and 20% had mothers with degrees. In contrast, only about 8% of the total Australia workforce possessed a degree.¹⁹

¹² Julie McMillan and John Western, 'Measurement of the Socio-Economic Status of Australian Higher Education Students' (2000) 39(2) *Higher Education* 223.

¹³ Donald S Anderson and John Western, 'Social Profiles of Students in Four Professions' (1970) 3(4) *Quarterly Review of Australian Education* 1.

¹⁴ Gale and Tranter, above n 9.

¹⁵ This also includes Australia's relatively high percentage of international students. *Ibid* 31.

¹⁶ McMillan and Western, above n 12.

¹⁷ Cited in Weisbrot, above n 3, 233.

¹⁸ Andrew Goldsmith, 'Warning: Law School Can Endanger your Wealth' (1995) 272 *Monash University Law Review* 272, 278.

¹⁹ Dennis Charles Pearce, Enid Campbell, and Don E Harding, *Australian Law Schools: A Discipline Assessment* (Commonwealth Tertiary Education Commission, 1983), Appendix 4.

Critics have argued that the abolishment of fees was a failed experiment, however Weisbrot points out that during the 1970s higher education became accessible for middle-class women and mature age students. At the same time that fees were abolished, Australia went through an economic recession, there was a reduction in youth employment, and there was a significant increase in the high school retention rate, which increased competition for university education. If fees had not been abolished, it is likely that university participation by students from low SES groups would have dropped to virtually nothing.²⁰

University fees returned in 1989 in the form of the Higher Education Contribution Scheme (HECS).²¹ The next concerted effort to increase diversity within Australian universities occurred soon after, with the release of an equity policy framework in 1990.²² The policy identified six under-represented social groups: low SES students, students from remote and rural regions, students with disabilities, non-English speaking students, and Indigenous students. The policy required universities to provide data concerning enrolments by students in these groups, and to devise strategies to increase student diversity.²³ The policy succeeded in increasing the number of Australian graduates, although it has been argued that the additional graduates largely consisted of middle-class students.²⁴ A government review of higher education participation showed that the proportion of women, students from non-English speaking backgrounds and students with disabilities enrolling at university increased, but there was little progress with the other groups including low SES students.²⁵ The proportion of disadvantaged students studying law also remained low compared to most other disciplines.²⁶

In 2008, the Federal government conducted the review of Australian higher education known as the Bradley Review, which focused specifically on social inclusion.²⁷ The government then announced that it wanted to increase the proportion of Australians aged 25 to 34 years with a Bachelor degree to 40% by 2025, and

²⁰ Weisbrot, above n 3, 234.

²¹ Bruce Chapman, 'Australian Higher-Education Financing: Issues for Reform' (2001) 34(2) *Australian Economic Review* 195.

²² This framework was detailed in 'Department of Education, Employment and Training' *A Fair Change for All: A Discussion Paper* (1990).

²³ Hamish Coates and Kerri-Lee Krause, 'Investigating Ten Years of Equity Policy in Australian Higher Education' (2005) 27(1) *Higher Education Policy and Management* 35.

²⁴ Richard James, *Social Equity in a Mass, Globalised Higher Education Environment: The Unresolved Issue of Widening Access to University* (University of Melbourne Centre for the Study of Higher Education, 2007) 5.

²⁵ Sam Sellar and Trevor Gale, 'Mobility, Aspiration, Voice: A New Structure of Feelings for Student Equity in Higher Education' (2011) 52(2) *Critical Studies in Education* 115.

²⁶ Coates and Krause, above n 23.

²⁷ Denise Bradley et al, *Review of Australian Higher Education* (Commonwealth of Australia, 2008).

the proportion of undergraduate enrolments from low SES background to 20% by 2020.²⁸ Previously, the Federal government paid universities to teach a restricted number of students. This cap was dropped, and universities were permitted to teach as many students who wanted to enrol in approved courses, as long as equity targets were met. Consequently, many universities extended their programs, including a lowering of academic requirements for admission in some courses, and the number of enrolments in law courses significantly increased. Many universities also extended or established programs aimed at increasing the number of students in the identified target equity groups. However, as with previous reforms, these changes had only a small impact. In 2012, there was an unprecedented increase in student enrolment, but the number of offers made to students from low SES background rose by only 5.8%,²⁹ and there is no recent data concerning the proportion of low SES and Indigenous students studying law. These reforms are also likely to be short-lived.

A new Federal government was elected in 2013, and it has signalled the likelihood of a return to capping student enrolments and the deregulation of student fees. Higher fees will most likely have a detrimental impact upon the ability of low SES students to take up university education,³⁰ although it appears that the Federal government is not concerned with this issue.³¹

Despite these problems, there does appear to be some improvement in the number of Indigenous law students and lawyers practicing in Australia. Indigenous people did not enter the Australian legal profession until the 1970s. The first

²⁸ Gale and Tranter, above n 9, 40.

²⁹ Sally Knipe, 'University Course Completion and ATAR Scores: Is There a Connection?' (2013) 12(1) *Journal of Educational Enquiry* 25.

³⁰ Margaret Thornton, 'Deregulation, Debt and the Discipline of Law' (2014) 39(4) *Alternative Law Journal* 213.

³¹ The current efforts at reforming higher education do not appear to be located in concern about ensuring student diversity. For instance, in response to a question concerning how the proposed deregulation of student fees may impact upon women and poor people, Christopher Pyne the Minister for Education replied: 'Now, women are well-represented amongst the teaching and nursing students. They will not be able to earn the high incomes that say dentists or lawyers will earn, and Vice Chancellors in framing their fees, their fee structure, will take that into account. Therefore the debts of teachers and nurses will be lower than the debts, for example, of lawyers and dentists': ABC, 'Christopher Pyne Not Ruling Anything Out on Education Reform Negotiations', 7.30 Report, 6 August 2014 (*Christopher Pyne*). < <http://www.abc.net.au/7.30/content/2014/s4062352.htm>>. The way in which the corporatism of Australian higher education has served as the underlying basis for the exclusion of Indigenous people from university study is further examined in Toni Schofield, Rebecca O'Brien and John Gilroy, 'Indigenous Higher Education: Overcoming Barriers to Participation in Research Higher Degrees' (2014) 2 *Australian Aboriginal Studies* 13; Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8(1) *International Journal of the Legal Profession* 37.

