LAW112 – Introduction to the Australian Legal System

Annette Gainsford and Alison Gerard
Disclaimer

I would like to advise that this presentation may contain images and names of deceased Aboriginal and Torres Strait Islander people.

Course content contains sensitive material that some students may find distressing.

For further assistance contact Student Central if you require further assistance ask@csu.edu.au or call 1800 ASK CSU (1800 275 278).
Hello my name is Annette Gainsford and I would like to acknowledge the traditional custodians of this land and pay my respect to elders past and present.

May this land that they have walked for thousands of years humble us and may their spirits guide us in all we do.
What is an Acknowledgement of Country

An ‘Acknowledgement of Country’ can be done by everyone, Indigenous or non-Indigenous, to pay respect to the fact that one is on Aboriginal land.
What is a Welcome to Country

Welcome to Country’ is an important ceremony by Aboriginal people and inviting them to perform it helps non-Indigenous people recognise Aboriginal culture and history.
Why are such welcomes and acknowledgements important?

Incorporating a Welcome or Acknowledgement protocol into events recognises Aboriginal people as the First Australians and custodians of their land. It promotes an awareness of the past and ongoing connection to place of Indigenous Australians.

Unlike New Zealand, Canada and the United States, Australia has no treaty with its Indigenous people.

A Welcome to or Acknowledgement of Country doesn’t replace a treaty, native title or land rights, but they’re a small gesture of recognition of the association with land and place of the First Australians.
Learning Outcomes

Be able to demonstrate an understanding of Indigenous customary law and how to communicate effectively with Indigenous people and communities

- Communicating positively
- Customary law
- Pedagogical Framework

Be able to demonstrate an understanding of Indigenous social justice and analysing contemporary contexts of reconciliation in Australia

- Aborigines Protection Act 1909 (NSW) and Aborigines Protection Amending Act 1915 (NSW)
- Access to justice
Wiradjuri Woman, Indigenous Academic
Group Activity

What makes up my cultural identity?

Cultural identity is the identity or feeling of belonging to a group. It is part of a person's self-conception and self-perception and is related to nationality, ethnicity, religion, social class, generation, locality or any kind of social group that has its own distinct culture.
Yindyamarra Winhanga-nha.

Meaning ‘the wisdom of respectfully knowing how to live well in a world worth living in’.

Represents Wiradjuri cultural values pertaining to the relational development of knowledge.

Knowledge that is put to work for the betterment of others, learning that is grown through working and walking alongside others in communities.

Indigenous education has been a long-standing core business of Charles Sturt University; however in the past few years there has been a shift in becoming serious about the institutional commitment to Indigenous leadership through partnership with Elders, communities and individual staff members.
Pedagogical Framework

Charles Sturt University implemented their Cultural Competence Pedagogical Framework in 2009:

to actively embed meaningful Indigenous perspectives and pedagogy in curriculum content for all undergraduate students.
This Pedagogical Matrix, developed by Ranzijn, McConnochie and Nolan (2006)

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<th>Cultural incompetence</th>
<th>Cultural knowledge</th>
<th>Cultural awareness</th>
<th>Cultural sensitivity</th>
<th>Cultural competence</th>
<th>Cultural proficiency</th>
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<td>Professionally specific skills</td>
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<td>Reflexivity of values and attitudes</td>
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<td>Understanding Indigenous cultures, histories, &amp; cont. issues</td>
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<td>Generic understanding of culture</td>
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### Indigenous Cultural Competence Graduate Learning Outcomes

<table>
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<th>Knowledge</th>
<th>Skill</th>
<th>Application</th>
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<td>Understand specific cultural and historical patterns that have structured Indigenous lives in the past and the ways in which these patterns continue to be expressed in contemporary Australia</td>
<td>Critically examine personal power, privilege and profession within the broader context of the history, assumptions and characteristics that structure Australian society, and the way those factors shape historical and contemporary engagement with Indigenous communities and Indigenous people</td>
<td>Practise in ways that show a commitment to social justice and the processes of reconciliation through inclusive practices and citizenship</td>
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Royal Commission into Aboriginal Deaths in Custody (1989-1991)

- The Royal Commission was the most comprehensive and systematic national investigation of deaths in custody in Australia. It was critical of the delivery of professional services to Aboriginal and Torres Strait Islander people and communities and the ignorance, or cultural incompetence, of professionals.

- Sweeping recommendations were made as part of the Royal Commission to address the systemic deficiencies in the criminal justice, health and education systems and to improve the approach of professionals involved in delivering services to Aboriginal and Torres Strait Islander people. In relation to legal services, the Royal Commission recommended:
Recommendation 96.

That judicial officers and persons who work in the court service and in the probation and parole services and 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 position 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 in order to improve cross-cultural understanding.
Changes since RCIADIC

Changes since the RCIADIC
- Increase in the rate of death
- Increase in the numbers of Indigenous people in custody
- More deaths in prison custody than police custody
- Persistent breaches of the RCIADIC Recommendations
Bowraville Report

NSW Justice Department

NSW Standing Committee on Law and Justice report on the Bowraville murders

The Bowraville Inquiry began towards the end of 2013 to investigate the family responses to the murders of three Aboriginal children – Colleen Walker-Craig, Evelyn Greenup and Clinton Speedy-Duroux – in Bowraville, NSW, between September 1990 and January 1991.
The Inquiry recommended that:

Recommendation 4

That the NSW Department of Justice consider and report on the merit of requiring lawyers who practise primarily in criminal law, as well as judicial officers and court officers, to undergo Aboriginal cultural awareness training.

