

SUPPORTING LAW STUDENT WELLBEING: INTEGRATING TRAUMA-INFORMED PRACTICES IN LEGAL EDUCATION

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Sensitive course content pervades all courses in a law degree and is one of many diverse and complex factors impacting law student wellbeing. This article defines sensitive course content and examines its effects through the lens of trauma, particularly vicarious and collective trauma. It explores two examples from Australian universities where trauma-informed practices were integrated into the legal curriculum. Incorporating trauma-informed practices offers numerous benefits: it supports the mental wellbeing of law students, enhances their employability and destigmatises conversations around this critical issue. However, implementing these practices in legal education faces challenges, such as the diversity of legal practices, institutional constraints and law school culture. Legal education providers must lead the way in mitigating the impacts of sensitive course content by integrating trauma-informed practices and conducting further research to support law student wellbeing.

I INTRODUCTION

Over the past decade, a disquieting truth has slowly emerged in the world of legal education: studying law cultivates and exacerbates psychological distress within law students, casting a long and ominous shadow upon their ability to practise and thrive as members of the legal profession in the future. Recent literature has underlined a contributing factor to this psychological distress: the sensitive and confronting course content law students frequently encounter during their law degree.¹ Although the majority of Australian law schools have taken steps

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1 See, eg, Graham Ferris, 'Law-Students Wellbeing and Vulnerability' (2022) 56(1) *Law Teacher* 5 <<https://doi.org/10.1080/03069400.2021.2005347>>; Colin James et al, 'Student Wellbeing through Teacher Wellbeing: A Study with Law Teachers in the UK and Australia' (2019) 10(3) *Student Success* 76 <<https://doi.org/10.5204/ssj.v10i3.1338>>; Kate Seear, 'Do Law Clinics Need Trigger Warnings? Philosophical, Pedagogical and Practical Concerns' (2019) 29(1) *Legal Education Review* 1 <<https://doi.org/10.53300/001c.7671>>; Burcu Pinar Alakoc, 'Terror in the Classroom: Teaching Terrorism without Terrorizing' (2019) 15(2) *Journal of Political Science Education* 218 <<https://doi.org/10.1080/15512169.2018.1470002>>; Kelley Burton and Amanda Paton, 'Vicarious Trauma: Strategies for Legal Practice and Law Schools' (2021) 46(2) *Alternative Law Journal* 94 <<https://doi.org/10.1177/1037969X21999850>>.

to acknowledge the prevalence and impact of such content by emphasising the importance of student wellbeing and providing external support initiatives,² these efforts remain ancillary to the legal curriculum where such content is commonly encountered. In this context, the area of trauma-informed practice presents an opportunity for legal education providers to recognise the impact of this content as an institutional concern and effectively address it through the legal curriculum. The area of trauma-informed practice encompasses a broad domain of research and practice dedicated to comprehending the impacts of trauma on individuals and communities as well as developing holistic and inclusive strategies to mitigate these impacts.³ Referred to as trauma-informed practices, these specific strategies are commonly used in fields working with traumatised individuals to promote their psychological wellbeing and reduce the risk of re-traumatisation.⁴

Before exploring the relevance of trauma-informed practices in legal education, Part II of this article will summarise the literature on the various complex factors, beyond sensitive course content, that affect law students' wellbeing both directly and indirectly. Part II will also clarify what is meant by 'sensitive course content' and explore the impact of such content through the lens of trauma and the associated concepts of vicarious and collective trauma. In Part III, this article will then focus on the area of trauma-informed practice and the integration of trauma-informed practices into the legal profession. Following that, Part IV will articulate the specific reasons justifying the implementation of these practices into legal education. Part V will then examine how trauma-informed practices have been incorporated within the legal curriculum by outlining two different examples from Australian universities. Finally, Part VI will elucidate some of the challenges and barriers to implementing trauma-informed practices while highlighting areas for further research to address these issues.

This article aims to highlight the severe impact of merely one of the contributing factors to the psychological distress experienced by law students, while also discussing the utility of trauma-informed practices in mitigating such an impact, and scrutinising the practical challenges associated with this endeavour. Ultimately, this article will argue that legal education providers must understand the impacts of sensitive course content on students and integrate trauma-informed practices into the legal curriculum. In addition, this article will assert that such an integration will not only recognise the inherent value of nurturing the mental wellbeing of law students but will also underscore the importance of these practices in enhancing their employability, preparing them to thrive in the legal profession and destigmatising conversations surrounding this important topic.

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- 2 For a comprehensive list and critique of recent initiatives, see Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-Being through a First Year Law Subject' (2012) 12(1) *Law and Justice Journal* 133 <<https://doi.org/10.5204/qutlr.v12i1.233>>; Rachael Field and Sally Kift, 'Addressing the High Levels of Psychological Distress in Law Students through Intentional Assessment and Feedback Design in the First Year Law Curriculum' (2010) 1(1) *International Journal of the First Year in Higher Education* 65 <<https://doi.org/10.5204/intjfyhe.v1i1.20>>.
 - 3 Liz Wall, Daryl Higgins and Cathryn Hunter, 'Trauma-Informed Care in Child/Family Welfare Services' (Research Paper No 37, Child Family Community Australia, Australian Institute of Family Studies, 2016) 9.
 - 4 *Ibid.*

II FACTORS IMPACTING LAW STUDENT WELLBEING

To start a fire, one generally requires the presence of three components: a spark or a source of heat, fuel and oxygen to keep the fire burning.⁵ On 28 October 2004, the suicide of Tristan Jepson, a university student battling clinical depression since 1998, provided a spark for what was to become a raging fire surrounding the topic of mental health within the legal profession.⁶ The fuel in this instance was provided by Jepson's parents who established the Tristan Jepson Memorial Foundation, as it was then known,⁷ in honour of their son's life and in an attempt to confront the stigma surrounding the topic of mental illness within both the legal profession and legal education.⁸ In January 2009, the Brain and Mind Research Institute ('BMRI') in conjunction with the Tristan Jepson Foundation, published a scathing report which detailed the alarming levels of depressive symptoms amongst legal professionals and students, a report aptly named, 'Courting the Blues'.⁹

The BMRI report involved the participation of 741 final-year law students from 13 universities across Australia, 924 solicitors as well as 756 barristers. Amongst other unsettling findings, the report noted that not only were 35% of surveyed law students suffering from 'high to very high' levels of psychological distress,¹⁰ with some reporting severe enough symptoms to warrant medical intervention,¹¹ but a large number of participants, both lawyers and students, were reluctant to seek help or had a negative view of the 'effectiveness' of medical assistance in resolving their ailments.¹² Perhaps the most damning aspect of the report, however, was the discussion surrounding the causes of the reported psychological distress, particularly for law students. Although the report emphasised the need for further research into the topic, it tentatively pointed to the highly competitive nature of law students and the adversarial manner in which they are taught to navigate problems as potential contributors to this distress.¹³ It was emphasised that these aspects of legal education may bleed into the everyday interactions of students and reduce both their sense of camaraderie and overall wellbeing.¹⁴

5 'Fire Extinguisher Training Module', *The Fire Triangle* (Web Page) <https://www.sc.edu/ehs/training/Fire/01_triangle.htm>.

6 Norm Kelk et al, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers' (Monograph No 2009-1, Brain and Mind Research Institute, University of Sydney, January 2009); Wendy Larcombe and Katherine Fethers, 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress among Law Students' (2013) 36(2) *University of New South Wales Law Journal* 390, 390–1.

7 Jerome Doraisamy, 'Jepson Foundation to Be Renamed', *Lawyers Weekly* (online, 11 July 2018) <<https://www.lawyersweekly.com.au/biglaw/23610-jepson-foundation-to-be-renamed>>.

8 'About Us', *Minds Count Foundation* (Web Page) <<https://mindscount.org/about-us/>>.

9 Kelk et al (n 6).

10 Ibid 11–12.

11 Ibid 42.

12 Ibid 21.

13 Ibid 46.

14 Ibid.

The grim findings of the BMRI report naturally sent shock waves across the legal profession and academia.¹⁵ Although many in the profession had intuitively appreciated that psychological distress amongst law students and practitioners was of practical concern, the report had signalled the need to move beyond an anecdotal exploration of the issue to a more thorough examination to illuminate the causes and posit practical ideas for reform.¹⁶ Both the legal academy and the legal profession understood that their role in this equation was to keep the fire burning. Not long after the publication of the report, scholarship began to focus on not only the causes of the elevated psychological distress and whether such distress originated in law school, but also upon specific aspects not directly addressed by the report, including the role of sensitive content in causing and exacerbating psychological distress.

