
LEGAL PRACTITIONERS WORKING

MORE EFFECTIVELY WITH ABORIGINAL CLIENTS:

PROMISING NEW CULTURAL COMPETENCY TRAINING

BY LEGAL AID NSW

by Loretta Kelly, Antony Barac, Scott Hawkins and Stuart Barlo

INTRODUCTION

In 2011 Legal Aid New South Wales ('LANSW') identified the need to provide private legal practitioners with training that would assist them in providing services to Aboriginal clients. In mid-2012, LANSW sought expressions of interest from consultants who could provide cultural competency training, with a focus on practical skills to work effectively with Aboriginal clients. *Wirraal Wuungganbay* 'Black Duck Working' (authors Kelly and Barac) won this tender process based on their ability to address key learning outcomes with a combination of theoretical concepts and practical skills in working with Aboriginal clients.

This article provides the background to this training. It outlines the issues that arose in designing the training package as well as some of the more challenging points that arose in the four one-day workshops that have been conducted thus far.

BACKGROUND TO THE TRAINING

Whilst LANSW has been providing Aboriginal cultural awareness training for some time to staff, including legal officers, and key partners such as community legal centres and women's domestic violence court advocacy scheme, there has been little to no take-up of this from the private legal profession.

This was seen to represent a major gap in ensuring that all of LANSW's services were being provided in a culturally sensitive manner, given the fact that the private profession undertakes approximately 40 per cent of LANSW's casework through grants of legal aid.

Advice received about the lack of take-up included that, with the course running for two working days, private practitioners simply could not afford to take this time out of their practice to attend the training. With this in mind, the consultants were asked to develop a package that could

be delivered in a one-day workshop that was specifically designed for private legal practitioners, and which was based upon key learning outcomes for delivering legal services to Aboriginal clients.

The course, *Aboriginal Cultural Competency: Practical Skills for Working with Aboriginal Clients*, has now been delivered to over 90 private legal practitioners in Sydney (twice), Wollongong and Coffs Harbour, with another workshop to be delivered in Bathurst at the end of May 2013. Most participants are legal practitioners in private practice, but we have also had several mediators and magistrates in attendance.

Cultural competency training aims to prepare a workforce that can begin to address the disparities in the access to services that continue to negatively impact on Aboriginal clients.¹

CONCEPTUAL UNDERPINNINGS: CULTURALLY COMPETENT PROCESSES, CULTURALLY SAFE CLIENT OUTCOMES AND THE CULTURAL PROFICIENCY STANDARD

It was no surprise, given the participant cohort, that the very nature of the training would be challenged—for example, why were we advocating for a 'competency' level? After much debate about the meaning of competency, most participants were in agreement with the trainers and Grote, who argues that cultural competency 'is a move towards cultural proficiency'.² It is this 'proficiency' standard that our training promotes and to which we aspire.

Our cultural competency training adopts the broader approach that extends beyond the domain of the individual. It also challenges those individuals to improve the competency of the firms/agencies in which they are employees or principals; the legal profession of which they are members; and the legal system in which they are stakeholders. This is because 'cultural competence

requires a whole-of-agency approach and strong and committed leadership at all levels.³ This philosophy is incorporated into our holistic cultural competency model.

In this model we include the three factors that contribute to cultural competency: attitudes, skills and knowledge.⁴ Whereas cultural awareness and cultural sensitivity relates to the individual practitioner's knowledge, '[c]ultural competence focuses on four levels (systemic, organisational, professional and individual)'.⁵ Systemic issues in particular are critical for Indigenous clients in an industry dominated by non-Indigenous practitioners. A cultural competence approach remembers that the system begins with individuals.

Our training model is also informed by the philosophy of (client) cultural safety⁶—a subjective target that a (objectively assessed) culturally competent practitioner should be able to meet.⁷

What does this mean in practice? A culturally competent practitioner comes to appreciate that separating Aboriginal clients' legal issues from social/cultural matters may be neither possible nor desirable. During the training, we see practitioner attitudes shift towards a holistic approach to meeting client needs. We are by no means suggesting that legal practitioners should be quasi social workers. Rather, this attitudinal shift should be accompanied by appropriate skills and knowledge. For example, skills to make culturally appropriate referrals and knowledge about Aboriginal community services. This includes the ability to make a 'warm referral' (where the legal practitioner personally makes the phone call and speaks directly to the other service provider while the Aboriginal client is present). The practitioner's capacity to do this successfully (success being measured by the Aboriginal client actually following up with the additional support services) is indicative of cultural competency.

