

# Embedding Indigenous Cultural Competence in a Bachelors of Laws at the Centre for Law and Justice, Charles Sturt University: A Case Study

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## Abstract

The Centre for Law and Justice was established at Charles Sturt University (CSU) in 2016 to offer an internationally unique Bachelor of Laws (LLB) degree in addition to other criminology undergraduate and postgraduate programs. CSU is one of the few universities across Australia to include Indigenous cultural competence as a Graduate Learning Outcome. Embedding Indigenous cultural competence into higher education entails producing graduates that have an understanding of Indigenous cultures, histories and contemporary social realities. For law graduates specifically, it involves equipping students with a legal education that analyses law as a form of knowledge and ensures they have critically reflected on the role played by the legal profession in dispossession and other policies of colonisation that have a continuing impact on the present. It also enables students to explore Indigenous cultures as a rich source of knowledge, wisdom and resilience. Building upon a community of practice that is emerging at a national and international level around embedding Indigenous perspectives, this paper analyses the literature on Indigenous cultural competence within legal education in Australia. It sets out how CSU's LLB incorporates Indigenous cultural competence into the traditional law curriculum using a torts law case study. This paper argues for the importance of contextualisation, collaboration, and place-based learning in the embedding of Indigenous cultural competence in law curriculum.

# Embedding Indigenous Cultural Competence in a Bachelors of Laws at the Centre for Law and Justice, Charles Sturt University: A Case Study

## Introduction:

Universities play a critical role in promoting social justice in society. The Indigenous Higher Education Advisory Council (IHEAC) argues that higher education institutions are vital to 'raising the health, education and economic outcomes for the Indigenous community overall' and in 'preparing educated people for leadership roles'.<sup>1</sup> Their role in training lawyers to be culturally competent is the focus of this paper.

The Centre for Law and Justice was established at Charles Sturt University (CSU) in 2016 to offer an internationally unique Bachelor of Laws (LLB) degree in addition to other criminology undergraduate and postgraduate programs. The LLB at CSU provides legal education in the traditional law curriculum - known as the 'Priestley 11'. The additional features of CSU's LLB are the embedding of Indigenous cultural competence, alongside the inclusion of content relevant to CSU's footprint – regional, rural and remote Australia. Whilst the latter content includes legal issues and concepts such as environmental and mining law, native title and dispute resolution, the embedding of Indigenous cultural competence entails educating law students on the richness of Indigenous cultures, the impact of history and its contemporary social realities, and the fostering of critical reflexivity around the role of the law and the legal profession.

First, this paper will trace the definition of Indigenous cultural competence and its trajectory into the higher education policy lexicon that culminated with the *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*.<sup>2</sup> Second, we chart the limited literature on Indigenous cultural competence in legal education in Australia. The OLT funded Indigenous Content in Law Curriculum project is one notable feature on this landscape.<sup>3</sup> Third, we contribute to the community of practice on embedding Indigenous cultural competence in law curriculum by identifying how the whole-of-curriculum approach at CSU led to its incorporation in the law of torts subject. In this section, we highlight the importance of consulting with Indigenous legal experts and Elders and Aboriginal and Torres

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<sup>1</sup> Indigenous Higher Education Advisory Council (2005) 5 cited in Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*, (Canberra 2011) 18.

<sup>2</sup> Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*, (Canberra 2011).

<sup>3</sup> Marcelle Burns, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12 (1) *International Education Journal: Comparative Perspectives* 226, 230.

Strait Islander organisations, the utility of place-based understandings of Indigenous legal content and the need to develop a balanced curriculum. Balancing the curriculum avoids the pitfalls of adopting a deficit model where the ‘narrative of cultural loss’ is preferred in place of the more positive ‘narrative of survival’.<sup>4</sup> We evaluate the different pathways to delivering content using authentic learning experiences that include interactions with Indigenous Australian academics, Elders and legal experts, in particular through CSU’s ‘Elders-in-Residence’ program.

### Indigenous Cultural Competence

Whilst this paper focuses on curriculum, it is important to note that Indigenous cultural competence is about more than just curriculum and extends to Indigenous employment strategies, the involvement of Indigenous people in university decision-making and the promotion of cultural safety within universities.<sup>5</sup> Universities Australia undertook an extensive project on Indigenous cultural competence in 2009-2011 that produced the most widely operationalised definition of the concept as it pertains to curriculum:

Student and staff knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with proficiency to engage and work effectively in Indigenous contexts congruent to the expectations of Indigenous Australian peoples.<sup>6</sup>

Conceptual development of ‘Indigenous cultural competence’ has a long history, but the notion of educating professionals on Indigenous cultures and histories rose to particular prominence as a result of the Royal Commission into Aboriginal Deaths in Custody (the ‘Royal Commission’). The Royal Commission was the most comprehensive and systematic national investigation of deaths in custody in Australia. The Royal Commission was critical of the delivery of professional services to Aboriginal and Torres Strait Islander people and communities and the ignorance, or cultural incompetence, of professionals.<sup>7</sup>

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<sup>4</sup> Martin Nakata, ‘Australian Indigenous Studies: A Question of Discipline’ *The Journal of Australian Anthropology*, 17, 265-275.

<sup>5</sup> Universities Australia, *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (Canberra, 2011) 11.

<sup>6</sup> Universities Australia, *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (Canberra, 2011) 3.

<sup>7</sup> Elliott Johnson, *National Report: Royal Commission into Aboriginal Deaths in Custody Vol 1* (1991), Recommendation 295.

