

GENERAL GUIDANCE FOR SOLICITORS REPRESENTING ABORIGINAL AND TORRES STRAIT ISLANDER CLIENTS

CULTURAL AWARENESS AND EFFECTIVE LEGAL SERVICE PROVISION

To provide the best professional advice to and representation of clients, lawyers ideally have a good understanding of their client's non-legal circumstances and issues that may be impacting on their client's instructions. It is important to acknowledge the diversity of Aboriginal and Torres Strait Islander cultures, experiences and ways of communicating across Australia.

When it comes to working with and assisting your Aboriginal and Torres Strait Islander client, it is helpful to understand the particular needs of your client, and to have an understanding of the cultural issues that may be at play, which will help you to create the right environment to allow effective communication between you and your client.

This resource aims to provide information to you as a lawyer which will enable you to fulfil your responsibilities of clear communication and representation with greater confidence. It is a mistake to assume that proper advice can be given without some understanding of the ways in which Aboriginal and Torres Strait Islander people communicate, and the cultural context and life experiences which impact on your client, and your relationship with your client. A client's cultural background is relevant and in fact fundamental to your relationship with your client. However, you should not assume that all Aboriginal and Torres Strait Islander people have the same cultural and linguistic characteristics and life experiences. Of course, many Aboriginal and Torres Strait Islander people have a good understanding of the legal system and the issues that affect their situation. As with any other client, you must be wary of making assumptions about your client based on generalisations or appearances.

Extra time will often be required to build the necessary trust for you to assist your client and for you to provide the optimum professional assistance to which your client is entitled.

Barriers to effective communication and representation

Provided below are links to fuller information, including on matters that, if misunderstood or mismanaged, may be

barriers to effective communication and representation. Such matters include cultural practices around communication, such as what extended silence and pauses might mean, how to interpret avoidance of eye contact, the role of non-verbal language such as gestures, the possibly limited utility of direct and specific questioning, and gratuitous concurrence. Your client may appear to answer yes to a question (or no to a negative question), regardless of actual agreement, or understanding of the question.

There are also other factors that are not strictly cultural that, if mismanaged, may impact effective communication and representation. These include the impact of shame, the impact of trauma, and concerns about maintaining confidentiality within close-knit communities.

Trauma-informed service provision

The Law Society notes particularly the importance of trauma-informed service provision. Some Aboriginal and Torres Strait Islander people may be affected by trauma in ways that are not immediately obvious to you, and which may impact on your relationship, and on your capacity to take instructions and provide the best assistance required.

This may be because of individual and intergenerational life experiences that stem from colonisation, and may include direct and systemic discrimination and racism, separation from country, forced removal from family and destruction of culture, and personal experiences of violence.

Experience of trauma may manifest in mistrust of authority, as well as fight (aggressive), flight (avoidance) or freeze (shutting down) responses. For example, some responses might include instances where your client does not keep further appointments, or where they might be difficult to contact, or appear unwilling to be candid. This should not be interpreted as unwillingness, ingratitude or untrustworthiness.

Locally delivered cultural awareness training

If possible, the Law Society suggests receiving locally delivered face-to-face Aboriginal cultural awareness training. Such training is also likely to benefit effective relationship building and referral pathways.



LOCAL ABORIGINAL CONTROLLED ORGANISATIONS

It is the Law Society's long-standing view that the delivery of legal services to Aboriginal and Torres Strait Islander clients (particularly in respect of criminal law, family law and care and protection matters) are more effective when legal practitioners work in concert with Aboriginal community service providers.

Local Aboriginal Land Councils and Aboriginal Medical Services

Local Aboriginal Land Councils (LALCs) can be loosely conceptualised as "local government for Aboriginal people". Both LALCs and Aboriginal Medical Services (AMSs) should be considered the first ports of call for information about Aboriginal and Torres Strait Islander people in your local area, as well as for information about Aboriginal community controlled services available in your local area. Many Aboriginal and Torres Strait Islander people engage regularly with their LALCs and AMSs, and these services often act as hubs or have links to, and knowledge of, other Aboriginal controlled and/or trusted service providers in their area.

In order to find out more about Aboriginal and Torres Strait Islander people in your local area and services that may assist them, the Local Aboriginal Land Council and the local Aboriginal Medical Service may be helpful: <http://alc.org.au/land-councils/lalc-boundaries--contact-details.aspx>

There is no consolidated list of AMSs but you can contact the Aboriginal Health and Medical Research Council of NSW at ahmrc@ahmrc.org.au for more information.

The Aboriginal Legal Service (NSW/ACT)

The Aboriginal Legal Service (NSW/ACT) is a community controlled Aboriginal law firm providing legal services in the areas of Criminal, Care & Protection and Family Law.

