EXPLORING INDIGENOUS CULTURAL COMPETENCE IN LEGAL PRACTITIONER CLIENT RELATIONS

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ABSTRACT

This thesis explores how Indigenous Cultural Competence is enacted and theorised in legal practitioner client relations. The research commences by investigating how key documents influence legal and health practice contexts in relation to indigenous clients. Analysis results in relation to legal practice are checked against the lived experiences of non-Indigenous legal practitioners. The thesis finds that efforts by individual practitioners to incorporate Indigeneity are not supported by the wider legal systems of governance they inhabit. Legal practitioners who incorporate Indigeneity into their practice may suffer a degree of professional marginalisation and exclusion which echoes the larger exclusion, misunderstanding and minimisation of their clients' Indigeneity throughout the justice administration.

The research contributes to the understanding of Indigeneity within legal practitioner client relations and helps to fill the knowledge gap between Indigenous theories of practice utilised in health and daily legal practice. The thesis supports the findings of other researchers in relation to both Indigenous exclusion and professionals' efforts to practice in ways which are supportive of Indigenous client identities. Through use of Foucauldian Discourse Analysis, this thesis brings the spheres of health and law disciplines together. Common Foucauldian themes of power-knowledge, subjectivity, governmentality, regimes of truth, and discipline are used to make visible the schematic of discursive power animating conduct documents from health and law, as well as interview responses.

This research highlights different approaches to Indigenous Cultural Competence adopted by Queensland Health and Queensland Law Society. Queensland Health demonstrates, through their documents, a commitment to integration of Indigenous Cultural Competence or similar practice theories at all service levels. Queensland Law Society demonstrates, through their solicitor conduct rules, a commitment to the principles of justice, fairness and equality before the law, without reference to culture at all. Interview participants demonstrate a commitment to justice, fairness and equality as well as to their client. Interviewed practitioners are motivated to do what they can to assist and translate client ways of being within and to the legal system.

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List of Acronyms and Abbreviations

ASCRs	Australian Solicitor Conduct Rules
CDA	Critical Discourse Analysis
CS	Cultural Safety
CTA	Critical Thematic Analysis
FDA	Foucauldian Discourse Analysis
HHS	Hospital and Health Services
ICC	Indigenous Cultural Competence
LCA	Law Council of Australia
LPA	*Legal Practice Act 2007* (Qld)
LPR	*Legal Profession Regulation 2017* (Qld)
QHATSICCF	Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework
QLS	Queensland Law Society

PREFACE

Going through this might open new horizons of just life you know, that's so precious. I'll have to write a song about it[1].

Mr G Yunupingu

Don't ask me if I've ever been to prison

Don't ask me for my political views on the judicial system

Half the time you mob don't even listen

I'm wasting my time and I'd rather be fishing[2]

Lucky Luke

These quotes reflect two positions. The first is from singer and songwriter G Yunupingu speaking about his kidney failure and dialysis. He reframes his disability as containing something positive to be experienced and used as inspiration for artistic creation. The second quote is from Mount Isa hip hop artist Lucky Luke, who articulates frustration and avoidance of discussions about Indigenous Justice inequity. Both quotes are relevant to this thesis. Indigenous clients and their lawyers find ways to cope with non-Indigenous systems, inequity, each other, and commentary relating to Indigenous overrepresentation. To achieve this they find appreciation, strength and inspiration to, and whilst, enacting their roles and purposes within the legal system. This thesis pays homage to them all.

[1] Australian Story Message from Mr Yunupingu Monday 19 October 2009

[2] "Lucky" song lyrics

Chapter One: Introduction and Rationale

Overrepresentation of Aboriginal and Torres Strait Islander people (who I will refer to as "Indigenous" or "First Nations") people in the justice system is not limited to the criminal justice system but is often discussed in relation to incarceration rates. The disproportionate and growing incarceration rates of First Nations People have been described variously as 'a National Shame' (Australian Human Rights Commission, 2018); 'a catastrophe' (Gooda, 2014) and as 'a second convict age' (Leigh, 2020). Overrepresentation in the criminal justice system is the subject of multiple discussions, publications and studies (ie; Australian Human Rights Commission, 2014), which implicate laws, policing, intergenerational racism, access to lawyers and other components as contributors. However, few of these studies look at the work being done by lawyers with clients.

Legal practitioners are arguably the gatekeepers and facilitators of justice. It is important to look at lawyers' roles within both the legal system and within Indigenous client experiences of that system, to see if and how client relations can be made more effective for First Nations people and their lawyers. Numerous questions can be raised regarding the current situation, such as where the profession looks for guidance when considering the intersections between legal practice, Indigenous clients, and Indigenous overrepresentation; where the evidence or research base is for lawyers' practice in this space; and how lawyers can use their power, as technical experts, and professionals with status, to promote positive change towards justice equity for their Indigenous clients.

One area lawyers may look to the health sector, where the role of individual, organisational and systemic interactions between service providers and service users is the subject of ongoing work. Theories such as Indigenous cultural competence, capability, safety, sensitivity, and awareness have been broadly adopted, adapted, and implemented throughout health organisations including Queensland Health. These theories have informed efforts to crystalise National Cabinet commitments to redress Indigenous health equity which are supported by Commonwealth funding arrangements and a network of enmeshed plans, frameworks and goals stretching down to individual Hospitals and Health Services (HHS). The contribution of this utilisation of theories in processes of health service provision is difficult to quantify in relation to achievement of Indigenous health equity outcomes nationally. At minimum however, it evidences awareness, investment, and commitment to the task of Indigenous health equity. At most, research reports successful health outcomes from this approach.

What is certain is that Indigenous overrepresentation in the justice system, in diverse areas including child protection, domestic violence and crime is a crisis; a crisis for the health, wellbeing, and success of Indigenous people, their families, communities and Country. This thesis is potentially the first exploratory attempt to look at the possibilities for using theories of practice such as Indigenous Cultural Competence (ICC) in legal practice in Australia. Given the current pandemic of overrepresentation, it is shocking to see the paucity of research examining how lawyers accomplish roles with Indigenous clients. This thesis asked how, or if, Indigenous theories of practice are already used by practitioners; whether formally or informally; and how, if, and when such efforts are made, whether the efforts are affirmed or discouraged by the wider system lawyers inhabit, such as their profession.

This thesis does not provide solutions or a recipe for success. It does not seek to 'fix' anything. Rather, it aspires to explore and contribute to understandings of how things are, so that this knowledge may contribute to genuine and sustainable change. Using Foucauldian Discourse Analysis (FDA), this thesis explores how key governance documents exert influence upon people interacting with Indigenous people within a professional service environment. The analysis makes visible the assumptions informing the documents and the effect of these assumptions upon people who are subject to these documents. This process of limitation or allowance is examined to reveal some of the networks, nodes, circuits and conduits of power flowing throughout the social body reproducing selective, privileged, knowledge-power. These power flows are enacted in interpersonal and institutional relationships.

Foucault's techniques reject the top-down imposition model of autocratic power in favour of a much more nuanced, complicated, and egalitarian schematic. Although knowledge-power permits, rejects, or constrains reality ('truth') at any given time and place, knowledge-power does not necessarily remain unchanged. Knowledge-power has the capacity to respond to the capillaries of the system to change or accept expressions of a new truth. Use of Foucault's techniques in this thesis aims to momentarily allow readers to glimpse part of the truth ordinarily hidden from them. This awareness may continue a discourse supporting improved ways of legal practice thinking, doing and being.

Part of the reason for this research is also a limitation – the paucity of research already conducted in this field. There are no comparable theories of Indigenous practice in law, so data sets are necessarily drawn from distinctly different industries or professions. The literature review is not systematic. In terms of the interviews, the data set is small, and possibly biased due to my position as practitioner-

researcher. Interviewees were drawn from a single organisation and self-selected. The risk is that the data set is skewed towards more motivated or interested participants. In addition, FDA has no agreed recipe, so it is unable to be verified in the way more positivist or scientific approaches allow. Indeed, FDA denies the possibility of full objectivity and focuses on revealing social mechanisms which produce 'truth', through critical engagement with discourse. These limitations highlight that the conversation around the topics of the research has begun in this research area.

This research contributes to filling the knowledge gap between ICC and legal practice. It contributes to understandings about how non-Indigenous legal practitioners manage their relations with Indigenous clients. It shows that legal practitioners are aware of Indigeneity and take responsibility for adjusting their interactions with clients in accordance with perceived individual client need. However, lawyers often confused culture with disadvantage, and adjustment occurs within a legal system which excludes or marginalises Indigeneity. The findings are consistent with research relating to Indigeneity in other disciplines. The findings suggest the need for changed lawyer education, training and recognition of expertise to reconcile and integrate Indigeneity throughout legal practice.

Problem Statement

Over-representation of Indigenous people in the justice system is not the problem. Rather, it is a surface of emergence of many problems. The problem for this thesis is the paucity of existing research into how lawyers do their jobs with Aboriginal and Torres Strait Islander clients and how and if lawyers can do their jobs better. Lawyers are enablers of justice who are committed to equality, fairness and the rule of law. More questions need to be asked about how, on their watch, over representation thrives, and how legal practitioners are constrained or enabled to innovate beyond deficit approaches in client relations with Aboriginal and Torres Strait Islander peoples.

Purpose of the Study

This project aims to bring together perspectives from law and health using the common theme of relations with service users, to explore how positive legal practice is occurring with Indigenous clients and how this can be supported by organisations, systems and frameworks. It will explore some of the constraints and opportunities provided for consideration of Indigeneity within current regulatory regimes and how these may be exploited or overcome by legal practitioners to enhance positive Indigenous client relations. It will also seek to explore the ability of the legal discipline to benefit from or adopt concepts or frameworks developed and implemented in health.

Method

The method adopted in this research is qualitative in nature. It uses the interpretive framework of Foucauldian Discourse Analysis (FDA) to analyse three data sets. The technique of Critical Thematic Analysis (CTA) is also used to analyse the three data sets and assist the FDA. The data sets consist of two documents and one group of interview transcripts. The text documents consist of a governance document from health and a governance document from law. There are 12 interview transcripts in total. Interviews are conducted with legal practitioners operating in the field and working exclusively with Indigenous clients.

Relevant knowledge gaps

This thesis sought to position itself within the knowledge gap between legal practice and Indigenous Cultural Competence. Without further research, including this thesis, there remains important questions about:

1. How non-Indigenous legal professionals working with Indigenous clients practice in a way which is supportive of Indigeneity;
2. When current structures guiding legal practitioner client relations constrain or are sufficiently flexible to incorporate practice innovation with Indigenous clients;
3. How positive practice can be supported by organisations and the legal discipline; and
4. If ICC has any potential utility to legal practice.

Research questions

This thesis explored the following research questions:

1. Do current legal practice ethics incorporate elements or principles of ICC?
2. What is the potential utility of ICC in the practice of law?
3. How might ICC or other practice innovations with a similar intention be implemented or supported within the context of non-Indigenous legal practitioner and Indigenous client relations?

Thesis Structure

Chapter One introduces the idea of the thesis to readers; it talks about growing Indigenous justice inequity and the paucity of research into the role of lawyers within this situation. The approach of health in using theories of practice such as ICC to address health inequity contrasts with law's approach. Law relies upon the formal equality of ethics, professionalism, and fiduciary duties to safeguard fair, just and equitable treatment of clients. The importance of mutually trusting relations between clients and lawyers is compared to the relations between medical professionals and patients.

Foucauldian concepts of discourse are introduced as applying to both health and law. Common Foucauldian themes such as power bring the disciplines together. The knowledge gap between ICC and legal practice is identified and three research questions provided.

Chapter Two provides a scoping review of the literature related to the filed. The chapter talks about the development, definition and implementation of ICC and the ongoing discussions about it. It provides some examples of research into the use of ICC and related theories and identifies the broad reach of ICC into fields such as childcare, dentistry and libraries. The review identifies a silence within the literature regarding ICC and legal practice. In relation to law, the review talks about traditional and alternate perspectives on legal practitioner client relations, and how these relate to the governance structures of professionalism, ethics, and fiduciary duty. The review identifies a silence in the legal literature regarding Indigenous client relations with legal practitioners.

Chapter Three introduces me as a researcher, and the Foucauldian approach. The methods of this research are provided, including details of sampling such as characteristics of and recruitment techniques for interview participants. The position of the methods used within this thesis is situated, with support for sampling size drawn from previous studies and support for analysis techniques provided by two key references. Interview procedures are detailed, and bias potential and management, along with ethical considerations, are discussed.

Chapter Four discusses the results and interpretation of critical thematic analysis of the data sets. CTA is a technique for identifying patterns within a text based on the repetition of words, the recurrence of phrases or concepts and the variation in forcefulness of words or phrases within texts. These patterns may show what's important to each text, in a similar way to how we repeat, re-word and emphasise what's on our mind when we speak. Instances of repetition, recurrence and forcefulness are identified, interpreted, and used to code the data according to FDA themes. This chapter shows the process undertaken for verifying the relevance of the FDA themes chosen to frame analysis, and the CTA interpretation itself also provides additional meaning for the texts, outside of the FDA.

Chapter Five is divided into two parts, both dealing with FDA. The first part is a thematic FDA of the texts, focusing on the interviews. The second part is an FDA in the Willig tradition which arrives at a point explaining the opportunities and/or constraints on subjects for feeling, thinking, and doing which are created by the discursive constructions within the text. This chapter moves from a thematic intersectional FDA to one focused on individual subjects to arrive at a thorough understanding of the

effects of the data sets upon subjects and subjects' positions within the power circuitry of which they and the texts exist within.

Chapter Six discusses the findings in response to the research questions, based upon the results and interpretation applied within proceeding chapters. It summarises the findings and places the research within theoretical and practical context. This chapter engages in discussion about the research and the implications, limitations and relationships arising from it. This chapter summarises key findings and contributions and identifies future areas of research before concluding. A brief self-reflective epilogue follows the conclusion.

Chapter Two: Literature Review

Introduction

The disproportionate intersection of Aboriginal and Torres Strait Islander people with Australia's legal system is well documented and growing (Burns, 2018). Where Indigenous people become legal clients, they are overwhelmingly represented by non-Indigenous practitioners (Law Society of NSW, 2019). Legal practitioner client relations occur within an environmental, interpersonal, and cognitive domain (Blackburn, 2017) constructed and maintained by a regime (Foucault, 1975) whose institutions, rules and practices contain limited consideration of Indigeneity.

Whilst positive legal practitioner client relations are critical for fulfilment of professional responsibilities, the administration of justice and procedural fairness, there is little research into how this is achieved or how it can be organisationally or systemically supported. Indigenous Cultural Competence (ICC), as a recent and widely adapted offspring of a family of concepts designed to improve health service equity, may have some potential to address this gap. Through exploration of literature relating both to ICC and legal practitioner client relations, this review sought to frame the field relating to how client Indigeneity is considered within legal practice guidance and governance and whether ICC can provide any potential utility to enable or enhance relations with Indigenous clients.

This review will firstly discuss the centrality of client relations to legal practice, and then the guidance provided to legal practitioners about client relations by the key notions of ethics, fiduciary duties and professionalism. Discussion will then turn to theories of practice which incorporate Indigeneity, including cultural safety and Indigenous Cultural Competence (ICC). Critical aspects of ICC will be considered such as its intersection with legal practice, definition, methods of improving ICC and critical commentary. The chapter concludes with a finding that there is currently a research gap between ICC and legal practice.

Literature Review Search Method

This paper is based on a review of educational research and professional literature relating to ICC and legal practitioner - client relations, predominantly in an Australian context. A search of James Cook University library, google scholar and informit database combining the search strings "Indigenous Cultural Competence" and "legal practice" and close combinations yielded zero results related to lawyering; five results relating to legal education and three results relating to Canadian studies. A change to the term "law" yielded no further relevant results.

Search terms were then by necessity widened to include Cultural Competence and related terms such as Cultural Safety in disciplines and professions other than law. This yielded a large number of results, particularly in education and health, where there was extensive evidence of professions' attempts to implement practices and develop conceptual models to improve Indigenous client outcomes. Following review of literature abstracts and key findings many articles were excluded due to a lack of relevance to the central themes of practitioner relations with clients and concepts and practices which could potentially be used to understand and further develop Indigenous client relations, with a focus on ICC.

1. Legal Practitioner Client Relations

The importance of the interaction between legal practitioners and their clients and the critical components of positive interaction has been highlighted in research related to procedural justice theory. Procedural justice theory considers voluntary compliance with the criminal law and reduction in recidivism to be influenced by the perceptions of both adult and juvenile clients about how they are treated by justice agents, including legal practitioners, law enforcement and Judicial officers. Clients use their experiences with individual justice agents to form a view about the legitimacy of the legal system as a whole. Further, procedural justice theory posits client perceptions of participation, fairness, trustworthiness, respect and empathy as particularly important features for interactions and agents (Blader & Tyler, 2003; Pierce & Brodsky, 2002; Raaijmakers et al., 2015; Sprott & Greene, 2010).

Trust is a relational feature frequently discussed in procedural justice research as necessary for a wide array of important outcomes. For clients, a trusting relationship with their legal representative has been found to improve their understanding; participation; self-disclosure; co-operation; acceptance of advice; perception of fairness and satisfaction in the legal system and decision making. For legal practitioners, a trusting relationship with clients has been found to improve court outcomes; enhance empathy and assist in fulfilment of professional responsibilities (Howieson & Rogers, 2019; Boccaccini & Brodsky, 2002; Boccaccini et al., 2004; Pierce and Brodsky, 2002; Sprott & Greene, 2010; Campbell et al., 2015). Client trust has also been linked to intelligence, age and race, with Pierce and Brodsky (2002), finding differences between the trust patterns of Black and White American juveniles in accordance with measures of intelligence.

Legal practitioner approaches to encouraging client trust in client interviews and interactions have been explored through the client centred approach to case management and interview. This approach uses a more naturalistic interview style which focuses on the client narrative and rapport building (Burton, 2018). A modified, or downgraded use of this approach, termed the *client aligned approach* was found to be useful in medical malpractice matters where clients may have required a more

paternalistic case management style (Melville et al., 2014). In relation to impaired clients, a more relationship centred approach to trusting interactions has been advocated for by Boulding and Brooks (2010).

1.2 Ethics, Fiduciary Duty & Professionalism

Client and legal practitioner relations can be seen to be shaped and governed throughout Australia by three broad mechanisms of legal and ethical governance; firstly, notions of professionalism, secondly, fiduciary duty, and finally, legal ethics. Fiduciary duty in this context requires legal practitioners to place their client's interests above their own and act in their client's best interest. The duty arises from the assumed relationship of confidence and trust between lawyers and their clients. Professionalism, fiduciary duty and ethics are enshrined in legal instruments such as laws, rules and judgements and commence operating prior to a legal practitioner's admission into the profession. For instance, section 31 of the *Legal Practice Act 2007* (LPA) states (in part):

> (1) A person is suitable for admission to the legal profession under this Act only if the person is a fit and proper person to be admitted.
>
> (2) In deciding if the person is a fit and proper person to be admitted, the Supreme Court must consider—
>
> > (a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and
> >
> > (b) other matters that the Supreme Court considers relevant.

Section 9 of the LPA lists all suitability matters, the first of which is:

> (a) whether the person is currently of good fame and character.

Aspiring legal practitioners are thereby on notice that their conduct must always be consistent with what is judged by the Supreme Court as reflective of demonstrating good fame and character.

Considerations regarding the character of legal practitioners is a feature within the first mechanism of legal and ethical governance; traditional notions of practitioners as belonging to a profession. This notion positions legal practitioners as learned, privileged, wise and dispassionate advisors and advocates who faithfully apply their knowledge in service to the public against the injustices of the State (McKenzie, 2017). This idea can be distinguished from the more modern concept of legal practice as engaging in a business or supplying a service to consumers (Robertson, 2015; Spigelman, 2003). Conflict between these two understandings of the profession emerged prominently during

discussions preceding changes to admission and oversight arrangements commencing in the nineteen eighties[3].

Regardless of which elements of the profession are emphasised, the mechanism of the fit and proper person test always governs membership. Factors which are routinely considered relevant to the decision about who is a fit and proper person to continue their practice of law include any previous criminal behaviour; improper conduct; infirmity or dishonesty. However, relevant considerations are interpreted broadly by legal governing bodies, with the central rationale being to safeguard the confidence of the public both in the profession itself and the system of justice more widely by ensuring only those unlikely to bring these institutions into disrepute are admitted, or, if already admitted, continue to practice as solicitors or barristers (Ross, 2001).

The historic justification for the profession[4] as advocating against State injustice can be seen as contrasting with legal profession admission rules, whereby a candidate must petition the State for admission to the profession, and once admitted, is foremost an agent of the court, bound to promote the administration of justice by the State[5]. The notion of professionalism has also been linked to denigration of emotional expression, relationality and empathy by practitioners as they seek to display behaviours consistent with formalist and liberalist ideas (Kadowaki, 2015). This display element of practice can conflict with practitioner's real behaviours and attitudes towards clients (Newman, 2018).

The second mechanism of legal and ethical governance of fiduciary duties, are based in equity law. Equity has been described as akin to the spirit of the law[6]. It is concerned with principles of justice and fairness and applies these to all situations. Fiduciary duties are imposed on legal practitioners due to an assumption of imbalanced power relations with clients. This assumption can be understood as grounded in the traditional conception of the professional as possessing specialised skills and capacity to adversely affect vulnerable clients (Corones, 2003) who depend upon, and place trust in, their representatives'[7] training and experience (Moynihan, 2005).

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[3] For a summary and discussion of the reform of the legal profession see Spigelman, J, (2003). Are lawyers lemons?: Competition principles and professional regulation, *Australia Law Journal*, *44*, 49–52 and Robertson, D, (2015). An overview of the Legal Profession Uniform Law; *Summer Bar News*, *37*.

[4] McKenzie, J. (2017) Legal Ethics What Are They Today? Discussion paper delivered by John McKenzie to Legal Services Commissioner NSW

[5] For an exploration of the role of juvenile justice lawyers as mediators of State power in Hong Kong see Cheng, K., Chui, W., Ong, R. (2015). Providing Justice for Low-Income Youths: Publicly Funded Lawyers and Youth Clients in Hong Kong. *Social & Legal Studies*, *24*(4), 577–593.
For a discussion of resistance to State power through dignity-based lawyering in Myanmar see Batesmith, A., Stevens, J. (2019). In the Absence of the Rule of Law: Everyday Lawyering, Dignity and Resistance in Myanmar's 'Disciplined Democracy'. *Social & Legal Studies*, *28*(5), 573–599.

[6] Dal Pont, G., Chalmers, D., Maxton, J. (2003). Equity and Trusts: Commentary and materials. Third edition. *Lawbook Co*, Pyrmont NSW, p.8.

[7] Legal Services Commissioner v Baker (No 1) [2005] QCA 482

Due to their fiduciary relationship with clients, legal practitioners have specific obligations to use their position to advance the legal interests of their client, avoid conflicts of interest and make profit only with the fully informed consent of the client (Corones, 2003). Alternative approaches to these fiduciary obligations which also seek to diminish power imbalances have been proposed in the form of a more *empathetic, client-centred* and *responsive approach* to lawyering. Such an approach has been successful in both reducing the power imbalance in the client legal practitioner relationship whilst improving representation quality (Bastress & Harbaugh, 1990), particularly when representing impaired clients (Boulding & Brooks, 2010).

Incorporating ideas from both professionalism and fiduciary duty is the third mechanism of legal and ethical governance; legal ethics. Ethics are standards of conduct expected of legal practitioners. They are enshrined in various legal instruments including professional conduct rules, breach of which can result in disciplinary action and, potentially, removal from the profession. Several alternate approaches to this prescriptive regime of client ethical relations have been proposed, such as relational*, caring* (Menkel-Meadow, 1985, 1996; Schultz & Shaw, 2003), and *contextual* (Bartlett & Aitken, 2009; Hutchinson, 1998; Nicolson & Webb, 1999;) ethics.

Both the relational and caring approach use ethics models derived from sectors other than law. The relational approach derives from Miller's Relational-Cultural Theory of psychology which explains the movement of people towards relationships and mutuality as a hallmark of psychological health, in comparison to traditional models of therapy which emphasised health as illustrated by autonomy, separation and individualism (Howieson & Rogers, 2019). Miller argued that traditional models of psychology practice did not incorporate the context, relationships, and experience of marginalised people (Comstock, 2008), including women. The caring approach is derived from Gilligan's (Gilligan, 1982) feminist philosophical perspective of morality as contextual and relational, and founded on a care relationship between individuals.

Professionalism, fiduciary duty and ethics each seek to promote practitioner client relations by excluding practitioners who are unable to meet and maintain a minimum standard of conduct. The conduct required of practitioners is guided by an intention to maintain the confidence of the public in the legal system and the legal profession. Current legal and ethical mechanisms can be seen to reflect conceptualisation of legal practice as involving the use of specialised knowledge and skills to exercise power over clients whilst maintaining a dispassionate demeanour. Whilst alternative approaches can be summarised as emphasising and incorporating relational aspects of practice, such as empathy, caring and client context.

2. Theories of practice acknowledging Indigeneity

There is a diversity of terms reflecting an intention to bring greater awareness, care and supportive practice to Indigenous client – non-Indigenous professional relations in Australia[8], such as *cultural empathy* (Hogan et al., 2018), *cultural appropriateness* (Kendall & Barnett, 2015), *cultural security* (Parisa et al., 2016), *cultural respect* (Liaw, 2015), *cultural integrity* (McGough et al., 2018) and *cultural safety* (Grote, 2008), with each emerging concept seeking to build upon the strengths of prior and related concepts. One complexity within the reviewed literature is that terminology employed to refer to cultural competence is frequently combined with or deployed interchangeably with related concepts (Dunbar & Scrimgeour, 2009). The diversity of this "cultural family" is sometimes further complicated by its integration with discourses involving major concepts such as *racism* (Grant & Guerin, 2018), *communication* (Jennings et al., 2018), and *empathy* (Kendall & Barnett, 2015).

The common use of the term 'culture' in reference to these approaches reflects its popularity throughout diverse disciplines, including *anthropology* (Anderson-Levitt, 2012; Gamio, 2010), *business* (Manley, 2008), *social work* (Park, 2005), *cultural geography* (Anderson, 2019) and *social science* (Johoda, 1984), to differing meaning and effect. Use of the term culture has been criticised as enabling stereotyping, racism and generalisations (eg: Abu-Lughod, 1991; Anderson, 2019; Paex & Gonzalez, 2000; Williamson & Harrison, 2010). However, Barker (2008) makes the point that the term 'culture' is not so much a definitive term but instead a conceptual tool which may be useful in practice. He encourages readers to enquire about how culture is spoken about and why rather than focusing on definitions.

Culture is a concept which was popularised in the field of anthropology. Tylor (1871) famously defined it as "that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society". Tylor uses the concept as part of his theories categorising human civilisation into evolutionary stratas, leading, at the pinnacle of those layers, to that of the 'civilized English man' (Mangabaro, 2002, p.9). Tylor's way of understanding 'culture' was not unanimous amongst his professional colleagues. However, by the 1920's 'culture' was a popular term in scientific journals, and views akin to Tylor's were a significant part of the field. For example, Malinowski's 'Argonauts of the Western Pacific' (1922) used ethnography to develop understandings of 'culture', and in doing so challenged research practices relying upon indirect accounts of, or assumptions about, 'culture'. His work also shows the elitist and Eurocentric character

[8] With further diverse terms utilised in USA including anti-subordination and dignity lawyering

of accepted scientific discourse at the time, including through use of categories for people such as 'native'.

Colonial discourse in the form of New Imperialism made use of anthropological and naturalist theories such as 'culture', social categories, and evolution to support political and economic policies of expansion. These colonial theories were based upon the assumed superiority of the colonisers. Users of these theories arranged all societies and people in relation to the colonisers, framing differences to the colonisers as problems resulting from an environmental, biological and cultural evolutionary process. New Imperialism framed colonial aggression as an opportunity to civilize and save some populations through their introduction to and adoption of coloniser culture. It also positioned colonisers as fulfilling a positive duty towards 'native' subjects to save and civilize them less they perish (the 'doomed race' theory). These ideas were persuasive and pervasive and have heavily influenced Australia. For example, protectionism, assimilation and the white Australia policy can all be seen as supported by this type of colonial discourse (Edmundson, 2019).

Definition, categorisation and division of Indigeneity have been features of colonisation in Australia, as governments and courts used a variety of classifications to constrain or enable policy, legislation, and decisions about Indigenous people. However, these classifications are not static. When looking, for example, to answer the legal question of who can be categorised as an 'Aborigine', the High Court in *The State of Tasmania v The Commonwealth* (1983)[9], relied on the three-part test of biological descent, social identity and acceptance. In *Attorney-General (Commonwealth) v Queensland* (1990)[10], the Federal Court found biological descent to be sufficient for a person to be considered 'Indigenous'. The Australian Law Reform Commission, meanwhile, has recommended that the meaning of 'Aboriginality' should rely upon social construction alone (Pritchard, 2004).

Whilst anthropology developed 'culture' as a tool to increase certainty through use of delineation and categorisation, there were some who were concerned about the vagueness, breadth, and popular usage of the term. For example, T.S Eliot (1948) states that his purpose in writing 'Notes toward a definition of culture', is to define a term which is misused. He expresses his concern that culture is used widely to mean different things, such as civilization or art. These features of widespread use and elusive (Johoda, 1984) and highly contextual meaning have been described by Mangabara (2002, p.11) as a lack of communicative efficiency. It is this very lack of efficiency which ensures the continued currency of the term, as the meaning of 'culture' shifts with usage. It is also this lack of communicative

[9] *The State of Tasmania v The Commonwealth* (1983) 158 CLR 1.
[10] *Attorney-General of the Commonwealth of Australia v State of Queensland and Ors The National Aboriginal and Islander Legal Services Secretariat v State of Queensland and Anor* (1990) 25 FCR 125.

efficiency which contributes to difficulties in anchoring and measuring performance related to 'culture'.

An alternate to this "slipperiness" and complexity (Park, 2005) is a more static approach whereby clear boundaries are created and maintained around what is included or excluded from a dynamic lived reality. Such an essentialist conceptualisation or "cookbook" approach to culture denies complexities and lends itself to stereotypes, generalisations and assumptions. However, whilst the current breadth of use of the term culture is dynamic and accommodating, it may be poorly understood (Williamson & Harrison, 2010) and risk meaninglessness. Attempts to attribute meaning and usage to culture continue through the works of authors such as Krakouer (2018) and Davis (2019), who seek to delineate and protect Indigeneity within the non-Indigenous social work and child protection systems using key frameworks such as family.

Barker (2008) sidesteps issues of definition by encouraging a transparent approach, where culture is a term or tool which can be used but is not the thing itself. This approach is helpful when differences ('culture') are embedded at pre-consciousness (Krakouer, 2018, p.271), making explanation difficult. In using this approach, consideration of the politics informing decisions about how the term or tool 'culture' is used is important. Questions about the intention of selecting the term, the purpose of its selection and possible alternatives offering a greater degree of communicative efficiency remain valid, despite (or perhaps because of) the ubiquity of the term 'culture'. Using Barker's approach may discourage thoughtless use of 'culture' or 'cultural', and in doing so encourage more conscious engagement between people.

'Indigenous culture' in Australia refers to something which connects Indigenous Australians to land, family, identity, and spirit, and is linked to positive health, wellbeing, and child development (Krakouer, 2018, p.270-271). This framing of Indigenous culture as a strength and necessity reflects Indigenous perspectives. However, the difficulties involved in attempts made by Indigenous people to define and explain something ('culture') which is inherent (Krakouer, 2018, p.271), are worthy of consideration. Nakata (2007) discusses the 'cultural interface' as the lived space of Torres Strait Islanders involving a complex arrangement of changing realities rather than conceptions of oppositions such as 'them-us' (p.202). Popular conceptions of 'Indigenous culture' do not, and possibly, cannot, reflect these nuances. The cultural interface would argue the emergence and development of another regime of truth that could be equally problematic and contested.

Contextually, 'Indigenous culture' is a concept and term which is widely used by institutions attempting to address 'Indigenous problems' such as health inequity. When used in this way notions of 'Indigenous culture' are constructed, maintained, and reinforced through documents enacting

institutional goals relating to Indigenous people. These documents encourage stakeholders to view and interact with Indigenous people using the lens of 'Indigenous culture'. 'Indigenous culture' is also used within this accepted lens to inform or reform specific practices and models. Broadly defined 'cultural' commonalities between Indigenous people such as views about family and kin are used, for example, to inform revised models of service for Indigenous people in fields such as child development (Krakouer, 2018, p.270-272).

The popular and widespread acceptance and use of 'Indigenous culture' raises issues about whether the term has become a regime of truth. The necessary simplification involved in popularisation of the concept may also place at risk a deeper level of interaction and understanding between and among individuals. However, the centrality of the concept to efforts to improve the interaction between non-Indigenous institutions and systems and Indigenous people is evident in the wide array of theories utilising the term and their continued utility. These theories of practice continue to be effective at raising awareness of Indigenous people in, for example, health, education, and social service environments. Cultural safety, for example, is one of these theories of practice which aim to prevent the emergence or continuance of nursing practice without consideration of Indigenous culture.

2.1 Cultural Safety developed in Nursing

Cultural Safety (CS) is a concept which emerged in New Zealand nursing in the late 1980s from the work of Māori nurse and nurse educator Irihapeti Ramsden, following her work within the New Zealand nursing profession to improve the experience of healthcare for Māori patients and families. In her work Ramsden observed nurses operating in ways which reinforced colonial practices of dominance, control and subordination of Māori identity (Ramsden, 2002), and reflected a broader health care system affected by and planned for, the dominant culture and society of more powerful, non-Māori groups (Bozorgzad et al., 2017).

CS developed from the concepts of cultural awareness and sensitivity (Ramsden, 2002), and is an antecedent to ICC (Parisa et al., 2016). CS is a bicultural concept whereby Māori interact with the culture of the nursing profession, as expressed through individual staff (Ramsden, 2002). CS expects nurses to reflect upon their culture and beliefs, and how these influence thoughts and actions, with a view to avoiding implicit or explicit racism or ethnocentrism by identifying and overcoming bias accumulated throughout their socio-political life (Parisa et al., 2016).

CS has been adopted outside of its original context of New Zealand nursing and can now be summarised, at the broadest level, to refer to a concept which acknowledges the ongoing effects of colonization on Indigenous people in neo-colonial countries, including Australia, and enquires how

power imbalances continue to manifest in organisational settings (Mackean, 2019). Use of the concept in healthcare has been widespread as investment into programs and services to address inequities and improve Indigenous people's health and wellbeing in New Zealand and Australia are made by government (Cargo et al., 2019) in an effort to 'close the gap' in health outcomes between Indigenous and non-Indigenous populations.

CS and culturally safe practices and strategies have been credited with inviting decolonization of patient care by promoting awareness of *power imbalances* (Mackean et al., 2019), *structural inequities* (Cox & Simpson, 2015), *social injustice* (McGough et al., 2018), *racism, colonialism* and *discrimination* by professional care givers (Schill & Caxaj, 2019), and *promoting trust, better communication* (Jennings et al., 2018), *power-sharing* (Schill & Caxaj, 2019), *empathy* (Kendall & Barnett, 2015), and for *raising awareness of Indigenous clients* (Milne et al., 2016), *issues* (Coxa et al., 2015; Fleming et al, 2019), and *staff* (Hickey et al., 2019).

CS has also been criticised for attempting to address issues of racism and colonialization from within a monocultural health system (Altman, 2009), being poorly understood (Parisa et al., 2016); subject to ongoing confusion regarding its definition, interpretation and implementation (Doran et al., 2019) and increasing the risk of unsafe clinical practices (Johnstone & Kanitsaki, 2007), whilst not being consistently linked to improved health outcomes for Indigenous clients (Johnstone & Kanitsaki, 2007; Gadsen et al., 2019). Cultural empathy has been suggested by Hogan, Rossiter and Catling (2018) as an alternative approach to achieving culturally safe midwife practices. Whilst Kendall and Barnett (2015) develop the idea of empathy further, advocating for implementation of empathic systems in organisations, such as the sanctuary model of stakeholder response, to improve health systems.

Partly to address conceptual difficulties of CS implementation (Aseron et al., 2013), several authors have attempted to identify key CS components in order to develop practice tools for CS integration or enhancement (Fleming et al., 2019; Hickey et al., 2019; Milne, 2016), however, there is a diversity of context specific approaches and CS factors reported (Aseron et al., 2013; Running Wolf & Rickard, 2003). On a practical level, the social and psychological challenges experienced by professional staff in adjusting their attitudes, thoughts and behaviour to accord with CS implementation can be considerable (McGough et al., 2018).

Ramsden's 2002 thesis tells the story of the author and how her theory of CS emerged over her lifetime as she experienced the intersection between Māori and nursing ways of being. However, she rejects the idea that CS is only about Māori. Rather, she writes about CS as applicable to all people who encounter health institutions and how patients should enter, experience and leave the encounter as themselves, safely within their identity, rather than needing to change to better suit the health

institution or professional. Much of the controversy surrounding the concept appears related to static conceptualisations of 'culture' and political and media agendas of promoting racism. These divisive narratives aid in maintaining arguments of CS being a bi-racial concept with limited potential for implementation outside of New Zealand. However, CS was conceived within a context of localised responses to systemic issues, including individual professional responses to patients, and therefore its intention was always to be a versatile model for local adaption.

2.2 Indigenous Cultural Competence

The term 'cultural competence' (CC) was conceived in response to accumulating research evidencing lower quality care and poorer health outcomes for minority populations in the USA in the late 1980s (Nelson, 2004; Blackburn, 2017). The term has been used in the Australian health sector since the 1990s. It is now widely used across diverse disciplines, as part of a family or suite of concepts and intervention frameworks, all holding a common intention of improving the health, social and educational outcomes for minority groups including Indigenous people (Perso & Hayward, 2015; Dunbar & Scrimgeour, 2009) by explicitly acknowledging and improving the relations between service users who do not belong to the dominant social group; treating professionals and institutions, (Malat, 2001; Phiri et al., 2010; Saha et al., 1999).

ICC grew from a heritage of concepts which sought to reduce inequity in health care. Initial attempts to make health care more accessible to minority populations relied heavily on cultural awareness training, however, subsequent research found that increased awareness failed to change practices. In an effort to address this, the concept of cultural security was introduced; however, cultural security was not broadly adopted. Several other concepts, including cultural safety in New Zealand and transcultural care in the United States of America contributed to the eventual emergence of cultural competence as relevant to Indigenous Australians; Indigenous Cultural Competence (Grote, 2008) (ICC).

