



Equal Treatment Benchbook

Third Edition



EQUAL TREATMENT BENCHBOOK

Queensland Courts

Third Edition

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FOREWORD

The Supreme Court of Queensland first published an Equal Treatment Benchbook in 2005; the second edition was published just over a decade later, in 2016. In late 2023, the Court embarked on a process of updating the information in the Equal Treatment Benchbook. What that project demonstrated, however, is that legal, social and cultural developments in the decade since the second edition was published have been such that simply updating the content was not sufficient. What was required was a complete revision.

This third, revised edition of the Equal Treatment Benchbook provides practical, contemporary guidance for judicial officers in relation to a range of issues that may confront participants in court proceedings. Its purpose is to support procedural fairness and equality of treatment for all court participants. It is underpinned by meticulous and comprehensive research, undertaken by the authors of the third edition, Ms Rebecca Fogerty and Dr Brooke Thompson, solicitors.

We celebrate and are proud of the diversity of our society. It is part of our national identity. Inclusion is an essential element of the equality and fairness which define our justice system. Exclusion, and disadvantage, are anathema to it. Good intentions are important, but insufficient; comprehensively informed understanding and practice is what is required. This third, revised edition of the Equal Treatment Benchbook is an accessible reference for such understanding. It is a valuable resource, which merits a “cover to cover” read for all judicial officers, and will provide targeted guidance when required.

This time we will not wait another 10 years to update the Equal Treatment Benchbook. It will be regularly maintained and updated as required. To that end, constructive feedback or suggestions are welcome and may be sent to benchbookfeedback@courts.qld.gov.au.

The Hon Helen Bowskill
Chief Justice of Queensland
March 2026

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First and foremost, we express sincere thanks to the authors of this revised third edition, Ms Rebecca Fogerty and Dr Brooke Thompson, for their significant contribution of time, experience and expertise; their careful and thoughtful approach to the topics covered; and for their diligence, professionalism and efficiency.

We also thank Mr Frankie Berardi, who carried out the work of updating the content of the second edition during 2023-2024. Although that work was overtaken by the decision to completely revise the Benchbook, Mr Berardi is commended for his industry and scholarship.

Many others have contributed by reviewing parts of the revised Benchbook. They include the members the combined Queensland courts and tribunal Diversity and Inclusion Committee (Bowskill CJ, Mullins P, Henry J, Crowley J, Clarke DCJ, Balic DCJ, Member Paratz and Deputy Chief Magistrate Gett); Freeburn J, Chief Judge Devereaux SC, Magistrate Kahlert and Ms Amanda O'Brien, Principal Registrar of the Supreme, District and Land Courts.

The front cover artwork is a detail from the 'Thousands of Eyes' artwork created by Japanese artist Yayoi Kusama in 2012; the public square arc wall installation outside the QEII Courts of Law in Brisbane. Kusama has said that the eyes symbolise the 'beautiful souls' of people watching over our future and 'singing out louder and louder that love is forever and infinite, to the ends of the universe'. A judicial interpretation of the artwork is that it represents the scrutiny to which the transparent court process may be, and regularly is, subjected. The 'Thousands of Eyes' represent the eyes of the community, looking on at the work of the courts.

PREFACE

Equal treatment is essential to fairness, judicial authority and legitimacy. Under the Australasian Institute of Judicial Administration's *Suggested Criteria for Judicial Appointments*, judges should have a 'demonstrated commitment' to the values of impartiality, integrity and inclusivity.¹ This includes:

- avoiding apparent and actual bias,
- respecting all individuals and communities served by the courts,
- recognising social disadvantage and equity needs of individuals, groups and communities, and
- understanding and adapting to social change.

The judicial oath reflects the close relationship between equal treatment and justice: a judge swears to discharge their role without fear, favour or affection.²

This book contains general information and practical guidance about equal treatment for judges in the day-to-day context of hearing and deciding cases. It aims to facilitate justice, ensuring that no person is disadvantaged in their interaction with the courts due to factors such as race, culture, language, ethnicity, religion, gender, sexual orientation, ability, age, or other relevant difference or difficulty.

The Equal Treatment Benchbook serves a different, though complementary, purpose to sentencing, trial and other benchbooks. The primary focus is on the practical aspects of how justice is delivered, emphasising equality, inclusion and impartiality in judicial conduct and courtroom management.

This book is not intended to be prescriptive, nor is its scope exhaustive. It is not an analysis of the complex social, cultural and economic factors which may impede equitable access and participation. It is a living document, reflecting the varied circumstances of the communities that are served by Queensland's courts.

It remains always for the presiding judge to determine what, if any, remedial action is necessary in the circumstances of an individual case. In deciding whether or how to take any action, the judge must balance the interests of all participants involved in a proceeding, not just the person with a particular identified difference or disadvantage. The paramount consideration is the interests of justice.

This book should be read in conjunction with the Council of Chief Justices' [*Guide to Judicial Conduct*](#), as some of the topics overlap.

Although this book is directed at judges, it may be a valuable resource for other justice system participants, including lawyers, self-represented litigants, parties to proceedings, witnesses, and interpreters.

¹ Emerita Professor Kathy Mack, *Suggested Criteria for Judicial Appointments* (Australasian Institute of Judicial Administration, revised ed, 2024) 8.

² *Constitution of Queensland Act 2001* (Qld), sch 1.

In this book, the term “judge/judges” includes all judicial office holders in Queensland, including magistrates and tribunal members. The term “court/courts” encompasses all courts and tribunals in Queensland. References to the “High Court” means the High Court of Australia. Any reference to legislative instruments is to Queensland legislation, unless specifically noted in the text.

CHAPTER 1. EQUAL TREATMENT AND THE COURTS

*'Fairness is not an abstract concept. It is essentially practical. Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice.'*³

1.1. Introduction

Ensuring fair treatment in the courtroom is a vital judicial function. The allegory of Justice blindfolded symbolises impartiality and fair application of the law. To maintain public confidence in the courts, 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.'⁴

In a diverse place like Queensland, the commitment to equal justice may raise difficult questions about how laws and courtroom processes should be applied. French CJ, Crennan and Kiefel JJ summarised this tension in *Green v The Queen*:

'Equal justice' embodies the norm expressed in the term 'equality before the law'. It is an aspect of the rule of law ... It applies to the interpretation of statutes and thereby to the exercise of statutory powers. It requires, so far as the law permits, that like cases be treated alike. Equal justice according to law also requires, where the law permits, differential treatment of persons according to differences between them relevant to the scope, purpose and subject matter of the law.'⁵

Equal treatment requires knowledge of relevant social differences and circumstances, including a person's class, religion, ethnicity, language, race, gender, sexuality, ability, and age, and in specific historical, social, and political contexts.⁶

Equal treatment does not end with awareness. It requires clear communication and, where appropriate, practical steps to address any unfairness arising from difference or disadvantage.

1.2. Implicit or Unconscious Bias

Bias is an inherent feature of human cognition, arising from our necessarily limited and imperfect ways of processing information. Often, the most powerful biases are likely to be those of which we are least aware and therefore least able to correct.

The central feature of impartiality is the absence of bias.⁷ The High Court has emphasised that actual or apprehended bias 'strike[s] at the validity and acceptability

³ *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1, 14 [37] (Gleeson J).

⁴ *The King v Sussex Justices* [1924] 1 KB 256, 259 (Lord Hewart CJ).

⁵ (2011) 244 CLR 462, 472–3.

⁶ Susan Armstrong, 'Accommodating culture in family dispute resolution: What, why and how?' (2011) 20 *Journal of Judicial Administration* 167, 169.

⁷ Kathy Mack, Sharyn Roach Anleu and Jordan Tutton, 'Judicial impartiality, bias and emotion' (2021) 28(2) *Australian Journal of Administrative Law* 66, 67.

of the trial and its outcome.⁸ Both types of bias may ground an appeal or disqualify a judge from presiding in a particular matter.

The concept of implicit or unconscious bias has also gained the attention of courts⁹ and individual judges.¹⁰ Implicit or unconscious biases are the ‘attitudes or stereotypes that affect our understanding, decision-making, and behavior, without our even realizing it’.¹¹

Over the past thirty years, cognitive and social psychologists have demonstrated that human beings think and act in ways that are often not rational. We suffer from a long litany of biases, most of them having nothing to do with gender, ethnicity, or race. For example, we have an oddly stubborn tendency to anchor to numbers, judgments, or assessments to which we have been exposed and to use them as a starting point for future judgments—even if those anchors are objectively wrong.¹²

Implicit bias may be driven by underlying attitudes and stereotypes about social categories, such as genders and races. An *attitude* is ‘an association between some concept (in this case, a social group) and an evaluative valence, either positive or negative.’¹³ A *stereotype* is an association between a concept (again, in this case, a social group) and a trait.¹⁴ It is essential to distinguish between the two, as a positive attitude towards a particular group does not necessarily preclude negative stereotypes, and vice versa. As Dowsett J identified:

Perhaps the most pernicious aspect of prejudice is that in a reasonably intelligent and well-educated person, it may be unconscious and, to others, virtually impossible to detect. ... The effects of prejudice are potentially very serious. As it is difficult to detect, it is of the utmost importance that we seek to avoid, or at least minimise, its occurrence.¹⁵

Everyone has unconscious biases. Engaging in reflective practices can assist in identifying and mitigating them. Strategies suggested by scholars and judges include:

- providing written reasons,¹⁶

⁸ *Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd* (2006) 229 CLR 577, 611 [117] (Kirby and Crennan JJ).

⁹ For example, in *GetSwift Ltd v Webb* [2021] FCAFC 26, the Court (at [45]) found that a reasonable apprehension of bias arose because ‘even where a decision-maker has expressly disavowed consideration of certain [immaterial and prejudicial] material, it may be that the particular nature and relevance of that material can still give rise to the risk of a subconscious influence.’ See also *CNY17 v Minister for Immigration and Border Protection* (2019) CLR 76.

¹⁰ Keith Mason, ‘Unconscious Judicial Prejudice’ (2001) 75(11) *Australian Law Journal* 676; Justice J A Dowsett, ‘Prejudice – The Judicial Virus’ (Paper, 7 February 2009) <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/speeches-former-judges/justice-dowsett>>.

¹¹ Jerry Kang et al, ‘Implicit Bias in the Courtroom’ (2012) 52 *UCLA Law Review* 1124, 1126.

¹² *Ibid* 1128.

¹³ *Ibid* 1128.

¹⁴ *Ibid* 1128.

¹⁵ Dowsett (n 10) 14.

¹⁶ *Ibid* 16.

- deliberate exposure to counter typical associations,¹⁷
- cultivating healthy scepticism about one's own objectivity,¹⁸
- participating in discourse about how the justice system responds to difference and disadvantage,¹⁹
- seeking different perspectives, and
- engaging with diverse members of the community.

1.3. Achieving Substantive Equality

Equal treatment does not always necessitate the *same treatment*. As McHugh J stated in *Waters v Public Transport Corporation*, 'discrimination can arise just as readily from an act which treats as equals those who are different as it can from an act which treats differently persons whose circumstances are not materially different'.²⁰ In particular cases, court processes may need to be adapted to enable an individual to fully participate in the proceedings.

Judges may tailor their communication style, for example, when dealing with children and young people, individuals with communication difficulties, or self-represented litigants. The need for adaptation in those situations is often apparent. Other scenarios may require a more nuanced appreciation of the person's circumstances. For example, accommodations may be appropriate for people with a particular religious affiliation or childcare responsibilities. Sometimes, processes may also need to be varied to accommodate the individual circumstances of a legal practitioner.

1.4. The Importance of Communication

The integrity of the legal process depends on all participants understanding and being understood. Good communication requires empathy (awareness of the circumstances of the participants) and insight (understanding how any differences or disadvantages may impede a person's involvement in the proceedings). Courtroom communication is discussed in further detail in [Chapter 2 \(Effective Communication in the Courtroom\)](#).

1.5. Suggested Further Reading

Australian Law Reform Commission, [Without Fear or Favour: Judicial Impartiality and the Law on Bias](#) (Report 138, December 2021).

Council of Chief Justices, [Guide to Judicial Conduct](#) (3rd ed, 2023).

¹⁷ Kang et al (n 11) 1169-72. See also Judge Andrew J Wistrich and Jeffrey J Rachlinski, 'Implicit Bias in Judicial Decision Making: How It Affects Judgment And What Judges Can Do About It' in Sarah Redfield (ed), *Enhancing Justice: Reducing Bias* (American Bar Association, 2018) 87, 105-6.

¹⁸ Kang et al (n 11) 1173.

¹⁹ Robert French, 'The Relevance of Difference – Equal Justice and Equality before the Law' (Speech, University of Sydney, 27 August 2015).

²⁰ (1991) 173 CLR 349, 402.

Kang et al, '[Implicit Bias in the Courtroom](#)' (2012) 52 *UCLA Law Review* 1124.

Mack, K, Roach, A and Tutton, J, '[Judicial Impartiality, Bias and Emotion](#)' (2021) 28(2) *Australian Journal of Administrative Law* 66.

CHAPTER 2. EFFECTIVE COMMUNICATION IN THE COURTROOM

‘Knowledge and understanding of legal rights and court processes and communication barriers reflect a fundamental requirement of equal justice: that all people be able to understand and be understood in legal proceedings.’²¹

2.1. Introduction

Every person in a courtroom must understand and be understood. This includes judges communicating clearly and appropriately for the intended audience. Poor communication can undermine the fundamental object of legal proceedings and lead to miscarriages of justice.²² Short of this, it can result in perceptions of unfairness and a loss of public confidence in the system.

2.2. Clear Communication

Using technical language can create confusion and misunderstanding among non-legally trained courtroom participants. Judges are encouraged to be mindful of the importance of non-verbal communication (see 2.7 below).

Any of these factors can undermine a person’s ability to understand and participate in proceedings. Ensuring equal treatment involves being adept at recognising communication barriers and remediating them.

2.3. Appropriate Communication

The courtroom is a primary workplace for legal practitioners, bailiffs, associates, court clerks, registry staff, corrective service officers and many others. Communication between the judge and routine court participants should be courteous, respectful, and professional.

Conventionally, judges should communicate in a way which upholds the courts’ authority and the appearance of neutrality.²³ Whilst humour, for instance, is generally discouraged,²⁴ occasional individualised and appropriate injections of judicial personality can have a positive effect on court participants.²⁵

²¹ TF Bathurst and Sarah Schwartz, ‘Doing right by “all manner of people”: building a more inclusive legal system’ in Judicial Commission of New South Wales, *Handbook For Judicial Officers* (Sydney, 2021) 86, 90.

²² See *R v Tran* [1994] 2 SCR 951; *R v Kina* [1993] QCA 480.

²³ Council of Chief Justices, *Guide to Judicial Conduct* (3rd ed, 2023) 19.

²⁴ See generally Sharyn Roach Anleu, Kathy Mack and Jordan Tutton, ‘Judicial Humour in the Australian Courtroom’ (2014) 38 *Melbourne University Law Review* 621.

²⁵ *Ibid.*

Of course, court proceedings are interactive and influenced by the mixture of participants and issues in play. Properly managing the psychology of a proceeding — including communication — is part of good “judge craft”.

Polite and respectful communication serves some broader objectives. It sets an example for practitioners, reinforcing their ethical obligation of courtesy. It can also moderate the tone of highly emotional proceedings. Most importantly, it encourages perceptions of neutrality and confidence in the justice system, especially for non-legally qualified participants.

Judges sometimes face unique communication challenges, such as inexperienced or overbearing legal practitioners, or highly emotional situations. The overriding principle of neutrality necessarily limits what can be said in a particular moment. These challenging scenarios, however, underscore the importance of judges’ nuanced use of interpersonal skills in maintaining public trust in the justice system.

2.4. Names and Naming Systems

Court proceedings generally begin with introductions of legal representatives and parties by name.

2.4.1. Names

Names are integral to a person’s identity and are influenced by family, cultural and religious factors. A judge’s initial reaction (or lack thereof) to a person’s name can influence a participant’s engagement in the proceedings and whether there is any perceived bias.

Correctly pronouncing names and using preferred forms of address is a matter of respect and courtesy. Most of Queensland’s courts have published practice directions²⁶ to facilitate simple processes for legal practitioners and self-represented litigants to provide, and for the courts to seek, guidance and clarification about names, pronunciation and modes of address.

Where parties are legally represented, practitioners should consider whether any names associated with the matter may be difficult to pronounce and, if necessary, promulgate the correct phonetic pronunciation.

A judge may clarify the correct pronunciation of a name either prior to the proceeding (via the associate or clerk) or directly with the legal representative, party or witness at the commencement of proceedings.

²⁶ Supreme Court of Queensland, *Practice Direction Number 10 of 2023: Pronunciation of Names and Preferred Forms of Address*, 3 April 2023. District Court of Queensland, *Practice Direction 2 of 2023: Pronunciation of Names and Preferred Forms of Address*, 5 April 2023; Magistrates Courts of Queensland, *Practice Direction Number 2 of 2023: Pronunciation of Names and Preferred Forms of Address*, 6 July 2023; Queensland Civil and Administrative Tribunal, *Practice Direction No. 5 of 2023: Pronunciation of Names and Preferred Forms of Address*, 11 December 2023; Land Court of Queensland, *Practice Direction 3 of 2023: Pronunciation of Names and Preferred Forms of Address*, 7 June 2023.

The Queensland Supreme and District Courts' written appearance slips enable practitioners to inform the judge of their preferred form of address (such as "Dr", "Mr", "Ms" and so on). In contested matters where one practitioner holds a doctorate, use of the title "Dr" may undermine perceptions of an equal footing between the parties (especially if the qualification pertains to an unrelated topic or area of law) and it is preferable not to use it.

2.4.2. Naming Systems

Different cultures have different naming conventions. For example:

- family names may come first or last, or there may be no family name at all,
- names may include middle names or compound or hyphenated given names or family names,
- names might simply be one name without a formal surname, or the same name may appear twice to represent both the first name and surname,
- names may include patronyms (names deriving from the father), matronyms (names deriving from the mother), or teknonyms (names deriving from a child), and
- names may have religious, astrological, or other symbolic significance.

[Appendix A](#) is a non-exhaustive list of specific naming examples.

Some Australians from culturally and linguistically diverse backgrounds may adopt an English-language name distinct from their birth or legal names. For example, some people from cultures where the surname precedes the first name may invert their name to conform to the English-language form.

Due to the wide range of naming conventions, terms such as "first name", "second name", "middle name", "surname", and "Christian name" can be ambiguous. It is better to use clear language such as "What is your full name?" or "How would you like me to address you?"

Styles for addressing gender diverse individuals are discussed in [Chapter 10 \(Gender Identity and Sexual Orientation\)](#).

