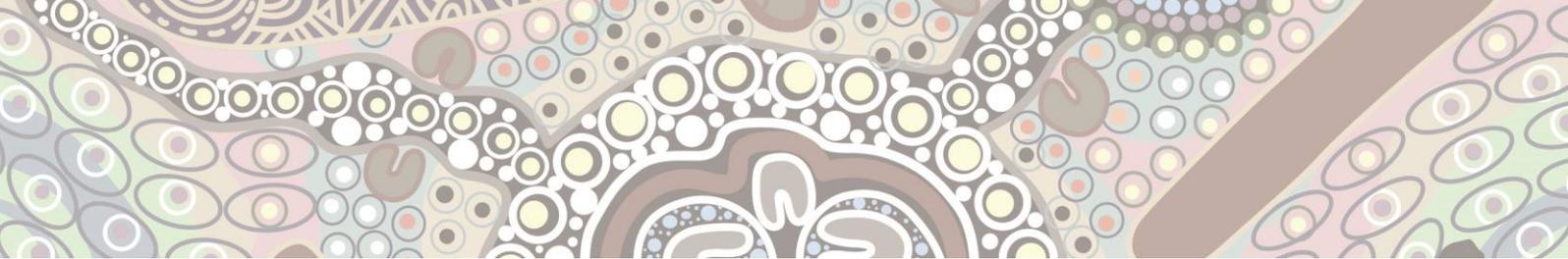


Best practice standards for representing Aboriginal clients





Acknowledgement

We acknowledge the Traditional Owners and Custodians of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

Lore and Law Artwork

We thank Luke Penrith for creating the cover artwork titled “*Lore and Law*” for Legal Aid NSW. He is an Aboriginal man from Brungle and has connections to Wiradjuri, Wotjobaluk, Yuin and Gumbaynggirr nations. The artwork represents Legal Aid NSW’s work across all practice areas, and is described by Mr Penrith:

“The two big brown boomerangs represent the LORE and LAW, both essential to Aboriginal people across Australia. The two designed boomerangs are of Aboriginal people being at times confused and nervous within the Justice system.

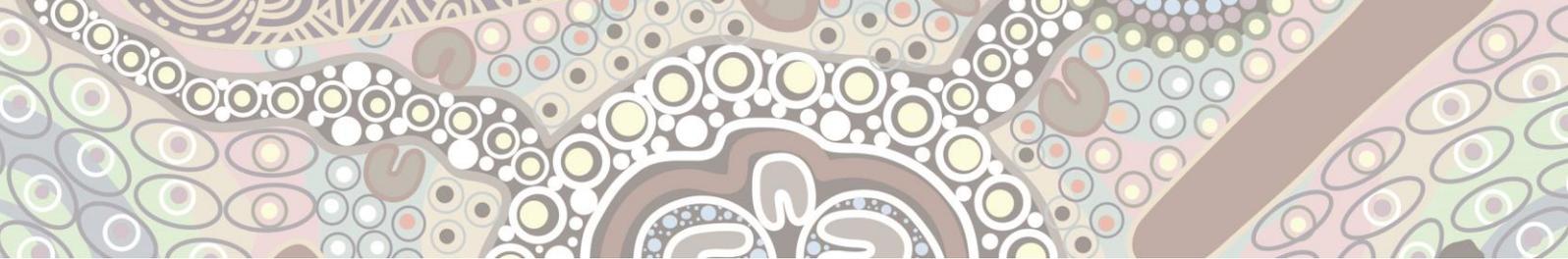
The two black hand prints represent our Elders, supporting Aboriginal people within the LORE and LAW frameworks; many Aboriginal people still live under two legal systems.

Under the hand prints are eyes, watching, acknowledging and providing support through Black eyes.

In the centre of the Yarning Circle are our Elders on one side and the NSW Legal System on the other side making informed decisions.

Aboriginal Elders are important people in our communities. They have a vital role in how community works and how the community relates with the outside the community, including government agencies and service providers.

The four pathways from the outside to the centre are the journeys of Aboriginal people making their way through the legal system, mainly Family Law, Criminal Justice, Civil Law and support for the Stolen Generation Reparations Scheme.



The U shapes are our Aboriginal solicitors / lawyers and support staff supporting our mob to navigate through the justice system. Aboriginal legal staff play an important role as they provide an opportunity to identify underlying causes of behaviour and link communities with the appropriate support services”.

Luke Penrith of Brungle

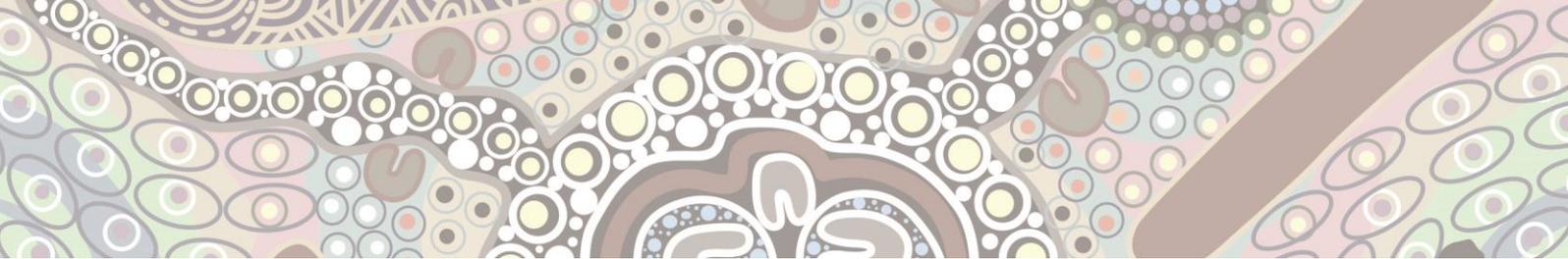
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Updated October 2020

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Opening Remarks

Our legal system is a complicated and intimidating web of jurisdictions ranging across criminal, civil and family law that often operate in complete isolation to each other. Imagine what this means to an Aboriginal person, from a marginalised background, trying to navigate their way through a system that does not understand them, their culture, their family obligations or their unique community structures. This is compounded by the fact that Aboriginal people experience multiple legal issues complicated their over-representation on all indicators of social disadvantage.

Legal Aid NSW has been delivering services to Aboriginal people within this context for over 40 years now. Over this time we have seen many passionate and committed practitioners do their absolute best to represent the needs of our clients. Practitioners whose overriding commitment to social justice has seen them fight for the rights of their Aboriginal clients.



We have also heard communities and clients say that the justice system does not work for me, in fact it often works against me. My lawyer did not understand me or my culture. I do not understand the jargon or the intent of this system.

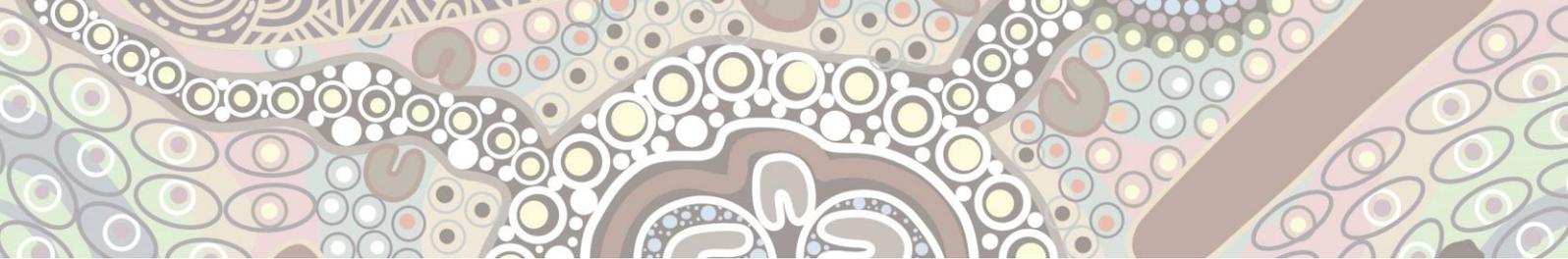
Our Aboriginal Services Branch has analysed the situation and brought together their cultural and community expertise with the subject matter experts in our practice and policy areas, along with our key partners at the Aboriginal Legal Service NSW/ACT and the Aboriginal Secretariat for Out of Home Care community organisations to provide these Best Practice Standards for Representing Aboriginal Clients.

While not the be all and end all of working with your Aboriginal clients, the standards are a starting point in the continuous journey of cultural competency. They set minimum expectations in regard to the knowledge and expertise that you need to Aboriginal culture and family and community structures to better represent those clients.

Understanding that this is just the start of the journey, we will be providing specific training sessions that draw on the elements of the standards and will be an opportunity to delve further into the points that are made. This training will range from the general principals outlined at the beginning of the standards right through tailored sessions around the elements of the civil, criminal and family law sections.

Finally I would like to acknowledge the work of the Aboriginal Services Branch here at Legal Aid NSW for bringing together a unique document that has not been produced to this extent within any jurisdiction in Australia. I also thank the contributors to the standards for the generosity they have displayed in contributing to the final product. It would not have been possible without you.

Brendan Thomas
CEO, Legal Aid NSW



1. Introduction

Aboriginal people represent 15.7% of all case and in-house duty services at Legal Aid NSW. Given this significant proportion we are committed to providing best practice legal representation to Aboriginal clients across our services. To ensure that this is done in a consistent manner these standards provide practitioners with practical information and guidance on those issues that directly impact on your representation. This will enhance your knowledge and skills in providing effective services to Aboriginal people.

It should be noted that the advice provided in these standards are general by nature and may apply differently to individual clients and their unique circumstances. You will need to assess each client and situation on a case by case basis. It is about having the tools at your disposal when they are needed.

While reference is made to Torres Strait Islander people in parts of this document it must be understood that the points made are very specific to Aboriginal communities in NSW. Also, while Aboriginal communities in NSW share many cultural beliefs, they remain individual and diverse. These standards must be read in the context of that diversity.

