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Embedding Indigenous Perspectives in Business Law

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ABSTRACT

This paper considers the policy context for embedding Indigenous perspectives, provides a brief analysis of the commentary in the literature, and finally outlines the teaching strategies and practices which one academic has employed in teaching a business law subject at both undergraduate and postgraduate levels. These strategies and practices act as an exemplar for other academics seeking to embed Indigenous perspectives within the business degree curriculum.

Keywords: Indigenous perspectives; curriculum; business law

Introduction

Overview of the National and University Context

Embedding Indigenous perspectives in curriculum is a process which has been undertaken by a range of disciplines in universities across Australia. The Faculty of Law, Business and Creative Arts at James Cook University (JCU) is currently undertaking such a process. To date, a number of academics have written about embedding Indigenous perspectives within law degrees but little has been written about this in respect of business degrees. This paper seeks to contribute in small part to bridging this gap. Indigenous perspectives for the purposes of this article, which considers the business law context, has a broad meaning which contemplates a range of embedding mechanisms including cases, legislation, socio-legal commentary and relevant policy contexts.

At JCU a key entry point for the consideration of embedding Indigenous perspectives in the curriculum has been through the Indigenous Reconciliation Statement. The Reconciliation Statement forms part of the university policy and covers a range of university functions such as teaching, community engagement and research. In its Reconciliation Statement the university states that:

JCU commits to working toward the achievement of reconciliation by:

- *Creating a university environment where Aboriginal and Torres Strait Islander peoples and members of the wider campus community, work, study and live together with mutual respect and understanding.*
- *Recognising and valuing cultural diversity as an asset which enriches the life of the university community.*
- *Integrating Aboriginal and Torres Strait Islander knowledge, perspectives and experience across the curriculum through consultation with Aboriginal and Torres Strait Islander students and staff. (James Cook University, 2008)*

Indigenous Reconciliation Statements similar to that of JCU at other Australian universities are readily available online including The University of Adelaide, University of Western Sydney, University of Wollongong, University of Sydney, Queensland University of Technology, Griffith University and Charles Sturt University.

The Reconciliation Statement has not been the only entry point at JCU for embedding Indigenous perspectives. Complementary to it has been the curriculum refresh process, a federally funded program drawn from the University Plan. The Plan includes themes such as 'access pathways for equity groups', implementing the Reconciliation Statement and the 'development of graduate attributes in line with JCU's framework' (JCU 2010).

Notably, the Indigenous perspectives agenda has not been limited to university-based policy. It has appeared in the national reform agenda through the Australian Government's Review of Australian Higher Education Final Report, commonly referred to as The Bradley Report, published in December 2008. The Bradley Report specifically identifies social inclusion as a key theme in tertiary sector reform including Recommendation 30 which states 'That the Australian Government regularly reviews the effectiveness of measures to improve higher education access and outcomes for Indigenous people in consultation with the Indigenous Higher Education Advisory

Council.’ (Bradley et al. 2008, p. xxiii). Anning (2010) discusses the role of the Australian University Quality Agency in this national context as well.

These internal curriculum and reconciliation processes together with the national reform agenda show an overall movement towards inclusive curriculum and greater participation by Aboriginal and Torres Strait Islander people in the tertiary sector. As a result there is an increasing need for schools and faculties to link into this growing trend. This paper seeks to address this social policy imperative in a practical way by demonstrating how academics teaching in a business degree can start to embed Indigenous perspectives and work towards meeting this emerging tertiary sector goal.

Cultural Competence as a Graduate Capability

In addition to the above considerations there are local imperatives which operate at both the strategic university level and at a core skills level. Universities Australia is currently running four pilot programs under the banner of The Indigenous Cultural Competency in Australian Universities Project focussed on this graduate capability. The project is being overseen by Universities Australia together with the Indigenous Higher Education Advisory Council. Universities Australia defines Indigenous cultural competency as:

‘the ability to understand and value Indigenous perspectives. It provides the basis upon which Indigenous and non-Indigenous Australians may engage positively in a spirit of mutual respect and reconciliation’

The objective of this project is to provide Australian universities with the tools to embed cultural competency at the institutional level so that they are encouraging and supportive environments for Indigenous students and staff, and so that they produce well-rounded graduates with the skills necessary for providing genuinely competent services to the Australian Indigenous community (Universities Australia 2011).

