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RETAINING OUR BEST: IMPOSTER SYNDROME, CULTURAL SAFETY, COMPLEX LIVES AND INDIGENOUS STUDENT EXPERIENCES OF LAW SCHOOL

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I INTRODUCTION

*We are not built for these institutions, and this way of living, therefore we must work within the boundaries we have. However always remember that we can go beyond the boundaries, but [we] must ensure [the] safety of our full being and connection collectively, including Indigenous and non-Indigenous relations. This is something we must work together on as Law students, the Law faculty, and all teachers who are going to teach Indigenous law students.*¹

Improvement in enrolment and retention of Indigenous tertiary students has for many years been a national priority.² In 2017, Universities Australia committed its members to growing enrolment rates for Aboriginal and Torres Strait Islander peoples by at least 50 per cent more than the growth rate of non-Indigenous student enrolment, and to achieving parity in retention and success rates for Indigenous students with domestic non-Indigenous students in the same fields of study, by 2025.³ Indeed, there have been significant gains in this area in recent years. Indigenous enrolments at university have increased

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¹ Unless otherwise stated, quotes from students come from written survey responses.

² See, eg, Roderick West, 'Learning for Life: Review of Higher Education Financing and Policy' (Report, Department of Employment, Education, Training and Youth Affairs, 1998); Brendan Nelson, 'Our Universities: Backing Australia's Future' (Report, Department of Education, Science and Training, May 2003); Denise Bradley et al, 'Review of Australian Higher Education' (Report, Review of Australian Higher Education, December 2008); Larissa Behrendt et al, 'Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People' (Report, Department of Industry, Innovation, Science, Research and Tertiary Education, July 2012).

³ Universities Australia, *Indigenous Strategy 2017–2020* (1 March 2017) <<https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Universities-unveil-indigenous-participation-targets#.XBt1ks9Kgb0>>.

from 0.9 per cent of all domestic enrolments in 2002,⁴ to 1.61 per cent in 2016.⁵ Between 2014 and 2015 the Indigenous enrolment growth rate was more than triple that of the overall domestic rate,⁶ indicating an encouraging upward trajectory. However, current national enrolment rates are still well below the 2.7 per cent of Australia's working age population who identify as Aboriginal or Torres Strait Islander.⁷

This article aims to do two things. The first is to provide a student-led evidence base on factors that affect retention, by providing Indigenous student perspectives on aspects of law school which affect their ability to persist in their studies. The issues focused on in this paper are experiences of alienation and 'imposter syndrome' — an intrusive feeling of non-belonging; and a related issue of the need for more institutional regard for the complex lives of Indigenous students, including cultural or family obligations and high levels of stress in students' personal lives. Guided by those student voices, the paper then reflects on what law faculties might do to respond to the concerns raised by students.

While this article looks to provide insight into the factors that Indigenous students say affect their persistence through law school, and to highlight ways that law schools in Australia can better support their Indigenous students, the observations set out here come from within a context: a city-based, Go8 law school. UNSW has recognised a need to increase the intake and retention of Indigenous students, students from low socio-economic status (SES) groups and students from disadvantaged backgrounds.⁸ At July 2018, 6.7 per cent of domestic students at the University of New South Wales (UNSW) were from low SES background, and in the Faculty of Law, the proportion of low SES students was even lower, at around 4.5 per cent of domestic students.⁹ Government higher education statistics data from 2016 places UNSW as having the lowest number of commencing Indigenous students of any university in New South Wales (112 students)¹⁰ and as being in the bottom quartile of universities (10/44) for Indigenous student participation rates overall.¹¹

Thus, the Indigenous law students providing the data for this research have a particular experience of university. At other universities, including regional and remote campuses, there may be a

⁴ Department of Education and Training, 'Higher Education in Australia: A Review of Reviews from Dawkins to Today' (Report, Department of Education and Training, 2015) 18, Table 5.

⁵ Department of Education and Training, *Higher Education Statistics 2016: Appendix 5 – Equity Performance Data* (18 October 2018) <<https://docs.education.gov.au/documents/2016-appendix-5-equity-performance-data>>.

⁶ 7.1 per cent compared with 2.1 per cent: Universities Australia, above n 3, 25.

⁷ Ibid. This is in line with recommendations 1 and 2 of Behrendt et al, above n 2.

⁸ UNSW, *UNSW 2025 Strategy: Our Strategic Priorities and Themes* (October 2015) Theme B1: A Just Society <https://www.2025.unsw.edu.au/sites/default/files/uploads/unsw_2025strategy_201015.pdf>.

⁹ Figures provided by the Projects team, Student Life, UNSW on 24 October 2018.

¹⁰ Department of Education and Training, above n 5.

¹¹ Ibid.

more visible presence of students who are people of colour, are parents, have visible experiences of poverty, or who come from less privileged backgrounds. Some student observations in this study reflect the relative privilege of the UNSW student cohort, and this is a positioning that affects the student experience. Nonetheless, many of the observations made here will have, at least to some degree, commonality with law schools elsewhere, and provide food for thought for faculties wishing to take Indigenous student support seriously.

The research findings presented in this article draw attention to some ways in which UNSW is falling short in meeting the needs of Indigenous students. These findings provide a foundation for further improvement, but they should also be understood in the context of UNSW Law's long-term commitment to Indigenous legal education (ILE). As a member of the alumni focus group said, '...I think the law school should be pretty proud of themselves'. UNSW Law has shown a commitment to ILE since its inception. A dedicated Director, ILE oversees an Indigenous winter school and pre-law program (in partnership with UNSW's Indigenous Programs Unit, Nura Gili) and provides academic and pastoral support to students; the law school provides in-house exam revision classes for all law subjects where there are three or more Indigenous students enrolled; a textbook scheme provides free law textbooks for Indigenous students for the duration of the degree; a faculty-initiated First Nations mooting competition develops student advocacy skills; financial support is provided for students to attend conferences nationally and overseas; a dedicated Student Services staff member provides a first point of contact for Indigenous student issues; relationships with the bench and the profession provide an abundance of working and mentoring opportunities; a Faculty Indigenous Legal Education and Reconciliation Committee provides a forum where academic and professional members of the law school sit with representatives from Nura Gili and student representatives to discuss issues pertaining to ILE. The Faculty counts four Indigenous judicial officers among its graduates, and in 2019, celebrates the graduation of 100 Indigenous lawyers. Retention rates for Indigenous students at UNSW compare very favourably with other Australian universities. In 2015, 83.21 per cent of Indigenous students were retained from the previous year, which was the highest rate of any university in Australia (excluding two institutions with Indigenous enrolment numbers of fewer than 20 students overall).¹² Between 2010–2015, UNSW was in the top two universities for rates of retention of Indigenous students in any year, and was in the top handful of universities when measuring the pass rate of Indigenous students in the courses they enrolled in in that year.¹³

¹² Department of Education and Training, above n 5. The University of Divinity had fewer than 5 Indigenous students in 2015 and retained them all, and the Bachelor Institute of Indigenous Tertiary Education had 16 Indigenous students in 2015 and had a retention rate of 86.67 per cent. Retention rates measure the proportion of students who continue their studies from previous years.