Indigenous university graduate was probably Kumantjayi Perkins in 1965, and the first Indigenous law graduate was Mallenjaiwakka in 1972. The number of Indigenous law students remained very low until the early 1990s. A survey of 18 Australian law schools in 1990 showed that there were 50 enrolled undergraduates who identified as Indigenous, one Indigenous post-graduate student, and a total of 21 graduates up until 1990.³² A subsequent survey of 25 Australian law schools estimated that 35 Indigenous students had commenced LLB study in 1991, which had increased to 89 by 2000. In 2000, it was reported that at least 256 Indigenous students were studying law across Australia.³³ Figures from the Australian Association of Graduate Employees show that from 2000 to 2009, the number of Indigenous students enrolled in a LLB has remained relatively constant.³⁴

While the number of Indigenous students currently studying law is unknown, there has been a recent increase in the number of practicing Indigenous lawyers. Figure 1 shows the number of Indigenous solicitors practising in NSW since 2000.³⁵ Estimates of the Indigenous population of NSW are available from the Australian Bureau of Statistics for 2006 and 2011.³⁶ In 2006, approximately 2.2% of the NSW population was Indigenous, whereas 0.16% of NSW solicitors were Indigenous. In 2011, the Indigenous population of NSW was 2.9% of the total population, and the proportion of Indigenous solicitors in NSW was 0.44%. While this represents an improvement, Indigenous people are still under-represented within the Australian legal community.

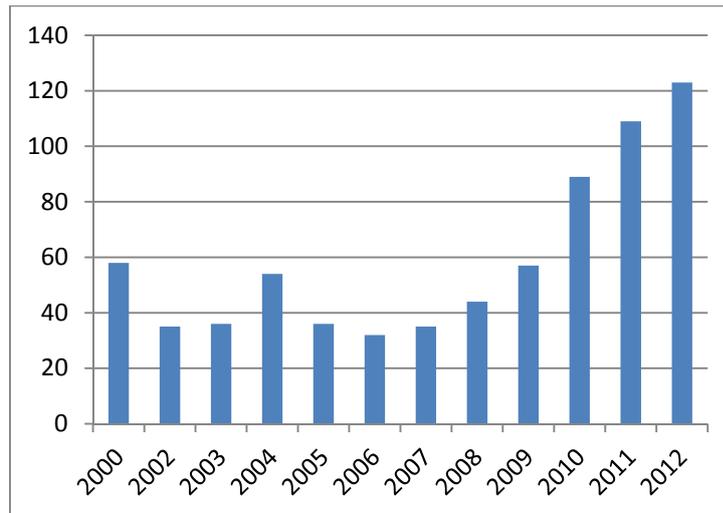
³² Daniel Lavery, 'The Participation of Indigenous Australians in Legal Education' (1993) 4 *Legal Education Review* 177, 179.

³³ Heather Douglas, 'The Participation of Indigenous Australians in Legal Education 1991-2001' (2001) 24 *University of New South Wales Law Journal* 485, 488.

³⁴ Phillip R Rodgers-Falk and Robert Noomgarm Japaljarri Vidler, *Growing the Number of Aboriginal and Torres Strait Islander Law Graduates: Barriers to the Profession*, Background Paper to Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People: Final Report (2011) 2. This pattern is also replicated in national commencement numbers for all degrees, Ekaterina Pechenkina and Ian Anderson, *Background Paper on Indigenous Australian Higher Education: Trends, Initiatives and Policy Implications* (Australian Government, 2011) <http://sydney.edu.au/documents/about/higher_education/2011/20110930%20IndigenousHigherEducationReview-ResearchPaper.pdf> 7.

³⁵ Law Society of New South Wales, *Surveys and Statistics* (2009) <<http://www.lawsociety.com.au/resources/surveyandstatistics/index.htm>>. No data is available for 2001.

³⁶ Australian Bureau of Statistics, *4705.0 - Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006* (2007) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4705.0>>.

Figure 1 Number of Indigenous solicitors practicing in NSW

Statistics collected by the Law Institute of Victoria (LIV) in 2007 show there were no Indigenous judges and magistrates in Victoria, and only one Indigenous barrister. The LIV also conducted a survey of law firms that reported that little was being done to encourage and support Indigenous people to join the legal profession. Many law firms reported being unaware of the issue of Indigenous underrepresentation or were at a loss as how to solve the problem.³⁷ Since 2007, however, the situation appears to have improved somewhat. For instance, five barristers in Victoria currently identify as Indigenous,³⁸ and in January 2013 Rose Falla became the first Indigenous Victorian magistrate.³⁹

III BARRIERS TO ENTRY TO LAW SCHOOL: ACHIEVING ADMISSION

For students from disadvantaged backgrounds a significant hurdle to entering the legal profession is obtaining the secondary school grades necessary for entry into higher education.⁴⁰ The need to satisfy a high entry requirement is especially problematic for

³⁷ Harriet Morley, 'Breaking the Barriers: Victorian Indigenous Lawyers' (2007) 81(18) *Law Institute Journal* 18.

³⁸ Victorian Bar, *Barristers Directory* (2015) <<http://www.vicbar.com.au/barrister-directory/indigenous-barristers>>.

³⁹ Vince Chadwick, 'State's First Indigenous Magistrate Appointed', *The Age*, January 30, 2013 <<http://www.theage.com.au/victoria/states-first-indigenous-magistrate-appointed-20130129-2djb5.html>>.

⁴⁰ Daniel Edwards, 'Increasing Competition for University and the Challenge of Access for Government School Students: A Case Study' (2008) 52(3) *Australian Journal of Education* 287.

students wanting to get into law schools, as law schools typically require exceptionally high grades at secondary level.⁴¹ Following the most higher education recent reforms, some law schools have lowered their entry requirements. However, demand for places within law continues to outstrip supply, which means that the standard required for admission remains very high.

