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Improving Pasifika Legal Education Project

Literature Review on the barriers and
interventions supporting Pasifika people
succeeding in law school and taking up
a career in the legal profession

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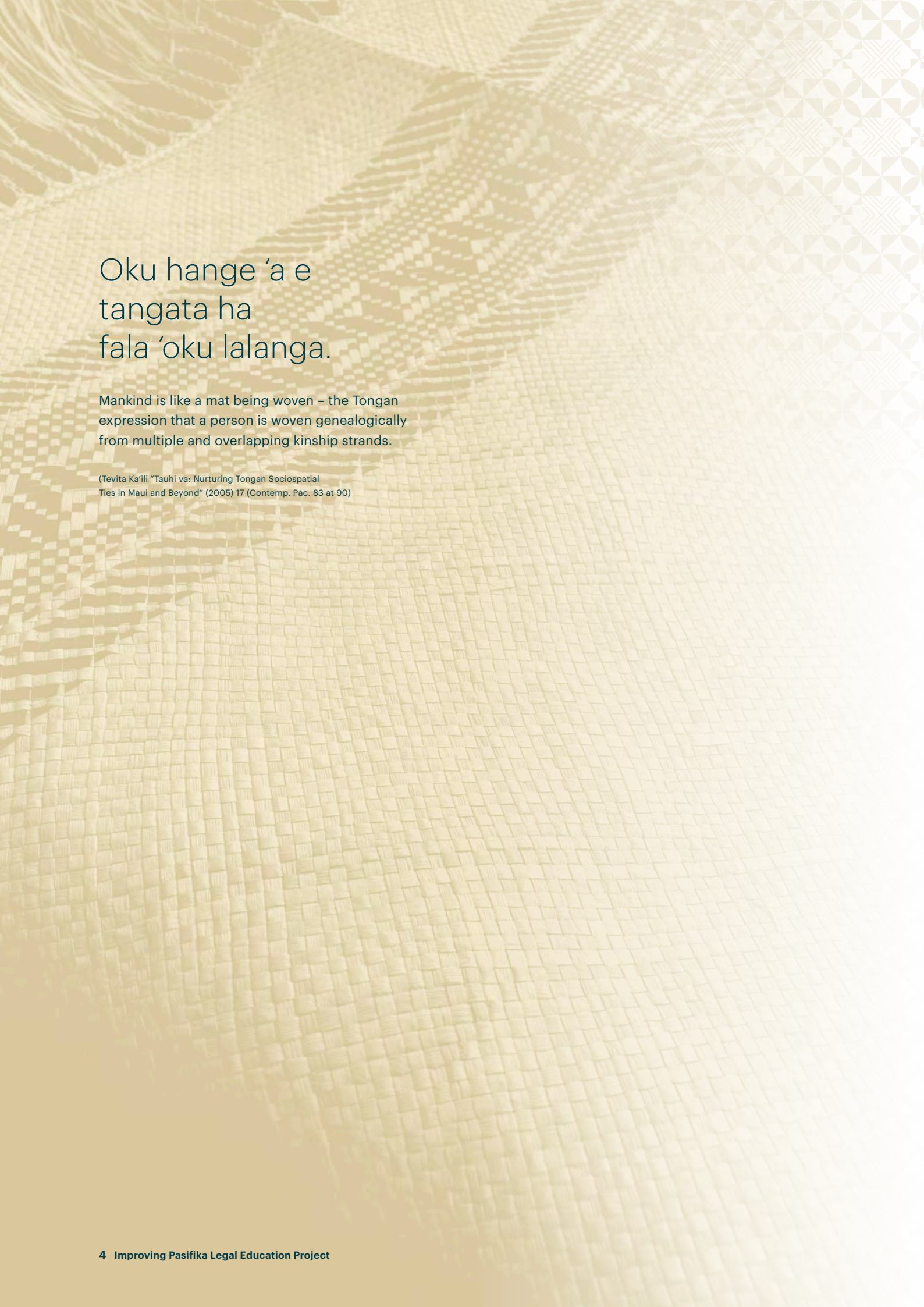
Literature Review on the barriers and interventions supporting Pasifika people succeeding in law school and taking up a career in the legal profession

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Launch of the Improving Pasifika Legal Education in New Zealand Project, Victoria University of Wellington, Te Herenga Waka, October, 2021





Oku hange 'a e tangata ha fala 'oku lalanga.

Mankind is like a mat being woven – the Tongan expression that a person is woven genealogically from multiple and overlapping kinship strands.

(Tevita Ka'ili "Tauhi va: Nurturing Tongan Sociospatial Ties in Maui and Beyond" (2005) 17 (Contemp. Pac. 83 at 90)

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Executive Summary

1. This literature review is part of the background work to inform the project, “Equity, Belonging, Authority – How can law, policy and practice support Pasifika people in Aotearoa New Zealand – Improving Pasifika Legal Education”. This review explores both conceptual and research-based literatures on Pasifika legal education and barriers to Pasifika people and interventions in the law education and legal profession in terms of equity, belonging and authority.
2. The term “Pasifika” is used to describe people living in New Zealand who have migrated from the Pacific, or who identify with Pasifika because of their ancestry or heritage. It is a collective term used to refer to men, women, and children who identify with the islands and/or cultures of the Pacific. The term includes a variety of combinations of ethnicities, recent migrants or first, second, third, fourth, and subsequent generations of New Zealand-born Pasifika peoples.
3. The term “Equity” refers to “ensuring a level playing field so that we all have the opportunity to thrive”; while “Belonging” is the “feeling at home in all the places where law is spoken and used – whether in the classroom, in the courtroom, or in the boardroom”; and “Authority” concerns “the power of law to create change”.¹
4. There is no doubt that progress has been made over the last thirty years in improving equity and diversity in legal education and profession. However, this success remains qualified. There is no single, identifiable, barrier to Pasifika students’ success in legal education: multiple factors are implicated. The complex and multi-faceted nature of the problem makes the provision of solution all the more challenging.
5. There is a large gap between the percentage of Pasifika peoples and other ethnicities in law programmes and law profession.
6. The key gap in the literature is the minimal literature that refutes deficit theorizing as a reasonable explanation for the lack of Pasifika success in law education and profession. Much literature is written from a deficit perspective, thereby absolving schools of responsibility in rectifying the cultural aspect of the problem.
7. A number of barriers to the success of Pasifika law students and law professionals have been identified from this analysis of the literature. These include: social and cultural differences; barriers associated with notions of strained economic resources; and the influences and experiences in the early years through high school that do much to shape ability and access to higher education such as legal education and law profession. Further, there are some ingrained institutional and systemic barriers that limit opportunities for Pasifika people to participate in the power and authority networks and structures that shape the future of the legal profession.

¹ Pasifika Legal Education Research Hub, <https://www.wgtn.ac.nz/pasifika-legal/research-themes/themes>.

8. There have been interventions, strategies and responses at the university level to improve equitable access to higher education for Pasifika students. However, these interventions are short-term and ad hoc in nature so they have not brokered significant improvements to Pasifika representation in the law programmes and legal profession.
9. The existing research base has significant limitations. There has also been little consideration in the literature of the role of Pasifika lived experiences in shaping equity, belonging and authority in legal education and profession. As a result, there is a significant lack of longitudinal, quantitative data on this area. Without a clear empirical picture as to the current state of Pasifika people's participation in legal education, it is impossible to identify whether the Government or Tertiary Education Commission policies are appropriate or can be met in this field. Without this empirical picture it is also impossible to identify whether the host of strategies adopted by law faculties, universities and government are working.
10. This literature review highlights the need for a framework that acknowledges both the cogency of cultural influences and the inherent challenges associated with a monocultural paradigm requisite to understanding how Pasifika law students, law graduates and law professionals may succeed. The review demonstrates the need for a collaborative, multidisciplinary and community-based understanding for improved Pasifika success in legal education and the law profession.



University of Canterbury Pasifika Law Students' Society

PART 1 – Introduction

1.1 Background

A key priority of the Government’s Pacific Education Action Plan 2020-2030 is to address the ongoing inequalities for Pasifika engagement and success in education with a vision that diverse Pacific learners and their families are safe, valued and equipped to achieve their education aspirations.² This aligns with the key priorities of the Tertiary Education Commission Strategy, which includes reducing barriers to education for all, including Pasifika people.³

This is an important priority because Pasifika are consistently under-represented in law schools and the legal profession and earn less in the legal field than any other ethnicities. Pasifika comprise only three percent of all lawyers in New Zealand.⁴ Pasifika lawyers have an average time in the profession since admission of 13 years as opposed to 19 years for Pākehā New Zealanders. Pasifika lawyers also earned seven percent less than those of European descent.⁵ The statistics are more striking when looking at the law firm partners and directors. Between 2008 and 2018, only 227 partners and directors were admitted. Of those, 75 percent were of European ethnicity, 15 percent were of Asian descent, eight percent were Māori and two percent were Pasifika.⁶

The New Zealand Law Society in its ‘Snapshot of the Profession 2021’ reports that there is a need to grow more Pasifika lawyers to be proportional to the Pasifika community.⁷ Similarly, the Tertiary Education Commission (TEC) in the past decade has emphasised the importance of eradicating disparities in higher education institutions. In 2021, TEC sought to achieve parity by setting a deadline by which universities will end persistent disparities between the pass rates of Māori and Pasifika students and those of other ethnicities in 10 years.⁸

This literature review is prepared to inform and guide an understanding of the barriers to success to Pasifika law students and law professionals in the New Zealand law schools and law profession. It will be used to inform the talanoa consultations and meetings with Pasifika law students, law practitioners and the Pasifika communities in Aotearoa New Zealand.

1.2 Scope of the literature review

The literature review has focused on identifying common barriers, enablers and opportunities to Pasifika people to thrive in law school and the legal profession. In particular, the literature search was focused on the key areas of Pasifika students’ transitions into law school, their participation, retention and progression into the workforce.

The scope of literature search included research and evaluation reports, theses, journals and articles, as well as initiatives developed and successfully implemented in law school settings to improve Pasifika law students’ experiences. While a small body of recent international literature has been reviewed, the main focus has been on New Zealand literature relevant for Pasifika law students and law professionals.

2 Ministry of Education, 2020.

3 Tertiary Education Commission, “The Tertiary Education Strategy”, 13 November 2020, www.tec.govt.nz.

4 Geoff Adlam “Diversity in the New Zealand legal profession: At a glance” *LawTalk* (Volume 932, Wellington, September 2019) 61 at 64.

5 Geoff Adlam “Diversity in the New Zealand legal profession: At a glance” *LawTalk* (Volume 932, Wellington, September 2019) at 64.

6 Geoff Adlam “Lawyer ethnicity differs from New Zealand population” *LawTalk* (Volume 920, Wellington, August 2018) 70 at 72.

7 New Zealand Law Society, “Snapshot of the Profession 2021”, (10 December 2021), <https://www.lawsociety.org.nz/news/lawtalk/lawtalk-issue-948/snapshot-of-the-profession-2021/>.

8 RNZ, “Tertiary institutions given 10 years to end minority pass rate disparity”, 11 October 2021, Tertiary institutions given 10 years to end minority pass rate disparity | RNZ News.

While the literature summarises key barriers experienced by Pasifika law students and law professionals, recent literature shows a shift from a deficit model of viewing Pasifika students' under-achievement in the circumstances or shortcomings of the students, to focus instead on how law schools can improve their provision for Pasifika learners.⁹

As a result, the body of literature focused on key barriers experienced by Pasifika students that need to be removed for Pasifika law students to thrive. These barriers hinder the enabling environmental conditions that respond and are relevant to Pasifika law students' learning needs. These key barriers are identified as fundamental and therefore are necessary to foster successful Pasifika law students' participation, retention, and course and qualification completion. In the same vein, these barriers impact the success of Pasifika professionals in their lives after law school.

1.3 Approach

Most of the literature reviewed was recommended by members of the Project Committee and the Academic Advisory Panel to the project.

The literature was read and analysed to gauge key emergent themes. Significant weight was given to literature articulating the needs of Pasifika students and people and their experiences from the Pasifika perspectives and from the perspective of tertiary education providers.