Recommendation 5

That the NSW Government liaise with the Legal Profession Admission Board of New South Wales, the New South Wales Bar Association and all accredited universities offering legal training in New South Wales to request that Aboriginal cultural awareness training be included as a compulsory element in their legal training and accreditation.
Stan Grant Speech 2016

https://www.youtube.com/watch?v=uEOssW1rw0I\n
Reflexivity Activity

Gibbs
Reflective Cycle (1988)

- Ranzijn, McConnochie and Nolan (2006)
Customary Law

In Australia there are two legal systems.

- Aboriginal customary lore/law practices are approximately 60,000 years old.
- The Australia legal system is 230 years old and has been imposed on Aboriginal people without consultation or respect for customary law practices.
- Whilst only mainstream Australian law is legally recognised, customary and tradition lore/law practices remain a part of Aboriginal culture today.
Contemporary Examples of the Recognition of Customary Law

“An Aboriginal mother will inherit more than 85 per cent of her son’s estate after arguing in the NSW Supreme Court that the “traditional lore and customs” of her matriarchal community in northern NSW trumped the laws of succession that apply to most other Australians (PDF of the full story will be in the resources folder): The Australian, July 2018

Aboriginal Language Map and diversity
Connection with country is crucial to the wellbeing of Aboriginal and Torres Strait Islander peoples.

Culture represents the ways of living that are built up by groups and is transferred from one generation to another.

Aboriginal and Torres Strait Islander peoples are connected to country through lines of descent (paternal and maternal), as well as clan and language groups.

It is important for all Australians to understand the essential features of Aboriginal and Torres Strait Islander cultures, including connection to the land, commitment to family and community.
Policies and Blood Quantum

Aborigines Protection Act 1909 (1909 - 1969)

Assimilation Policy (1940s – 1960s)

The term the “Stolen Generations” is used for Aboriginal people forcefully taken away from their families between the 1890s and 1970s.

Blood Quantum
The events of the past are very important to Aboriginal and Torres Strait Islander people. These events weren’t that long ago. There are many people alive today who:

- Were forcibly removed from their parents under government policy
- Had their children taken away
- Were not allowed in towns after 6:00pm at night
- Were not allowed to be in certain areas without permission
- Were barred from schools and hospitals
- Returned from wars only to find they did not have the same rights as non-Aboriginal people
- Have not enjoyed the same rights as others, simply because they are Aboriginal

There are people still alive today who witnessed killings and poisonings as young children. This affected those people deeply.
Intergenerational Trauma

Many generations of Aboriginal and Torres Strait Islander peoples around the nation have been affected by traumatic events. These experiences have included:

- War in the earlier years as they tried to defend their country, or continue to live on it
- Widespread death from disease
- Slavery
- Forced removal from land
- Dispossession of language
- Imprisonment often for offences they didn’t commit
- Being taken from their parents and families at a young age and held in institutions where many were abused
- Having their children taken from them
Aboriginal Education

Social issues are interrelated and education is a fundamental contributor to areas of social justice.

Closing the Gap – Prime Minister’s Report 2018
Figure 22: Year 12 apparent retention rate

Per cent

Source: ABS Schools Australia 2016
Aboriginal Employment

Closing the Gap – Prime Minister’s Report 2018
Figure 23: Employment rates, 15–64 year-olds

- **Indigenous**
- **Non-Indigenous**
- **Indigenous (excluding CDEP)**

*Estimate of employment rate by removing CDEP participants from employment data. As the Census only asks Australians in remote areas about their CDEP status, it is likely to overestimate the excluding-CDEP employment rate. The CDEP program did not exist in 2016 so no estimate is shown.*

Aboriginal Housing

The rate of homelessness for Indigenous Australians was 14 times as high as the rate for non-Indigenous Australians in 2011 (ABS 2012b).

Despite making up 3% of the population, Indigenous people represented 22% of people accessing specialist homelessness services in 2012–13.

Indigenous Australians have a life expectancy of around 10 years less than non-Indigenous Australians.

In 2008–2012, the estimated life expectancy at birth for Aboriginal and Torres Strait Islander males was 69.1 years, and 73.7 years for females. This was 10.6 and 9.5 years lower than the life expectancy of non-Indigenous males and females respectively.

Figure 1.22-4 Age distribution of proportion of deaths, by sex and Indigenous status, NSW, Qld, SA and the NT, 2008–12

Aboriginal Community Consultation

Consultation is an ongoing process that benefits all participants equally in helping to ensure that Aboriginal voices are effectively incorporated into decision making processes.

It involves establishing a respectful relationship with Aboriginal communities, and demonstrating a willingness to share, to learn and to negotiate.

The sharing of knowledge is a two-way process; it follows that members of Aboriginal communities should be shown respect and should be acknowledged for their time and assistance.
Elders in Residence Program

Dindima
Aunty Gloria Rogers

Dinawan Dyirribang
Uncle Bill Allen

Mallyan
Uncle Brian Grant
Building Respectful Relationships and Engaging with Indigenous Communities

- Acknowledge Country
- Using preferred names
- Ask or listen
- Seek more than one opinion
- Relationship before business
- Get to know us’
- Attend local events
- Visit Aboriginal and Torres Strait Islander organisations and leaders
- Begin with a relationship of trust
A Collective sense of responsibility going forward

- Recognition of Past Histories
- Acknowledgement of Legacies
- Listening and Understanding
- Belief in Solutions
- Need for Action
Appropriate Terminology, Representations and Protocols of Acknowledgement for Aboriginal and Torres Strait Islander Peoples

Protocol document – working with Aboriginal people and communities

www.healthinfonet.ecu.edu.au/key-resources/promotion-resource?lid=15681
Reconciliation Australia


Reconciliation Action Plans

“How creating a better Australia for tomorrow today, join the movement for change”
Closing the Gap Report 2018

Thank you

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