In a similar way to cousin concepts such as client centred care and CS, ICC initially focused on individual health practitioner and patient interactions (Saha et al., 2008). ICC also subsumed many of the features of its 'cultural' predecessors or Elders such as self-reflection and a focus upon equity and social justice (Grote, 2008; Hill & Mills, 2012; Sue, 2001). However, despite the similar intention of the terms CS and ICC, they remain separate concepts and practices (Schill & Caxaj, 2019). CS and ICC are sometimes delineated by using CS in reference specifically to the individual experience of the care recipient whilst ICC is more often used as a broader term focused on the integration of culture into the delivery of health and other professional services by their systems and institutions (Nguyen, 2008).

2.2.1 ICC and Legal Practice

Calls for the legal service sector, including the judiciary and lawyers, to adapt more inclusive practices has been persistent since the Royal Commission into Aboriginal Deaths in Custody (Johnson., 1991; Burns et al., 2018), however, the cultural competence of Australian Lawyers has received little attention (Burns, 2013). Accordingly, a review of the literature revealed just three articles relating to ICC and legal professionals. These articles are critical of the sector, including current systems of legal education, admission rules, legal practice and judicial training. The articles describe material available to the profession for promoting improved practices as limited in scope (Burns, 2013); failing to engage practitioners in self-reflection (Burns, 2013; Cavanagh & Marchetti, 2016); void of engagement with topics of white privilege and racism (Cavanagh & Marchetti, 2016); promoting a deficit discourse (Burns et al., 2018) and failing to satisfy standards commensurate with cultural competence (Cavanagh & Marchetti, 2016).

2.2.2 Approaches to Defining Cultural Competence

CC if often defined as:

> *a set of 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* (Grote, 2008, p.14)

These congruent behaviours, attitudes and policies are most often based upon three components: knowledge, awareness/attitudes and skills/behaviours, with each component at least partially context and practitioner specific (Watt et al., 2015). The variable and contextual nature of the model provides flexibility to encompass the dynamic nature of the client or patient and professional relationship (Watt et al., 2015).

Alternatively, localisation involves the definition and evaluation of CC by the members of a specific cultural group, and professional practice is modified in response to their needs (Doyle, 2012). Such a local, as opposed to centralised, approach to Indigenous health interventions has been successful (Campbell et al., 2015; Mullins & Khawaja, 2017), as has a localised approach to gaining cultural competence and knowledge (Burgess, 2017) through cultural immersion. This proposed place-based, or localised implementation of ICC is neither acknowledged (Burgess, 2017) nor excluded in mainstream models of ICC, such as that of Cross (1989) or Goode (2004). However, it would seem to reflect a more detailed and nuanced definition of CC which has the benefit of being directly relevant to local service users.

2.2.3 The Role of Critical Self-reflection

A common component of ICC models is the notion of professionals exploring within themselves to become more aware of their internal cultural landscape (Cross, 1989; Goode, 2004). This component is expressed in several different but related concepts, including, firstly, cultural self-reflection and understanding and secondly, critical reflexivity. In the first concept professionals are encouraged to reflect upon and evaluate their cultural beliefs and norms to appreciate different cultural perspectives (Forsyth et al., 2018). In the later, professionals find ways to question themselves about how they interact with others and how they think, feel and behave in relation to culture (Nilson, 2017). Mental re-framing is another related term used to describe a process necessary for individuals to undertake in order to comprehend and appreciate Aboriginal and Torres Strait Islander culture (Burgess, 2017). The reflexivity inherent in CC has also been proposed as important in the role of unbiased decision making about clients (Boys et al., 2011).

Carey (2015) criticises the popular conception of cultural self-reflection in ICC as applying exclusively to non-Indigenous people. Her criticisms reflect a concern that the omission of Indigenous people from self-reflection reinforces a binary social construct whereby the internalised cultural beliefs and practices of Indigenous people are uncritically accepted and assumed to represent a unified and correct idea of Indigeneity. This criticism of ICC as based on assumptions of binary opposition between Indigenous and non-Indigenous is reflected in broader critiques of ICC as *racist* (Pon, 2009), *essentialist* (Carey, 2015), and *bi-culturally based* (Sakamoto, 2007). Limiting self-reflection to non-Indigenous people may also overlook how people can develop false assumptions, cultural incompetence and stereotypes (Sakamoto, 2005) when exposed to cultures similar to their own (Meyer et al., 2015).

2.2.4 Implementation of ICC and Patient or Client Relations

There is recognition that education imparts more than knowledge and skills, and inducts students into the culture, or way of being, doing and thinking consistent with their discipline (Forsyth et al., 2018). Once students move from tertiary education into practice the clinical encounter of patient and health care professional reflects the micro-dynamics of the broader cultural encounter. During this encounter, interactions are influenced by differences between clinician and patient social position and power, with the politics of identity forming a backdrop to mutual efforts at dialogue and collaboration (Kirkmayer, 2012). This can equally be applied to the legal context, though perhaps with the benefit of legal education or induction being of shorter duration than medical or dentistry fields of practice, and therefore offering the prospect of graduates who are less firmly embedded within their disciplinary culture.

ICC is often discussed as facilitative of trust and mutual understanding (Kirkmayer, 2012; Forsyth et al., 2018; Mullins & Khawaja, 2017) in these clinical or professional encounters, and has been widely adopted and tasked with improving relations between patients and their professionals in a variety of ways. For instance, in relation to dentistry, ICC is a requirement of the Australian Dental Council accreditation process for dental schools. Within this context, ICC is taught to improve non-verbal and verbal communication, patient rapport, and empathetic non-verbal behaviours by dentists (Forsyth et al., 2017).

Specific to legal practice, CC has been linked to procedural justice, with Boys et al, 2011, proposing that legal practitioners receive transdisciplinary education, including in social work techniques of client interview. ICC has also been described as overlapping with the principles and practices of patient-centred care such as respect for people as individuals, holistic consideration of socio-cultural context, effective communication and engagement of patients as partners, and in regards to interviewing technique; promotion of trust and the basis of an ongoing relationship (Saha et al., 2008). This approach has similarities to the relationship-centred approach to lawyering and client relations (Boulding & Brooks, 2010).

Character traits of warmth, empathy and frankness developed through compassion and respect (Kohl et al., 2010) have been described as the core capabilities required by professionals seeking to develop their ICC. These characteristics, like most aspects of ICC itself, are difficult to measure, monitor or guide (Jongen et al., 2018; Paul et al., 2012;) and may more easily be identified by the negative implications which flow from their lack amongst service providers (Paul et al., 2012) accurately and consistently. Even then, the identification of systemic, organisational and/or individual need for ICC development in knowledge, skills, behaviours and/or attitudes (Doyle, 2012) may be difficult. Compounding this difficulty is the diversity of approaches available to increase ICC amongst the workforce which makes approaches and results from heterogeneous interventions difficult to compare (Jongen et al., 2018).

Despite recognition of the importance of place and physical manifestations of culture in ICC (Hill & Mills, 2012; Blackburn, 2017), there was a single article found in relation to the environmental design component of ICC. Anthony and Grant (2016) in their discussion of courthouse design, showcase the lack of consideration of Indigeneity inherent in typical Australian building or space designs and utilisation. This theme frequently re-occurs either directly (eg; Bertilone et al., 2017; Doyle, 2012), or indirectly (eg; Hill & Mills, 2012; Nilson, 2017) throughout the reviewed literature. Anthony and Grant's (2016) research identifies that a lack of empirical research about how the courts are used means it is unclear whether these courthouses are improving Indigenous justice experiences.

2.2.5 Methods of Improving ICC

CC or *awareness training* is one method used to improve ICC (Grote, 2008). Consistent with other aspects of ICC implementation, there is some debate about training, with some, such as Doyle (2012), advocating for the prioritisation and standardisation of cultural training in the same way as other operationalised professional medical skills; whilst others, such as Burgess (2017) view the concept of CC as constraining, and argue for a local, contextual approach to training delivered and controlled by cultural knowledge holders.

Consistent with the ensuing diverse range of training content and methods implemented, there is no uniformly adopted method for measuring the outcome of cultural awareness training (Chapman et al., 2014), and reported results vary. For instance, Chapman et al (2014) found that training changed participant perceptions but not attitudes towards Indigenous people. There appear to be no longitudinal research studies into the effects of training, and no evidence of its impact upon patient outcomes, (Paul et al., 2012). The lack of cohesion and discernible gain for Indigenous people has led to criticism that CC initiatives such as training are strategies used by organisations primarily to reduce costs and risks (Carey, 2015) and that CC teaching remains inadequate and fragmented (Forsyth et al., 2017).

Employment of Indigenous people is also a frequently used strategy to improve ICC, with consistently reported success. Bertilone et al, (2017) for instance, attributes much of the success of a maternity program to employment of Aboriginal Health Officers and grandmothers, particularly in relation to improved communication with Aboriginal clients and Rix et al (2016) acknowledges the pivotal role of Aboriginal Health Workers in acute hospital settings in acting as cultural bridges between patients and medical professionals.

The degree of responsibility placed on Aboriginal staff members for the organisations' cultural performance can be considerable, however. Doyle (2012), for example, states that structural inadequacies and community expectations lead to substitution of Aboriginal Health Workers for other professionals in the best interests of patients, and this contributes to worker burn out. She also identifies the additional out of scope roles she undertakes as an Aboriginal Health Worker, and the emotional challenges of her working environment. This is consistent with Mullins and Khawaja's (2017) discussion of role flexibility and community visibility amongst psychologists working with Indigenous clients.

2.2.6 Critical commentary

The meaning in a name

Just as CS received criticism for its use of the term *safety* (Ramsden, 2002), the teaming of the terms 'competence' and culture has been critiqued for implying that institutions and professionals can achieve a level of mastery over another's social identity (Burgess, 2017). This conceptualisation relies upon an understanding of competence drawn from education, where competence is a binary (pass/fail) measure of curriculum achievement. However, usage of competence in CC signals a broad concept of adequacy or sufficiency of social function (Kohli et al., 2010) rather than any measurable, assessable skill equivalent to clinical competence (Doyle, 2012). CC and ICC regard competence as a journey, rather than a destination (Leavitt, 2010; Nilson, 2017), where participants aim to move along an endless continuum from cultural destructiveness towards cultural proficiency (Grote, 2008).

Othering

ICC has been critiqued as requiring bi-cultural or essentialist assumptions in order to make sense (Carey, 2015). The teaming of the terms 'culture' and 'Indigenous' have been discussed as illustrating ICC's division of people between binary groups of *normal* and *other* (or different from normal), where *normal* represents the dominant social group of non-Indigenous professionals (Sakamoto, 2007), and Other is Indigenous as constructed by members of the *normal* group (Paul et al., 2012). Construction of this Indigenous *other* in turn relies upon building boundaries based upon the assumed essential, unified components of Indigeneity, rather than engaging with the more complex and diverse reality of what it means to be Indigenous (Carey, 2015; Kirkmayer, 2012; Pon, 2009). This process is referred to as essentialism.

Essentialism

The potential of ICC to exacerbate racism through essentialism has been described by several researchers. Pon (2009) and Sakamoto (2007), for example, explain how simplification of identity promotes stereotyping and labelling of people into categories which reinforce, or align with colonial notions of, and language about, Indigenous people (Burns, 2018) as deficient or problematic (Carey, 2015). This discourse of deficit recreates power relations of disadvantage (Sinclair, 2019) and disempowerment (Kirkmayer, 2012), and has been described as a one-sided conversation about Indigenous people providing an excuse for legal professional inaction in addressing inequity (Burns et al., 2018). However, anti-essentialism has been criticised by some authors as degrading shared group identity and weakening political power through a divide and conquer strategy (Nunn, 2018).

Elements of essentialism can be seen throughout the reviewed literature as researchers and participants attempt to negotiate ways of thinking and being which are different for them (Hill & Mills, 2013; Nilson, 2017). For example, the "cultural excursion" reported by Hill and Mills (2012), whilst focused on the importance of place and space to learning and ICC can be interpreted as containing elements of essentialism in that the excursion into Indigeneity necessitated a long journey from the Normal world of the University to the 'edge of the outback' in order for the academics to spend a short amount of time with a small number of Elders. Similarly, the reflections of Nilson (2017) on her experiences in Western Australia concern her use of reflexivity to navigate the 'Other' whilst lacking reference to similarly meaningful experiences in non-Indigenous environments such as urban areas and institutions, thus perpetuating the stereotype of Indigeneity being something which is visited, far away, difficult, and isolated from everyday experience.

Trauma, Racism and Power

ICC has also been critiqued for failing to consider or engage with issues of trauma (Jongen et al., 2018); racism (Herring et al., 2013); power (Sakamoto, 2007); dominant group privilege (Cavanagh and Marchetti, 2016); professional identity (Sakamoto, 2007); and for perpetuating a new racism using discrimination based on culture rather than biology (Pon, 2009). These criticisms are often linked to the previously mentioned elements of othering, essentialism and deficit discourse, each of which attempt to simplify or minimise the issues which professionals, organisations and systems face when attempting to reform practice.

A Regime of Truth

The popularity of the term ICC has also led to criticism that it has become normalised (Sinclair, 2018; 2019) as a 'regime of truth' (Sinclair, 2019) in the Foucauldian sense (Foucault, 1975), whereby it has become so widely used that it is uncritically accepted and accorded the power of 'truth'. As truth it is supported by a body of discourse which empowers and re-enforces the concept whilst censoring or excluding both critical or alternative knowledge and the people who communicate such knowledge. Similarly, institutionalisation of the term has been criticised for serving the process of legitimation, domination and boundary marking and for allowing designated competent professionals to control the delivery of services (Kirkmayer, 2012).

Uncertainty

There is a paucity of data evidencing superior outcomes for patients of professionals implementing ICC (Paul et al., 2012). This may relate to ICC's myriad interpretations (Sinclair, 2019), expansive focus (Saha et al., 2008) and heterogeneity of applications and measures (Jongen et al., 2018). The meaning

of ICC may remain contested (Power et al., 2018) undecided (Paul et al., 2012) or without consensus (Sinclair, 2019), which potentially complicates understanding, implementation and measurement. Proponents of ICC, however, argue the definition and use of ICC in wide, flexible and persuasive terms, including identifying ICC as an 'inherent aspect of professional responsibility' for legal practitioners (Burns et al., 2018); a 'useful base' which can be modified and adapted over time (Wood, 2013); a starting point or awareness promotion tool (Kirmayer, 2012); and a basic human right (Power et al., 2018).

2.2.7 Concluding Remarks Regarding ICC

There is a consistent body of research advocating for movement towards a more patient or client-centred, caring and relational approach to client relations by health and legal professionals. ICC and CS take these notions further, focusing on equity, with a view to changing systemic disadvantages experienced by Indigenous service users. Whilst the popularity of ICC may reflect good intentions, shortfalls and disconnections (Rix et al., 2016) remain, and effectiveness appears variable (Paul et al., 2012), due largely to diverse methods of implementation and measurement. The foundations of ICC are problematic due to compounded complications inherent in the terms 'Indigenous' and 'culture'. 'Culture' in particular has a lengthy political pedigree and lacks communicative efficiency. In addition, the difficulty of defining and translating inherent aspects of being into non-Indigenous constructs necessitates simplification. This results in a widely utilised and accepted popular construction of 'Indigenous culture'. However, in practice, ICC illuminates dominant culture (Herring et al., 2013) and continues to support systemic, organisational and individual practice reforms throughout the health sector.

Conclusion

There appears to be little consideration of Indigeneity as it intersects legal professional practice. Legal practitioners maintain their membership of the legal profession by meeting prescribed minimum standards of ethical conduct, including towards clients, as referenced in the tripartite governance mechanisms of professionalism, fiduciary duties and ethics. These standards have received criticism for reinforcing imbalanced power relations and dispassionate interactions with clients. More caring, relational, responsive and empathetic client relations approaches have been advocated as superior alternatives to this system of ethical governance. Practice models such as CS and CC similarly advocate for disruption of professional-patient encounters dominated by dispassionate medical or allied health professionals in favour of more thoughtful, self-reflective, and caring interactions with patients.

ICC has been widely adopted throughout many professions, with the intention of improving equity for Indigenous service users through improved relations. Whilst the intention of ICC remains consistent, commentary regarding the conceptualisation and implementation of ICC reflects a diversity of understandings, techniques and measures. The literature does not evidence the consistent effectiveness of ICC in achieving superior outcomes for Indigenous service users (Jongen et al., 2018). Where superior outcomes for Indigenous service users were most often reported was in relation to discrete, localised interventions involving service delivery changes (eg; Bertilone et al., 2017) or through implementation of theories and approaches related to ICC rather than ICC itself, such as cultural safety and cultural respect (eg; Liaw et al., 2015; Shepherd et al., 2016).

Many aspects of ICC remain uncertain. At minimum, however, ICC brings to the fore considerations of relations with Indigenous patients or clients, a topic which is currently omitted from explicit reference within legal practice governance. ICC may offer a way of improving Indigenous client practitioner relations, which, given the critical importance of client relations to ethical, effective legal practice and procedural justice, is an area of research deserving of attention.

The literature review has identified a clear research gap, existing between the literature discussing ICC and the literature concerned with legal practice. Without further research it remains unclear if current legal practice ethics incorporate elements or principles of ICC; whether and to what degree there is potential for the use of ICC in legal practice; and how ICC or other practice innovations with a similar intention be implemented or supported within the context of non-Indigenous legal practitioner and Indigenous client relations.

Summary of Chapter

This chapter has reviewed the available educational research and professional literature regarding ICC and legal practice in Australia. The chapter has discussed current legal governance structures in relation to client relations before turning to examine the theory of ICC. Cultural safety has also been discussed due to its important role in developing ICC and the frequent overlap between the theories. Within the topic of ICC, definition, implementation, and methods of improvement were talked about. The critical role of self-reflection within the theory was also discussed. Criticisms of ICC were canvassed, including othering, essentialism, uncertainty and ICC as a regime of truth. The chapter concluded that the literature showed little relationship between legal practice and ICC. The review also found that ICC displays consistent good intention but variable results.

Chapter Three: Method and Methodology

Introduction

This chapter outlines the interpretive framework, methodology, and method used in this research. It talks about where I am situated, as a practitioner-researcher, and what assumptions I have made in designing this project. The chapter describes processes and rationales of data analysis. It provides the processes of selection, recruitment, and interview of participants, and compares the rationale of interview questions with their outcome. The chapter also considers the issue of validity.

3.1 Researcher Standpoint

I am a solicitor working for an Indigenous specific law firm in a remote area of Queensland. Unlike most of my colleagues, my background overlaps many of the experiences of clients, and my clients resemble my family. Within my family Indigeneity holds various positions; denied, acknowledged, rejected, even alternating, and the conflicts involved in choosing and articulating are bitter. My personal identity is complicated and contested, as evidenced by my name, which is chosen by me, rather than by my parents. I have been aware of my marginality all my life. However, within the culture of my profession, I have achieved belonging.

I have held my current position for more than five years, having previously lawyered in government and private practice. Upon reflection on my previous practice with non-Indigenous clients and when I duty lawyer for all court attendees, I recognise a difference in my own practice and comfort between clients who are or aren't Indigenous. I find I have a positive bias towards dealing with Indigenous clients. However, when I am asked by a colleague how to practise better client relations or when a client tells me my colleague is offensive, I have few authorities beyond subjective notions to draw on to support my advice to either party. I am aware that my position in relation to Indigeneity and legal practice is unusual and therefore anything I have to offer may reflect a consensus of one.

This research comes from a place of empathy with both non-Indigenous colleagues trying to provide the best possible legal service to Indigenous clients with few experiences or tools to help and Indigenous clients dealing with strangers in every sense of the word. This research also comes from a place of anger and frustration, where the chronic, growing over-representation of Indigenous people in the legal system points to serious unaddressed injustice at every level of the system. This research aims to use words to better understand where one part of me/my identity (my professional family) is

in relation to another part (my Indigenous family); and how these two parts might become more reconciled.

3.1.1 Ontological and Epistemological Assumptions

Post structuralism was a key shift in knowledge production in the Western tradition that emphasized socially constructed meanings. This research accepts that in addition to natural reality (such as hot weather; rain; health), that reality consists of multiple individual perceived, experienced, or constructed realities simultaneously occurring of which none should be prioritised as superior or truer than any other. This later reality is individually constructed through social interactional practices which are contingent upon socio-historical context. Whilst knowledge of reality is an individual attribute, I assume that there is some commonality between individual realities where people share socio-historical context and, flowing from this, social interactional practices. I have applied this understanding of ways of being to three collections of individuals; legal practitioners, health practitioners, and Indigenous service (legal or health) recipients. I have chosen qualitative research as I seek to understand the realities of participants (Maxwell, 2011; Menzel, 1978).

This research accepts that documents written by law and health authorities are regarded as important within their respective professions. An indicative small selection of texts created within each profession will be analysed with a view to exploring some of the concepts and structures contextualising practitioner realities (Maxwell, 2004) in relation to Indigenous service users. Resultant identified concepts and structures will then be compared and contrasted in order to find meta-narratives which are consistent and meaningful across both law and health.

Text analysis views discourse as a powerful tool for creating and reflecting realities. It holds that discourse can be explored using text and language deconstruction to reveal the underlying social and conceptual contexts and processes (Maxwell, 2004) reflected, sustained, and created by certain discourse, such as power hierarchies, omissions, and contradictions. In using this approach, I aim to explore the processes connecting discourses to professional practices with Indigenous clients and offer an opportunity for practitioner subjects to escape false consciousness (Kamberlis & Dimitriadis, 2005) minutely or momentarily.

Consistent with Foucauldian epistemological assumptions of social construction and relativity, my research assumes that reality is co-produced in that social relations between individuals shape reality, knowledge, and truth. I therefore do not make any assumptions about how or if the written texts analysed by me or my analysis itself influences individual legal and health professionals' behaviour

towards individual Indigenous service users. Rather, I seek to explore how individual experiences and meaning making varies between legal practitioners within the meta-narrative context revealed by the text analyses.

A Foucauldian epistemological approach is consistent with themes promulgated throughout the legal profession such as power, language, knowledge, truth, and the subject. Many theories of power intersect with law, with law occupying a position both as an instrument of, and constraint upon the power of the Monarchy (Foucault, 1975), ruling class (Marx, 1867), government or bureaucracy (Durkheim, 1893; Weber, 1905). Power is an important theme in law and legal practice at all levels, from the judiciary which is often conceptualised as a check and balance to the power of the legislature and executive, through to the perceived power of the legal profession to provide fairness of legal process through client representation and advocacy.

3.1.2 Interpretive Framework: Michel Foucault

The theorist Michel Foucault has been described as obsessed with power (Wickham, 2006). Foucault was not a legal theorist. He did not develop a theory of law (Baxter, 1996; Valverde, 2010) or legal practice. His references to law occurred within works centrally concerned with exploring the manifestation and mechanisms of power in Western society (Wickham, 2006). Foucault contrasted monarchical power regimes which used juridical law to inflict interrogation and spectacular punishment upon subjects, with modern power, which he described as the ability to influence others and as something which was omnipresent, insidious, and dynamic (Van Krieken, 2001).

Foucault's view of power as relational and existing only in action is reflected in both broad considerations of the importance of procedural justice in legal practitioner and client interactions (Sprott & Greene, 2010), and specific interactions, for example, during client interview (Boys et al., 2011; Burton, 2018). Unlike the more specific focus of structural functionalists, conflict theorists or symbolic interactionists, Foucault's conception of power acknowledges the intrinsic presence of power 'everywhere' (1978, 1993), affecting everyone (1980, 1998), and producing (1977) rather than only repressing (1978). This conception of power provides a more equitable role for professionals and clients to co-create effective relations.

Within Foucault's work law manifests differently throughout time and place as it is just one tactic power uses (Tadros, 1998). Law is viewed as a force directing power, or an interface through which administrative mechanisms can be altered to enable government decisions to take effect (Tadros, 1998). The position of legal practitioner client relations within this power structure is relevant to

dignity based lawyering which seeks to resist state power through client focused practice (Batesmith & Stevens, 2019), *movement lawyering* which seeks to disrupt the political status quo (Cummings, 2020), principles of *anti-subordination representation* which challenge race-neutrality claims in law (Alfieri, 2005), and lawyers operating as mediators of state power (Cheng et al., 2015).

For Foucault, power and knowledge are reciprocal. Power creates or allows the production of certain knowledge, which then reinforces exercises of power. All knowledge, including this research, is constructed through discourse. A key mechanism in producing knowledge was what Foucault termed regimes of truth, which were discourses accepted and acceptable as true in that time and place. Regimes of truth influence thought and practice, bounding the ideas accepted into the body of knowledge and practice within a discipline and resisting change. The term 'regime' reflects the idea that truth is constructed and maintained by a ubiquitous institution affirming and reinforcing its power.

The accepted discourse of justice applying equally to all individual legal subjects regardless of personal characteristics may be thought of as a regime of truth within the legal profession. Both Critical Race Theory and Post Colonialism discuss how individuals existing within the legal subject construction are dealt with, or 'visible' in law, whilst other (non-legal) subjects remain invisible (Leiboff & Thomas, 2004). Similarly, the accepted practice of individuals seeking to uphold legal rights can be regarded as a regime of truth. *Movement* lawyers have criticised this model of liberalist advocacy for promoting singular conflicts within an adversarial system, thereby undermining the power of legal subjects (Cummings, 2020). These discussions, however, remain alternate to the mainstream practice and conception of law as blind to the identifying features of its subjects, and this blindness being attached to a discourse of equality, neutrality, and fairness.

According to Foucault, regimes of truth are formed by objects and practices given meaning through discourse. Discourse constructs knowledge about something by attaching meaning and ideas to it. Discourse includes ways of representing, talking, and doing, through all mediums, or texts. Discourse analysis helps reveal the conditions of possibility, or unconscious rules of thought, in a time or place. Foucault's approach to discourse analysis is useful in revealing manifestations of power and their relations. Both are central concerns in equity and social justice-based approaches relating to both the cultural family of practice theories in health (Cox & Simpson, 2015; Jennings et al., 2018; Kirmayer, 2012; Parisa et al., 2016) and to a lesser degree, alternate approaches to legal ethics (Boulding & Brooks, 2010).

Foucault spoke of ethics as a relationship with self involving sustained focus upon aligning ways of being with moral agency. Caring for oneself in this way requires an individual to make themselves a subject, which they work upon (for example, by self-reflection) with moral intent for the purpose of ethical conduct, often against dominating forces which discourage liberty and truth (White, 2014). Indigenous Cultural Competence and Cultural Safety both consider elements of self-reflection and equity action (Carey, 2015; Sakamoto, 2005). In contrast, legal ethics are prescribed responsibilities enshrined in documents such as *Ethics Conduct Rules*. Such documents may reinforce a normative discourse about how legal practitioners consider and evidence care about clients and limit consideration of alternate ethics models or practice frameworks. The space for resistance, innovation and "self-care" or self-reflection by practitioners within this framework is uncertain.

3.1.3 Qualitative Methodology

In this research qualitative data has been used to explore the nature of legal practice by non-Indigenous solicitors with Indigenous clients, a governance document which applies to them, and a Queensland Health document demonstrating an ICC approach to enabling Indigenous health equity. Use of social science methodologies (including qualitative research) and interdisciplinary techniques to illuminate the effects of law on society is supported by writers such as Hutchinson (2010, 2012), and Suter (2012) who emphasise the effect of law upon society (Hutchinson, 2012, p99) and the necessity of looking outside of the law for answers (Suter, 2012) to legal questions. A qualitative approach was chosen as reflective of a desire to acquire deeper understanding of the current situation from the 'multiple realities' of participants (Suter, 2012).

3.1.4 Method

This project is specific in time. It provides snapshot of selected parts of the current situation and then examines the meaning of these parts by looking into and beneath them using discourse analysis. Patterns which emerge from the data analysis are then used to inform findings, discussion, and identify links to other studies, practices and ideas. As a qualitative study the research is conducted within the natural working environment of participants and practitioner-researcher. It is a multi-method study using primarily documentary research. Interviews were used to both seek a deeper understanding of how notions manifest in practitioner discourse and performance and to enhance validation through triangulation of text analysis results. Non-probability purposive sampling from a homogenous interviewee group (same occupation) were used for representativeness (Maxwell, 2013). In person, synchronous electronic (zoom) and asynchronous electronic (e-mail) semi-structured interviews were used for data collection.

3.2 Research Questions

This thesis explored the following research questions:

1. Do current legal practice ethics incorporate elements or principles of ICC?
2. What is the potential utility of ICC in the practice of law?
3. How might ICC or other practice innovations with a similar intention be implemented or supported within the context of non-Indigenous legal practitioner and Indigenous client relations?

3.2.1 Data Sets

My research is informed by three data sets.

Data set One:

1. Australian Solicitor Conduct Rules 2012 (ASCR)

The Australian Solicitor Conduct Rules 2012 (ASCR) is a key operational document governing the ethical behaviour of solicitors in Queensland. The document summarises and enshrines rules of conduct, including in client relations. These Rules have been derived from both Law and tradition. The Rules, or, for states other than Queensland, their interstate equivalents, are enforceable through State Legal discipline bodies Australia wide. All Australian legal practitioners are subject to substantially similar documents.

Data set Two:

2. Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010-2033

The Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010-2033 is an important policy document guiding Queensland hospitals and health service providers. The document, and the policies it reflects, responds to the Coalition of Australian Government (COAG) Closing the Gap objectives of improved health outcomes for Aboriginal and Torres Strait Islander people. The document contains key outcomes, strategies and guides for implementation based upon a state-wide view of aspiring change.

The documents for data sets One and Two are available publicly through general internet search.

Data set Three:

3. Twelve transcribed semi-structured interviews with non-Indigenous legal practitioners working exclusively with Indigenous clients.

Semi-structured interviews are consistent with the inductive approach and allowed further explanation and introduction of new or novel ideas by the interviewees whilst maintaining comparability. Non-Indigenous practitioners were chosen for interview as they represent most legal practitioners representing Indigenous people in Australia. Practitioners working exclusively with Indigenous clients were viewed as most likely to generate data relevant to the research.

The ethical considerations involved when interviewing colleagues in the same law firm were canvassed in my March 2021 application to James Cook University human research ethics committee. To reduce the risk of perceived power imbalances or feelings of coercion caused by any perceived seniority, only unsupervised legal practicing certificate holders working within a different area of practice and/or a different geographic location to me were approached for interview. Where interviewees were unknown to me, I also reminded them of my role as practitioner/researcher during interview and the terms of the information and consent forms, including the confidential nature of the information they disclosed to me, and their right to withdraw. Ethics approval number H8381 was received on 29 April 2021. A copy of the e-mail providing ethics approval is contained in appendix 1.

3.2.2 Interviewee Recruitment Process

In December 2020 I secured written approval from the CEO and executive of the employing law firm for employees to participate as interviewees, and in my case, as interviewer. Potential interviewee awareness of the project, my role, and our employer's endorsement of participation was built by Queensland state law directors and myself speaking about the project as an agenda item during two Queensland-wide quarterly staff meetings, in December 2020 and March 2021. During these meetings I was introduced, and it was stated to attendees that I was working on my research masters and would be contacting staff and inviting them to participate in confidential interviews. The agenda disseminated to all legal practitioners identified me by name, role, and location.

Interviewees were approached by me in person, from student e-mail or private telephone. Interviewees were approached via e-mail to their work address at first instance, and in some cases, this was followed by an in person or telephone approach, for instance, where agreement to participate had been indicated but a consent form had not been returned. Each interviewee was provided with

an information sheet, informed consent sheet, and was informed of their right to withdraw from participation at any stage. No interviewees were a subordinate employee to me.

E-mails to potential participants were sent in three stages. Each stage contained 18 e-mails inviting participation (54 total). The first stage, sent in April 2021, was directed to practitioners in the regional north Queensland towns of Normanton, Townsville and Cairns, as it was thought that these practitioners would be most interested in the project. One person from Townsville agreed to participate. The second stage, sent in May, was directed to practitioners in a wide array of locations in regional Queensland including Mount Isa, Rockhampton, Toowoomba, Charleville and Mackay. Twelve were known to me and six had previously worked at my office. One participant was currently working at my office. Six became participants. The third stage, sent in June, was directed to practitioners who were predominantly working in the southeast of Queensland, including the cities of Brisbane and the Gold Coast. Five became participants.

The overall response rate was higher than the 22.2% participation rate, with eight practitioners expressing agreement but then failing to be available for interview. There were no participants from Thursday Island or Cairns. All interviews were completed by mid-July 2021. There were four male interviewees (33.3% of sample). This is consistent with the Australian percentage of men employed in the community legal sector as solicitors (30%) (NSW Law Society, 2019).

3.2.3 Interview Procedures

Interviews were conducted by the researcher in person, by video conference or e-mail at the workplace of the legal practitioners at a time and day nominated by them. Interviews were conducted in a confidential space. Three interviews were conducted via e-mail; two in person and the remaining seven via zoom. Due to technical issues in one zoom meeting, this interview was substantially conducted via telephone. On average zoom and in person interviews ran for 31 minutes. Pseudonyms were ascribed, and data anonymised. Transcribed interviews were saved on JCU storage cloud and provided to interviewees via e-mail for review in August 2021. Interviewees were provided with the opportunity to seek revision, redact, withdraw or explain statements prior to analysis. There were no substantial changes requested and no participants withdrew.

3.2.4 Key Questions or Themes of Interviews

All interviewees were asked four key questions in the order 1-4 below.

1. What are the Australian Solicitor Conduct Rules (ASCRs)? When did you last read the ASCRs?

2. How do you use the ASCRs in relations with clients? Tell me about a time when you have used the ASCRs.
3. What is Indigenous Cultural Competence? Tell me where you were working when you heard the term Indigenous Cultural Competence or Cultural Safety or any term like that?
4. How have you changed the way you practice law since commencing work exclusively with Indigenous clients? Tell me about a time when client Indigeneity influenced your practice.

3.2.5 Question Rationales and Responses

The questions asked of interviewees aim to explore perceived and affective power of traditional legal notions and instruments of client relations ethics governance (ASCRs), measured against use of innovative practices and knowledge or interest in alternative client relations frameworks. The technique of jointly asking questions in both specific, past tense and generalised, present tense aimed to enhance the depth of results (Maxwell, 2013; p104).

Question one was designed to identify how legal practitioners perceive the ASCRs; whether as guidelines or absolutes; how relevant and current they are in practitioners' minds, as well as to capture any discussion revealing attitudes towards or opinions about the ASCRs. The specific and simple nature of the questions about a familiar document was designed to place the interviewee at ease.

Five practitioners expressed surprise at this question and uncertainty in responding. This had the opposite effect to that intended in that it aroused confusion and suspicion rather than placing these practitioners at ease. In one case, the question elicited the commencement of a protracted response involving multiple illustrations which were at times seemingly irrelevant.

Question two was designed to open discussion regarding how practitioners use the ASCRs in practice and how useful they are regarding client relations. Participants found this question much easier to answer, focusing on specific rule areas within the ASCRs which they encountered most frequently.

Question three was designed to draw out any knowledge, awareness and attitude they may have about the cultural suite of practice endeavours. Practitioners were expected to express confusion in response to question three, however, only one did. Most practitioners had a working definition of ICC without any formal knowledge or awareness of the theory, and only when I tried to speak about ICC and related concepts as being theories of practice did some practitioners express confusion.

Question four was designed to invite discussion of specific examples of practice as well as discussion about the changing practice position of the interviewee. It was thought it may invite discussion of practice with Indigenous clients generally and may be helpful in highlighting any misalignments between a practitioner's education and expectations of practice and experienced reality.

Most practitioners initially had difficulty answering this question, commonly saying that they endeavoured to treat everyone equally and with respect and as individuals. My position as an insider helped to encourage specific examples of changed practice, sometimes by way of contrast with previous workplaces. However, generally this question was not effective at prompting reflection upon practice, self, or broader institutional or contextual structures.

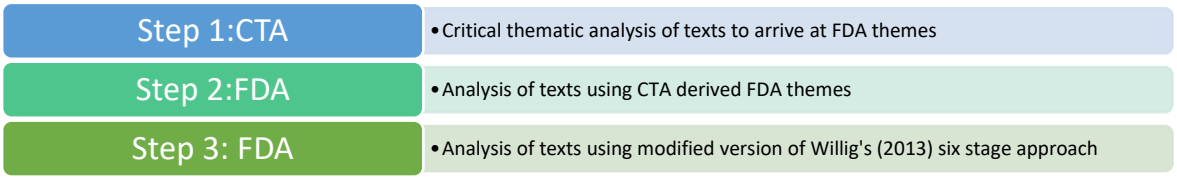
3.2.6 Validity Considerations

It is acknowledged that I have worked in the same office, and therefore know, seven of the interviewees. These are interviewees numbered 1, 2,3,4,5,9,11,12. Of these colleagues I maintain a close professional relationship with one, being interviewee 3. All interviewees are, however, experienced solicitors with high levels of experience in both interviewing and negotiating power imbalances and are in a position of responding to non-evaluative questions. The potential bias and reactivity this knowledge of the interview participants may have produced is balanced against the richness of the data allowed by these relations.

Triangulation in the form of using a variety of data sources (documents and interviews), interview methods (e-mail, video conference and in person), and interviewee locations (different offices), combined with respondent validation of pre-analysis transcriptions aims to enhance research validity whilst maintaining data gathering methods which allow participants to relax sufficiently to reveal their realities. This approach is consistent with the subjective nature of the Foucauldian ~~post-modern~~ approach. There was no discernible pattern differentiating known interviewee responses to unknown interviewee responses in any way.

3.3 Method of Data Analysis

Figure 1: 3 step method of data analysis



Data was analysed using a three-step process. As a first step to organising the data from all three data sets, it was thematically organised into open, or inductive codes (Russell, 2010) using the technique of Critical Thematic Analysis (CTA) (Owen, 1984). Foucauldian Discourse Analysis (FDA) themes were then used as closed codes (Russell, 2010). This process assisted in ensuring that the FDA themes selected for use had emerged in a documented way from the data and served as a check upon bias in selection of FDA themes. This process additionally produced a disruption to the deployment of Willig's 2013 model. The second step was use of the CTA checked themes in FDA following the inspiration of Kendall and Wickham. This produced a general narrative of the situation in relation to these themes and the texts. Step three was the use of a modified version of Willig's FDA model to tighten understanding around the effect of the discursive constructions within the texts upon individual subjects.

