

Towards growing Indigenous culturally competent legal professionals in Australia

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The Review of Australian Higher Education (Bradley Review, 2008) and the Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People (Behrendt Review, 2012) identified the need for tertiary institutions to incorporate Indigenous knowledges into curriculum to improve educational outcomes for Indigenous Australians and to increase the cultural competency of all students. These reviews recommended that higher education providers ensure that the institutional culture, the cultural competence of staff and the nature of the curriculum supports the participation of Indigenous students, and that Indigenous knowledge be embedded into curriculum so that all students have an understanding of Indigenous culture. While cultural competency has been recognised as an essential element of professional practice in health services internationally, and legal practice in the United States, very little work has been done to promote the cultural competency of legal professionals in the Australian context. This paper will discuss a pilot cultural competency professional development program for legal academics at Queensland University of Technology (Brisbane) developed with the assistance of a Faculty of Law Teaching and Learning Grant in 2010-2012, and tell one Murri's journey to foster Indigenous cultural competency in an Australian law school.

Keywords: Indigenous, cultural competency, legal education, professional development.

Racism against Aboriginal and Torres Strait Islander peoples exists in various forms and in all systems in Australia today. Racism has a destructive impact on Aboriginal and Torres Strait Islander peoples' education, health and wellbeing, well beyond its immediate impact. Racism works strongly against all agendas which aim to close the gaps in health and other outcomes between Aboriginal and Torres Strait Islander peoples and other Australians. (Boatshed Racism Roundtable Declaration, 2009, p.1)

The twentieth anniversary of the report of the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) in 2011 was a time for deep reflection. The RCIADIC revealed the shocking extent of Indigenous over-representation in police and prison custody

in Australia: however twenty years later the rate of Indigenous over-representation has actually increased and Indigenous Australians now represent some 25% of the adult prison population and over 50% of juvenile detentions (SCRGSP, 2011). The RCAIDIC identified the high levels of ‘disadvantage’ experienced by Indigenous Australians according to almost every socio-economic indicator as a contributing factor to Indigenous over-representation in custody. Addressing Indigenous disadvantage is now the central focus of Indigenous policy with the Council of Australian Governments adopting a national reform agenda in 2008 which is geared towards ‘Closing the Gap’ in the life chances and opportunities between Indigenous and non-Indigenous Australians by improving Indigenous health, education and employment outcomes (COAG, 2008). The *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People (Behrendt Review)* identified access to and participation in higher education as a critical element of ‘Closing the Gap’ (Australian Government, 2012).

Indigenous Australians currently make up 2.2% of the Australian working age population (15-64 years) yet represent only 1.4% of students in higher education (Australian Government 2012). Indigenous retention and success rates in Australian universities are 20% below those of non-Indigenous students (DEEWR, 2008). Queensland University of Technology (QUT) is amongst the top three law schools in Australia in terms of Indigenous graduate outcomes - with nineteen Indigenous students completing the Bachelor of Laws (LLB) program between 2005 and 2009 (AAGE, 2009). The Faculty offers a number of supports for Indigenous students including a Pre-Law and Justice program, scholarships, and a text-book loan scheme – yet despite these measures there still exists a significant gap between overall graduate outcomes and achieving equity in Indigenous student outcomes. In the Law Faculty¹ Indigenous Australians make up 1.17% of all students – well below the equity level – yet have an attrition rate of 29.7% - almost three times the standard QUT rate (QUT, 2011). Clearly more needs to be done to achieve parity in legal educational outcomes for Indigenous Australians.

In recent years there have been a number of significant policy developments to increase Indigenous participation in higher education. In 2007 the Indigenous Higher Education Advisory Council’s report *Ngarpartji Ngarpartji – Yerra: Stronger Futures* articulated some key strategies for improving Indigenous participation in higher education, including introducing Indigenous cultural competency as a graduate attribute for all students (IHEAC, 2007). The Review of Australian Higher Education (Bradley Review) recommended broad based reforms to widen participation in higher education and promote greater social inclusion for low-socio economic groups including Indigenous Australians (2008). In particular, the Review recommended “the Australian Government regularly review the effectiveness of measures to improve higher education access and outcomes for Indigenous people in consultation with the

1 Queensland University of Technology’s Faculty of Law comprises the School of Law, School of Justice and Legal Practice Unit.

Indigenous Higher Education Advisory Council” (2008).² The Review also identified the need for tertiary institutions to incorporate Indigenous knowledges into curriculum to improve access and educational outcomes for Indigenous Australians and to increase the cultural competency of all students. The review reported that:

It is critical that Indigenous knowledge is recognised as an important, unique element of higher education, contributing to economic productivity by equipping graduates with the capacity to work across Australian society and in particular with Indigenous communities. Arguments for incorporation of Indigenous knowledge go beyond the provision of Indigenous specific courses to embedding Indigenous cultural competency into the curriculum to ensure that all graduates have a good understanding of Indigenous culture (2008, p.32-33).

Another major development was the IHEAC and Universities Australia’s project on developing Indigenous cultural competency in Australian universities (2009-2011). Two significant outcomes of this project were the *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (Universities Australia, 2011a), and *National Best Practice Framework for Indigenous Cultural Competency* (Universities Australia, 2011b). These documents outline a comprehensive institutional approach to developing cultural competency addressing the five themes of university governance, teaching and learning, Indigenous research, human resources, and community engagement. More recently, the *Behrendt Review* advocated a whole-of-university approach to improving Indigenous student access and outcomes within the higher education sector, with Indigenous education units taking primary responsibility for student support, and faculties promoting academic success (Australian Government, 2012). Importantly the review acknowledged Indigenous education units are not well placed to ‘drive’ a whole of university approach due to a lack of resources, influence and discipline specific knowledge. The Review recommends that universities develop and implement strategies to “improve the cultural understanding and awareness of staff, students and researchers including the provision of cultural competency training”, as one aspect of building the capacity of universities to support Indigenous student success (Australian Government, 2012, p.xxiv).