2. General standards across all practice areas

There are standards that are applicable to all areas of legal representation. As such all practitioners will need to be aware of their importance:

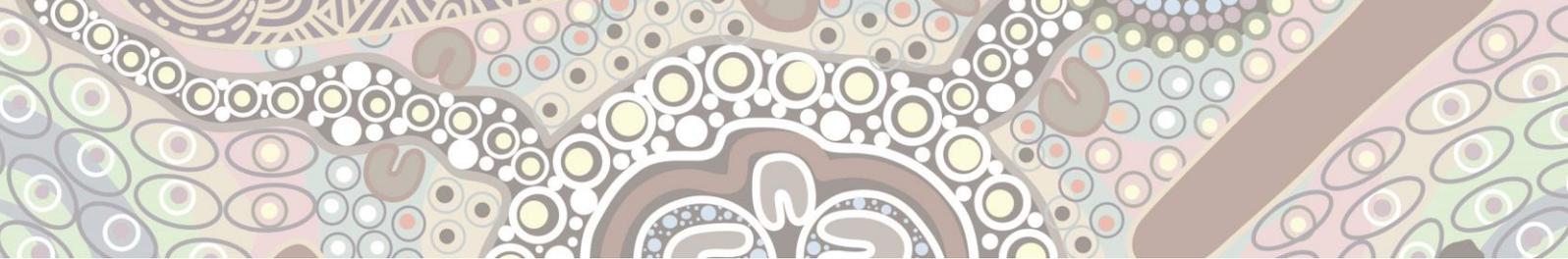
2.1. Participation in Aboriginal Cultural Competency Training

Ensure you participate in the Aboriginal Cultural Competency Training workshops coordinated by the Aboriginal Services Branch each year. This includes:

- Foundational Cultural Awareness Training attached to corporate induction;
- Training attached to each practice area's annual conference and tailored to the specific needs of that practice area (open to private practitioners and the Aboriginal Legal Service);
- Continuing Professional Development (CPD) sessions held throughout the year i.e. Reconciliation Week (open to private practitioners and the Aboriginal Legal Service); and
- Localised Cultural Awareness Training connecting local offices with their community.

New lawyers at Legal Aid NSW need to start their journey with the Foundational Aboriginal Cultural Awareness Training and continue to improve their representation of Aboriginal clients by attending Cultural Competency Training each year. The complexity of Aboriginal people, culture and issues means that cultural competency is an ongoing process and will help you acquire on-the-job knowledge to better represent your clients.

All courses will appear via the Legal Aid NSW Learning Management System on the intranet and qualify for CPD points for every hour undertaken.

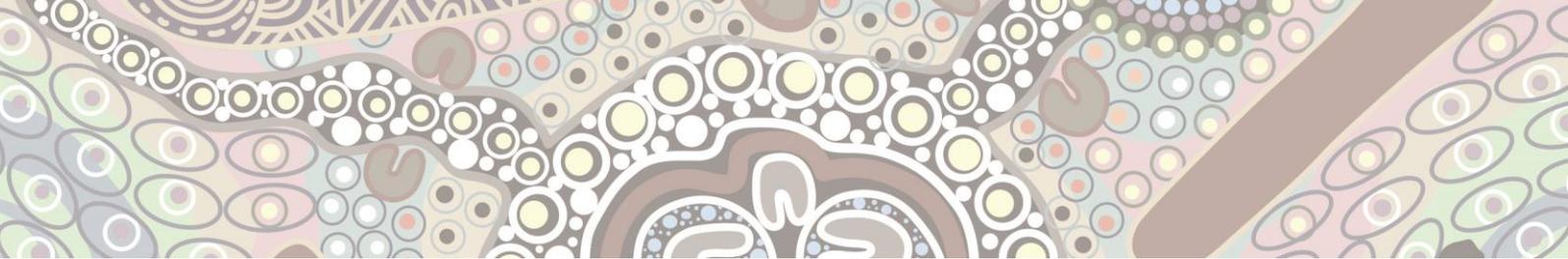


2.2. Important for all practitioners to know

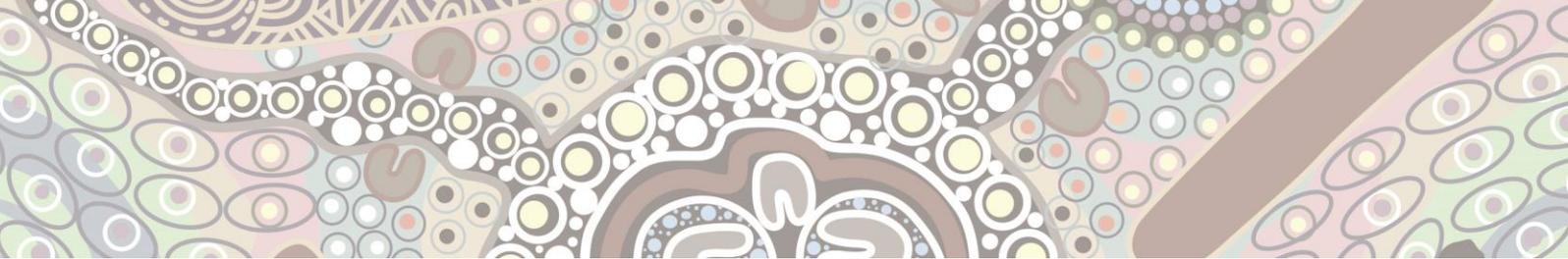
- Understand the local Aboriginal community you are working with. It is important to know what Aboriginal country you are working on and the specific cultural, community and social issues experienced by the community you are working with. Consult with the Aboriginal Field Officer, Community Liaison Officer, local Aboriginal people, the Aboriginal Services Branch and/or other Aboriginal Legal Aid NSW staff within your office, if you are unsure. This information will help you connect with your client and provide a better service.
- Be aware of the historical and current policy issues that impact many Aboriginal people and communities that you will work with. This includes transgenerational trauma that has a significant impact on Aboriginal people's lives and will impact on your representation of Aboriginal clients. Legal Aid NSW provides very specific training for this.
- Be aware that many Legal Aid NSW clients will have significant trauma in their lives and you will need to understand that this will impact interactions with the legal system. The trauma can also have an influence on drug and alcohol dependency.
- As a lawyer at Legal Aid NSW dealing with vulnerable clients you need to make sure that you take care of yourself, particularly in relation to vicarious trauma. We encourage you to debrief with your colleagues to support and share experiences and lessons learnt in dealing with vulnerable clients and difficult situations. Legal Aid NSW provides training around vicarious trauma and we encourage you to contact the [Employee Assistance Program](#) (EAP) if you require further assistance.
- If you are attending an event or presenting Community Legal Education (CLE), outreach or other community event, it is appropriate that you provide an Acknowledgement of Country. For more information please see the [Legal Aid NSW Welcome to Country and Acknowledgment of Country Guidelines](#).
- It is important to understand and respect that although you may work with Aboriginal clients in a professional capacity, across a range of service delivery methods and/or years, this cannot be taken as being proficient in the breadth of Aboriginal culture and identity. In this professional capacity an Aboriginal person is presenting you with a limited part of their life during a period of what will quite often be extreme distress. These standards and the Aboriginal Cultural Competency training will provide you with tools to better represent your Aboriginal clients during this period in their lives.

2.3. Communication with Aboriginal clients

- Be aware of communication and linguistic differences between Aboriginal and non-Aboriginal people. Ensure that you use plain language and not complicated legal jargon when communicating with your client. We encourage you to use open ended questions and allow time for your client to tell you their response. You need to ensure that your client understands your advice because in some circumstances a client may be too embarrassed to tell you that they don't understand it. This is commonly referred to as gratuitous concurrence. For more information we recommend reading research undertaken by Dr Dianna Eades.



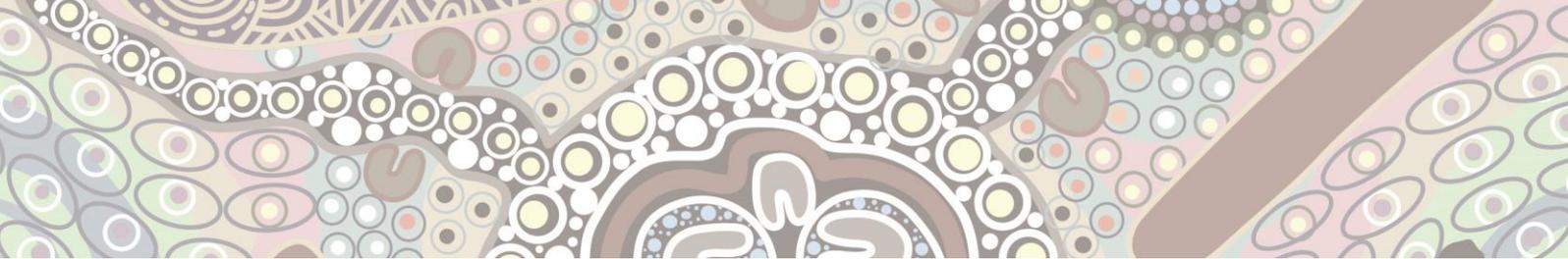
- Due in part to the detrimental impact of past interactions with those seen as authority figures (government, police, lawyers) you need to allow more time to build rapport and trust with your client. This involves listening to the client's story without interruption. We understand that practitioners often have time constraints that will inhibit their ability to spend this time with the client however, all efforts should be made to allocate meaningful time for a conference with an Aboriginal client. For more information please see the Legal Aid NSW *What Works for Vulnerable Clients* report 2019.
- During periods of silence try not to feel pressure to rush your client or think they have no opinion or don't have anything to say. They may be considering your advice and taking time to make a decision. Also, do not view this as an indication of unfriendly behaviour or that communication has broken down. "While silence in western societies can often be uncomfortable, in Aboriginal cultures it is a legitimate feature of personal interaction and does not have the same negative connotations. Pause after making each point. This allows clients to digest your advice and ask any questions".ⁱ
- Consider whether your client is comfortable speaking with you on a one-on-one basis or would prefer to invite family members or support person to attend the conference. A support person may be a family member, a community member or liaison officer from Legal Aid NSW or other services. Aboriginal Client and Community Support Officers located in the Local Court are an example of such positions which also exist across many justice and social services agencies.
- Be aware that many Aboriginal clients will predominantly only communicate with other Aboriginal people on a consistent basis and their use and understanding of the English language may not be the same as yours. Within this there are distinctive features of accent, grammar, words and meanings. This is often referred to as 'Aboriginal English' and retains characteristics of traditional Aboriginal dialects.ⁱⁱ
- Do not adopt language used by Aboriginal people when communicating with your client because it can be considered inappropriate. It is important to be authentic, respectful and polite when communicating with your Aboriginal client.
- To avoid receiving short or monosyllabic responses (yes or no) or non-verbal communication such as nods and shrugs, understand that the tone of voice is very important in Aboriginal culture in conveying respect and understandingⁱⁱⁱ. This respectful style supports more effective communication with clients.
- Invite questions once you have finished your explanations; ensure you do not give the impression of being in a hurry to finish the meeting.^{iv}
- Be aware that avoiding eye contact can be a sign of respect for many Aboriginal people. Do not take this as a sign of disengagement and never force eye contact in these situations.^v
- Be aware that Aboriginal communication styles are often less direct than those of non-Aboriginal people. "For example, when seeking personal information, Aboriginal people may attempt to build up a gradual overall picture and ask more direct questions only once some understanding has been established. The 'straight to the point' approach may be unsuccessful when speaking to Aboriginal people".^{vi}