The high entry requirement for law is unlikely to change. The Graduate Careers Australia administers an annual Graduate Destinations Survey. This survey shows that there has been a steady decline of law graduates moving into professional practice in recent years. In 1999, the percentage of law graduates who found full-time employment in professional practice was 67.8%. By 2012, this had dropped to 55.9%. During this same period, the percentage of law graduates taking up government positions has remained relatively constant. However, there has been a steady increase in the number of law graduates taking up positions in industry and commerce. In 1999, only 13.3% of law graduates had moved into industry and commerce, compared to 20.8% in 2012.⁴²

This suggests that the law degree is still important for students who intend to go into private practice. However, it appears that the law degree has also been transformed into a valuable generalist qualification. This transformation reflects the changing nature of the relationship between higher education and the workplace. The Australian workforce, as is the case with the workforce of other OECD countries, has transformed from being heavily dependent on blue-collar occupations to being increasingly comprised of professional service occupations. For instance, it is estimated that in 2006, 40% of all Australian jobs were managerial, professional or associate professional positions.⁴³ Nearly two thirds of the growth in the employed workforce between 1996 and 2006 is attributable to these three occupations.⁴⁴ Many of these positions require employees to hold a degree, and this expectation appears to be increasing. For instance in 2000, 43.6% of people working in managerial, professional and associate professional occupations held a Bachelors degree or higher. This had risen to 48% by 2006.⁴⁵

⁴¹ Weisbrot, above n 3, 224.

⁴² Graduate Careers Australia, *GradStats* (2015) <<http://www.graduatecareers.com.au/research/researchreports/gradstats/>>.

⁴³ Bob Birrell, Daniel Edwards and Ian R Dobson, 'The Widening Gap Between Demand For and Supply of University Graduates in Australia' (2007) 15(2) *People and Place* 72, 77.

⁴⁴ Bob Birrell and Virginia Rapson, *Clearing the Myths Away: Higher Education's Place in Meeting Workforce Demands* (Dusseldorp Skills Forum, 2006).

⁴⁵ Birrell et al, above n 43, 77

The increasing value placed upon higher education, and in particular upon the law degree, has meant that the demand for admission remains high.⁴⁶

In Australia, students who have attended an independent secondary school rather than a government-funded school are more likely to obtain the results required for admission to university.⁴⁷ Australian students can attend a government-funded school that provides free education, or an independent school that often charges high fees. Catholic schools are also fee based, but fees are often lower than independent non-Catholic schools. High economic resource families typically send their children to independent or Catholic schools.⁴⁸

For the most part, strategies aimed at increasing student diversity within universities have targeted secondary schools (discussed below), however educational disadvantage has been shown to start in the earliest years of schooling. Children from low SES families have lower levels of literacy, numeracy and comprehension and lower retention rates compared to children from higher SES families.⁴⁹ The relationship between SES and school performance has also been shown to be consistent regardless of how SES is measured, or whether studies are based on individual or aggregate data.⁵⁰

Institutional educational disadvantage is even more acute for many Indigenous students. On average, Indigenous students spend at least two fewer years at school than non-Indigenous students, and are more likely to leave school early.⁵¹ Risk factors that are associated with low retention are more likely to occur in Indigenous families. These include familial poverty, living in an isolated community, health problems, inadequate housing, low parental levels of education, and speaking a language other than

⁴⁶ See also Christine Parker, 'An Oversupply of Law Graduates: Putting the Statistics in Context' (1993) 4 *Legal Education Review* 4; Anne Daly 'What is the Recent Evidence on an Excess Supply of Legal Qualifications in Australia?' (2012) 45(4) *Australian Economic Review* 441.

⁴⁷ Sinan Gemici, Patrick Lim, and Tom Karmel, *The Impact of Schools on Young People's Transition to University: Longitudinal Surveys of Australian Youth, Research Report 61* (National Centre for Vocational Education Research Ltd, 2013).

⁴⁸ Anderson and Vervoorn, above n 10; Goldring, above n 19; Trevor Williams, Michael Long, Peter Carpenter and Martin Hayden, *Year 12 in the 1980s* (Australian Government Publishing Service, 1993) 23.

⁴⁹ Gillian Consident and Gianni Zappala Gianni, 'The Influence of Social and Economic Disadvantage in the Academic Performance of School Students in Australia' (2002) 38 *Journal of Sociology* 129.

⁵⁰ Brian Graetz, 'Socioeconomic Status in Education Research and Policy' in John Ainley, Brian Graetz, Michael Long and Margaret Batten (eds), *Socioeconomic Status and School Education* (DEET/ACER, 1995).

⁵¹ Jan Gray and Quentin Beresford, 'A "Formidable Challenge": Australia's Quest for Equity in Indigenous Education' (2008) 52(2) *Australian Journal of Education* 197, 201.

English at home.⁵² These risk factors should not be seen within a simplistic 'deficit model', but are the result of the ongoing effects of Australia's history of dispossession.

Gray and Beresford argue that educational disadvantage for Indigenous children has been normalised as part of the legacy of colonialism.⁵³ Indigenous people have endured official policies of dispossession, segregation and assimilation that have resulted in intergenerational trauma. Until the 1950s, Indigenous children were denied access to all but the barest minimum level of education required to produce useful labourers. Many children who were removed as part of the Stolen Generations did not receive any education at all, and low levels of intergenerational education meant that Indigenous parents feel alienated and disconnected from the education system.⁵⁴ The Australian education system is also founded on Western cultural assumptions that success requires incremental growth and regular attendance.⁵⁵ Indigenous students are not offered the flexibility needed to meet cultural obligations, the standard Western curriculum does little to engage Indigenous students, and many Indigenous students report feeling isolated and disillusioned at school.⁵⁶

Gray and Beresford also argue that assimilationist policies continue to inform current educational policy. The assumption that Indigenous children lack the cultural skills needed for school success places the blame for education disadvantage on Indigenous people themselves. The lack of Indigenous teachers, high staff turnover, unsustained and uncoordinated education policies, the use of behaviour management approaches towards discipline which results in Indigenous students being disproportionately suspended or excluded, and the overrepresentation of Indigenous young people in youth detention centres further exacerbate retention problems.⁵⁷

⁵² Jan Gray and Quentin Beresford, *Alienation from School among Aboriginal Students* (Institute for the Service Professions, Edith Cowan University, 2001).

⁵³ Gray and Beresford above n 51, 205.

⁵⁴ Gray and Beresford above n 51, 205-6; Stephen S Zubrick et al, *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People* (Curtin University of Technology and Telethon Institute for Child Health Research, 2006).

