

# RESPONDING TO CHANGED PARAMETERS OF THE LAW STUDENT: A REFLECTION ON PASTORAL CARE IN THE LAW SCHOOL

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The Bradley Review into Higher Education provides a new imperative to include so-called equity students in tertiary study.<sup>1</sup> At James Cook University ('JCU'), a holistic LLB curriculum seeks to address a variety of challenges faced by this increasingly diverse student cohort. The authors identify the means by which our program supports students and then highlight the gap between policies of engagement and retention, and the reality of providing front line care for students. It concludes that the role of pastoral care, while imperative to achieve the bureaucratic aims of government and institution, is gendered, undervalued and misunderstood within the law school context.

## I. INTRODUCTION

Academics are all too aware of the ongoing changes to higher education in Australia over the past 20 years or so, and its movement from an elite to a mass system of education. Student fees place education in the neoliberal marketplace where universities have become an enterprise rather than a social good,<sup>2</sup> and the student has become the consumer of education services.<sup>3</sup>

Government policy is driven by economic imperatives, evidenced by the push to provide Australia with a 'highly skilled' workforce, 'to position Australia to compete effectively in the new globalised economy'.<sup>4</sup> Currently 29% of Australian 25–34 year-olds have degree-level qualifications<sup>5</sup> but the Bradley Report recommends a target of 40% of 25–34 year-olds having attained at least a bachelor-level qualification by 2020. This means opening up higher education to an even more diverse cohort — representing a fundamental shift in the demographics of the student population.

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1 Denise Bradley et al, *Review of Australian Higher Education Final Report* (2009) Department of Education, Employment and Workplace Relations <<http://www.deewr.gov.au/HigherEducation/Review/Pages/ReviewofAustralianHigherEducationReport.aspx>> at 13 November 2010 ('The Bradley Report').

2 For example see David Pick and Jeannette Taylor, 'Economic Rewards are the Driving Factor: Neo-liberalism, Globalisation and Work Attitudes of Young Graduates in Australia' 7 (2009) *Globalisation, Societies and Education* 69; S Marginson, 'The Public/Private Divide in Higher Education: a Global Revision' 53 (2007) *Higher Education* 307.

3 For example see Beverley Oliver et al, 'Are our Students Work-ready?: Graduate and Employer Feedback for Comprehensive Course Review' (Paper presented at the Evaluations and Assessment Conference, Brisbane, 2007) <<http://c2010.curtin.edu.au/local/docs/paper5.pdf>> at 13 November 2010; Australian Government, *Learning and Teaching Performance Fund Indicators, Learning and Teaching Performance Fund 2009 Administrative Information for Providers* (2009) Department of Education, Employment and Workplace Relations 4 <[http://www.dest.gov.au/NR/rdonlyres/9FD84A99-9CD0-42F3-B47D-CEFB9E23E341/24592/LTPF\\_AIP\\_2009\\_FINAL\\_Nov08.pdf](http://www.dest.gov.au/NR/rdonlyres/9FD84A99-9CD0-42F3-B47D-CEFB9E23E341/24592/LTPF_AIP_2009_FINAL_Nov08.pdf)> at 13 November 2010, which shows indicators for eligibility for funding that include student satisfaction with generic skills, as well as with teaching; Lynda Crowley-Cyr, 'Reflexive Professionals or Disempowered Technicians? A Case Study of the Risks of "McLearning" in a Regional Law School' (2008) 1 *Journal of the Australasian Law Teachers Association* 299.

4 See The Bradley Report, above n 1, Executive Summary xi.

5 Ibid.

In discussing the learning experience of this socially broader cohort, Kinnear et al point out that:

the need for individual institutions to understand the “micro-ecology” of students over time, to understand how the complexity of social, academic, and cultural factors play out for the student within the specific institutional context is an urgent and emerging one.<sup>6</sup>

Indeed Darlaston-Jones et al identify that academic, social, cultural and personal characteristics contribute to student attrition rates.<sup>7</sup> In the context of the Bradley Review, this means that enrolling students from non-traditional backgrounds is not enough — attrition is likely to be an issue.

This is reinforced by comments made recently in the Higher Education Supplement of *The Australian* which reported that ‘the proportion of students who are struggling emotionally is likely to grow as universities open up to people from less privileged backgrounds. “It’s a big sleeping issue...”<sup>8</sup> This is of particular concern for legal academics, in light of the 2009 report on law students’ mental health.<sup>9</sup> There is a clear link between students’ readiness for tertiary study and their emotional well-being.

Kift suggests that the way to support cohorts who ‘enter our programs with even greater diversity in preparedness and cultural capital than ever before’, is to change ‘both culturally and structurally, the prevailing character of the first year student experience...through coherent, integrated, intentional, supportive and inclusive first year curriculum design.’<sup>10</sup>

This paper reflects on the work of the first year coordinators in the LLB at JCU, in achieving this end. First this paper identifies the student context at JCU and the LLB curriculum response to that context. In particular, the focus is on the often-neglected pastoral care aspects of the co-ordinators’ roles as a key element in a curriculum responsive to students’ needs. This paper will then reflect on the *care* aspects of pastoral care — as a different construct from ‘support’ that is mentioned in much of the literature.<sup>11</sup> Finally, in light of experiences of caring, this paper queries the extent to which this role is recognised or valued in a neo-liberal higher education context that increasingly seeks ‘simplified, measurable performance indicators.’<sup>12</sup>

6 Adrienne Kinnear et al, ‘Perceptions of Successful Students: Lessons for the First Year Experience’ (Paper presented at the 11<sup>th</sup> Pacific Rim First Year in Higher Education Conference, Hobart, 30 June–2 July 2008) 2 <[http://www.fyhe.com.au/past\\_papers/papers08/FYHE2008/content/pdfs/7a.pdf](http://www.fyhe.com.au/past_papers/papers08/FYHE2008/content/pdfs/7a.pdf)> at 13 November 2010.