In 2011, Molly Townes O'Brien, Stephen Tang and Kath Hall published the findings of a cross-sectional study examining two independent cohorts of law students, one approaching the end of their first year and the other completing only the first two weeks.¹⁷ The results from the two cohorts of 214 and 174 participants, respectively, highlighted that whilst students entering a law program exhibited similar levels of depression and anxiety to those of a comparable age within the general population, by the end of the academic year, there was a significant and undeniable increase in their depressive symptoms.¹⁸ Within the same year, Anthony Lester, Lloyd England and Natalia Antolak-Saper conducted a similar longitudinal survey at Monash Law School and noted a 'statistically significant increase' of 2.71% in the symptoms of depression experienced by law students towards the end of their first year in law school.¹⁹ These symptoms ranged from 'persistent lowered moods over a week' and 'diminished energy' to an outright 'loss of pleasure and interest in activities', as well as 'feelings of worthlessness, irritability and hopelessness'.²⁰ Whilst these studies did not identify with exact precision the causes for the elevation, they were critical in establishing that there is a direct link between legal education and increased psychological distress amongst law students.²¹

In discussing this link, both studies relied upon American empirical research which led the discourse around the subject matter well before the publication of the BMRI report. One significant and commonly cited American study conducted by Andrew Benjamin et al, involved the participation of 320 first-year law students

15 See, eg, Justice Shane Marshall, 'Depression: An Issue in the Study of Law' (Keynote Address, Australian National University College of Law, February 2015) 3–4.

16 Field and Duffy (n 2) 137.

17 Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One' (2011) 2(2) *International Journal of the First Year in Higher Education* 49, 52 <<https://doi.org/10.5204/intjfyhe.v2i2.84>> ('No Time to Lose').

18 Ibid 55.

19 Anthony Lester, Lloyd England, and Natalia Antolak-Saper, 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36(1) *Alternative Law Journal* 47, 48 <<https://doi.org/10.1177/1037969X1103600110>>.

20 Ibid.

21 Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9(2) *E-Journal of Business Education and Scholarship of Teaching* 56, 58.

from the University of Arizona.²² Worryingly, the research was not only seminal for assessing the increased levels of psychological distress amongst first-year law students, but in establishing that such levels did not abate even after the point of graduation.²³ At this point, both Australian and international literature was useful in substantiating two key findings: law school is the ‘causal agent’ for the psychological deterioration experienced by law students and that such deterioration often begins in the first year of their degree.²⁴ Although Massimiliano Tani and Prue Vines’ cross-sectional study of 2,528 law students within the University of New South Wales (‘UNSW’) vaguely posited the ‘lack of autonomy, high levels of competitiveness and a lack of social connectedness’ during a law degree as potential factors in the development of psychological distress,²⁵ the existing literature was yet to provide a well-founded explanation for these negative psychological trends.

O’Brien, Tang and Hall attribute these negative elevations to the rational and adversarial thinking styles embedded throughout the law school curricula.²⁶ According to their study, the emphasis upon legalistic thinking styles in hopes of teaching students to ‘think like lawyers’ encourages ‘emotional detachment’ and warns students not to ‘empathize with the litigants, but to treat them as instruments of principle and precedent’.²⁷ In their view, some aspects of legal education, whether it be the rational modes of thinking or otherwise, must be ‘uniquely distressing’ as other programs such as engineering and medicine, are also plagued by difficult content, challenging workloads and academic and career competition.²⁸ This argument is not without merit as was indicated by O’Brien, Tang and Hall’s subsequent 2011 study which also noted the change in thinking style amongst first-year law students.²⁹ The majority of the 214 students surveyed in that study expressed that the ‘rational and objectifying’ thinking style embedded within the curriculum invited them to ‘look at every issue as a legal issue’, ‘forget the human beings involved’ and ‘look for loopholes and negatives’ even in the context of mundane interactions with family and friends.³⁰

Other causes for these psychological trends have also been put forward. Some commentators point to the internal facets of legal education whilst others critique the role of external factors, which exert pressure on students. For instance, Senthoran Raj posits that the presentation of emotion as the ‘antithesis of legal reasoning’ and emotional intelligence as a ‘pedagogical threat’ to effective legal reasoning, forces

22 Andrew Benjamin et al, ‘The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers’ (1986) 11(2) *Law and Social Inquiry* 225, 246 <<https://doi.org/10.1086/492145>>.

23 Ibid.

24 Field and Duffy (n 2) 138.

25 Massimiliano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ (2009) 19(1) *Legal Education Review* 3, 30 <<https://doi.org/10.53300/001c.6214>>.

26 O’Brien, Tang and Hall, ‘No Time to Lose’ (n 17) 56–7.

27 Ibid 57.

28 Ibid 56.

29 Molly Townes O’Brien, Stephen Tang and Kath Hall, ‘Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum’ (2011) 21(2) *Legal Education Review* 149, 181 <<https://doi.org/10.53300/001c.6247>>.

30 Ibid 177.

students to disengage from their motivations and emotional experiences, dousing both their curiosity and the pleasure of learning.³¹ This emotional disconnect will not only contribute to a decline in the students' mental health but will also negatively impact upon their vocational readiness as they will lack the ability to understand the needs of those they represent and interact with in the profession.³²

On the other hand, Margaret Thornton argues that the neoliberal turn, despite its insidious transformation of the purpose of higher education and its role in the increase of tuition fees, class sizes and competitiveness within the market, has not been seriously posited as a primary cause for the psychological distress of law students.³³ In Thornton's view, the commodification of legal education creates the very conditions contributing to student distress whilst sloughing responsibility for battling such a distress to the individual student as their economic value as opposed to mental wellbeing is prioritised by universities.³⁴ Others, such as Fiona Burns et al, suggest the involvement of more specific factors including 'financial stress, work commitments, caring for dependents, illnesses and death' in not only colouring the experience of law school for some law students but in outright preventing them from continuing their higher education.³⁵ Their research indicates that the contribution of financial stressors to a deteriorating mental state is twofold. On one hand, students who were more financially secure not only had the necessary time to fully engage with their legal education but also had less anxiety about the progress of their studies and whether they would find suitable employment after graduating.³⁶ On the other hand, students who spent substantial time in paid employment had greater concerns about both the expense of tertiary education and the lack of accommodation or understanding by universities of their work commitments.³⁷

More recently, the governmental mitigation strategies including stay at home orders and travel restrictions implemented during the COVID-19 pandemic added another cause to the list of external stressors weighing down law students. In a study examining 675 first-year students from different faculties in the University of Vermont, William E Copeland et al identified a 'modest but persistent' decrease in the daily wellness behaviours and mood patterns of students.³⁸ The study emphasised that such patterns were not only caused by the ongoing nature of the pandemic and the governmental strategies introduced to neutralise it, but also by

31 Senthoran Raj, 'Teaching Feeling: Bringing Emotion into the Law School' (2021) 55(2) *Law Teacher* 128, 131 <<https://doi.org/10.1080/03069400.2020.1781456>>.

32 Ibid 135.

33 Margaret Thornton, 'Law Student Wellbeing: A Neoliberal Conundrum' (2016) 58(2) *Australian Universities' Review* 42, 43 <<https://doi.org/10.2139/ssrn.2887812>>.

34 Ibid 48.

35 Fiona Burns et al, 'Financial and Caregivers' Stressors in Australian Law Students: A Qualitative Analysis' (2019) 26(3) *Psychiatry, Psychology and Law* 343, 343 <<https://doi.org/10.1080/13218719.2018.1485525>>.

36 Ibid 348.

37 Ibid 349.

38 William E Copeland et al, 'Impact of COVID-19 Pandemic on College Student Mental Health and Wellness' (2021) 60(1) *Journal of the American Academy of Child and Adolescent Psychiatry* 134, 140 <<https://doi.org/10.1016/j.jaac.2020.08.466>>.

the displacement from peer groups and the expectation to ‘work as usual’ students experienced.³⁹ In a more specific study examining 644 law students at four large, public research universities in the United States, Krista M Soria and Bonnie Horgos noted that 27% of law students experienced clinically significant symptoms of major depressive disorder, while 37% of law students experienced clinically significant symptoms of generalised anxiety disorder during the COVID-19 pandemic.⁴⁰ Importantly, the study attributed these patterns of psychological distress to an increase in housing insecurity, and unexpected living and medical expenses that were further exacerbated by an absence of an institutional framework to support students through the trauma of living through a pandemic.⁴¹ While the full extent of the pandemic’s impact on law students’ wellbeing remains to be quantified through further research, these early studies suggest that although law schools may not be responsible for every hardship a student experiences, they can play a pivotal role in either mitigating the impact of such hardships or exacerbating them.

Having reviewed the progress of existing literature, it is reasonable to conclude from both the varying causes of distress as well as the complex nature of psychological distress itself, that there cannot be one definitive cause for the negative psychological impact experienced by law students during law school. Rather, it is an amalgamation of different factors, all exerting their own measure of distress. It is also critical to note that law students from different countries may be impacted by the aforementioned factors to different degrees due to, amongst other things, differences in on-campus living experiences, funding models, pedagogical approaches and postgraduate pathways. This article does not aim to discern which factors impact law students more, but rather aims to examine the role played by a factor that universally affects students, albeit to different degrees. It is a factor that is not only deeply ingrained within legal education but can also be mitigated by it: the role played by sensitive course content in fostering students’ psychological distress or retraumatising them.

