



# WORKING WITH ABORIGINAL AND TORRES STRAIT ISLANDER CLIENTS

Resources for solicitors in NSW

## Table of Contents

<b>1</b>	<b>Executive summary</b>	<b>4</b>
<b>2</b>	<b>Disclosure of solicitors' obligations and the solicitor/client relationship</b>	<b>5</b>
2.1	Duties to your client	5
2.2	How your client can assist in progressing their matter	5
2.3	Duties to the court and to the administration of justice	6
<b>3</b>	<b>Some common factors relevant to client engagement</b>	<b>7</b>
3.1	Mistrust of government and justice system	7
3.2	Trauma	7
3.3	Cultural practice and ceremony in NSW	8
3.3.1	Sorry business	8
3.3.2	Men's business and women's business	9
3.3.3	Kinship systems and avoidance relationships	9
<b>4</b>	<b>Considerations for better communication</b>	<b>10</b>
4.1	Non-verbal communication	10
4.2	Plain English	10
4.3	Aboriginal English	11
4.4	Indigenous languages in NSW	11
4.5	Gratuitous concurrence	11
4.6	Cognitive impairment, disability and disadvantage	12
<b>5</b>	<b>Staying in contact with clients</b>	<b>13</b>
5.1	Methods of communication	13
5.2	Coming to town/appointments	14
5.3	Your expectations	14
5.4	Unscheduled contact	15
5.5	Use of audio-visual technology	15
<b>6</b>	<b>Addressing unmet legal and non-legal needs</b>	<b>16</b>
<b>7</b>	<b>Aboriginal and Torres Strait Islander community-controlled organisations</b>	<b>17</b>
7.1	Relevant organisations	17
7.2	Build the relationship	18
7.3	Show an ongoing commitment	18
7.4	Visiting communities	18
<b>8</b>	<b>Further resources</b>	<b>19</b>
8.1	Indigenous specific court initiatives	19
8.2	Resources relevant to culturally competent practice	19
8.3	Judgments and reports	20
8.4	The Indigenous Issues Committee of the Law Society of NSW	20

## Preface and acknowledgements

The Law Society of NSW acknowledges the Traditional Owners of lands in NSW and pays its respects to Elders past, present and emerging, particularly within the legal sector.

We acknowledge the diversity of Indigenous peoples and communities across Australia, including within NSW. For ease of reference, in this guide, the terms “Aboriginal”, “Aboriginal and Torres Strait Islander” and “Indigenous” are used interchangeably, though we recognise that they are not necessarily synonymous terms.

We acknowledge the invaluable information that already exists in other sources, notably “Section 2 – Aboriginal People” in the *Equality Before the Law Bench Book*. We do not attempt to reproduce information that already exists. Rather, this resource is an effort to add to the literature through a consideration of the practicalities of meeting one’s obligations as a solicitor acting for an Aboriginal and Torres Strait Islander client.

This resource does not constitute legal advice and should not be relied upon in the place of legal advice. This resource does not purport to provide comprehensive details regarding Aboriginal and Torres Strait Islander societies and culture.

This resource has been prepared by both Aboriginal and Torres Strait Islander and non-Indigenous members of the Indigenous Issues Committee of the Law Society of NSW (“Committee”), a standing policy committee of the Law Society. The Committee has wide-ranging expertise and experience in working with Aboriginal and Torres Strait Islander clients across New South Wales and assists the Law Society with policy development and law and practice reform on matters affecting Indigenous peoples in NSW. In preparing this resource, the Committee drew from its practice and policy experience, and, where relevant to NSW, on the matters identified in the Indigenous protocol documents prepared by other Australian Law Societies.

### Cover artwork

Jasmine Sarin, *Country and Coast*, Digital print, Boomalli Aboriginal Artists Co-operative, © Jasmine Sarin

© 2021 The Law Society of New South Wales ACN 000 000 699, ABN 98 696 304 966. Except as permitted under the Copyright Act 1968 (Cth), no part of this publication may be reproduced without the specific written permission of The Law Society of New South Wales.

Disclaimer: This publication provides general information of an introductory nature and is not intended and should not be relied upon as a substitute for legal or other professional advice. While every care has been taken in the production of this publication, no legal responsibility or liability is accepted, warranted or implied by the authors or The Law Society of New South Wales and any liability is hereby expressly disclaimed.

## 1 EXECUTIVE SUMMARY

*This resource is intended to support legal practitioners to meet their professional obligations as solicitors when acting for Aboriginal and Torres Strait Islander clients, including effective communication.*

The responsibilities of solicitors in assisting Aboriginal and Torres Strait Islander people in any legal setting are no different from those which apply in relation to non-Aboriginal people. However, there are many particular attributes of Aboriginal societies, culture and history that may be relevant to your client, which should be borne in mind in order to provide culturally safe, and therefore effective assistance. As with every client, you should assess how best to meet the needs of your client on an individual basis.

For some Aboriginal and Torres Strait Islander clients, the most useful starting point in fulfilling your obligations as a solicitor may be to inform your client on your role, including relevant professional obligations, and on what a successful lawyer/client relationship looks like. This will likely include an explanation of what a client can expect of their lawyer, and what a lawyer needs from their client in order to facilitate better outcomes.

This resource also provides some information on common matters that may affect client engagement with the lawyer or with the case. In particular, solicitors will likely benefit from a deeper understanding of what is required in order to provide culturally safe and trauma-informed assistance. Without an understanding of these approaches, the consequent impairment to building a relationship of trust with an Indigenous client may adversely impact your ability to effectively discharge your professional obligations.

This resource provides practical advice to enable better communication with Aboriginal and Torres Strait Islander clients. This includes verbal and non-verbal communication and includes some considerations about staying in touch and managing the relationship between meetings.

Finally, and perhaps most critically, this resource addresses the Law Society's long-standing position that solicitors are usually best able to assist Aboriginal and Torres Strait Islander clients by working in coordination with, and supported by, Aboriginal community service providers. This is particularly true for those Indigenous clients who have complex and interconnected legal and non-legal issues. Legal services are often most effective if they are provided as a part of a suite of therapeutic and non-therapeutic services. Information is provided in this guide about relevant Aboriginal community-controlled organisations, and suggestions for building relationships with these organisations with a view to providing effective legal assistance.

## 2 DISCLOSURE OF SOLICITORS' OBLIGATIONS AND THE SOLICITOR/CLIENT RELATIONSHIP

*Some Aboriginal clients may be unfamiliar with the role and professional obligations of a solicitor.*

Depending on your client's familiarity with the legal system, to build an effective solicitor/client relationship it may be beneficial to begin your discussions with an explanation of your role and responsibilities. For example, it may be useful to explain to your client that you have obligations to them, what they tell you will almost always be confidential and that you act on their instructions; you cannot decide what to do in their matter, only give them advice so that they can make decisions themselves. You should, of course, assess your individual client's level of knowledge about these issues.

