

Growing the number of Aboriginal and Torres Strait Islander Law Graduates: Barriers to the Profession

This paper explores initiatives in the higher education sector to grow the number of Aboriginal and Torres Strait Islander law graduates. The paper will recommend what could be learnt from this sector and applied more broadly in other specific areas of study.

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1. Introduction

ATSI law students “...feel disoriented by the system, under siege and in an alien environment”¹

Prior to 1970, Aboriginal and Torres Strait Islander people (hereafter ATSI) were generally absent from Australian higher education institutions. In fact, the number of ATSI university graduates Australia-wide in 1970 was fewer than ten,² none of these in law. Australia’s first ATSI law graduate was Mallenjaiwakka (formerly Lloyd McDermott) in 1972.³ Sadly, by 2009, Australia’s combined law schools have only managed to graduate approximately 500 ATSI law graduates ...in total.⁴ Only eight (8) had gone on to become barristers by 2008.⁵

The ATSI law student statistics below also indicate a slow trend in the growth of ATSI enrolments in law studies since 1970.

* It should be noted that this paper relies heavily on the author’s research in this area since there is a dearth of research on topic.

¹ Heather Douglas, ‘*The Participation of Indigenous Australians in Legal Education 1991-2001*’ (2001) 24 University of New South Wales Law Journal 485.

² Owen Stanley and Geoff Hansen, *Abstudy: An Investment for Tomorrow’s Employment, a Review of ABSTUDY for the Aboriginal and Torres Strait Islander Commission* (1997) [5.2.5.1] – accessed 25 January 2005 <http://www.atsic.gov.au/issues/Disadvantage/Education/ABSTUDY/Default.asp>

³ Law Council of Australia (2010) *Background Paper – Indigenous Australians and the Legal Profession* 23 at <http://www.lawcouncil.asn.au/programs/national-policy/indigenous/policy-statement.cfm> The University of Sydney inaugurated Australia’s first law school in 1855.

⁴ This figure is difficult to project accurately as University records are inconsistent and in some instances include non LLB programs such as criminal justice studies. The author estimates (based on available statistic) that the figure is somewhere between 450 and 550 ATSI student graduates between 1970 and 2009.

⁵ Michael Pelly (2008) *Black lawyers can raise the bar*, the Australian newspaper, March 28 2008 at <http://www.theaustralian.com.au/business/legal-affairs/black-lawyers-can-raise-the-bar/story-e6frg986-1111115904986>

1st Year ATSI students enrolments in LLB (all Australian Law Schools)

1970 ⁶	1991 ⁷	1995 ⁸	2000 ⁹	2005 ¹⁰	2009 ¹¹
0	35	74	89	70	92

Within this slow growth, retention has been hugely problematic. For example, Douglas states that an approximate attrition rate of 75 per cent existed nationally in 1990.¹² By 2000, levels were supposedly lower than 75 per cent.¹³ Douglas' research also indicates that there were 636 commencing 1st year ATSI law students throughout Australia between 1991 and 2000, yet only 18 % (117) completed their degree discipline in the same time period.¹⁴ An 18% average completion rate over a 9-year period is distressing.

Further research indicates that between 2005 and 2009, there were 360 commencing 1st year ATSI law students throughout Australia. Only 59% (212) completed their degree.¹⁵ In 2009, of the 92 commencing ATSI law students, only 45% (41) completed.¹⁶

It remains clear from the statistics that there are many more ATSI students commencing law studies than are completing them.

2. *Racism/discrimination/cultural disrespect/lateral violence*

Probably the biggest contributor to the high levels of attrition of ATSI law students within a university environment is cultural disrespect, lateral violence and/or racial discrimination. Despite the existence of a plethora of legislation and policies, universities generally don't deal with these matters very well as they are perhaps the most complex of all the challenges to be met when seeking to include ATSI perspectives across the various university disciplines. Cultural disrespect and racism are at the heart of much of the historical and contemporary Indigenous experience – be it direct, indirect, individual or institutional.

Most ATSI students and/or staff experience discrimination in one form or another almost weekly within the university environment. For example, a survey undertaken in 2007 as part

⁶ Stanley, above n. 2

⁷ Heather Douglas in Greg Shaw (Ed) (2005), *'How Australian law schools endeavour to support indigenous students'* Tertiary Teaching and Learning: Dealing with Diversity, Charles Darwin University Press at 177.

⁸ Douglas, above n.

⁹ Douglas, above n 7.

¹⁰ Extracted from data published by the Australian Association of Graduate Employees' (AAGE) UniStats Report 2005-2009

http://www.aage.com.au/index.php?option=com_content&view=article&id=67&Itemid=61

¹¹ AAGE, above n.

¹² Douglas, above n 7.

¹³ Douglas, above n 7 at 178.

¹⁴ Douglas, above n 7 at 177 & 178.

¹⁵ AAGE, above n 10.

¹⁶ AAGE, above n.

of the author's PhD study indicate that 77% of ATSI law students interviewed at Griffith University experienced cultural disrespect and/or racism from staff and/or students in the law school throughout their studies.¹⁷

Similarly, a survey in British Columbia concluded that, "...66% of BC Indigenous law graduates indicated that they had experienced some form of discriminatory barrier as a result of their aboriginal ancestry at law school. Three quarters of these indicated that insensitivity to aboriginal issues in course materials and the behaviour of the instructor was the most significant problem."¹⁸ It is clear from the statistics that schools need to develop mechanisms to stop the problem of cultural disrespect, lateral violence and racial discrimination.