DESIGNING THE TRAINING PROGRAM: A GENERIC MODEL TO BE MODIFIED BY LOCAL INPUT

The need for input by the local Aboriginal community⁸ 'on country' (the region in which the training workshop takes place) is an intentional part of our model. This means that, particularly in regional areas, the involvement of a local Aboriginal elder or respected local cultural knowledge holder, who works alongside the trainers, provides local cultural knowledge and expertise when required. Indeed in evaluations of the workshops, participants in regional areas valued the involvement of the local expert highly, and it was a critical part of meeting the training course's objectives.

In order to encourage some participants to value the need for self-reflection⁹ in this area, we highlight gaps in knowledge. A non-threatening way we do this is by using a 'Koori IQ test'.¹⁰ The modest results achieved by most participants in this test seem to set the stage for openness to learning and reflection.

This particular Koori IQ test, developed by Kelly and Barac, contains some general questions about culture, language, politics and demographics, but also some Indigenous legal issue questions. The participants seem to enjoy the humorous approach of the Koori IQ test, which encourages them to let their 'politically correct' guard down. It simultaneously debunks culturally skewed IQ tests and brings to light less-known facts about Aboriginal society. As it covers so many different areas, the Koori IQ test is ideal for isolating issues of particular concern to those in attendance.

CHALLENGING ISSUES ARISING IN THE TRAINING SESSIONS

In the training sessions there were several stereotypes about Aboriginal people that were identified in different sessions—often in the role-plays—and these had to be dealt with sensitively.

DOMESTIC VIOLENCE

A stereotype that arose in one workshop is that Aboriginal male violence is ubiquitous. In a role-play, we had an Aboriginal Field Officer acting as an Aboriginal male client whose non-Aboriginal female partner had absconded with their baby.

While the role-play facts did not mention violence by the client against his ex-partner, the practitioner nonetheless asked several questions of his client in an attempt to elicit a confession of domestic violence—of which none was forthcoming. In post role-play discussions it came to light that some practitioners found it difficult to accept that a mother would 'disappear' with the baby unless there was violence from her partner.

We addressed this assumption in the group de-brief by turning it into a learning point about the issue. The Field Officer described how, in both his professional and private life, he had come across a number of non-Aboriginal women leaving their Aboriginal partners, without informing them of their new address, and taking with them the young children of the relationship. When this Field Officer queried several young non-Aboriginal women who had done this, the women did not make any allegations of domestic violence—they stated, simply and

honestly, that they just wanted to have ‘black (Aboriginal) babies’. The presence of such a (relatively new) social phenomenon was supported by the Aboriginal elder at the workshop (a co-instructor on the day), who had also observed several instances of this in a different part of the region. We were able to turn a stereotype into a positive learning experience for all participants.¹¹

‘OFFENSIVE’ LANGUAGE

Rather than dismiss or criticise presumptions and values, we are keen to work through them in discussion and role-plays. One such ethic concerned the standard of acceptable behaviour of a client. For instance, one practitioner said that he would never tolerate one particular offensive word (the four-letter ‘c word’). Kelly explained that this is a common word used in ‘story telling’ amongst younger Aboriginal people where there are high levels of frustration. In a role-play where this practitioner was taking instructions from an Aboriginal client, Kelly, who acted as the client, frequently used the word throughout the role-play. By the end, the practitioner said he was completely de-sensitised to the word and, provided it was not used to abuse him, now had no issue with its use.

BODY LANGUAGE

Some practitioners noted their discomfort with other behaviours of clients in role-plays, including clients ‘standing up’ suddenly, which they interpreted as aggressive. Standing up suddenly is a common behaviour when Aboriginal people re-tell a distressing story, or where they are frustrated with the conversation—it is not (usually) intended to insult or intimidate the person advising or counselling them.

In role-play debriefing sessions we encouraged participants to discuss their feelings about such behaviours. Practitioners who initially presented with this as an issue felt that, by understanding this as a form of cultural expression, they could remain engaged with such a client without feeling unnerved. But if they did feel intimidated or abused by a client’s behaviour, practitioners were encouraged to identify this to the client and, if it continued, to end the interview.

In every workshop we considered at length the stereotype that Aboriginal people do not maintain eye contact. In the case of this stereotype, there is some basis to the perception; however, the avoidance of eye contact is not easily predicted or interpreted.