2.5. Interpreters and Translators

Although sometimes the terms are used interchangeably, there is an important distinction between interpreting and translating. To "interpret" means to carry out the process by which spoken or signed language is conveyed from one language (known as the source language) to another language (known as the target language) *orally*. A person who carries out this task is called an interpreter. To "translate" means to carry out the process by which written language is conveyed from one language (known as

the source language) to another language (known as the target language) in *written* form.²⁷ A person who carries out this task is called a translator.

A person who has limited English proficiency may need to be assisted by an interpreter to properly understand and participate in a court proceeding (whether as a party or witness). The interpreter's role is to remove the language barrier so that the party can be "linguistically present" at the proceedings and so be placed in the same position as an English-speaking person. The role of an interpreter is therefore essential to ensuring access to justice and procedural fairness for people with limited English proficiency in court proceedings.²⁸

The need for an interpreter does not only arise for a person who cannot speak English at all. The formality, complexity and unfamiliarity of court proceedings may mean that a person for whom English is a second (or third) language, and who can manage to undertake less formal conversations in English, may not be able to fully understand and participate in a court proceeding without an interpreter.

Assessment and identification of the need for an interpreter is primarily a matter for the legal representative for the party or witness concerned. However, judges should be alert to this need, particularly in the case of a self-represented party.

Adopting a "hybrid" approach for a non-English speaking party or witness should generally be avoided. Hybrid interpreting occurs when a non-English speaker gives their evidence in English, but an interpreter is retained to assist by interpreting when the witness requires assistance in either understanding the question or giving their answer. Although this may be a well-intentioned solution for a person who has some English language ability, it carries risks and disadvantages, including because it cannot be known whether the person has in fact understood the question, or provided their answer as fully as they would wish to, if giving evidence completely in their first language. Depending on the nature of the proceeding, a binary approach is preferable.

Interpreters owe a paramount duty to the court to interpret *accurately* to the best of their ability and be impartial.²⁹ They are required to comply with the code of conduct for interpreters.³⁰ In this context, "accurately" means:

- resulting in the optimal and complete transfer of the meaning of the other language into English and of English into the other language, and
- preserving the content and intent of the other language or English (as the case may be) without omission or distortion, including matters the interpreter may consider inappropriate or offensive.³¹

²⁷ *Uniform Civil Procedure Rules 1999* (Qld) r 429VB ('UCPR'); *Criminal Practice Rules 1999* (Qld) r 54AB ('Criminal Practice Rules').

²⁸ Judicial Council on Diversity and Inclusion, *Recommended National Standards for Working with Interpreters* (2022, 2nd ed) 1.

²⁹ *Uniform Civil Procedure Rules 1999* (Qld) r 429VH; *Criminal Practice Rules 1999* (Qld) r 54AH.

³⁰ *Uniform Civil Procedure Rules 1999* (Qld) r 429VI; *Criminal Practice Rules 1999* (Qld) r 54AI.

³¹ *Uniform Civil Procedure Rules 1999* (Qld) r 429VB; *Criminal Practice Rules 1999* (Qld) r 54AB.

A common misconception is that accurate interpreting equates to literal, word for word translation. Due to differences across languages, including grammatical, pragmatic and cultural, literal translations are rarely possible. Interpreters are also required to aim to achieve accuracy of content and manner, including the tone of the original speech.³²

Interpreting is a complex and difficult task, requiring a high degree of skill, experience and training. This is why the Court rules provide that a person may not act as an interpreter unless the person is currently certified, registered or recognised as an interpreter by a “recognised agency”, such as NAATI.³³ Leave may be granted for another person to act as an interpreter if it is necessary in the interests of justice.

Judges can assist the interpreter to perform their role to the best of their ability by:

- using plain English to communicate clearly and articulately during court proceedings,
- ensuring all other court participants do the same,
- following Standard 17 of the [Guideline for Working with Interpreters](#), including by ensuring the interpreter has been appropriately briefed about the nature of the proceeding, and
- actively engaging in appropriate case management to support accurate interpreting and making any necessary directions.³⁴

A useful checklist of matters to assist judges presiding over proceedings involving interpreters can be found in Appendix A to Chapter 21 of the [Supreme and District Courts Criminal Directions Benchbook](#). It applies equally to civil proceedings.

2.6. Cross-Cultural Communication

Language and cultural differences can affect a person’s demeanour and behaviour when giving evidence or participating in court proceedings.³⁵ As recognised by former Chief Justice of the High Court, Robert French:

With the very significant shift in the composition of the Australian population and the many countries of origin from which Australians now come, the potential for misunderstanding and misinterpretation, by people of different cultures, concerning the working of the justice system and the potential for misunderstanding and misinterpretation of those people by those involved in the justice system is real.³⁶

³² *Recommended National Standards for Working with Interpreters* (n 28) 66-67.

³³ *Uniform Civil Procedure Rules 1999* (Qld) r 429VF and r 429VG; *Criminal Practice Rules 1999* (Qld) r 54AF and r 54AG.

³⁴ *Uniform Civil Procedure Rules 1999* (Qld) r 429VL; *Criminal Practice Rules 1999* (Qld) r 54AL.

³⁵ See *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (In liq)* (1999) 73 ALJR 306, 289-90 (Kirby J).

³⁶ Robert French, ‘Equal Justice and Cultural Diversity — The General Meets the Particular’ (2015) 24 *Journal of Judicial Administration* 199, 204-5.

To ensure that there is 'equality between the parties to litigation',³⁷ judges may consider the distinctive cultural assumptions of the adversarial system and how these might affect some participants.

2.6.1. Communication Styles

Styles of communication are culturally mediated. Eye contact and directness in communication can signal honesty and engagement in some cultures, whereas the same behaviours may appear disrespectful or confrontational in others. Across different cultures, silence can be perceived as a positive or negative trait and 'gaze avoidance' may signal respect towards an authority figure (such as a questioner).³⁸

It is considered impolite in some cultures to disagree flatly with another person, and so some witnesses may seek to compromise and find some common ground with the questioner. This politeness may be misread as a lack of certainty.³⁹ What is neutral in one language may sound aggressive or argumentative in another.⁴⁰

These are salient concepts when considering how participants may interact with lawyers and judges. Other aspects of non-verbal communication are discussed in 2.7 below.

2.6.2. Interactions with Authorities

Cultures vary widely in their expectations of deference and in how acceptable it is to disagree with authority figures. This is a reason to consider the hierarchies inside Australian courtrooms. The process of questioning witnesses — in evidence in chief and cross-examination — creates a power structure such that 'courtroom talk is controlled by lawyer questions'.⁴¹

Socio-linguistic research has found that civilian witnesses have considerably fewer utterances than the lawyer questioners and that many questions contain factual presuppositions or are full propositions which may be socially or linguistically challenging for some witnesses to dispute.⁴² As Eades observes, 'it can be argued

³⁷ John von Doussa, 'Launch of the Supreme Court Equal Treatment Benchbook' (Speech, Supreme Court of Queensland, 15 February 2006) <<https://www6.austlii.edu.au/au/journals/QldJSchol/2006/15.pdf>>.

³⁸ See generally D Eades, 'Telling and retelling your story in court: questions, assumptions and intercultural implications' (2008) 20(2) *Current Issues in Criminal Justice* 209 ('Telling and Retelling Your Story in Court').

³⁹ Roland Sussex, 'Intercultural Communication and the Language of the Law' (2004) 78 *Australian Law Journal* 530, 532, 538.

⁴⁰ Alejandra Hayes and Sandra Hale, 'Appeals on Incompetent Interpreting' (2010) 20 *Journal of Judicial Administration* 119, 128.

⁴¹ Eades, 'Telling and Retelling Your Story in Court' (n 38) 213.

⁴² Eades, 'Telling and Retelling Your Story in Court' (n 38); Danet et al, 'An ethnography of questioning in the courtroom' in R Shuy and A Shnukal (eds), *Language Use and the Uses of Language* (Georgetown University Press, 1980) 222; S Harris, 'Questions as a mode of control in magistrates' courts' (1984) 49 *International Journal of the Sociology of Language* 5; J Luchjenbroers, "In your

that it is typical for much of a witness's story to be actually told in the words of lawyers rather than witnesses'.⁴³

Further, individuals from countries where police exercise power brutally or arbitrarily, or who belong to politically repressed or targeted minority groups, may display responses to authorities that appear aggressive or non-compliant. Cultural context may provide a useful framework for understanding such reactions because '[p]eople who have lived their lives under such systems will have quite different reactions to police and the courts than will Australians from other cultural backgrounds.'⁴⁴

Misunderstandings can also arise simply from unfamiliarity with Australian systems. It has been observed, for instance, that many refugees have negative interactions with the legal system due to being 'poorly equipped to deal with some of the basic systems and regulations in Australia'.⁴⁵ Some refugees have significant distrust of authority figures, including the court system and/or the police service, stemming from 'state sanctioned violence' from their home countries in the process of fleeing.⁴⁶

2.6.3. Ethnocentrism

Judges cannot be expected to know the nuances of every culture they might encounter in the courtroom. Rather, judges (and all legal practitioners) should be prepared to consider the potential significance of cultures with which they have no direct experience. It is beneficial to try to avoid ethnocentrism — interpreting behaviour through one's own cultural assumptions — and the misunderstandings it can cause.

Areas of potential misunderstanding may include:

- politeness,
- body language,
- power dynamics,
- metalinguistic factors such as pitch, volume and silence, and
- the differences between individualistic and collectivistic cultures.⁴⁷

own words...": Questions and answers in a Supreme Court trial' (1997) 27 *Journal of Pragmatics* 477.

⁴³ Eades, 'Telling and Retelling Your Story in Court' (n 38) 212.

⁴⁴ Len Roberts-Smith, 'Communication Breakdown: The Importance of Cultural and Language Awareness in Court' (1989) 27(7) *Law Society Journal* 70, 72.

⁴⁵ Katie Fraser, *Out of Africa and Into Court: The Legal Problems of African Refugees* (Report, June 2009) 15. The cross-cultural experiences of African refugees and humanitarian arrivals within the Australian justice system remains under-studied. Reliable data is regrettably scarce and much needed.

⁴⁶ Danielle Campbell and Roberta Julian, *A Conversation on Trust: Community Policing and Refugee Settlement in Regional Australia* (Australian Research Council Linkage Project, Final Report, July 2009) 36.

⁴⁷ Roland Sussex (n 39).

2.6.4. Practical Measures

Clarification may be sought by asking questions, or it may be necessary to receive evidence from a linguist, anthropologist or other expert.⁴⁸

Under the *Evidence Act 1977*:

- a judge may order special witness measures to be taken in respect of a witness,⁴⁹ which may include the person charged in a criminal proceeding,⁵⁰
- a witness's cultural background may be a 'relevant matter'⁵¹ if it is likely to cause a witness to be disadvantaged for the purpose of special witness measures,⁵²
- judges must disallow improper questions, which include questions that have no basis other than a racial or cultural stereotype, and⁵³
- judges may take a witness's cultural background into account when deciding if a question is improper.⁵⁴

In some circumstances, it may be appropriate to direct jurors about how to consider oral evidence where cultural issues are relevant and it is in the interests of justice to do so.⁵⁵ Judges are, however, prohibited from directing, warning or suggesting to the jury that 'the law regards any class of persons as unreliable witnesses'.⁵⁶

Judges are allowed to make 'such observations upon the evidence as the court thinks fit to make' in their summing up of a criminal case.⁵⁷ In *R v Savage*, the Queensland Court of Appeal said:

A judge may comment upon the evidence as long as the judge makes it clear to the jury that they are to determine the facts. Ultimately the constraints upon a judge, in commenting upon the facts, are defined by the judge's duty to ensure that the trial is fair in all respects.⁵⁸

The High Court has further cautioned:

A trial judge may comment on the evidence provided he or she makes clear that the determination of the facts is entirely within the jury's province. However, unless there is a need for comment — as, for example, in dealing with an extravagant submission

⁴⁸ See, eg, *R v Ogunseye* [2021] QCA 192, [8].

⁴⁹ *Evidence Act 1977* (Qld) pt 2 div 4.

⁵⁰ *Ibid* s 21(2)(b).

⁵¹ *Ibid* s 20B (definition of 'relevant matter').

⁵² *Ibid* s 21(1)(b).

⁵³ *Ibid* s 20A.

⁵⁴ *Ibid* s 20A(3)(a).

⁵⁵ *Criminal Code* s 632(3). The Queensland Court of Appeal has previously upheld a trial judge's commentary about Indigenous witnesses that were made at the beginning of the trial (i.e., before any evidence was received) and during the summing up: *R v Savage* [2018] 1 Qd R 485. Cf *Stack v Western Australia* (2004) 151 A Crim R 112, [9], [144].

⁵⁶ *Criminal Code* s 632(2)(a).

⁵⁷ *Ibid* s 620(1).

⁵⁸ [2018] 1 Qd R 485, 498 [33] (McMurdo JA).

by counsel — the wise course will often be not to do so. Where the judge chooses to comment, the following statement of Brennan J in *B v The Queen* is to be kept in mind:

[The comment] must exhibit a judicial balance so that the jury is not deprived 'of an adequate opportunity of understanding and giving effect to the defence and the matters relied upon in support of the defence.'⁵⁹

The specific communication issues faced by Aboriginal and Torres Strait Islander people in court proceedings are dealt with in more detail in [Chapter 4](#).

2.7. Non-Verbal Communication

Non-verbal communication is defined as 'communication by means other than words, including through non-verbal behaviour',⁶⁰ and includes facial expressions, gestures, body language, and gaze direction. Non-verbal cues 'complement verbal communication, shaping the observer's understanding and enhancing overall communication efficiency.'⁶¹

Assessing non-verbal communication is a critical feature of the adversarial process, however, non-verbal cues 'cannot be "read" like a book' and 'their meanings are influenced by a variety of factors'.⁶²

Facial expressions and body language colour how one's words are understood. People interpret these cues within their cultural framework, creating the prospect of misunderstandings in a multicultural population. In video-link hearings, the paucity of non-verbal signals can be a barrier to clear communication (see also 2.10 below).

The established legal principles about a person's demeanour and credit should be balanced against the cautions identified by the High Court and in the academic literature.

2.7.1. Non-Verbal Communication by Judges

Judges may consider their own non-verbal communication and demeanour in the courtroom. Chief Justice Gleeson stated that 'it is essential for a judge to maintain in court a demeanour which gives to the parties an assurance that their case will be heard and determined on the merits, and not according to some personal

⁵⁹ *Castle v The Queen* (2016) 259 CLR 449, 470-1 [61] (Kiefel, Bell, Keane and Nettle JJ) quoting *B v The Queen* (1992) 175 CLR 599, 605 (Brennan J).

⁶⁰ Vincent Denault and Danielle Bozin, 'The Influence of "Body Language" on the Assessment of Witness Credibility in Australian Written Court Judgments' [2024] *Journal of Forensic Psychology Research and Practice* 2399616: 1-17, 3.

⁶¹ Arman Raver, Torun Lindholm and Charlotte Alm, 'Non-verbal cues in eyewitness testimonies do not predict accuracy or credibility assessments' (2025) 15 *Scientific Reports* 5265: 1-10, 1.

⁶² Vincent Denault, Chloé Leclerc, and Victoria Talwar, 'The use of nonverbal communication when assessing witness credibility: a view from the bench' (2024) 31(1) *Psychiatry, Psychology and Law* 97, 113.

predisposition on the part of the judge'.⁶³ It has been recognised that managing demeanour is, in some ways, 'part of the practical craft of judging'.⁶⁴

Judicial conduct is a recognised category in which a reasonable apprehension of bias can arise.⁶⁵ The Australian Law Reform Commission has commented that conduct during proceedings extends to a judge's demeanour, gestures and tone in court.⁶⁶

While occasional displays of impatience, irritation, sarcasm or rudeness are unlikely to meet the apprehension of bias test, judges are expected to conduct themselves in a way that is respectful and preserves the appearance of neutrality.

2.7.2. Assessing Credibility

Assessment of a witness's credit is based, at least in part, on non-verbal cues and communication.⁶⁷ The High Court has long recognised the role that a witness's demeanour can play in a trial judge's findings:

The mere words used by the witnesses when they appear in cold type may have a very different meaning and effect from that which they have when spoken in the witness box. A look, a gesture, a tone or emphasis, a hesitation or an undue or unusual alacrity in giving evidence, will often lead a Judge to find a signification in words actually used by a witness that cannot be attributed to them as they appear in the mere reproduction in type.⁶⁸

So important is the notion of a trial judge's advantage in seeing and hearing a witness give evidence, that the High Court has held, in a trilogy of cases,⁶⁹ that appellate courts must have 'respect for the advantages of trial judges, and especially where their decisions might be affected by their impression about the credibility of witnesses whom the trial judge sees but the appellate court does not'.⁷⁰

The principles are expressed in *Abalos v Australian Postal Commission* where McHugh J stated:

[W]here a trial judge has made a finding of fact contrary to the evidence of a witness but has made no reference to that evidence, an appellate court cannot act on that

⁶³ AM Gleeson, 'Performing the Role of the Judge' (1998) 10(8) *Judicial Officers Bulletin* 57, quoted in Kathy Mack and Sharyn Roach Anleu, 'Performing Impartiality: Judicial Demeanour and Legitimacy' (2010) 35(1) *Law and Social Inquiry* 137, 140.

⁶⁴ Ibid 142.

⁶⁵ *Webb v The Queen* (1994) 181 CLR 41, 74 (Deane J).

⁶⁶ Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (ARLC Report 138, December 2021) 97.

⁶⁷ Sussex (n 39). See also Stephen Porter and Leanne ten Brinke, 'Dangerous decisions: A theoretical framework for understanding how judges assess credibility in the courtroom' (2009) 14 *Legal and Criminological Psychology* 119.

⁶⁸ *Dearman v Dearman* (1908) 7 CLR 549, 561 (Isaacs J).

⁶⁹ *Jones v Hyde* (1989) 63 ALJR 349, 351-2; *Abalos v Australian Postal Commission* (1990) 171 CLR 167, 178 (McHugh J) ('*Abalos*'); *Devries v Australian National Railways Commission* (1993) 177 CLR 472, 479 (McHugh, Brennan and Gaudron JJ) ('*Devries*').

⁷⁰ *Fox v Percy* (2003) CLR 118, 127 [26] (Gleeson CJ, Gummow and Kirby JJ).

evidence to reverse the finding unless it is satisfied 'that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion' ...