Although not easy to address, experience has shown that we cannot develop ATSI inclusiveness effectively without being able to identify racism, understand its gravity, and being prepared to deal with it. Schools need to have a racism strategy that includes - responding, reprimanding, and policy implementation. Deans, Heads of School, Group Managers, and Pro Vice Chancellors need to be trained in dealing with racial discrimination and policies need to be developed by them to support these initiatives. Human Resource management in universities is integral to policy implementation and hence, requires staff training also. Leadership needs to be strong, educative and consistent. Further, minority group members should be a part of the decision making process that concerns and affects them. Within this framework, Schools need to be proactive in implementing a Strategy that incorporates issues such as:

- Educating staff and students on what is not acceptable;
- Informing students about appropriate, fair and respectful behaviour;
- Informing students about relevant university policies;
- Learning to respond quickly and efficiently when racism occurs; and
- Developing policies that reflect good management and positive outcomes.

Methodologies to achieve these goals include:

1. Facilitating Staff Retreats on the topic of ATSI Student Experience and conducting follow-up forums and seminars;
2. Undertaking specific student case studies of experienced racism in order to develop materials to assist with staff training and development;
3. Developing a 'sensitivity guide' for staff that assists them in understanding the diverse student needs including specific suggestions and recommendations for staff to use in combating racism; information on the nature of the student cohort; substantive equality and information on dealing with requests for extensions, special consideration and deferred exams on equity grounds;

¹⁷ Phillip Falk, (2007 - current) *Pathways to Indigenous Inclusive Teaching and Learning Practices – modelling a law school - PhD questionnaire and interviews (work in progress)*. Question 20 of ATSI student questionnaire.

¹⁸ Kevin Dolman (1997) *Indigenous lawyers: Success or Sacrifice?* Indigenous Law Bulletin Vol:4 at .2.

4. The Head of School or Dean (senior management) giving orientation week PowerPoint presentations on inclusiveness and equity values, and treating others with respect, along with a discussion on the University Policy Framework for dealing with inappropriate behaviours and complaints. Put students on notice regarding these policies in a proactive manner from the start of their course. These same PowerPoint presentations should be repeated by Course Convenors in all week 1 lectures for all School subjects each Semester. This has proven to be five minutes well spent down the track when students claim they were unaware of student conduct frameworks and policies. The PowerPoint presentations should also be available on student Blackboard in an obvious place;
5. Training academic staff and senior managers on dealing with alleged racial misconduct quickly and efficiently in order to minimise harm;
6. Forming committees or working parties to develop policy frameworks and directions; and
7. Incorporating the topic of 'racism and its effects' within curricula where relevant.

3. *A Starting Point for ATSI Inclusiveness in Schools/Disciplines – Growing the Numbers*

One proven methodology that has been found to be helpful as a starting point for ATSI inclusiveness is for Schools/Disciplines to facilitate a retreat for all staff (academic and administrative) on 'creating a supportive learning environment for the Indigenous Student'. A precursor to such a day includes distributing a booklet of readings a week prior to the retreat that relates to ATSI student experiences at University. Topics covered at the retreat should include information as it relates to the law and ATSI peoples experience (preferably conducted by Elders); a session on the social, economic, and cultural frameworks within which students operate including an awareness of cultural protocols. Other sessions may focus on inclusive curriculum methodologies and the development of a culturally aware teaching pedagogy. The next phase could be a presentation on non-indigenous peoples' 'whiteness' and privilege at the interface of Indigenous and non-indigenous relations. In such a session, staff would explore the concept of white race privilege and the class distinctions and barriers created within the higher education framework and in particular, law teaching.

90% of eligible academic law staff at Griffith University who attended a Staff retreat on this topic [*Creating a supportive learning environment for the Indigenous Student*] agreed that it was beneficial to their learning on the topic.¹⁹ Feedback from various staff included: "...the retreat revealed a range of curricular design possibilities; it heightened awareness; it reinforced the importance of cultural sensitivity; and it enhanced understanding of the prejudices experienced by ATSI students and staff."²⁰

Follow on Forums and Seminars need to be ongoing so as to capture new staff and to remind old staff of the issues at hand. Proactive methods such as this will assist reduce racism, and hence reduce ATSI student attrition rates. Follow up Forums and Seminars could include a focus on issues such as:

¹⁹ Falk, above n 17. Question 12 of Academic Law Staff questionnaire.

²⁰ Falk, above n.

1. Indigenisation of the curriculum;
2. Combating student racism;
3. Developing a culturally aware pedagogy;
4. Teaching and learning methodologies;
5. Non-ATSI staff: Scholars or administrators;
6. Cultural Competency and white race privilege;
7. Comparative inclusive approaches; and
8. ATSI research ethics and cultural protocols.

76% of eligible academic law staff at Griffith University attending the staff forums and seminars on the abovementioned topics agreed that they were beneficial²¹ whilst 84% of eligible staff stated that "...the information in the booklets disseminated prior to the retreat, forums and seminars were useful."²²

As a proven starting point to rectification of the unacceptable levels of attrition, Law Schools need to take a multi-faceted approach to ATSI inclusiveness. By ATSI inclusiveness I mean bringing ATSI culture, knowledge, issues and perspectives into the School by working across and encompassing the areas of:

- Staff Development and Training;
- Student Support;
- Curriculum Development; and
- Teaching and Learning.

