

Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients

1. Respect the diversity of Aboriginal and Torres Strait Islander cultures

- 1.1 Recognise that Aboriginal and Torres Strait Islander cultures differ.
- 1.2 Treat each culture respectfully in interactions with Indigenous clients.
- 1.3 Recognise that there may be some cases where a cultural expert report is required.

Practice points:

- Be aware that being Aboriginal or Torres Strait Islander is not dependent upon skin colour.
- Understand that not using traditional language or practising customs does not diminish a person's standing as being Aboriginal or Torres Strait Islander.
- Understand that there are cultural differences which impact on how lawyers effectively advise and represent Aboriginal and Torres Strait Islander clients.

2. Principles for effective communication with Aboriginal and Torres Strait Islander clients

- 2.1 Recognise that providing a quality service to Aboriginal and Torres Strait Islander clients involves taking into account communication barriers.

Practice points:

- Understand the historical and current experiences of Aboriginal and Torres Strait Islander clients with the Australian justice system and the need to develop trust and rapport with clients.
- Understand that English may not be the first or second language for some Aboriginal and Torres Strait Islander clients.
- Understand that effective communication with Indigenous clients can be achieved through the use of interpreters.
- Develop networks with relevant agencies which could provide support to lawyers on communication with Aboriginal and Torres Strait Islander clients.
- Be aware that asking direct questions of Aboriginal and Torres Strait Islander clients is not considered culturally appropriate and may lead to gratuitous concurrence. Direct questions should be avoided wherever possible.
- Be aware that some non verbal features of communication including avoiding direct eye contact and silence can be misinterpreted.

- Be aware that pronunciation, grammar and sentence structure differ and could lead to miscommunication.
- Use plain English and seek clarification from Aboriginal and Torres Strait Islander clients to ensure no misunderstanding or miscommunication has occurred.
- Where appropriate, use other strategies such as use of diagrams to communicate court and litigation processes.

3. Recognise that Aboriginal and Torres Strait Islander clients may not respond to mail or may be difficult to contact

Practice points:

- Be aware that mail sent to clients in remote communities may take longer to reach a client and that some mail will be addressed care of the post office in the community.
- Be aware that for some Indigenous clients responding to mail can present challenges and self-addressed stamped envelopes should be provided to assist clients.
- Be aware that access to public telephones in some remote communities is limited and that clients may not be able to contact their lawyer.
- Be aware of agencies who can assist a practitioner in contacting their client.

4. Recognise that Aboriginal and Torres Strait Islander clients may have a different concept of 'time'

- 4.1 Recognise that differing concepts of time can have an impact on instructions provided about when an event occurred and may also impact on attendance at appointments, meetings and court appearances.

Practice points:

- When seeking instructions about when an event occurred, recognise that some Aboriginal and Torres Strait Islander people will not provide a date but reference an event to what was happening at the time it occurred.
- Recognise that family and community commitments may have priority over punctual attendance at appointments, meetings and court.

5. Ensure that the client has a clear understanding of the service to be provided

Practice points:

- Provide clients with clear information about the client/solicitor relationship.
- Provide clients with information about the tasks that must be done and who has responsibility for doing them.



6. Understand that traditional lore and cultural imperatives may take priority over commitments including attending court and appointments

- 6.1 Understand the cultural significance for Aboriginal and Torres Strait Islander clients to participate in traditional lore practices.

Practice points:

- Understand the significance for Aboriginal people to participate in Aboriginal cultural practices such as attending sorry business, men's and women's business and the impact these can have on providing legal services.
- Understand the need for Torres Strait Islander people to participate in cultural practices such as Coming of the Light ceremonies, tomb openings and other significant cultural events.
- Be aware that some Aboriginal people respect traditional lore by not speaking the name of a deceased person for a period of time.
- Be aware that Aboriginal people require permission to take photographs.
- Be aware that where a photograph has been taken and a death occurs, the photograph must be removed from public circulation for a specified time during sorry business.
- Be aware that Indigenous communities close for cultural and ceremonial reasons.

7. Understand that there are differing structures of Aboriginal and Torres Strait Islander families

- 7.1 Understand that Aboriginal and Torres Strait Islander family structures differ greatly and the value of family relationships is high.

Practice points:

- Understand the nature of Aboriginal kinship systems and have an awareness of cultural family obligations that exist for Aboriginal clients.
- Be aware of past and current legislation, policies, and practices which have impacted on Aboriginal and Torres Strait Islander people and their families.
- Understand that there may be a cultural requirement for family and extended family members to support an Aboriginal or Torres Strait Islander client through the legal process.
- Be aware of the Torres Strait Islander practice of traditional adoption and the Family Court of Australia's process for recognising these adoptions through Kupai Omasker.

8. Understand the central role of community in the lives of Aboriginal and Torres Strait Islander clients

- 8.1 Understand that Aboriginal and Torres Strait Islander community structure has an impact on representing Aboriginal and/or Torres Strait Islander clients.

Practice points:

- Understand and respect the role of Elders in the client's community.
- Understand the role of community justice groups including their role in sentencing and providing cultural advice about their community.
- Be aware of the role of community justice groups to resolve disputes within communities by mediation.

9. Understand the circumstances and limited resources available to Aboriginal and Torres Strait Islander clients particularly those living in remote and regional communities

- 9.1 Understand that clients living in remote and regional communities have limited access to resources and services which can impact on representing and advising a client.

Practice points:

- Be aware of what services and resources are available within the client's community.
- Refer clients to existing services which can be reasonably accessed by the client.

10. Understand the complex causes of Aboriginal and Torres Strait Islander over-representation in the criminal justice system as both defendants and victims

- 10.1 Understand that there are many factors leading to Aboriginal and Torres Strait Islander clients coming into contact with the criminal justice system.

Practice points:

- Be aware of the recommendations made by the Royal Commission into Aboriginal Deaths in Custody 1987.
- Be aware of the recommendations made by the Aboriginal and Torres Strait Islander Women's Taskforce on Violence 1998.