Sweeping recommendations were made as part of the Royal Commission to address the systemic deficiencies in the criminal justice, health and education system and to improve the approach of professionals involved in delivering services to Aboriginal and Torres Strait Islander people. In relation to legal services, the Royal Commission recommended:

96. That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way in order to improve cross-cultural understanding.<sup>8</sup>

This recommendation was aimed at legal and related professional staff but the Royal Commission also saw the important role that universities could play in achieving social change. Higher education was discussed in Volume Four of the five volumes of reports that followed the Royal Commission.<sup>9</sup> The utility of incorporating content within university degrees that was sensitive to the needs of particular communities was acknowledged. At the time, the Royal Commission lent its support to a proposed review by the Department of Education, Employment and Training and the National Board of Employment, Education and Training. The review recommended: reviewing curriculum to remove racist content; reviewing curriculum to highlight where Indigenous culture could be embedded as core curriculum; developing Indigenous perspectives across courses; and developing specific Indigenous studies units within a suite of electives or core curriculum.<sup>10</sup>

Notably, the Royal Commission recommendations did not specifically use the terminology 'Indigenous cultural competence' and instead referred to 'cultural awareness'. Rob Ranzjin, Keith McConnochie and Wendy Nolan helpfully chart the distinction between cultural awareness and cultural competence.<sup>11</sup> In short, cultural competence differs from cultural awareness in that it is more than mere awareness and involves elements of critical understanding of one's own cultural identity and biases, and a critical reflection on the role of

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<sup>8</sup> Ibid, Recommendation 96.

<sup>9</sup> Ibid, 33.2.5.

<sup>10</sup> Ibid.

<sup>11</sup> Rob Ranzjin, Keith McConnochie and Wendy Nolan, *Psychology and Indigenous Australians - Foundations of Cultural Competence*, (Palgrave MacMillan, 2009).

the profession with which one is engaged and an understanding of professionally specific skills such as fostering cultural safety.

Farrelly and Lumby articulate the limitations of cultural awareness and highlight the fact that after decades of cultural awareness training we have not progressed the cultural competency of professionals delivering services or, in fact, shaping policy.<sup>12</sup> A detailed and helpful exploration of cultural competence and the nuances of this definition - as opposed to cultural awareness and cultural safety - can be found in Marcelle Burns' recent article in the journal *Legal Education Review*.<sup>13</sup>

More than 20 years after the Royal Commission into Aboriginal Deaths in Custody issued its recommendations, the prison population - in particular the number of Indigenous people incarcerated, has increased dramatically.<sup>14</sup> The need for commitment to the Royal Commission recommendations, therefore, is as pressing now as it was in the early 1990's and more than just cultural awareness is required.

The Indigenous Higher Education Advisory Council played a lead role in shaping the response from the higher education sector to the Royal Commission and its call for change. In 2005, the Strategic Plan of IHEAC advanced several priority areas for Indigenous Higher Education that centred upon improving pathways into higher education, improving enrolment, retention and completion rates, and employment rates of Indigenous staff within universities and governance structures. It also aimed to 'enhance the prominence and status of Indigenous culture, knowledge and studies'.<sup>15</sup> This was developed into the IHEAC *Stronger Futures Strategy* that then intersected with the Council of Australian Governments Closing the Gap framework.<sup>16</sup> Vice-Chancellors signed onto the partnership and from here, Universities Australia, in collaboration with IHEAC and the Department of Education, Employment and Workplace Relations launched a two-year stocktake project aimed at

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<sup>12</sup> Farrelly, Terri, and Bronwyn Lumby. "A Best Practice Approach to Cultural Competence Training." *Aboriginal and Islander Health Worker Journal* 33, no. 5 (2009): 14.

<sup>13</sup> Burns, Marcelle. "Towards Growing Indigenous Culturally Competent Legal Professionals in Australia." *International Education Journal: Comparative Perspectives* 12, no. 1 (2014), 230-231.

<sup>14</sup> Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Prisoner Characteristics*, (2016) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~5>>.

<sup>15</sup> Indigenous Higher Education Advisory Council Report to the Minister for Education, Science and Training March 2006 cited in Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*, (Canberra 2011), 22.

<sup>16</sup> Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*, (Canberra 2011), 24.

articulating a best practice framework for embedding Indigenous cultural competence within institutions to:

[P]rovide encouraging and supportive environments for Indigenous students and staff, whilst producing well-rounded non-Indigenous graduates with the knowledge and skills necessary for providing genuinely competent services to the Australian Indigenous community.<sup>17</sup>

The embedding of Indigenous cultural competence within university curriculum also finds support from a number of other key domains. At a national level, both the Bradley Review<sup>18</sup> and the Behrendt Review<sup>19</sup> recommended that universities take up the challenge of incorporating Indigenous knowledges into curriculum and enhance the cultural competence of all graduates and staff. The incorporation of Indigenous cultural competence finds support in international law through the *Universal Declaration on the Rights of Indigenous Peoples*.<sup>20</sup> Since the release of the Best Practice Framework statement, Universities Australia released the *Indigenous Strategic Directions Statement 2017-2020*. This strategy focuses on improving: the participation of Indigenous people in higher education as students, graduates and staff; the understanding of non-Indigenous people as regards Indigenous knowledges, cultures and ‘educational approaches’; and, the University environment for Aboriginal and Torres Strait Islander people.<sup>21</sup> We turn now to consider the uptake of Indigenous cultural competence within law curriculum in Australia.

### Indigenous Cultural Competence in Australian Legal Education

Nicole Watson writing in 2004 levelled the claim that the traditional law curriculum and its delivery in law schools in fact fermented racism.<sup>22</sup> Marcelle Burns writes that the most common form of discrimination in education settings was ‘disrespect’ (42.6%) which was characterised by Burns as the ‘inability to properly engage with forms of Indigenous

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<sup>17</sup> Ibid 27.

<sup>18</sup> Denise Bradley et al, *Review of Australian Higher Education: Final Report* (Department of Education, Employment and Employee Relations, 2008).

<sup>19</sup> Larissa Behrendt, *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People Final Report* (Australian Government, 2012).

