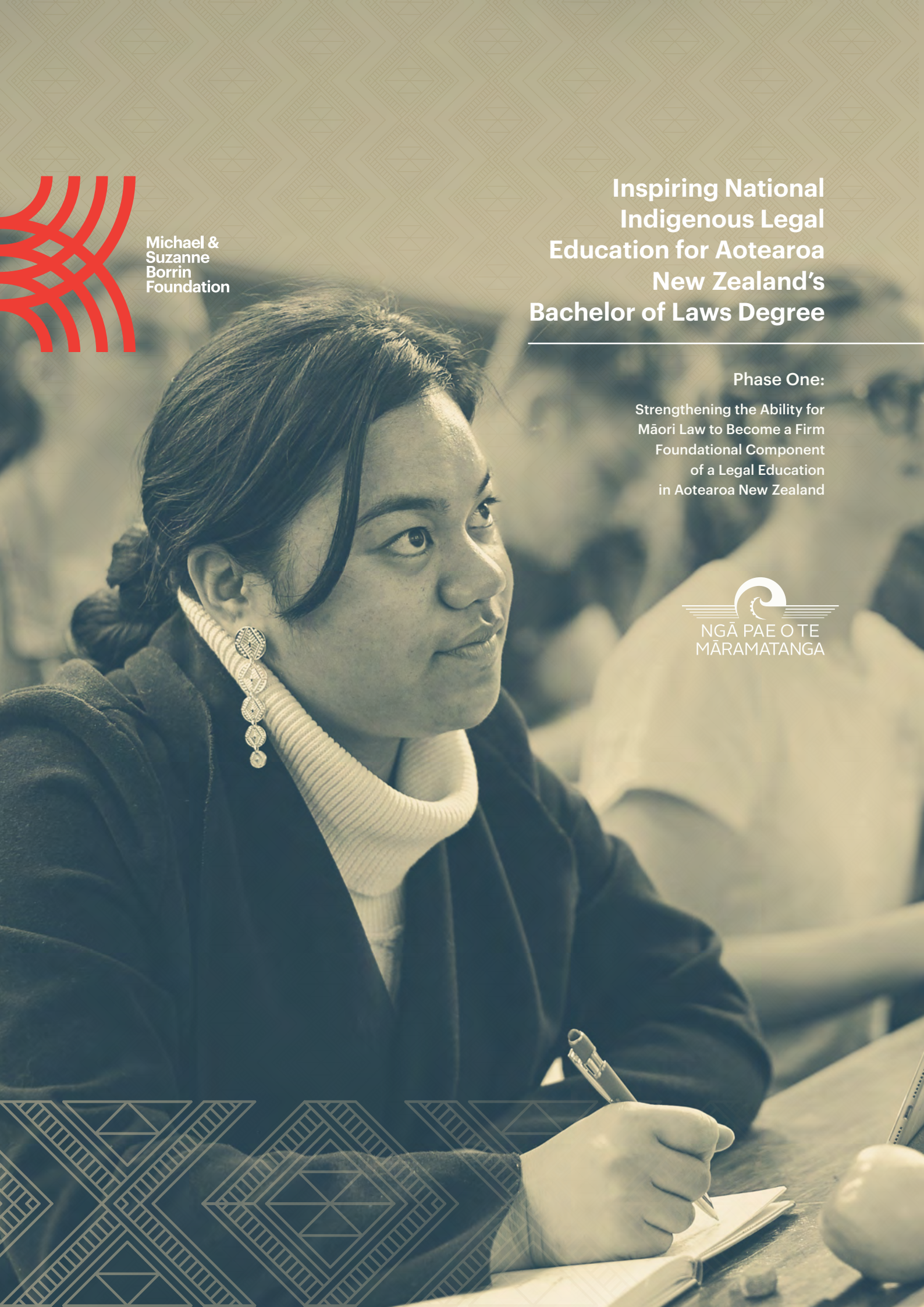
Michael & Suzanne Borrin Foundation

Inspiring National Indigenous Legal Education for Aotearoa New Zealand's Bachelor of Laws Degree

Phase One:

Strengthening the Ability for Māori Law to Become a Firm Foundational Component of a Legal Education in Aotearoa New Zealand

NGĀ PAE O TE MĀRAMATANGA



Michael &
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University of Otago LLB students, 2019.

University of Otago Te Whare Wānanga o Otāgo New Zealand

Victoria University of Wellington Te Herenga Waka

AUT

The University of Waikato Te Whare Wānanga o Waikato

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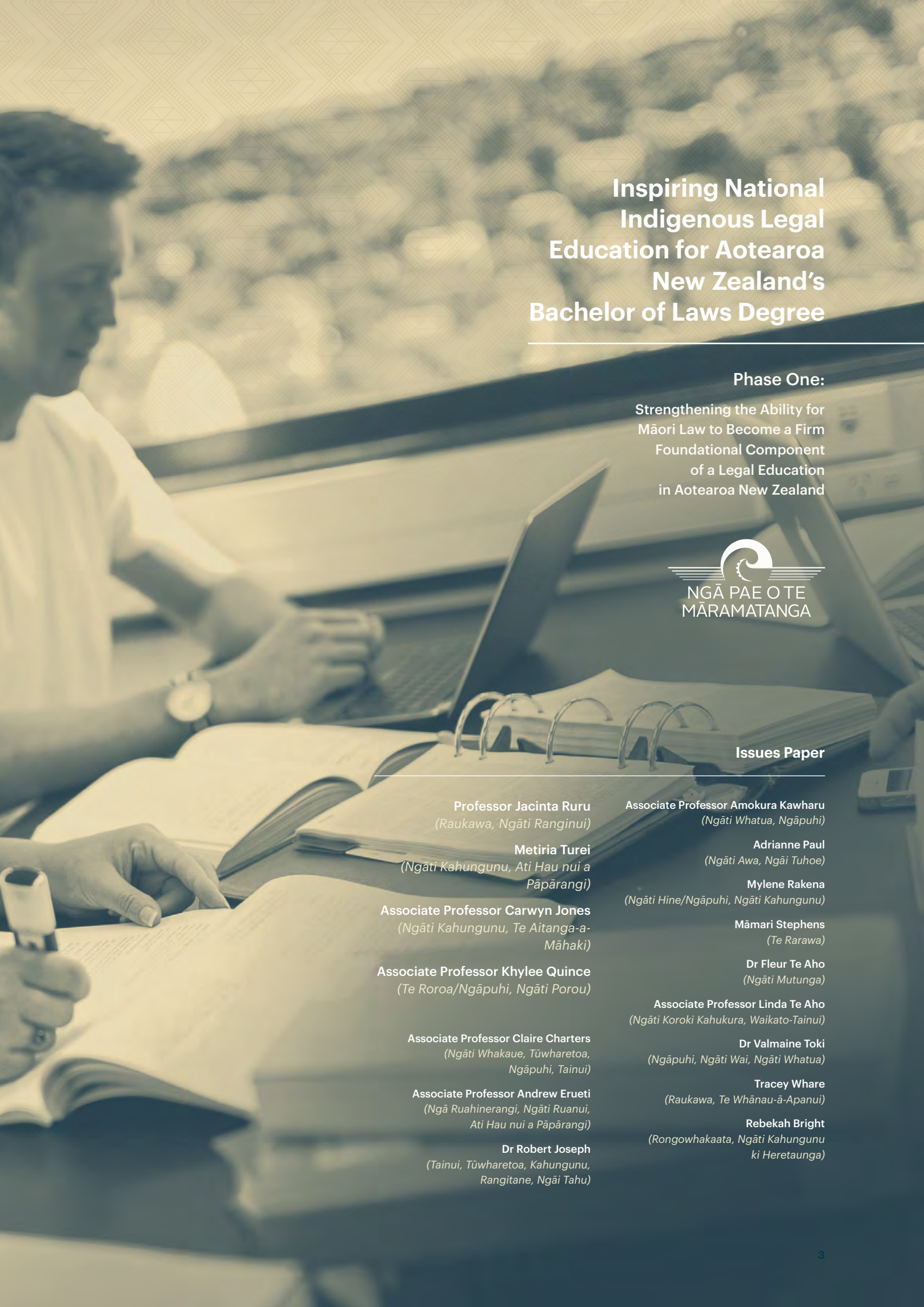

Inspiring National Indigenous Legal Education for Aotearoa New Zealand's Bachelor of Laws Degree

Phase One:

Strengthening the Ability for Māori Law to Become a Firm Foundational Component of a Legal Education in Aotearoa New Zealand

NGĀ PAE O TE MĀRAMATANGA

Issues Paper

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(Rongowhakaata, Ngāti Kahungunu ki Heretaunga)

Ngā Mihi | Acknowledgements

Tēnei mātou ka tangi mōteatea nei ki a rātou mā kua wehe atu ki tua o te ārai. Haere, hoki atu koutou ki te poho o te Atua, ki te huihuinga o te kahurangi, okioki ai. Kāti te taha ki ngā mate. E ngā mahuetanga iho, kia ora mai tātou katoa.

Nei rā te mihi ki ngā iwi ki ngā hapū maha, nā koutou i tū kaha, i tū māia ahakoa ngā whiunga mai o te wā. Nā koutou e ū tonu ana te iwi Māori ki āna tikanga, ki tōna rangatiratanga motuhake.

Nei rā te mihi ki a koutou e ngā pou āwhina me te pae o te mātauranga. Mei koe ake koutou e riro mai ngā akoranga me ngā tohutohu i taea ai e mātou te pūrongo nei me āna whakataunga.

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Waiho mā ēnei kupu a Hēnare te Ōwai o Ngāti Porou, hei whakarāpopoto te wai o tēnei pūrongo. Koinei katoa hei takoha hoki mā mātou ki ngā reanga whai mai. Tēnā koutou katoa.

Mā wai rā
e taurima
te marae i waho nei?
Mā te tika
mā te pono
me te aroha e...

It is right that we first lament those who have passed beyond the veil. May they rest among the illustrious, in the embrace of the most high. May there be life and vitality for we who have been left behind.

We recognise with pride the many peoples of the Māori world who stood firm and brave despite the suffering and challenges of the times. You have never yielded; Māori people remain firmly connected to their tikanga, their own distinct ways of being in this world.

We acknowledge warmly those who supported us, those who shared your deep knowledge with us. We were fortunate indeed, as your teaching and direction are reflected in this report and its recommendations.

Our sincere acknowledgments extend also to the Deans of this country's law schools, and to those people who supported our work from the broader legal community. Your support of us has enabled this stage to be completed well.

Of course, our warm greetings and thanks go also to the Michael and Suzanne Borrin Foundation, by your support this work became possible. For this we are sincerely grateful.

We leave the last words to Hēnare te Ōwai of Ngāti Porou, to summarise the essence of this report. This report and the work yet to be done is our promise, and our gift to the generations to come. Tēnā koutou katoa.

Mā wai rā
e taurima
te marae i waho nei?
Mā te tika
mā te pono
me te aroha e

Who then,
will protect the marae here?
It will be truth,
Justice,
and love

Rārangi Taki | Contents

The tohu used in this report

The artwork in this report was created by **Tristan Marler** (Te Rarawa/Te Aupouri)

We've used a tohu design in this report to conceptually support what we are advocating for. The design consists of two main parts; the chevron is made of Haehae/Pākati which represent Kupe's Law and the history of our people pre-European contact. The Niho taniwha design is enclosed by the Haehae/Pakati pattern and represents Cook's law. The arrangement of this design can also be interpreted as the pattern Aronui which symbolises the three baskets of knowledge. When repeated the design forms a Tukutuku panel and the pattern changes again. This pattern is Pātiki (flounder) which is about being able to provide for whanau or Iwi.

Te Hunga Rōia Māori o Aotearoa Hui ā Tau, Whanganui a Tara 2019

1. Introduction

"In 1840 we had been here for a thousand years. We had a highly workable and adaptable system of law in operation, and Te Tiriti o Waitangi guaranteed that it would remain as the first law of Aotearoa." — Ani Mikaere (Ngāti Raukawa, Ngāti Porou)[1]

Māori law is the first law of Aotearoa.

The hapū and iwi of Aotearoa operated under complex systems of values and principles that recognised the importance of, and regulated, relationships between people, between people and their environment, and between the natural world and the spiritual world.[2] That system was deep, complex and constantly evolving.[3] Common values were understood across different hapū and iwi[4] just as iwi and hapū-specific kawa[5] was understood and practised. Through tikanga – a system of "practices, principles, processes and procedures, and traditional knowledge"[6] – social, economic and familial relationships; disputes; transfers; and concerns were all managed. Trade, exchange values, access to environmental resources, inheritance, infringements, punishment, restitution, authority, governance and leadership were all part of this complex legal system.

Mead's *Tikanga Māori: Living by Māori Values* provides a comprehensive analysis of tikanga values and their historical and modern application across all spheres of life.[7] Now retired justice, Durie, meanwhile, described extra-judicially in detail the values-based system that regulated the maintenance of personal relationships, protocols in meeting and fighting, whakapapa to settle rights and status, establishing authority and status (mana) through acts of generosity, maintenance of balance through reciprocity, contracts, and trade through gift exchange.[8]

This Issues Paper is the result of the first stage of a multi-year, three-phase national project. In it we review the literature and consider some of the preliminary opportunities relevant for the teaching of Māori law as a foundation source of the Aotearoa New Zealand Bachelor of Laws (LLB) degree for the benefit of the legal profession and Aotearoa New Zealand society. We present ten key messages as integral to this Issues Paper.

1 Ani Mikaere "Tikanga as the First Law of Aotearoa" (2007) 10 *Yearbook of New Zealand Jurisprudence* 24 at 25.

2 Joseph Williams "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21*Waikato Law Review* 1.

3 Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Huia Publishers, Wellington, 2003). See also Robert Joseph "Re-creating Space for the First Law of Aotearoa-New Zealand" (2009) 17 *Waikato Law Review* 74; Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Victoria University Press, Wellington, 2013) at 128; Ani Mikaere "Tikanga as the First Law of Aotearoa" above n 1; Valmaine Toki "Tikanga Māori – A Constitutional Right? A Case Study" (2104) 40 *Commonwealth Law Bulletin* 1 at 32–48.

4 See ET Durie "Will the Settlers Settle? Cultural Conciliation and Law" (1996) 8 *Otago Law Review* 449; Benton, Frame and Meredith above n 3, at 429.

5 Williams above n 2, at 6.

6 Carwyn Jones "A Māori Constitutional Tradition" (2014) 12 *New Zealand Journal of Public and International Law* 187 at189–190.

7 Mead above n 3.

8 Durie above n 4, at 445.

A: Ten Key Messages

1. To realise the practice of Māori law as law in Aotearoa New Zealand's modern legal system, systemic change in the legal profession needs to occur.
2. We call for a legal profession that is trained to work in a bijural, bicultural and bilingual Aotearoa New Zealand legal system.
3. Undergraduate legal education has an essential role in fulfilling this call for change.
4. Aotearoa New Zealand's six law schools already have varying levels of competency in this area but should now move in a systemic formal manner towards preparing their graduates for a legal practice built on a bijural, bicultural and bilingual legal education.
5. A bijural legal education presupposes the existence of Māori law founded on tikanga Māori, which is taught as a legitimate and continuing source and influence on the rights, obligations, rules and policy in Aotearoa New Zealand's legal system. Māori law can and should be taught as part of the multi-year core LLB curriculum in a manner that adheres to Māori transmission methods of knowledge.
6. A bicultural legal education implements structures, develops processes and provides resources grounded in Te Tiriti o Waitangi | the Treaty of Waitangi, including the employment of Māori, and sharing of resources, leadership and decision-making with iwi, hapū and Māori academic staff. Specific steps include:
    - **i.** quality, structural relationships with the mana whenua with the intent of building greater collaboration for the teaching of Māori law;
    - **ii.** the recruitment and retention of high numbers of Māori teaching staff;
    - **iii.** a structure for ensuring Māori-led quality content in the compulsory and optional courses offered across the study years;
    - **iv.** shared decision-making authority and equitable access to financial resources with Māori staff in the faculty;
    - **v.** financial support for the development of a bicultural curriculum and its quality delivery; and
    - **vi.** recognition of the Māori epistemologies for teaching and instruction, such as wananga, pūrākau, the use of te reo Māori and the legal knowledge held by kaumātua.
7. A bilingual legal education would utilise te reo Māori broadly in general teaching and specifically in relation to Māori law concepts and principles such that all students have a working knowledge of Māori law in te reo Māori at the time of graduation. Where students are fluent in te reo Māori, they should be easily able to learn and be assessed in te reo Māori. Specific steps include:
    - **i.** professional development support for learning te reo Māori for teaching staff;
    - **ii.** greater support for a law student's right to use te reo Māori in all forms of communication;
    - **iii.** the development of a bilingual curriculum and its quality delivery;

iv. access to teaching and assessment in law schools in te reo Māori;
v. ensuring graduates' fuller understanding of Māori legal and cultural concepts not limited by the use of English interpretations; and
vi. promoting every citizen's right to use te reo Māori in legal and parliamentary forums and documents.

8. Strategically decolonising and Indigenising legal education is already underway in Canada and in development in Australia. Such changes are possible. Aotearoa New Zealand is well placed to catch up to these countries and accelerate our existing practices if the commitment is made in a deliberate formal manner with long-term significant resources made available.