### 2.1 Duties to your client

You should let your client know, in plain language, the nature of the fiduciary relationship between you. It may assist to build a relationship with your client to advise them that you owe them a duty to:

- maintain a client's confidences. This can be particularly important for some clients. Depending on the matter, it may also be useful to let your client know that solicitors are not mandatory reporters;<sup>1</sup>
- communicate effectively with clients (to provide clear and timely advice);
- avoid conflicts of interest with prior or concurrent clients;
- follow a client's lawful instructions;
- act honestly and in their best interests; and
- act with due skill and diligence, as promptly as reasonably possible, and with courtesy.

In respect of the duty to communicate effectively and promptly, you have an obligation to explain to your client the law that applies to their situation, their options, the process for enforcing their rights (if any), and the benefits and risks associated with each option available to them.

You have a duty to ensure that your client understands what you have told them so that they can make informed decisions about the choices available to them, and so that they can provide you with instructions. You must therefore convey this advice so that it is understood by the client, for example by using plain English. As discussed in more detail below, it is often useful for your client to be supported by an Aboriginal community services provider. It may be helpful again to have the client repeat back to you their understanding of the advice you have given them as well as the options they have in addressing their legal issue.

Given that effective communication requires an understanding of cultural context, if possible, you should receive locally delivered face-to-face Aboriginal cultural awareness training prior to engaging with clients. Such training is also likely to benefit effective relationship building and referral pathways. There are also many resources available online to supplement face-to-face training.<sup>2</sup>

### 2.2 How your client can assist in progressing their matter

It will also be useful to explain to your client how they can assist you in progressing their matter. In particular, you might consider giving your client the following reminders:

#### Keep in contact

Legal issues can take a long time to resolve. Agree on how frequently you will be informed and by what method, such as telephone or email. Tell your client to inform you immediately if the circumstances of their matter or personal circumstances change. Let them know that even slight changes may mean that you might have to take a different approach. This issue is addressed in more detail in section 5 below. Clients should clearly understand that if you cannot contact them and you do not have the instructions you need you cannot continue to act in their matter.

---

<sup>1</sup> As regulated by s 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

<sup>2</sup> See section 8.

## Keep their own case file

It may be useful to provide your client with information on the documents they should keep in their own case file. Let your client know that they should ask for and keep copies of all letters and documents prepared on their behalf, as well as keep copies of the documents they provide to you. Remind them that they should not give you the only copy of the documents they have. You might consider assisting your client with details of places where they can make copies of documents at a reasonably affordable price (such as the local library). Alternatively, make copies of the original documents clients provide to you and return the originals to them.

## Ask questions

The law is complex with lots of unfamiliar words and processes. Let your client know that there is no shame if they do not understand something. They should ask for an explanation as soon as possible if something is not clear to them, as this will minimise the likelihood of misunderstandings further down the track. Remind them *not* to sign any document until they fully understand what it is about and that if they are not comfortable with something, there may be other options. It will assist with efficiency and the effectiveness of your legal services if at the outset you take the time to encourage your client to feel uninhibited by the shame of admitting that they do not understand a word or concept. By expressing empathy and understanding and repeating that understanding throughout the course of your retainer, you are likely to increase the prospect of your client having the confidence to ask for an explanation if they need one in a timely way.

## Give accurate, complete and honest information

Let your client know that to represent their interests successfully you need accurate, complete, and honest information. Remind your client that you have a duty of confidentiality, so that they do not need to feel embarrassed or afraid, or conceal unfavourable facts.

Let your client know that it is important for them to share as much as possible about the facts, matters and circumstances about their case as soon as possible, and that facts that may not seem important to the client may have significant legal consequences.

Remind your client that you have a duty to act honestly and a duty not to mislead the court. For instance, if your client provides false information in an affidavit or false evidence during a case, whether or not they did so deliberately, and they do not allow you to correct the misinformation, you must withdraw from their case.

## Do the homework

Let your client know that they should do what you have asked them to do on the matter as quickly as possible. For instance, if you have asked for more information or documentation, your client should provide these as soon as possible. Consider giving your client a list of what you need from them and when.

## 2.3 Duties to the court and to the administration of justice

It may be useful to explain to your client that firstly and in all aspects of legal practice, solicitors have duties to the courts and the administration of justice and that those duties will impact on how they assist the client. Those duties include a duty to:

- not mislead the Court
- act honestly and professionally to other solicitors, witnesses, and other parties
- be independent
- be frank in their responses and disclosures to the Court
- be diligent in their observance of undertakings

Where you can, give examples of how that duty may impact on your representation of the client in the context of the client's matter.

## 3 SOME COMMON FACTORS RELEVANT TO CLIENT ENGAGEMENT

*In addition to cultural context, there are some life experiences common to many Aboriginal and Torres Strait Islander people and communities that may affect how your client perceives state and legal institutions and therefore may affect how they might engage with you.*

### 3.1 Mistrust of government and justice system

Many Aboriginal and Torres Strait Islander people will have experiences of the justice system either personally or through someone close to them. Often those interactions have resulted in deep, often intergenerational, distrust of police, child protection agencies, lawyers, and courts.

You should be aware that lack of faith in a just outcome in legal matters may be a common assumption for Aboriginal and Torres Strait Islander clients and that this may affect how they respond to your advice and pursuit of action on their behalf. Because of past experiences it may take some time for a client to trust you. It may be helpful if the client knows a family member or friend who trusts you or even a support or community worker who may be able to attend appointments with them if needed. In many cases, legal assistance for Aboriginal people is most effective when solicitors are also engaged with Aboriginal community-controlled service providers. This is discussed in more detail below.

### 3.2 Trauma

Many Aboriginal and Torres Strait Islander people are affected to some extent by trauma and if this is true for your client, your practice will have to be trauma-informed in order to be effective, particularly to avoid exacerbating existing trauma. Mismanagement of trauma and associated shame is likely to adversely affect your relationship with your client and may affect the quality of the outcomes for your client. The importance of a trauma-informed approach cannot be overstated.

The impact of trauma may affect your client in ways that are not immediately obvious to you, and may have an impact on your relationship, and your capacity to take instructions and provide the best assistance required. For example, what may appear to be routine practice, such as telling your client to keep the outcome of a settlement agreement confidential, may be triggering if your client is the victim of child sexual abuse.

Your client may have experienced trauma because of individual experiences including direct and systemic discrimination and racism, separation from Country, personal experiences of violence and abuse, serious ill health or premature death of loved ones, forced removal from family and destruction of culture.

Your client may also suffer from complex trauma resulting from intergenerational life experiences that stem from colonisation and may include the impact of individual trauma on family and others which then affects the client.

