

Best practice standards for representing Aboriginal clients



Artwork: © Luke Penrith



Acknowledgment

We acknowledge the Traditional Owners and Custodians of the land we live and work on within New South Wales. We recognise the 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 the community and providing culturally competent services to Aboriginal and Torres Strait Islander people.



CEO Foreword

Legal Aid NSW is committed to delivering fair outcomes and responding to the needs of Aboriginal and Torres Strait Islander clients and communities across NSW.

In 2020, Legal Aid NSW introduced our Best Practice Standards for Representing Aboriginal Clients, which was a significant step in ensuring our staff provided best practice advocacy for Aboriginal and Torres Strait Islander clients.

Over the last few years, a lot has changed in the way we deliver services, but we are as committed as ever to continue to provide the best possible service to Aboriginal and Torres Strait Islander people and communities. This commitment aligns with our responsibilities under the National Agreement on Closing the Gap.

This year, the Best Practice Standards for Representing Aboriginal Clients were reviewed with a view to uplifting those Standards so that they reflect our ongoing journey to provide trauma-informed, culturally appropriate and high-quality services to Aboriginal and Torres Strait Islander clients.

The Best practice standards for representing Aboriginal clients gives Legal Aid staff and private practitioners who are doing legal aid work a practical resource to refer to when representing or working with Aboriginal and Torres Strait Islander clients.

We look forward to continuing this important work and ensuring our advocacy centres people and our proud tradition of providing high-quality and innovative legal services.

We would like to take this opportunity to acknowledge and thank the work of the Aboriginal Services Branch and all the contributors for their invaluable contributions to the standards. It would not have been possible without you all.

Monique Hitter, CEO and Kimberley Wilson, Director, Aboriginal Services



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, who make 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 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

© All artwork copyrights are reserved to artist Luke Penrith.



Contents

Acknowledgment	1
CEO Foreword	2
Lore and Law Artwork	3
1. Introduction	5
2. Purpose	6
3. Overarching considerations	7
3.1. Understanding culture and community	7
3.2. Trauma, Emotional and Social Wellbeing	8
4. Best Practice Standards	11
4.1. Clear and honest communication	12
4.2. Acknowledgement, respect and understanding	13
4.3. Confidentiality	14
4.4. Consent and self-determination	14
4.5. Support and healing	14
5. Applying best practice standards	16
5.1. Advice – family law	16
5.2. Duty services – criminal law	18
5.3. Extended legal assistance and casework services – civil law	21
6. Legal Aid NSW: interdisciplinary service delivery	24
6.1. Aboriginal Field Officer (AFO) Program	24
6.2. Civil Law Service for Aboriginal Communities (CLSAC)	25
6.3. Family Law Service for Aboriginal Communities (FamAC)	25
6.4. Walama List	25
6.5. Aboriginal Women on Remand Pilot (AWRP)	26
6.6. Aboriginal Services Branch (ASB)	26
7. Further reading	27
7.1. 'Significance of Culture to Wellbeing, Healing and Rehabilitation' (2021)	27
7.2. Aboriginal Legal Service (ALS)	27
7.3. NSW Law Society	27
7.4. Indigenous-specific lists in NSW	28
8. Conclusion	29
Annexure A	30

1. Introduction

All Legal Aid NSW staff, including administration, allied professionals and lawyers, must be culturally sensitive, culturally aware and trauma-informed when delivering a service.

Aboriginal and Torres Strait Islander cultures are closely tied to themes of respect, connectedness and kinship. Legal Aid NSW respects the diversity and resilience of Aboriginal and Torres Strait Islander peoples and cultures in NSW. Legal Aid NSW acknowledges that there may be nuanced barriers that need to be individually addressed when providing high-quality services to Aboriginal and Torres Strait Islander clients and communities.

The guidance provided in these standards is general by nature and may apply differently to individual clients, their circumstances, and the type of service you are providing. It is the responsibility of the practitioner to assess each client and situation on a case-by-case basis.

While reference is made to Torres Strait Islander peoples in parts of this document, it must be understood that the points made are very specific to Aboriginal communities in NSW.

2. Purpose

The purpose of this resource is to ensure that Legal Aid NSW practitioners are accountable, culturally safe and responsive to the needs of individual Aboriginal and Torres Strait Islander clients. These standards are applicable to all areas of legal representation, and all practitioners should be aware of their importance. This guide aims to provide practitioners with practical information and guidance on things that may directly impact their representation. This guidance will enhance our knowledge and skills in providing effective services to Aboriginal and Torres Strait Islander peoples. While this resource provides vital information, legal practitioners should continue their learning and understanding of how to provide culturally safe and trauma-informed representation.

This guide does not provide any legal advice, identify legal principles or provide Aboriginal cultural competency training. Instead, this guide intends to identify and imbed best practice standards within Legal Aid NSW practice areas and how to utilise some of our Aboriginal and Torres Strait Islander-specific services within Legal Aid NSW.

3. Overarching considerations

Best Practice Standards depend on client needs. Lawyers should be flexible and understanding. When considering how flexible you need to be or how to tailor your service, consider the hurdles the client faces in accessing your service. Understand their vulnerability and strengths, and look at the overall impact on the client to a more tailored approach.