It was within this emerging policy framework that the Cultural Competency Professional Development Program (CCPDP) was conceived. The first catalyst for the program was my work in ‘embedding’ Indigenous perspectives into the Bachelor of Law program during 2008-2009. Consultations with unit co-ordinators (all of whom were non-Indigenous) revealed that many of them felt they did not have sufficient knowledge and skills to effectively teach Indigenous content and perspectives. Some reported discomfort in not knowing how to deal with racism and a desire not to offend Indigenous students. This reported ‘discomfort’ was consistent with findings from

2 The Indigenous Higher Education Advisory Council is convened by the Australian Government, Department of Education, Employment and Workplace Relations, to advise the Federal Government on Indigenous higher education policy. For further information see <http://www.deewr.gov.au/Indigenous/HigherEducation/Programs/IHEAC/Pages/Home.aspx#about>,

other universities engaged in developing Indigenous inclusive curriculum (Falk, 2007). The second catalyst for the CCPDP was the *Bradley Review* and the goal of ensuring that the institutional culture of universities, the cultural competency of staff and the nature of curriculum recognises and supports the participation of Indigenous students. Seeing an apparent need for staff development in cultural competency I applied for and was awarded a Faculty of Law Teaching and Learning Grant to develop a program of cultural competency training for academic staff in the faculty during 2010-2011.

Because the CCPDP developed independent of and parallel to the IHEAC/Universities Australia work on cultural competency it was not possible to fully incorporate their findings into this project. Similarly the CCPDP was completed before the release of the Behrendt Review, yet is consistent with its broad recommendations. I have however referenced these documents to situate my work within the current Australian higher education policy setting. This project focuses on aspects of cultural competency as they relate specifically to teaching and learning,³ and human resources⁴ within the Universities Australia framework.

WHAT IS CULTURAL COMPETENCY?

The need for professionals to be able to work effectively in cross-cultural contexts has been recognised by health services professions for well over twenty years in the United States, and more recently in New Zealand and Australia. In the United States, legal academics such as Bryant have promoted the need for culturally competent legal practitioners for over a decade (2001). In Australia, however, there has been very little attention paid to the cultural competency of lawyers. Unlike the health

3 Universities Australia, Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities, October 2011, makes the following recommendations in respect of teaching and learning: “Recommendation 1: Embed Indigenous knowledges and perspectives in all university curricula to provide students with the knowledge, skills and understandings which form the foundations of Indigenous cultural competency. Recommendation 2: Include Indigenous cultural competency as a formal graduate attribute or quality. Recommendation 3: Incorporate Indigenous Australian knowledges and perspectives into programs according to a culturally competent pedagogical framework. Recommendation 4: Training teaching staff in Indigenous pedagogy for teaching Indigenous Studies and students effectively, including developing appropriate content and learning resources, teaching strategies and assessment methods. Recommendation 5: Create reporting mechanisms and standards which provide quality assurance and accountability of Indigenous studies curricula” (30).

4 Universities Australia, Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities, October 2011, recommendations in relation to human resources include: “Recommendation 6: Develop induction processes which include Indigenous cultural competency training for all new staff. Recommendation 7: Provide professional development opportunities for university staff in advanced Indigenous cultural competency. Recommendation 8: Training senior management to support and work effectively with Indigenous staff and trainees ” (186).

sector,⁵ Australian legal professional standards do not prescribe Indigenous cultural competency as a learning outcome for legal education nor as essential content of courses for admission as a legal practitioner (ALTC, 2010; CALD, 2009). Therefore, Universities Australia's initiatives with respect to cultural competency have the potential to fill a noticeable void in legal education in Australia.

TOWARDS CULTURAL COMPETENCY

Cultural awareness, cultural safety, cultural respect and cultural security are variations on a common theme of professional services that work effectively with different cultural groups. This section will provide a working definition for cultural competency and outline some key differences in the approaches towards cultural competency taken to date.

The concept of cultural competency emerged in the United States health literature in 1989 with the commonly cited definition from Cross, Bazron, Dennis and Issacs (1989) of cultural competency as: "congruent behaviours, attitudes and policies that come together in a system, agency or among professionals and enable that system, agency, or those professionals to work effectively in cross cultural situations" (iv). This definition identifies both individual (attitudes, behaviours) and institutional (policies) aspects of cultural competency and the need for an integrated approach to deliver culturally appropriate services to minority groups. For Sue, cultural competency is also related to social justice in that it promotes "inclusion, fairness, collaboration, cooperation and equal access and opportunity" and has individual, systemic and institutional dimensions (Sue, cited in IHEAC, 2008, p.14).

'Cultural awareness' entered the Australian vernacular in 1991 when the RCIADIC found that professional service delivery to Indigenous Australians operated in a 'neo-colonial framework', and that professionals generally lacked knowledge of Indigenous cultures and the contemporary circumstances of Indigenous Australians (Johnson, 1991b cited in UA, 2011b). Cultural awareness aims to increase knowledge of Indigenous cultures and how historical, cultural and social factors shape clients' interactions with services providers, together with self-reflection upon how one's own culture is constructed and therefore not neutral (IHEAC, 2008). Cross-cultural awareness has however been criticised because it has little impact on behaviours and does not necessarily lead to changes in practice (Farrelly & Lumby, 2009; IHEAC, 2008).

In Australia the health professions have adopted a 'cultural respect' framework which promotes behavioural changes for practitioners and modifications to health care systems based on the "recognition, protection and continued advancement of the inherent rights of Aboriginal and Torres Strait Islander Peoples" (Australian Health

⁵ Ranzjin, McConnochie and Nolan, 2007 cited in IHEAC, 2008 note the important role of professional organisations and accreditation guidelines to reinforce cultural competency in curriculum.

