



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

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Introduction

Australia is one of the most ethnically, culturally and linguistically diverse countries in the world.

The Aboriginal and Torres Strait Islander population is nearing 700,000, or 3 per cent of the total population,¹ and 11 per cent of Aboriginal and Torres Strait Islander Peoples speak an Australian Indigenous language at home.² The 2011 Census recorded that over a quarter of Australia's population was born overseas and another one fifth had at least one overseas-born parent.³ More than 300 languages are spoken in Australian households.⁴ Almost half (49 per cent) of longer-standing migrants and 67 per cent of recent arrivals speak a language other than English at home.⁵

This diversity is expected to increase, with Australia's Aboriginal and Torres Strait Islander population growing by 2.2 per cent per year⁶ and migration

anticipated to account for 60 per cent of Australia's future population growth.⁷ While Australia benefits enormously from this diversity, it also presents systemic challenges, particularly in relation to issues of access to justice.

In 2014, in recognition of this fact, the Council of Chief Justices endorsed the formation of the Judicial Council on Cultural Diversity (JCCD). The JCCD aims to assist Australian courts, judicial officers and administrators to positively respond to the changing needs of Australian society and ensure that all Australians have equal access to justice. In a multicultural, multilingual and multi-faith society, it is fundamental that strategies are put in place to ensure the accessibility of the courts.

The JCCD believes that both Aboriginal and Torres Strait Islander women and migrant and refugee women require the development of a national framework to improve access to justice, particularly in the context of family violence and family breakdown.

However, the JCCD also recognises that Aboriginal and Torres Strait Islander women and migrant and refugee women have different starting points and different access barriers, and that Aboriginal and Torres Strait Islander women in particular face unique challenges. The JCCD recognises that, as First Peoples, Aboriginal and Torres Strait Islander Peoples have a singular place in Australia.

- 1 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population nearing 700,000*, Media Release (30 August 2013) <http://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/3238.0.55.001Media%20Release1June%202011>.
- 2 Australian Bureau of Statistics, *Census of a Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australia, 2011*, cat no. 2076.0 (27 November 2012) <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2076.0Main%20Features902011?opendocument&tabname=Summary&prodno=2076.0&issue=2011&num=&view=>.
- 3 Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census — Cultural Diversity in Australia, 2012–2013*, cat 2071.0 (21 June 2012) <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013>.
- 4 Australian Bureau of Statistics, *2011 Census Shows Asian Languages on the Rise in Australian Householders*, Media Release — National, 21 June 2012, <http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-60>.
- 5 Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census*, op cit.
- 6 Compared with a projected annual growth rate of 1.6 per cent for the total Australian population over the same period: Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population may exceed 900,000 by 2026*, Media Release (20 April 2014) <http://www.abs.gov.au/ausstats/abs@.nsf/products/3E27B260A585DE5DCA257CC900143EF6?OpenDocument>.

7 Migration Council Australia, *The Economic Impact of Migration* (2015) http://migrationcouncil.org.au/wp-content/uploads/2016/06/2015_EIOM.pdf.

Development of a national framework

In developing this national framework of best practice guidelines and resources to be used across Australian courts, the JCCD drew on the recommendations and findings of its two consultation reports — *The Path to Justice: Access to Justice for Aboriginal and Torres Strait Islander Women*⁸ and *The Path to Justice: Access to Justice for Migrant and Refugee Women*.⁹

The JCCD has also used *The International Framework For Court Excellence* (2nd edition, 2013) (IFCE), produced by the International Consortium for Court Excellence, as the key organising structure for this framework. The IFCE is used in some courts and tribunals in Australia, as well as globally, as a tool to “assess and improve the quality of justice and court administration they deliver.”¹⁰ This framework references the IFCE’s 10 core court values and aligns with its “Seven Areas for Court Excellence” to highlight the areas and actions that courts should target in order to improve accessibility for Aboriginal and Torres Strait Islander women and migrant and refugee women.

Overview of the framework

The framework is comprised of four elements:

1. **Purpose** of the framework.
2. **Values and principles** that should underpin court operations as they relate to Aboriginal and Torres Strait Islander women and migrant and refugee women, particularly in the context of family violence.
3. **Approach**, translating these values and principles into action areas. These action areas will guide courts’ considerations around how their resources and operations may be modified to improve access to justice for Aboriginal and Torres Strait Islander women and migrant and refugee women. These seven areas are:
 - Court Leadership and Management;
 - Court Planning and Policies;
 - Court Resources (Human, Material, and Financial);
 - Court Proceedings and Processes;
 - Client Needs and Satisfaction;
 - Affordable and Accessible Court Services;
 - Public Trust and Confidence.
4. **Monitoring and evaluation** of the framework.

8 Judicial Council on Cultural Diversity, *The Path to Justice: Access to Justice for Aboriginal and Torres Strait Islander Women* (2016) http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf.

9 Judicial Council on Cultural Diversity, *The Path to Justice: Access to Justice for Migrant and Refugee Women* (2016) http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf.

10 International Framework for Court Excellence (2nd ed, March 2013) <http://www.courtexcellence.com/Resources/The-Framework.aspx> 1.

Purpose

This framework is a national approach to improving access to justice and achieving equality before the law for Aboriginal and Torres Strait Islander women and migrant and refugee women.