3.1. Understanding culture and community

- Aboriginal peoples across New South Wales are culturally diverse, encompassing different nations, language groups and kin systems. As such, healing, cultural practices and protocols can also be diverse.
- All practitioners must undertake a journey of cultural competency training to understand the diversity of Aboriginal people, their culture, and their connection to Country and kinship systems. This understanding will help you better represent your Aboriginal clients.
- Assumptions regarding a client's identity and their connection to culture are discouraged.
- 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.
- Legal Aid NSW staff can consult with an Aboriginal Field Officer (AFO), the Aboriginal Services Branch (ASB), Family Law for Aboriginal Communities (FamAC) or Civil Law for Aboriginal Communities (CLSAC) if you are unsure and would like advice on how to engage with your local Aboriginal community.
- All Legal Aid NSW staff are encouraged to engage with their local Aboriginal community respectfully. Managers and team leaders are encouraged to show leadership and build local community relationships. This can be done by Legal Aid NSW staff attending community/cultural events and immersing themselves outside of the office. Many Aboriginal communities have an expectation that Legal Aid NSW staff will attend community events.
- Understand and respect the client's kinship and relationship with the broader community. They may have cultural obligations to other parties that need to be recognised in the legal service setting and are often dismissed as the determinant of the client's character or commitment to the legal matter at hand. Their community and kinship responsibilities will often influence how the client defines their priorities.
 - Clients may have children or other dependents who need to attend the appointments. Office staff and their lawyers should be accommodating and understanding.

Kinship

- Be aware that Aboriginal Kinship structures and family dynamics are different to those of non-Aboriginal people.
- 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. The connection is not limited to a biological relationship but refers to a culturally defined relationship reflecting cultural bonds and obligations. It is important to understand that this connection may not reflect Western expectations of the family structure.

- 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 the court, client conferences, appointments and mediation.
- Understand that terms of endearment such as brother (or bro), sister (or sis), cuz (or cousin), Aunty or Uncle may be applied to non-blood relatives as well as blood relatives and are often an acknowledgement of respect and the relationship between the two.
- A client's community and kinship responsibilities will often influence how the client defines their priorities, which may interfere with their legal matter. Understanding what these responsibilities are will help the lawyer understand how to provide a flexible approach.

Men's Business and Women's Business

- For many Aboriginal and Torres Islander People, there are cultural protocols and practices relating to men's and women's business. These practices are not publicly discussed. Lawyers should be cautious of questions asked around this, but be aware that a client may be unavailable for periods of time.
- Cultural and gender sensitivities regarding the client and which lawyer should represent them in their legal matter should be given serious consideration. Clients may prefer to speak to a lawyer of the same gender, particularly clients who have experienced sexual assault or family violence.
- When assigning grants of aid to private lawyers, consider selecting specific private practitioners for vulnerable clients rather than transferring it to a panel offer.

Sorry Business

- When a community or family member passes away, Aboriginal and Torres Strait Islander clients may have certain cultural obligations and commitments to fulfil. This is known as 'Sorry Business'.
- If a client has Sorry Business, the lawyer must understand what the client may need, the time needed and the possibility of it impacting the legal matter.
- If a client cannot attend a court date or mediation, the lawyer should advise the client of the consequences of not attending or engaging with the legal matter. Where possible, requests to change their appointments and vary court dates or conferences should be considered.
- Where a community is dealing with Sorry Business, it is both respectful and practical for staff not to make any arrangements to see clients or conduct community legal education (CLE) or outreach until advised by the community of an appropriate time.
- For many Aboriginal and Torres Strait Islander people, it can be inappropriate to mention the name of the deceased. If you need to refer to the deceased person, you could ask the family how you should refer to the deceased person.

3.2. Trauma, Emotional and Social Wellbeing

Mistrust of governments

- Be conscious of the lack of faith in obtaining a just outcome in legal matters due to a distrust of the legal system. You must not dismiss their lived experience and their distrust.

- Many Aboriginal and Torres Strait Islander people may have a deep and intergenerational mistrust of government institutions, including police, child protection agencies, lawyers and courts, due to the historical and current experiences of Aboriginal and Torres Strait Islander clients within the Australian legal system.
- Building trust with the client may take time. It may be helpful to engage with an AFO or support person to assist with building a rapport with the client and understanding the client's specific needs and strengths.
- Be conscious of how you present to the client and their family. The client may see you as part of the system. You can mitigate this by informing the client of your role and what you are able to do. For example, you may need to clarify that you are not on the side of the police. You should be clear about the legal process, the steps involved and what the outcome could likely be, ensuring that the client understands the information you are providing to them.

Trauma-informed practice

- Lawyers should be conscious of the possibility of trauma in a client's life.
- Be trauma-informed. Most, if not all, Aboriginal clients have experienced trauma as an ongoing impact of colonisation. Clients should not have to explain why they have trauma or be asked to re-tell their story a number of times to different staff members. It can be frustrating for the client to have to repeatedly explain the basis of their trauma, their lived experience with the legal system and how that has impacted their decision-making. Detailed notes should be made to prevent the unnecessary re-telling of the client's story.
- Lawyers need to understand the underlying trauma and social and emotional wellbeing of a client and how that impacts their engagement. Lawyers should discuss with the client what they are experiencing in order to tailor their communication to the client's needs. Do not assume their behaviour is because of drugs or alcohol abuse unless that has been confirmed.
- The mismanagement of the client's trauma can impact how they interact with you and adversely impact the outcomes in their legal matter.
- Many Aboriginal clients understand distress from non-biomedical frameworks. The Social and Emotional Wellbeing (SEWB) framework is the foundation of physical and mental health for Aboriginal communities. It takes a holistic and collectivist view of wellbeing.
- If you have concerns about your client's social and emotional wellbeing, it is important to talk to the client in a respectful, compassionate and trauma-informed manner. Many clients may have had negative experiences when discussing their distress and associated trauma.
- Experiences of trauma can manifest differently and may not be very obvious.
- Clients may also have compounding legal issues or mental health challenges that may impact how they communicate. Depending on the client, it may be helpful to have a support person or an AFO to assist with creating a safer space for the client.
- The *Pathways to Justice* report identified the following key principles of a trauma-informed approach:
 - understand and acknowledge the trauma and its impact on individuals, families and community
 - promote safety
 - ensure cultural competence
 - support client's control