Ministers' Advisory Council, Standing Committee for Aboriginal and Torres Strait Islander Health Working Party, 2004, cited in IHEAC, 2008, p.12). An earlier concept from New Zealand is that of 'cultural safety' which is understood as professionals recognising the impact of their culture on their professional practice, and striving to eliminate unsafe cultural practices which "diminishes, demeans or disempowers the cultural identity and well-being of an individual" (Nursing Council of New Zealand, cited in IHEAC, 2008, p.12).

Nash, Meiklejohn, and Sacre (2006) argue that in the health sector cultural competency now has gained more currency because it "implies a higher standard of proficiency than [cultural] safety" (p.301). While Universities Australia also sees cultural awareness, cultural security, cultural safety and cultural respect as elements of cultural competency (UA, 2011b), it distinguishes cultural competency from these approaches as it incorporates the ability to reflect upon one's own culture and professional paradigms leading to "decolonisation of organisations paradigms, policies and procedures" (Nolan, 2008 cited in UA, 2011b, p.38).

The individual and institutional dimensions of cultural competency are also reflected in the IHEAC's definition of cultural competence as:

The awareness, knowledge, understanding, and sensitivity to other cultures combined with a proficiency to interact appropriately with people from those cultures in a way that is congruent with the behaviour and expectations that members of a distinctive culture recognise as appropriate among themselves. Cultural competence includes having an awareness of one's culture in order to understand its cultural limitations as well as being open to cultural differences, cultural integrity, and the ability to use cultural resources. It can be viewed as a non-linear and dynamic process which integrates and interlinks individuals with the organisation and its systems (IHEAC, 2007, p.34-38.).

Universities Australia's concept of Indigenous cultural competency synthesises these definitions, encompassing both individual and institutional elements, as well as promoting reflection upon professional paradigms that may limit effective interactions with Indigenous peoples. Universities Australia defines cultural competency in the higher education sector as:

Student and staff knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with the proficiency to engage and work effectively in Indigenous contexts congruent to the expectations of Indigenous Australian peoples. Cultural competence includes the ability to critically reflect on one's own culture and professional paradigms in order to understand its cultural limitations and effect positive change. Indigenous cultural competence requires an organisational culture which is committed to social justice, human rights and the process of reconciliation through valuing and supporting Indigenous cultures, knowledges and peoples as integral to the core business of the institution. It requires effective and inclusive policies and procedures, monitoring mechanisms and allocation of sufficient resources to foster culturally competent behaviour and practice at all levels of the institution. Embedding Indigenous cultural competence requires commitment to a whole of institution approach, including increasing

the University's engagement with Indigenous communities, Indigenisation of the curriculum, pro-active provision of services and support to Indigenous students, capacity building of Indigenous staff, professional development of non-Indigenous staff and the inclusion of Indigenous cultures and knowledges as a visual and valued aspect of university life, governance and decision-making (2011a, p.48).

The *Behrendt Review* also endorsed the Universities Australia cultural competency project as part of developing 'quality teaching' of Indigenous perspectives and to support an Indigenous graduate attribute (Australian Government, 2012).

Accepted definitions of cultural competency incorporate not only an understanding of Indigenous cultures but also the ability to reflect upon the culturally specific nature of what constitutes 'knowledge', especially in the disciplinary context. To be culturally competent one must be able to interrogate what Bagele (2012) describes as "academic discourse systems" which [construct] "cannons of truth around whatever its participants decide is 'admissible evidence' ... and come to determine what counts as knowledge" (p.4). These definitions also recognise the need for a multi-dimensional approach to building cultural competency that encompasses both individual (training) and institutional (policy and governance) aspects to support the participation of Indigenous Australians in higher education and to build a culturally competent workforce.

CULTURAL COMPETENCY AND THE AUSTRALIAN LEGAL PROFESSION

The need for legal professionals to gain an understanding of Indigenous culture was first recognised by the RCIADIC which recommended that:

...judicial officers and persons working in the court service and in the probation and parole services whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged positions of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today. The Commission further recommends that such persons should wherever possible participate in discussion with members of the Aboriginal community in an informal way to improve cross-cultural understanding (Johnston 1991, p.7).

Although these recommendations do not refer explicitly to lawyers, they do, by implication, apply to solicitors and barristers as 'officers of the court'. Farrelly and Carlson (2011) report that significant work has been done by the Australasian Institute of Judicial Administration and state and federal justice departments to develop 'cross-cultural awareness' programs for judges and departmental staff, however there is little evidence to suggest that such programs have filtered down to the legal profession. And while such programs are consistent with the recommendations of the RCIADIC, the problems with cultural awareness noted above also apply in this context.

A review of the literature revealed there was very little material relating specifically to Indigenous cultural competency and legal professionals. O'Donnely and Johnstone's (1997) call for legal education to move beyond a mere 'celebration of difference' and towards an examination of how law is linked to a broader history of colonialism and racism, seems to have gone largely unheeded. The Australian legal literature is largely confined to discussion of 'cultural awareness' that is limited to lawyers acquiring some knowledge about Indigenous culture. Here the focus is on Indigenous language and communication styles (Eades, 1992) assessing English language skills and protocols for working with Indigenous Australians (Northern Territory Law Society, 2004; Law Society of South Australia, 2010). While useful these documents are limited in their scope as they do not engage legal practitioners in the self-reflection necessary to move beyond cultural awareness and towards cultural competency.

It would appear that the RCIADIC recommendations have not led to substantial incorporation of cultural awareness or Indigenous cultural competency into law school curricula. IHEAC's 2008 review of cultural competency programs in Australian universities identified only two documented law and justice programs which encompassed aspects of Indigenous inclusive curriculum, although not cultural competency *per se*.⁶ Whilst IHEAC is not claiming to be conclusive as to the extent of cultural competency activities actually taking place, the programs reported by IHEAC accounted for only 6% of university law and justice courses nationally. Universities Australia's reports on cultural competency also contained only a few references to law programs (2011a; 2011b). Papers presented at the 2008 Indigenous Legal Studies Conference discussed how Indigenous legal issues are included in approximately one-third of Australian law programs however concerns were expressed by participants at the marginalisation of this content and the need to ensure that all students learn about Indigenous issues (Burns, 2008).