⁵⁵ B Collins, *Learning Lessons: An Independent Review of Indigenous Education in the Northern Territory* <http://www.mja.com.au.ezproxy.flinders.edu.au/public/issues/174_10_210501/bauert/bauert.html>; Colin J Bourke, Ken Rigby, and Jennifer Burden, *Better Practice in School Attendance: Improving the School Attendance of Indigenous Students* (Monash University, 2000); Gray and Beresford above n 51, 201.

⁵⁶ Jan Gray and Gary Partington, 'Attendance and Non-Attendance at School' in Quentin Beresford, Gary Partington and Graeme Gower (eds), *Reform and Resistance in Aboriginal Education: The Australian Experience* (University of Western Australian Press, 2003) 261; Jerry Schwab, 'Indigenous Early School Leavers: Failure, Risk and High-Stakes Testing' (2012) 1 *Australian Aboriginal Studies*, 3.

⁵⁷ Gray and Beresford, above n 51.

IV CULTURAL BARRIERS

Even when students from low SES groups obtain the grades needed to enter law school, it is still unlikely that they will enrol. Students from high SES groups who excel in secondary school are more likely choose medicine and law compared to students from low SES groups who are more likely to enrol in engineering or teaching.⁵⁸ Indigenous students who gain the results required for university admission are more likely to choose post-school low-level vocational education qualifications than university.⁵⁹ This suggests that there are additional factors, other than results obtained at secondary school, behind the under-representation of disadvantaged students at university.⁶⁰ Independent schools offer a number of advantages that cannot be matched by government-funded schools. These include better career guidance, subject choice, completion rates, quality of academic preparation, higher grades, expectations and ambitions.⁶¹ Noel Pearson argues that the better quality education offered by independent schools reflects demand from fee-paying parents. In contrast, government schools focus on supply rather than demand, and thus are concerned with the quantity rather than then quality of education. Pearson calls for educational reform in the form of implementing further quality control mechanisms in government schools.⁶²

The advantages conferred by independent schools also highlight the importance of cultural barriers in discouraging low SES groups from entering university. An overview of studies into university participation reveals that low SES and Indigenous students often do not enrol as they consider university admission

⁵⁸ Anderson and Western, above n 13, 24; Coates and Krause, above n 23, 41.

⁵⁹ Gray and Beresford, above n 51, 201.

⁶⁰ Philip Parker et al, 'Will Closing the Achievement Gap Solve the Problem? An Analysis of Primary and Secondary Effects for Indigenous University Entry' (2013) *Journal of Sociology* 1. See also Delwar Hossain et al, 'Bridging the Gap: Identifying Needs and Aspirations of Indigenous Students to Facilitate their Entry into University' (2008) 37(01) *The Australian Journal of Indigenous Education* 9.

⁶¹ McMillan and Western, above n 13, 228.

⁶² Noel Pearson, *We Need Real Reform for Indigenous Public Schooling* (Cape York Institute For Policy and Leadership, 2004) <http://www.kooriweb.org/foley/resources/pearson/pearson_pdfs/aus25aug2004.pdf>. Pearson has also argued that Indigenous students from remote communities would benefit from attending boarding schools in the cities that have the resources to provide higher quality education. On the other hand, Schwab argues Indigenous students perform best when located within their home communities, including remote communities, and that alternative solutions, such as creating a more enriching, engaging and culturally appropriate curriculum, improving teacher retainment and actively engaging parents and communities, are more appropriate. Schwab, above n 56.

to be unattainable, they place little value on higher education, and they are more likely to feel alienated from university culture.⁶³

Interviews with Indigenous high school students also suggest that those who want to go to university do not necessarily take a strategic approach to achieving admission. Indigenous high school students often demonstrate that they do not have a detailed knowledge of entry requirements, back-up plans, or awareness of alternative entry pathways. While their parents may be encouraging, they may be uncertain about how to provide support. Indigenous students often lack appropriate career advice, need to deal with additional social and peer problems, and need to travel or relocate in order to continue with their studies. The aspirations of Indigenous students are often shaped by a desire to assist their home communities rather than to advance their own individual careers.⁶⁴

V LAW SCHOOL ATTRITION

Gaining entry to university is the most significant barrier to participation by low SES groups in the legal profession, but it is not the only barrier.

A number of Australian studies have shown that first year university students from state-funded schools outperform students who attended an independent school and achieved the same entry grade.⁶⁵ These studies have only involved statistical analysis, and thus are unable to explain why students from state-funded schools excel, but it has been suggested elsewhere that the additional resources and more attentive coaching provided by independent schools overinflates students' grades. Students who attended state-funded schools may also be more independent and determined learners at university level.⁶⁶ In contrast, Indigenous students who are admitted to law schools often struggle. Many Indigenous law students withdraw in their first year. Douglas reports that of the 636 first year Indigenous law students enrolled in Australian law

⁶³ Richard James et al, *Participation and Equity: A Review of the Participation in Higher Education of People from Low Socioeconomic Backgrounds and Indigenous People* (Centre for the Study of Higher Education, 2008) 3.

⁶⁴ Adrian Parente, Rhonda Craven, and Geoff Munns, 'What do Indigenous Students Say about their Aspirations' (2003) 12 *Journal of Aboriginal Studies Association* 11.

⁶⁵ Leo H T West, 'Differential Prediction of First Year University Performance for Students from Different Social Backgrounds' (2001) 10(2) *Journal of Institutional Research* 32; Ian R Dobson and Eric Skuja, 'Secondary Schooling, Tertiary Entry Ranks and University Performance' (2005) 13(1) *People and Place* 53; Merran Evans and Alan Farley, *Institutional Characteristics and the Relationship between Students' First-Year University and Final-Year Secondary School Academic Performance* (Monash University, 1998); Elisa Rose Birch, and Paul W Miller, 'The Influence of Type of High School Attended on University Performance' (2007) 46(1) *Australian Economic Papers* 1.