7 Dawn Darlaston-Jones et al, ‘Addressing Attrition: Why We Need a Unified Approach to Transition Issues’ in A Herrmann and M M Kulski (eds), *Expanding Horizons in Teaching and Learning* (Proceedings of the 10th Annual Teaching Learning Forum 7–9 February 2001, Perth, Curtin University of Technology) <<http://lsn.curtin.edu.au/tlf/tlf2001/darlaston-jones.html>> at 13 November 2010.

8 Guy Healy, ‘More Students Need Support for Mental Health Issues’ *The Australian* (online), 16 June 2010, <<http://www.theaustralian.com.au/higher-education/more-students-need-support-for-mental-health-issues/story-e6frgcjx-1225880086459>> at 13 November 2010.

9 Norm Kelk et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers* (2009).

10 Sally Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program* (2009) 16 <<http://www.altc.edu.au/resource-first-year-learning-experience-kift-2009>> at 13 November 2010.

11 See for example Hamish Coates, ‘The Value of Student Engagement for Higher Education Quality Assurance’ (2005) 11 *Quality in Higher Education* 25, 33; Robyn Benson et al, ‘Experiences of Students from Diverse Backgrounds: the Role of Academic Support’ (Paper presented at the 32<sup>nd</sup> HERDSA Annual Conference *The Student Experience*, Darwin, 6–9 July 2009).

12 Bernie Grummell, Dymyna Devine and Kathleen Lynch, ‘The Care-less Manager: Gender, Care and New Managerialism in Higher Education’ (2009) 21 *Gender and Education* 191, 192. Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program*, above n 10, 18, identifies the importance of appropriate reward and recognition structures.

## II. OUR STUDENTS' CONTEXT

The LLB at JCU has relatively open access compared with many universities in metropolitan Australia where students are still likely to comprise an elite (both in terms of socio-economic background and prior academic achievement).<sup>13</sup> JCU students are as likely as not to be from a rural or remote area, mature-age, and first-generation university educated.<sup>14</sup> They are also less likely than students of other universities to have achieved as highly academically prior to entering university. In 2010, the minimum entrance score for law at JCU was substantially lower than for all other law schools in Queensland.<sup>15</sup>

JCU students themselves identify their lack of preparedness for tertiary study. Over one half of first year students believed that their final year at school did not adequately prepare them for university.<sup>16</sup>

Anecdotally, the law degree is seeing an increasing number of students who are recent migrants (including refugees) and those who are dealing with adverse domestic issues. At the beginning of first year, many students report that they had only within the last two weeks decided to study law and so had moved (from elsewhere in Australia) to Cairns or Townsville. This places an additional burden on students who leave their social and family networks, and face finding accommodation and work as well as the challenge of tertiary study — and these are important factors that affect student retention.<sup>17</sup>

The decrease in numbers of students receiving Austudy or Youth Allowance as their primary income has led to an increase in students who rely on income from paid work.<sup>18</sup> Like students elsewhere in Australia,<sup>19</sup> JCU law students undertake paid work that keeps them off campus. Although numbers of full-time students at JCU have risen, there is an emerging trend of students spending fewer days on campus and less time in classes. In 2008, 65% of JCU law students worked more than 11 hours per week; 37% worked more than 16 hours per week. The majority of students reported spending 27 hours per week on their studies, including course contact time. A full time load (four subjects) would have required 40 hours per week spent on such activity. These data identify a significant gap between how much time teachers expect students to spend on study, and the time students actually spend.<sup>20</sup> This is borne out also in national studies.<sup>21</sup>

JCU first year students have identified that paid work is either their main source or only source of income and the majority of those students fear that their paid work impacts negatively on their academic performance.<sup>22</sup> Students wish to complete their degree as fast as possible and they simply do not have enough time to spend on their study.<sup>23</sup>

These data are concerning: students who spend less time on campus are 'less likely to ask questions in class and contribute to class discussions.'<sup>24</sup> As learning takes place through the *active* behaviour of the student, a lack of engagement in educationally useful activities will counteract student learning. If institutions seek increasing numbers of graduates, then students 'at risk' of not participating require support. As students' experience of learning in the transition

13 Craig McInnis and Simon Marginson, *Australian Law Schools after the 1987 Pearce Report*, (1994) 206; Alex Zeigert, 'Social Structure, Educational Attainment and Admission to Law School' (1992) 3(2) *Legal Education Review* 155, 196.

14 James Cook University, *First Year Experience Project Report 2008* (2008) James Cook University <[http://www.jcu.edu.au/teaching/idc/groups/public/documents/datasets/jcuprd\\_031354.pdf](http://www.jcu.edu.au/teaching/idc/groups/public/documents/datasets/jcuprd_031354.pdf)> at 18 November 2010.