Indeed the general absence of Indigenous cultural competency in legal education impacts on the capacity to provide culturally appropriate legal services for Indigenous Australians. In 2009 the Senate's Inquiry into Access to Justice reported that "[r]esearch indicates that Indigenous Australians rely on [Indigenous legal services] and are relatively less likely to seek help from mainstream providers due to a distrust of

6 These programs were Griffith University's Indigenous Law Program and QUT's Bachelor of Justice program. See Carpenter B, Field R, and Barnes M, (2002) 'Embedding Indigenous Content and Perspectives Across the Justice Studies Curriculum: Developing a Cooperative Integrated Strategy' available at <http://www.aare.edu.au/02pap/car02109.htm> (accessed 7 May 2008) and McLaughlin, J.M., and Whatman S.L.(2008) 'Embedding Indigenous perspectives in university teaching and learning : lessons learnt and possibilities for reforming/decolonising curriculum', in Heber R.W, (ed.) *Indigenous education : Asia/Pacific*. Indigenous Studies Research Centre, First Nations University of Canada, Canada, Regina, Saskatchewan, pp. 123-146. IHEAC reports that at the time of writing two key units in QUT's Justice program had been removed. QUT's School of Justice has however recently introduced a minor in Indigenous Justice into the Bachelor of Justice program.

the legal system, language barriers and a perceived lack of cultural awareness among mainstream legal service providers” (Senate, 2009, p.137).

The United Nations Human Rights Committee however has expressed concerns about the adequacy of legal services for Indigenous Australians, due to the limited funding available for Indigenous specific services, and a lack of qualified interpreters (UNHRC, 2009). Thus, the inability of the legal profession to respond adequately to the needs of Indigenous Australians has been identified as a significant human rights issue. Further, the United Nations *Declaration on the Rights of Indigenous Peoples*, which Australia endorsed in 2009, also provides that Indigenous peoples should have access to *all forms of education within the state*, and that Indigenous cultures should be *appropriately reflected in education*, as a measure to combat prejudice and discrimination. Thus, the inclusion of Indigenous knowledges and cultural competency within legal curriculum is consistent with Australia’s commitments under international law.

THE CULTURAL COMPETENCY JOURNEY

Moving towards cultural competency is described as a ‘journey’ or ‘developmental process’ (Cross, et al., 1989). It is conceptualised by Nakata as ‘non-linear and dynamic’ (Nakata, et al., cited in UA, 2011a). Indeed an understanding of the dynamic nature of culture is an important pre-condition for cultural competency, for, as Cotterall (2006) observes, “[t]he concept of culture becomes dangerous when it is used to draw those lines of demarcation, presenting them as fixed rather than infinitely fluid and depending on standpoint and perspectives” (p.2). As Bryant states we are all multicultural to some degree, occupying multiple subject positions depending on a range of factors such as race, culture, gender, sexuality, and occupation (2001). For Lebaron and Zumeta (2003, p.466) cultural competency “does not mean having an encyclopaedic knowledge of myriad cultural groups to apply in specific circumstances. It does mean familiarity with culture as an underground river that shapes expectations, understandings, and actions... [and is] an ongoing process, never fully achieved because of constant change”.

Models of cultural competency are presented as continuums where stages can be revisited in response to new information and/or as novel situations arise. The Cross, et al. (1989) model progresses from cultural destructiveness, cultural incapacity, cultural blindness, cultural competence, to cultural proficiency. Howell describes four stages of growth from unconsciously incompetent, consciously incompetent, consciously competent, and to unconsciously competent (Howell, cited in Purnell, 2002). Universities Australia also cites Bennett’s model which ranges from denial, defence, minimisation, acceptance, adaption, to integration (Bennett, 2003 cited in UA, 2011b); and Webb’s model which moves from cultural incompetence, cultural knowledge, cultural awareness, cultural sensitivity, cultural competence and cultural proficiency (Webb, 2000 cited in UA, 2011b). These models share a few key features, notably moving from a state of ignorance as to the effect of cultural on professional

relationships, the acquisition of cultural knowledge to inform practice, and the development of skills to be able to discern cultural appropriate service delivery options.

Objectives for Indigenous cultural competency programs include developing an understanding of the history of Indigenous and non-Indigenous relations; increased knowledge of Indigenous culture; an understanding of race, discrimination and white privilege; and skills and strategies in cross-cultural communication and developing effective working relationships with Indigenous peoples (Farrelly & Lumby, 2009). McConnochie, et al. (2004) add that programs should include knowledge and understanding of Indigenous spirituality and belief systems; Indigenous diversity and identity; Indigenous inter-connectedness to land, family and spirituality; trans-generational impacts of colonisation; contemporary Indigenous communities; social and economic factors; human rights obligations, legislation and relevant reports (McConnachie, et al., 2004 cited in UA, 2011b). Elements from both these approaches were incorporated into the CCPDP.

IHEAC's pedagogical principles for Indigenous cultural competency, adopted by Universities Australia (2011b), also informed the CCPDP. IHEAC's principles emphasise the unique colonial, historical, cultural, social, economic, political and contemporary position of Indigenous Australians that set us apart from other cultural groups within Australia; a strengths-based perspective of culture, diversity and identity; the involvement of Indigenous staff and communities in the development of curricula; modelling Indigenous and non-Indigenous co-operation; self-reflective activities that foster self-awareness and critical analysis; and opportunities for non-Indigenous participants to explore their own cultural values and concepts of whiteness and privilege (IHEAC, 2008).