According to the Blue Knot Foundation,<sup>3</sup> trauma-informed services:

- are informed about, and sensitive to, trauma-related issues;
- are attuned to the possibility of trauma in the lives of all clients;
- commit to and act on the core principles of safety, trustworthiness, choice, collaboration and empowerment;
- have reconsidered and evaluated all elements of service provision in light of the role and impacts of trauma;
- apply this understanding to design systems which accommodate the vulnerabilities of trauma survivors, and enable services which minimise the risk of re-traumatisation;
- emphasise physical and emotional safety for all – clients, practitioners and service providers;
- recognise symptoms as adaptive rather than pathological;
- collaborate with clients, and affirm their strengths and resources; and
- recognise the importance of respect, information, hope and possibilities for connection.

Experience of trauma may manifest in mistrust of authority, as well as fight (aggressive), flight (avoidance) or freeze (shutting down) responses.

---

<sup>3</sup> 'Trauma-informed Care and Practice', *Blue Knot Foundation* (web page) <<https://www.blueknot.org.au/Workers-Practitioners/For-Health-Professionals/Resources-for-Health-Professionals/Trauma-Informed-Care-and-practice>>.

For example, some responses might include instances where your client does not attend appointments, may be difficult to contact, appear unwilling to be open with you or even mendacious. This should not be interpreted as unwillingness, ingratitude, or untrustworthiness to engage but instead as something you may wish to work through with the client in a trauma informed way.

For many clients it will be important for them to have someone they *feel safe* with supporting them at appointments or court for example. It is also important for you to take time to listen as traumatised people will often have difficulty talking about an event in linear order, especially if the event itself has been traumatic for them.

If the person chooses to tell you about their trauma you should allow them to do this. However, it may be difficult for someone to speak openly about a traumatic event and this type of discussion should be approached carefully.

You should also take account of the likelihood that this trauma may be a contributing factor to the legal matter that your client has.

Many resources exist to assist you to build a trauma-informed practice. The Blue Knot Foundation is a good starting point.<sup>4</sup> Given that a client's capacity to give instructions may vary with circumstances and over time, it may be useful to consider your client's capacity to provide instructions. Capacity is discussed further at 4.6.

### 3.3 Cultural practice and ceremony in NSW

There may be cultural practices and ceremony which are relevant to how your client may interact with you. New South Wales is home to the largest number of Aboriginal and Torres Strait Islander people in Australia and encompasses many different nations.<sup>5</sup>

Across NSW, cultural practices and protocols have been significantly impacted due to colonisation and attempted assimilation. However, culture is resilient and adaptive. Furthermore, there are ongoing efforts to sustain and revitalise these practices and protocols which are continued by many cultural groups in NSW.

Many Aboriginal people live and work off their Country. We note that as at 2011, one third of Aboriginal people live in the major cities of Australia.<sup>6</sup> However, do not make assumptions about your client just because they live in an urban area – they may continue to practice relatively traditional culture, and hold relatively traditional world views. Many Aboriginal people are biculturally fluent, that is, able to easily negotiate between Aboriginal culture and language, and mainstream Australian culture; but, like any other group of culturally distinct people, others may be less cross-culturally fluent. You should make your own assessment based on your individual client. Some relevant practices and ceremony that may affect client engagement are set out below.

#### 3.3.1 Sorry business

Aboriginal and Torres Strait Islander peoples will often have certain obligations to fulfil when a family member passes away. This is commonly known as 'sorry business'.

Sorry business may be carried out for extended periods of time. The obligations one has will vary depending on the relationships they had with the individual who has deceased. Long periods of leave may be needed in certain circumstances for the funeral, ceremony and travelling. A person's commitments in regard to sorry business will vary depending on their family, their cultural practices and geographical location. In some instances, sorry business may be limited to a few days, in other cases it could be extended based on their obligations. It may be useful to ask your client how sorry business might affect them if there are pending court dates. A client who is vulnerable may not be aware that they have the option of changing the court date and therefore does not ask or offer incidental information about their circumstances. This may cause a practitioner to not consider options such as filing an application to vacate a hearing or to delay conferences.

---

4 See for example this article: Cathy Kezelman and Pam Stavropoulos, *Trauma and the Law: Applying Trauma-informed Practice to Legal and Judicial Contexts* (Background Paper, 2016) <<https://www.blueknot.org.au/Portals/2/Reports%20and%20Docs/Legal%20and%20Justice%20Background%20Paper%20with%20Abstract%20FINAL.pdf>>.

5 Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians*, 3238.0.55.001, June 2016).

6 'Population and distribution', *Australian Institute of Aboriginal and Torres Strait Islander Studies*, <<https://aiatsis.gov.au/explore/articles/population-and-distribution>>.

If your client has sorry business underway, you should try to ascertain how long your client will need to attend. If your client has a court commitment arising in that time, you should consider that there is a real possibility that your client may not attend court in that time. You should explain to your client the importance of any particular court date, and the consequences of non-appearance, then take your client's instructions. You may be required to make representations to the court about your client's capacity to attend, and the court's capacity to adjourn by consent or otherwise. It will be useful to provide supporting documents to verify the sorry business from support services.

Be conscious that in some circumstances and for many Aboriginal and Torres Strait Islander people it may be inappropriate for them to mention the name of a deceased person or view a photograph or film of a person that has passed away for an extended period of time following a person's death.

### **3.3.2 Men's business and women's business**

Men's and women's business are cultural protocols associated with rites of passage and significant cultural obligations. This type of business may also require people to travel for multiple and extended periods of time. These practices are not discussed with non-community members, and lawyers should be conscious of what questions they ask in relation to this.

As a result of assimilation policies, an Aboriginal person's connection to culture exists on a spectrum, with some individuals having a strong connection to their cultural practices and others sometimes being completely disconnected. Be aware that there may be a significant trauma impact for those who are disconnected from their cultural practices.

### **3.3.3 Kinship systems and avoidance relationships**

It is important to have an awareness and understanding of Aboriginal kinship systems and cultural family obligations. It is equally important to be aware of past and current legislation, policies, and practices which have impacted Aboriginal people and their families.

"Avoidance relationships" relate directly to one's kinship relationships, commonly known as moieties, skin groups or skin.

Kinship details a person's responsibility and obligations, according to one's relationships within this system.

For many Aboriginal people, kinship systems not only imply who is related to whom but also how they must act towards each other in particular circumstances – for example, if they can speak to or about one another and the level of respect that should be shown.

Avoidance relationships are not as common in NSW as they are in other parts of Australia due to the impact of colonisation on some Aboriginal cultural and kinship practices. However, efforts to revitalise kinship systems are currently underway in NSW and avoidance relationships, among other cultural protocols, may be more commonly observed in the future.