[W]hen a trial judge resolves a conflict of evidence between witnesses, the subtle influence of demeanour on his or her determination cannot be overlooked.⁷¹

In the more recent decision of *Fox v Percy*,⁷² Gleeson CJ, Gummow and Kirby JJ cautioned against the 'dangers of too readily drawing conclusions about truthfulness and reliability solely or mainly from the appearance of witnesses.' Their Honours observed:

[I]n recent years, judges have become more aware of scientific research that has cast doubt on the ability of judges (or anyone else) to tell truth from falsehood accurately on the basis of such appearances. Considerations such as these have encouraged judges, both at trial and on appeal, to limit their reliance on the appearance of witnesses and to reason to their conclusions, as far as possible, on the basis of contemporary materials, objectively established facts and the apparent logic of events. This does not eliminate the established principles about witness credibility; but it tends to reduce the occasions where those principles are seen as critical.⁷³

In discussing the changing context of credibility assessments based on demeanour, Kirby J said that '[t]rial judges should strive, so far as they can, to decide cases without undue reliance on such fallible considerations as their assessment of witness credibility.'⁷⁴

Contemporary research provides continued reason for caution by judges when using non-verbal communication to assess credibility: 'While studies consistently show weak effects and minimal differences between truth-tellers and liars, misconceptions about the diagnostic value of these non-verbal behaviours persist among legal actors and laypersons.'⁷⁵ There is not necessarily a clear relationship between non-verbal cues and credibility⁷⁶ and 'honest witnesses can be considered dishonest because judges

⁷¹ (1990) 171 CLR 167, 178 (McHugh J), quoting *Watt (or Thomas) v Thomas* [1947] AC 484, 488. The principles in *Abalos* were applied in *Devries* (at 479) where McHugh, Brennan and Gaudron JJ said: 'More than once in recent years, this Court has pointed out that a finding of fact by a trial judge, based on the credibility of a witness, is not to be set aside because an appellate court thinks that the probabilities of the case are against – even strongly against – that finding of fact. If the trial judge's finding depends to any substantial degree on the credibility of the witness, the finding must stand unless it can be shown that the trial judge has "failed to use or has palpably misused his advantage" or has acted on evidence which was "inconsistent with facts incontrovertibly established by the evidence" or which was "glaringly improbable".'

⁷² (2003) CLR 118, 129 [30] (Gleeson CJ, Gummow and Kirby JJ).

⁷³ *Fox v Percy* (2003) CLR 118, 129 [31] (Gleeson CJ, Gummow and Kirby JJ). See also *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (In liq)* (1999) 73 ALJR 306, 328-9 (Kirby J).

⁷⁴ *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (In liq)* (1999) 73 ALJR 306, 329 (Kirby J). See also *Fennell v The Queen* (2019) 93 ALJR 1219, 1233 [81].

⁷⁵ Raver, Lindholm and Alm (n 61) 1. See also TJ Luke, 'Lessons From Pinocchio: Cues to Deception May Be Highly Exaggerated' (2019) 14(4) *Perspectives on Psychological Science* 646.

⁷⁶ Aldert Vrij, Maria Hartwig and Par Anders Granhag, 'Reading Lies: Nonverbal Communication and Deception' (2019) 70 *Annual Review of Psychology* 295, 302.

see behaviours they (erroneously) associate with dishonesty, and dishonest witnesses can be considered honest because judges see behaviours they (erroneously) associate with honesty.’⁷⁷

Cultural differences in non-verbal communication further confound these issues. It is harder to accurately assess a witness’s credibility when they do not share one’s cultural background.⁷⁸ Culture is just one of many potential influences on a person’s demeanour and behaviour; other examples include physical and mental health and neurodivergence.⁷⁹

2.8. Judicial Intervention in Proceedings

Advocates, parties to proceedings, witnesses and juries attach significant weight to a judge’s oral communications. Accordingly, judges should be mindful that excessive intervention might affect perceptions of equal treatment and a fair hearing. The circumstances of the case determine the appropriate level of intervention. Cases with self-represented parties, for example, will require more assistance than those involving experienced counsel.

The issue of inappropriate judicial intervention often arises in the context of jury trials, where perceptions of equal treatment are particularly acute. As a starting point, judges are entitled (and sometimes duty-bound) to ask questions or otherwise intervene to clarify evidence, correct an unfairness to the witness, or prevent questioning that is inappropriate, offensive, or which breaches other laws or earlier rulings.

As Whealy J observed in *FB v Regina; Regina v FB*, in some cases it is ‘the silent judge’ who may ‘occasion an injustice’ and that:

[i]t is obvious that, in the course of clarifying the evidence, and throwing a clearer light on the issues at trial, a judge may, without taking sides one way or the other, involuntarily or inevitably, assist either the prosecution or the defence. For my part, I cannot accept that this unintended consequence, if that is what happened, makes such an intervention inappropriate. I cannot accept that there is any principle that suggests a trial judge (whose task it is to determine the facts) should sit mute, especially in a situation where the lack of clarification and precision will hinder the ultimate fact finding process.⁸⁰

In jury trials, excessive interference or involvement by a trial judge ‘may constitute such departure from the due and orderly processes of a fair trial to amount to a

⁷⁷ Denault and Bozin (n 60) 2.

⁷⁸ ‘A consistent finding in the social science literature is that it is more difficult to detect lies when the liar and observer do not share the same ethnic or cultural background’: Porter and ten Brinke (n 67) 124.

⁷⁹ Each of these issues as they relate to communication in the courtroom is discussed in more detail in [Chapter 6 \(People with Physical Disabilities\)](#) and [Chapter 7 \(People with Conditions that may affect Cognition, Communication or Mental Health\)](#).

⁸⁰ [2011] NSWCCA 217, [109].

miscarriage of justice.’⁸¹ Excessive intervention may cause unfairness in various ways. For example,

- the parties’ opportunity to put their case fully and fairly to the jury may be impaired,
- witnesses may be prevented from telling the full account of facts as they understand them to be,
- the trial judge might be identified as being with one party to the litigation, and
- the jury might be led to believe from the judge’s intervention that the judge is convinced of the guilt of the accused person or that the defence case is hollow.⁸²

As Ipp AJA observed in *R v Thompson*:

It must be emphasised that intervention for the purpose of clarification does not necessarily require the judge to question the witness. The judge may readily achieve clarification by pointing out, at an appropriate time, usually in the absence of the jury, evidential ambiguities or obscurities to counsel. That is by far the most desirable course. It should be left to counsel, whenever possible, to deal with such matters. If the judge undertakes the task by questioning witnesses, there is the danger that he or she will assume, albeit temporarily, the role of counsel and become identified with the cause of one side or another. Unfairness can readily be the consequence.⁸³

Whether a trial is unfair is ‘evaluated in the context of the whole trial and in the light of the number, length, terms and circumstances of the interventions.’⁸⁴

Similarly, the judge’s summing up represents a critical juncture in a jury trial that can affect perceptions of the fairness of the process. The High Court, in *McKell v The Queen*, identified the relevant principles in determining whether a summing up is unfair or unbalanced:

A trial judge must sum up for the jury the case presented by each of the prosecution and the accused after each side has addressed the jury. In *Domican v The Queen*, Mason CJ, Deane, Dawson, Toohey, Gaudron and McHugh JJ observed that ‘the requirement of fairness means that ordinarily the respective cases for the prosecution and the accused must be accurately and fairly put to the jury’. In carrying out this task, it is no part of the trial judge’s role to ‘don the mantle of prosecution or defence counsel.’ As Gibbs CJ said in *Cleland v The Queen*, ‘[i]t is clear in principle that a trial judge, when directing a jury in a criminal trial, must hold an even balance between the cases of the prosecution and the accused’.⁸⁵

⁸¹ *R v Clancy* (2022) 11 QR 582, 585 [16]. See also *R v Mawson* [1967] VR 205, 207-8; *Cook v The Queen* (2016) 250 A Crim R 454, 462 [28].

⁸² *R v Clancy* (2022) 11 QR 582, 593 [20], following *R v Mawson* [1967] VR 205 and *Cook v The Queen* (2016) 260 A Crim R 454, 463 [31].

⁸³ [2002] NSWCCA 149, [42]; (2002) 130 A Crim R 24.

⁸⁴ *R v Clancy* (2022) 11 QR 582, 593 [18]. See also *Galea v Galea* (1990) 19 NSWLR 263; *R v Thompson* (2002) 130 A Crim R 24.

⁸⁵ *McKell v The Queen* (2019) 264 CLR 307, 319 [35] citing *Domican v The Queen* (1992) 173 CLR 555, 561 and *R v Cleland* (1982) 151 CLR 1, 10.

In the civil context, active judicial case management is now readily accepted as an incident of the courts' implied power to do 'what is necessary in the interests of justice to ensure a fair trial'.⁸⁶ Where a judge is responsible for case management, they should consider any perceptions that the judge has formed a view on the substantive merits as a result of decisions made at the interlocutory or procedural stage.

2.9. Communication of Reasons

Giving reasons for a decision promotes transparency and is a defining characteristic of the judicial function.⁸⁷ Reasons help parties 'see the extent to which their arguments have been understood and accepted as well as the basis of the judge's decision.'⁸⁸ A failure to provide adequate reasons, where they are required, is an error of law.⁸⁹

Providing written reasons encourages intellectual discipline, critical analysis and self-reflection and so is an incident of, as well as a strategy to achieve, equal treatment. Justice Dowsett has described the relationship between reasons and fairness: 'If one has difficulty in expressing reasons in written form, it may well be that the thought process has miscarried. One possible reason is unrecognised prejudice.'⁹⁰

Of course, not every decision needs to be accompanied by reasons and in other cases brief reasons will suffice.⁹¹ As French CJ and Kiefel J recognised in *Wainohu v New South Wales*, 'the content and detail of the reasons to be provided – will vary according to the nature of the jurisdiction which the court is exercising and the particular matter the subject of the decision.'⁹²

The adequacy of reasons 'refers to their sufficiency in content and form, and not to their validity in point of law, or the correctness of matters of fact'.⁹³ The purpose for which reasons are given will generally determine their content, and must be weighed against various other fairness considerations, such as the burden that giving elaborate reasons imposes upon the system.⁹⁴

⁸⁶ Stephen Rares, 'Judicial Intervention and Caseflow Management' [2011] *Federal Judicial Scholarship* 12.

⁸⁷ *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38, 71 [67] (French CJ).

⁸⁸ *Soulemezis v Dudley Holdings* (1987) 10 NSWLR 247, 279 (McHugh J).

⁸⁹ *Fleming v The Queen* (1998) 197 CLR 250, 260 [22]. See also *Sunland Group Ltd v Townsville City Council* [2012] QCA 30; *Bawden v ACI Operations Pty Ltd* [2003] QCA 293, [29]; *Chrystal Dawn Pty Ltd v Redruth Pty Ltd* [1998] QCA 373.

⁹⁰ Dowsett (n 10) 12.

⁹¹ *Public Service Board (NSW) v Osmond* (1986) 159 CLR 656, 666-667 (Gibbs CJ).

⁹² (2011) 243 CLR 181, 215 [56] (French CJ and Kiefel J). See also *Cypressvale Pty Ltd v Retail Shop Lease Tribunal* [1996] 2 Qd R 462, 482 (McPherson and Davies JJA); *Re Kay; Ex Parte Attorney-General* [2017] 2 Qd R 522, [28], [34] (McMurdo JA).

⁹³ *Cypressvale Pty Ltd v Retail Shop Lease Tribunal* [1996] 2 Qd R 462, 482 (McPherson and Davies JJA).

⁹⁴ See *Beale v Government Insurance Office of NSW* (1997) 48 NSWLR 430, 444.

From an equal treatment perspective, some general principles about giving reasons can be extracted from the cases:

- Reasons should generally refer to the material evidence and findings of fact, giving the judge's reasons for them and stating the basis on which the judge had come to prefer one body of evidence over a competing body of evidence.⁹⁵
- The resolution of issues relating to a witness's credibility should incorporate an analysis of any evidence independent of the parties (e.g. other testimony or documentary evidence) or other probabilities.⁹⁶
- Judges should limit their reliance on a witness's appearance or demeanour when assessing their credibility.⁹⁷
- Judges should not simply adopt submissions made by one party as the basis for a finding of credibility.⁹⁸
- When resolving conflicting expert evidence, it will usually be necessary to subject an expert opinion — which was not accepted by the judge — to a coherent reasoned rebuttal, unless there are other good reasons for discounting the expert opinion.⁹⁹
- Where a dispute involved a more intellectual exchange with reason and analysis advanced on either side, the judge should 'enter into the issues canvassed before him [or her] and explain why he [or she] prefers one case over the other'.¹⁰⁰
- In criminal cases where the defence has gone into evidence, a judge should avoid the language of *preferring the evidence of a prosecution witness* because the judge is not required to believe the accused is telling the truth before the accused is entitled to an acquittal.¹⁰¹

Justice Dowsett has stated that 'good intentions are not safeguards against unconscious prejudice' and 'just as diligence by counsel in mastering facts and law will assist a judge in deciding a case, the judge's own diligence in those areas will tend to minimise the risk of prejudice'.¹⁰²

⁹⁵ *Camden v McKenzie* [2008] 1 Qd R 39, following *Beale v Government Insurance Office of New South Wales* (1997) 48 NSWLR 430, 431; *Fletcher Constructions Australia Ltd v Lines MacFarlane & Marshall Pty Ltd (No 2)* (2006) 6 VR 1, 31-3.

⁹⁶ *Camden v McKenzie* [2008] 1 Qd R 39, following *Goodrich Aerospace Pty Ltd v Arsic* (2006) 66 NSWLR 186, 191-2 (Ipp JA, Mason P and Tobias JA agreeing).

⁹⁷ See section 2.7.2 above.

⁹⁸ *Camden v McKenzie* [2008] 1 Qd R 39.

⁹⁹ *Drew v Makita (Australia) Pty Ltd* [2009] QCA 66. Following *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377, 381-2 (Henry LJ).

¹⁰⁰ *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377, 381-2 (Henry LJ); cited in *Drew v Makita (Australia) Pty Ltd* [2009] QCA 66.

¹⁰¹ There have been cases in which a ground of appeal asserts that the Magistrate erred in applying the incorrect standard of proof in using such language in their reasons: *McDonald v Queensland Police Service* [2017] QCA 255, [42]-[43]; *Hurley v The Commissioner of the Queensland Police Service* [2017] QDC 297, [84]-[85] (Muir DCJ).

¹⁰² Dowsett (n 10) 17.

2.10. Technology: Audio-Visual Links and Remote Hearings

Digital tools and communication systems may enhance access to justice, promote openness, and improve courtroom communication. Conversely, they can also entrench inequalities and be a barrier to meaningful participation in court proceedings.¹⁰³ These technologies are an unavoidable aspect of the judicial role, and judges should approach them with proper care and consideration.

Australian courts have adopted various technological innovations such as electronic filing, videoconferencing and audiovisual link ('AVL') hearings, e-trials, digital court reporting, and live streaming of court proceedings. The uptake has not been uniform, with material differences between state and federal systems, urban and regional courthouses, and civil and criminal jurisdictions. These differentials create practical and substantive law challenges.

Queensland courtrooms now commonly utilise AVL, especially for children, vulnerable adults, and those outside the jurisdiction. Improvements in technological platforms and adaptations made during the COVID-19 pandemic have somewhat assuaged the early caution favouring oral testimony in cases such as *Campaign Master (UK) Ltd v Forty-Two International Pty Ltd (No. 3)*.¹⁰⁴

Nonetheless, in 2022, in *Palmer v McGowan (No 2)*, Lee J observed:

[V]ideo-link technology tends to reduce the chemistry which may develop between counsel and the witness. This is allied with the general sense that there has been a reduction in formality in the proceedings. This is certainly so and is undesirable. To those problems may be added the difficulties that can arise when dealing with objections.¹⁰⁵

Academic research is mixed about the equal treatment outcomes of courtroom AVL hearings. Many of the concerns about AVL relate to the decontextualising effect:

- AVL may be unsuitable for people with limited English proficiency or with certain disabilities.¹⁰⁶
- AVL could 'exacerbate existing feelings of remoteness in interacting with a foreign system' for Aboriginal and Torres Strait Islander people.¹⁰⁷
- Lawyers may experience participation challenges when appearing remotely.¹⁰⁸

¹⁰³ Monika Zalnieriute and Felicity Bell, 'Technology and the Judicial Role' in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021) 116, 125.

¹⁰⁴ [2009] FCA 1306.

¹⁰⁵ (2022) 398 ALR 524, [38], quoting Perram J in *Capic v Ford Motor Company of Australia Ltd (Adjournment)* [2020] FCA 486, [19].

¹⁰⁶ Michael Legg and Anthony Song, 'The Courts, the Remote Hearing, and the Pandemic: From Action to Reflection' 44(1) *University of New South Wales Law Journal* 126, 138.

¹⁰⁷ Ibid.

¹⁰⁸ In the American context, see generally Alicia Bannon and Janna Adelstein, *The Impact of Video Proceedings on Fairness and Access to Justice in Court* (Report, Brennan Centre for Justice, 10 September 2020); Jenia I Turner, 'Remote Criminal Justice' (2021) 53 *Texas Tech Law Review* 197.

- Expert witnesses may encounter a loss of framing as an authority figure.¹⁰⁹
- Research in the UK and Canada has shown a higher rate of adjournments in AVL hearings.¹¹⁰
- It has been observed anecdotally that criminal defendants are more likely to disengage from the court or behave inappropriately when appearing remotely.¹¹¹
- Young people charged with offences may find it more difficult to participate in proceedings through AVL.¹¹²
- Participants who have cognition issues may experience further alienation if using AVL.

There is also a potential ‘framing effect’ when prisoners appear in court remotely from correctional facilities, because video links may generate heightened demarcations in criminal proceedings that weaken the ideal of equality before the law:

The *Sydney Morning Herald* reported in 2012 that a NSW Supreme Court judge switched off the sound of an unrepresented prisoner who launched a ‘tirade’. Such a situation not only highlights the ability of video conferencing facilities to physically absent a prisoner, but also emphasises the ease with which prisoners may be utterly silenced with the flick of a switch. It is no wonder that many prisoners expressed a feeling of isolation and alienation.¹¹³

Practical considerations such as audio and video quality, lighting, integration of AVL systems with legacy hardware and telecommunication infrastructure will bear on whether it is a successful substitute for in-person participation.¹¹⁴

The English Court of Appeal, in *Re A (Children) (Remote Hearing: Care and Placement Orders)*,¹¹⁵ has set out some factors relevant to holding a remote hearing, including:

- the importance and nature of the issue to be determined and whether it is on an interim or final basis,
- whether there is a special need for urgency,
- whether the parties are legally represented,

¹⁰⁹ Legg and Song (n 106) 143. See also Emma Rowden and Anne Wallace, ‘Performing Expertise: The Design of Audiovisual Links and the Construction of the Remote Expert Witness in Court’ (2019) 28(5) *Social & Legal Studies* 698, 708-9.

¹¹⁰ C Webster, ‘Out of sight, out of mind: A case study of bail efficiency in an Ontario video remand court’ (2009) 21(1) *Current Issues in Criminal Justice* 103; N Fielding et al, *Video Enabled Justice Evaluation* (Independent Evaluation Final Report, 2020).