15 QTAC, <[http://www.qtac.edu.au/oaApps/jsp/course\\_search\\_results.jsp?action=search&admissionsPeriod=guide2010&courseCode=&semester=&keywords=&keywordSearchMethod=all&areaOfStudy=LAW](http://www.qtac.edu.au/oaApps/jsp/course_search_results.jsp?action=search&admissionsPeriod=guide2010&courseCode=&semester=&keywords=&keywordSearchMethod=all&areaOfStudy=LAW)> at 10 May 2010. The cut-off for law for the other Queensland universities ranged from 3–9 compared to 15 at JCU.

16 Kerri-Lee Krause et al, *The First Year Experience in Australian Universities: Findings From a Decade of National Studies* (2005) Department of Education, Science and Training <<http://www.dest.gov.au/NR/rdonlyres/1B0F1A03-E7BC-4BE4-B45C-735F95BC67CB/5885/FYEFinalReportforWebsiteMay06.pdf>> at 13 November 2010.

17 Darlaston-Jones et al, above n 7.

18 Krause et al, above n 16.

19 Universities Australia, *Final Report of a National Survey of Students in Public Universities* (2007) 39.

20 Kate Galloway, *Report on the School of Law Flexible Learning Project* (2008).

21 Krause et al, above n 16.

22 James Cook University, *First Year Experience Questionnaire 2006* (2006); Galloway, above n 20.

23 Galloway, above n 20; see also Crowley-Cyr, above n 3.

24 Krause et al, above n 16, 32.

year is a ‘crucial one that can have lasting positive (or negative) effects, depending on the skill with which it is handled,’<sup>25</sup> early intervention strategies are vital to facilitate ‘an active process of constructing rather than acquiring knowledge.’<sup>26</sup>

The challenge does not stop there however. McInnes reviews studies that show how students’ attitudes and aspirations are changing.<sup>27</sup> He points out that changes in priorities, interests and rites of passage mean that engagement in university experience is not a ‘self-evident good’.<sup>28</sup> Christie, in the UK context, writes that middle class students draw upon ‘discourses of entitlement to and self-realisation within higher education,’<sup>29</sup> but that ‘non-traditional students have limited access to the cultural capital’ that would help them navigate the university system.<sup>30</sup>

This change in student attitudes about their study is linked to the contemporary global economic marketplace.<sup>31</sup> Pick and Taylor for example, identify a close link between student aspirations and the national economic agenda. As part of this economic agenda, universities transform graduates into workers for the new economy — steeped in cultural practices that will help create and reinforce economic goals. These practices involve ‘individual autonomy, responsibility, freedom and choice.’<sup>32</sup> Pick and Taylor, through surveys of Australian students, identify that the fee-paying environment forces students to ‘become more utilitarian’ towards the value of their education. Students expect a higher income to justify the cost of their education.<sup>33</sup>

Despite this context, teaching in the Bachelor of Laws in Australia continues to be a fairly traditional and formal mode of content-focussed and doctrinal delivery.<sup>34</sup> This represents the very culture of the law and the law school that has been identified as a barrier to inclusiveness of a more diverse cohort.<sup>35</sup>

This context exists also in the JCU Law School, a small school teaching across two regional campuses separated by some 350km. By 2004, with high attrition rates and unacceptably high failure rates during first year, the Law School needed to act to promote retention of its already diverse and ‘non-traditional’ cohort by addressing their learning needs. Therefore in redesigning the first year curriculum, particular attention has been paid to the transition to tertiary study — engaging students in their law study and developing their skills from the outset — as a means of engagement in the culture of academic life.<sup>36</sup>

The first year program seeks, amongst other things, to:<sup>37</sup>

- enable a transformative, transitional experience for students to develop into ‘self-reflexive, independent, responsible learners and ethical scholars’;

25 Sally Kift, *Assuring Quality in the Casualisation of Teaching, Learning and Assessment: Towards Best Practice for the First Year Experience* (2003) Ultibase Royal Melbourne Institute of Technology <<http://ultibase.rmit.edu.au/Articles/march03/kift1.htm>> at 13 November 2010.

26 Sally Kift, ‘My Law School — Then and Now’ (2005–2006) 9 *The Newcastle Law Review* 1, 14.

27 Craig McInnis, *Signs of Disengagement? The Changing Undergraduate Experience in Australian Universities Inaugural Professorial Lecture* (2001).

28 *Ibid* 8.

29 Hazel Christie, ‘Emotional Journeys: Young People and Transitions to University’ (2009) 30 *British Journal of Sociology of Education* 123, 131.

30 *Ibid*.

31 *Ibid* citing Don Edgar, ‘Thick and Thin Relationships in the New Millennium’ in G Bateman and D Lamont (eds), *Relationships into the New Millennium* (1999).

32 Pick and Taylor, above n 2, 74, citing Davies et al ‘The rise and fall of the neo-liberal university’ (2006) 41(2) *European Journal of Education* 305, 319.

33 *Ibid*.

34 Gary Davis, *Report to Council of Australian Law Deans on the International Conference on the Future of Legal Education (Summary)* (2008) Council of Australian Law Deans <<http://www.cald.asn.au/docs/FutureOfLegEdConfRptSummy.doc>> at 18 November 2010; Nickolas James, ‘Expertise as Privilege: Australian Legal Education and the Persistent Emphasis Upon Doctrine’ (2003) 8 (1) *University of Western Sydney Law Review* 1.