- share power and governance
- integrate care
- support relationship building, and
- enable recovery.¹
- “Promoting social and emotional wellbeing and healing for Aboriginal and Torres Strait Islander people requires consideration of these broader social, economic, political and historical circumstances”².
- Ongoing learning is encouraged when providing trauma-informed and culturally sensitive services to Aboriginal and Torres Strait Islander clients.

¹ Australian Law Reform Commission, [Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report](#) (ALRC Report 133) (2018).

² V. Edwige and P. Gray, Report: ‘Significance of Culture to Wellbeing, Healing and Rehabilitation’ (2001).

4. Best Practice Standards³

The interplay of social and historical determinants, best practice standards and client focus legal advocacy



³ Image adapted from 'Social and Emotional Wellbeing Framework depicting the interplay of social and historical Determinants' from Gee et al (2014), cited in Pat Dudgeon et al, Aboriginal Participatory Action Research: An Indigenous Research Methodology Strengthening Decolonisation and Social and Emotional Wellbeing (Lowitja Institute, 2020), page 4.

4.1. Clear and honest communication

- Ensure that you use **plain language** rather than legal jargon when communicating with your client.
- Clients can view lawyers as people with authority and power. Clients have often had negative past experiences with people in authority and may associate this with you, even though you are in a different role.
- Be aware that many Aboriginal clients may only want to 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 such as accent, grammar, words, and meanings. These features are often referred to as 'Aboriginal English' and retain characteristics of traditional Aboriginal dialects.
- 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 or too overwhelmed to tell you that they do not understand it. This is commonly referred to as **gratuitous concurrence**.
- Allow clients to digest your advice and ask any questions. During **periods of silence**, try not to feel pressure to rush your client or think they have no opinion or do not have anything to say. They may be considering your advice and taking the time to make a decision.
- 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.⁴
- Rather than identifying specific dates and times, Aboriginal clients may often refer to physical, social or climactic events when recalling something. In this context, do not force a response, as it may produce misleading answers.
- **Set clear expectations** about the role and service you can provide. Be mindful that clients may accept decisions because they have given up on the system and they do not feel respected or acknowledged.
- Remember, a client can have multiple matters in different practice areas, which means they may have multiple lawyers. You may need to clarify who you are and what you are helping them with when contacting the client.
- Often, clients only want the information they need. Be guided by the client as to what they want to know. Often, they will indicate what they want to know as a priority, and then you can move through other critical information.
- **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 it will help build trust between you and your client. If you are calling from a private number, let them know ahead of time or send a text message prior to your call to inform them that you are calling.
- 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 AFO or Community Liaison Officer from your office or team can assist.

⁴ Legal Aid NSW, Making our Services Work for Aboriginal People, June 2006, page 9.

- Due to the complexity of responsibilities Aboriginal people can 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: for example, 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 have not heard from your client, be aware that some clients may not have any capacity to contact you: for example, no phone credit. You are encouraged to contact the AFO in your office or team 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 AFO, look for Aboriginal support officers in relevant NSW government and non-government agencies. There are Aboriginal Client and Community Support Officers attached to numerous courts throughout NSW.

4.2. Acknowledgement, respect and understanding

- Respect is an overarching obligation that lawyers implement in every aspect of their advocacy.
- Ground the conversation, be personable and get to know the client, especially in a court setting, which is often very overwhelming for clients. Do not go straight into the legal issue.
- **Acknowledge the client's circumstances and lived experience** that may be impacting their legal issue. Do not dismiss their feelings of discrimination or unfairness. Ask the client if they have any concerns or if there is anything they want to talk about. This may not be relevant to the particular matter at hand. However, you should not dismiss their concerns. Instead, address their concerns and bring them back to the issue at hand.
- Respect the client's autonomy and empower them to make informed decisions.
- 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 lawyers 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. From the perspective of the client and family members, the "lack of time" can often feel like an excuse not to engage properly with the client or their legal matter.
- When building trust and rapport with the client, we encourage lawyers to prioritise face-to-face conferences.
- Understand the significance of culture and family. It might be helpful to obtain the names and contact details of the client's family members for when you cannot contact the client.
- We encourage lawyers to maintain **continuity of files** and client representation where possible. This continuity reduces the risk of the client having to repeat their story and details of their circumstances with multiple practitioners. Continuity maintains the trust 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. If it is likely that other lawyers will represent the client, set this expectation as early as possible and ensure the client understands.
- If the client is being transferred to a different lawyer, the client must be informed of this ahead of time and the reasons clearly outlined. This approach ensures that the client doesn't feel dismissed and that they do not matter.