¹¹¹ *Magistrates’ courts and Covid-19: Magistrates’ experiences in criminal courts during the pandemic* (Report, UK Magistrates Association, April 2022) 30-32.

¹¹² Tamara Walsh, ‘Video Links in Youth Justice Proceedings: When Rights and Convenience Collide’ (2018) 27(4) *Journal of Judicial Administration* 161.

¹¹³ Carolyn McKay, ‘Video Links from Prison: Permeability and the Carceral World’ (2016) 5(1) *International Journal for Crime, Justice and Social Democracy* 21, 32.

¹¹⁴ See generally Rowden and Wallace (n 109).

¹¹⁵ [2020] EWCA Civ 583, 4 [9]. Although that case considered an appeal from the Family Court in respect of a remote hearing relating to the long-term care of a child, the principles are equally applicable in other cases. See also *Re P (A Child: Remote Hearing)* [2020] EWFC 32.

- the ability of any lay party to engage with and follow remote proceedings meaningfully, including access to and familiarity with the necessary technology, funding, intelligence/personality, language, and ability to instruct their lawyers (both before and during the hearing),
- whether the parties will go into evidence or will make submissions only,
- the estimated duration,
- the available technology and the experience and confidence of the court and its users to conduct the hearing remotely, and
- any appropriate available alternatives that may facilitate physical attendance in a courtroom.

2.11. Suggested Further Reading

Alton, M A, '[The Evolution of Impartiality and the Need for Cultural Competency When Assessing Credibility](#)' (2022) 35 *Canadian Journal of Administrative Law & Practice* 27.

Beck, L, '[The Constitutional Duty to Give Reasons for Judicial Decisions](#)' (2017) 40(3) *UNSW Law Journal* 923.

Bell et al, '[AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators](#)' (Australasian Institute of Judicial Administration, 2022).

Bosland J and Gill J, '[The Principle of Open Justice and the Judicial Duty to Give Public Reasons](#)' (2014) 38 *Melbourne University Law Review* 482.

Justice Helen Bowskill, '[Reasons, Restraint and Reasonable Apprehensions](#)' (Paper, Magistrates Court Conference, 31 May 2018).

Sussex, R, '[Intercultural communication and the language of the law](#)' (2004) 78 *Australian Law Journal* 530.

Weinberg, M, '[Adequate, Sufficient and Excessive Reasons](#)' (Speech, Judicial College of Victoria, 4 March 2014).

CHAPTER 3. CHILDREN AND YOUNG PEOPLE

*'Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.'*¹¹⁶

3.1. Introduction

Children and young people may be involved in civil and criminal court proceedings and in various capacities, including as complainant, defendant, plaintiff, respondent, or witness. They may participate on their own account or via a litigation guardian. Children and young people may experience a range of legal problems that extend beyond the youth justice and child welfare systems.¹¹⁷

The Australian Law Reform Commission has emphasised:

Formal participation by children in legal processes requires that children understand the process and its requirements, and have the intellectual, emotional and psychological skills necessary to negotiate the process and to persist in their pursuit of a particular goal. Many adults do not have these abilities and have considerable difficulties in dealing with legal processes. However, these difficulties are significantly magnified for children. Indeed, these skills themselves are often associated with levels of development and maturity. Many children are unlikely to have the skills and experience necessary to participate successfully in legal processes without assistance.¹¹⁸

Children 'are less psychologically mature than adults in ways that affect their decision-making in antisocial situations'¹¹⁹ and tend 'to be less future-oriented with their decisions, weigh gains more heavily than losses compared to adults and have a heightened vulnerability to peer influence.'¹²⁰

¹¹⁶ *Human Rights Act 2019* (Qld) s 26(2).

¹¹⁷ Deborah Macourt, 'Youth and the law: it's not all about juvenile justice and child welfare' (2013) 35 *Updating Justice* 1.

¹¹⁸ Australian Law Reform Commission, *Seen and heard: priority for children in legal proceedings* (ALRC Report 84, 19 November 1997) 4.4 ('*Seen and heard*').

¹¹⁹ E Cauffman and L Steinberg, '(Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults' (2000) 18(6) *Behavioural Sciences & the Law* 741, 759.

¹²⁰ Thomas Crofts, 'Act now: raise the minimum age of criminal responsibility' (2022) 35(1) *Current Issues in Criminal Justice* 118, 123. See also J E Nurmi, 'How do adolescents see their future? A review of the development of future orientation and planning (1991) 11(1) *Developmental Review* 1; A Benthin, P Slovic and H Severson, 'A psychometric study of adolescent risk perception' (1993) 16(2) *Journal of Adolescence* 153; L Furby and R Beyth-Marom, 'Risk taking in adolescence: A decision-making perspective' (1992) 12(1) *Developmental Review* 1; L Steinberg and K Monahan, 'Age differences in resistance to peer influence' (2007) 43(6) *Developmental Psychology* 1531; M Gardner and L Steinberg, 'Peer influence on risk taking, risk preference, and risky decision making in adolescence and adulthood: An experimental study (2005) 41(4) *Developmental Psychology* 625.

The parts of the brain critical to judgment, foresight, and decision-making are among the last to mature.¹²¹ Risk-taking increases between childhood and adolescence due to changes in the brain's dopaminergic system, heightening reward-seeking behaviour particularly when peers are present.¹²² Risk-taking declines between adolescence and adulthood, again reflecting structural and functional processes of neurological maturation.¹²³

Children's inherent developmental vulnerabilities create barriers that 'prevent or limit [their] participation in legal processes'.¹²⁴ The law has long recognised that these vulnerabilities affect how children and young people interact with the justice system and court proceedings.¹²⁵

Abuse and neglect of children may alter brain functionality. There is a profound link between child abuse, involvement with the child protection system, and youth offending.¹²⁶ Even where a child or young person has developmental and legal capacity to participate in legal processes, 'appropriate participation can be extremely difficult because the processes themselves are not designed for participation by children'.¹²⁷ Children and young people:

- may experience discrimination simply because they are not adults,¹²⁸
- generally do not complain or seek redress because they are more likely to be brought into the legal system by another party (e.g. a parent, police officer, teacher, social worker, doctor, counsellor, litigation guardian etc) who seeks to resolve an issue through the legal process,¹²⁹
- may not understand the proceedings and/or their role within it,¹³⁰ and
- are marginalised by the legal system and its participants.¹³¹

¹²¹ Katherine Hunt Federle and Pual Skendelas, 'Thinking Like a Child: Legal Implications of Recent Developments in Brain Research' in Michael Freeman (ed) *Law, Mind and Brain* (Routledge, 2017) 199, 199.

¹²² Laurence Steinberg, 'A Social Neuroscience Perspective on Adolescent Risk-Taking' (2008) 28(1) *Developmental Review* 78, 78.

¹²³ Ibid.

¹²⁴ Australian Law Reform Commission, *Seen and heard* (n 118) 4.3.

¹²⁵ For example, s 48AA(4)(b)(ix) of the *Youth Justice Act 1992* provides in relation to bail proceedings for children under 14 years old that the court may have regard 'to the desirability of releasing children under 14 years from custody due to their vulnerability and community expectations that children under 14 are entitled to special care and protection'. Section 9E(1) of the *Evidence Act 1977* provides special measures for children when giving evidence and explicitly recognises that children tend 'to be vulnerable in dealings with a person in authority'. See also *R v GSR* [2023] QChC 36.

¹²⁶ Judy Cashmore, 'The Link Between Child Maltreatment and Adolescent Offending: Systems Neglect of Adolescents' (2011) 89 *Family Matters* 34-5.

¹²⁷ Australian Law Reform Commission, *Seen and heard* (n 118) 4.10.

¹²⁸ Ibid 4.12-4.15.

¹²⁹ Ibid 4.16-4.19.

¹³⁰ Ibid 4.20-4.22.

¹³¹ Ibid 4.23-4.29.

There are already numerous resources which aim to assist judges about children and young people in the courtroom.¹³² This book does not seek to duplicate these sources and focusses on practical issues to achieve equal treatment.

3.2. Children and Young People as Witnesses

When children and young people give evidence in court, they enter a very adult-oriented environment. Children giving evidence may be adversely affected by numerous factors such as lack of legal knowledge, the actual process of being asked questions, and case length and outcome.¹³³

Some child witnesses may not have been in a courtroom prior to giving evidence. Ideally, judges should be mindful of ensuring the child understands how the courtroom works and why they are giving evidence.¹³⁴

Frequently, the child or young person has waited at the courthouse for several hours prior to giving their evidence. Delays in finalising the case may exacerbate stress or trauma, as well as affecting the quality of the evidence if the child is asked to recall events from years ago. As with adults, the amount of detail that children and young people can recall may decrease or fluctuate over time. A short period of time for adults may feel much longer to a child or young person.

Children may not always understand what is being asked of them:

It is not intended to have children regarded, because they are children, as occupying a supralegal status residing far from the clutches of cross-examination. Neither is it the intention to condemn only the cross-examiner for an assault on the presumed innocence of the child. However, cross-examination does represent a distillation of tactics and styles used throughout criminal court proceedings and it is the words and actions of the cross-examiner which most obviously attack the credibility of the child victim. Prosecutors, magistrates and judges, however, also use language which does not admit the world of the child and does not allow or enable the child to present her evidence in the most convincing way.¹³⁵

Their ability to understand questions or articulate their responses may be exacerbated by trauma.¹³⁶

¹³² See, eg, Australasian Institute of Judicial Administration, *Bench Book for Children Giving Evidence in Australian Courts* (March 2020); Childrens Court of Queensland, *Child Protection Benchbook* (2nd ed, 2023); Childrens Court of Queensland, *Youth Justice Benchbook* (2025).

¹³³ JA Quas and BD McAuliff, 'Accommodating Child Witnesses in the Criminal Justice System: Implications for Death Penalty Cases' in RF Schopp et al (eds), *Mental Disorder and Criminal Law: Responsibility, Punishment and Competence* (Springer, 2009) 79, 83, quoted in Kirsten Hannah et al, *Child Witnesses in the New Zealand Criminal Courts: A Review of Practice and Implications for Policy* (The Law Foundation, New Zealand, 2010) 23.

¹³⁴ Hannah (n 133).

¹³⁵ Mark Brennan, 'The discourse of denial: Cross-examining child victim witnesses' (1995) 23 *Journal of Pragmatics* 71, 72.

¹³⁶ Laura Chipp, 'Practitioner Perspective: A Participatory Approach to Young Offenders in the Children's Court' in Marg Camilleri and Alistair Harkness (eds), *Australian Courts: Controversies, Challenges and Change* (Palgrave Macmillan, 2023) 314, 315.

Judges and other court participants may consider using age-appropriate techniques when communicating with children and young people. These include using clear language, avoiding technical and legal jargon, speaking at a moderated pace, avoiding verbosity and circumlocution, and employing regular pauses.¹³⁷

3.2.1. Competency to Give Evidence

The law recognises that ‘the age of a witness is not determinative of his or her ability to give truthful and accurate evidence.’¹³⁸ The English Court of Appeal, in *R v Barker*, stated:

Like adults some children will provide truthful and accurate testimony, and some will not. However children are not miniature adults, but children, and are to be treated and judged for what they are, not what they will, in years ahead, grow to be. Therefore, although due allowance must be made in the trial process for the fact that they are children with, for example, a shorter attention span than most adults, none of the characteristics of childhood, and none of the special measures which apply to the evidence of children, carry with them the implicit stigma that children should be deemed in advance to be somehow less reliable than adults. The purpose of the trial process is to identify the evidence which is reliable and that which is not, whether it comes from an adult or a child. ... In a trial by jury, his or her credibility is to be assessed by the jury, taking into account every specific personal character which may bear on the issue of credibility, along with the rest of the available evidence.¹³⁹

The [*Supreme and District Courts Criminal Directions Benchbook*](#) addresses the competency of witnesses, including children, to give evidence. A child (defined as ‘a child under 16 years’¹⁴⁰) is presumed to be competent to give evidence.¹⁴¹

Where an issue is raised about any person’s competency to give evidence, the court must find whether the witness is ‘able to give an intelligible account of events which he or she has observed or experienced’.¹⁴² This refers to the person’s ability to be understood, rather than their account being accurate or truthful.¹⁴³

A person who is not competent to give sworn evidence may give unsworn evidence if they understand that ‘the giving of evidence is a serious matter’ and that ‘in giving evidence, he or she has an obligation to tell the truth that is over and above the ordinary duty to tell the truth’.¹⁴⁴ It is an error of law to permit a witness to give unsworn

¹³⁷ Ibid.

¹³⁸ [2010] EWCA Crim 4, [40] (Lord Judge CJ, Hallett LJ and Macur J).

¹³⁹ Ibid cited with approval in *CMG v R* [2011] VSCA 416, [10]; *RGM v R* [2012] NSWCCA 89, [100]; *R v Isaacs (A Pseudonym)* [2021] NSWDC 401, [36].

¹⁴⁰ *Evidence Act 1977* (Qld) s9E(3).

¹⁴¹ Ibid s 9(1).

¹⁴² Ibid s 9A(2).

¹⁴³ Supreme Court of Queensland, *Supreme and District Courts Criminal Directions Benchbook*, ch 12.

¹⁴⁴ *Evidence Act 1977* (Qld) s 9B(2). The statutory test finds its origins in *R v Hayes* [1977] 2 All ER 288, 291 (Bridge LJ): It must be examined whether ‘the child has a sufficient appreciation of the

testimony without determining their competency to give sworn evidence under s 9B of the *Evidence Act 1977*.¹⁴⁵

Competency to give evidence is a question for the court. The court may inform itself as it sees fit, including through questioning the person on a *voir dire*, s 93A recordings, and/or expert evidence about the person's level of functioning, including their powers of perception, memory and expression.¹⁴⁶

When assessing whether a person is competent to give evidence on oath, it is better to phrase questions simplistically with one topic per question, avoiding complex words and forms. For example, questions that begin with "why" can be difficult for children and for those with more simple language skills. A "why" question is a higher-level language question that requires linguistic ability involving critical thinking, analysis, evaluation, and reasoning and goes beyond simple recall of facts. Such questions should be avoided when determining competency.

At the start of a hearing involving a child or young person, or other vulnerable witness, it is important to clearly explain to the person who in the courtroom is the judge, crown prosecutor, defence barrister and bailiff, and indicate whether any other people are present in the court room during the taking of their evidence.

In assessing competency, it is recommended to start by signposting. An example of signposting is to say: What a person answers questions in court, we have to make sure they tell the truth. I am going to ask you some questions now to make sure you understand how important this is.

The following are suggestions, but not a template, for questions which might be asked in assessing whether a person is competent to give evidence on oath:

- You have come to court today to answer questions about [the defendant]. Is that right?
- Answering questions in court is very important. The answers you give can affect other people. Do you understand?
- Do you know what telling the truth is? Tell me what it means to "tell the truth". Can you give me an example?
- Ask example questions of true / not true. For example, "You have pink hair? Is that a truth or a lie?" "I am wearing a red shirt. Is that true or not true?"
- In court it is more important than normal to tell the truth and not tell a lie. Do you understand that?
- For what reason is it more important to tell the truth in court?
- If you don't tell the truth, this can cause bad things for you or for other people. It is very important to tell the truth here today. Do you promise to tell the truth?

solemnity of the occasion, and the added responsibility to tell the truth, which is involved in taking an oath, over and above the duty to tell the truth which is an ordinary duty of normal social conduct.'

¹⁴⁵ See also *R v BBR* [2010] 1 Qd R 546; *R v MBT* [2012] QCA 343.

¹⁴⁶ *Evidence Act 1977* (Qld) s 9C. See also the discussion of admissibility of opinion evidence in *R v D* (2003) 141 A Crim R 471.

Where a person gives unsworn evidence, the court must first explain to them their duty to speak the truth.¹⁴⁷ Failure to do so will void the trial.¹⁴⁸

Section 9E(2) of the *Evidence Act 1977* sets out the principles that apply to courts when dealing with children under 16 years in a proceeding:

- The child is to be treated with dignity, respect and compassion.
- Measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence.
- The child should not be intimidated in cross-examination.
- The proceeding should be resolved as quickly as possible.

In *R v GW*,¹⁴⁹ the High Court considered — in the context of the Australian Capital Territory legislative provisions on sworn versus unsworn evidence of children — whether the trial judge was required to warn the jury that the child's evidence might be unreliable because it was unsworn. The Court held that there was no such requirement under statute or the common law.¹⁵⁰ The assessment of the credibility and reliability of a child's evidence, sworn or unsworn, is for the trier of fact.¹⁵¹

3.2.2. Statutory Protections for Child Witnesses

Various statutory provisions outline court and tribunal processes for child witnesses. For example, s 29 of the *Queensland Civil and Administrative Tribunal Act 2009* requires the tribunal to take reasonable steps to ensure proceedings are conducted in a way that recognises and is responsive to the needs of a child who is a party to, or witness in, the proceeding.

In criminal proceedings, if a child or young person is an 'affected child witness',¹⁵² their evidence is to be prerecorded beforehand in the presence of a judicial officer.¹⁵³ Where this is not possible, their evidence is to be given via audio visual link or with the benefit of a screen.¹⁵⁴

Section 21AO of the *Evidence Act 1977* does, however, allow the court to make an order that an affected child witness in a criminal proceeding (other than a committal proceeding) give evidence that is not videorecorded if the court has 'good reason' to make the order 'having regard to the child's wishes' and the purpose of the affected child witness provisions.

¹⁴⁷ *Evidence Act 1977* (Qld) s 9B(3).

¹⁴⁸ *R v BBR* [2010] 1 Qd R 546; *R v MBT* [2012] QCA 343.

¹⁴⁹ (2016) 258 CLR 108.

¹⁵⁰ *R v GW* (2016) 258 CLR 108, 109.

¹⁵¹ *Ibid.*

¹⁵² *Evidence Act 1977* (Qld) s 21AC.

¹⁵³ *Ibid* s 21AB(a)(i).

¹⁵⁴ *Ibid* s 21AB(a)(ii).

Concerns have been raised about whether children and young people truly have a choice when giving evidence via video link, with suggestions that they be provided with sufficient information and clear explanations about meaningful alternatives to help them make an informed decision.¹⁵⁵ This would ordinarily be a matter raised with the witness in pre-trial conferences by the prosecution or legal practitioner, as the case may be.

In a committal proceeding, an affected child witness's evidence-in-chief is given by statement only and a child is ordinarily not to be called for cross-examination.¹⁵⁶

In civil proceedings, affected child witness evidence is given at the proceeding with the use of an audio-visual link or with the benefit of a screen.¹⁵⁷

3.2.3. Special Witness Measures

A child under 16 years is automatically a 'special witness'.¹⁵⁸ A child or young person over the age of 16 may also be a 'special witness' on application if they fall within one of the categories set out in s 21(1)(b)-(f) of the *Evidence Act 1977*.