35 For example see Australian Law Reform Commission, *Equality Before the Law Women’s Equality*, Report No 69 (1994).

36 For example see Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program*, above n 10.

37 Lisa Westcott and Mandy Shircore, ‘The Experience of a Small Regional Law School in Preparing Students for a Journey Through Law’ (2006) *James Cook University Law Review* 5.

- take a broader approach to students' skill development, including ...emotional literacy of students.

This transformative transitional experience for JCU students relies at least partly on their capacity to cope with the social and emotional contexts of study. As Endres points out 'transformative education involves the ongoing alteration of the students' character through a sustained personal relation.'<sup>38</sup> In considering the social and emotional contexts of study, curriculum is designed using a 'broad view' of curriculum — one that encompasses 'the whole process of teaching and learning and all the activities in their various contexts which take place during that process.'<sup>39</sup> If it is within the 'academic curriculum that students must find their place, be inspired, excited, engaged and retained',<sup>40</sup> then it is important to understand the impediments faced in fostering positive learning experiences, and how to help students overcome these.

The first aspect of the curriculum lies in the more concrete elements supporting development of students' emotional intelligence — through emphasis on emotional literacy or 'using opportunities in and out of class to help students turn moments of personal crisis into lessons in emotional competence.'<sup>41</sup> Goleman identifies abilities such as self-motivation, persistence, empathy, hope and mood regulation as elements of emotional intelligence.<sup>42</sup>

### III. TRANSITION TO THE LLB AT JCU

In light of students' 'life factors', it can be challenging for them to develop a positive 'student identity' with a clear sense of direction and purpose, with confidence in their ability to succeed.<sup>43</sup> Like so many of their peers nationally, generally JCU first year students feel overwhelmed by what is required, feel their school experience did not adequately prepare them for university study, and are largely unaware of the many services available to them.<sup>44</sup>

Christie cites studies that 'highlight the emotional component of ... navigating the financial, social and cultural barriers that non-traditional students must overcome if they are both to gain access to university and to become full members once there.' For these students — whose background is similar to that of JCU law students — 'the transition to university is an intensely emotional process...'<sup>45</sup> and this cannot be divorced from students' academic success.

Värlander focuses on the important role of emotions in learning:

The more emotionally engaged a learner is, the more likely it is that he or she will be able to learn... Nevertheless, when people perceive a learning situation to be threatening, and experience emotions, eg insecurity and anxiety, they are less likely to learn.<sup>46</sup>

Like Värlander, Beard et al point out that 'student success is heavily dependent on aspects of social integration which involve the affective dimensions of their engagement with higher education.'<sup>47</sup> They argue that emotion in higher education is rarely acknowledged and argue for a more human model of the student.

38 Benjamin Endres, 'The Conflict Between Interpersonal Relations and Abstract Systems in Education' (2007) 57 *Educational Theory* 171, 177.

39 Barbara Bagilhole and Jackie Goode, 'The Gender Dimension of Both the "Narrow" and "Broad" Curriculum in UK Higher Education: Do Women Lose Out in Both?' (1998) 10 *Gender and Education* 445, 449.

40 Karen Nelson, Sally Kift and Wendy Harper, 'Any Portal in a Storm? Online Engagement Patterns of First Year QUT Students' (Paper presented at the 2005 Online Teaching and Learning (OLT) Conference, Brisbane, 27 September 2005).

41 Daniel Goleman, *Emotional Intelligence* (1996) 280.

42 Ibid 34.

43 Greer C Johnson and Glenice Watson, 'Oh Gawd How am I Going to Fit into this? Producing (Mature) First-year Student Identity' (2004) 18 *Language and Education* 474.

44 James Cook University, *First Year Experience: Project Report 2009* (2009)

45 Christie, above n 29, 125.

46 Sara Värlander, 'The Role of Students' Emotions in Formal Feedback Situations' (2008) 13 *Teaching in Higher Education* 145, 148.

47 Colin Beard, Sue Clegg and Karen Smith 'Acknowledging the Affective in Higher Education' (2007) 33 *British Educational Research Journal* 235, 236.

In a similar vein, the Law School at JCU has developed strategies to guide, nurture, support and empower students to reach their potential. The aim is to support students' emotional development as an integral part of their academic development. This falls onto first year academic staff, and particularly the First Year coordinators ('FY coordinators')<sup>48</sup> who are largely responsible for pastoral care.

Pastoral care is a student-centered, holistic approach to student welfare that aims to ensure the student develops and engages meaningfully. Adopting a pedagogy of diversity,<sup>49</sup> it is acknowledged that students come with a range of life experiences and contexts, often coupled with a misalignment of expectations and skill sets so pastoral care is one strategy to deal with this misalignment.

Integrating pastoral care into curriculum fosters academic and social connections as well as emotional literacy. This approach aims to provide students with insight into their own process of adjustment, that is personal to them. This fosters a feeling of control over initial social and academic anxieties. This broad approach to curriculum ensures development of skills and attributes to address students' new circumstances. A university with a solid system of pastoral care based on the principle that the general wellbeing of the student comes first, 'will have a smaller drop-out rate and provide a positive educational experience.'<sup>50</sup>

In the LLB at JCU, curriculum addresses students' 'mismatches with the reality'<sup>51</sup> in a variety of ways.