A Sensitive Course Content in Law Schools

Although a monumental and sobering publication, the BMRI report acknowledged the limitation of its findings and encouraged future researchers to further probe into and explore the different factors contributing to the psychological distress on which it shed light.⁴² To this day, Australian legal academics have responded by following in the footsteps of their American counterparts in examining the role of varying stressors upon a law student’s mental wellbeing. A notable factor which has been highlighted in recent works is the sensitive and often confronting course content law students must watch, read, write about, engage

39 Ibid 134.

40 Krista M Soria and Bonnie Horgos, *Law Students’ Mental Health during the COVID-19 Pandemic* (SERU Consortium Report, 1 November 2021) 2.

41 Ibid 4.

42 Kelk et al (n 6) 50.

with and sometimes regurgitate on a weekly basis throughout their law degree.⁴³ While there is yet to be a robust body of research quantifying the extent to which sensitive course content contributes to a law student's psychological distress, the pervasiveness of such content in the legal curriculum, along with its well-documented impact on students in other disciplines,⁴⁴ underscores the necessity of investigating it as a significant contributing factor.

Within the law school curriculum, sensitive content may include reading cases concerning domestic violence, rape, sexual assault, grievous bodily harm, child abuse and homicide in criminal law.⁴⁵ It may also involve reading and analysing factual scenarios detailing a car accident, false imprisonment or medical negligence in torts law.⁴⁶ Moreover, students may be required to identify and engage with issues of duress, misrepresentation or undue influence in a contract negotiation while studying contract law or equity.⁴⁷ Beyond the conspicuously confronting subjects, a law student must reflect on the complicated and overly legalistic procedures demanded by judicial and merits review as well as the insufficient outcomes produced by the failure of these processes in administrative law.⁴⁸ An Aboriginal or Torres Strait Islander student completing their constitutional or property law courses may read the facts of *Mabo v Queensland [No 2]*⁴⁹ and its success in overturning the myth of terra nullius, only to later learn of the ease with which the native title rights of their ancestors could be extinguished.⁵⁰

If a law student happens to select public international law as an elective, they will encounter numerous cases concerning human rights violations, racial segregation and apartheid, forced eviction and displacement, child labour and

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- 43 See Burton and Paton (n 1) 94; Grace Maguire and Mitchell K Byrne, 'The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals' (2017) 24(2) *Psychiatry, Psychology and Law* 233 <<https://doi.org/10.1080/13218719.2016.1220037>>; Japneet Bakhshi, Mareena Susan Wesley and K Jayasankara Reddy, 'Vicarious Trauma in Law Students: Role of Gender, Personality, and Social Support' (2021) 16(1) *International Journal of Criminal Justice Sciences* 34; Ronald Tyler, 'The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic' (2016) 21(2) *Berkeley Journal of Criminal Law* 1 <<https://doi.org/10.15779/Z38KD1QJ9N>>.
- 44 Julianne Stout and Angelika I Martin, 'Trauma-Informed Care in the Classroom: Our Experience with a Content Warning in a Medical School Course' (2022) 32(3) *Medical Science Educator* 711, 711–12 <<https://doi.org/10.1007/s40670-022-01559-0>>; Jessica Gladden et al, 'Teaching Trauma Content in Higher Education: A Systematic Literature Review' (2023) 24(5) *Trauma, Violence, and Abuse* 3384, 3384–5 <<https://doi.org/10.1177/15248380221129575>>; John Cavener and Sarah Lonbay, 'Enhancing "Best Practice" in Trauma-Informed Social Work Education: Insights from a Study Exploring Educator and Student Experiences' (2024) 43(2) *Social Work Education* 317, 321 <<https://doi.org/10.1080/02615479.2022.2091128>>.
- 45 Andrew E Taslitz, *Strategies and Techniques for Teaching Criminal Law* (Aspen Publishing, 2012) 3, 42.
- 46 Arthur Best, *Strategies and Techniques for Teaching Torts* (Aspen Publishing, 2012) 29.
- 47 Rick Bigwood and Rob Mullins, 'Teaching Contract Vitiating in Australia: New Challenges in Subject Design' (2018) 30(2) *Bond Law Review* 185, 189–90 <<https://doi.org/10.53300/001c.6797>>.
- 48 Richard Seamon and Howard E Katz, *Strategies and Techniques for Teaching Administrative Law* (Aspen Publishing, 2013) 40.
- 49 (1992) 175 CLR 1.
- 50 Cathy Sherry, 'Teaching Land Law: An Essay' (2016) 25(2) *Australian Property Law Journal* 129, 132–3.

gender-based violence.⁵¹ If a student wishes to flee from such traumatic material by selecting employment law as an elective, they will be caught off guard when their law teacher assigns cases dealing with bullying, sexual harassment, violations of workplace privacy or direct and indirect discrimination.⁵²

When a student decides to improve their practical experience by selecting clinical subjects, they will inevitably be privy to countless instances of human suffering ranging from a simple tenancy matter where the client is experiencing the brunt of the ongoing rental crisis, or a divorce application for a marriage marred by incidents of domestic violence.⁵³ Although by no means an extensive account of the sensitive course content a law student may encounter throughout their studies, the aforementioned examples from both compulsory and elective courses effectively demonstrate that a law student's university path is laden with content conducive to psychological distress.⁵⁴ However, the challenge of driving change in the delivery of sensitive content lies not only in its prevalence within legal education, but also in the diverse ways this content may affect a student's mental wellbeing.

B Impact of Sensitive Course Content

An important step in articulating how or why it is essential for law students to be equipped with the appropriate tools when navigating the challenges of legal education is understanding the impact of sensitive course content upon both students and practitioners. In this context, it is first critical to note that students will generally not experience the impact of sensitive content to the same extent as practitioners, as they are a step removed from any client interactions which involve discussions of trauma, unless they are engaging in clinical legal education.⁵⁵ However, this observation should not derail any efforts to examine the impact of sensitive content on law students particularly as they may be exposed to such content through avenues other than direct client interaction.⁵⁶ On the contrary, the relatively lesser impact of sensitive content on students ought to be embraced as an opportunity by legal education providers to proactively address and educate about its effects.⁵⁷

The psychological impact of sensitive course content may be most clearly understood through the lens of trauma and the associated concepts of vicarious and collective trauma. Laurie A Pearlman and Karen Saakvitne broadly describe traumatic events as those in which an individual experiences a threat to 'life

51 Michael Lynk, 'Not Logic, but Experience: Teaching Canadian Human Rights Law' (2023) 53(1) *American Review of Canadian Studies* 141, 145 <<https://doi.org/10.1080/02722011.2023.2172884>>.

52 Miriam A Cherry, 'Teaching Employment Discrimination Law, Virtually' (2013) 58(1) *Saint Louis University Law Journal* 83, 84.

53 Australian Government Office for Learning and Teaching, *Best Practices: Australian Clinical Legal Education* (Final Report, September 2012) 8.

54 Mallika Kaur, 'Negotiating Trauma and Teaching Law' (2021) 35(1) *Journal of Law and Social Policy* 113, 114 <<https://doi.org/10.60082/0829-3929.1426>>.

55 Mary Heath et al, 'Teaching Sensitive Material: A Multi-disciplinary Perspective' (2017) 4(1) *Ergo* 5, 8.

56 Ibid.

57 Janet Thompson Jackson, 'Wellness and Law: Reforming Legal Education to Support Student Wellness' (2021) 65(1) *Howard Law Journal* 45, 64 <<https://doi.org/10.2139/ssrn.3839050>>.

or bodily integrity' and in which their effective coping strategies are rendered inadequate.⁵⁸ Bonnie Burstow additionally notes that trauma is not simply just an experience in which an individual's sense of control, meaning and connectedness is temporarily severed.⁵⁹ Trauma is also an ongoing response to such an experience, the short- and long-term effects of which, may continue to be manifested long after the traumatic incident.⁶⁰ Importantly, the complexity and depth of this response will largely depend upon the personal characteristics of the individual and the unique social, familial, economic and political factors surrounding them.⁶¹ Although trauma is far from a unique experience, it is also not a phenomenon experienced equally, with the brunt of its impact falling on marginalised groups including women, individuals from linguistically diverse backgrounds, physically or cognitively impaired individuals, senior citizens and individuals experiencing homelessness and other socio-economic challenges.⁶²

Having a nuanced understanding of trauma and the divergent manner in which it manifests is not only critical in curbing its impact upon the client and any interactions with them, but also essential in recognising and neutralising its effects on assisting students or practitioners. The negative and profound impact of 'empathetically' engaging with sensitive content is commonly described using the concept of 'vicarious trauma'.⁶³ It is often experienced through exposure to accounts of individuals who have experienced traumatic events and their aftermath or to other materials that detail their experience.⁶⁴ Vicarious trauma is a genuine and long-term response to working with and indirectly experiencing the anguish of traumatised populations, often leading the vicariously-traumatised individual to express their emotional turmoil in a range of detrimental ways.⁶⁵ They may, for instance, experience nightmares, bouts of irritability, poor self-esteem, paranoia over one's safety and overall emotional numbness.⁶⁶ Worryingly, vicarious trauma may also lead to the development of cognitive bias and social isolation,⁶⁷

58 Laurie A Pearlman and Karen Saakvitne, *Trauma and the Therapist: Countertransference and Vicarious Traumatization in Psychotherapy with Incest Survivors* (WW Norton, 1st ed, 1995) 60.