- Understand that terms of endearment such as brother (or bro), sister (or sis), cuz (or cousin), aunt or uncle may be applied to non-blood relatives as well as blood relatives and are often an acknowledgment of the other person's Aboriginality, or relationship between the two.^{vii}
- Rather than specific dates and times Aboriginal people may often refer to physical, social or climatic events when recalling something. In this context, do not force a response as it may produce misleading answers.^{viii}
- The concept of shame is a powerful social construct with Aboriginal communities. This will be particularly strong around issues such as domestic and/or family violence, sexual assault and substance abuse and may impact on what a client is prepared to tell you.^{ix}
- Any child raising issues of abuse may imply a strong sense of shame for themselves, while also being reluctant to bring shame on their family or another member of their community.
- “Be aware that Aboriginal clients may prefer to speak to a solicitor of the same sex, particularly female clients who have experienced sexual assault and/or domestic and/or family violence.”^x
- Oral communication is a fundamental component of Aboriginal culture and is a vital tool in your effective communication with clients and should be utilised to support all written correspondence.
- “Handshaking for males can be very important—a handshake will generally be appropriate when you first meet”.^{xi} There is a wide diversity in the style of handshake employed by many Aboriginal people which are indicative of the type of relationship between the two parties. Close relations and friends are less formal and may be more complicated in gestures while others may be the more standard and formal when engaging with professionals. Follow the lead of your client to determine the style being employed at the time.
- Due to a history of paternalistic attitudes and strategies employed by government and service providers, some Aboriginal clients may feel that they are patronised or ‘talked down to’. You must always treat the client as equal. To help build a relationship of trust and respect consider inviting clients to bring a friend / relative / support person / Aboriginal Field Officer / Community Liaison Officer to the interview, who may assist in this process. Ensure that the client is comfortable with that person's presence during the interview, particularly at times when sensitive information may be disclosed.^{xii}
- Never promise something that you cannot deliver and “understand that the ‘grapevine’ effect works very well” in Aboriginal communities; any failure to reply or follow-up something promised is likely to be public knowledge in a short period and may jeopardise any credibility you have previously established.^{xiii}

2.4. Aboriginal Kinship structures

- Be aware that Aboriginal Kinship structures and/or family dynamics are different to non-Aboriginal people. Extended family members will often have the same status as immediate family members in an Aboriginal person's support network and may accompany clients to court and client conferences.



- Kinship refers to a person who shares a cultural or community connection with an Aboriginal person that is recognised by that person, their family or community. This includes extended family including aunts, uncles, cousins, nieces and/or nephews. However, the connection is not limited to a biological relationship, but refers to a culturally defined relationship reflecting cultural bonds and obligations. For more information we encourage you to undertake Dr Lynette Riley's, Aboriginal Kinship training at Legal Aid NSW.

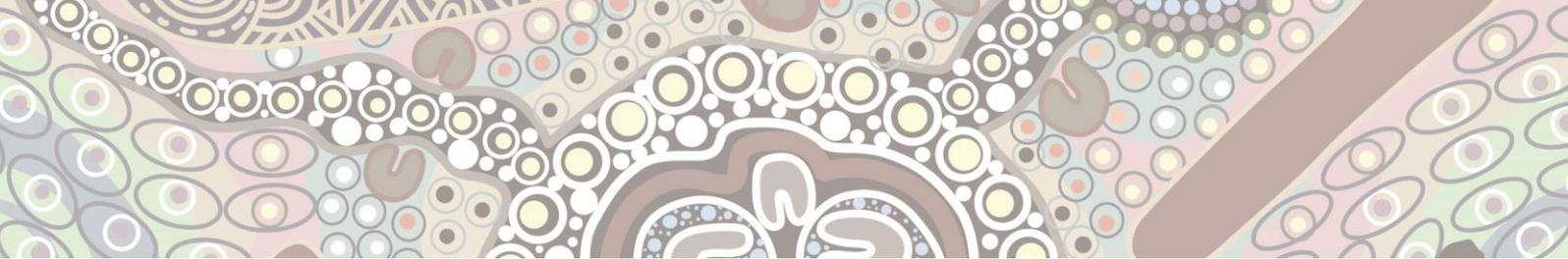
2.5. Engaging with Aboriginal communities

- Understand that Elders play a major and vital role in the Aboriginal community and will often assume high authority on a variety of matters. In this respect many communities have established Elders networks or groups that can be an important engagement tool for any services undertaken in that community.
- Where a community is dealing with 'Sorry Business' (a death within the community), it is both respectful and practical for staff not to make any arrangements to see clients or conduct CLE or outreach until advised by the community of an appropriate time.
- If you have an Aboriginal Services Branch polo shirt consider wearing it when conducting interviews, advice clinics, CLE, outreach or Aboriginal related work events e.g. NAIDOC week events. The shirts are a mark of respect to Aboriginal culture and are worn to raise awareness in the community that Legal Aid NSW is a committed provider of services to the community.

There are shirts only available to Legal Aid NSW staff with printed Aboriginal artwork. The print is the artwork created by Luke Penrith, described at the beginning of this document. These shirts can be obtained for the above-mentioned purposes.

2.6. Applying for Legal Aid

- When assisting clients to complete the Legal Aid application form (where you are required to ask if the client is Aboriginal and/or Torres Strait Islander), do not assume by their appearance that they are not. Aboriginality is complex and not necessarily defined by appearance.
- An Aboriginal person is commonly defined and widely accepted by Aboriginal communities and organisations as someone who:
 - (a) is a member of the Aboriginal race of Australia, and
 - (b) identifies as an Aboriginal person, and
 - (c) is accepted by the Aboriginal community as an Aboriginal person.
- This definition is contained in the NSW Aboriginal Land Rights Act. It is also widely utilised by both government and non-government organisations regarding eligibility for certain services (housing or health) and regarding Aboriginal Identified employment programs.
- Be aware that Aboriginal clients may have issues with literacy and numeracy and may require assistance with filling out the Legal Aid application form. This will need to be assessed on a case by case basis as not all Aboriginal people will require assistance.



2.7. Appointments and court appearances with Aboriginal Clients

- It has been well established that the most vulnerable clients may present with multiple legal issues that cross over into family law, criminal law and civil law. As Aboriginal clients are over-represented in this client group, it is important to adopt a holistic approach to assisting the client to address all legal needs. This will often include conducting warm referrals to other sections of Legal Aid NSW or external services.
- Introduce yourself to the Aboriginal Field Officers and/or Community Liaison Officers in your office (limited locations). They can assist with clients that have extended needs and multi practice area needs, as they work across all three practice areas and have the flexibility to undertake follow-up with clients when required. For more information please see the [Working with Aboriginal Field Officer and Community Liaison Officer Guide](#) on the intranet.
- Contact your client at least 24 hours before the appointment time to remind the client of the appointment. If you have any difficulty contacting the client, an Aboriginal Field Officer and/or Community Liaison Officer attached to your office can assist. Due to the complexity of responsibilities Aboriginal people may have they may not prioritise a client appointment or court appearance when there are other significant factors affecting their ability to attend and engage in the process e.g. the care of an elderly parent or multiple children of various ages.
- If your client does not attend an appointment or court appearance, or if you haven't heard from your client be aware that some clients may not have any capacity to contact you e.g. no phone credit. You are encouraged to contact the Aboriginal Field Officer and/or Community Liaison Officer in your area for assistance. They are well connected within the community and can follow up to see if the client still needs help and arrange for the client to see you. Where there is no Aboriginal Field Officer and/or Community Liaison Officer look for Aboriginal support officers in relevant NSW government and non-government agencies i.e. Aboriginal Client and Community Support Officers attached to numerous courts throughout NSW.
- Maintain contact with clients so they know you are helping them. This is to ensure the client is aware that you are working on their case and will help in building trust between you and your client.
- When working with Aboriginal clients be aware that a lack of resources or capacity may make it difficult to attend appointments. In regional locations this may be exacerbated by a lack of public transport options and distances that need to be travelled. Due to socio-economic factors such as literacy and numeracy, identification documents and financial costs may mean that Aboriginal people may not have a driver's license.
- If an Aboriginal person attends more than twice about the same issue then the practitioner has an obligation not just to deliver the service in the same way again and again, but to have some insight into what they can do differently to assist the client's progress.
- We also encourage you to work with your office manager to implement strategies to assist in making the office more welcoming for Aboriginal clients. You may consider placing Aboriginal artwork, posters or publications such as the Koori Mail, or Aboriginal and Torres Strait Islander desk top reception flags in the office. The Aboriginal Services Branch can arrange these flags for you.



2.8. Unconscious Bias

- Be aware of the principles of ‘unconscious bias’ and avoid them in your services to Aboriginal clients. Unconscious bias is:
 - “attitudes beyond our regular perceptions of ourselves and others;
 - reinforced by our environment and experiences; and
 - the basis for a great deal of our patterns of behaviour about diversity”.^{xiv}
- Legal Aid NSW acknowledges that this is a complex issue. To this end specific training is being developed and will be available in late 2020.

3. Criminal Law Division Standards

3.1. Introduction

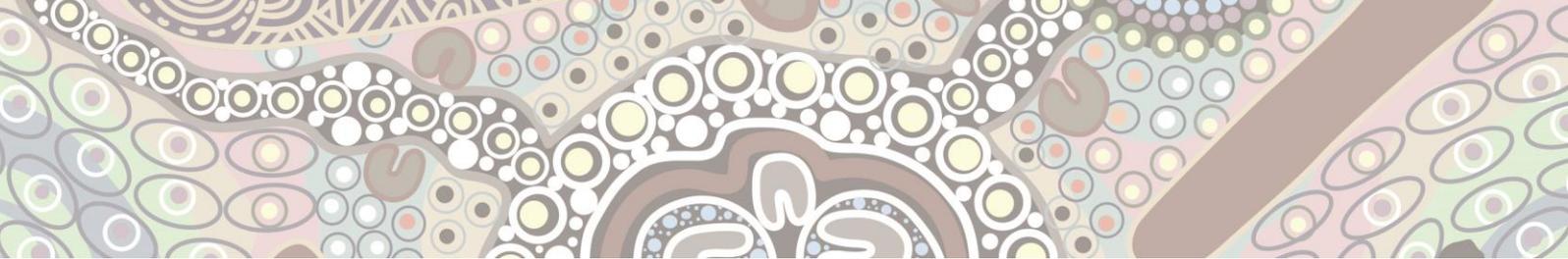
Legal Aid NSW plays a vital role in the representation of Aboriginal people within the criminal justice system. In 2018-2019 16.2% of all case and in-house duty services in criminal law matters were delivered to Aboriginal people. This is a significant increase over previous years.