ALCOHOL AND DRUG DEPENDENCE

The appropriate response of a practitioner to an alcohol or

drug dependent client was a hotly contested subject, and unfortunately not one to which we can do justice, either in a one-day workshop or in this article.

Our discussions in workshops on this topic have related only to clients who *admit* to their intoxication and/or drug dependence. It may be that those who *deny* their intoxication don’t present as much of an ethical dilemma, as practitioners are already well versed in dealing with unreliable clients.¹²

A scenario we discuss involves a client who readily admits to his cannabis addiction; his regular morning intake is seven ‘cones’.¹³ The trainers suggested that it may be possible to negotiate with the client about what level of the drug is enough to ‘take the edge off’ (reduce his anxiety),¹⁴ but nonetheless permit him to accurately communicate his instructions and fully comprehend advice. For example, it might be agreed that the client limits his intake to three cones on the morning of an appointment (morning appointments are usually best for drug dependent clients).

The idea that a legal practitioner might negotiate with an admitted drug-dependent client about what is acceptable drug usage was repugnant to several practitioners. Other practitioners responded to their distaste with the assertion that we are all likely to have had drug-dependent clients without our being aware of it, simply because some addicts are very good at covering it up.

Some practitioners went further; suggesting that declining a retainer from such a client might relinquish the remarkable opportunity available to lawyers in such a situation. As Goodliffe argues: ‘Lawyers are often in a much better position than other professionals to persuade their clients to face up to the consequences of their addiction and do something about it.’¹⁵

In the end, most practitioners agreed that, in order to obtain meaningful, lucid instructions, the practitioner and the client should have an understanding about the level of drug/alcohol use that puts such clients in their best mental state prior to an interview. This does not mean that the practitioner condones the continuing drug/alcohol use¹⁶ or downplays its gravity. Further, an understanding of this type should not be extended to the client’s appearance in court or in other forums.¹⁷

We were pleased that this controversial and usually hidden topic was opened-up for discussion, and hope that it gives rise to further contemplation.

APPROACHES TO TIME

There were discussions about how to deal with the polychronic nature of traditional Aboriginal culture—that is, time scheduling is seen as more fluid, and several different activities can be done at the same time. This polychronic view of time is seen amongst Aboriginal elders in their story telling approach to conversation, where many things may be said that don't appear relevant while the elder is 'getting to the point'. Paradoxically, many elders do emphasise the importance of being on time—or even early—for appointments and for work. Contemporary Aboriginal culture is therefore a mixture of polychronic and monochronic behaviours.

In the training, we discuss strategies on how practitioners can become more comfortable with such a flexible approach to time, given a lawyer's time constraints on the one hand, and the client's need to develop a trust relationship on the other. Some strategies include making the first appointment a 'getting to know you' session, with the subsequent appointment allocated 'for business'. Given that legal aid does not fund getting to know you sessions, we explain that research on this issue tells us that time investment in rapport building early in the relationship pays dividends later. The approach that 'you have to spend time to save time'¹⁸ not only leads to more effective engagement in future sessions, but it's also likely to increase referrals from the client's friends and relatives!

'WHITE RACE PRIVILEGE'

One of the learning objectives of this training is 'increased understanding of white race privilege'.¹⁹ In one workshop, a male solicitor who was raised in a socio-economically disadvantaged background described how being gay had led to much discrimination. He therefore did not feel that he held a 'high social position'. Kelly explained that 'from the perspective of the blackfella who is legal aid-funded, all white people hold a race-based privilege'. This practitioner's subsequent reflections—as illustrated in his assessments—show he came to appreciate that, while he does not feel privileged because of his race, he understands that his 'whiteness' nevertheless impacts at a real, practical level in his interactions with Aboriginal clients. He appreciates how subtle differences in speech such as tone and language used, as well as non-verbal body language, will assist the Aboriginal client to feel more comfortable given this power dynamic.

CONCLUDING REMARKS

Our training asks participants to adopt critical self-awareness and to undertake self- (and organisational) reflection, in order for them to get the most from the

training. The authors' goals are that this journey will continue and that we will be able to be part of this process of increasing the cultural competency of the legal profession. As practitioners become culturally proficient and adopt processes that meet the needs of Aboriginal people, Aboriginal clients will start to experience culturally safe outcomes—not just in their interactions with the legal profession, but we also look forward to seeing the ways in which the broader goal of reducing barriers facing Aboriginal people in the legal system is achieved.

