should and should not involve, lessens the likelihood that the fiduciary duty will be breached and provides remedies when it is.

Even seemingly consensual sexual relations between law faculty and law students may harm the student involved, other students, the institution and the teacher. The critical power imbalance is the one created when a teacher supervises or evaluates a student or is likely to do so in the future — *i.e.* when the teacher's fiduciary duty is implicated. Harm can occur any time a teacher asks a student in his class to go out with him. Even if a student says no and the teacher appears to accept that answer, the pedagogical relationship has been affected. While the widespread practice of anonymous grading can reduce the risk of academic harm, there are many law school contexts, such as seminars or clinics, where anonymity is not available. Another potential source of harm to a law student is the moral disapproval of students, faculty and others. Any sexual relationship with a student creates serious risks for a teacher. The most obvious is that the student will charge him with sexual harassment or retaliation. At a minimum, such an allegation is embarrassing, time consuming and stressful. And it can destroy a career.

There are many arguments against regulation. It is viewed as paternalistic and puritanical and as encouraging a victim mentality. Other objections concern the negative portrayal of faculty and intrusiveness into the private lives of consenting adults. However, sex in a fiduciary relationship is inherently coercive. The reason for regulating faculty-student sex is not that students are immature or that women do not know what they want; the reason is that the power disparity is too great.

One of the fundamental truths that feminism has revealed is that relegating issues to the private realm has often been detrimental to women and other oppressed groups. Prohibiting faculty-student relationships is not really about privacy; it is about abuse of power. Once a teacher starts a sexual relationship with someone under his supervision, his right of privacy must be balanced against the interest of the university in protecting itself and its students.

Sensitivity to perceptions of impropriety, abuse of power, and conflicts of interest are particularly important in law schools because the students are future lawyers. Attorneys need to understand and avoid actual and perceived conflicts with the interests of their clients. If law schools tolerate faculty-student sex, the message to the future lawyers is that attorney-client sex is okay too. If, instead, law schools adopt the AALS policies regarding sexual harassment and faculty-student sex and implement regulations and procedures that effectuate those policies, the message to future lawyers will be the right one: those who have power over others should not abuse it.

The AALS policies provide the framework for identifying appropriate and inappropriate sexual behaviour between law teachers and law students. To ensure that students are adequately informed and protected, law schools should implement these policies. The procedures should not prove unduly burdensome or intrusive but will demonstrate that law faculties hold themselves accountable in their fiduciary relationships to the same extent as do attorneys. Setting an example for future lawyers in their relationships with clients can only have a positive effect on the practice of law and the public's view of law schools and the legal profession.

Indigenous Australians and legal education: looking to the future
H Douglas
7 *Legal Educ Rev* 2, 1996, pp. 225–251

Indigenous people are under-represented in the Australian legal community. Their high attrition rates continue to undermine the efforts of law schools to address the issue by increasing opportunities for indigenous students to obtain places in law schools. Addressing access issues is not in itself sufficient; law schools must also provide a system of support. The focus in Australia has gradually shifted from emphasising access issues to improving success rates in students' studies and therefore reducing attrition through on-going support programs.[1]

There are clearly many barriers to be negotiated by indigenous students in order to first obtain access to and then to succeed at law school. These barriers are inter-linked: low socio-economic background; lack of formal education; language difficulties; a perception by indigenous people that law schools are not places for them; and cultural differences, including ways of understanding what law means.

There are three basic theories to justify special admission processes to minorities. These are reparation, social utility and distributive justice. First, reparation is the repairing of damage caused by historical discrimi-

1 See also *Access to legal education — 1996* by D Barker (Centre for Legal Education, 1996) for an examination of the feasibility of developing access programs for educationally disadvantaged students (not limited to indigenous people) in order to equip them wioth the skills needed to help them succeed at university. This monograph was reviewed in 5 *Leg Educ Digest* 3 (Jan, 1997) pp. 4–5

nation. Secondly, social utility arguments suggest that there are social benefits for all in including minorities in the mainstream. Four sub-arguments can be advanced: that indigenous lawyers will provide more appropriate services to their community; that law school diversity is positive for all students; that indigenous students can act as role models for those in the minority community; and finally that indigenous law students can help to eliminate negative stereotypes that inhibit minority participation in community life. Weisbrot's study of the background of Australian lawyers discovered that most were educated at selective private schools, had conservative political affiliations and were from high socio-economic backgrounds. Clearly, in Australia, the profession remains fairly homogenous. Homogeneity may not be a good thing; it encourages intolerance and ignorance. Finally, distributive justice is about sharing wealth and opportunity among all citizens of a nation. Distributive justice includes concepts of fairness and justice. The rule of law is the linchpin of our notion of what justice is and affirmative action programs can transform the formal idea of equality into substance and reality.

The situation in Australia is dynamic and it would be difficult to discuss all the types of support offered by all Australian law schools. To a large degree, Australian programs rely on 'word of mouth' for recruitment, which appears to be an effective way to attract indigenous students. The University of New South Wales' (UNSW) program appears to provide a good example of the 'snow-balling' effect: the numbers of indigenous students enrolling in the program have continued to grow steadily as more students move up through the program. Most Australian university law schools offer alternative access procedures to indigenous students. Lavery's research indicated that nine of 18 law schools surveyed in 1990 had special entrance provisions for indigenous students. During the 1990s, several pre-law programs have been established. This success is most likely related to several factors including: a continued commitment to access and support to indigenous students, the development of the Aboriginal Law Centre and the snowballing effect.

In terms of ongoing support, the Aboriginal Law Centre was set up in 1981 at the UNSW and its role has continued to expand. In 1987, the University established the Aboriginal Student Centre which provides a permanent meeting place for students and encourages student networking and use of resources. Griffith Law School has developed a 'Mentoring Program', which aims to give indigenous students the opportunity of making connections with solicitors in the workplace. Most universities which provide pre-law programs also provide extra tutorial support on either a needs basis or at regular intervals.

Looking to the future, much can be done to reduce the difficulties which indigenous people face in accessing the legal profession. Scholarships and assistance in the purchase of textbooks can assuage the effects of poverty. Education issues can be addressed to some extent by pre-law programs. Access would be better provided if law schools combined resources to deliver pre-law courses. Although many law schools have alternative access programs, in many cases indigenous students are still not being attracted in the numbers which may be expected. Recruitment should be an important focus for law schools. Nettheim suggests that one of the major reasons indigenous students are not successful at law school is social alienation. Law schools need to work to counter this by providing indigenous centres in law schools, access to Aboriginal resource material and by displaying Aboriginal art. The development of sensitive curriculum is also important.

UNSW recently evaluated their indigenous support programs and found that the gradually increasing support services for indigenous law students has corresponded with an increasing number of students receiving credits or above in their assessment, while subject failure rates have fallen. In most law schools, it is still too early to say whether the programs outlined above have been successful. Access remains important but the key focus should be on the implementation of programs which foster the success of indigenous students, to which is linked the need to find ways to reduce their attrition rates.

Indigenous students' perceptions of factors contributing to successful law studies
C Penfold
7 *Legal Educ Rev* 2, 1996, pp. 155–191

Studies have frequently looked at the needs of Aboriginal and Torres Strait Islander students and identified difficulties which these students face in the formal academic system. Lack of financial support, schooling background, pressure from family and community, health problems, inappropriate curricula, identity crises and negative stereotyping have all been identified as contributing to the poor rates of indigenous participation and success in formal education. As a result, indigenous Australians are under-represented in all professions, including law. While the number of in-