<sup>20</sup> Article 14(2) of the *UN Declaration on the Rights of Indigenous Peoples* states that ‘Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination’.

<sup>21</sup> Universities Australia, *Indigenous Strategic Directions Statement 2017-2020*, (Canberra 2017).

<sup>22</sup> Nicole Watson, ‘Indigenous People in Legal Education: Staring into a Mirror Without Reflection’ (2004) 6(8) *Indigenous Law Bulletin* 4.

knowledge and perspectives as they relate to the disciplinary and professional context'.<sup>23</sup>

Law schools are appropriately placed to address these deficiencies. Marcelle Burns writes that 'legal educators must also be able to interrogate law as a form of disciplinary knowledge and critique the role of the legal profession in the lives of Indigenous peoples – both past and present'.<sup>24</sup>

One of the challenges for law schools historically is that accreditation bodies for law curriculum tend to focus on doctrinal content and are less concerned with the law in context approach.<sup>25</sup> Momentum has recently swung towards making Aboriginal cultural awareness training a compulsory aspect of admission in NSW, spurred on by the NSW Standing Committee on Law and Justice Report on the Bowraville murders. The Inquiry began towards the end of 2013 to investigate the family responses to the murders of three Aboriginal children - Colleen Walker-Craig, Evelyn Greenup and Clinton Speedy-Duroux. – in Bowraville, NSW, between September 1990 and January 1991. The Jumbunna Indigenous House of Learning characterised the handling of the murder investigation, the trials and proposal for a retrial as a 'perfect storm' that denied 'effective justice'.<sup>26</sup> The Bowraville Inquiry recommended that:

#### Recommendation 4

That the NSW Department of Justice consider and report on the merit of requiring lawyers who practise primarily in criminal law, as well as judicial officers and court officers, to undergo Aboriginal cultural awareness training.

#### Recommendation 5

That the NSW Government liaise with the Legal Profession Admission Board of New South Wales, the New South Wales Bar Association and all accredited universities offering legal training in New South Wales to request that Aboriginal cultural

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<sup>23</sup> Burns, Marcelle. "Towards Growing Indigenous Culturally Competent Legal Professionals in Australia." *International Education Journal: Comparative Perspectives* 12, no. 1 (2014), 237.

<sup>24</sup> *Ibid* 238-9.

<sup>25</sup> Alexander Reilly, "Finding an Indigenous Perspective in Administrative Law. (Australia) (Special Focus Issue - Incorporating Indigenous Perspectives in the Law Curriculum)." *Legal Education Review* 19, no. 1 2 (2009): 271-87, 273.

<sup>26</sup> Submission no. 27, Jumbunna Indigenous House of Learning, p 32 cited in New South Wales Legislative Council Standing Committee on Law and Justice, *Family response to the murders in Bowraville* (2014), xvii.

awareness training be included as a compulsory element in their legal training and accreditation.<sup>27</sup>

Due to the aforementioned limitations of the concept of cultural awareness, it is unfortunate the recommendations stopped short of cultural competence. Nevertheless, the recommendation is a reinforcement of the Royal Commission recommendations.

### **Proposed Models for Incorporation**

There are a number of proposed models for incorporating Indigenous cultural competence into law curriculum. Amy Maguire and Tamara Young<sup>28</sup> in their review of *Indigenising Law Curriculum* using the case study of the Newcastle Law School follow the approach outlined by Carwyn Jones, in the New Zealand context. Indigenous issues is defined by Carwyn Jones as ‘Indigenous content that is distinct from both ‘Indigenous perspective’ and ‘Indigenous law’ ...Indigenous legal issues might relate to laws within the state legal system that are specifically directed at or which affect the rights or activities of Indigenous peoples’.<sup>29</sup> To illustrate, native title would be an Indigenous legal issue, Indigenous forms of land tenure would not. Jones writes that this knowledge is helpful for law students who work with Indigenous communities, for Indigenous law students to see how the legal system affects Indigenous communities, and for speaking to the tensions between the law and its impact.

Indigenous perspectives may not include substantive law but nevertheless provide context and theoretical background. ‘These perspectives are the views of Indigenous individuals or communities of the way the law operates’.<sup>30</sup> Importantly, Indigenous perspectives are not just about the ethnicity of the person presenting the content and may represent individual and/or community views. Jones highlights that best practice would mean the incorporation of a range of perspectives throughout the course. The inclusion of Indigenous perspectives means that a critical framework can be applied to analyse the legal system. Narrative style teaching methods may be deployed to incorporate the lived experience of Indigenous people in a departure from traditional teaching methods.

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<sup>27</sup> Ibid xiii.

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<sup>29</sup> Carywn Jones, "Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand Lib Curriculum'(2009)." *Legal Education Review* 19: 257.

<sup>30</sup> Ibid 263.



Finally, Indigenous law is, as Jones posits, ‘the content of Indigenous legal systems’.<sup>31</sup> Incorporation of Indigenous law exposes students to customary law and comparative analysis, between statute and common law for example.<sup>32</sup>

Heron Loban in analysing the embedding of Indigenous perspectives within Business law at James Cook University takes a more practical approach to defining Indigenous perspectives defining Indigenous perspectives as having a ‘broad meaning which contemplates a range of embedding mechanisms including cases, legislation, social-legal commentary and relevant policy contexts’.<sup>33</sup> Loban’s practical approach involves embedding Indigenous perspectives through: decided cases or case studies involving Indigenous litigants where students are asked to discuss the outcome or the outcome if the case did come before a court; professional experience whereby an academic’s own professional experience working with Indigenous people and communities are centred; and use of experts through guest lectures with Indigenous and non-Indigenous experts. Loban also adds that Indigenous perspectives should be embedded through assessment and necessitate community engagement, partnerships and consultation.<sup>34</sup>