¹³ *Ibid.*

However, as the discussion below makes clear, the strategies employed by UNSW Law are only partly fulfilling the needs of the Indigenous student body. The establishment of key roles that have provided crucial support for students has not itself succeeded in creating conditions for cultural safety faculty-wide,¹⁴ and the provision of significant support structures, both academically and pastorally, is only part of what is needed. While UNSW Law has many strong elements in place, a greater focus is needed on institutional change rather than reliance on the skills and commitment of individuals to high quality ILE.

Our universities are training grounds for Indigenous leaders in their field of study.¹⁵ The experience of students at university therefore not only impacts on whether they persist in their studies, but also contributes to their sense of themselves in their profession. If students succeed in spite of, rather than because of, the institution, this can impact both on their capacity to fully explore their future options while studying, but also on their sense of what is possible for them in their post-university careers. This is because the university experience is, in part, a forum for students to identify ‘the “possible self” that they wish to realise after graduation’.¹⁶ An institution that creates a positive environment can empower students to think of themselves as leaders and to build their confidence to explore future paths. This paper examines, inter alia, the way that faculty policies and practices, and the culture of the institution more generally, can impact on students’ sense of themselves in the tertiary context. The issues considered in this paper feed into a broader discussion about whether our universities are achieving what they might — not just in terms of raw admission and graduation numbers, but also in providing an environment where Indigenous students can achieve and thrive.

II APPROACH AND METHOD

In this study, all current Indigenous UNSW Law students, and all Indigenous alumni for whom contact details were available, were invited to complete an electronic survey. In total, 150 email invitations were sent to 65 current students and 85 former students. There was an overall response rate of 50 per cent, with 75 surveys completed. Those 75 responses comprised 39 current students (33 LLB and six JD — more than half the total current cohort), and 36 former students (comprising 29 graduates and seven who did not complete their law degree). After the survey had closed, two opt-in focus groups were held at the Law School with an independent Indigenous facilitator. There was one current student focus group and one graduate focus group, with seven participants altogether. Informed consent was obtained by all

¹⁴ This speaks in part to the difficulty in guaranteeing a flow-through of culture or pedagogic expectation in a teaching workforce that relies heavily on casual lecturers.

¹⁵ Behrendt et al, above n 2, 4.

¹⁶ Rob Jones, ‘The Student Experience of Undergraduate Students: Towards a Conceptual Framework’ (2018) 42 *Journal of Further and Higher Education* 1040, 1048.

participants including consent to audio-recording for focus groups, in accordance with ethics approval from the UNSW Human Research Ethics Committee.

Responses from the surveys and focus group transcriptions were analysed using content analysis¹⁷ to identify themes in the data. Five broad themes emerged from student comments about what affected their ability to persist in their studies:

- Experiences of alienation, imposter syndrome and lack of cultural safety;
- Limited institutional understanding of the complex lives of many Indigenous students, including around mental health and family/parenting responsibilities;
- The need for academic and non-academic support, and the interrelatedness of the two;
- Financial hardship and accommodation needs;
- The particular needs of senior students.

This article discusses the first two of these themes, and picks up aspects of the third. While all themes involve the interaction of students with the university, the first two in particular touch on the positioning of the institution not just from a practical, but also from a cultural, perspective. An exploration of imposter syndrome, cultural safety and institutional responses to complex lives requires discussion of how cultures embedded in the institution and its structures (beyond what is expressed by individual academics or courses) impact on the student experience. This is further taken up in the discussion of Pierre Bourdieu's theory of social reproduction below.

The themes selected for this paper also pick up on the priorities articulated by students in response to the survey question, *If you discontinued or suspended your studies at any time, what were the main reasons for this?* 21 people out of 75 (or 28 per cent of all survey respondents) said that they had taken a break during their studies, including seven respondents who did not ultimately complete their law degree. They gave 44 reasons for their decision to stop or take a break from studying.

¹⁷ Klaus Krippendorff, *Content Analysis: An Introduction to its Methodology* (Sage Publications, 2nd ed, 2003).

If you discontinued or suspended your studies at any time, what were the main reasons for this?

Reasons for discontinuation/suspension of studies	
Family emergency/crisis	9
Mental/physical health issues	8
Needed more social/emotional support	8
Financial hardship/lack of housing stability	10
Decided law wasn't for me	4
Needed more academic support	3
Travel/exchange	2
Total	44

Total number of respondents, 21 people (28 per cent of all respondents)

The majority of students surveyed who suspended their law studies did so because of non-academic factors, with personal hardship, health issues and needing more social/emotional support forming the basis of the decision to interrupt studies in the majority (57 per cent) of responses. These factors have a direct relationship with the themes discussed in this paper.¹⁸

The themes not discussed in detail in this paper are: financial difficulty and problems with accommodation;¹⁹ academic support needs,²⁰ and the particular needs of senior students. These are central issues, but to allow for adequate discussion of the present issues, will not be canvassed here. Provision of scholarships or other financial aid, tutoring and revision classes are a first (and in some respects easy) layer

¹⁸ It is possible that the four responses 'decided law wasn't for me' also have some relationship to the themes in this paper, but it is not clear from the information provided.

¹⁹ Financial stress has a major impact on retention prospects and may impact more heavily on law students than on Indigenous students pursuing some other degrees. The high number of contact hours required in law (including a requirement at UNSW Law that students attend 80 percent of classes in person) means that working alongside study may be more difficult than in other degrees. The very high costs of law textbooks can create a significant financial equity issue for Indigenous students unless there is a textbook scheme in place to give access to texts at little or no cost. The Paul Rodwell Textbook Scheme at UNSW Law provides all set law textbooks to Indigenous law students at no cost, for the duration of their degree. One survey respondent noted, 'The Paul Rodwell Book Scheme helped enormously financially. I probably would have left the program ... if it weren't accessible'. See also Heather Douglas and Cate Banks, "'From a Different Place Altogether': Indigenous Students and Cultural Exclusion at Law School' (2000) 15 *Australian Journal of Law and Society* 42, 51.