3.4 Critical Thematic Analysis (CTA)

As a precursor to employment of FDA, transcripts were initially open coded using the guiding principles of CTA (Owen, 1984) being repetition, recurrence and/or forcefulness (Lawless & Chen, 2019). Critical perspectives such as CTA and Critical Discourse Analysis (CDA) intersect FDA purposes such as the deconstruction of underlying knowledges and assumptions embedded in discursive formations to enable the invisible to become visible and thereby to create the possibility for critical engagement. In accordance with CTA's technique, repetition was identified when key words or phrases were repeated; recurrence was identified when concepts or meanings were repeated using different words and phrases; and forcefulness was identified when speech pace, tone or volume changed indicative of emphasis or dissonance.

3.4.1 Rationale for CTA

CTA was initially confined to interviews, however, attempts to use FDA on the chosen documents (ASCRs and ATSICCF) resulted in my falling down the rabbit hole of genealogy and archaeology of law, despite my project design acknowledging this trap for novice researchers and the guidance of Willig (2013) who omits these steps. My forays into archaeology illustrated the abundance of Foucauldian themes available throughout the law document, resulting in a confusion of words stretching weeks of candidature. Following this experience, in an effort to better refine, justify and structure the FDA, these documents were also initially open coded using the guiding principles of CTA (Owen, 1984) before closed coding Foucauldian themes in the same manner as the interview transcripts. In addition to its' role relating to FDA, CTA provided independent insight into the patterns and assigned importance of information within the texts and for these reasons has been included within a separate chapter.

3.4.2 CTA and Interview Transcripts

In an additional step, responses within part one of interview question three and interview question four were thematically grouped prior to closed coding. In the first, this was due to the large repetition of the word *Culture* and diversity of recurrence relating to *Culture,* and in the second this was due to the diversity of use of repeated and recurring words and the large size of discursive formations. Thematic grouping prior to closed coding was done to check that the open codes assigned aligned with and encompassed their sub-theme components. Responses were grouped by repeating patterns of words or concepts and arranged into response themes. These response themes then became the open codes in the same manner as for repeating, recurrent or forceful words in questions one and two. Each interviewee was counted once in each theme category regardless of the number of mentions within each theme to avoid any single interviewee unduly influencing results.

3.4.3 Choice of Codes

The CTA closed coding of all texts resulted in 17 Foucauldian themes. Selection of common themes can assist in directly comparing the mechanisms of each theme as applied to each group, whilst contrast between non-common themes may also reveal important differences. Since choice of either method may exclude what was most important, I chose the FDA themes to utilise based on the three most recurring frequencies of code within each group. This resulted in the 5 codes: governmentality; regime of truth; discipline; power-knowledge; subject positions and roles. Four of these themes are shared between the documents, with discipline being the exception. These shared codes conceptually link the data sets using Foucauldian themes and more easily allow comparisons to occur between documents in relation to these themes.

3.4.4 Introduction to the Codes

a) Power-knowledge

Power-knowledge in the Foucauldian sense, rather than simply power, refers to the relations and processes which produce knowledge and truth through discourse, and maintain 'regimes of truth'.

b) Regimes of truth

Regimes of truth are apparatus which control the perception of some truths being unquestionable. Power-knowledge moves through discourse and discursive instruments such as governmentality, subjectivity and discipline to reproduce, select, and reinforce certain knowledges and truths.

c) Governmentality

Foucault used the term governmentality to refer to the procedures and techniques designed to

govern the conduct of populations as well as individuals; or methods of conducting the conduct of others. Rather than remaining a concept linked to the creation of docile bodies or empty vessels, governmentality has been explained as best achieved by eliciting the cooperation and complicity of individuals (Allen, 1999, p.198-1999; Rose & Miller, 1992; Sidhu, 2011)

> *who internalise the effects of power and regulate themselves towards ends that are congruent with the forms and effects of power deployed by the state* (Foucault, 1991, p.91-94; Rose and Miller, 1992, p.2).

d) Discipline

Foucault describes discipline as a mechanism of power regulating individual behaviour through the organisation of space, time, and people's physical activity; enforced using complex systems of surveillance. Discipline frequently flows from governmentality as conduct of subjects is controlled. This section will describe some of the discipline structures exposed within the texts and their uses, as well as some of the possible results flowing from these.

e) Subjectivity

Foucault described the subject as a self-aware entity capable of free will, and subjectivities as being the places for these subjects to inhabit. Foucault theorised that conducting others relies upon the will of subjects to be conducted in that way. Extrication from a particular subject position requires building alternate subjectivities through voluntary insubordination.

3.5 Foucauldian Discourse Analysis (FDA)

All data sets were analysed using Foucauldian discourse analysis. Although this approach can be applied to any symbolic system (Parker, 1992), my analysis was confined to written or transcribed text. I used two primary approaches to FDA; Kendall and Wickham (1999) and Willig (2013). The first interrogates a text to arrive at an understanding of its' contextual narrative, purpose, meaning, background and effect. The text is observed and studied in an impersonal way to reveal how it emerged and what it represents. Willig's approach is more pointed and personal. It looks to the effect on an individual of the discursive constructions within a text. Taken together, these approaches to FDA situate individual subjects within the wider discourse.

3.5.1 Kendall and Wickham

Kendall and Wickham (1999) outline five steps of Foucauldian discourse analysis and identify key questions to be asked of a text, such as:

1. What is being represented here as a truth or as a norm?

2. How is this constructed? What 'evidence' is used? What is left out? What is foregrounded and backgrounded? What is made problematic and what is not? What alternative meanings/explanations are ignored? What is kept apart and what is joined together?
3. What interests are being mobilised and served by this and what are not?
4. How has this come to be?
5. What identities, actions, practices are made possible and /or desirable and/or required by this way of thinking/talking/understanding? What are disallowed? What is normalised and what is pathologised?

3.5.2 Willig

Willig (2013) provides six analytic stages of Foucauldian discourse analysis, each corresponding to key questions. These six stages and their questions are:

1. Discursive constructions
   i) How is the discursive object constructed through language?
   ii) What type of object is being constructed?
2. Discourses
   i) What discourses are drawn upon?
   ii) What is their relationship to one another?
3. Action Orientation
   i) What do the constructions achieve?
   ii) What is gained from deploying them here?
   iii) What are their functions?
   iv) What is the author doing here?
4. Positionings
   i) What subject positions are made available by these constructions?
5. Practice
   i) What possibilities for action are mapped out by these constructions?
   ii) What can be said and done from these subject positions?
6. Subjectivity
   i) What can potentially be felt, thought and experienced from the available subject positions?

3.5.3 Use of CTA in FDA

My use of CTA to confine and affirm the FDA produced a difficulty in relation to Willig's model. One of the five themes identified within the CTA closed coding was 'subject positions and roles' which bore

a close resemblance to 'subjectivity' in the Willig model. There was also tension in seeking to utilise Kendall and Wickham's model without considering archaeology and genealogy. Inclusion of archaeology and genealogy had the potential to expand the research beyond the available time and space, despite the effect of CTA in constraining the themes to be considered. Exclusion of archaeology and genealogy had the potential to omit an important, broad, and foundational layer both of the analysis and of Kendall and Wickham's model. Consideration of these tensions lead to the decision to deviate from both models of approach to FDA.

3.6 Data Analysis Rationale

There is no standard method for conducting FDA. When applying Willig's six stages I adopted a hybrid approach, substituting subjectivity for archaeology and genealogy and changing the position of this stage from 6 to 1. This substitution fulfilled several purposes; the first was to enable greater exploration of loaded language and text, particularly in the legal discourse; the second was to omit duplication or further manipulation of the subjectivity theme, which is close to the CTA theme of subject positions and roles; the third was to encompass Kendall and Wickham's 5 stage approach, which is inclusive of archaeology and genealogy. The change in position is due to the sequential nature of Willig's analysis, which narrows concentration at each stage. Archaeology and genealogy are by necessity broad strokes, partly informing texts by historic review, and therefore most appropriately positioned at stage 1. I did attempt to consider and, where applicable, integrate Willig's conception of subjectivity[11] within other stages so as not to omit the important analysis contained in this stage.

3.6.1 The Six Stages

Each text was examined and described in the following order:

1. Archaeology and genealogy
2. Discursive constructions
3. Discourses
4. Action orientation
5. Positioning
6. Practice

[11] Subjectivity is used by Willig to link discursive constructions and subjective experience. Willig describes it as the most speculative (Willig, 2013, p136) of the stages as it attempts to make known the possibilities for feeling provided by the preceding stages, such as discourse, discursive constructions, and positionings.

3.6.2 Introduction to the Stages

Stage 1. Archaeology and Genealogy

Due to the potential size of a full analysis, this layer involved a necessarily truncated description of the archaeology and genealogy of each text. Willig undertakes her analysis without exploring genealogy and archaeology. Kendall and Wickham (1999), however, use both archaeology and genealogy. They speak about the difference between the concepts and the usefulness of their separation or combination in analysis, concluding that:

> *Perhaps it occurs to you at this point, as it occurs to us and has occurred to other scholars as well, that a lot can be gained by keeping archaeology and genealogy together (p.11).*

They provide seven purposes for archaeology and four for genealogy, before stating (p.11):

> *archaeology can be understood as Foucault's method; genealogy is not so much a method as a way of putting archaeology to work, a way of linking it to our present concerns. We might think of genealogy as the strategic development of archaeological research (see also Foucault 1981a; Bevis et al. 1993; Dean 1999: 32, 4).*

Perhaps a clearer working definition for the terms is provided by Sam (2019, p.343):

> *The purpose of this method is to better understand **implicit knowledge** (savoir) as it sets the conditions for formal knowledge (connaissance; Scheurich & McKenzie, 2005). Foucault notes that archaeology is akin to conducting a general history. Instead of focusing on a grand theory or overarching logic to bring coherence to the past, general history looks at mutations, change, contradictions, and continuity over time (Foucault, 1972).*

Stage 2. Discursive constructions

Willig explains discursive constructions as the ways in which the discursive object is constructed through language (Willig, 2013, p.134). This involves looking at the ways people talk about something; the context of the thing referenced in the sentence or paragraph; and the implications or meaning which can be drawn from these. Willig provides the example of how the discursive object of 'the relationship' is constructed by interviewees as something which can be finished when the interviewee talks to friends about how best to end the relationship. Looking at discursive constructions is a way of peering underneath the language to see some of the supporting concepts and linkages without making assumptions as to the reasoning or motivation of the speaker in their use of particular

language[12]. The first step of analysis in Willig's model involves identifying each reference to the discursive object.

Stage 3. Discourses

Having arrived at two dominant constructions of the object, Willig then places these constructions within wider discourses (p.132).

Stage 4. Action orientation

Willig explains action orientation in terms of the function of the different discursive constructions of the object within their discourse contexts. She speaks of action orientation as helping to describe the possibilities that construction of an object within a certain discourse provides to the speaker or text. Adoption of a romantic discourse for instance, may serve to emphasize a loved one's caring role in a patient's recovery.

Stage 5. Positionings

Willig describes positionings as the positions subjects can take up within the networks of meaning. Subjects are not roles in that they provide a discursive place to inhabit rather than a part to be played.

Stage 6. Practice

Willig describes practice as concentrating on the relationship between discourse and practice, with a focus on whether opportunities for action are opened or closed by discursive constructions and subject positions. She explains that:

> *certain practices become legitimate forms of behaviour from within particular discourses. Such practices in turn reproduce the discourses that legitimate them (p.132).*

The example she uses is the legitimacy of unprotected sex within marital discourse constructing long term relationships as incompatible with condom use.

3.6.3 Data Analysis Rationale Summary

The challenge for this project was always about how disparate disciplines and their documents could be brought together through a process of analysis. Whereas it would have been simple to arrive at an FDA composed of two sets of findings according with the two disciplines of health and law, a [rickety] bridge has been built by using a more complicated approach. CTA has been used to link the texts by shared FDA themes. Two approaches to FDA have then been utilised, one which maps the effect of discursive constructions within a text on individual subjects, and one which situates each text within

[12] Kendall and Wickham (1999) refer to this as 'no inside'.

broader structures in accordance with CTA derived themes. These themes have been drawn from all texts but applied predominantly to data set three, as this data set combines and performs practices relating to other data set texts. FDA of texts in isolation has also been completed to ensure a thorough understanding of both the method and effect of discourse.

3.7 Previous Literature Interpretive Frameworks

Within my literature review I identified three research projects which explored areas or utilised methods which overlap or intersect my research.

Mullins and Kawaja (2017) researched the experiences of non-Indigenous psychologists working with Indigenous clients using thematic analysis of semi-structured interviews with 12 interviewees using the six-phase framework outlined by Braun and Clarke (2006). This project has similarities to at least one of the themes in data set three of my research, in that it explores the professional practice by non-Indigenous professionals servicing Indigenous clients. However, Mullins and Kawaja do not explore ethical structures constraining and supporting psychological practice, nor any documents nor alternate frameworks.

Use of thematic analysis of transcribed interviews for data set three of my research would allow a degree of consistency and comparability to Mullins' findings in relation to at least one of the four interview themes, with the potential to reveal interdisciplinary similarities. However, use of Foucauldian analysis has been chosen largely because of the important role of discourse analysis within written documents in data sets one and two. Consistent application of this technique provides consistency with the preceding data sets and allows more reliable and meaningful comparison across all data.

Sinclair (2018) used a post-structuralist approach to grounded theory and yarning to collect data from 9 participants about early childhood educators' perspectives and understandings of cultural competence. This data was then thematically analysed using an inductive qualitative method. Sinclair's study is situated with a similar conceptual context to my project, and, unlike Mullins, locates practitioners within their interactions with Indigenous cultural competence. Her approach is informed by Foucauldian text analysis of the Australian early years learning framework and discourse analysis of Indigenous Cultural Competence.

Although the number of interviewees is comparable, the mixed method approach of Sinclair appears to require more complexity and time than my research permits, having been drawn from a larger body

of work which also utilised Q methodology. As a new researcher I understand grounded theory as an approach for generating theory which accounts for behavioural phenomenon, with theory being inductively grounded in data usually drawn from participant experience. Consistent with her choice of grounded theory methodology, Sinclair's primary data source is interviewees. The focus of my research however, is upon the discursive and conceptual structures informing legal practice. As such, interviewees serve to test some of the ideas brought forward from the text analyses, rather than their perceptions or behaviour forming an independent research interest. For these reasons grounded theory is not considered methodologically congruent with my research.

In Q methodology, participants rank and sort a series of statements. Responses are then analysed using factor analysis. Q methodology can be useful in identifying participants' perception of an issue or subject. In order to use this method Sinclair has defined the domain of discourse in her area of focus. The narrative approach of yarning enables Sinclair to gain a thorough insight into participants' realities using a non-threatening approach. Her use of Q methodology is congruent with yarning, as both use a sample with some understanding and exposure to the issue of Indigenous Cultural Competence. Sinclair is also an Indigenous researcher working with Indigenous practitioners, and it is possible that this enhances the value of yarning as a data collection approach. In contrast, my sample for data set three was non-Indigenous legal practitioners who are likely unfamiliar with the concept of Indigenous Cultural Competence.

Finally, Blackburn (2017) used autoethnography to undertake practitioner research into cultural competence and community engagement of two Australian libraries. She applied Overall's library specific definition of cultural competence and Sung and Hepworth's community engagement model for public libraries to her experiences working within two public libraries. In this research library and Indigenous cultures are considered, with Blackburn positioning herself within the library culture. This is similar to my own position. However, Blackburn's autoethnographic approach is not well suited to the documentary data focus within my research and does not touch upon the conceptual themes identified within my literature review as effectively as Foucault.

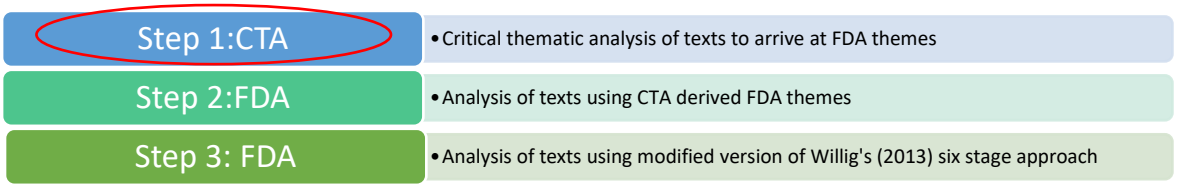
3.8 Chapter Summary

This chapter has described the theoretical and interpretive framework for the research as well as the method and rationale behind the methods employed. It has provided a description of my position as a researcher, my assumptions about the world and my perspective. The chapter has outlined a method of data analysis involving both critical thematic analysis and Foucauldian discourse analysis;

two techniques which intersect and complement one another. I have combined these methods as a way of checking my interpretations and refining my focus. I have also combined two well-known methods of FDA as a way of glimpsing the entire cross section of the texts, from the broadest level to the smallest, within a relatively small word count. The process of sampling has been described, including the questions asked of the participants in semi-structured interviews. The possibility of bias created by participants being known to me has been acknowledged and the interpretive frameworks employed by comparable research by Mullins and Kawaja, Sinclair and Blackburn discussed. The next chapter will provide the results and interpretation of CTA.

Chapter Four: CTA Results and Interpretation

Figure 2: Sequence of data analysis results and interpretation. Step 1 critical thematic analysis



Introduction to Results and Interpretation Chapters

This research looked at three distinct data sets, however, this thesis is not arranged in accordance with analysis of each data set. Instead, the thesis reflects the process of analysis, as layers of understanding develop from the data as it is interrogated using different techniques of analysis. Each technique provides a slightly different view of the data and emphasises different, but consistent findings. At the commencement of this process is CTA, which anchors and documents the initial thematic analysis of all data sets. This is followed by FDA which builds an understanding of key Foucauldian themes operating within interview transcripts. The second part of FDA builds understanding about how the discourse in all data sets operates upon individual action.

Introduction to CTA Results

This chapter will summarise first the results and then the interpretation of the CTA for each data set, commencing with the ASCRs, then moving to the QHATSICCF and finally the interviews. I have combined both the results and the interpretation of the CTA within this chapter, as CTA, similarly to FDA, is an interpretive process, yielding results only after interpretation by the researcher. In this case, my interpretations of the results went on to influence the selection of FDA themes to include in the later FDA chapter. This meant that discussion of my interpretations necessarily occurred prior to FDA. This chapter shows, through identification of word repetition, phrase or concept recurrence and variation in forcefulness, what patterns are occurring in the texts and how powerful they are. This process helps to indicate what the text communicates as important and true.

4.1 Australian Solicitor Conduct Rules (ASCRs)

The ASCRs are enforceable written rules of conduct for solicitors in Queensland. The CTA found *solicitor* to be the most repeated word within the text, with other often repeated words recurring in use with *solicitor*. There was little variation within the document.

high repetition and recurrence of terms relating to solicitor

Repetition

The most repeated word in the document is *solicitor* (269), followed by *client* (131), *practice* (85), *rule* (74) and *conduct* (61).

The words *culture*, *Indigenous*, *Aboriginal* or the term *First Nations* do not appear in the document.

The phrase *Torres Strait Islander* is not contained in the document.

Recurrence

The high repetition of *Client* is within discursive formations relating to solicitor behaviour towards and regarding clients where *Client* is most often used as an indicator of legal category, as defined in the glossary:

> *"client" with respect to the solicitor or the solicitor's law practice means a person (not an instructing solicitor) for whom the solicitor is engaged to provide legal services for a matter.*

Client discursive formations include direct reference to solicitor interpersonal interactions with clients at Rule 7.1:

> *7.1 A solicitor must provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement.*

Rule 7.1 is unique in its use of the descriptor 'clear'. There is no other Rule which explicitly states the quality of the communication or advice which must be provided specifically to clients, by their solicitors. Rule 4.1.2 however, does provide that Solicitors must be *honest and courteous in all dealings in the course of legal practice.* This is a fundamental duty non-specific to Clients.

Conduct is repeated in diverse use to refer to misconduct, conduct of self (as a Solicitor), others and things. When in the context of solicitors, it often has negative connotations from its attachment to professional misconduct (Rules 2.2; 2.3; 32.1; 42; 43.2), dishonest and disreputable conduct (r5). There are also references to client conduct (20.3); prosecutor conduct (29.3); conduct of a law practice (34.2; 40.1); conduct of a managed investment scheme (41.1); conduct of a matter (11.5) or case (21.7). There is a separation between professional behaviour and conduct (43.2). There is no reference to the word conduct in the glossary.

Repetition of *practice* is most often part of the discursive formation of *legal* or *law practice*, referring in the alternate to a *solicitor* or *law Practice*. The minority of repetitions refers to *Australian Legal Practitioners*, which can be interpreted as a discursive technique employed to navigate the differences in terms and titles between states and territories.

The Rules reference themselves and this accounts for all repetitions of Rule in the body of the text.

There is no occurrence of any words, phrases or terms relating to *Indigeneity, culture*, or *First Nations*.

Forcefulness

The text is written in legislative style. The formal arrangement does not provide for variation in forcefulness.

The word *unless* is capitalized six times and the word *except* is capitalized once.

The introduction by Noela L'Estrange does contain some variation in paragraph length. The shortest paragraph contains one sentence '*I commend the ASCR to your consideration'*.

4.2 Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework (QHATSICCF)

The QHATSICCF is a policy document enunciating expectations for Queensland Health staff in relation to Aboriginal and Torres Strait Islander people. The CTA found a high repetition and recurrence of the words contained in the document name.

Repetition

The most repeated word in the document is *health* (297), followed by *Aboriginal* (227), *Torres* (223), *Cultur*[13] (182), *Queensland* (168).

Outside the words used in the title, the most repeated word is *people* (65), followed by *staff* (53), *respect* (42) and *care* (43).

Recurrence

Respect is used broadly within discursive chains concerning Queensland Health's cultural respect framework, the cultural respect and recognition principle; respecting Aboriginal and Torres Strait Islander people, consumers, staff; individuals, teams; past efforts; cultural differences.

[13] This includes the words culture, cultural, culturally, cultures

Care is used as part of the term 'healthcare' and patient care. On occasion it is used as part of phrases such as '*culturally respectful healthcare services'* and '*culturally capable healthcare for Aboriginal and Torres Strait Islander peoples'*.

Staff is repeated diversely throughout the text, including 18 repetitions as part of the term '*Aboriginal and Torres Strait Islander staff*'.

Health recurs most frequently as part of '*Queensland Health'* and as part of discursive formations relating to '*Aboriginal and Torres Strait Islander people's'* health.

People is mostly (53/65) used as part of the term '*Aboriginal and Torres Strait Islander Peoples'*. The remaining usage includes phrases such as '*diverse peoples*' and '*first peoples'* or occurs within a discursive chain of '*Aboriginal and Torres Strait Islander elders, people, consumers and staff*'.

Culture/Cultural/Culturally is also used widely and diversely throughout the text. The words *cultural* and *culturally* are outstanding in their combination with a wide array of words which include theories and parts of theories of practice. The words are combined with, for instance: knowledge, responsive, inclusive, understanding, difference, awareness, safety, sensitive, appropriate, capable, equipped, respectful, support, bias, traditions, needs, well-being.

Forcefulness

Results in terms of forcefulness are uncertain. The document is written in the style of a Queensland government organization policy document which makes changes in forcefulness ~~are~~ difficult to detect. The preliminary pages of the document (title pages, preamble etc.) until the foreword contrast with the substantive content in format, font size and layout. However, it is uncertain if any difference in document design can be interpreted as forcefulness.

4.3 Interview Transcripts

The interview transcripts, at approximately 26,000 words, represent the largest and most complex data set. The length of CTA analysis of the interviews reflects this. Questions three and four responses also required additional thematic grouping due to the diversity and length of responses, the results of which are included under *coding component theme* headings. This section will summarise the results of the CTA for each interview question and part of question. Appendices 2-5 and 7-8 provide tables of key phrases from interview responses arranged by question. A summary of results can be found at 4.3.9.

4.3.1 Q1 part 1: What are the ASCRs?

Repetition

The words *rules* (33), *client* (17), *ethical* (15), and *conduct* (12) were the most repeated.

Recurrence

Of the 11 responses analysed (one was omitted due to non-answer to the question), all except one framed Conduct Rules as absolute and non-discretionary. Words and phrases used included *dictate* (2), *have to abide by* (2), *have to follow* (1), *govern* (4), *behove* (1).

Forcefulness

Most interviewees showed little variation in forcefulness. There were three examples of changes in forcefulness, as provided below[14].

> I10*: Oh Gosh. It's the rules that govern our obligations with respect to ethics and how we are to conduct ourselves.*
>
> I6*: Oh God. I know that they exist. I haven't read them probably; I've got them in the bottom of my draw at work and I haven't had a look at them for several years.*
>
> I8*: What do you mean by what are they?*

4.3.2 Q1 part 2: When did you last read them?

Due to the specific and limited nature of this question I have not used the CTA steps of repetition, recurrence, and forcefulness to arrive at or interpret these results.

Table 1: Period (years) since ASCRs read

Time period	<1year	<3 years	<5years	unknown
Number	8	1	1	2

[14] Interviewees are identified using a capital i and a number. There are 12 interviewees, I1-I12.

Table 2: Period (months) within past year since ASCRs read

Time period	<1 month	<3months	<4months	6-12mths
Number	1	1	2	4

The majority (8/12) respondents had used the ASCRs within the past year. Of these, half had used them in the past 6-12 months, and the other half had used them more recently.

Half (6) of interviewees could enunciate situations where they had referred, or would refer, to the ASCRs in relation to client interactions. Eight interviewees indicated that they used the ASCRs as a reference tool to review when facing perceived ethical dilemmas, such as conflicts of interest.

4.3.3 Q2: How do you use the ASCRs in relations with clients? If applicable, tell me about a time when you have used the ASCRs.

Repetition

The words most frequently repeated were *client* (66), *court* (31), *rules* (27), *duty/duties* (20). *ethics/ethical* (17).

Recurrence

In these responses interviewees frequently used the word *rules* as a shortened version of the ASCRs, therefore interpretation drawn from this result is limited.

Once again repeated words echoed the words utilised in the question (*client* and *rules*).

The discursive formations surrounding the word *client* echoes the language and phrases used within the ASCRs, such as repetition of discourse concerning client interests, duties to clients and conflicts of interest (11).

Competing interests and duties between the client and the court was a recurring concept. Duty to the court was mentioned by 8 interviewees, duties to the client by 7, client communication 7, and conflicts of interest 6.

Participants consistently identified when the rules may be relevant to their practice and spoke repeatedly of referring to them in these instances.

Forcefulness

As with the preceding questions, participants responded in an even manner without much variation in pace or tone. There were two exceptions.

Interviewee 6 paused when they realised that I worked for the same organisation as they did:

> I6: *Oh, you're with [intentionally blank]. Oh shit I shouldn't be, I didn't realise that.*

It took some minutes for the interviewee to recover before continuing. This pause may have expressed some trepidation or distrust linked to workplace context, however, it appears that this was overcome. There was no discernible change in this interviewee's responses or participation following this event.

Interviewee 12 was slow to answer the question, requiring several prompts, and the response was uncharacteristically unclear:

> I12: *I'm sure that I go by them like as there'll be from when I started you know how I've developed my practice since then, but I don't refer to them…*

4.3.4 Q3 part 1: What is Indigenous Cultural Competence?

This question involved a much more varied response and generated more discussion than other questions.

Repetition

In contrast to questions one and two; the word *rules* were repeated twice only in question 3 responses. The repetition occurred in one interviewee response in reference to the ASCRs and in adjoined sentences.

The word *cultural* repeated 59 times in varied usages. *Cultural* was repeated more than *Indigenous* (34) and *competence/competent* (28).

The most repeated words beside those used in the question were *different/difference* (35), *aware* (21), *training* (20), *understanding* (17).

Safety and *sensitivity* were not often repeated (7).

There were no overlaps between the repeated words from earlier questions.

Recurrence

All repetitions of *competent* or close equivalents were within discursive formations referencing the concept of ICC. The majority (24) repetitions of *Indigenous* were also within ICC or "*Indigenous culture"*. Unlike *Indigenous* and *competence*, *culture* was linked to all networks of responses to this question. '*Cultur*'[15] was repeated 82 times. The discursive formations integrating *culture* or *cultural* were diverse and included phrases such as *cultural client*; *culturally inclusive*; *cultural dynamics, phenomenon, sensitivity, awareness, competence, norms* and *aspects*. *Cultural/culture* was such a popular term at times it appeared overused:

> I9: *Indigenous cultural competence is being culturally aware of the cultural dynamics of the client.*

Culture was a popular topic of discussion for interviewees, including with others in the legal industry:

> I4: *Within our organisation at [blank] and externally with stakeholders we often discuss cultural aspects that attribute to the unique Indigeneity of the many different mobs. We also discuss cultural phenomenon with magistrates and prosecutors..*

Culture was also a topic for learning and training once the interviewees had gained or sought employment with the organisation.

Aware and *understand* formed part of a discourse involving both a broad and specific knowledge of things relevant to client representation.

> I2: *Pursuant to the criminal justice system, understanding the catalyst for the incarceration of First Nations peoples is important: for example, single parent households, drug dependence, alcoholism, fatherless households, low education levels.*

> I5: *The sensitivity part for me is more about being aware of and looking out for triggers and things that might cause offence or issues when you're dealing with clients or other colleagues or Elders.*

Different and *difference* were used diversely within discourse relating to differences within First Nations client groups; between First Nations groups according to location; the meaning of terms such as competence; between groups such as International social groups and Australian First Nations groups. One interviewee mentioned having a different culture to First Nations clients. One interviewee identified themselves as white.

[15] See 12

Forcefulness

This question evoked greater variation in forcefulness than the previous questions, particularly from one interviewee who commenced their response with:

> I6: *You could drive a truck through that answer!*

This was taken to indicate that the scope of the question was exceedingly broad in the interviewee's view.

The same interviewee also displayed emphasis when speaking about pan-Indigeneity and making assumptions about all First Nations people being the same. When asked if they could provide examples of this the interviewee replied:

> *Yes, it's called government. It's true (I6).*

Two interviewees also displayed a higher degree of hesitancy and revision when speaking about ICC:

> I8: *So in some ways for me it's just having a background understanding awareness of it but not I suppose reading it as gospel I suppose, because you'll end up offending people if you regard all Indigenous people with the same brush. It's its own form of bigotry in a sense, so to me, whenever I do cultural competence, it files away in my mind as just another, you know, touchstone of understanding the people of that community, not something that I'm constantly relying upon I suppose. I don't know really how to explain it.*

And

> I11: *I think cultural competence just, it's about knowing their culture, or how to relate to it as far as I'm aware. Um, I think it's a very generalised term; a lot of people say, like, cultural com, are you culturally competent..*

Response to this question appeared less certain than those to question two. Response lengths was, on average, slightly longer, but with more drop offs, poorly structured sentences and greater levels of involvement from the interviewer. For example:

> I10: *To me I suppose it, yeah, that would its dependant on what culture you're referring to as well.*

Interviewer: "I am referring to Australian Aboriginal and Torres Strait Islander people".

> I10: *So what the word means to me or…*

And

I7: *And I've learnt about not to have photos of any deceased people in your office. Um, what, what, Is this what you're getting at, this sort of thing?*

Response was dominated by one interviewee, who provided a transcript which was six times longer than the average and which remained relevant throughout.

4.3.5 Q3 part 1: Coding Component Themes Summary of Results

Unlike preceding questions, responses within this question were thematically grouped prior to coding. This additional step was necessary to organise diverse repeated and recurring words and large discursive formations and documented the process used to check that the open codes assigned aligned with and encompassed their sub-theme components.

Themes identified from responses were *Knowledge* or *Awareness; Communication; Understanding; Connection* and *Relatedness*. Appendix 6 contains a tabulated summary of the component themes from responses to this question.

Knowledge or *Awareness* was mentioned by 9/12 respondents. Of these nine, six spoke of awareness. *Awareness* in these responses referred to awareness of clients, including their background, culture, inter-generational disadvantage and trauma, emotional triggers, and wider context of Indigenous over-representation. *Knowledge* was mentioned by 7/12 respondents. Each of these seven referred to the importance of knowledge of diverse Indigenous cultures, practices, and protocols. Four of the seven referred to difficulties in obtaining this knowledge.

Communication was mentioned by 9/12 respondents. Of these, five referred to questioning techniques, three to eye contact, three to body language and two to listening. There is one response related to practitioner listening.

Understanding was mentioned by 7/12 respondents. *Understanding* took the form of understanding culture (4 responses); understanding clients (2 responses) and understanding the broader context of Indigenous Australians (2 responses)[16].

Connection and Relatedness was mentioned by 5/12 respondents. These five respondents mentioned empathy four times, understanding three times and relatedness twice. For these respondents it appears by the number of responses that this theme was important to their practice.

[16] Two respondents relating to understanding culture are not respondents in the theme of knowledge of cultures, practices, and protocols. There is overlap between these categories and it is possible to incorporate these two responses within the knowledge of culture theme.

4.3.6 Q3 part 2: Tell me where you were working when you heard the term Indigenous Cultural Competence or Cultural Safety or any term like that?

Nine interviewees first encountered the term ICC after they had commenced working with First Nations clients. Most interviewees (9/12) first encountered the term when they were involved with their current workplace, including when preparing for interview (2) and at interview (1). Two interviewees encountered the term after commencing work with First Nations clients in Queensland State government departments. Appendix 7 contains a table summarising response to this question.

> I12: *We had that cultural capability training recently. Obviously everyone's different and every culture has a different way of doing things and it's about trying to be able to best understand how Indigenous peoples may feel from years and years and years of what's gone on until now from when the white person came, and understanding why they might be a little…*
>
> I9: *the first time I heard about cultural competency would have been when I was doing my main induction*
>
> I8: *..so that was probably day one of that job when cultural competency was sort of a requirement for the new hires. Since then there's been a level of cultural competence training or CPD[17] or something every year since..*
>
> I7: *I probably heard the term maybe when I was interviewed or maybe in my first training session about Indigenous culture.*

4.3.7 Q4: How have you changed the way you practice law since commencing work exclusively with Indigenous clients? Tell me about a time when client Indigeneity influenced your practice.

Repetition

The most repeated words were again found in the question, *client* (160), *Indigenous* (68), *practice* (49). *cultural/culture* (67), *different* (47), *Aboriginal* (30).

[17] Compulsory professional development

Persistent low-level repetitions occurred for *trauma* (19), *language* (13), *education* (13). These words were used by all interviewees but were not often repeated by single interviewees. Due to their comparative low repetition, they were not included in analysis.

Rule was repeated twice, both in a non ASCR context:

> I6: *the white lawyer coming in and telling the client what to do or what the rules are is a challenge in itself.*

And

> I5: *Oh! The other thing I learnt, I've got one more example, really good one, which I've broken the rule, which I didn't know at the time, I haven't climbed Mount Warning[18] since I found out.*

Indigenous was often repeated as part of the phrase '*Indigenous client*'.

Recurrence

Different was used diversely within formations relating to clients and practice,

> I5: *They're different, its different. It has different problems, definitely, from private practice.*

and

> I12: *Very differently. Completely differently to how I did in private practice.*

Language:

> I6: *The language you use, to explain things sometimes is different. You might use a plainer, less legalistic language depending on the education level of the client, but that's true for non-indigenous people as well.*

Culture:

> I2: *where colonisation has been very effective culture is very different and how people interact with culture is very different.*

Equality:

> I7: *You just treat everyone as an individual with empathy, I don't think you really need to treat people really differently because of the race at all.*

[18] Wollumbin, or Mount Warning, is an area in Northeast News South Wales which is sacred to the Bundjalung people. Climbing of the Mountain without an appropriate Aboriginal guide is discouraged by Bundjalung Elders.

There's no real difference that dealing with anyone else, but, I mean, yeah. So that's probably the way that I assert that's how they like to be treated to be honest with you, not treated differently, they want to have the same, you know, treatment, as anyone else.

Education:

I10: *Definitely there are differences, I think the biggest would be education is very different so I'm not sure if that can be either a lack of education or um dealing with that you have to look at it differently.*

Location:

I11: *Well up here is a different world. So kinda seen a bit of that but not, and I knew a little bit about the culture from that but not to the extent that, how mistreatment. Even though you've heard afew things about stolen generation and what not but..*

Aboriginal is also used in diverse formations. It is used to signify First Nations people (including children, women, men, family), objects, law, studies, culture. It is also used without conjunctive term by two interviewees, each on a single occasion:

I7: *If a client comes to me and says they have a bachelor's degree in, as a nurse, I'm not just going to assume that because you're Aboriginal I'm going to have to talk to you like you're an idiot.*

And

I5: *So she told me that anything I learnt at University would be out of date, no good, it's not like that for Aboriginals now.*

One interviewee who repeatedly used the term *Aboriginal* included it in discursive formations relating to skin colour, marriage and culture:

I5: *I find that a lot of the Aboriginal clients I have have partnered with either Māori or Islanders or just general Australians. Even yesterday, you know I've got a client, she's quite dark looking, and she was there with her new baby and her white partner and I couldn't believe the baby was so fair. I was just surprised. I was expecting this cute little olive-skinned baby and it's as white as anything.*

One interviewee used *Aboriginal* in reference to artefacts manufactured for sale.

Aboriginal was used in discursive formations reflecting an awareness of communication barriers with individuals:

I6: *There's the communication issues that come into it in terms of, you know, at the end of the day I'm a white female, and an Aboriginal male may not want to tell me things and no matter how culturally competent I become.*

As well as in discursive formations reflecting awareness of broader legal issues:

I2: *It is clear that there still remains tension between Aboriginal Customary Law and the Commonweath.*

And

I7: *..dealing with the larger family structure of Aboriginal families in domestic violence settings, dealing with the rights of an Aboriginal child in child protection settings or in family law settings, so, and what that means when applying what is a child's right to enjoy any Aboriginal culture in those settings..*

Forcefulness

Interviewees were observed to maintain their generally even communication pace and tone, with few exceptions. Responses to this question were longer than any of the previous questions, with tone changing towards one of open discussion rather than interview. Less prompting by the interviewer was required then in question 3.

A change in tone emerged in one response when the interviewee spoke about the backgrounds of clients:

I9: *Oh gosh, just horrendous, some of it. Some of my client's backgrounds are horrendous. A lot of clients, just the difficult like, homelessness, drug use, mental health, trauma, significant trauma; like a lot of our clients were put in those boys' homes where they were subjected to a lot of abuse; a lot of clients were removed from their parents, they grew up in foster care, they've got no kind of connections with their family. It um, yeah, there's just a lot of, and that's probably a recurrent theme for I'd say the majority of our clients.*

The interviewee also paused for several minutes when asked how they prevent themselves becoming desensitised.