Annette Gainsford and Michelle Evans, also from CSU, have reflected on Indigenising Curriculum in business education to highlight the central role played by Indigenous leaders and educators. Their work outlines how Indigenous leadership, ‘upheld by the institution and individual academic collaborators’, is critical to the success of Indigenising curriculum.<sup>35</sup> Gainsford and Evans build on the work of Ranzjin, McConnochie, Day, Nolan and Wharton who write about some of the main impediments to culturally engaged curriculum.<sup>36</sup> According to Ranzjin, McConnochie, Day, Nolan and Wharton, these are: lack of institutional commitment; dependence on individual’s discretionary effort and goodwill; assumptions about Indigenous departments doing the work; lack of engagement and/or commitment by academic staff; and the lack of a well-articulated and designed curriculum.<sup>37</sup>

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<sup>31</sup> Ibid 266.

<sup>32</sup> Ibid 267.

<sup>33</sup> Heron Loban "Embedding Indigenous Perspectives in Business Law.(Report)." *e-Journal of Business Education and Scholarship Teaching* 5, no. 2 (2011): 11, 12.

<sup>34</sup> Ibid 18.

<sup>35</sup> Gainsford, A., Evans, M. (2017). Indigenising Curriculum in Business Education, *Journal of Australian Indigenous Issues*, Volume 20 (1) 57-70.

<sup>36</sup> Ranzijn, R. O. B., Keith McConnochie, Andrew Day, Wendy Nolan, and Michelle Wharton. "Towards Cultural Competence: Australian Indigenous Content in Undergraduate Psychology." *Australian Psychologist* 43, no. 2 (2008): 132-39.

<sup>37</sup> Ibid.

Gainsford and Evans assert from their experience in Indigenising business curriculum at CSU - that two additional requirements are pivotal: Indigenous educators; and the development of resources designed by Indigenous educators at the course level.<sup>38</sup>

There is common agreement that Indigenous content should not be taught in isolation,<sup>39</sup> and should be assessed.<sup>40</sup> A literature review reveals that a whole-of-curriculum approach is often not the approach that is adopted within Australian law schools which appear to be at a nascent stage in the embedding of Indigenous cultural competence. Indigenous legal issues, Indigenous perspectives and Indigenous law are often taught in a foundation law course, an elective, and perhaps some Priestley 11 content and there is some literature on general issues of incorporation.<sup>41</sup> To date, there is scholarship reflecting on the incorporation of Indigenous legal content in these Priestley 11 subjects: constitutional law;<sup>42</sup> administrative law;<sup>43</sup> criminal law and procedure;<sup>44</sup> and property law.<sup>45</sup> Our search could reveal nothing on its incorporation in the law of torts, equity and trusts, or contract law for example. We turn now to outline the CSU context in which the LLB is offered by the Centre for Law and Justice.

#### *Charles Sturt University and Indigenous Cultural Competence*

CSU has adopted the Wiradjuri phrase *Yindyamarra Winhanga-nha*, meaning 'the wisdom of respectfully knowing how to live well in a world worth living in'. This phrase represents

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<sup>38</sup> Gainsford and Evans, above n 35, 2.

<sup>39</sup> Nicole Graham, 'Indigenous Property Matters in Real Property Courses at Australian Universities' (2009) 19 *Legal Education Review* 289, 290; Maguire, Amy, and Tamara Young. "Indigenisation of Curricula: Current Teaching Practices in Law." *Legal Education Review* 25, no. 1 (2015): 95-119.

<sup>40</sup> Meyers, Gary D. "Two Examples of Incorporating Indigenous Issues in Law School Curricula : Foundation Year Courses and Electives in Environmental/Natural Resources Law." *Indigenous Law Bulletin* 7, no. 9 (2008): 6-8, 7.

<sup>41</sup> Anker, Kirsten. "Teaching 'Indigenous Peoples and the Law' : Whose Law?". *Alternative Law Journal* 33, no. 3 (2008): 132-36; "Grand Narratives and the Law School Curriculum: Teaching Indigenous Australians and the Law." *Australian Feminist Law Journal, The* 11, no. Sept 1998 (1998): 156-72; Maguire, Amy, and Tamara Young. "Indigenisation of Curricula: Current Teaching Practices in Law." *Legal Education Review* 25, no. 1 (2015): 95-119; Meyers, Gary D. "Two Examples of Incorporating Indigenous Issues in Law School Curricula : Foundation Year Courses and Electives in Environmental/Natural Resources Law." *Indigenous Law Bulletin* 7, no. 9 (2008): 6-8; Burns, Marcelle. "Towards Growing Indigenous Culturally Competent Legal Professionals in Australia." *International Education Journal: Comparative Perspectives* 12, no. 1 (2014).

<sup>42</sup> Castan, Melissa. "The Recognition of Indigenous Australians in the Teaching of Federal Constitutional Law." *Journal of the Australasian Law Teachers Association* 7, no. 1 (2014): 87.

<sup>43</sup> Reilly, Alexander. "Finding an Indigenous Perspective in Administrative Law. (Australia) (Special Focus Issue - Incorporating Indigenous Perspectives in the Law Curriculum)." *Legal Education Review* 19, no. 1 2 (2009): 271-87.

<sup>44</sup> Anthony, Thalia, and Melanie Schwartz. "Invoking Cultural Awareness through Teaching Indigenous Issues in Criminal Law and Procedure." *Legal Educ. Rev.* 23 (2013): 31.

<sup>45</sup> Graham, Nicole. "Indigenous Property Matters in Real Property Courses at Australian Universities." *Legal Educ. Rev.* 19 (2009): 289.