9. Care will be required to progress this aspirational systemic change, especially in regard to ensuring mana whenua are supportive of these moves. The change should be Māori led and Māori designed, with substantial allied support from Deans of law schools and the legal profession, including the judiciary, law practitioners, law academics and law students.

10. This is a three-phase project. The next two phases of this research are essential to stress-test and model these key messages that have been developed in Phase One. In the meantime, to commence this journey for aspirational change we recommend we all (re)read and continue to upskill ourselves as much as possible on the extensive knowledge and research already shared by Māori scholars.[9] We recommend the ten starter readings highlighted in the below table, along with all the sources listed in our selected bibliography (see Appendix 1).

B: A Starter Reading List: Ten Readings to Begin to Understand Māori Law

1. Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Victoria University Press, Wellington, 2013).
2. ET Durie, "Will the Settlers Settle? Cultural Conciliation and Law" (1996) 8 *Otago Law Review* 449.
3. Moana Jackson *He Whaipaanga Hou: Maori and the Criminal Justice System* Ministry of Justice (1987).
4. Carwyn Jones *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (University of British Columbia Press, Vancouver, 2016; republished by Victoria University Press, 2016).
5. Ani Mikaere "The Treaty of Waitangi and Recognition of Tikanga Māori" in Michael Belgrave, Merata Kawharu and David Williams (eds) *Waitangi Revisited: Perspectives on the Treaty of Waitangi* 2nd ed. (Oxford University Press, Auckland, 2005).
6. Hirini Moko Mead *Tikanga Māori: Living by Māori Values* rev. ed. (Huia Publishers, Wellington, 2016).
7. New Zealand Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001).
8. Māmari Stephens and Mary Boyce (eds) *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (LexisNexis NZ, Wellington, 2013).
9. Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011).
10. Joseph Williams "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 *Waikato Law Review* 1.

9 For example, we recommend the ten books listed in this article: Jacinta Ruru, Angela Wanhalla, Jeanette Wikaira "Read Our Words: An Anti-racist Reading List for New Zealanders" *The Spinoff* (15 June 2020) https://thespinoff.co.nz/atea/15-06-2020/read-our-words-an-anti-racist-reading-list-for-new-zealanders.

C: Our Project

"Lex Aotearoa is very much alive. It is still fragile, but its survival is more certain now than in the past. It is demanding that we change to address its challenges. I hope we Aotearoans are up for it." — Sir Joe Williams J (Ngāti Pūkenga, Te Arawa)[10]

"Inspiring National Indigenous Legal Education for Aotearoa New Zealand's Bachelor of Laws Degree" is a research project that has the potential to transform legal education in Aotearoa New Zealand, and in turn have a significant influence on how law impacts the lives of people in this country. There is increasing understanding and acceptance that the first laws of Aotearoa New Zealand came with Kupe, another law was later brought by Cook (that became our Pākehā state law), and that now there is a unique jurisprudence, 'Lex Aotearoa', which has developed from both legal traditions. The increasing recognition of the value of Māori law by the nation's legal profession means we need to carefully think through and work out how Māori law ought to be taught as a compulsory part of the LLB degree. Legal education in Aotearoa New Zealand will need to evolve in order to live up to the challenges that Lex Aotearoa will demand of us.

This project is a national three-phase study that formally commenced in 2019 and represents a new milestone on the journey that the peoples of Aotearoa New Zealand began together in 1840. We believe that this project will contribute to fully realising the principles of Te Tiriti.

This Issues Paper is the result of Phase One of the project. **Our aim here is to collate our knowledge of a sample of written sources of Māori law, prefaced with a researched discussion of why we think this is the time to call for a legal profession that is trained to work in a bijural, bicultural and bilingual system.** Phase Two will stress-test our call for this systemic change. The bulk of the Phase Two research will require consultations and collaboration with both the wider Māori community and legal community to consider the opportunities and challenges for implementing our proposals in legal education. These discussions will be structured according to Kaupapa Māori methodology to enable an empowered, culturally inclusive and vibrant discussion with tangata whenua, colleagues, communities and interested persons within the constraints of the current COVID-19 pandemic. Phase Two will take approximately 13 months of intensive consultation in 2020–2021. Phase Three will draw on the strategic work of Phases One and Two to develop a proposed action plan inclusive of draft practical models for decolonising legal education and specifically Indigenising the LLB degree. This multi-staged work is an essential part of the development of a truly bicultural decolonised Aotearoa New Zealand.

10 Williams above n 2, at 34, writing in an extra juridicial role.

Our project began with the following overarching research question:

How can Māori law be integrated into the LLB as a foundational part of the degree?

It became obvious to us early on that for this to be achieved systemic change has to first occur. There needs to be both deep structural change within, and new learning done by, the legal academy to rise to meet this challenge for the benefit of Aotearoa New Zealand, including the broader legal profession.

Some of the preliminary questions that developed from our overarching research question above were:

- What ought to be the respective roles of law schools and Māori communities in teaching Māori law?
- What is the role of Indigenous teaching methods in transmitting Māori law and how might that be done?
- What are the respective roles of academic teaching staff and non-academic Indigenous law experts?
- What aspects of Māori law should and should not be taught in law schools?
- How do law schools protect the integrity of Māori law?
- How can the practice of teaching Māori law for academic teaching staff and non-academic Māori law experts and the student body be empowered, culturally inclusive, and vibrant?

These preliminary questions remain important to us as we progress our research project. The focus on Māori law as a starting point makes sense because Aotearoa New Zealand's state legal system, including our common law, is increasingly recognising the value of Māori law. However, as yet there has been no national collaborative discussion about if and how Māori law ought to be taught as a substantial part of the foundational part of the LLB degree.

We readily accept that while a culturally sensitive legal education is understood and practised, our law schools do not yet equip all LLB graduates with the ability to respond to the current and evolving legislative, judicial and societal expectations of understanding Māori law as a foundational component of law in this country.

We therefore believe that legal education in Aotearoa New Zealand must change. There is increasing demand from the judiciary for advice on Māori law, especially since the Supreme Court accepted in 2012 that "Māori custom according to tikanga is therefore part of the values of the New Zealand common law" (*Takamore v Clarke*).[11] Other parts of the legal profession are recognising this need. Professional training is being done, for example, to upskill the judiciary on Māori law including time spent on marae. Law firms are engaging in Māori law professional development for their legal staff on Māori law understandings beyond treaty settlement and land law issues due to the needs of their clients. We need to ensure all Aotearoa New Zealand law graduates are well prepared for these new expectations in society and within the practice of law.

The Hon Chief Justice of the Supreme Court, Winkelmann CJ, made a keynote speech to Te Hunga Rōia Māori o Aotearoa | Māori Law Society hui-ā-tau in August 2019 welcoming the new moves by the profession, the judiciary and Parliament to make "renovations to the house of law in Aotearoa New Zealand to make it fit as a law for this place and time".[12] She said to the mostly Māori audience, "In my mihi, I referred to you as carpenters of the house of law, because I believe that in the room lies the ability, imagination and courage to build our house strong." Our Chief Justice has made a call for the need for our law to evolve. We believe that this three-phase research project is one of the best ways to ensure a robust response to this call for change.

11 *Takamore v Clarke* [2012] NZSC 116 per Elias CJ.

12 Hon Chief Justice Helen Winkelmann "Keynote Speech to Te Hūnga Rōia Māori o Aotearoa (Māori Law Society): Renovating the House of Law", Wellington (29 August 2019). https://www.courtsofnz.govt.nz/publications/speeches-and-papers.

Mā te Ture, Mō te Iwi | By the Law, For the People

Te Hunga Rōia Māori o Aotearoa | The Māori Law Society was formed in 1988, in order to provide Māori lawyers a forum and support network outside of existing mainstream structures to work together on issues that affect them and their clients. Since its inception, the organisation has grown and membership now includes legal practitioners, judges, parliamentarians, legal academics, policy analysts, researchers and Māori law students. Their mahi includes raising awareness of Te Ao Māori and tikanga in the legal profession, promoting law reform and conducting research on issues of relevance to their members and Te Ao Māori.

The Kaupapa | Vision of Te Hunga Rōia Māori o Aotearoa is "Mā te Ture, Mō te Iwi | By the Law, For the People". As Māori law graduates, regardless of where and how we utilise our legal skills, we have a mutual desire to effect change through the law within and for our iwi, and we are ultimately responsible to our iwi. 'Iwi' for Te Hunga Rōia Māori o Aotearoa relates to both our tribal identity and to our Māori legal community.

The hui-ā-tau (annual conference) is considered the highlight of the year for Te Hunga Rōia Māori. Due to the challenges posed by the COVID-19 pandemic, the hui-ā-tau for 2020 will be held mainly online, with regional groups meeting together to participate in the online conference and hold their own parallel events.

In February 2020, Te Hunga Rōia Māori o Aotearoa and the New Zealand Law Society signed a Memorandum of Understanding, agreeing to work together and support each other while maintaining their separate roles and independence.

www.maorilawsociety.co.nz

Te Hunga Rōia Māori o Aotearoa Hui ā Tau, Whanganui a Tara 2019.

D: Our Research Team

This national multi-year project is led by 16 Māori legal researchers associated with Ngā Pae o Te Māramatanga | New Zealand's Māori Centre of Research Excellence and has received generous direct funding from the Borrin Foundation and significant in-kind funding from the country's six law schools. While the lead report writers are Professor Jacinta Ruru and Metiria Turei, we have all contributed to writing and reviewing this report. We have done this in a collaborative, focused and deliberately inclusive manner. Two part-time Māori LLB students, Rebekah Bright and Jessica Nicholson, were contracted to provide research assistance. At the end of this Issues Paper we provide brief summaries of the authors' biographies.

E: Methodology

Our research project is purposively Māori-led. We are a national Māori research academic team, trained in Pākehā state law. We prioritise and value kaupapa Māori research methodologies and Indigenous legal methods, sitting alongside Western legal analysis. We ground our research in a deep respect for Māori law, broader Indigenous legal traditions, He Whakaputanga Declaration of Independence (1835), Te Tiriti o Waitangi (1840) and the United Nations (UN) Declaration on the Rights of Indigenous Peoples (2007). Our literature review is a testament to this commitment, where we specifically highlight Indigenous-authored work where possible. We value the time spent together and being able to collectively share and present our existing experiences and strategic visions for change. An important part of our methodology has involved awareness of similar work done in comparative contexts. This project closely follows the investigation and implementation of the teaching of First Laws in other jurisdictions, particularly in Canada where an inspiring literature review was completed in 2017 and a fast-growing legal scholarship on the possibilities and practicalities of rising to meet the challenge of an Indigenous legal education is developing.[13] We have also reviewed the Australian publications and especially the impressive final 2019 report of the Indigenous Cultural Competency for Legal Academics project[14] which is the result of more than six years of research, surveys and consultation. The Australian project considered how to "articulate what Indigenous cultural competency means in the context of legal education and to build a community of practice to support the embedding of ICC [Indigenous Cultural Competency] in [the] law curriculum".[15] As we discuss further in this paper, **our work here begins to provide the Aotearoa New Zealand perspective as part of this global movement.**

During Phase One we presented our preliminary findings in a workshop format at the Native American and Indigenous Studies Association Conference held at Waikato University in June 2019 (where we met several law academics from Australia, the United States and Canada who are doing similar research) and at the Te Hunga Rōia Māori o Aotearoa | Māori Law Society hui-ā-tau in Wellington in August 2019. We also met as a team with international law academics who are engaged in similar research, including Professor Val Napoleon,[16] Professor Michael Coyle,[17]

13 Michael Coyle "Indigenous Legal Orders in Canada – A Literature Review" (2017) Law Publications 92. http://ir.lib.uwo.ca/lawpub/92.

14 Marcelle Burns, Anita Lee Hong and Asmi Wood *Indigenous Cultural Competency for Legal Academics Program: Final Report (2019)* Australian Government Department of Education and Training, Australia. http://icclap.edu.au.

15 At iii.

16 Val Napoleon is a member of Saulteau First Nation as well as an adopted member of the Gitanyow (Gitksan) House of Luuxhon, Ganada (Frog) Clan. She is a Law Foundation Professor of Aboriginal Justice and Governance and co-founder of the Indigenous Law Research Unit and the Joint Degree Program in Canadian Common Law and Indigenous Legal Orders (JD/JID) at the University of Victoria, British Columbia. She is from northeast British Columbia (Treaty 8).

17 Michael Coyle is a Professor at Western Law, Ontario, Canada. He joined the Faculty of Law in 2000. Along with John Borrows, he is the co-editor of *The Right Relationship: Reimagining the Implementation of Historical Treaties* (University of Toronto Press, 2017).

Andre Boiselle[18] and Annette Gainsford.[19] We were also grateful for the contribution by Associate Professor Jeff Corntassel[20] during our presentation at the Native American and Indigenous Studies Association Conference.

F: Conclusion

There is excellent work already happening in our law schools with the support of the Deans and academic staff. There is a growing body of knowledge being shared and an increasing commitment and practice for the teaching of Māori law across all law school curriculums. Te Piringa Faculty of Law at the University of Waikato is a clear leader in this field, and we discuss this in more detail in this Paper. But it is also true that a comprehensive national approach to the foundational teaching of Māori law does not yet exist. We hope that this paper commences a national conversation for respectful systemic change.

This paper next considers how this research sits in an international and comparative context. Then it provides an introduction to Māori law and its interface with Aotearoa New Zealand's state legal system; briefly recognises the work already underway in the six law schools; and then outlines in more detail our call for a bijural, bicultural and bilingual legal profession, indicating in a preliminary manner what this might mean for legal education. After our conclusion, we appendix a selected bibliography.

Jacinta Ruru, with Tame Te Rangi (Ngāti Whatua education spokesperson) presenting the Jolene Patuawa-Tuilave Māori Leadership in Law Scholarship to the inaugural recipient Adam Tapsell, in 2015.

18 Andrée Boisselle is Associate Professor at Osgoode Hall Law School York University Toronto, Canada. Her doctoral research on Stó:lō constitutionalism and the Coast Salish legal tradition has been supported by scholarships from the Trudeau Foundation and the Social Sciences and Humanities Research Council of Canada.

19 Annette Gainsford is a Lecturer in Law and Justice at Charles Sturt University, and Indigenous Academic Fellow. Annette has extensive experience in Indigenous curriculum development that embeds Indigenous cultural competence across the disciplines of law, justice, business and education. She is currently writing her doctoral thesis, *Embedding Indigenous Knowledges in the Design of Higher Education Curriculum: An International Study in Law Education*, which aims to develop an original model for embedding Indigenous knowledges into higher education law curriculum.

20 Jeff Corntassel is Associate Professor at the School of Indigenous Governance at the University of Victoria, British Columbia. His research and teaching interests include Indigenous political movements, community resurgence and sustainable self-determination.

Katarina and Makareta Coote (Kāi Tahu, Kāti Māmoe),
LLB graduates, University of Otago, 2019.

II. Formal International and Comparative Calls for Recognition of Indigenous Laws

Indigenising legal education is already underway in Canada and in development in Australia. Much of the drive for change is attributable to government commitments to the UN Declaration on the Rights of Indigenous Peoples[21] and advancements in their own domestic law such as *Mabo v Queensland No 2*[22] *in Australia, and Delgamuukw v British Columbia* in Canada.[23] Importantly, for many years, their Indigenous legal academics, with strong allied support, have called out the low numbers of Indigenous students entering and graduating from law schools. In recent years, the law schools have become more open to new forms of teaching and learning Indigenous laws. We discuss the experiences from both Canada and Australia below to offer a comparative context for the acceleration of the tertiary teaching of Māori law in Aotearoa New Zealand. First though we commence with the importance of an international law instrument.

A: United Nations Declaration on the Rights of Indigenous Peoples

In 2007, the UN Declaration on the Rights of Indigenous Peoples ("Indigenous Declaration") was adopted by the UN General Assembly by a majority of 144 votes. The four states that voted against the Indigenous Declaration at that time were Aotearoa New Zealand, Australia, Canada and the United States; all states that had been colonies of European powers and which today have a non-Indigenous majority in its makeup of citizenry. Since 2007, these four states have respectively indicated their support for the ndigenous Declaration (Australia in 2009 and Aotearoa New Zealand, the United States and Canada in 2010), despite noting that some articles are in opposition to the constitutional arrangements that the four states have in place. Some of the most relevant articles to this Issues Paper include:[24]

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, **legal**, economic, social and cultural **institutions**, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 34

Indigenous peoples have the right to promote, develop and maintain their **institutional structures** and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, **juridical systems or customs**, in accordance with international human rights standards.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give **due consideration to the customs, traditions, rules and legal systems of the indigenous peoples** concerned and international human rights.

The Indigenous Declaration officially recognises that Indigenous peoples have their own legal systems which must be acknowledged and upheld by member states. In 2015, Canada's Truth and Reconciliation Commission called for the federal, provincial, territorial and municipal governments "to fully adopt and implement" the Indigenous Declaration and called "upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration".[25]

21 United Nations "United Nations Declaration on the Rights of Indigenous Peoples" https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html.

22 *Mabo v Queensland No 2* [1992] HCA 23, (1992) 175 CLR 1.

23 *Delgamuukw v British Columbia* [1997] 3 SCR 1010.