The Aboriginal Legal Service (ALS) remains a primary provider of criminal law representation to Aboriginal people. Legal Aid NSW works in partnership with the ALS to deliver co-ordinated services to Aboriginal people. This is reflected in the [Statement of Commitment](#).

These are important factors for practitioners representing Aboriginal clients to consider:

3.2. Aboriginal clients detained or arrested

- Be aware of Part 9 in the *Law Enforcement (Powers and the Responsibilities) Act 2002 (LEPRA)* regarding investigation and questioning of persons under arrest and relevant safeguards. Section 12 of LEPRA provides that the regulations may make provisions for Aboriginal and/or Torres Strait Islander people.
- Understand the *Law Enforcement (Powers and Responsibilities) Regulation 2016* (“the Regulations”) and the provisions relating to an Aboriginal and/or Torres Strait Islander person being detained and/or arrested under Division 3. This includes:
 - **Section 29** of the Regulations state that a custody manager “must, as far as practicable, assist the person in exercising the person’s rights under Part 9 of the Act, including any right to make a telephone call to a legal practitioner, support person or other person”.^{xv}
 - **Section 31** of the Regulations indicate that “a detained person or protected suspect who is a vulnerable person is entitled to have a support person present during any investigative procedure in which the detained person or protected suspect is to participate”.^{xvi}
 - **Section 37** of the Regulations state “if a detained person or protected suspect is an Aboriginal person or Torres Strait Islander, then, unless the custody manager for the person is aware that the person has arranged for a legal practitioner to be present during questioning of the person, the custody manager must immediately inform the person that a



representative of the Aboriginal Legal Service (NSW/ACT) Limited will be notified, that the person is being detained in respect of an offence, and of the place at which the person is being detained, and notify such a representative accordingly”.^{xvii}

- **Section 38** of the Regulations indicate that if “a detained person or protected suspect who is a vulnerable person is given a caution, the custody manager or other person giving the caution must take appropriate steps to ensure that the detained person or protected suspect understands the caution”.^{xviii}
 - In addition, see **Sections 28-35** and **Sections 39-40** of the Regulations, which also relate to Aboriginal people’s interaction with police.
- Be aware of the Custody Notification Service (CNS) operated by the Aboriginal Legal Service. This is a 24-hour, 7 day a week telephone advice service for Aboriginal and/or Torres Strait Islander people. A custody manager must contact the service if a detained person or protected suspect is Aboriginal and/or Torres Strait Islander (Section 37 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016*). The service has recently been expanded so that the police must also contact the CNS if an Aboriginal and/or Torres Strait Islander person is taken into protective custody for intoxication.
 - Please contact the CNS coordinator at the ALS, Redfern office (02 8303 6600) if you require a CNS record for forensic purposes (i.e. if your client was injured in police custody and this was disclosed to the CNS operator or client participated in an interview and was not noted on the CNS records). Please note that these records should only be obtained if they are required to advance the interests of your client’s case.
 - Understand the provisions in the *Crime (Forensic Procedure) Act 2000* that specifically relates to Aboriginal and/or Torres Strait Islander people including the requirement for the ALS to be contacted if a forensic procedure is to be undertaken as outlined in s10 (4) of the Act:
 - (4) Before asking the suspect to consent to a forensic procedure, the police officer must:
 - (a) inform the suspect that a representative of an Aboriginal legal aid organisation will be notified that the suspect is to be asked to consent to a forensic procedure, and
 - (b) notify such a representative accordingly.^{xix}

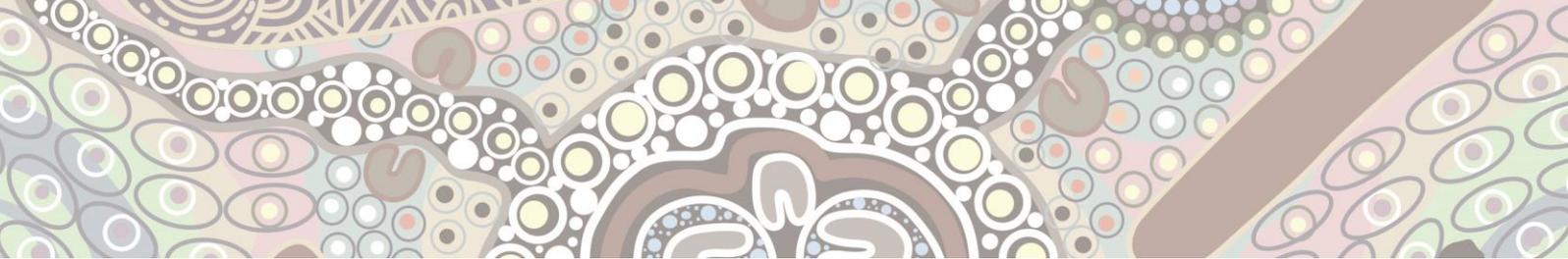
3.3. Bail Applications for Aboriginal clients

- Make every effort to ensure bail conditions are appropriate. Ensure that your client fully understands the bail conditions and is not agreeing to conditions that are not understood or unable to be complied with.
- Ask your client if they have any family or a support person/s that can assist with accommodation, surety or any other conditions regarding bail. Aboriginal people may have family and community support networks who may be able to assist.

- Be aware that a bail authority is to consider any special vulnerability or needs of the accused person because they are Aboriginal and/or Torres Strait Islander (*s18(1)(k) Bail Act 2013*). You should make submissions on this issue.
- We encourage practitioners to maintain continuity of files and client representation where possible. This reduces the risk of the client having to repeat the process and story and details of their circumstances with multiple practitioners. Continuity maintains the trust/good faith built in the relationship which will need to be re-established by a new practitioner. Clients having to re-tell their stories can also be distressing for them.
- You may be able to engage with an Aboriginal Client and Community Support Officer at your Local Court to provide support to your client in their court proceedings. They may assist with gaining access to rehabilitation, bail applications, locating clients and creating plans to prevent breaches of Apprehended Violence Orders (such as “What’s Your Plan”). These positions are located in many local courts throughout NSW and are coordinated by the Aboriginal Services Unit within the Department of Communities & Justice who can provide further details on their locations and services.

3.4. Sentencing Aboriginal clients

- All practitioners must be aware of sections 3A and 21A *Crimes (Sentencing Procedure) Act 1999* and sections 16A and 17A *Crimes Act 1914 Cth*.
- Understand the principles in ***R v Fernando (1992) 76 Crim R 58***. In this case the Court recognised circumstances of disadvantage that may be associated with Aboriginality in sentencing proceedings. Wood J considered material to distil sentencing principles relevant to Indigenous offenders. The circumstances of disadvantage require evidence. The propositions are as follows;
 - (1) The same sentencing principles are to be applied in every case irrespective of membership of an ethnic group;
 - (2) The relevance of Aboriginality is not necessarily to mitigate punishment but to put context to the offence and offender’s circumstances;
 - (3) Recognition of the problems of alcohol abuse and violence are significant and their cure requires more consideration than imposing imprisonment;
 - (4) The court must be careful in the pursuit of their sentencing policies to not deprive Aboriginals of the protection which it is assumed punishment provides. A belief cannot be allowed to go about that serious violence by drunken person within their society are treated by the law as occurrences of little moment;
 - (5) Where alcohol abuse reflects the socio-economic circumstances and childhood environment, that can be taken into account as a mitigating factor. The court must recognise the endemic presence of alcohol, the grave social difficulties faced by those communities where poor self-image, lack of education and work reinforcing their resort to alcohol and its worse effects;

- 
- (6) In sentencing the court must avoid racism and realistically assess the objective seriousness of the crime within its local setting by reference to the offender's subjective circumstances;
 - (7) In sentencing an Aboriginal person from a deprived or disadvantaged background due to social or economic factors, a long term of imprisonment may be unduly harsh if it is served in an isolating environment with no cultural or relevantly social connections;
 - (8) Full weight must be given to the competing public interest to rehabilitation of the offender and the avoidance of recidivism, whilst balancing out consideration of the objective seriousness of the offence/s.

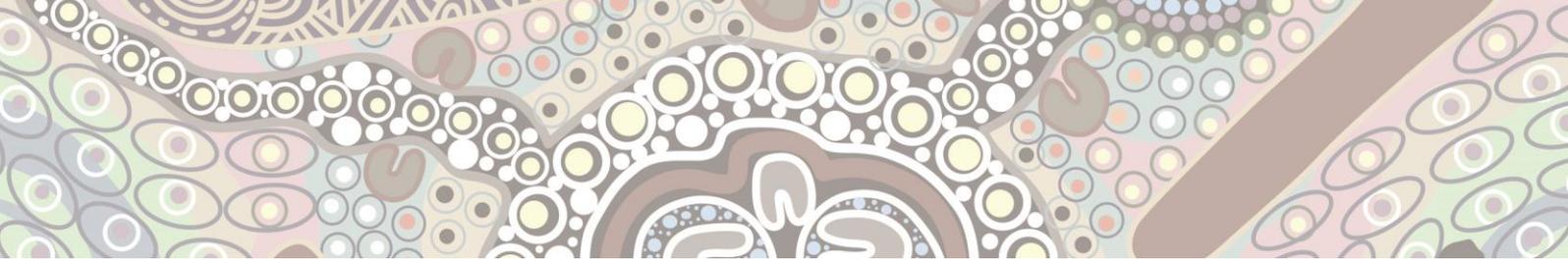
These are ways that the **Fernando** principles can be applied in the sentencing of Aboriginal offenders:

- (a) Fixing the length of sentences;
 - (b) Finding special circumstances;
 - (c) The disadvantages of Aboriginality as an explanation of offending behaviour;
 - (d) Recognising the legacy of dislocation and dispossession of Aboriginal people as causes of offending behaviour;
 - (e) Explaining the difficulties in prison experienced by Aboriginal offenders; and
 - (f) Explaining the use of drugs in Aboriginal communities.
- Understand the principles in ***Bugmy v The Queen (2013) 249 CLR 571*** where the High Court decided the relevancy of an offender's background of profound social deprivation to the application of sentencing principles.

The deprived background of an Aboriginal offender may mitigate the sentence appropriate for an offence, just as the deprived background of a non-Aboriginal offender may mitigate that offender's sentence. Importantly the majority also held that the effects of a background of significant deprivation do not diminish over time and are to be given full weight as factors for consideration in sentencing. The High Court held that an offender's subjective case should be given its full weight as a factor in sentencing. The analysis a sentencing judge must apply to an offender's subjective case will be the same whatever the race of the offender, in order to achieve individualised justice.