The ALS can also assist in providing appropriate referrals to community organisations and service providers. Please note that the police are required to notify the ALS when an Aboriginal person has been taken into custody, and the ALS lawyer will give the person in custody legal advice and check on their well-being. You can find out more about the ALS at <https://www.alsnswact.org.au/>

RECONCILIATION ACTION PLANS

Many organisations will have Reconciliation Action Plans (RAPs), instituted in partnership with Reconciliation Australia. These RAPs set out the organisation's commitments to reconciliation. It may be useful to consult your organisation's RAP prior to assisting your client.

The Law Society currently co-chairs the Legal Profession Reconciliation Network (LPRN) together with MinterEllison and Community Legal Centres NSW. The LPRN is a national network of law firms and legal organisations that have RAPs in place, or have an existing interest in promoting reconciliation in the legal profession. Please contact the Law Society if you are interested in joining the network.

USEFUL RESOURCES

- *Equality before the Law Bench Book Judicial Commission of New South Wales 2018*: <https://jirs.judcom.nsw.gov.au/benchbks/equality/section02.html>
- *Aboriginal Cultural Safety Workbook for CLCs Community Legal Centres NSW 2016*: <https://www.clcnsw.org.au/resource/aboriginal-cultural-safety-workbook-clcs-2016>
- *Working with Aboriginal Clients at Kingsford Legal Centre – Service Provision Manual, Kingsford Legal Centre*: http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/klc_aboriginal_service_provision_web.pdf
- *Taking Evidence from Aboriginal witnesses speaking English: some sociolinguistic considerations, by Diane Eades*: <http://www.austlii.edu.au/au/journals/PrecedentAULA/2015/12.pdf>
- *Trauma Australian Indigenous HealthInfoNet*: <https://healthinfonet.ecu.edu.au/learn/health-topics/healing/trauma/>
- *Barriers to Access to Justice for Aboriginal and Torres Strait Islander Women. Judicial Council on Cultural Diversity*: <https://jccd.org.au/wp-content/uploads/2018/06/Aboriginal-Torres-Strait-Islander-Women-FACTSHEET.pdf>
- *Legal Aid NSW / Making our services work for Aboriginal people*: https://www.lawsociety.com.au/sites/default/files/2018-03/Making-our-services-work-for-Aboriginal-people_0.pdf
- *Guide to legal services for Aboriginal people in NSW and ACT*: https://www.lawsociety.com.au/sites/default/files/2018-03/Guide_to_Legal_Services%20%281%29_0.pdf
- *ATSILS Pro Bono Guide*: https://www.lawsociety.com.au/sites/default/files/2018-03/262_ATSILS-final-for-web-26_10_09_0.pdf
- *Legal Aid QLD best practice guidelines: Lawyers working with Aboriginal and Torres Strait Islander Clients*: <http://www.legalaid.qld.gov.au/About-us/Policies-and-procedures/Best-practice-guidelines/Lawyers-working-with-Aboriginal-and-Torres-Strait-Islander-clients>
- *Indigenous Protocols for Lawyers Second Edition. Law Society Northern Territory 2015*: https://lawsocietynt.asn.au/images/stories/publications/indigenous_protocols_for_lawyers.pdf
- *Working with Aboriginal clients: What makes a good lawyer? [NT]*: https://www.lawsociety.com.au/sites/default/files/2018-03/workingwithaboriginalclients_0.pdf
- *Lawyers' Protocol for dealing with Aboriginal clients in South Australia*: https://www.lawsocietysa.asn.au/Public/Publications/Guidelines/Lawyers_Protocols_for_Dealing_with_Aboriginal_Clients.aspx
- *Protocols for lawyers with Aboriginal or Torres Strait Islander clients in Western Australia*: <https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/Protocols-for-Lawyers-with-Aboriginal-or-Torres-Strait-Islander-Clients-in-Western-Australia.pdf>

The following judgments and inquiry reports may also provide insights into communicating with Aboriginal and Torres Strait Islander people

- *FI v Aboriginal Dulcie Dumaia* 1959, NTJ 697
- *R v Anunga* 1976, 11 ALR 412 (NTSC)
- *Bowles v WA* 2011, WASCA 191
- *Bugmy v R* [2013] HCA 37
- *Judicial Commission of NSW Special Bulletin 4 Relevance of Deprived Background of an Aboriginal offender*: https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/special_bulletin_04.html
- New South Wales Parliament Legislative Council Standing Committee on Law and Justice, *Inquiry into the family response to the murders in Bowraville*, 2014, accessible at <http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/V3ListReports>