### A. *Students' Early Formative Experiences on Campus*

As James observes, the 'origins of changing student expectations may lie, paradoxically, in the early formative experiences of students on campus.'<sup>52</sup> Crossling et al identify that O-week activities have potential to meet the need to 'induct students into the wider higher education environment.'<sup>53</sup> As JCU moves towards a 'third generation FYE [First Year Experience] approach',<sup>54</sup> the LLB has led the way through active involvement in O-week, offering a workshop designed to de-mystify the legal writing process and inspire confidence in first year students. Workshop materials are integrated into the first year subject sites providing a seamless introduction into study. Feedback from students over the many years this workshop has been delivered can be summed up in one student's words 'I went away feeling excited about starting my course for the first time during O-week!'<sup>55</sup> Surveys also reveal that attendees of these workshops are more likely to attend writing workshops run by learning advisers during semester, indicating the importance of the workshops in motivating students to learn.

Following the O-week experience, the first lectures discuss student support services<sup>56</sup> and integrate a variety of student support mechanisms into the lecture itself. Bringing student mentors into initial lectures ensures all first year students have the opportunity to become a 'mentee'. The mentee benefits from engaging with a continuing law student as a role model to help them better adjust to the university environment. Mentors help orientate first year students

48 JCU Law School has two FY coordinators, one for each campus.

49 Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program*, above n 10.

50 Donard de Cogan, *Towards a Blue-Print for Pastoral Care* School of Information Systems University of East Anglia, Norwich <<http://www.hull.ac.uk/engprogress/Prog3Papers/Donard.pdf>> at 13 November 2010.

51 Richard James, 'Students' Changing Expectations of Higher Education and the Consequences of Mismatches with the Reality' (Paper presented at the OECD-IMHE Conference *Management Responses to Changing Student Expectations*, Brisbane (QUT), 24 September 2001).

52 Ibid 3.

53 Glenda Crossling, Margaret Heagney and Liz Thomas, 'Improving Student Retention in Higher Education' (2009) 51 *Australian Universities Review* 9, 12.

54 Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program*, above n 10, 1. As evidence of the JCU third generation approach, see James Cook University, *First Year Experience Future Directions* (2010)

55 See also report in Stephanie Davison, 'Start at the Very Beginning: Engaging Students in Orientation Week Activities' (Paper presented at FYHE Conference, Gold Coast (Griffith University), 12-14 July 2006).

56 Crossling, Heagney and Thomas, above n 53, 16.

to university culture, and raise awareness of services and programs.<sup>57</sup> Often through the mentor there is a more informal initial meeting between first year students and academic staff, which can help in breaking down perceived barriers between students and staff.

There are of course students who retreat from face-to-face engagement. In the first three to four weeks of first year, FY coordinators compile a list of students who have not been attending classes. These students are contacted to offer appropriate support.

### B. Ongoing Student Support

After the formative experiences in the LLB, ongoing pastoral support is provided through the Law School Peer Assisted Learning ('PAL') program and ongoing social presence of academic staff.

The PAL program offers social and academic support for first year students. Such programs have potential to be an excellent tool for student learning through facilitating the development of students' skills. They channel the experiences of final year students who provide an opportunity for first year students to self-assess and peer-assess using formative assessment practice.<sup>58</sup> In the PAL environment, the peer-to-peer connection permits students to disclose challenges and misconceptions without fear of reprisal or jeopardizing academic performance.<sup>59</sup> Student engagement in a PAL program offers benefits such as clarification of key concepts, immediate feedback, increased motivation and reduction of social isolation.<sup>60</sup>

Having only run the program for one semester, it is too early to evaluate its impact on student learning. It was however disappointing to see the low uptake of the program. An informal evaluation suggests that students are on campus too infrequently to attend. While it is believed that the program is necessary to assist in social cohesion resulting from students' absence from campus, those very students may not be interested in attending the program. Consequently it is possible that the program may be reinstated in semester two using online social networking sites as a forum for both synchronous and asynchronous interaction between students and PAL leaders — and of course between the students themselves. These proposed changes are part of the ongoing task of developing an 'integrated experience' whereby 'social interaction adds value to intellectual outcomes'.<sup>61</sup> It is incumbent on the authors as developers of curriculum to '[develop] appropriate responses to the new social, economic and technological context of universities'<sup>62</sup> and of course, students' experience and expectations.

While PAL is one means of providing social presence, this is done also via email — weekly in first semester, and intermittently in second semester. Emails are friendly, light and positive.<sup>63</sup> Their purpose is to encourage students to engage in student life by recognising the stresses of study and providing solutions to common student concerns. Students are encouraged to develop learning skills by accessing workshops and online resources. Emails also highlight activities related to campus life with invitations to seminars or cultural events. Southey et al identify the importance of such an approach in addressing 'some of the emotional support issues that students may have.'<sup>64</sup>

Emotional support is also provided through formative assessment. In all first year subjects, students are offered a one-on-one dialogue with academic staff on assessment tasks that are

57 James Cook University, *Student Mentor Handbook* <[http://www.jcu.edu.au/learningskills/idc/groups/public/documents/guide/jcuprd\\_034556.pdf](http://www.jcu.edu.au/learningskills/idc/groups/public/documents/guide/jcuprd_034556.pdf)> at 13 November 2010; For example see discussion in Craig Zimitat, 'Improving Quality of Teaching is Part of Improving Retention: a Study of First Year Students in an Australian University' (Paper presented at the FYHE Conference, Gold Coast (Griffith University), 12–14 July 2006).

58 See Jacques van der Meer and Carole Scott, 'Shifting the Balance in First-Year Learning Support: from Staff Instruction to Peer-Learning Primacy' (2008) 1(1) *Australasian Journal of Peer Learning* 70, 75.