The effect of the decision is that Aboriginal offenders will be able to rely upon evidence of systemic social deprivation as a relevant factor in determining an appropriate sentence on an individual basis. It is important as it recognises that the effects of a background of profound social deprivation do not diminish over time or with repeat offending. If sentencing courts are to give full weight to the effects of social deprivation, this may effect the over-representation of Aboriginal people in custody.

- Be aware of *The Bar Book*. It contains chapters of research relating to experiences of disadvantage and deprivation. The purpose of this resource is to assist in the preparation and presentation of evidence to establish the application of the *Bugmy* principles. For more information see [The Bar Book Project](#) on the Public Defenders website.



- Understand the functions of the Drug Court as an alternative sentencing program and consider referring clients where appropriate. The eligibility criteria is set out in section 5 of the Drug Court Act 1998 and is **outlined in Annexure A**.
- Be aware of Aboriginal specific support service, programs and rehabilitation services available to Aboriginal clients.

3.5. Children's Legal Service

- Be aware of the Custody Notification Service (CNS) operated by ALS and the requirement for the custody manager to contact the service if a detained person or protected suspect is Aboriginal and/or Torres Strait Islander (see 3.2 for contact details).
- Understand Aboriginal kinship and family dynamics are different to non-Aboriginal families (see 2.3 for more information on kinship). This is particularly relevant and important to keep in mind when having a client conference.
- Be aware of the Youth Koori Court located in Parramatta and Surry Hills. It is an alternative diversionary program for Young Aboriginal offenders. The eligibility criteria to participate in this program is outlined in *Practice Note 11: Youth Koori Court, issued 16 January 2015* (see **Annexure A** for the eligibility criteria).

4. Civil Law Division Standards

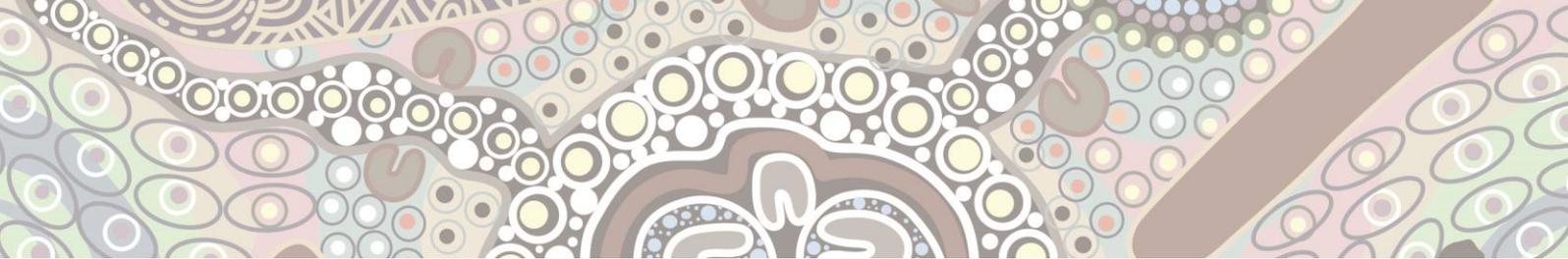
4.1. Introduction

Legal Aid NSW is a primary provider of Civil Law services to Aboriginal people. In 2018-19 15% of all case and in-house duty services in civil law matters were delivered to Aboriginal people. Legal Aid NSW commissioned research by Chris Cunneen into *'the Civil and Family Law Needs of Aboriginal people in NSW'* in 2008.

There are a variety of important factors for Civil Law practitioners representing Aboriginal clients to consider:

4.2. Important Service Model Factors

- A recent evaluation of our specialist **Civil Law Service for Aboriginal Communities (CLSAC)** found that there were a number of factors that contributed to the success of the service model. These principles are applicable across the civil law division and should be the basis of best practice civil law services to Aboriginal people. CLSAC was identified as modelling "best practice in outreach and collective wellbeing promotion" by:
 - Delivering services face to face;
 - Being flexible – meeting clients in places where they are comfortable;
 - Offering legal services on a drop-in basis, or for part of the day;

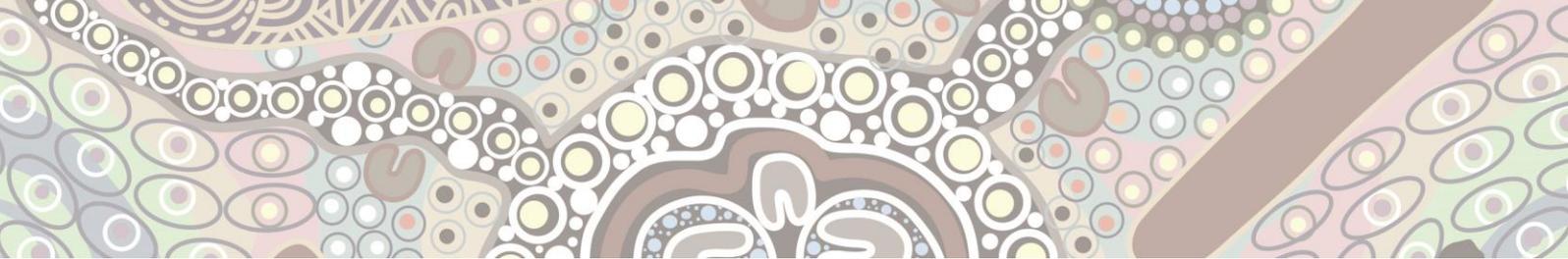


- Adopting an unhurried approach to client interactions;
- Conducting legal health checks to assist the client to understand and prioritise their legal and non-legal needs, to allow practitioners to identify avenues for redress;
- Making sustained efforts to link clients to services that meet their non-legal needs; and
- The equal reverence for legal and cultural knowledge within the team.
- These client-focused service delivery approaches are underpinned by a commitment to:
 - Showing deep respect and compassion for clients, their communities and responsibilities;
 - Learning about the history and culture of the areas in which services are provided or the areas the clients are from;
 - Deep engagement with communities through relationships with Traditional Owners, Elders and community leaders and allowing relationships to develop over time;
 - Acknowledging the complexity of issues faced by clients;
 - Understanding the pervasiveness and impacts of trauma, and providing services in a trauma-informed way; and
 - Engaging with clients family members, with consent.
- These factors are further supported by the Legal Aid NSW *What Works for Vulnerable Clients* report which states:
 - **Flexibility of service.** The service delivery method must be flexible to meet the needs of vulnerable clients with recognition of how trauma, cultural barriers and complex life circumstances make it challenging to access services. Clients must be aware of the service, how to access it and feel comfortable engaging with the service.
 - **Consultations with local stakeholders prior to establishment of the service to identify appropriate service design.** Analysis of community demographics and local service gaps, accessibility including proximity to public transport and community preferences were some of the considerations to ensure services met local needs and the needs of the target group.
 - **Applying a client centred and trauma informed approach, ensured the service met the needs of the client group.** CLSAC works in partnership with Aboriginal communities and community-based organisations to identify appropriate outreach locations. Outreach is delivered where and when it suits the client, and there is an option of phone advice between services to provide consistent service delivery. Event-based outreach is also a feature of the service based on community preference.

4.3. Common Civil Law Matters

Below are some of the most common areas of civil law that Aboriginal people seek assistance from Legal Aid NSW for.

Stolen Generations Reparations Scheme



The Stolen Generations Reparations Scheme allows for reparations payments to be made to people removed from their families.

When you are assisting members of the Stolen Generations, you can reduce the likelihood of re-traumatising your clients by reading and applying the tips in the following fact [sheet](#):

Housing issues

There are a range of housing issues faced by Aboriginal people:

- Aboriginal people face higher rates of homelessness than the general population;
- Aboriginal people are over-represented in public and social housing;
- Aboriginal people face discrimination in accessing private rental accommodation;
- Barriers to accessing public and social housing due to over-incarceration rates and punitive Department of Housing policies around negative classifications, damage caused by overcrowding, long public housing wait lists and debts due to overcrowding or domestic and/or family violence;
- Housing in some communities is sub-standard due to a historical and current underfunding in Aboriginal communities, particularly of routine maintenance.

The landlord may be a private landlord, the Department of Housing, a Local Aboriginal Land Corporation or a social housing provider.

Consumer and consumer credit

The Department of Prime Minister and Cabinet states that:

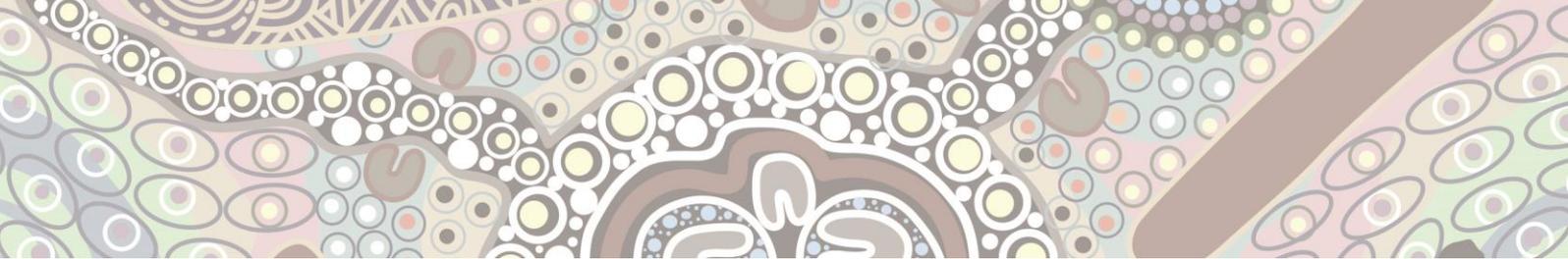
“Aboriginal and Torres Strait Islander people face unique barriers to participation in the financial sector due to historic economic marginalisation and low intergenerational wealth transfer. Historical policies which restricted Indigenous wealth, home ownership and business ownership continue to burden Aboriginal and Torres Strait Islander people.

This has led to Indigenous businesses being undercapitalised and the need for government interventions which are improving the lives of Indigenous Australians. These barriers are compounded in remote Australia, where access to essential financial infrastructure and fit-for-purpose banking and financial advice is limited. There are also more fundamental barriers such as lower levels of financial literacy, and limited exposure to people with higher levels of financial literacy”.^{xx}

For further information on this go to [The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#).

The most common consumer and consumer credit issues faced by Aboriginal people include:

- Aboriginal funeral insurance; and/or
- Targeting of Aboriginal communities and individuals by predatory and unscrupulous traders, for example consumer lease providers, telecommunications companies.



Be aware that the cost of living in rural, regional and remote areas is high, and is often inadequately considered by creditors when making assessment as to the suitability of a credit product. Also be aware of the extent of demand-sharing in your client's life and the impact that this has on their disposable income and cash flow.