## 4 CONSIDERATIONS FOR BETTER COMMUNICATION

*Aboriginal and Torres Strait Islander peoples are culturally, linguistically, and geographically diverse, with English being a second language for some.*

Additionally, some Aboriginal people may speak Aboriginal English, where the meanings ascribed to English words may be different to the meanings understood by non-Aboriginal English speakers. Significant differences in language and cultural practice increase the risks associated with miscommunication.

Several States and Territory Law Societies have developed detailed protocols to assist lawyers representing Aboriginal and Torres Strait Islander clients.<sup>7</sup> It may assist you to refer to these protocols.

These protocols set out consistent principles of good communication with Aboriginal and Torres Strait Islander clients, including how to identify the need for an Aboriginal language interpreter, explanations of Court processes and the role of lawyers, use of plain English and assess hearing or other impairments that may impact communication. It is important to note that effective communication consists of verbal and non-verbal components. Some key issues are identified below. Considering, and making any necessary accommodations for these issues will assist with improving communication with your client.

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. This is addressed more fully in section 7 below.

### 4.1 Non-verbal communication

For many non-Indigenous people, eye contact is considered a key component of communication and respect. For many Aboriginal and Torres Strait Islander people however, sustained eye contact, particularly towards someone of the opposite gender or who is older than the person may be considered disrespectful. Lack of sustained eye contact should not be interpreted for a client being disengaged or as an admission of guilt, but rather associated with cultural protocols that customarily signals a sign of respect.

Allow for silences and longer pauses, and consider that some gestures carry meaning (though it is beyond the scope of this guide to provide detailed information on this issue).

### 4.2 Plain English

Similar for all cross-cultural communication, speaking in plain English will greatly assist lawyers to communicate effectively with Aboriginal and Torres Strait Islander clients.

Plain English refers to language that is clear and can be more easily understood by audiences that may be used to communication with different forms of grammar or syntax.

Importantly, use of plain English is not about 'watering down' communication of legal concepts and principles but instead about maximising the client's understanding.

Key features and principles of plain English are outlined in the various State and Territory Protocols. You should familiarise yourself with this guidance and adapt your communication style.

Be aware that there may be limited utility in direct and specific questioning as for many Aboriginal people, as many Aboriginal people operate under the following social assumptions:

- With important personal information, it is often best to use indirect ways of finding things out, such as talking around a topic, or hinting and waiting until the other person is ready to share information.
- Asking many questions is rude, and it is a very ineffective way of finding out information.<sup>8</sup>

To make sure your client has understood the advice you have given them or instructions they need to follow you can also ask them to repeat in their own words what they understood from your conversation. It may also be useful to provide them with clear and concise written steps for what will happen next and your contact details so that if they have any questions, they can speak with you.

<sup>7</sup> The Law Society of Western Australia, *Protocols for Lawyers with Aboriginal or Torres Strait Islander Clients in Western Australia* (The Law Society of Western Australia, 2017); Law Society Northern Territory, *Indigenous protocols for lawyers: Second edition, 2015* (N. T. Law Society, 2015); Law Society of South Australia, *Lawyers' Protocols for Dealing with Aboriginal Clients in South Australia* (Law Society of South Australia, 2017).

<sup>8</sup> Diana Eades, "Taking evidence from Aboriginal witnesses speaking English: some sociolinguistic considerations," (2015) 126 Precedent 44 <<http://www.austlii.edu.au/au/journals/PrecedentAULA/2015/12.pdf>>

### 4.3 Aboriginal English

Aboriginal English is a linguistic term referring to different dialects of English used by Aboriginal people.

Aboriginal English is more commonly used in many communities across NSW and some words spoken in Aboriginal English can have a significantly different meanings to those used in Standard English.

It is important for lawyers to be aware of these differences when representing Aboriginal clients. Useful examples of the differences between Aboriginal English and Standard English can be found in the State and Territory protocols.

Lawyers working with Aboriginal and Torres Strait Islander clients should familiarise themselves with the work of linguist Dr Diana Eades,<sup>9</sup> who has investigated common misunderstandings of Aboriginal English in the legal profession and the significant impacts this can have on the administration of justice. It is particularly important to be aware of use of Aboriginal English when interviewing clients about their legal issues, as the answers your client provides to questions you ask may be interpreted differently by you than the way it was intended by the client.

### 4.4 Indigenous languages in NSW

Prior to 1788, there were more than 70 Aboriginal languages spoken across New South Wales.<sup>10</sup> In 2005, a survey of Aboriginal languages identified that only about five Aboriginal languages are still spoken with most being critically endangered.<sup>11</sup>

The number of people who speak Indigenous languages as a first or primary language is lower in NSW than other States and Territories. Aboriginal languages are, however, being actively revived.

In 2017, the NSW Parliament passed legislation acknowledging the significance of Indigenous languages and promoting language revival and revitalisation.<sup>12</sup>

While lawyers in NSW may have less need to use Indigenous language interpreters than lawyers in other States and Territories, lawyers should nevertheless be aware of when an interpreter may be required and cognisant of the efforts to revive Indigenous languages in NSW.

Remember to be mindful that an interpreter might be needed especially if travelling to regional or remote communities where Indigenous languages may be more commonly spoken. If one is needed, you should take steps to organise for one prior to travelling.<sup>13</sup> Often the relevant Local Aboriginal Land Council (LALC) is the appropriate place to begin your inquiries.<sup>14</sup>

### 4.5 Gratuitous concurrence

Gratuitous concurrence is when a person appears to assent to every proposition put to them even when in fact they do not agree. Be wary of framing questions that require a yes or no response.

For many Aboriginal and Torres Strait Islander people, using gratuitous concurrences during a conversation is a cultural phenomenon, and is used to build or define the relationship between the people who are speaking. For example, it may indicate respect towards a person, cooperation between people, acceptance, resignation or perceived futility of a situation.

It is widely recognised that people who are in a position of powerlessness when confronted by alien institutions, systems or who are disadvantaged due to a language barrier, or impacted by traumatic institutionalisation may adopt strategies of always agreeing or saying what they think the person in authority wants them to say, regardless of the truth of the matter.

If you are unsure whether your client really agrees with you, check their understanding by asking again. If they appear agitated, they may be saying yes to end the conversation because they want to leave, feel intimidated, uncomfortable or have other priorities.

---

9 Diana Eades, *Aboriginal English and the law* (1992); New South Wales Parliament Legislative Council Standing Committee on Law and Justice, Parliament of New South Wales, *Inquiry into the family response to the murders in Bowraville* (Final Report, 6 November 2014). The issues raised in this report reference the importance of communicating with Aboriginal people in a culturally appropriate manner.

10 Our Languages, *NSW Aboriginal Languages Research and Resource Centre* (23 October 2019) <<https://ourlanguages.org.au/nsw-aboriginal-languages/>>.