This project is aimed at delivering a national best practice framework for Indigenous cultural competency. It is being trialled through pilot programs at Edith Cowan University, The University of Western Australia, The University of Wollongong and The University of Newcastle. Specifically, the pilot program at The University of Newcastle in the Faculty of Business and Law aims to develop ‘business partnerships’ which ‘promote the value of culturally competent university graduates’ (Universities Australia 2011). This competency is important for those graduates who will go on to work in regional or remote areas. It can be reflected in practice in subject objectives such as raising the students’ awareness of the service needs of Aboriginal and Torres Strait Islander people; highlighting the communication needs of Aboriginal and Torres Strait Islander people including communicating in Aboriginal and Torres Strait Islander languages; and in identifying those Aboriginal and Torres Strait Islander governance structures which reflect cultural norms and decision-making processes and understandings of finance, economy and property. This need for cultural competency in graduates has clearly been recognised at tertiary institutions Australia-wide and continues to be a growing imperative in the university sector (Miller 2011).

Rather than operating in conflict, these imperatives can all be met by employing the strategies and practices outlined below. This is not to say that the process of embedding Indigenous perspectives is simple. It has been recognised as a complex process which is 'challenging for both Indigenous and non-Indigenous' (Williamson and Dalal 2007) academics. Some academics have even sought to categorise embedding practices as a way of simplifying what can sometimes be a difficult and uncertain process (Miller 2011). Therefore, the strategies and practices outlined below are by no means exhaustive. They are intended to act as a basic 'toolkit' and a starting point for academics in 'Indigenising' their curriculum in a business degree context.

Context of the *Business Law and Ethics (BLE)* Subjects

At JCU the subject BLE is offered in the first semester of the first year for business students. Students studying BLE are primarily those enrolled in the accounting major, however, the cohort can include students from other business streams such as management and marketing. At the postgraduate level BLE is either studied as part of a Masters of Business Administration or a Masters of Practical Accounting. BLE is taught across the four locations of Cairns, Townsville, Brisbane and Singapore. This paper focuses on the delivery of the business law offerings at the Cairns Campus of JCU.

The content of business law subject offerings at universities in Australia is generally limited by the requirements of the accounting profession. Business law subjects are externally audited on a regular basis to ensure they meet the profession's standards. The subject must cover a broad range of topics designed to ensure ongoing compliance with professional requirements. The areas of law covered include the Australian legal system, contract law, tort law, property law, consumer law, credit law and intellectual property law. Teaching of Indigenous perspectives is not specifically required by the profession. It should be noted however that some professions, such as nursing, do require cultural competency as part of the accreditation process in addition to 'clinical' and 'ethical' requirements (Nash et al 2006). Whilst the areas of law which must be covered in BLE to meet professional requirements is fairly proscriptive, the way in which it is taught lies with the university and the academics who teach it. It is here that the individual academic through his or her delivery of a business law subject has the opportunity to embed Indigenous perspectives, a university sector imperative, whilst continuing to meet professional standards.

Before turning to the practical process of embedding Indigenous perspectives within the business law curriculum it is useful to note that the teaching of business law internationally has seen the embedding of a range of perspectives to meet the specific and changing needs of students. For example, MacDonald and Ramaglia (2004) refer to the incorporation of a liberal arts perspective into the teaching of international business law to undergraduate students. Whilst Lampe (2006) argues the need to include alternative dispute resolution in business law classes, as this better reflects the reality of the business environment and the skills business graduates will need in the workplace. Both articles highlight the need to consider the relevance and utility of business law as taught at university with respect to the 'real' business environment and in consideration of the broader social context in which students learn and in which businesses operate.

The Literature

The literature in recent years has reflected the growing trend towards making university curriculum more socially inclusive. A key part of this trend has been an increasing recognition of the need to include Indigenous perspectives. For example, embedding Indigenous perspectives has been taken up by a number of academics who cite the need for universities to participate in the broader reconciliation process (McLaughlin and Whatman 2008). In other commentary, embedding Indigenous perspectives has been seen as part of the process of developing job-ready graduates. In this regard, the inclusion of Indigenous content is seen as part of the professional development of students to produce graduates who are culturally competent (Guilfoyle 2008). Indeed, a detailed case study in embedding Indigenous perspectives in psychology curriculum was recently funded by the Australian Learning and Teaching Council (Ranzjin et al 2008).

One of the most compelling reasons for embedding Indigenous perspectives found in the law literature is the sui generis nature of Aboriginal and Torres Strait Islander laws in Australia. In fact, Aboriginal and Torres Strait Islander laws are increasingly receiving greater recognition by the courts and legislature (Meyers 2008; Anker 2008). Native title in property law is one example of this (Graham 2009). This argument has also been advanced in New Zealand in respect of the Maori laws in the law degree (Jones 2009).

