

Indigenous protocols for lawyers

By Kristina Karlsson

The Indigenous Protocols for Lawyers Project is the result of 14 months of work including extensive consultation with members of the legal profession and relevant individuals and organizations involved in Indigenous issues.

The final product is a 28-page, two-colour, A4 document in PDF. The document has been professionally designed and laid-out by Drawing Room Pty Ltd. The document contains the following:

- (a) three protocols for lawyers to follow when acting for Indigenous clients;
- (b) the Aboriginal Interpreter Service User Guidelines;
- (c) a summary of common law and legislative obligations of lawyers practising in the NT, including excerpts of current legislation;
- (d) general points to consider when interacting cross-culturally;
- (e) tips for good practice;
- (f) boxes with handy information;
- (g) basic information on language use in the Northern Territory; and
- (h) a list of further reading and references.

The Protocols are intended to be a basic but crucial guide to a lawyer's practice in the Northern Territory. It is my current understanding that the document is the first of its kind in the country. It is original in that it is a document to guide the behavior of legal practitioners rather than Indigenous people. Much public policy and policy documentation places the burden of behavioral and system change onto Indigenous peoples (for example, to learn certain rules or procedures, to change their behavior or learn the English language). This is an important document because it shifts the burden of responsibility of behavioral change from Indigenous clients to lawyers and the practice of law more broadly.

Users should keep in mind that effective cross-cultural communication should be based in many ways on not making assumptions about the other person at the expense of seeing them as an

individual. While cultures are different in many ways (for example, in the priority of values they have, how body language is used etc) we should be careful not to essentialize cultures different to our own, that is, viewing that culture as showing a universal essence or unity. Rather, we should try and see others as multifaceted and complex individuals.

When we communicate with someone who is culturally different to ourselves, we should not limit our attempt at understanding him or her by examining the supposed stereotypes of their culture. Instead, we should attempt to understand the complexity of who he or she is.

Some of the guidelines in the Protocols may be interpreted as being essentialist. That is not the intention. They are a starting point for basic intercultural interaction rather than a prescription for total intercultural understanding.

The Protocols originated from my own experience as a lawyer new to the Territory. When I arrived, I had had no experience interacting with Indigenous people and had a basic, but theoretical, awareness of Indigenous issues and Indigenous/non-Indigenous cross-cultural interaction. Almost from my first day of practice in the Territory I was obliged to represent Indigenous clients. Most of those clients were 'longgrassers' or clients who called 'remote' communities home. English was usually their fourth or fifth language. I was unable to speak any Indigenous languages. Finding myself inadequately prepared both culturally and linguistically, I wondered whether there were any established procedures or protocols that I might follow to ensure that my client's interests were best represented and that assisted me to fulfill my duties as a lawyer. To my amazement I found that there were none, so, I set about planning this

project.

Ten drafts of the document and four graphic design proofs were produced during 14 months of consultation, research and writing. Consultation was the most important aspect of this project. I was highly conscious of the need for consultation involving Indigenous legal organisations as well as other lawyers practising in the Territory. After undertaking preliminary research, the document was drafted and subsequently sent it via email and/or hard copy to a number of Indigenous organisations, legal organisations and other relevant individuals or groups for feedback. Overall, two early drafts were sent out for comment.

The project was also advertised to all practising lawyers in the NT in editions 33 and 34 of the NT Law Society's electronic newsletter *The Practitioner*. A handful of practitioners contacted me as a result of this advertisement expressing interest in reading a draft of the Protocols. I received feedback via email, facsimile and telephone on various drafts.

Funding for the layout was provided by the Law Society Public Purposes Trust and I wish to thank the Trust for its grant. The project has been a wonderful opportunity for me. I trust that the Protocols will be a useful and worthwhile addition to practitioners of law in the Northern Territory and to the wider community.

The Law Society has agreed to distribute the Protocols to the profession and review them at some time in the future. The Protocols are available from the Society's website at www.lawsocnt.asn.au. Individuals and organizations are invited to provide their comments to Julie Davis via email at jdavis@lawsocnt.asn.au.^①