4.3.8 Q4: Coding Component Themes Summary of Results

Due to the diversity of use of repeated and recurring words and the size of discursive formations, responses within this question were thematically grouped prior to coding using the same method as

in question 3. This was done to document the process used to check that the open codes assigned aligned with and encompassed their sub theme components.

Themes identified were *Communication techniques, Connection* (trust, rapport & understanding); *Empathy, Culture shock or adjustments; Client trauma*; and *Client education level*. Appendix 9 contains tabulated summaries of the component themes for this question.

Communication techniques dominated discussion in this question, with listening evoking the most mentions (7) of each of the five themes (and 19 mentions) within this category. This was followed by language (5), questioning techniques and eye contact. Reference to language was usually regarding the necessity of simplifying language due to English being a second language or education levels being low. Two practitioners specifically mentioned the low education level of clients. Avoidance of gratuitous concurrence was also important to interviewees.

Responses in *Connection* were dominated by I10, who made 5 responses relating to trust and connection. Particularly within *Connection* category there were statements made by participants which could readily be framed within different or overlapping themes. Many of the responses in this category also repeated themes evident in responses to question 3.

4.3.9 Summary of CTA Results

The results indicate a divergence in language which repeats, recurs, or varies in forcefulness into two groups correlating with the disciplines of health and law. Interview transcripts provide the most complex and diverse results, whilst other data sets have a greater degree of restriction or cohesion, with a much smaller range of words repeated and recurrent and a lower degree of variation in forcefulness. The results for the first two questions of the interviews show similar patterns to the ASCRs, and the results for the third questions of the interviews accords more with the Queensland Health document.

4.4 Interpretation of CTA Results

Introduction

In the preceding section the results of CTA applied to all data sets has been provided. This section of the thesis will summarise the interpretation of these results. Both the nature and my use of CTA as an FDA consistent technique rather than an interpretive framework (Nakata, 2007) means the interpretations made in this section do not represent completed findings. Rather, the interpretations

progress the process of building understandings from the data, providing a clear place to start with ensuing FDAs, and documenting the process of ascribing meaning to results.

Interpretation will be recorded in the same order as results. That is:

1. Australian Solicitor Conduct Rules (ASCRs)
2. Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework (QHATSICCF)
3. Interview questions 1-4

The CTA interpretation will then explain the choice of five FDA themes or closed codes which were chosen to structure the first FDA.

4.5 ASCRs

Solicitor is repeated far more than any other word, including the proclaimed subject or object of the text, *conduct*. *Solicitor* features as an independent word, unlinked to any repeated chain or formation. The degree of repetition and autonomy may indicate that all other words defer and exist in relation to *solicitor*, meaning, in discursive terms, that *solicitor* is the nexus of intertextual chains and arguably forms and is re-created by a network of references surrounding the word *solicitor*.

The commendation by Ms L'Estrange continues her discursive efforts throughout her introduction to appeal to Queensland solicitors as an insider defending the profession against critics of self-regulation with the support of industry peak bodies. Her commendation for consideration provides her approval without closing the door on counter argument. This technique can be linked to the network of references creating and re-creating the knowledge of *solicitor* identity and function.

Conduct is part of a recurring intertextual chain employed diversely and with acceptance, within the *solicitor* network of references.

Client is a discursive instrument employed to refer to a legal relationship between solicitors and a category of individual. Indigeneity is excluded from the network of references relating to *client* and *solicitor conduct*. This is consistent with the exclusion of considerations of Indigeneity from ASCR discourse.

In relation to capitalization and forcefulness, use of capital letters for word such as *unless* and *except* stresses the compulsory nature of the *Rules* by way of visual contrast with the exception to the given *Rule*.

The table at appendix 13 shows how the selected words, operating as open codes, informed identification of Foucauldian themes within the data.

4.6 QHATSICCF

There is a large degree of repetition of the title and other key words and discursive formations within the document. This degree of repetition is not unexpected within a document of this nature. There are several overlapping interpretations available to explain this repetition. It may indicate limitations in the network of discursive references creating and reflecting the health practice knowledge. It may be understood as reflecting and recreating the institutional discourse of Queensland Health. The use of repetition may influence the acceptance and adoption of certain discourse as knowledge within the organisation.

There is a high repetition and recurrence of the term '*Aboriginal and Torres Strait Islander*' and homogenous discursive formation '*Aboriginal and Torres Strait Islander*' to prefix a wide array of words and terms. This makes '*Aboriginal and Torres Strait Islander peoples'* more visible and sayable, however, the repetitive and exclusive use of the term '*Aboriginal and Torres Strait Islander'* to indicate all First Nations people and cultures may encourage pan-Indigeneity and indicate limitations in the network of discursive references creating and reflecting knowledge of First Nations people.

The recurrent combination of *culture/culturally* with a wide array of secondary words may confuse the concepts signified by each term and the utterance weakens the meaning, understanding and depth of each approach.

Care can be compared to *practice* in the ASCRs in that it is most often part of discursive formation related to '*healthcare'* referring to the job or function of people employed by Queensland Health as well as the organisation itself.

Respect is a word with varied meaning according to context and perception. This uncertain quality recurs within formations containing other words with uncertain or dependent meanings such as *culture* and *Aboriginal and Torres Strait Islander* to create discursive chains of uncertain meaning.

The lack of forcefulness within the substantive document may, when combined with recurring uncertain or weakened discursive formations and excessive repetition of key words, contribute to a lack of forcefulness of the discourse contained within and represented by, the document.

The table at appendix 14 shows how the selected words, operating as open codes, informed identification of Foucauldian themes within the data.

4.7 Interview Transcripts

4.7.1 Q1 part 1: What are the ASCRs?

Repetition of Rules

High repetition of the word *rules* was interpreted as the likely result of the prominence of the text and the phrasing of the question. The words *Rules* and *conduct* echo key elements of the question. The ASCRs are a prominent document in legal practice and the repetition of the words conduct and rules may indicate the influence of the question itself, as well as repetition of reference to "The Rules". The discursive formations surrounding these words *Rules* and *conduct* echo the language and phrases used within the ASCRs, such as repetition of the word *practice* (11) and *solicitor* (11). It is possible that the questioning by the interviewer may have unconsciously emphasised these words.

There were almost no alternate words used for the most repeated words. For example, possible synonyms *behaviour* (0), *guidelines* (4), *regulation* (1), or *customer* (0). This may indicate limitations in the network of discursive references creating and reflecting the legal practice knowledge or may be understood as reflecting the institutional discourse of legal practice. It may also show the roles ascribed to participant subjects within the ASCRs and legal practice.

Ethical & Conduct

Ethical was most used as part of a discursive chain explaining the ASCRS as rules and standards. The repetition of *conduct* and *ethical* in these contexts may indicate a focus within the discourse upon self-monitoring of behaviour as indicative of virtuous self-governance/discipline. Seven of the twelve repetitions of *conduct* were about the management of self as *solicitors*, as contrasted to the management of others, or objects and things such as cases and proceedings.

Acceptance of the Rules

It appears from responses that participants had a high degree of awareness and tacit acceptance of the rules, as all practitioners knew what the ASCRs are and did not challenge them.

Forcefulness

Variations in forcefulness were interpreted as showing unfamiliarity with the research interview process and surprise at the question.

The table at appendix 15 shows how the selected words, operating as codes, informed identification of Foucauldian themes within the data.

4.7.2 Q1 part 2: When did you last read them?

Often and recent use

The results may indicate that the ASCRs are a 'live' document utilised widely and often by practitioners. Such common usage implies that most interviewees can identify when a situation raises an ethical issue, and also when the Rules may contain guidance in relation to that issue. It may also indicate a willingness on behalf of practitioners to accept the guidance or authority of the ASCRs.

4.7.3 Q2: How do you use the ASCRs in relations with clients? If applicable, tell me about a time when you have used the ASCRs.

Familiarity and Integration

Most respondents expressed a familiarity with the contents of the Rules and were able to enunciate several key concepts such as the sometimes-competing interests between professional ethical duties to the court and to the client. Responses indicate that the Rules are consciously and unconsciously adhered to and influence practitioner behaviour and decision-making. The Rules are also communicated to clients to explain practitioner actions.

These results may indicate the influence of the ASCRs as a discursive practice as they illustrate the integration of ASCR concepts and discourses throughout practice. The discursive practice was arguably interrupted by practitioners such as I12 who professed their non-reference to the ASCRs, but these professions were contradicted in broader intertextual chains which displayed unconscious competence or implicit awareness. For instance, I4 states:

> *I have never been in a situation where I needed to look at them.*

and

> *It's not like every time I open a file I go, ooh, am I following the rules? Because I think that we should know them well enough to not mislead the court; that above everything you're an officer of the court first.*

Similarly, I1 states:

> *...difficult because I'm so unfamiliar with the ASCR formally.*

and

Say if a client makes admissions to the offence to me but wishes to plead guilty. My duty is first to the court and then to the client.

The table at appendix 16 shows how the selected words, operating as codes, informed identification of Foucauldian themes within the data.

4.7.4 Q3 part 1: What is Indigenous Cultural Competence?

ICC

High repetition of *cultural, Indigenous* and *competence* may indicate interviewee sensitivity to and adoption of the terms of the question, along with repetition of relevant terms or concepts in responses. Despite this reflection, no interviewees were familiar with the term ICC as a theory and instead phrased ICC as practice or training for practice. For example:

I9: *I don't think it was a specific theory, or framework, I think it was more just how to be culturally sensitive or culturally competent*

And

I5: *I've heard the term many times in various contexts*

I11: *I think it's just a overarching general term.*

The low repetition of *safety* and *sensitivity* may indicate a similar lack of familiarity with the theories of Cultural Safety and Cultural Sensitivity. Four interviewees were asked directly about whether they had heard of Cultural Safety. None of the four were familiar with the theory:

I8: *Cultural safety is a new one, I haven't heard of that one before.*

I10: *Cultural safety is probably not something that I've heard of.*

I4: *I have not heard about cultural safety or any term like that until now.*

I6: *Not really, I think that's something more something you're likely to get in an e-mail from Head office rather than day to day on the ground.*

Culture

It was clear that *culture* was the central idea interviewees took from the question. Their ideas surrounding how to negotiate and define culture within their practice appeared to be something that they were familiar with through their institutional organisation in general terms. The degree of acceptance or critical engagement with the notion was unclear, as the majority of interviewees could

describe ICC but did not express a view about it. Of the three interviewees who expressed a view, one stated:

> I2: *In short, yes ICC [Indigenous Cultural Competency] is of great utility. It provides perimeters to study, comprehend and practice First Nations Peoples as a unique subset of culture in Australia.*

Another interviewee preferred the notion of empathy:

> I8: *It's just the empathetic thing I suppose. What is it, it's just empathy at the end of the day for me. I don't assume that a particular Aboriginal or TI person subscribes to any particular protocol at any point in time. I just treat everyone as an individual.*

A third interviewee provided an extensive discussion of ICC in practice but also said:

> I6: *So I don't think you can have like a cultural competency because we're only dealing with the law..*

Forcefulness

This question was expected to confuse some interviewees, and whilst only one explicitly expressed confusion, there was arguably a discernible change in forcefulness which may indicate underlying uncertainty. It would appear that this uncertainty relates more to the phrasing of the question and expectations of response rather than the concept of ICC, as all interviewees were able to provide relevant responses and were able to elaborate with prompting. The lack of overlap between repeated words in responses to this question and earlier questions may be indicative of the research gap between ICC and legal practice episteme.

4.7.5 Q3: Coding Component Themes Summary

It appears that practitioners are using a practical understanding of ICC as including awareness, knowledge and understanding of First Nations clients and culture, and accompanying techniques to improve communication and connection between clients and their solicitors. The open codes identified align with these component themes.

The table at appendix 17 shows how the selected words, operating as codes, informed identification of Foucauldian themes within the data.

4.7.6 Q4: How have you changed the way you practice law since commencing work exclusively with Indigenous clients? Tell me about a time when client Indigeneity influenced your practice.

Client & Indigenous

The high repetition of *client* and *Indigenous* can be regarded as influenced by the question. This interpretation is consistent with the pattern of responses to other questions. Question 3 likewise involved high repetition of *cultural/culture* and *different*. This question can be regarded as a logical follow on from the preceding question and as such the repetition of similar terms is not unexpected.

Different

The repetition of *different* has increased from question 3 and this may relate to interviewee attempts to explain the unique characteristics of practice with Indigenous clients by way of contrast. This approach is reflective of the phrasing of the question, which asks about a change from previous practice techniques.

The repetition and recurrence of formations involving *different* may point to the experiences of interviewees being challenged by the dissonance between their experiences and expectations and their practice. It is arguable that the intersections between legal practice and client realities of culture, location and intergenerational disadvantage pose difficulties for practitioners which are phrased as differences. The persistent but lower levels of repetition of *trauma, education* and *language* may detail some of the difficulties or differences of clients as identified by interviewees.

Aboriginal

The degree of repetition of *Aboriginal* is unique to the responses to this question. Responses to question three for instance, repeated *Aboriginal* twelve times and this was often in conjunction with *Torres Strait Islander*. On just two occasions within question four responses is *Aboriginal* used in conjunction with *Torres Strait Islander*. The high number of repetitions is concentrated within five responses, with one response accounting for half the number.

Some of the discursive formations reflect legislative language used in State and Commonwealth jurisdictions. However, the unusual repetition of *Aboriginal* to the degree found within one response may warrant further analysis and discussion.

Forcefulness

Interviewees appeared more comfortable with answering this question than previous questions. This may have been due to their knowledge of the schedule (being the last question), the nature of the question and subject matter, or other factors. This question was directed firmly within the field of the interviewee and practical matters of practice which may have enhanced interviewee confidence. The sole variation in forcefulness identified occurred in relation to emotionally significant information which the interviewee may have been responding to.

4.7.7 Q4: Coding Component Themes Summary

The open codes aligned with component themes; however, the open codes obfuscate components of trauma, language and education. These components do not contain words repeated or recurring sufficiently frequently or forcefully to justify inclusion in the CTA derived open code. However, these elements are regarded as informing codes such as of *Cultural, Different, Client*. The closed coding categories contain concepts adept at revealing these components during further discussion of findings.

Deficit discourse

Deficit discourse refers to the expression of thoughts, words and actions which frame Indigeneity and Indigenous people in negative, deficient, or problematic ways. Deficit discourse is the process of overlooking the individual characteristics, strengths and talents of a person in preference for focusing on their problems, issues and negative characteristics. These issues and characteristics are then associated with a person's Indigeneity. This association reinforces negative stereotypes and racism.

Interviewee responses conform to a deficit approach towards Indigeneity, with clients being identified as often traumatised, poorly educated, having language and understanding difficulties, and belonging to families which have high levels of repeat contact with legal services. Given that this question is asking how practitioners have changed their practice specifically for Indigenous clients, it is possible that the challenging features of clients are having the greatest impact upon practice, and it may be difficult for practitioners to identify differences between Indigeneity and disadvantage.

Listening, Empathy & Trust

Listening did not feature prominently in responses to the question 'what is ICC?' but did in question four. This may show a divergence between the conceptual understanding of ICC, and practice with Indigenous clients. The related category of Empathy contained five total mentions relating to either

the use or existence of empathy. The sparsity of responses belonging to the empathy and trust themes may invite further study given the importance accorded these features of practice within the research.

Culture shock

Culture shock or adjustments in total measure five however this consisted of five different themes within this category. Several researchers have reported on the perceived unpreparedness of professionals to work with Indigenous clients. The finding of this category within responses may be consistent with this research.

The table at appendix 18 shows how the selected words, operating as codes, informed identification of Foucauldian themes within the data.

4.7.8 Comparison of Closed Codes & FDA Themes

The CTA closed coding of all texts resulted in 17 Foucauldian themes. There was a distinct difference between the number and type of codes identified when texts relating to ICC or health (interview transcripts for questions 3 and 4 and the QHATSICCF) were compared to texts relating to law (interview transcripts for questions 1 and 2 and the ASCRs). Discipline, for instance, recurred in the first group six times in total and not at all in the second group. Tables of comparison were prepared and codes which were shared by both groups of text are highlighted.

Table 3: Closed Codes from CTA of ASCRs and Q1 & 2

Closed Code	Re-occurrence
Governmentality	7
Discipline	5
Biopower	3
Subject positions and Roles	4
Moral codes	2
Regime of Truth	1
Technology	
Power-knowledge	
Apparatus	1

Table 4: Closed Codes from CTA of ATSICCF and Q3 & 4

Closed Code	Re-occurrence
Regime of Truth	7
Institutions	3
Universal categories	3
Discursive practice	1
Governmentality	1
Episteme	
Gaze	

Power-knowledge	4
Normalisation	3
Subject positions	5
Apparatus	
Biopower	
Individuals/individualisation	1
Identity	1

Selection of common themes can assist in directly comparing the mechanisms of each theme as applied to each group, whilst contrast between non-common themes may also reveal important differences. Since choice of either method may exclude what was most important, I chose the FDA themes to utilise based on the three most recurring frequencies of code within each group. This resulted in the following five codes: governmentality; regime of truth; discipline; power-knowledge; subject positions and roles. Four of these themes are shared between the documents, with discipline being the exception. These shared codes conceptually link the data sets using Foucauldian themes and allow comparisons to occur between documents in relation to these themes.

4.8 Key Findings

Key findings from this chapter were:

1. The ASCRs are centrally concerned with the identity, functions and self-conduct of solicitors and construct all other things, including people, in relation to solicitors.
2. The ASCRs omit reference to Indigeneity.
3. Interviewees accept the ASCRs. Most interviewees use the ASCRs.
4. Most interviewees became aware of the terms ICC or similar after they commenced working with Indigenous clients.
5. Interviewees are unfamiliar with ICC or CS as theories of practice.
6. Interviewees recognise differences in how they practice with Indigenous clients to non-Indigenous clients. The differences identified by practitioners sometimes confuse disadvantage with culture, resulting in a deficit discourse of Indigeneity.
7. Awareness, understanding and knowledge of client culture is important to interviewees as they work to improve communication and connection with clients.
8. Some interviewees found it difficult to adjust to working with Indigenous clients.
9. The Queensland Health text was found to be weak in forcefulness but abundant in repetition of the phrase *Aboriginal and Torres Strait Islander*. The lack of acknowledgement of diversity combined with this repetition could encourage issues of pan-Indigeneity.

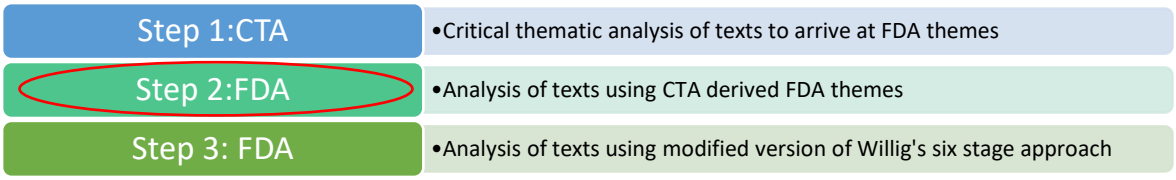
4.9 Chapter Summary

This chapter has provided the results and interpretation of results for CTA conducted on each text. The interpretation of the CTA results was influenced by the FDA theoretical framework and arrived at FDA closed codes or themes for use in the next chapter. These themes are not the only themes which could have been chosen to focus the FDA. The chapter has shown the divergence of discourse between the law and health texts and demonstrated the gap between theories of practice such as ICC and legal practice.

Chapter Five: Foucauldian Discourse Analysis

Part 1: FDA using CTA Derived Codes

Figure 3: Sequence of data analysis results and interpretation. Step 2 CTA derived FDA themes



Introduction to Chapter

There is no standard method of FDA. The previous chapter culminated in the selection of five Foucauldian themes to frame FDA. These themes emerged from the CTA, which assisted in verifying that the chosen themes are evident within the texts and have a documented basis for selection. The method of FDA applied in part one of this chapter is inspired by the approach of Kendall and Wickham (1999), which asks questions of a text about what it communicates in connection with Foucauldian themes. Results from part one shows the broad thematic landscape of enacted discourse. Part two of this chapter is inspired by the approach of Willig (2013). Willig's approach asks questions of a text about how it uses discourse to constrain or enable action by individuals subject to the text. Together, parts one and two build understanding of what discourse communicates in the texts, as well as how.

Introduction to part 1

This section will commence the FDA of each text using five Foucauldian themes or closed codes which have been arrived at by interpretation of the texts using CTA. This part of the FDA looks at the texts only through the lens of explicit FDA concepts and in doing so continues their recreation into texts which speak to their place and effect in relation to power as relevant to the research questions. This part predominantly looks at the interviews as this text efficiently combines and performs the discourses of the ASCRs and QHATSICCF. Unlike the previous chapter, the themes rather than the texts will structure this part. The five themes in order are as follows: power-knowledge, regimes of truth, governmentality, discipline, and subjectivity.

5.1 Power-knowledge

The interviews and ASCRs repeatedly reinforce the knowledge that the court holds primacy of power, over solicitors and over clients. For instance, at times the primary duty to not mislead the court places

solicitors on the record in the position of needing to disclose sensitive information about the client to the court, even when this information was not sought by the solicitor and may not have been anticipated by the client as being part of the case.

> I3: *The same client had called me and threatened suicide and said that I was going to be to blame for that suicide as well and so there was also consideration of the rules and ethical obligations. It reached the point where in family law you are doing a notice of risk I can't draft a document that said that person had no mental health concerns because I had him say that to me.*

If the client wishes to pursue a cause of action before the court that conflicts with the Rules, the only available option for a solicitor is not providing a legal service to the client.

> I4: *What you've told me meets the threshold well and truly over the necessary and desirable and then they say well no I don't want this, and I say well I can't act for you.*

Non-provision of service may further decrease the power of the legal subject in court and influence production of their truth and knowledge for interpretation by the court.

If the client is dissuaded from attempts to mislead the court, solicitors remain limited by the Rules during their representation,

> I9: *So, it's a bit of a balancing act as to how much you disclose about that to your client's detriment as opposed to your obligation to not mislead the court, so you have to be very well aware of your duties to the court and the client.*

which may reinforce the power of both legal governance and the court above both solicitor and client.

The interviews also demonstrate that interviewees use the Rules to limit their services, relations with, and knowledge of people or situations.

> I7: *So if I was trying to explain to a client why we couldn't assist them because of a conflict for example. I might try to explain it in line with the way the rules talk about when you can and can't act against a former client rather than speaking specifically about the client that's caused the conflict.*

> I10: *So, it's sort of making an assessment on whether you can act for that client knowing information which you might not ordinarily have learnt.*

This use is consistent with the requirements of the Rules and may serve to reinforce the power of the court to control the relations of clients and solicitors.

5.2 Regimes of Truth

In the interviews, obeying the Rules is conceptualised as an integral part of being a legal professional, with cultural competence occurring exclusively within this conceptualisation,

> I1: *Acting in a manner that is culturally appropriate whilst upholding highest professional standards…*
>
> Interviewer: *What does 'highest professional standards' mean to you?*
>
> I1: *Acting to the best of your ability within the bounds of your employment. Conducting yourself in a manner that does not bring disrepute to the profession and is in the best interests of your client, subject to your duty to the courts.*

and

> I5: *The competent side of it is more about being professional when communicating with clients and your other colleagues and things.*

This may indicate the marginalisation or exclusion of ICC within or from professionalism, and point to rituals of communication and fellowship by legal practitioners failing to support equal inclusion of ICC within the regime of truth of professionalism.

Conceptions of professionalism may vary between Indigenous clients and non-Indigenous clients, with Indigenous clients preferencing connections with their solicitor and non-Indigenous clients preferencing task execution. One interviewee described it like this:

> I10*: It helps me get my job done easier if there's not that strict, rigid professionalism, 'cause I feel like that's not responded to as well. I think there's less of a feeling of trust if you're just purely professional.*
>
> I10: *Ah well, they respect you more if you act completely professional I feel with a non-Indigenous client. They find that you're like a professional and want to come back to you because you can do the job.*

This may indicate the normalisation of non-Indigenous ideas of professionalism as truths, reflecting the implicit knowledge that to act professionally is to behave in non-Indigenous ways, and by extension, that to be professional is to be non-Indigenous.

Normalisation of non-Indigeneity is evident through practitioner responses detailing adaptions to interactional and communicative practice with Indigenous clients, for example,

I1: *In conversation with clients I am more likely to ask open ended questions with a purpose to them, rather than closed questions.*

As well as where practitioners appeared to find it more difficult to unify non-Indigenous and Indigenous knowledge when exerting power within wider justice structures, for instance:

I6: *This might be really important to you but this is not how our legal system sees it, we'll try and mash it in.*

It can be difficult for solicitors to change their practices to adapt to Indigenous clients,

I10: *Well it's not easy. All I can do is try my best.*

particularly when they enter practice with Indigenous clients from a predominantly non-Indigenous background:

I6: *I really struggled with when I came from Victoria where I had probably met 3 indigenous people in my entire life and then moved to Mount Isa and so massive culture shock…*

Their process of adaption is often experimental,

I2: *Sometimes I overestimate and sometimes I underestimate sophistication levels.*

Interviewer: *How would you know if you have offended someone?*

I2: *They generally don't come back.*

including observing effects upon client emotions,

Interviewer: *How do you know if you are being culturally appropriate?*

I1: *It can be really difficult sometimes – but I also think that is a matter of demeanour. Withdrawn, bored, angry, scared, sad or quiet clients can often be an indicator that something is off.*

and is often reliant upon Indigenous clients and colleagues for learning:

I1: *I could ask the client, but generally I will refer to our [Indigenous] court support officers in this regard.*

I2: *I had one Indigenous colleague call me a racist before because I provided services to both white people and black people on a circuit and I'd put the white people first because I did them in the order of how they had turned up.*

This may demonstrate widespread omission of Indigeneity from the power and knowledge networks of professional education, training, and the linked social connections which expose future practitioners to Indigenous people and issues.

Reliance upon Indigenous people for learning may place clients and staff in positions of power in relation to culture which contrasts with a lower level of discipline specific knowledge and role related power and status. Within this process Indigenous people are the subject of experimentation, learning and interrogation by solicitors who seek to obtain and use information, ostensibly for the benefit of their client, however, within greater duties owed to the administration of Justice and to the court.

Clients and others have no control over the use of their cultural information once disclosed to solicitors, and solicitors themselves are unable to control the flow of information once disclosed to the court or others:

> I4: *Within our organisation at [blank] and externally with stakeholders we often discuss cultural aspects that attribute to the unique indigeneity of the many different mobs. We also discuss cultural phenomenon with magistrates and prosecutors who in my opinion have a broad variance when it comes to understanding cultural phenomenon such as gratuitous concurrence which makes indigenous persons more suggestible when giving evidence or appear stunned under cross examination.*

Discussions about Indigenous people by non-Indigenous people may reflect and reinforce the othering of Indigeneity throughout the power-knowledge constructs of the legal profession and necessarily involves the re-interpretation and re-creation of culture by non-Indigenous people and systems.

Consideration of ICC or similar constructs are excluded from the Rules, despite the presence of economic discourse informing the Rules such as consumer protection and the assurance of quality of service and competition. This has the effect of omitting considerations of ICC from the disciplinary regime supporting both the Rules and ethical practice. Responsibility for this element of service, outside of the legal construct of discrimination, appears to be placed upon solicitor subjects, who may choose their level of engagement with client culture and use initiative to enact change practices within existing structures. This exclusion of Indigeneity from ethical rules may reflect the omission of cultural knowledge from the truth of legal discipline and practice knowledge and reinforce the disempowerment of culturally competent practitioners by positioning them as practicing outside the professional and ethical norm.

Most practitioners made attempts to adjust their thinking, doing and saying to their Indigenous clients. However, when clients became less visibly or audibly 'Indigenous' practitioners reverted to non-Indigenous, or normalised ways of thinking and doing.

> I5: *We have a lot of Indigenous clients who are very fair, they've lost touch with their culture, they've integrated with white culture.*
>
> I7: *…and then in Brisbane, you know, its, I don't know if you want to put in a way that's, there's not a, well English is the primary language, you can probably put it that way. There's no real difference than dealing with anyone else.*

This contrasted to the thinking of practitioners in more remote areas who were confronted by Indigenous issues:

> I2: *When I practiced in the Gulf of Carpentaria, specifically Doomadgee I bared witness to, what could only be referred to as a mob of First Nations peoples marching into the Doomadgee Magistrates Court to dispute Commonwealth law in place of Aboriginal Customary law, claiming sovereignty.*
>
> I4: *Indigeneity has influenced my practice of the law by opening my eyes to heightened disadvantage, that I knew about before but that was not as potent as lived experience.*
>
> I11: *Well up here is a different world. So kinda seen a bit of that but not, and I knew a little bit about the culture from that but not to the extent that, how mistreatment. Even though you've heard afew things about stolen generation and what not but...*

Most practitioners spoke about their efforts to increase and affect knowledge, awareness and sensitivity about Indigenous cultures in order to perform their job better. However, none reflected upon the power dynamics of colonialism inherent in the justice system whereby information garnered benefited the coloniser and recreated and reinforced power imbalances. Even the statement by one interviewee:

> I2: *I am the whitest person alive.*

was used to refer to a person-to-person encounter involving different cultural standpoints during a socio-legal transaction without accompanying context indicating understanding of the meaning of whiteness represented by the practitioner for clients.

At least one of the interviewees utilised liberalist notions of the individual legal subject, which is consistent with the Rules and wider justice and professionalism discourses such as the idea of equality before the law. This notion was used to varying degrees to resist more collective approaches to ICC

such as government and some ICC training without critically acknowledging the difficulties in establishing knowledge which is inherent in this individualised approach. The notion was also used to resist ICC in favour of treating Indigenous clients as individuals with empathy. This view may overlook the truths informing and operating upon the solicitor when doing so and the limits upon thought and action inherent in their position.

5.3 Governmentality

The Rules are repeatedly referenced and used within interviewee responses. For instance, text three shows that solicitors largely associate the notion of professional ethics with Rule contents and use the Rules to 'check' their behaviour, whether unconsciously or consciously,

> I11: *The Rules are always in the back of my mind when conducting myself as a solicitor, daily.*

or solve a problem:

> I6: *Yes, definitely (a problem-solving scenario); getting information about how to solve the problem.*

This may indicate the position of the Rules as a regime of truth as well as an apparatus of governance. In addition, by inference, it may also indicate that solicitors may not identify ethical problems or questionable behaviour as readily or easily when these are excluded from the Rules.

Counter-conduct

Elements of counter conduct may be present in all texts. The QH text, for example, contains multiple related terms for ICC, which may reflect repeated previous attempts to embed better practice with First Nations people. Parts of the document appeal to justification of changed practice and explanation of ICC. This may indicate the presence of passive or more active resistance to changed practices within the social body of the organisation which require coercion, persuasion, and direction.

Similarly, text one reflects economic and political discussions at the time but retains the governance structure created, maintained, and accountable to the profession itself. For example, the text is a QLS document developed by the Law Council of Australia. The Legal Services Commission is the disciplinary body whose decisions are made by solicitors. The judiciary decide admission upon the recommendation of others within the legal profession. This may indicate efforts to counter neoliberal restructuring of the legal profession.

5.4 Discipline

Solicitors are arguably subject to normalised disciplinary power materialising in arrangements of work including organisation of space, units of time, data capture and reporting, hierarchical observation, and surveillance. Interviewees appeared to negotiate ICC within their practice without explicit conflict with existing structures of governance. Upon closer reading, however, there is tension with some disciplinary technologies such as time,

> I11: *And I think take a lot more time to get engaged with those community organisations to help everybody, try and help clients as best as we can. Whereas before yeah it was just about pumping it out, getting the next matter; getting paid.*

> I6: *So that's definitely one facet of going from you're billing in 6 minute increments where people just want their problem dealt with opposed to you can't jump straight into the issue, you've got to have that small talk first.*

Scheduling,

> I5: *…you come to the understanding that if the client doesn't turn up to the appointment there can be many reasons behind that.*

> I6: *… and is this someone who operates on Murri time and has no concept of making appointments…*

and the structuring of relationships within notions of professionalism:

> I9: *And I do think an element of knowing your clients like acting for this client over and over and over again, I feel like you kind of, you can have a lot of empathy for them. Its not just, you know, were not just a practice where its like a number and you just go in and out, in and out, in and out.*

These appear to be negotiated successfully by solicitors within existing organisational structures of flexibility and lack of time billing. It is untested whether this resolution is also successful for clients and others.

In one instance, a Magistrate sought to use the power of the court to compel clients without working mobile telephones to instruct their solicitors and attend court:

> I10: *Yeah, and I think and we regularly have appearance required whereas say somewhere if you could get in contact with your client you don't need that appearance required perhaps.*

There's not then that issue of warrants being issued which can happen if their appearance is required and they don't show up.

This may demonstrate a disciplinary power cycle, where the court compels behaviour in response to resistance to the regime of truth, consisting of the normalised process of client examination (interview, instruction, and contact) and punishment. Execution of warrants and arrest present an escalation of punishment to correct the aberration.

Solicitors and Magistrates co-operate in using their power to reinforce institutional regimes involving rituals of information giving:

I10: *Yeah, and a lot more frequent court dates. Whereas if I could get things done in the meantime perhaps I could adjourn for a month knowing that I needed that much time but, because I know I'll need to talk to the client in between it might be that I'll just adjourn it for a couple of weeks and then, and I think the Magistrate does that as well. I think she regularly adjourns our matters a lot shorter than she might for a non-Indigenous client.*

Interviewer: *Do you think she tries to case manage from the bench?*

I10: *Yeah. I definitely think so. She'll even say that, to clients, 'now you're going to attend the office and speak to your lawyer in the meantime, aren't you?'*

The difficulties experienced by solicitors in obtaining instructions from clients may represent counter-conduct on behalf of clients seeking to resist disciplinary technologies materialising in hierarchical observation, surveillance, organisation of space and time, and control of information from and about them used as part of the disciplinary and punishment process of sentencing.

5.5 Subjectivity

Text three showed largely uncritical acceptance of the Rules without contradictions or tensions, with the Rules appearing to have been internalised without apparent conflict. At most, responses indicate a minority of interviewees may have passively resisted the Rules through expressed forgetting or unconscious competence.

I1: *I think my ideas of best practice, and by extension practice that attracts the ire of the LSC are in the back of my mind always, yes – the ASCR specifically though, no.*

As agents of the court with a fundamental duty to the court and justice system, solicitors did not critically reflect upon that system within their responses, instead focusing on techniques and strategies for completing their work within existing governance structures.

Text three appears to indicate that solicitor subjects will to be governed in this way, where the Rules are a regime of truth enforced through a professional governance and discipline regime. As part one described, text one limits the field of freedom and possibilities for actions, thoughts and feelings by solicitors. Although McNay (1994, p.52) stated that:

> *the practitioners of these discourses (and knowledge) are not often consciously aware of the rules shaping their discourse*.

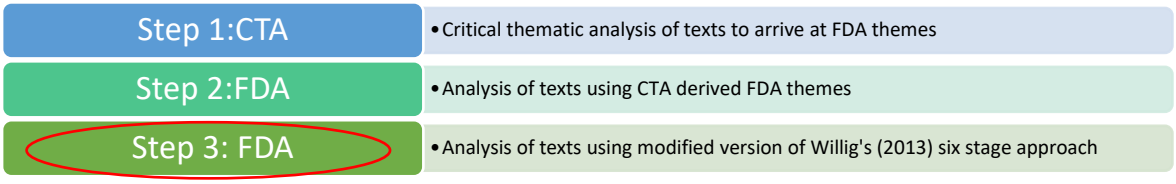
Until counter conduct or critical attitude discourse emerges, there is no evidence that solicitors (as knowing subjects) do not want to conduct themselves or be conducted differently.

5.6 Summary of Results

This section has commenced the FDA by focusing on text three (interview transcripts) and the five themes. Taken together, these five themes describe circuits of power flowing through the performance of discourse within the legal profession. At present, they show a situation where Indigenous client relations occur within a disempowered space for both clients and solicitors. In terms of power-knowledge and regimes of truth, FDA has described the politics of truth constructed through the enacted discourse of legal practice. This truth is shown to be non-Indigenous. As Indigeneity is outside normalised legal practice and professionalism it is relegated to 'other', and legal practice which is influenced by Indigeneity is marginalised. Solicitor subjects are subordinate to the ASCRs, which reinforce power imbalances between courts, solicitors and clients and omit consideration or reference to Indigeneity. Interviewees appear accepting of their subordination and unreflective of the potential effects of their position upon Indigenous over-representation.

Part 2: FDA using Six Stage Approach

Figure 4: Sequence of data analysis results and interpretation. Step 3 FDA using 6 stage approach



Introduction to part 2

This section, the second part of the FDA, is inspired by Willig's (2013) model. Willig's approach builds understanding about how discourse influences the relationship between an individual subject and a text, and the effect of the text upon an individual's potential to act. The model is more tightly focused than that utilised in part one, offering a different but overlapping and consistent perspective upon the discourse. Unlike Willig's model, this FDA incorporates the key Foucauldian concepts of archaeology and genealogy. Archaeology and genealogy are important for looking at the traces, emergence, ruptures and repetitions in discursive constructions through time. Willig's model includes subjectivity, which is discussed in part one of the FDA. Subjectivity has been excluded from this FDA to both accommodate archaeology and genealogy and avoid repetition or confusion.

Part two both continues and completes the FDA of the three texts. Each text will be looked at on six levels; (i) archaeology and genealogy, (ii) discursive constructions, (iii) discourses, (iv) action orientation, (v) positionings and (vi) practice. This part will be arranged by text, with the ASCRs discussed first, the QHATSICCF next, and the interviews last. A summary of the FDA for each text is included, as well as an overall summary. This part more tightly focuses the analysis, building to the effect of the discourse upon individual subjects and upon the possibilities afforded them by the constructions for thinking, feeling and acting.

5.2.1 ASCRs

(i) Archaeology and Genealogy

Using Foucault's method of problematisation as a starting point for analysis, I focused upon exposing some of the historical conditions which produced the problem of solicitor conduct, and when and how it became something requiring the ASCRs. Due to constraints of time and space, this part contains only a limited summary application of Foucault's conception of archaeology and genealogy.

The rupture/transformation

The 1970s were a period of tumultuous economic and social change in Australia. As social justice movements grew in response to concerns about poverty, equality and social justice, a neoliberal political discourse emerged which encouraged increased productivity through market competition (Robertson, 2015) and viewed the system of professions through the lens of economic efficiency. Self-regulating professions came under scrutiny amongst both social justice and neoliberalist concerns about fairness, transparency, quality and efficiency of services.