It provides an opportunity for Australian courts to build on existing efforts to respond to the particular challenges and barriers that may affect Aboriginal and Torres Strait Islander women and migrant and refugee women in their interaction with the court system. It is acknowledged that not all women will experience these barriers and that there are a diversity of experiences; however, a system that caters to the needs of the most disadvantaged will cater to all using the system.

The framework is intended to serve as an aspirational set of principles and best practice guidelines for Australian courts around operational actions they can take to improve accessibility. It is recognised that these actions will need to be flexible and responsive to local community needs and that implementation will be determined by jurisdictional priorities and resource capacity. It is further recognised that particular courts may have already implemented some or many of the measures recommended.

The development of this framework is focused on adapting court policies, procedures and resources — not the content of the law. Enabling cultural considerations for diverse court users does not provide advantage, rather it provides an assurance that all Australians receive equal justice and have equal access to justice.

Values and Principles

The core values to which Australian courts should strive are:

- Equal justice;
- Fairness;
- Impartiality;
- Independence of decision-making;
- Competence;
- Integrity;
- Transparency;
- Accessibility;
- Timeliness;
- Certainty.¹¹

It has been noted that “[t]hese core values guarantee due process and equal protection of the law to all those who have business before the courts. They also set the court culture and provide direction for all judges and staff for a proper functioning court.”¹²

¹¹ See International Framework for Court Excellence (2nd ed, March 2013) <http://www.courtexcellence.com/Resources/The-Framework.aspx> 3.

¹² Ibid.

While all of these values are important, the key value/principle underpinning this framework is the achievement of **equal justice** for all court users — regardless of their sex, race, religion, language, or national or ethnic origin.

For culturally diverse women, equal justice requires at a minimum that they be able to understand and be understood in legal proceedings. This in turn requires access to appropriately trained interpreters, supported by court policies and judicial officers and staff who understand and value the role of interpreters.

To achieve equal justice, Aboriginal and Torres Strait Islander women and migrant and refugee women must also have sufficient awareness and understanding of the role of the justice system, how courts work and what protections the law offers them. Additional steps need to be taken to facilitate this understanding.

Further, equal justice requires that courts are free from unconscious bias and discrimination and that proceedings are fair and impartial. Judicial officers, court staff and the legal profession should possess a level of cultural awareness around the challenges and barriers faced by Aboriginal and Torres Strait Islander women and migrant and refugee women in their interaction with the courts.

In relation to Aboriginal and Torres Strait Islander women, this requires an appreciation that they may have a legacy of trauma and may have experienced a lifetime of institutional discrimination, making them reluctant to engage with the justice system. Further, many Aboriginal and Torres Strait Islander women carry significant fears that reporting violence will mean that authorities will remove children.

For migrant and refugee women, judicial officers and staff need an understanding of the potentially adverse impact of pre-arrival experiences, such as persecution at the hands of authorities, as well as contemporary pressures around financial dependence and immigration status — and how these factors may affect a woman's responses to court processes and personnel.

In addition, an understanding of gendered inequality and gendered violence is integral to ensuring that judicial officers and courts can respond appropriately to the needs of women appearing before them in family violence matters and recognise the difficulties women may face in engaging with the justice system.

Finally, this framework seeks to recognise and emphasise the importance of a focus on the needs and interests of victims attending court. By addressing issues concerned with the provision of equal justice, the framework aspires to improve **access to justice** for Aboriginal and Torres Strait Islander women and migrant and refugee women.

Approach

The framework aligns with the “Seven Areas for Court Excellence” outlined in the International Framework for Court Excellence. It seeks to guide courts’ considerations around how their resources and operations may be modified to improve access to justice for Aboriginal and Torres Strait Islander women and migrant and refugee women, and to improve the delivery of equal justice to court users in these groupings.

Court Leadership and Management

The importance of leadership from senior judicial officers and court administrators

Leadership from judicial officers and court administrators is essential in demonstrating a court’s commitment to providing equal justice and equal access to justice for Aboriginal and Torres Strait Islander women and migrant and refugee women.

An essential foundation for this framework is a recognition that courts should consider the impact of demographic shifts upon usage of the court system and reflect upon what changes may be necessary in order to ensure courts are accessible to Australia’s diverse population.

There is a need for a more uniform and systemic approach to the complexity of cultural and linguistic issues facing the courts. The adoption of measures to modify structures and policies throughout the court system is essential if courts

are to tackle the distrust and poor familiarity with court processes that exist amongst some diverse court users.

These efforts need to be complemented by meaningful engagement with local communities to develop and implement this framework, and to ensure that courts and their staff are open and accountable around their operations.

Chief Justices, Chief Judges and Chief Magistrates play an important role in setting the tone and culture in which courts operate. Making clear the expectations of judicial officers and court administrators and offering strong statements of support for the measures and spirit of the framework are invaluable in creating the impetus for change.

Establishment of cultural diversity committees

Each court, if they have not already done so, should consider establishing a committee/s responsible for issues pertaining to access to justice for Aboriginal and Torres Strait Islander peoples and people from migrant and refugee backgrounds.

Representation could be drawn from the judiciary, court administrators and other court staff (including Indigenous Court Liaison Officers and/or Cultural Court Liaison Officers). Courts may also wish to consider including other relevant stakeholders, for example, domestic violence and sexual violence service providers, legal professionals, police, and representatives from Aboriginal and Torres Strait Islander communities and migrant and refugee communities.