Under s 21AAB of the *Evidence Act 1997*, the court may, on its own initiative or on the application of a party to the proceeding, direct that:

- a directions hearing be held about evidence to be given by a special witness, and
- further directions hearings be held at any later stage in the proceedings.

Where a special witness declaration is made, the *Evidence Act 1977* explicitly empowers the court to make directions about how to take the witness's evidence (e.g. whether the witness gives evidence from a remote room or with the presence of a support person or whether the evidence is recorded), including breaks, limits of the type and number of questions that may be asked about particular issues.

Where the measures encompass any of those at s 21A(2) (a)-(e) of the *Evidence Act 1977*, the Court of Appeal has repeatedly held that:

the failure to comply with a mandatory requirement for the giving of a direction under s 21A(8) is an error of law. This Court can uphold any subsequent conviction only if convinced, notwithstanding the non-compliance and after reviewing the whole of the record, that there has been no substantial miscarriage of justice. The question is not whether the non-compliance could have had any adverse effect on the appellant's prospects of acquittal but whether, the trial being irregular, this Court

¹⁵⁵ Matthew Hall, 'Children Giving Evidence through Special Measures in the Criminal Courts: Progress and Problems' (2009) 21 *Child and Family Law Quarterly* 65.

¹⁵⁶ *Evidence Act 1977* (Qld) s 21AB(a)(iii).

¹⁵⁷ *Ibid* s 21AB(b).

¹⁵⁸ *Ibid* s 21(1)(a).

is able to conclude for itself upon a review of the record that there has been no substantial miscarriage of justice.¹⁵⁹

3.2.4. Intermediaries

The Queensland Intermediary Scheme aims to facilitate how evidence is given by prosecution witnesses in child sexual offence matters who:

- are under 16 years of age,
- have an impairment of the mind, or
- have difficulty communicating.¹⁶⁰

The court may appoint an intermediary on application or on its own initiative. An application for an intermediary can be made at any point in the proceeding. Section 21AZM(1) of the *Evidence Act 1977* provides that the function of the intermediary in a relevant proceeding is to:

- to communicate or explain to the witness questions put to the witness, to the extent necessary to enable the witness to understand the questions, and
- to communicate or explain to a person asking questions of the witness the answers given by the witness in reply, to the extent necessary to enable the person to understand the answers.¹⁶¹

Intermediaries may also:

- complete an assessment of a witness's communication and provide practical, individually tailored strategies to police, lawyers, and judges on how best to question vulnerable witnesses,
- prepare a comprehensive report that details a witness's specific communication needs in the context of the court proceedings,
- provide recommendations suited to each individual witness such as, use of moderate pace, signposting topics, neutral tone, regular breaks, and simplification of language,
- attend a directions hearing and actively participate to enable planning of the pre-recording to facilitate the most accurate evidence,
- provide feedback to legal counsel on their intended questions for a vulnerable witness prior to a hearing in which evidence is pre-recorded,
- assist the court in gaining the best evidence from the witness by attending a pre-recording of evidence and facilitating communication at the judge's discretion, and

¹⁵⁹ *R v Bisht* [2013] QCA 238, [49] (McMurdo P).

¹⁶⁰ *Evidence Act 1977* (Qld) s 21AZL(1).

¹⁶¹ *Ibid* s 21AZM(1).

- where appropriate, use visual aids, alternative communication methods and interventions where the agreed recommendations are not followed, or communication breaks down during a pre-recording hearing.¹⁶²

Intermediaries are professionals with qualifications in speech pathology, psychology, occupational therapy, or social work who are appointed to the Intermediaries Panel after completing additional intermediary training and are assigned work based on the individual needs of witnesses.

Intermediaries are impartial officers of the court who are employed by the Department of Justice to assist judges and legal counsel to establish and maintain clear lines of communication with vulnerable witnesses. Intermediaries are not expert witnesses.

Henry J has remarked that an intermediary's role is to aid communication vis-à-vis the court and the person for whom the intermediary is appointed. The intermediary is not to act as a support person or carer to reduce the stress experienced by vulnerable witnesses.¹⁶³ The presence of a support person or other similar measure may be allowed by the court by way of a special witness declaration (discussed above).

Current legislation enables intermediaries to be appointed for relevant proceedings heard in Brisbane and Cairns regions. There have also been instances where the special witness provisions in the *Evidence Act 1977* have formed the basis for the appointment of intermediaries to vulnerable witnesses in proceedings in other geographical areas or for other offence types.

There has been some discussion about whether witness intermediary schemes should be extended to vulnerable defendants (such as children and young people), other criminal offence types, and expanded locations to ensure equitable access to adjustments that enable clear testimony and accurate evidence.¹⁶⁴

3.2.5. Improper Questions

Children and young people face multiple disadvantages from questioning during court proceedings.¹⁶⁵

¹⁶² Queensland Courts, 'Who are intermediaries' (Web Page, 4 October 2023) <<https://www.courts.qld.gov.au/services/queensland-intermediary-scheme/who-are-intermediaries>>.

¹⁶³ *R v Cherry (a pseudonym)* (2023) 15 QR 422, 426.

¹⁶⁴ Jacqueline Giuffrida and Anita Mackay, 'Extending witness intermediary schemes to vulnerable adult defendants' (2021) 33(4) *Current Issues in Criminal Justice* 498, 499.

¹⁶⁵ See generally Judith Cashmore, 'Child witnesses: the judicial role' (2006) 8(2) *The Judicial Review* 281; Martine B Powell, 'Improving the reliability of child witness testimony in court: The importance of focusing on questioning techniques' (2005) 17(1) *Current Issues in Criminal Justice* 137; Samantha J Andrews, Michael E Lamb and Thomas D Lyon, 'Question Types, Responsiveness and Self-contradictions when Prosecutors and Defense Attorneys Question Alleged Victims of Child Sexual Abuse' (2015) 29(2) *Applied Cognitive Psychology* 253; Deirdre A Brown and Michael E Lamb, 'Can Children Be Useful Witnesses? It Depends How They Are Questioned' (2015) 9(4) *Child Development Perspectives* 250; Samantha J Andrews and Michael E Lamb, 'The structural linguistic complexity of lawyers' questions and children's responses in Scottish criminal courts' (2017) 65 *Child Abuse and Neglect* 182.

These include:

- feeling constrained by the questions and how they can answer,
- admissibility issues and perceptions of pressure to ‘carefully edit their “stories” to suit’ (for example, answering questions without referring to another complainant),
- difficulty understanding the questions, and
- perceptions of unnecessary or repetitive questioning about irrelevant details.¹⁶⁶

Judges must disallow improper questions of all witnesses¹⁶⁷ and this is ‘an obvious and important means by which judges and magistrates can ensure that questioning is fair and understandable to child witnesses, and indeed to all witnesses.’¹⁶⁸ This must be balanced with maintaining perceptions of neutrality:

Our adversarial system has not encouraged judges to intervene in the conduct of the examination of witnesses unless objection is taken, or the advocate has plainly exceeded the bounds of proper questioning. Some judges fear that undue intervention, even if justified, will excite concern as to prejudice, or cause the jury to be sympathetic to the accused.¹⁶⁹

Judges should nonetheless recognise questioning that is developmentally inappropriate, oppressive or unduly intimidating for a child or young person.

3.2.6. Practical Guidance

The following are some recognised equal treatment strategies for judges when dealing with children and young people:

- Determine early in proceedings how a child will give evidence and ensure that appropriate technology and equipment is in place.
- Consider any requests for adjournments against the potential negative impact of an adjournment on the child’s ability to give evidence.
- Consider requirements for the child’s parent or guardian who will attend the court proceedings with them.
- Ensure that appropriate support is available for the child.
- Where possible, the child should not be kept waiting for long periods of time at a courthouse before giving their evidence.
- Afford the child regular breaks as required. Be alert to any changes in a child witness’s demeanour or the way in which the child answers questions. Fidgeting, change in body posture, or repeated answers of “I don’t know” or “I can’t remember” may indicate the child is tired or needs a break.

¹⁶⁶ Cashmore (n 165).

¹⁶⁷ *Evidence Act 1977* (Qld) s 20A.

¹⁶⁸ Cashmore (n 165), 285.

¹⁶⁹ *Royal Commission into the New South Wales Police Service* (Report, 1996) vol 5, 1110, quoted in Cashmore (n 165) 286.

Chapter 3 of the [*Benchbook for Children Giving Evidence in Australian Courts*](#) outlines current best practices for questioning a child witness:

- Phrase questions positively rather than negatively (for example, “Do you remember his name?” instead of “You don’t remember his name, do you?”).
- Use an active voice rather than a passive voice (for example, “You said the red car hit the blue car?” rather than “You said the blue car was hit by the red car?”).
- Ask separate questions on separate topics.
- Recognise that children’s conceptualisation of time, frequency and ordering of events is gradually acquired. It may therefore be appropriate to use concrete anchor points in questions, with times or events that are relevant to the child.
- Use the child’s words/vocabulary where possible to describe people, actions and objects.
- Avoid “front loading” questions that are prefaced with qualifying phrases before asking the crucial point.
- Keep each sentence simple.
- Use signposting (for example, “I want to ask you some questions about your father”).
- Discuss events in logical sequence.
- Ask questions with the child’s point of view in mind (for example, using “Dad” instead of “the accused/my client”).
- Include only one query in each question.
- Avoid questions that may be taken too literally.

3.3. Children and Young People as Defendants

The Charter of Youth Justice Principles in the *Youth Justice Act 1992* sets out equal treatment considerations for children and young people charged with criminal offences.¹⁷⁰ These principles recognise children’s inherent vulnerability¹⁷¹ in the criminal justice system and facilitate safeguards and accommodations for a fair trial.¹⁷²

One safeguard is the presumption of *doli incapax* (criminal incapacity). In Queensland, the minimum age of criminal responsibility is 10 years old.¹⁷³ For children aged between 10 and 14 years, the prosecution must rebut the presumption and prove beyond reasonable doubt that ‘at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the

¹⁷⁰ *Youth Justice Act 1992* (Qld) sch 1.

¹⁷¹ A “child” is a person who is under 18 years of age: *Acts Interpretation Act 1954* (Qld) sch 1. The *Youth Justice And Other Legislation (Inclusion of 170-year-old Persons) Amendment Act 2016* increased the threshold age of a child from 17 to 18 years old.

¹⁷² For example, children being dealt with under the *Youth Justice Act 1992* should have procedures and other matters explained to them in a way the child understands. In *R v EI* [2011] 2 Qd R 237, the majority held that the principles expressed in the charter hold equal weight.

¹⁷³ *Criminal Code* s 29(1).

omission.’¹⁷⁴ This statutory presumption serves ‘to ameliorate the harshness of the criminal law’¹⁷⁵ by recognising that children in this age range are presumed incapable of forming the requisite *mens rea* to be held criminally responsible. Generally, the closer the child is to the age of 10, the stronger the evidence required to rebut the presumption, and conversely, the nearer the child is to the age of 14, less evidence may be required.¹⁷⁶ However, children do not mature at a uniform rate and the presumption ‘directs attention to the intellectual and moral development of the particular child.’¹⁷⁷

3.3.1. Human Rights Considerations

Children are guaranteed the same human rights as adults in the criminal justice process. They also have specific rights as out in s 33 of the *Human Rights Act 2019*:

- An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.
- An accused child must be brought to trial as quickly as possible.
- A child who has been convicted of an offence must be treated in a way that is appropriate for the child’s age.

What constitutes equal treatment and a fair trial for a child is complex, contextual and driven by the individual child’s needs. The European Court of Human Rights has held (in relation to three separate children’s trials) that some English court procedures did not meet a standard sufficient to achieve a fair trial.¹⁷⁸ One of these cases involved a trial of two 11-year-old boys charged with murder. The trial court put into place additional measures, including the presence of social workers, explanation of procedures, shortened hearing times, and scheduled breaks. It was nonetheless found that the formality with which the trial proceeded (including the usual dress and courtroom setup), the fact that it was conducted in open court with significant press coverage, and the defendants’ particular immaturity and proven emotional disturbances meant that they would have found the proceedings incomprehensible, limiting their ability to effectively instruct counsel. For those reasons, it was held that the defendants had been unable to effectively participate in the proceedings against them and had therefore been denied a fair trial.¹⁷⁹

¹⁷⁴ Ibid s 29(2).

¹⁷⁵ *RP v The Queen* (2016) 259 CLR 641.

¹⁷⁶ *R (a Child) v Whitty* (1993) 66 A Crim R 462, 465.

¹⁷⁷ *RP v The Queen* (2016) 259 CLR 641, 651 [12].

¹⁷⁸ *SC v United Kingdom* (European Court of Human Rights, Fourth Section, Application no. 60958/00, 30 September 2003); *T v United Kingdom* (European Court of Human Rights, Grand Chamber, Application no. 24724/94, 16 December 1999); *V v United Kingdom* (European Court of Human Rights, Grand Chamber, Application no. 24888/94, 16 December 1999).

¹⁷⁹ *T v United Kingdom* (European Court of Human Rights, Grand Chamber, Application no. 24724/94, 16 December 1999); *V v United Kingdom* (European Court of Human Rights, Grand Chamber, Application no. 24888/94, 16 December 1999).

3.3.2. Characteristics of Youth Offenders

There is no one “profile” of a youth offender (or alleged youth offender). Children charged with criminal offences come before the court with their own unique characteristics, difficulties and disadvantages.

Children’s abilities and developmental paths vary and unfairness may arise from the fact that ‘[e]ffective engagement in court processes and procedures is founded on inherent assumptions about an individual’s capacities based on chronological age that may not be met’ by some children.¹⁸⁰ As far as possible, judges should recognise the particular difficulties faced by the individual child, which may be compounded by broader disadvantages.

While each child that comes before the court will present differently, the academic literature¹⁸¹ acknowledges that children charged with criminal offences have a high prevalence of cognitive disabilities¹⁸² and/or neurological conditions.¹⁸³ Aboriginal and Torres Strait Islander children are overrepresented in cohorts that have cognitive and neurological disabilities.¹⁸⁴ Child offenders often present with multiple disabilities, ‘including physical and sensory disability and mental health conditions’ where the combination can ‘seriously confound their journey’ through the criminal justice system.¹⁸⁵

There are various ways that cognitive and neurological disability may increase the likelihood of a child’s involvement in the criminal justice system:

- Inadequate responses to disability and neurodivergence in educational settings can result in a young person disengaging or being excluded from education.

¹⁸⁰ Kim Turner and Nathan Hughes, ‘Supporting young people’s cognition and communication in the courtroom: A scoping review of current practices’ (2022) 32(2) *Criminal Behaviour and Mental Health* 175, 176.

¹⁸¹ See generally McVilley et al, ‘Identifying and responding to young people with cognitive disability and neurodiversity in Australian and Aotearoa New Zealand youth justice systems’ (2023) 30(6) *Psychiatry, Psychology and Law* 789; S Baidawi and A R Piquero, ‘Neurodiversity among children at the Nexus of the Child Welfare and Youth Justice System’ (2021) 50 *Journal of Youth and Adolescence* 803; N Reid et al, ‘Fetal alcohol spectrum disorder: The importance of assessment, diagnosis and support in the Australian justice context’ (2020) 27(2) *Psychiatry, Psychology and Law* 265; R A Pedruzzi et al, ‘Navigating complexity to support justice-involved youth with FASD and other neurodevelopmental disabilities: Needs and challenges of a regional workforce’ (2021) 27(9) *Health and Justice* 8; Gaye Lansdell, Bernadette J Saunders and Anna Eriksson, ‘Young people with acquired brain injury: Preventing entrenchment in the criminal justice system’ (2011) 650 *Trends & Issues in Crime and Criminal Justice* 1.

¹⁸² Cognitive disabilities ‘refer to disabilities that involve impairments in mental functioning, including cognition, communication and social skills. This includes intellectual disability, traumatic brain injury (TBI), and foetal alcohol syndrome disorder (FASD)’; McVilley et al (n 181) 792.

¹⁸³ McVilley et al (n 181) 792.

¹⁸⁴ Ibid 799.

¹⁸⁵ Ibid 792. See, for example, *Queensland Police Service v Jack Campbell (a pseudonym)* [2024] QChCM 2. The offending child in that case had been assessed as having Foetal Alcohol Spectrum Disorder, Autism Spectrum Disorder (Level 2), Intellectual Disability, Anxiety, Depression, and Dysregulated Mood Disorder.

- There is a strong correlation between disability and child maltreatment or neglect and associated trauma, which can lead to maladaptive or antisocial behaviours.
- Detection and prosecution of young people with disability and/or neurodivergence may be more likely, because they may not be able to mask or deny their behaviour, and are more susceptible to police interview and questioning techniques that establish a person's guilt.
- A misunderstanding of general social cues and context can contribute to certain offending behaviour (for example, sexual offending).¹⁸⁶

Cognitive and neurological disability may also overlap with other difficulties, including being subject to the child protection system, gender, age, complex trauma, substance misuse, and cultural and linguistic background. Young offenders with an acquired brain injury may have particular difficulties understanding the severity and resulting consequences of their actions, court processes and bail conditions, and complying with court orders.¹⁸⁷

For judges, recognising cognitive and neurological disability, and implementing corresponding equal treatment safeguards, may be particularly challenging because of the high proportion of child defendants whose conditions are undiagnosed.¹⁸⁸

Where a child is to be sentenced, judges may order that a specialist report be obtained to inform sentencing.¹⁸⁹ There are also powers of referral pursuant to the *Mental Health Act 2016*¹⁹⁰ in appropriate cases.¹⁹¹

Further discussion of related issues are in [Chapter 6 \(People with Physical Disabilities\)](#) and [Chapter 7 \(People with Conditions that May Affect Cognition, Communication or Mental Health\)](#).

3.3.3. Court Processes

The *Youth Justice Act 1992* outlines the following accommodations for equal treatment of children and young people:

¹⁸⁶ McVilley et al (n 181) 793.

¹⁸⁷ Lansdell, Saunders and Eriksson (n 181) 8.

¹⁸⁸ Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending* (Report, July 2017), pt 1, 157. See, for example, *Re JG* [2023] QChC 3, in which Fantin J observed that the scant medical information available to the court when making a determination as to bail for a 16-year-old girl pointed to a number of significant impairments which had not been properly assessed or treated by the Department of Children, Youth Justice and Multicultural Affairs. Fantin J further observed that such conditions 'may have contributed to dysregulation and offending behaviour'.

¹⁸⁹ *Youth Justice Act 1992* (Qld) s 151.

¹⁹⁰ *Ibid* s 61.

¹⁹¹ *Mental Health Act 2016* (Qld) pt 3.