24 Emphasis added.

25 Above n 21, Articles 43 and 44.

In November 2019, Canada's British Columbia legislature unanimously passed the Declaration on the Rights of Indigenous Peoples Act, which seeks:[26]

a. to affirm the application of the Declaration to the laws of British Columbia;
b. to contribute to the implementation of the Declaration;
c. to support the affirmation of, and develop relationships with, Indigenous governing bodies.

Section 3 of the Act powerfully commits to alignment of laws:

> In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

Other provinces in Canada and Australia and Aotearoa New Zealand have yet to formally commit in a like manner to British Columbia. However, in 2019 Aotearoa New Zealand, through Te Puni Kokiri | The Ministry of Māori Development, established a Declaration Working Group to advise the Government on an action plan and engagement process with Māori to progress towards the aspirations of the Indigenous Declaration.[27] The work of the Working Group has yet to be made public. Notably, Aotearoa New Zealand's courts, including the Supreme Court, are increasingly referencing the Indigenous Declaration as part of our developing jurisprudence.[28] Decolonising and Indigenising the legal profession, including legal education, is one necessary step towards meeting the requirements of the Indigenous Declaration. We now examine the Canadian and Australian legal contexts and their respective law schools, which are both moving in this direction.

26 Section 2, Declaration on the Rights of Indigenous Peoples Act [SBC 2019] Chapter 44.

27 *Developing a Plan on New Zealand's Progress on the United Nations Declaration on the Rights of Indigenous Peoples* (2019) Office of Te Minita Whanaketanga Māori https://www.tpk.govt.nz/en/a-matou-mohiotanga/cabinet-papers/develop-plan-on-nz-progress-un. See also Te Puni Kokiri Ministry of Maori Development https://www.tpk.govt.nz/en/whakamahia/un-declaration-on-the-rights-of-indigenous-peoples.

28 See, for example, *Ngāti Whātua Ōrākei Trust v Attorney-General and Ors* [2018] NZSC 84; Claire Charters "The UN Declaration on the Rights of Indigenous Peoples in New Zealand Courts: A Case for Cautious Optimism" in Centre for International Governance Innovation *UNDRIP Implementation: Comparative Approaches, Indigenous Voices from CANZUS* 2020, 43–56.

B: Canada

The Indigenous peoples of Canada, including First Nations, Inuit and Metis, have sophisticated systems of government, law and language that were established and flourishing on the lands now known as Canada. While colonisation has seriously undermined these laws, these laws continue to exist in Indigenous societies throughout Canada.

1. Constitution

The Indian Act (established under s.91.24 of the Constitution Act, 1867) dominated the legal status and rights of First Nations (formerly Indians) peoples in Canada. For generations the Act has defined who is and is not a recognised Indian person and determined rights and obligations of the governance by band councils of reserve lands. Despite numerous amendments to remove its more discriminatory elements, the Act remains a severe constraint on Indigenous human rights.[29] In 1973, the Supreme Court of Canada in *Calder v A.G.B.C* [30] recognised the possibility for Aboriginal title rights of First Nations peoples and, importantly, that those rights were pre-existing rights, sourced in the custom and ownership of their lands prior to colonisation. In 1982, Canada enacted the Canadian Constitution Act, section 35 of which provides:

> 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
>
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

29 John Borrows "Seven Generations, Seven Teachings: Ending the Indian Act" (2008) Paper delivered at the National Centre for First Nations Governance. For a full discussion see John Borrows "Indian Agency: Forming First Nations Law in Canada" (2001) *Political and Legal Anthropology Review* 24, no. 2 at 9–24.

30 *Calder v British Columbia (AG)* [1973] SCR 313, [1973] 4 WWR.

II. Formal International and Comparative Calls for Recognition of Indigenous Laws CONT.

The Constitution Act, 1982 therefore reaffirms the prior occupation rights of First Nations peoples. It also affirms treaty rights, defined by the Supreme Court of Canada as recognition of the state's acceptance that First Nations peoples were independent nations capable of entering into binding "nation to nation relations".[31] Subsequent decisions, such as *R v Sparrow*[32] and *Delgamuukw v British Columbia*,[33] continued a series of judicial determinations on section 35 which supported both the constitutional protection and the specific rights of First Nations people to access their land, water and resources.

2. Truth and Reconciliation Commission 2015

The Canadian Federal Government established the Truth and Reconciliation Commission in 2007 to investigate the harm suffered by Indigenous peoples from the government's use of Residential Schools for assimilating Indigenous children during the eighteenth and nineteenth centuries. The Commission's final report, released in 2015, outlined 94 wide-ranging "Calls to Action" identifying ways in which the government could address persistent wrongs committed and inequalities created by government agencies.[34]

Recognising the importance of the Indigenous Declaration, the Commission reported that[35]

> [s]tudying the Declaration with a view to identifying its impacts on current government laws, policy, and behaviour would enable Canada to develop a holistic vision of reconciliation that embraces all aspects of the relationship between Aboriginal and non-Aboriginal Canadians, and to set the standard for international achievement in its circle of hesitating nations.

One of the Commission's Calls to Action entreats the Canadian government to[36]

> [r]econcile Aboriginal and Crown constitutional and legal orders [first laws and traditions] to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.

The report goes on to state:[37]

> The Commission believes that the revitalization and application of Indigenous law will benefit First Nations, Inuit, and Métis communities, Aboriginal–Crown relations, and the nation as a whole. For this to happen, Aboriginal peoples must be able to recover, learn, and practise their own, distinct, legal traditions.

To this end, the Commission called for Indigenous law institutes to be established in Canada:[38]

> In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

31 David Nahwegahbow and Nicole Richmond "Impact of the 1982 Constitution on First Nations: Reflections on Section 35: Whether the Constitution Act Has Made a Difference for First Nations?" (2007/2008) *National Journal Of Constitutional Law*, Suppl. Constitutional Update 2007 Toronto Vol. 23, 153 At 158, citing *R v Sioui* [1990] 1 SCR 1025.

32 *R v Sparrow* [1990] 1 SCR 107.

33 Above n 23.

34 Truth and Reconciliation Commission of Canada *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* 2015.

35 At 190.

Jacinta Ruru, Tame Te Rangi and Adam Tapsell, Māori Leadership in Law Scholarship to the inaugural recipient 2015.

36 At 199, Call to Action 45 iv.

37 At 205.

38 At 207, Call to Action 50.

Furthermore, the Commission specifically called on the legal profession:[39]

> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
>
> We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti- racism.

Together these Calls to Action created a significant impetus for law schools to respond and gave Indigenous legal academics a great boost to continue their calls for reform.

3. Response from the Law Schools

There are thirty law schools in Canada. The first-level common law degree is the Juris Doctor or JD, which takes three years to complete (the LLB, LLL and BCL are further law degrees offered that either partly or wholly provide civil law education). The law degree in Canada is an undergraduate degree program, not a graduate degree program, even though prior undergraduate education is required for entry.

The call from the Truth and Reconciliation Commission made in 2015 was immediately heeded by a number of law schools in Canada. Professor Michael Coyle noted in his 2017 report that of the twelve English-speaking law schools in Canada at the focus of his report, nine were currently offering regular courses on Indigenous legal traditions.[40] These universities include the University of Victoria, Western University, McGill University and Osgoode Hall. In 2018, the Council of Canadian Law Deans published reports of twenty-one of twenty-three Canadian law schools on how they had responded to the Commission's Calls to Action.[41] Of these law schools, three had implemented a compulsory Indigenous law component by 2017, with others beginning to expand their curriculums towards this goal.[42]

Among Indigenous scholars, Professors Borrows and Napoleon at the University of Victoria, British Columbia, have been leaders in Indigenous academia in forging a path to enable Indigenous legal orders to gain a place within the curriculums of Canadian law schools. The teaching methods employed by Borrows and Napoleon include trans-systemic pedagogies and some land-based learning outside of the classroom, as well as field schools away from the tertiary campus in years three and four, and the analysing of historic narratives as akin to discussing precedent cases.[43] In addition, students spend time in Indigenous communities to learn in a local setting and from experts in Indigenous law who may be outside of legal academia.

The University of Victoria has gone a leap further than simply teaching law courses with Indigenous law content. It offers a Joint Degree Program in Canadian Common Law and Indigenous Legal Orders (JD/JID multijuridical), which gives students the opportunity to graduate within four years with two degrees: one in the common law and one in Indigenous legal orders.

39 At 168, Call to Action 27 and 28.

40 Coyle above n 13, at vii. Note that 'legal orders' denotes a legal tradition rather than, say, an order of the Court.

41 Council of Canadian Law Deans *CCLD TRC Report* July 2018 https://ccld-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf. Note there are now 24 law schools in Canada.

42 Above n 13. These three are University of Victoria, Lakehead University and University of British Colombia.

43 John Borrows "Outsider Education: Indigenous Law and Land-Based Learning" in 15 *Yearbook of New Zealand Jurisprudence* (2017); Val Napoleon and Hadley Friedland "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016) *McGill Law Journal* 725.

II. Formal International and Comparative Calls for Recognition of Indigenous Laws CONT.

The first intake to this new programme was welcomed in September 2018.[44] Also, Nunavut Artic College in conjunction with the Government of Nunavut, and more recently the University of Saskatchewan Law School, offers a four-year law degree designed for Nunavut students which incorporates Inuit legal traditions, uses their Indigenous language, and is taught on their lands. These students graduate with a University of Saskatchewan law degree.

This development in Indigenous legal education is particularly critical given the very difficult experiences of Indigenous law students in Canada. Monture wrote in 1990 of her law school experience as a First Nations student. Despite there being better access to law schools for First Nations students, once she was enrolled she found that the teaching maintained very much the "missionary" approach to education, where Indigenous students were expected to change and assimilate to be successful in that setting, in line with the broader historical approach that education in Canada has adopted towards First Nations students.[45] More recently, Lawrence and Shanks write that for many Indigenous students "law school is a full scale assault on their sense of justice".[46] The low numbers of Indigenous students and academics present in law schools, the perpetuation of colonialist dogma in course content, and the stereotyping of Indigenous students as lacking academic ability all contribute to this "assault".[47] The authors note a programme at the Native Law Centre at the University of Saskatchewan that prepares students for law school in attempt to "mitigate the impact of the environment of the law school", which can be "a powerful experience of exclusion and oppression".[48] But this program has now ended.

44 Hannah Askew "Learning from Bear-Walker" in *Windsor Yearbook of Access to Justice* (2016) 33(1) at 31; University of Victoria "Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID" (2019) https://www.uvic.ca/law/about/indigenous/jid/index.php.

45 Patricia A Monture "Now That the Door is Open: First Nations and the Law School Experience" (1990) *Queen's Law Journal* 15(2) at 180, 185.

46 Sonia Lawrence and Sigma Daum Shanks "Indigenous Lawyers in Canada: Identity, Professionalization, Law" (2015) *Dalhousie Law Journal* 38(2) at 513. See also John Borrows "Outsider Education" above n 43 and Gerry Ferguson and Kuan Foo *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (Vancouver, Law Society of British Columbia, 2000). Note this was the third report produced from this project.

47 At 513, 514, 523.

48 At 514.

C: Australia

The Aboriginal and Torres Strait Islander people were the First Nations of Australia. They first made home the lands now known as Australia many thousands of years ago and had highly complex legal systems in operation prior to colonisation. Just as colonisation in Canada seriously undermined Indigenous laws, Western colonisation caused significant damage here too.

1. Constitution

The Constitution of Australia was drafted at the turn of the twentieth century by European colonisers who believed that in accordance with their law (English common law) no one had owned the country until their arrival. It was not until 1992 that the eighteenth-century notion of *terra nullius* in Australia was finally overturned and the customary rights and laws of the Aboriginal and Torres Strait Islander peoples recognised as extant. Until then the Constitution relied heavily on *terra nullius* to assume absolute sovereignty over the Aboriginal and Torres Strait Islander peoples and their lands. This absolute authority was supported by the courts until the landmark *Mabo v Queensland (No2)* decision, which held that[49]

> the common law of this country recognizes a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional lands...

Subsequently, the Australian Parliament enacted the Native Title Act in 1993, which provides a limited means to recognise Aboriginal and Torres Strait Islander peoples' customary rights to their land under traditional laws and customs, legal systems for that recognition, and compensation where native title was infringed. But the Constitution itself remains silent about Aboriginal and Torres Strait Islander peoples. One of the most recent calls to change the Constitution was made in 2017.

In 2017, Law Professor Megan Davis, member of the Australian Referendum Council, read the *Uluru Statement from the Heart* on the floor of the First Nations Convention. The *Uluru Statement* is a short document

49 Above n 22.

by the First Nations of Australia clearly stating their possession and sovereignty of the Australian continent. We reproduce the *Statement* here in full:

> Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from 'time immemorial', and according to science more than 60,000 years ago.
>
> This sovereignty is a spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.
>
> How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years?
>
> With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.
>
> Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are aliened from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.
>
> These dimensions of our crisis tell plainly the structural nature of our problem. *This is the torment of our powerlessness*.
>
> We seek constitutional reforms to empower our people and take a *rightful place* in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.
>
> We call for the establishment of a First Nations Voice enshrined in the Constitution.
>
> Makarrata is the culmination of our agenda: *the coming together after a struggle*. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.
>
> We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.
>
> In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.

The *Uluru Statement* is a powerful call for constitutional change in Australia.

II. Formal International and Comparative Calls for Recognition of Indigenous Laws CONT.

2. Law Commission Reform Work

In 1986, the Australian Law Reform Commission published *The Recognition of Aboriginal Customary Laws*, which brought a surge of optimism that Aboriginal customary laws would, at last, be treated as legitimate.[50] In the following years, the law reform bodies of Northern Territory and Western Australia both published detailed reports that grappled with Indigenous legal concepts that did not fit cleanly into the Western definitions of "custom" and "law" as siloed paradigms. Like many Indigenous customary law frameworks, they were considered more spiritual than juridical in nature.[51] In 2006, the Law Reform Commission of Western Australia published *Aboriginal Customary Laws: The Interaction of Western Australian Law with Aboriginal Law and Culture*, which reviewed the international obligations imposed by the then draft Indigenous Declaration and recommended the recognition of Aboriginal customary law consistent with international human rights standards.[52] However, while it may appear that these recommendations have largely gone unheeded, there has been a strong move by the federal Department of Education, Skills and Development to improve higher education access and outcomes for Aboriginal and Torres Strait Islander peoples, including in law schools.[53]

3. Law Schools

There are currently thirty-eight law schools in Australia. The undergraduate LLB degree is the most commonly offered qualification, but some of the law schools are now moving towards also offering postgraduate JD programmes.

Australian Indigenous legal academics have been working on issues of cultural competency and the recognition of Indigenous laws for many years. For example, the work of Indigenous legal scholars such as Professors Larissa Behrendt[54] at University of Technology Sydney and Megan Davies[55] at the University of New South Wales has been influential and foundation-setting. The Indigenous Law Centre at University of New South Wales, established in 1981, is a globally connected research centre that produces significant research outputs, including the only two journals dedicated to Indigenous legal issues in Australia, the *Indigenous Law Bulletin* and the *Australian Indigenous Law Review*.

Just as in Canada, an increasing number of academic publications are calling for Australian law schools to more comprehensively and consistently decolonise and Indigenise their legal education programmes. In a 2016 article, Greenwood noted that while Indigenous perspectives and legal issues impacting Indigenous peoples have made their way into Australian law school teaching content to varying extents, the law schools have "failed to engage with Indigenous laws".[56] Greenwood states that, by necessity, Indigenous laws should be "taught by or in close collaboration with Indigenous peoples and communities… with authority to speak about Indigenous law" and that "the continued under-representation of Aboriginal legal academics compounds the difficulties in communicating Indigenous laws".[57]

50 Australian Law Reform Commission *The Recognition of Aboriginal Customary Laws* (1986) ALRC Report 31. See also Tatum Hands "Aboriginal Customary Law: The Challenge of Recognition" (2007) 32 *Alternative Law Journal* 42.

51 Northern Territory Law Reform Committee *Report on Aboriginal Customary Law* (2003) https://nt.gov.au/justice/docs/lawmake/ntlrc_final_report.pdf; Danial Kelly "The Legal and Religious Nature of Aboriginal Customary Law: Focus on Madayin" (2014) 16 *U. Notre Dame Australia Law Review* 50.

52 Law Reform Commission of Western Australia *Aboriginal Customary Laws – The Interaction of Western Australian Law with Aboriginal Law and Culture – Final Report* (2006) Project 94.

53 Australian Government Review of Higher Education *Access and Outcomes for Aboriginal and Torres Strait Islander People: Final Report* (July 2012).

54 Professor Larissa Behrendt is a Eualeyai/Kamillaroi woman and Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology, Sydney. She is a Land Commissioner at the Land and Environment Court and the Alternate Chair of the Serious Offenders Review Board, a member of the Academy of Social Sciences of Australia and a founding member of the Australian Academy of Law.