Implementation of widespread microeconomic and macroeconomic reform in Australia commenced in the early 1980's during recession. Designed to increase economic productivity and efficiency, major reforms over this time included dismantling of tariffs, financial deregulation, privatisation and corporatization of government enterprises such as banks, floating of the Australian dollar, competition reform incorporating changes to regulation of monopoly utilities such as telecommunications and energy, and labour market reform.

As economic reform deepened, a discourse challenging the special status of professions crystalised when the Trade Practices Commission announced in 1988 that it would research the impact of professional regulation on competition in Australia. This resulted in the 1990 discussion paper "*Regulation of professional markets in Australia: issues for review*"[19]. The paper was the first of many to come which repeated advocacy for deregulation of the legal industry, finding that the:

> *"legal profession is heavily over-regulated and in urgent need of comprehensive reform"* (Corbin, 2001, p.140).

As a result of this and other contemporaneous reports, professions became the increasing subject of government scrutiny and intervention. Each government in Australia signed the *Competition Principles Agreement* which evidenced their commitment to the *National Competition Policy*. The agreement included an obligation upon each signatory government to investigate professional regulation and legislation with the aim of assessing whether these instruments were producing anti-competitive effects.

Recurring negative commentary about the administration of justice, including limited access, court delays, questionable standards of representation by legal professionals, and excessive costs of the legal system, led to the 1995 Australian Law Reform Commission review of the adversarial system of

[19] Fels, A. (2001). *Regulation, competition and the professions.* [Paper presentation]. Industry Economics Conference 2001, Melbourne, Victoria.

litigation in the federal civil system[20]. The terms of reference commenced with directing the Commission to consider "*the need for a simpler, cheaper and more accessible legal system"* (p.3). In the amended terms of reference Daryl Williams AM QC, Attorney General includes:

> *"The Commission shall consider, among other matters: the causes of excessive costs and delay.."* (p.5)

In 2000, *Managing justice: A review of the federal civil justice system*[21] was released[22]. The ALRC inquiry focused on case management, procedure, and practice in federal civil tribunals and courts, as well as on issues such as legal ethics, legal and judicial education, costs, legal aid, delay, judicial accountability, alternative dispute resolution, and expert witnesses. Key recommendations included that the development and implementation of national professional responsibility and ethics rules should be accorded priority by legal professional associations and regulatory bodies[23].

In 2003 the government responded[24], describing the report as one of the most highly significant reports produced by the ALRC. The ALRC – Reform Journal (2003, p.1) stated that the report:

> *"…will become the centrepiece of federal Government initiatives to develop a national civil justice strategy"*[25].

In its 2003 response, the government refers to advice from the Law Council of Australia (LCA) that its *Model Rules of Professional Conduct and Practice* have already been reviewed and subsequently adopted at the LCA meeting on 16 March 2002. Copies of the *rules* had been provided to Attorneys-General of the Commonwealth, State and Territories.

All states and territories enacted various versions of Conduct Rules following 2002 whilst microeconomic reform continued under the National Reform Agenda, which targeted improvements in competition policy, regulation, and human capital[26]. In June 2011, the *Australian Solicitors' Conduct Rules* (Conduct Rules) were approved by the Law Council of Australia (LCA), and thereafter states and

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[20] Australian Law Reform Commission. (2000). *Review of the federal civil justice system.* https://www.alrc.gov.au/inquiry/review-of-the-federal-civil-justice-system/

[21] ALRC Report 89

[22] Following a series of consultation, background and issues papers, the Commission released a major Discussion Paper, *Review of the Federal Civil Justice System* (DP 62) in 1999. As a part of its research for the inquiry, the ALRC undertook and also commissioned empirical research in a number of areas. Several research reports were released with the Discussion Paper in 1999.

[23] See 16

[24] https://www.alrc.gov.au/wp-content/uploads/2019/08/Government-Response.pdf

[25] Editors. (2003). Managing justice: The government responds. *Australian Law Reform Commission – Reform Journal, 28*(83) 62-63. http://classic.austlii.edu.au/au/journals/ALRCRefJl/2003/28.html

[26] https://www.rba.gov.au/publications/bulletin/2000/oct/pdf/bu-1000-1.pdf

territories repealed their existing Rules in preference for the LCA Rules. These Rules were reviewed by the LCA in February 2018, with recommendations for potential rule changes for consultation made. The LCA is now working with states and territories to implement the revised Rules.

Between the 1970s and 2000s discourse about solicitor conduct was particularly visible and recurrent. The ASCRs emerged from a process of institutional and economic structural reform which disrupted and transformed earlier conceptions of professional services, acceptable behaviour and independence, to incorporate, or even replace these, with commercial ideals of service delivery, efficiency, uniformity and trade. This transformation has occurred within a context of greater socio-political and economic transition involving recessions, industry re-structuring, increased competition, and de-regulation.

(ii) Discursive constructions

Appendix 10 contains a table identifying all discursive constructions which reference solicitor conduct in the ASCRs. Within the text, solicitor conduct is constructed as an action by a solicitor which can have important effects, particularly when that action does not accord with the Rules. The importance of solicitor action is identified through the effects on the justice system and public confidence in the system and practitioners.

Although conduct is used diversely throughout the document, negative notions of solicitor action are an important part of the text, with six of the 31 uses of conduct being from misconduct. Negative uses include references to *criminality, investigation, bullying, harassment, discrimination, prejudice, inflammatory* and *unsafe*. Many actions are identified within the context of prohibitions upon them, signaled by the words '*must not*', whilst others are phrased as actions without discretion by use of the word '*must*'. Conduct can be complained about by others and when solicitor actions do not accord with the Rules solicitors may be punished. Punishment may include removal from the role of practitioners.

(iii) Discourses

In the ASCRs solicitor conduct is constructed as action by a solicitor which requires regulation by the Rules due to the potential severity of outcome. There are at least two parts to this construction. The first relates to regulation and the second to the potential outcome. Regulation of solicitors resonates with professional discourse, including ethics and governance, whilst Rules and potential outcomes resonates with economic discourse, including neoliberalism, corporate governance and risk management (in governance and business).

Use of both discourses occurs within the introduction[27], which refers both to the Rules being the first national set of conduct rules, which accords with economic discourse; and to the long history of integrity of the profession, which accords with professional discourse. The term *legal profession* features prominently[28] and is frequently referenced but appears without glossary inclusion, except within '*legal profession legislation'*. The latter is defined through economic discourse as a law regulating legal practice and provision of legal services.

Use of *profession* within the introduction goes beyond the glossary terms of provision of legal service, to identify solicitors as being a body,

> *…as a profession, we have a justified reputation…*

with shared values and purpose,

> *…we uphold the long-standing values of our profession and ensure the integrity of administration of justice for the community.*

and responsibilities:

> *It is the essence of our professional responsibility that we act in the paramount interest of the administration of justice and serve the best interests of our client.*

The ASCRs are linked to the concept of legal profession self-governance,

> *The ASCR is a statement by us as a Society that we are capable of determining the ethical and professional conduct which we as solicitors strive to achieve daily.*

and ethics:

> *The ASCR are rules of professional conduct; they do not detract from us striving each day to maintain the highest possible level of ethical standards.*

This use of the term *legal profession* arguably accords with ideas of a profession being:

> "*a group … pursuing a learned art as a common calling in the spirit of public service[29] (Pound, 1953, p.5)"*

[27] Though starts before this within such things as the text colour palette and layout

[28] Such as in the legal instrument enacting the Rules - *Legal Profession (Australian Solicitors Conduct Rules) Notice 2012*

[29] Pound, R. (1953). *The Lawyer from antiquity to modern times. With particular reference to the development of bar associations in the United States.* West Publication Co.

These ideas resonate with traditional economic and professional views supporting protectionism, trade restrictions and self-regulation. For example, when speaking about the link between ethics and professionalism for barristers in 1992[30], Sir Gerard Brennan QC stated:

> *The first, and perhaps the most important, thing to be said about ethics is that they cannot be reduced to rules… If ethics were reduced merely to rules, a spiritless compliance would soon be replaced by skilful evasion. There is no really effective forum for their enforcement save individual acceptance and peer expectation. However, among those who see themselves as members of a profession, peer expectation is sufficient to maintain the profession's ethical code. Ethics give practical expression to the purpose for which a profession exists, so a member who repudiates the ethical code in effect repudiates members of the profession.*

Ethics or *ethical* feature prominently and repeatedly throughout the text. However, these words can be linked to a wide array of discourses, including professional and economic. For example, corporation law and governance impose ethical duties upon directors.

Use of '*Legal Profession'* also relates the Rules to legislative discourse such as the *Legal Profession Act 2007 (LPA)* and the *Legal Profession Regulations 2017 (LPR)*, which regulate practice as a solicitor in Queensland. Several of the terms utilised in the CEO's introduction and the ASCRs more generally are also used in the LPA. The LPA also resonates with economic discourse, including consumer protection, reduction of trade restrictions and facilitation of national competition, for example:

> **3 *Main purposes***
>
> *The main purposes of this Act are as follows—*
>
> *(a) to provide for the regulation of legal practice in this jurisdiction in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;*
>
> *(b) to facilitate the regulation of legal practice on a national basis across State borders.*

The consistent overlay of discourses of economics, professionalism and ethics within the text may reflect changed conceptions of professional ethics, as written by Corbin (2001, p.139) in reference to the Law Council of Australia and American Bar Association:

[30] Brennan, G. (1992, May 3). Address to Queensland Bar Association, Brisbane.

The term 'professionalism' is being re-defined. These bodies are using professionalism to describe the conduct required of professionals rather than as a term to describe their mode of regulation. It is also noted that the exhortations of the professional bodies speak in terms of behaviour required by ethical codes.

(iv) Action orientation

The ASCRs utilise professional and economic discourse, and at times are the link between them.

Professional discourse is evident in the legislative formatting and layout of the document. This familiarity may enhance the acceptance and utility of the document for solicitors (the target audience). Noela L'Estrange (CEO) emphasizes professional discourse throughout her introduction. She opens with the form of address '*Dear Colleague'*, and reference to '*we'* solicitors, which may assist in positioning herself as an insider. She seeks to embed the ASCRs in established professional discourse such as ethics,

The Australian Solicitors Conduct Rules 2012 (the ASCR) provide a framework for ethical decision making about what we as solicitors do daily.

and appeals to professional tradition and identity when phrasing obedience to the Rules as upholding:

the long-standing values of our profession and ensure the integrity of administration of justice for the community.

The ASCRs are then linked to authority and collective professional expertise in ethics,

I would like to acknowledge the extensive research and assistance rendered by the QLS Ethics Committee.

within the context of National Rules ostensibly supported by representative authority (the Law Council of Australia) and fair and democratic process of consultation:

The Law Council of Australia and its constituent bodies, of which your Society is one, undertook extensive consultation to produce the current ASCR.

She then re-iterates the link between ethics and professional discourse and adds the notion of professional self-regulation,

The ASCR is a statement by us as a Society that we are capable of determining the ethical and professional conduct which we as solicitors strive to achieve daily.

This may assist in the positioning of the ASCRs as something internally driven by the profession rather than something which is externally imposed upon it.

Professional discourse involving reference to the ASCRs as frameworks and principles is then replaced with naming the Rules as rules:

> *The ASCR are rules of professional conduct;*

The ASCRs are then commended to solicitors for consideration. This is in tension with the compulsory nature of the ASCRs, where discretion is limited and arguably, time for consideration and negotiation has been superseded by a time for obedience; professional judgement has been replaced in some instances with ASCR contents.

Professional discourse may have been used by the CEO to support the acceptance of the ASCRs as part of professionalism by solicitors and to encourage their adoption.

Economic discourse is evident in the title of the person chosen to introduce the Rules to readers, '*Chief Executive Officer*' and in the contents of the Rules.

Deregulation, competition, and reduction of trade barrier discourses are reflected within Rule 1.1:

> *These Rules apply to all solicitors within Australia, including Australian-registered foreign lawyers acting in the manner of a solicitor…*

Competition and consumer protections are reflected again in Rule 4.1.3:

> *…deliver legal services competently, diligently and as promptly as reasonably possible;*

Consumer protection discourse can be seen in Rule 7, *Communication of Advice*, including,

> *7.1 A solicitor must provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement.*

and at Rule 34.2:

> *In the conduct or promotion of a solicitor's practice, the solicitor must not seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the solicitor at the time when the instructions are sought.*

Trade practices and business regulation discourse is evident in Rules including 36.1:

A solicitor or principal of a law practice must ensure that any advertising, marketing, or promotion in connection with the solicitor or law practice is not:

36.1.1 false;

36.1.2 misleading or deceptive or likely to mislead or deceive;

36.1.3 offensive; or

36.1.4 prohibited by law.

The prevalence of economic discourse throughout the ASCRs may support the visibility, legitimacy and enforceability of non-discretionary, transparent expectations of solicitor conduct which can be relied upon by consumers, the economy and the market. Such notions seek to support consumers in comparing the quality of services received and provide safeguards and complaints processes for unsatisfactory services or products. Use of economic discourse may support the notion of legal practice as being an economic unit of professional service competing within a national sector or industry, and subject to external regulation comparable to other services.

(v) Positionings

Within the ASCRs Solicitors are continually offered the subjective position of untrustworthy but powerful individuals who require intervention in the form of rules and penalties to ensure they act ethically, and even then, there are Rules about solicitor co-operation with regulatory authorities.

Some of the solicitor conduct the Rules guard against includes lying,

22.1 A solicitor must not knowingly make a false statement to an opponent in relation to the case (including its compromise).

encouraging others to lie,

24.1 A solicitor must not: 24.1.1 advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or…

and threats and humiliation:

34.1 A solicitor must not in any action or communication associated with representing a client:

34.1.2 threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the solicitor's client is not satisfied; or

34.1.3 use tactics that go beyond legitimate advocacy and which are primarily designed to embarrass or frustrate another person.

The consequences for not following the Rules are repeated throughout the document and first appear at Rule 2, including Rule 2.3:

A breach of these Rules is capable of constituting unsatisfactory professional conduct or professional misconduct and may give rise to disciplinary action by the relevant regulatory authority, but cannot be enforced by a third party.

It is necessary to rule regarding failing to co-operate with regulatory bodies responsible for investigating solicitor conduct:

43.1 Subject only to his or her duty to the client, a solicitor must be open and frank in his or her dealings with a regulatory authority.

In addition to the dishonest, corrupt and possibly criminal subject position provided to solicitors, they are also positioned as both servants and representatives of the wider system of justice.

For instance, Rule 3 states:

A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

Rule 5 reinforces the position of solicitors as guardians of the reputation of the wider legal governance system (administration of justice) as well as the wider profession:

A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:

5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or

5.1.2 bring the profession into disrepute.

Solicitors, who are the subject of the text and are subject to the construction of the object (solicitor conduct) are the primary users of a text which constructs their conduct as a potential risk to consumers, colleagues, and the system of justice. Acceptance and adoption of the Rules, along with the subject position it provides, is compulsory for solicitors. It is difficult to understand what is gained for solicitor subjects within this position.

(vi) Practice

In the case of the ASCRs, the positioning of the subject as subject to the discursive construction of the object necessitates clear and absolute language around the object (eg; '*must not'; 'must'*). In other words, the object (solicitor conduct) is constructed as a risk in need of management and control. The subject (solicitors) are provided with the position of needing management and control and of simultaneous acceptance of this. The subject's opportunity for agency is arguably limited or appropriated by the text and directed towards the object as constructed by the text. For example, within the text the word conduct is used mostly within the context of solicitors managing and controlling their actions.

A table showing all uses of the word *conduct* in the ASCRs is provided at appendix 11. This table was further divided into three categories in accordance with how the word *conduct* is used; whether *conduct* referring to solicitors conducting people or things (such as a case or business); solicitors being conducted (such as by a regulator); or solicitors conducting themselves (such as by obeying a 'must not' directive). The summary table below shows how solicitor conduct in the text mostly refers to subjects actively participating in their own control in an act of self-conduct. Such self-control or limitation of action possibilities may require solicitors to accept[31], internalise, legitimise and reproduce practices and discourses which accord with the ASCRs whilst excluding or closing down opportunities for action which are not contained in the text. Taking this one step further, it may be that once solicitors inhabit this subject position of limitation, there are implications for their opportunities for feeling, thought and experience.

Table 5: ASCRs: use of conduct

Construction	Solicitor self-conduct	Being conducted	Solicitor conducting
Total	16	7	6

5.2.2 Summary of Analysis of ASCRs

The ASCRs have been analysed in six stages. The six stages, in summary, describe how the text limits the practices of solicitors whilst recruiting their acceptance and co-operation through appeals to shared group identity and values. The text has emerged from a background of social and economic transformation in Australia, commencing in the 1970s. Concerns for economic efficiency have helped

[31] as per paragraph four of the CEO's introduction where she says "*The ASCR is a statement by us as a Society that we are capable of determining the ethical and professional conduct which we as solicitors strive to achieve daily"*; paragraph three; "*The ASCR is intended to be the first national set of conduct rules for all Australian solicitors*"; and paragraph six, "*The ASCR are rules of professional conduct; they do not detract from us striving each day to maintain the highest possible level of ethical standards"*.

to re-shape conceptions of professionalism to incorporate an emphasis on service delivery and competition. Within the text, economic and professional discourse are used to construct the necessity of control of solicitor conduct due to the important, and often negative effects of their actions. As subjects of the text, responsibility for ensuring solicitor conduct is within the bounds of the text rests largely upon solicitors themselves.

5.2.3 QHATSICCF

(i) Archaeology and Genealogy

Using Foucault's method of problematisation as a starting point for analysis, this part focused on exposing some of the historical conditions which produced the problem of *Aboriginal and Torres Strait Islander Cultural Capability*, when and how it became something requiring the Queensland Health framework. Due to constraints of time and space, this part contains only a limited summary application of Foucault's conception of archaeology and genealogy. This summary maps the discursive rupture and accelerating transformation of the state healthcare system occurring since the 1950s which is reflected in the QHATSICCF.

The rupture/transformation

In 2008 the *Coalition of Australian Governments* (COAG) agreed to six targets and timelines relating to Indigenous health and wellbeing. These were:

> *1. close the gap in life expectancy within a generation (by 2031)*
>
> *2. halve the gap in mortality rates for Indigenous children under 5 within a decade (by 2018)*
>
> *3. ensure 95% of all Indigenous 4 year-olds are enrolled in early childhood education by 2025*
>
> *4. halve the gap for Indigenous students in reading, writing and numeracy within a decade (by 2018)*
>
> *5. halve the gap for Indigenous people aged 20–24 years in Year 12 attainment or equivalent attainment rates by 2020*
>
> *6. halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade (by 2018)*
>
> *7. close the gap between Indigenous and non-Indigenous school attendance within 5 years (by the end of 2018).*

The *National Partnership Agreement on Hospital and Health Workforce Reform 2008* was then enacted between Commonwealth and State governments to assist achievement of targets as part of a broader network of objectives and agreements relating to social inclusion, including 'Indigenous disadvantage'[32]. The agreement is described by the Commonwealth of Australia Department of Health as:

> *the key mechanism for the transparency, governance and financing of Australia's public hospital system. Through this agreement, the Australian Government contributes funds to the states and territories for public hospital services. This includes services delivered through emergency departments, hospitals and community health settings.*

The 2008 COAG agreement has since been replaced by the *National Health Reform Agreement 2011* which provides five principles for National health reform including:

> *e. governments agree that Australia's health system should promote social inclusion and reduce disadvantage, especially for Indigenous Australians.*

The Australian Health Care Agreement was signed to enact the 2011 reform agreement, and in Queensland the agreement was legislated through the *Hospital and Health Boards Act 2011.* Commencing in 2012, local hospital networks in Queensland became funded by the Commonwealth. In Queensland there are sixteen Hospital and Health Services (HHS) with a board to manage operations. The board reports to the Queensland Government Minister for Health and Ambulance Services and the Department decides, using service agreements, what services to purchase from each HHS.

In 2017 the Queensland Aboriginal and Islander Health Council (QAIHC) and the Queensland Human Rights Commission provided Queensland Health with the report '*Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander People in Queensland's Public Hospital and Health Services Report*' otherwise known as the '*Health Equity Report*'. The report found that the *Hospital and Health Boards Act 2011* failed to give legislative force to the intention of the *National Partnership Agreements* and related policy designed to close the Indigenous health gap; indicating that Queensland was not genuinely committed to the task.

The Health Equity Report considered the 2011 Act as rendering Aboriginal peoples and Torres Strait Islander peoples 'legally invisible'[33] by not including, for example:

[32] Preliminaries of National partnership agreement
[33] https://www.legislation.qld.gov.au/view/pdf/published.exp/sl-2021-0034

• a statement of commitment to Closing the Gap in Aboriginal and Torres Strait Islander health in a preamble to the Act, reflecting that "Aboriginal and Torres Strait Islander health is 'everyone's business'";

• a provision for the delivery of responsive, capable and culturally competent healthcare to Aboriginal and Torres Strait Islander peoples in Queensland as an object of the Act;

• a requirement that Hospital and Health Boards have among their members a person, or persons, with expertise and experience in Aboriginal and Torres Strait Islander healthcare or health service delivery among the skills, knowledge and experience required for a Hospital and Health Service to perform its functions effectively and efficiently; and

• a provision that requires the Hospital and Health Services to establish Aboriginal and Torres Strait Islander health plans.

In 2017, in response, Queensland Health issued the *Statement of* Action towards Closing the Gap in health outcomes (Statement of Action), which committed to building sustainable cultural capability throughout all of Queensland Health.

Then, in 2018, Queensland Health issued additional advice requiring each HHS to develop a *Closing the Gap Health Plan* which shows actions within the three key areas identified in the Statement of Action. These are[34]:

1.Promoting opportunities to embed Aboriginal and Torres Strait Islander representation in Queensland Health leadership, governance and workforce.

2.Improving local engagement and partnerships between Queensland Health and Aboriginal and Torres Strait Islander people, communities and organisations.

3.Improving transparency, reporting and accountability in Closing the Gap progress.

In 2021, the *Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021 (the Regulation)* was passed, prescribing that HHSs, in partnership with local Aboriginal and Torres Strait Islander community-controlled health organisations and First Nations people, develop and implement a Health Equity Strategy. Health Equity Strategies replace Closing the Gap Health Plans, reflecting the change in discourse towards the inclusion of Indigenous health within the caption of health equity. For example, within Queensland Health websites promote:

[34] https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0005/16565/QH-Addressing-institutional-barriers-002.pdf

Aboriginal and Torres Strait Islander health equity—a renewed approach to eliminating unavoidable, unjust and unfair health inequities.

Strategy requirements include specific key performance measures relating to actively improving health service access, ending institutional racism, and providing health services in a culturally safe, sustainable and responsive way to Aboriginal people and Torres Strait Islander people.

Also in 2021 the Queensland Minister for Health released the discussion paper *'Making Tracks towards health equity with Aboriginal and Torres Strait Islander peoples: working together to achieve life expectancy parity by 2031'*. The discussion paper is described by Queensland Health as 'historic' due to the level of involvement of Indigenous community-controlled health organisations:

…it's the first time a discussion paper has been co-designed and jointly written between Queensland Health and QAIHC on behalf of ATSICCHOs.

Amongst the stated purposes of the discussion paper is the explanation of what Health Equity is and how it can be applied.

Emergence of COAG and Closing the gap

Throughout the 1950s and 1960s social movement supporting Indigenous civil rights and equality began to gain wider support[35]. This was framed within a discourse of Aboriginal Rights linked to international comparisons of racism within South Africa and the USA. In the early 1960s discovery of bauxite in the Gove Peninsula encouraged the parallel Land Rights Movement. In 1966 Australia signed *the International Convention of the Elimination of all forms of Racial Discrimination,* and in 1967 Australian non-Indigenous people voted overwhelmingly to change the constitution so that Indigenous people as a group were not excluded from Commonwealth legislation and the census. At the same time as these changes on a Commonwealth level, Aboriginal Reserves were gazetted until 1968 in Queensland and missions and reserves continued to operate.

The late 1960s and 1970s were a period of major transformation in Indigenous equity issues, particularly on a Commonwealth level[36]. During this decade, for the first time in Australia's history, Indigenous people were counted in a census, became eligible for Commonwealth social assistance, were universally legally able to leave missions or reserves or travel overseas. A Commonwealth land rights commission and department of Aboriginal affairs was established. In 1975 the *Racial*

[35] For example, growing union support of the Gurindji claim for land and equality in 1966.

[36] Queensland appeared reluctant to follow. For example, in 1971 forced confinement of Indigenous people on reserves ended, however forced control over wages and savings continued until 1972 and until 1975 no consent was required by Indigenous people for third parties to manage their property. The *Anti-Discrimination Act 1991* (Qld) came into force on 30 June 1992.

Discrimination Act (RDA) was passed. This Act provided rights to equality before the law and bound the Commonwealth and states to the *International Convention on the Elimination of all Forms of Racial Discrimination.*

The 1970s was a period of major transformation in Indigenous and non-Indigenous health equity issues, particularly on a Commonwealth level. For instance, in 1971 the first Aboriginal Health Service was established in Redfern, Sydney. In 1973 the first national '*Ten Year Plan for Aboriginal Health*' was developed by the Whitlam Government[37]. In 1975 the predecessor to Medicare was introduced amongst strident opposition from doctors and private health funds, and in 1979 the House of Representatives Standing Committee on Aboriginal Affairs Report '*Aboriginal Health'*, stated that poor Aboriginal health was caused by socio-economic factors, inappropriate health services and low standards of housing and environmental conditions.

Commonwealth and Queensland governments, however, were not in agreement in relation to Indigenous issues such as Land Rights, self-determination and mining. For instance, conflict arose between the Queensland and Commonwealth Governments over Aurukun and Mornington Island Aboriginal reserves when these communities protested to the Commonwealth government about the Queensland government control of them (as former reserves). The conflict resulted in an agreement between state and federal ministers whereby the former reserves would be leased for fifty years to new local councils created by the states.

Queensland government views played out in Commonwealth courts in cases such as *Koowarta v. Bjelke-Petersen (1982)*[38] and *Mabo v Queensland (1988)*[39]. In *Koowarta,* the High Court upheld the constitutional validity of the *Racial Discrimination Act 1975 (RDA),* finding that the blocking of John Koowarta's land purchase plan by the Queensland Government was contrary to the *RDA*. In *Mabo* the High Court found that the *RDA* prevented discriminatory treatment of Indigenous interests in land[40]. The Court found that Queensland legislation extinguishing native title without compensation payment was inconsistent with the *RDA.*

In 1992 the *Coalition of Australian Governments (COAG*) was founded by Prime Minister Paul Keating during another intense period of development in Indigenous affairs on a Commonwealth and

37 https://www.solidarity.net.au/mag/back/2010/21/hawke-keating-and-aboriginal-rights-labors-sorry-history/
38 153 CLR 168
39 166 CLR 186 (Mabo No. 1)
40 National Archives of Australia. (1978). Cabinet documents, Indigenous affairs.

parliamentary and judicial level[41]. COAG was conceived as a forum where all levels of government could debate and discuss issues of national importance, such as the *Native Title Act 1993*, and would become increasingly important to Indigenous policy. In 1992 COAG made a *'National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal peoples and Torres Strait Islanders'* which acknowledged the need for all governments to work together to address the causes of Indigenous inequality and disadvantage[42].

The following year the Aboriginal and Social Justice Commissioner role was created within the Human Rights and Equal Opportunity Commission to fulfill the following functions:

> *(1) Report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and recommend where necessary on the action that should be taken to ensure these rights are observed.*
>
> *(2) Promote awareness and discussion of human rights in relation to Aboriginal peoples and Torres Strait Islanders.*
>
> *(3) Undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.*
>
> *(4) Examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal peoples and Torres Strait Islanders. The Commissioner is also required, under Section 209 of the Native Title Act 1993, to report annually on the operation of the Native Title Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.*

In 1994 Queensland Health released its first policy for *Aboriginal and Torres Strait Islander Health* which provided key directions and goals for 1995-2000. These included community control of primary health care services; culturally appropriate health service provision; workforce planning and development; and coordination of approach by government agencies[43]. This reflected the language

[41] Eg; 1991 Report of the Royal Commission into Aboriginal Deaths in Custody. Council for Aboriginal Reconciliation established in 1991. 1992 *Mabo* decision, Keating's 1992 Redfern Speech, 1993 *Native Title Act*; 1996 *Wik* decision.

[42] https://humanrights.gov.au/our-work/publications/achieving-aboriginal-and-torres-strait-islander-health-equality-within#a-the0

[43] https://catalogue.nla.gov.au/Record/523410. The Queensland Health policy existed within a broader state government context where 'Aboriginal and Islander Affairs' and 'Family Services' were separate divisions of the same Department. This department held responsibility for diverse functions including protection of children from child abuse and neglect, licensing for providers of childrens services, social problems awareness and education, crisis intervention, and correctional services for young offenders[43].

of COAG commitments to reconciliation, Indigenous partnership, service co-ordination and delivery throughout the 1990s and 2000s. In 2004, COAG agreed to the '*National Framework of Principles for Government Service Delivery to Indigenous Australians'* which committed all governments to a framework for addressing, amongst other things, health inequality[44].

In 2006 the Aboriginal and Social Justice Commissioner released the *Social Justice Report*, which contained nine recommendations for ending the Indigenous health inequity. Following campaigning by the Australian Indigenous Doctors' Association, the Congress of Aboriginal and Torres Strait Islander Nurses, the Indigenous Dentists' Association of Australia, the National Aboriginal Community Controlled Health Organisation, Oxfam Australia, Australians for Native Title and Reconciliation, and the Commissioner under the slogan 'close the gap', in March 2008 the Commonwealth government and opposition signed the *Close the Gap Statement of Intent.*

From at least the 1950s discourse relating to racism, discrimination and inequity for First Nations people has been visible and recurring in public, political and judicial domains. Prominent landmarks within this discourse include the 1967 referendum, 1975 *RDA*, and the 1992 creation of the Coalition of Australian Governments (COAG). Since 1994 there has been Queensland Health policy targeting Indigenous health. In 2008, following the adoption of a human rights and Indigenous health equity discourse, clear COAG *close the gap* targets for Indigenous health emerged. The QHATSICCF perpetuates, updates and recreates this discourse at a State public policy and administration level.

(ii) Discursive constructions

The discursive object is *Aboriginal and Torres Strait Islander cultural competence or capability*. I have regarded competence and capability as the same discursive object as they are not differentiated in any way and appear to be used interchangeably. For example, on page 15 of the text Table 1 is entitled *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 – 2033 strategies*. The preceding paragraph states:

> *Table 1 provides an overview of all strategies (existing and planned) with respect to the elements in the Organisational Cultural* ***Competency*** *[emphasis added] Framework and their application to improving the health of Aboriginal and Torres Strait Islander people.*

Table 1 then has two columns, one which uses the term Cultural competence ("*Queensland Health Organisational Cultural Competency Framework element")* and the other which uses Cultural

[44] Social justice report

Capability ("*Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033 Strategy*"). A similar example is also contained in the body of Table 1.

For ease of reference the acronyms QHATSICCF and 'the framework' will be used interchangeably to refer to the analysed text. The acronyms ATSICC and CC will be used to refer to Aboriginal and Torres Strait Islander Cultural Capability/Competence and Cultural Capability/Competence. A table was prepared which identified all references to the discursive object Aboriginal and Torres Strait Islander "Cultural Capability" or "Cultural Competency" within the Framework. This table can be found within appendix 12.

Summary of Table 1

Cultural competence or capability is constructed as something which is discernable from other things. It is something which can be defined, however, the definition provided, whilst specific, includes terms which may be unclear, such as '*culturally respectful and appropriate'*. Cultural competence or capability is constructed as something which can be taught and learnt, lead, developed, planned, monitored, and evaluated. It is an expected, important, and principle-based process without an end point which involves everyone, including patients, the community and stakeholders, and everything the organisation does. It requires resources and leadership and represents a challenge for the organisation.

(iii) Discourses

The text situates within health practice[45] and National public policy discourse. National public policy discourse is informed by Indigenous affairs and health discourse, including COAG Reform Council documents, Prime Minister's reports and Productivity Commission reports. These networks of texts use both social justice and governance discourses (for example, human rights, intergovernmental co-ordination of services, efficiencies, efficacy and accountability).

Flowing from these broader discursive structures, public policy and managerial discourses can be seen operating in the text to direct implementation of cultural capability throughout the organisation. The combination of managerial and public policy discourses may assist in positioning the object (*Aboriginal and Torres Strait Islander cultural competence or capability)* both as a just action or response to inequitable health experiences for Aboriginal and Torres Strait Islander people, and as an expectation upon all Queensland Health employees by their employer.

[45] For instance; the concept of a framework

Managerial discourse can be seen within the introduction, which uses language referencing strategic plans, such as organisational mission and purpose,

> *Queensland Health's mission is 'creating dependable health care and better health for all Queenslanders'.*

and:

> *Queensland Health shares the vision of closing the life expectancy gap between Aboriginal and Torres Strait Islander and other Queenslanders.*

Mission statements are designed to state what an organisation does and who for, whilst vision statements describe an inspiring future. Vision statements in particular are used to direct employee efforts towards an organisational goal.

Managerial discourse can also be seen within the identification of the business area and processes of the organisation,

> *…and applies this understanding and respect in its governance, policy, planning, infrastructure, funding, standards, information systems, human resource management, quality improvement, education, training and every aspect of health service delivery.*

and reference to managerial functions such as planning, supporting and improving service and achieving organisational goals:

> *…planned, supported, improved and culturally equipped to provide services to Aboriginal and Torres Strait Islander peoples is one of the key factors that will contribute to improved health outcomes and the achievement of this mission.*

The managerial discourse within the introduction includes directive phrasing towards employees, including:

> • *Improving Aboriginal and Torres Strait Islander people's health is everyone's business.*
>
> • *All Queensland Health staff are bound by the Queensland Government commitment to close the gap in health inequities between Aboriginal and Torres Strait Islander and other Queenslanders.*

> • *Services must be culturally and clinically responsive and appropriate in order to close the gap.*

The breadth of these statements, however, is also suggestive of public service policy directives.

The text also references broader health equity and public policy discourse. For example,

> *We acknowledge and respect the diversity in Aboriginal and Torres Strait Islander peoples and cultures and their right to equitable, accessible and quality health care.*

and:

> *The health system, overall, does not provide the same level and quality of care for Aboriginal and Torres Strait Islander peoples.*

The text also attempts to engage with Indigenous discourse through storytelling and non-text discourse such as artwork. However, these attempts may involve appropriation of Indigenous art forms by the non-Indigenous discourses and non-Indigenous ontologies which dominate the text, including generation of an artwork which illustrates and supports the intention of the text and a lack of discernable insider discourse from First Nations contributors.

(iv) Action orientation

Indigenous inspired artwork, colour and design are featured prominently in the text. Construction of the object within this visual context may assist in disrupting normalized discourses surrounding appropriate presentation of corporate documents and offer symbolic role modelling of changed practice to incorporate Aboriginal and Torres Strait Islander culture throughout Queensland Health. The text design may also assist in supporting the acceptance of the text by Indigenous stakeholders through visual indication of Queensland Health's commitment and acknowledgement of culture, including showcasing a positive image of Aboriginal and Torres Strait Islander culture to staff and stakeholders.

The non-text public policy discourse of redressing inequity may be reflected by the comparatively small size of the Queensland Health coat of arms which may assist in minimizing the conceptual conflict between symbols, particularly for Indigenous readers. Similarly, the excerpt from the Queensland constitution preamble at page two of the text may assist in positioning Queensland Health as part of a government committed to recognition of Aboriginal and Torres Strait Islander people, and

the text as being a part of this. The text also explicitly links itself to Commonwealth Government health equity initiatives:

> *Queensland Health shares the national and state vision of improving health outcomes and closing the gap in life expectancy.*

but is careful only to share a limited vision with the Commonwealth government which re-affirms the objectives of the text.

Political discourse may also be evident in some parts of the text, such as 'The Queensland Health Response' which highlights the positive actions, connections and commitments made by the Department:

> *Making Tracks towards closing the gap in health outcomes for Indigenous Queenslanders by 2033 – policy and accountability framework is Queensland Health's overarching framework for closing the life expectancy gap within a generation (by 2033), one of the key targets to which the Council of Australian Governments has committed.*

This may assist in positioning the text within a central political position, closely connected to COAG and *close the gap* targets as well as part of a greater body of work on a State government level. The connecting of the text to these spheres may place it in a perceived position of authority and continuity with broader policy movements.

The text quickly moves from possible political discourse towards managerial discourse,

> *…one of the key factors that will contribute to this goal.*

before again shifting to reinforce health equity discourse:

> *…services in order to address the health inequality experienced by Aboriginal and Torres Strait Islander peoples.*

This transition may assist in obtaining the most discursive benefit from connection to National policy discourse whilst minimizing any risks associated with this connection.

The text positions its' construction of the object authoritatively through discourse and repetition. The managerial or public administration discourse is unequivocal:

> *…we can and must change the way we do business.*

With expectations placed upon staff phrased as requirements:

> *This will require all Queensland Health staff, individually and collectively, to understand and respect cultural differences and needs, and apply this understanding in their various roles.*

Use of words and phrases such as '*strategies'*, '*key outcomes'*, '*implementation', 'measurement, evaluation and monitoring*' accord with managerial reports, which in turn link to notions of accountability, reporting and scrutiny of employees and wider public administration and governance discourses of accountability, transparency and economy.

Implementation of cultural capability as an additional expectation of performance is clear,

> *Measuring and evaluating the success of the framework will initially occur through a variety of existing evaluation and reporting mechanisms.*

with executives receiving special attention:

> *Due of the need for strong leadership and responsibility in Queensland Health..*

These directive discursive strategies may assist in presenting the construction as more stable, certain, and measurable than the principle-based process model provided in the text can be.

Use of health equity discourse to construct the object provides a largely uncontested rationale for change:

> *Australians, in general, are one of the healthiest populations of any developed country and have access to a world-class health system. At the same time, Australia is also noteworthy in the developed world for its failure to make substantial improvements in the overall health of its Aboriginal and Torres Strait Islander population.*

The construction of the object as something needed and imposed for reasons of social justice may enhance acceptance of the object and the process of its implementation.

The change is then supported throughout the text by construction of the object as something capable of being learnt and improved over time and with experience, and as something which has the full support of the organisation, including adequate resourcing and union involvement. The repetition of the construction of the object as something teachable and learnable links to both managerial and public policy discourses and reinforces the position of the organisation and staff as not yet having achieved cultural capability. The buttressing of the rationale for change with the construction of the object as being fully supported by the resources of the organisation, including the union, may reduce the resistance to implementation and adoption by staff.