QUT INSTITUTIONAL SETTING

Queensland University of Technology's *Reconciliation Statement* 2001 articulates the university's commitment to incorporate Indigenous content and perspectives into university curriculum and teaching practices (QUT, 2001). *QUT Blueprint 3* 2011-2016 reaffirms the university's commitment to the *Reconciliation Statement*, and supports a vision for social justice and equal opportunity in education (QUT, 2011). The *Blueprint* recognises that to achieve these goals *all staff* must have an "understanding and knowledge of Indigenous perspectives" plus the need to strengthen the focus on intercultural competence in curriculum (QUT, 2011, p.5). In 2012, QUT adopted a *Reconciliation Action Plan* (RAP) that sets targets for generic staff training in Indigenous knowledges and cultural competency, to be supplemented by role specific training and opt-in opportunities for staff to develop their knowledge and skills further (QUT, 2012). Primary responsibility for this training rests with the university's Equity Department in partnership with Indigenous staff. The RAP requires the incorporation of Indigenous knowledges as an element of QUT's Course Design Framework, and faculties to develop strategies to attract and retain Indigenous academics (QUT, 2012). Clearly, QUT's institutional policies align with sectorial priorities of widening

participation and social inclusion that came out of the *Bradley* and *Behrendt Reviews*. As the project unfolded, however I found that there was a significant gap between the university's policy and vision and the reality of putting these goals into practice.

Indigenous academics currently comprise only 0.8% of full time academics in Australian universities (Australian Government, 2012).⁷ As Asmar and Page have noted, there are serious resource issues with respect to incorporating Indigenous cultural competency in the post-Bradley era – asking ‘who will do the work?’ (2009). My experience with the CCPDP also echoed these concerns. The CCPDP was initially funded as a collaborative project between the Faculty of Law and the Oodgeroo Unit – the university's Indigenous education centre that has teaching, research, and student support functions. The project proposal was to design a two-day pilot workshop for up to 15 academics that was to be evaluated with a view to further training within the faculty, and also as professional development program for legal practitioners. Planning and design for the workshop commenced early in 2010 with a workshop scheduled for October 2010. Progress on the project however was delayed due to changes in staff availability from the Oodgeroo Unit, and a subsequent restructuring that resulted in fewer academic positions. It was somewhat ironic that at a time when broad sweeping sectorial reforms promoting Indigenous cultural competency were taking place, the Oodgeroo Unit's staffing was reduced thus diminishing its capacity to contribute to this important work.

With the deadline for the project long overdue I needed to deliver - so unable to ‘re-group’, I decided to go it alone and modify the program to a one day workshop presented in September 2011, with another workshop held in February 2012 to maximise outcomes. In going it alone, I was conscious of the fact that I was breaching a number of fundamental pedagogical principles for Indigenous cultural competency programs – the desirability of programs being developed co-operatively with (other) Indigenous staff; and local community involvement in the planning and design of the program (IHEAC, 2008). I was also aware that I was leaving myself open to some of the dangers identified in the literature: by training my professional peers, I exposed myself to the possibility of damaging professional relationships by challenging potential biases and prejudices that may be held (Farrelly & Lumby, 2009). I also felt the weight, as an Indigenous staff member, of taking sole ‘responsibility’ for Indigenous matters (IHEAC, 2008). There was also the risk that a one day workshop may verge on tokenism, falling well short of ‘cultural immersion’ or programs of longer duration which have been identified as more likely to have an impact on behaviours and attitudes (Farrelly & Lumby, 2009). For me, however, it was a case of ‘damned if you do and damned if you don't’ so in the circumstances I decided it was better to do something, albeit perhaps less pedagogically sound, than to do nothing at all.

⁷ Data from the Australian Government, Department of Industry, Innovation, Science, Research and Tertiary Education (DIIRSTE), indicates that QUT had five full-time Indigenous academic staff members in 2012 – see Full-time and Factional Staff by State, Higher Education Provider, Function and Gender, 2012, available at <http://www.innovation.gov.au/HigherEducation/HigherEducationStatistics/StatisticsPublications/Pages/Staff.aspx> (accessed 11 December 2012).

While the recent adoption of QUT's Reconciliation Action Plan promises to address some of the problems I encountered in staffing for this project, and assigns responsibility for cultural competency training to Equity Services (in conjunction with Indigenous staff), as we shall see below, there is a demonstrated need for discipline specific engagement in Indigenous knowledges to breach the gap in legal education in order to create inclusive learning environments for Indigenous students. The approach adopted by QUT also aligns with the recommendations of the *Behrendt Review* in that it adopts a whole-of-university approach to improving Indigenous educational outcomes and acknowledges that Indigenous education centres are not adequately resourced to drive this work. It also identifies the need for Indigenous staff within faculties to complement the work done at an institutional level.

TOWARDS AN INDIGENOUS LEGAL PEDAGOGY

Indigenous people feel that education is relevant when higher education institutions reflect, value, and incorporate our knowledges in the curriculum and the teaching methodologies. Our own knowledges keep us in the classroom and lead us to employment (Tom Calma, 2008, cited in Universities Australia, 2011a, p.51).

The failure of Australian legal education to address Indigenous cultural competency to date needs to be understood within the broader social context in which legal education is situated. The *Boatshed Racism Roundtable Declaration (2009)* – a statement by leading Australian academics on racism and its effects on Indigenous Australians – identified the presence of racism in all systems in Australia and its “destructive impact on Aboriginal and Torres Strait Islander peoples’ education, health and wellbeing, well beyond its immediate impact” (p.1). Thus there is a strong potential for universities to be sites of institutional racism which fail to provide “appropriate and professional services to people because of their colour, culture, or ethnic origin’ and where ‘structures and processes ... maintain and reproduce unfair and avoidable inequalities between ethnic/racial groups” (Hollinsworth, 2007, p.1).