Social security

Aboriginal people are eligible for the same social security benefits as all other Australians. Additionally, Aboriginal people often receive worse outcomes when dealing with Centrelink, such as:

- Income management – some Aboriginal people in NSW may be income managed if they live in particular areas. If the person has a Basics Card, it's a good indication that they have been income managed.
- Cashless Debit Card – some Aboriginal people in NSW have the Cashless Debit Card, which channels the bulk social security payment onto a commercially managed card, and a small portion into their bank account.
- Compliance penalties – Aboriginal people are penalised at a far greater rate than the rest of the population and are less likely to get the benefit of a special circumstances exemption.
- Access to the Disability Support Pension (DSP) – Aboriginal people have trouble accessing the DSP.
- Debts – Aboriginal people are more likely to accumulate Centrelink debts, particularly due to changes in the care of children, or marriage/de facto relationships and income related debts.

The only payment specific to Aboriginal people is ABSTUDY. This is not a legislated payment and is a creature of statute.

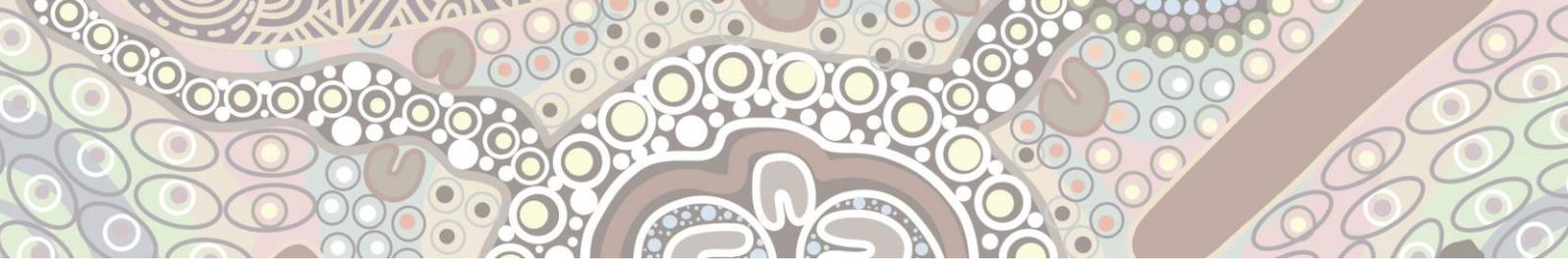
Police mistreatment and harassment

Aboriginal clients may report having been mistreated by police. This may arise from historical and present over-policing of Aboriginal communities and clients and entrenched racist views leading to discriminatory treatment by police. Aboriginal people may rightly fear that an interaction with the police over a minor incident or crime, may result in a death in custody.

The treatment clients report may give rise to a claim against police for false imprisonment, assault/battery and/or malicious prosecution. When Aboriginal clients report these issues, it is important to obtain as much information as the client can recall in relation to any incidents with police, to allow for further investigation into the merit of any claim.

If an Aboriginal client reports harassment by police it is worth noting they may be the subject of a Suspect Target Management Plan (STMP). The STMP is an NSW Police Force initiative that aims to reduce crime by identifying and targeting 'repeat offenders'. Research based on data from five local area commands in NSW for the 2015 financial year indicates that Aboriginal and Torres Strait islander Australians are significantly over-represented as [STMP targets](#).

If an Aboriginal client reports continuous harassment, searches, interrogation and surveillance, they may be an STMP target, and the police conduct is arguably without any apparent lawful basis. It is



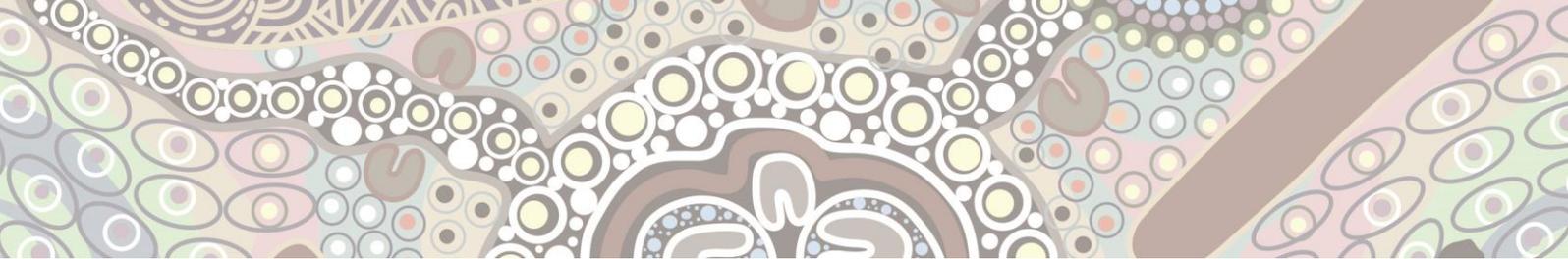
important to try and obtain as much information from the client as possible, and consideration given as to whether investigation into the merit of a claim should occur.

Racial discrimination

Aboriginal clients may have been discriminated against based on their race, which is unlawful under state and federal legislation in protected areas including (but not limited to) employment, education, provision of goods and services and accommodation. When a client reports a potential discrimination complaint it is important to advise them of the differences between the Commonwealth and State jurisdictions, including the differing limitation periods for lodging a complaint (6 months and 12 months respectively).

4.4. Community Legal Education and Outreach services

- Understand community dynamics and politics but do not become involved in them. Within this you may need to take CLE and outreach to more than one venue to ensure you are providing a service to the whole community and not just one faction or family.
- Link in with existing networks/community groups to conduct sessions so that you are not setting up 'yet another thing' for community members to attend.
- Be aware of local issues/trends/events/circumstances and the impacts it will have on your service delivery. This will include the best times of the day and week to conduct events that may be occurring, that will impact on people's participation. For example 'Sorry Business', NAIDOC Week or the Aboriginal Rugby League Knockout (Koori Knockout).
- Allow time for participation numbers to build over time – be proactive and don't wait for people to come to you. Meet people and service providers to explain how you can assist, meet with stakeholders and elders each time you are in the community and ensure that you develop and maintain trust. Don't abandon outreach that has low numbers at the start, you may just need to establish a relationship with the community.
- Be aware of other legal service providers working in the community or region, including the Aboriginal Legal Service, Community Legal Centres, local private practitioners or the pro bono work being undertaken by large private law firms and link in with them and/or work in partnership.
- Utilise the [Aboriginal Civil Law Check-up form](#).



5. Family Law Division Standards

5.1. Introduction

Legal Aid NSW is a primary provider of Family Law Services to Aboriginal people in NSW, including in Care and Protection matters. In 2018-19 13.2% of all case and in-house duty services were delivered to Aboriginal people.

Despite the data it is widely acknowledged that there is widespread unmet services in regard to both Civil and Family Law in Aboriginal communities throughout NSW. Legal Aid NSW commissioned the research project *'Civil and Family Law Needs of Aboriginal People in NSW'* by Chris Cunneen. This report provided Legal Aid NSW with a number of recommendations on how to better meet these needs and has informed the services now provided to Aboriginal people and communities throughout NSW.

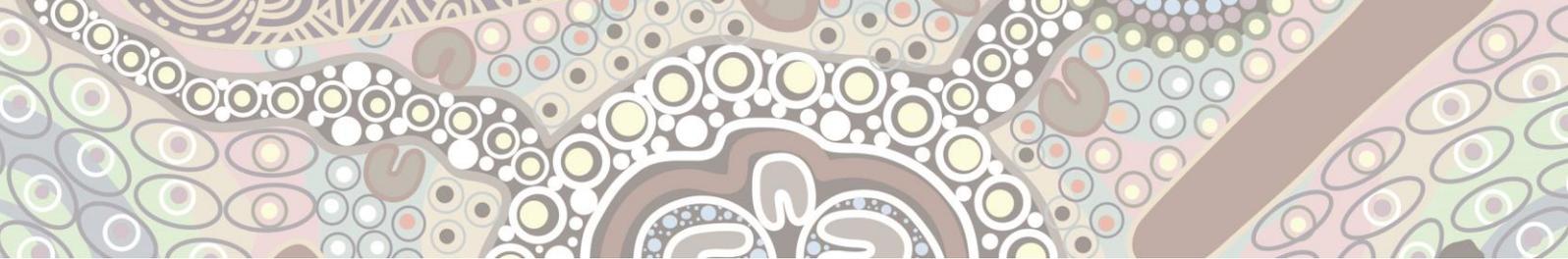
Specific Standards for Family Law practitioners include:

5.2. Access to the Family Law Courts

- Be aware of the historical issues around child removal particularly in relation to the Stolen Generations. This has and continues to have an impact on Aboriginal families.
- Understand that Aboriginal people historically have not felt comfortable using the Family Court system to resolve parenting disputes.
- Within this, many Aboriginal people mistrust those involved in the administration of this system (including lawyers) and will act accordingly. You will need to assure them that the information provided to you will not be used against them and that it is in their best interest to give you all the information so you can better represent them. Reinforce the confidentiality of their instructions and clarify that you are not a mandatory reporter as many people have this misconception.
- Your clients and even you will often feel frustration and anger at the injustices of the system. You should keep this in mind and in check to ensure you can help them navigate their way through these feelings and manage their expectation of what you can do.
- An Indigenous List is provided in some Federal Circuit Court registries to encourage and support Aboriginal people to access Family Law proceedings. Where one or more parties in a matter identify as Aboriginal, we encourage you to make a formal request to join the nearest Indigenous List. Several Aboriginal specific services also attend the Indigenous List to provide wrap around support services for Aboriginal clients engaging in the Family Law system. For more information please contact the Early Intervention Unit at Legal Aid NSW or Family Advocacy and Support Service (FASS) at the family court registry. The Early Intervention Unit and FASS regularly provide duty services for the Indigenous List.