Wiradjuri cultural values pertaining to the relational development of knowledge and knowledge that is put to work for the benefit of others to foster a strong community of practice. CSU is one of a handful of universities across Australia that have adopted a Graduate Learning Outcome based around Indigenous cultural competence. This Graduate Learning Outcome states that students will be able to:

Practise in ways that show a commitment to social justice and the processes of reconciliation based on understanding the culture, experiences, histories and contemporary issues of Indigenous Australian communities.

The Graduate Learning Outcome involves three attributes as outlined in Table 1 below:

*Table 1 Indigenous Cultural Competence Graduate Learning Outcome, Charles Sturt University*

Knowledge	Skill	Application
Understand specific cultural and historical patterns that have structured Indigenous lives in the past and the ways in which these patterns continue to be expressed in contemporary Australia	Critically examine personal power, privilege and profession within the broader context of the history, assumptions and characteristics that structure Australian society, and the way those factors shape historical and contemporary engagement with Indigenous communities and Indigenous people	Practise in ways that show a commitment to social justice and the processes of reconciliation through inclusive practices and citizenship

This commitment is supported by the CSU *Indigenous Education Policy* which was initiated in 2008 and is currently on its third iteration. This policy was also complemented and reinforced by CSU's *Incorporating Indigenous Australian Content in Courses Policy*. Together these policies set out strategic targets, guidelines and quality assurance mechanisms to support the universities commitment to educating Indigenous and non-Indigenous students in a safe learning environment and authentically embedding Indigenous content across all CSU courses.

A significant component in supporting this institutional policy is the organisation-wide Indigenous Cultural Competence Program that provides all academic and non-academic staff with professional development in relation to Indigenous cultural competence. This professional development is made up of eight online modules that are delivered internally by a mixed mode and are designed, developed and delivered by Indigenous Elders, Indigenous and non-Indigenous academics, Indigenous community members and other significant organisational stakeholders. The modules are designed to effectively engage all staff in increasing their knowledge, skills and capabilities about Indigenous cultures, history and contemporary situations. It is acknowledged that this professional development alone does not fully prepare academics to effectively teach Indigenous content in curriculum.<sup>46</sup> However, it is recognised that the cultural competency modules are a starting point for academics to gain foundational knowledge and form standpoints. The online modules are considered as one of many support mechanisms and further discussion of cultural mentoring and team teaching approaches will be further discussed later in the paper.

In starting a new LLB, we have had the opportunity of mapping key concepts across the newly written curriculum like Indigenous cultural competence. We have used the mapping developed by Rob Ranzijn et al.<sup>47</sup> This requires that throughout the degree students cover 160 hours of content that begins with a general background on Indigenous issues and moves through to discipline specific content such as critically examining the nature of the legal profession. Protocols around culturally appropriate communication skills are mapped into curriculum, as well as activities designed to explore the students' own values and attitudes. This mapping enables Indigenous legal issues, Indigenous perspectives and Indigenous law to become embedded throughout CSU's LLB.

In embedding this content, we utilise concepts of 'place-based' learning. Place-based knowledge in Indigenous education has long been recognised by international scholars such as Archibald<sup>48</sup>, Barnhart<sup>49</sup>, Cajete<sup>50</sup>, Kawagley<sup>51</sup>, Lambe<sup>52</sup>, Thaman<sup>53</sup> and Webber<sup>54</sup> as a rich

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<sup>46</sup> Gainsford and Evans, Above n 35.

<sup>47</sup> Ranzijn, R. O. B., Keith McConnochie, Andrew Day, Wendy Nolan, and Michelle Wharton. "Towards Cultural Competence: Australian Indigenous Content in Undergraduate Psychology." *Australian Psychologist* 43, no. 2 (2008): 132-39.

<sup>48</sup> J Archibald, *J Indigenous storywork: Educating the heart, mind, body, and spirit* (UBC press 2009); Australian Institute of Aboriginal Torres Strait Islander Studies. *Guidelines for Ethical Research in Indigenous Studies* (Australian Institute of Aboriginal and Torres Straight Islander Studies, 2012).

<sup>49</sup> R Barnhardt Indigenous knowledge systems and Alaska Native ways of knowing. *Anthropology & education quarterly*, (2005) 36(1), 8-23.

source of knowledge and a way to engage with local Indigenous people, customs and knowledges in an educative environment. Learning about Indigenous studies from the traditional owners where individuals are situated is considered best practice to value the ways of knowing and knowledge associated with Indigenous peoples. The acceptance of multiple wisdoms starts with place-based knowledge and learning. Here in Australia it is acknowledged that Indigenous communities have their own distinct traditions with diverse social and economic requirements. It is reflected in the literature cited above that place-based education can assist in highlighting historical and contemporary realities specific to certain societal settings. This practice is adopted by the Centre for Law and Justice to enable significant scope to engage local Indigenous elders, community and industry experts in privileging Indigenous voices in the design, development and delivery of Indigenous content across the curriculum. This two way teaching and learning process offers authentic learning experiences for Indigenous and non-Indigenous students and provides space for Indigenous knowledges and cultural experience to become a rich source of learning.<sup>55</sup> This process is multifaceted and provides cultural mentoring and support structures for non-Indigenous academics in developing further knowledge and confidence about Indigenous content.

Across the CSU LLB there has been considerable scope to deliver two way learning opportunities through team teaching environments strengthened by internal cultural mentoring and the 'Elder-in-Residence' program. This program has offered shared learning environments where knowledges are explored revealing differences and similarities between Indigenous ways of knowing and Western frameworks, opening up investigation for academics and students to contemplate new pathways of learning. The two way learning process provides opportunities for academics to increase their knowledge and skills and

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<sup>50</sup> GA Cajete, American Indian epistemologies. *New directions for student services*, (2005) (109), 69-78.