⁶⁶ West, *ibid.*

schools between 1991 and 2000, only 18% completed their degree.⁶⁷ In recent years, there have been greater efforts to improve retention among Indigenous law students (discussed below), and these efforts appear to have improved retention to some degree. Between 2005 and 2009, 59% of commencing Indigenous law students completed their degrees. However, there is still a substantial gap between the retention levels of Indigenous law students and those of non-Indigenous law students.⁶⁸

Indigenous law students report experiencing a range of race-related problems at law school. In a survey of Indigenous law students enrolled at Griffith University in Queensland, 77% reported experiencing cultural disrespect and/or racism from staff and other students in the law school. A significant majority of Indigenous law students (82%) had experienced tension between their studies and their community responsibilities, and felt that the law school did not provide sufficient recognition of the importance of family responsibilities.⁶⁹ Interviews with Indigenous law students at Monash University showed that some students felt that they struggled with the pressures of community expectations and had concerns about being stereotyped as an Indigenous person.⁷⁰ Likewise, Indigenous law students at the University of New South Wales struggled with feelings of alienation, lack of confidence, and language problems.⁷¹

Research into the experiences of Indigenous law students has typically been relatively small-scale. An exception is the survey conducted by Krause et al, which compared the experiences of Indigenous and non-Indigenous first year students across several universities.⁷² The study revealed that many Indigenous students struggled to adjust to university teaching styles and to the volume of work expected. Over a third of Indigenous students had seriously considered deferring their studies, and 13% reported that their grades were below a pass mark. Indigenous students were more likely to keep to themselves and to feel pressure from family commitments. More than half reported that anxiety about money

⁶⁷ Heather Douglas, 'The Participation of Indigenous Australians in Legal Education 1991-2001' (2001) 24 *University of New South Wales Law Journal* 485, 488.

⁶⁸ Rodgers-Falk and Noomgarm Japaljarri Vidler, above n 34, 2

⁶⁹ *Ibid* 3.

⁷⁰ Richard Potok, *A Report into the Professional Development Needs of Native Title Representative Body Lawyers Final Report* (Castan Centre for Human Rights, Monash University, 2005) 201.

⁷¹ Carolyn Penfold, 'Indigenous Students' Perceptions of Factors Contributing to Successful Law Studies' (1996) 7 *Legal Education Review* 155.

⁷² The study also took a longitudinal approach, surveying cohorts of first years from 1994, 1999 and 2004, although the random sampling used for the first two studies did not produce a suitable sample of Indigenous students. This was corrected for 2004. Kerri-Lee Krause, Robyn Hartley, Richard James and Craig McInnis, *The First Year Experience in Australian Universities: Findings from a Decade of National Studies* (DEST, 2005) 67.

interfered with their studies, whereas only 31% of non-Indigenous students reported financial concerns.⁷³

VI STRATEGIES FOR ADDRESSING UNDERREPRESENTATION OF DISADVANTAGED STUDENTS

Students from low SES backgrounds and Indigenous students face a range of structural and cultural barriers that diminish the likelihood that they will enrol in universities, and especially in highly competitive programs such as law. Successive government policies have required universities to put in place strategies to increase the proportion of disadvantaged students enrolling in university courses. The need for strategies aimed at increasing enrolment, performance and retention for Indigenous students has also been the focus of a report by the Indigenous Higher Education Advisory Council (IHEAC).⁷⁴ This section provides a critical overview of the main diversification strategies that have been applied in Australian universities and examines their effectiveness.

The government's main approach to encouraging more low SES students to enter university is abolishing fees or offering means-based financial assistance. It has largely assumed that financial assistance will be sufficient to overcome barriers to participation.⁷⁵ While economic constraints have some influence on the under-representation of disadvantaged groups in higher education, economic measures alone are not sufficient to improve diversity within law schools. Research has demonstrated that many Australian students from low SES families are reluctant to forego earning and are debt averse.⁷⁶ In addition, when fees were abolished completely, low SES students continued to be under-represented.⁷⁷

Additional financial support may provide partial assistance to non-Indigenous students, but for Indigenous students, financial assistance can make a significant contribution to university access and retention.⁷⁸ A major source of funding for Indigenous students is the Aboriginal and Torres Strait Island Study Scheme (ABSTUDY). The scheme is means tested, and in January 2000 payments were aligned with the financial assistance schemes

⁷³ Ibid 68.

⁷⁴ Indigenous Higher Education Advisory Council (IHEAC), *Ngapartji Ngapartji – Yerra: Stronger Futures* (Commonwealth of Australia, 2008).

⁷⁵ Trevor Williams, *Participation in Education. ACER Monograph No. 30* (Australian Council for Educational Research, 1987) 38; James, above n 24, 10.

⁷⁶ Glen Postle, John Clarke, and David Bull, 'Equity Programs and Strategies Reported by the Australian Higher Education Sector' in Glen Postle et al (eds), *Towards Excellence in Diversity: Educational Equity in the Australian Higher Education Sector in 1995: Status, Trends and Future Directions* (University of Southern Queensland Press, 1997).

⁷⁷ Weisbrot, above n 3, 234; James, above n 24, 10.

⁷⁸ James, above n 24, 4; Pechenkina and Anderson, above 34, 11.

available for all low SES students. This was followed by a sharp decline in the number of Indigenous enrolments and a drop in ABSTUDY recipients. IHEAC recommended that the means tests and payment rates needed urgent reconsideration.⁷⁹

Universities generally select students according to academic performance, and it is now readily acknowledged that these selection criteria act to exclude disadvantaged students. Special admissions schemes exist in many universities, and are intended to assist disadvantaged students to enrol in courses if they do not have the requisite grades for admission. Early special admissions programs in Australia had only limited success. Until the early 1990s, most special admissions schemes simply involved the transfer of credit.⁸⁰ This meant that the schemes largely assisted students into programs with lower requirements, and offered little assistance for entry into programs such as law. Thus, these earlier schemes did little to shift the overall SES profile of law schools. Instead, students who came from the same SES background as the main student body but had originally missed out on their first preference were able to enrol.⁸¹

Special admission schemes were expanded in the late 1990s, and have become an important factor in increasing Indigenous enrolments.⁸² IHEAC estimates that approximately 70% of Indigenous students enter higher education via special admission schemes. The types of schemes have also become more varied.⁸³ Some universities allow for alternative methods for selecting students which rely on aptitude tests such as uniTEST rather than prior academic performance. An empirical evaluation of aptitude tests shows that they allow for the selection of high-quality students, and at the same time are more likely to select for a greater diversity of students.⁸⁴

Universities have also focused on pathways that direct students from vocational education, especially TAFEs, into universities. The focus on this pathway is based on the assumption that a high proportion of students enrolled in vocational education are from disadvantaged backgrounds. However, an evaluation of the effectiveness of using TAFEs as a conduit for universities shows that it does little to widen participation. Instead, students enrolled

⁷⁹ IHEAC, above n 74, 16.