59 Ibid 74.

60 Ibid 75.

61 McInnis, above n 27, 11.

62 Richard James, above n 51, 3.

63 See Kim Southey et al, 'A Feminine Approach to Teaching a Large, First Year University Course: And Everyone Lived Happily Ever After!' in Majella Albion and Pauline Collins (eds), *2007 International Women's Conference: Education, Employment and Everything... The Triple Layers of a Woman's Life* (2007) 137, 141.

64 Ibid 140.

frequent and ‘low-stakes’.<sup>65</sup> As Crossling et al point out, ‘formative assessment provides a vehicle for interaction between students and staff, thus helping to develop student familiarity and confidence to approach staff for additional clarification and advice...’<sup>66</sup> It also allows academics the opportunity to know their students.

#### IV. THE ‘CARE FACTOR’

The discussion so far has focused on quite tangible curricular elements, services and support without mentioning the ‘care factor’ or the emotional role carried out by teachers.

In one sense, so far the focus has been on a ‘public face’ of academic work: externally measurable strategies to support student learning. This conceals the private: the emotional interaction between teacher and student. Endres points out that ‘the attempt to compartmentalize the public and private aspects of life too completely prevents us from understanding the role of the interpersonal professions, which seem to involve a dynamic interaction between these domains.’<sup>67</sup> Indeed, this is the authors’ experience as FY Coordinators.

As pointed out, students’ learning experience is affected by emotions. Non-traditional students in particular experience an array of emotions in defining themselves as students. FY coordinators observe this in many ways within the context of academic support.<sup>68</sup>

As legal academics, clearly the pastoral care role is not that of counsellor. Part of the curriculum strategy is ensuring ready student access to campus counselling and other appropriate support services. This represents an integrated approach to student support.<sup>69</sup> Jacklin and Le Riche distinguish “support” as a mainly reactive response to perceived student problems, [from] “supportive” (and proactive) cultures and contexts...<sup>70</sup> It is this additional aspect of embedded supportive practice that reflects what the authors call the ‘care factor’ of pastoral care.

The authors interpret this ‘care factor’ in terms of ‘realness and genuineness, prizing, acceptance and trust, and empathetic understanding.’<sup>71</sup> These attitudes cannot be embodied in support services geared towards students as a homogeneous cohort. While there are undoubtedly a number of shared experiences of first year students, ‘sufficient subgroup differences emerge toward consideration of support strategies designed to meet the specific needs of various groups of students.’<sup>72</sup> A variety of strategies are therefore required to ensure this diverse array of students value their learning and are then more likely to stay, succeed and graduate.<sup>73</sup>

In the authors’ experience, the supportive aspect of the teacher’s role is integral to success as a teacher. Based on experience with individual students and their needs, it is considered to be an essential part of an integrated approach to transition,<sup>74</sup> as well as more widely.<sup>75</sup>

The individuality of the student’s emotional experience is apparent in the LLB at JCU. Students experience a variety of emotions in connection with their study that they freely share

65 Westcott and Shircore, above n 37.

66 Crossling, Heagney and Thomas, above n 53, 15.

67 Endres, above n 38, 178–9.

68 Importantly, in discussing academics’ experiences of students’ emotions, this paper is not offering a ‘therapeutic view of the pedagogic encounter.’ Beard, Clegg and Smith, above n 47, 236.

69 Crossling, Heagney and Thomas, above n 53, 14.

70 Angela Jacklin and Pat Le Riche, ‘Reconceptualising Student Support from “Support” to “Supportive”’ (2009) 34 *Studies in Higher Education* 735.

71 Colin Beard, Sue Clegg and Karen Smith, ‘Acknowledging the affective in Higher Education’ (2007) 33(2) *British Educational Research Journal*, 235, 236 citing Alan Mortiboys, *The Emotionally Intelligent Lecturer* (SEDA, 2002) and Carl Rogers, *Freedom to Learn* (Columbus, 1969).

72 Krause et al, above n 16.

73 Sally Kift and Karen Nelson, ‘Beyond Curriculum Reform: Embedding the Transition Experience’ (Paper presented at the HERDSA Conference, Sydney, 3–6 July 2005).

74 Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program*, above n 10.

75 For example see Rob Smith, ‘An Overview of Research on Student Support: Helping Students to Achieve or Achieving Institutional Targets? Nurture or De-nature?’ (2007) 12 *Teaching in Higher Education* 683; Bagilhole and Goode, above n 39; Felicity Rosslyn, ‘The Emotional Background to Learning’ (2004) 9 *Emotional and Behavioural Difficulties* 70; Christie, above n 29; Värlander, above n 46; Carole Leathwood and Valerie Hey, ‘Gender/ed Discourses and Emotional Subtexts: Theorising Emotion in UK Higher Education’ (2009) 14 *Teaching in Higher Education* 429.



with the FY coordinators. Consultation addressing a question of pure ‘black-letter’ content can result in student tears as they grapple with their place in the class, their expectations of themselves and their wider life context. Subjects that cover gender, race, sexuality and critical theories generally further complicate the student’s emotional response to their study.