²⁰ Academic support is an acknowledged bedrock of Indigenous student retention. The fact that it doesn't appear as a priority improvement area in survey responses is likely because UNSW Law has given close attention to academic support needs (many survey responses identify academic support initiatives as central, but they did not emerge as an area that students said needed further attention).

of support that institutions can offer. Grappling with broader inclusion and wellbeing issues affecting this cohort are some of the deeper dynamics that will be discussed here.

III THE CHALLENGE OF IMPOSTER SYNDROME

I didn't feel as though I was good enough or that it was for me.

Alienation has been recognised as a leading cause of attrition among Indigenous law students in two decades of literature.²¹ Newmann identifies:

four fundamental aspects of student alienation: powerlessness, normlessness, meaninglessness, and social isolation. Powerlessness refers to student perception of absence of personal control in learning. Normlessness reflects lack of appropriate rule-governed behavior (eg academic dishonesty). Meaninglessness describes alienated students' interpretation of curriculum as irrelevant to their current and future needs. Loneliness and separation from peers and teachers characterizes social isolation.²²

Imposter syndrome — the strong feeling that you do not belong — is an expression of both isolation from peers and teachers, and also of 'meaninglessness' because of the low degree of acknowledgement in the average law classroom of the experience that Indigenous law students have of the law.

Students in previous studies have reported that feelings of social and academic isolation at law school were 'their greatest barrier to completion of their studies'.²³ This theme was also strong among UNSW students, who commented:

I felt isolated from all the other students in the faculty... I didn't dress like them, didn't talk like them and didn't have money to socialise.

I constantly felt like the least intelligent person in the room.

I felt like people came to law school in little cliques from high school and weren't open to meeting new people and forming new friendships ... The funny thing is that I had lots of friends from my arts degree courses. Law students at UNSW are just a different breed.

²¹ See, eg, Katelyn Barney, 'Listening To and Learning From the Experiences of Aboriginal and Torres Strait Islander Students to Facilitate Success' (2016) 7(1) *Student Success* 1, 5; Peter Devonshire, 'Indigenous Students at Law School: Comparative Perspectives' (2014) 35 *Adelaide Law Review* 309, 309; Aurora Project, *The Aspiration Initiative Workshop* (2010); Heather Douglas, "'This is Not Just About Me": Indigenous Students' Insights About Law School Study' (1998) 20 *Adelaide Law Review* 315, 320–1.

²² Genevieve Marie Johnson, 'Student Alienation, Academic Achievement, and WebCT Use' (2005) 8(2) *Educational Technology & Society* 179, 179, citing Fred M Newmann, 'Reducing Student Alienation in High Schools: Implications of Theory' (1981) 51 *Harvard Educational Review* 546.

²³ Douglas, above n 21, 321. See also Barney, above n 21, 5; Devonshire, above n 21; Aurora Project, above n 21.

I'm not really involved in the law school unless it is something that [the Director, ILE] organises, because these are events I feel comfortable at. Still, as a 5th year student, I do not feel like I am really a part of the Law School. So if I were to change anything it would be to change the culture of the Law School to be less of an elitist mindset — particularly other law students — to make our new incoming students feel welcomed.

Imposter syndrome can be particularly pronounced in faculties such as Law where school results needed to gain entry are very high. When entry occurs via Indigenous access programs, peers may express the opinion (or students might articulate to themselves) that they do not 'deserve' to be there. This can lead to a great deal of stress: 'I found it quite difficult to look after my mental health, with so many courageous and intelligent peers. I felt very insignificant and as though I wasn't smart enough to be competing against my fellow classmates.'

Indigenous students may also be more likely than the non-Indigenous cohort to be the first of their family to enter tertiary education, which can, in its own right, produce anxieties about belonging:²⁴

I think a lot of Indigenous people probably would be one of the first, if not *the* first, to go to university, certainly [to] study law. I kind of felt, 'this isn't something that anyone in my family has really done before' ... and then I'd go into a law class and I'd be surrounded by people who, you know, [come from] generations of lawyers or whatever, and they've been to the private schools and there was just like that cultural difference.

Students in other research have stated that the sense of alienation they experienced went beyond 'simply their different socio-economic background'.²⁵ UNSW students also emphasised a generalised feeling of difference: 'It's just the environment, it's a very poisonous environment, in the sense that [in] some of the classes you just do not feel comfortable whatsoever'.

Where students experience the classroom environment as alienating, it creates barriers to participating in class, which impacts on often compulsory class participation (CP) grades:

The culture of law school is intimidating — especially in first year. You are surrounded by students who went to the top schools and who have connections to the law world. This is intimidating, especially when feeling like you deserve to be there and when participating in CP etc. Maybe a strategy that staff and lecturers recognise that this is a struggle for some Indigenous law students and take this into consideration in CP, particularly in first year.

While no students in the present study reported hostility from non-Indigenous students about alternative entry options and the provision of academic support to Indigenous students,²⁶ UNSW students

²⁴ See, eg, Sharron King et al, 'Exploring the Experience of Being First in Family at University: A 2014 Student Equity in Higher Education Research Grant Projects' (Report, Curtin University, August 2015) 50.

²⁵ Douglas, above n 21, 323.

²⁶ This was reported as contributing to imposter syndrome in other studies, see Sally Farrington, Kristie Daniel DiGregorio and Susan Page, 'The Things That Matter:

nevertheless report acute awareness of the uneven playing field into which they enter when they start law school. This strong feeling of difference was articulated by a current student, who is also a parent:

I mean everyone says that they're proud of you because you're studying and all that but really... if you don't live home with mummy and daddy, if you don't have time to study every single day for 12 hours of the day, really, you don't belong in this law school. That's how I feel ... often times I'll sit in class and I'll see all these students who have time to do everything and everything's just, you know, like a fairy tale for them. Unfortunately, not everything is like that. (Current student focus group (FG))

Feelings of alienation among Indigenous students in tertiary education are often further compounded for students studying law because of the role of the law in producing, entrenching and perpetuating disadvantage for Aboriginal and Torres Strait Islander people. This gives rise to the 'meaninglessness' aspect of alienation articulated by Newmann, where there is a disconnect between students' lived experience and the curriculum:

International law may be seen as a foundation for claims of sovereignty; constitutional law as legitimising the exclusion of Indigenous peoples from full participation in civil society. In a similar vein, land law may be identified as the system that formalises the dispossession of their forebears.²⁷

Certainly, any discussion of criminal law and criminalisation in Australia raises difficult and confronting issues for Indigenous students, given the overrepresentation of Aboriginal and Torres Strait Islander peoples at all stages of the criminal justice system.²⁸ Oliver, Rochecouste and Grote argue that support needs to be in place to help students navigate through feelings that their Aboriginal identity is under attack as they complete their studies.²⁹ Given that Western academic discourses 'often fail to capture understandings of Indigenous issues, as students or the Indigenous community experiences them',³⁰ Nakata, Nakata and Chin call the tertiary classroom a 'contested knowledge

Understanding the Factors that Affect the Participation and Retention of Indigenous Students in the Cadigal Program at the Faculty of Health Sciences, University of Sydney' (Paper presented at the Annual Conference of the Australian Association for Research in Education, Melbourne, 29 November – 2 December 1999); Asmi Wood, 'Law Studies and Indigenous Students' Wellbeing: Closing the (Many) Gap(s)' (2011) 21 *Legal Education Review* 251, 266.

