

Best practice guidelines for lawyers

Working with First Nations clients

Principle 1: Improve your understanding

Guideline: Develop and maintain your own knowledge of the social context of First Nations peoples including impacts of colonisation and the Stolen Generations, loss of connection to country and culture and generational trauma.

PRACTICE POINTS:

- Continually update your knowledge about First Nations peoples and their lived experiences from both historical and contemporary perspectives.
- Attend relevant professional development opportunities to keep your knowledge base current.
- Undertake a cultural immersion activity
- Participate regularly in cultural awareness and capability training.

Notes

Reports to consider

- National Agreement on Closing the Gap and key reform priorities www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf
- Recommendations of the Royal Commission into Aboriginal Deaths in Custody which was released in 1987. Many of these recommendations remain unaddressed www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html
- Recommendations made by the Aboriginal and Torres Strait Islander Women's Taskforce on Violence www.austlii.edu.au/au/other/IndigLRes/2000/8.pdf
- The Bugmy Bar Book www.bugmybarbook.org.au/

Principle 2: Respect cultural diversity

Guideline: Understand First Nations cultures differ and treat each culture respectfully in your interactions.

PRACTICE POINTS:

- Recognise First Nations identification is defined by an individual and their community.
- Understand not using traditional language or practicing traditional customs does not detract from a person's identity as a First Nations person.
- Ensure you understand the nature of the Aboriginal kinship system.
- Familiarise yourself with the Ailan Kastom (Torres Strait Islander) child rearing practice under the *Meriba Omasker Kaziv Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*.
- Actively work to understand the local community with which you are working.

Principle 3: Communicate effectively

Guideline: Focus on effective communication and overcoming communication barriers to ensure quality services for First Nations clients.

PRACTICE POINTS:

- Be aware of LAQ's Language Services Policy and ensure that interpreters are used whenever necessary.
- Use plain English rather than complex legal jargon.
- Seek clarification to ensure no misunderstanding or miscommunication has occurred.
- Be aware that asking direct questions may lead to gratuitous concurrence (the pattern of saying yes to a question regardless of agreement or understanding).
- Allow clients to tell their story and respond to questions without feeling rushed.
- Use the Blurred Borders Queensland resources to assist with communication.
- Understand some non-verbal communication features that might be more prevalent, include no direct eye contact, silence and pauses.
- Be aware concepts of time may differ, for example, some clients may not provide a date or time but reference an event that was happening at the time.

Principle 4: Making and maintaining contact

Guideline: Understand your First Nations clients may experience difficulties receiving and responding to letters, emails and calls.

PRACTICE POINTS:

- Be aware of the difficulties clients experience living in remote, regional and isolated regions including:
 - access to telecommunications
 - limited or no internet connection
 - black spots that impact mobile phone usage
 - limited income to afford phones and other communication devices
 - reluctance to answer unfamiliar or private phone numbers.
 - clients living in urban areas can experience the above issues as well.
- Be aware mail sent to clients in remote communities may take longer to reach them and some mail will be addressed to post offices in that community.
- Be aware responding to mail can be challenging and you should provide self-addressed stamped envelopes to help clients.
- Be aware access to public telephones in some remote communities is limited and clients may not be able to contact their lawyer.
- Familiarise yourself with local agencies who can help contact clients for you.

Best practice guidelines for lawyers (continued)

Working with First Nations clients

Principle 5: Delivering client centred services

Guideline: Tailor your services to meet the needs of First Nations clients who have diverse perspectives, experiences and unique needs.

PRACTICE POINTS:

- Provide clients with clear information about your role, the service you will provide, the tasks required and who has responsibility for them.
- Identify if the client has other legal issues.
- Refer clients to culturally appropriate support agencies and programs where appropriate.
- Understand there may be a cultural requirement for immediate and extended family members to support a client through the legal process.
- Build trust and rapport with clients by displaying empathy and sensitivity.
- Provide trauma-informed practice by placing clients at the centre of their journey and story, ensuring the relationship is built on deep listening and understanding.
- Engage report writers and professionals who have backgrounds in addressing and understanding the background to over-representation and disadvantage experienced by First Nations peoples.

Principle 6: Acknowledge cultural obligations

Guideline: Understand that lore and cultural obligations may take priority over commitments, including attending court and appointments.

PRACTICE POINTS:

- Understand the obligation for clients to participate in cultural practices such as attending Sorry Business, men's and women's business and working on country.
- Be aware some First Nations peoples respect traditional lore and custom by not speaking the name of a deceased person for a period.
- Understand the need for Torres Strait Islander people to participate in cultural practices such as Coming of the Light ceremonies, tombstone openings and other culturally significant events.
- Seek permission before taking photographs.
- Be aware First Nations communities may close for cultural and ceremonial reasons.

Principle 7: Recognising the importance of community

Guideline: Respect that community may play a central role in your client's life.

PRACTICE POINTS:

- Understand and respect the role of Elders.
- Learn about the services and resources that are available within your client's community.
- Identify if there is a community justice group in your client's area and the services they provide.
- Consider the role community justice groups can play in sentencing through delivering cultural submissions and advice about their community. They can also assist in mediations where there may be disputes.

Principle 8: Understanding the causes of over representation of First Nations peoples in the justice system

Guideline: Learn about the many factors leading to First Nations peoples intersecting with the justice system.

PRACTICE POINTS:

- Be aware of Australia's colonial history and the impacts of the forcible removal of children leading to complex experiences of trauma and loss.
- Be informed about the impacts of removing children from their families, communities and culture, which continues to occur today.
- Ensure families and children in the child protection system have the right to obtain legal advice and representation.
- Understand there may be cultural impacts for people experiencing and/or using violence, which includes named children or relationships.
- Understand there can be distrust and suspicion around government agencies and the justice system.
- Consider where the *Human Rights Act 2019* may be applied in your representation.