Each court should consider whether a committee is best established within one particular court (for example, the Magistrates' Court), or as a joint body across all courts in that particular State or Territory.¹³

The role of the committee could include meeting regularly to:

- Monitor the implementation of this framework;
- Oversee judicial education programs;
- Raise awareness among the judiciary and court staff about professional development programs and events;
- Coordinate community outreach events and encourage participation from others within the court;
- Meet with community organisations and service providers that work within the court system;
- Oversee the development of resources for culturally and linguistically diverse court users;
- Arrange open days in the courts;
- Act as a focus point for others within the court to raise issues with;
- Provide annual reports to the JCCD on the courts' progress against this framework.

Courts should give consideration to the form the committee will take. The following are examples that courts may wish to investigate:

- *Two separate committees — one with responsibility for Aboriginal and Torres Strait Islander peoples' issues and one with responsibility for migrant and refugee issues.* If adopted, the two committees could meet on a semi-regular basis to discuss issues of common concern and avenues for joint action.

- *One committee responsible for both Aboriginal and Torres Strait Islander peoples' access to justice and migrant and refugees' access to justice.* Courts that adopt this model may wish to consider appointing members with particular responsibility for particular issues.

In establishing committees, courts may wish to consider the sensitivities of their local communities and determine whether resources permit two separate committees (the preferred approach) or whether a committee with a clear delineation of responsibility is the most practicable approach. It is recognised that in smaller jurisdictions, resource constraints may limit the size and practicality of committees.

Partnerships and cooperation with other organisations

Courts should place particular importance on building and strengthening relationships with their local communities and relevant services, including organisations that specifically work with Aboriginal and Torres Strait Islander women and migrant and refugee women. This is paramount if courts are to be responsive to the needs of Aboriginal and Torres Strait Islander women and migrant and refugee women.

Community education forums

Judicial officers and court staff should consider becoming involved in, and/or coordinating, community education forums. Such forums could be delivered in collaboration with:

- Legal services;
- Family violence services and their caseworkers;
- Family law services, including Family Relationship Centres and Family Law Pathway Networks;

¹³ Further, it is recommended that meetings of the Council of Chief Magistrates include agenda items relating to cultural diversity and the implementation of the framework.

- Women's organisations;
- Police;
- Police Prosecutors and Directors of Public Prosecution;
- Aboriginal and Torres Strait Islander community controlled organisations;
- Settlement services.

It would be beneficial for education forums to be targeted to specific groups, for example, sessions specifically for Aboriginal and Torres Strait Islander women or sessions specifically for migrants or refugees from a particular cultural or ethnic background.

There are a number of benefits from this type of engagement:

- Strengthening relationships and building trust with local organisations;
- Providing legal information to and improving the legal knowledge of Aboriginal and Torres Strait Islander women and migrant and refugee women;
- Demonstrating to women that courts are accessible institutions and, consequently, potentially alleviating some of the intimidation and stress women feel when going to court;
- Improving knowledge of court processes and procedures among service providers, thereby assisting them to deliver better services to their clients;
- Judicial officers and court staff are themselves likely to learn from the experiences of others and interactions with those who work on the ground.

Regular meetings with key stakeholders

Courts should give consideration to holding regular meetings or court user forums with key stakeholders working in the court system. These would provide an opportunity to promote the objectives of the framework and enable courts to gain feedback on their performance against this framework and more generally. Meaningful engagement with relevant services, including Aboriginal and Torres Strait Islander organisations and migrant and refugee organisations, will ensure a diversity of voices and values are considered on a regular basis and in a timely fashion.

Working with the legal profession

It is important to recognise the vital role that the legal profession can play in working collaboratively with courts to implement the framework and assist in identifying and removing barriers to court accessibility for Aboriginal and Torres Strait Islander women and migrant and refugee women. Courts should seek to work with legal aid services, community legal centres and State and Territory Law Societies and Bar Associations.

Community visits

Courts should also consider establishing a regular community visits program, whereby judicial officers could visit Aboriginal communities or meet with migrant or refugee groups.

Courts could liaise with local Aboriginal community controlled organisations to arrange a program of activities and speakers. Similarly, they could liaise with local settlement services to hold visits and meetings with members of migrant and refugee communities.

Some jurisdictions have long histories of running these types of events.

Example The Judicial Commission of New South Wales has run a community visits program since 1992, whereby judicial officers visit Aboriginal communities within New South Wales. The visits give judicial officers “the opportunity to enhance their understanding and appreciation of the history and culture of Aboriginal people, and provide a useful forum for members of the court and the Aboriginal community to exchange information and ideas on issues of mutual concern, including cultural and language difficulties”.¹⁴

¹⁴ Judicial Commission of New South Wales, *Ngara Yura Program — Community Visits* <https://www.judcom.nsw.gov.au/education/ngara-yura-program/community-visits/>.

Court open days and tours

Courts should consider holding tours that are open to local service providers. Such tours would give stakeholders an opportunity to meet with court staff and judicial officers, and gain a greater understanding of the services and facilities available.

Example The Victorian Magistrates’ Court runs “Walk in Her Shoes” tours, which outline the process of applying for an intervention order to family violence stakeholders, including government and non-government agencies and final-year tertiary students. The tours “promote the services provided by the [Victorian Magistrates’ Court] and related court services such as VOCAT, the After-Hours Service and remote witness facilities”.¹⁵ This helps participants better understand court processes and the services that are available to support victims of family violence.

The WA Magistrates Court also run similar tours.