²⁷ Devonshire, above n 21, 310.

²⁸ See Thalia Anthony and Melanie Schwartz, 'Invoking Cultural Awareness Through Teaching Indigenous Issues in Criminal Law and Procedure' (2013) 23 *Legal Education Review* 31.

²⁹ Rhonda Oliver, Judith Rochecouste and Ellen Grote, 'The Transition of Aboriginal and Torres Strait Islander Students into Higher Education' (Report, Office of Learning and Teaching, 2013) 10.

³⁰ Martin Nakata, Vicky Nakata and Michael Chin, 'Approaches to the Academic Preparation and Support of Australian Indigenous Students for Tertiary Studies' (2008) 37(S1) *Australian Journal of Indigenous Education* 137.

space',³¹ and argue that Indigenous students need to be supported to learn skills that will enable them to negotiate this 'cultural interface'.³²

As the student comments above demonstrate, the origins of the feeling of being an imposter can be multiple: it may be a combination of the newness of the university experience, the perceived SES and educational elitism of the student cohort (which, given that low SES student numbers at UNSW Law are relatively low, is a perception grounded in reality), and the specific experience of being an Indigenous person studying the very systems that propped up colonisation and entrench contemporary Indigenous disadvantage. It is not difficult to see why imposter syndrome tests student resilience, presents barriers to inclusion and belonging and is ultimately a challenge to retention. However, in addition to being able to articulate this dynamic so clearly, students have strong ideas about what helps to overcome imposter syndrome and what the institution might do to foster a sense of belonging at law school. It is outside a faculty's control that many of its Indigenous students are the pioneers of tertiary education in their families (and a law degree at that). There is also nothing that a law school can do about the fact that, as discussed below, some non-Indigenous students may commence with little exposure to or understanding of Indigenous justice issues. What *is* within a faculty's control is how they address both of these dynamics.

IV COMBATting ALIENATION BY CREATING CULTURAL SAFETY

We shouldn't have to feel like an outcast. (Current student FG)

Cultural safety is a concept that was first developed in nursing practice for provision of healthcare to Maori people in New Zealand. It situates health (and health inequity) in a colonial context and suggests that to provide quality care for people from different ethnicities and cultures — particularly where those people have been marginalised or dispossessed — it must be provided within the cultural values and norms of the patient.³³ The idea has been imported into a range of contexts, including tertiary education, with a focus on recognising and addressing unequal power relations between cultures from the point of view of the marginalised group. Conceptualised in this way,

cultural safety extends beyond cultural awareness and cultural sensitivity. It empowers individuals and enables them to contribute to the achievement of positive outcomes. It encompasses a reflection on individual cultural

³¹ Ibid 141.

³² Ibid 138.

³³ See Robyn Williams, 'Cultural Safety — What Does It Mean for Our Work Practice?' (1999) 23 *Australia and New Zealand Journal of Public Health* 213; Dianne Wepa (ed), *Cultural Safety in Aotearoa New Zealand* (Pearson Education, 2004).

identity and recognition of the impact of personal culture on professional practice.³⁴

Professor of Aboriginal Studies and Djaru woman Mary Ann Bin-Sallik continues:

I believe that we should be challenging universities from a cultural safety standpoint as opposed to those of equal opportunity, positive discrimination and anti-racism ... [U]niversities can no longer continue to promote structures embedded in institutional racism.³⁵

Students reported experiencing a lack of cultural safety in law classrooms and in the law school environment more generally. They also had clear ideas about how cultural safety can be fostered, centring on two major themes: ensuring that the classroom environment is one which is sensitive to Indigenous ways of knowing and being; and building meaningful bridges between the tertiary institution and community.

A Creating an Inclusive Classroom Environment

Feeling part of the family, support and encouragement, advocacy, the smiles when we attend and achieve.

Heather Douglas and Cate Banks approach the issue of cultural exclusion through the prism of Pierre Bourdieu's theory of social reproduction. Bourdieu posits that the education system reproduces the inequalities that exist between students at the time of entry, using 'institutional or routine mechanisms' to legitimise discourses favoured by the dominant class, and rendering 'symbolic violence' on the dominated class.³⁶ One dynamic that Douglas and Banks discuss which facilitates this violence is the decision about what is taught and how it is taught: 'What is missing from the curriculum is equally important to what is there'.³⁷ They note that Indigenous content and perspectives are often missing from curricula, and when they *are* included, 'there is often inadequate consideration made by the lecturer of the implications of the method and means of delivering and conveying such information'.³⁸

Improving cultural competence among teaching staff is thus a precursor (but not itself sufficient) to developing the conditions for cultural safety.³⁹ Lecturers can have a major impact on either boosting or compromising students' feelings of belonging in the classroom, depending on their 'knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and their

³⁴ Maryann Bin-Sallik, 'Cultural Safety: Let's Name It!' (2003) 32 *Australian Journal of Indigenous Education* 21.

³⁵ Ibid 27.

³⁶ Douglas and Banks, above n 19.

³⁷ Ibid.

³⁸ Ibid 47.

³⁹ Judith Rochecouste, Rhonda Oliver and Debra Bennell, 'Is There Cultural Safety in Australian Universities?' (2014) 3(2) *International Journal of Higher Education* 153.

awareness of Indigenous protocols'.⁴⁰ It is imperative that teachers can handle Indigenous socio-legal issues in ways that are appropriate and supportive, since without this baseline pedagogic stewardship, it is impossible for Indigenous students to feel safe in the classroom. An extreme example of poor practice in this regard is recounted by one UNSW student:

In my first semester, I was subjected to sitting through one class where the lecturer advocated for the 2007 [Northern Territory] Intervention by stating most Indigenous men were drunks, was shown images of deceased Indigenous people in a video about the Stolen Generation in class without warning (and was told I lost class participation marks when I went outside because I was upset), and was questioned by a class why my grandfather didn't just sue the government for being part of the Stolen Generation. It's not only been emotionally distressing, but it's sad to know I have lost marks and had my grade point average decreased by biases against Indigenous peoples in the system from a law school I thought I could expect more from.