1.4 Structure of the literature review

This report is structured as follows:

- Part 2 offers a background and context to Pasifika peoples in New Zealand;
- Part 3 reviews the literature on Pasifika learners' transitions to tertiary education and examined the key barriers to successful tertiary transitions for Pasifika peoples;
- Part 4 examines barriers to enabling culturally relevant and supportive tertiary learning environments for Pasifika law students;
- Part 5 examines barriers to successful transitions for Pasifika into the law profession;
- Part 6 identifies literature gaps;
- Part 7 concludes the review.

1.5 Limitations of the literature

The literature review has provided strong descriptions regarding key barriers that must be removed to enable Pasifika students to do well in tertiary education. However, there is no clear empirical story as to the current state of Pasifika students' experiences in legal education or Pasifika in the legal profession. Without this empirical context it is impossible to identify whether the host of strategies adopted by law faculties, law schools and government are working.

There is also little discussion in the literature around the definition of 'success' and desired outcomes for Pasifika students in law schools.

⁹ Ruth Gorinski and Cath Fraser, *Literature review on the effective engagement of Pasifika parents and communities in education*. (2006), Research Division, Ministry of Education.

PART 2 – Pasifika Peoples in New Zealand Law and Society

2.1 Introduction

There is a very crowded field of thought about the definitions, formation and meaning of ‘identity’, which is interlinked with indigeneity, race, and culture.¹⁰ Rather than formulating a definition of identity, this review examines how Pasifika students and lawyers experience ideas—for example, community, home, geographies, and any of the many other ways in which identity is defined and understood.

With respect to Pasifika or Pacific Islander identities, the term Pacific Islander or ‘Pasifika’ and the idea of ‘Pasifika identity’ are deeply complicated. This issue is caused by the generality of the term ‘Pasifika’ versus the specific identification of cultural groups or nations (for instance, Samoan, Fijian, ni-Vanuatu).

‘Pasifika’ became a meaningful category only after it was first formally introduced in the education context in the mid-1980s through a Pasifika community-led initiative called Anau Ako Pasifika.¹¹ Today, the term is used as a collective reference to a multi-ethnic heterogeneous group of Pacific peoples living in New Zealand. This group of people share ancestry, languages, and traditions and due to the small population sizes of these individual Pacific Island nations and the closeness in affiliations between the people. In New Zealand they are often categorised under the general term Pasifika.

We recognise that these terms can carry different political and social meanings for different people. For example, the term has been contested by Pasifika scholars as homogenising,¹² as it groups together Pasifika living in New Zealand, whether they were born in New Zealand or migrated. Moreover, it is not ethnicity-specific,¹³ and every Pacific Island nation has its own uniqueness, which should not be ignored.¹⁴ Other Pasifika scholars have reconceptualised the term Pasifika to represent a symbol of unity rather than a homogeneous group of Pacific Island people.¹⁵

In this section we briefly outline important factors about Pasifika people in Aotearoa New Zealand that informed this literature search and analysis.

2.2 Pasifika peoples in New Zealand society

To shed light on the challenges for Pasifika law students and lawyers in Aotearoa, this section provides some general demographic information on Pasifika in Aotearoa.

Throughout this review, the term “Pasifika” is used to describe people living in Aotearoa New Zealand who have migrated from Pacific Island countries other than New Zealand,¹⁶ or who identify as Pasifika because of their ancestry or heritage deriving from those countries. The terms used to describe these people vary considerably: for example, Pacific Nations

10 Bette Jacobs, “Indigenous identity: Summary and future directions”, *Statistical Journal of the IAOS*, (2019) vol. 35, no. 1 at 147-157. <<https://content.iospress.com/articles/statistical-journal-of-the-iaos/sji190496>>.

11 Brown D Airini, Elana Curtis, Odie Johnson, Fred Luatua, Moa O’Shea, Te Oti Rakena, Gillian Reynolds, Pale Sauni, Angie Smith, To’anga Su’a Huirua, Matt Tarawa, Meryl Ulugia-Pua, *Success for all: improving Māori and Pasifika student success in degree-level studies*, (2009) NZCER; Diane Mara, “Anau Ako Pasifika: A home-based early childhood project for Pacific Islands families in Aotearoa/New Zealand” (1997) 3 *Early Childhood Folio* 3, 29-32.

12 Others have also argued for the use of the term ‘Moana’ and ‘Moana Oceania’.

13 Sitaleki Finau “Collective label of people from the Pacific Ocean Proper” in T Black (ed) *Enhancing Matauranga Māori and Global Indigenous Knowledge* (New Zealand Qualifications Authority, Wellington, 2014) 166.

14 Linita Manu’atu & Mere Kapa “Toward Conceptualising Cultural Diversity: An Indigenous Critique” (paper presented at the Joint Conference, School of Māori and Pacific Development and International Centre for Cultural Studies, Hamilton, New Zealand, November 22 2002); Diane Mara “Implementation of Te Whariki in Pacific Islands Early Childhood Centres. Final Report to the Ministry of Education” (New Zealand Council for Educational Research, Wellington, 1999); C Nakhid “Intercultural” perceptions, academic achievement, and the identifying process of Pacific Islands students in New Zealand schools” (2003) 72(3) *JNE* 297. Also see Tanya Wendt Samu “The ‘Pasifika Umbrella’ and quality teaching: Understanding and responding to the diverse realities within” (2006) 12(1) *WkJEd* 35.

15 Tanya Wendt Samu “The ‘Pasifika Umbrella’ and quality teaching: Understanding and responding to the diverse realities within” (2006) 12(1) *WkJEd* 35.

16 These countries are: Samoa, Vanuatu, the Cook Islands, Papua New Guinea, Tonga, Niue, Hawaii, Tokelau, Fiji, Solomon Islands, Kiribati, Tuvalu, Hawai’i, Nauru, Marshall Islands, Federated States of Micronesia, Palau.

person; Polynesian, Melanesian, or Micronesian; or Pacific Islander. The Ministry of Education uses the term “Pasifika” to differentiate these people from other people who view themselves as Pacific, based on the fact that New Zealand is itself a country in the Pacific region. Pasifika peoples are not a homogeneous group, hence the use of “peoples” rather than “people”. The terminology includes those peoples who have been born in New Zealand or overseas. The term includes a variety of combinations of ethnicities, recent migrants or first, second, third, fourth, and subsequent generations of New Zealand-born Pasifika peoples.

Pasifika peoples constitute the fastest growing young population in New Zealand with low rates of mortality and high rates of fertility.¹⁷ According to the 2018 Census, New Zealand’s population of Pacific peoples was reported at 381,642 which constitutes 8.1 per cent of New Zealand’s total population.¹⁸

It is a multi-ethnic, heterogeneous group comprising different languages and cultures.¹⁹ We recognise this diversity. By 2026, it is projected that Pasifika peoples will constitute 10 per cent of New Zealand’s population.²⁰ Thus, Pasifika populations “in New Zealand will produce an increasing portion of the nation’s births, its student body, workforce, taxpayer base, voter and consumers of both public and private goods and services.”²¹

2.3 Pasifika in education and employment

The achievements of Pasifika peoples have gradually improved at different levels of education. Between 2012 and 2018, Pasifika peoples’ participation in early childhood education increased from 87 per cent to 93 per cent.²² During the period 2010–2020, the proportion of 18-year-old Pasifika who leave school with the minimum qualification of a National Certificate of Education Achievement (NCEA) Level 2 or higher increased from around 60 per cent to 80 per cent.²³ The 2019 NCEA achievement data also shows that good progress has been made to close the NCEA achievement gap between Pasifika and non-Pasifika, as shown in Table 1. Moreover, at the tertiary level, as at 2018, eight per cent of Pacific peoples held bachelor’s degree or higher, representing an increase from seven per cent in 2013.²⁴

Table 1: NCEA Achievement in 2019

NCEA Level	Pasifika	National Overall
Year 11 Level 1	62%	71%
Year 12 Level 2	71%	78%
Year 13 Level 3	60%	67%
University Entrance	30%	49%

17 Statistics New Zealand “Pacific Peoples” (2018) <<https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>>.

18 Statistics New Zealand “Pacific Peoples” (2018) <<https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>>.

19 However, there are significant cultural similarities and there are shared experiences around colonization, migration and resettlement.

20 Ministry of Social Development “The Social Report” (Ministry of Social Development, Wellington, 2010) at 15.

21 Ministry of Pacific Island Affairs “About Pacific peoples in New Zealand: Ministry of Pacific Island Affairs” <www.mpia.govt.nz>.

22 UNICEF Office of Research, An Unfair Start: Inequality in Children’s Education in Rich Countries, Innocent Report Card 15 (Florence: UNICEF Office of Research, 2018). The United Nations International Children’s Emergency Fund (UNICEF) publication in 2018 provides a league table of inequality in children’s education in 41 developed OECD and EU countries. This table provides information about educational inequalities at preschool, primary and secondary school.

23 Ministry of Education “Indicator: School Leavers with NCEA Level 2 or Above” (2020) Education Counts <<https://www.educationcounts.govt.nz/statistics/school-leavers>>.

24 Ministry of Education “Educational attainment in the adult population: Indicator Report” (March 2021) Education Counts <<https://www.educationcounts.govt.nz/statistics/school-leavers>>.

PART 2 – Pasifika Peoples in New Zealand Law and Society

Nevertheless, Pasifika peoples remain behind other ethnic groups in New Zealand in terms of employment, earnings, and wealth. In June 2019, Pasifika unemployment declined from 2018 to eight per cent,²⁵ and further declined in June 2020 to six per cent.²⁶ The median income of Pasifika peoples also rose to \$24,300 in 2018, but remained lower than the median income of Pākehā, Māori, and Asian New Zealanders.²⁷ Moreover, median net worth values in New Zealand in the same year were \$138,000 for Pākehā, \$46,000 for Asian people, \$29,000 for Māori and \$15,000 for Pacific people.²⁸ This means that a Pākehā person in New Zealand has 9.2 times as much net worth as Pasifika.

Interesting patterns emerge from a closer examination of educational and employment statistics. For Pacific peoples, the number of school leavers with a qualification of NCEA Level 2 or higher was 54.7 per cent in 2001, 65.5 per cent in 2011 and 79.8 per cent in 2018. However, the tertiary participation rates of Pasifika people continued to decline in 2018.²⁹

In contrast, Pasifika participate at higher rates than the overall New Zealand population in occupations such as community and personal service workers, clerical and administrative roles, sales workers, machinery operators and drivers, and especially labourers (19.9 per cent, compared to 11.3 per cent of

the New Zealand population).³⁰ The data also shows that while some of the indicators reflected improving outcomes, there were often large gaps between the Pākehā population and Pasifika.

This shows that despite significantly increased participation by Pasifika students, they have been concentrated at lower levels of the qualification framework. Pasifika students remain significantly under-represented at degree and post-degree levels. At the same time, Pasifika have a higher proportion of students who leave school with low or no qualifications. This trend can be attributed to a shift in the early 2000s to focus on improving participation and the development of the ‘single qualification ladder’ and the ‘seamless pathway’ of learning which were seen as important for Māori and Pasifika who were under-represented in tertiary education.³¹ It aimed to enhance the esteem and quality of certificate and diploma courses and facilitate the ability of students to advance through the system. This has driven the surge in enrolments in lower levels of tertiary education, with many Pasifika students with low or no school qualifications enrolling in certificate-level qualifications.³²

25 Ministry of Business, Innovation & Employment, ‘Pacific Peoples in the Labour Market – June 2019 Year’, <www.mbie.govt.nz>.

26 Ministry of Business, Innovation & Employment, ‘Pacific Peoples in the Labour Market – June 2020 Year’, <www.mbie.govt.nz>.

27 Statistics New Zealand “Pacific Peoples” (2018) <<https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>>.

28 Statistics New Zealand “Household Economic Survey, Year Ended” (June 2018) <<https://www.stats.govt.nz/information-releases/household-net-worth-statistics-year-ended-june-2018>>.

29 In education, only 30 per cent of Pasifika year 13s gained university entrance in 2017, the lowest rate of any ethnic group. Nine per cent of Pasifika respondents indicated that their highest qualification was a Bachelor’s degree or higher in 2016, compared to the national average of 25 per cent; and 30 per cent of Pasifika were recorded with no qualification, compared to 20 per cent of the general population. Lisa Marriott and Nazila Alinaghi, “Closing the Gaps: An Update on Indicators of Inequality for Māori and Pacific People”, (2021) 32 JNZS 2.