11 'Issues and Opportunities Paper: Legislative recognition and protection of Aboriginal languages', *Aboriginal Affairs NSW* (Web Page) <<https://www.aboriginalaffairs.nsw.gov.au/pdfs/languages-consultations/ABORIGINAL-LANGUAGES-CONSULTATION-PAPER.PDF>>. Bridget Brennan, 'NSW introduces nation's first laws to recognise and revive Indigenous languages', ABC News, 11 October 2017) <<https://www.abc.net.au/news/2017-10-11/nsw-passes-unprecedented-laws-to-revive-indigenous-languages/9039746>>.

12 NSW Government, 'NSW Aboriginal Languages Legislation', *Aboriginal Affairs NSW* (Web Page) <<https://www.aboriginalaffairs.nsw.gov.au/policy-reform/language-and-culture/nsw-aboriginal-languages-legislation>>.

13 Solicitors should be reminded of the risks of acting as such themselves, or relying on family/community members. Independent, professional interpreters are best to avoid conflicts and to ensure validity of instructions: see *Rogic v Samaan* [2018] NSWSC 1464.

14 There are also interpreter services you might consider, such as: 'Interpreter service', Aboriginal and Torres Strait Islander Health Practice Council of NSW <<https://www.atsihealthpracticecouncil.nsw.gov.au/interpreter-service>>.

If the client repeatedly says ‘yes’ immediately after a question, ask them with respect what they understood from the last question.

If the client is looking into their phone or reading while you are writing and talking, and nodding their head, it is likely to be a sign that they want to appear that they have understood although they may have not. If you are unsure however you should check their understanding by asking them again or to repeat questions in their own words to ensure they understand.

#### **4.6 Cognitive impairment, disability and disadvantage**

Hearing loss is widespread among Aboriginal and Torres Strait Islander peoples and hearing problems may have not been assessed or addressed/treated. You should take this into consideration when working with Aboriginal and Torres Strait Islander clients, both in client-lawyer interviews and courtroom settings, particularly when working with clients who you believe may be undiagnosed.

You should also be aware of higher rates of disability within the Aboriginal and Torres Strait Islander population.

While it is important to avoid assuming that a client has a disability, you should be aware of these issues including the potential impact of undetected hearing loss or other undiagnosed disability on a person’s ability to access justice including cognitive impairments, mental health and other disability.

This may also include impairments such as undiagnosed foetal alcohol syndrome disorder (FASD) or other cognitive impairments which can significantly impact an individual’s access to justice or have even led them to enter the justice system in some ways.

These types of impairments should also be communicated with decision makers or the court when appropriate and if you believe your client is undiagnosed you should consider making a referral to an appropriate medical or health service who may be able to assist the client in gathering evidence that they have an impairment.

The Law Society of NSW has produced a guide ‘*When a Client’s Mental Capacity is in Doubt*’,<sup>15</sup> which may be useful to refer to when working with clients, if you are unsure about their capacity or if taking instructions from them seems to be somewhat different or varies at different times.

It is important to note that seeking the support of health or disability advocates in these situations who know or can build trust with the client to support them through legal processes if they have an impairment can also be extremely useful and greatly assist the client.

---

15 The Law Society of NSW, ‘When a Client’s Mental Capacity is in Doubt - A Practical Guide for Solicitors’, <<https://www.lawsociety.com.au/sites/default/files/2018-03/Clients%20mental%20capacity.pdf>>.

## 5 STAYING IN CONTACT WITH CLIENTS

*Aboriginal and Torres Strait Islander people also often have unique pressures and difficulties which can impact their ability to keep in contact with you as their lawyer. Maintaining engagement can be a significant issue to manage in respect of Aboriginal clients.*

Many of the issues identified in this resource that may adversely affect your relationship with your client can be addressed by meeting your client in person.

If you have difficulties with engaging with your client through texts or phone calls, an in-person meeting is also an invaluable way to re-establish connection with your client in a relaxed setting and, if required, to reset the relationship.

Maintaining engagement with your client may require you to work with your client and with an Aboriginal community service provider. This may impact on client confidentiality and on privilege. You may have to take specific instructions on this issue as the hinge for successful engagement between you and your client may be the community service provider.

Many people may not have reliable access to a telephone or computer. Some do not have a fixed abode and cannot reliably receive mail at a home address or there is no mail delivery to their community at all. According to the Australian Institute of Aboriginal and Torres Strait Islander Studies, Indigenous people are more likely to be away from their usual place of residence at a given point in time, and more likely to change their usual place of residence over a given time period than other Australians.<sup>16</sup>

In these circumstances it is important to be flexible and find different ways to contact the client. For example, you may know that they access support for an Aboriginal Support Worker or often drop in for meals at a local support centre where you may be able to arrange to meet with them in advance. Being prepared and organised ahead of time to overcome these barriers can assist you to work with the client to address their legal needs and ensure they do not miss limitation dates or important filing dates for example relevant to their matter. You may wish to remind your client to let you know if their contact details change.

### 5.1 Methods of communication

Mail is often not reliable as the sole or primary method of keeping in contact with your client for several reasons. Low rates of literacy and numeracy in some Aboriginal communities can also make written advice or contact a barrier for accessing help with their legal issue.

You should be flexible in your approach to communicating legal advice or information the client needs to know. For example you may be able to call or text the client, leave a message for them to call you at a community organisation they often go to when they are next there, organise to meet with the client ahead of time to catch up about their matter or ask for another person they can contact to pass on a message to the client.

Where available, you can also ask Aboriginal or other community and support workers to help you keep in contact with the client, pass on messages to you if their number or address changes or let you know if their circumstances change in any way. If your client is located a significant distance from you can also try to work with Aboriginal community controlled organisations like their Local Aboriginal Land Council (LALC), Aboriginal Medical Service (AMS), Aboriginal Legal Service (ALS), or Legal Aid who may have video-conferencing facilities that can be used to communicate with your client if you think it would be beneficial to speak with them about their matter face-to-face but you cannot travel to the community due to resourcing.

---

<sup>16</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies (n 7).

While not all clients will want to communicate in this way, speaking over the telephone is generally the quickest way to obtain instructions from the client and provide them with an update on their matter. This is also an easy way to develop trust and rapport with your client. Remember that some people may not have enough credit on their phone to retrieve voice mails or return calls. Some clients may lose their phone or change numbers frequently. SMS can be a more effective method of getting your message through than calling. This is also often an easy way for clients to send you forms, sign documents or contact you to give you updates if they have access to this technology.

Even if the client does have a working mobile phone, they may also be reluctant to answer calls from unknown or private numbers and may be more likely to answer if you first send a text message identifying yourself first.

Social media may also be an effective method of contact. Aboriginal people are said to be engaged in social media at a higher rate than non-Aboriginal Australians.<sup>17</sup> Encourage your organisation to set up a Facebook profile and messenger service to encourage engagement and communication.