- 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 on something promised is likely to be public knowledge in a short period and may jeopardise any credibility you have previously established.⁵
- Even in the event the outcome is not favourable to the client, it is important that the client knows that you have done your best and have explored everything, and you have given detailed advice in a way that makes sense to them.

4.3. Confidentiality

- Reinforce the confidentiality of their instructions. Please do not assume a client knows this or understands what this means and how it applies to support persons assisting them.
- Many Aboriginal people mistrust those involved in the administration of the justice 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.
- The concept of shame is a powerful social construct within Aboriginal communities. Shame will be particularly strong around issues such as domestic and family violence, sexual assault and substance abuse and may impact what a client is prepared to tell you.⁶
- Offices should be flexible in delivering advice in person. For example, if a client is obtaining advice through our State Wide Advocacy Team (SWAT), a client should be able to visit their closest office to have a highly sensitive phone call in a safe space.

4.4. Consent and self-determination

- Lawyers should ensure they are empowering the client to make informed decisions and be engaged in their legal matters. The client’s autonomy must be respected. The client should have the tools to participate and understand what is happening in their legal matters.
- You should confirm that the client understands their legal matter and is engaged in its progress. If you are unsure if the client understands the question or the advice, repeat it in a different way or ask them to confirm what you said.
- With the client’s consent, involve a support person or AFO, if available, to help empower the client to ask questions or to make informed decisions.
- Engage with Aboriginal Community Controlled Organisations (ACCOs) to provide holistic and culturally appropriate support.

4.5. Support and healing

- Your client may feel frustrated and angry at the injustices of the system. Keep this in mind and check in with your client to ensure you can help them navigate their way through their feelings and manage their expectations of what you can do.

⁵ Legal Aid NSW, Making our Services Work for Aboriginal People, page 10.

⁶ Legal Aid NSW, Making our Services Work for Aboriginal People, page 10.

- Ensure that your client understands the legal proceedings and what is reasonably available to them.
- Identify the intersecting legal and non-legal matters that can be addressed holistically and make the appropriate referrals. Lawyers should be breaking legal practice silos to develop a holistic and cross-practice service delivery approach.
- Consider whether your client is comfortable speaking with you on a one-on-one basis or would prefer to invite family members or a support person to attend the conference. A support person may be a family member, a community member, an AFO or a support worker from other services.
- Be aware that some Aboriginal clients may have issues with literacy and numeracy and may require assistance with filling out the Legal Aid NSW application form. This support will need to be assessed on a case-by-case basis as not all Aboriginal people will require assistance.
- When making referrals to culturally appropriate services outside Legal Aid NSW, you need to understand the key underpinnings of the service, who it is led by and other cultural considerations.
- When providing referrals, give the client options and advise on the avenues open to the client to consider. If you know a client is unlikely to be accepted or heard by that referral, consider a different alternate referral organisation.
- Ensure the client is aware of the support services Legal Aid NSW can offer and the role they have in assisting the client throughout the legal process. This support may also include AFOs, case workers or financial counsellors.

5. Applying best practice standards

Best Practices will look different depending on the client, their legal matter and the service type. The following should not be used as holistic advice but for general consideration.

5.1. Advice – family law

Trauma, Emotional and Social Wellbeing

- Use the [Trauma Informed Organisational Toolkit](#)
 - Find out if there is a history of trauma with DCJ, police or the other party and explain to the client your role and how you will help.
 - Be attuned to the client's responsiveness and their emotions.
 - Understand the client can be overwhelmed, and this can impact their emotions, reactions, understanding and rationality.
 - Be mindful that clients may automatically accept decisions because they have given up on the system and they do not feel respected or acknowledged.
 - Be mindful of the environment. If you are having a face-to-face appointment in the office, consider sitting on the same side of the desk as the client rather than directly opposite them.
-

Culture and community

- Obtain cultural information and get background information from people such as carers or family members.
 - See if they are linked with any community support services.
 - Consider face-to-face advice appointments.
-

Acknowledgement, respect and understanding

- Explain at the beginning who you are, why you are seeing them and that you are there to help them.
 - Begin with small talk about shared common neutral experiences.
 - Show empathy and concern for the client.
 - Be warm, patient and friendly.
 - If practical, consider how the interview environment might feel to the client and ask them if they feel comfortable and if they would like anything changed or adjusted. Alternatively, you could consider different seating arrangements.
 - Explain the truth – do not lie about the reason why you cannot help them. If you cannot assist the client, tell them the reasons why.
-

Confidentiality

- Remind them of the lawyer–client confidentiality rules.

- Tell them why you are taking notes, who will have access to them, and why.

Try saying: “I will be taking notes about what we discuss today. I am doing this because it will ensure I can remember what you say so that you don’t have to keep telling me every single time we talk”.⁷

Clear and honest communication

- Set genuine expectations for the client.
 - Outline the steps in the legal matter and explain what you can and cannot do.
-

Consent and self-determination

- Often, clients only want the information they need. Be guided by the client as to what they want to know. Often, they will indicate what they want to know as a priority, and then you can move through other critical information.
 - Clients need to be informed and have a clear and concise understanding of where they stand and how they need to progress their matter.
 - Make it easy for the client to understand what is happening in their legal matter. Break down each stage and each piece of information.
-

Support and healing

- Give the client an option for a support person to be present. If your team has an AFO, consider whether it is appropriate to include them in the client meetings.
 - The client should feel heard and understood after interacting with their lawyer.
 - Utilise the Aboriginal Civil Law Check-up form (see Annexure A).
-

⁷ Legal Aid NSW, Overcoming the Barriers.