59 Bonnie Burstow, 'Toward a Radical Understanding of Trauma and Trauma Work' (2003) 9(11) *Violence Against Women* 1293, 1304 <<https://doi.org/10.1177/1077801203255555>>.

60 Ibid 1303–5.

61 Gemma Smyth, Dusty Johnstone and Jillian Rogin, 'Trauma-Informed Lawyering in the Student Legal Clinic Setting: Increasing Competence in Trauma Informed Practice' (2021) 28(1) *International Journal of Clinical Legal Education* 149, 156 <<https://doi.org/10.19164/ijcle.v28i1.1130>>.

62 Christine E Doucet, 'Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care' (2014) 23(1) *Journal of Law and Social Policy* 136, 141 <<https://doi.org/10.60082/0829-3929.1193>>.

63 Sarah Katz and Deeya Haldar, 'The Pedagogy of Trauma-Informed Lawyering' (2016) 22(2) *Clinical Law Review* 359, 368.

64 Kylie Nomchong, 'Vicarious Trauma in the Legal Profession' [2017] (Summer) *Bar News* 35, 35.

65 Teresa Puvimanasinghe et al, 'Vicarious Resilience and Vicarious Traumatization: Experiences of Working with Refugees and Asylum Seekers in South Australia' (2015) 52(6) *Transcultural Psychiatry* 743, 744 <<https://doi.org/10.1177/1363461515577289>>.

66 Sarah Katz, 'We Need to Talk about Trauma: Integrating Trauma-Informed Practice into the Family Law Classroom' (2022) 60(4) *Family Court Review* 757, 765 <<https://doi.org/10.1111/fcre.12674>> ('We Need to Talk about Trauma'); Burton and Paton (n 1) 96.

67 Katz, 'We Need to Talk about Trauma' (n 66) 765.

culminating in the refusal to seek help from others, disillusionment and a loss of one's frame of reference and sense of identity.⁶⁸

The adverse impacts of vicarious trauma may also be experienced intergenerationally as the negative traits and their consequences can be learned and passed from generation to generation.⁶⁹ For lawyers and students working with traumatised populations, the risk of being exposed to vicarious trauma increases substantially due to the presence of 'environmental' factors including a 'lack of formal training in dealing with trauma survivors' and more importantly, 'an inability (or unwillingness) to de-brief about such matters in an emotionally honest manner'.⁷⁰ This risk is further compounded when one considers the impact of the 'widespread upheaval' caused by the recent COVID-19 pandemic and the relatively 'subtler and more insidious' trauma tailing the approach of climate change, the cumulative effects of which are fundamentally and undeniably life altering.⁷¹

The additional harms presented by the advent of global warming and the escalation of community-wide disasters including the COVID-19 pandemic, the Ukraine–Russia war and, more recently, the genocide in Palestine, may be described as 'collective trauma', a concept which presents another wrinkle to the issue of law student wellbeing.⁷² The concept of 'collective trauma' refers to an 'entire group's psychological reaction to a traumatic event',⁷³ an experience that can negatively alter the worldview of individuals and persist across generations and time.⁷⁴ The COVID-19 pandemic accurately exemplifies one such traumatic event as countries globally experienced not only the devastating physical impact of infection, illness and death, but also the emotional impact of collective 'loss, fear, lack of control and helplessness'.⁷⁵ According to Sarah Katz, the ongoing challenges and trauma, brought on and exacerbated by the COVID-19 pandemic, will have an 'inescapable impact' upon the wellbeing of law students and future practitioners.⁷⁶ This impact will be felt not only by those who were personally burned by the chaos of the pandemic but also by those who must deal with its social and economic consequences.⁷⁷

Another experience of collective trauma that has reared its head alongside the pandemic is the ongoing threat of climate change and the countless extreme weather events it has brought and threatens to bring in its wake. Monica Taylor strongly emphasises the damaging psychological impact living through an extreme weather event may have on the wellbeing of those directly experiencing the event and those

68 Ibid 764.

69 Ibid.

70 Nomchong (n 64) 36.

71 Sarah Katz, 'The Trauma-Informed Law Classroom: Incorporating Principles of Trauma-Informed Practice into the Pandemic Age Law School Classroom' (2020) 25(1) *University of California Davis Social Justice Law Review* 17, 22, 25 ('The Trauma-Informed Law Classroom').

72 Marlene F Watson et al, 'COVID-19 Interconnectedness: Health Inequity, the Climate Crisis, and Collective Trauma' (2020) 59(3) *Family Process* 832, 833 <<https://doi.org/10.1111/famp.12572>>.

73 Ibid 840.

74 Ibid.

75 Katz, 'The Trauma-Informed Law Classroom' (n 71) 26.

76 Ibid 22.

77 Ibid.

forced to live through the aftermath.⁷⁸ Accordingly, Taylor argues that current and prospective law students must not only inoculate themselves against the high risk of psychological distress inherent within the study and practice of law, but must also face the ‘iron law of climate change’, a law that punishes those who were least responsible for bringing about its devastating effects.⁷⁹ Hence, it is clear from the intersection of trauma, vicarious trauma, collective trauma as well as a variety of other stressors that can potentially exert psychological distress on a law student, that the challenge law schools must face is not ‘insignificant’.⁸⁰ However, these issues are by no means ‘insurmountable’ and should be explored further.⁸¹

III TRAUMA-INFORMED PRACTICE

At the outset, it is important to distinguish between what is meant by trauma-informed practice and trauma-informed practices. Trauma-informed practice encompasses a broad domain of research and practice dedicated to comprehending the impacts of trauma on individuals and communities as well as developing holistic and inclusive strategies to mitigate these impacts.⁸² Trauma-informed practices are specific strategies, commonly used in fields working with traumatised individuals, that promote psychological wellbeing and reduce the risk of re-traumatisation. Although originally an implement of the mental health field, the paradigm of trauma-informed practice has seen increasing prevalence and applicability to other disciplines including general medical practice, midwifery, social work and, more recently, the legal profession.⁸³ Broadly speaking, trauma-informed practice is an ongoing and systemic approach to the delivery of services that recognises the prevalence of trauma and its effect upon those delivering and receiving services.⁸⁴

Trauma-informed practice is structured around the presumption that each individual may have been, at some point within their lifetime, touched by trauma and as such, their response to certain situations will be coloured by the experience.⁸⁵ A trauma-informed approach to service delivery centres the importance of ‘safety, trustworthiness, choice, collaboration and empowerment’ within all aspects and levels of service delivery.⁸⁶ It is a framework that regards ‘difficult’ or abnormal reactions to certain situations as ‘coping mechanisms and attempted self-protection’ against the recurrence of prior adverse experience.⁸⁷ Trauma-informed practice also

78 Monica Taylor, ‘Climate Crisis, Legal Education and Law Student Well-Being: Pedagogical Strategies for Action’ (2021) 40(3) *University of Queensland Law Journal* 459, 461 <<https://doi.org/10.38127/uqlj.v40i3.6103>>.

79 Ibid 459.

80 Kaur (n 54) 115.

81 Ibid 116.

82 Wall, Higgins and Hunter (n 3) 9.

83 Cathy Kezelman and Pam Stavropoulos, ‘Trauma and the Law: Applying Trauma-Informed Practice to Legal and Judicial Contexts’ (Background Paper, Blue Knot Foundation, 2016) 8.

84 Wall, Higgins and Hunter (n 3) 9.

85 Ibid.

86 Kezelman and Stavropoulos (n 83) 5.

87 Ibid 6.

recognises and promotes an individual's resilience notwithstanding the enormity and impact of prior traumatising experiences.⁸⁸ Ultimately, as Melanie Randall and Lori Haskell put it, being trauma-informed 'entails becoming more astutely aware of the ways in which people who are traumatized have their life trajectories shaped by the experience and its effects' and developing policies and practices which reflect this understanding.⁸⁹

Katz argues that no profession is more in need of embracing and integrating trauma-informed practices than the legal profession as it hosts both stressed legal personnel and traumatised clients, a hazardous combination that risks the re-traumatisation of clients and the vicarious traumatisation of practitioners.⁹⁰ The application of the principles championed by trauma-informed practice to the everyday practice of law has been aptly referred to as 'trauma-informed lawyering'.⁹¹ Trauma-informed lawyering is an approach to legal practice which places the reality of the client's traumatic experience and the lawyer's exposure to such an experience at the 'forefront' of the client-lawyer relationship.⁹² Although not a step-by-step process, adopting a trauma-informed stance in legal practice includes learning to identify the symptoms of trauma experienced by the client, adjusting the representation strategy and the overall relationship with the client to account for any complexities presented by the client's trauma and lastly, protecting the lawyer against the risk of vicarious trauma.⁹³

At its core, trauma-informed lawyering involves re-learning characteristics intrinsic to all positive human relationships including 'empathy, responsive listening, restraint from judgement, [and] demonstration of authentic care and concern'.⁹⁴ Being a trauma-informed lawyer necessarily entails adopting representation strategies that avoid exacerbating a client's trauma while simultaneously protecting and advancing their legal interests.⁹⁵ Being trauma-informed also requires a practising lawyer to be mindful of the impact their client's trauma may have on their personal mental wellbeing so as to not fall victim to the symptoms of vicarious trauma, or neglect their professional duties to the client and the profession as a whole.⁹⁶

The benefits of integrating the tools of trauma-informed practice into the lawyering process are evident if not logical. Firstly, it enhances the lawyer's understanding of the complexities of trauma and how its impact may be exhibited by different individuals.⁹⁷ This knowledge will allow the lawyer to approach

88 Katz and Haldar (n 63) 375.

89 Melanie Randall and Lori Haskell, 'Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping' (2013) 36(2) *Dalhousie Law Journal* 501, 531.