Other areas such as Research and Administration are beyond the scope of a paper of this nature.

Making ATSI culture, knowledge, perspectives and people more prominent across a Law Schools' entire program is an important symbolic step towards achieving successful participation, retention and completion rates for ATSI students. Student numbers will grow as an outcome of such inclusion.

4. Staff Development and Training

Besides employing an ATSI academic in a school,²³ staff development and training is a vital key to success in any ATSI inclusive approach. The delivery of staff development and training on ATSI issues requires a planned approach, from both a group training perspective (school-based approach) and also from an individual training perspective (both academic and administrative staff); to address the areas of teaching and learning, curriculum development, research, administration and ATSI student support. It is critical that senior

²¹ Falk, above n 17. Question 13 of Academic Law Staff questionnaire.

²² Falk, above n 17. Question 14 of Academic Law Staff questionnaire.

²³ Employing new ATSI staff and enhancing existing ATSI employees is consistent with the Indigenous Higher Education Advisory Council (IHEAC) 2011 *National Indigenous Higher Education Workforce Strategy* (objectives 1 and 2).

www.deewr.gov.au/Indigenous/HigherEducation/Programs/IHEC/Pages/Home.aspx

management (Pro Vice Chancellors, Deans and Heads of Schools) express their support for such staff training initiatives and provide resources, such as funding and administration for the training to be implemented. They should also participate in specific ATSI training workshops themselves. It is also important to consider workload allocations for ATSI academics involved in preparing and facilitating any workshops or training.

Whole-of-School approaches, coupled with individual staff engagement on the issues are key components for effective staff training. The collective participation of school staff in the training will bring further outcomes, because the overall knowledge and understanding about ATSI issues will be enhanced, and the school as a whole will be better placed to address ATSI-related issues and growing ATSI student numbers.

In order to highlight the demand and need for such training and staff development, the author's PhD questionnaire results demonstrate that 91% of Griffith Law School academic staff interviewed indicated that they would like assistance from ATSI academics in developing ATSI perspectives for curriculum and teaching methods.²⁴ A further 72% said they would like assistance with reading materials on their individual subjects.²⁵ 63% stated they would like assistance/training with locating ATSI-related internet links²⁶ whilst a further 63% said they would like assistance in locating ATSI-related case notes.²⁷ Quite clearly, these statistics suggest that law school academics are screaming out for assistance both with locating and developing ATSI-related materials and in developing specific skills to enhance curricular and teaching pedagogy.

Extensive group and individual staff development and training is a critical component of engagement with ATSI issues within any school and requires recognition at the highest level of the university as a legitimate and important function; it should be a generic meta-function of the institution.

5. ATSI Student Support

Effective and culturally appropriate ATSI student support is an essential element in ATSI students' study environment, in particular for first year students to enhance their retention. In this regard, 82% of Griffith ATSI law students experienced tension between community/family responsibilities and academic responsibility (i.e. funeral or other family commitment).²⁸ Student comments included:

- System is too rigid;
- Family comes first; needs to be more flexible with a range of family needs and issues;
- Family responsibilities are not recognised enough; and
- A need for non-ATSI staff to be aware that some cultural issues can't be talked about.²⁹

²⁴ Falk, above n 17. Question 11 of Academic Law Staff (54 staff) questionnaire.

²⁵ Falk, above n.

²⁶ Falk, above n.

²⁷ Falk, above n.

²⁸ Falk, above n 17. Question 19 of both ATSI law student questionnaire.

²⁹ Falk, above n 17. Question 19 of ATSI law student questionnaire - feedback/comments.

Academic staff needs to be aware of the socio and economic factor that affect ATSI students. For ATSI people, family responsibilities and obligations will almost always come first. Policies should be developed to accommodate these factors.

It is well documented that most ATSI law students withdraw from their studies during first year.³⁰ The three main contributing factors relating to this are intimidation, alienation and dislocation.³¹ Of course, each student has his or her own personal reasons, which can include difficulties in adapting to a foreign and alien environment, feelings of isolation, lack of Indigenous peers, financial constraints, lack of support both academically and emotionally, family and community commitments and obligations, a lack of life skills, cultural clashes and racism.

Integral to the success of ATSI students at university is access to a culturally-safe and culturally-inclusive environment whilst on campus, so finding ways to enhance the sense of community for ATSI students is important. The provision of student support can take many forms to service ATSI student's needs. Several initiatives have been undertaken at various universities to enhance the ATSI student study environment, their university experience and academic success.³² The provision of support in most instances is via the establishment of an ATSI student support centre. More recently however, they have also been provided through additional school-based ATSI support services.³³ A combination of the two is most desirable.

School-based ATSI academic student support is discipline-specific and would include guidance on obtaining resources and research, assistance with interpreting assignment questions; discussing topics raised in class and how they may relate to ATSI peoples' views, answering questions about course content to assist students with their enrolment decisions such as choosing electives, group exam preparation, and discussion on ATSI research topics for independent and joint research courses. These areas of academic support are in some institutions implemented by ATSI academics or alternatively ATSI Learning Assist Officer in the School. The challenge for schools is to find a suitable work load formula for the staff member involved. We need to be mindful that time spent on ATSI student support impacts enormously on ATSI academic staff in their own performance reviews.