Indigenous students in previous studies have noted that discriminatory comments from students appear to be condoned when not directly dealt with by academic staff.⁴¹ Students sometimes feel that rather than being able to rely on lecturers to protect them from ignorant or insensitive comments from students, the burden falls to them to speak up:

Lecturers not saying anything: you always have to feel like, because you're the Indigenous student in class, you have to be the person that has to say 'oh, that's not right I don't think'. Which kinda sucks ... I had a really good lecturer that was very good at doing that, turning it on its head for me, like, 'I see what you're saying *but...*'. Whereas in all other classes I have to be that voice of reason to be, like, 'I don't think that's right' or 'I don't think that's necessary'. You shouldn't have to do that. And I just stopped doing it because it's embarrassing all the time. (Current student FG)

Even where there is no culturally sensitive content being taught, the need to build confidence in Indigenous students is part of what is required for cultural sensitivity among teaching staff. Awareness of the fact that Indigenous students may feel, at least initially, out of place in the law classroom can be crucial to fostering confidence in students, as this reflection shows:

There was this case that was brought up in class and I got excited because I was like, 'Oh! I did that!' The lecturer was like, 'Oh, put your hand up if you did this case, if you read this case' and I put my hand up real proud. And he was like 'put your hand up if you understood it' and I kept my hand up, and I was the only one in the class that did. When he was like, 'Ok, well explain it to me'. He put me on the spot pretty hard. I began to explain it, and I broke it down into a much simpler language, which he's not very fond of. He prefers to talk like Shakespeare [laughs] ... And he basically told me

⁴⁰ Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (October 2011) 7 <<https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Compet#.XBtwzM9Kgb0>>.

⁴¹ Elizabeth Stevens et al, 'Equity, Diversity and Student Engagement in a Law School: A Case Study Approach' (2006) 16 *Legal Education Review* 1, 14.

in front of everyone that I was wrong, that I shouldn't even bother speaking up in class if I'm not gonna do the readings and do them properly. And ever since then, I am so reluctant to talk in class, because I'm so scared of being destroyed again. (Current student FG)

On the other hand, lecturers who make an effort to be supportive and welcoming, and who handle Indigenous content appropriately, make an enormous difference to the law school experience. Outside the classroom (but inside the faculty), the Director, ILE role was seen as crucial to retention of Indigenous law students:

I probably wouldn't have finished my law degree if it wasn't for [the Director, ILE] (Alumni FG)

Definitely having someone to talk through your problems like [the Director, ILE]. That relationship was the most crucial throughout my time at UNSW Law.

[The Director, ILE] really helped me stay on track and keep my goals in mind.

UNSW Law's commitment to taking social justice seriously was also important to some students in creating confidence in lecturers' ability to handle sensitive subject matter: 'They've selected the right lecturers, and this law school stands for something that's really quite important around social justice' (Alumni FG). Knowing that teaching staff have a research track record or other experience in Indigenous or social justice issues provides comfort to students that the burden of maintaining a respectful classroom and calling out inappropriate comments will not fall to them.⁴²

I think from the law school's perspective, I think they've got a strong culture as far as views about inequity and, for instance, incarceration issues — I think this law school's completely across it. They don't need to be told, they already know themselves through the work that they do. So, I felt comfortable in the work that I was doing as a student. [At the time I was studying] we were still talking about issues at the Block, they were across it, you didn't need to explain it, I didn't need to try and educate them, they knew about it. (Alumni FG)

Outside the classroom, welcome events with faculty, followed up by hallway friendliness, can set a climate of belonging. Indeed, it has been noted by theorists and students alike that, 'frequent student-faculty contact in and out of classes is the most important factor in student motivation and involvement'.⁴³ In the words of one survey respondent: 'I've had lecturers that [when they see you] are very like, "oh hi!" It's just good. You can see them walk down the hall [and they'll say] "hey, how you going?"' Another student said that introductory events allow relationships with faculty to be established:

⁴² See also Rochecouste, Oliver and Bennell, above n 39, 160–1 on the importance of professional development and awareness of Indigenous history and culture among staff to creating cultural safety.

⁴³ Jones, above n 16, 1050.

[You] speak to the lecturers and stuff, and you kinda know them personally, so when you go into class it's not as daunting. And even, one of them was talking and was like, 'I teach this so, if you can fit your timetable, try and come to my class', things like that. So, it's kind of cool when you can establish that relationship.

These reflections bear out an observation made almost 25 years ago at UNSW, where relatively minor instances of teacher interaction were reported by Indigenous students as boosting an overall perception of support.⁴⁴ While formal policies can heighten faculties' awareness of issues faced by this cohort, perception of support is 'generated most powerfully by the behavior of individuals' which benefit students more directly than written policies.⁴⁵ However, that such individuals exist within faculties cannot be left to hope or luck. The faculty has a central role to play in creating an academic and professional workforce who foster inclusivity and cultural safety, and who understand the impact of the classroom environment that they create.

The question for law schools is what *they* can do to maximise the likelihood that the classroom experience — and the law school experience as a whole — is a supportive environment. The student reflections above show an unevenness in faculty ability to moderate their classrooms in ways that foster a culturally safe environment, such as (1) solidarity — empathising with the student; (2) hospitality — welcoming new members into the community; (3) safety — providing safe places where creativity is nurtured; (4) redistribution of power — allowing students to exercise power for their own learning and development; and (5) criticality.⁴⁶ It is unrealistic to expect faculty to be able to employ such techniques (although evidently some already do) without guidance. The issue needs to be approached structurally, rather than hoping that individual lecturers get it right and relying on Indigenous student resilience when they do not. Behrendt et al recommended that faculties provide teaching staff with professional development programs to increase the likelihood of positive interactions,⁴⁷ an issue which has also been taken up in depth by Universities Australia in their report, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*.⁴⁸ To be effective, such training would go beyond dealing with Indigenous curriculum content, to help educators understand the importance of positive relationships with teachers as a *learning requirement* for Indigenous students, since it is so intimately connected

⁴⁴ Carolyn Penfold, 'Indigenous Students' Perceptions of Factors Contributing to Successful Law Studies' (1996) 7 *Legal Education Review* 155, 169.

⁴⁵ Ibid 170.

⁴⁶ Sarah J Mann, 'Alternative Perspectives on the Student Experience: Alienation and Engagement' (2001) 26 *Studies in Higher Education* 7, 17.

⁴⁷ Behrendt et al, above n 2, 101, 136. See also Lester-Irabinna Rigney, 'Indigenous Higher Education Reform and Indigenous Knowledges' (Report, Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People, Department of Education, 10 May 2011).