A further reason promoted by law academics for embedding Indigenous perspectives is the need to include relevant cases, legislation and law reform issues which by their nature involve significant Indigenous interests. This type of inclusion is what Miller (2011) describes as 'practical' embedding. Reilly (2009, p.274) notes that in teaching the law degree there are subject areas where Indigenous perspectives are 'conventionally' covered. Reilly (2009, p.276) cites property law, constitutional law, criminal law and the law of evidence as 'conventional' vehicles for including Indigenous content. Intellectual property law is another area of law which acts as a rich source of cases involving Indigenous parties and Indigenous rights (Meyers 2008; Anker 2008). The Australian Competition and Consumer Commission's brochure on 'Indigenous Art and Craft' (2010) evidences the need for this inclusion.

Finally, the literature explores the need for an intellectual interrogation of the law as a social institution which entrenches dominant perspectives. Universities must provide a learning environment in which Indigenous perspectives are not silent and where Indigenous students are not marginalised (Douglas 2005; Anker 2008). Discussion of this theme commonly takes place in teaching students the Australian legal system, its origins, its history and its authority in foundation subjects (Reilly 2009).

Embedding Through Decided Cases

A straightforward means by which Indigenous perspectives can start to be embedded quickly in a business law subject with existing resources such as prescribed textbooks is through the use of cases involving Indigenous individuals and organisations as parties. This is perhaps the most accessible way for many academics to immediately begin to embed Indigenous perspectives in the teaching of business law. Jones (2009) and Reilly (2009) adopt this approach in the areas of constitutional law and administrative law. Examples of such cases can be found throughout most areas of

the law taught in a business degree and, most usefully, in currently prescribed textbooks. Two areas which particularly lend themselves to the use of such cases are consumer law and intellectual property law.

In the area of consumer law unconscionable conduct is one such example, in particular, the case of the Australian Competition and Consumer Commission v Keshow [2005] ATPR (Digest) 46-265. This case is widely cited in the literature because of its 'textbook' illustration of unconscionable behaviour. The case involved a trader engaging in behaviour which was found by the court to be unconscionable, misleading and deceptive, in his dealings with Aboriginal women living in remote parts of the Northern Territory. Outlined in the case are a range of factors pertinent to trading with Aboriginal people including cultural considerations, language differences, literacy and numeracy levels and commercial experience.

Intellectual property law is the other area of law where cases relating to Aboriginal and Torres Strait Islander people can be easily incorporated into the business law curriculum. *Bulun Bulun v R & T Textiles* (1998) 157 ALR 193 is commonly found referenced in textbooks. This case involved questions of infringement of the copyright of an Aboriginal artist's work and more broadly that of an Aboriginal group. *Milpurrurru v Indofurn Pty Ltd* (1994) 130 ALR 659, also a copyright case, revolved around the importation of carpets which reproduced the work of Aboriginal artists without their permission.

Embedding Through Case Studies

Not all examples need come from decided cases. Cases studies from the media and corporate newsletters provide a rich source of 'real world' scenarios for business law content. Decided cases, whilst important in the context of embedding Indigenous perspectives can prove limiting. The use of case studies as 'real world' examples is a common source of material used by academics in the law generally (Corbin 2002). Recent case studies relating to Indigenous people and commerce can be readily sourced from the websites and publications of corporate regulators. For example, the Australia Securities and Investment Commission (2011) has an 'Indigenous' section on its Money Smart website, and the Queensland Office of Fair Trading (2011) has a page specifically for Indigenous consumers. Not-for-profit organisations such as the Australian Communications Consumer Action Network and the Indigenous Consumer Assistance Network can also produce useful resources for teaching, for example, research reports which contain recent case studies with Indigenous perspectives (Loban 2010).

For the purposes of teaching and learning, in presenting case studies, it provides students and academics with the freedom to discuss the possible or likely outcome if the case were to be decided by a court. Alternatively, students can express what their advice might be should they find themselves in that situation in the profession. It allows both a legal consideration of the situation and a business approach to the problem in circumstances where the same approach may not be taken in both contexts.

Embedding Through Professional Experience

Academics may practice within their profession whilst performing their teaching and research duties, be that in accounting or law. The experience derived from professional practice or from community service can provide a wealth of examples which can be incorporated into the business curriculum. For example, the author as part of her community service engaged with Aboriginal and Torres Strait Islander people and their communities in the areas of consumer law, credit law and communications law. Involvement in such community organisations generated knowledge and experiences which can be used to inform common situations which might arise in the course of trading as a company, or more generally in the course of business. Being an academic allows one to utilise one's own skills and experience to be creative in teaching. In the discipline of music, Dillon (2007) cites the use of song to embed Indigenous perspectives in the university's music curriculum.