Courts should also give consideration to working with local Aboriginal and Torres Strait Islander community organisations and migrant and refugee organisations to run tours that are open to community members. This would assist access to justice by demonstrating the openness of courts to their local communities; further, a familiarity with courts and an understanding of their role makes it more likely that women experiencing violence will take the option of going to court.

¹⁵ Magistrates’ Court of Victoria, Children’s Court of Victoria, *Submission to the Royal Commission into Family Violence* (June 2015) 32.

Celebrating diversity

Courts may wish to explore opportunities to celebrate days of significance, for example, NAIDOC Week and Harmony Day.

Events could be held in collaboration with local community members and staff from local organisations.

Courts could consider what days of significance are appropriate for them to commemorate, taking into account the sensitivities of local community groups, including smaller ethnic and religious communities.

Court Planning and Policies

Rigorous planning and policies are required for courts to continuously demonstrate that they are responsive to the needs of diverse court users. Courts should develop clear plans to implement this framework and develop strategies for working with Aboriginal and Torres Strait Islander communities and migrant and refugee communities.

For example, some courts have given consideration to working with Aboriginal and Torres Strait Islander communities, their community controlled organisations and Reconciliation Australia to develop accredited Reconciliation Action Plans.

Court Resources (Human, Material, and Financial)

Courts need to efficiently and proactively manage their resources to meet the demands of the justice system and address the needs of court users. To address these needs, both judicial officers and court staff need to understand the communities they are serving. For Aboriginal and Torres Strait Islander women and migrant and refugee women, these needs include the employment of specific staff to assist them to navigate the court system.

Judicial education

Courts should review their judicial education and professional development programs.

All courts should introduce ongoing cultural competency training for all judicial officers. Cultural competency is essential to ensuring that judicial officers respond appropriately to the needs of Aboriginal and Torres Strait Islander women and migrant and refugee women appearing before them, and are able to communicate effectively with them.

As part of this, courts should encourage their judicial officers to undertake the online cultural diversity training package that is being developed through a partnership between the Australasian Institute of Judicial Administration, the Family Court of Australia, the Judicial Commission of NSW, the Judicial College of Victoria, and the National Judicial College of Australia.

Further, judicial officers in all courts should receive ongoing core family violence training that is developed according to a gendered and cross-cultural framework. Family violence impacts every area of the court system, with cases related to family violence being heard in all jurisdictions. The curriculum could cover topics including:

- The social and psychological dynamic of family violence;
- The effect of family violence on children along their developmental trajectory;
- Understanding the trauma of family violence;
- Responses to perpetrators and accountability;
- Risk assessment frameworks;
- Understanding groups with specific needs (including Aboriginal and Torres Strait Islander women and migrant and refugee women);
- Mental health and wellbeing of judicial officers.¹⁶

¹⁶ See, eg, Judicial College of Victoria, *Submission to the Royal Commission into Family Violence* (2015) 14–15.

In addition to this, judicial officers should receive jurisdiction-specific family violence training.

Education could be offered in a range of formats, including specialised programs (one to two days), seminars, topic specific sessions, online learning, support for conference participation and independent learning. It is recognised that judicial officers do have access to many such programs and that many will have received training of some kind.

It is also recommended that the National Judicial College of Australia consider introducing a family violence training session into the orientation program for new judicial officers, and seek specific funding to provide training to judicial officers in jurisdictions other than New South Wales and Victoria (which have providers of such training).

Courts can work with the National Judicial College of Australia, the Australasian Institute of Judicial Administration, and their jurisdiction-specific judicial education body, if applicable, (for example, the Judicial Commission of NSW or the Judicial College of Victoria) to develop judicial education programs.

Courts could also give consideration to developing a list of consultants, senior academics, legal professionals, law reformers and respected community leaders who they can work with to facilitate professional development opportunities.

Further, courts should utilise existing resources, including:

- *Equality before the Law Bench Book* (Judicial Commission of NSW, Release 10, July 2016);¹⁷
- *Equality before the Law Bench Book* (Department of the Attorney General, WA, 2009);¹⁸
- *Equal Treatment Benchbook* (Supreme Court of Queensland, 2nd ed, 2016);¹⁹
- *Aboriginal Bench Book for Western Australia Courts* (AIJA, 2nd ed, 2008);²⁰
- *National Domestic and Family Violence Bench Book* (AIJA, 2016);²¹
- *Family Violence Bench Book* (Judicial College of Victoria, 2014).²²

Staff training

Court staff are a major point of engagement with the court system for Aboriginal and Torres Strait Islander women and migrant and refugee women, particularly for unrepresented women. It is fundamental that staff are trained to understand the needs of diverse court users so they can ensure they respond appropriately.

¹⁷ https://www.judcom.nsw.gov.au/wp-content/uploads/2016/07/Equality_before_the_Law_Bench_Book.pdf.

¹⁸ http://www.supremecourt.wa.gov.au/_files/equality_before_the_law_benchbook.pdf.

¹⁹ http://www.supremecourt.wa.gov.au/_files/equality_before_the_law_benchbook.pdf.

²⁰ <http://www.aija.org.au/Aboriginal%20Benchbook%202nd%20Ed/Chap1-8.pdf>.

²¹ <http://dfvbenchbook.aija.org.au/contents>.

²² <http://www.judicialcollege.vic.edu.au/publications/family-violence-resources>.