While users may not have 'credit' for normal SMS communication, Facebook Messenger (or other messaging apps) can generally be used via open Wi-Fi networks by clients and is often a more accessible option for many clients. As with any other mode of communication, you should be mindful of how to use social media channels in a way that still appropriately preserves confidentiality and privilege.

You should also try to agree upfront with your client on the best ways to contact them if you think that they may be difficult to contact. For example, if your client lives in a remote area and does not have reliable phone access or service, you may want to agree with them on a consistent time to contact them or place where they can go to call or contact you. It is best to agree to this upfront and ask the client for permission to discuss their matter with others or a support if needed for confidentiality reasons. You should also be aware that some Aboriginal clients may not want members of their family or community to know the mere fact that they have engaged with lawyers.

## 5.2 Coming to town/appointments

It may assist to build trust and a sense of safety to meet your client in a more relaxed and casual atmosphere

(for example, dressing casually rather than in a suit) as this can sometimes help assist the perception that the legal professional is connected to the police or government. Of course, an individual assessment of what is appropriate for your client is necessary as in some instances, dressing down may be misconstrued as a sign of lack of respect.

In some instances, visiting your client in an environment familiar to them, such as their local community centre, LALC or AMS may assist to build trust. However, again, it depends on the circumstances of your particular client. In other instances, clients may prefer not to meet at home or in a known community location for privacy reasons as for many Aboriginal and Torres Strait Islander clients, engagement with a lawyer may carry significant challenges, including shame, or the potential for humbugging and other filial pressures to be brought to bear on that person.

## 5.3 Your expectations

Noting that you will not be able to act if you are unable to obtain instructions, it is important not to get frustrated because your client has not contacted you within a reasonable time after you have sent a letter or left a message for them to contact you or give you instructions.

Several factors may determine the timing of your client's engagement. For example, they may not have received your message or correspondence, they may not be used to reading important looking letters or they may need someone to help them read this. Clients impacted by trauma may avoid engagement.

They may also have other important matters to attend to, such as fulfilling their obligations to members of their community, attending a funeral or looking after family members.

There are often many priorities both legal and non-legal that can go beyond the assistance you are providing the client. As such it is important to let them know significant dates in advance and be patient, ensuring you allow for time and flexibility as much as possible in communicating with them about their matters.

There may be times when there are long gaps between communication depending on the client's other commitments. At times when you urgently need to contact the client however you should use the community connections you have available or try and visit the client where resources are available.

---

<sup>17</sup> A 2014 survey conducted by McNair Ingenuity Research has revealed that six-in-ten adult Indigenous Australians use Facebook on a daily basis, compared to 42% of adult Australians nationally. See: Megan Staal, 'Indigenous Australians Predisposed to Facebook', B&T (Web Page, 28 August 2014) <<https://www.bandt.com.au/indigenous-australians-predisposed-facebook/>>.

## 5.4 Unscheduled contact

Aboriginal clients are not necessarily more likely to make unscheduled contact. However, it is important to consider the effect of asking your client to come back or call another time if they do make unscheduled contact, particularly if there is a clear need for flexibility. A particular need for flexibility can arise for a range of clients for reasons including:

- nature of your client's employment (for example, if your client is a ranger, they may be out of contact for long periods of time)
- chaotic lifestyles often arising from mental illness or addiction,
- multiple pressures, for example for a person escaping family violence or a person who is homeless, or
- that the person has limited understanding of how legal services are provided.

It may be useful to establish expectations at the beginning to let your client know when and how they can contact you, and to leave you a message including when the best time might be to call them back. It may also be useful to determine if your client has any support persons they consent for you to contact if you are unable to get in touch with your client. Otherwise, for particular clients, it might be useful to acquaint them to other staff members to let them know they can take provide their details and instructions if you are unavailable.

If your client makes an unscheduled visit to your office or calls you at unscheduled times, it is important to resist the temptation to ask them to come back or call another time. If they contact you, this may likely indicate that their legal matter is their top priority at that moment.

You may not get another chance to obtain important legal documents such as statements, or have the client sign authorities or other, forms or finalise work for if you do not see them or take their call. This may also create mistrust and negatively impact the relationship you have with the client in some circumstances.

Generally, you can fit a person in between other clients to address their immediate concerns and/or obtain the instructions, authorities, other information you need on the spot. Most clients will wait a short time to be fitted in if they can be seen when they attend rather than having to come back. Where the client is very unlikely to wait, you can generally interrupt another appointment to meet with the client briefly. If those

concerns are not immediately able to be resolved or require further investigation on your behalf, it may be preferable to make a time for you to respond more fully to that client, whether by telephone, in person or in the community (preferably), if that is at all possible.

If you cannot avoid asking the client to come back or call another time, ensure you make an appropriate time where they can speak with you again and that you have their updated contacted details so that you can get in contact without difficulties. Your client may also become offended if they are sent away and may lose any further interest in helping you do your job.

## 5.5 Use of audio-visual technology

There may be situations when teleconferencing and the use of audio-visual (AVL) technologies will be necessary (such as during the COVID-19 pandemic) to facilitate engagement with your client, as well as conferences, court appearances and even trials.

In some instances, the use of technology has resulted in good outcomes for Aboriginal and Torres Strait Islander clients. For example, allowing for electronic witnessing and signature provisions has been of assistance for some clients in rural, regional or remote (RRR) areas. The use of Jabber and other technological platforms allowing people in custody contact with their families in their homes is another example of a better technology-mediated outcome.

However, the reliance on technology for communications may exacerbate other access to justice issues such as those presented by physical or intellectual disabilities (including hearing loss) and cognitive impairments, and for people in RRR areas (including Aboriginal clients) without reliable access to devices and connection infrastructure such as broadband, Wi-Fi or mobile phone reception. In the context of the COVID-19 pandemic, clients in quarantine may be particularly affected as they may not be able to access the support of local Aboriginal community organisations.

In navigating these issues it might be even more critical to contact local Aboriginal community organisations that your client already engages with (such as the LALC and AMS) to determine the existing supports available and the best way to assist your client.

The combined effect of limited technological access and the importance of physical interaction and proximity for many Aboriginal clients may be a relevant consideration for practitioners to raise with Courts, including in sentencing submissions.

## 6 ADDRESSING UNMET LEGAL AND NON-LEGAL NEEDS

*At the end of an interview with a client, there may be an opportunity to address their other unmet legal and non-legal needs.*

By highlighting and asking open ended questions it may be possible to address issues before they escalate. This is often referred to as doing a legal and/or non-legal health check.