90 Katz, 'We Need to Talk about Trauma' (n 66) 769.

91 *Ibid* 767.

92 Katz, 'The Trauma-Informed Law Classroom' (n 71) 30.

93 Katz, 'We Need to Talk about Trauma' (n 66) 767–8.

94 Eliza Patten and Talia Kraemer, 'Establishing a Trauma-Informed Lawyer-Client Relationship' (2014) 33(10) *ABA Child Law Practice* 193, 199.

95 Randall and Haskell (n 89) 505.

96 Katz, 'We Need to Talk about Trauma' (n 66) 769–70.

97 Robey B Champine et al, "'What Does It Mean to Be Trauma-Informed?': A Mixed-Methods Study of a Trauma-Informed Community Initiative' (2022) 31 *Journal of Child and Family Studies* 459, 467 <<https://doi.org/10.1007/s10826-021-02195-9>>.

their client with the empathy they deserve and establish a respectful rapport that fosters the transparency, trust and collaboration necessary for an effective relationship.⁹⁸ Secondly, Cathy Kezelman and Pam Stavropoulos argue that being a trauma-informed lawyer paves the way for more holistic and comprehensive legal advocacy.⁹⁹ They staunchly assert that a practitioner who understands the trauma-related factors influencing their client's situation is able to more effectively advocate for their client as they are able to pursue strategies that support both their client's legal rights and mental fortitude.¹⁰⁰ As Katz simply put it: '[T]rauma-informed lawyering is not a radical concept, but rather simply good lawyering.'¹⁰¹

Thirdly, by mitigating the impact of trauma as a barrier to accessing and navigating the legal system, trauma-informed lawyering can promote better access to justice for traumatised clients.¹⁰² By understanding precisely how a client's experience of personal, vicarious or collective trauma can hinder their ability to seek justice and how to responsibly overcome such hinderances, a trauma-informed lawyer is able to empower their client and safeguard their rights without compounding their trauma or fortifying existing barriers to justice.¹⁰³ Fourthly, Kezelman and Stavropoulos argue that embedding trauma-informed practices throughout the legal sector is justified due to not only the extensive evidence demonstrating the benefits of positive relational experiences in rebuilding neural pathways affected by stress and trauma, but also due to the approach's inherent accessibility.¹⁰⁴ They assert that being trauma-informed does not require 'clinical knowledge or qualifications', but a basic grasp of the 'impacts of stress on the brain and body and strategies to avoid exacerbating possible trauma-related problems'.¹⁰⁵ Given the relatively low stakes required to begin the journey of being a trauma-informed practitioner, Kezelman and Stavropoulos argue that it is imperative upon both the individual lawyer and the full spectrum of legal institutions to adopt trauma-informed practices within their services.¹⁰⁶

The last and perhaps most evident benefit of integrating trauma-informed practices into the legal profession is the alleviation of stigma surrounding the topic of mental health in the legal profession.¹⁰⁷ Colin James opines that the stigma attached to the topic of mental health within the legal profession leads many lawyers to believe that it is 'counter-intuitive' to disclose symptoms of vicarious trauma for fear that it will be seen as a 'professional weakness'.¹⁰⁸ He reiterates that the suppression of symptoms in this manner not only exacerbates the harm

98 Ibid.

99 Kezelman and Stavropoulos (n 83) 6.

100 Ibid.

101 Katz, 'The Trauma-Informed Law Classroom' (n 71) 32.

102 Wall, Higgins and Hunter (n 3) 8.

103 Ibid 9.

104 Kezelman and Stavropoulos (n 83) 5.

105 Ibid.

106 Ibid.

107 Colin James, 'Towards Trauma-Informed Legal Practice: A Review' (2020) 27(2) *Psychiatry, Psychology and Law* 275, 282 <<https://doi.org/10.1080/13218719.2020.1719377>>.

108 Ibid.

experienced by the practitioner but also hinders any prospects of organisational reform.¹⁰⁹ As the principles of trauma-informed practice recognise the critical role of organisations in responding to traumatised individuals, it places a heavy emphasis upon building supportive and stigma-free environments that allow for open and frank discussions of the impact of a client's trauma or workplace challenges.¹¹⁰ By promoting a culture of empathy and sensitivity as well as incentivising gradual transitions in workplace policies to enhance the safety of clients and responding practitioners, trauma-informed practices assist in overcoming the challenges associated with seeking mental health support within the legal profession.¹¹¹

Given the existence of compelling reasons to adopt the principles of trauma-informed practice, particularly within the legal profession, it is notable that there remains a considerable gap in the implementation of these practices within legal education, despite being the gateway to the legal profession and often where practitioners first start exhibiting signs of a deteriorating mental state.¹¹² One may argue that this gap is partly due to the difference between legal practice and legal education and the outcomes they seek to achieve.¹¹³ Yet there are also many overlaps, particularly in the exposure to sensitive content, the impact of which trauma-informed practices may assist in ameliorating.¹¹⁴ Hence, it is crucial to examine the reasons advanced for the implementation of trauma-informed practices within the context of legal education.

IV THE CONTEXT OF LEGAL EDUCATION

At this juncture, it is clear that the implementation of trauma-informed practices within the legal profession plays a significant role in reducing some of the detrimental impacts the lawyering process may have on the mental resilience of practitioners and clients.¹¹⁵ But the benefits the legal profession gains from this implementation do not necessarily justify the incorporation of trauma-informed practices within legal education. As such, it is critical to advance the specific reasons supporting the incorporation of trauma-informed approaches within legal education. As indicated in Part II, there is a growing body of empirical evidence both nationally and internationally, confirming that law students experience elevated levels of psychological distress compared to the general population and their counterparts in other disciplines.¹¹⁶ Additionally, there is a robust body of

109 Ibid 282–3.

110 Ibid 284.

111 Ibid.

112 Katz and Haldar (n 63) 372.

113 Katz, 'We Need to Talk about Trauma' (n 66) 770.

114 Ibid.

115 See Champine et al (n 97) 467; Kezelman and Stavropoulos (n 83) 5–6; Wall, Higgins and Hunter (n 3) 8–9; James (n 107) 282–4.

116 See Tani and Vines (n 25) 3; Penelope Watson and Rachael Field, 'Promoting Student Well-Being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 389; Wendy Larcombe et al, 'Does an Improved Experience of Law School Protect

evidence attributing the cause of such psychological distress to certain aspects of the law school experience.¹¹⁷

More recently, research efforts have focused on the sensitive content permeating the law school curriculum and its role in exposing law students to the risk of vicarious trauma or exacerbating the harmful impact of individual and collective experiences of trauma.¹¹⁸ Studies examining the integration of trauma-informed policies within private legal practice have consistently shown that lawyers equipped with the appropriate training to deal with traumatised clients are less susceptible to the symptoms of vicarious trauma.¹¹⁹ As such, the first and most pertinent reason for adopting trauma-informed approaches in the context of legal education is their value in mitigating the traumatising impact sensitive course content may have on students and academics.¹²⁰ Indeed, the adoption of some form of trauma-mitigating pedagogical model became an urgent matter for many higher education providers following the advent of COVID-19.¹²¹ The systemic havoc and personal turmoil caused and exacerbated by the COVID-19 pandemic accentuated the need for a teaching model sensitive of the effects of personal and collective trauma while reducing the risk of re-traumatisation in the process of learning.¹²² Jonathan Todres emphasises that although the initial disarray of the pandemic has arguably subsided, law students are continuing to reel from its devastating mental health consequences.¹²³ As such, Janet Thompson Jackson validly argues that providers of legal education can no longer afford to educate students in ‘intellectual silo[s]’ and must look for ways to address the mental health crisis through their most powerful tool: the curriculum.¹²⁴ To avoid the risk of vicariously traumatising students with sensitive course content and exacerbating pre-existing trauma, providers of legal education must learn from the experiences of the legal profession by integrating trauma-informed practices in a manner that is equally as beneficial.

Although a compelling reason in its own right, mitigating the risk of vicarious trauma is merely one of the reasons supporting the implementation of trauma-informed practices within legal education. Incorporating trauma-informed practices also furthers the value legal education places on fostering practice-ready graduates.¹²⁵ Mallika Kaur opines that ‘trauma-centredness’ is being increasingly valued and even demanded within the legal profession including within the

Students against Depression, Anxiety and Stress? An Empirical Study of Wellbeing and the Law School Experience of LLB and JD Students’ (2013) 35(2) *Sydney Law Review* 407 <<https://doi.org/10.2139/ssrn.2147547>>; Kelk et al (n 6) 16–42.