55 Professor Megan Davis is Pro Vice-Chancellor Indigenous UNSW and a Professor of Law, UNSW Law. Megan was elected by the UN Human Rights Council to UNEMRIP in 2017. She currently serves as a UN expert with the UN Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples based in Geneva. Megan is an Acting Commissioner of the NSW Land and Environment Court and a Fellow of the Australian Academy of Law and a Fellow of the Australian Academy of Social Sciences. She is a member of the NSW Sentencing Council and an Australian Rugby League Commissioner. She was also Director of the Indigenous Law Centre, UNSW Law, from 2006 to 2016.

56 Brooke Greenwood "First Laws: The Challenge and Promise of Teaching Indigenous Laws in Australian Law Schools" (2016) 24 *Waikato Law Review: Taumauri* at 44.

57 At 54.

In 2016, McGuire and Young offered arguments in favour of including teaching around the "first legal systems of Australia" but noted that key obstacles include the vast range of Indigenous laws that exist among Indigenous Australian nations, the lack of "qualified and authorised" Indigenous people who can teach about Indigenous law, and the corresponding low numbers of Indigenous legal academics.[58] McGlade, in her article "The Day of the Minstrel Show", demonstrates the profound barriers faced by Indigenous law academics in Australian law schools and notes that at the time of writing (2005) there were no longer any Indigenous law academics employed in Western Australian universities.[59]

McGuire and Young discuss Indigenous law as an uplifting addition to a legal education. Their focus is the inclusion of Indigenous legal issues and perspectives in Australian legal education, as perhaps first step in creating a space for Indigenous ideas within law schools. Overall, there is an explicit ambition in Australian law schools to produce culturally competent law graduates.[60] "Cultural competence" is defined as the "knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with proficiency to engage and work effectively in Indigenous contexts".[61] This appears to mean an awareness of the historical impacts of colonisation on Aboriginal and Torres Strait Islander peoples and the ongoing disparities and disenfranchisement this has caused and continues to cause. While achieving cultural competence may be an important step, Greenwood proposes that Australian law schools go deeper still and take up the challenge of including Indigenous law in their teaching, in pursuit of a "richer, more just education ... and the revitalisation of legal structures that have guided communities... for thousands of years".[62]

4. Student Experience

In the 1998 article "'This Is Not Just about Me'": Indigenous Students' Insights about Law School Study", Douglas interviewed twenty-five current or past Indigenous law students in the Brisbane area.[63] She noted that nearly every student interviewee reported that law school had been "difficult and disheartening" and that Indigenous students typically comprise less than 2 per cent of an annual law school intake.[64] The major barriers reported by Indigenous students were cultural isolation, pressure from familial obligations and financial difficulties.[65] Suggestions for improvements to law schools for the benefit of Indigenous students included providing part-time study options to allow flexibility to meet family obligations; making them to be more affordable; employing Indigenous tutors, lecturers and support mentors, particularly in the crucial first year of study; and providing cultural awareness training for academic staff.[66]

In her later article "Indigenous Legal Education: Towards Indigenisation", Douglas noted that law schools seem to expect that Indigenous achievement is dependent on Indigenous students changing and adapting to the law school, rather than the law school itself changing.[67] She argues that law schools must be transformed to be "safe spaces for Indigenous students".[68]

58 Amy McGuire and Tamara Young "Indigenisation of Curricula: Current Teaching Practices in Law" (2016) 25 *Legal Education Review* 95–119 at 105.

59 Hannah McGlade "The Day of the Minstrel Show" in (2005) *Indigenous Law Bulletin: Racism in Legal Education Special* 4.

60 Alison Gerard, Annette Gainsford and Kim Bailey "Embedding Indigenous Cultural Competence in a Bachelor of Laws at the Centre for Law and Justice, Charles Sturt University: A Case Study" in K Lindgren, F Kunc and M Coper (eds), *The Future of Australian Legal Education: A Collection* (Sydney, 2018); Alison Gerard and Annette Gainsford "Using Legislation to Teach Indigenous Cultural Competence in an Introductory Law Subject" (2018) 28 *Legal Education Review* 1.

61 Gerard and Gainsford, above n 60, at 4.

62 Greenwood above n 56, at 57.

63 Heather Douglas '"This is Not Just about Me': Indigenous Students' Insights about Law School Study" 1998 *Adelaide Law Review* 20 349–370.

64 At 317; at 329.

65 At 348.

66 At 344; at 336; at 348.

67 Heather Douglas "Indigenous Legal Education: Towards Indigenisation" in (2005) *Indigenous Law Bulletin: Racism in Legal Education Special* 3.

68 At 6/8.

Wood adds to the narrative, noting that the Australian National University College of Law established the Tjabal Indigenous Higher Education Centre in the early 1990s, providing a "targeted support program for Indigenous students" which essentially piloted a model for Indigenous student pastoral care and academic support that could be rolled out across other Australian law schools.[69] This program is operated "almost entirely by Indigenous staff"; however, the author notes that, while operating well on a small scale, the program may not be practical on a larger one.[70]

We are also aware that a number of Australian law schools are taking action to better engage with Indigenous students in response to the National Best Practice Framework for Indigenous Cultural Competency[71] and the Guiding Principles for the Development of Indigenous Cultural Competency in Australian Universities.[72]

5. Indigenous Cultural Competency for Legal Academics Project (2019)

The Indigenous Cultural Competency for Legal Academic Professionals (ICCLAP) project has been a significant cross-institutional multi-year collaboration with the aim of improving Indigenous cultural competency in legal education and developing Indigenous cultural competency (ICC) in all law students. Led by Marcelle Burns of the University of New England, New South Wales, the collaboration included academics from five law schools and was supported by the Australian Government Department for Education and Training. The researchers began in 2011 with a literature review and law school survey and subsequently tested possible solutions drawn from their findings in numerous workshops and conferences.

The ICCLAP project's final report, published in 2019, makes several key recommendations, including: ICC in staff and students should be promoted to improve Indigenous student success; Indigenous knowledges and perspectives should be embedded in all university curriculums; and ICC should be included as a graduate attribute.[73] This six-year project followed on from a significant body of work previously published on this subject.[74] An important step towards its aims is to build the capacity of legal academics to engage with Indigenous knowledges and ICC in their work. The report states that the[75]

> inclusion of Indigenous knowledges in legal education is essential to shifting unequal power relationships between First Peoples and the Anglo-Australian legal system, and offer students the opportunity to 'critically reflect on one's own culture and professional paradigms in order to understand its cultural limitations and effect positive change.

D: Conclusion

The law school experience in colonised nations for Indigenous students can be very tough. Law has been a valuable tool of the colonist to deny Indigenous peoples' their sovereignty, property, culture and dignity. Law schools in countries such as Canada and Australia are beginning to realise not only the barriers for Indigenous students' entry into law schools, but also the biases inherent within law school curriculums. Aotearoa New Zealand can be inspired by these international shifts as we set about developing our own solutions for systemic change.

69 Asmi Wood 'Law Studies and Indigenous Students' Wellbeing: Closing the (Many) Gap(s)" (2011) *Legal Education Review* 21, 2.

70 At 274, 275. The article does not provide detail on the numbers of students the programme currently caters for.

71 Universities Australia and Indigenous Higher Education Advisory Council *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities*, Universities Australia, Canberra (2011) https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Compet#.WYPBr1Igm4o.

72 Universities Australia and Indigenous Higher Education Advisory Council *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities*, Universities Australia, Canberra (2011) http://www.universitiesaustralia.edu.au/lightbox/1313.

73 Above n 14.

74 For example, see Marcelle Burns "Towards Growing Indigenous Culturally Competent Legal Professionals in Australia" (2013) *International Education Journal* 12(1), 226–248; Amy Maguire and Tamara Young "Indigenisation of Curricula: Current Teaching Practices in Law" (2015) Legal Education Review 5.; Greenwood above n 56; Gerard and Gainsford above n 60.

75 Above n 14 at 8.

III. Recognition of Māori Law in Aotearoa New Zealand's State Legal System

The Aotearoa New Zealand political and state legal systems are engaging with the validity of Māori law in legislation and legal precedent. This is occurring at the same time as the New Zealand Government begins to operationalise its commitment to the Indigenous Declaration, as Treaty jurisprudence continues to develop through Waitangi Tribunal reports and the Treaty settlements process, as the Māori economy grows with a strong tikanga base, and as more and more New Zealanders begin to embrace te reo Māori as a signifier of their Aotearoa New Zealand identity. In this section we review the literature on Māori law, examining both the developing scholarship and the parliamentary and judicial recognition of tikanga. We conclude that Aotearoa New Zealand is already developing a bijural legal system and that this should be recognised by including Māori law as a foundational part of the LLB degree.

A: Definitions

In *Tikanga Māori: Living by Māori Values*, Mead provides a comprehensive description and analysis of tikanga Māori in traditional and contemporary Aotearoa New Zealand:[76]

> Tikanga are tools of thought and understanding. They are packages of ideas which help to organise behaviour and provide some predictability in how certain activities are carried out. They provide templates and frameworks to guide our actions and help steer us through some huge gatherings of people and some tense moments in our ceremonial life. They help us to differentiate between right and wrong in everything we do and in all of the activities we engage in. There is a right and proper way to conduct one's self.

In 1996, Durie J, in considering whether Māori custom could be considered law, stated extra-judicially: "I have assumed the proper question to be whether there were values, standards, principles or norms to which the Māori community generally subscribed for the determination of appropriate conduct."[77] In his concluding comments to that article, Durie J asked:[78]

> Will we recognise the laws of England or the laws of New Zealand and if the latter, will we hone our jurisprudence to one that represents the circumstances of the country and shows that our law comes from two streams?
>
> This is not a plea for a dual system of law. Nor is reform sought that would create historical causes of action or disturb current titles. It is about law and cultural conciliation to ensure a proper provision for indigenous law in our jurisprudence and statutes.

Tikanga Māori operates as law and is increasingly recognised by the courts and community as contributing to Aotearoa New Zealand's jurisprudence.[79] This is not to say that existing tikanga systems stand ready to implement or enforce Māori law, at least in a Western institutional sense. Mead, for example, was not convinced that tikanga Māori was sufficiently well known such that it might be adopted as a customary law and therefore be "binding on the majority of the Māori population", particularly in respect of criminal law, "[i]n the sense of the determination of a 'system of rules produced by agents of the community and which could have courts where offenders could be formally tried'".[80]

76 Mead above n 3, at 12.

77 Above n 4, at 452.

78 At 452.

79 For example, see *Takamore v Clarke* above n 11; *Peter Hugh McGregor Ellis v The Queen* SC 49/2019 [2019] NZSC Trans 31.

80 Mead above n 3 at 6–7.

That caution was echoed more recently by Māori legal scholar Moana Jackson's expert evidence in *R v Mason*.[81] But the question this Issues Paper considers is not whether there are the institutional structures in place for implementing Māori law. Rather, this paper sets out to review the literature that considers how Māori law can be understood as "law" and therefore taught in Aotearoa New Zealand's law schools, as a crucial step towards building a single jurisprudence from Durie's "two streams" as part of our "cultural conciliation".[82] In *R v Mason*, Heath J cited Jackson's evidence as the means by which a tikanga Māori system could be understood in the modern context as part of an "evolutionary rebuilding":[83]

> In an iwi/hapū context and many iwi and hapū do have those processes and the people skilled in implementing them but that's part of the evolutionary rebuilding, I think, but the attempts to rebuild that are constantly being hamstrung when we are told so often that there's no such thing or it's been extinguished or it has no validity... rebuilding the practical effectiveness of tikanga as a legal process if you like when so much damage has been done to, it will be as long-term as rebuilding the language because there is a lot of history to overcome and it may well be that as that process matures, that part of the reconciliation in the treaty relationship if you like is a negotiated jurisdictional ambit...

This rebuilding is underway and is beginning to be supported more broadly by the judiciary, who are increasingly considering tikanga Māori in their deliberations. This does not mean that our task ahead is easy or straightforward. As described below, Aotearoa New Zealand could evolve towards a single legal system with Māori law incorporated into it or a pluralistic system of two strands of law operating with some crossover, or perhaps some other structural form.

We expect that the future development of Aotearoa New Zealand legal system will be a process of debating contested ideas and that legal communities and society in general will pay increasing attention to its development over the coming years. We believe that a crucial step in this law reform debate is the teaching of Māori law as a distinct and comprehensive legal system operating prior to and after colonisation within the terms and structures determined by the Māori legal experts operating under tikanga Māori.

B: Recognition by Aotearoa New Zealand's State Legal System

Māori law has been recognised by the judiciary and Aotearoa New Zealand's governance bodies at different points since the early days of the colonial government. In 2001, the Law Commission, led by Baragwanath J and assisted by a panel of experts including Bishop Manuhuia Bennett, Durie J, and Judge Michael Brown, published *Māori Custom and Values in New Zealand Law* to provide a "concise document for judges and decision-makers". The inquiry was initiated by Durie J, who noted extrajudicially, that "some knowledge of Māori custom would greatly assist judges in carrying out their judicial functions".[84]

In its report the Law Commission describes in some detail the historical recognition of the legal authority of tikanga Māori:[85]

> In 1840, the British Minister informed Governor Hobson that
>
> > [the Māori people] have established by their own customs a division and appropriation of the soil ... with usages having the character and authority of law ... it will of course be the duty of the protectors to make themselves conversant with these native customs...

81 *R v Mason* [2012] NZHC 1361; [2012] 2 NZLR 695.

82 Above n 4 at 461.

83 At [48].

84 Law Commission *Māori Custom and Values in New Zealand Law* (2001) New Zealand Law Commission SP9 2001 at vii.

85 At 18.

III. Recognition of Māori Law in Aotearoa New Zealand's State Legal System CONT.

Following this pattern, the Secretary of State for the Colonies, Lord Stanley, advocated a justice system that was inclusive of Māori custom. In 1842, he advanced the suggestion that certain Māori institutions such as tapu be incorporated into the English system. He further suggested that legislation be framed in some measure to meet Māori "prejudices", including punishment for desecration of wāhi tapu (sacred places). Tentative legislative recognition was accorded Māori custom law by way of, in particular, the Native Exemption Ordinance 1844, Resident Magistrates Courts Ordinance 1846 and Resident Magistrates Act 1867, which used Māori assessors, and section 71 of the Constitution Act 1852.[86] Section 71 provided for the establishment of Māori territorial districts where.[87]

> the Laws, Customs, and Usages of the aboriginal or native Inhabitants of New Zealand, so far as they are not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves, in all their Relations to and Dealings with each other...

This provision provided for the creation of autonomous "Native" districts for the exercise of Māori political, legal and social autonomy.[88] The provision was never used and finally repealed in 1986. The general recognition of Māori customary law by early Pākehā governance steadily declined until the 1877 *Wi Parata*[89] case, which held the Treaty to be a "simple nullity" and denied the existence of any legitimate Māori tribal sovereignty. Specific recognition of Māori customary law remained a core part of the work of the Native Land Court (first established in 1862) but for the express purpose of converting Māori land tenure into a English freehold tenure system. *Wi Parata* remained a general precedent for 125 years before being finally and fully overturned by the Court of Appeal in *Attorney General v Ngāti Apa*[90] in 2003.

Despite Prendergast CJ's ruling in *Wi Parata* and its many consequences, it is clear that aspects of Māori law and English common law were understood in the early years of the colony as two distinct juridical traditions. And despite more than a century of the general disregard for Māori law, the judiciary has in the twenty-first century been making significant strides in accepting and understanding tikanga Māori as Māori law and as relevant to Aotearoa New Zealand's state legal system. This process has not been without its critics. In noting the move away from *Wi Parata*, Mikaere warned:[91]

> While Prendergast's overt racism has for the most part been spurned in favour of greater cultural sensitivity, any concessions that are made to Māori aspirations for tino rangatiratanga and the recognition of tikanga are nevertheless envisaged as occurring within the framework of Crown sovereignty.

86 For further discussion on these early acknowledgements see Dame Sian Elias "Sailing in a New Direction: The Laws of England in New Zealand" (address at the Great Hall, Lincoln's Inn, England for the UK-NZ LINK Foundation, 12 November 2002); Richard Boast et al *Māori Land Law* (Butterworths, Wellington, 2004); ET Durie *Custom Law* (unpublished confidential draft paper for the Law Commission, January 1994); Alex Frame "Colonising Attitudes towards Māori Custom" (1981) New Zealand Law Journal 105. And by way of interest, see an 1840 article authored by Samuel Revans, Secretary to the Committee of Colonists, *New Zealand Gazette and Wellington Spectator*, Vol 18, Issue 2, 18 April 1840, https://paperspast.natlib.govt.nz/newspapers/NZGWS18400418.2.4?end_date=31-12-1870&items_per_page=10&query=court&snippet=true&sort_by=byDA&start_date=01-01-1839&type=ARTICLE accessed 7 February 2020.

87 Paul Heath "'One Law for All' – Problems in Applying Maori Custom Law in a Unitary State" (2012) 13–14 *Yearbook of New Zealand Jurisprudence* 194–212.

88 For a full discussion see Robert Joseph *"The Government of Themselves": Case Law, Policy and Section 71 of the New Zealand Constitution Act 1852* (Te Mātāhauariki Institute, Waikato, 2002).

89 *Wi Parata v The Bishop of Wellington* (1877) 3 Jur (NS) 72.

90 *Attorney General v Ngāti Apa* [2003] NZCA 117; [2003] 3 NZLR 643 (Court of Appeal).