Your client may have visited you with one legal problem and be focused on that during their conversation with you. However, being aware that Aboriginal and Torres Strait Islander people often have multiple and complex legal and non-legal needs, and asking some open questions, you may be able to assist your client to get assistance with other issues they did not know assistance was available for. Bear in mind that solicitors should generally refrain from providing non-legal services given the potential for conflict (such as being a material witness).<sup>18</sup>

Questions you can ask that may highlight common legal or non-legal issues include:

- Do you have a will?
- Have you been a victim of crime?
- Have you been involved in a motor vehicle accident?
- Do you owe any money or have letters from people asking for money (consumer debt)?
- Do you have any outstanding fines or fine debts?
- Do you have any issues with housing or Centrelink?

Some of these issues may also come up naturally throughout your conversation with the client. If this happens you should make note of these and come back to address them with the client later to find out if you can make a warm referral for assistance with the matter.

It is important to be aware that the manner in which you ask these questions will impact upon their effectiveness. To avoid inducing shame or frustration from your client, a more considered approach may be to engage in general conversation, listen to what they discuss and try a third person approach.

For example: I spoke to another client today who told me that they had been meaning to do a will for a while and keep forgetting. We talked about how not having a will can be very difficult for those left behind to distribute belongings and decide how to respect the wishes of the departed.

---

<sup>18</sup> Rule 27, Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015

## 7 ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY-CONTROLLED ORGANISATIONS

*As noted in section 4, some of the access to justice barriers for Aboriginal and Torres Strait Islander people can be mitigated by legal practitioners working closely with Aboriginal community-controlled organisations.*

Legal practitioners are often able to provide more culturally safe and therefore effective services to Aboriginal and Torres Strait Islander people when working together with Aboriginal and Torres Strait Islander community-controlled service providers. This can be a good way to build trust with your client, and to improve communication.

Additionally, many Aboriginal and Torres Strait Islander clients will have complex legal and non-legal needs, and it may be necessary to provide legal services as part of a suite of therapeutic services. These issues may relate to housing and homelessness, employment, education, obtaining identification, assistance with filling out or completing forms, accessing Centrelink or other supports, mental health, drugs and alcohol, family violence, care and protection of children and so on. For the reasons set out below, it is often useful for your client to attend meetings with you together with a support person present.

### 7.1 Relevant organisations

In NSW, the relevant organisations and services in each community are likely to be:

- **Local Aboriginal Land Councils and Aboriginal Medical Services.** LALCs can be loosely conceptualised as “local government for Aboriginal people”, established under the *Aboriginal Land Rights Act 1983* (NSW). Both LALCs and 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. Contact the NSW Aboriginal Land Council (the peak body) to find out the relevant LALC in the community you are interested in.<sup>19</sup> 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](mailto:ahmrc@ahmrc.org.au) for more information.
- **Aboriginal Legal Service (ALS NSW/ACT).** The ALS NSW/ACT is a community-controlled Aboriginal legal service provider in the areas of criminal, care and 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/>
- **Native Title Service Providers.** NTSCORP Limited is the Native Title Service Provider for Aboriginal Traditional Owners in New South Wales and the Australian Capital Territory. Under section 203B-BK of the *Native Title Act 1993* (Cth) (NTA), NTSCORP offers assistance to Traditional Owners to facilitate native title claims as well as receive the information required to exercise their procedural rights under the NTA, and to fulfill cultural obligations to traditional Country sea and waters that may be affected by proposed activities including development. NTSCORP supports Traditional Owners with notification of Future Acts activities, agreement making, including Indigenous Land Use Agreements, and provides other assistance to native title claim groups.
- Family Violence Prevention Legal Services (FVPLS)
- Wirringa Baiya Aboriginal Women’s Legal Centre
- Aboriginal and/or Torres Strait Islander Community or Neighbour Centres
- Aboriginal and Torres Strait Islander working groups and community working parties; and
- Other services or networks aimed at Aboriginal and Torres Strait Islander people and interagencies, such as youth services, women’s services and refuges, services for homeless people, student resource centres etc
- Many Aboriginal and Torres Islander as well as non-Indigenous organisations may also have an Aboriginal Community Liaison Officer or Aboriginal Support Worker who may be able to assist you to help a client if you think they may benefit from support or additional referrals to appropriate services, to address many of the non-legal issues clients often present with.

<sup>19</sup> ‘Land Councils’, *New South Wales Aboriginal Land Council* <<http://alc.org.au/land-councils/lalc-boundaries--contact-details.aspx>>.

## 7.2 Build the relationship

If you are able to, visit the organisation in person and work at the pace of the organisation to build a relationship. Find out what they do and explain to them what you and your organisation does. Create a warm referral pathway if possible.

Accept invitations you may receive to events organised by your new connections. Most importantly, be respectful, friendly and open. Many community organisations often have limited resources and may not be able to come to you – be open to visiting them in the community and accepting their offers for tea/coffee and yarns (chat) etc.

Welcome to Country and Acknowledgement of Country protocols may in some instances be appropriate, for in-person or remote meetings. There are resources available to assist you to determine the contexts in which it might be appropriate to acknowledge country.<sup>20</sup>

## 7.3 Show an ongoing commitment

Aboriginal and Torres Strait Islander communities become wary and cynical of organisations and individuals with no ongoing commitment to maintaining a relationship with their community. This tends to affirm the existing bias of distrust of government organisations as well as the justice system. It is important to maintain relationships and keep the community updated with the work you are doing in their community and consult with them throughout this process.

Find out what the common issues in the community are, by asking your new connections (e.g. the Land Council) what issues they regularly hear about and then identifying whether and how you or your organisation may be able to help address those issues.

Warm referrals are important in community. It is often a barrier to give a phone number or address to a client unless they are able/prefer to follow up this referral themselves. Offer to call the organisation you are referring them to for additional assistance or get the organisation to call them directly instead of the client doing this. Keep the client in the loop about where the referral is up to and remember that some clients may not have the capacity or resources to make phone calls, attend appointments or complete forms without assistance. Ensure that in making a referral, the organisation is aware of any barriers the client might face.

Explore any possible options for partnerships or joint work, including service delivery and community legal education with the local Community Legal Centres, Legal Aid, Aboriginal and Torres Strait Islander Legal Services (ATSILS) and/or FVPLS.

Partnering may be as simple as assisting a community support worker or agency to assist your client by providing supporting reports or references for a court matter.<sup>21</sup> If the agency or support worker has not previously undertaken this work before, you could provide a draft or template, and offer to edit. Better outcomes can usually be obtained for your client with such supporting documentation. Assisting organisations and community workers to build confidence and corporate knowledge in providing this service is likely to lead to increased capacity for that person and organisation to provide that service for other clients.

## 7.4 Visiting communities

If visiting an Aboriginal community, it is important to get to know the local Aboriginal and Torres Strait Islander services (legal and non-legal), particularly the Aboriginal community-controlled organisations, that are available in the area. Both as a matter of respect and efficiency, it is useful to make contact with relevant individuals and organisations in the community prior to visiting if possible.