Research shows that Indigenous Australians experience racism in educational settings at unacceptably high levels. In studies by Dunn (2005 cited in Paradies, et al, 2009) and Gallagher (2009 cited in Paradies, et al., 2009) Indigenous peoples’ reporting of racism in education ranged between 36.2% and 58% respectively. The most common type of discrimination reported by Dunn was ‘disrespect’ (42.6%) which in educational settings points to an inability to properly engage with forms of Indigenous knowledge and perspectives as they relate to the disciplinary and professional context. The limited information available on the experiences of Indigenous law students appears to bear this out with students reporting, feeling alienated and isolated, being ‘singled out’ to speak on Indigenous issues, and a lack of Indigenous content in curriculum (Douglas, 2001; Falk, 2007; Hudd & Field, 2006). Indigenous law students also experience “cultural disrespect, lateral violence, and racial discrimination” (Rodgers-Falk, 2011, p.2).

Insights from critical race theory and whiteness studies may be instructive as to why the incorporation of Indigenous knowledges in legal education has hitherto been perceived as problematic (Watson, 2005a). Critical race theory draws attention to the failure of formal equality to translate to social equality for historically racialised groups due to the omnipresence of liberalism and ‘colour-blind’ notions of equality (Delgado & Stefancic, 2001). Critical race theorists therefore advocate a ‘race-conscious’ approach to dealing with difference so that the norms that perpetuate racism and disadvantage are made apparent. For critical race theorists, however, race is not just about ‘the other’ – as Crenshaw (1995) argues we need to examine ‘white race consciousnesses’ – in order to understand the rationales that contribute to the continuing marginalisation of non-whites. Whiteness studies also examine the social construct of ‘whiteness’ as a ‘location of structured advantage, or race privilege’; ‘a standpoint’, and ‘a set of cultural practices that are usually unmarked and unnamed’ (Frankenberg, 2003, p.1). As Moreton-Robinson (1998) has observed, ‘whiteness’ in Australia is culturally based and is the ‘silent norm’ that controls institutions which are governed by the values, beliefs, and assumptions of the white ‘mainstream’. Thus, critical race and whiteness theory may explain the gap between perceived inequalities between Indigenous and other Australians, and the level of support for measures to address them.

The *Australian Survey of Social Attitudes* (2007) found that whilst 68% of Australians recognise that Indigenous Australians are not treated equally, and 52% agreed that that injustices against Indigenous peoples are not just in the past, only 45% agree that further government assistance is required to address Indigenous disadvantage (AuSSA, 2007). However what is most worrying about these figures is that only 10% of people surveyed have regular contact with Indigenous Australians – yet have ‘opinions’ about what Indigenous Australians need (AuSSA, 2007). Therefore, a significant challenge for any Indigenous cultural competency program is to bridge the existing knowledge gap that the majority of Australians have about Indigenous peoples and culture. Perhaps the most important aspect of Indigenous cultural competency programs is to unsettle white privilege in order to change attitudes and behaviours that may unwittingly perpetuate Indigenous disadvantage.

Another critical element of cultural competency for legal professionals is to examine how ‘law’ as an academic discipline and professional practice has been central to the colonisation and dispossession of Indigenous Australians. As the *Bradley Review* noted: “as the academy has contact with and addresses the forms of Indigenous knowledge, underlying assumptions in some discipline areas may themselves be challenged” (2008, p.32-33). In this sense it is necessary to examine power relations in reference to what Foucault calls “correlative fields of knowledge” (cited in UA, 2011a, p.42) or, in other words, how law constructs knowledge about Indigenous peoples, and how this knowledge contributes to the differential positioning of Indigenous peoples within Australian society. In order to create Indigenous inclusive classrooms, legal educators must also be able interrogate law as a form of disciplinary knowledge and critique the role of the legal profession in the lives of Indigenous peoples – both past and

present. And as Irene Watson (2005b) reminds us we need to distinguish ‘whose law’ it is we are actually teaching, and acknowledge the differences between Indigenous and mainstream concepts of law, together with refusal of the Australian legal system to acknowledge Indigenous sovereignty. It is only by addressing these fundamental issues that we are able to reduce the ‘cultural dissonance’ (Bryant, 2001) experienced by Indigenous Australians in their learning of law. In examining these aspects of ‘white legal culture’, academics are able to unpack how their own cultural values and biases have shaped their understanding of law and its relationship to Indigenous peoples.

THE CULTURAL COMPETENCY PROGRAM

The one-day workshop program was designed to meet the objectives of: introducing participants to a theoretical framework for incorporating cultural competency into their teaching practice and curriculum; developing practical skills in cultural competency; and, exploring relevant pedagogical principles. The objectives for the program drew broadly on the work of IHEAC (2008) - as adopted by Universities Australia (2011b) and Farrelly and Lumbly (2009) and incorporated elements of generic and role specific content. The content covered the following areas: introduction to cultural competency; challenging the assumptions of ‘law’; Indigenous cultural domains; five habits of cultural competency; and, pedagogical approach to teaching Indigenous cultural competency. An overview of the program content is outlined below.

Introduction to cultural competency

The introductory content of the program aimed to situate cultural competency into the broader social context including higher education policy, Indigenous socio-economic disadvantage, and forms of institutional racism and its impacts. The Cross, Bazron, Dennis, and Issacs (1989) model of cultural competency was outlined to provide a framework for participants to ‘self-assess’ their individual level of cultural competency and also that of the broader institutional setting in which they work. Having completed an initial self-assessment it was now time to delve into the nature of legal disciplinary ‘knowledge’ and how the assumptions of ‘law’ have influenced professional interactions between Indigenous Australians and legal practitioners.