5.2. Duty services – criminal law

Trauma, emotional and social wellbeing

- Use the [Trauma Informed Organisational Toolkit](#)
 - Observe the client's body language. Ask a support person or court support worker to sit with them to help alleviate their anxiety or nerves.
 - Observe the client's reactions to the questions you ask, particularly about mental health.
 - Try beginning with indirect questions about whether they are linked in with any support services or receiving Centrelink benefits (such as the Disability Support Pension (DSP)).
 - When interacting with police, prosecutors and other people in authority, ensure you explain the reasons to your client. The client may view these interactions with others from a position of distrust due to past negative and traumatic experiences.
 - Understand the level of distrust the client may have with the legal system. This distrust may look like a client just pleading guilty without a genuine reflection on the event in question because they may have given up, do not feel heard or adequately represented, do not understand the consequences, or feel pressured to respond for expediency.
-

Understanding culture and community

- Obtain cultural information and get background information from people such as carers or relatives.
 - Consider gender sensitivities if the matter relates to sensitive topics such as domestic violence or sexual violence and whether another lawyer should act and is able to act instead of you.
-

Clear and honest communication

- Be empathetic but direct about the difficult questions that you need to ask straight away. Try saying: "Today, we only have a short amount of time, so I will have to ask you very direct and personal questions about you and your circumstances. It is really important that you answer my questions honestly. But it is really important to know that I cannot unhear what you tell me...".
- Set genuine expectations for the client. Explain at the beginning who you are, what your role is and what you can do for them.
- Pre-empt some of the issues right at the beginning of the interview.
- Reassure the client by telling them what your strategies are going to be. Show the client that you are confident in your skills, you know what you are doing, and you are on their side.
- If they are unsure of what is happening, you should adapt your communication style, re-explain and identify the barriers that prevent the client from engaging.

- Break down what “guilty” and “not guilty” means. For example, guilty means you did it, not guilty means you didn’t do it, or you want the police to prove it. Ensure the client is informed about the consequences without pressuring them. Try saying: “Guilty means you did it, not guilty means you didn’t do it, or you want to see the brief first and see if the police can prove you did it”.⁸
 - Write down as much as you can about the client to ensure the next lawyer is informed and can be trauma-informed about asking follow-up questions. This information avoids repeatedly re-traumatising the client.
 - Ask the client if they would like any information written down, such as bail conditions, next court dates, lawyer’s contact details, and the next steps they should take. Also, ask whether they want you to relay information to a third party whom they trust, such as a family member.
-

Acknowledgement, respect and understanding

- Show empathy and concern for the client. Avoid insincere or overly dramatic statements about a client’s past.
 - Show concern and use the client’s language. If they have a mental illness, they may refer to this as “being unwell” or “anxious”.
 - Avoid saying, “I understand what you are going through”. You don’t, and you might inflame the situation.
 - Respect the client’s time. The client notices how much time you spend with them compared to other clients, and it can make the client feel as if they do not matter. Try to signpost when you expect their matter to be in court and explain any anticipated delays.
 - Empower the client to understand the processes and make informed decisions about their matter. Ensure the client understands what is going to happen. This may include the order of who talks in court, what the prosecution will likely say, and the fact that you have to let them state their point first before providing the court with your version of events.
 - Highlight to clients what you are going to submit, for example, a sentence or detention application. This information can be personal and can trigger your client.
-

Confidentiality

- Explain what you can do, how you can help, and why you are taking notes and reassure them about confidentiality.
 - Make sure the client understands that we are not working with the police or the other party.
 - Explain to the client that it is a public courtroom. If the client does not want certain things submitted publicly via oral submissions, find alternative ways to do so, for example, written submissions, submitting reports and other supporting documents, and then indicate to the court why written submissions are preferred, if and when appropriate.
-

⁸ Legal Aid NSW, Overcoming the Barriers.

Consent and self-determination

- Confirm that the client understands the advice and is not just agreeing with you or with their support person. Check for their understanding by asking the client to say back to you what you have said.
 - Explain the importance and context of your questions.
 - Explain what will happen in court. Try saying: “When we go into the courtroom, and the court is ready to hear your matter, the police prosecutors will speak first, and they will probably say things about you that you may not like. After they speak, the court will allow us to respond and make our arguments...”.
 - Explicitly explain that you are on your client’s side and that they get to decide what they want to do with their own legal matter. Your job is to give legal advice and advocate for them.
 - If you are making submissions and the client wants to add something specific that may prejudice their matter, tell them why you will not say something. Give them a chance to understand.
 - Draw a diagram of their legal options. For example, what happens if they plead guilty, and what happens if they want to consider pleading not guilty?
 - At the end of a service, ask your client if they would consent to having their personal information, including documents, saved for future cases. If consent is obtained, ensure they are uploaded to CCMS under easily identifiable document names.
-

Support and healing

- With consent, get an AFO or support person. They can ask if the client is receiving treatment or linked in with any services. If they are not seeking treatment, offer options and make them aware of relevant services. Try saying: “Would it be OK if I talk to [insert support person] so that we can work out how to best support you through this?”
 - Build a relationship with the court support officers or other support services at court. They may be able to provide insight into the client and how best to engage with them.
 - Utilise the Aboriginal Civil Law Check-up form (see Annexure A) or obtain consent for facilitated referrals.
-

