



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: IIC/HRC/GUak:1184379

22 July 2016

The Hon Wayne Martin AC CJ  
Chair  
Judicial Council on Cultural Diversity  
PO Box 1895  
CANBERRA ACT 2602

By email: [secretariat@jccd.org.au](mailto:secretariat@jccd.org.au)

Dear Chief Justice,

**National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women**

Thank you for the opportunity to provide further comments to the Judicial Council on Cultural Diversity ("JCCD") on the draft national framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women ("draft national framework").

We note that the Law Society of NSW has previously provided a submission to the JCCD on its consultation report: *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts* ("consultation report"), which has informed this draft national framework.

We take this opportunity to provide the following specific comments on the draft national framework.

**Establishment of cultural diversity committees**

The Law Society welcomes the draft national framework's recommendation to consider the establishment of committees responsible for issues pertaining to access to justice for Aboriginal and Torres Strait Islander people and people from migrant and refugee backgrounds. As noted in our previous submission, the Law Society considers that building strong relationships between courts and local Aboriginal and culturally appropriate legal and therapeutic services will assist with the development of better access to justice strategies at a local level.

On this point, the Law Society encourages the JCCD to consider recommending the inclusion of community members on the cultural diversity committees, to ensure that local community engagement and collaboration occurs at an earlier stage of the consultation process. This will also assist in the development of meaningful strategies and targeted service delivery that meets the needs of specific community groups.

## **Language and communication**

The Law Society notes that the draft national framework recognises the need for courts to establish interpreter policies and conduct training for judicial officers about working with interpreters. The Law Society also acknowledges that the JCCD is currently conducting a separate consultation on a draft national framework for interpreting standards.

The Law Society considers that the draft national framework should also recognise the particular language needs of Aboriginal and Torres Strait Islander women, which may be different to the broader considerations around working with interpreters. The Law Society notes that Aboriginal people may face a number of difficulties in relation to aspects of language and communication in court proceedings, which may be different to the needs of migrant women. The NSW Judicial Commission *Equality Before the Law Benchbook* outlines a number of additional considerations that may be relevant to courts in providing services to Aboriginal people, noting that Aboriginal people may have:<sup>1</sup>

- a lesser ability to speak and/or understand (standard) English, noting that many speak a form of Aboriginal English;
- a different communication style, for example, not making eye contact, use of silence preceding answers to questions, that makes it hard for others to adequately understand them, or means that they are wrongly assessed as, for example, evasive or dishonest;
- a lower literacy or educational level than average;
- a disability that requires using a communication aid or different technique; or
- a better knowledge or higher appreciation of Aboriginal customary law than Australian law and legal processes.

The Law Society submits that the draft national framework should include a particular reference to the language needs of Aboriginal and Torres Strait Islander women, to ensure court interpreting services are able to meet their specific needs.

## **Access to holistic services**

The Law Society acknowledges the draft national framework's emphasis on improving access to services and resources in courts, including holding education sessions, production of video resources for those in remote areas, as well as the provision of information brochures produced by the courts.

However, the Law Society emphasises the comments made in our previous submission, regarding the need for adequately funded and culturally appropriate legal services, particularly in those critical areas in which family violence intersects with the legal system. This is consistent with the JCCD consultation report, which acknowledges the particular barriers experienced by Aboriginal and Torres Strait Islander women accessing court services in the family law and violence context.

The Law Society has consistently advocated for better family law pathways for Aboriginal families. One of the main barriers our members have identified is that Aboriginal people are unlikely to use mainstream services and are unlikely to use mediation services, noting that mediation services are the usual pathway into the family law system. Knowledge of the availability and accessibility of these services is important and access issues are particularly problematic in remote Aboriginal communities. Given this, we reiterate our earlier submission regarding the particular importance of developing relationships between courts and local service providers

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<sup>1</sup> See [https://judcom.nsw.gov.au/wp-content/uploads/2016/07/Equality before the Law Bench Book.pdf](https://judcom.nsw.gov.au/wp-content/uploads/2016/07/Equality%20before%20the%20Law%20Bench%20Book.pdf).

(particularly Aboriginal community service providers such as the Aboriginal Medical Services). Too often, Aboriginal families' interaction with the courts in the broader family system is through the coercive care and protection regime.

As previously noted, access to community service providers as an alternative to court-based services is especially pertinent in care and protection, family law and apprehended domestic violence order proceedings. These services are most effective when funded to provide a holistic service incorporating legal advice and therapeutic support within an early intervention context, and when accompanied by appropriate community legal education initiatives.

In relation to the provision of services targeted to the needs of Aboriginal families, the delivery of services should take place within a therapeutic jurisprudential framework. The Law Society submits that legal assistance service providers require the support of Aboriginal community controlled therapeutic services, which provide the same sort of "cultural brokerage" as Indigenous court liaison officers<sup>2</sup>. In our view, it is difficult to deliver legal services effectively without the support of Aboriginal community controlled service providers, which are invaluable in respect of ensuring the well-being of legal practitioners.

#### **Engagement with legal practitioners in the implementation of the framework**

The draft national framework suggests engagement with various organisations and service providers, particularly in the context of providing community education on the court system. In this regard, the Law Society considers that greater reference should be made to the role of legal practitioners in working collaboratively with courts to implement this framework and in the identification of barriers to court accessibility for Aboriginal women and migrant and refugee women.

The Law Society would welcome the JCCD's further consideration of these issues in the context of the draft national framework.

Thank you for your consideration of this letter. Questions may be directed to Anastasia Krivenkova, Principal Policy Lawyer, on (02) 9926 0354 or [anastasia.krivenkova@lawsociety.com.au](mailto:anastasia.krivenkova@lawsociety.com.au).

Yours sincerely,



Gary Ulman  
**President**

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<sup>2</sup> Judicial Council on Cultural Diversity, *Consultation Report: The Path of Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts*, 45