Schools with a high intake of ATSI students could consider appointing a learning assistance officer to provide all types of ATSI student support in place of having ATSI academics carry a large component of student support within their workloads.

³⁰ See for example Heather Douglas, (2001) The Participation of Indigenous Australians in Legal Education 1991-2001(2001) 24(2) *The University of New South Wales Law Journal* 485 and Yew May Martin, Maureen Maclachlan & Tom Karmel (2001) Commonwealth Department of Education, Science and Training, "Undergraduate Completion Rates: An update"
<http://www.dest.gov.au/highered/occpaper/01f/default.htm>

³¹ Douglas, above n 7.

³² Phillip Falk, (2005) "Law Schools and the Indigenous Student Experience" *Indigenous Law Bulletin*, January 2005 special edition 2; 6(8) at 8 <http://www.austlii.edu.au/au/journals/ILB/2005/2.html> See also other articles by ATSI academics in this edition of ILB.

³³ Some Law Schools (such as Griffith and QUT) have various levels of school-based ATSI support.

Both school-based and centralised student support have their merits and demerits. The availability of centralised ATSI student support like the current ATSI Centres is seen as a necessary step towards facilitating culturally-safe and inclusive learning environments for ATSI students; school-based support is discipline-based and provides a complementary extension to the centralised service provision.

Within these two frameworks, ATSI student support can generally be divided into four areas:- student orientation; cultural support; administrative support; and academic support. Both school-based and centralised student support roles need to be clearly defined and demarcated. The formation of a strong working relationship should be worked on by key staff in both arenas. In utilising these frameworks, the following issues will arise:

(a) ATSI Orientation Programs

Orientation Programs specifically for new ATSI students a few weeks before first semester are an effective element of student familiarisation and hence contribute to retention. In this regard, 64% of eligible Griffith ATSI law students interviewed believed that a *Pre-Law Orientation Program* assisted them in their preparation for University life.³⁴ Student comments included:

- Any preparation is beneficial to a first year student.
- Good structured pre-law courses are beneficial to indigenous students.
- Very supportive.
- Regret that program wasn't available for my own situation.
- More confidence at start of university; and
- Good for Indigenous networking and to meet lecturers in law school.³⁵

Orientation Programs are often designed to familiarise new students with certain facilities and services such as those within the existing ATSI student support centres, as well as those across the university. They should also provide students with fundamental information such as library services and computer facilities. Throughout the program students should visit different areas of the university, meet staff and become familiar with each other. Within the broader ATSI orientation program discipline-based orientation (i.e. Law School) should occur also. Funding needs to be made available to Schools for this purpose. The author's experience is that school staff are rarely involved in ATSI student orientation week and that this should change. ATSI students should be made familiar with the school itself and its staff. Key school administration staff should also meet ATSI students and inform them of their role in the school. An introductory lunch/meeting should occur in the school where students should be introduced to the convenors of their first year first semester courses and other relevant staff.

³⁴ Falk, above n 17. Question 16 of ATSI law student questionnaire. Note: not all ATSI students interviewed attended a Pre-Law Orientation Program.

³⁵ Falk, above n 17. Question 16 of ATSI law student questionnaire - feedback/comments.

(b) Alternative Entry Schemes

Alternative Entry Schemes enable ATSI students the opportunity to gain entry into university based on equity-based criteria such as formal schooling and level of attainment, work and life experience. In this regard, statistics indicate that "...in 2008, of 1230 indigenous students admitted into universities in NSW, only 5 per cent had an *Australian Tertiary Admission Rank* (ATAR)."³⁶ When assessing student entry into university programs such as law, we need to be mindful of this. We also need to be mindful of the high attrition rates in programs such as law (55% attrition in 2009).³⁷

More often than not, ATSI centres administer and interview potential students' applicants who apply via Alternative Entry. This is often done by Learning Assistance Officers (or similar) and administrative staff. Schools rarely play a role in this process (though it varies from institute to institute). Schools should play a vital role in the alternative entry process, in particular in assessing potential students' ability within a school program framework. Entry assessments should be undertaken with a view to assessing the student potential to actually complete a particular Degree Program.

Instead of universities' current practice in allowing almost any ATSI student in without that student having a ATAR is to set them up for failure as the level of study demanded of them is often beyond their capacity. Rather, consideration should be given to the proportion of ATSI students who may actually graduate. Entry processes need to become more rigorous and school specific. For example, a student applying to enter an Arts/Law program but doesn't meet the standards for law, should commence the Arts program and be given the opportunity to reapply for law at a later date, rather than simply being entered into the double degree Arts/Law and subsequently dropping out.

Creating articulated pathways such as Para-Legal, Para-Health type associate degree programs is another effective method for preparing ATSI students for articulation into full degree programs. Bridging courses are also good in this respect.

(c) Indigenous Tutorial Assistance Scheme (ITAS)

At present ITAS assistance is only available to ATSI students who are on the point of failure or of discontinuing, whereas it should be available at an early stage of the ATSI students courses' well before they reach that point.³⁸ Based on the abovementioned *Australian Tertiary Admission Rank* statistic, 95 per cent of ATSI students are in need of tutorial assistance of some kind. Moreover, there should be more emphasis on the inculcation of quality in the ATSI student teaching and learning. Quality rather than quantity should be an objective of ITAS. Instead of helping mediocre students across the line, more emphasis should be placed on assisting good student to be even better. ITAS should also be available at all levels of study, including Honors, Masters and PhD if necessary.