5.3. Extended legal assistance and casework services – civil law

Trauma, emotional and social wellbeing

- Be attuned to the client's responsiveness and their emotions. Understand that the client may be overwhelmed, and this can impact their emotions, reactions, understanding and rationality.
 - Use the [Trauma Informed Organisational Toolkit](#).
 - Civil legal matters can take time to resolve, and the lack of stability can cause great distress to clients. Speak to the client in a respectful, compassionate and trauma-informed manner. Give the client an option for a support person to be present. If your team has an AFO, consider whether it is appropriate to include them in the client meetings.
 - Lawyers need to understand the underlying trauma and social and emotional wellbeing of a client and how that impacts their engagement. Lawyers should discuss with the client what they are experiencing in order to tailor their communication to the client's needs. Do not assume their behaviour is because of drugs or alcohol abuse unless that has been confirmed.
-

Understanding culture and community

- Build trust by building rapport with the client. Find a neutral connection with the client by having a relaxed, get-to-know-you conversation before going into the legal issue.
 - Find out if there are any cultural considerations you need to understand when engaging with your client. Do not assume the client is not engaging with you because they do not care or do not want your assistance. With consent, discussions with their support person and family members may provide insight into the client's circumstances and how you can adapt your advocacy.
-

Clear and honest communication

- Avoid asking clients to re-tell their trauma. Ensure your file notes are updated and appropriately detailed.
 - Consider how to best engage with your client. This may be via phone or in-person appointments.
 - Consistent communication is important. In the event the legal matter has not progressed, inform the client why it has not progressed. This helps make the client feel reassured, informed, respected and in control of their own matter. The client should not feel left in the dark and not know where their matter is in the legal process. If a client has contacted the lawyer for an update, the lawyer should respond within 48 hours.
 - Confirm the client understands and is engaged in what is happening in their legal matter. If you are unsure that the client understands the question or the advice, repeat it in a different way. With consent, involve a support person or AFO if available.
 - When organisational tests/priorities need to be met, it is critical that there are open and transparent conversations with the client about why this is happening. Clients need to be informed and have a clear and concise understanding of where they stand and how they need to progress their matter.
-
- For example, when granting a section 33 Legal Aid NSW grant, if there is a chance we are unable to assist, let them know that this is a possibility at the start and explain the reasons for this. You will have set clear expectations for the client.

Acknowledgement, respect and understanding

- Continuity of service is crucial. Clients get frustrated with services that continue to transfer them to another team or lawyer without first informing them and communicating the reasons why.
- Listen and do your best. The client can feel when you care about them and the outcome of their legal matter.
- Often, clients only want the information they need. Be guided by the client as to what they want to know. Often, they will indicate what they want to know as a priority, and then you can move through other critical information.
- Make it easy for the client to understand what is happening in their legal matter. Break down each stage and each piece of information.
- Reframe expectations if necessary.
- Do not dismiss the client's perception of the legal problem. Acknowledge their concerns and contextualise their legal matter and how you can or cannot assist.

Confidentiality

- If the client is reluctant to share information, re-explain confidentiality to the client, especially when communicating over the phone.
- Ask the client who you can speak to if you have challenges getting in contact with the client or if you need additional information about the client.

Consent and self-determination

- Clients need to be informed and have a clear and concise understanding of where they stand and how they need to progress their matter.
- Confirm that the client understands the advice and is not just agreeing with you or with their support person. Check for their understanding by asking the client to say back to you what you have said.
- Make it easy for the client to understand what is happening in their legal matter. Break down each stage and each piece of information.
- Ask the client to prepare in advance for the interview and give them things to do before they attend. For example, note down what they need help with or questions they want to ask.

Support and healing

- Identify if your client has ongoing legal matters in different jurisdictions that may intersect with your legal advice. Ensure you break down any silos to provide a holistic and strategic legal service.
- Ensure the client is aware of the support services Legal Aid NSW can offer and the role they have in assisting the client throughout the legal process. This support may also include financial counsellors or other Allied Health Professionals.

- Give the client options and advise on the avenues open to the client to consider. If you know a client is unlikely to be accepted or heard by that referral, consider a different referral: for example, tort claims against the police and referrals to private law firms. Set genuine expectations for the client. Try saying: “Unfortunately, there is no legal solution that we can offer, or at least none of the solutions you are seeking. It is likely that you would get the same outcome if you went to a different legal service...”.⁹
-

⁹ Legal Aid NSW, Overcoming the Barriers.

6. Legal Aid NSW: interdisciplinary service delivery

Legal Aid NSW has a number of different programs, teams and projects that provide holistic and client-focused legal services.

6.1. Aboriginal Field Officer (AFO) Program

AFOs undertake a broad range of activities to support holistic, client-focused legal and non-legal advocacy. Their primary purpose is to better service Aboriginal and Torres Strait Islander clients, including but not limited to:

- working with lawyers to provide holistic support to clients by addressing their non-legal needs, and
- assisting and facilitating community engagement through outreach services and community legal education to ensure Aboriginal communities understand their legal options and how to access Legal Aid NSW.

As of February 2024, Legal Aid NSW employs a number of AFOs across the state, including in the following locations:

- Dubbo
- Port Macquarie
- Newcastle (Bolton St and Hunter St Offices)
- Nowra
- Blacktown
- Broken Hill
- Campbelltown
- Wagga Wagga
- Walgett
- Broken Hill
- Tamworth (FamAC)
- Parramatta (FamAC)
- Lismore (FamAC), and
- Aboriginal Women on Remand Pilot (Head Office, Sydney).