The role of FY Coordinator in the JCU Law School with its emphasis on pastoral care has evolved in response to demands of first year. Consequently there is not a formal duty statement defining this role or a clear workload allocation,<sup>76</sup> nor any formal training for the role. FY coordinators draw on life experience to resolve students’ affective learning issues as they arise. Perhaps the most unexpected part of the role has been the significant support provided in addressing these needs, which is time consuming and often emotionally draining. Endres points out that ‘one of the most difficult aspects of teaching is that it requires teachers to...emotionally engage their students which cannot be done through formal procedures and professional disinterest alone’.<sup>77</sup>

Interestingly, these emotional encounters apparently occur most frequently in the offices of the FY coordinators, and much less frequently in those of colleagues — in particular not of male colleagues.<sup>78</sup> Is it possible that the ‘care factor’ constitutes a positioning of the (female) FY coordinators themselves, and by students, as caring?

### A. *Caring as a Gendered Construct?*

Neal et al have analysed women’s self-belief and self-confidence in professional domains including academe.<sup>79</sup> In one case study, they report that a woman academic is ‘positioned as caring by her students who seek her consultation [but] she also positions herself in this role.’ This academic ‘sees student support as part of her performance of a “good” academic.’<sup>80</sup>

Balighole and Goode likewise found in their interviews that women academics who ‘found students at their door... [did not feel] that they could turn these students away’. Both men and women interviewees in their study felt that women more than men took on the emotional aspects of pastoral care.<sup>81</sup> Deem too writes that ‘women may do more of those things which are not easily measured or even noticed, such as extended pastoral care for students, than men.’<sup>82</sup> Collier reports on the masculine culture of the law school, and the ‘model of academic performativity this [managerialist] process has entailed, one which is a distinctly masculine notion of labour.’<sup>83</sup>

Smith analyses the higher education context (in the UK) to identify a continuum of responses to student support. On the one hand, ‘meaningful, holistic support proceeds from a position that education contains constituent elements of nurturing.’<sup>84</sup> On the other hand, institutional imperatives within a managerialist or technicist paradigm, approach student support with ‘mechanistic, depersonalised and “off-the-shelf” support products.’ These do not necessarily meet student need.<sup>85</sup> Smith posits that communicative strategies, such as those described above, will be seen as ‘inefficient’ and ‘unproductive’ in a managerialist environment.

76 Though as part of its evolution towards ‘third generation first year experience’, JCU is developing policy in this regard. See above, James Cook University, *First Year Experience: Project Report 2009*, n 54.

77 Endres, above n 38, 175.

78 Discussion with male colleagues reveals far fewer interactions with students about emotional or personal matters than with female colleagues.

79 Geraldine Neal et al, ‘By the Way...Self-Confidence — the Key to Success?’ (2008) 5(1) *Studies in Learning, Evaluation Innovation and Development* 46.

80 Ibid 53.

81 Bagilhole and Goode, above n 39, 455.

82 Rosemary Deem, ‘“New Managerialism” and Higher Education: the Management of Performances and Cultures in Universities in the United Kingdom’ (1998) 8 *International Studies in Sociology of Education* 47, 53, citing studies by Ackers (1996, 1997) and Brooks (1997).

83 Richard Collier, ‘The Changing University and the (Legal) Academic Career: Rethinking the Relationship Between Women Men and the “Private Life” of the Law School’ (2002) 22 (1) *Legal Studies* 1, 20.

84 Smith, above n 75, 688.

85 Ibid.

There is every possibility that the ‘care factor’ in pastoral care is gendered. To the extent that women take on this role, and that this role is unacknowledged within the management structure of the university, this has implications for women’s career development.<sup>86</sup> Thornton points out though, that ‘caring men may also be penalised for having devoted excessive energies to feminised activities, such as nurturing students.’<sup>87</sup>

This is an area that bears further research within the Australian legal education context, particularly in light of the further opening up of higher education and of the particular affective needs of law students as a cohort.<sup>88</sup> At this point however it can only be speculated upon, based on personal experiences, using reflection to provide ‘insight into [our] own professional context’.<sup>89</sup>

Whether or not this caring approach to curriculum is gendered, the nature of this work and its emotional aspects are not explicitly recognised or valued within institutional policies such as workload models or performance management. Student surveys of teaching, focus on motivating students and generating student interest as well as mastery of the subject and achieving learning outcomes. No mention is made of supporting students’ affective learning.<sup>90</sup> In lacking recognition, this aspect of teaching is not given a value.

### B. *Caring as Emotional Labour*

The difference between the reality of the emotional aspects of the academic’s work and the institutional framework creates a gap that comes at a personal cost. This can be understood, as Wharton has explained, as ‘emotional labour’.

Wharton defines emotional labour as ‘the process by which workers are expected to manage their feelings in accordance with organizationally defined rules and guidelines.’<sup>91</sup> She cites Hochschild, who argues that ‘emotions not only are shaped by broad cultural and societal norms, but also are increasingly regulated by employers with an eye to the bottom line.’<sup>92</sup> In their study of emotional labour of academics, Constantini and Gibbs identify a tension between the academic, administration and the ‘customer’ (student).<sup>93</sup>

In the authors’ case, having used personal experience to develop the role of FY coordinator, inevitably cultural and societal norms have been drawn upon — as women, and perhaps as mothers. But responses to students’ needs, based on these norms, also probably reflect an understanding of the institutional imperative to retain students. Perhaps also the institution and students position us to care.