(v) Positionings

The construction of the object provides a position of equity for all subjects, and this is one of not knowing and not being sufficiently culturally competent or capable. Due to the construction of the object as necessary for health equity, each subject is enlisted into a current position of obstruction of this goal and the related goal of closing the gap in life expectancy for First Nations Australians.

The object is constructed as different to other notions enacted by subjects attempting to redress equity, for example:

> *In acknowledging and respecting individuals, teams, and services that are working, or have tried to work, in culturally responsive and appropriate ways, we also identify that ongoing improvements are needed across Queensland Health to support staff, patients, clients, consumers, their families and communities.*

This places staff in a position where their cultural competence is currently inadequate and in need of development,

> *…so that our staff have the knowledge and skills to deliver care in culturally capable ways;*

even if these staff are themselves Indigenous:

> *The program will provide mandatory foundation knowledge for all Queensland Health employees..*

The insufficiency of subjects in relation to the object places them in a position of needing education, training and development provided and decided by the organisation. Following which, staff subjects will be monitored, evaluated and measured by the organisation in relation to the object using:

> *a variety of existing evaluation and reporting mechanisms*

This may place subjects in the position of accepting additional measures of performance, at least partly consisting of the object as taught, reinforced and accepted by the organisation.

(vi) Practice

The object (cultural capability or competency) is constructed as an expected, important and principle-based process without an end point involving everyone, and which can be taught, learnt, developed, monitored and evaluated. The subjects (predominantly Queensland Health staff) are provided with the position of being deficient regarding the object and because of this, perpetuating health inequities. Their subject position is accepting of education and management by the organisation in relation to the object to contribute to achieving the organisational goal. The subject's opportunity for

agency within these discursive constructions and subject positions is arguably limited or appropriated by the text and directed towards the object as constructed and delimited by the text.

Use of directive managerial and public policy discourse may limit opportunities for autonomous and independent actions as subjects reproduce discourses which accord with the framework. Such limitation of action through management direction and control may require subjects to accept a subservient subject position in relation to the object and reinforce organisational definitions and processes of object construction. Taking this one step further, it may be that once subjects inhabit this subject position of limitation and control, there are implications for their opportunities for feeling, thought and experience.

5.2.4 Summary of Analysis of QHATSICCF

The QHATSICCF has been analysed through six stages. The six stages, in summary, describe how the text limits the practices of subjects whilst recruiting their obedience and compliance through just motivations for imposition of changed practice. National and State political discourse relating to Indigenous health equity has accelerated. Within this discourse Aboriginal and Torres Strait Islander cultural competence is constructed as something important, ongoing, and subject to managerial control. Texts such as the QHATSICCF utilize managerial and public policy discourse to affirm these constructions and direct subjects towards implementation of organisation goals of ICC.

5.2.5 Interviews

(i) Archaeology and Genealogy

Archaeology and genealogy is harder to apply in relation to the interviews as problems were presented to the interviewees by me, so their texts are an imposed space created by my problematisation of current legal practice. Also, the key components of the interviews involve the ASCRs and ICC, and I have already briefly analysed these through archaeology and genealogy. For these reasons, this analysis omits stage 1 and seeks to rely upon the archaeology and genealogy previously described.

(ii) Discursive constructions

Two discursive objects were the focus of the four interview questions, the ASCRs and ICC. This focus makes it difficult to isolate discursive constructions as the entirety of most interview responses construct one or the other of these objects. After drafting a very long table of discursive constructions I concluded that there were two repeating constructions of the ASCRs resounding throughout responses for questions one and two. These were that the Rules were both non-discretionary, and influential upon client relations. Potential complaint, punishment and detriment to career were

associated with both constructions. These constructions accord with the CTA results and interpretation for questions one and two.

The construction of the Rules as non-discretionary came in a variety of terms, including dictate,

> I1: *From memory, the conduct rules are a set of rules that dictate how practitioner's ordinarily should conduct themselves in practice.*
>
> I9: *Um, the solicitor conduct rules are the rules that dictate my practice and they outline my duty to the court, the law and to the client.*

govern,

> I3: *They are the rules that govern what I do on a daily basis.*
>
> I7: *So they are the rules that govern our profession in terms of our ethical obligation.*
>
> I10: *It's the rules that govern our obligations with respect to ethics and how we are to conduct ourselves.*

behove,

> I2: *The Conduct Rules behove solicitors to conduct themselves with integrity, professionalism and factors multiple stakeholders.*

and 'have to':

> I4: *They're rules for solicitors and what we have to abide by.*

The two interviewees who described the Rules as guidelines did so by combining them with firmer constructions:

> I11: *A set of rules or guidelines, more like guidelines, they are rules for us to, for solicitors to act upon*
>
> I8: *Our ethical guidelines that we have to follow if we want to keep practicing as lawyers in Australian courts.*

The construction of the Rules as influencing practice, including client interactions was readily evident. For example:

> I11: *I've had to use them in terms of the duty to a client, which, especially with children I have a duty to the child, not to their guardians, so I've had to sit down with children and with guardians before and explain that…*

I10: *In certain situations you can explain a lot more about your obligations, other situations you probably have to be a little bit more careful how much information I think you give the clients.*

I7: *So that's not I don't want to give you information, I'm trying to make your life more difficult or keep you out of your family members life; it's that we have this professional obligation under our rules that govern our jobs and we can't give that information out unless we have written or verbal authority to do so.*

The Rules are particularly important when solicitors are inexperienced,

I1: *The last time I read the rules would have been when I was admitted as a practitioner and perhaps once or twice since.*

I2: *I reviewed the Rules often last at the end of 2018.*

and then became a part of implicit practice knowledge:

I4: *I think now that now almost ten years post admission it just something that's ingrained to you and why that's important.*

Not following the rules has known negative consequences:

I1: *I think that a breach of the rules could result in a complaint made against you and disciplinary action brought from the LSC?*

I2: *Ultimately, dissatisfactory regard and compliance with the rules could lead to a complaint to the QLS Ethics Board and potential detriment to career.*

I3: *If I do something wrong now the result will be very different to if I did something wrong three years ago. The punishment would be more sever – depending on the act itself it could mean I don't practice anymore and then what would I do?*

Questions three and four relate to the construction of the object Indigenous Cultural Competence within the context of legal practice. The object was dominantly discursively constructed as legal practice which was different because of the client's Indigeneity. This construction accords with the CTA results and interpretation for questions three and four.

Difference was constructed diversely, and included awareness,

I9: *Being aware of the cultural dynamics of the client you are working with.*

I8: *Making sure that you have a background awareness in your mind of whatever nuances exist with whichever Indigenous person you happen to be dealing with…*

I6: *Making sure you're aware of things like, not necessarily facts and statistics per sea but over representation of Indigenous kids in the child protection system, in prison, and knowing that that can have intergenerational traumatic effects on people.*

knowledge,

I8: *Knowing what those protocols are so when something does come up you behave appropriately and don't offend someone.*

I6: *The differences between land people and sea people, and regional, versus rural versus remote versus inner city.*

sensitivity,

I5: *The sensitivity part for me is more about being aware of and looking out for triggers and things that might cause offence or issues.*

and understanding:

I6: *Understand what the problem is and the cultural side of things that go along with that.*

I12: …*understanding a bit about that culture so you can best help represent them.*

I5: *The more you can understand the issues that they are facing, the more competent you can become.*

Cultural Competence was constructed as necessitating skills in communication, including listening,

I6: *Definitely you have to listen a lot more to the client and read between the lines sometimes more in terms of what might be going on for them.*

changing body language and tone,

I9: *I find things like just being very quiet, like usually I speak with a calm voice.*

I2: …*brief, fleeting eye contact a prolonged eye contact is viewed as intimidating, offensive and could cause break down in any possibility of building trust.*

and avoiding gratuitous concurrence,

I1: *In conversation with clients I am more likely to ask open ended questions with a purpose to them, rather than closed questions. Closed questions can result in gratuitous concurrence*

and make engaging with a client difficult, because they may not get across what they want, and you don't have accurate instructions.

all of which requires time and empathy:

I12: *Taking the time to get to build the rapport.*

I11: *Acknowledge and try and adjust how you're relating to people.*

I4: *You have to listen to the client for a long period of time so that they can tell their story.*

(iii) Discourses

Within the interview responses the ASCRs are constructed as non-discretionary rules influencing practice. This construction resonates with legal professional discourse, particularly ethics and governance, and aligns closely with the intention and purpose of the ASCRs themselves. Interview responses construct cultural competence as legal practice which is different because of client Indigeneity. This construction remains resonate with legal professional practice but emphasises principles of social justice, community service and client responsive practice. Responses to questions one and two tended to focus on the 'what' of practice whilst three and four response focused on the 'how'. From this trend it may be found that the ASCRs provide the bounds of practice within which cultural capability may be used.

One interviewee described cultural competence as:

I1: *Acting in a manner that is culturally appropriate whilst upholding highest professional standards.*

This helps describe the combination of the concepts of rules and cultural competence within professional discourse. The same interviewee goes on to explain, when asked what the phrase highest professional standards meant to them:

Acting to the best of your ability within the bounds of your employment. Conducting yourself in a manner that does not bring disrepute to the profession and is in the best interests of your client, subject to your duty to the courts.

This response frames cultural competence within the duties, responsibilities, and associated discourse within the ASCRs.

Similarly, the employment of cultural competence within the discourse of professional conduct as a management tool is illustrated by one respondent who stated:

I5: *I think it's more useful than some of the more negative terminology that can be used. If I had an issue with a staff member where I think they are speaking in a way which is disrespectful, of Indigenous cultural client I can phrase that in a slightly more positive way than sort of saying 'I think you're actually using racist' terminology. I can say 'we as an organisation pride ourselves on our cultural competence and that sort of language is not in line with our principles'.*

Resistance to the notion of Indigenous cultural competence was often positioned within legal professional notions of the individual client and discourses of social justice and equality.

I6: *So I think it's more like not going 'well, all indigenous people are the same, like you can say 'all Australian people are the same or all Asian people are the same because I think, depending on whether you are land or you're are sea and where you are located its totally different and it all comes from going, right, this is where I operate, this is sort of the general proposition for the area in which I operate, how can I make sure I'm more culturally competent with that, rather than trying to do it as a big catch all because you can't put every Indigenous person in the same basket.*

Another respondent phrased resistance to cultural competence in terms of resistance to prejudice:

I8: *initial cultural competence consisted of little things like sitting, not face to face with clients, sitting angle on, not having eye contact, I found that was not true for 80% of people. So in some ways for me its just having a background understanding awareness of it but not I suppose reading it as gospel I suppose, because you'll end up offending people if you regard all indigenous people with the same brush, its its own form of bigotry in a sense.*

This also applied to this interviewee's experience of cultural competence training:

I've done some cultural competency training which I found quite helpful and I've done some cultural competency training which, to be blunt, I found really racist. And the reason why I say that is because of, it may have been the way it was presented but one part I found really offensive was, cultural competency presented in such a way that was inviting practitioners to apply the presumption that's clients weren't sophisticated, um, but, a person's education is going to speak far more to a person's understanding of legalese and sophisticated stuff then their race is, so I found that training absolutely appalling.

However, on a practice level, all interviewees were able to clearly detail Indigenous client responsive practice. These practices contrasted with experiences in private practice:

I8: *I mean there's a big difference between working in private and working in any social justice legal service that it's definitely more client focused.*

I5: *Although in private practice you've got other problems. You've got billable hours, partners on your back, getting it up, putting it all in a computer system, getting all the invoices done or getting your bills out at the end of every month or something, or whatever they want, but you've also got very well-educated clients and they'll ask more questions and they'll want more in depth.*

I12: *I think I'd really struggle to go back and I'd jump back in front of the bus and say could you finish me off properly because I'd rather kill myself than go back to private practice. I couldn't do it. I have no interest. I'd rather give up law than go back to private practice. I have no desire to ever bill in 6 minute increments ever again, I'd rather shoot myself. I would go to a community legal centre. I have no interest in private practice now.*

One interviewee articulated a contrast between expectations of professional behaviour between Indigenous and non-Indigenous clients. In relation to service which was culturally competent this respondent stated:

I10: *it helps me get my job done easier if there's not that strict, rigid professionalism, 'cause I feel like that's not responded to as well. I think there's less of a feeling of trust if you're just purely professional.*

Whilst in relation to non-Indigenous clients:

they respect you more if you act completely professional I feel with a non-indigenous client. They find that you're like a professional and want to come back to you because you can do the job.

These and similar comments may indicate a different type of professionalism emerging from practice with Indigenous clients, linked to social justice discourses, which may or may not be reflected in professional discourse.

This type of professionalism requires time,

I11: *I take a bit more time to like, to get to know the clients and I think a lot of it is, now you can take that time whereas in private you're kind of like okay, I need to get to the next client; next matter, get money sort of thing.*

connection,

> I9: *I think just taking a moment to think about each client and their specific individual life and individual needs. And I do think an element of knowing your clients like acting for this client over and over and over again, I feel like you kind of, you can have a lot of empathy for them. Its not just, you know, were not just a practice where its like a number and you just go in and out, in and out, in and out.*

adjustment,

> I3: *No one really prepares you.*

and change:

> I4: *The effects of intergenerational trauma and the ongoing social problems that are apparent in these communities have led me to be more desensitised to violence in a sense and perhaps as a practitioner humbled and tempered me.*

(iv) Action orientation

Construction of the objects within the context of professional discourse is evident throughout all responses. This is consistent with the interview situation, participants, interviewer as practitioner-researcher, and interview design. Use of professional discourse by interviewees may serve several functions. The first is as a social practice, shared with the interviewer, which affirms identity and connection and in doing so reduces social risk. The second may be to provide the interviewees with a familiar de-personalised role as a legal professional. Adoption of this role arguably discourages emotional involvement through discussion or questions of personal, emotive, or identity challenging nature, and encourages a task-based approach to obtaining information which may, at times, be personal or subjective. The third function is ready availability of pre-existing theoretical frameworks to scaffold responses with reduced perceived risk of failure, however this risk of failure may be conceptualised. Taken as a whole, these three functions may combine to indicate a need to reduce the perceived risk of engaging in the interview and research process through increased control and normalisation of discourse.

A concern with the 'right' response can be seen in several responses, including:

> I8: *Just because of the Uni thing, I think I'm getting tested.*

> I7: *Um, what, what, Is this what you're getting at, this sort of thing?*

> I6: *Is this confidential?*

This may indicate anxiety about disclosing information to the researcher.

The object of cultural competence is constructed within professionalism discourse such as existing networks of professional duties, for example,

communication,

> I5: *..probably the language you use when I'm talking to Indigenous clients. A lot of them are not very well educated and you've got to really make the language simple.*

conflict of interest,

> I10: *We might have a lot of clients where we act for the aggrieved and now the respondent, so you kind of know a lot about situations that ordinarily you might not have information on. So, it's sort of making an assessment on whether you can act for that client knowing information which you might not ordinarily have learnt.*

confidentiality,

> I7: *We're often contacted by family or friends of clients who want information and we have to defer back to our professional obligations in terms of confidentiality*

and duty to the court,

> I8: *sometimes clients will tell me something that they don't want the court to know but I have to explain to them that there's an ethical duty on me not to mislead and deceive the court in any way…*

and existing areas within networks of law. For example,

child protection,

> I7: *when dealing within, such as child protection matters, the rights of an Aboriginal child in terms of their placement principles, and in terms of their right to experience and enjoy Aboriginal culture, is probably something that I pay attention to probably more…*

and family law.

> I2: *For me, I found that interesting and relevant and s60CC say that that is relevant. There's another part – s61DF maybe -also says that views about who should make decisions about the kids is relevant but my boss at the time told me take 90% of that out of the material when it was being prepared because I had too much of a focus on culture.*

The construction also occurs within existing professional practice discourse,

> I6: *in terms of professionalism and the way you approach the job and how much energy you put in and all that stuff, that's all the same.*

including in relation to client interactions,

> I3: *I think there's some cultural sensitivity but education level is more what informs how I interact with clients.*

legal processes,

> I4: *Client indigeneity has influenced my practicing of the law as it pertains to trial law fairly significantly.*

and interactions with other legal professionals:

> I4: *We also discuss cultural phenomenon with magistrates and prosecutors who in my opinion have a broad variance when it comes to understanding cultural phenomenon such as gratuitous concurrence which makes indigenous persons more suggestible when giving evidence or appear stunned under cross examination.*

Construction of the object from within professionalism discourse may reduce practitioner anxieties or difficulties in discussing the object. It may also demonstrate the self-perpetuating and dominance of legal professional discourse.

(v) Positionings

The subjects appear firmly positioned within their professional roles as non-Indigenous solicitors employed by an Indigenous specific law firm. They position themselves as ethical legal professionals who seek information about Indigenous culture and adjust their practice to best represent and advocate for their clients. They inhabit a position of principle, concerned with enacting social justice and equality through their work,

> I2: *We are essentially an organisation of allies.*

despite the difficulties of the job:

> I6: *The volume of the work is challenging. You don't get anything like that in any other field I don't think. I've worked in legal aid organisations, community legal, and private practice and nowhere have you had to deal with the level of work that we do.*

I9: *Yeah, its day and night dealing with clients who have suffered trauma like that as opposed to you know, working in private practice where there's just none of those elements at all.*

(vi) Practice

The constancy of professional discourse and related discursive constructions would appear to limit opportunities for action. The subject positions fill the role available within this discourse but are arguably unable to access the same degree of force and cohesion in relation to cultural competence as is available in the ASCRs. For instance, whilst common themes emerged in relation to questions three and four, responses did not evoke the same degree of repetition and recurrence as questions one and two. This variance was reflected within one response which said:

I6: *I just wish someone had spoken to me about those things but then I always qualify that with 'this is just my experience', you ask another lawyer and they'll have something totally different to say.*

The construction of cultural competence within professional discourse may minimise the object and reproduce practice which conforms to networks of discourse supporting notions of professionalism. These networks may intersect cultural competence at crucial but limited points such as communication or discrete legislative parts, but appear not to provide adequate basis or integration for subjects to utilise in an institutionalised, internalised fashion to justify practise decisions in a similar way to the ASCRs.

5.2.6 Summary of Analysis of Interviews

The interviews have been analysed in six stages. The analysis showed areas of repetition from the previous CTA and FDA analysis, which may indicate saturation has been achieved. The six stages, in summary, describe how the text limits the practices of interviewees through their identification with professional discourse. Professional discourse is aligned with the ASCRs, and the ASCRs influence client relations. Interviewees recognise a different type of professionalism and a different way of relating with clients, however, the analysis shows how the text consistently inhabits, promulgates, and uses notions of professionalism, including the ASCRs.

5.2.7 Summary of FDA

There is no standard method for FDA. Willig applies an approach which focuses upon the effect of the discourse in action whilst omitting broader Foucauldian themes and approaches, including archaeology and genealogy. The data sets have been analysed using two approaches. The first has been a thematic approach; the second has involved a six-stage analysis. Each stage has consecutively

narrowed available subject opportunities for being, using different discursive methods, before culminating at the point of textual emergence in the form of a document or utterance.

The analyses indicated that the ASCRs may create, reflect and reproduce relations of power-knowledge using economic and professional discourse which construct solicitor conduct as a risk. This risk is ameliorated through neutralising practitioner freedoms of conduct through '*must*' and '*must not*' directives and re-structuring the field of freedom of action through conduct rules which mask or make inaccessible alternate action opportunities.

The Rules construct the knowledge that to be an ethical practitioner is to be obedient. This construction of truth supports the economic role of legal practitioners within neoliberal discourses of service quality comparisons, competition, and market forces. Professionalism discourses normalise this apparent transformation from professional self-governance to deregulation, enmeshing discourses to create a changed meaning of professional.

The QHATSICCF may achieve the same aim in terms of power-knowledge by using managerial and public policy discourse to direct adoption of a regime of truth in the form of ICC. Health equity, public policy and managerial discourses construct obedient staff and stakeholder subjects as effective and equitable health practitioners. Staff subjects are governed in accordance with organisational apparatus such as implementation, monitoring, and evaluation of ICC.

Interview transcripts showed the positioning of subjects attempting to utilise ICC from within professional discourse. It provided information about difficulties experienced by subjects within the enacted discourse of the Rules and illuminated the flow of the five themes through performance of legal professionalism. All data sets can be seen as producing subjectivities of limitation within technologies of governmentality.

5.2.8 Summary of Chapter

This chapter has consisted of two parts. The first FDA mostly looked at data sets one and three in relation to five Foucauldian themes. This FDA concluded that non-Indigeneity was systemically normalised throughout all themes. For instance, professionalism and ethics omitted, and at times contrasted, with Indigeneity. The second FDA looked at each data set in relation to the opportunities for, or constraints upon, action for subjects. This FDA described how each data set achieves the effect of limiting subject opportunities for thinking, feeling and acting. In the case of the QHATSICCF, subject opportunities were limited in the interests of health equity, whilst in the ASCRs subject opportunities were limited in the interests of political and economic reform. Throughout the FDA interviewees

acknowledging some of the difficulties they experience in attempting to incorporate Indigeneity into legal practice but appeared to will to be governed as they are.

Chapter Six: Discussion and Implications

Introduction to Chapter

This thesis set out to understand more about how non-Indigenous lawyers do their job with Aboriginal and Torres Strait Islander clients and how and if lawyers can do their jobs better. It has found that legal practice as a discipline remains firmly embedded and unchallenged in its position as a non-Indigenous institution. Inside this physical and metaphysical institution is where practitioners work with Indigenous clients. Practitioners accept the conceptual constraints the institution provides, without much awareness about their scope. Despite this, they are confident in their abilities to incorporate Indigeneity into their practice. This chapter revisits some of the literature on cultural competency to make sense of the findings and place them within the context of the field. The research has significantly contributed to understanding some of the factors influencing how legal practice is performed with Indigenous clients, and why theories incorporating Indigeneity, such as ICC, have not been adopted by the legal profession.

6.1 Ethics, Fiduciary Duty and Professionalism

Contrasting findings

The research describes a contrast between the perception of Indigenous inclusion by interviewed practitioners and analysis of the ASCRs which demonstrated Indigenous exclusion. Practitioners reported that they possessed the ability, skills, and motivation to perceive and respond to the needs of their Indigenous clients; and were able to make active efforts to change their practice to be more responsive to individual client needs and affect the best legal and client outcome. All legal practitioners interviewed reported practicing within the guidance of the ASCRs and other methods of professional governance.

The analysis found that it is normal for Indigeneity to be excluded from legal practice as non-Indigeneity is a normalised part of ethics, professionalism, and *the Rules*. Current ethics regimes incorporate principles, such as of equality, justice and fairness, which do not explicitly acknowledge inequitable outcomes for First Nations people and do not direct practitioners in any way specifically in relation to First Nations clients. In addition, existing legal profession governance structures, such as the *Rules* and notions of professionalism, privilege and reinforce non-Indigenous ways of being and limit solicitor subject possibilities for thinking, feeling and acting.

The ASCRs were shown to be highly effective in guiding legal practice. Interviewees used the ASCRs regularly, including to frame or limit interactions with people (for example, conflicts of interest,

confidentiality), and check responsibilities towards clients and others. Interviewees linked the ASCRs with notions of professionalism and ethics and had internalised the ASCRs without express dissonance. Interviewee responses repeatedly used concepts, phrases and words drawn directly from the ASCRs and which explicitly referenced related notions of professionalism.

The *Rules* and neoliberal professionalism

The ASCRs evolved from a process of neoliberal economic deregulation which emphasised individuality, competitive efficiency and the role of clients as consumers of legal services. This focus is illustrated, for one example, by the objectives for the Queensland government's 1998 (Green, 2002) review of the legal profession, which included (p.9):

1. *to provide a regulatory scheme which promotes efficiency and high standards of service delivery by the legal profession;*
2. *to promote competitive practices;*
3. *to enhance the accountability of the profession to clients.*

The neoliberalist discourse of individuality, productivity, technical skills, efficiency, and performance which have influenced the ASCRs and the legal profession for at least a decade, overlie pre-existing professional discourses of responsibility, expert and privileged knowledge, and group identity. The reform of the notion of professionalism to one inclusive of economic discourse and objectives occurred over a period of approximately four decades between 1970s to 2012 and represents a significant change to the profession. This change was congruent with wider historical forces. It required extensive sustained campaigning at a political, social and professional level and included reforms to associated structures such as regulation, higher education and training.

Neoliberal objectives of legal service efficiency are supported by surveillance techniques in the form of workplace data capture, time billing, key performance measures and bonuses and discipline structures such as Legal Service Commission investigation. Theses apparatus reinforce practitioner accountability for time, money, case outcomes and decisions. Several interviewees identified conflicts between some common features of practice with Indigenous clients, such as additional time requirements for Indigenous client relations, and demands placed on practitioners. This was particularly evident in time pressured environments such as private practice and in watch houses before bail applications.

Another type of professionalism?

There was some evidence of a different conceptions of professionalism between Indigenous and non-Indigenous clients identified by interviewees, with traditional non-Indigenous professionalism

requiring dispassionate technical advice without much need for relationality, connection, or personal sharing. This construction of professionalism has been linked to subversion of emotional expression, relationality, and empathy by practitioners (Kadowaki, 2015). Newman (2018) raises the issue of apparent neuroticism by criminal lawyers as they necessarily display attitudes and behaviours towards clients which are inauthentic but consistent with formalist and liberalist ideas.

In contrast, in this study, interviewee responses to questions three and four reflected key themes of knowledge/awareness, communication, understanding, empathy, and connection. When taken together, they may show a concern by practitioners to demonstrate and encourage trust, particularly affective trust. When people trust, they take risks, as "*where there is trust there is the feeling that others will not take advantage of me*" (Porter et al., 1975, p.497). From a client perspective, risk taking behaviour may include voluntary attendance at a solicitor's office or court, self-disclosure or provision of sensitive information to a legal practitioner, and active involvement in decision making (Boccaccini & Brodsky, 2002). For legal practitioners, a trusting relationship with clients has been found to improve court outcomes; enhance empathy and assist in fulfilment of professional responsibilities (Boccaccini & Brodsky, 2002; Boccaccini et al., 2004; Campbell et al., 2015; Howieson & Rogers, 2019; Pierce & Brodsky, 2002; Sprott & Greene, 2010).

Models of trust in organisational contexts, such as between managers and staff, posit that trust consists of two sub-types: affective and cognitive (McAllister, 1995). Affective trust is built through emotional investment and expressive attendance to a relationship without expectation of receiving comparable benefits in return (Johnson & Grimm, 2010). Relationships characterized by this type of trust resemble communal relationships (Clark & Mills, 1993) rather than exchange relationships. Alternatively, cognitive trust is built through evidence of dependable competence in task completion. From a solicitor perspective, this type of trust may be built when a client attends appointments and provides instructions as arranged (Hill & O'Hara, 2006). Cognitive trust can be compared to a "trust that" something will occur, whilst affective trust can be compared to "trust in" the person who will complete the task (Hill & O'Hara, 2006).

The techniques that practitioners reported utilising with First Nations clients appear to be more consistent with a communal rather than an exchange relationship. This approach contrasts with the economic discourse informing the *Rules* as well as work structures and traditional notions of professionalism. It is possible that client expectations of establishing, maintaining, and interacting with legal practitioners in a way designed to further communal relationship aims contributes to the culture shock expressed by several interviewees. This way of interacting may be particularly

noticeable for practitioners in small communities where continued exposure to communal relationship building may exert pressure on traditional professional boundaries and roles.

Interviewee responses consistently indicated use of alternate approaches to legal ethics, such as relational, caring (Menkel-Meadow, 1985; 1996; Schultz & Shaw, 2003), and contextual (Bartlett & Aitken, 2009; Hutchinson, 1998; Nicolson & Webb, 1999) ethics. These approaches all emphasise and incorporate relational aspects of practice, such as empathy, caring and client context, and are mostly derived from fields other than law. Similarly, interviewee responses indicated engagement in alternative approaches to fiduciary obligations by using more empathetic, client-centred and responsive approaches to lawyering (Bastress & Harbaugh, 1990; Boulding & Brooks, 2010). Whilst interviewees themselves did not express conflict between traditional notions of professionalism and practice governance, ethics or duties, their consistent engagement with alternate approaches may indicate the insufficiency of mainstream approaches for legal practice with Indigenous clients.

Client interview

More than half the interviewees mentioned the importance of listening to client narrative, as opposed to dominating discussions and possibly evoking gratuitous concurrence through interrogative closed questioning. This practice is consistent with the more naturalistic interview style used to foster trust in the client centred approach to case management and interview (Binder et al., 2011; Burton, 2018). It is also consistent with the suggestions of Boccaccini and Brodsky (2002, p.84), that trust with clients can be built through *basic interpersonal skills such as active listening, empathy, respect, and patience*.

More than half the interviewees also mentioned the importance of understanding client perspectives and context during interactions. Howieson and Rogers (2019) looked at whether the initial client interview led to trust and understanding. They found that client trust and a perception of mutual understanding between the participants (Kim et al. , 2014) was built through the process of lawyers acknowledging client perspectives and communicating their own throughout the interview. It remains unclear from interview responses if interviewees communicated their understanding of the client perspective and their own to clients. Establishment of client trust during interview may be an area for future research.

6.2 Approaches to Defining ICC

In the time it has taken to write this thesis terminology has continued to evolve within the cultural family of theories and practice. '*Capability*' and '*Humility*' have been increasingly discussed within the past two years. Use of capability can be seen in the QHATSICCF, for example. The legal doctrine, or regime of truth, of equality before the law of all legal subjects assists legal practitioners to support

discourse and practice focusing on individual clients, practitioners and cases. This approach is also consistent with elements of ICC and more recent discussions in an international context regarding the related and subsequent theory of cultural humility. Stahnke (2021, p.4), speaking about therapist situations, described cultural humility as assuming:

> *..that clients are in fact their own experts as to their own version of culture and where they fit in (Fisher-Bone et al., 2014). When you come from a place of unknowing, you empower the other person to be the teacher. You create opportunity to learn from that person—not about all the people of their culture, but about what culture means to them (and what it doesn't), removing the cultural history of a group from the assumed experience of one individual (Rosen et al., 2017).*

Where legal practice appears to depart from its path towards cultural humility and other theories including cultural safety and ICC is in the absence of cultural self-reflection and understanding, or critical reflexivity. There appears to be a low level of awareness amongst interview participants of the discourse they inhabit and the mechanisms of Indigenous disempowerment they reinforce and recreate. The importance of critical reflexivity and cultural self-awareness as a pre-requisite of cultural humility is explained by Williams, Cooper and Shriberg (2021, p.3) :

> *According to Tervalon and Murray Garcia (1998), cultural humility goes beyond the concept of cultural competence to include: (1) a personal lifelong commitment to self-evaluation and self-critique (intrapersonal).*

Interviewees may have undertaken self-reflection which was not evident in this research. The guiding governance document of the ASCRs however, omit any reference to self-reflection, and interviewees likewise omitted any reference to it or related concepts.

Continuing, for a moment to look at cultural humility, Williams et al (2021), provides the other two parts of the theory as:

> *(2) recognition of power dynamics and imbalances, a desire to fix those power imbalances, and to develop partnerships with people and groups who advocate for others (interpersonal); and (3) institutional accountability.*

Interviewees demonstrated awareness of power dynamics and imbalances, desired to ameliorate these where possible, and formed partnerships with community organisations who could assist their clients. Interviewees also provided information about the organisation's efforts to support their cultural competence. However, neither the ASCRs nor the interviews could provide evidence of

institutional accountability for practitioner relations with Indigenous clients. From this it would seem that cultural humility, like ICC and cultural safety, remains unfulfilled.

There was little evidence of ICC found within the ASCRs or interviews, if ICC is taken to be:

> *a set of 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 (Grote, 2008, p.14).*

This is due to the absence of cohesion and systemisation of the efforts of interviewees to adapt their practice. In addition, the effectiveness of their efforts in uncertain. However, interviewees consistently sought greater knowledge about Indigenous culture, whilst reporting unique skills and behaviours and voicing awareness about Indigeneity and attitudes consistent with practice incorporating Indigeneity. Each of these features is an important basis to the behaviours, attitudes and policies of ICC. In a larger body of work it may be possible to expand the enquiry, with the potential of gathering sufficient evidence to justify inclusion of current legal practice efforts within the definition of ICC.

6.2.1 ICC and Legal Practice

Interviewee responses to questions three and four highlighted the '*slipperiness*' and complexity (Park, 2005) of culture, with interviewees discussing Indigenous culture as a diverse and dynamic concept albeit with some common features. A desire to learn more about Indigenous culture was consistent across interviews, which may reflect some uncertainty about the meaning of culture (Johoda, 1984). Despite a strong desire to learn more, interviewees mostly appeared confident in their practices of 'Indigenous cultural competence' as they defined it.

Interviewees defined ICC by reference to action orientated problem-solving techniques for working with Indigenous clients. Legal practice performance did not reflect a structured use or consideration of any theory or approach and instead was more ad hoc and experimental with overarching principles such as equality and social justice backgrounded. Important elements of ICC such as self-reflection and the foregrounding of Indigeneity were not evident in responses. Most interviewees were ignorant of theories of practice which acknowledge Indigeneity, including the cultural suite of theories such as CS, and ICC. Those who were aware of these theories were often dismissive or oppositional towards them. However, some interviewees used terms such as *'awareness*' and '*sensitivity*' to explain their practices, suggesting some exposure to and utilisation of these theoretical frameworks.

Most practitioners agreed that awareness and knowledge of culture was an integral part of their practice and reported tailoring their behaviour to individual clients. They consistently resisted the 'one size fits all', 'cookbook' or pan-Indigenous approach to Indigeneity, with one interviewee explicitly criticised government for adopting such an undifferentiated approach[46]. Individual practices reported were congruent with the theory of ICC, and were used to build rapport, communication and connection with clients and display empathy. Examples of these self-reported behaviours include paying attention to eye contact and body language so as not to be confrontational or offensive to clients, sharing some personal information, and involving family members in client interviews.

The individualised approach reported by interviewees is consistent with the liberalist notion of the legal subject and traditional approaches to legal practice. Traditional approaches to practice have been criticised[47] as leaving unacknowledged and unchallenged wider structural issues unable to be addressed by advocacy on behalf of individual legal subjects (Cummings, 2020). Consistent with these criticisms, this research appears to show a fallacy of efficiency operating within current legal practitioner client relations. Modification of practitioner interactions with individual Indigenous clients may assist in "getting the job done" with minimal overt opposition or discomfort. However, growing Indigenous over-representation would appear to indicate that it does not prevent the job from having to be re-done at a faster and accelerating rate then for non-Indigenous clients.

6.2.2 Methods of Improving ICC

This research has shown that interviewees felt unprepared for their practice with Indigenous clients. Even practitioners who had sought out University subjects relating to Indigeneity and the law felt they had received poor preparation for working with Indigenous clients. These results are consistent with research recognising the role of education in inducting students into the ways of being, doing and thinking consistent with their discipline (Forsyth et al., 2018), and the related efforts made in the Higher Education sector to develop and improve cultural competency (Burns, 2013). The 2012 Australian Government Behrendt Review, for instance, recommended the improvement of understanding and awareness of Indigenous culture amongst university personnel. In relation to an Australian Law School, Burns (2013) describes her experience of implementing a pilot Culture Competency Professional Development Program for legal academics with the QUT 2010-2012. Participant evaluations of the one-day training workshops highlighted two perceived priorities: the

[46] It is a criticism which could be made of the QHATSICCF due to its high repetition of '*Aboriginal and Torres Strait Islander*' without further depth or elaboration. Equally, however, the purpose and nature of the QHATSICCF lends itself to this repetition and may leave greater refinement of language to subordinate texts.

[47] Including by legal practice movements such as *movement lawyering* (Cummings, 2020), and *anti-subordination representation* (Alfieri, 2005).

need for role specific training; and the interrogation of discipline specific knowledge. These priorities arguably reflect the legal culture of individualised adversarial advocacy detailed previously.

Preparation of professionals for working with Indigenous clients has been the topic of research and discussion within fields such as teaching (Moreton-Robinson et al., 2012) and medicine (Dade Smith, 2016). Most participants also had low levels of exposure to First Nations people and Indigenous knowledge and ways prior to commencing their employment. Methods for defining interviewee meanings in the context of what is meant by 'preparation' may warrant further research. However, if preparation is taken to include previous relationships with Indigenous people, a lack of knowledge about First Nations people built prior to and outside of the client-legal practitioner environment may be limiting. In such circumstances legal practitioners may be at a higher risk of adopting a deficit discourse of Indigeneity through their narrow exposure to Indigenous people within their legal roles.

Use of clinical legal education (CLE) has been discussed internationally in relation to development of empathy, emotional intelligence (Lawton et al., 2021) and cross-cultural competence (Grimes et al., 2021) in the areas of migration and asylum law. CLE, or practical legal training (PLT) as it sometimes known, occurs prior to admission as a legal practitioner. It may offer potential in providing experiences in preparation for legal practice with Indigenous clients in a way which is formal, controlled and relatively low risk for participants, the profession, and the community. This notion is supported by Burns et al (2018) who advocate for change to the *Model Admission Rules 2015* to engage with ICC and send a clear message that ICC is an indispensable legal practice skill. Inclusion of ICC within the *Model Admission Rules* would entail the requirement of demonstrated cultural awareness as part of PLT.

An approach which better equips practitioners to work with Indigenous clients prior to entry to the role of practitioners appears preferable to one which relies upon existing practitioners utilising written resources. For example, Cavanagh and Marchetti (2016), when looking at judicial cross-cultural training, found that there were twelve bench books holding substantial information which could assist judicial members dealing with Indigenous people. However, they are critical of these resources as absent from any requirement that judicial officers demonstrate their understanding; engage in critical self-reflection; or issues of racism. Interviewees in this research reported taking responsibility for educating themselves, in any way they found accessible. These secondary methods of learning commonly included internet research, organisational resources, and conversations with peers. None of the interviewees mentioned using bench books, resources or other guidelines of a similar nature.

The research highlighted the important role of Indigenous people in training and teaching non-Indigenous legal practitioners about Indigenous clients. Most interviewees indicated their reliance

upon Indigenous support staff, combined with trial and error, for primary guidance in relation to client relations. Employment of Indigenous people is also a frequently used strategy to improve ICC, with consistently reported success. Bertilone et al. (2017), for instance, attributes much of the success of a maternity program to employment of Aboriginal Health Officers and grandmothers, particularly in relation to improved communication with Aboriginal clients; and Rix et al. (2016) acknowledges the pivotal role of Aboriginal Health Workers in acute hospital settings in acting as cultural bridges between patients and medical professionals.