⁴⁸ Universities Australia, above n 40.

with their academic success.⁴⁹ The need for this type of training is reiterated by this student, reflecting on a lecturer comment that he found belittling:

I feel like, if the lecturer had've known where I was coming from, and that that sort of thing isn't ok, and that, you know, I already have a hard time contributing to class participation and talking in class and stuff. And then to, you know, go off at me when I go to have a go — I feel like he wouldn't have been so keen to destroy me in front of the class. (Current student FG)

There are other measures that faculties can put in place to increase a culture of awareness and sensitivity to the experience of Indigenous students, in line with the need articulated by Behrendt et al for 'everyone, not just Aboriginal and Torres Strait Islander staff or Indigenous Education Units, to be responsible for "Indigenous business"'.⁵⁰ These may include smaller initiatives such as rewarding and celebrating good practice in creating cultural safety among lecturers. They should also include larger programs, like regular review of teaching content and pedagogic approaches for Indigenous issues, and the provision of holistic student care, in partnership with Indigenous units.

Finally, while teaching staff should teach Indigenous content sensitively irrespective of whether there are Indigenous students in their class, faculties may consider talking to their Indigenous students upon entry to the LLB and annually thereafter, to hear about any concerns they have about classroom conduct. Without such a forum, the likelihood of students coming forward with concerns may be low. It may also be that individual students have a view about whether they would like lecturers, particularly in early year subjects, to know that they have Indigenous students in their class, so that special care can be taken by those lecturers to build and not compromise confidence in their students.⁵¹

While there is clearly more work to do in the classroom to create cultural safety, this is not the only forum where gains can be made. More meaningful engagement between law schools and the Indigenous community was another way that students identified that cultural safety could be fostered.

⁴⁹ Rhonda Oliver et al, 'Indigenous Student Perspectives on Support and Impediments at University' (2016) 45 *Australian Journal of Indigenous Education* 23, 32.

⁵⁰ Behrendt et al, above n 2, 145.

⁵¹ A general directive to lecturers would protect the privacy of students, while providing an avenue for increased pedagogic scaffolding for students who would like it. Of course, much depends on the degree of confidence that students have about the ability of teaching staff to deal sensitively with that information, and it is therefore a process that must be handled carefully.

B *Going Out to Community, and Bringing the Community In*

Social isolation almost made me drop out of law in my 3rd year.

There is a strong relationship between students' perceived level of institutional support and their decision to remain at university.⁵² One of the primary strategies to convey such support is through the establishment of Indigenous units on campus, and, more recently, the creation of senior executive roles such as Pro Vice-Chancellor (Indigenous).⁵³ Indigenous units on campus, such as Nura Gili at UNSW, play a central role in restoring cultural safety, fostering a sense of belonging and solidarity,⁵⁴ and giving students a forum to share struggles and anxieties.⁵⁵ Research on optimising success of remote Indigenous students at university suggests that getting students socially engaged can have direct impact on academic performance.⁵⁶ This is reflected in this student observation — one of many similar ones: 'The support of Nura Gili and their various programs that linked in with the law faculty was the most important factor that helped me complete my degree'. The positive impact of having a place on campus to meet and feel at home is well recognised by students, as well as having staff who can provide practical and moral support to mediate their experience with the institution. This little piece of community on campus is a central part of the university experience for many Indigenous law students.

However, bringing community onto campus in the form of Indigenous units is only part of the picture. There were also recommendations from students to bring the family more into the law school through events and open days: 'building connection is vital, especially sharing the grounds we are walking on'. Unsurprisingly, a number of students identified family support as the most important factor helping them to persist in law school: 'Support from family during time of stress was very important. It was at this time I contemplated dropping out of university, but my family encouraged me to keep at it'. This need for more connection and community were themes in a number of survey responses:

⁵² Christine Asmar, Susan Page and Ali Radloff, 'Dispelling Myths: Indigenous Students' Engagement with University' (2011) 10 *Australasian Survey of Student Engagement Research Briefings* 1, 12.

⁵³ Five of the Group of 8 Universities have a PVC (Indigenous) or equivalent executive positions – University of Western Australia, University of Adelaide and ANU do not yet. In addition, Macquarie University, University of Technology, Sydney, Western Sydney University, Charles Darwin University, La Trobe University, University of Newcastle and Edith Cowan all have PVC Indigenous positions. Most of these positions were created and filled for the first time in 2017–2018. Prof Megan Davis became UNSW's first PVC (Indigenous) in March 2017.

⁵⁴ Asmar, Page and Radloff, above n 52, 12.

⁵⁵ Penfold above n 44, 162; Oliver et al, above n 49, 29.

⁵⁶ Dennis M McInerney, and Ronnel B King, 'Harnessing the Power of Motivational Factors for Optimizing the Educational Success of Remote Indigenous Students: A Cross-Cultural Study' in Rhonda G Craven and Janet Mooney (eds), *Seeding Success in Indigenous Australian Higher Education* (Emerald, 2013) 81, 89.

Community support, ie connection with Elders in area.

Connection programs. Get law teachers, mentors and students coming together outside these walls.

Being away from home can be hard so it is better to feel there is that community and that support around you.

These desires are now also encapsulated in the UNSW Indigenous Strategy 2018 which takes *Culture and Country* as one of its three pillars⁵⁷. *Culture and Country* commits to increasing the ‘physical presence of Aboriginal culture on campus’ and to ‘make our campus welcoming physically and culturally, so that Indigenous students and staff are happy here, feel like they belong, feel supported, valued and thrive’.⁵⁸

Breaking down barriers between tertiary education institutions and Indigenous communities is valuable across all university faculties, but is perhaps particularly important for Law. Because the law has been the instrument of dispossession and criminalisation of Aboriginal and Torres Strait Islanders since colonisation and into the present day, there is a significant additional layer of ‘otherness’ between law faculties and Indigenous communities. Developing connections between the faculty and the communities in which the universities are physically located as well as their students’ families, provides university staff with interactions that can contribute towards respectful engagement, which can in turn increase cultural competence and provide a foundation for a retreat from ignorance or cultural hegemony. At the same time, bringing the community in can help increase understanding among families about what their children are doing, and provide a sense of connection for students between the law school and their home environments.