30 Statistics New Zealand “Pacific Peoples” (2018) <<https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>>. There is also a correlation between the data on occupations and the highest qualifications attained by ethnicity. In 2018, a plurality of Pasifika had high school qualifications as their highest qualification (32 per cent), while the highest qualification held by most European and Others (including Asian, Middle Eastern, Latin American, African) was a Bachelors degree or higher (33 per cent and 55 per cent respectively). The highest qualification held by a plurality of Māori was a Tertiary certificate or diploma (33 per cent). This also shows that there is a high percentage of the Pasifika population with no qualification compared to the other ethnicities, indicating a clear impact of tertiary education on employment prospects.

31 Ministry of Education, 2004.

32 New Zealand Ministry of Education, “OECD Thematic Review of Tertiary Education – New Zealand Country Background Report”, (January 2006) <<https://www.oecd.org/newzealand/36441052.pdf>>.

However, it was interesting to note that a decade later, ethnic disparities and improving the participation of people from low-income backgrounds continue as a policy objective. In 2020 the Ministry of Education launched its Pacific Education Action Plan 2020–2030. This Action Plan aims to address the ongoing inequalities for Pasifika engagement and success in education with a vision that diverse Pacific learners and their families are safe, valued and equipped to achieve their education aspirations.³³ This Plan proposes an approach that transforms education to enhance Pasifika learners' success and recognises the limitations of previous Pacific Education Plan strategies over the years. Some of these limitations included the lack of systemic monitoring of the Pacific Education Plan; the national-level emphasis over regional or local levels; the limited time frames (always 5 years) to sustain change; the lack of partnership between government, education partners and learning contexts; and the lack of ethnic-specific data to be responsive to Pacific peoples as a diverse group.³⁴

The Plan identifies the following system shifts that are needed for Pacific learners and families to meet these objectives.

1. Work reciprocally with diverse Pacific communities to respond to unmet needs, with an initial focus on needs arising from the COVID-19 pandemic.
2. Confront systemic racism and discrimination in education.
3. Enable every teacher, leader and educational professional to take coordinated action to become culturally competent with diverse Pacific learners.

4. Partner with families to design education opportunities together with teachers, leaders and educational professionals so that aspirations for learning and employment can be met.
5. Grow, retain and value highly competent teachers, leaders and educational professionals of diverse Pacific heritages.

Pasifika student perspectives have identified the learning environment as essential for increased academic success. The New Zealand Educational Institute (NZEI) *Educating Pasifika for Success 2012* Report outlined that, 'students develop the ability, confidence and motivation and succeed academically when they participate competently as a result of having developed a secure sense of identity and knowledge that their voice will be heard and respected within their learning environment'.

This is echoed in the Tertiary Education Commission (TEC) 'Pasifika Operational Strategy 2017 – 2020',³⁵ with a goal to increase Pasifika success within all tertiary institutions. Further, the Academic Quality Agency for NZ Universities Cycle 6 audit focuses on enhancement access, outcomes and opportunity for Māori students and Pasifika students.

³³ Ministry of Education, 2020, at 4.

³⁴ At 4.

³⁵ Tertiary Education Commission *Pasifika Operational Strategy 2017 -2021* (30 January 2017) <www.tec.govt.nz/assets/Publications/Pasifika-Operational-Strategy-2017-2020.pdf>.

PART 2 – Pasifika Peoples in New Zealand Law and Society

2.4 Pasifika in legal education and the legal profession

The English legal system was transplanted to New Zealand through colonisation and the legal profession was predominantly made up of lawyers from England. In 1861, New Zealand-based law training began and the New Zealand Law Society was established in 1869.³⁶ The legal profession was monocultural, conservative and an extension of the English law training system and institutions of courts. In 1897, the first person of Māori descent was admitted as a barrister and solicitor in New Zealand.³⁷ The first person of Pasifika descent was not admitted as a barrister and solicitor in New Zealand until 1936.³⁸ The first person of Pasifika descent to be sworn in as a District Court Judge occurred in 2002. In 2019, Tiana Epati was elected as the first Pasifika President of the New Zealand Law Society. Although there were appointments and admissions to the legal profession from other ethnic groups in New Zealand, the numbers have been persistently low for Pasifika comparatively.³⁹ However, we acknowledge that Tikanga Māori predated the English legal system in Aotearoa and continues to this day.

For the Māori and Pasifika communities in New Zealand, law has been a mechanism of assimilation, colonial governance and dispossession; a basis for the assertion of rights; and a method of resistance. Even though the Māori and Pasifika peoples were effectively excluded from legal education and the profession for decades, the number of Pasifika lawyers increased in the 1980s.⁴⁰ The path has been forged by many “brown” lawyers such as Olive Virginia Malienafau Nelson, who took those first steps into the profession.⁴¹

In 2017, New Zealand universities collectively agreed to incorporate an enhancement theme⁴² into their sixth cycle of academic audit.⁴³ The topic selected for the theme was “Access, outcomes and opportunities for Māori students and for Pasifika students”. Although New Zealand universities are generally considered to be well-performing internationally, persistent gaps exist in the levels of access and achievement for both Māori and Pasifika students.

36 New Zealand Law Society “Lawyer ethnicity differs from New Zealand population” (3 August 2018) New Zealand Law Society < www.lawsociety.org.nz/news/lawtalk/issue-920/lawyer-ethnicity-differs-from-new-zealand-population/>.

37 New Zealand Law Society “Lawyer ethnicity differs from New Zealand population” (3 August 2018) < www.lawsociety.org.nz/news/lawtalk/issue-920/lawyer-ethnicity-differs-from-new-zealand-population/>.

38 New Zealand Law Society “Lawyer ethnicity differs from New Zealand population” (3 August 2018) < www.lawsociety.org.nz/news/lawtalk/issue-920/lawyer-ethnicity-differs-from-new-zealand-population/>.

39 In May 2019, Justice Joe Williams was appointed as the first Supreme Court Judge of Māori heritage in New Zealand.

40 Geoff Adlam “Lawyer ethnicity differs from New Zealand population” *LawTalk* (Volume 920, Wellington, 3 August 2018).

41 For example, Olive Virginia Malienafau Nelson in 1936 became the first person of Samoan descent in New Zealand to obtain a law degree and be admitted as a barrister and solicitor, New Zealand Law Society, “Olive Virginia Malienafau Nelson, 1917 – 1970” <<https://www.lawsociety.org.nz>>.

42 Enhancement theme for universities in Aotearoa addresses the topic of ‘Access, outcomes and opportunities for Māori students and for Pasifika students. These topics were chosen “because although New Zealand universities are generally considered to perform well, persistent gaps exist in access to university and success for these groups of students”. Robyn Longhurst, Darryn Russell, Winnie Laban, Fiona Johnson-Bell, Sheelagh Matear, “Evidence and evaluation for enhancement: Māori and Pasifika perspectives in Aotearoa New Zealand” (2020) <evidence-and-evaluation-for-enhancement-māori-and-pasifika-perspectives-in-aotearoa-new-zealand.pdf (enhancementthemes.ac.uk)>.

43 Robyn Longhurst, Darryn Russell, Winnie Laban, Fiona Johnson-Bell, Sheelagh Matear, “Evidence and evaluation for enhancement: Māori and Pasifika perspectives in Aotearoa New Zealand” (2020) <evidence-and-evaluation-for-enhancement-māori-and-pasifika-perspectives-in-aotearoa-new-zealand.pdf (enhancementthemes.ac.uk)>.

Adopting this topic recognised that these gaps concerned some academic quality issues, and consequently universities were asked (not students) and what they needed to do to redress these gaps.⁴⁴ It is also an indication of national consensus that diversity is both a social fact and a public good worth fostering and institutional promotion.

Chief Justice Dame Helen Winkelmann attributed the lack of diversity in the senior courts to a “pipeline issue”.⁴⁵ Her comments echo a resounding consensus that diversity in the legal profession and legal education is a priority. Further, it was reported that the profession and the law schools continue to be criticised for failing to reflect the diversity of the society they are training lawyers to serve.⁴⁶ This includes issues about justice and delivery of legal services relating, both causally and contextually, to the issues about the access to and delivery of legal education.

Pasifika are consistently under-represented in the law programmes in tertiary education institutions in New Zealand, at undergraduate, Honours and postgraduate levels. For instance, in 2011 only 3.5 per cent of New Zealand law graduates were Pasifika (which comprised 7.4 per cent of the total population of New Zealand), while 66.1 per cent were Pākehā (which at the time comprised 75 per cent of the total population of New Zealand).⁴⁷ The growth of Pasifika law graduates has been minimal, with Pasifika making up only 6.5 per cent of LLB graduates in 2017, with Pākehā making up 71 per cent.⁴⁸

Relatedly, Pasifika are consistently under-represented and earned less than other ethnicities in the legal profession. Pasifika comprise only three per cent of all lawyers in New Zealand.⁴⁹ Pasifika lawyers have an average time in the profession since admission of 13 years, as opposed to 19 years for New Zealand Pākehā, and earned seven per cent less than Pākehā.⁵⁰ The statistics are even more striking in relation to law firm partners and directors: only 227 of partners and directors were admitted between 2008 and 2018. Of those number, 75 per cent were of Pākehā ethnicity, 15 per cent were of Asian descent, eight per cent were Māori and two per cent were Pasifika.⁵¹ Only three per cent of judges in New Zealand are identified as Pasifika and all of these serve in the District Court.⁵² No Pasifika person has yet been appointed to the High Court, Court of Appeal or Supreme Court. There has also never been a Pasifika Queen’s Counsel. Moreover, only three per cent of law academics in New Zealand self-identify as Pasifika.⁵³

44 The project is being steered by Robyn Longhurst, Darryn Russell, Winnie Laban, Fiona Johnson-Bell, Sheelagh Matear, and is entitled “Evidence and evaluation for enhancement: Māori and Pasifika perspectives in Aotearoa New Zealand, Building Resilient Learning Communities: Using Evidence to Support Student Success”.

45 Anusha Bradley “90 per cent of High Court, Court of Appeal judges Pākehā” (20 September 2021) Radio New Zealand <<https://www.rnz.co.nz>>.

46 Anusha Bradley “90 per cent of High Court, Court of Appeal judges Pākehā” (20 September 2021) Radio New Zealand <<https://www.rnz.co.nz>>.

47 Rachael Breckon, “Diversity Changing Stereotypes – the future lawyer” *LawTalk* (New Zealand, 14 Sept 2012) at 7.

48 Geoff Adlam “Snapshot of the Profession 2019” *Law Talk* Volume 926 (March 2019), at 31.

49 Geoff Adlam “Diversity in the New Zealand legal profession: At a glance” *LawTalk* (Volume 932, Wellington, September 2019) 61 at 64.

50 At 64.

51 Geoff Adlam “Lawyer ethnicity differs from New Zealand population” *LawTalk* (Volume 920, Wellington, August 2018) 70 at 72.

52 Anusha Bradley “90 per cent of High Court, Court of Appeal judges Pākehā” (20 September 2021) Radio New Zealand <<https://www.rnz.co.nz>>.

53 At the time of the writing of this review there are currently only seven law academics of Pasifika descent at New Zealand Law Schools; Prof. Rex Ahdar and Alex Latu at the University of Otago, A.Prof Guy Sinclair, Fuimaono Dylan Asafo and Litia Tuiburelevu at the University of Auckland, Bridget Fa’amatuaui at Auckland University of Technology and Suliana Mone at University of Waikato.