91 Ani Mikaere "The Treaty of Waitangi and Recognition of Tikanga Māori" in Michael Belgrave, Merata Kawharu and David Williams (eds) *Waitangi Revisited": Perspectives on the Treaty of Waitangi* (Oxford University Press, 2005), 330.

Te Aho summarised in 2007 the extent to which tikanga has been incorporated into Aotearoa New Zealand law and concluded at that time that although tikanga did occupy a place in the common law, its consideration was limited.[92] Joseph agreed, noting in 2009 that the "current legal system is encouraging the integration and reconciliation of Māori customary and English common law",[93] but cautioned that[94]

> Māori custom is generally not recognised as a freestanding source of law in its own right. A critical challenge facing the Judiciary in applying substantive Māori customary law then lies in their lack of understanding of te reo Māori (language), mātauranga Māori (world views, knowledge base) and general tikanga Māori customary law.

Heath J, writing extra-judicially, also identified the challenges for the court in recognising and then applying Māori law in court:[95]

> [I]t is my view that a critical difficulty facing the judiciary in applying substantive Māori custom law lies in their lack of understanding of Māori culture. How can an accepted custom be proved? And by whom? As the Law Commission lamented in 2001 "Part of the problem today is that judges, through no fault of their own, are being called upon to assess the mores of a society still largely foreign to them." One facet of this "misunderstanding" is the fact that most of the judiciary are not bilingual. A lack of fluency in Māori becomes problematic when Judges are called upon to consider and apply Māori concepts in statutes. In applying such a concept, a non-bilingual judge must, first, identify the English equivalent and, second, identify the incidents of that concept in terms of English understanding. This two-pronged process divorces the concept from its philosophical and cultural base and often removes much of its integrity.

Nonetheless by the time of the Supreme Court decision in *Takamore*[96] in 2012, the courts were not only required to interpret legislation which incorporated Māori law[97] but stated plainly that "Māori custom according to tikanga is therefore part of the values of the New Zealand common law".[98] That decision was referred to more recently by the Supreme Court in *Peter Hugh McGregor Ellis v The Queen*,[99] where the Court discussed and sought further submissions on the Māori view of the legal status of a deceased person in considering the applicant's posthumous appeal. Glazebrook J asked:[100]

> Isn't it a matter of law though, isn't the question being asked, given that we are in Aotearoa, given that we have the Treaty, given that we have statements, at least both extra judicially and otherwise, **that tikanga should be part of the common law generally, and in fact it should always have been part of the common law historically**,[101] then as a matter of law should we be taking the approach in this context… if you look at *Takamore* and various cases of that nature, I wouldn't have thought it was controversial to say that tikanga does not take the same approach. I would have thought judicial notice of that was probably able to be taken

> Although obiter, this comment is an example of how the judiciary is currently thinking not only about the ways that tikanga can be applied in contemporary cases but also the role of Māori law historically.

92 Linda Te Aho "Tikanga Māori, Historical Context and the Interface with Pākehā Law in Aotearoa/New Zealand" (2007) 10 *Yearbook of New Zealand Jurisprudence* at 10. For more of this discussion on tikanga and Māori laws see Te Aho (ed) "Tikanga Māori me te Mana i Waitangi: Māori Laws and Values, Te Tiriti o Waitangi, and Human Rights Special Issue" (2007) 10 *Yearbook of New Zealand Jurisprudence*.

93 Joseph "Re-creating Space for the First Law of Aotearoa-New Zealand" above n 3, at 74.

94 At 91, referencing the High Court decision *Clarke v Takamore* (HC Christchurch CIV 2007-409-001971, July 2009 Fogarty J) as an example.

95 Above n 87, at 210.

96 Above n 11.

97 Jacinta Ruru "First Laws: Tikanga Māori in/and the Law" (2018) *Victoria University of Wellington Law Review* 13 at 218–219.

98 At 94.

99 Above n 79.

100 At 54–55.

101 Authors' emphasis.

III. Recognition of Māori Law in Aotearoa New Zealand's State Legal System CONT.

In 2013, Te Mātāhauariki Institute at the University of Waikato, under the direction of the late Judge Michael Brown, published *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law.*[102] This rich source provides explanations of tikanga terms and the context in which these terms were and are used. The work was extolled by Dickson as "a publication that would assist in explaining the meaning of Māori tikanga practice and further, it might show how Māori tikanga practice could fit into the present legal system".[103] The two texts, *Māori Custom and Values in New Zealand Law* and *Te Mātāpunenga*, remain key in providing judges and decision-makers with authoritative sources they can draw on, independent of the submissions of interested parties. We also note the significant resources available in the Legal Māori Resource Hub developed by Victoria University of Wellington with support from the Law Foundation, which provides, among other resources, the Legal Māori Corpus, an impressive digitised collection of thousands of pages of legal and law-related texts in the Māori language dating from 1829 to 2009.[104]

This quickly growing body of knowledge and recognition of tikanga as a source of relevant law is supported by the courts' growing recognition of the rights contained in the Indigenous Declaration. Mackay[105] has set out a brief description of this recognition, citing the Court of Appeal in *Takamore v Clarke*, which noted the "importance of recognising the collective nature of indigenous culture (as recognised in particular by the Indigenous Declaration)".[106] In addition to the *Takamore* and *Ellis* cases, the higher courts have endorsed the Crown's obligations under the Indigenous Declaration.[107]

In addition, the New Zealand Parliament is also increasingly acknowledging the legitimacy and supporting the implementation of Māori law. Treaty settlement legislation routinely acknowledges the mana, mauri and whakapapa of the natural environment, thereby recognising Māori legal concepts in relation to nature, as the Indigenous Declaration requires. Of particular note is the recognition in statute of Te Urewera[108] and the Whanganui River[109] as having the unique status of "legal persons" with "rights, powers, duties, and liabilities".[110] Joseph notes that the tikanga concept of kaitiakitanga, provided for in section 7 of the Resource Management Act 1991, is also included in twenty-eight specific statutes.[111] In addition to many references to tikanga and tikanga concepts in Treaty Settlement legislation, tikanga is referenced in at least forty further statutes, ranging from the Oranga Tamariki Act 1989 to the Building Act 2004.

C: Critique of Incorporating Tikanga into Pākehā Law

The literature reviewed above supports the recognition of tikanga Māori as law. The critique of this development comes primarily in two forms. The first is that the two foundational concepts of the Aotearoa New Zealand state legal system – parliamentary sovereignty and legal positivisim – do not allow for the recognition of tikanga as a legal system. In stark contrast, the second holds that the recognition of tikanga Māori as law by the Aotearoa New Zealand common law is an ongoing act of coloniality, in effect the assimilation and degradation of Māori law by the state. We now examine the issues raised by these two critiques.

The principle of parliamentary sovereignty asserts Parliament's law-making role as absolute, neither

102 Benton, Frame and Meredith above n 3.

103 Matiu Dickson "Review of *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law*" *Māori Law Review* (April 2014).

104 https://www.legalmaori.net.

105 Laura MacKay "The United Nations Declaration on the Rights of Indigenous Peoples: A Step Forward or Two Back?" (2013) 1 *Public Interest Law Journal of New Zealand* 177.

106 Above n 11, at [16].

107 For example, see *Ngāti Whātua Ōrākei Trust v Attorney General* SC 135/2017 [2018] NZSC 84; *New Zealand Māori Council v Attorney-General* [2013] 3 NZLR 31 at [92]; *Greenpeace of New Zealand Inc v Minister of Energy and Resources* [2012] NZHC 1422 at [141]; *Wakatu v Attorney General [2017] NZSC 17; Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

108 Te Urewera Act 2014, s 11.

109 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14.

110 Ruru "First Laws" above n 97.

111 Robert Joseph, Mylene Rakena, Mary Te Kuini Jones, Dr Rogena Sterling and Celeste Rakena (2018) *The Treaty, Tikanga Māori, Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand – Possible Ways Forward.* https://sustainableseaschallenge.co.nz/news-updates/empowering-maori-improve-ecosystem-management-aotearoa at 18.

constrained nor shared.[112] Positivisim[113] affirms parliamentary sovereignty and goes further to consider law solely "as the product of authoritative state institutions: eg, the legislation of Parliament and the rulings of the courts, in New Zealand's case".[114] These two views of law have been used to describe why Māori law is unable to be recognised *as* law *by* the law.[115] There are difficulties with this argument. Boast describes the problem:[116]

> It is also debateable whether legal positivism seems true because it appears to accurately describe the functioning of the official legal system, or whether this is only the case because legal practice has conformed to positivist theory since the latter acheived intellectual dominance in Britain and its colonies in the later nineteeth century.

Hart's own rules[117] provide scope for law-making institutions to adapt to new circumstances as needed.[118] Within the narrow scope of legal positivism, which advocates for the full and exclusive authority of Aotearoa New Zealand's law-making institutions, those very institutions are recognising the authority of tikanga as a legal system to a greater or lesser degree.[119]

In the case of parliamentary sovereignty, Parliament has historically recognised and continues to recognise tikanga Māori in legislation.[120] With legislative provisions that go as far back as 1852[121] and the more recent legislative acknowledgements of Te Urewera and the Whanganui River as having a legal personhood as tūpuna,[122] clearly parliamentary sovereignty has not been undermined by the incorporation of tikanga. Coates,[123] Dawson[124] and Charters[125] all acknowledge that this incorporation occurs and that it is not "inconsistent with the formal doctrine of Parliamentary sovereignty".[126]

However, Coates, Charters and Dawson also express concern about the process of incorporation, in that incorporation affirms the absolute supremacy of the Parliament such that the full recognition of tikanga as an extant, relevant legal system is at best subordinate[127] to the Parliament and state law, and at worst an example of an ongoing coloniality, as described by Jackson: "[I]ts presentation as an enlightened recognition of Māori rights are merely further blows in that dreadful attack to which colonization subjects the indigenous soul."[128]

112 See s 15 Constitution Act 1986; Supreme Court Act 2003, s 3(2): "Nothing in this Act affects New Zealand's continuing commitment to the rule of law and the sovereignty of Parliament." See also Somers J "Sovereignty in New Zealand Resides in Parliament" in *NZ Maori Council v A-G* [1987] 1 NZLR 641 at 69; AV Dicey, *An Introduction to the Study of the Law of the Constitution* (Macmillan Press, 10th ed., 1959) 36, 70.

113 See HLA Hart *The Concept of Law* (2nd ed., Oxford University Press, New York 1997) for further discussion.

114 John Dawson "The Resistance of the New Zealand Legal System to Recognition of Māori Customary Law" (2008) 12 *Journal of Pacific Law* 56 at 60.

115 At 61.

116 Boast above n 86, at 21–22.

117 Above n 113.

118 Toki above n 3.

119 See Claire Charters "Recognition of Tikanga Māori and the Constitutional Myth of Monolegalism: Reinterpreting Case Law" (2019) http://dx.doi.org/10.2139/ssrn.3316400 and also Natalie Coates "The Recognition of Tikanga in the Common Law of New Zealand" [2015] *New Zealand Law Review* 1.

120 See Ruru "First Laws" above at n 97.

121 See, for example, s 71 of the Constitution Act 1852, Resource Management Act 1991, Property (Relationships) Act 1976 and Te Ture Whenua Māori Act (Māori Land Act) 1993 as just a few examples.

122 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14. For further discussions see Jacinta Ruru "Listening to Papatūānuku: A Call to Reform Water Law" (2018) *Journal of the Royal Society of New Zealand* 48; Linda Te Aho "Contemporary Issues in Māori Law and Society: Crown Forests, Climate Change, and Consultation – Towards More Meaningful Relationships" (2007) 15 *Waikato Law Review* 138; Liz Charlpleix "The Whanganui River as Te Awa Tupua: Place-based Law in a Legally Pluralistic Society" (2018) *Journal of the Royal Geographic Society* 184.

123 Coates above n 119.

124 Dawson above n 114, at 62.

125 Above n 119.

126 Charters n 119, at 9.

127 See Coates n 119 and Dawson n 114.

128 Moana Jackson "Justice and Political Power: Reasserting Māori Legal Processes" in Kayleen M Hazelhurst (ed), *Legal Pluralism and the Colonial Legacy* (Ashbury Publishing, Idaho, 1995) 244 at 254.

III. Recognition of Māori Law in Aotearoa New Zealand's State Legal System CONT.

Mikaere is also particularly critical of accepting incorporation:[129]

> [S]o long as Crown sovereignty remains unchallenged, tino rangatiratanga cannot be realised and tikanga Māori will forever be positioned as inferior to Pākehā law, tolerated to varying degrees and for different purposes … but ultimately subject to amendment or repeal at the stroke of the legislative pen or to misinterpretation at the hands of the judiciary.
>
> She goes further to assert that rather than state law incorporating tikanga, tikanga is the first sovereign legal system against which any other should be assessed: "We need to be clear and unapologetic about this: in this country, tikanga is 'the 'law'. What the Crown currently refers to as 'the law' is merely the illegitimate product of its abuse of kāwanatanga."[130]

This critique, that the recognition of tikanga in state law undermines its supremacy as the first law of Aotearoa, directly challenges the colonisation of Aotearoa and therefore the constitutional status of the Parliament and its institutions. Both Jackson and Mikaere have acknowledged that there is some value in making the law more responsive to Māori needs and aspirations,[131] but this should not be at the cost of the greater constitutional drive to have Te Tiriti o Waitangi fully implemented; that is, the conferring of tino rangatiratanga. This framing – that the full recognition of tikanga will require constitutional reform or transformation – is echoed by Dawson[132] and by Charters in the following:[133]

To provide greater clarity, accuracy, honesty and coherence in cases in which tikanga is in play, courts should clarify that when they apply tikanga Māori norms, they are recognising tikanga Māori as an authoritative source of law independent of state law, albeit on the basis that *state* courts are constitutionally required to uphold state law as superior. In other words, courts should explicitly acknowledge that their upholding of state law with Parliament as the *ultimate* authority does not mean that state law is or needs to be understood as the *only* legitimate legal authority in the territory of New Zealand. Courts might also take the extra and logical step of formally recognizing that as a matter of tikanga Māori – an independent authoritative source of law in New Zealand – Parliament is not the ultimate and superior source of law even if, as a state court subservient to the superiority of state law, they cannot recognize the same. In doing so, courts would debunk the mythical and colonial narrative that New Zealand is monolegal, yet retain their constitutionally-required deference to Parliament's supremacy. They might also provide a more solid legal basis from which to explore the potential development of a more legitimate postcolonial pluralistic legal order in New Zealand.

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129 Mikaere "The Treaty of Waitangi and Recognition of Tikanga Māori" above n 91, at 342.

130 Ani Mikaere "How Will the Future Generations Judge Us? Some Thoughts on the Relationship between Crown Law and Tikanga Māori" (paper presented at Ma te Rango te Waka ka Rere: Exploring a Kaupapa Māori Organisational Framework, Te Wānanga o Raukawa, Otaki, 2006).

131 Mikaere, "Tikanga as the First Law of Aotearoa" n 1, at 26. See also Moana Jackson's oral evidence in *R v Mason* n 81, where he says of rebuilding the practical effectiveness of tikanga as a legal process, "[I]t may well be that as that process matures, that part of the reconciliation in the treaty relationship if you like is a negotiated jurisdictional ambit".

132 Dawson above n 114, at 62.

133 Charters above n 119, at 18.

Nonetheless, there remains debate as to whether the end result might be a form of pluralism or a single legal system, as Joseph describes:[134]

> The future of Aotearoa-New Zealand must lie in a single legal system which nevertheless recognises and respects the world views, values, customary laws and institutions of the two great founding cultures of this country, Māori and British, as well as 'others' where appropriate. The existing legal framework must be modified thereby permitting the first law of this country, tikanga Māori customary law, to operate effectively... . With education, understanding, competence in both worlds, and confidence on the part of all participants, it may be possible to re-create and re-locate a significant space for the first law of Aotearoa-New Zealand within the legal system. But it will be a significant challenge to do so. Notwithstanding the challenge, Māori, Pākehā and the legal system can rise to the occasion if political will, confidence and competence from all involved exists.

National Māori Student Moot Competition at the Supreme Court, Whanganui-a-Tara, 2019

D: Conclusion

The primary task of this Issues Paper is to review the literature on the teaching of Māori law as extant and operational in Aotearoa New Zealand's current state legal system. It is clear that this is a topical issue that is being discussed by Māori, legal scholars, constitutional experts and legal practitioners, including ourselves. We support this debate on these and other constitutional questions in the face of an evolving jurisprudential environment that is steadily incorporating tikanga into Aotearoa New Zealand law. We unite to advocate for a bijural legal education that will better equip new lawyers and future judges with the tools to critically engage with these critical issues.

134 Joseph above n 2, at 96.

IV. Aotearoa New Zealand's Law Schools

There are six law schools in Aotearoa New Zealand and approximately sixteen individual Māori legal academics across all of those law schools, albeit many have reduced teaching loads, with significantly reduced FTE (for example some are only .2FTE associated with a law school). Moreover, the Māori experience of studying and practising Pākehā law is relatively recent (Māori only began to graduate in law in any numbers in the 1970s) and law schools have remained in many respects inimical to Māori law and experience. Research exists from around the world, including here in Aotearoa New Zealand, that attests to this.[135] The numbers also bear this out: in 2016 only 10 per cent of all LLB and LLB honours completions were Māori students,[136] and in 2017 only 6 per cent of law academics identified as Māori.