- A parent or guardian should generally be present when a child appears before a court charged with an offence.¹⁹² Many children in the youth justice jurisdiction are in the care of Child Safety. For these children, a representative of Child Safety will attend in place of a parent, although their actual parent/s may also attend court.
- The court must take steps to ensure, as far as practicable, that the child and any parent present has full opportunity to be heard and participate in the proceeding.¹⁹³
- The court must ensure that the child understands the alleged offences, the court's procedures, and the consequences of any potential order.¹⁹⁴
- The court must afford a child charged with an indictable offence a reasonable opportunity to obtain legal representation.¹⁹⁵
- A child may change a plea of guilty entered after being committed to be sentenced on an indictable offence.¹⁹⁶
- While a sentencing court 'must have primary regard to any impact of the offence on a victim',¹⁹⁷ the court must also have regard to, *inter alia*: the child's characteristics, including disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality, and the child's history of being abused or victimised.¹⁹⁸
- A child's age is a 'mitigating factor in determining whether or not to impose a penalty, and the nature of the penalty imposed'.¹⁹⁹
- A detention order can only be made against a child if the court has first received and considered a pre-sentence report.²⁰⁰
- The court is obliged to ensure a child offender understands the purpose and effect of any order, along with any consequences that flow as a result of failure to comply with the order.²⁰¹ It can be useful for a judge to use very clear and simple language and to check that the child understand what has been ordered

¹⁹² *Youth Justice Act 1992* (Qld) ss 69-71.

¹⁹³ *Ibid* s 72(1).

¹⁹⁴ *Ibid* s 72(2).

¹⁹⁵ *Ibid* s 79.

¹⁹⁶ *Ibid* s 106.

¹⁹⁷ *Ibid* s 150(1)-(2).

¹⁹⁸ For judicial commentary in respect of the sentencing principles applying to youth offenders, see *R v KTB* [2025] QChC 3 and *R v TC* [2025] QChC 8.

¹⁹⁹ *Youth Justice Act 1992* (Qld) s 150(4)(a).

²⁰⁰ *Ibid* s 207.

²⁰¹ For recent examples of the use of plain language to explain the purpose and effect of an order made by the court, and consequences for failure to comply, see generally: Sentencing remarks of Judge McCarthy KC in the matter of *R v Ian Valentine Ketchup* (Childrens Court of Queensland, Townsville, 24 February 2025); Sentencing remarks of Judge Smith (as his Honour then was) in the matter of *R v Tallis Chapman* (Childrens Court of Queensland, Toowoomba, 5 March 2025).

(for example, by asking the child “can you tell me what the rules are for your bail?”).

Judges should also be mindful of statutory restrictions on publication of children’s identifying information,²⁰² and the provisions relating to who may be present at a proceeding relating to a child.²⁰³

3.4. Suggested Further Reading

Australasian Institute of Judicial Administration, [*Bench Book for Children Giving Evidence in Australian Courts*](#) (, March 2020).

Baidawi, S and A R Piquero, ‘[Neurodisability among children at the Nexus of the Child Welfare and Youth Justice System](#)’ (2021) 50 *Journal of Youth and Adolescence* 803.

Childrens Court of Queensland, [Child Protection Benchbook](#) (2nd ed, 2023).

Childrens Court of Queensland, [Youth Justice Benchbook](#) (2025).

McVilley et al, ‘[Identifying and responding to young people with cognitive disability and neurodiversity in Australian and Aotearoa New Zealand youth justice systems](#)’ (2023) 30(6) *Psychiatry, Psychology and Law* 789.

Powell, M B and Earhart, B, ‘[Principles to enhance communication with child witnesses](#)’ (2018) 30(9) *Judicial Officers’ Bulletin* 99.

Reid, N et al, ‘[Fetal alcohol spectrum disorder: The importance of assessment, diagnosis and support in the Australian justice context](#)’ (2020) 27(2) *Psychiatry, Psychology and Law* 265.

²⁰² *Youth Justice Act 1992* (Qld) s 301; *Child Protection Act 1999* (Qld) ss 192-193.

²⁰³ *Children’s Court Act 1992* (Qld) s 20.

CHAPTER 4. ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

*'If it were permissible in past centuries to keep the common law in step with international law, it is imperative in today's world that the common law should neither be nor be seen to be frozen in an age of racial discrimination.'*²⁰⁴

4.1. Introduction

The colonisation of Australia by Europeans had devastating effects on Aboriginal and Torres Strait Islanders. Government policies of systematic dispossession, forced assimilation, and pervasive control extended well into the 20th century. This history is tangibly recent, with many people today having lived through these policies or being the children of those who did.

In the 2021 census, 29.2% of Australia's Aboriginal and Torres Strait Islander population lived in Queensland.²⁰⁵ This includes people from diverse ancestral groups, people of mixed heritage, and those whose ancestral connections have been lost – often due to governmental policies such as forced removals (the Stolen Generations) and the mission system. While the metropolitan South-East is home to Queensland's largest Aboriginal and Torres Strait Islander population in absolute numbers, Indigenous people comprise a larger proportion of the population in many regional and remote areas.²⁰⁶

There remain pervasive inequalities in life outcomes between Aboriginal and Torres Strait Islander peoples and other Australians across domains such as health, education, employment, and justice. Compared to other Australians, Aboriginal and Torres Strait Islander peoples have:

- a life expectancy at birth about 7 years less,
- triple the rate of avoidable deaths,
- double the rate of needing assistance with daily activities due to disability,
- 1.5 times the rate of infant mortality,²⁰⁷
- about triple the rate of grade 12 non-completion,
- double the unemployment rate (13% compared to 5.2%), and a significantly fewer working-age people in employment (54% compared to 76%),²⁰⁸ and,

²⁰⁴ *Mabo v Queensland (No. 2)* [1992] HCA 23; (1992) 175 CLR 1, [41] (Brennan J).

²⁰⁵ Australian Bureau of Statistics, *Australia's Aboriginal and Torres Strait Islander Population: Summary* (25 August 2022).

²⁰⁶ *Ibid.*

²⁰⁷ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework: Queensland 2025 Report* (Report, 11 June 2025).

²⁰⁸ *Ibid.*

- over ten times the rate of children in out-of-home care in the child protection system, amounting to 1 out of every 20 Indigenous children.²⁰⁹

These challenges and inequalities are also reflected in the overrepresentation of Aboriginal and Torres Strait Islander peoples in Australia's criminal justice system. Although Aboriginal and Torres Strait Islander peoples make up approximately 3.8% of the Queensland population, they represent 33% of the national adult prison population.²¹⁰ The overrepresentation is more pronounced for Aboriginal and Torres Strait Islander young people, who are approximately 20 times more likely to be held in custody than non-Indigenous Australian young people of the same age.²¹¹

This overrepresentation reflects not only broader social and economic disadvantage but also specific barriers that Aboriginal and Torres Strait Islander peoples face when navigating the court system itself. The trial process may operate 'unfairly to...witnesses and accused, because that process is often outside their experience, either linguistically or culturally.'²¹² The Final Report of The Royal Commission into Aboriginal Deaths in Custody recognised the importance of cross-cultural understanding within the judiciary to guard against the operation of any ethnocentric biases.²¹³ Aboriginal and Torres Strait Islander peoples may experience multiple barriers when appearing before courts, including:

- fear and/or mistrust of the justice system arising from intergenerational trauma and experiences of racism,
- communication barriers stemming from differences in language and communication styles, and,
- difficulty understanding court processes, forms and orders.

These barriers may result in Aboriginal and Torres Strait Islander peoples being unable to participate fully and fairly in court proceedings. This chapter aims to provide brief, practical guidance in relation to equal treatment for Aboriginal and Torres Strait Islander peoples who come before Queensland courts. Other than some necessarily

²⁰⁹ Australian Institute of Health and Welfare, 'Child protection Australia 2023–24: Aboriginal and Torres Strait Islander children' (Web page, updated 11 December 2025) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2023-24/contents/aboriginal-and-torres-strait-islander-children>>.

²¹⁰ Australian Bureau of Statistics, 'Estimates and projections, Aboriginal and Torres Strait Islander population' (Web Page, 24 July 2024) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-and-projections-australian-aboriginal-and-torres-strait-islander-population/latest-release>>; Australian Institute of Health and Welfare, 'Measure 2.11 Contact with the criminal justice system' (Web page, updated 21 May 2024) <<https://www.indigenoushpf.gov.au/measures/2-11-contact-with-the-criminal-justice-system>>; Queensland Sentencing Advisory Council, *Connecting the dots: the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland* (Sentencing Profile, March 2021) 1.

²¹¹ Maicee Harrison et al, 'The relationship between justice system non-involvement and the social and emotional wellbeing of young Aboriginal and Torres Strait Islander people' (2024) 32(4) *Psychiatry, Psychology and Law* 532, 533.

²¹² Dean Mildren, 'Redressing the Imbalance Against Aboriginals in the Criminal Justice System' (1997) 21 *Criminal Law Journal* 7, 12.

²¹³ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 5, 91.

brief contextual information, it is beyond the scope of this book to provide a comprehensive survey of the history, culture and present-day context of Indigenous people in Queensland. Nonetheless, it is recommended that judges be familiar with these issues to ensure their courtrooms are culturally appropriate and adequately accommodate diverse participant needs.

Finally, it should be emphasised that Aboriginal and Torres Strait Islander peoples are not a homogenous group: there is considerable diversity between Aboriginal people and Torres Strait Islander people, among the hundreds of distinct language groups and communities, between urban and regional or remote communities, and in individual circumstances including connection to culture and country (connection which may have been significantly influenced or lost by removal), educational background, and personal experience. This chapter should be read in the context of that diversity.

4.2. Identity and Terminology

Queensland is home to two distinct Indigenous groups: Aboriginal people and Torres Strait Islander people. Torres Strait Islander people come from the region between Cape York and Papua New Guinea, while Aboriginal people come from all other areas of Australia. Some people identify as both.²¹⁴

These large groupings encompass a variety of peoples.²¹⁵ Aboriginal people may further refer to themselves using terms associated with specific geographic regions, such as Koori, Murri, or Nunga.²¹⁶ Aboriginal and Torres Strait Islander peoples may also refer to themselves in ways that relate to their country, including ‘saltwater people’, ‘spinifex’, or ‘rainforest’.²¹⁷

Regarding preferred terms:

- Aboriginal and Torres Strait Islander peoples is the preferred term in the plural.
- The plural use of the word “peoples” acknowledges that within the two distinct cultures (being Aboriginal and Torres Strait Islander), there are hundreds of unique and distinct communities, cultural and language groups.
- “Aboriginal” and “Torres Strait Islander” should be capitalised.
- An individual can be referred to as an Aboriginal person, a Torres Strait Islander person, or an Aboriginal or Torres Strait Islander person, depending on their identity.

²¹⁴ Australian Institute of Aboriginal and Torres Strait Islander Studies, ‘Indigenous Australians: Aboriginal and Torres Strait Islander People’ (Web Page) <<https://aiatsis.gov.au/explore/indigenous-australians-aboriginal-and-torres-strait-islander-people>>.

²¹⁵ “Peoples” is used in the plural to refer to multiple distinct groups of people as opposed to multiple individuals.

²¹⁶ Australian Institute of Aboriginal and Torres Strait Islander Studies (n 214).

²¹⁷ Ibid.

- It is generally not appropriate to abbreviate Aboriginal and Torres Strait Islander to ATSI, unless used in a table or graph if there is not enough room to spell out the words in full. If this is necessary, the better abbreviation is A&TSI as it is a better representation of the two distinct cultures.
- It is appropriate to abbreviate Aboriginal and Torres Strait Islander when it forms part of an acronym such as an organisation's name (e.g. the Aboriginal and Torres Strait Islander Legal Service is known as ATSILS).
- Indigenous Australians is often used for brevity but can be interpreted as diminishing identity and homogenising Aboriginal and Torres Strait Islander cultures. It is also imprecise because it can refer to people indigenous to anywhere in the world. This can be avoided by using the term only after first referring to "Aboriginal and Torres Strait Islander peoples". It should be capitalised when specifically referring to Australian Aboriginal and Torres Strait Islander peoples.
- Some individuals prefer to be identified by their clan, nation, language group or island group. However, some who have been displaced may not know their language or cultural group or there may be sensitivities.
- The term "First Nations" has become increasingly widespread but is not universally accepted, along with Australia's First Peoples or Australia's First Nations Peoples. "First Nations Peoples" is predominantly used in North America to refer to the original inhabitants of Canada.
- "Nation", "community", "people", "mob" or the local language or culture group name is usually preferable to "tribe". "Mob" is an Aboriginal English word and as such may be more appropriate, but community acceptance may be required before using this word. Some Aboriginal people use the term "tribe" due to mainstream schooling in imposed terminology, and such usage should generally be respected.

The following terminology should be avoided:

- Aboriginals or Torres Strait Islanders.
- Aborigine/Aborigines – although grammatically correct, it has negative connotations and is linked to terminology used during periods of colonisation and assimilation.
- Black/Blak/Blackfullas – may be used by Aboriginal and Torres Strait Islander peoples themselves but should be avoided by others.
- Antiquated skin colour (e.g. dark and fair-skinned) and "blood quotient" or blood-percentage (half, quarter, one-eighths etc) terminology is considered offensive and should not be used.

If unsure, it is best to simply ask the person about their preferred terminology.

4.3. Kinship and Community Structure

Family and kinship are organising principles across both Aboriginal and Torres Strait Islander societies, though particular systems vary widely between different

communities and language groups.²¹⁸ Kinship systems provide each person with defined roles based on age, gender, and other factors, and serve to ‘link people through a duty of care’.²¹⁹ Within Aboriginal communities, interpersonal relationships are guided by kinship rules rooted in broader concepts of family and associated family rights and responsibilities that extend far beyond Western concepts of nuclear family.²²⁰ Kinship rules shape a variety of experiences: birth, initiation, betrothal, hunting and gathering, access to resources, gaining knowledge, and handling death and mourning.

The most important organisational divisions in Aboriginal societies are based on sex and age.²²¹ Male elders generally have responsibility for spiritual matters and rituals and are custodians of the Law.²²² Women are responsible for matters of marriage and fertility, but also possess distinct sacred knowledge and rituals (“women’s business”).²²³ Many Aboriginal kinship systems regard siblings of the same sex as equivalent (for example, a child might call her maternal aunts “mother”, who would call her “daughter” in turn).²²⁴

4.3.1. Indigenous Australian and Western Kinship Systems

Aboriginal and Torres Strait Islander kinship systems differ fundamentally from Western kinship traditions in several respects. Western kinship traditions emphasise bloodlines – for example, in succession law they do not recognise adoption without formal documentary processes, focus on inheritance through blood ties from past to future and tend to ignore collateral relatives.²²⁵ The nuclear family (two parents and their children) is emphasised in Western systems.²²⁶

In contrast, most Indigenous Australian communities have different kinship patterns. These include less emphasis on blood and easier recognition of adoption, a view of time that is more circular than linear (meaning relationships may repeat across

²¹⁸ Pat Dudgeon et al, Connection between family, kinship and social and emotional wellbeing (Report, Australian Institute of Health and Welfare, 2021) 3-5; Productivity Commission, ‘Aboriginal and Torres Strait Islander families and households are safe’ (Web Page, 2024) <<https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area13>>.

²¹⁹ Productivity Commission (n 218).

²²⁰ Alice Beaufile, “That’s the bloodline”: Does Kinship and care translate to Kinship care?’ (2023) 58(2) *Australian Journal of Social Issues* 408, 410; Fiona Buchanan, Jamie Sorby and Amelia Smith, ‘Kinship and Cultural Strengths – Learning from an Aboriginal Perspective’ (2024) *Australian Social Work* 1, 2-3.

²²¹ Robert Tonkinson, ‘Australian Aboriginal Peoples’ in *Encyclopaedia Britannica* (online encyclopaedia, updated 17 October 2023) <<https://www.britannica.com/topic/Australian-Aboriginal/Leadership-and-social-control>>.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Prue Vines, ‘Australia’s (Slow) Experiment with Indigenous Customary Law in Intestacy’ (2023) 6(1) *Journal of Commonwealth Law* 68, 76-77.

²²⁶ Buchanan, Sorby and Smith (n 220) 3.

different generations) and an absence of emphasis on the nuclear family.²²⁷ For example, a “spouse” may exist for one person in three generations – this does not mean the person has a romantic or sexual relationship with all three, but rather that specific rules of behaviour and obligation apply to all three.²²⁸ In many Aboriginal kinship systems, a grandmother’s obligations to her grandchildren are more akin to a Western mother’s obligations to her children.²²⁹

4.3.2. Impact on Giving Evidence and Court Processes

Kinship relations can significantly influence how an Aboriginal or Torres Strait Islander person gives evidence, especially concerning relatives. It may create feelings of guilt or distort perceptions of personal responsibility. Rules of conduct rooted in kinship might also affect a witness’s willingness or ability to speak to, or in front of, certain individuals. Some communities practice customary avoidance between certain categories of male and female kin, where, for example mothers-in-law and sons-in-law rarely communicate directly.²³⁰

It is important to note that Aboriginal and Torres Strait Islander children who were removed from their parents may be less likely to have a strong sense of their Aboriginal or Torres Strait Islander identity, are more likely to have discovered their identity later in life and are less likely to know about their cultural traditions.²³¹ The effects of forced removal and cultural erasure mean that some Aboriginal and Torres Strait Islander peoples may not know their traditional kinship group, language group, or Country.²³²

4.4. Customary Law

Customary law refers to rules and norms deriving their legal force from custom and community acceptance rather than from formal legislative enactment.²³³ In the context of Aboriginal and Torres Strait Islander peoples, customary law encompasses the body of rules, traditions, and customs that have governed Indigenous societies in Australia

²²⁷ Vines (n 225) 76-77.

²²⁸ Ibid 76.

²²⁹ Ibid 77.

²³⁰ Central Australian Aboriginal Congress, *A guide for health researchers working with Aboriginal and Torres Strait Islander people and communities* (2021) 19.

²³¹ NSW Public Defenders, ‘Cultural Dispossession and Cultural Resilience: Aboriginal and Torres Strait Islander Peoples Experiences of Colonising Practices’, *The Bugmy Bar Book* (May 2023) 10 [38].

²³² Dudgeon et al (n 218) 11-12.