PART 2 – Pasifika Peoples in New Zealand Law and Society

In terms of areas of practice, Pacific lawyers are also more likely to practice criminal law and family law, with Pacific lawyers practising in family law (45.8%), criminal law (39.4%), employment law (30.3%) and company law (28.5%).⁵⁴

At the same time, Pasifika are over-represented in the criminal justice system. Pasifika represent 12 per cent of the prison population, compared to eight per cent of the general population.⁵⁵ These statistics reflect and compound the generally poor socioeconomic positions occupied by Pasifika in New Zealand. Among other relevant statistics, Pasifika are over-represented in lower socioeconomic statistics like rental housing, and have the lowest household net worth, noted at \$15,000 in June 2018.⁵⁶

The increasing recognition of the value of diversity by the nation's legal profession urges New Zealand's law schools to focus on improving Pasifika legal education with an aim to increase the number of Pasifika students enrolling and graduating with law degrees by removing barriers to success.⁵⁷

Pasifika people are grossly underrepresented in the country's legal profession. If representation in the profession were proportional to population, there would be at least around 1,082 Pasifika lawyers in New Zealand.⁵⁸ As at June 2018, there were 377 Pasifika lawyers in New Zealand making up 2.8 per cent of all lawyers in the country.⁵⁹

In a recent article about the composition of the courts in New Zealand, Chief Justice Winkelmann issued a challenge to the entire legal profession for a more diverse judiciary, that "To achieve this aim will take the courage to do what is right, rather than what is convenient".⁶⁰ Chief Justice Winkelmann's remark underscores the sentiment that an improvement in diversity in the legal system is not only a legal obligation but a moral one. It is a cause worth pursuing for it engenders greater respect for both the system and the place of law in society.⁶¹

Overcoming this diversity challenge commences with diversification of the law student population. As Finke suggests, "because race is an important determinant of one's life experience, minority students bring an important perspective to predominantly White law schools".⁶²

54 Ministry of Pacific Peoples "Pacific Aotearoa Status Report A snapshot 2020 Pacific Peoples in Aotearoa Report" (Report for Ministry of Pacific Peoples, Wellington, 2020) < www.mpp.govt.nz >.

55 Department of Corrections "Prison facts and statistics - June 2021" (June 2021) Prison Statistics < www.corrections.govt.nz >.

56 Statistics New Zealand "Household Economic Survey, Year Ended June 2018" (June 2018) < <https://www.stats.govt.nz/information-releases/household-net-worth-statistics-year-ended-june-2018> > ; Pasifika Futures "Pasifika People in New Zealand: How Are We Doing?" (2017) 36 < http://pasifikafutures.co.nz/wp-content/uploads/2015/06/PF_HowAreWeDoing-RD2-WEB2.pdf >.

57 Note the recent New Zealand Council of Legal Education (CLE) initiative to include concepts of te ao Māori and tikanga in all law degree courses. Diana Clement "Tikanga becomes compulsory for law students" ADLS (14 May 2021) < https://adls.org.nz/Story?Action=View&Story_id=338 >.

58 Geoff Adlam "Lawyer ethnicity differs from New Zealand population" *LawTalk* (Volume 920, Wellington, 3 August 2018).

59 Geoff Adlam "Lawyer ethnicity differs from New Zealand population" *LawTalk* (Volume 920, Wellington, 3 August 2018).

60 Mike White "Diversity badly lacking among New Zealand's judges" *Stuff New Zealand* (online ed, New Zealand, 4 October 2020) < www.stuff.co.nz/national/crime/122897629/diversity-badly-lacking-among-new-zealands-judges >.

61 P Y T Hamlar, "Minority Tokenism in American Law Schools" (1983) 26 *L.J.* 443 at 459.

62 C.L. Finke, 'Affirmative Action in Law School Academic Support Programme' (1989), 39 *J. Legal Ed.* 55 at 59.

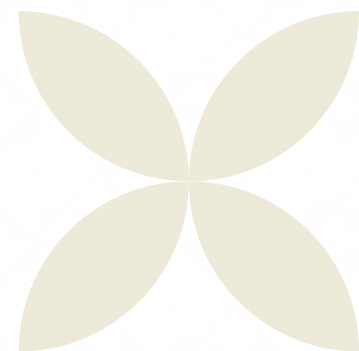
The racial and socioeconomic homogeneity of the law school student population is striking. Ministry of Education statistics show that in 2017 there were 15,785 domestic students enrolled in law bachelor's degrees (LLB and LLB(Hons)). Only nine per cent of these students were Pasifika, in comparison to European with 66 percent, Asian with 24 per cent and Māori with 12 percent.⁶³ This pattern is mirrored in the rates of law degree completions, with European leading with 72 percent, 20 per cent for Asian, 10 per cent for Māori and six per cent for Pasifika.⁶⁴ This means that law schools are, to some extent, isolated from the people and institutions with which the law interacts, and law students who are future lawyers are not familiar with the social fabric and diverse make-up of society.

Literature on the development of a Pacific legal profession has focused on customary law and its application in Pacific Island nations, but not on Pasifika lawyers in New Zealand.⁶⁵ Training in the Commonwealth legal systems is necessary because of the adoption of Western legal culture in Pacific countries, but there must also be due regard for local customs and traditions.⁶⁶

Similarly, there is an assumption that because Pasifika are greatly overrepresented in the New Zealand prison population, legal expertise is only required in the field of criminal law. This assumption ignores the complexity of legal problems facing many Pasifika communities. Legal expertise is required in variety of practice areas—economic development, commercial law, corporate law, family law, tax law—with which Pasifika communities need to engage.

Many law schools have implemented equity programmes for Pasifika law students.⁶⁷ For example, Victoria University of Wellington has a targeted admission scheme, scholarships, and awards.⁶⁸ Law schools have equity programmes for remedial support including tutorials, support staff, mentoring, and workshops. Law schools have adjusted their overall structure to provide a focus on Pacific peoples' issues; for instance, inviting Pacific guest lecturers to speak, having a Pacific law paper, coordinating conferences and exchanges focused on Pacific legal issues.⁶⁹

While there have been some increases in Pasifika higher education, access rates for Pasifika students remain persistently low. For instance, in education, only 30 per cent of Pasifika Year 13 students gained university entrance in 2017, the lowest rate of any ethnic group.⁷⁰ Nine per cent of Pasifika participants indicated that their highest qualification was a bachelor's degree or higher in 2016, compared to the national average of 25 per cent; and 30 per cent of Pasifika were recorded without any qualification, compared to 20 per cent of the general population.⁷¹ For law, national statistics show that the qualification completion rate across all universities and from year two to completion has been between 40 to 50 per cent in the period between 2009–2018.



63 Geoff Adlam "Lawyer ethnicity differs from New Zealand population" *LawTalk* (Volume 920, Wellington, 3 August 2018).

64 As above. Comparing with 2014, there was an increase in members of minorities graduating with LLB – nine per cent for Māori; five per cent for Pasifika and 23 per cent for Asian. Also see Geoff Adlam "Snapshot of the Profession" *LawTalk* (Volume 883, Wellington, 11 March 2016) at 20.

65 Carolyn Penfold, "Contextualising Program Outcomes for Pacific Island Law Graduates" (2012) *Leg Ed Rev* 51.

66 Jennifer Corrin "Finding the Right Balance in Plural Systems: Training Lawyers in the South Pacific" (2005) 4(2) *JCLE* 171 at 185.

67 New Zealand Council of Legal Education "Maori and Pasifika Support: Law School Responses" (NZCLE 96/31, April 2021).

68 Mara Kawehiwehi Hosoda "Optimising the New Zealand Law School Experience for Pacific Lawyers" (PhD Thesis, University of Otago, 2015), at 30.

69 At 31.

70 Marriott and Alinaghi, above n29.

71 Marriott & Alinaghi, above n 29.

PART 3 – Key Barriers to Successful Tertiary Transitions for Pasifika Peoples

Increasing the number of Pasifika people entering law schools as well as improving retention and performance grades are the key focus areas of the Improving Pasifika Legal Education Project because they are critical to New Zealand’s workforce needs.

Focusing on growing the number of Pasifika lawyers to be proportional to the Pasifika communities in Aotearoa is critical and we believe that increasing Pasifika participation and improving retention and achievements are also crucial. In 2021, in terms of the Pasifika population, the proportion of Pasifika lawyers to the Pasifika population is 802.6:⁷²

Pasifika, as a young population, is projected to increase from 8 percent to 10 percent of the New Zealand population by 2030. However, as at June 2019, 16.4 per cent of Pasifika people aged 15–24 years are not in education, employment, or training.⁷³ Further, while Pasifika people’s participation at tertiary education has been improving since 2017, there are still more Pasifika people at the non-degree level.⁷⁴ In 2020, 31 per cent of Pasifika people left school without graduating with a school qualification, 24 per cent earned a tertiary certificate or diploma and only 15 per cent earned a bachelor’s degree or higher.⁷⁵



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These statistics impact not only the number of Pasifika learners entering and successfully completing law school and higher education, but also Pasifika people entering the legal profession. The rate of population growth, gaps in access indicators and qualification attainment rates suggest that Pasifika students are not well served by the universities. As at 2021, Pasifika lawyers account for 3.3 per cent of the profession.⁷⁶

Accordingly, increasing the number of Pasifika students in law school who would transition successfully to legal practice is a key focus of this project and has been identified as critical to New Zealand’s needs. Increasing the number of Pasifika students in law programmes, and ensuring they are supported to complete their qualifications, will provide a pathway to greater economic prosperity for Pasifika people.

In addition, removing the barriers for Pasifika to enter the legal profession will help increase the pool of Pasifika lawyers, ensuring the legal profession reflects the community they serve, thereby increasing trust in the legal system. However, it should be noted that there is a limited focus based on a review of the literature, on factors specifically encouraging or inhibiting Pasifika students’ access to law school. Where this is discussed, the main barriers outlined related to systemic and cultural barriers,⁷⁷ this will be discussed later in this paper.

72 James Barnett, Marianne Burt, Navneeth Nair, ‘Snapshot of the Profession’, (LawTalk, New Zealand Law Society, Wellington, 2021) <www.lawsociety.org.nz>.

73 Ministry of Business, Innovation & Employment, ‘Pacific Peoples in the Labour Market – June 2019 Year’, <www.mbie.govt.nz>. The rate of the Pasifika young people not in engaged in employment, education or training has been consistently higher than Pākehā (10.1%) and Asian (9.2%) ethnic groups.

74 Education Counts, ‘Tertiary Achievement and Attainment’, <www.educationcounts.govt.nz/statistics/achievement-and-attainment>.

75 Above n 74.

76 James Barnett, Marianne Burt, Navneeth Nair, ‘Snapshot of the Profession’, (LawTalk, New Zealand Law Society, Wellington, 2021) <www.lawsociety.org.nz>.

77 Hosoda, above n68.

It is evident based on a review of the relevant studies and literature on barriers that there is a complex mix of factors that are at play at different stages while students are in law school, after graduating from law school and even while they are in the process of applying to law school. The study by Bolstad et al., states that:⁷⁸

International studies of students' subject choice decisions in the last few years of secondary school suggest first, that there is a great deal of variation in how young people make their subject choices and educational decisions. Secondly, they also suggest that these decisions involve a complex mix of psychological and social factors, and often it is the interaction between these factors that is important in shaping students' choices and decisions. Thirdly, students' personal and family worlds seem to be an important influence on their choices. Notwithstanding these complexities, existing research suggests two areas that seem to be particularly important in students' choice to continue or not to continue with science. These are: students' experiences with school science; and their knowledge and awareness of the range of study and career options that involve science.

Our review of the available literature on Pasifika law students and Pasifika lawyers showed that most studies are based on student surveys without digging deeply into what really blocks students from gaining access or succeeding in law school. A study conducted by Hipkins et al., noted that studies based on student surveys "tend to conclude with homilies about the need for more information and better guidance."⁷⁹

Further, in looking at the 'pipeline issue', it is clear that identity categories in common usage can be useful tools but may also occlude important internal differences. Relatedly, it is interesting to note the increased visibility and voices of Pasifika. It is however not clear whether or not the increase in access to a legal education will change the experience and sense of obligation among lawyers entering the profession.

Nevertheless, central themes have emerged from across different studies to provide consistent insights into key barriers across each of the three stages of educational transition: Pasifika students in secondary school; their experiences in law school; and post-law school. The three stages of the transition process are interconnected as the barriers at each stage can influence their subsequent experiences. For instance, if a student is not properly guided or assisted at enrolment, this can result in inappropriate course choices which can impact on their first-year progress in law school, as well as influence their perception of the law school as an unwelcoming place.⁸⁰

The experiences as well as the background of Pasifika students prior to entering law school are important. These include their "home environment, primary school, high school, preparatory courses and previous university study" and characteristics, such as if they are the first one in their immediate family to attend university, family commitments and other family-related issues.⁸¹

78 Rosemary Hipkins, Miles Barker & Rachel Bolstad "Teaching the 'nature of science': modest adaptations or radical reconceptions?" (2005) 27(2) *IJSE* 243 at vi – vii.