All six law schools are increasingly cultivating a culturally sensitive approach to their teaching and finding ways to provide more support to Māori law students. Each law school teaches Māori legal issues to a greater or lesser degree. However, with the exception of Waikato Law School, which has a foundation of biculturalism, few are engaging with the structural change necessary to facilitate a deliberate bicultural approach. All are at varied stages in the teaching of components of Māori law within the LLB degree. These individual efforts of the law schools are applauded, but they are challenged by the absence of any nationally coordinated programme to scale up this practice, or any national opportunity to reflect and discuss how far we ought to go in teaching Māori law within the LLB degree. Te Piringa | the Faculty of Law at the University of Waikato has been at the forefront of this journey. The New Zealand Council of Legal Education is the statutory body responsible for the regulation, quality and provision of legal training for those wishing to be admitted as barristers and solicitors to the profession in Aotearoa New Zealand. The Council prescribes the core curriculum for the LLB degree. The core subjects are:

Legal System

Law of Torts

Law of Contracts

Criminal Law

Public Law

Property Law (or Land Law, and Equity and Succession where Property Law is not offered.)

Legal Ethics is also a prescribed course for those wishing to be admitted to the profession.

The Council has confirmed that it is currently looking at the inclusion of tikanga Māori in the LLB curriculum in consultation with Aotearoa New Zealand's law schools. This consideration by the Council is welcome and timely, as over the last thirty years there has been growing interest among the general population of Aotearoa New Zealand in learning relating to Māori culture and language as a whole.[137]

There do not appear at present to be any published studies on the student uptake of papers with strong Māori content, and whether this has been consistently increasing or waxed and waned. Anecdotally, however, there appears to be firm demand from the student body for papers with Māori content, and how this is manifested across the six law schools in terms of student enrolments presents an area for further research. We expect to understand this better through the Phase Two consultation process of this project.

135 For the New Zealand experience see, for example, Makere Papuni-Ball *Caught in the Cross-Fire: The Realities of Being Māori at a Bicultural Law School* (LLM Thesis, University of Waikato,1996); Caroline Morris "A 'Mean Hard Place'? Law Students Tell It as It Is" (2005) 26 *Victoria University of Wellington Law Review* 197. For Australia, see Douglas "'It's Not Just about Me'" above n 62; Wood above n 68; Peter Devonshire, "Indigenous Students at Law School: Comparative Perspectives" (2014) 35 *Adelaide Law Review* 2.

136 "Snapshot of the Profession" *LawTalk* (March 2018) at 914.

137 Ophelia Buckleton "Unprecedented Demand for te reo Māori Classes" *New Zealand Herald* (25 February 2018) https://educationcentral.co.nz/unprecedented-demand-for-te-reo-Māori-classes.

Te Piringa | Faculty of Law, Waikato University

For Te Piringa | Faculty of Law, recognising the importance of a bicultural, bilingual and bijural legal education is not new. By way of background, in 1988 the University of Waikato published *Te Matahauariki*, a report arguing for the establishment of a new law school and recognising the need for a legal education that reflected the needs and concerns in a bicultural society and that was accessible to Māori and non-Māori alike. Remarkable for the time, the new law school would provide an opportunity to "give meaning to the notion of partnership in good faith that was central to the Treaty of Waitangi". The University of Waikato School of Law was established in 1990 and adopted for itself three founding goals: professionalism, biculturalism, and teaching law in context. It was legal scholar Ani Mikaere, during her time at Waikato, who first articulated tikanga Māori as "the first law of Aotearoa". Ani also championed the significance of Te Tiriti o Waitangi, the Māori language version of the Treaty signed by the majority of Māori signatories. This work led to a research project into Māori historical legal practices, resulting in the publication of *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law*.

Te Piringa has been important in promoting diversity in the profession. A diverse range of staff and students have been attracted by the Faculty's founding goals. It takes dedicated staff to transform legal education, and through the years, a critical mass of Māori legal academics, together with supportive non-Māori colleagues, have reaffirmed tikanga as the first law of Aotearoa in teaching and research. Tikanga and kaupapa Māori have been woven into the structures and processes of the law school, enabling staff and students to understand and know about Māori and other Indigenous legal systems and the laws and institutions which comprise them; critiques of state law from Māori and Indigenous perspectives; and the ways in which state laws impact the rights and responsibilities interests of whānau, hapū, iwi and Indigenous peoples generally. In 2010 the name gifted to the Law School by Dame Te Atairangikaahu at its founding, Te Piringa, became the officially recognised name of what is now Te Piringa | Faculty of Law.

Over time, Te Piringa became instrumental in encouraging students to use te reo Māori in assessment, paving the way for the university and other law faculties to follow suit. Te Piringa has also promoted te reo Māori mooting and alternative dispute resolution skills. It is imperative that faculty staff comprise tikanga and reo experts and since establishment Te Piringa has retained a pou tikanga (or elder in residence) to enhance the contribution of staff members, a position held by Matiu Dickson, Linda Te Aho and Craig Coxhead amongst others, who are versed in tikanga and fluent in te reo Māori. Despite many challenges, Te Piringa remains committed to its founding bicultural mission which encompasses bilingual and bijural education, weaving tikanga and understandings of Te Tiriti o Waitangi through all levels of the curriculum.

IV. Aotearoa New Zealand's Law Schools CONT.

Ahunga Tikanga – Te Wānanga o Raukawa

Outside of the six law schools in Aotearoa New Zealand, Te Wānanga o Raukawa offers the Ahunga Tikanga programme (formerly 'Māori Laws and Philosophy').

The Ahunga Tikanga programme offers diploma, bachelor's, and master's levels of study. All programmes offered by Te Wānanga o Raukawa are structured in three parts. One-third of the programme is devoted to the particular field of specialisation, one-third to te reo Māori, and one-third to iwi and hapū studies (which requires students to engage in study relevant to their own communities).

The aims of the programme are "to introduce students to Māori legal systems prior to contact with Pākehā; to consider the influence of Pākehā values on our legal systems; and to critique the legal processes that we encounter in contemporary times".

The first year of the bachelor's programme (which comprises the diploma) "focuses exclusively on tikanga Māori, Māori law. The papers undertaken in this year of study seek to reclaim and validate the theoretical base for the practice of tikanga. The presence of tikanga Māori as a highly successful and self-contained system of law is explored." Students complete modules such as 'Whakapapa and the Beginning of Law', 'Laws of Ranginui and Papatūānuku', 'Laws of Tāne', 'Laws of Tangaroa' and 'Laws of Exchange'.

The graduate profile of the bachelor's programme as described by Te Wānanga o Raukawa is that the graduate:

> *"will have a good working knowledge of tikanga Māori as it exists today. This person will have, also, the ability to link the tikanga of today with that which existed prior to the time of He Whakaputanga o te Rangatiratanga o Nu Tireni in 1835 and the signing of Te Tiriti o Waitangi/The Treaty of Waitangi in 1840." Further, "the graduate will have the capacity to assist with the design of political, judicial and other systems that better reflect the way in which Māori prefer to express themselves rather than the way these systems are encountered today. These characteristics will rest on the ability to work in both of the official languages of Aotearoa New Zealand. In addition, the graduate will have undertaken Iwi and Hapū Studies and have the ability to work alongside their hapū."*

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There is a significant and growing body of scholarship from both Aotearoa New Zealand and overseas that demonstrates real momentum in accepting the validity of Indigenous laws, recognising the authority of Indigenous teaching and learning pedagogies, and incorporating that law and those pedagogies into the broad legal and legal education system. Our review in this Issues Paper has shown that different parts of the Aotearoa New Zealand state legal system are separately working towards greater recognition of Māori law. The scholarship strongly suggests that our law schools need to modernise in response. We therefore propose the following: **A bijural legal education that prioritises bicultural and bilingual teaching and learning for all law graduates.**

A: Bijural Legal Education

A bijural legal system is one where there is the "coexistence of two legal traditions within a single state".[138] While the term is more commonly used to describe a state with both common law and civil law traditions, it can also apply to a state operating both with Western legal tradition and Indigenous law. Canada is one example of a bijural state, where the British common law and French civil law operate together and where there is a move towards multi-juralism, that is, the inclusion of Indigenous laws.[139] The term is often used instead of "legal pluralism", and while the two terms might appear on the surface to be interchangeable, they are not when considering the particular circumstances of Aotearoa New Zealand.

The term "pluralism" has an historical association to the intrusion of colonial legal systems into those of Indigenous sovereign countries[140] where the Indigenous system has been rendered inferior to that of the colonising state. Pluralism has also been used to describe a legal system with a number of non-state legal orders that place cultural, religious and other non-state juridical systems alongside each other equally, and collectively as subservient to the state system.

The literature reviewed in this Issues Paper argues for the recognition of Māori law in Aotearoa New Zealand jurisprudence as an activation of rangatiratanga held by hapū and guaranteed in Te Tiriti o Waitangi. The literature does not treat Māori law as equivalent to other non-state legal orders that may also be operating in Aotearoa New Zealand. Indeed some of the literature assumes that the progress already made in the recognition of Māori law by the Parliament and judiciary leads inevitably towards a new form of Aotearoa New Zealand jurisprudence that incorporates both "Kupe's law" and "Cook's law" into a coherent legal system on an equitable basis. The literature presupposes the existence of Māori law founded on tikanga; that it is a continuing legitimate source of rights and obligations; and that it has independent, authoritative standing in an Aotearoa New Zealand bijural legal system.

138 C Lloyd Brown-John and Howard Pawley "When Legal Systems Meet: Bijuralism in the Canadian Federal System" (Working Paper 234, Institut de Ciències Polítiques i Socials, 2004).

139 Bijuralism and multijuralism exist in both formal and informal ways across a number of state jurisdictions. See John Borrows "Creating an Indigenous Legal Community" (2005) 50 *McGill Law Journal* 153 for a discussion on multijuralism and the inclusion on Indigenous law into Canada's currently bijural system.

140 For a discussion of the use of legal pluralism in the process of colonisation globally see Sandra L Bunn-Livingstone *Juricultural Pluralism vis-a-vis Treaty Law* (Martinus Nijhoff Publishers, The Hague 2002). For a critique of legal pluralism in the Aotearoa New Zealand context see Moana Jackson "Changing Realities: Unchanging Truths (Paper presented to Commission on Folk Law and Legal Pluralism Congress, Victoria University of Wellington, 1992)" (1994) 10 *Australian Journal of Law and Society* 115–129.

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Therefore, we as the authors of this report use the term "bijural" to describe the *equitable* treatment of both Māori law and Aotearoa New Zealand's Western legal tradition, in recognition of Durie's view that "our law comes from two streams"[141] whether in legal education or law in general, and whether in the development of Williams's specific "Lex Aotearoa"[142] or a pluralistic system.

A bijural legal education therefore would engage with Māori law *as a source of legitimate legal rights and obligations*. Māori law would be the subject of legal education in Aotearoa New Zealand, recognised as a legal order on its own terms, not merely as a fixed cultural artefact that is only relevant when viewed through the prism of a common law-based system. The literature identifies the need to include legitimate and enforceable Māori legal concepts that, in effect, bring about a genuine bijural legal system.[143]

A selection of those concepts includes:[144]

- whanaungatanga, or the source of the rights and obligations of kinship;
- mana, or the source of rights and obligations of leadership;
- tapu, as both a social control on behaviour and evidence of the indivisibility of divine and profane;
- utu, or the obligation to give and the right (and sometimes obligation) to receive constant reciprocity; and
- kaitiakitanga, or the obligation to care for one's own

The teaching of these concepts means moving beyond simply incorporating more Māori content within existing courses. It requires exploring ways in which the LLB curriculum could be structured to effectively recognise Māori law as a foundational component of Aotearoa New Zealand law. For example, there would need to be careful consideration of the basic organisation of material in a programme that was genuinely bijural because it is unlikely that a programme structure designed to deliver a common law curriculum will be appropriate to deliver a bijural legal education.[145]

This move towards bijuralism is also closely connected to improved bilingualism in the law schools,[146] particularly where a state has more than one official language used in legal and parliamentary forums and documents. Aotearoa New Zealand already recognises te reo Māori as an official language and the right of people to use te reo Māori in court proceedings. However, there has not been an extension of that recognition to the legal content of those proceedings. It has been assumed that the use of Māori language is enough to enable the understanding of Māori values and principles, but there is still no recognition of those values and principles as descriptions of legal concepts different from those expressed through the English language.

141 Above n 4, at 461.

142 Above n 2.

143 This definition was provided by Leo Watson, 18 October 2019. See also C Lloyd Brown-John and Howard Pawley above n 138; John Borrows "Creating an Indigenous Legal Community" above n 139; Durie "Will the Settlers Settle? Cultural Conciliation and Law" above n 4; Williams "Lex Aotearoa" above n 2; Joseph "Re-creating Space for the First Law of Aotearoa-New Zealand" above n 3; Ruru "First Laws" above n 97; Carwyn Jones *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (University of British Columbia Press 2016; Anne Des Ormeaux and Jean-Marie Lessard *Legal Dualism and Bilingual Bisystemism: Principles and Applications* (2017) Canada, Department of Justice; Xavier Blanc-Jouvan "Bijuralism in Legal Education: A French View" (2002) 52(1–2) *Journal of Legal Education* 61; Carwyn Jones "Whakaeke i Ngā Ngaru – Riding the Waves: Māori Legal Traditions in New Zealand Public Life" in Lisa Ford and Tim Rowse (eds) *Between Indigenous and Settler Governance* (Routledge, New York, 2013), 174.

144 Above n 2, at 3. For a fuller list of tikanga concepts see Joseph et al above at 111. See also Mead above n 3; Durie above n 4, Jones above n 6.

145 John Borrows *Law's Indigenous Ethics* (University of Toronto Press, Toronto, 2019) at 192–194.

146 Des Ormeaux and Lessard above n 139.

There is a demand across the profession for more professional development in Māori law and tikanga.[147] The Institute of Judicial Studies has established a tikanga module as part of its regular programme of professional development for judges in all courts in Aotearoa.[148] The module explicitly addresses "tikanga as law" and has been delivered annually since 2014. Practitioners representing Māori clients or Māori interests are increasingly including Māori law in their written and oral submissions before judges, who are also increasingly required to be well versed in Te Ao Māori. This is a process in which the six law schools of Aotearoa New Zealand have a key role, creating those skilled legal practitioners and in turn those judges from the students under their tutelage.

Comments from participants in our project workshops at the Te Hunga Rōia Conference hui in Wellington in August 2019, which were attended by a mixture of current law students, legal practitioners, legal academics and other persons interested in this kaupapa, generally indicate a desire for a greater level of teaching of Māori law in the law schools. The ways suggested in which this could occur range from establishing or increasing Māori law content in core compulsory courses from the first year of study to establishing a Māori law degree, taught completely in te reo Māori. An area for further inquiry is whether what is presently being offered in teaching of tikanga Māori and Māori legal issues at the six law schools is covering what Māori and non-Māori students consider important, if there is the opportunity for sufficiently in-depth study into a topic area, and whether areas of Māori law are being omitted in the core curriculum at their law school or in the optional papers available.

147 See, for example, Chapman Tripp *Te Ao Māori: Trends and Insights Pipiri* (June 2017) and Chapman Tripp *Tikanga Māori in the Law and the Māori Crown Relationship Te Waka Ture: Post Waitangi Reflections* (February 2019); and the New Zealand Law Society NZCLE Ltd "Kua Ao Te Ra: Māori Cultural Development for Lawyers" programme in 2019.

148 See Institute of Judicial Studies https://www.ijs.govt.nz/prospectus/default.asp.

B: Bicultural Legal Education

The call for biculturalism in Aotearoa New Zealand began in earnest in the 1970s with the Māori Land Rights Movement led by Whina Cooper and Te Roopu o Te Matakite, whose manifesto states:[149]

> Since the signing of the Treaty of Waitangi in 1840, New Zealand has been a bi-cultural society and will continue as such long into the foreseeable future. Although it is an irrefutable fact that the society is bi-cultural, its social and legal institutions are mono-cultural.

Despite the long use of the term "bicultural", most extensively from the 1980s,[150] by Aotearoa New Zealand civil and political institutions, there has been no single definition that is widely utilised by these institutions, with each determining their own definition according to their own priorities.[151]

Joseph describes the term as "contested" and defines biculturalism as a context where two founding cultures are entitled to make decisions about their own lives for mutual co-existence.[152] He goes on to identify that some have resisted the notion of biculturalism as separatism, but others understand it more as complementary, with each culture retaining its own integrity.

149 Te Roopu o te Matakite 1975 manifesto as described in Vincent O'Malley, Bruce Stirling and Wally Penetito (eds) *The Treaty of Waitangi Companion Māori and Pākehā from Tasman to Today* (Auckland University Press, 2010) at 313.

150 See Jacqueline Mackinnon and Linda Te Aho, "Delivering a Bicultural Legal Education: Reflections on Classroom Experiences" (2004) 12 *Waikato Law Review* 62 at 100. For a more general overview see Janine Hayward "Biculturalism – Biculturalism in the State Sector" *Te Ara – the Encyclopedia of New Zealand* http://www.TeAra.govt.nz/en/biculturalism/page-2 (accessed 17 September 2019).