All relevant court staff should receive compulsory cultural competency training and family violence training. Training should be ongoing, rather than a once off. Training could include:

- Issues facing Aboriginal and Torres Strait Islander women, migrant and refugee women and women with disabilities seeking access to justice;
- The effects of family violence, especially non-physical violence, on people experiencing family violence;
- The impact of family violence on children;
- The role of court staff, particularly registrars.²³

Employment strategies

Courts should introduce employment strategies aimed at actively recruiting Aboriginal and Torres Strait Islander people and people from migrant and refugee backgrounds. This is particularly important in areas with large Aboriginal and Torres Strait Islander populations and/or migrant and refugee populations. There could also be a specific focus on increasing the number of female court staff.

The benefits of increasing diversity amongst staff include:

- Better reflecting the diversity of court users. This makes the courts more accessible to individuals who may otherwise see the courts as environments that are unwelcoming of diversity;
- Greater tolerance and respect among staff for each other and for court users;
- Increased cultural sensitivity in service delivery;
- A range of diverse experiences and perspectives among staff, which has the potential to lead to innovative ideas;
- More staff who speak and/or write in languages other than English, increasing the court's ability to communicate effectively with court users.

Indigenous Court Liaison Officers and Cultural Court Liaison Officers

Courts are alienating and intimidating environments for the majority of people. This experience is often exacerbated for Aboriginal and Torres Strait Islander people, who have a history of negative interactions with the justice system, as well as for people from migrant and refugee backgrounds, who often have little familiarity with the court system and may have traumatic backgrounds.

Indigenous Court Liaison Officers and Cultural Court Liaison Officers could assist Aboriginal and Torres Strait Islander women and migrant and refugee women (and men) to navigate and better understand the court system, reducing their feelings of stress and improving their experience.

Possible roles for court liaison officers include:

- Supporting women to complete paperwork;
- Assisting women with understanding where to go at court and when;
- Providing information about court processes and procedures;
- Familiarising women with the courtroom prior to their hearing, so that the environment is less intimidating;
- Assessing the need for an interpreter and coordinating interpreting arrangements;
- Facilitating participation in hearings via video link;
- Providing referrals and coordinating access to support services and legal advice;
- Explaining intervention orders.

²³ See, eg, Victorian Law Reform Commission, *Family Violence Laws: Report* (2006) Recommendation 34.

Court Proceedings and Processes

As noted in the IFCE, “Fair, effective and efficient court proceedings are indicators of court excellence.”²⁴ For Australian courts to be fair, effective and efficient, it is essential that all court users understand the processes in which they are participating, and are able to contribute fully to proceedings.

Education sessions

Magistrates’ Courts

Magistrates’ Courts should consider introducing education sessions for women applying for intervention orders. The sessions could cover:

- How to apply for an intervention order;
- What terms are included in an intervention order;
- Varying the standard terms of an intervention order;
- How the hearing for an intervention order will proceed;
- The roles of people in the courtroom;
- Reporting a breach of an intervention order;
- The effect of a breach of an intervention order.

Courts should consider holding specific sessions for Aboriginal and Torres Strait Islander women and for migrant and refugee women. These could include Aboriginal and Torres Strait Islander women and migrant and refugee women who have gone through the legal process speaking about their experience.

Further, courts should consider developing video resources and written materials that explain the court process to women. These could be specifically targeted to Aboriginal and Torres Strait Islander women and to migrant and refugee women. Video resources could include Aboriginal and Torres Strait Islander women and migrant and refugee women who have gone through the legal process speaking about their experience. Where appropriate, these could be filmed in commonly spoken languages. Videos could be available online and shown in court waiting areas.

Written materials should be in plain English and in other languages where possible. They should be available online and easily accessible in courts.

These sessions and resources would be particularly beneficial for Aboriginal and Torres Strait Islander women and migrant and refugee women, as they are often more reluctant to engage with the court system, face additional pressures to withdraw from the process, and encounter language and cultural barriers to participating in court hearings.

The Family Court and the Federal Circuit Court

The Family Courts should consider introducing education sessions for women going through the court system. This would be beneficial, as it would assist women to:

- Feel more comfortable with the court process;
- Better understand the roles of each of the participants; and
- Provide an understanding of what will happen in the courtroom.

It is recommended that the Family Courts consider holding specific sessions or developing video resources for Aboriginal and Torres Strait Islander women and migrant and refugee women.

²⁴ International Framework for Court Excellence, 2nd edition, March 2013 <http://www.courtexcellence.com/Resources/The-Framework.aspx> p 9.

Specialised practices and responses

Courts could give consideration to adopting elements of specialised practice and responses, as appropriate, according to the needs and resources of their particular jurisdiction.

Characteristics of a specialised approach could include:

- Judicial officers with specialist family violence experience;
- Dedicated prosecutors;
- Applicant and respondent support workers;
- Specialist court staff;
- Providing space and logistical support for specialised support services at court and encouraging appropriate referral mechanisms;
- Ongoing training for all key participants;
- Appropriate arrangements for victim's safety; and
- Specialist family violence lists.²⁵

Client Needs and Satisfaction

Understanding court users — improving data collection

Courts should seek to improve data collection about the cultural, linguistic and gender diversity of their court users.

Lack of demographic information about court users adversely impacts on courts' ability to respond to the needs of Aboriginal and Torres Strait Islander women and migrant and refugee women and inhibits the effective functioning of the courts.

An essential pre-requisite to tackling the barriers faced by diverse communities in their interaction with the courts is therefore to better identify these individuals, to fully understand the particular barriers they face, and to ensure an effective flow of information between court administrators and judicial officers about the needs of these court users.