Want more information?

Please contact the AFO Coordinator or Senior Lawyer, Aboriginal Services Branch at aboriginalservices@legalaid.nsw.gov.au

6.2. Civil Law Service for Aboriginal Communities (CLSAC)

CLSAC is a team dedicated to the legal needs of Aboriginal clients, predominantly those living in regional and remote areas of New South Wales and Aboriginal women in custody. They can assist with:

- Unfair contracts and debt
- Housing
- Centrelink and NDIS
- Discrimination
- Employment, and
- Stolen Generations and National Redress Scheme

CLSAC services priority regional and remote locations across NSW. For further information, you can visit [CLSAC – who we can help](#).

Want to make a referral?

You can refer clients to the email clsac@legalaid.nsw.gov.au or (02) 9219 5057.

6.3. Family Law Service for Aboriginal Communities (FamAC)

The Family Law Service for Aboriginal Communities (FamAC) is a state-based, Aboriginal-led service made up of lawyers dedicated to assisting Aboriginal and Torres Strait Islander families and children in family law and care and protection matters. The FamAC team provides advice, early intervention support, outreach and casework litigation to Aboriginal and Torres Strait Islander families and children currently involved in or at risk of being involved in family or care and protection proceedings.

FamAC provides outreach services to priority regional and remote Aboriginal communities throughout New South Wales. For further information, you can visit [FamAC – who we can help](#).

Want to make a referral?

You can refer clients to the FamAC team through their referral form. You can also call the FamAC team on (02) 9407 2941 or email FamAC@legalaid.nsw.gov.au.

6.4. Walama List

Legal Aid NSW has established a dedicated Walama Unit based in Indictable Team 3 in Sydney. Legal Aid NSW is represented on both the District Court's Walama Working Group and the Walama List Users Group. We work closely with other stakeholders, including the Aboriginal Legal Service NSW/ACT, to ensure that appropriate procedures are in place to provide the best possible representation of clients who may be eligible for the List and to support its therapeutic objectives.

The Walama List provides a therapeutic and holistic approach to sentencing eligible Aboriginal and Torres Strait Islander offenders. Walama achieves this by working with Elders and respected community members, as well as government and non-government services, to address underlying needs and risk factors related to offending behaviour.

Any concerns or feedback regarding the Walama List Walama Unit can be made at walama@legalaid.nsw.gov.au.

6.5. Aboriginal Women on Remand Pilot (AWRP)

This service aims to provide a holistic model of service delivery and triage for Aboriginal women on remand. The AWRP team will work closely with stakeholders and community organisations to reduce delays in service delivery and fast-track resolutions in criminal matters.

The key objectives of this service are:

1. To reduce delays and barriers relating to service delivery for Aboriginal women who are accessing criminal law services and Supreme Court Bail.
2. To provide a culturally appropriate client-centred legal service for Aboriginal women.
3. To reduce the overrepresentation of Aboriginal women in custody and help Aboriginal women feel empowered to participate completely in their legal matters.

6.6. Aboriginal Services Branch (ASB)

Legal Aid NSW Aboriginal Services Branch is part of the executive branch and works across all policy, program and practice areas. The purpose of the ASB is to ensure that Legal Aid NSW responds to the legal needs of Aboriginal people and clients in a culturally appropriate and comprehensive manner. The Aboriginal Services Branch also oversees the Aboriginal Field Officer Program.

For advice, guidance or requests for ASB input on policies, strategies, and programs that respond to the legal and non-legal needs of Aboriginal clients, please contact us at aboriginalservices@legalaid.nsw.gov.au.

7. Further reading

Ongoing reflection and learning about how to work with Aboriginal clients, cultural safety, unconscious bias, racism, and trauma-informed practice is critical. Our understanding, learning and training can change over time. It is the responsibility of Legal Aid NSW staff and panel lawyers to undertake cultural competency training.

The following resources may be useful to support the ongoing development of best practice advocacy. Legal Aid NSW encourages education on best practices beyond this list.

7.1. 'Significance of Culture to Wellbeing, Healing and Rehabilitation' (2021)

The Bugmy Bar Book commissioned this report with the support of the Australian Bar Association. The authors discuss the importance of culturally appropriate and responsive services and programs in addressing social and emotional wellbeing for Aboriginal and Torres Strait Islander peoples and allowing individuals to build core capabilities within a culturally safe environment, including learning to recognise destructive behaviours, building coping skills, and forming supportive and pro-social relationships, all of which are protective factors against future contact with the criminal process.

You can access this report by visiting [Significance of Culture to Wellbeing, Healing and Rehabilitation](#).

7.2. Aboriginal Legal Service (ALS)

As an ACCO, ALS have a unique capacity to develop culturally safe and localised solutions that have the support of the community. With over 23 locations across NSW and the ACT, the ALS support Aboriginal people, families and communities across a range of different areas, including (but not limited to):

- criminal law and bail
- family law and child protection
- fines
- family violence and safety
- deaths in custody
- employment law
- Custody Notification Service
- Justice Reinvestment
- The Bugmy Evidence Project
- Closing the Gap in NSW, and
- policy and advocacy.

For more information about how the ALS can assist, please visit the [ALS website](#).