151 For a fuller discussion of different institutions see Stephanie Milroy "Waikato Law School: An Experiment in Bicultural Legal Education. Part 1: Biculturalism and the Founding of Waikato Law School" (2005) 8(2) *Yearbook of New Zealand Jurisprudence* 173.

152 Robert Joseph "Constitutional Provisions for Pluralism, Biculturalism and Multiculturalism in Canada and New Zealand: Perspectives from the Quebecois, First Nations and Māori" (2000) Te Matahauariki Research Institute (draft) at 7.

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The Māori response to biculturalism has also evolved over time.[153] The literature reviewed here sources the definition of biculturalism in Te Tiriti o Waitangi[154] and the struggle for self-determination.[155] Māori legal academic and judicial commentary distinguishes between biculturalism underpinned by structural change and the lesser goals of cross-cultural competence or cultural sensitivity.[156] Durie has described the structural participation of Māori in the "legal, political and institutional systems of New Zealand … with the opportunity to develop a Māori component within the legal system".[157] Whiu describes the Māori expectation for a bicultural law school as a site for "emancipatory or liberating theory and practice of education".[158] Milroy traverses this area in some depth and concludes that despite the differences in interpretation, "[w]hat they seem to concentrate on are structures, processes and resources grounded in our understanding of the Treaty and the successful functioning of organisations for Māori and Pākehā".[159] While each law school will need to develop their approach *in situ*, Milroy insists that the[160]

> model must include transfer and sharing of resources and decision-making power (perhaps the hardest and most important step); acknowledgment of our history; and practices and procedures that deliver a legal education service that works for Māori as well as for Pākehā.

Law schools have a unique and powerful opportunity to improve students' understanding of the social role of law and develop a critical discourse on the role and application of law.[161] The founding of Te Piringa | Faculty of Law, with its explicitly bicultural objective, provides an important exemplar. Papuni-Ball, who was in first cohort to graduate from Te Piringa, writes that "although admirable in its aims, [the law school] was not prepared in structure, staff or mental processes for biculturalism" and that "instead of being educated in Māori tikanga and the true discourse of law as a tool of oppression, we were exposed to continual suppression of our cultural heritage".[162] Milroy (now a Māori Land Court judge) was also part of this first contingent of Te Piringa law graduates, and concluded in her 1996 LLM thesis that "Māori education should be by Māori for Māori" and that that is "consistent with biculturalism and essential to the survival of Māori culture", noting that this was not yet a reality "on the ground" within the teaching of law.[163] As discussed by Milroy, Whiu and others, a bicultural legal education is different from a culturally sensitive education and includes a number of requirements that impose structural obligations on the institution.

153 Durie "The Rule of Law, Biculturalism and Multiculturalism" (2005) 13 *Waikato Law Review: Taumauri* at 41–45.

154 See Ranginui Walker "Cultural Domination of Taha Māori: The Potential for Radical Transformation" in J Codd, R Harker and R Nash (eds) *Political Issues in New Zealand Education* (Palmerston North: Dunmore Press, 1985); Durie "The Rule of law, Biculturalism and Multiculturalism" above n 153.

155 See Leah Whiu "Waikato Law School's Bicultural Vision – Anei Te Huarahi Hei Wero I A Tatou Katoa: This Is the Challenge Confronting Us All" (2001) 9 *Waikato Law Review* 265.

156 See Mackinnon andTe Aho "Delivering a Bicultural Legal Education" above n 150; Durie "The Rule of Law, Biculturalism and Multiculturalism" above n 153; Milroy "Waikato Law School" above n 151.

157 Above n 153 at 8, with reference to Mason Durie "Māori and the State: Professional and Ethical Implications for a Bicultural Public Service" (paper presented at the Public Service Senior Management Conference, Wellington, 1993).

158 Whiu above n 155, at 271.

159 Above n 151, at 184.

160 At 185.

161 Carwyn Jones "Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum" (2009) 19 *Legal Education Review* 257 at 259. For a Canadian First Nations perspective see Val Napoleon "Thinking About Indigenous Legal Orders" in R Provost and C Sheppard (eds) *Dialogues on Human Rights and Legal Pluralism* (Springer, The Netherlands, 2013), 229–245.

162 Papuni-Ball above n 135, at i.

163 Stephanie Milroy "Waikato Law School: An Experiment in Bicultural Legal Education" (LLM Thesis, University of Waikato, 1996) at 110.

Of great importance in the literature is the need for a genuinely collaborative approach to the content and the instruction of law courses for a bicultural education.[164] This includes the retention of a high number of Māori teaching staff and an institutional structure for ensuring Māori-led quality content in the compulsory and optional courses offered in the school. It is also important that a law school shares decision-making authority and equitable access to financial resources with Māori staff in that faculty. The development of a bicultural curriculum and its quality delivery needs sufficient funding to succeed, in part because it also requires recognition of the different forms of teaching and instruction, such as oral knowledge and the use of Māori language.[165]

The research reviewed acknowledges the important role of law schools in the teaching of Māori law but also suggests teaching off-site in Māori cultural forums based on tikanga and te reo Māori.[166] Marae and Māori community-based legal education is underway[167] and could be further developed in collaboration with bicultural legal education systems within universities and between educational institutions such as wananga and iwi. Most universities have clear and structural relationships with the mana whenua in the rohe (area) in which the university operates but some will need to build stronger networks. Such collaborations would provide students with unique exposure to the operation of Māori law and the intrinsic value of tikanga and te reo Māori. To this end, it will be essential that law schools develop highly collaborative relationships with academic and non-academic Māori law experts to ensure that any instruction is authentic and appropriate to the rohe in which the institution is situated.

We therefore make the following recommendation:

The six law schools should commit to developing a bicultural legal education that implements structures, develops processes and provides resources grounded in Te Tiriti o Waitangi, including the employment of Māori, and sharing of resources, leadership and decision-making with iwi, hapū and Māori academic staff.

Such commitment would prioritise:

- quality, structural relationships with the mana whenua with the intent of building greater collaboration for the teaching of Māori law;
- the recruitment and retention of high numbers of Māori teaching staff;
- a structure for ensuring Māori-led quality content in the compulsory and optional courses offered across the study years;
- shared decision-making authority and equitable access to financial resources with Māori staff in the faculty;
- financial support for the development of a bicultural curriculum and its quality delivery; and
- recognition of the Māori epistemologies for teaching and instruction, such as wananga, pūrākau (story), the use of te reo Māori and the legal knowledge held by kaumātua.

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164 Mackinnon and Te Aho above n 150; see also Jacinta Ruru, "Legal Education and Māori" in Claudia Geiringer and Dean R Knight (eds), *Seeing the World Whole: Essays in Honour of Kenneth Keith* (Victoria University Press, 2008), 243.

165 Jones "Indigenous Legal Issues" above n 161, at 267.

166 Jones *New Treaty* at n 143.

167 For example, see Waikato University 2020 Summer Paper LEGAL441 – Comparative and International Indigenous Rights Research Project taught by Linda te Aho, where students were taught on the marae and undertook their own research project within the scope of domestic and international law in the United States, Canada, Australia and New Zealand, with a focus on independence, the Discovery Doctrine, Aboriginal title, treaties, Indigenous jurisdiction, modern treaty or agreement making and the Indigenous Declaration, as well as ahunga tikanga (Māori laws and philosophy). Batchelor's programme taught at Te Wānanga o Raukawa

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C: Bilingual Legal Education

Te reo Māori is the first language of Aotearoa New Zealand. Although it was for many centuries the dominant language of Māori political and legal life, over the last nearly two centuries the language was degraded to the point of near extinction. That has been turned around in the last few decades thanks to the extraordinary efforts of whānau and hapū, but the health of te reo Māori remains a constant concern.

In the early years of the settler government te reo Māori was essential in the development of Aotearoa New Zealand's legal and political system. He Whakaputanga o te Rangatiratanga o Niu Tirene (1835) and Te Tiriti o Waitangi (1840), and their English versions, are early examples of the use of both languages featuring in our political discourse. Likewise, both languages have been a foundational part of our developing state legal system. Stephens notes that "almost all private deeds of sale prior to the establishment of the Native Land Court in 1862 were enacted in Māori and English".[168] Indeed te reo Māori had to be utilised to share and embed Western ideas of law and their legal consequences,[169] even as the civic use of te reo Māori was undermined.[170]

The first attempts by reo-speaking Māori Members of Parliament (MPs) to use te reo Māori in the parliamentary chamber were persistently thwarted by procedural barriers from the very beginning of Māori parliamentary representation. Stephens describes how, over a seventy-nine year period from 1907 to 1986, the parliamentary record shows at least thirty-six examples where at least one sentence in Māori is used in the debating chamber, but most of these examples were formal and ritualistic in nature rather than substantive contributions to the debate on legislation or similar matters. However, recent decades have seen a significant shift in the use of te reo Māori in parliamentary proceedings.

As at the time of writing, twenty-nine MPs are understood to have whakapapa,[171] at least seven are fluent enough to deliver substantive te reo Māori speeches in the parliamentary chamber, and at least nine others are sufficiently competent to regularly use te reo Māori for formal address and acknowledgement.[172] An increasing number of Pākehā MPs are using te reo Māori as their abilities allow. Parliament now has a Tari o te Manahautū o te Whare Mangai (Māori language services unit) within the Office of the Clerk and a full-time Te Kaiwhakahaere o Nga Ratonga Reo Māori who oversees the simultaneous translations in the Chamber and in select committees, as well as translations and transcriptions for Hansard.

In addition, Parliament is increasingly using te reo Māori in its law-making processes, with many select committee reports and legislation being written and/or translated in both English and te reo Māori. Reports from the Māori Affairs Select Committee are now routinely published in a bilingual format.[173] In 2013, Parliament enacted the first genuinely bilingual statute, Te Ture mō Mokomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) 2013 | Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013. The purpose of the legislation was to recognise the injustice suffered by descendants of Mokomoko, a tīpuna of Te Whakatōhea, who was executed for the murder of Carl Volkner in 1865.[174] Although not the first legislation to contain provisions in te reo Māori, it was nonetheless the first where both language versions are accorded equal status in their interpretation.[175] Ahu notes a number of difficulties with this approach because bilingualism is not an embedded requirement of the institutions responsible for interpretation: How do judges understand both language versions? How do they resolve differences in the meaning? What language meaning should be preferred in a conflict?

168 Māmari Stephens "A House with Many Rooms: Rediscovering Māori as a Civic Language in the Wake of the Māori Language Act 1987" in R Higgins, P Rewi and V Olsen-Reeder (eds) *The Value of the Māori Language: Te Hua o te reo Māori* Vol 2 (Huia Publishers, Wellington, 2014) 53 at 59.

169 Above.

170 Māmari Stephens and Phoebe Monk "A Language for Buying Biscuits? Māori as a Civic Language in the Modern New Zealand Parliament" (24 January 2012) *Social Science Research Network* at 3.

171 Authors' review of self-identification of Māori MPs; see https://www.parliament.nz/en/mps-and-electorates/members-of-parliament.

172 Authors' review of Hansard proceedings 2019–2020.

173 For a list of such reports see https://www.parliament.nz/en/pb/sc/scl/m%C4%81ori-affairs/tab/report.

174 Tai Ahu "New Zealand's First Bilingual Statute: Does New Zealand Have an Appropriate Legal Framework?" https://maorilawreview.co.nz/2014/03/new-zealands-first-bilingual-statute-does-new-zealand-have-an-appropriate-legal-framework/#return-note-4432-5.

175 Above.

Notwithstanding these and other issues that arise from bilingual legislation, Parliament continues to incorporate te reo Māori into legislation.[176]

The first Māori Language Act was passed by Parliament in 1986 and provided for the use of te reo Māori in the Courts. Te Ture mō Te Reo Māori 2016 | Māori Language Act 2016 now provides that any person appearing in court may speak Māori in court, including counsel, parties, witnesses and any member of the court.[177] The provision explicitly states that this entitlement stands whether or not the person speaks English also, and that although notice to the court is required by way of service in the lower courts, not giving notice does not defeat the entitlement to speak in te reo Māori. The court is required to provide an interpreter.[178]

In 2012, the use of Court Announcements in Māori in the District Courts was formalised, and after 2016 this was expanded to include the higher courts. The announcements used became "more extensive and … consistent with the announcements made [in English] in the Higher Courts"[179] and included phrases such as "Kia rite mō te Kaiwhakawā, e tū koa" (Silence, all stand for His/Her Honour the Judge) and "Kua whakawātea te Kaiwhakawā, e tū koa" (His/Her Honour will retire, all stand please).[180] Despite these steps promoting the use of te reo Māori in court, there remains some resistance. In November 2018, a Pākehā Crown lawyer was criticised by a High Court judge after introducing herself and her client in te reo Māori. This response was met by surprise from some practitioners who have used Māori in court routinely and without incident.[181]

More recently, however, with the appointment to the Supreme Court bench of Justice Williams, a fluent te reo Māori speaker of Ngāti Pūkenga and Te Arawa, and a growing number of judicial appointments of fluent te reo Māori speakers, greater use of te reo Māori in all courts may well become the norm. Additionally, in August 2019, as part of the annual conference of Te Hunga Rōia Māori o Aotearoa | Māori Law Society, a mooting competition for law students was held in the Supreme Court, with students presenting arguments and taking questions from the bench in te reo Māori for the first time in that Court.[182]

The New Zealand Government has committed to a significant revitalisation plan that it is hoped will see one million New Zealanders speaking te reo Māori by 2040. The Government launched its Māori Language Revitalisation Strategy 2019–2023 Maihi Karauna[183] in February 2019, committing to a vision of "Kia Mauri Ora te Reo", describing the Māori language is a "living language" and aiming for a time when "whānau are acquiring te reo Māori as their first language through intergenerational transmission". With some 37,000 Māori aged over fifteen speaking te reo Māori at least as much as English,[184] and increasing use of te reo Māori by the courts and Parliament, there is an increasing need for law schools to respond to tauira (students) with high levels of, and a preference for, te reo Māori. Law schools need to keep up if they want to attract and retain this cohort of motivated Māori students.

176 Two additional bilingual Acts have been passed by Parliament since 2013: Te Ture mō Te Reo Māori 2016 | Māori Language Act 2016 and Te Pire Haeata ki Parihaka | Parihaka Reconciliation Act 2019.

177 Te Ture mō te reo Māori 2016 | The Māori Language Act 2016, s 7.

178 James Greenland "Te Reo Māori I Nga Kōti O Aotearoa – The Māori Language in The New Zealand Courts" New Zealand Law Society (2016). https://www.Lawsociety.Org.Nz/News-And-Communications/Latest-News/News/Te-Reo-Mori-I-Te-Kti-O-Aotearoa-The-Mori-Language-In-The-New-Zealand-Courts

179 Alexandra Nelson "Ministry of Justice Supports Greater Use of te reo Māori in Courts" *Manukau Courier* (31 March 2016).

180 Courts of New Zealand "Court Announcements in Māori" https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-guidelines/high-court/te-reo-Māori/HCAnnouncementsinMāori.pdf.

181 Radio New Zealand "Law Society Surprised by Resistance to Use of te reo in Court" (12 November 2018). https://www.rnz.co.nz/news/national/375621/law-society-surprised-by-resistance-to-use-of-te-reo-in-court.

182 Judge Craig Coxhead "Te Kōkiri: Advocacy – 2019 Te Hunga Roia Māori Moot" *Māori Law Review* December 2019 http://Māorilawreview.co.nz/2019/12/te-kokiri-advocacy-2019-te-hunga-roia-Māori-moot.

183 Maihi Karauna "The Crown's Strategy for Māori Language Revitalisation 2019–2023" https://www.tpk.govt.nz/en/a-matou-kaupapa/maihi-karauna.

184 At 14.

Law schools also need to make sure their whole graduate cohort can meet the demands of a populace exercising their legal right to use te reo Māori in the court room – as participants, lawyers, and judges. Te reo Māori can be better supported across the profession and will need to be because the full understanding of Māori legal concepts is only possible if the court officers have some working knowledge of te reo Māori.[185]

Recent Māori scholarship on the ideology of language shift for te reo Māori has developed the ZePA model for helping to understand the progression from a non-speaker (**Z**ero – resistant to adoption) to a **P**assive speaker (receptive but no proficiency) to an **A**ctive speaker (who strives to advance as they can). These states are on a continuum with language scholars looking for opportunities to progress a "right shift" in language support and acquisition in individuals, whānau and institutions.[186] We recognise that law schools will not yet have the resources and skill sets available to them to become bilingual, but we make recommendations that can assist law schools to continue this "right shifting" for the benefit of their students.