Challenging the assumptions of ‘law’

An understanding of the historical relationship between Indigenous peoples and the Australian legal system is critical to understanding the contemporary context in which Indigenous Australians experience ‘mainstream’ law, both as students and users of legal services. Historical policies such as *terra nullius* which provided a rationalisation for the theft of Indigenous lands, legislative regimes of ‘protection’ which heavily regulated and controlled the lives of Indigenous peoples,⁸ and the constitutional

8 For example under the Aboriginal Protection and Restriction of the Sale of Opium Act 1897 (Queensland), section 31, which empowered ‘protectors’ to remove Aboriginal people to reserve lands; provide for the care, custody and education and children; negotiate employment contracts

exclusion of Indigenous Australians were discussed to set this context. Current legal issues impacting on Indigenous Australians were then explored to identify continuities with historical policies using examples such as the Northern Territory Intervention 2007,⁹ and the strict burden of proof in native title claims.¹⁰ Participants were then invited to reflect upon how the legal history of Australia and current legal issues may impact on the way Indigenous law students engage in their legal studies.

Indigenous cultural domains

For non-Indigenous lawyers to understand Indigenous perspectives of the mainstream legal system it was also necessary to introduce workshop participants to Indigenous cultural domains to provide a reference point for them to approach issues of cultural difference in their teaching of law. In doing so however one must stress the diversity of Indigenous Australian cultures (with over 200 language and cultural groups) and the ‘multiple subjectivities’ that Indigenous Australians occupy as a consequence of colonisation (Moreton-Robinson, 2003). Indigenous cultural domains were mapped against Purnell’s (2002) model for cultural competency, adapted to a legal context, under the broad categories of family; country; diversity; spirituality; health; law; knowledge; resistance; language and communication. Drawing on the work of Janke (1998), Martin (2008), and Moreton-Robinson (2003), Indigenous worldviews of relatedness and connectivity were introduced. This set the groundwork for exploring the inter-connectedness of Indigenous knowledges, spirituality, law, country, family and kinship networks, and holistic understandings of health. Indigenous cultural diversity and issues of identity were examined to engender understanding of the heterogeneity of Indigenous lifestyles and experiences. ‘Resistance’ was discussed as a culturally situated response to forced assimilation and cultural genocide and as an aspect of Indigenous agency, survival, and resilience. Indigenous communication styles

for Aboriginal people; ban Aboriginal rites and customs; and impose imprisonment for breach of regulations.

9 A Federal Government program introduced to address issues of child neglect and abuse in Northern Territory Aboriginal communities which includes banning alcohol and pornography, compulsory leasing of Aboriginal townships, income management of welfare payments to residents of Aboriginal communities, and removing consideration of Aboriginal law in criminal proceedings. See generally the Northern Territory National Emergency Response Act 2007 (Cth), Welfare Payment Reform Act 2007 (Cth), FACSIA Act 2007 (Cth). For a critique of the human rights breaches involved in the Northern Territory Intervention see James Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous peoples (2009). The Stronger Futures Northern Territory Act 2012 (Cth) extends a number of these measures until 2022.

10 Under the Native Title Act 1993 (Cth) Indigenous Australians must prove they have a continuing system of ‘traditional laws and customs’ from the time of the British assertion of sovereignty to present to establish native title rights. See generally *Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422.

and languages were outlined with a focus on the diversity of Indigenous languages (including Aboriginal English and Kriol) (Queensland Department of Justice and Attorney-General, 2000.), and protocols for working with Indigenous communities (Queensland Government, n.d.). The presentation of Indigenous cultural domains was heavily underscored by an emphasis on the fluidity of Indigenous cultures, and the danger of stereotypes and colonial constructions such as ‘traditional’ and ‘urban’ (Hokuwhitu, 2010). Indigenous knowledges, in this context, also include the forms of Indigenous knowledge derived from the experiences of colonialism and racism, and new forms of knowledge that emerge at the cultural interface (Nakata, 2002).

Five habits of cultural competency

The next part of the program focussed on developing skills in cultural competency by introducing participants to Bryant’s (2001) model of the ‘five habits’ of cross-cultural lawyering. This model was developed for clinical legal education in the United States and is designed as a framework for students to explore the cross-cultural dimensions of legal practice. It is noted here that the five habits is a generic model in that it does not explicitly deal with Indigenous peoples, however, the *process* it outlines can be applied to any cross-cultural context to identify cultural issues that may arise in the client-lawyer relationship. The model was applied to an authentic case study to help academics analyse how their cultural values may impact on the way they approach a legal matter.

The five habits identified by Bryant are: *Habit One: degrees of separation and connection* - is a process of identifying similarities and differences between the client and lawyer. *Habit Two: the three rings* - is to explore the ways in which culture may influence a case where for example a conflict exists between the values of the lawyer, the client and the legal system. The three rings (think intersecting rings - like a venn diagram) may help to draw attention to issues that may not be critical to the success of the case, and also where the legal system may need to change to legitimise the clients claim. *Habit Three: Parallel universes* – engages learners in exploring their client’s cultural framework to open practitioners to the possibility of multiple interpretations for the clients’ behaviour. *Habit Four: Pitfalls, Red Flags and Remedies* – focuses on the communication process and aims to help identify good communication, recognise ‘problem conversations’ as they arise and be alert to potential ‘red flags’ that indicate things are not going well. *Habit Five: The Camel’s Back* – is a self-reflective process which aims to help the legal practitioner identify ‘cultural blinders’ and communication blockers arising from the practitioner’s inability to look outside their own cultural framework or from ignorance of the client’s culture. This process challenges lawyers to examine their own thoughts and biases – even the ‘ugly ones’ – in order to “create settings where bias and stereotype are less likely to govern” professional relationships (Bryant, 2001, p.77).

The five habits and the case studies used were productive in engaging workshop participants in an analysis of how culture may impact on the work of legal professionals.

Participants were able to identify a number of differences drawn from the Indigenous cultural domains to explain aspects of the client's behaviour that they found troubling – including a range of possible explanations that indicated less reliance on cultural stereotypes. They were also able to identify how their own cultural values affected the way they analysed the case and recognised where they needed to put aside their own cultural biases in order to represent the client's interests in a culturally competent manner.