⁸⁰ Postle et al, above n 76.

⁸¹ Ibid, 215.

⁸² Douglas, above n 54, 493.

⁸³ IHEACH, above n 74, 14.

⁸⁴ Hamish Coates, Hamish Bennett, Daniel Edwards and Tim Friedman, *Student Aptitude Test for Tertiary Admission (SATTA) Pilot Program: Evaluation Report for the Department of Education, Employment and Workplace Relations* (DEEWR, 2010); Daniel Edwards, Hamish Coates and Tim Friedman, 'Using Aptitude Testing to Diversify Higher Education Intake: An Australian Case Study' (2013) 25(2) *Journal of Higher Education Policy and Management* 136.

in high level vocational courses have a similar SES profile to university students.⁸⁵

Another mechanism for encouraging disadvantaged students to enrol in university is the use of outreach programs. Traditional outreach programs involve partnerships between universities and local schools, are usually aimed at high schools,⁸⁶ and include activities such as school visits and open days.⁸⁷ Traditional outreach programs have had some place-specific success, but they have not achieved any significant breakthrough.⁸⁸

Scull and Cuthill have trialled the use of an 'engaged' outreach program, which achieved better results compared to traditional programs. They argue that traditional programs focus too narrowly on individual students, rather than engaging the full range of people who influence a student's decision to attend university. Their engaged program involved collaboration between a university and local Pacific Island immigrant communities in an area of high social deprivation in South East Queensland. The program was aimed at increasing education aspiration within the entire community, rather than working with individual students. It also addressed the lack of awareness and support from all stakeholders involved in decision-making, including families, schools and peers.⁸⁹ A further initiative that entails engaging Indigenous high school students in order to enhance their academic achievement is The Aspiration Initiative (TAI). The TAI is a five year pilot launched in 2011 involving year eight Indigenous students from Victoria, New South Wales and Western Australia.⁹⁰

⁸⁵ Leesa Wheelahan, 'Do Educational Pathways Contribute to Equity in Tertiary Education in Australia?' (2009) 50(3) *Critical Studies in Education* 261.

⁸⁶ John Clarke, Bruce Zimmer and Robert Main, 'Review of the Under-Representation in Australian Higher Education by the Socio-Economically Disadvantaged and the Implications for University Funding' (1999) 8(1) *Journal of Institutional Research in Australasia* 1.

⁸⁷ Fran Ferrier, Margaret Heagney, and Michael Long, 'Outreach: A Local Response to New Imperatives for Australian Universities' in Fran Ferrier and Margaret Heagney (eds), *Higher Education in Diverse Communities: Global Perspectives, Local Initiatives* (London EAN European Access Network and the Higher Education Authority of Ireland, 2008) 68.

⁸⁸ Sue Scull and Michael Cuthill, 'Engaged Outreach: Using Community Engagement to Facilitate Access to Higher Education for People from Low Socio-Economic Background' (2010) 29(1) *Higher Education Research and Development* 59, 61-2.

⁸⁹ *Ibid.*

⁹⁰ The Aspiration Initiative, *About the Academic Enrichment Program* <<http://theaspirationinitiative.com.au/academic-enrichment/139-about-the-academic-enrichment-program>>. Other non-university based programs that play an important role in developing the university readiness of Indigenous students include The Australian Indigenous Education Foundation <<http://www.aief.com.au/>> and AIME <<http://www.aimementoring.com/about/aime/>>.

In 1991, no Australian law school offered any type of pre-law program.⁹¹ Today, many law schools offer some form of bridging or enabling program for disadvantaged students, including Indigenous law students. James et al discuss two case studies: a multi-faceted Indigenous Law Programme and a four week enabling program. The Indigenous Law Program included an Indigenous Pre-Law Orientation Program, direct student support, teaching and staff development, and research supervision. The enabling program focused on the skills students needed in order to study law, including study skills, research, and writing skills. In 2000, the program had nine students; this had increased to 44 by 2005, and the program was highly successful in improving retention levels.⁹²

Research has suggested that bridging and enabling programs can be effective in increasingly the number of disadvantaged students enrolling in university, as well as increasing their performance and completion rates. However, the programmes need to be well-designed and culturally appropriate.⁹³ It has been argued that bridging programs are usually built around neoliberal values such as inclusivity, objectivity, fairness, and equality, and that these values are at odds with Indigenous students' experiences of education. Unless bridging courses incorporate an Indigenous perspective, they can be alienating and isolating for Indigenous students.⁹⁴ In addition, many bridging programs are quite modest, and some of the Australia's elite universities have been reluctant to support bridging programs at all.⁹⁵

For Indigenous students, overcoming the hurdle of admission is not enough to ensure graduation. Poor performance and low retention rate for Indigenous university students highlight the need for support. Research suggests that support programmes to assist Indigenous law students to complete their degree need to have two components: academic support and cultural support. Cultural

⁹¹ Daniel Lavery, 'The Participation of Indigenous Australians in Legal Education' (1993) 4 *Legal Education Review* 177, 182.

⁹² James, above n 63, 58-9.

⁹³ Johann De Villiers and Henry Rwigema, 'The Effects of a Bridging Year on the Graduation Success of Educationally Disadvantaged Commerce Students' (1998) 12(1) *South African Journal of Higher Education* 103; Driekie Hay and F Morals, 'Bridging Programmes: Gain, Pain or All in Vain: Perspectives on Higher Education' (2004) 18(2) *South African Journal of Higher Education* 59.

⁹⁴ Carl James, "'I Really Wasn't Ready": Expectations and Dilemmas of a University Student in an Access Program' (2010) 1(1) *Journal of Critical Race Inquiry* 49.