We therefore recommend:

> **The six law schools should commit to developing a bilingual legal education that utilises te reo Māori broadly in general teaching and specifically in relation to Māori law concepts and principles such that all students have a working knowledge of Māori law in te reo Māori at the time of graduation.**

Where students are fluent in te reo Māori, they should be easily able to learn and be assessed in te reo Māori. Such commitment would prioritise:

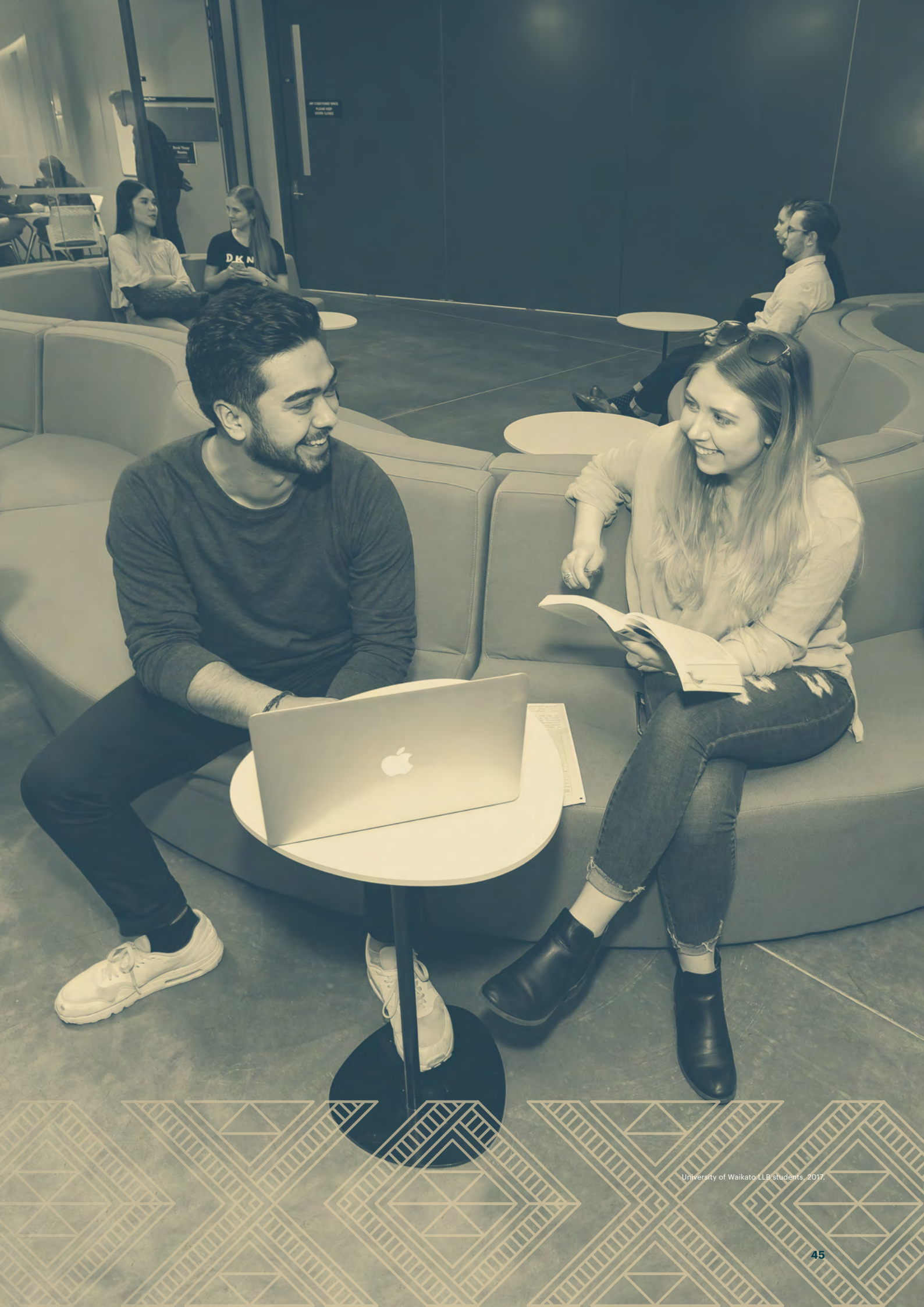
- professional development support for learning te reo Māori for teaching staff;
- greater support for a law student's right to use te reo Māori in all forms of communication;
- the development of a bilingual curriculum and its quality delivery;
- access to teaching and assessment in law schools in te reo Māori;
- ensuring graduates fuller understanding of Māori legal and cultural concepts not limited by the use of English interpretations; and
- promoting every citizen's right to use te reo Māori in legal and parliamentary forums and documents.

D: Conclusion

To realise the practice of Māori law as law in Aotearoa New Zealand's modern legal system, systemic change in the legal profession needs to occur. We call for a legal profession that is trained to work in a bijural, bicultural and bilingual Aotearoa New Zealand legal system. Undergraduate legal education has an essential role in fulfilling this call for change. Aotearoa New Zealand's six law schools already have varying levels of competency but should now move in a systemic formal manner towards preparing their graduates for a legal practice built on a bijural, bicultural and bilingual legal education.

185 See Judge Stephanie Milroy "Ngā Tikanga Māori and the Courts" (2007) 10 *Yearbook of New Zealand Jurisprudence* at 15–23; Māmari Stephens and M Boyce (eds) *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (LexisNexis NZ, Wellington, 2013); Des Ormeaux and Lessard above n 143.

186 Rawinia Higgins and Poia Rewi "ZePA – Right-shifting: Reorientation towards Normalisation" in Higgins, Rewi and Olsen-Reeder above n 169.



University of Waikato LLB students, 2017.

VI. Conclusion

Our aim in this Issues Paper has been to collate our knowledge of a sample of written sources of Māori law. We prefaced our review with a researched discussion of why we are calling for Aotearoa New Zealand law students to be trained to practise in a bijural, bicultural and bilingual legal system.

We conclude with this simple message:

> **There can be no systemic change to how we understand law in a contemporary Aotearoa New Zealand if we do not teach it differently in our law schools.**

This Issues Paper has demonstrated that all the parts of the Aotearoa New Zealand state legal system are considering how Māori law should be understood and used to inform us about the role and application of law in this country. Undergraduate legal education has an essential role in fulfilling this call for change and in enabling the practice of Māori law *as law* in Aotearoa New Zealand's modern legal system.

We recognise the value of the current debate on how Māori law may shape our future legal system, and we advocate for teaching Māori law to *all* law students in order to equip them for this debate. To do this, we encourage our six law schools to move in a systemic formal manner towards preparing their graduates for a legal practice built on a bijural, bicultural and bilingual legal education.

This Issues Paper and literature review is the first phase of a three-phase project. Future research is required to stress-test our preliminary key messages. We need to understand the breadth of interest and the extent of any concerns amongst those practitioners in the Māori and Pākehā legal systems and amongst wider society for the teaching of Māori law in the six law schools.
We can also assess how relevant Māori law is to general state law practice, which would help us to develop the different models and time frames for any change to legal education in Aotearoa New Zealand.

VII. Our Research Team

Jacinta Ruru
(Raukawa, Ngāti Ranginui)

Jacinta Ruru is Professor of Law at the University of Otago, Co-Director of Ngā Pae o te Māramatanga, New Zealand's Centre of Māori Research Excellence, Fellow of the Royal Society Te Apārangi, and recipient of the Prime Minister's Supreme Award for Excellence in Tertiary Teaching. She is founding director of her innovative Te Īhaka: Building Māori Leaders in Law programme at the University of Otago and co-leads the university's Poutama Ara Rau Research Theme, a multidisciplinary network seeking to answer the question "How can mātauranga Māori and Māori pedagogies transform tertiary teaching and learning?" Jacinta has published and delivered keynote addresses on the importance of ensuring Māori succeed in law. In 2019 she was named an inaugural University of Otago Sesquicentennial Distinguished Chair.

Metiria Turei
(Ngāti Kahungunu,
Ati Hau nui a Pāpārangi)

Metiria Turei is a research fellow in the Faculty of Law at the University of Otago (supported by the Phase One Borrin Foundation grant) and a postgraduate student at the Dunedin School of Art. She holds a law degree from the University of Auckland and recently retired after 15 years as a Member of Parliament in the New Zealand House of Representatives. She has strong experience and understanding of Māori justice concepts and their application in law; the impact of legislation and policy on Māori individuals and whānau and constitutional law reform; as well as Māori research methodologies and the practice of kanohi ki te kanohi communication and collaboration with whānau, hapū and hāpori.

Carwyn Jones
(Ngāti Kahungunu,
Te Aitanga-a-Māhaki)

Carwyn Jones is an Associate Professor at the Faculty of Law, Victoria University of Wellington, and an Associate Investigator with Ngā Pae o te Māramatanga. Carwyn's primary research interests relate to the Treaty of Waitangi and Indigenous legal traditions. He is the author of *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (UBC Press, May 2016), co-editor of *AlterNative: An International Journal of Indigenous Peoples* and the *Māori Law Review*, and maintains a blog, *Ahi-kā-roa*, on legal issues affecting Māori and other Indigenous peoples. He has published on legal education, including "Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum" (2009) 19 *Legal Education Review* 257. He is the current academic representative on Te Hunga Roia Māori o Aotearoa | Māori Law Society.

VII. Our Research Team CONT.

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(Te Roroa/Ngāpuhi, Ngāti Porou)

Khylee Quince is Associate Professor, Associate Head of School, and Director of Māori and Pacific Advancement at AUT School of Law. She is Co-Director of AUT's Centre for Indigenous Rights and Law and a Ngā Pae o te Māramatanga Principal Investigator. Her research includes Māori and the criminal justice system, tikanga Māori and the law, restorative justice and alternative dispute resolution, Māori women and the law, and Māori and family law. She has won an Ako Aotearoa award for Tertiary Teaching Excellence.

Claire Charters
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Claire Charters is Associate Professor in the Auckland Law School, University of Auckland. Claire's primary area of research is in Indigenous peoples' rights in international and constitutional law, often with a comparative focus. She is currently working on articles on the UN Declaration on the Rights of Indigenous Peoples, the relationship between tikanga Māori and the state legal system, tensions between human rights and Indigenous peoples' rights, and the legitimacy of Indigenous peoples' rights under international law, which will ultimately be published by Cambridge University Press. Claire was awarded a Royal Society Rutherford Discovery Fellowship in 2017 and is currently a co-director of the Aotearoa New Zealand Centre for Indigenous Peoples and the Law.

Andrew Erueti
(Ngā Ruahinerangi, Ngāti Ruanui, Ati Hau nui a Pāpārangi)

Andrew Erueti is a Commissioner on the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. Andrew's primary area of research is Indigenous customary law and legal pluralism, the human rights of children in institutional care, and Indigenous peoples' human rights. He is editor of *International Indigenous Rights in Aotearoa New Zealand* (Victoria University Press, 2017). His current writing projects include the human rights of children in care; interpreting the Treaty of Waitangi; and the drafting of human rights codes that recognise indigenous law. From 2007 to 2013 he was Amnesty International's advisor on Indigenous rights in its head office in London and then the UN office in Geneva. He has advised Māori and Indigenous peoples on claims to the Waitangi Tribunal and human rights treaty bodies, including the UN CERD Committee and UN Human Rights Committee.

Dr Robert Joseph
(Tainui, Tuwharetoa, Kahungunu, Rangitane, Ngāi Tahu)

Dr Robert Joseph is a Senior Lecturer at Te Piringa | Faculty of Law, University of Waikato, and Research Director of the Māori and Indigenous Governance Centre. He was a Senior Research Fellow for the Te Mātāhauariki Research Institute at the University of Waikato under the leadership of Judge Michael Brown and Dr Alex Frame. Robert's research interests include the realisation of the Treaty of Waitangi rights and responsibilities; internal self-determination rights and responsibilities of Indigenous groups; Māori and Indigenous peoples' excellent governance best practices; structures and principles that result in and transformative governance; Canadian and North American Indigenous studies; treaty processes and post-settlement development; appropriate dispute resolution, particularly with respect to resolving disputes between different cultures; and excellent Māori governance training. He is currently writing a biography of his paternal tūpuna (ancestors), who fought at the famous 1864 Battle of Ōrākau during the Waikato Wars.

Amokura Kawharu
(Ngāti Whatua, Ngāpuhi)

Amokura Kawharu is the President of the New Zealand Law Commission. Amokura was formerly an Associate Professor at Auckland Law School and holds a BA/LLB (Hons) degree from the University of Auckland and an LLM with a major in international law from the University of Cambridge. She became a member of Auckland Law School's faculty in 2005 after working in private commercial law practice in Auckland and in Sydney. Her research interests include international trade and investment law, arbitration, and international disputes resolution. She has published widely in these fields, including as co-author of the leading Aotearoa New Zealand text on arbitration law, *Williams & Kawharu on Arbitration* (2nd ed., LexisNexis, 2017). She holds or has held several leadership positions including as a member of the University of Auckland Council and Finance Committee, and board member of Ngā Pae o te Māramatanga.

Adrienne Paul
(Ngāti Awa, Ngāi Tuhoe)

Adrienne Paul has recently been appointed to Te Kura Ture | School of Law, University of Canterbury, teaching tikanga Māori, the Treaty of Waitangi and Māori land law. She previously lectured at Te Piringa | Faculty of Law, University of Waikato. Her current PhD research covers international environmental law relative to the *MV Rena* oil spill disaster in the Bay of Plenty region. She also practises in the areas of Māori land law and general law. Adrienne passionately continues to empower people through the sharing of knowledge.

VII. Our Research Team CONT.

Mylene Rakena
(Ngāti Hine/Ngāpuhi, Ngāti Kahungunu)

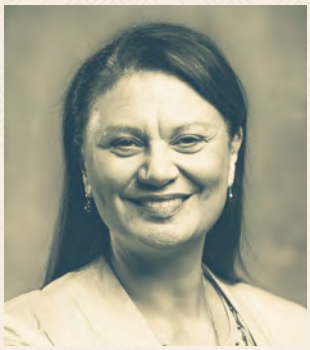
Mylene Rakena is the Manager of the Centre for Environmental, Resources and Energy Law at Te Piringa | Faculty of Law, University of Waikato. Mylene completed her LLB (Hons)/BMS (Hons) specialising in Māori land law and corporate public relations. She is particularly interested in environmental governance and sustainable natural resource management on Māori-owned land.

Māmari Stephens
(Te Rarawa)

Māmari Stephens is an Associate Professor in the Faculty of Law, Victoria University of Wellington). Māmari led the Legal Māori Project, which created *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (LexisNexis, 2013), a Māori-English bilingual dictionary of legal terms. She is the author of *Social Security and Welfare Law in Aotearoa New Zealand* (Thomson Reuters, 2019). Māmari is a priest in the Anglican Church in Aotearoa New Zealand and Polynesia. She has a background in classics and law at Victoria University of Wellington, where she is currently a Reader in Law.

Dr Fleur Te Aho
(Ngāti Mutunga)

Fleur is a Senior Lecturer at the University of Auckland Law School and researches and teaches on Indigenous peoples and the law and criminal law. Fleur is also an Honorary Research Fellow at the Australian National University's (ANU) National Centre for Indigenous Studies. Prior to joining the University of Auckland, Fleur taught and researched at ANU in both the ANU College of Law and the National Centre for Indigenous Studies. Fleur has a PhD from ANU and an LLM (Distinction) from Victoria University of Wellington. She has several years' experience practising as a solicitor in Wellington, including assisting iwi in the negotiation of historical Treaty of Waitangi settlements with the Crown.



Linda Te Aho
(Ngāti Koroki Kahukura, Waikato-Tainui)

Linda Te Aho is Associate Professor of Law and Associate Dean Māori at Te Piringa | Faculty of Law and Associate Dean Māori for the Division of Arts, Law, Psychology and Social Sciences at the University of Waikato. Linda holds many significant academic and iwi leadership roles. She is an executive board member for Waikato-Tainui (Te Arataura), a director of Tainui Group Holdings, and editor of the *Waikato Law Review*. Her primary research work concerns Māori and Indigenous rights and environmental law, tikanga and Māori history. Her extensive publications include considerations of Indigenous legal education, with a focus on Waikato Law School's commitment to biculturalism.

Dr Valmaine Toki
Ngāpuhi, Ngāti Wai, Ngāti Whātua)

Dr Valmaine Toki is an Associate Professor and Deputy Dean at Te Piringa | Faculty of Law, University of Waikato. She holds a holds a BA, LLB (Hons), MBA, LLM and PhD. Valmaine was the first New Zealander appointed as an expert member of the UN Permanent Forum on Indigenous Issues, where she served two terms. Her research and writing interests lie within the area of recognising and realising Indigenous issues. As practising counsel, Valmaine recently represented her iwi in successful judicial review proceedings in the High Court, which turned on the failure to recognise an Indigenous right. She is active in tribal governance and local government matters. Her current research project reviews World Bank programmes through an Indigenous lens. In addition, she is researching the concept of an Indigenous court underpinned by tikanga Māori.

Tracey Whare *(Raukawa, Te Whānau-ā-Apanui)*

Tracey Whare is a Lecturer at the University of Auckland Law School, where she teaches and researches in the areas of Te Tiriti o Waitangi, Indigenous peoples' rights, international law, and tikanga Māori. She has been involved in Indigenous advocacy at the UN for more than twenty years and uses her advocacy experience to inform her research.

VII. Our Research Team CONT.

Rebekah Bright
(Rongowhakaata, Ngāti Kahungunu ki Heretaunga)

Rebekah Bright has been involved with this project as a research assistant. She is a law student in her final year at Te Piringa | Faculty of Law, University of Waikato. Rebekah is involved with Te Piringa's Māori student association, Te Whakahiapo, as Pou Whakataetae (Competitions Officer) and has enjoyed being involved in law school competitions, especially mooting.

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