³⁶ Professor Martin Nakata (2011) *Well-intentioned indigenous slant diluting core curriculums*, The Australian Newspaper, Higher Education Section 17 August 2011 at <http://www.theaustralian.com.au/higher-education/well-intentioned-indigenous-slant-diluting-core-curriculums-says-martin-nakata/story-e6frgcjx-1226116157459>

³⁷ AAGE, above n 10.

³⁸ Nakata above n 36.

Individual students' ITAS allotment should be re-evaluated at periodic intervals and in subjects that have several ATAS students enrolled, group tutorial sessions are also a complementary option.

(d) Structural Initiative - First Year Subject

A proven structural initiative that enhances ATSI first year student performance has been the placement of an ATSI academic staff member on the teaching team for the first year, first semester core course, to conduct several lectures specifically on ATSI issues throughout the semester. This provides an ATSI perspective within the first-year curriculum and empowers the ATSI students simply by having an ATSI person in front of the class. It facilitates a feeling of inclusiveness for the ATSI student which enhances their learning environment from the commencement of their studies which could be deemed as a valuable form of cultural support designed to enhance academic performance.

Further to this, another step in supporting student academic performance has been to encourage all ATSI first-year students, to choose the tutorial/seminar group taught by the ATSI lecturer where possible. This has empowered students to confidently participate in class discussions and to become familiar with each other and the ATSI academic within the school. It further enables the ATSI academic to monitor the students' progress and identify their learning needs during the early stages of their degrees. This in turn enhances the provision of individual student support via liaison with ATSI Centre staff and ITAS tutors to discuss the student's needs and address them on the spot. It is important to capture problems quickly and efficiently, in order to keep the student on track and meeting deadlines. It is in this first year that we lose most ATSI students so it is imperative that a proactive approach by schools and staff be implemented.

Providing opportunities for ATSI students to have contact with ATSI academics, support staff and each other in these early stages of their university life helps students to feel a part of the bigger 'family' of ATSI people on campus. It empowers them as individuals and as a group.

The author trialled the abovementioned initiative at Griffith Law School (from 2000 – 2004) and believes that its adoption was the key to the low attrition rates attained by ATSI students at the time.

Griffith Law School ATSI Attrition Rates 2000 – 2004³⁹

2000	2001	2002	2003	2004
11%	10.8%	8.3%	10.6%	10.7%

6. Curriculum Development

Various approaches to ATSI curriculum development have been tried and trialled over the years in some law schools, including: (a) a vertical integration subject approach that spans the breadth of the entire law program (b) creating an 'ATSI people and the law'

³⁹ Griffith University (2006) Carrick Award for Australian University Teaching – Indigenous Education, for the receipt of the Neville Bonner Award - Application for Phillip Rodgers-Falk at 2.

subject/course as an elective subject, and (c) creating stand alone elective subjects/course for ATSI students only.

Academic law staff at Griffith Law School believe that the learning of ATSI issues in law curricula is highly important, for example, of 54 academic law staff interviewed, 60% stated that ATSI inclusiveness was of 'high' importance, 29% stated it was of 'medium' importance, whilst only 11% stated that it was of 'low' importance.⁴⁰

Schools should undertake a curriculum review on ATSI issues already in their program. A curriculum review on ATSI inclusiveness will enable the school to see what is being taught where, how, by whom and to build capacity on the good work of staff that already exists. Speaking from experience, most reviews will find that schools and staff have been taking an ad hoc approach to ATSI curricula inclusiveness.

Let's now look at some models for curriculum development currently engaged by law schools across the country.

(a) a vertical integration approach

Some law schools have taken an innovative approach to ATSI-inclusive curricula by way of a 'vertical integration approach'. One of the aims of an ATSI vertical integration approach is to embed ATSI issues into all core courses in a co-ordinated and planned manner by dropping issues where relevant into subjects across the degree program where they had been identified by a curriculum review for such. This would be undertaken collaboratively with each of the subject convenor.

Another aim of ATSI vertical integration is to engage both ATSI and non-ATSI law students in legal areas that affect ATSI people. Furthermore, it enables all students to develop an understanding of the interface between Australia's white and ATSI legal systems and to develop awareness of the historically privileged nature of white institutions and their impact on the lives of Indigenous peoples. The vertical approach produces a coordinated account of questions and issues of 'Indigeneity' in Australian legal thought.⁴¹

An ATSI vertical integration provides ATSI themes across courses, lecturer topics, readings, exercises and assessment items that address ATSI issues, to be included in a sequenced manner throughout a Law Program. Students incrementally develop their knowledge and understanding of ATSI legal issues as they undertake and complete selected core courses. The ATSI curricula also extend to the inclusion of compulsory ATSI-related assessment items within the Law Program. Upon completion of their degree programs, all students would have knowledge of ATSI issues and the law – a graduate attribute.

To complement student learning on ATSI issues, students should also be availed the opportunity to expand their knowledge on ATSI legal issues through the choice of the ATSI elective courses.