²³³ Australian Law Reform Commission, *Recognition of Aboriginal Customary Laws* (ALRC Report No 31, 1986) [37]. See also, Law Reform Commission of Western Australia, *Aboriginal Customary Laws* (Final Report, Project No 94, 2006); Vines (n 225); Harry Blagg et al, Australia’s National Research Organisation for Women’s Safety, *Understanding the Role of Law and Culture in Aboriginal and Torres Strait Islander Communities in Responding to and Preventing Family Violence* (Research Report No 19, 2020).

for tens of thousands of years and continue to operate in varying degrees today.²³⁴

There is no single, uniform system of Aboriginal and Torres Strait Islander customary law.²³⁵ Rather, customary law comprises multiple, distinct legal systems that developed among different Aboriginal and Torres Strait Islander communities, each with their own specific laws, customs, and traditions.²³⁶ While there is considerable diversity among these systems, they share common characteristics: they are spiritually based, closely linked to land and country, transmitted orally through generations, and integrated into the social fabric of community life.²³⁷ The Australian Law Reform Commission declined to provide a single definition of customary law, noting that 'narrow legalistic definitions misrepresent the reality'.²³⁸

Customary laws govern diverse aspects of Aboriginal and Torres Strait Islander life, including kinship obligations, marriage, child-rearing, land relationships, dispute resolution, and ceremonial practices.²³⁹ For Aboriginal people, these laws are intimately connected to the Dreaming (or Dreamtime) and to the spiritual relationship between people, country, and ancestors.²⁴⁰ Learned from childhood through observation, participation in ceremonies, and transmission of knowledge through songlines, stories, and dance, customary law provides the normative framework for appropriate conduct within Indigenous communities.

While Aboriginal and Torres Strait Islander customary laws have continuing significance, they are not formally recognised as part of an autonomous legal system on equal footing with the common law and statute of Australia. As such, they operate as a form of normative ordering rather than as law in the strict positivist sense. Nevertheless, Queensland and Australian courts have recognised customary law obligations and relationships in specific contexts. The extent and circumstances of this recognition have varied.

The most significant recognition occurred in *Mabo v Queensland (No 2)*,²⁴¹ where the High Court held that the common law recognises native title reflecting Indigenous peoples' entitlement to traditional lands in accordance with their laws and customs. Queensland courts have given limited consideration to customary laws in criminal sentencing, where they may be raised in mitigation along with other factors relating to the unique circumstances and systemic disadvantage faced by Aboriginal and Torres Strait Islander offenders.²⁴²

²³⁴ Australian Law Reform Commission, *Recognition of Aboriginal Customary Laws* (n 233) [37].

²³⁵ *Ibid* [622].

²³⁶ *Ibid*.

²³⁷ *Ibid* [37], [99]-[100].

²³⁸ *Ibid* [99].

²³⁹ *Ibid* [37].

²⁴⁰ *Ibid* [103].

²⁴¹ [1992] HCA 23; (1992) 175 CLR 1.

²⁴² *Penalties and Sentencing Act 1992* (Qld) 9(1)(oa).

In some contexts, courts have recognised customary law relationships and obligations. For example, in matters involving copyright in Aboriginal artistic works, the Federal Court has recognised that Aboriginal artists may owe fiduciary duties to their clan or community arising from customary law obligations regarding the reproduction and use of culturally significant imagery.²⁴³

In other contexts, recognition of customary law relationships has been more limited. In *Eatts v Gundy*,²⁴⁴ the Queensland Court of Appeal held that a relationship between a deceased person and a child raised as her son according to Aboriginal law and custom did not fall within the meaning of "issue" or "child" for the purposes of intestacy or family provision under the *Succession Act 1981* (Qld). The Court held that these terms, in the statutory context, focused on biological relationships or relationships created by formal legal adoption under statute, and did not extend to customary adoption practices.

Queensland has recently legislated to formally recognise Torres Strait Islander traditional child-rearing practices. The *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Qld) provides for "cultural recognition orders" that transfer parentage from birth parents to cultural parents in accordance with Ailan Kastom. A cultural recognition order has the same effect as a statutory adoption order for purposes including dispositions of property and intestacy. The *Human Rights Act 2019* (Qld) may affect how courts interpret statutes in relation to Aboriginal and Torres Strait Islander customary laws. Section 28 protects the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples, including rights to maintain and develop kinship ties. Section 48 requires that all statutory provisions must, to the extent possible consistent with their purpose, be interpreted in a way that is compatible with human rights. The interaction between these provisions and the interpretation of statutes touching upon customary law relationships and obligations remains to be fully explored in Queensland courts.

4.5. Cultural Protocols

Observing cultural protocols, where possible, is important to ensuring Aboriginal and Torres Strait Islander peoples can participate fully and fairly in court proceedings. Many Aboriginal and Torres Strait Islander communities maintain cultural practices and protocols that have particular significance in legal contexts, including protocols relating to the naming and depiction of deceased persons, gender-specific matters, and the handling of culturally sensitive materials.

Judicial officers' awareness and accommodation of these protocols demonstrate respect for Aboriginal and Torres Strait Islander cultures, helps to avoid causing unnecessary distress or offence to court users, and promotes equality of access to justice. Where cultural protocols may affect court proceedings or the admission of

²⁴³ *Bulun Bulun v R & T Textiles Pty Ltd* (1998) 86 FCR 244.

²⁴⁴ [2015] 2 Qd R 559.

evidence, judicial officers should be alert to these considerations and, where appropriate, seek guidance from the parties or an appropriately informed and qualified body.

4.5.1. Deceased Persons

Each Aboriginal and Torres Strait Islander community deals with the death of an individual differently. However, in many Aboriginal and Torres Strait Islander communities, the reproduction of a deceased person's name and image is offensive to cultural beliefs.²⁴⁵ This extends to the mention of a deceased person's name in the presence of the deceased's family or community.

Where a proceeding will involve reference to, or depiction of, a deceased Aboriginal or Torres Strait Islander person, it is generally recommended that the relevant legal representative seek permission (e.g. from the deceased person's next of kin) to name and/or show images of the person. The matter should be raised in advance of the trial or hearing.

Where such reference or depiction is unavoidable, the judge should warn Aboriginal and Torres Strait Islander peoples who are present that the proceedings will include references to a person who is deceased. See, for example, the sentencing remarks in *R v Poonkamelya* (16 September 2004), which commence with the warning 'The following material contains references to Indigenous persons who are deceased.'

4.5.2. Sorry Business

"Sorry business" is a term used by Aboriginal and Torres Strait Islander peoples to describe the period of mourning and cultural practices that take place following a death. Sorry business includes ceremonies, protocols, and rituals associated with bereavement and funerals for a deceased person. Funerals can involve entire communities, and the "sorry time" of the funeral and mourning takes precedence over all other matters.²⁴⁶ There is no set time period for sorry business.²⁴⁷ Failure to attend the funeral of a relative may cause distress and possibly lead to cultural consequences for the person and their family.²⁴⁸

Cultural protocols during sorry business may include:

- not naming the deceased person or showing their image,
- community-wide mourning involving ceremonies and cultural practices,
- extended absence from work, school, or other obligations to attend to kinship responsibilities, and/or,
- return to country for mourning and ceremonies.

²⁴⁵ Terri Janke, *Writing Cultures: Protocols for Producing Indigenous Australian Literature* (2002).

²⁴⁶ NSW Public Defenders, *The Bugmy Bar Book* (n 231) 2 [8].

²⁴⁷ Ibid.

²⁴⁸ Ibid 3 [10].

Inability to participate in sorry business may compound trauma and disconnection from culture.²⁴⁹ It is helpful for judges to be aware of the ways in which sorry business may affect Aboriginal and Torres Strait Islander peoples' ability to participate in court proceedings. This might involve consideration of the following matters:

- granting adjournments to allow participation in sorry business,
- understanding that cultural obligations to attend funerals and participate in mourning are not discretionary but are fundamental cultural responsibilities, and,
- consulting with parties about appropriate timeframes and cultural sensitivities.

4.5.3. Gender-Specific Cultural Practices and Restrictions

Aboriginal and Torres Strait Islander cultures also include gender-specific knowledge, practices, and ceremonies that are sometimes referred to as “women’s business” and “men’s business”.²⁵⁰ Women’s business refers to distinct cultural practices and ceremonies where women are custodians of special knowledge and practice holding significant religious and spiritual power and authority. Men’s business similarly encompasses cultural knowledge, practices, and ceremonies that are restricted to initiated men. Neither gender has greater spiritual responsibilities or needs, but rather, ‘men and women have different – and sometimes separate – roles or functions in ceremony.’²⁵¹

Some sacred sites are restricted to one gender, and participation in certain ceremonies can be restricted by gender and age.²⁵² Some images and knowledge may be gender-specific and may only be seen by initiated men or women.²⁵³ This can create particular difficulties for Aboriginal and Torres Strait Islander women, for example, in legal proceedings which relate to traditional women’s business that cannot be disclosed to men.

Judges should be aware that evidence, materials, or testimony may involve gender-restricted cultural knowledge. In such cases, consideration may need to be given to hearing evidence in closed court or with gender-appropriate restrictions, and consulting with Aboriginal and Torres Strait Islander liaison officers about culturally appropriate ways to manage the proceedings while maintaining procedural fairness.

²⁴⁹ Ibid 3-4.

²⁵⁰ See Diane Bell, “‘Women’s Business’: What is It?” in Francoise Dussart and Howard Morphy (eds), *Aboriginal Religions in Australia: An Anthology of Recent Writings* (Routledge, 2005).

²⁵¹ Tracey Bunda et al, *The Language of Relationships with Aboriginal and Torres Strait Islander People* (University of Queensland, 2023).

²⁵² Ibid.

²⁵³ Oxfam Australia, *Aboriginal and Torres Strait Islander Cultural Protocols* (2015) 9.

4.6. Language and Communication

Language and communication differences can create significant barriers to effective participation in court proceedings for Aboriginal and Torres Strait Islander peoples, affecting their ability to give evidence, understand legal processes, and engage with the justice system.

4.6.1. Aboriginal and Torres Strait Islander Languages

An estimated 250 languages and 800 dialects were spoken in Australia at the time of colonisation.²⁵⁴ Regional pidgins developed in Queensland in the 19th century, commonly using English vocabulary with traditional grammar systems. Over time these evolved into Aboriginal English and two creoles: Kriol and Yumplatok (Torres Strait Creole). These are considered complete languages and not merely “broken English”.²⁵⁵

Yumplatok, Kriol and Djambarrpuyngu are the most commonly spoken Aboriginal and Torres Strait Islander languages in Australia.²⁵⁶

The 2021 census found that some 77,000 people used 167 Indigenous languages at home.²⁵⁷ In Queensland, some 19,000 people (8% of the Aboriginal and Torres Strait Islander population) spoke Indigenous languages at home.²⁵⁸ In Cape York and Torres Strait, the majority of Aboriginal and Torres Strait Islander peoples spoke a language other than English at home.²⁵⁹ The most widely spoken Aboriginal or Torres Strait

²⁵⁴ Australian Institute of Aboriginal and Torres Strait Islander Studies, ‘Languages alive’ (Web page, 13 October 2025) <<https://aiatsis.gov.au/explore/languages-alive>>.

²⁵⁵ Juanita Sellwood and Denise Angelo, ‘Everywhere and nowhere: Invisibility of Aboriginal and Torres Strait Islander contact language in education and Indigenous language contexts’ (2013) 36(3) *Australian Review of Applied Linguistics* 250, 252, 254. See also, Linda Reed, Ariana Mount and Denise Angelo, *Strengthening Australian languages: between policy and practice* (Report on the Language Policy Symposium, 26-27 September 2022, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2024).

²⁵⁶ Australian Bureau of Statistics, ‘Language Statistics for Aboriginal and Torres Strait Islander Peoples, 2021’ (Web Page, 25 October 2022) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/language-statistics-aboriginal-and-torres-strait-islander-peoples/latest-release>>. See also, Anna Shnukel, ‘Torres Strait Creole’ in Susanne Michaelis et (eds), *The Survey of Pidgin and Creole Languages* (Oxford University Press, 2013) vol 1, 205.

²⁵⁷ Australian Bureau of Statistics, ‘Aboriginal and Torres Strait Islander people: Census’ (Web Page, 1 July 2022) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/aborigin-al-and-torres-strait-islander-people-census/latest-release>>.

²⁵⁸ Australian Bureau of Statistics, ‘Queensland: Aboriginal and Torres Strait Islander population summary’ (Web Page, 1 July 2022) <<https://www.abs.gov.au/articles/queensland-aboriginal-and-torres-strait-islander-population-summary>>.

²⁵⁹ Australian Bureau of Statistics, ‘Language speakers by State/Territory and Indigenous Location, Data download from Language Statistics for Aboriginal and Torres Strait Islander Peoples, 2021’ (Web Page, 25 October 2022) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/language-statistics-aboriginal-and-torres-strait-islander-peoples/2021>>.

Islander language groups in Queensland are Yumplatok and Wik Mungan. 88% of Indigenous language speakers self-report speaking English well or very well.²⁶⁰

4.6.2. Aboriginal English

Aboriginal English is a variety of English spoken by about 80% of Aboriginal people.²⁶¹ Aboriginal English, which likely developed on missions and reserves, encompasses a range of forms from close to Standard Australian English to closer to Kriol.²⁶² Kriol, a specific creole language spoken predominantly in the Northern Territory and Western Australia (with limited presence in Queensland), has a unique grammar and structure that makes it largely unintelligible to Standard Australian English speakers, despite its English-derived vocabulary.²⁶³

The superficial similarities between Standard Australian English and Aboriginal English (or Torres Strait Creole) can lead to misunderstandings. The meaning of a statement can be misconstrued, or someone may mistakenly assume that a witness is fluent in or speaking Standard Australian English.²⁶⁴ This can significantly affect court proceedings, as illustrated by the Queensland Court of Appeal case of *R v Kina*,²⁶⁵ where the defendant's communication difficulties with her solicitor and counsel prevented her from fully disclosing the circumstances of the offence, which included a history of sexual violence against her by the victim.

The West Australian case of *Murray v Feast*²⁶⁶ is also instructive. In that case, the appellant was convicted of one charge of aggravated common assault. The appellant was a Walmajarri man who mainly spoke Walmajarri, as well as Mardok, Manjaderra, and 'mixed languages'. The appellant gave evidence at trial with the assistance of an interpreter. However, at the beginning of the appellant's evidence at trial, the Magistrate instructed the interpreter not to interpret portions of the appellant's

²⁶⁰ Australian Bureau of Statistics, 'English as a second language, Data download from Language Statistics for Aboriginal and Torres Strait Islander Peoples, 2021' (Web Page, 25 October 2022) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/language-statistics-aboriginal-and-torres-strait-islander-peoples/2021>>.

²⁶¹ Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Third National Indigenous Languages Survey: FAQs' (Web Page) <<https://aiatsis.gov.au/research/current-projects/third-national-indigenous-languages-survey/third-national-indigenous/faqs>>.

²⁶² Queensland Government Department of Justice and the Attorney General and Department of Aboriginal and Torres Strait Islander Policy, *Aboriginal English in the Courts: A Handbook* (2000) 8. See also, Diana Eades, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013) 18-20, 57-58.

²⁶³ Greg Dickson, 'Kriol', in Claire Bowern (ed), *The Oxford Guide to Australian Languages* (Oxford University Press, 2019); Eva Schultze-Berndt, Felicity Meakins and Denise Angelo, 'Kriol', in Susanne Michaelis et al (eds) *Atlas of Pidgin and Creole Language Structures* (Oxford University Press, 2013).

²⁶⁴ Diana Eades, 'Taking Evidence from Aboriginal Witnesses Speaking English: Some Sociolinguistic Considerations' (2015) 126 *Precedent* 44, 44-45 ('Taking Evidence from Aboriginal Witnesses Speaking English'); Eades, *Aboriginal Ways of Using English* (n 262) 57-58.

²⁶⁵ [1993] QCA 480.

²⁶⁶ [2023] WASC 273.

evidence because it was in English. Both the interpreter and the appellant tried to inform the Magistrate that while the appellant appeared speak in English, he was actually speaking in Aboriginal English and Kriol, necessitating translation because the meaning and words of phrases can differ between the languages. The Magistrate did not accept the argument and reiterated that the translator need not translate anything said in “English”. On appeal, Solomon J determined that the denial of the appellant’s linguistic distinctiveness contributed to an unfairness going to the root of the trial process:

The stark reality is this: a criminal prosecution of a Walmajarri man proceeded in the face of the court’s express denial of the linguistic distinctiveness of the accused. Unintended though it was, this cannot be regarded as fair and just. The injustice is all the more troubling because the denial of linguistic identity relates to the language and culture that evolved from antiquity in our very own landscape. ... If the court is to keep apace with community standards, it must apply the community standard reflected in the sentiments of the [Supreme Court’s] Reconciliation Statement to the concrete reality of the justice system.²⁶⁷

Some important examples of differences between Aboriginal English and Standard Australian English are set out in the Criminal Justice Commission’s report, *Aboriginal Witnesses in Queensland’s Criminal Courts*,²⁶⁸ and summarised below:

- Pronunciation – initial ‘h’ sounds often dropped; ‘f’ or ‘v’ sounds often changed to ‘p’ or ‘b’. so that the phrase “we had a fight” may sound like “we ad a bight”.
- Tense – terminal ‘-ed’ sound may be dropped and past tense indicated with an auxiliary verb such as “bin” or time indications like “before” or “that time”.
- Meanings of words – examples cited in the Criminal Justice Commission’s report include “drunk” meaning tipsy, and “choked down” meaning drunk or very drunk.
- Repeated or lengthened verbs – for example, “ran, ran, ran” and “raaaaaan” both conveying running for a long time.
- Double negatives – these do not commonly indicate a positive, so a question like “You didn’t not want to go to the police station, did you?” could cause confusion.²⁶⁹

These differences do not mean there is more ambiguity in Aboriginal English, rather that the syntax differs from Standard Australian English. The subject and object of a sentence may be misidentified by a person unfamiliar with the language structure of Aboriginal English.²⁷⁰ The extent to which someone can switch between Aboriginal English and Standard Australian English will vary widely between individuals and

²⁶⁷ Ibid [174].

²⁶⁸ Criminal Justice Commission, *Aboriginal Witnesses in Queensland’s Criminal Courts* (Report, June 1996).

²⁶⁹ Ibid.

²⁷⁰ *Aboriginal English in the Courts: A Handbook* (n 262). See also, Eades, *Aboriginal Ways of Using English* (n 262) 64-68.

depends to a significant extent on the individual's experience in mainstream domains, such as education and employment.²⁷¹

4.7. Cultural Aspects of Communication

Beyond linguistic differences between Aboriginal English and Standard Australian English, cultural differences in communication styles can create further barriers to effective participation in court proceedings. Some Aboriginal and Torres Strait Islander peoples communicate in ways that differ from the assumptions underlying mainstream Australian courtroom practices, and these differences can lead to misunderstandings that affect the assessment of witness credibility and the fairness of legal processes. More general information about the impact of culture on communication is in [Chapter 2 \(Effective Communication in the Courtroom\)](#).

4.7.1. Indirect Communication

Indirect communication is often preferred in Aboriginal and Torres Strait Islander contexts, where the privacy of people's thoughts and feelings are highly respected and information may more often be exchanged through making remarks and hinting for a response.²⁷² When something is unclear, it may be considered polite to wait for the meaning to become clear through continued interaction rather than asking for clarification. Aboriginal people may respond with "I don't know" or similar responses when they feel uncomfortable with direct questioning or feel that the questioning style is inappropriate. In this way, difficulties may arise with closed questions, demands for specific details, or questions that discourage narrative responses.