5.3. Aboriginal families and child rearing practices

- Be aware of family and kinship dynamics and understand that Aboriginal family structures and parenting approaches often differ to mainstream structures. This is explained by forensic psychologist, Stephen Ralph:



“Traditional Aboriginal family structures are based on a collectivist form of social organisation in which the raising of children is not just the responsibility of the parents. In Aboriginal culture the notion of family is broader and more inclusive of extended family members and kinship ties in which matters of mutual responsibility, obligation and reciprocity are tacitly known and understood. This is often evident in the extent to which grandmothers and aunts also play a role in caring for children, particularly when difficulties arise within the family”.^{xxi}

- Understand Aboriginal child rearing practices. Stephen Ralph states:

“An understanding of Aboriginal families and child-rearing practices begins with the understanding that parenting and child-rearing practices are culturally determined and are based upon the culture’s expectations, beliefs, values and future aspirations. As a colonised society Aboriginal Australians seek to maintain cultural integrity and the values and practices that have been part of Aboriginal cultural for tens of thousands of years. At the same time there are evident pressures exerted by mainstream, non-Aboriginal society for Aboriginal people to more fully adapt to living within non-Aboriginal society, and thereby comply with the expectations of non-Aboriginal people.”^{xxii}

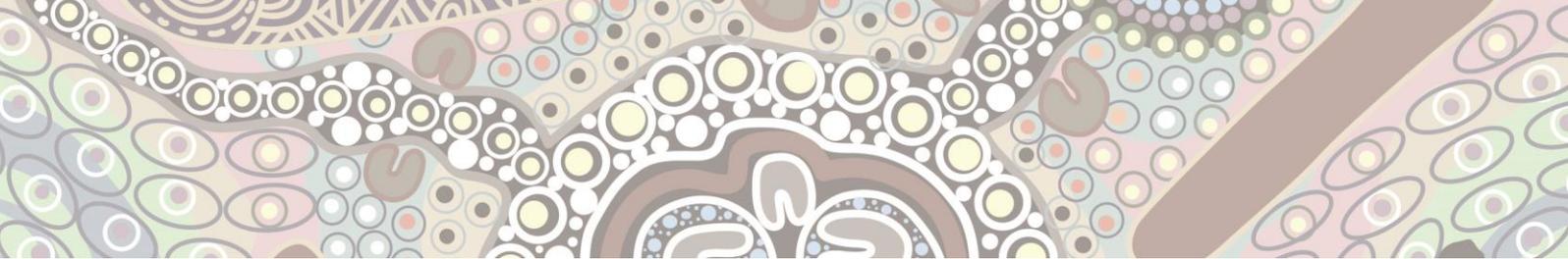
- When making assessments involving Aboriginal people it is imperative to understand the impact of trauma and grief. “The experience of trauma and grief in all its various forms is common to most Aboriginal families and has a widespread and at times debilitating effect upon family functioning and the well-being of family members”.^{xxiii}
- There are many factors that need to be taken into consideration when considering the best interests of the child. As explained by Stephen Ralph these “risk and protective factors” are listed as:

Indigenous Specific Risk Factors

- Cultural alienation, identity confusion and racism
- Trans-generational transmission of trauma
- Distrust of the child welfare system to past exposure to institutional and systemic racism
- Suicide of a family member and collective grief
- Welfare dependence

Indigenous Specific Protective Factors

- Cultural affiliation and resilience
- Extended family, community and kin networks
- Living on country and connectedness^{xxiv}
- Be aware of traditional Torres Strait Islander adoption practices often referred to as *Kupai Omasker*. This is a practice where children are permanently transferred to another family, with the children usually remaining with extended family.^{xxv}
- For more information on Aboriginal child rearing practices please read papers and information provided by Forensic Psychologist Stephen Ralph, in particular, “Some considerations for Family



Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families” as referenced at the end of this document and on the [intranet](#).

5.4. Domestic and Family Violence

- Understand the gendered nature of offending and that Aboriginal women and children experience domestic and family violence at higher rates than any other sections of the community. Understand the nature of domestic and family violence as a cycle and that clients may return to you multiple times before it is resolved (or before they leave the offender).
- In these situations, do not fall into the trap of ‘victim blaming’. As a practitioner you need to understand the family/community/location dynamics as well as the victim’s feelings for the offender that may make it hard for Aboriginal women to leave abusive relationships.

5.5. Family Law Court Proceedings

- Understand provisions in the *Family Law Act 1975* regarding Aboriginal and Torres Strait Islander children in parenting proceedings. This includes:
 - **Section 60CC of the *Family Law Act 1975***. The Court must consider the “best interests of the child” as set out in this section.
 - The Court must also consider subsection (h) of the Act if the child is Aboriginal and/or Torres Strait Islander which includes:
 - (i) the child's right to enjoy his or her Aboriginal and/or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
 - (ii) the likely impact any proposed parenting order under this Part will have on that right.^{xxvi}
 - **Section 60B(2)(e) of the Act**. This refers to children having a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
 - **Section 60B(3) of the Act** further states that Aboriginal and/or Torres Strait Islander children have the right:
 - (a) to maintain a connection with that culture; and
 - (b) to have the support, opportunity and encouragement necessary:
 - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - (ii) to develop a positive appreciation of that culture.^{xxvii}
 - **Section 61F of the Act**. This provides that:

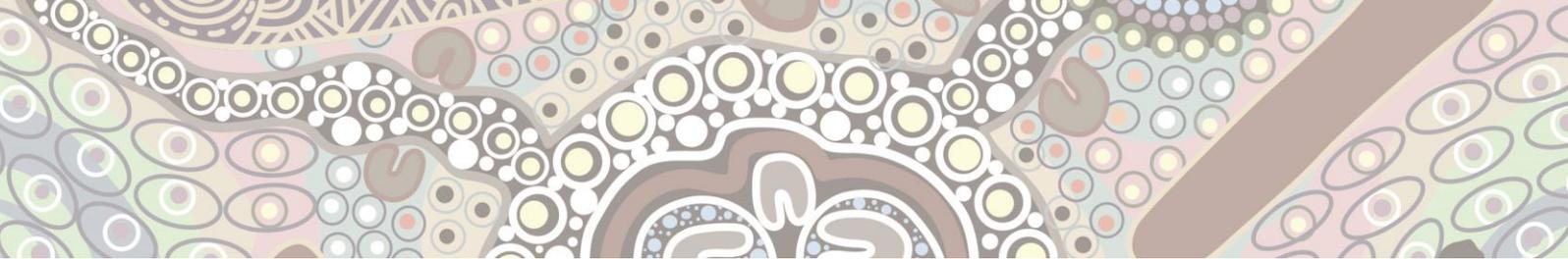


...the court must have regard to any kinship obligations, and child-rearing practices, of the child's Aboriginal and/or Torres Strait Islander culture.^{xxviii}

- Be aware that expert evidence on cultural issues can be provided by the child's Aboriginal grandparent. For more information please see *Hort & Verran [2009] FamCAFC 214*.
- Ensure that your client understands the legal proceedings and what is reasonably available to them.

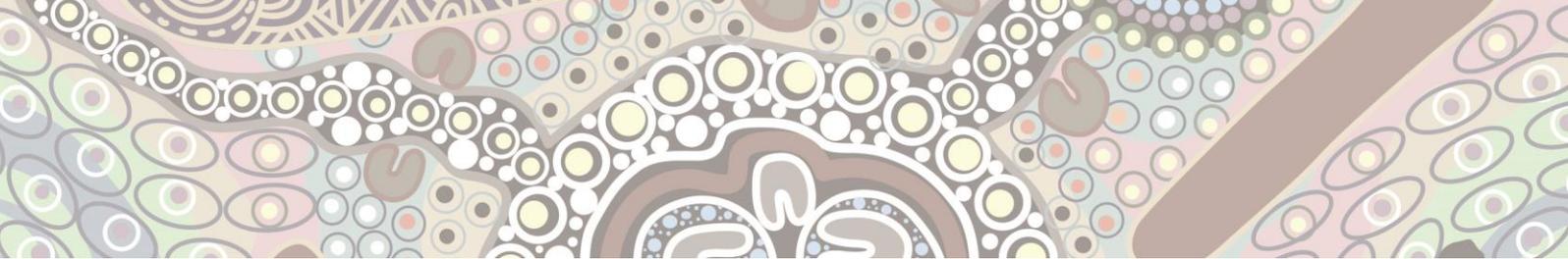
5.6. Care and Protection Proceedings

- Understand the *Children and Young Persons (Care and Protection) Act 1998* and provisions regarding Aboriginal and/or Torres Strait Islander people, paying particular consideration to Part 2 Aboriginal and/or Torres Strait Islander Principals (12-13)
- Understand **s12** which states Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.
- Understand **s13** which provides for the placement of Aboriginal and/or Torres Strait Islander children and young persons. Placement must occur in the following order:
 - (a) a member of the child's or young person's extended family or kinship group, as recognised by the Aboriginal and/or Torres Strait Islander community to which the child or young person belongs, or
 - (b) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or it would not be in the best interests of the child or young person to be so placed--a member of the Aboriginal and/or Torres Strait Islander community to which the child or young person belongs, or
 - (c) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or (b) or it would not be in the best interests of the child or young person to be so placed--a member of some other Aboriginal and/or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of residence, or
 - (d) if it is not practicable for the child or young person to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the safety, welfare and well-being of the child or young person to be so placed--a suitable person approved by the Secretary after consultation with:
 - (i) members of the child's or young person's extended family or kinship group, as recognised by the Aboriginal and/or Torres Strait Islander community to which the child or young person belongs, and



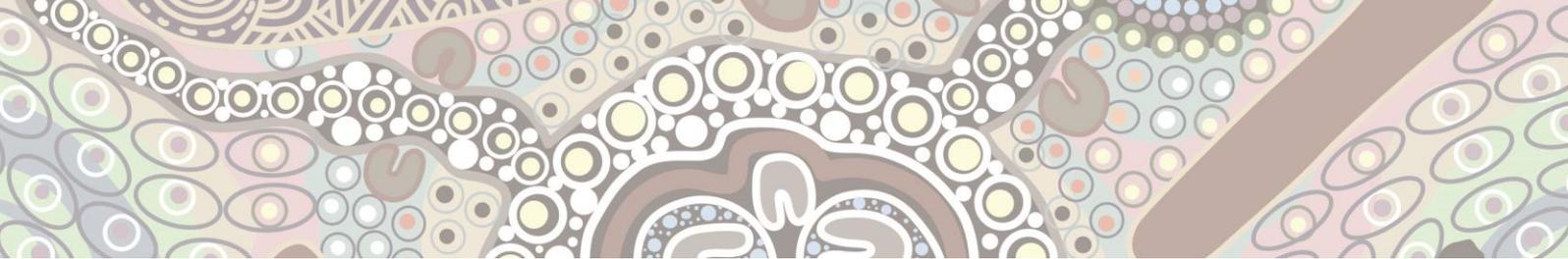
(ii) such Aboriginal and/or Torres Strait Islander organisations as are appropriate to the child or young person.^{xxix}