V UNDERSTANDING THE RELATIONSHIP BETWEEN COMPLEX LIVES AND ACADEMIC SUCCESS

It is not uncommon when discussing the needs of Indigenous students for faculties to draw a line between the provision of academic support (recognised as within their purview) and non-academic support (often viewed as outside of what can reasonably be expected from them). Yet it is often very difficult, and bordering on nonsensical, to distinguish between ‘personal’ issues and academic performance related issues for Indigenous students, since the former so closely informs the latter. This reality, which is so crucial to understanding the support needs of the Indigenous student cohort, is reflected in this survey response:

⁵⁷ UNSW, *Indigenous Strategy 2018* (October 2018) <http://www.nuragili.unsw.edu.au/sites/default/files/UNSW%20Indigenous%20Strategy%202018_0.pdf>. The other pillars are *Grow our Own*, which focuses on development of an Indigenous academic workforce from within the UNSW student body and *Give Back*, which looks to establish a culture of civic responsibility in Indigenous students.

⁵⁸ *Ibid* 8, 12.

For me, the times I struggled the most at Law school and UNSW more generally was when my personal life wasn't going too well — eg good accommodation, work, financially and family matters back home.

Recognising this nexus means that the traditional approach to the division of responsibility between academic support (largely faculty) and pastoral support (largely Indigenous units) needs to be rethought. Confining support to academic matters denies the interrelated impact of personal with academic issues. To support Indigenous students through law school, the whole student needs to be considered, and a much more integrated approach is required. This will, in turn, reduce the degree of alienation experienced by students, by:

getting to know the other; checking out different experiences, needs and purposes; voicing different experiences, histories, and positions, and having these accounts heard; receiving response to one's contributions; raising awareness of privilege and inequality; and acting to mitigate these.⁵⁹

The discussion above of cultural safety and students' desire to build more belonging and community on campus provides one example of how 'non-academic' factors impact on academic achievement, and shows that Indigenous students thriving at law school turns on the provision of this type of acknowledgement and wrap-around care. This is also borne out in responses from students when asked what prevented their degree progress: 'Lack of support when it came to emotional and social health wellbeing'; 'Support systems, this is important as its easy for Indigenous students to fall through the gaps and not speak up when they need help or are not understanding specific things about university'.

Indigenous students might get support and assistance through a specialised Indigenous programs unit, but it is when that support breaks through from *non*-Indigenous parts of the institution that feelings of a sense of belonging is truly fostered. Therefore, further thought must be given to meaningful collaboration between Indigenous units and faculties in the provision of support to the Indigenous student cohort.⁶⁰ Some of the issues that faculties need to come more wholly to terms with are discussed below.

A Mental Health

It took me, like, failing classes and having a complete mental breakdown to actually hear people telling me like, 'oh this is available' — it should never have gotten to that point. (Current student FG)

The prevalence of mental health challenges among Indigenous law students is one of the most important findings of this research. According to figures provided by UNSW Disability Services (DS), in the two-year period leading up to June 2017, 2.17 per cent of students across UNSW registered with DS for either physical or mental health

⁵⁹ Mann, above n 46, 47.

⁶⁰ Oliver, Rochecouste and Grote, above n 29, 8–9.

issues that required educational accommodations or adjustments. In the same period, 5.11 per cent of law students registered with DS — indicating that law students present to DS for support in relation to a disability at a rate more than double the general student population. In that same period, thirty one per cent of Indigenous law students (20 out of 65) registered with DS, overwhelmingly because of mental health issues. That means that Indigenous law students are reporting disability at *six times* the rate of non-Indigenous law students, and more than *fourteen times* the rate of the general student population. This accords with figures from 2011 research from the University of Southern Queensland (USQ) which found that 37 per cent of Indigenous students suffered from a mental illness.⁶¹ Data from that study indicated that many of participants identified university as a positive environment that helped their state of mind, while others specifically noted the struggles of university life when discussing their illness.⁶² Similarly to the present study, USQ found that the majority of Indigenous students who discontinued with their studies (85 per cent) cited personal or situational problems as their main reason for leaving, not academic issues.⁶³ The intersection between feeling culturally unsafe and being first in family at university (where that is the case) can produce powerful challenges to mental health: first in family students ‘focus on learning the system and consequently neglect factors such as building support systems and looking after their health, ironically the very factors that can provide a buffer to the stress experienced’.⁶⁴

In answer to a survey question about what support would have helped in their first year of study, a number of people raised mental health support:

Counselling — [for] balancing stress.

A free counselling program — after making such a big move to study, I found it quite difficult to look after my mental health.

More frequent [university counselling] sessions.

Indigenous specific medical, mental health support.

I think the promotion or addition of LGBTQI services or mentors to Nura Gili programs would be extremely beneficial.

I had a really hard time talking with [Student Disability Unit] just to get special consideration for exams and I felt like I didn't get enough help.

Many Indigenous students travel significant distances from their home to attend law school and can feel a sense of loneliness, anxiety or be overwhelmed due to being far from home.⁶⁵ While many Indigenous students are aware of mental health services at their university, they

⁶¹ Maree Toombs and Don Gorman, ‘Mental Health and Indigenous University Students’ (2011) 35(4) *Aboriginal and Islander Health Worker Journal* 22, 24.

⁶² *Ibid* 22.

⁶³ *Ibid*.

⁶⁴ King et al, above n 24, 78.

⁶⁵ Douglas, above n 21, 326; Wood, above n 26, 261–2.

may feel uncomfortable accessing them.⁶⁶ Addressing mental health issues can therefore tie in with other suggestions about developing good relationships with the local community:

Is there some hook-in with the local Aboriginal Medical Service? You're not far from La Pa (La Perouse), is there some hook-in with them, perhaps? Yeah, there's two AMS's you could hook in with. And rather than trying to do these services yourself, create have some sort of relationship with one of the AMSs ... with their [student] card maybe, if you have a problem. (Alumni FG)

This accords with observations elsewhere that resources offered to bolster mental health, to be truly effective, must 'encourage self-determination and community governance, reconnection and community life, and restoration and community resilience',⁶⁷ and that strengthening the relationship between student centres and other support services should be an objective of Indigenous units.⁶⁸

B Recognition of Complex Lives Through Increased Flexibility

There is strong (and growing) awareness in the tertiary education sector of the importance of flexibility in work arrangements for staff with parental responsibilities. However, in some institutions, this readiness to accommodate is not extended in the same way to student parents, particularly those in the undergraduate population. While numbers are small, there are proportionally many more Indigenous than non-Indigenous student parents in the undergraduate law student population at UNSW. Indeed, there are very few non-Indigenous parents in the undergraduate population at all, yet it is not unusual for undergraduate Indigenous law students to have young families.⁶⁹ There was a strong sense among focus group participants particularly that this additional layer of responsibility was poorly understood by the law faculty.