If you know Aboriginal people from that community, it may be useful to speak with them to find out more about the community. Otherwise, the LALC, or the AMS is likely an appropriate place to start. In some communities, you will need LALC assistance, or permission, to visit. Some communities have Community Managers or Service/Liaison Officers. It is useful to speak to these persons about local conditions and community leaders or people in authority you should speak to.

If you are meeting with particular people in a community, you should also try to find out exactly what their roles entail and the relationships they have within the community. You may find that the information you need to engage with community or work with clients to overcome legal and non-legal issues may come from a range of different people and organisations in the community who have authority to speak about those things.

---

<sup>20</sup> See for example [https://www.indigenous.gov.au/contact-us/welcome\\_acknowledgement-country](https://www.indigenous.gov.au/contact-us/welcome_acknowledgement-country)

<sup>21</sup> It is important to bear in mind that you do not inadvertently provide advice to the agencies, without first carrying out the appropriate conflict checks.

## 8 FURTHER RESOURCES

*While this resource aims to give legal professionals information to support the provision of effective legal assistance to Aboriginal and Torres Strait Islander clients, it is not exhaustive.*

There are many relevant and valuable resources available. Listed below are some materials which may assist.

### 8.1 Indigenous specific court initiatives

In the justice system, relevant initiatives include the Youth Koori Court and circle sentencing in Local Courts. In respect of family law and child safety, Indigenous lists have been established in a number of registries at the Federal Circuit Court. Indigenous lists at the Federal Circuit Court are an access to family law initiative, aimed at assisting Indigenous people to proactively seek safe solutions for children within their own families, thereby avoiding the involvement of the care and protection jurisdiction.

Further information on the **Youth Koori Court** is available here:

- Children’s Court of NSW Resource Handbook – Youth Koori Court: [https://www.judcom.nsw.gov.au/publications/benchbks/children/youth\\_koori\\_court.html](https://www.judcom.nsw.gov.au/publications/benchbks/children/youth_koori_court.html)
- First Peoples Disability Network information about the Koori Court Disability Inclusion Pathfinder Project: <https://fpdn.org.au/portfolio/youth-koori-court/>

Further information about **circle sentencing** is available here:

- Judicial Commission of NSW education video: Circle sentencing in NSW: <https://www.judcom.nsw.gov.au/education/education-dvds/circle-sentencing-in-nsw/>

Further information about **Indigenous lists at the Federal Circuit Court** is available here:

- Family Law Pathways Network video resource, “Our Kids”: <http://greatersydney.flpn.com.au/resources/our-kids/>

### 8.2 Resources relevant to culturally competent practice

- Equality before the Law Bench Book Judicial Commission of New South Wales 2018: <https://jirs.judcom.nsw.gov.au/benchbks/equality/section02.html>

- **Indigenous protocols for lawyers.** Produced by Law Society Northern Territory: [https://www.lawsociety.com.au/sites/default/files/2018-03/indigenous\\_protocols\\_for\\_lawyers\\_0.pdf](https://www.lawsociety.com.au/sites/default/files/2018-03/indigenous_protocols_for_lawyers_0.pdf)
- **Lawyers’ Protocols for Dealing with Aboriginal Clients in South Australia.** Produced by Law Society of South Australia: <https://www.lawsocietysa.asn.au/PDF/ProtocolIndigenousClients.pdf>
- **Protocols for Lawyers with Aboriginal or Torres Strait Islander Clients in Western Australia.** Produced by The Law Society of 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>
- **Protocol in respect of Aboriginal and Torres Strait Islander peoples.** Produced by New South Wales Bar Association: [https://nswbar.asn.au/uploads/pdf-documents/ATSI\\_2019i.pdf](https://nswbar.asn.au/uploads/pdf-documents/ATSI_2019i.pdf)
- **University of Sydney Kinship module – Learn about Aboriginal Kinship systems (provided by Senior Lecturer, Leader Indigenous Strategy, Lynette Riley):** <https://www.sydney.edu.au/about-us/vision-and-values/our-aboriginal-and-torres-strait-islander-community/kinship-module.html>
- **Connecting and Working with Aboriginal and Torres Strait Islander Communities, organisations and Clients: a guide For Community Legal Centres.** Produced by National Association of Community Legal Centres: [http://www.naclc.org.au/resources/NACLC\\_Service\\_Delivery\\_Guide\\_2017\\_Final.pdf](http://www.naclc.org.au/resources/NACLC_Service_Delivery_Guide_2017_Final.pdf)
- **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](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://healthinonet.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 / Best Practice Standards for Representing Aboriginal Clients:** Available on request from Legal Aid NSW.
- **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](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-forweb-26\\_10\\_09\\_0.pdf](https://www.lawsociety.com.au/sites/default/files/2018-03/262-ATSILS-final-forweb-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>
- **Working with Aboriginal clients: What makes a good lawyer?** [NT]: [https://www.lawsociety.com.au/sites/default/files/2018-03/workingwithaboriginalclients\\_0.pdf](https://www.lawsociety.com.au/sites/default/files/2018-03/workingwithaboriginalclients_0.pdf)
- **Client management and self-care - A guide for pro bono lawyers:** <https://www.probonocentre.org.au/wp-content/uploads/2017/03/Client-management-guide.pdf>
- **Public Defenders Bar Book Project:** <https://www.publicdefenders.nsw.gov.au/barbook> which is intended to assist practitioners in the preparation and presentation of evidence to establish the application of the *Bugmy v The Queen* (2013) 249 CLR 571 principles.
- **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](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 <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2131>

## 8.4 The Indigenous Issues Committee of the Law Society of NSW

The role of the Indigenous Issues Committee is to represent the Law Society and its members on legal policy and practice issues arising in relation to Indigenous people in NSW.

The Committee's priorities include developing and commenting on law reform and legal policy proposals; educating the legal profession about changes to the law, and providing guidance on practice and other issues; and exchanging information about issues arising in legal practice.

The Committee also plays a steering and advisory role in respect of the Law Society's implementation of its Indigenous Reconciliation Strategic Plan 2019-2022.

More information about the Law Society's work in respect of Indigenous legal and policy matters is available here: <https://www.lawsociety.com.au/about-us/Law-Society-Initiatives/indigenous-issues>.

## 8.3 Judgments and reports

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

- *R v Aboriginal Dulcie Dumaia* (1959) NTJ 694
- *R v Anunga* (1976) 11 ALR 412
- *Bowles v WA* [2011] WASCA 191
- *Bugmy v R* [2013] HCA 37



THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney

ACN 000 000 699 ABN 98 696 304 966

[lawsociety.com.au](http://lawsociety.com.au)

T +61 2 9926 0333 F +61 2 9231 5809

E [lawsociety@lawsociety.com.au](mailto:lawsociety@lawsociety.com.au)