79 Hipkins et al, above n78, at 2.

80 Seini Jensen, Irena Madjar and Elizabeth McKinley "Students and NCEA course choices and allocations, Focus on Senior Secondary" (2010) 2 *Set* 37.

81 Reremoana Theodore, Mele Taumoepeau, Karen Tustin, Megan Gollop, Charlotte Unasa, Jesse Kokaua, Nicola Taylor, Sandhya Ramrakha, Jackie Hunter and Richie Poulton, "Pacific University Graduates in New Zealand: What helps and hinders completion", 14(2) *Sage Journals*, 138.

PART 3 – Key Barriers to Successful Tertiary Transitions for Pasifika Peoples

Theodore et al., identified 13 broad categories or characteristics that affect and hinder Pasifika students' completion of their qualifications.⁸² These include: "family responsibilities; student/personal factors; financial health; employment; University-Academic; time pressure; bereavement; lack of support; interpersonal relationships; residence; pregnancy/birth (etc.)".⁸³

Equity in education is generally defined as a system "where all students, regardless of their ethnicity, socioeconomic status or abilities, can succeed".⁸⁴ In her study, Bolton argued that educational equity is a pressing social challenge in New Zealand because all children deserve access to a high quality education that prepares them for success later in life, no matter their ethnicity, where they live or how much money their parents make.⁸⁵

However, because of the lack of Pasifika students in tertiary education generally, universities have implemented equity programmes to support Pasifika students. Examples of these programmes include targeted entry schemes for professional programmes, such as health sciences,⁸⁶ mentoring programmes,⁸⁷ engineering programmes,⁸⁸ Pacific liaison persons and supporting staff,⁸⁹ the Tuakana summer first-year

course,⁹⁰ bridging or foundation programmes,⁹¹ and tutoring.⁹²

Current population projections show that Māori and Pasifika children will make up the majority of primary school students by 2040.⁹³ In terms of international assessments, New Zealand consistently performs above the average, however, the results for Māori and Pasifika students fall among the lowest-performing OECD countries. There are also gaps in the NCEA levels attained by Māori and Pasifika learners, as well as the lower rates of these students meeting National Standards.⁹⁴ The common barriers identified under educational equity that negatively impact Pasifika students' success are systemic and cultural barriers.⁹⁵

'Familiarity' with the legal and law programmes/ profession requirements by both students and their communities serve as barriers for Pasifika students. Mandler reported that students' and parents' familiarity with employment opportunities influences choices.⁹⁶ Studies have found that familiarity with lawyers enhances the legal education process.⁹⁷ Familiarity helps to demystify law and law school, eases the transition into tertiary education and assists the student to develop confidence. This can also ease Pasifika students' sense of isolation, which is reinforced if students are not connected to supportive staff or peers.

82 At 23.

83 At 23.

84 Sarah W Bolton, *Educational Equity in New Zealand: Successes, Challenges and Opportunities* (Prepared for Ian Axford (New Zealand) Fellowships in Public Policy, Fulbright New Zealand, Wellington, 2017).

85 Bolton, above n 86.

86 Roannie Ng Shiu "It's Life Gong to the Moon": The experiences of Samoan Tertiary Health Students at the University of Auckland" (PhD Thesis, University of Auckland, 2011).

87 Cherie Chu "Mentoring for Leadership in Pacific Education" (PhD Thesis, Victoria University of Wellington, 2009).

88 Marcia Murray and Te Kipa Morgan, "An indigenous approach to engineering effective learning opportunities" (Paper presented at Australasian Association for Engineering Education Conference, December 2009).

89 Lorraine Petelo "Fa'alogo l leo o le fanau: A qualitative study of the ways in which students of Samoan background experience their education within the University of Canterbury" (PhD thesis, University of Canterbury, 2003).

90 Viliame Latu, "There is more to learning mathematics than mathematics: Attributional beliefs and motivation of Māori and Pacific island students" (Paper presented to Mathematics Education Research Association of Australasia, Townsville, Sydney, June 2004).

91 Alexandra McKegg, "Learning communities: A structured approach to student integration" (Paper presented to Higher Education, Research & Development Society Conference, 2005).

92 Camille Nakhid, "Ethics and the obstruction of social justice for Māori and Pasifika students in tertiary institutions in Aotearoa New Zealand" (2006) 9(3) *Race, Ethnicity and Education* 295.

93 Statistics New Zealand.

94 See Ministry of Education "Indicator: School Leavers with NCEA Level 2 or Above" (2020) Education Counts < www.educationcounts.govt.nz>.

95 Hosoda, n 68.

96 Peter Mandler, "Educating the nation: IV. Subject choice" (2017), 27 *Trans. R. Hist. Soc* 1.

97 Peter Hamlar "Minority Tokenism in American Law Schools" (1983) 26 *HowLJ* 443, at 535; D Weisbrot, "Recent Statistical Trends in Australian Legal Education" (1991) 11 *LegEdRev* 219, at 235.

A lack of confidence can be a dominant cause of students' academic problems.⁹⁸ The lack of role models is an important contributor to success.⁹⁹ Underrepresentation and the resulting loss of confidence clearly forms a barrier to both access and success. As Pasifika lawyers make up only a tiny percentage of the legal profession, many students will lack the advantage of this 'familiarity' in their upbringing. As discussed previously, as significant numbers of Pasifika people work in low-status jobs, comparatively, it is more likely that Pasifika students will not have these comparative advantages.

The school context may also affect Pasifika students' access to law school. Anders et al., stated that "schools might try to offer a curriculum which they deem appropriate for the socioeconomic composition of the school" and that "schools serving poor children face difficulties in recruiting and retaining highly qualified staff", especially in areas of teacher shortage, such as languages and science.¹⁰⁰ This explanation shows how different factors can come together in different school contexts to impact on students' perceptions. These include the school's perception of the types of subjects that will be appropriate for their students; the influence of peers, including the overall academic ability of the Pasifika students; and the availability of teaching staff.

3.1 Transitions from secondary school to tertiary education

In terms of transitioning from secondary school to tertiary education, three main issues have been identified in the literature relating to Pasifika students' lack of:

- Information, guidance and goals tied to relevant tertiary education pathway options;
- Academic preparedness and familiarity with tertiary academic requirements; and
- Information and support to guide their actions and decisions.¹⁰¹

The impact of the above shortcomings on Pasifika students has detrimental effects because students feel disconnected and isolated. They become unfamiliar with academic requirements, feel unsupported socially, or feel academically unprepared as well as unsupported. Generally, systemic barriers included the failure to provide information on the transition from high school to tertiary education,¹⁰² how institutions function and operate,¹⁰³ and the support resources available,¹⁰⁴ were systemic barriers.

98 Hamlar, at 536. For a contrary argument, see L Taylor "Factors that Effect Academic Success in Law School" (MATHesis: Bond University, 1996).

99 Carolyn Penfold "Indigenous Students' Perceptions of Factors Contributing to Successful Law Studies" (1996) 7 LER 155 at 166-168.

100 Jake Anders, Morag Henerson, Vanessa Moulton, & Alice Sullivan, "The role of schools in explaining individuals' subject choices at age 14" (2018) 44(1) Oxford Review of Education 75 at 89.

101 Elizabeth McKinley, Irena Madjar, "From schools in low-income communities to university: Challenges of transition for Maori and Pasifika students" in *Diversity in Higher Education - Maori and Pasifika Higher Education Horizons* (Vol. 15, Emerald Group Publishing Limited, Bingley, 2014).

102 Telesia Kalavite "Fononga'a Fakahalafononga: Tongan Students' Journey to Academic Achievement in New Zealand Tertiary Education" (PhD Thesis, University of Waikato, 2010).

103 Lorraine Petelo, "Fa'alogo I leo o le fanau: A qualitative study of the ways in which students of Samoan background experience their education within the University of Canterbury" (PhD Thesis, University of Canterbury, 2003), at 175; Telesia Kalavite, above n 105, at 155; Irena Madjar and Elizabeth McKinley *Understanding NCEA: a relatively short and very useful guide for secondary school students and their parents* (2ed, Starpath Project for Tertiary Participation and Success, New Zealand Council for Educational Research, Wellington, 2013), at 98.

104 Lorraine Petelo, above n 105, at 192 and 199; Anae, Melani, Helen Anderson, J. Benseman, and E. Coxon, *Pacific peoples and tertiary education: Issues of participation: Final report* (Report for Ministry of Education, University of Auckland, 2003).

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The lack of understanding impacted on the academic pathway of the Pasifika student. As Jensen et al., observe, students often have a general understanding of the NCEA system, for example, how to navigate the easiest path through their requirements, yet most do not understand the long-term implications of their choices.¹⁰⁵ This study also found that students need to understand that schools' allocating them to alternate versions of subjects, often based on earlier performance, can close doors to academic pathways. The study by Jensen et al., is important because it found many students do not understand the full implications of their NCEA course choices or course allocations.¹⁰⁶ In particular, Māori, Pasifika and lower decile secondary school students are at risk of ending up with inappropriate choices if their academic potential is not recognised early enough and if they do not receive clear guidance about the best course choices.¹⁰⁷

Insightful research from the University of Auckland's Starpath Project¹⁰⁸ has identified a series of stepping-stones and stumbling blocks that have an impact on the transition from secondary to tertiary study.¹⁰⁹ Surveys have shown that Pasifika students, many of whom attend low-decile schools, tended to be enrolled in fewer academic subjects.¹¹⁰

Their achievement tended to be assessed by unit standards rather than achievement standards¹¹¹ and they completed fewer credits from the approved list of University Entrance (UE) subjects.

The researchers could see that these patterns placed students at risk of not achieving UE, or of achieving at a level that would likely exclude them from limited-entry university programmes. According to the Starpath team, a fundamental underpinning belief was that many of the students in these low decile schools had the ability and potential to succeed in degree-level qualifications. They noted that:¹¹²

These inequities pose a major challenge, and not only for young people from Maori, Pacific and low-income families and their parents. According to international studies, there is a strong correlation between educational qualifications, long-term employment and life-long earnings, and Maori, Pacific and children from low-income backgrounds comprise a rapidly increasing proportion of the youth population (and hence the future workforce) in New Zealand. If relatively few of these young people acquire degree level qualifications (and particularly University degrees, which attract a premium in life-long earnings), the country's prospects of sustaining a high income, high value economy into the future are significantly diminished.

105 Seini Jensen et al, above n81.

106 Seini Jensen et al, above n 81.

107 Seini Jensen et al, above n81.

108 This project was an extended study of students' subject choices and pathways, centered on low decile schools in Northland and Auckland. The programmes were described as focused on equitable outcomes for New Zealand students who have been under-represented in tertiary education.

109 Jensen, above n 81. M Webber, J. Eaton, V. Cockle, T. Linley-Richardson, M. Rangī, K. O'Connor, *Starpath Phase Three –Final Report* (Starpath Project The University of Auckland, 2018). This report from the University of Auckland Starpath Project highlights challenges for students from low to mid-decile Auckland region secondary schools as they transition from school into university study. The study identifies 'stepping stones' or 'stumbling blocks' including – academic goals and realistic expectations for university study; family expectations; personal determination to succeed at university; early planning, including strategic subject choices; academic preparation and study skills; and student leadership activities and work experience. Key implications for students, families, schools and universities are discussed.

110 The results applied for Māori as well. See Boaz Shulruf, John Hattie & Sarah Tumen "The predictability of enrolment and first year university results from secondary school performance: the New Zealand National Certificate of Educational Achievement" (2008) 33(6), *Stud. High. Educ.* 685.

111 There are two types of standards – unit standards and achievement standards. Unit standards are always internally assessed and it is one part of the whole performance system and it's to describe the standards associated with competent performance. On the other hand, achievement standards are internally assessed, and some are externally assessed in exams or by submission of a portfolio/report where student's outcome or performance is focused and students demonstrate that they have learned the required skills and content.