The reliance of legal practitioners upon Indigenous staff for education about Indigenous clients may represent an additional responsibility for Indigenous staff. The degree of responsibility placed on Aboriginal staff members for the organisations' cultural performance can be considerable and may contribute to turnover. Doyle (2012), for example, states that structural inadequacies and community expectations lead to substitution of Aboriginal Health Workers for other professionals in the best interests of patients, and this contributes to worker burn out. She also identifies the additional out of scope roles she undertakes as an Aboriginal Health Worker, and the emotional challenges of her working environment. In geographic areas where legal practitioners change frequently, such as remote areas, the responsibility of local Indigenous staff to maintain community expectations of service whilst educating and negotiating newly arrived legal practitioners may be particularly onerous.

Even with the guidance of local Indigenous staff, without a more structured approach to knowledge sharing, it is uncertain if interviewees are learning the right things in the right ways from the right people and places. For instance, few interviewees mentioned recruiting or approaching local Indigenous knowledge holders outside of the organisation, such as Elders and Council members, and no interviewees mentioned any immersive experiences (Burgess, 2017) using local sites or groups. Several interviewees mentioned receiving training to improve cultural competence. These appeared to be Queensland statewide or National based awareness raising workshops rather than localised learnings. Interviewee experiences varied, with reports ranging from racist to affirming. This variability is consistent with discussion in the field (eg; Chapman et al., 2014) and contributes to uncertain training effectiveness.

The results of this project accord with discussions about the experience of culture shock by professionals dealing with First Nations clients or patients (eg; Mullins & Khawaja, 2017), reliance upon First Nations staff for roles which are beyond the scope of their employment (eg; Doyle, 2012; Rix, 2016), the role of tertiary education in inducting professionals (Kirmayer, 2012), and variability of cultural awareness training outcomes (eg; Chapman et al., 2014). The results of this project are consistent with the broader field of reviewed literature regarding ICC and sister concepts

implementation within diverse systems such as nursing, social work, psychology, dentistry, education and information services.

6.2.3 Othering and Deficit Discourse

Othering is spoken about by several authors, including Sakamoto (2007) and Paul et al. (2012) within the context of concerns that ICC promotes othering. Within interviewee understandings both of ICC and of practice with Indigenous clients, there was evidence of othering. For instance, formal education was normalised by interviewees as a regime of truth frequently disrupted by client interactions. This reflects solicitors' expectations, norms and truths which contrast with many of their clients and are subsequently understood as difference, disadvantage, or deficit. It is possible that a lack of self-reflection and critical engagement with issues of white privilege may contribute to the othering of clients.

This project links to the findings of several authors such as Burns (2013; 2018), Cavanagh and Marchetti (2016) and Young and Nielsen (2018) that the legal profession has limited engagement with self-reflection and issues of white privilege and available resources promote a deficit discourse. Legal practice within this context can be explained in terms of power-knowledge in the Foucauldian sense, where relations and processes (re)produce knowledge and truth through discourse whilst the practitioners of these discourses (and by extension, knowledge) are not often consciously aware of the rules shaping their discourse (McNay, 1994, p.52).

Burns et al. (2018) argue that changes to lawyer admission rules to include ICC as an inherent aspect of communication responsibilities would involve a shift away from deficit discourse, which they describe as providing an excuse for professional inaction in addressing inequity. The proposal to position ICC within communication responsibilities is somewhat at odds with Burns' (2013) article which described legal discussions focusing on communication styles and language as limited in scope due to their failure to engage practitioners in adequate self-reflection to grow cultural competence (p.233). This conflict is resolved, however, by the positioning of current professional communication responsibilities as reflecting and reinforcing an Indigenous client deficit discourse. The proposed changes to admission rules also propose a change in discourse from overcoming Indigenous disadvantage to '*building better lawyers'* (Burns et al., 2018).

Othering of Indigeneity arguably prevents possibilities for practitioners and clients to occupy a space of normality throughout their relations, other than through minimisation of Indigeneity within defined legal intersections deemed relevant to legal proceedings. Even with this minimisation of Indigeneity, there were findings suggesting that interviewed practitioners occupied a marginalised practice space

with their clients which is unacknowledged in terms of professional skills and status. In this way, subject solicitors are '*Othered*' from truths of professionalism by way of practice which seeks to adapt professional behaviour to better accord with First Nations clients. This possible extension of Othering to professionals working with First Nations people has not been discussed within the reviewed literature and may be an area for future research.

6.2.4 Power and Knowledge

From before the *First Charter of Justice* in 1788, power in the form of colonial governance of Australia, enacted and was enacted by, law and its practice. Foucault described law as a tactic of power, and Tadros (1998) expands upon this statement to describe law as a relay in an autopoietic ensemble. This relay conducts and adjusts power between government and discipline to create a self-replicating, self-sustaining circle. For instance, the relay and dependency of delinquency, police, and prison. This conceptualisation of power is not a traditional, centralised and top-down approach, but rather one where

> *"power [is] distributed in homogeneous circuits capable of operating anywhere, in a continuous way, down to the finest grain of the social body" (Foucault, 1975, p80).*

Governmental control over longer spans of time and space are best achieved by eliciting the cooperation and complicity of individuals (Allen, 1999, p.198) such as the willingness demonstrated by interview subjects to be governed in the ways they currently are. That is, through ethics, notions of professionalism and the Rules. The ASCRs demonstrate the exercise of power by solicitors upon themselves to fulfill objectives of the profession and the nation-state (Foucault, 1980, p.58) to produce individuals who are entrepreneurial and self-governing, and who enrich the nation's economy through their productivity.

As a function of governmentality power, solicitors are subject to disciplinary power materialising in such things as organisation of space (offices or workstations), units of time, data capture methods, hierarchical observation, and surveillance. These arrangements of work, or disciplinary technologies are normalised. Also, within the analysed documents, both QH staff and solicitors are made subject to complex systems of surveillance by colleagues, superiors, stakeholders and customers (patients and clients) in relation to their conduct. This is consistent with Foucault's view that knowledge can be created by mechanisms of power collating information about how people live and their activities. Knowledge collated in this way can then be used to further reinforce exercises of power.

The ASCRs embody a transformed discourse of legal professionalism, and represent a regime of truth, however, as a text, it is a small part of a larger discourse, which includes social practices. Governance

is also part of this discourse, influencing what discourse excludes or includes (McNay, 1994) in accordance with power-knowledge technologies.

Games of truth are played by both Queensland Health and Queensland Law Society in providing the regimes of ICC and ASCRs as each establishes authorities of delimitation to further the goal of conducting *individuals throughout their lives by placing them under the authority of a guide responsible for what they do and for what happens to them* (Foucault 1997, p68).

6.3 Limitations of the Research

Several limitations to this research are acknowledged. These relate to interview participants and to the documents selected, and to a lesser degree, the analysis. In addition, the nature of the three research questions, particularly questions two and three, prompt the making of recommendations which flow from the findings. As this is a thesis and not a report, I have tried to resist making any such recommendations. Where such recommendations occur, they are phrased as potential opportunities, as any firmer language is beyond the scope of this work.

The project privileges non-Indigenous legal practitioner voices, in that it does not include any interviews other than with the twelve non-Indigenous legal practitioners working for the same law Firm. These participants work exclusively with First Nations clients and have self-selected to participate. These characteristics indicate that they may be more motivated or interested in the topic than the average legal practitioner. These characteristics are relevant to considerations of generalisability. The design omits the perspective of First Nations' people entirely, including as service users or employees of either health or legal services. It also excludes the perspective of health service employees.

The project analysed one document which was a professional governance document for solicitors and another document which was an organisation specific (Queensland Health) document. Although FDA can be applied to all texts, the documents cannot be directly compared in the same way as two like documents could be, for example, the Medical Doctor's Code of Conduct[48] and the ASCRs. The QHATSICCF also received less attention than the ASCRs. The first part of FDA focused heavily on the legal texts and was limited to consideration of five themes. There is scope for a more thorough analysis in this part, particularly in relation to additional themes, but also in relation to the existing chosen themes.

[48] https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx

Each of the above limitations could be addressed within a larger project, such as a doctoral thesis. A larger research study could incorporate a greater range and depth of data. Documents could include medical professional governance and law Firm organisational strategy documents to ensure comparability and enhance reliability. A larger work could encompass an extension of interviews to include Indigenous clients of the law Firm, non-Indigenous medical professionals, and First Nations patients. This could assist in gaining an understanding of how the efforts reported by legal practitioners are experienced by clients and how ICC is used and experienced within health service settings. A larger work would provide the opportunity to address, in greater detail, FDA of the QHATSICCF and allow discussion of the FDA themes which were identified within the results of this thesis but were not selected as a focus.

6.3.1 Considerations of Method

It is important that FDA is not afforded the role of an unquestionable regime of truth which constrains possibilities for alternate understandings and approaches. Like all research tools, FDA is subject to criticism. An awareness of these criticisms has strengthened the approach taken to the research and the findings drawn from it. Criticisms of FDA belong mainly to three categories: (i) ideology, (ii) the complex reflexive role of the researcher, and (iii) flexibility of technique.

(i) Ideology

According to Breeze (2011), FDA's cousin brother, CDA, can trace its origin to Marxist or neo-Marxist traditions of social science, which involved judgement and prescription rather than interpretation and description (p.496). Although Foucault's approach to discourse analysis can be separated from CDA (Fairclough, 1989), significant intersections remain, both in ideology and technique. For example, the paradigm within both analytical schools of the role of discourse as both conditioning and configuring the social world whilst remaining largely invisible to users and subjects (Fairclough & Wodak, 1997, p.258); and the desire to raise consciousness as a first step towards emancipation (Fairclough, 1989, p.1). Such features of CDA have been criticised as showing a negative bias towards existing discursive structures and institutions (Gee & Handford, 2013)[49].

Similarly, Foucault's approach appears at times to be explicitly politically motivated. For instance, in his discussions with Chomsky he stated that the real political task of society was to criticise institutions that appeared neutral and independent and attack them so that their *'obscured political violence'*

[49] CDA's allegedly negative bias is reflected in techniques which commence by researchers focusing on a 'social wrong', and the obstacles to addressing this wrong.

would *'be unmasked'* (Foucault, 1971). Such statements have fuelled criticisms that FDA will always lead to a skewed result. Wickham and Kendall (2008) summarise this position well by saying (p.143):

> *The Foucauldian approach is a pointless burden on discourse analysis, one which forces description in a pre-ordained direction – the effect of a teleology – thereby rendering the only explanations that can be built from them almost meaningless, insomuch as they can be nothing other than expressions of the metaphysical presuppositions at the heart of the teleology.*

(ii) The complex role of the researcher

FDA encourages users to be aware of how readers and authors, collectively and individually, including their social context, construct text meanings using a complex sociolinguistic process (Olsson, 2007). The process of FDA, therefore, is a process of text reconstruction by the author, which in this instance, is me. I, as author, have applied a subjective gaze conditioned and configured by discourse, to a text to describe, using said discourse, some of the conditions of existence and principles of producing meaning manifest within the discourse of the text. This process ascribes a very active and dynamic role for practitioner researchers such as myself as they navigate the dualities of insider and outsider, creator and created in a similar way to when practitioner researchers such as Henriques et al. (1998) examined their role in constructing the objects and subjects they claimed to be explaining using psychological theories.

(iii) Flexibility of technique

FDA, in a similar way to CDA, can be described as a '*loosely interconnected set of different approaches*' (Breeze, 2011, p.19). Willig acknowledges that her six-stage approach does not constitute a full FDA. However, her approach does highlight the importance of the two key players within FDA; discourse, and the analyst. For example, Willig's approach commences with an object of focus chosen by the researcher. This does not necessarily accord with what the interviewee meant; By stage four significant interpretation is leading to meanings being assigned to the text by the researcher, and by stage five data is being used to support interpretations about meaning. Stage six is described as the '*most speculative'*, as FDA does not explain the choices of the subject or their experiences within a certain subjectivity. Willig questions whether subjectivity can be theorized only on discourse (p.137) and acknowledges that multiple readings are possible with FDA.

Kendall and Wickham's approach is significantly looser and broader than Willig's. Whilst Willig's model neatly focuses on how a text works to create subjectivity, Kendall and Wickham incorporate archaeology and genealogy to provide additional understanding of contemporary practices by

exposing historical conditions (Arribas-Ayllon & Walkerdine, 2008). Selective and purposeful judgement by the researcher is required to "pick a point" to start this process. In the case of law and medicine, practices commenced well prior to the commonly recounted Greek and Latin traditions, and a researcher must impose a selective gaze upon which historic 'ruptures' are integrated into the FDA and in what depth. Kearins and Hooper (2002) describe the process of conducting genealogical research within a disciplinary context as "*at best vague*" (p.734).

These three criticisms also represent strengths of the FDA approach. FDA commences with problematisation; a place of questioning the unquestioned truths. This research standpoint challenges the status quo and is unavoidably political. Researchers are active participants; they are transparently implicated in the production of truth and the attacking of truth using approaches which are supported by a way of looking into the world, using discourse as a guide. This flexibility enables the production of knowledge which is specific to time, place and person, but which can be linked to other conceptual and metaphysical locations. Consistent with FDA, my critical position involves a subjective lens used to interrogate each text. The texts are exposed to an unfamiliar gaze with an unfamiliar intent. My analysis then re-creates and re-forms these texts into new texts, which derive from my constructions about the conditions of existence for meanings represented by the texts.

CTA

CTA, in contrast to the complications of FDA, provides an explicit 'recipe' for use. It was developed from Owen's (1984) process for looking at how interviewees used discourse when interpreting relationships (p.274), and thus is suited to analysis of interviews. CTA is not linked to any pre-existing theoretical framework (Braun & Clarke, 2006, p.81) so does not inherit pre-existing issues. Chief criticisms of CTA are the lack of clarity involved in the process of analysing themes, and the minor relegated role of the 'critical' aspect of connecting results to larger social structures such as discourse and ideology (Lawless & Chen, 2019, p.96). CTA is a flexible approach which can be necessarily used within diverse frameworks, including, for example, CDA and FDA, to progress goals of social justice. The insufficiency of CTA to provide a comprehensive analysis independently can be seen as limiting. However, this characteristic was important as a neutral check and guide upon any potential distortions or bias within the FDA.

6.3.2 Areas for Future Research

Scant existing research within the area of legal practice and Indigeneity produces many possibilities for future research, some of which have been mentioned previously. The lack of discussion or research into over-representation enables a business-as-usual approach to continue largely uninterrupted in

the legal sector. This approach employs traditional methods of comparison between Indigenous and non-Indigenous people such as incarceration rates, recidivism, sentencing, and offending. These methods focus attention away from the process of lawyering as part of the relay of government, police/government agents, criminals/clients and prison/orders. This lack of focus upon service delivery may be contributing to continued over-representation. However, such remains uncertain and an area for potential future research.

In addition, both the reviewed literature and interviews showed an absence of attention directed to examining the importance of place and the physical manifestations of power in a legal practice organisational setting. Anthony and Grant (2016), in their discussion of courthouse design, showcase the lack of consideration of Indigeneity inherent in typical Australian building or space designs and utilisation. Cavanagh and Marchetti (2016) also note the absence of suggested changes in institutional practices such as space arrangement or staffing. Physical space and place are perhaps the most explicit of all discourses, and research into this area would expand the literature in relation to ICC and design, as well as legal practice.

6.4 Statement of Significance

This project has contributed to reducing the paucity of research exploring the relationship between legal practice and Indigeneity. To the body of research involving ICC and the family of cultural theories, the project has uniquely contributed data from solicitor interviews, as well as FDA of legal practice and health governance documents. Use of FDA offers readers the possibility of momentarily lifting the veil to reveal discourse which influences health and law practices with First Nations people. Interviews have provided insight into the practices and thoughts of non-Indigenous solicitors working exclusively with First Nations clients, in relation to ICC and the ASCRs and their interaction with one another. This project also raises questions and directions which are worthy of further discussion and research, and in this way encourages the building of future discourse in this field.

6.5 Issues for Practice

This project draws attention to issues of First Nations exclusion from legal practice governance and the challenging position of practitioners within this environment. It has highlighted the reality that client relations do not occur in a neutral space and solicitors' engagement with Indigeneity is not confined to clients or particular parts of the law, but extends to work mates, colleagues, stakeholders and the entire legal and associated non-legal network. Equally, solicitors are informed in their practice by education, exposure to First Nations people and issues, training and non-Indigenous conceptualisations and ways of being.

At present there is no regime such as Queensland Health's ICC which can offer legal practitioners' guidance which is comparable in authority to other legal instruments such as the ASCRs. As a result, practitioners learn as they go, and their efficacy is variable and uncertain. This uncertainty of success is also an issue in sectors, such as health, which utilise ICC, however, there have been consistent reports of success using a localised approach to ICC. The potential for local First Nations partnerships and micro-practices affirming ICC principles and practices may be useful for legal practices to explore.

Queensland Health's approach represents the enaction of a subplan enmeshed within several other plans flowing from a shared intention at a Commonwealth, State and Territory level to address health inequity. The law's approach is not as unified, and much responsibility remains with individual practitioners (with the support of their organisation) to amend their practices on a client-by-client basis using their best judgement. Similarly, law has not explicitly linked Indigenous over-representation in the legal system to client service in the way Queensland Health has linked Indigenous health inequity to service. Queensland Health appears to have prioritised Indigenous health equity through enaction of ICC as a necessary and compulsory measure, whereas it appears to be of lower priority and urgency for law.

6.6 Summary of Chapter

This chapter has summarised the key research finding and discussed these findings within the context of existing literature. The chapter has talked about the challenges of changing legal practitioner client relations to incorporate a more organised conception and practice of ICC. These challenges have been traced to and through the discourse. This discourse constrains opportunities for action by legal practitioners which disrupts normalised non-indigeneity. The chapter has spoken about the willing obedience of legal practitioners to the ASCRs and other professional governance instruments and how this currently minimises, but has the potential for, inclusion of Indigeneity. The potential for implementation of ICC or similarly intended theories of practice demonstrated by QHATSICCF has also been touched upon.

6.7 Conclusion

This thesis explored the topic of ICC and legal practitioner client relations. A review of the literature in the field showed a research gap between legal practice and ICC. The research gap extended to legal practice and any of the 'cultural family' of practice theories, such as cultural safety, sensitivity, awareness, humility of capability. This project has used the interpretive framework of Foucault and the technique of discourse analysis (CTA and FDA) to explore three texts; the ASCRs, the QHATSICCF,

and the transcripts of interviews with twelve non-Indigenous legal practitioners working exclusively with First Nations clients.

Key findings from the CTA of interviews included at least seventeen Foucauldian codes, many of which were shared between data sets; the existence of a deficit discourse; acceptance of the ASCRs, and practical attempts by legal practitioners to improve communication and connection with Indigenous clients. FDA in two parts followed the CTA. The FDA traced how textual discourse worked to transmit power (in the Foucauldian sense) away from clients and constrained opportunities for action by solicitor subjects. FDA by theme showed the politics of truth throughout the ASCRs promulgating non-Indigeneity.

The thesis asked three research questions.

1. Do current legal practice ethics incorporate elements or principles of ICC?
2. What is the potential utility of ICC in the practice of law?
3. How might ICC or other practice innovations with a similar intention be implemented or supported within the context of non-Indigenous legal practitioner and Indigenous client relations?

In relation to the first question, current ethics regimes incorporate principles, such as of equality, justice and fairness, which do not explicitly acknowledge inequitable outcomes for First Nations people and do not direct practitioners in any way specifically in relation to First Nations clients. Whilst legal ethics do not appear to incorporate any elements or principles of ICC, individual practitioners make active efforts to change their practice within existing professional governance structures so that they are more responsive to individual client needs and can affect the best outcome for clients.

Despite individual adaptations, important elements of ICC such as self-reflection and the foregrounding of Indigeneity are not present in either legal professional governance or practice. In addition, existing legal profession governance structures, such as Solicitor Conduct Rules and notions of professionalism, privilege and reinforce non-Indigenous ways of being and limit solicitor subject possibilities for thinking, feeling and acting. From within a position as willing subjects interviewee definitions and enactments of ICC ignore their position within a discourse of normalised non-Indigeneity and subordinate subjectivity.

In relation to the second question, research participants are:

i) Committed to social justice, equality, and empathetic relations with their First Nations clients;

ii) Aware of some of the changes they make in their practice to improve rapport with First Nations clients;
iii) Expressing a strong desire to know more about Indigeneity in order to improve client outcomes;
iv) Willing to be governed by existing structures and notions and in existing ways.

These participant features may provide potential opportunity for ICC implementation through inclusion within existing legal practice governance structures. However, as participants in this project, these practitioners may be more motivated than most to engage with ICC.

Potential utility of ICC was complicated by the location of legal practice within neoliberal environments and philosophies of individualism, productivity and efficiency. Interview participants expressed commitment to social justice, equality, and empathetic relations with their First Nations clients. Important elements of alternate legal practice approaches which intersect with ICC were reported in interviews[50]. However, strategies such as empathy were utilised within a liberal positivist arena of individualism without apparent awareness of the role of colonialism and the standpoint of the non-Indigenous practitioner within this empathy. This absence of explicit self-reflection by practitioners may have contributed to deficit discourse and othering of Indigenous clients.

In addition, the reform of the notion of professionalism to one inclusive of economic discourse and objectives occurred over a period of approximately four decades between 1970s to 2012 and represents a significant change to the profession. This change was congruent with wider historical forces. It required extensive sustained campaigning at a political, social and professional level and included reforms to associated structures such as regulation, higher education and training. Therefore, although the potential for incorporation of elements or principles of ICC into legal and ethical theories and practical training exists, it is likely to require very significant focus and support to achieve.

In relation to the third question, there appears to be a low level of awareness amongst interview participants of the discourse they inhabit and the mechanisms of Indigenous disempowerment they reinforce and recreate. At the same time, they seek to grow their skills and knowledge, are aware of diversity amongst First Nations people, and are motivated to "do better" at practice with First Nations

[50] Practice theories such as client-centred, caring, relationship focused, contextual, and client-aligned approaches have specific meaning in practice for each practitioner and client and this project did not explore this meaning.

clients. These interviewee characteristics may indicate an opportunity for implementation of localised learning partnerships between legal service providers and First Nations representatives to enhance practitioner knowledges.

Currently legal practitioners are primarily responsible for educating themselves about how they relate with Indigenous clients. This has the effect of displacing some of the education load to Indigenous non legal staff, clients, and the community. In contrast, Queensland Health takes responsibility for directing and implementing changed practice by staff throughout the organisation. This research found that although the potential for incorporation of elements or principles of ICC into legal and ethical theories and practical training exists, it is likely to require very significant focus and support at a level beyond individual practitioners to achieve.

Most participants had low levels of exposure to First Nations people and low levels of exposure to Indigenous knowledge and ways prior to commencing their employment. This may indicate an opportunity for both higher education providers and practical legal training providers to incorporate First Nations practice (in addition to substantive and discrete law subjects) within the curriculum as a compulsory, rather than elective subject, and to increase vertical integration of Indigeneity throughout the law curriculum and campus environment.

Similarly, interviewed practitioners occupied a marginalised practice space with their clients which is unacknowledged in terms of professional skills and status. This may indicate an opportunity for inclusion of First Nations practice as a specialist accreditation or additional practice expertise available to practitioners through Queensland Law Society. Such inclusion may also assist First Nations clients in their comparison of available legal service quality.

Debates about Indigenous practice theories continue (eg; Kaphle et al., 2021). Notwithstanding these debates, Queensland Health has enacted the QHATSICCF across the State. QHATSICCF demonstrates the potential for widespread implementation of cultural theories of practice in a high stakes environment where sufficient will is conducted. This research has deepened understanding about how and why ICC has been excluded from legal practice and included in health practice, as well as how ICC can be encouraged using discursive techniques drawn from health equity and managerial discourses.

The results of this research reiterate the ideas of authors such as Burns (2018), Magalhães & Sanchez (2009), Michailakis (1995), Sinclair (2018; 2019), and Tadros (1998), that the discipline of law is

autonomous and autopoietic; that is, any conception of ICC is interpreted through the lens of existing structures of law practice and theory and incorporated as part of the archival body. This means that, as advocated for by Burns et al., (2013), the most potential for implementation and support of ICC in legal practice is contained within existing legal practice structures.

Epilogue

This research is completed with a certain feeling of defeat. It was my frustration at the lack of evidence base for legal practice with Indigenous clients which sparked this project. This project has not offered me the hope I was looking for. I hoped that lawyers such as myself were doing ICC already without formal implementation of ICC. Instead, I have found evidence of what could be described as a shared fiction amongst interviewees. I am now a knowing part of the fiction. In my practice I must optimistically deny my subjectivity or else quit in futility, thus leaving the job to someone else, equally insufficient to the task.

The project has helped to explain not just how it is, but why. Just as Foucault spoke about, the discourse shows the how. Discourse links the why and the what and when and the who. Discourse holds the history of the system, even from the Latin empire, through Britain, to Australia. It continues to transmit from the past. Discourse shapes the how's of the system, the judicial processes and administration of justice. Discourse also shapes the legal practitioners, as we do what we do, how we do it and why. Discourse influences, constrains, and allows all of it. And now my thesis is added to the discourse.

I have recommended change. So have others. The discourse is unlikely to shift as a result. This research shows this to be true. There is simply not enough discourse about this area of research. The research also shows the development over time of change responding to changes in the capillaries of practice. I again risk raising my hopes that this work momentarily lifts the veil on a shared fiction, and by doing so contributes to a changed discourse. That fiction is that legal practice can be done in a way which counters inequity and injustice for First Nations clients and flies in the face of systemic over-representation. Erasing this illusion is both painful and hopeful.

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Appendices

Appendix 1: E-mail notification of ethics approval

Appendix 2: Q1 part 1: Summary of responses

Table of key phrases

Source	Quote
I1	*the conduct rules are a set of rules that dictate how practitioner's ordinarily should conduct themselves in practice.*
I2	*The Conduct Rules behoove solicitors to conduct themselves with integrity, professionalism and factors multiple stakeholders, such as: client-practitioner, court-practitioner, the duty to the court being paramount, provided, unless exceptions apply.*
I3	*They are the rules that govern what I do on a daily basis*
I4	*They're rules for solicitors and what we have to abide by.*
I5	*These rules govern the ethical standards of Solicitors. The rules seek to ensure uniform ethical practice amongst the profession by providing a guideline of how to properly conduct the practice of law as it pertains to general and more discrete issues.*
I6	*Oh God. I know that they exist.*
I7	*So they are the rules that govern our profession in terms of our ethical obligation. They are basically the rules that govern our profession of lawyers and also provide us with guides in terms of ethical issues such as conflict of interest, all that sort of stuff.*
I8	*the ethical guidelines I have to follow to practice in Australian courts.*
I9	*the solicitor conduct rules are the rules that dictate my practice and they outline my duty to the court, the law and to the client.*
I10	*It's the rules that govern our obligations with respect to ethics and how we are to conduct ourselves.*
I11	*the code of conduct that solicitors have to abide by in the profession to make sure that we are upholding ethical practicing standards*
I12	*A set of rules or guidelines, more like guidelines, they are rules for us to, for solicitors to act upon; sets out how we should be conducting ourselves and what the community should expect from solicitors to abide by and how we conduct ourselves in court, clients, ethical things*

Appendix 3: Q1 part 2: Summary of responses

Table of key phrases

Source	Quote
I1	*The last time I read the rules would have been when I was admitted as a practitioner [2017] and perhaps once or twice since.*
I2	*I reviewed the Rules often last at the end of 2018.*
I3	*I think I last read them within the last 3 months. I pull it out every chance I get.*
I4	*I actually read them last year because I did an ethics CPD. Before the ethics CPD I would have read them for a similar reason about 3 years before.*
I5	*When commencing practice in Queensland some 7 months ago I briefly skimmed the ASCRs to keep myself up to date.*
I6	*I've got them in the bottom of my draw at work and I haven't had a look at them for several years.*
I7	*It's certainly a guiding document and something I regard as very useful if you don't have the answers to a question. That was only about two weeks ago (the matter where the rules were referenced).*
I8	*Probably last time I did a core CPD, so when was that? 6 months ago. I use them only if I have an ethical quandary that comes my way.*
I9	*I've read parts of them this year, not the whole lot. I found exactly what it was that I was after but it wasn't in the actual rules.*
I10	*Probably, in its entirety probably not for a very long time. Probably afew months ago, I'd say, just in terms of conflict situations.*
I11	*maybe three months ago. I look at parts of them when I need to*
I12	*Years. Couldn't tell you. Well not look at regularly. Unless there's something their question ethical question that comes up*

Appendix 4: Q2: Summary of responses

Table of key phrases

Source	Quote
I1	*As a matter of best practise though, when it comes to clients, you need to:* *1. Be polite and professional in order to instil confidence* *2. Conduct their matter with expediency* *3. Act in their best interests and on their instructions* *a. One exception being when the client's interests being at odds with your duty to the court*
I2	*The utility of the Conduct Rules in application to my practice are as follows:* *1. transparent with the court and prosecutions pertaining to client's instruction, when this is in the interest of the client;* *2. Professionalism with stakeholders* *3. Integrity - saying what we mean, and meaning what we say: managing. Client expectations is a huge component of the relationship. Fostering trust and building rapport is essential; integrity is essential.* *4. largely the rules aid us to perform with due diligence and mindfulness of choices made and the consequences of our actions.*
I3	*1. what weighs on me a lot is the swiftness in communication rule – like you have to respond to things promptly – let the client know promptly what's going on. That stresses me out when I've got a high workload* *2. there was consent to disclose information to her so I wasn't worried in terms of confidentiality* *3. The same client had called me and threatened suicide and said that I was going to be to blame for that suicide as well and so there was also consideration of the rules and ethical obligations.* *4. It was also making sure that the balance between the obligations between your duties to the court and to the client*
I4	*1. I suppose you just use them in the fact that you go to the court and you don't lie* *2. I have never been in a situation where I needed to look at them.*
I5	*1. The ASCRs as it relates to criminal law evokes a primary consideration of the Solicitors 'duty to the court'* *2. The duty to the client is to ensure that you provide fair and impartial advice and representation so as to ensure that the client is properly represented.* *3. adequately manage of conflicts of interest*
I6	*1. The only other thing I might have looked up with the law society is conflict of interest.* *2. Yes, definitely (a problem-solving scenario); getting information about how to solve the problem.*

I7	1. *So if I was trying to explain to a client why we couldn't assist them because of a conflict for example.* 2. *Confidentiality as well… we have this professional obligation under our rules that govern our jobs and we can't give that information out unless we have written or verbal authority to do so.*
I8	1. *to explain to clients that my first duty is to the administration of justice as an officer of the court and sometimes clients will tell me something that they don't want the court to know but I have to explain to them that there's an ethical duty on me not to mislead and deceive the court in any way* 2. *the conflict one that comes up… I just say there are rules solicitors have to follow and explain it to them that way*
I9	1. *Conflicts of interest come up quite frequently for us* 2. *I've used them when I'm faced with an ethical issue that I'm not sure about or I need a bit of direction on.* 3. *I use them in my practice quite regularly in terms of the duties owed. For example, the duty to the court, the duty to the client.* 4. *strict with that because we have an obligation to the client to keep all their matters confidential.*
I10	1. *on a day-to-day basis, the thing that probably jumps to the forefront of my mind, particularly in our position at ATSILS would be conflict situations.* 2. *Our obligation is first and foremost to the court* 3. *situations you can explain a lot more about your obligations, other situations you probably have to be a little bit more careful how much information I think you give the clients.*
I11	*especially with children I have a duty to the child, not to their guardians, so I've had to sit down with children and with guardians before and explain that, that if the child doesn't want the guardian in the conference that they can't be in there, it's up to the child. I can then explain to the guardian as much as the child wants me to, but ultimately my duty is to the child as they are my client.*
I12	*I'm sure that I go by them like as there'll be from when I started you know how I've developed my practice since then, but I don't refer to them…*

Appendix 5: Q3 part 1: Summary of responses

Table of key phrases

Formations and chains which appeared to be most closely relevant to answering part one of the question were chosen for inclusion in this summary.

Source	Quote
I1	1. *Acting in a manner that is culturally appropriate whilst upholding highest professional standards.* 2. *good understanding of certain cultural norms* 3. *[client] demeanour first* 4. *the result second.* 5. *avoid things like Gratuitous Concurrence* 6. *if they're listening intently* 7. *say they feel as if they are being heard* 8. *confident in your approach* 9. *trust your judgement* 10. *calm in court* 11. *understand what is going on* 12. *they have had time to consider their position*
I2	1. *awareness of the issues, First Nations peoples face in a Commonwealth country* 2. *understanding the catalyst for the incarceration of First Nations peoples* 3. *single parent households, drug dependence, alcoholism, fatherless households, low education levels* 4. *inter-generational disadvantage* 5. *ICC is of great utility*
I3	1. *at minimum, empathetic to culture and the role that might play* 2. *understanding of the intricacies of the culture* 3. *Indigenous culture means it is location specific* 4. *self-sourced information* 5. *some sort of course* 6. *talking to colleagues* 7. *amazingly sophisticated clients* 8. *don't remember anything about indigenous Australians at school* 9. *didn't do anything during my law degree* 10. *Indigenous justice subject when I was doing my policing degree* 11. *indigenous justice subject I did at Uni was run by a Māori man*
I4	1. *active learning about cultural features of indigenous peoples* 2. *conducting research to obtain a job with ATSILS* 3. *Within our organisation at ATSILS and externally with stakeholders we often discuss cultural aspects* 4. *We also discuss cultural phenomenon with Magistrates and Prosecutors*
I5	1. *I've heard the term many times in various contexts* 2. *An evolving thing* 3. *there is so much more we have to learn about Indigenous culture* 4. *individual communications with clients*

	5. *the more you can listen and try and see things from their perspective* 6. *understand the issues that they are facing, the more competent you can become.* 7. *more useful than some of the more negative terminology that can be used* 8. *The sensitivity part for me is more about being aware of and looking out for triggers and things that might cause offence or issues* 9. *The competent side of it is more about being professional when communicating with clients*
I6	1. *massive culture shock* 2. *you can't jump straight into the issue, you've got to have that small talk first* 3. *understand what the problem is and the cultural side of things that go along with that* 4. *trying to not look at it from your judgement* 5. *making sure you're aware of things like, not necessarily facts and statistics per sea but over representation of Indigenous kids in the child protection system, in prison, and knowing that that can have intergenerational traumatic effects on people* 6. *not generalising* 7. *it's really important to be aware of things like totems* 8. *The differences between land people and sea people, and regional, versus rural versus remote versus inner city* 9. *be willing to put your hand up and say 'look, I get this is important to you, I don't understand it, can you explain what you mean* 10. *at least try and have some knowledge, make sure I know where I go, who the people are, what the country is, who am I speaking to* 11. *have a bit of a chat first and see* 12. *Is there something where you know, you know the family and you know that family has a little bit of intergenerational trauma and you might approach it a bit more, I wouldn't say sensitively, but a bit more different* 13. *Murri time* 14. *you can't put every Indigenous person in the same basket* 15. *I got no training* 16. *I wish someone had told me more about intergenerational trauma* 17. *'this is just my experience'* 18. *I don't think you can have like a cultural competency* 19. *how I can best do my job without offending someone* 20. *let me ask you all my stupid questions so I don't offend anyone and he was so generous with his time* 21. *people started coming to me, and that's when I knew that I was doing better* 22. *dress in my finest K Mart clothes*
I7	1. *training session* 2. *It could be different depending on what tribe they come from. And area.*
I8	1. *cultural competence training or CPD or something every year* 2. *making sure that you have a background awareness in your mind of whatever nuances exist with whichever Indigenous person you happen to be dealing with* 3. *it just depends on the group that you're dealing with* 4. *sitting angle on* 5. *not having eye contact* 6. *it's just empathy*

	7. *knowing what those protocols are so when something does come up you behave appropriately and don't offend someone* 8. *I just treat everyone as an individual*
I9	1. *aware of the cultural dynamics of the client you are working with* 2. *family dynamics* 3. *traditional practices* 4. *communication issues such as asking closed questions* 5. *language barriers* 6. *difficulty reading and writing* 7. *socio-economic factors* 8. *when I first started at [blank] it was called cultural sensitivity*
I10	1. *being aware, culturally, of specific needs Indigenous clients may have.* 2. *working at ATSILS* 3. *gratuitous concurrence* 4. *eye contact*
I11	1. *acknowledging that different cultures have viewed things differently, and can take different information differently* 2. *eye contact* 3. *Gender barriers* 4. *better to understand where they're coming from and* 5. *how I can relate to them and* 6. *communicate with them* 7. *knowing their culture, or how to relate to it* 8. *acknowledge and try and adjust how you're relating to people* 9. *very generalised term*
I12	1. *trying to be able to best understand how Indigenous peoples may feel from years and years and years of what's gone on until now* 2. *taking the time to get to build the rapport* 3. *make sure they don't just say yes to everything* 4. *understanding a bit about that culture so you can best help represent them* 5. *when I went into government*

Appendix 6: Q3 part 1: Summary of coding component themes

Knowledge or Awareness

Source	Quote	Theme
I8	*making sure that you have a background awareness in your mind of whatever nuances exist with whichever Indigenous person you happen to be dealing with*	Cultural awareness
I10	*being aware, culturally, of specific needs Indigenous clients may have.*	Cultural awareness
I9	*aware of the cultural dynamics of the client you are working with*	Cultural awareness
I6	*making sure you're aware of things like, not necessarily facts and statistics per sea but over representation of Indigenous kids in the child protection system, in prison, and knowing that that can have intergenerational traumatic effects on people*	Awareness of context
I2	*inter-generational disadvantage*	Awareness of context
I5	*The sensitivity part for me is more about being aware of and looking out for triggers and things that might cause offence or issues*	Cultural awareness
I2	*single parent households, drug dependence, alcoholism, fatherless households, low education levels*	Awareness of context
I6	*it's really important to be aware of things like totems*	Cultural awareness
I2	*awareness of the issues, First Nations peoples face in a Commonwealth country*	Awareness of context
I9	*traditional practices*	Knowledge of culture
I11	*knowing their culture, or how to relate to it*	Knowledge of culture
I8	*knowing what those protocols are so when something does come up you behave appropriately and don't offend someone*	Cultural knowledge
I9	*family dynamics*	Cultural knowledge
I9	*difficulty reading and writing*	Knowledge of client
I9	*socio-economic factors*	Knowledge of context
I6	*The differences between land people and sea people, and regional, versus rural versus remote versus inner city*	Cultural knowledge
I6	*at least try and have some knowledge, make sure I know where I go, who the people are, what the country is, who am I speaking to*	Cultural knowledge