Courts should improve their data collection about court users and actively seek information from them, including:

- Whether a person identifies as Aboriginal or Torres Strait Islander;
- Whether a person is from a non-English speaking background;
- Country of origin;
- Ethnic and cultural identity;
- The length of time a person has been in Australia and their visa status;
- Language spoken at home;
- Literacy level;
- English language proficiency;
- Whether an interpreter or other communication assistance is required;
- Whether the person had legal representation or was self-represented;
- Disability and other potential barriers

²⁵ See, eg, Australian Law Reform Commission, *Family Violence — A National Legal Response (ALRC Report 114)* chapter 32; Royal Commission into Family Violence (2016) Recommendation 60.

Benefit of collecting this information

Such information would assist courts to ensure they are responsive to the needs of their users. In particular, it would enable courts to tailor their responses to the needs of Aboriginal and Torres Strait Islander court users and court users from migrant and refugee backgrounds in particular locations, thereby improving the accessibility of the courts.

For example:

- Directional signs at particular Magistrates' Courts could be translated into other languages in areas with high populations of court users from non-English speaking backgrounds;
- Indigenous Court Liaison Officers and Cultural Court Liaison Officers could be targeted to particular court locations;
- Translated information brochures could be prioritised for specific courts;
- A list of preferred interpreters in languages commonly spoken in the area could be developed.

Assessing court user satisfaction levels

Courts should introduce or enhance mechanisms to assess satisfaction levels among court users.

Regular court user satisfaction surveys and complaints mechanisms help to assess satisfaction levels among court users. While some courts already utilise these processes, it would be beneficial for these mechanisms to be established in all courts in all jurisdictions — not only to measure the responsiveness of courts to the needs of diverse communities, but also to demonstrate that courts, judicial officers and staff are open and accountable in their operations.

Courts have traditionally focused on quantitative measures of performance and outcomes to assess client satisfaction. However, research indicates that perceptions of the court system are influenced more by a fair process than a favourable outcome.²⁶

Courts should adopt processes to make qualitative assessments part of this framework: rather than focus on factors such as the time taken for a case to proceed to a full hearing, indicators could consider how women feel during the process and perceptions around how they were treated by judicial officers and court staff. These mechanisms should explore the conduct of court staff, the quality of administrative processes and the conduct of judicial officers, rather than judicial decisions themselves.

Surveys should measure not only satisfaction with the outcome, but also elicit feedback about the court experience. Indicators could include:

- Whether the user found the court to be accessible;
- Feelings of safety;
- Whether staff were courteous, friendly and helpful;
- The extent of the client's understanding of court processes;
- The timeliness and convenience of those processes; and
- The client's perceptions of fairness.

²⁶ International Framework for Court Excellence (2nd ed, March 2013) <http://www.courtexcellence.com/Resources/The-Framework.aspx> 10.

Surveys could be targeted generally at all court users, at Aboriginal and Torres Strait Islander people, at migrant and refugee people, at women, or at Aboriginal and Torres Strait Islander women or migrant and refugee women.

More specific information that could be sought includes:

- The availability of plain English forms and documents;
- The availability of translated forms and information documents;
- Distance travelled to get to court;
- Time spent in court;
- Availability and use of audio-visual technology;
- The availability of interpreter assistance and the quality of the interpreter(s);
- Accessibility and usability of the court's website.

This information should be utilised to enhance court services and improve court processes as they relate to Aboriginal and Torres Strait Islander women and migrant and refugee women.

Affordable and Accessible Court Services

There are a number of ways in which court premises and processes can be improved to enhance the accessibility of courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.

Provision of information

Courts should develop and maintain brochures on their services in plain English and ensure that forms are also written in plain English. In addition, courts should consider translating information into key community languages to ensure greater outreach.

Women often have to wait long periods of time at court for their hearing. Courts should consider using this time as an opportunity for education, for example, by playing educational videos in waiting areas.

Courts could develop a resource list to be given to all Aboriginal and Torres Strait Islander women and migrant and refugee women. The information included on this list could include information about:

- The role of community legal centres and legal aid and information about how to contact them;
- Court processes;
- Victim assistance services;
- Family violence services;
- Primary health care services;
- Women's refuges;
- Housing support;
- Centrelink;
- Aboriginal and Torres Strait Islander services;
- Multicultural women's services;
- Settlement services;
- Immigration advice.

Legal and support services

Courts should encourage and support the provision of on-site legal services and other support services by relevant agencies. This would assist women in gaining legal advice and help them understand the court process.

Courts should also ensure court staff are trained in making referrals for women to legal services.

Further, many women experiencing family violence have difficulties making arrangements for children while they attend court. An example of best practice to remedy this is the creation of safe areas for children to wait in courts. McAuley Community Services runs a “Court Play Lady” program at Sunshine Magistrate’s Court in Victoria, which gives children a supervised place to play while their mothers attend court.²⁷

Daily coordination meetings

It would be beneficial in Magistrates’ Courts for staff to hold a daily coordination meeting before hearings begin in a family violence list. This would allow priority to be given to high-risk cases, ensure that interpreters are available and prioritise the list accordingly, liaise with legal representatives to manage conflicts, and liaise with applicant and respondent support workers.²⁸

Interpreters

A consistent barrier to equal justice and equal access to justice for Aboriginal and Torres Strait Islander women and migrant and refugee women is the lack of provision of interpreters who are appropriately supported by court officers and processes.