117 See Tani and Vines (n 25) 30; O’Brien, Tang and Hall, ‘No Time to Lose’ (n 17) 57; Raj (n 31) 131–5; Thornton (n 33); Burns et al (n 35) 343–8.

118 See Burton and Paton (n 1) 94; Maguire and Byrne (n 43) 233; Tyler (n 43) 1; Heath et al (n 55) 5.

119 James (n 107) 284–5.

120 Katz, ‘The Trauma-Informed Law Classroom’ (n 71) 34–8.

121 *Ibid* 24.

122 Jonathan Todres, ‘Work-Life Balance and the Need to Give Law Students a Break’ (2022) 83(5) *University of Pittsburgh Law Review* 1–14, 7 <<https://doi.org/10.5195/lawreview.2022.848>>.

123 *Ibid*.

124 Jackson (n 57) 64.

125 Katz and Haldar (n 63) 378.

relatively ‘quiet’ domains of law.¹²⁶ This increasing utility is due, in part, to the fact that the principles underlying trauma-informed practices closely align with the values underlying ‘client-centred’ lawyering.¹²⁷ Client-centred lawyering is an approach to lawyering that prioritises the client’s needs, goals, emotions and overall perspective when resolving a legal issue.¹²⁸ It is a model that places high value on the client’s ability to make decisions within the relationship and draws attention to both the legal and ‘non-legal’ aspects of a client’s situation.¹²⁹

Integrating trauma-informed practices into the law school curriculum prepares students for their legal careers by fostering a client-centred approach and encouraging exploration of non-legal solutions, crucial for securing the least invasive and traumatising outcome for both clients and practitioners alike.¹³⁰ Such integration also sensitises students to the impact of traumatic experiences on the decision-making process, enabling them to develop empathy and adjust their legal strategy accordingly.¹³¹ Ronald Tyler argues that teaching trauma-informed practices is of unprecedented importance given the recent increase of experiential education requirements and the growing recognition that trauma-informed practices are the appropriate model with which to ameliorate the vicarious trauma presented by legal education and future client interactions.¹³² This aligns with the wider understanding that trauma-informed practices not only gift students with a trauma-conscious attitude but also assist them in developing the corresponding practical lawyering skills expected of a practice-ready graduate.

Sarah Katz and Deeya Haldar assert that trauma-informed practices can aid students in better understanding their future role as a lawyer, the ethical duties practising law will impose, as well as the emotional burden they may have to bear.¹³³ They further emphasise that a trauma-informed graduate is able to better fulfill their duty of competence and diligence towards future clients as they are able to pursue solutions that satisfy their clients while simultaneously preserving their mental fortitude.¹³⁴ A graduate trained in trauma-informed practices will also recognise that to truly act in their client’s best interests and uphold their integrity as an officer of the court, they must be mindful of the limitations of their own emotional wellbeing and take precautions to prevent exacerbating or adding to any pre-existing mental strain.¹³⁵ Hence, the integration of trauma-informed practices is not simply an abstract theoretical exercise. Rather, it possesses a vocational importance and promotes the goals valued by legal education and demanded by

126 Kaur (n 54) 116.

127 Katz and Haldar (n 63) 375.

128 Ibid.

129 Caroline Rogus and Philomila Tsoukala, ‘Doctrine, Experiential Learning, and Client-Centered Lawyering: Teaching Family Law in a Post-pandemic World’ (2022) 60(4) *Family Court Review* 818, 821 <<https://doi.org/10.1111/fcre.12677>>.

130 Ibid.

131 Ibid 822, 827.

132 Tyler (n 43) 14.

133 Katz and Haldar (n 63) 377.

134 Ibid.

135 Ibid 392.

the legal profession – an aspect that should undoubtedly provide higher education providers with the incentive to integrate.¹³⁶

If mitigating psychological distress among law students and enhancing their employability are not persuasive enough, another argument can be advanced: legal education providers must integrate trauma-informed practices in recognition of the fact that mental health issues are not merely individual problems but institutional ones, and that educational institutions play a part in addressing the stigma surrounding such topics. Seema Tahir Saifee strongly argues that educational organisations must cease deflecting their moral and ethical duty to address the mental health crisis ravaging the profession and begin to address the matter as not merely an individual issue but an ‘institutional concern’.¹³⁷ Todres echoes a similar sentiment, stating that providers of legal education cannot expect law students to engage in self-care strategies without first creating the conditions in which such strategies are not only possible, but welcome.¹³⁸

In 2021, the International Bar Association (‘IBA’) published a new report discussing data collected from 3,256 surveyed legal professionals and more than 180 legal organisations, including bar associations, law societies, in-house legal departments and law firms.¹³⁹ This report confirmed that stigma surrounding discussions of mental health continues to persist with its cause ranging from a fear of detrimental consequences to career prospects, discriminatory treatment following disclosure and an intolerant workplace culture.¹⁴⁰ Fatma Yener Özcan and Burcu Ceylan reiterate that discussions concerning trauma, psychological distress and their respective impact upon an individual’s wellbeing must be had before students enter the profession, ideally through the law school curriculum.¹⁴¹ In their view, the impact of failing to embed such critical discussions will not only perpetuate the stigma clouding such topics within the profession, but also lead graduates to stigmatise future clients recovering from traumatic experiences or navigating their mental health issues.¹⁴² The IBA report concluded by highlighting that to truly remove the mental health stigma, there needs to be a ‘systematic overhaul’ of the entire legal profession, starting with law schools.¹⁴³ Since such a feat cannot be accomplished overnight, the IBA emphasised that legal education, and the profession as a whole, must implement strategies that assure students and practitioners alike that conversations regarding mental health are acceptable, if not absolutely necessary.¹⁴⁴

136 Raj (n 31) 135.

137 Seema Tahir Saifee, ‘Sustaining Lawyers’ (2021) 56(4) *Wake Forest Law Review* 907, 940.

138 Todres (n 122) 3.

139 International Bar Association, *Mental Wellbeing in the Legal Profession: A Global Study* (Report, October 2021) 24.

140 Ibid 21.

141 Fatma Yener Özcan and Burcu Ceylan, ‘Lawyers’ Beliefs about Mental Illnesses and Their Tendency to Stigmatize People with Mental Illnesses’ (2022) 58(4) *Perspectives in Psychiatric Care* 1303, 1307–8 <<https://doi.org/10.1111/ppc.12932>>.

142 Ibid.

143 International Bar Association (n 139) 51.

144 Ibid 15.

Implementing trauma-informed practices within legal education not only communicates to law students the importance of protecting their mental health but also actively disrupts the narrative that being psychologically distressed is part and parcel of being a member of the profession.¹⁴⁵ Furthermore, incorporating trauma-informed practices within legal education will inculcate in students a sense of empathy towards their fellow students and future clients who are dealing with trauma-related or mental health issues, and prevent stigmatising their experiences further.¹⁴⁶ By integrating trauma-informed practices into the legal education curriculum, higher education institutions recognise that the individual's responsibility for their mental health and a supportive institutional framework are as interdependent as a bow and arrow: the self-care and empathy of the individual form the bow, whilst trauma-informed education provides the arrow. Only together can they effectively target the profession's mental health crisis, piercing the shield of stigma surrounding it.

V HOW CAN TRAUMA-INFORMED PRACTICES BE INTEGRATED IN LEGAL EDUCATION

When considering how trauma-informed practices can be assimilated into the legal curriculum, it is important to recognise that being 'prescriptive' is neither 'possible [n]or advisable'.¹⁴⁷ Kaur emphasises that the method through which trauma-informed practices are integrated within the curriculum ought to remain flexible for a myriad of reasons.¹⁴⁸ Firstly, the diversity of law subjects to which trauma-informed practices directly apply prevents educators from adopting a universal method through which to integrate these practices.¹⁴⁹ Secondly, dictating a one-size-fits-all approach to the incorporation of trauma-informed practices not only assumes that every sensitive topic in law courses can be effectively addressed in the same manner, but it also assumes that educators are equally equipped to deal with these topics in a particular way.¹⁵⁰ Thirdly, and perhaps more importantly, prescribing a singular method to implementing trauma-informed practices will stifle the ability of educators to experiment with a variety of different methods to identify the most appropriate way of introducing these practices into the course being taught.¹⁵¹ However, even with the absence of a clear step-by-step formula for the successful integration of these practices, ongoing research can offer considerable guidance on how trauma-informed practices have been implemented within a range of subjects, at different stages and using a variety of different means.¹⁵² Hence, the remainder of this Part will focus on analysing two similar,

145 Ibid 13–14.

146 Özcan and Ceylan (n 141) 1307.

147 Kaur (n 54) 117.

148 Ibid.

149 James (n 107) 285.

150 Kaur (n 54) 115–16.

151 Ibid 119.

152 Heath et al (n 55) 12.

but distinct, projects that have incorporated trauma-informed practices within the legal curriculum and further evaluate how each solidifies our understanding of how integration can be approached.