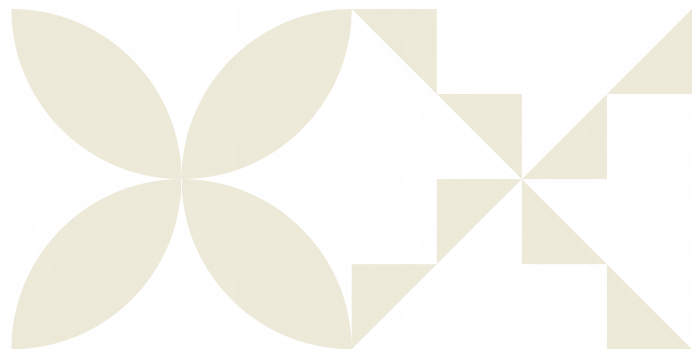
112 Irena Madjar, Elizabeth McKinley, Seini Jensen, Alice Van Der Merwe "Towards University: Navigating NCEA Course Choices in Low-Mid Decile Schools" (Starpath Project Report, University of Auckland, 2009) at 3.

The key determinant for participation in degree-level study does not appear to be socio-economic status per se, rather, it is the availability of opportunities to learn. Part of the Starpath project included a study by Associate Professor Aaron Wilson, the study explored the participation and achievement rates of secondary school students in selected literacy standards and used classroom observations to record practices and resources used in literacy teaching. Wilson found that the extent to which unequal opportunities to learn, for Māori and Pasifika and other students from low socioeconomic status communities exist at the systems level as well as at the level of classroom instructional offerings.¹¹³

The above issue was explored in a study in England where Anders et al drew on data from England's National Student Database to report that the school attended explained around a quarter of the variance in the academic selectivity of subjects chosen once demographics had been accounted for. They suggested that "schools might try to offer a curriculum which they deem appropriate for the socioeconomic composition of the school" and that "schools serving poor children face difficulties in recruiting and retaining highly qualified staff", especially in areas of teacher shortage, such as languages and science.¹¹⁴ The Anders et al study highlights the multiple potential factors that can come together in different school contexts to impact students' decisions.¹¹⁵ These include the school's perception of the types of subjects that will be appropriate for their students; the influence of peers, including the overall academic ability of the cohort; gender; and the availability of teaching staff for various subjects.¹¹⁶

Studies found there was a failure to provide financial assistance.¹¹⁷ There was no assistance for those students who were subject to family financial strain,¹¹⁸ additional work commitments,¹¹⁹ and those who lacked time and space for study because of family poverty issues.¹²⁰ Clearly, once Pasifika students from lower socioeconomic backgrounds gain access to law schools they will be burdened with financially related stresses which are likely to make success much more difficult to attain.¹²¹

Within the university, studies suggested there were systemic barriers in the way universities characterised Pacific students generally. Pacific students were homogenised under the category 'Pacific Islander';¹²² 'Samoan';¹²³ or 'brown'.¹²⁴ Also, the university stereotyped Pacific students classifying them as living in a lower economic position, lacking English language acquisition, low academic achievement, having Christian values, and lacking a work ethic.¹²⁵ Pacific support services reiterated the differences between Pacific students and other students.¹²⁶



113 Aaron Wilson and Stuart McNaughton, "Using selected NCEA standards to profile senior students' subject area literacy", (2014) 2 Set 61.

114 Anders et al, above n 102, at 89.

115 Anders et al, above n 102.

116 Anders et. al, above n 102.

117 Lorraine Petelo, above n 105, at 208.

118 John Benseman, Eve Coxon, Helen Anderson & Melani Anae "Retaining non-traditional students: lessons learnt from Pasifika students in New Zealand" 25(2) High. Educ. Res. Dev. 147 at 156.

119 Jo Fletcher "Second-chance diverse literacy learners: Factors that influence their learning" (paper presented to Australian Association for Research in Education International Education Research Conference, Canberra Australia National Convention Centre, 29 November – 3 December 2009) at 13.

120 Kalavite, above n 105, at 169.

121 Lynne Taylor et. al, above n80, at 1047-1060.

122 Lorraine Petelo, above n 105, at 126.

123 At 135.

124 At 144.

125 Diane Lysette Mara "Theories and Narratives: Pacific Women in Tertiary Education and the Social Construction of Ethnic Identities in Aotearoa New Zealand" (Phd Thesis, Victoria University of Wellington, 2006) at 205.

126 At 221

PART 3 – Key Barriers to Successful Tertiary Transitions for Pasifika Peoples

Generally, the university culture presented a systemic barrier,¹²⁷ as it was impersonal and unwelcoming.¹²⁸ University study style was a barrier in that it was based primarily on individual accomplishment,¹²⁹ a *laissez faire* approach to learning,¹³⁰ written instructions and questions,¹³¹ and it was heavily reliant upon time management skills.¹³² There was a lack of Pacific knowledge,¹³³ and a negative reception of Christian values.¹³⁴

3.2 Subject guide in secondary school and the pathways

Further, the education system plays an important role on students' school choices which impact the student' school-to-work transitions. In New Zealand, the system is organised around education rather than employment. The senior secondary school qualifications (NCEA) do not distinguish between the types of subjects students can study to gain credits. The system provides the student with a lot of choices while they are deciding on their subjects because each subject is itself assessed by a flexible combination of NCEA achievement standards and/or unit standards. For example, two students may study Geography but there is no guarantee that they will have both achieved an identical combination of knowledge and skills.¹³⁵

The flexibility and openness within the system means that the very concept of students choosing their subjects should be appraised carefully. Additionally, New Zealand's system maintains that all credits are equal, so this means that students may differentiate their academic performance with strategies that may not work for their future educational endeavours. For example, students might seek to gain more credits than they need or they may try to gain more Merit/Excellence endorsements for individual achievement standard and for their qualification as a whole.¹³⁶

Relatedly, University Entrance may also serve as a barrier. Pasifika students have found certain university pathways are blocked because they got Level 3 NCEA but they do not get a University Entrance. This might be because the school credits they have are not distributed across approved subjects in the correct way, or because they do not satisfy the literacy or numeracy requirements, or some combination of these factors. Nonetheless, many students who get University Entrance are then faced with competition for places in limited-entry university courses. In these situations, universities usually rank students according to their Achieved/Merit/Excellence profiles to create their grade point averages (GPAs).

Another systemic barrier is the lecturer teaching style at university. Barriers included lecturers not adapting their communication style to those with English comprehension challenges,¹³⁷ lecturers having no cultural knowledge,¹³⁸ teaching practices that led Pasifika students to internalise racism,¹³⁹ tokenism where lecturers expected a student to represent all

127 Roannie Ng Shiu, "It's Like Going to the Moon": The experience of Samoan Tertiary Health Students at the University of Auckland" (PhD thesis, University of Auckland, 2011), at 113.

128 Irena Madjar, Elizabeth McKinley, Seini Jensen, Alice Van Der Merwe "Stumbling blocks or stepping stones? Students' experiences of transition from low-mid decile schools to university" (Starpeth Project, University of Auckland, 2010) at 97.

129 Lorraine Petelo, above n 105, at 188.

130 Roannie Ng Shiu, above n 129.

131 Naila Fanene "A Study of the Academic Writing Problems of New Zealand-Born Samoan Students in Tertiary Institutions" (MA thesis, Auckland University of Technology, 2006) at 75 & 91.

132 Fanene, above n 133, at 121; Telesia Kalavite, above n105, at 156.

133 Diane Lysette Mara, above n127, at 207.

134 At 207.

135 NZQA, "Understanding NCEA – A Guide for students, parents and communities", www.nzqa.govt.nz/assets/.

136 NZQA, "Course Endorsement Guide", <www.nzqa.govt.nz/assets/>.

137 Naila Fanene, above n 133, at 54.

138 Rosemarie Penn "Manumalo: A Study of Factors which Facilitate Success for New Zealand-born Samoan Students at University" (MEd Thesis, Auckland University of Technology, 2010) at 69.

139 Airini, Deidre Brown, Elana Curtis, Odie Johnson, Fred Lutuata, Mona O'Shea, Te Oti Rakana, Gillian Reynolds, Pale Sauni, Angie Smith, To'aiga Su'a Huirua, Matt Tarawa, Sonia Townsend, Tania Savage, Meryl Ulugia-Pua *Success for all: Improving Māori and Pasifika student success in degree-level studies* (Teaching & Learning Research Initiative Report, Wellington, 2010) at 12.

Pacific ethnic groups,¹⁴⁰ and staff opposition to support services.¹⁴¹

There are other factors at play. For instance, a recent study has noted educational disadvantages such as students in remote communities having few of the more general support mechanisms taken for granted by urban students, for example, libraries and government agencies such as Parliament.¹⁴² Moreover, there is also an argument that poorer education at high school and primary levels leads to a correspondingly poor performance and representation of Pasifika people at the tertiary level.¹⁴³

3.3 Social and Cultural Barriers

Students' backgrounds have a material impact on their academic performance and outcome. Cultural differences and poverty have been identified as the main barrier for Pasifika students.

Cultural barriers are those specific to Pacific people's culture that Pasifika students bring with them to university. Studies demonstrated the strong family obligations/commitments sometimes were a barrier, such as family expectations to study a particular subject,¹⁴⁴ family financial obligations,¹⁴⁵ and family commitments and responsibilities generally.¹⁴⁶ Studies indicated church was a cultural barrier, especially the commitment generally,¹⁴⁷ and financial obligations.¹⁴⁸

At university and school, a cultural barrier was English as a second language generally.¹⁴⁹ More specifically, difficulties in written English,¹⁵⁰ and spoken English,¹⁵¹ were cultural barriers. Additional cultural barriers included discomfort in criticising people in positions of authority and leadership (staff and tutors),¹⁵² not making eye contact to demonstrate listening, and walking lower to be polite by acknowledging deference to those in authority and seniority.¹⁵³

Vaughan stated that:¹⁵⁴

students who do well in the areas most valued by teachers and schools (eg. enjoyment of reading, being focused and responsible, high cognitive competency) are consistently more likely to see themselves undertaking tertiary study, often university, having professional occupations, and fewer barriers to the life they desire. In short, they are more likely to have a learning identity that predisposes them to undertake tertiary study in the first year of leaving school, and possibly undertake more formal learning later in life too.

140 Diane Lysette Mara, above n127, at 205-206.

141 Camille Nakhid, above n94, at 304.

142 Airini et al, above n 141.

143 Seini Jensen, Irena Madjar and Elizabeth Mckinley, "Students and NCEA course choices and allocations", NZCER, Focus on Senior Secondary (2010) 2 Set.

144 Lorraine Petelo, above n 105, at 162.

145 Jo Fletcher, above n121, at 10.

146 Lorraine Petelo, above n 105, at 178; Benseman, above n120, at 155; Naila Fanene, above n133, at 51; Rosemarie Penn, above n 120, at 68

147 Naila Fanene, above n133, at 51.

148 Lorraine Petelo, above n 105, at 171.

149 Naila Fanene, above n 133, at 121; Telesia Kalavite, above n 107, at 157; Diane Mara and Maryanne Marsters *Pasifika Students: supporting academic success through the provision of mentoring* (Report to Ako Aotearoa, Regional Hub Project Fund Scheme, Hawkes Bay, 2009), at 21.

150 Lorraine Petelo, above n 105, at 194.

151 Benseman et. al, above n120, at 157.

152 Naila Fanene, above n 133, at 45.

153 Jo Fletcher, above n 121, at 13-14.

154 Karen Vaughan, *Workplace learning: A literature review*. (Ministry of Education, NZCER Press, Wellington, 2008), at 67.

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3.4 Evaluating Equity responses/interventions

The three important and interrelated perspectives that drive the imperative for more equitable access to higher education for Pasifika students¹⁵⁵ include social justice, cohesion, and economic prosperity.¹⁵⁶

Hosoda records that in reaction to the lack of Pasifika students in tertiary education generally, New Zealand universities have implemented equity programmes to assist Pasifika students.¹⁵⁷ Equity programmes for Pasifika students are those that aim to increase the recruitment, retention and success of Pasifika students and support an inclusive work and study environment.¹⁵⁸

However, in some instances, it has been argued, that the selection process had deliberately sought to admit more Māori or Pasifika than their share of the general population and inevitably this discriminated against another ethnic group. For example, in September 2020 the Christchurch High Court considered a legal challenge to Otago University’s medical school ‘Mirror on Society’ policy and associated admission scheme, which provided preferential entry of Māori, Pasifika and other groups identified under the policy into Medicine. Geddis et al argued that this legal challenge to the University of Otago’s diversity policy for medical student intake did not deserve to succeed.¹⁵⁹ This policy was introduced in 2012 for the purpose of ensuring that the “student intake was diverse so that, as much as possible, it would reflect the ethnic and socioeconomic realities of the communities which students would go on to serve.”¹⁶⁰ The claim was settled outside of court before a decision could be issued.