7.3. NSW Law Society

The Law Society of NSW, in consultation with the Indigenous Issues Committee, has developed the following resources:

- [General Guidance for Solicitors Representing Aboriginal and Torres Strait Islander Clients](#)

- [Working with Aboriginal and Torres Strait Islander Clients](#)
- [Making our services work for Aboriginal people](#)

These resources aim to provide practical information for lawyers to meet their professional obligations when assisting First Nations clients effectively.

7.4. Indigenous-specific lists in NSW

- [Youth Koori Court](#)

The Youth Koori Court (YKC) modifies the process within the usual Children's Court process to better involve Aboriginal and Torres Strait Islander young people, their families and the broader Aboriginal and Torres Strait Islander community in the court process.

- [Circle Sentencing](#)

Circle Sentencing is an alternative sentencing court available for eligible adult Aboriginal offenders who have been found guilty or have pleaded guilty because of criminal proceedings in a local court.

Rather than being sentenced by a magistrate alone, representatives from the local Aboriginal community help decide appropriate sentences and devise suitable outcome plans for Aboriginal defendants. The defendant sits in a circle with respected Aboriginal community members, support people and the local magistrate to discuss the offending behaviours. The victim may also choose to participate.

- [Walama List](#)

The Walama List enables Aboriginal and Torres Strait Islander community participation in the court process and embedding Aboriginal and Torres Strait Islander narratives in the sentencing process and facilitates appropriate therapeutic interventions to address identified needs and risk factors.

Who can participate in the Walama List?

[District Court Practice Note 26](#) sets out Walama List procedures, including eligibility requirements and procedures for referrals.

- [NCAT Indigenous Tenancy List](#)

Tenants and landlords who identify as Aboriginal or Torres Strait Islander can have their matter heard in NCAT's Aboriginal Tenancy List.

- [The Federal Circuit and Family Court of Australia specialised Indigenous List](#)

The Federal Circuit and Family Court of Australia aims to provide greater access to justice for people who identify as Aboriginal or Torres Strait Islander and have a family law issue to resolve.

- [Winha-nga-nha List](#)

The Winha-nga-nha List is a dedicated court list for Aboriginal and or Torres Strait Islander families involved in care proceedings at Dubbo Children's Court.

8. Conclusion

These standards have been designed to assist you in your representation of Aboriginal clients.

Above all else, 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.

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.

© The Legal Aid Commission of NSW 2024

Annexure A

Law check-up

Artwork: © Luke Penrith

1. Client details

Name

Date

Address

Date of birth

Phone/other contact person

Do you consent to Legal Aid NSW calling your other contact to talk to you?

Yes

No

2. Checklist



Problems with Department of Communities and Justice (DCJ) formerly DOCS or FACS



Family or relationship
Family breakdown, family violence, child support, care and protection



Care and protection



Centrelink and NDIS
Pensions and payments, debts, fraud prosecutions, NDIS problems



Housing
Applying for a house, rent, repairs, eviction, mortgage problems



Financial hardship
Credit card debts, difficulty paying loans or bills, problems with debt collectors, access to superannuation



Stolen Generations Compensation and Redress Scheme



Consumer or contract issues
Problems with unfair contracts, scams, door to door sales, renting or buying household goods, payday loans, insurance



Fines
Unpaid fines, work and development orders, victim restitution orders



Funerals
Funeral insurance problems, burial disputes, options to pay for funerals

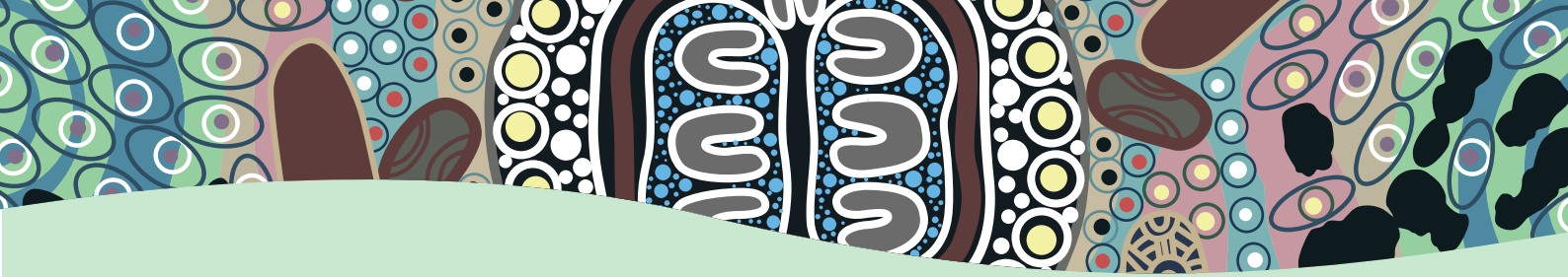


ID issues
Birth certificates, NSW photo cards, Medicare cards



Complaints about government bodies
Police, schools, government departments





Artwork: © Luke Penrith

Law check-up



Discrimination or harassment

In work, in education, goods and services, housing



Crime

Going to court, police interviews, getting your property



Employment and Working with Children Checks

Loss of employment, entitlements, bullying or harassment



Veterans or returned services

Benefits if you've served in the military



School problems

Children's suspension, expulsion, enrolment or bullying



Other

3. Details of client's circumstances and help they need (optional but helpful)



Client consent to referral

Yes No

Client signature: _____ Date: _____


Referral

Referred by

Name

Contact

Organisation

 Email this referral to _____ or _____