A Project One

‘Preparing Law Students for Dealing with Sensitive Course Content’ is a first-year project implemented in 2018 by the University of the Sunshine Coast (‘UniSC’) Law School in conjunction with the University’s Student Wellbeing service.¹⁵³ This endeavour was implemented within a Priestley 11 course (Criminal Law and Procedure) to raise awareness of the impact of exposure to sensitive course content and assist first-year students, through a variety of tools, in recognising and mitigating the impact of such content on their emotional wellbeing.¹⁵⁴ The project is multifaceted, incorporating a variety of different trauma-informed practices to ensure first-year law students are sufficiently cognisant of and protected from the vicarious trauma resulting from their ongoing engagement with sensitive course content. One key resource is a video clip explaining what vicarious trauma is, its symptoms, who may be impacted by it and testimonials from past student recounting various coping strategies.¹⁵⁵ The recording is complemented by an assessment task requiring students to review their understanding of vicarious trauma and how its detrimental impacts may be curbed in the form of a reflective journal.

Additionally, the project partnered with the Student Wellbeing service at UniSC to curate a range of easily accessible online materials covering the importance of mental wellbeing and how to navigate both personal and vicarious trauma. This project represents a simple, flexible and effective method of implementing trauma-informed practices within the law school curriculum for three main reasons. Firstly, the project targeted first-year law students in an important group to educate on the psychological impact of studying law as studies continue to show that this is when many students first exhibit signs of debilitating mental health concerns.¹⁵⁶ Secondly, the project’s emphasis on educating students about the symptoms of vicarious trauma and its debilitating effects not only aids students in identifying these symptoms within themselves, those around them and potentially future clients, it also acts as a catalyst for students to seek further guidance on these issues using the supplementary online resources.¹⁵⁷ Thirdly, it unequivocally communicates to first-year law students that protecting their psychological wellbeing, particularly from all the sensitive course content they may be exposed to, is also a significant learning outcome and one that is not merely confined to a particular course or year of their degree.

In their concluding remarks, Kelley Burton and Amanda Paton reiterate that although the project is incorporated at a critical stage, a ‘one-off or haphazard commitment’ to addressing vicarious trauma only temporarily increases awareness

153 Burton and Paton (n 1) 98.

154 Ibid.

155 Ibid 99.

156 Ibid 98–9.

157 Katz, ‘We Need to Talk about Trauma’ (n 66) 771.

of the issue whilst falling short of mitigating the risk of developing it.¹⁵⁸ Rather, a ‘coordinated and ongoing approach’ to the integration of similar practices is needed, one that may require the support of the Council of Australian Law Deans, Legal Education Associate Deans Network, Australasian Law Academics Association, Law Admissions Consultative Committee, accrediting bodies and admissions boards.¹⁵⁹

B Project Two

The second project is a collaborative endeavour by seven educators from disciplines like law, psychology and social work in three South Australian universities (University of South Australia, University of Adelaide and Flinders University).¹⁶⁰ The initiative was purposed to harness the collective experience of these educators within different disciplines in crafting practical guidelines for the delivery and management of sensitive course content through trauma-informed teaching strategies.¹⁶¹ The primary focus of the guidelines was the prevention of vicarious trauma to students when engaging with sensitive course content while simultaneously building students’ capacity to discuss and learn from such content as they would be expected to in a workplace environment.¹⁶² This was achieved by the educators in this project through the adoption of four trauma-informed strategies: careful curriculum planning, designing safe learning environments, creating trauma-informed learning opportunities and empowering students to manage their experience of the curriculum.

Curriculum planning involves closely monitoring the amount and frequency of sensitive course materials being assigned to students as well as providing a ‘pre-briefing’ about the nature of the materials well in advance.¹⁶³ This strategy is critical not only in reducing barriers to learning, including the risk of re-traumatisation, but also in ensuring that the ‘intensity’ of exposure to sensitive course content is limited to what is necessary for learning.¹⁶⁴ Designing safe learning environments includes providing students with sufficient predictability about the extent of sensitive content that requires consideration while providing them with the choice to engage with discussions of such content either in class or online.¹⁶⁵ It may also involve providing the students with a contextualised account of the sensitive issues to be discussed, making classes aware of the presence of ‘hidden survivors’ and emphasising the need for balanced and respectful discussions around these issues.¹⁶⁶ Negotiating how classes will be delivered when sensitive course content is being

158 Burton and Paton (n 1) 99.

159 Ibid. See also, Council of Australian Law School Deans, ‘Australian Law School Standards with Guidance Notes’ (Standards, 30 July 2020) 21 <<https://cald.asn.au/wp-content/uploads/2023/11/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.

160 Heath et al (n 55) 6.

161 Ibid.

162 Ibid 7.

163 Ibid 8.

164 Ibid.

165 Ibid 8–9.

166 Ibid 8.

discussed not only creates safer spaces for professionally discussing the subject matter, but also signals to vulnerable students that their presence and involvement is important, welcome and entirely in their control.¹⁶⁷

Creating trauma-informed learning opportunities entails giving careful thought to the inclusion of graphic and traumatic materials in assessments or tutorial activities particularly when less traumatic material is equally as effective in addressing set learning outcomes.¹⁶⁸ Where the allocation of such materials is unavoidable, this strategy may be paired with the fourth to reduce the risk of vicarious trauma as a result of exposure to such content.¹⁶⁹ The fourth strategy involves educating students about the mental health toll of engaging with sensitive course materials while simultaneously providing them access to appropriate support services and self-care strategies to navigate the taxing parts of the curriculum.¹⁷⁰ This strategy involves increasing students' understanding of the impact of sensitive course content and empowering them with the appropriate tools to effectively respond to this learned understanding.¹⁷¹ The third and fourth strategies directly acknowledge that whilst encountering sensitive course content may be an inescapable part of law school, how such content is delivered and responded to by students are elements that educators can shape to be more humane and trauma sensitive.¹⁷²

This project, much like the first, effectively demonstrates that incorporating trauma-informed practices within legal education is both feasible and advantageous. The strategies outlined above require small yet impactful adjustments to the learning experience; a small investment to address a pervasive and detrimental facet of the legal curriculum.¹⁷³ This project also clarifies that incorporating trauma-informed practices within legal education does not involve entirely removing sensitive course content or all potential stressors, as that is neither possible nor necessary.¹⁷⁴ Rather, trauma-informed legal education merely entails consciously designing both the curriculum and the learning environment in a manner that fosters effective learning whilst being cognisant of the potential risks of trauma.¹⁷⁵

VI CHALLENGES OF INTEGRATING TRAUMA-INFORMED PRACTICES IN LEGAL EDUCATION

Starting and maintaining a fire may be a difficult endeavour for several reasons. For instance, the wood may not be seasoned or dry enough to ignite. Similarly, using large piles of wood without layering it with kindling will result in a fire that only burns through the surface of the wood. Battling high winds with no shelter

167 Ibid 9.

168 Ibid.

169 Ibid 10.

170 Ibid 10–11.

171 Ibid 11.

172 Ibid 12.

173 Kaur (n 54) 117.

174 Heath et al (n 55) 11.

175 Ibid 11–12.

may not only make it difficult to light tinder but also maintain a flame once it is lit. Failing to acknowledge these barriers and adapt to their presence will be a step backwards, hindering both progress and efforts to find appropriate solutions. When considering the adoption of trauma-informed practices in legal education, it is equally important to consider the existence of barriers to effective implementation and whether they could be overcome.

A Diversity of Practices and Areas of Law

As previously indicated in Part V, the diversity of law subjects to which trauma-informed practices directly apply poses a challenge for adopting a standardised approach to implementation.¹⁷⁶ The challenge stems from the varying levels of exposure to, and severity of, sensitive content in each subject, the structure of the curriculum, as well as the method of delivery.¹⁷⁷ Additionally, the diversity of the trauma-informed tools or practices that could be incorporated by legal education complicates any attempts to identify which tool ought to be adopted or which may be the most effective.¹⁷⁸ For instance, providing targeted education about the impact of vicarious trauma on a law student's wellbeing and restructuring the learning environment to allow for student decision-making and control when engaging with sensitive content are both trauma-informed practices that may be integrated within a given subject.¹⁷⁹ Whether to integrate one of these practices, both, neither or adopt an entirely different practice is a question that must be decided by educators and is ultimately dependent on the nature of the subject being taught, the effectiveness of the tool in mitigating the harm posed by the sensitive content, as well as the educator's knowledge of these tools and their capacity to implement them.¹⁸⁰

The infinite ways in which trauma-informed practices can be integrated into legal education will perhaps be too overwhelming for educators who may not be able to wholly dedicate their time to experimenting with different strategies and discern their effectiveness. Hence, future research must undoubtedly prioritise not only clarifying how the 'effectiveness' of trauma-informed practices is to be assessed but also providing institutions with a blueprint for implementation by identifying the compatibility of specific practices with certain courses.¹⁸¹ However, as stated in the previous Part, it is this flexibility that is required when integrating these practices within different courses and is, incidentally, a prominent reason for their adoption in different fields and degrees.¹⁸² While this challenge ought to

176 James (n 107) 285.

177 Katz, 'We Need to Talk about Trauma' (n 66) 770.

178 Mark Rabil, Dawn McQuiston and Kimberly D Wiseman, 'Secondary Trauma in Lawyering: Stories, Studies, and Strategies' (2021) 56(4) *Wake Forest Law Review* 825, 851.