That's what's really pissed me off about the law faculty, is, you know, every time I apply for Special Consideration or I apply for this particular class, blah blah blah, it's never a good enough excuse that I'm a parent. It's never a good enough excuse that I have to work, you know, 35 hours a week just to pay my rent, because I'm not entitled to Centrelink ... I got so sick of this law faculty, and I felt like I didn't want to finish my law degree. I wanted to finish my Honours, and then graduate with my arts degree and go somewhere else. (Current student FG)

There's no flexibility or anything in like, enrolment procedures, you know. We have to get certain times because we have daycare organised... other Indigenous students, to get by, need to work, they've got their work days sorted like, there's no flexibility to like try and get into a class based on those things ... we're expected to get things done like a white person living

⁶⁶ See Toombs and Gorman, above n 61, 24.

⁶⁷ Ibid 22.

⁶⁸ Oliver, Rochecouste and Grote, above n 29, 9.

⁶⁹ Undergraduate parents may be more commonplace at other universities than at UNSW.

at home who doesn't have any responsibilities. And I find that really tough.
(Current student FG)

Student parents provide a good example of the layered complexity of Indigenous law students' lives, but there are many other examples, including family responsibilities that arise, often suddenly, that need immediate attention. Students clearly identify the need for more flexibility in faculty policies on a range of issues that impact on their ability to attend, navigate through, and complete their courses. These relate to compulsory attendance requirements; special consideration applications for extensions for assessment when family issues arise; encountering images of deceased people; and to particular enrolment needs due to childcare imperatives. While these issues can sometimes be dealt with informally with individual lecturers, it is preferable for formal policies to be in place so that they are not reliant on the understanding of individuals, and so that the burden doesn't fall to the student to have to make their case.

It has been noted in the literature that higher education systems tend to be highly inflexible when it comes to accommodating Indigenous student's needs.⁷⁰ An absence of flexibility can make students feel as if they must choose between their studies and their non-university identity.⁷¹ Although Indigenous students can apply for extensions and special consideration, these requests usually need to be supported by a medical certificate or other documentation, which does not always fit with the circumstance that the student is facing, particularly if it is an urgent extended family matter. Wood points out that there is nothing preventing law schools from freezing assessment items completed prior to when a community responsibility arises that causes the student to halt studies, allowing students to continue where they left off, unpenalised, on return.⁷²

While there may be numerous non-Indigenous law students who have complex lives or for whom unexpected challenging circumstances arise during their studies,⁷³ this is a separate matter from the commitments that universities have to Indigenous students. A true commitment to enabling pathways to and through university is a commitment to taking the cohort as they are and working within their context. The fact that other students may experience some of the same issues at some point and to some extent in their law degree does not

⁷⁰ Clair Andersen, Tracey Bunda and Maggie Walter, 'Indigenous Higher Education: The Role of Universities in Releasing the Potential' (2008) 37(1) *Australian Journal of Indigenous Education* 1, 2; Susan Page, Sally Farrington and Kristie Daniel-DiGregorio, 'The Student Experiences Study: Using Research to Transform Curriculum for Indigenous Health Science Students' in Angela Brew and Judyth Sachs (eds), *Transforming a University: The Scholarship of Teaching and Learning in Practice* (Sydney University Press, 2007) 105, 111.

⁷¹ Peta Sharrock and Helen Lockyer, 'One to One and Face to Face: A Community Based Higher Education Support Strategy Retaining Indigenous Australian University Students' (2008) 37(1) *Australian Journal of Indigenous Education* 28, 37.

⁷² Wood, above n 26, 262.

⁷³ Behrendt et al, above n 2, x.

touch upon a commitment to Indigenous legal education, and is not a reason to avoid policies that address the needs raised by Indigenous students. In the words of one focus group participant, ‘I think the law faculty ... need[s] to stop thinking that Indigenous students have the same fucking problems as everyone else, they really do’. (Current student FG)

VI CONCLUSION

Discussion of retention of Indigenous students in tertiary education necessarily shines a light on areas where universities are in need of improvement.⁷⁴ However, there is also a growing literature on successes in this arena, and the celebration and extension of these successes must be brought to the fore.⁷⁵ The fact that in this study students have described feeling alienated and culturally unsafe, have said that their support needs are not always recognised or met, and that mental health issues have been reported as prevalent, should not be minimised. Despite this, and no doubt in part because of some of the academic and pastoral support structures that *are* in place, Indigenous law students at UNSW Law are persevering and achieving. However, UNSW, and law faculties across Australia, should be working hard to ensure that Indigenous students are thriving and have a sense of belonging through their time in law school. This begins with a recognition that there are matters that the institution has to address.

As such, this paper concludes with a return to its title — retaining our best. In the same way that we value the students who accept a place in law schools after achieving particularly outstanding high school results, we should value our Indigenous cohort not just for equity reasons — although this is important — but for the inherent value of having these students as part of who we are as law schools. Like we make adjustments for our elite athlete cohort — allowances for extensions and absences for their responsibilities — we should recognise that many of our Indigenous students are climbing mountains, every day, to succeed in tertiary education. When an Indigenous student graduates from law school, their walk across the graduation stage is a deeply significant event for many people:

I graduated last July in front of my parents and two younger brothers—to think that my mother, born in [a remote town in NW NSW], with such little access to an education got to witness her son be handed an Arts/Law degree with Distinction. That meant more to her and my family than I can ever express in words. Both my younger brothers are currently enrolled in university and I like to think I played some small part in inspiring them to do that. UNSW Law, for the constant challenges you gave me and for supporting me to do my best, thank you. And thank you for continuing to do your part for future Indigenous law students. We are forever grateful.

⁷⁴ McInerney and King, above n 56, 83.

⁷⁵ Barney, above n 21, 2.

The provision of adequate support for Indigenous law students should be an institutional,⁷⁶ and indeed a national, priority. Not as a deficit discourse, which a discussion around equity can sometimes devolve into, but because Indigenous students are assets to our law schools. They bring their values, resilience, persistence and perspectives to the classroom — different and important perspectives about what the law is and how it operates in practice. We *need* this as institutions. Indigenous law students in this study report experiencing an alienating feeling of elitism while attending law school. The reality is that *they* are the elite. As one participant in the alumni focus group said, ‘Don’t feel that you shouldn’t be here, because you should be. In fact you should be here. More than most of the other kids to be quite frank’.

This is not to say that we should expect our Indigenous students to be vocal or ambassadors or even to speak in class at all about these issues. But perhaps in a faculty that goes above and beyond to show support and respect and where cultural safety is a priority, more students will feel that they are able to do so. When we have structured our faculties and our support systems in such a way that gives this message to our Indigenous student cohort then we will not only have retained our best, but we will have brought the best out of ourselves as law schools and as universities.

⁷⁶ The UNSW 2025 strategy, for example, states ‘We will implement a University-wide scheme focused on continuously improving Indigenous students’ access and degree completions. UNSW, above n 8.