⁹⁵ Postle et al, above n 76. Institutions largely based in regional Australia have been successful in opening up recruitment, however their completion rates have been relatively low. In contrast, the Group of Eight universities have continued with relatively low enrolments. These universities, however, tend to have higher completion rates. Pechenkina and Anderson, above n 34.

support will differ between Indigenous groups, but at a minimum should facilitate and support an Indigenous student community.⁹⁶

Many Australian universities now have Indigenous education units that provide education services, support for individual students, a focal point for the Indigenous student community, and links to local Indigenous communities. For Indigenous law students, the units provide an invaluable way to network with other Indigenous students, especially when it is quite likely that they will not know any other Indigenous students studying law.⁹⁷ However, a recent review of educational access and outcomes for Indigenous students (the Behrendt Review) reported that the units are hampered by a lack of resources, influence and knowledge of specific disciplines.⁹⁸ The Behrendt Review also explained that it is important that support for Indigenous students is not just left to the Indigenous education units, but that a whole-of-university approach is adopted.⁹⁹

Some law schools now offer mentoring support for Indigenous students, most often in the form of assistance from individual staff members. The importance of faculty support has been stressed by Indigenous students, especially those in their first year.¹⁰⁰ Support is sometimes offered by Indigenous staff members, however Indigenous Australians are still under-represented as academics and researchers, and within other university positions.¹⁰¹ Indigenous staff have reported that the need to support to Indigenous students leads to feelings of being overworked and emotionally exhausted.¹⁰² Support is also invariably informal and is therefore not included in workloads,¹⁰³ although there are some examples of formal programs. One such program is provided by the ANU's College of Law, a targeted support program for Indigenous students. The program commenced in 1990, and includes an Indigenous academic adviser who acts as the primary contact for Indigenous students, provides academic and pastoral support, and assists in the creation of a 'safe space' for Indigenous students. In addition, Indigenous students may be admitted to the

⁹⁶ Gemma McKinnon, 'Supporting the Next Generation of Indigenous Law Students' (2014) 8(11) *Indigenous Law Bulletin* 3.

⁹⁷ Penfold, above n 71; Pechenkina and Anderson, above n 34, 13.

⁹⁸ *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People Final Report* (Commonwealth of Australia, 2012).

⁹⁹ *Ibid.*, 62-5. See also Lyn Anderson, Michael Singh, Clare Stehbins and Lennette Ryerson, *Equity Issues: Every University's Concern, Whose Business?: An Exploration of Universities' Inclusion of Indigenous Peoples' Rights and Interests* (Capricornia Aboriginal and Torres Strait Islander Education Centre, Central Queensland University, 1998).

¹⁰⁰ Pechenkina and Anderson, above n 34.

¹⁰¹ *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People Final Report*, above n 98, 132.

¹⁰² Susan Page and Christine Asmar, 'Beneath the Teaching Iceberg: Exposing the Hidden Support Dimensions of Indigenous Academic Work' (2008) 37 (Supplement) *The Australian Journal of Indigenous Education* 109.

¹⁰³ *Ibid.*

College via an alternative entry scheme, the students are offered pre-entry pastoral support, and scholarships are available for Indigenous students.¹⁰⁴ By 2010, 30 Indigenous students had completed their law degree, of whom eight had graduated with honours degrees. The College of Law also reports that their high entry standards aligned with support mechanisms has ensured a recent retention and completion level of 100%.¹⁰⁵

Support for Indigenous law students has also come from the legal profession. For example, Tarwirri, the Indigenous Law Students and Lawyers Association of Victoria was created in 2002. It provides support for Indigenous law students, including assisting students to attend events such as the National Indigenous Legal Conference and hosting an Indigenous Law Students Mooting Competition.¹⁰⁶ The Queensland Law Society established LawLink in 2004, which provides Indigenous law students with opportunities to interact with the legal profession.¹⁰⁷ The Victorian Bar has established a mentoring program for Indigenous law students and annual clerkships.¹⁰⁸ In 2002, the NSW Bar Association established a trust to provide financial assistance to early career Indigenous barristers and law students. The Association also has a mentoring program for Indigenous law students, and encourages chambers to offer casual and part-time employment to Indigenous law students.¹⁰⁹ In 2010, the Law Council of Australia released its *Policy Statement: Indigenous Australians and the Legal Profession*, which promotes the study of law by Indigenous Australians and support for Indigenous law students.¹¹⁰

While the provision of academic and cultural support may be helpful, it does not necessarily get to the heart of the negative experiences many Indigenous students experience at university. Many Indigenous students report having experienced subtle and covert forms of racism, including conflict between their own

¹⁰⁴ Asmi Wood, 'Law Studies and Indigenous Students' Wellbeing: Closing the (Many) Gap (s)' (2011) 21 *Legal Education Review* 215.

¹⁰⁵ Ibid 269.

¹⁰⁶ Tarwirri, *Home Page* <<http://tarwirri.com.au/index.php>>. The importance of Tarwirri as a form of support has also been reported by Indigenous students: Pechenkina and Anderson, above n 34, 17.

¹⁰⁷ Queensland Law Society, *Cultural Diversity & Aboriginal & Torres Strait Islanders* <http://www.qls.com.au/For_the_profession/Practice_support/Resources/Equity_diversity_flexibility/Cultural_diversity_Aboriginal_Torres_Strait_Islander_Lawyers>.

¹⁰⁸ The Victorian Bar Inc, *Reconciliation Action Plan* <http://www.vicbar.com.au/uploads/publications/VB6734_VicBar_RAP_SP_FA.pdf>.

¹⁰⁹ NSW Bar Association, *Equal Opportunity* <<http://www.nswbar.asn.au/formembers/equal-opportunity>>.

¹¹⁰ Law Council of Australia, *Policy Statement: Indigenous Australians and the Legal Profession* (2010) <<http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/PolicyStatementIndigenousAustralians.pdf>>.

values and those expressed in their course curriculum.¹¹¹ The need to incorporate Indigenous knowledge into the university curriculum has been highlighted by both the Bradley Review and IHEAC. Despite this, there has been scant inclusion of Indigenous perspectives within the core component taught by law schools. However, this may soon change. In 2010, the Australian Learning and Teaching Council stipulated Threshold Learning Outcomes (TLOs) which require law graduates to demonstrate knowledge of the principles of values and justice, to understand the broader context in which legal issues arise, to engage in critical analysis, and to consider how the law impacts differently upon different social groups.¹¹² Many universities now specify graduate attributes, and the Behrendt Review suggests that this may be a useful way to ensure Indigenous knowledge is embedded into the curriculum. Some law schools appear to have embraced this approach, adopting graduate attributes that include being aware of and understanding cultural diversity and appreciating Indigenous legal issues.¹¹³