One example used by the author in her teaching arises when covering leases and fixtures. In discussing this aspect of property law, a real life example used examines the expansion of a company's business from one location to three. Two of these offices need to be in remote locations, namely Aboriginal and Torres Strait Islander communities. All of the leases have to be negotiated. The case is used to take students through various issues such as what the chief executive officer of the company might do in negotiating the leasing of new premises. The example has the business premises, on inspection, containing a number of items including some which the previous tenants appear to have 'abandoned'. It provides a useful example for teaching students the principles of chattels and fixtures. The example reflects 'real life' as well as the diversity of the region and its business community and the practical difficulties that can arise in conducting a regional or rural business.

Embedding Through the Use of Experts

The use of experts is a further tool which can be employed in embedding Indigenous perspectives. Where the academic does not have the expertise or where time does not permit him or her to develop the requisite expertise, guest lecturer presentations can provide an opportunity for learning current trends in practice and policy for both student and academic. A further advantage in using external experts is the ongoing relationship that can develop between the university, industry and the community – a practice valued by universities. An extension of this approach is collaboration with expert colleagues within the university. This strategy has been successfully employed by Morgan and Golding (2010) in delivering an Indigenous education subject in an education degree. The collaboration was between the education and Indigenous studies areas of the university. All universities in Australia have expertise within their universities in the form of an Indigenous centre or Indigenous studies school. Such units can act as an important source of expertise in embedding Indigenous perspectives whilst facilitating cross-disciplinary collaboration.

An added benefit of using experts is that it can form a discrete part of the subject which lends itself well to delivery as a one or two hour lecture on a topic relevant to Indigenous perspectives. As an example, at JCU, this approach was taken by an academic who teaches auditing. The academic invited a guest speaker who had worked with Aboriginal and Torres Strait Islander councils and corporations in the preparation of annual reports. The guest speaker was able to outline the difficulties

faced by the councils and corporations in operating in remote localities, particularly in obtaining bookkeeping, accounting and auditing services. These are live issues which the students may face in their employment in the regions. In this case, inviting a guest lecturer with expertise provided students with the opportunity to ask questions and learn solutions which they can take with them into the profession.

Embedding Through Assessment

In addition to the embedding of Indigenous perspectives through the content, the process can and should be extended to assessment (McLaughlin and Whatman 2008). In the postgraduate offering of BLE an assignment was set based loosely on the facts of Keshow together with some additional facts and issues relating to consent and business ethics. In setting tasks which assess Indigenous perspectives, students must explore, understand and apply the law to circumstances where one of the parties to a business transaction may live in a remote part of Australia, may not have access to financial services or may not have English as a first language. These issues whilst raised for the purposes of the assessment in relation to Indigenous people can apply in many commercial contexts, for example, people living in rural Australia, people from low socio-economic backgrounds and in dealings with people from culturally and linguistically diverse backgrounds as the case may be for international business.

Community Engagement

Community engagement, partnerships and consultation are becoming an important part of the work of academics in Australian universities. This is occurring, for example, in teaching initiatives such as work integrated learning and through research activities such as industry consultancies. Embedding Indigenous perspectives in the university curriculum similarly requires an element of community engagement whether it is through consultation or partnering. This is for a number of reasons. Foremost, it recognises the expertise on Indigenous perspectives lies with Indigenous people and Indigenous communities. Community engagement also provides opportunities for academics to engage with the wider community in a positive way and has the potential to lead to longer term relationships based on mutually beneficial research and service partnerships. Matthews (2005) who conducted Indigenous mathematics research and the relevance of incorporating Indigenous perspectives into school curriculum in Queensland noted there was an important opportunity for non-Indigenous researchers to learn from Indigenous community partners and vice versa in the process of embedding Indigenous perspectives. In practical terms, for the academic with limited knowledge or experience in Indigenous issues community engagement provides a source of information about both long standing and emerging issues in the academic's field which could potentially be embedded in the curriculum. Ensuring community engagement also provides an authenticity to what is embedded, and legitimacy to the decision to include it.

Conclusion

Embedding Indigenous perspectives is an emerging practice in the tertiary sector which seems set only to grow. Whilst Indigenous perspectives may to some academics seem far from the workings of an accountant or lawyer, the above examples illustrate that this need not be the case. This paper has sought to impart the details of one academic's experience at JCU as a useful starting point for those academics who may be interested in or inclined to meet this growing trend and embed Indigenous perspectives into the business law curriculum.