<sup>51</sup> AO Kawagley & R Barnhardt (1998). Education indigenous to place: Western science meets native reality. (1998)

<sup>52</sup> J Lambe. Indigenous education, mainstream education, and native studies: Some considerations when incorporating indigenous pedagogy into native studies. *The American Indian Quarterly*, (2003) 27(1), 308-324.

<sup>53</sup> KH Thaman. Decolonizing Pacific studies: Indigenous perspectives, knowledge, and wisdom in higher education. *The Contemporary Pacific*, (2003) 15(1), 1-17.

<sup>54</sup> G Webber, G. *Intricate waters: A critical literature review of place-based education*.(2017).

<sup>55</sup> R Ober. Both-ways: Learning from yesterday, celebrating today, strengthening tomorrow. *The Australian Journal of Indigenous Education*, 38(S1), (2009) 34-39.

therefore has a considerable impact on the proficiency levels of academics and their ability to teach Indigenous perspectives across subject content. This process employs Martin Nakata's characterisation of challenging the cultural interface and sparking curiosity from academics to further develop curriculum, resources and undertake additional research to inform teaching and learning practices.<sup>56</sup>

The building of community partnerships with industry experts, local Wiradyuri Elders and the wider Indigenous community has been a steep learning curve for the Centre for Law and Justice. These significant relationships have required time and attention to build trust and a strong community of practice for collaborations to be carefully cultivated. Elders are recognised as experts, enjoying rich knowledge about cultural practices and a deep insight into contemporary environments. Having a local Wiradyuri academic as part of the Centre for Law and Justice staff, has acted as a bridge to the wider Indigenous community and has provided knowledges around protocol and practice assisting the Centre for Law and Justice to form respectful relationships with key stakeholders. These relationships are reciprocal in nature with agreed guidelines established in relation to remuneration for the sharing of cultural knowledge, teaching, cultural mentoring and consultation processes, all of which are key components in the educational design of the LLB curriculum.

Critical reflection has become a key component in informing future practice for the LLB curriculum with all academics undertaking CSU's Indigenous Cultural Competence Program and using it as important insight for building Indigenous perspectives into subjects. The program was a starting point for academics to consider Indigenous content and acted as a mechanism to collaborate with Indigenous narratives both historical and contemporary, this in turn creating a basis for relationships to form and for continued discussion of further opportunities for the embedding of Indigenous cultural competence. Academics became actively involved in the process and took ownership of subject content, while having a clear knowledge of where their subject content would sit in relation to the entire LLB course curriculum. This knowledge and practice was reinforced and supported by the chosen Ranzjin et al<sup>57</sup> pedagogical framework. Collaborations involved Indigenous academics, Indigenous educational designers, Indigenous industry experts and elders to provided cultural mentoring and educational support. This process is recognised as a significant factor in reducing

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<sup>56</sup> Nakata, M. (2002). Indigenous knowledge and the cultural interface: Underlying issues at the intersection of knowledge and information systems. *IFLA journal*, 28(5-6), 281-291.

<sup>57</sup> Ranzjin et al, above n 47.

resistance and enabling confidence in the design, development and delivery of Indigenous perspectives across the curriculum. In support of Ranzjin, et al's<sup>58</sup> work we acknowledge there is significant recognition and evidence that many varied components are necessary to sustain the process of Indigenising curriculum. We grant that numerous factors intersect to support academics to make this work possible including institutional policy, Indigenous partnerships, teaching initiatives, aligned learning outcomes, Indigenous resources and constant critical reflection.

Including Indigenous perspectives and exploring multiple worldviews enables students to consider a range of viewpoints from different perspectives therefore providing an environment where differences can be considered and social tolerance can be fostered.<sup>59</sup> This process is vital in creating safe learning spaces for Indigenous and non-Indigenous students and teaching staff alike (including Elders, industry experts, community members or academics). Shared learning environments that explore cultural difference need to be safe for all students to express their own individual and collective narratives without judgement or bias to promote justice and equity in the classroom.<sup>60</sup> These shared dialogues enable students to challenge their own cultural biases, values and attitudes and motivates students to think dynamically about contemporary situations and further explore additional knowledge to better inform their future practice. Though safe learning environments are consciously deliberated in the design of the LLB, implications have occurred that need to be considered.

The Centre for Law and Justice's recognition and commitment to Indigenous research is seen as an ongoing strength in the promotion of the right to self-determination for Indigenous Australians and in forming partnerships that protect the traditional and cultural rights of Indigenous people.<sup>61</sup> Consultation processes at the Centre for Law and Justice are built on respect, cultural protocols and mutual understanding supporting all fourteen principles of the

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<sup>58</sup> Ibid.

<sup>59</sup> C Hardy, & D Tolhurst, (2014). Epistemological beliefs and cultural diversity matters in management education and learning: A critical review and future directions. *Academy of Management Learning & Education*, 13(2), (2014) 265-289.

<sup>60</sup> RJ Wlodkowski, & MB Ginsberg. *Diversity & Motivation: Culturally Responsive Teaching*. Jossey-Bass Higher and Adult Education Series. Jossey-Bass Education Series, Jossey-Bass Social and Behavioral Science Series: (ERIC 1995).

<sup>61</sup> D Foley, Indigenous epistemology and Indigenous standpoint theory. *Social Alternatives*, 22(1), (2003) 44.

AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies.<sup>62</sup> Within the Centre for Law and Justice there is a strong emphasis on Indigenous research, led by an Indigenous Academic Fellow and Centre based academics who have a high interest and focus on Indigenous research. The Indigenous research agenda is imperative to the cultivation of Indigenous leadership and to informing future practice.<sup>63</sup> Further adaptation of curriculum from research has led to the inclusion of the AIATSIS Guidelines in specific capstone subjects to provide opportunities for students to engage with Indigenous research to encourage higher degree research students in this area. Research is understood as a valuable part of the pedagogical continuum that influences students' knowledge, skills and application of capabilities when working with Indigenous peoples to address persistent inequality.