179 See Burton and Paton (n 1) 98; Heath et al (n 55) 8.

180 Heath et al (n 55) 11.

181 James (n 107) 285; Kezelman and Stavropoulos (n 83) 9.

182 For an excellent review on how the flexibility of trauma-informed practices enables its implementation, see Yan Huo et al, 'Barriers and Enablers for the Implementation of Trauma-Informed Care in Healthcare Settings: A Systematic Review' (2023) 4(1) *Implementation Science Communications* 49 <<https://doi.org/10.1186/s43058-023-00428-0>>.

be acknowledged and mitigated through future research literature, it must also be reframed as opportunity for creative adaptation.¹⁸³

B Institutional Restraints

It is perhaps ironic to expect academic staff to adopt trauma-informed practices into their teaching whilst they navigate ‘diverse student needs and expectations, a competitive research environment, community expectations for relevance, declining public funding, and increased administrative and fiscal accountability’.¹⁸⁴ In this context, some law academics may experience trauma from their own personal experience, employment and/or professional experience. For example, legal educators are repeatedly exposed to sensitive course content and law students who are traumatised by such learning materials. In the 21st century, academics must engage in not only the transmission of knowledge through their teaching, but also in its generation through relevant research in their field.¹⁸⁵ Don Houston, Luanna H Meyer and Shelley Paewai note that while commitments to teaching and research are sometimes ‘synergistic and complementary’, the reality is, that they are more often than not, ‘antagonistic and competing’.¹⁸⁶ This tension can be attributed to the prevailing reward framework within modern universities which incentivises research and publication over teaching, prompting many academics to focus on research to the detriment of their teaching and students.¹⁸⁷ The competing demands of research and teaching academics have to negotiate pose a unique challenge to the integration of trauma-informed practices within legal education.

Although the prioritisation of research will certainly aid future efforts to investigate the effectiveness of specific trauma-informed practices and their compatibility with certain subjects, it will also hinder any efforts to incorporate such research within the classroom.¹⁸⁸ The greater the pressure on academics to prioritise their research over their teaching duties, the more challenging it will become for them to cultivate a trauma-informed curriculum and learning environment given the additional planning and consideration they demand.¹⁸⁹ Although research has demonstrated that academics continue to value their role and teaching commitments,¹⁹⁰ implementing trauma-informed practices will require meticulous planning and consistent application – a burden that many academics will not be able to shoulder with existing institutional restraints.¹⁹¹ Ultimately, regardless of how effective

183 Kaur (n 54) 119.

184 Don Houston, Luanna H Meyer and Shelley Paewai, ‘Academic Staff Workloads and Job Satisfaction: Expectations and Values in Academe’ (2006) 28(1) *Journal of Higher Education Policy and Management* 17, 19–20 <<https://doi.org/10.1080/13600800500283734>>.

185 Ibid 18.

186 Ibid. See also Bridget Durning and Alan Jenkins, ‘Teaching/Research Relations in Departments: The Perspectives of Built Environment Academics’ (2005) 30(4) *Studies in Higher Education* 407, 422 <<https://doi.org/10.1080/03075070500160046>>.

187 Ibid 408–9.

188 Raj (n 31) 132.

189 Houston, Meyer and Paewai (n 184) 18.

190 Ibid.

191 Raj (n 31) 132.

trauma-informed practices are, their successful incorporation within legal education will require the active involvement of academics.¹⁹² Neglecting the institutional policies and frameworks that academics must navigate and the challenge they pose to implementation would not only be a step backwards, but would also violate the fundamental principles underlying trauma-informed practices.¹⁹³

C Law School Culture

Teaching law students to think critically ‘like a lawyer’ is a necessary but dangerous endeavour. It inadvertently creates a culture whereby emotion, and as a result, discussions surrounding emotional struggles, are not only separate from the law, but are its ‘antithesis’.¹⁹⁴ Although law schools have made significant progress towards challenging this entrenched culture, conversations concerning the interplay between law, trauma and mental health continue to be perceived, by students and educators alike, as conversations that fall outside the scope of the legal curriculum and which are better addressed outside the confines of the classroom.¹⁹⁵ This poses another barrier to implementing trauma-informed practices in legal education for two predominant reasons.

Firstly, law students immersed in a law school culture that regards topics pertaining to trauma as a ‘pedagogical threat to effective legal learning’ may not approach these topics with the seriousness they deserve.¹⁹⁶ This attitude may, in turn, dissuade students from effectively engaging with trauma-informed practices thereby exposing themselves to trauma without any adequate safeguards.¹⁹⁷ The challenge presented by the culture within law schools highlights the need for more research on how trauma-informed practices can be implemented in a manner that highlights their vocational importance, transforming them from mere ‘add-on[s]’ to a critical component of studying and practising law.¹⁹⁸ Furthermore, this challenge underscores the importance of integrating trauma-informed practices at an early stage to cultivate a law school culture that is both aware of, and responsive to, the emotional burdens that studying and practising law entail.¹⁹⁹

Secondly, educators who have both studied and taught in a law school culture where emotion is deemed secondary to logic and where mental health concerns are seen as merely individual problems may perceive the current generation as ‘overly sensitive’.²⁰⁰ Furthermore, educators ingrained in this environment may fear that implementing trauma-informed practices could inadvertently foster a

192 Heath et al (n 55) 11.

193 For an excellent review on the effects of neglecting the wellbeing of legal academics within a neoliberal focused university setting, see Colin James et al, ‘Fit Your Own Oxygen Mask First: The Contemporary Neoliberal University and the Well-Being of Legal Academics’ in Judith Marychurch and Adiva Sifris (eds), *Wellness for Law: Making Wellness Core Business* (LexisNexis Butterworths, 2020) 57.

194 Raj (n 31) 131.

195 Douglas (n 21) 60.

196 Raj (n 31) 131.

197 Heath et al (n 55) 10.

198 Kaur (n 54) 116.

199 O’Brien, Tang and Hall, ‘No Time to Lose’ (n 17) 56–7; Burton and Paton (n 1) 99.

200 Kaur (n 54) 113.

learning environment that encourages and tolerates excuses and tardiness.²⁰¹ Some educators may also be apprehensive that teaching students to be trauma-informed extends beyond the boundary of their role as educators.²⁰² These insights highlight the need for targeted education about the practical importance of trauma-informed practices and their role in protecting the mental health of students and educators alike.²⁰³ Moreover, it demonstrates the need for further research on how educators can negotiate the boundaries of their role so that they are better equipped to handle and respond to matters beyond their experience.²⁰⁴ Addressing existing institutional restraints may also aid in shifting the attitudes of educators who may perceive it as contradictory to advocate for the benefits of being trauma-informed without either having experienced or practised it themselves.²⁰⁵

When facing difficulties starting or maintaining a fire, what is often needed is an understanding of the problem and then making the necessary adjustments. While addressing the aforementioned barriers is by no means as simple as the analogy suggests, it still hinges on the same fundamental principles: acknowledgement, a deeper analysis of these barriers' impact and adjustment, however modest. While the road to creating a trauma-informed legal education may be littered with a few hurdles, bypassing such hurdles is an endeavour that is as essential as it is overdue.²⁰⁶

VII CONCLUSION

This article has tried to address merely one factor in a sea of complicated factors that may impact a law student's psychological wellbeing. Exposure to sensitive content is a factor that legal education can and ought to mitigate by integrating trauma-informed practices into the curriculum. Mounting literature has articulated both the central tenets underlying trauma-informed practices and their practical value in addressing the impact of trauma – be it personal, vicarious, or collective – as an impediment to learning, seeking care or accessing justice. The utility of these practices and the broader area of trauma-informed practice is evidenced by its widespread implementation in various 'helping' professions, including the legal profession, where there is extensive exposure to sensitive and confronting materials. The practical applicability of these practices to the higher education setting is also demonstrated by its extensive integration within medical schools²⁰⁷ and its slow but commendable incorporation into legal education by a few dedicated educators in Australian universities.²⁰⁸

The incorporation of trauma-informed practices is not only necessary to support law student wellbeing, a critical objective in its own right, but also to produce

201 Ibid 116.

202 Heath et al (n 55) 10.

203 Kezelman and Stavropoulos (n 83) 9–11; Kaur (n 54) 116; James (n 107) 287.

204 Heath et al (n 55) 10; Jackson (n 57) 57.

205 Houston, Meyer and Paewai (n 184) 18.

206 Jackson (n 57) 50.

207 Ibid 57–61.

208 See above Parts V(A), (B).

graduate students who can thrive in the legal profession and further contribute to destigmatising conversations about mental health. How to best implement these practices into the varyingly diverse courses within a law degree, while overcoming both institutional and cultural restraints, is a question that continues to beget more questions, and one that ultimately necessitates further and more robust research efforts. However, what is clear is that legal education providers must take the lead in initiating change and further research on this issue – it simply cannot remain the sole responsibility of a handful of dedicated law educators. In a world where trauma pervades every aspect of legal education and how it is delivered, legal education providers can no longer afford to make a token effort towards mitigating its impact and consider their role done. Rather, as the gateway into the legal profession, legal education providers ought to be drivers of change in this field, the champions of law student mental wellbeing and the oxygen to keep the flame of progress burning brightly on this matter.