Such proposition aligns with the statutory framework under s 9 of the Race Relations Act 1993 and s 224(6) of the Education Act 1989, which support the provision of preferential entry schemes. The leading decision on affirmative action programmes is *Amaltal Fishing Company Ltd v Nelson Polytechnic (No. 2)*.¹⁶¹ In that decision, the Human Rights Review Tribunal held that in relation to the requirements for equity programmes to fit within the definition under s 73 of the Human Rights Act 1993 are: 1) that the thing done was done in good faith 2) that the thing done was for the purpose of assisting or advancing persons or groups of persons of a particular race and 3) that those persons or groups of persons need, or may reasonably be supposed to need, assistance or advancement in order to achieve an equal place in the community.

However, it should be noted that research on the New Zealand law school experience or equity programmes for Pacific law students is limited. Hosoda’s work tried to fill the gap left by the lack of literature on the law school experiences of Pacific law students. One of the questions which arises is whether and how the kinds of changes that some law schools are making or are trying to make are producing new stories about Pasifika experiences in law schools.

155 Reremoana Theodore, Mele Taumoepeau, Jesse Kokaua, Karen Tustin, Megan Gollop, Nicola Taylor, Jackie Hunter, Cynthia Kiro, Richie Poulton, “Equity in New Zealand university graduate outcomes: Māori and Pacific graduates”, (2017) 37(1) High. Ed. Res. Dev. 206.

156 Theodore et al., above n157.

157 Hosoda, above n 68, at 29.

158 University of Auckland “FAQs about equity and the Equity Office” (April 2014), <www.auckland.ac.nz>.

159 Maria Hook, Jane Calderwood Norton and Andrew Geddis, “An affirmative case for Otago medical school’s affirmative action policy”, *The Spinoff* (September 25, 2020).

160 Above n 161.

161 (1996) 2 HRNZ 225.

PART 4 – Barriers to Enabling Culturally Relevant and Supportive Tertiary Learning Environments for Pasifika Law Students

The studies on Pasifika law students and lawyers describe the ways that the substance and form of teaching are hostile to Pasifika perspectives and ideas. Law schools are an important part of this discussion, both because it is often understood as the first step on a professional journey and because of the perception that the law school is a full-scale assault on the sense of justice. As highlighted by Lawrence and Shanks, the environment of the law school can be “a powerful experience of exclusion and oppression” for indigenous people.¹⁶²

This experience is echoed in the accounts of Pasifika law students as reflected in Hosoda’s thesis.¹⁶³ Even so, teaching style is not the only problem. As noted above, there are relatively few Pasifika students and fewer Pasifika law lecturers.¹⁶⁴ Accounts of the more overtly racist perception and assertion that Pasifika people lack the academic ability and have been unfairly promoted over others abound.¹⁶⁵ For instance, as found in the project, “I, too, am Auckland” many of the student participants reported the following factors:¹⁶⁶

1. Ongoing experiences of racial microaggressions or “subtle racism” toward them in the University’s environs, most acutely felt in the physical spaces such as the lecturer theatres and libraries.
2. That Pacific law students were often tokenised for their physical abilities on the sports field, but rarely invited to participate in intellectual debates or moots.

3. That they saw their lecturers as occupying positions of great authority, authority and privilege, with the ability to influence students’ perceptions of marginalised groups. If racist sentiments were expressed by their lecturers, this would undoubtedly impact on peer perceptions of Pacific and Māori law students.
4. Many Pacific law students were the first in their family to attend university and carried their family’s pride and sacrifice on their shoulders. This was a heavy load to bear, made more difficult while experiencing racial hostility in their place of learning.

The language of cultural difference is used to describe the source of disconnection between a Pasifika person and law school.¹⁶⁷ Cultural difference is certainly not incompatible with the notion of oppressive laws. While the idea that laws are oppressive is a normative proposition, cultural difference is a relative issue that depends on the cultural spaces in which the Pasifika person has been living and learning. As alluded to by Asafo and Tuiburelevu, Pasifika academics provide cultural services which involve providing academic and pastoral care to Pasifika students which are not recognised by tertiary institutions.¹⁶⁸ The culture that Pasifika students bring with them represents strong family, collective and religious values, commitments and responsibilities which form barriers that hinder studies and completion of studies. The cultural divide that law school represents will be deeper and wider for some.

¹⁶² Sonia Lawrence and Sigma Daum Shanks “Indigenous Lawyers in Canada: Identity, Professionalisation, Law”, (2015) 38(2) DLJ, at 514.

¹⁶³ Hosoda’s thesis considers the experiences of Pacific law students in New Zealand. Hosoda, above n68.

¹⁶⁴ Geoff Adlam “Diversity in the New Zealand legal profession: At a glance” *LawTalk* (Volume 932, Wellington, September 2019) at 61.

¹⁶⁵ Ministry of Education *Best practice for teaching Pacific learners, Pacific Evidence Brief 2019* (Report of Ministry of Education, Wellington, December 2019).

¹⁶⁶ Ngā Pae o Te Māramatanga, “I, Too, Am Auckland,” <<http://mediacentre.maramatanga.ac.nz/content/i-too-am-auckland>>.

¹⁶⁷ Hosoda’s thesis considers the experiences of Pacific law students in New Zealand. Hosoda, above n68, at 52.

¹⁶⁸ Dylan Asafo & Litia Tuiburelevu, “Finding Our Way to the Island: Critical Reflections from Two Emerging Pacific Legal Academics in Aotearoa,” (2021) 33 JNZS 55.

PART 4 – Barriers to Enabling Culturally Relevant and Supportive Tertiary Learning Environments for Pasifika Law Students

The above findings are further compounded by students' personal factors that impacted their course retention and completion. In the study conducted by Theodore et al., 32 percent of Pasifika graduates identified personal factors, such as "lacking motivation, drive, or self-respect".¹⁶⁹ Further examples were stated such as loneliness, "not asking for help or seeking help too late, shyness, being unsure of what to study, lacking study skills, poor study habits, disorganisation and issues with time management."¹⁷⁰ Interestingly, it was reported in the study that half of the Pasifika participants were the first in their family to attend university.

The University of Canterbury's UCMExL outreach programme is in part dedicated to preparing students for these experiences and offers Pacific high school students support with NCEA subjects.¹⁷¹ Victoria University of Wellington has also instigated an evidence-informed approach to evaluate preparedness for university and the law programme, and permits the construction of academic skills support. These programmes are in part dedicated to preparing students for these experiences and trying to mitigate the impact of the law school.

Law school, for many Pasifika students and lawyers, can be an experience of exclusion and oppression.¹⁷² Even though this experience may serve to heighten a sense of Pasifika identity it may also lead to a desire to leave the study of law.

The question of belonging and community beyond law school has been explored to some limited extent. One of the findings of a 'Workplace Environment Survey' prepared for the New Zealand Law Society in 2018 was that ethnicity plays a role in bullying.¹⁷³ In this survey, the Pasifika group was identified as one of the subgroups more likely than average to have experienced bullying behaviour within the last 6 months of their study.¹⁷⁴ It was noted that "around a quarter of Pacific targets of bullying...perceive the bullying to be motivated by race and culture."¹⁷⁵

4.1 Engagement Model with Pasifika Students

Studies have shown that in higher education, belonging is critical to student retention and success. Although universities would readily accept this position, we can say that the implications are very often not addressed in institutional priorities, policies, processes and practices.

Many of the studies point to the importance of students having a strong sense of belonging in higher education, which is the result of engagement. Belonging has emerged as a key idea in this research and is closely aligned with the concepts of academic and social engagement. We draw on both psychological and sociological traditions to inform our understanding of these issues: the psychological literature is used to define belonging at the individual level, while the sociological literature is used to explain how the potential mismatch between a student's background and that of the institution may result in students not feeling like they belong and so they leave early.

169 Theodore et al, n 83 at 24.

170 Above n 170.

171 University of Canterbury "Study sessions help boost academic results for pasifika students" UC News (7 September 2021) <www.canterbury.ac.nz>.

172 Asafo and Tuiburelevu, n 168.

173 New Zealand Law Society *Access to Justice Research 2021* (Kantar Public (Colmar Brunton) report prepared for the New Zealand Law Society, October 2021).

174 New Zealand Law Society *Access to Justice Research 2021* (Kantar Public (Colmar Brunton) report prepared for the New Zealand Law Society, October 2021), at 33.

175 At 7.

At the individual level ‘belonging’ recognises students’ subjective feelings of relatedness or connectedness to the institution. This ‘involves feeling connected (or feeling the one belongs in a social milieu)’.¹⁷⁶ It may be related to “the extent to which students feel personally accepted, respected, included and supported by others in the [school] social environment”.¹⁷⁷ Belonging may be characterised by regular contact and the perception that interpersonal relationships have stability, affective concern, and are ongoing.¹⁷⁸ Thus interpersonal relations are essential for satisfying the need to belong. Goodenow described sense of belonging in educational environments as:

Students’ sense of being accepted, valued, included, and encouraged by others (teacher and peers) in the academic classroom setting and of feeling oneself to be an important part of the life and activity of the class. More than simple perceived liking or warmth, it also involves support and respect for personal autonomy and for the student as an individual.



Fa'alagilagi Tuimavave, Solicitor and Alumni of Te Herenga Waka, 2021

176 Robert J Vallerand, “Toward a hierarchical model of intrinsic and extrinsic motivation,” in M. P Zanna (ed) *Advances in Experimental Social Psychology*, (Academic Press, New York, 1997), at 300.

177 Carol Goodenow, “Classroom Belonging among Early Adolescent Students” (1993) 13(1) *JEA* 21 at 80.

178 Roy F Baumeister and Mark R Leary, “The need to belong: Desire for interpersonal attachments as a fundamental human motivation,” (1995) 117(3) *Psychological Bulletin* 497.

PART 5 – Barriers to Successful Law Profession Transition for Pasifika Law Students

Systemic barriers are those imposed by institutions. “Institutions” include government policy and service delivery, primary and secondary schools, and university infrastructure. This section considers some of the systemic barriers identified within the literature.

Bringing the question of belonging and equity into direct conversation with the substantive law might include asking whether and how Pasifika legal professionals will make, or have made, changes in the law and in the legal profession. Does their presence change legal spaces? Do they bring new approaches to legal doctrine, new attention to community needs, new ethical considerations, and new or differently theorised approaches to New Zealand law? Do they believe they offer more justice to their Pasifika clients? Is it enough that they complete a law degree and provide more diverse faces to a mainstream system?

Some of the issues are a straightforward question of representation: about Pasifika people finally occupying spaces and roles from which they had previously been excluded. Generally, questions may turn on issues of critical mass or solidarity—can Pasifika lawyers make a change by presenting a united front within the profession or in schools? Finally, there are questions about the theoretical and ideological knowledge and commitments of Pasifika lawyers. Which larger goals are they pursuing through their work? Which tools will they use to get there? How will they engage with Pasifika clients?

Te Namu, VUW Tokelauan Students Association, Te Herenga Waka



There is not much work at all on the issues raised above in this section. However, Naepi examined the ethnicity of academic scholars in New Zealand,¹⁷⁹ and found that despite the national and university policies intended to see education better serve Pasifika peoples, there has been no change in the numbers of Pasifika academics employed by New Zealand universities.

She also noted that Pasifika who are in the academy are continually employed in the lower, less secure levels of the academy.¹⁸⁰ This finding applies to the law faculties in New Zealand and the University of the South Pacific law school where most Pasifika law academics occupy junior academic positions at the assistant lecturer, lecturer, or research fellow level.¹⁸¹

Notably, the above issues lead to a further systemic barrier that is related to a lack of support for Pasifika-led research. This is clearly evidenced in the lack of legal scholarships by Pasifika law professionals. Asafo and Tuiburelevu argue that the lack of funding and opportunities for research opportunities exacerbates the problem.¹⁸² Kidman and Chu found that Pasifika academics are rarely included in academic ‘prestige economies’ or elite scholarly networks and are often isolated in their academic departments.¹⁸³

Given the intimate relationship between law and power in New Zealand, greater participation and representation in the legal profession may serve as a significant means for Pasifika to assert collective power. However, as evident from statistical reports, Pasifika have gained access to legal education and the legal profession yet not into the senior and leadership roles. No empirical study has explored the reasons behind this.