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- 1 Ellen Grote, *Principles and Practices of Cultural Competency: A Review of the Literature* (Indigenous Higher Education Advisory Council, 2008) 5. Note Grote refers here to the impact 'upon the health and general wellbeing of Australian Indigenous peoples'.
- 2 Ibid.
- 3 Victorian Aboriginal Child Care Agency, *Aboriginal Cultural Competence Framework* (Victorian Government Department of Human Services, 2008) 54.
- 4 Hung T Nguyen, 'Patient centred care: Cultural safety in indigenous health' (2008) 37(12) *Australian Family Physician* 990, 993.
- 5 Ibid 992.
- 6 Cultural safety is: 'an environment that is spiritually, socially and emotionally safe, as well as physically safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience of learning together', Robyn Williams, 'Cultural safety: what does it mean for our work practice?' (1999) 23(2) *Australian and New Zealand Journal of Public Health* 213.
- 7 'Cultural competence increases cultural safety' so that the more culturally competent the practitioner is the more likely the Aboriginal client will have an outcome that embraces their identity, Jessica Ball, *Cultural competence in health care for Aboriginal peoples* (Early Childhood Development Intercultural Partnerships, University of Victoria, Canada, 2010) <<http://www.ecdip.org/docs/pdf/Cultural%20safety%20in%20health%20care%20compr.pdf>>.
- 8 Terri Farrelly and Bronwyn Carlson, 'Towards cultural competence in the justice sector' (Current Initiatives Paper 3, Centre for Cultural Competence Australia, Australian Institute of Criminology, 2011) 5.
- 9 '[T]he aim of continuing professional education is not professional development per se but increasing the learner's critical awareness', Athena Harris Ingall, *An Exploratory Study of the Continuing Legal Education Needs of Government Solicitors in New South Wales: Final Report*

and Recommendations (The Law Society of New South Wales, 2009) 7. Critical awareness is an essential part of the cultural competency 'journey' (Victorian Aboriginal Child Care Agency, above n 3, 54) and the more embedded the process, the more likely practitioners can meet their cultural proficiency goal.

- 10 The concept of a Koori IQ test was first developed by James Wilson-Miller, who explains that the test is not designed to be taken seriously, James Wilson-Miller, 'Koori IQ Test' (Reconciliation Australia, 2010) <<http://www.reconciliation.org.au/home/get-involved/learning-tools/quizzes/koori-iq-test>>.
- 11 We did not suggest that this was a common phenomenon, but only that it was one of several possible explanations for a woman leaving her partner without providing a forwarding address.
- 12 'The alcoholic's denial makes her a particularly unreliable client', Jonathan Goodliffe, 'The Alcoholic Client and the Alcoholic Lawyer' <<http://www.articles.jgoodliffe.co.uk/articles/acal.htm#21>> (originally published in (2000) 144 *The Solicitors' Journal* 10).
- 13 Typically 0.25 grams of cannabis, smoked via a water pipe (bong), University of Sydney Faculty of Medicine, *Cannabis*, NSW Health, slide 14, <sydney.edu.au/medicine/addiction/lectures/Cannabis2009.ppt>.
- 14 This is typical 'self-medicating' behaviour. Some clients, particularly young people, are unaware that there is a range of effective prescription drugs (besides opioids and benzodiazepines) available to treat anxiety and depression.
- 15 Goodliffe, above n 12.
- 16 Quite the contrary: 'where the alcoholic client insists on continuing to drink, her lawyer is entitled to concentrate on her own protection and may sometimes be justified either in treating her retainer as repudiated or in regarding her client as incapable of giving her instructions. The capacity of an alcoholic to instruct a lawyer should in principle depend on the context, Goodliffe, above n 12.
- 17 The reasons for remaining sober at formal proceedings are several and beyond the scope of this training.
- 18 Tracey Westerman and M Wettinger, 'Working with Aboriginal People. Psychologically Speaking, Western Australian Psychological Society - Frameworks of Working with Aboriginal People' (1998) <<http://www.indigenoussychservices.com.au/publications.php>>
- 19 See Farrelly and Carlson, above n 8, 4.

Basketpa Tjukulangati (Deep Rockhole Basket) 2009
Pantjiti Mackenzie

Minarri (greybeard) grass and hand dyed raffia
55 x 68 x 73cm
Image: Emma Diamond ©Tjanpi Desert Weavers, NPY Women's Council