- Be aware that the child placement principles also apply to the making of Guardianship orders for Aboriginal and/or Torres Strait Islander children and young persons. Please see section 79A (3) (c) of the *Children and Young Persons (Care and Protection) Act 1998* for more information. Also be aware that Guardianship orders and adoption orders are a highly sensitive issue within the Aboriginal community.
- Be aware of the NSW Child, Family and Community Peak Aboriginal Corporation commonly known as AbSec. Please see the [AbSec website](#) for information regarding current policies affecting Aboriginal children and Aboriginal community-controlled services and family centres.
- AbSec advise that they are completely opposed to the adoption of Aboriginal children as it “... risks permanently removing an Aboriginal child from their family and culture, ... further rupturing our communities with little chance for reunification”. Where Guardianship orders are to be made AbSec are also calling for robust safeguards to be put in place to ensure the ‘safety, dignity, identify and culture of the child’.
- “Be aware of the adoption case **Hackett (a pseudonym) v Secretary, Department of Communities and Justice [2020] NSWCA 83**. The NSW Court of Appeal held that the definition of Aboriginal child, in accordance with s 4 of the *Adoption Act 1984*, is a child of Aboriginal descent and is not required to satisfy the three-limb Aboriginal person test in the *Aboriginal Land Rights Act 1983*. This means that children who would otherwise be de-identified because their parents or grandparents were unable to meet the three-limb test, will now be properly identified as Aboriginal.
- Be aware of the Guiding Principles co-developed by Grandmother’s Against Removal (GMAR NSW) for strengthening the participation of local Aboriginal community in child protection decision making with the New England DCJ District Office and the NSW Ombudsman Office. Please see the [Communities & Justice website](#) to view the Guiding Principles.
- Ensure Care Plans for Aboriginal and/or Torres Strait Islander children are appropriate. See Section 83 (7A) the of the *Children and Young Persons (Care and Protection) Act 1998*.
- Advocate for an appropriate Cultural Support Plan for “Aboriginal children and young people to maintain a connection to culture, identity, community and Country”.^{xxx}
- Care Plans and Cultural Support Plans should be prepared in consultation with Aboriginal people and communities. It has been established that the strongest plans:
 - “were developed in consultation with family and community;
 - were supported by contact schedules and plans which promoted extensive family contact (including with both maternal and paternal Aboriginal family where both sides identified as Aboriginal);
 - promoted contact with country;

- 
- were regularly reviewed and treated as a living document;
 - named people and family members with whom children could connect and be connected as they grew;
 - were supported by casework actions and monitoring; and
 - were lodged with the Children’s Court”.^{xxxii}

5.7. Department of Communities and Justice (DCJ)

- Many Aboriginal people and families have had long and unhappy interactions with Family and Community Services (FACS), who now form part of the Department of Communities and Justice (DCJ). Due to the long historical and continuing interaction many Aboriginal people still refer to the department by their much older name “DOCS” (Department of Community Services). While DCJ provide vital services regarding family welfare, their relationships with Aboriginal communities is strongly affected by culturally inappropriate and unjust interactions that continue to have a detrimental impact on the lives of individuals, families and communities. These interactions permeate through many communities and individuals. You should be aware of this in your representation of clients.
- With this in mind it is particularly important that you understand that a critical part of your role as a family lawyer representing an Aboriginal client is to ensure that DCJ have adhered to the above provisions in regard to Care Plans and Cultural Support Plans, as it has been shown on many occasions that this is not the case. Aboriginal family and community participation is vital in the success of such plans and you should ensure that this has occurred in a meaningful way.
- Within this do not automatically accept that information put forward by DCJ is true/correct or exhaustive of all the information available. On occasions you will need to challenge this information. Ensure that you listen to your client with fresh ears.



6. Conclusion

These standards have been designed to assist you in your representation of Aboriginal clients. Above all else it should be understood that a document like this can never cover the breadth of Aboriginal culture or indeed every circumstance or issue that you will encounter within your representation of an Aboriginal client. In this light the standards can be seen as a starting point on your journey as you navigate through your career of representing Aboriginal people.

We also acknowledge the passion and dedication that many practitioners have in providing quality legal representation to Aboriginal clients and the community. We want the standards to be something that assists you in this service.

Finally, this document would not have been possible without the assistance of a large network of practitioners, both Aboriginal and non-Aboriginal. To all of you, thank you for your generosity in sharing your knowledge, experience and insight.

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7. Annexure A

7.1. Eligibility for the Drug Court:

Section 5 Drug Court Act 1998

- (1) A person is an eligible person if:
- (a) the person is charged with an offence, other than an offence referred to in subsection and
 - (b) the facts alleged in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is highly likely that the person will, if convicted, be required to serve a sentence of full-time imprisonment, and
 - (c) the person has pleaded guilty to, or indicated that he or she intends to plead guilty to, the offence, and
 - (d) the person appears to be dependent on the use of prohibited drugs (within the meaning of the Drug Misuse and Trafficking Act 1985) or other drugs prescribed by the regulations, and
 - (e) the person satisfies such other criteria as are prescribed by the regulations.^{xxxii}

7.2. Eligibility for Youth Koori Court:

Practice Note 11: Youth Koori Court

4.1 To be referred to the Youth Koori Court a young person must;

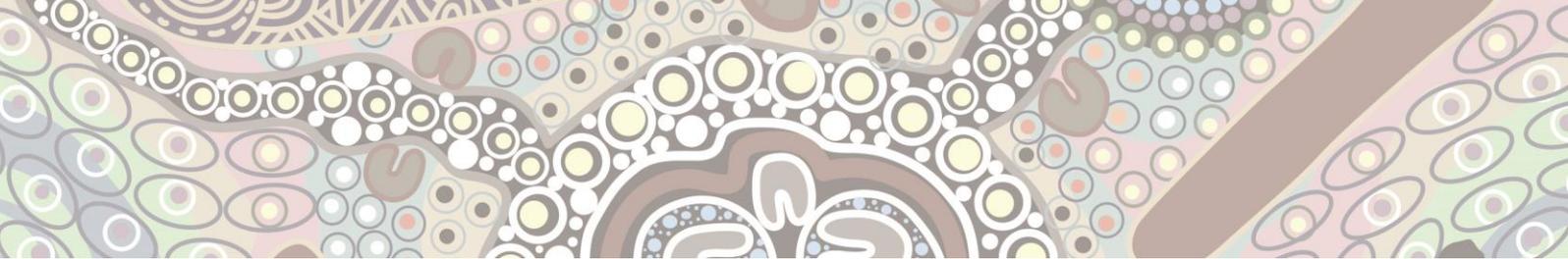
- a. Have indicated that he or she will plead guilty to the offence or the offence has been proven following a hearing,
- b. Must be descended from an Aboriginal person or Torres Strait Islander, identify as an Aboriginal person or Torres Strait Islander and must be accepted as such by the relevant community,
- c. Be charged with an offence within the jurisdiction of the Children's Court that is to be determined summarily,
- d. At a minimum, be highly likely to be sentenced to an order which would involve Juvenile Justice supervision,
- e. Be 10 to 17 years of age, at the time of the commission of the offence(s) and under 19 years of age when proceedings commenced, and
- f. Be willing to participate.^{xxxiii}

For more information please refer to the Practice Note.

These standards were developed by the Aboriginal Services Branch at Legal Aid NSW in consultation with practice areas. If you have any questions, please do not hesitate to contact Scott Hawkins, Manager of the Aboriginal Services Branch on (02) 9219 5109.

Acronyms and Abbreviations

Acronym/Abbreviation	Definition
CPD	Continuing Professional Development
EAP	Employee Assistance Program
CLE	Community Legal Education
ALS	The Aboriginal Legal Service (NSW/ACT) Limited
LEPRA	<i>Law Enforcement (Powers and the Responsibilities) Act 2002</i>
THE REGULATIONS	<i>Law Enforcement (Powers and Responsibilities) Regulation 2016</i>
CNS	Custody Notification Service
FERNANDO	<i>R v Fernando</i> (1992) 76 Crim R 58
BUGMY	<i>Bugmy v The Queen</i> (2013) 249 CLR 571
CLSAC	Civil Law Service for Aboriginal Clients
STMP	Suspect Target Management Plan
NAIDOC	National Aborigines and Islanders Day Observance Committee
ABSEC	Aboriginal Child, Family and Community Secretariat
FACS	Department of Family and Community Services re-named as Department of Communities and Justice
DCJ	Department of Communities and Justice



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- ⁱ Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 9.
- ⁱⁱ Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 9.
- ⁱⁱⁱ Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 9.
- ^{iv} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 9.
- ^v Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 9.
- ^{vi} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 9.
- ^{vii} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^{viii} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^{ix} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^x Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^{xi} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^{xii} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^{xiii} Legal Aid NSW, *Making our Services Work for Aboriginal People*, June 2006, page 10.
- ^{xiv} <https://www.forgov.qld.gov.au/unconscious-biases>
- ^{xv} Section 29, *Law Enforcement (Powers and Responsibilities) Regulation 2016*.
- ^{xvi} Section 31, *Law Enforcement (Powers and Responsibilities) Regulation 2016*.
- ^{xvii} Section 37, *Law Enforcement (Powers and Responsibilities) Regulation 2016*.
- ^{xviii} Section 38, *Law Enforcement (Powers and Responsibilities) Regulation 2016*.
- ^{xix} Section 10, subsection 4, *Crime (Forensic Procedure) Act 2000*.
- ^{xx} Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Aboriginal and Torres Strait Islander Consumers' Interactions with Financial Services*, Background Paper 21, page 2.
- ^{xxi} Ralphs, S, 'Some considerations for Family Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families', NLA Independent Children's Lawyers Training program, page 14.
- ^{xxii} Ralphs, S, 'Some considerations for Family Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families', NLA Independent Children's Lawyers Training program, page 14.
- ^{xxiii} Ralphs, S, 'Some considerations for Family Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families', NLA Independent Children's Lawyers Training program, page 25.
- ^{xxiv} Ralphs, S, 'Some considerations for Family Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families', NLA Independent Children's Lawyers Training program, page 30.
- ^{xxv} Ralphs, S, 'Some considerations for Family Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families', NLA Independent Children's Lawyers Training program, page 21.
- ^{xxvi} Section 60CC, subsection 3 (h), *Family Law Act 1975*.
- ^{xxvii} Section 60B, subsection 3, *Family Law Act 1975*.
- ^{xxviii} Section 61F, *Family Law Act 1975*.
- ^{xxix} Section 13, *Children and Young Person (Care and Protection) Act 1998*
- ^{xxx} <https://www.absec.org.au/images/downloads/Cultural-Planning-Policy-Brief-Draft-Final-2019.pdf>
- ^{xxxi} Davis, M, *Family is Culture Final Report*, Independent Review into Aboriginal Out-of-Home Care in NSW, October 2019, page 341.
- ^{xxxii} Section 5, *Drug Court Act 1998*.
- ^{xxxiii} Practice Note No. 11, Section 4, Children's Court of New South Wales Youth Koori Court, First Issued: 16 January 2015.