179 Sereana Naepi, “Why isn’t my professor Pasifika? A snapshot of the academic workforce in New Zealand universities”, (2019) 8 *MAI Journal* 229.

180 Above n 179, at 230.

181 Asafo and Tuiburelevu, above n 168.

182 Above n 168, at 58.

183 Joanna Kidman and Cherie Chu, “We’re not the hottest ethnicity: Pacific scholars and the cultural politics of New Zealand universities”, (2019) 17 *GSE* 492.

At the tertiary level, studies have suggested that aggregating Pasifika students generally serves as a barrier. With respect to Pasifika or Pacific Islander identities, the term Pacific Islander or ‘Pasifika’ and the idea of ‘Pasifika identity’ are deeply complicated. This issue is caused by the generality of the term ‘Pasifika’ versus the specific identification of cultural groups or nations.

‘Pasifika’ became a meaningful category only after it was first formally introduced in the education context in the mid-1980s through a Pasifika community led initiative called Anau Ako Pasifika.¹⁸⁴ Today, the term is used as a collective reference to a multi-ethnic heterogeneous group of Pacific people living in New Zealand. This group of people share ancestry, languages, and traditions and—due to the small population sizes of these individual Pacific Island nations and the closeness in affiliations between these people—in New Zealand, so they are often categorised under the general term ‘Pasifika.’

Studies on the impact of using stereotypes and stigma have varied findings. On one hand, they were perceived to have serious consequences for career path and success.¹⁸⁵ On the contrary, one study found that stereotypes were perceived as being unlikely to affect students in their future careers.¹⁸⁶

However, as the study by Theodore et al., identified, the idea that an institutional understanding of these issues is very crucial.¹⁸⁷

5.1 Outsider groups in the legal profession

Scholars in the legal profession have created a broad base of work about professionalisation in the law. These include works that focus on the experiences of traditionally excluded groups, including women and racial minorities. Scholars in both historical and contemporary contexts have revealed the ways in which the profession has “jealously guarded” the gateways of the profession and resisted change.¹⁸⁸

Most of this literature concentrates on women or indigenous students at law schools or as lawyers and has been heavily influenced by feminist legal theory and critical race theory.¹⁸⁹ Another subset of the literature that considers similar issues describes the closed nature of the legal profession and law school, including a consideration of the existence and operation of racism in the profession and in law school.¹⁹⁰ Recently, the Law Society also reported on sexism, sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession.¹⁹¹

While openly discriminatory rules are largely a thing of the past in the profession, systemic factors including different access to higher education, entry to law school, and the rising costs of living, continue to mean that the legal profession is not broadly representative of the New Zealand public.

184 Brown D Airini, Elana Curtis, Odie Johnson, Fred Luatua, Moe O’Shea, Te Oti Rakena, Gillian Reynolds, Pale Sauni, Angie Smith, To’ainga Su’a Huirua, Matt Tarawa, Meryl Ulugia-Pua, *Success for all: improving Māori and Pasifika student success in degree-level studies*, (Report for NZCER, Wellington, 2009); Diane Mara, “Anau Ako Pasifika: A home-based early childhood project for Pacific Islands families in Aotearoa/New Zealand” (1997) 3 *Early Childhood Folio* 3, 29-32.

185 Megan R Mahoney and others, “Minority Faculty Voices on Diversity in Academic Medicine: Perspectives From One School” (2006) 83(8) *Academic Medicine* 781 at 784.

186 Paul Henry “Educational and Career barriers to the Medical Profession: Perceptions of Underrepresented Minority students” (2006) 40 *College Student Journal* 429 at 439 – 440.

187 Above n83.

188 Angela Melville “Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous disadvantage” (2014) 24 *LegEdRev* 45.

189 Michael Espoito “Legal education: Studying law as an indigenous student like ‘walking in two worlds’”, (Bulletin 41(1), Law Society of South Australia, 15 February 2019); Angela Melville “Educational Disadvantages and Indigenous Law Students: Barriers and Potential Solutions” (2017) 4(2) *AJLE* 95.

190 Angela Melville, above n 188.

191 New Zealand Law Society Working Group, *Report of the New Zealand Law Society Working Group Toenable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession* (Report for the New Zealand Law Society, December 2018).

PART 5 – Barriers to Successful Law Profession Transition for Pasifika Law Students

Professional norms continue this stratification of the profession. Scholarship which considers the past and present experience of groups previously left out of the profession asks about the ways in which these norms work on the introduction of new groups to the profession.¹⁹²

There is a lack of sources in the literature which specifically discuss Pasifika lawyers and the challenges they face. Even so, the above points derived from the literature are supported by the anecdotal stories from the profiles of Pasifika lawyers and statements from the Pasifika Lawyers Association that attest to the struggles they face.¹⁹³ A recent New Zealand Law Society 'Access to Justice Survey' illuminated several characteristics of Pasifika lawyers, finding:¹⁹⁴

- that 66 per cent of Pasifika lawyers in the survey rated the legal system as 'poor or very poor' at providing everyone in Aotearoa New Zealand access to justice;
- Pasifika legal aid lawyers worked on average around 54 hours a week;
- Pasifika lawyers who were not working in legal aid had the greatest interest in providing legal aid in the future compared with other focus groups;
- Pasifika lawyers provided 10 hours a week of free services, higher than the overall average of 6 hours;
- High rates of Pasifika lawyers planned to provide more free legal services in the future;

- Pasifika lawyers (49 per cent) are more likely than average (22 per cent) to be interested in providing free legal services to those who can't afford to access the legal system; and
- Pasifika lawyers had high rates of showing interest to register with Te Ara Ture, a service that connects volunteer lawyers with people who need free legal help, as identified by Community Law centres.

The survey shows significant engagement in public interest areas and legal aid work by Pasifika lawyers. Such areas of law, however, take a great toll on lawyers in terms of time commitment and the impact of the subject matter of such types of cases. Of even more concern are the New Zealand Law Society statistics which reported in 2018 that 35 per cent of Pasifika lawyers were more likely than average to have experienced bullying behaviour in the last six months.¹⁹⁵ These statistics reflect the need for further research in this area.

192 Carrie Mendel-Meadow, "Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law" (1987) 42(1) UMLR 29 at 29.

193 Pacific Lawyers Association "The Pacific Lawyers Association's viewpoint" LawTalk 921 (New Zealand, 31 August 2018) <<https://www.lawsociety.org.nz>>; NZ Law Society "Pacific lawyers can use skills to effect change" (27 November 2018) New Zealand Law Society <<https://www.lawsociety.org.nz>>.

194 New Zealand Law Society *Access to Justice Research 2021* (Kantar Public (Colmar Brunton) report prepared for the New Zealand Law Society, October 2021).

195 Colmar Brunton *Workplace Environment Survey, Prepared for the New Zealand Law Society* (Colmar Brunton, Workplace Survey, 28 May 2018).

PART 6 – Literature Gaps

The key gaps identified in the research and literature discussed above relate to the lack of definitions of what Pasifika law students' success and desired outcomes from law school look like. Further, the extent of professional development opportunities in the tertiary sector centred on developing cultural competence and knowledge of pedagogies that work for Pasifika law students in the law school settings.

Another key gap in the literature relates to understanding factors contributing to or inhibiting Pasifika students' progression or entry to law school. This is an important area of focus as most tertiary participation of Pasifika is at sub-degree level.

The literature also lacks an in-depth focus on Pasifika learner participation in tertiary education, including barriers experienced by different Pasifika learners.

Thus, the existing research base has significant limitations. There has also been little consideration in the literature of the role of Pasifika lived experiences in shaping equity, belonging and authority in legal education and profession. There is a significant lack of longitudinal, quantitative data on this area. Without a clear empirical picture as to the current state of Pasifika people's participation in legal education, it is impossible to identify whether the Government or Tertiary Education Commission policies are appropriate or can be met in this field. Likewise, without this empirical picture it is impossible to identify whether the host of strategies adopted by law faculties, universities, and government are working.



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PART 7 – Conclusion

In the art of weaving, the status of the mat depends on the sizes of the weft/strands, the processing techniques for preparing the pandanus, and the actual weaving.¹⁹⁶ Some pandanus leaves are more durable than others and the types that take longer to process and are difficult to weave are the ones used to make fine mats. The finer the mat, the more prestigious it is, for it denotes respect.

The reviewed literature has touched on the key barriers to access, retention and success of Pasifika students and lawyers. But the weft or strands are not fine enough to weave the fine mat that it takes to make sustainable changes. They are more reactive in nature and are not specific about the barriers. Not only that, but the outcomes of Pasifika-specific learning support initiatives and factors that hinder their effectiveness are unclear. There is a gap in research about factors that contribute to successful peer mentoring relationships. For example, while all the studies about Pasifika students' learning outcomes have identified barriers such as the cultural obligations and socioeconomic status of Pasifika students have recommended structural changes to law schools, none goes into detail about what these structural changes mean.

Penn explains that she interpreted "many Ministry of Education reports as being mainstream, politically correct and, therefore, controlling of opinion, or, hegemonic"¹⁹⁷ The impact of such studies is a false representation of Pasifika people that it does not redress the social, cultural and economic injustices that are occurring in education.

When looking for studies of Pasifika after law school, there is very limited research exploring Pasifika experiences at this stage. Further, the impacts of the previously mentioned initiatives are not clear due to lack of available reviews and evaluations.

Luckily, there are other studies that can magnify the identified factors. Regarding the pedagogical factors, Penn suggests that universities should adopt policies and procedures that enable culturally responsive educational pedagogies and practices which honour indigenous minorities.¹⁹⁸

Further, Matapo points out that the task for Pasifika researchers is to reconceptualise research 'with-the-world', animate and inanimate, as a fully present and privileged self in a post-truth era.¹⁹⁹ Matapo argues that Pasifika engagement in education must do more than focus on equity provision and on the notions of academic success. She argues that by mobilising Pacific indigenous philosophy within Pasifika education research, new and emergent opportunities may arise demonstrating the valuable contribution Pacific indigenous philosophy provides for education research.²⁰⁰ Through Pacific indigenous philosophy, "the ontologies, epistemologies, and ethical relations are taken seriously within education research, thus affirming collective intersubjectivities that constitute the realities of Pasifika people".²⁰¹

There is no better time than now to seek out and listen to the voices of the Pasifika law students and lawyers. One is timing on a human scale. There is a growing number of Pasifika lawyers in New Zealand, but the younger Pasifika generations are large and vibrant. We want a project that will create a repository of these voices. Another reason relates to timing on a political and legal scale. As seen from different studies, there is attention to Pasifika issues inside law schools and in law which is unprecedented, although the implications of this attention are far from clear.

196 Heather E. Young-Leslie, "...Like a mat being woven", (2007) 3(5) Pacific Arts 115 at 119.

197 Rosemarie Penn, "Manumalo: A Study of Factors which facilitate success for New Zealand-born Samoan students at University" (MEd thesis, Auckland University of Technology 2010) at 3.

198 Above n 197.

199 Jacoba Matapo, "Tangata o le Moana – The people of Moana: Traversing Pacific Indigenous philosophy in Pasifika education research" (Phd thesis, Auckland University of Technology, 2021), at 40.

200 At 115.

201 At 80.

At the same time, Government and university strategies recognise the direct and systemic racism that prevents many Pasifika lawyers from advancing and staying in the profession. Finally, there is the possibility that this kind of project which gathers the voices of Pasifika law students and lawyers can serve as a way of attracting Pasifika youth to the idea of law as a career. The words of Pasifika lawyers may guide them through the shoals of this choice and enable an easier road.

Legal practice is political practice. For New Zealand's Pasifika lawyers and law students, the implications of their engagements with New Zealand law are likely to be clearer and harder to ignore. Likewise, connections between a personal sense of identity and community belonging and professional identification as a member of the community of lawyers are likely to be more complicated than they are for the mainstream of the profession.

The existing literature highlights the complex position of Pasifika law students and the decisions and situations uniquely faced by this group. There are real implications to the various approaches this group of people takes to reconciling their personal identity and status as a legal professional.

Listening, hearing, and thinking about the ways that Pasifika law students and lawyers construct, experience, and grapple with these questions will provide a new basis for both strategising and theorising about the relationship between Pasifika people and the law.

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