References:

- Anker, K. (2008) "Teaching 'Indigenous peoples and the law': whose law?" *Alternative Law Journal*, 33(3), pp.132-136.
- Anning, B. (2010) "Embedding an Indigenous Graduate Attribute into University of Western Sydney's Courses" *Australian Journal of Indigenous Education*, 39, pp.40-52.
- Australia Securities and Investment Commission (2011) viewed 22 November 2011, <http://www.moneysmart.gov.au/tools-and-resources/information-for/indigenous>.
- Bradley, D. et al. (2008) *Review of Australian Higher Education*, Australian Government.
- Corbin, L. (2002) "Teaching business law to non-law students" *E Law (Murdoch University Electronic Journal of Law)*, 9(1), pp.1-9.
- Dillon, S. (2007) "Maybe we can find some Common Ground: Indigenous Perspectives, a Music Teacher's Story" *The Australian Journal of Indigenous Education*, 46, pp.59-65.
- Douglas, H. (2005) "Indigenous Legal Education: towards Indigenisation" *Indigenous Law Bulletin*, 6(8), pp.12-15.
- Graham, N. (2009) "Indigenous Property Matters in Real Property at Australian Universities" *Legal Education Review*, 9, pp.289-304.
- Guilfoyle, A. (2008) "Embedding Indigenous content into qualitative research in psychology in reflective case studies: a case for social change" in Renner J, Cross J and McCormack L. (eds) *Sustainability in higher education: directions for change: EDU – COM 2008 conference proceedings 19-21 November*, pp.201-211.
- James Cook University (2010) *University Plan*.
- James Cook University (2008) *Reconciliation Statement*.
- Jones, C. (2009) "Indigenous Legal Issues, Indigenous perspectives and Indigenous Law in New Zealand LLB Curriculum" *Legal Education Review*, 9, pp.257-270.
- Lampe, M. (2006) "A New Paradigm for the Teaching of Business Law and Legal Environment Classes" *Journal of Legal Studies Education*, 23(1), pp.1-51.
- Loban, H. (2010) *Unconscionable Conduct and Aboriginal and Torres Strait Islander Consumers: Research Report*, Indigenous Consumer Assistance Network Ltd.
- MacDonald, D. and Ramaglia, J. (2004) "Teaching International Business Law: A Liberal Arts Perspective" *Journal of Legal Studies Education*, 22(1), pp.39-64.
- McLaughlin, J and Whatman, S. (2008) "Embedding Indigenous Perspectives in University Teaching and Learning: Lessons learnt and Possibilities of reforming / decolonising curriculum" in Heber R (ed) *Indigenous education: Asia/Pacific*, pp.123-146.
- Matthews, C. et al. (2005) "Does Mathematics Education in Australia Devalue Indigenous Culture? Indigenous perspectives and Non-Indigenous Reflections" in Clarkson P et al (ed) *Building connections: theory, research and practice: proceedings of the 28th annual conference of the Mathematics Education Research Group of Australasia*, 2, pp.513-520.

- Morgan, S. and Golding, B. (2010) "Crossing Over: Collaborative and Cross-Cultural Teaching of Indigenous Education in a Higher Education Context" *The Australian Journal of Indigenous Education*, 39, pp.8-14.
- Meyers, G. (2008) "Two Examples of Incorporating Indigenous Issues in Law School Curricula: Foundation Year Courses and Electives in Environmental / Natural Resources Law" *Indigenous Law Bulletin*, 7(9), pp.6-8.
- Nash, R. et al (2006) "The Yapunyah project: Embedding Aboriginal and Torres Strait Islander perspectives in the nursing curriculum" *Contemporary Nurse*, 22, pp.296-316.
- Office of Fair Trading (2011) viewed 22 November 2011, <http://www.fairtrading.qld.gov.au/indigenous-consumers.htm>.
- Ranzijn, R. et al. (2008) *Disseminating strategies for incorporating Australian Indigenous content into psychology undergraduate programs throughout Australia*, A Report for the Australian Learning and Teaching Council.
- Reilly, A. (2009) "Finding an Indigenous Perspective in Administrative Law" *Legal Education Review*, 9, pp.271-286.
- Universities Australia (2011) viewed 20 November 2011, <http://www.universitiesaustralia.edu.au/page/311/policy---advocacy/indigenous-issues/cultural-competency/>.
- Williamson, J and Dalal, P. (2007) "Indigenising the Curriculum or Negotiating the Tensions at the Cultural Interface?: Embedding Indigenous Perspectives and Pedagogies in a University Curriculum" *Australian Journal of Indigenous Education*, 36, pp. 51-58.