Women with limited English language skills are at a distinct disadvantage when completing forms and understanding paperwork, communicating with court staff, participating in court proceedings and understanding court orders. The provision of professional, appropriate and skilled interpreters is therefore crucial if the legal system is to respond to their needs and ensure they can participate fully in court processes.

Interpreter policies

All courts should have court interpreter policies that are publicly available and easily accessible. The policies should:

- identify who is responsible for engaging and paying for an interpreter in all cases;
- establish an early process for identifying whether court users need an interpreter;
- establish procedures for ensuring that qualified interpreters are engaged;²⁹
- contain a presumption that wherever possible a female interpreter will be booked for a female party;
- provide that separate interpreters should be engaged for applicants and respondents where practicable.³⁰

Explaining the role of the interpreter

Judicial officers should ensure that non-English speaking court users understand the role of the interpreter. It is particularly important to emphasise the interpreter’s obligation of confidentiality and that the interpreter’s role is limited to interpreting from one language to another and does not extend to acting as an advocate or providing advice.

²⁷ McAuley Community Services for Women, *Court Play Lady Appointed* (July 2014) <http://www.mcauleycsw.org.au/latest-news/court-play-lady-appointed>.

²⁸ See also *Royal Commission into Family Violence* (2016) Recommendation 64.

²⁹ It is recognised that there are many languages in which professional and even paraprofessional interpreters are difficult to obtain. It is recommended that reference be made to the JCCD’s *Australian National Standards for Working with Interpreters in Courts and Tribunals* when booking interpreters.

³⁰ See also *Royal Commission into Family Violence* (2016) Recommendation 158.

Training for judicial officers about working with interpreters

Effective courtroom communication is a shared responsibility between judicial officers, lawyers and interpreters. Judicial officers and lawyers have an obligation to take steps to ensure that interpreters understand the language being used in court.

Courts, if they do not already provide it, should facilitate training for their judicial officers in how to work with interpreters. This would assist them to work more effectively with interpreters and thereby improve the experience of Aboriginal and Torres Strait Islander women and migrant and refugee women who have limited English proficiency.

Training and establishing professional standards

Courts could consider partnering with interpreting services to run training sessions on court values and expectations for interpreters. This would ensure that all interpreters working in the courts are familiar with the Court Interpreter's Code of Conduct³¹ and their obligations under it.

Training sessions would give more guidance to interpreters working in legal settings, which is particularly important given that there is currently no specialist legal interpreting qualification in Australia.

There is also a lack of regulation of interpreters in court and, on the whole, a lack of consequences for unprofessional conduct. The Court Interpreter's Code of Conduct provides court-specific ethics guidance to interpreters.

A complaints feedback mechanism and the provision of training for interpreters who have engaged in misconduct would assist in ensuring that interpreters employed for court interpreting are of the highest standard.

Safety at court

Another key accessibility factor for Aboriginal and Torres Strait Islander women and migrant and refugee women is that they feel physically safe participating in court processes.

By taking steps to address this need, Australian courts can help to improve the experience of Aboriginal and Torres Strait Islander women and migrant and refugee women in their interaction with the courts, and enhance their overall confidence in the justice system.

Separate waiting areas

Courts should give priority to establishing separate waiting areas for women attending court for family violence matters.

Aboriginal and Torres Strait Islander women and migrant and refugee women have reported significant concerns about waiting in the same area in the court as the alleged perpetrator, highlighting their experience of men using this time to intimidate and harass them.

Separate waiting areas would greatly assist in alleviating women's stress at court.

Participation in hearings via video link

Many women find it highly stressful to attend court and be in the same room as the alleged perpetrator. There is a risk of further traumatising survivors of family violence if they are required to do so.

Whenever it is requested and feasible, courts should give consideration to permitting women to participate in hearings via video link. Women should be made aware of their right to ask for this option, for example, during court information sessions.

³¹ The Judicial Council on Cultural Diversity has developed a Court Interpreter's Code of Conduct with the aim of its adoption by all Australian Courts.

There are various options for how women could participate in hearings via video link, including:

- Women could attend court but participate via video link from another room in the Court; and
- Women could attend a site outside the Court building (for example, a legal service or community organisation) and participate via video link. This would also improve access to justice for women in regional and remote locations.

Other measures to reduce stress in the court environment

If, for whatever reason, women cannot participate via video link, courts should consider taking other steps to reduce women's stress in the court environment. Possible options include:

- Giving women the opportunity to visit the courtroom prior to their case being heard so that they can familiarise themselves with the environment;
- Seating women in the courtroom in a place where they cannot see the perpetrator;
- Allowing women to be accompanied by support workers;
- Closing the court to the public to minimise the potential pressure exerted by the presence of community members or members of the public. This will help women feel safe, as well as minimising the risk of the details of her experience becoming known in her community.

Signage

Women have reported finding the process of arriving at court to be highly intimidating, and noted that there is often insufficient information available about where to go for assistance and how to determine when and where their matter will be heard.

Courts should consider improving the signage and information available upon arrival at court. In addition to improving directional signs and having court staff available to assist people upon arrival at court, courts could consider translating signage into community languages in areas with high Aboriginal and Torres Strait Islander populations and/or high migrant and refugee populations.

Security

All courts should consider investing in security and safety measures to ensure all court buildings are safe environments for women.