### Indigenous Cultural Competence in Tort Law

Law schools make, what Dr Alexander Reilly calls both “conscious and unconscious philosophical choices”<sup>64</sup> in how Indigenous perspectives in law are taught. This is particularly so in the Priestley 11 subjects, where the aim is to get through vast amounts of material in a way that meets accreditation requirements and equips students for legal practice. Because lawyers like categories, there is a temptation to treat the study of law in terms of discreet silos of knowledge. Each subject area has its own particular rules, principles and applications. Each of these rules and principles are learnt as a specialised body of knowledge, frequently taught by people whom are experts in their field.

The reality of legal practice quickly shows that legal problems do not work this way. For example, seldom will any legal problem arise that is just a tortious problem or just an administrative law problem. This is acknowledged to an extent by the Council of Australia Law Deans and accrediting bodies, by their recognition of the need to scaffold specific elements of learning across all subjects; those skills such as statutory interpretation, advocacy and alternate dispute resolution.

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<sup>62</sup> Australian Institute of Aboriginal Torres Strait Islander Studies. (2012). *Guidelines for Ethical Research in Indigenous Studies*: Australian Institute of Aboriginal and Torres Strait Islander Studies.

<sup>63</sup> M Evans & A Sinclair. Navigating the territories of Indigenous leadership: Exploring the experiences and practices of Australian Indigenous arts leaders. *Leadership* (2015). doi: 10.1177/1742715015574318

<sup>64</sup> Reilly, Above n 43.



When approaching Indigenous cultural competence, the same principle applies. Teaching Indigenous cultural content cannot be successfully achieved through adherence to the “silo” model of teaching, but must be gradually scaffolded across all law subjects, deeply embedded over the duration of the student’s degree.

When designing tort law at CSU, the Centre for Law and Justice began at the place most law schools do by identifying those aspects of tort law required to be taught by the *Legal Profession Uniform Admission Rules 2015* (NSW). Having organised content and structure around these requirements we then stepped outside content and asked the questions: “where in the law of righting wrongs, does tort intersect with Indigenous experience and culture? What examples are there of tort law being used to challenge the status quo for Indigenous people? How can the cases be used to teach both required legal content and bring a richness of Indigenous perspective to this subject area?”

Experience has taught that it is not enough, as Associate Professor Reilly has observed, to simplistically incorporate cases involving Indigenous people as litigants or raising issues of Indigenous significance. This is “introducing Indigenous content without an Indigenous perspective”<sup>65</sup>. The result of teaching Indigenous content in this way is that it becomes tokenistic, and the material becomes neither relevant nor helpful to the subject, with students treating ICC as irrelevant to the study of law.

This tokenistic approach is unfortunately evident in the majority of torts law text books. If the cases of *Williams*, *Trevorrow*, *Cubillo and Gunner*<sup>66</sup> are covered, they are mentioned extraneously to the law of negligence, and are usually incorporated by way of brief mention under “alternate statutory schemes”, or at best, an isolated case example for false imprisonment.

No text, to date, appears to have contextualised the material with a genuine Indigenous perspective, no narrative is included that speaks to the significant disadvantage Indigenous plaintiff experience evidentially, financially and emotionally. Certainly, there is no critical analysis of how tort, as a very creative and fertile area of law can be used to redress the cultural loss and devastation caused through successive generations of white policy.

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<sup>65</sup> Ibid 274.

<sup>66</sup> *Cubillo v Commonwealth* (2001) 103 FCR 1, *Williams v Minister, Aboriginal Land Rights Act 1983* (2000) 5(4) AILR 61.

The approach taken to teaching tort law at CSU is to use the decisions of *Trevorrow v State of South Australia [No 5]* (2007) 98 SASR 136 and *State of South Australia v Lampard-Trevorrow* (2010) 106 SASC 361 as a case study for the law of negligence, and the liability of statutory authorities.

*Trevorrow* was an action for compensation brought by Mr Bruce Trevorrow (and later his estate) against the State of South Australia for his forced removal as a child by the Aborigines Protection Board and the Children’s Welfare and Public Relief Board of South Australia in 1958. This matter is the only successful action brought for compensation for loss arising from breach of statutory duty in negligence, the first and only case to successfully raise misfeasance of public office, and the torts of false imprisonment in the context of the Stolen Generation.

From a black letter law perspective, this case offers fertile ground for the teaching a number of required elements of tort law specified by the regulations. These requirements are mapped in the tabular analysis below in Table 2.

Table 2 Tort law required by Schedule 1 of the Legal Profession Admission Rules 2015 (NSW) mapped against the *Trevorrow* case

Requirement	Trevorrow
Salient features of determining whether imposition of a duty of care on a statutory authority (negligence) contrasting how these matters are determined today with <i>Trevorrow</i> .	Analysis of the “salient features” (control, vulnerability, foreseeability, proximity, and legislative scheme) outlined in <i>Graham Barclay Oysters Pty Limited v Ryan</i> for determining a duty. Consideration of statutory provisions giving rise to a duty and also <i>Crimmins v Stevedoring Industry Finance Committee, Sutherland Shire Council v Heyman, Pyrenees Council v Day</i> .
Vicarious liability	Vicariously liability of the State of South Australia for the actions of its agencies and officers (through consideration of <i>S5 Crown Proceedings Act 1992 (SA)</i> ).
Tort of misfeasance in public office (intentional tort)	First time raised as a cause of action and successfully prosecuted in a Stolen Generation case
Foreseeability (negligence)	Issue of foreseeability of harm raised in torts of misfeasance in public office and negligence
Tort of False Imprisonment (intentional tort)	Notion of what constituted false imprisonment (removal to foster care) failure of the defence of lawful authority

	and actionable per se. Trespass to the person.
Breach of fiduciary duties	Equitable compensation vs common law compensation, non -delegable duties
Statutory interpretation	Consideration by the court of the proper construction of the words “legal guardianship” by analysing parliamentary intention and construction of the wording.