Incorporating Indigenous knowledge and perspectives into the law curriculum, however, is not an easy task. For instance, an external audit of the ANU Law School's curriculum included criticism of the absence of an Indigenous law unit. The School introduced an elective unit entitled *Indigenous Australians and the Law*.¹¹⁴ While student feedback concerning the unit was positive, the topic was taught as an elective rather than a core unit, and the number of students exposed to Indigenous legal issues was small and self-selecting.¹¹⁵ Teaching at ANU is research-led, and the development of courses concerning Indigenous people and the law is curtailed by the relative lack of research in this area. The low number of Indigenous researchers employed in law schools exacerbates this problem.¹¹⁶

The ANU unit focused upon the impact of Western law on Indigenous Australia, but did not include consideration of Indigenous laws.¹¹⁷ An example of a successful effort to incorporate Indigenous knowledge and perspectives into the core component of law curriculum is Thalia Anthony and Melanie

¹¹¹ Christopher Sonn, Brian Bishop, and Ross Humphries, 'Encounters with the Dominant Culture: Voices of Indigenous Students in Mainstream Higher Education' (2000) 35(2) *Australian Psychologist* 128.

¹¹² Sally Kift, Mark Israel and Rachel Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws – Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010).

¹¹³ Thalia Anthony and Melanie Schwartz, 'Invoking Cultural Awareness through Teaching Indigenous Issues in Criminal Law and Procedure' (2013) 23(1/2) *Legal Education Review* 31.

¹¹⁴ Asmi Wood, 'Incorporating Indigenous Cultural Competency through the Broader Law Curriculum' (2013) 23 (1/2) *Legal Education Review* 57, 65.

¹¹⁵ *Ibid*, 76

¹¹⁶ *Ibid*, 71

¹¹⁷ *Ibid*, 72.

Schwartz's teaching of *Criminal Law and Procedure* at a number of universities in Sydney.¹¹⁸ Anthony and Schwartz attempt to move beyond the impact of criminal law on Indigenous people to look at the impact of colonial law on Indigenous criminal law. This shift in perspective provides students with a deeper understanding of the coexistence of Indigenous and non-Indigenous law, and considers how law may act as a tool for the subjugation of marginal social groups. It also provides a contextual and critical analysis of the differential impact of the law, such as the overrepresentation of Indigenous people in Australia's prisons, which moves beyond simplistic, victim-blaming explanations. However, such a shift is not easy, and requires a familiarity with Indigenous law, as well as appropriate text books and Indigenous teaching staff.¹¹⁹

These examples are limited to efforts to incorporate Indigenous knowledge and experiences into individual units. The embedding of Indigenous knowledge more broadly across the entire law program offers further challenges, as reflected in the Queensland University of Technology's recent efforts to incorporate an Indigenous perspective within its entire program. This initiative revealed that many law teachers do not feel as if they have sufficient knowledge and skills to effectively teach Indigenous knowledge and perspectives. Teachers reported feeling uncomfortable about not knowing how to deal with racism, and expressed concern that they might offend Indigenous students.¹²⁰ Even when teachers have tried to include relevant material in courses, Indigenous students have reported feeling pressured to be experts on the Indigenous issues, to fit the stereotypes expected by students and teachers, and to correct misunderstandings. Law teachers have also struggled to deal with the emotional issues raised by some of the course material.¹²¹ It appears that in order to raise the cultural competency of law students, it is first necessary to raise the cultural competency of law teachers.

¹¹⁸ Anthony and Schwartz, above n 113, 32.

¹¹⁹ Anthony and Schwartz, above 113. For further examples of how Indigenous knowledge and perspectives may be included in the law curriculum see Nicole Graham, 'Indigenous Property Matters in Real Property Courses at Australian Universities' (2009) 19 *Legal Education Review* 289; Carwyn Jones, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum' (2009) 19 *Legal Education Review* 257; Alexander Reilly, 'Finding an Indigenous Perspective in Administrative Law' (2009) 19 *Legal Education Review* 271.

¹²⁰ Macrelle Burns, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12(1) *The International Educational Journal: Comparative Perspectives* 226, 228.

¹²¹ Penfold, above n 71. Also see Asmi, above n 104.

VII CONCLUSION

The number of students from low SES groups entering law schools, and therefore the legal profession, has remained persistently low despite efforts to support disadvantaged students. Only recently has there been any improvement, and it is likely that that progress will now be reversed. This article has identified several structural barriers. For students from low SES groups the main barrier is the high secondary school grades required for entry into law school. Australia's divided education system, which gives students who have attended an independent school an advantage when attempting to gain admission to law school, contributes to this problem. There are also cultural barriers, such as students from low SES groups not aspiring to enter higher education.

Indigenous law students face many of the same barriers as those faced by students from low SES groups, but they also face additional and more deeply entrenched barriers. These include intergenerational trauma that undermines the value of education within Indigenous communities and contributes to low retention rates and relatively poor academic performance. Australia's education system has continued to follow assimilationist assumptions that leave many Indigenous students feeling alienated and isolated. Indigenous students need additional financial support relative to other social groups, and they need additional cultural support. Without this support, there is a high risk that Indigenous students who do make it into law school will drop out.

Despite these problems, there are potential solutions that can be implemented by universities and law schools, and supported by the legal profession. Diversification strategies that have been shown to work include the provision of financial support, especially specific financial support targeted towards Indigenous students; special admissions programs that do more than simply transfer academic credit; community-based outreach programs; culturally appropriate bridging and enabling programs; academic and cultural support services; and the inclusion of Indigenous culture into every aspect of university life including curriculum design, course delivery, research activities, staff appointments and training, and management. However, expectations of what these types of programs can achieve must be realistic. Ultimately even the most well-designed, culturally appropriate, and well-targeted transitional and support programs cannot address deeply entrenched educational disadvantages. The dual nature of Australia's education system, which provides short-term but highly influential advantages to students with families who can afford private education, acts to sustain inequalities.

For many disadvantaged students – especially those from remote Indigenous communities – educational disadvantage begins in the earliest years of childhood and is located in entrenched histories of dispossession. However, these deeper problems should not absolve universities, law schools and the legal profession from

taking responsibility for increasing diversity. Strategies that are put in place at the point of university entry will only ever be partly successful. It is important that diversification strategies are based on evidence, involve communities rather than just individuals, and are joined up with policies aimed at addressing disadvantage in a student's earliest years. It is only with such a holistic approach to eradicating barriers to entry and success that the persistent inequalities within the legal profession will be addressed.