Public Trust and Confidence

A key objective of this framework is to promote higher public trust and confidence in Australian courts and the judiciary. As previously noted, an essential foundation for this framework is a recognition that courts need to consider how they will respond to demographic shifts over coming decades, and that there are changes that can be made to ensure that the Australian court system is more accessible to diverse court users.

Courts also need to demonstrate that they are aware of the barriers faced by diverse court users, that they are attempting to address these barriers, and that they are responsive to honest feedback about the justice system and its impact on Aboriginal and Torres Strait Islander women and migrant and refugee women.

Meaningful engagement with diverse communities in the development and implementation of measures outlined in this framework will also assist in building trust and confidence in the courts and judiciary amongst Aboriginal and Torres Strait Islander women and migrant and refugee women.

An emphasis on transparency in monitoring and evaluating this framework will foster public trust and confidence in the courts as responsive institutions.

Monitoring and evaluation

Establishing procedures and mechanisms to monitor the implementation and progress of this framework is fundamental to its success. Regular and public reporting by the courts on progress achieved, changes made in response to surveys and feedback, and areas that have been identified for further attention, is also essential.

Establishment of key performance indicators

Courts should establish key performance indicators so that they can measure their progress against the framework.

Managing responsibility and accountability within the court system for the introduction and maintenance of measures to ensure equality before the law and access to justice for Aboriginal and Torres Strait Islander women and migrant and refugee women is critical; as is providing an accessible and immediate means for court users to raise issues they experience at court, allowing for timely feedback, and providing an avenue for people to express their grievances.

Establishing clearly defined responsibilities and setting key performance indicators and benchmarks will help ensure that the needs of diverse court users are being appropriately met.

Measurable, rather than aspirational, indicators and benchmarks should be established. Examples of key performance indicators include:

- The number of requests for interpreter assistance which were met, and what qualifications the interpreter had;
- The development of plain English forms, orders and sentences;

- The number of information documents that have been translated into other languages;
- The number of requests for participation via video link that were met;
- The number of judicial officers undertaking judicial education programs;
- The number of staff participating in cultural awareness education and training;
- How judicial officers and staff rated the provision and quality of education;
- Court user satisfaction levels; and
- Ratings of the accessibility and usability of the court's website.

Annual reporting

Courts could consider reporting their progress against the framework on an annual basis to the JCCD. The JCCD Secretariat could collect this information and develop a report for the consideration of the Council of Chief Justices. A major benefit of such an approach would be the potential to highlight innovations and positive strategies in each jurisdiction and enable information sharing across the country about how particular courts are implementing the framework.

Further, courts should consider using their annual publications to highlight and report on relevant initiatives. This would give greater visibility to positive developments in court access strategies and improve the access of local court users.

Checklist of Proposed Actions

The below checklist is intended to guide courts in their implementation of the national framework. It is recognised that the decision as to whether to implement proposed actions is a matter for each individual court, taking into account their particular needs, jurisdictional priorities and resource capacity. The framework is designed to be flexible.

Courts could also use this checklist as a template for reporting their progress against the framework to the Judicial Council on Cultural Diversity on an annual basis. A major benefit of this is the potential to highlight innovations and positive strategies in each jurisdiction and share this information among courts across the country. The checklist may also be beneficial in assisting courts to prepare their annual reports.

	Not applicable	Reviewing	Can improve	Yes	Comments/Examples
Court Leadership and Management					
Court has adopted the framework.					
Court leaders have communicated the court's commitment to all staff and stakeholders.					
Court leaders have made public statements in support of the framework's goals.					
Court has established a cultural diversity committee.					
Court is involved in community education forums.					
Court regularly meets with key stakeholders.					
Court has a regular community visits program.					

	Not applicable	Reviewing	Can improve	Yes	Comments/Examples
Court runs tours and/or open days for relevant stakeholders and/or community members.					
Court celebrates days of significance.					
Court Planning and Policies					
Court has developed a clear plan to implement the framework.					
Court Resources (Human, Material, and Financial)					
Court encourages ongoing cultural competency training and family violence training for all judicial officers.					
Court staff receive cultural competency and family violence training.					

	Not applicable	Reviewing	Can improve	Yes	Comments/Examples
Court has employment strategies aimed at actively recruiting staff from diverse backgrounds.					
Court employs Indigenous Court Liaison Officers and Cultural Court Liaison Officers.					
Court Proceedings and Processes					
Court runs education sessions for women from Aboriginal and Torres Strait Islander backgrounds and migrant and refugee backgrounds.					
Court has implemented specialised responses.					
Client Needs and Satisfaction					
Court collects data on the demographics of court users.					
Court assesses court user satisfaction levels.					

	Not applicable	Reviewing	Can improve	Yes	Comments/Examples
Affordable and Accessible Court Services					
Court forms and brochures are available in plain English.					
Court has developed a resource list for Aboriginal and Torres Strait Islander women and migrant and refugee women on relevant services.					
Court encourages and supports the provision of on-site legal services and other support services by relevant agencies.					
Court holds daily coordination meetings.					
Court has interpreter policies that are publicly available and easily accessible.					

	Not applicable	Reviewing	Can improve	Yes	Comments/Examples
Court facilitates training in working with interpreters for judicial officers.					
Court has a separate waiting area for women attending court for family violence matters.					
Court facilitates women participating in hearings via video link, where requested and feasible.					
Court has considered the physical layout of the court, the security measures in place, and the signage and information available, in order to improve the safety and accessibility of the court.					