I6	*I wish someone had told me more about intergenerational trauma*	Knowledge of context
I6	*Is there something where you know, you know the family and you know that family has a little bit of intergenerational trauma and you might approach it a bit more, I wouldn't say sensitively, but a bit more different*	Knowledge of context
I5	*there is so much more we have to learn about Indigenous culture*	Knowledge of culture
I4	*active learning about cultural features of indigenous peoples*	Knowledge of culture
I3	*don't remember anything about indigenous Australians at school*	Knowledge of culture
I3	*didn't do anything during my law degree*	Knowledge of culture and context
I3	*indigenous justice subject when I was doing my policing degree*	Knowledge of culture
I3	*indigenous justice subject I did at uni was run by a Māori man*	Knowledge of culture
I3	*self-sourced information*	Knowledge of culture and context
I3	*some sort of course*	Knowledge of culture and context
I3	*talking to colleagues*	Knowledge of culture
I6	*let me ask you all my stupid questions so I don't offend anyone and he was so generous with his time*	Knowledge of culture

Communication

Source	Quote	Theme
I12	*make sure they don't just say yes to everything*	questioning
I10	*gratuitous concurrence*	questioning
I9	*communication issues such as asking closed questions*	questioning
I1	*avoid things like Gratuitous Concurrence*	questioning
I11	*Gender barriers*	questioning
I11	*eye contact*	Eye contact
I8	*not having eye contact*	Eye contact
I10	*eye contact*	Eye contact

I6	*be willing to put your hand up and say 'look, I get this is important to you, I don't understand it, can you explain what you mean*	honesty
I9	*language barriers*	language
I8	*sitting angle on*	Body language
I1	*[client] demeanour first*	Body language
I1	*calm in court*	demeanour
I5	*individual communications with clients*	communication
I1	*trust your judgement*	trust
I5	*The competent side of it is more about being professional when communicating with clients*	professionalism
I3	*talking to colleagues*	discussing
I4	*Within our organisation at ATSILS and externally with stakeholders we often discuss cultural aspects*	discussing
I4	*We also discuss cultural phenomenon with magistrates and prosecutors*	discussing
I1	*say they feel as if they are being heard*	listening
I3	*[talking to] amazingly sophisticated clients*	listening
I1	*if they're listening intently*	Listening

Understanding

Source	Quote	Theme
I12	*understanding a bit about that culture so you can best help represent them*	Understanding client culture
I6	*understand what the problem is and the cultural side of things that go along with that*	Understanding client culture
I3	*understanding of the intricacies of the culture*	Understanding client culture
I1	*good understanding of certain cultural norms*	Understanding client culture
I12	*trying to be able to best understand how Indigenous peoples may feel from years and years and years of what's gone on until now*	Understanding client feelings

I11	*better to understand where they're coming from and*	Understanding client perspective
I5	*the more you can listen and try and see things from their perspective*	Understanding client perspective
I5	*understand the issues that they are facing, the more competent you can become.*	Understanding client context
I2	*understanding the catalyst for the incarceration of First Nations peoples*	Understanding client context
I1	*understand what is going on [clients]*	Understanding clients

Connection and Relatedness

Source	Quote	Theme
I12	*taking the time to get to build the rapport*	Connecting with clients
I6	*have a bit of a chat first and see*	Connecting with clients
I11	*acknowledging that different cultures have viewed things differently, and can take different information differently*	Connecting with clients
I11	*acknowledge and try and adjust how you're relating to people*	Connecting with clients
I11	*how I can relate to them and* *communicate with them*	Connecting with clients
I11	*acknowledge and try and adjust how you're relating to people*	Relating to clients
I6	*you can't jump straight into the issue, you've got to have that small talk first*	Relating to clients
I12	*trying to be able to best understand how Indigenous peoples may feel from years and years and years of what's gone on until now*	Client empathy
I8	*it's just empathy*	Client empathy
I6	*trying to not look at it from your judgement*	Client empathy
I3	*at minimum, empathetic to culture and the role that might play*	Client empathy

Views of ICC

Source	Quote	Theme

I2	*ICC is of great utility*	Value of ICC
I1	*Acting in a manner that is culturally appropriate whilst upholding highest professional standards.*	Definition of ICC
I6	*I don't think you can have like a cultural competency*	Definition of ICC
I5	*An evolving thing*	Definition of ICC
I11	*very generalised term*	Definition of ICC
I5	*I've heard the term many times in various contexts*	Definition of ICC Usage of ICC
I5	*The sensitivity part for me is more about being aware of and looking out for triggers and things that might cause offence or issues* *The competent side of it is more about being professional when communicating with clients*	Definition of ICC
I6	*how I can best do my job without offending someone*	Definition of ICC

Appendix 7: Q3 part 2: Summary of responses

Source	Response	Place
I1	research on current organisation	NGO – ATSI specific
I2	Practical Legal Training at [blank]	NGO – ATSI specific
I3	Working in Remote Queensland	NGO – ATSI specific
I4	conducting research to obtain a job with [blank]	NGO – ATSI specific
I5	when I did my first interview with [blank]	NGO – ATSI specific
I6	Working at [blank]	NGO – ATSI specific
I7	when I was interviewed or in my first training session	NGO – ATSI specific
I8	day one of that job when cultural competency was sort of a requirement for the new hires cultural competence training or CPD or something every year	NGO – ATSI specific
I9	training when I was with [blank] training through [blank]; induction	QLD government NGO – ATSI specific
I10	working at [blank]	NGO - ATSI specific
I11	working at [blank]	NGO – ATSI specific
I12	when I went into government	QLD government

Appendix 8: Q4: Summary of responses

Table of key phrases

Formations and chains which appeared to be most closely relevant to answering part one of the question were chosen for inclusion in this summary.

Source	Quote
I1	1. *ask open ended questions* 2. *gratuitous concurrence* 3. *Demeanour - Withdrawn, bored, angry, scared, sad or quiet clients can often be an indicator that something is off.* 4. *refer to CSOs*
I2	1. *brief, fleeting eye contact* 2. *Encouraging the client to narrate their experience* 3. *Pre-empt adverse reactions*
I3	1. *I've progressed in terms of focusing the culture more relevantly for the different clients.* 2. *education level is more what informs how I interact with clients and its only when it comes to sensitive topics like talking to men about sexual offences or women about arrangements for children that's probably when the culture becomes relevant.* 3. *those initial demographics and how people respond to those questions* 4. *if I do think I am approaching a culturally sensitive subject I am very open* 5. *I'm open that "I am the whitest person alive" I don't know anything about Indigenous culture* 6. *Language levels is a big one* 7. *I dress different for some appointments, especially colours* 8. *Not a lot of eye contact, especially at watch houses* 9. *I tend to let the client pick the seat in the room* 10. *It's just normal social adjustments* 11. *I don't see it as anything I do on purpose* 12. *I had one Indigenous colleague call me a racist* 13. *Part of the job to have racial arguments through the law.* 14. *We are essentially an organisation of allies. We should be informed properly for it.* 15. *No one really prepares you.*
I4	1. *to listen to the client for a long period of time so that they can tell their story.* 2. *opening my eyes to heightened disadvantage,* 3. *intergenerational trauma and the ongoing social problems* 4. *desensitised to violence* 5. *gratuitous concurrence* 6. *deceiving a client into believing they have been unfaithful in their evidence.* 7. *apprehended bias*
I5	1. *A lot of them are not very well educated* 2. *you've got to really make the language simple.* 3. *I re-frame a lot* 4. *then say to them well, if there is anything I say to you that you don't understand please stop me and tell me what you want.*

	5. *eye contact. Some clients are okay with it* 6. *I don't give them much eye contact* 7. *When I worked in um private practice I never had an Indigenous client.* 8. *show them respect and treat them like any other client* 9. *try and show a lot of empathy because they've had a lot of trauma* 10. *A lot of them have health issues* 11. *They love a yarn* 12. *sympathise with them and make a few suggestions or referrals* 13. *I feel like I'm jack of all trades master of none*
I6	1. *you have to listen a lot more to the client and read between the lines* 2. *if the client doesn't turn up to the appointment there can be many reasons behind that.* 3. *more empathy* 4. *There's certain cultural things that they might not want to say in front of an Elder or something like that.* 5. *explaining why you have to get that information from somebody, it might seem quite intrusive to someone* 6. *It's not like you have one or two who face these challenges, its overwhelming majority of them.* 7. *I'm a white female, and an Aboriginal male may not want to tell me things and no matter how culturally competent I become I may never combat that entirely* 8. *the white lawyer coming in and telling the client what to do or what the rules are is a challenge in itself* 9. *volume of the work is challenging* 10. *gratuitous concurrence* 11. *background that our clients are coming from*
I7	1. *treat everyone as an individual with empathy* 2. *it's not a prerequisite, cultural competency, unless it comes up relevant in a matter,* 3. *There's no real difference that dealing with anyone else* 4. *so it is left to me to be the cultural advocate for the kid*
I8	1. *more client focused* 2. *communicate in plain English* 3. *aware of their background factors such as trauma, mental health* 4. *the way you communicate* 5. *empathise with them and hopefully de-escalate the situation* 6. *speak quite clearly using short sentences* 7. *asking them to repeat back what they think I mean* 8. *Sometimes, it's really helpful with kids when I'm trying to explain charges and things to them to actually show them*
I9	1. *I felt like I had to learn a lot very quickly about the Indigenous culture* 2. *having to actively seek out things, learn things* 3. *trauma, intergenerational trauma* 4. *Indigenous court support officers* 5. *being very honest with the clients* 6. *being willing to hear their side,* 7. *being willing to learn* 8. *being very quiet, like usually I speak with a calm voice*

	9. *day and night dealing with clients who have suffered trauma* 10. *a lot of the times we know families* 11. *familiar with our clients, and their backgrounds, and their families, and their family's backgrounds,* 12. *not having to go through those things constantly with them because we're just aware because we know them as a person* 13. *you have to be very sensitive* 14. *have to make sure that you don't become desensitised* 15. *a lot of empathy for them*
I10	1. *there are circumstances where I've had to ask male clients if they're happy to speak to me because I'm female* 2. *because of shame, I've had to build more of a relationship first* 3. *building a rapport - I'm not going to do anything with the information they're telling me unless they ask me to* 4. *try and share some things about myself to kind of build mutual relationships* 5. *more response from a client if they do feel like I'm hearing them* 6. *try and make little connections* 7. *I think there's less of a feeling of trust if you're just purely professional.* 8. *gratuitous concurrence* 9. *we need to take longer with clients* 10. *sometimes clients are difficult to understand* 11. *technology literacy can be very different* 12. *a lot more frequent court dates* 13. *taking instructions and trying to contact clients can be a lot more difficult.* 14. *I'm surprised if anyones been educated past grade ten*
I11	1. *I take a bit more time to like, to get to know the clients* 2. *understanding of their situation* 3. *engage with other community services* 4. *I think take a lot more time to get engaged with those community organisations* 5. *here is a different world* 6. *hear stories about it opens your eyes* 7. *try to be a bit more patient* 8. *trying to build their trust* 9. *understand where their background is, their family* 10. *if they're not wanting to talk about it then not pushing on*
I12	1. *more wholistic* 2. *knowing who the local service providers are* 3. *making sure things happen* 4. *I do a lot of referrals here* 5. *you need to be out there and working with the other people* 6. *I'm actually helping people* 7. *I'm still practicing in grey areas* 8. *very rarely am I on the same path* 9. *I get to wear jeans a lot more* **10.** *sometimes 5 or 10 minutes of actually listening to someone speak can make a huge difference*

Appendix 9: Q4: Summary of coding component themes

Communication techniques

Source	Quote
I1	*ask open ended questions*
I2	*Encouraging the client to narrate their experience*
I4	*to listen to the client for a long period of time so that they can tell their story.*
I6	*you have to listen a lot more to the client and read between the lines*
I10	*more response from a client if they do feel like I'm hearing them*
I9	*being willing to hear their side*
I12	*sometimes 5 or 10 minutes of actually listening to someone speak can make a huge difference*
I1	*gratuitous concurrence*
I10	*gratuitous concurrence*
I4	*gratuitous concurrence*
I6	*gratuitous concurrence*
I9	*being very honest with the clients*
I3	*I'm open that "I am the whitest person alive" I don't know anything about Indigenous culture*
I9	*being very quiet, like usually I speak with a calm voice*
I8	*speak quite clearly using short sentences*
I5	*you've got to really make the language simple.*
I10	*sometimes clients are difficult to understand*
I8	*communicate in plain English*
I3	*Language levels is a big one*
I8	*the way you communicate*
I1	*Demeanour - Withdrawn, bored, angry, scared, sad or quiet clients can often be an indicator that something is off.*
I11	*if they're not wanting to talk about it then not pushing on*
I6	*There's certain cultural things that they might not want to say in front of an Elder or something like that.*
I6	*explaining why you have to get that information from somebody, it might seem quite intrusive to someone*
I6	*I'm a white female, and an Aboriginal male may not want to tell me things and no matter how culturally competent I become I may never combat that entirely*
I6	*the white lawyer coming in and telling the client what to do or what the rules are is a challenge in itself*
I2	*brief, fleeting eye contact*
I3	*Not a lot of eye contact, especially at watch houses*
I5	*eye contact. Some clients are okay with it*
I5	*I don't give them much eye contact*

Connection (trust, rapport & understanding)

Source	Quote
I10	*building a rapport - I'm not going to do anything with the information they're telling me unless they ask me to*
I10	*I think there's less of a feeling of trust if you're just purely professional.*

I10	*because of shame, I've had to build more of a relationship first*
I6	*background that our clients are coming from*
I9	*a lot of the times we know families*
I9	*familiar with our clients, and their backgrounds, and their families, and their family's backgrounds,*
I9	*not having to go through those things constantly with them because we're just aware because we know them as a person*
I12	*more wholistic*
I8	*asking them to repeat back what they think I mean*
I5	*then say to them well, if there is anything I say to you that you don't understand please stop me and tell me what you want.*
I11	*understanding of their situation*
I10	*try and share some things about myself to kind of build mutual relationships*
I5	*I re-frame a lot*
I10	*try and make little connections*
I5	*sympathise with them and make a few suggestions or referrals*
I5	They love a yarn

Empathy

Source	Quote
I9	*a lot of empathy for them*
I8	*empathise with them and hopefully de-escalate the situation*
I7	*treat everyone as an individual with empathy*
I6	*more empathy*
I5	*try and show a lot of empathy because they've had a lot of trauma*

Culture shock or adjustments

Source	Quote
I11	*here is a different world*
I10	*technology literacy can be very different*
I9	*I felt like I had to learn a lot very quickly about the Indigenous culture*
I4	*opening my eyes to heightened disadvantage*
I3	*No one really prepares you.*
I3	*We are essentially an organisation of allies. We should be informed properly for it.*
I11	*hear stories about it opens your eyes*
I9	*having to actively seek out things, learn things*

Client Trauma

Source	Quote
I9	*day and night dealing with clients who have suffered trauma*
I8	*aware of their background factors such as trauma, mental health*
I5	*try and show a lot of empathy because they've had a lot of trauma*
I4	*intergenerational trauma and the ongoing social problems*
I9	*trauma, intergenerational trauma*

Client Education level

Source	Quote
I3	*education level is more what informs how I interact with clients and its only when it comes to sensitive topics like talking to men about sexual offences or women about arrangements for children that's probably when the culture becomes relevant.*
I5	*A lot of them are not very well educated*
I10	*I'm surprised if anyone's been educated past grade ten*

Appendix 10: ASCRs: References to *solicitor conduct*

Part or Rule	Use	Discursive construction
Title Page	Title of the document Placement or logo and name of Queensland Law Society on top left of page Placement of the words "ethics centre" on top right of page	Solicitor conduct is something that can be ruled; Solicitor conduct can be ruled upon. The rules emerge from or belong to the Law Society Conduct is linked to ethics
Introduction	The Australian Solicitors Conduct Rules 2012 (the ASCR) provide a framework for ethical decision making about what we as solicitors do daily.	Conduct requires a framework Solicitors require a framework for what they do
Introduction	The ASCR is intended to be the first national set of conduct rules for all Australian solicitors.	Conduct can be uniform Conduct rules are accepted all over Australia All practitioners are subject to these rules
Introduction	The ASCR is a statement by us as a Society that we are capable of determining the ethical and professional conduct which we as solicitors strive to achieve daily.	The Law Society decides conduct Conduct can be aspirational The Rules uphold professional self-governance
Introduction	The ASCR are rules of professional conduct; they do not detract from us striving each day to maintain the highest possible level of ethical standards.	Rules of conduct are minimal There is more to ethical conduct than rules
2.1	The purpose of these Rules is to assist solicitors to act ethically and in accordance with the principles of professional conduct established by the common law and these Rules.	Rules assist conduct Conduct can be professional Professional conduct is legal
2.2	In considering whether a solicitor has engaged in unsatisfactory professional conduct or professional misconduct, the Rules apply in addition to the common law.	Conduct can be unsatisfactory Conduct can be misconduct Conduct can be punished
2.3	A breach of these Rules is capable of constituting unsatisfactory professional conduct or professional misconduct, and may give rise to disciplinary action by the relevant regulatory authority, but cannot be enforced by a third party.	Conduct which is not the same as the rules can be punished by a regulatory authority

5	Dishonest and disreputable conduct	Conduct can be dishonest Conduct can be disreputable
5.1	A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practice law, or which is likely to a material degree to: 5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or 5.1.2 bring the profession into disrepute.	Conduct can be used as evidence that a solicitor should not be allowed to be a solicitor Conduct can reduce public confidence in the legal system Conduct can prejudice the legal system Conduct can make all lawyers look bad
11.5	If a solicitor or a law practice acts for more than one client in a matter and, during the course of the conduct of that matter, an actual conflict arises between the duties owed to two or more of those clients, the solicitor or law practice may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided that the duty of confidentiality to other client(s) is not put at risk and the parties have given informed consent	Cases can be conducted by solicitors or law practices
20.3.3(ii)	A solicitor whose client informs the solicitor that the client intends to disobey a court's order must: 20.3.3 not inform the court or the opponent of the client's intention unless: (i) the client has authorized the solicitor to do so beforehand; or (ii) the solicitor believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety	Client conduct can threaten safety
21.4	A solicitor must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the solicitor believes on reasonable grounds that: 21.4.1 available material by which the allegation could be supported provides a proper basis for it; and 21.4.2 the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the case if it is not made out.	Misconduct is serious Solicitors cannot allege misconduct lightly

21.7	A solicitor who has instructions which justify submissions for the client in mitigation of the client's criminality which involve allegations of serious misconduct against any other person not able to answer the allegations in the case must seek to avoid disclosing the other person's identity directly or indirectly unless the solicitor believes on reasonable grounds that such disclosure is necessary for the proper conduct of the client's case.	Alleging misconduct when the person isn't there will only happen when necessary and as part of conduct which is proper in a case. Cases can be conducted in a proper way. Conduct can be proper
29.3	A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.	Conduct can be other than language Conduct can inflame
29.13	A solicitor who appears as counsel assisting an inquisitorial body such as the Criminal Justice Commission, the Australian Crime Commission, the Australian Securities and Investments Commission, the ACCC, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 29.1, 29.3 and 29.4 as if the body is a court referred to in those Rules and any person whose conduct is in question before the body is an accused referred to in Rule 29.	Conduct can make someone an accused
32.1	A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.	Complaints about conduct by solicitors are subject to these rules Conduct can be complained about Conduct complaints must be genuine Complaints by solicitors about other solicitors conduct have a basis
34.2	In the conduct or promotion of a solicitor's practice, the solicitor must not seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the solicitor at the time when the instructions are sought.	Conduct can be promotional Conduct can promote Conduct of practice can oppress or harass someone

40.1	A solicitor must not, in relation to the conduct of the solicitor's practice, or the delivery of legal services, share, or enter into any arrangement for the sharing of, the receipts arising from the provision of legal services by the solicitor, with: 40.1.1 any disqualified person; or 40.1.2 any person convicted of an indictable offence that involved dishonest conduct, whether or not a conviction was recorded.	Conduct of practice can involve sharing money with criminally dishonest people
41.1	A solicitor must not conduct a managed investment scheme or engage in mortgage financing as part of their law practice, except under a scheme administered by the relevant professional body and where no claim may be made against a fidelity fund.	Conduct can include managing investment schemes and mortgage financing.
42.1	A solicitor must not in the course of practice, engage in conduct which constitutes: 42.1.1 discrimination; 42.1.2 sexual harassment; or 42.1.3 workplace bullying.	Conduct can discriminate Conduct can sexually harass Conduct can bully
43.2	A solicitor must respond within a reasonable time and in any event within 14 days (or such extended time as the regulatory authority may allow) to any requirement of the regulatory authority for comments or information in relation to the solicitor's conduct or professional behaviour in the course of the regulatory authority investigating conduct which may be unsatisfactory professional conduct or professional misconduct and in doing so the solicitor must furnish in writing a full and accurate account of his or her conduct in relation to the matter.	Conduct can involve time limits Conduct is not the same as professional behaviour Conduct can be investigated Conduct can be accounted for Conduct can be re-counted

Appendix 11: ASCRs: Uses of *conduct*

Rule	Use	Surrounding notions or important terms
2.1	Self-Conduct also being conducted by Rules and common law	Rules as assistance for ethical action Professional conduct (principles) Common law.
2.2	Self-Conduct; being conducted	Unsatisfactory professional conduct Professional misconduct
2.3	Misconduct as a breach of the Rules; self-conduct; being conducted	Unsatisfactory professional conduct Professional misconduct Disciplinary action by regulatory authority
5	Conduct as behaviour & character Self-conduct	Dishonesty Disreputable
5.1	Conduct as behaviour /action and character. Self-conduct; being conducted (by profession; public; administration of justice)	Solicitor conduct representative/reflective of the profession and the justice system Fit and proper person Reputation of the profession Public confidence in the administration of Justice
11.5	Conduct as control of a case / matter. Conducting others	Confidentiality Conflict of duties owed to clients Informed consent
20.3.3(ii)	Conduct as action. Self-conduct and Self-conduct of others (clients)	Client risk to safety of others an exception to confidentiality
21.4	Misconduct as criminality or fraud. Self-conduct and Self-conduct of others (any person).	Serious misconduct Allegations Fit and proper basis Duty to follow client instructions
21.7	Misconduct as criminality Conduct as control and progression of a case – conducting others	Serious misconduct Allegations Disclosure Submissions in mitigation
29.3	Conduct as communication; prosecutor being conducted; prosecutor self-conduct	Prosecutor Bias Accused
29.13	Conduct as action. Self-conduct	Accused Commissions to be treated as courts
32.1	Conduct as action or behaviour. Self-conduct; Conducting others' self-conduct; being conducted.	Allegation Unsatisfactory professional conduct Professional misconduct Bona fide

34.2	Conduct as business; conduct as acts; conducting others; self conduct	Legal Services Oppress or harass Seeking instructions from disadvantaged person
40.1	Conduct as business practice; Conduct as decision and action; self (business)-conduct	Legal Services Sharing of receipts Disqualified person Person convicted of indictable offence involving dishonesty
41.1	Conduct as control of a business activity; conducting others; self-conduct.	Managed investment scheme Mortgage financing Fidelity fund
42.1	Conduct as way of being; action or inaction; control and influence; self-conduct; conducting others	Conduct constituting Discrimination Sexual harassment Workplace bullying
43.2	Conduct as action; being conducted in relation to self conduct	Professional behaviour Regulatory body Unsatisfactory professional conduct Professional misconduct

Appendix 12: QHATSICCF: References to Aboriginal and Torres Strait Islander *Cultural Capability* or *Cultural Competency*

Page or part	Use	Discursive construction
Foreword	The *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 – 2033* is a genuine step forward.	The framework represents progress towards the intended direction of travel
contents	4.2 What is Aboriginal and Torres Strait Islander cultural capability?	ATSICC can be defined or explained
contents	4.4 What is the Aboriginal and Torres Strait Islander Cultural Capability Framework?	The framework can be defined and/or explained
contents	6.1 Aboriginal and Torres Strait Islander Cultural Capability Learning Program	ATSICC can be learnt
6 - introduction	Cultural capability, just like clinical capability, is an ongoing journey of continuous individual learning and organisational improvement, in order to ensure best practice in health service delivery.	CC can be compared to clinical capability CC is important CC has no end point CC is necessary for best practice in delivery of health services
8	This urgent need has resulted in the development of the *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033*.	CC is a response to need Urgent need has resulted in a CC framework
9	The scope of the *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* is clearly focused on the provision of culturally appropriate health services to Aboriginal and Torres Strait Islander consumers and communities.	CC is about culturally appropriate service
9	The Queensland Health Organisational Cultural Competency Framework, identified in the *Queensland Health Strategic Plan for Multicultural Health 2007–2012*, provides a sound context for organisational cultural capability and meets existing national and international cultural competency guides and standards.	CC for Aboriginal and Torres Strait Islander people is different to CC for other people
9	The Framework, while fully acknowledging the distinct requirements of many other culturally diverse peoples, excludes generic cultural capabilities in relation to culturally and linguistically diverse consumers and communities, which are addressed in the Queensland Health Organisational Cultural Competency Framework	Things that apply to Aboriginal and Torres Strait Islander people do not apply to other people and vice-versa.
9	The eight elements detailed in Figure 2 and its stated principles of self-reflection, cultural understanding, context,	There are many parts to CC, including self-reflection;

	communication and collaboration are embedded within and aligned to this *Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033*.	understanding; context; communication; collaboration.
9	Organisational Cultural Competence = improved patient safety and health outcomes	CC is the same as better safety and outcomes for patients
10	The *Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* is the overarching framework to guide every aspect of health service delivery for and with Aboriginal and Torres Strait Islander Queenslanders.	CC is vertically integrated throughout service CC affects everything
10	The *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* has embedded these three dimensions throughout the document.	CC can be modelled using three dimensions CC is important to National Health Ministers National Health Ministers talk about CC
10	The purpose of the *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* is to provide overarching principles for the governance, policy, planning, infrastructure, information systems, human resource management, quality improvement, education and training, and every aspect of culturally capable health service delivery; and to guide the skills, knowledge and behaviours that are essential for all levels of Queensland Health employees to provide culturally appropriate health services for Aboriginal and Torres Strait Islander Queenslanders.	Some skills, behaviours and knowledge are essential for CC The framework provides principles for enacting CC
10	The implementation of the *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* will strengthen the ability of Queensland Health as an organisation to:	CC is helpful to the organisation
10	• develop the cultural capability of all Queensland Health employees.	CC can be developed
10	• develop foundations to improve the cultural capability of the organisation	CC can be improved
10	• assist in identifying cultural capability gaps across the organisation	CC can be missing
11	Figure 3: Guiding Principles for Queensland Health Aboriginal and Torres Strait Islander cultural capability	CC has guiding principles
11	The principles provide overarching guidance to Queensland Health to systematically lift the organisation's cultural capability and to	CC principles help improve CC implementation

	deliver culturally responsive health services to Aboriginal and Torres Strait Islander peoples across Queensland. Below is a summary of each principle.	
12	The *Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* principles provide a foundation for describing the framework's key outcomes.	CC principles are a base for outcomes
12	Respect for the roles of unions and industrial consultative forums in assisting the organisation to achieve and maintain cultural capability.	CC can be helped by unions and industrial groups
14	Ongoing improvement and sustainability of cultural capability of Queensland Health staff through appropriately resourced, sustainable training, education, mentoring and other developmental experiences appropriate to their roles within the organisation, including sound orientation to the local Aboriginal and Torres Strait Islander community where relevant.	CC is ongoing CC can be improved CC takes resources; training; education; mentoring; experiences CC can be sustained
14	Planning of dedicated services for Aboriginal and Torres Strait Islander peoples involves community consultation; Aboriginal and Torres Strait Islander leaders and staff; culturally sensitive environments; high level of cultural capability; partnerships through inter-sectoral collaboration and integrated planning; realistic targets and measurable outcomes; and dissemination of information into the Aboriginal and/or Torres Strait Islander community.	CC is part of planning of dedicated services for Aboriginal and Torres Strait Islander people
14	Ongoing monitoring, evaluation and quality improvement of all strategies implemented for the improvement of cultural capability across the organisation.	CC can be monitored CC can be evaluated CC can be improved CC applies to the whole organisation
14	The strategies associated with the framework will, over time, embed cultural capability throughout Queensland Health.	CC will take time
14	Table 1 provides an overview of all strategies (existing and planned) with respect to the elements in the *Organisational Cultural Competency Framework* and their application to improving the health of Aboriginal and Torres Strait Islander people.	CC has elements CC can be planned CC improves the health of Aboriginal and Torres Strait Islander people
15	Queensland Health Organisational Cultural Competency Framework Elements	CC has elements

15	• Identification and promotion of good practice models of cultural capability	CC can be role modelled
15	• Alignment and inclusion of Aboriginal and Torres Strait Islander cultural capability in planning, development and reporting systems	CC can apply to systems CC can align with other things
15	• Inclusion of accountabilities for cultural capability in service level agreements and performance plans for executive and senior managers	Executive and senior managers can be held accountable for CC CC can be included in agreements
16	Aboriginal and Torres Strait Islander Cultural Capability Learning Program	CC can be learnt
16	Since the late 1990s, the Aboriginal and Torres Strait Islander Cultural Awareness Program has provided some cultural capability learning and development	CC can be learnt
16	The Aboriginal and Torres Strait Islander Cultural Capability Learning Program is also well positioned to interface with cultural diversity training (delivered through Queensland Health's multicultural program), and with many other Queensland Health education and training programs.	CC can be taught
16	The revised and expanded Aboriginal and Torres Strait Islander Cultural Capability Learning Program will provide a variety of learning experiences and development opportunities to build capabilities relevant to the roles of individual employees.	CC can be taught CC can be developed CC can be learnt
16	Figure 4: The Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Learning Program Model	CC can be learnt
16	All line managers Additional cultural capability is required by line managers with respect to the knowledge, skills and behaviours required for the management, supervision and support of Aboriginal and Torres Strait Islander staff, and the interpretation and implementation of policy that impact on the health outcomes of Aboriginal and Torres Strait Islander peoples.	Managers need more CC for managing Aboriginal and Torres Strait Islander staff Managers need more CC for turning policy into action
17	This information will provide for ongoing learning and information as needed by Queensland Health staff, and form the basis for improved cultural capability in all aspects of healthcare.	CC can be improved CC is related to everything CC is not a process that ends Information helps CC CC involves learning
17	Queensland Health's leaders are pivotal to driving improvements through their own Aboriginal and Torres Strait Islander cultural capability and for establishing partnerships	Leaders are important to CC Partnerships are important to CC

	which enable the best possible integrated healthcare.	
17	• key leadership in the implementation of the *Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033*, including the development, coordination, implementation, evaluation and continuous improvement of cultural capability strategies and initiatives	CC can be lead
17	• building and maintaining relationships and providing comprehensive stakeholder consultation and communication, including executive management, Aboriginal and Torres Strait Islander communities, national and statewide networks relevant to the improvement of Aboriginal and Torres Strait Islander cultural capability.	CC involves relationships
18	Building cultural capability in Queensland Health is a major challenge. Organisational leadership, adequate resources, ongoing consultation and support for Queensland Health staff in the initial implementation stages are critical to long-term success and sustainability.	CC is hard CC requires resources, commitment, motivation and relationships.
18	Due of the need for strong leadership and responsibility in Queensland Health, this includes incorporating implementation of the *Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 – 2033* into the:	CC can be monitored and evaluated CC is another performance measure
18	Further mechanisms for evaluation of the *Aboriginal and Torres Strait Islander Cultural Capability Framework 2010 - 2033* will be developed within its implementation plans.	There are different ways of evaluating CC

Appendix 13: ASCRs: open and closed codes

Open coding – what was repeated, recurrent and forceful in these texts?	**Closed coding – what Foucauldian themes, concepts or techniques are recurring, repeated or forceful?**
Solicitor	Subject positions and Roles Technology Power-knowledge Apparatus
Client	Subject positions and Roles
Conduct	Governmentality and Discipline Biopower apparatus

Appendix 14: QHATSICCF: open and closed codes

Open coding – what was repeated, recurrent and forceful in these texts?	**Closed coding – what Foucauldian themes, concepts or techniques are recurring, repeated or forceful?**
Cultural	Regime of truth Institutions Universal categories
Aboriginal and Torres Strait Islander	Regime of truth Discursive practice Governmentality Universal categories
Respect	Episteme Gaze Power-knowledge
Care	Regime of truth Institutions Normalisation Subject positions
Staff	Subject positions and roles Apparatus Biopower

Appendix 15: Q1 part 1: open and closed codes

Open coding – what was repeated, recurrent and forceful in these texts?	**Closed coding – what Foucauldian themes, concepts or techniques are recurring, repeated or forceful?**
Rules	Governmentality Discipline Biopower
Client	Subject positions and Roles
Ethical	Moral codes Governmentality Regime of Truth
Conduct	Governmentality and Discipline Biopower

Appendix 16: Q2: open and closed codes

Open coding – what was repeated, recurrent and forceful in these texts?	**Closed coding – what Foucauldian themes, concepts or techniques are recurring, repeated or forceful?**
Rules	Governmentality Discipline Biopower
Client	Subject positions and Roles
Court	Subject positions and roles Governmentality and Discipline
Ethical	Moral codes Governmentality Regime of Truth
Duties	Moral Codes Governmentality and Discipline

Appendix 17: Q3 part 1: open and closed codes

Open coding – what was repeated, recurrent and forceful in these texts?	**Closed coding – what Foucauldian themes, concepts or techniques are recurring, repeated or forceful?**
Cultural	Regime of truth Institutions Universal categories
Difference/Different	Normalization Subject positions
Aware	Knowledge
Training	Knowledge
Understand	Knowledge Power-knowledge
Competence	Regime of truth
Indigenous	Individuals/Individualization Identity

Appendix 18: Q4: open and closed codes

Open coding – what was repeated, recurrent and forceful in these texts?	**Closed coding – what Foucauldian themes, concepts or techniques are recurring, repeated or forceful?**
Cultural	Regime of truth Institutions Universal categories
Difference/Different	Normalization Subject positions
Client	Subject positions and roles
Practice	Regime of truth Institutions Normalisation Subject positions
Aboriginal	Discursive practice Governmentality Universal categories
Indigenous	Individuals/Individualization Identity

Appendix 19: Informed consent form

This administrative form has been removed

Appendix 20: Information sheet

INFORMATION SHEET

PROJECT TITLE: "Exploring Indigenous Cultural Competence in Legal Practitioner Client Relations"

You are invited to take part in a research project about Legal Practice and Indigenous Client Relations. The study is being conducted by Georgia Storm and will contribute to a thesis in the Master of Philosophy (Indigenous) at James Cook University.

DESCRIPTION OF PROTOCOLS

If you agree to be involved in the study, you will be invited to be interviewed. The interview, with your consent and where applicable, will be audio-recorded, and should take between 30 minutes to 1 hour of your time. The interview will be conducted via e-mail, video conference or in person at your workplace, or another venue of your choice.

Taking part in this study is completely voluntary and you can stop taking part in the study at any time without explanation or prejudice.

The contents of all interviews will be kept confidential and participants will be not be identified.

Interview transcripts will be available, and you can seek revision, redact, withdraw, or explain statements prior to the researcher analysing the transcript.
If you know of others that might be interested in this study, can you please pass on this information sheet to them so they may contact me to volunteer for the study.

Your responses and contact details will be strictly confidential. The data from the study will be used in research publications and reports such as theses and journal articles. You will not be identified in any way in these publications.

If you have any questions about the study, please contact **Georgia Storm and Dr Vincent Backhaus or Associate Professor Felecia Watkin Lui.**

Principal Investigator:
Georgia Storm

College: Indigenous Education and Research Centre
James Cook University
Phone: project specific mobile TBA
Email: george.storm@my.jcu.edu.au

Supervisors:
Dr Vincent Backhaus and
Associate Professor Felecia Watkin Lui

College: Indigenous Education and Research Centre
James Cook University
Phone: (07) 4232 1393 and (07) 4232 1044
Email: vincent.backhaus@jcu.edu.au;
Email: felecia.watkin@jcu.edu.au

If you have any concerns regarding the ethical conduct of the study, please contact:
Human Ethics, Research Office James Cook University, Townsville, Qld, 4811
Phone: (07) 4781 5011 (ethics@jcu.edu.au)

Appendix 21: Invitation e-mailed to interviewees

Dear Practitioner,

I am a researcher at James Cook University and a Legal Practitioner. I am contacting you with the approval of your employer, however, I am not contacting you at the request of your employer. All our dealings, including this correspondence, will be kept confidential by me.

I would like to invite you to participate in my Master of Philosophy (Indig) research project entitled "Exploring Indigenous Cultural Competence in legal practitioner client relations".
As part of my research I am seeking to speak to non-Indigenous legal practitioners who work exclusively with Indigenous clients.

Interviewees will be asked four questions, either in person, via e-mail or via video conference. These questions are not closed, so they may invite some discussion between us. I expect the interview to take 30 minutes to 60 minutes.

Interviews will be recorded using my mobile telephone which is specific to the project and passcode protected. A transcription will be provided to you, and you will be given an opportunity to redact, explain, elaborate, or otherwise amend the transcript. Transcripts will be anonymised and de-identified so that no one will be able to identify you.

Your interview will be one piece of data which I will be analysing as part of my Masters thesis.
You will receive a copy of my results at least two weeks before the thesis is distributed more widely so you can discuss any concerns you have about the results or dissemination of the thesis with me.

Attached is a consent form and information sheet. If you agree to be interviewed, please sign the attached documents, and return them by replying to this email.

I thank you for the time you have taken reading this introduction and invitation.

Georgia Storm MBA, LLB, BCom

JAMES COOK UNIVERSITY AUSTRALIA

We acknowledge the Australian Aboriginal and Torres Strait Islander peoples as the traditional owners of the lands and waters where we live and work.

Appendix 22: Australian Solicitors Conduct Rules

https://www.lsc.qld.gov.au/__data/assets/pdf_file/0016/652120/australian-solicitors-conduct-rules-2012-fnl-3.pdf

Appendix 23: Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework

https://www.health.qld.gov.au/__data/assets/pdf_file/0014/156200/cultural_capability.pdf