The real benefit of using *Trevorrow* as a case study is the valuable teaching opportunity to help students conceptualise loss and damage from an Indigenous perspective.

To successfully bring a tortious cause of action it is imperative that the lawyer first understand the facts of a case in order to frame the cause of action. To understand Bruce Trevorrow’s story, students are introduced to the narratives of other Indigenous people who were removed by the state from their families and culture. We use the available resources online and accessed narratives through websites such as the *Stolen Generations Testimonies*, administered by the Stolen Generations Testimonies Foundation.<sup>67</sup>

This approach is adopted for several reasons. First, we are building on students’ understanding of Indigenous belief systems, culture and the intergenerational trauma that has resulted from the forced removal of Indigenous people. This is possible because students have covered kinship and dispossession in foundation law subjects that give a historical context to the legal issues. Students bring this understanding to the study of torts. Second, a factual context is established that enables the student to readily identify the various torts the *Trevorrow* case raises, and helps students identify the heads of damage for which compensation was being sought.

Third, and most importantly, this content is taught in a culturally safe way. Students are warned that the content is distressing and depicts Indigenous people who may be deceased. Indigenous Elders of our community (who also were part of the Stolen Generation) are not requested to address students – as it is too painful and dangerous to their own wellbeing (and that of Indigenous students). Great care is taken in how these stories are communicated to all students, especially Indigenous students. Appropriate warning and support is offered to ensure this is achieved in a culturally safe learning environment.

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<sup>67</sup> Stolen Generations Testimonies Foundation, *Stolen Generations Testimonies*, [http://stolengenerationstestimonies.com/index.php/about\\_us.html](http://stolengenerationstestimonies.com/index.php/about_us.html).

Once context is achieved, students are required to analyse the judgments at first instance and on appeal to identify the legal elements of the relevant torts. This requires a careful legal analysis of the torts of false imprisonment, the salient features in determining duty of care by a statutory authority, breach and foreseeability in negligence.

Adding to context and understanding, CSU invited Claire O'Connor SC – who appeared as junior counsel in *Trevorrow* - to address the students on the case. Claire was invited to share both her legal analysis of why the case succeeded in tort when others have not, and also to speak to the unique lessons learned in representing an Indigenous man and his community.

The students' study culminates in an assessment task. The task is divided into two parts. Part A requires the students to demonstrate they have not only grasped the legal principles of the respective torts but how these were applied to the facts and reconsidered on appeal. Part B of the assessment, of equal weight, is a written essay that requires the students to critically reflect and evaluate how tort law can be used effectively to give voice for the wrongs suffered by Indigenous people. This approach produces considerably more than just another case analysis. Students are given a rich, contextual understanding that hears the voices of those involved and critically reflects on the role of law itself.

By incorporating Indigenous experience and culture into tort law in this way, we are building important graduate attributes. First, the forensic need to come to grips with the social, political and power context behind the facts of every case. Second, the legal need to identify and apply elements of a number of torts and to discern how courts will grapple with complex facts in determining these. Third, an understanding of the significance and extent of Indigenous Australia's loss and the law's ability to redress this.

Incorporating relevant Indigenous content helps acknowledge the resilience of cultural identity and tradition. Students are encouraged to engage with the broader social and political struggle that Indigenous people face in obtaining recognition of the cultural destruction they have suffered as a consequence of colonialism. The Stolen Generation is not the only avenue from which to teach cultural awareness in tort law. Defamation law, the intentional tort of false imprisonment, malicious prosecution, misfeasance in public office, abuse of legal process and tortious protection of privacy are fertile areas that lend themselves to being considered from an Indigenous perspective.

**Conclusion:**

This paper has explored the embedding of Indigenous cultural competence within the LLB offered at CSU. Indigenous cultural competence is clearly not just about curriculum but extends to the creating of a culturally safe environment for Indigenous staff and students. In doing this, we argue it extends to involving community partnerships and Indigenous organisations and Elders with cultural knowledge necessary for curriculum development.

With the Centre for Law and Justice's high focus on Indigenous research, embedding of Indigenous content across the Priestley 11, connection to Indigenous community, internal Indigenous academics and links to industry it is considered that there is significant scope for the CSU LLB to share content and processes with other tertiary institutions and external agencies. We acknowledge that the process to embed skills and competencies to navigate cultural difference in law and to integrate Indigenous knowledges successfully requires a specific and sought after skillset.<sup>68</sup> It is considered that this informed approach to Indigenous cultural competency in law education has much to offer outside organisations and existing practitioners to inform their cultural knowledge and law practices to better equip them to work with Indigenous Australians. It is anticipated that the future development of short courses and workshops in Indigenous cultural competence would be beneficial to meet the need for external agencies.

Meeting the challenges of embedding Indigenous cultural competence requires critical reflexivity and the courage to make mistakes and to learn from them. Our experience has also confirmed Martin Nakata's understanding that law needs to be the 'hook' with which to teach Indigenous cultural competence. The only times we have had resistance from students, and this has been only on rare occasions, was when the content had not been contextualised in delivery such that students felt the 'law' content was diluted. Law schools need to deeply embed Indigenous cultural competence in core curriculum and work with Aboriginal and Torres Strait Islander people to achieve the aims upon which this work is based. Only then can we avoid reproduce the sorts of colonising practices that continue to persist in the legal profession and in the law.

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<sup>68</sup> G Debebe, Cross-cultural competence and power-based rules: A native American case study. *International Journal of Intercultural Relations*, 32(5), (2008) 399-414.