This embodies the tension described by Constantini and Gibbs. On the one hand, the institution requires provision of an integrated transition experience for students to meet retention targets. Students require integrated emotional support — indeed, according to Constantini and Gibbs,

the expectation of it, often tacit, fuzzy and implicit, comes from customers (the students), who want more than pleasant platitudes and competent service, demanding instead authentic caring, otherwise they see the falseness of the false. They know of the deceit but want to feel that they are different and enjoy the empathy of the teacher.<sup>94</sup>

Responding to this need is part of one conceptualisation of a ‘good teacher’. Indeed caregiving can be a rewarding experience. There is no doubt that the JCU Law School is

86 Bagilhole and Goode, above n 39.

87 Margaret Thornton, ‘Discord in the Academy: the Case of the Feminist Scholar’ (1994) 3 *The Australian Feminist Law Journal* 53, 59.

88 Kelk et al, above n 9.

89 Sue Clegg, ‘Knowing Through Reflective Practice in Higher Education’ (2000) 8 *Educational Action Research* 451, 453.

90 James Cook University, *Student Feedback Handbook for Staff and Students* (2010) James Cook University <[http://www.jcu.edu.au/teaching/idc/groups/public/documents/guide/jcuprd\\_043585.pdf](http://www.jcu.edu.au/teaching/idc/groups/public/documents/guide/jcuprd_043585.pdf)> at 18 November 2010.

91 Amy S Wharton, ‘The Sociology of Emotional Labor’ (2009) 35 *Annual Review of Sociology* 147, 148.

92 Ibid.

93 Panikkos Constantini and Paul Gibbs, ‘Higher Education Teachers and Emotional Labour’ (2004) 18 *International Journal of Educational Management* 243.

94 Ibid 246.

experiencing a high level of success in student learning through this approach to pastoral care. However as Wharton points out, ‘changes in the structure, practice, and professional norms guiding these fields have the potential to increase or diminish workers’ positive experience of caregiving.’<sup>95</sup> Much attention has therefore been paid in the literature to the risk of burnout and emotional exhaustion as a consequence of emotional labour.

This lack of recognition, highlighted above, of something apparently integral to meeting institutional goals therefore represents somewhat of a paradox — or a gap between the policy and the reality of academic work.

## V. CONCLUSION

In today’s university climate where ‘a member of staff is expected to be a world-class teacher and a world-class researcher’<sup>96</sup> something is going to give. Pastoral care incorporating the ‘care factor’ is not presently calculable and will inevitably lack value where it does not neatly fit into a performance box. This will particularly be the case if the hypothesis of the gendered nature of the ‘care factor’ is correct. As Brummell et al point out, ‘the highly individualized capitalist-inspired entrepreneurialism that is at the heart of the new academy has allowed old masculinities to remake themselves and maintain hegemonic male advantage.’<sup>97</sup>

On the other hand, failure to address the social and emotional, as well as the academic needs, of students will result in a failure to achieve institutional performance indicators of retention and completion. Offering a variety of support services is necessary, but not sufficient to meet students’ learning needs. As McInnis pointed out nearly 10 years ago, ‘these academic and support strategies must be seamlessly managed and totally complementary if they are to be effective.’<sup>98</sup> This idea is reinforced by Kift’s transition pedagogy:<sup>99</sup>

A transition pedagogy seeks to attend to each of these aspects of student engagement in a coherent, embedded, and integrated way, utilising the curriculum to mediate as many student-institution interactions as possible to enhance the broader student experience.

So firstly, the importance of the ‘care factor’ needs to be recognised as an integral part of the teaching role. Because of the academic workload and the sheer number of students, many academics will feel unable to devote the precious time to pastoral care that they could. The role of pastoral care, including its emotional labour aspect, needs to be formally defined.

Secondly, the institutional (and governmental) measures of quality and performance need to adapt to recognise the value of pastoral care in meeting the objectives of more open access to higher education. The managerialist discourse of ‘responsiveness’<sup>100</sup> highlights the inadequacy of such a framework to meet students’ real learning needs, focusing as it does on market imperatives, client satisfaction and competitiveness. Likewise, it fails to recognise the ‘care factor’ as an integral part of the professional academic.

Research shows that ‘only those institutions that invest in “front-end loading” of first year effectively address first year transition issues, including retention, progress and course satisfaction’<sup>101</sup> and therefore, institutional and governmental performance indicators. Arguably, this requires increased resources to prioritise transitional issues and formally recognise the labour and emotionally intense nature of those activities.

‘The concept of student engagement is based on the constructivist assumption that learning is influenced by how an individual participates in educationally purposeful activities’<sup>102</sup> and

<sup>95</sup> Constantini and Gibbs, above n 93, 154.

<sup>96</sup> de Cogan, above n 50.

<sup>97</sup> Grummel, Devine and Lynch, above n 12, 192.

<sup>98</sup> McInnis, above n 27, 12.

<sup>99</sup> Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education Final Report for ALTC Senior Fellowship Program*, above n 10,10.

<sup>100</sup> Michael Gallagher, ‘Encouraging University Responsiveness: Student-focused Incentives in Australian Higher Education’ (Paper presented at OECD-IMHE Conference on *Management Responses to Changing Student Expectations*, Brisbane (QUT), 24 September 2001).

<sup>101</sup> James Cook University, *First Year Experience: Project Report 2009*, above n 44.

<sup>102</sup> Coates, above n 11, 26.

academics are entreated to maximise student engagement. In measuring quality teaching using 'engagement', the policy framework fails to acknowledge the role of pastoral care and the emotional labour involved in it. This is to the detriment of academic staff and inevitably the student.