⁴⁰ Falk, above n 17. Question 1 of Academic Law Staff questionnaire.

⁴¹ Falk, above n 17 at 21.

(b) creating 'ATSI people and the law' subject/course as an elective subject

Most law schools have an elective subject/course on ATSI people and the law. Some have several electives with different focuses. This often depends on the interest areas of the academic staff members involved. They can vary from the generic 'ATSI peoples and the law' courses, to 'ATSI people and criminal law', or 'native title and ATSI people', as a few examples.

The process of developing 'exclusively ATSI' courses should include the setting up of an advisory group comprising ATSI staff throughout the University as well as community Elders who are able to give advice and feedback regarding the curricula being developed. Courses should be convened and taught by ATSI lecturers with Elders and community members contributing as guest lecturers from time to time.

(c) creating stand-alone elective subjects/course for ATSI students only

Some law schools have created stand alone subjects for ATSI students only. These are often by way of legal clinic placement programs which could involve placing ATSI law students for one day per week with selected barristers for 13 weeks, for practical training and clinical legal education. Students pick an area of law that they are interested in and are matched accordingly. Placements could also be made with native title representative bodies, Land Councils, ATSI Legal Services, Murri/Koori Courts and other similar ATSI legal agencies/services. It is noteworthy that the Aurora Project concept grew out of such an ATSI legal clinic placement programs.⁴²

Courses of this nature facilitate an alternative and more suitable learning approach for ATSI students; a way that is more in line with Aboriginal ways of learning. By immersing ATSI law students in a professional environment, the program is innovative in that it facilitates a hands-on and oral approach to learning; is a positive step towards bridging cultural gaps and addressing cultural collisions; and furthers ATSI peoples' presence and participation within the legal profession. It also provides students with the opportunity to explore and identify career paths. With the assistance of a mentor, the placement aims to provide students with a better understanding of the links between what they have learnt at university and the practical application of the law and court processes.

ATSI students who have undertaken ATSI specific clinic courses have reported anecdotally to the author that the course links their learning with reality. They report that they feel more confident in their legal knowledge after undertaking the course. Moreover, whilst feedback from ATSI students concerning the non-ATSI clinic programs has been positive, the majority felt they would have preferred the more culturally appropriate Indigenous clinic course, as it is more consonant with their learning styles.

Indeed, New Zealand has taken this approach even further in establishing exclusively Maori universities known as Wananga's.⁴³

⁴² The Aurora Project at <http://www.auroraproject.com.au/>

⁴³ Te Whare Wananga o Awanuiarangi and Te Wananga Raukawa at www.wananga.ac.nz

7. Teaching and Learning

It is important to consider that the expectations a lecturer has and the decisions they make about how they are going to teach will indeed have an impact on what and how their students will learn. Therefore, it is important to consider an overall teaching approach for a course.⁴⁴

In order to enhance the delivery of an ATSI curriculum, the adoption of a 'culturally-aware' pedagogy should be considered, to address issues of cultural diversity. For the purposes of this paper, a culturally-aware pedagogy in the context of teaching and learning ATSI curriculum encompasses:

- The ability to engage in effective cross-cultural communication practices;
- Understanding ATSI people's views in relation to a particular discourse within the curriculum;
- Maintaining awareness that the teaching of ATSI issues presents different challenges for non-ATSI academics than it does for ATSI academics;
- Being able to recognise and manage the different learning responses of ATSI and non-ATSI students; and
- Taking responsibility for and having the ability to deal with racism and discrimination.

By adopting this approach, it is more likely that the learning outcomes of students and the teaching experiences of academics will be positively enhanced through teaching and learning of ATSI issues. Academic staff reported that by including ATSI content in their course it:

- Made ATSI students much more comfortable in discussions;
- Raised non-ATSI student awareness;
- Made ATSI students feel that the course is inclusive;
- Challenged non-ATSI students' views and encouraged them to think critically about ATSI issues rather than just believe what they see/hear in the media; and
- Broadened students' outlooks on core curricular issues and improved their capacity to think laterally and to improve their technical knowledge in key areas of law.⁴⁵

Perhaps one of the key factors in developing culturally-aware teaching practices for ATSI issues within any discipline is for academics to have a background knowledge and understanding about the historical events, policies and laws that have affected ATSI Australians since invasion. Academics also need to have a general understanding of current challenges and aspirations of ATSI people and their communities regarding their social, health, housing, economic and political situation. Further, the underlying trans-generational effects stemming from the outcomes of past policies and laws, such as trauma associated with the stolen generation, or the lack of trust that has historically developed toward police, must be kept in mind.

⁴⁴ Bird, J. et al, 2003, *Pathways to Good Practice - guide to flexible teaching for quality learning*, Teaching and Learning Centre, Southern Cross University at p.15.

⁴⁵ Falk, above n 17. Responses to Question 15 of Academic Law Staff questionnaire.

For example, the gaining of knowledge about underlying issues that contribute to ATSI peoples disadvantage may assist in breaking down perceived negative stereotypes about Aboriginal people; learning about the importance of Aboriginal Nations, languages, laws and customs in regard to ATSI peoples identity may affirm that ATSI people are not an homogenous group and that Aboriginal peoples have existed within sophisticated social, cultural and legal frameworks for generations.