Pedagogical approaches

Finally, the program outlined some pedagogical principles for teaching Indigenous cultural competency – with reference to the work of IHEAC (2008 above). A taxonomy for intercultural competency developed by Ridings, et al (2008), which maps the development of intercultural competency skills across Bloom's taxonomy of knowledge, attitudes and skills, was also explored. The possibility of 'resistance' to learning about cultural competency was also canvassed – which, for Bryant, arises where students fail to see the relevance of culture to their work, see other skills as more important, or feel that highlighting difference is contrary to notions of 'equality' (Bryant, 2001). The importance of building respectful relationships, focussing on 'cultural themes' and strategies to deal with inappropriate comments were canvassed (Bryant, 2001).¹¹ The first workshop concluded with a panel session with non-Indigenous colleagues sharing their experiences of developing Indigenous curriculum. Due to the small numbers of staff attending the second workshop, this part of the program was replaced with a small roundtable discussion on incorporating Indigenous content into teaching practice.

After having applied the five habits in the first workshop, I recognised their potential as a process for unit co-ordinators to use in developing Indigenous inclusive curriculum. So, for the second workshop I developed the five habits into a worksheet for Indigenous content in curriculum.

Evaluation

Two one-day workshops were held with a total of twenty academic staff participating in the program – eleven completing the full program and nine part of the program. Participation in the program was voluntary and participants self-selected. Getting sufficient numbers to run the program was a problem and the workshops had to be re-scheduled a couple of times to maximise participation. This indicated a difficulty in getting academics to commit to a full day of training and a possible need for shorter training modules to increase access to and participation in the program. This could be done through the provision of pre-reading or having some components of the program available online. I would be reluctant however to offer the full program online given

¹¹ Here Bryant suggests a number of techniques – saying 'ouch' to indicate hurt, repeating offensive comments for students to hear themselves or saying 'what you said makes me feel uncomfortable'.

the lack of data on the effectiveness of cultural competency in this media (Farrelly & Lumby, 2009) and my concerns about the low levels of meaningful contact between Indigenous and non-Indigenous Australians. One cannot, however, discount the possibility that ‘resistance’ may also be a factor in engaging non-Indigenous academics in learning about Indigenous cultural competency - for reasons outlined above.

Evaluation of the program was conducted by way of an anonymous post-workshop survey. Over 50% of participants completed the evaluation. Firstly, participants were asked to rate how ‘helpful’ different aspects of the program were giving a rating out of five (from not helpful to very helpful): the average score was 3.88/5 (with 3 indicating helpful). Here the most helpful aspects of the program were identified as the five habits of cultural competency (workshop 1 and 2); introduction to cultural competency and pedagogical principles (workshop 2). The next most helpful session in both programs was the Indigenous cultural domains. What this data tends to indicate is that knowledge that can be applied in a practical context was seen as useful aspects of the workshop program. The application of the five habits model to curriculum development in the second workshop also seems to have had a positive impact.

Secondly, participants were asked to self-assess how ‘helpful’ the program was in developing their understanding and skills in cultural competency. Participants were asked to give a rating of out five (strongly disagree to strongly agree): the average score being 4.49 (with 4 indicating agree). These scores were encouraging in demonstrating the impact the training had on knowledge and skills development. Participants reported that the program was most helpful in developing their understanding of the historical relationship between Indigenous peoples and the legal system (combined rating 4.72). This data reinforced for me how little legal academics actually know about the ways in which their own discipline was implicated in the colonisation of Indigenous peoples and highlighted the absence of Indigenous content in legal education. Participants also found the program helpful in developing their cultural competency skills (4.36) and in assisting them to identify how their own cultural positioning may impact professional and teaching practice (4.53). While it must be acknowledged the voluntary nature of the program may auger for a more positive evaluation, this data showed that participants had achieved some level of Indigenous cultural competency given how fundamental examining one’s own cultural positioning and skills development is to becoming culturally competent – factors that sets it apart from cultural awareness. As noted above, the five habits and case studies were instructive in demonstrating how culture may impact on the lawyer-client relationship and provide a structured process for identifying how cultural issues may play out in a variety of professional contexts.

Participants were also asked open-ended questions about how the program could be improved and what they would like to see in future programs. The most frequent response was for more practical tips and advice in relation to teaching (25%). This also reiterated that role specific training, which can be applied directly to professional practice, is highly valued. Both formal and informal feedback highlighted the importance of building relationships by noting that a ‘supportive and co-operative’

approach generated a good level of discussion and understanding. These comments were also reassuring in the sense that they indicated that the possibility of damaging professional relationships was not evident from the evaluation results.

CONCLUSION

Indigenous cultural competency has now been recognised as a fundamental aspect of higher education in Australia and potentially can lead to improved outcomes for Indigenous students and better service delivery to Indigenous Australians. In the legal profession, this development is long overdue. As universities embark on the process of embedding Indigenous cultural competency into teaching programs it is important to ensure that universities are adequately resourced and that there is a critical mass of Indigenous academics to guide this important work. The CCPDP developed at QUT Law School showed that some small inroads can be made towards Indigenous cultural competency in a one-day workshop program. Flexibility in program delivery may also serve to widen the participation on non-Indigenous staff in this process. The program evaluation highlighted the need for role specific training and to interrogate discipline specific knowledge in order to promote the cultural competency of academic staff, especially within the legal profession. There is however a critical need for more Indigenous academics to inform the development of Indigenous cultural competency within Australian universities, and more importantly to transform the nature of the disciplines themselves, so that Indigenous knowledges are no longer seen as marginal to the work of Australian universities. Increasing the cultural competency of Australian universities also opens up pathways for new understandings to be generated through the interface of Indigenous and western knowledge systems, adding to Australia's knowledge base and shifting existing paradigms about what is and can be known.

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