8. *Bodies, Standards and the Study of Law*

Several governing bodies influence the standards set for the study of law in Australia, but their silence on ATSI-related topics contributes to the poor participation and retention rates of ATSI people in law schools. It is a systematic problem of silence. The statistics on attrition and graduate outcomes in law highlight this factor. Silence occurs for many reasons including the lack of inclusiveness of ATSI issues in law school studies, a lack of ATSI academic staff, a lack of ATSI people at management level within the organisations, and/or their committees or councils.

(a) *Council of Australian Law Deans*

Overarching all Law Schools is the Council of Australian Law Deans (CALD) which has developed a standards guide, namely, the *CALD Standards for Australian Law Schools* (2009) which sets the academic and governing standards for all law Schools and programs nationally.⁴⁶ Firstly, it is noted that no ATSI people are directly included in the Council, as there are no ATSI Deans of Law Schools in Australia. The Council is void of any direct ATSI input and hence, their standards, not surprisingly, are silent on ATSI people and issues also. The author believes that the inclusion of ATSI issues at CALD level would be a positive step towards improving the lot for ATSI people generally. It would not only equip all law students pedagogically on ATSI issues, it would also assist with the retention of ATSI law students.

ATSI people and issues could easily be included within CALD Standards. For example:

- Standard 2.1 *Educational Outcomes* - could include reference to an 'ATSI graduate attribute';
- Standards 2.2 *Curricula Design* and 2.3 *Curricula Content* - could include direct reference to ATSI issues;
- Standard 2.3.2 *Curricula Content* - could include the words "culturally competent" as a skill and value obtained from curricula content;
- Standard 2.3.3 *Curricula Content* – could include a requirement for law curricula to develop knowledge and understanding on ATSI related issues;
- Standard 2.9 *Pastoral Responsibility* - should include a positive reference and commitment to pastoral responsibility for ATSI law students;
- Standard 4 *Academic Staff* - there needs to be a positive commitment to increasing ATSI staff numbers, in line with Indigenous Higher Education Councils Workforce Strategy objectives;

⁴⁶ Council of Australian Law Deans (CALD), *The CALD Standards for Australian Law Schools* (2009) <http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>

- Standard 9.6 *Interaction with Legal Profession and wider community* - should direct law schools to engage with ATSI communities and organisations; and
- Standard 12, *Law Schools Standards Committee* – CALD could include an ATSI person as an *ex-officio* member to its various governing committees.

Clearly, CALD standards would be a way to affect several positive initiatives for ATSI people and ATSI law students alike.

(b) *Priestley 11*

CALD have established a set of standards for law schools (adopted November 2009), set by the Law Admissions Consultative Committee which sets the ‘prescribed academic areas of knowledge’ required of graduates for the purposes of admission to practise.⁴⁷ These ‘prescribed academic areas of knowledge’ are also “...colloquially known as the Priestley 11”.⁴⁸ The current eleven ‘prescribed areas of knowledge’ are: Criminal Law and Procedure; Torts; Contracts; Property; Equity; Company Law; Administrative Law; Federal and State Constitutional Law; Civil Procedure; Evidence; and Ethics and Professional Responsibility.⁴⁹ Within each of these prescribed areas are numerous topics where ATSI issues could be inserted at numerous points throughout most topics, similar to the vertical integration approach discussed above. Although this is beyond the scope of this paper, the Priestley eleven would be excellent basis from which to develop, design and position a nationally planned approach to ATSI inclusiveness in law.

(c) *Australian Learning and Teaching Council*

More recently, the Australian Learning and Teaching Council (December 2010) published the outcomes of its *Learning and Teaching Academic Standards Project – Bachelor of Laws – Learning and Teaching Academic Standards Statement*.⁵⁰ This ALTC Bachelor of Laws - Learning and Teaching Academic Standards Statement has an interface with both *CALD Standards for Australian Law Schools* (2009) and the Law Admissions Consultative Committees ‘prescribed academic areas of knowledge’ (*Priestley 11*).

The Learning and Teaching Academic Standards (LTAS) project in Law has developed a set of six Threshold Learning Outcomes (TLOs) for the Bachelor of Laws degree, which the Australian Qualifications Framework (AQF) believes “... represent what a Bachelor of Laws graduate is expected “...to know, understand and be able to do as a result of learning.”⁵¹ The six Threshold Learning Outcomes (TLOs) are: (1) Knowledge; (2) Ethics and Professional Responsibility; (3) Thinking Skills; (4) Research Skills; (5) Communication and Collaboration;

⁴⁷ Australian Learning and Teaching Council (ALTC) (2010), *Academic Standards Statement*, Learning and Teaching Standards Statement – Bachelor of Laws p.4 at

<http://www.altc.edu.au/standards/disciplines/law>

⁴⁸ ALTC, above n 47 at 4.

⁴⁹ Law Admissions Consultative Committee, Schedule 1, ‘prescribed areas of knowledge’, at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=30440CF8-1C23-CACD-222E-59CF362D9B5A&siteName=lca

⁵⁰ ALTC, above n 47.

⁵¹ ALTC, above n 47 at 1.

and (6) Self-management.⁵² The Council of Australian Law Deans (CALD) endorsed these TLO's in November 2010.⁵³

A lengthy analysis of these TLO's is beyond the scope of this paper. Briefly, the document is almost silent on ATSI issues.⁵⁴ It also appears that very little ATSI input was sought from ATSI organisations and key stakeholders, with only one ATSI-associated organisation making a submission.⁵⁵ No consultation appears to have taken place with key ATSI stakeholders⁵⁶ or ATSI law academics.

These TLO's would also be an excellent base to develop, design and position a nationally planned approach to ATSI inclusiveness in law.

(d) *Law Council of Australia*

The Law Council of Australia's constituent bodies include Bar Associations and Law Societies from all States and Territories. It has a *Policy Statement on Indigenous Australians and the Legal Profession (2010)*⁵⁷ which guides the Law Council's approach to legal and public policy issues affecting ATSI people. They have an *Indigenous Legal Issues-Committee*, made up of both ATSI and non-ATSI member of the legal fraternity. The committee was integral in drafting the 2010 Policy along with other key working documents.

In June 2011, the Law Council developed and endorsed a *Reconciliation Action Plan 2011 – 2013* (hereafter RAP) in conjunction with *Reconciliation Australia*.⁵⁸ The RAP contains some very positive commitments to ATSI people and ATSI law students including scholarships, conference funding, developing pre law program database including information on TAFE legal courses, interactions with ATSI legal organisations and student bodies, and promotion of curricula development to name a few.

⁵² ALTC, above n 47 at 10.

⁵³ ALTC, above n 47 at 1.

⁵⁴ ATSI people are mentioned once at page 8, where it states "...as a discipline, law is informed by many perspectives (including Indigenous perspectives). It doesn't appear to elaborate on this anywhere. See ALTC, above n 47, at 8

⁵⁵ ALTC, above n 47, Appendix 2: List of submissions received, at 26.

⁵⁶ ATSI organisations such as ATSI Barrister and Lawyer Groups and Networks; the Law Council of Australia's Indigenous Legal Issues Committee; ATSI Legal Services (including Woman's Services); Native Title Representative Bodies; Land Council Legal Departments; Elders groups; and/or ATSI law academics nationally.

⁵⁷ Law Council of Australia (2010) Policy Statement on Indigenous Australians and the Legal Profession at

http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=5EBD7285-A817-D7B1-5C5A-E27872F3BD85&siteName=lca

⁵⁸ Law Council of Australia (2011) Reconciliation Action Plan 2011 – 2013 at

http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=5EBD7285-A817-D7B1-5C5A-E27872F3BD85&siteName=lca

Overall, the Law Council of Australia has made a huge shift in ATSI policy statements. If successfully implemented, these commitments will make inroads into retention of ATSI Law students.

(e) Bar Associations, Law Society's and ATSI Lawyers Association

Several Bar Associations across the country have established ATSI Barrister Trusts or similar with a primary objective of assisting Indigenous barristers, especially in their first few years of practice. Some also offer mentoring services for ATSI students, some financial assistance, others waive fees for courses.⁵⁹ Some State and Territory Law Societies offer services for solicitors, similar to those for barristers. For example, both the Northern Territory and South Australian Law Societies fund and support ATSI student mentoring program.⁶⁰

Several ATSI Law Student and Lawyer Associations have also emerged in various states including Ngalaya ATSI Lawyer Association in NSW, Queensland ATSI Student and Lawyer Association, Tarwirri ATSI Student and Lawyer Association in Victoria, to name a few.

These later bodies should be included in consultation processes involving ATSI people and the law.

⁵⁹ Law Council of Australia, above n 57 at 23 & 24.

⁶⁰ Law Council of Australia, above n 57 at 24.

9. Conclusion

The author believes that ATSI interests have been egregiously ignored by law schools throughout Australia. This disgraceful situation is sorely in need of leadership if we are ever going to grow the numbers of ATSI law graduates. This is all the more important as it is these ATSI law students who will go on to be policy makers, politicians, judges, barristers and lawyers in this country. They are the future leaders of ATSI communities, leaders with an ability and desire to close the gap for their people. Similarly, it is the Indigenous law graduates in Canada and the US that have led the revival of their communities and their people. Here in Australia, we also have some inspirational examples of ATSI leaders with law degrees including former District Court Judge Robert Bellair, Professor Mick Dodson, Professor Larissa Behrendt, Associate Professor Irene Watson, Noel Pearson, Michael Mansell, Nicole Watson, Associate Professor Megan Davis, Paul Coe, Magistrates Jackie Payne and Pat O'Shane, to name a few.

Law Schools across Australia need to take large steps quickly and efficiently on ATSI learning issues, as clearly the past and present work is not making inroads into attrition rates at a pace anywhere near proportionate to ATSI student growth in law studies. Statistics show that consistently since 1970 we have been losing more ATSI law students than are graduating. In the 150-year history of law schools in Australia⁶¹ they have graduated as few as 500 ATSI people in total, with only eight (8) going on to become barristers by 2008.⁶² This is an appalling situation, one that higher education establishments and law schools should be ashamed of. Clearly Law Schools can do better.

Tangible outcomes for ATSI law students are stepping stones to broader and more far-reaching outcomes of social change for ATSI people. Success for our people at university level, in particular in law, not only empowers and equips individuals to assist their families and communities, but it also brings legally qualified ATSI graduates in their professional capacities to the coalface of policy-making and law.

⁶¹ Sydney Law School being the first established in 1859.

⁶² Above n 4 & 5.

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