4.7.2. Shame

The concept of "shame" in Aboriginal and Torres Strait Islander cultures has a significantly broader meaning than in non-Indigenous Australian usage. In Aboriginal and Torres Strait Islander cultures, "shame" can refer not only to feelings arising from wrongdoing or guilt, but encompasses embarrassment, shyness, and discomfort in situations where one is the centre of attention or exposed in public or formal settings.²⁷³ Aboriginal and Torres Strait Islander peoples may experience "shame" when singled out for questioning, when receiving praise or criticism, when meeting strangers, or when expected to speak publicly before others—circumstances that would not typically evoke feelings of shame in non-Indigenous contexts.²⁷⁴

²⁷¹ Diana Eades, 'Judicial understandings of Aboriginality and language use' (2016) 12 *The Judicial Review* 471, 478-480.

²⁷² Eades, 'Taking Evidence from Aboriginal Witnesses Speaking English' (n 264) 46-47

²⁷³ See generally Jean Harkins, 'Shame and shyness in the Aboriginal classroom: A case for "practical semantics"' (1990) 10(2) *Australian Journal of Linguistics* 293; Farzad Sharifian, 'Cultural conceptualisations in English words: A study of Aboriginal children in Perth' (2005) 19(1) *Language and Education* 74.

²⁷⁴ Harkins (n 273).

Shame may impede communication and participation. Aboriginal and Torres Strait Islander witnesses, parties, or defendants may feel shame when required to speak in open court, when asked direct questions in front of others, or when their personal circumstances are discussed publicly. This feeling of shame can be so overwhelming that it may cause a person to avoid eye contact, speak quietly or minimally, provide brief or incomplete answers, or appear reluctant to engage fully in proceedings. Judges can be aware that such responses may not indicate dishonesty, lack of cooperation, or disrespect for the court, but rather reflect a deeply felt cultural response to being placed in the spotlight. Where appropriate, consideration might be given to alternative methods of taking evidence or conducting proceedings in a way that minimises the shame experienced by Aboriginal and Torres Strait Islander participants, such as limiting the number of people present when a person is giving evidence, allowing evidence to be given remotely, or allowing a support person to accompany the witness.

4.7.3. Gratuitous Concurrence

Gratuitous concurrence refers to the tendency of a speaker to agree with a proposition regardless of whether they actually agree or even understand.²⁷⁵ This can occur either out of respect for the questioner, creating an atmosphere of being agreeable, avoiding confrontation, or because the listener is confused by the question.²⁷⁶ This can 'lead to unintended confessions in police interviews where a person is asked a series of questions about guilt to which they reply uniformly in the affirmative. ... [G]ratuitous concurrence can also make it easy for a cross-examining counsel to discredit a witness by getting them to agree with a statement that contradicts the rest of their testimony. This is done by asking leading questions that require a yes/no response. The existence of gratuitous concurrence makes it highly likely that the reply will be a yes.'²⁷⁷

The case of *R v Kennedy*,²⁷⁸ in particular the extract from the accused's audiotaped record of interview with police, illustrates gratuitous concurrence:

Police Officer: Right. Now Cedric, I want to ask you some questions about what happened at Jay Creek the other day. Do you understand that?

Kennedy: Yes.

²⁷⁵ Mark Lauchs and Christopher Emzin, 'Submission to the Criminal Procedure Review – Queensland Magistrates Courts 2022' (2022) 9.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Northern Territory Supreme Court (Gallop J), 30 November 1978, unreported, quoted in Criminal Justice Commission (n 268) 22.

Police Officer: Right. Now it's in relation to the death of [that dead fellow]. Do you understand that?

Kennedy: Yes.

Police Officer: Right. Now I want to ask you some questions about the trouble out there but I want you to understand that you don't have to answer any questions at all. Do you understand that?

Kennedy: Yes.

Police Officer: Now. Do you have to tell me that story?

Kennedy: Yes.

Police Officer: Do you have to, though?

Kennedy: Yes.

Police Officer: Do you, am I making you tell me the story?

Kennedy: Yes

Police Officer: Or are you telling me because you want to?

Kennedy: Yes.

Police Officer: Now I want you to understand that you don't have to tell me, right?

Kennedy: Yes.

Police Officer: Now do you have to tell me?

Kennedy: Yes.

4.7.4. Scaffolding

Scaffolding refers to a person's tendency to adopt the wording and grammatical structure of the other person in their reply. If the speaker is not fluent in the language being used, the borrowed words may not accurately convey their intended meaning. Echoed words or phrases in a response may indicate that scaffolding is occurring.²⁷⁹

²⁷⁹ See generally Michael Cooke, 'A different story: narrative versus "question and answer" in Aboriginal evidence' (1996) 3(2) *Forensic Linguistics: The International Journal of Speech, Language and the Law* 273; Criminal Justice Commission (n 268) 18.

4.7.5. Unwillingness to Answer

Responses like “I don’t know” may not always indicate a lack of knowledge, but rather a reaction, “This is not an appropriate way for me to provide information.”²⁸⁰ Such culturally influenced responses may need to be appropriately negotiated in the context of witness compellability.

4.7.6. Quantitative Estimates

In some Aboriginal cultures, descriptions of numbers, times, and distances are traditionally expressed in terms of geographical, climatic or social relationships, which may seem imprecise to people from other backgrounds. Responses may be provided that are non-specific, qualitative or relative to something else (for example, “before breakfast”).²⁸¹

4.7.7. Silence

Silence is an accepted and valued part of communication in many Aboriginal and Torres Strait Islander contexts. However, silence can be misinterpreted in a variety of ways, and can indicate:

- that the person is considering the answer,
- disapproval of the question,
- discomfort with the surroundings or discussion,
- a cultural inability to discuss a particular topic, or
- misunderstanding of the question.²⁸²

Silence may be interpreted as a sign that subsequent responses are more considered and accurate.²⁸³ In Anglo-American culture, however, particularly in courtroom settings, silence may be interpreted as dishonesty, evasiveness, rudeness, ignorance, or guilt.²⁸⁴

4.8. Communication Strategies

There are various resources in existence which provide some recommendations to reduce the potential for misunderstanding when communicating with speakers of

²⁸⁰ Sussex (n 39) 532. See also Diana Eades, *Aboriginal English and the Law: Communicating with Aboriginal English Speaking Clients: A Handbook for Legal Practitioners* (Queensland Law Society, 1992) 45 (*‘Aboriginal English and the Law’*). See also, Eades, ‘Taking Evidence from Aboriginal Witnesses Speaking English’ (n 264).

²⁸¹ Australian Human Rights Commission, ‘Submissions of the Aboriginal and Torres Strait Islander Social Justice Commissioner on Common Difficulties Facing Aboriginal Witnesses’, (20 March 2007) [24]-[28]. See also Diana Eades, *Aboriginal English and the Law* (n 280) 49-51; Adam Alter, ‘Aborigines and Courtroom Communication: Problems and Solutions’ (Australian Human Rights Centre Working Paper 2004/2, 2004) 8-9.

²⁸² Lauchs and Emzin (n 275) 9.

²⁸³ Alter (n 281) 9.

²⁸⁴ See generally, Eades, ‘Taking Evidence from Aboriginal Witnesses Speaking English’ (n 264).

Aboriginal English and other Aboriginal and Torres Strait Islander languages. The following strategies are taken directly from Chapter 5 of the [*Aboriginal Benchbook for Western Australia Courts*](#) (second edition):

Speak slowly and clearly – When communicating with a speaker of Aboriginal English who is not fluent in Anglo-Australian English, it is important to speak slowly and clearly. The use of simple words, simple sentence structure and slow (but not patronising) speech, is best.

Use an ordinary tone of voice – An ordinary tone of voice, and everyday manner of speech, should always be used. Loud voices and/or harsh tones of voice suggest rudeness, aggression, or lack of respect. Especially in the courtroom context, a loud voice and/or a harsh tone may intimidate a speaker of Aboriginal English to the point that he or she is unable to respond.

Use the name by which the speaker wishes to be addressed – At the earliest opportunity, find out the name by which the speaker of Aboriginal English wishes to be addressed and use that name.

Use an indirect approach to asking questions – for example:

1. **Hint and wait:** this involves a two-part process:
 - Hint at the information which you are seeking (for example, “I am wondering whether you were at that house” or “I need to know whether you were at that house”), and
 - Allow the person sufficient time to consider the hint given, and to respond. It is important not to become impatient or to push for a quick response.
2. **Make a statement and await confirmation or denial:** this method is similar to the first. It requires the questioner to:
 - Volunteer appropriate information (for example, “It seems as if you were at that house” or “I think that maybe you were at that house” or “Maybe you were at that house”), then
 - Remain silent, and wait for confirmation or denial of the statement.

Note: this approach should be used carefully. If this approach merely disguises a direct question, it may trigger “gratuitous concurrence”.

Frame a question as a statement: this may be the most effective method. It requires the question to be framed as a simple utterance, with a rising intonation (for example, “You were outside that house?” or “You were outside that house, eh?”). A variation on this approach is to make a statement, then follow it with a short question, such as: “You were outside that house. Is that right?” Then allow sufficient time for the answer to be given.

Check with the speaker of Aboriginal English to establish if he or she understands the legal words used – It is important to seek feedback from the

speaker of Aboriginal English that he or she understands the legal words which have been used in court proceedings.

Show respect and consideration at all times – The demonstration of respect and consideration for persons who are not fluent in standard Australian English is of paramount importance. A raised voice and/or obvious exasperation may make the speaker of Aboriginal English feel frightened, confused and angry.

Simplify the use of words – Use simple words wherever possible. For example:

- Say “about” rather than “regarding” or “concerning”.
- Say “start” rather than “commence”.
- Say “go” rather than “proceed”.
- Say “to” rather than “towards”.
- Use simple verb tenses such as “you say” not “you are saying”.

Be careful of “I don’t know” responses – The response “I don’t know” may simply mean that it is inappropriate for the Aboriginal person to provide information in that way, or there may be issues of shame or modesty involved. Issues of modesty and shame may arise when a man asks a woman questions of a sexual nature. If “I don’t know” responses become common place, try a different approach e.g. consider whether it is necessary to ask the witness to repeat their understanding of the question, direction etc; check any written statement taken from the witness against his or her educational background and awareness of Anglo-Australian culture.

Don’t attempt to speak or to correct Aboriginal English – Don’t attempt to speak Aboriginal English. Attempts by non-Aboriginal English speakers to speak Aboriginal English may be interpreted as mocking or patronising. Similarly, don’t “correct” the speech of a speaker of Aboriginal English.

Don’t use complex sentences or figurative speech – Don’t use long and/or complex sentence constructions (including “I put it to you that...”). Similarly, don’t use figurative speech. An expression such as “as clear as mud”, or “raining cats and dogs” may confuse a speaker of Aboriginal English.

Don’t use negative questions – Don’t ask negative questions, such as “You didn’t do that, did you?” or “Is that not true?” Such questions may easily confuse a speaker of Aboriginal English.

Don’t use “either-or” questions – “Either-or” type questions (that is, questions which ask the respondent to choose between one of two alternatives) may be confusing. Often, the answer given by an Aboriginal person will refer to the second alternative which has been suggested. Thus, rather than asking “Were you at the house or at the pub” it may be better to say: “Maybe you were at the house. Maybe you were at the pub. Tell me where you were then?” Alternatively, simply ask “where were you then?”

Don't use technical legal words or "jargon" unless it is essential – Avoid the use of technical legal words or "jargon" unless it is absolutely essential. Substitute the word "law" for "statute" or "legislation". Say "X would like to ask you some questions" rather than "X will now cross examine you."

4.9. Using Interpreters

General considerations about interpreters are discussed in [Chapter 2 \(Effective Communication in the Courtroom\)](#). Judges should also be aware of the specific considerations regarding the use of interpreters with Aboriginal and Torres Strait Islander peoples.

Legal interpreting requires a high-level of competency, including command of legal terminology. The National Accreditation Authority for Translators and Interpreters (NAATI) presently lists just 85 accredited interpreters and translators of Aboriginal and Torres Strait Islander languages.²⁸⁵ Even where accredited interpreters are available, they may be difficult to obtain due to insufficient notice, unavailability in remote locations, or the interpreter's inability to take part in the proceedings because of a conflict of interest relating to family or kinship relationships.²⁸⁶

Independent, professional, accredited interpreters should be used whenever possible. However, the scarcity of accredited interpreters means it may not always be practical to expect or meet this standard. Careful consideration is necessary when deciding whether to allow an unaccredited, untrained, or informal interpreter. They may, for example, be unfamiliar with legal terminology or overwhelmed by the formal court environment.

*R v Watt*²⁸⁷ highlights some of the difficulties in engaging an appropriate interpreter. The complainant in that case spoke Wik Mungkan and did not speak English. She also had a hearing impairment. There were no NAATI accredited interpreters, so an interpreter with a Masters degree in Linguistics was engaged. However, the interpreter lacked training in legal interpreting and spoke a different variety of Wik Mungkan than the complainant. The Court of Appeal found that the complainant's inconsistent responses were, in part, due to inadequate translation.²⁸⁸ The Court further observed:

In addition to being a non-English speaker, the complainant had a hearing impairment: an estimated 40 per cent of the Aboriginal community suffers hearing loss. The application of the rule of law in Queensland depends not only on the right of an accused person to a fair trial according to law but also on victims of alleged crimes having a genuine opportunity to make a complaint and to give evidence about it. Our community has an obligation to do everything practicable to ensure that even complainants who do not speak English or who have other disabilities have this basic access to the

²⁸⁵ National Accreditation Authority for Translators and Interpreters, 'Indigenous Interpreting Project' (Web Page, 2025) <<https://www.naati.com.au/about-us/projects/indigenous-interpreting-project/>>.

²⁸⁶ Ibid.

²⁸⁷ [2007] QCA 286.

²⁸⁸ *R v Watt* [2007] QCA 286, [38].

criminal justice system. This obligation is certainly not lessened in respect of Indigenous complainants.²⁸⁹

Difficult to translate words or concepts pose a particular challenge in court proceedings, especially to untrained interpreters. Some legal words or phrases may have no conceptual equivalent in the second language,²⁹⁰ including the meaning of a “not guilty” plea, the relevance of “intention” to certain offences, the meaning and operation of “mitigating” and “aggravating” factors, and so on.²⁹¹ English loanwords may have different meanings in other languages.²⁹² For example, in *R v Johnson*,²⁹³ an Aboriginal suspect stated that he had intended to “kill” the complainant but after further questioning it became clear that his intention was not to murder the complainant, but to “kill her a little bit”, “kill her on the leg”.

4.10. Expert Evidence

The issue of expert evidence in relation to cultural factors is discussed in [Chapter 2 \(Effective Communication in the Courtroom\)](#). *R v Watt*²⁹⁴ also illustrates the complexities of cross-cultural interpretations and expert evidence in court proceedings. The complainant in that case repeatedly answered “no” to questions. The interpreter explained to the trial judge that the complainant’s answers were unlikely to be the truth because in the complainant’s cultural background, ‘you speak “yes” to the person who is for you and “no” to the person who is against you, regardless of what is involved.’

The trial judge acknowledged that the interpreter was acting as a kind of cultural facilitator in addition to formal interpreting. In the Court of Appeal, Wilson J observed:

While these procedures were unorthodox, this Court should be cautious about being unduly critical of them in all the circumstances, including trial counsel for the appellant’s general acquiescence. That said, they cannot be ignored in the consideration of whether upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt of the appellant’s guilt.²⁹⁵

In its report on Aboriginal witnesses, the Criminal Justice Commission suggested that, where an Aboriginal witness’s evidence might otherwise be understood, evidence from an expert linguist or anthropologist could be usefully called.²⁹⁶

²⁸⁹ Ibid [3].

²⁹⁰ Roberts-Smith (n 44) 75.

²⁹¹ Heather McRae and Garth Nettheim, *Indigenous Legal Issues: Commentary and Materials* (Thomson Reuters, 4th ed, 2009) 372.

²⁹² Roberts-Smith (n 44) 75.

²⁹³ (1987) 25 A Crim R 433, 442.

²⁹⁴ [2007] QCA 286.

²⁹⁵ Ibid [41].

²⁹⁶ Criminal Justice Commission (n 268) 41.

4.11. Improper Questions

Section 20A of the *Evidence Act 1977* contains the court's powers to control improper questioning. Improper questions include questions that have no basis other than a stereotype based on a witness's culture.²⁹⁷

More information on improper questions is in 3.2.5.

4.12. Aboriginal and Torres Strait Islander Women

Aboriginal and Torres Strait Islander women experience the intersection of gender and racial inequality, resulting in disproportionately high rates of violence and particular barriers when accessing the justice system. Understanding these specific challenges is helpful for judges to ensure equal treatment and fair participation in court proceedings.

4.12.1. Disproportionate Impacts of Violence

Aboriginal and Torres Strait Islander women experience violence at significantly higher rates than other Australian women. Between 1 July 1989 and 30 June 2023, 476 Aboriginal and Torres Strait Islander women were victims of homicide.²⁹⁸ Indigenous women experience a homicide victimisation rate up to seven times the national average.²⁹⁹ Aboriginal and Torres Strait Islander women comprised 16% of all adult female homicide victims during this period, despite representing only approximately 3% of the adult female population.³⁰⁰

Almost all victims (97%) were killed by someone they knew, with 66% killed by an Indigenous male intimate partner.³⁰¹ Aboriginal and Torres Strait Islander women are also 31 times more likely to be hospitalised due to family violence-related assaults than non-Indigenous women.³⁰²

The Aboriginal and Torres Strait Islander Action Plan 2023-2025 recognises these disproportionately high rates of family, domestic and sexual violence, noting that they reflect the intersection of gender and racial inequality and the ongoing impacts of colonisation, intergenerational trauma, and systemic and institutional racism.³⁰³

²⁹⁷ *Evidence Act 1977* (Qld) s 20A(2)(d).

²⁹⁸ Samantha Bricknell and Hannah Miles, *Homicide of Aboriginal and Torres Strait Islander Women* (Statistical Bulletin no. 46, Australian Institute of Criminology, 2024).

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² Our Watch, 'Quick facts about violence against women' (Web Page, March 2025) <<https://www.ourwatch.org.au/quick-facts>>.

³⁰³ Commonwealth of Australia, *Aboriginal and Torres Strait Islander Action Plan 2023-2025: Under the National Plan to End Violence against Women and Children 2022-2032* (Department of Social Services, 2023).

Judges can be aware of the high rates of violence experienced by Aboriginal and Torres Strait Islander women when considering matters involving family and domestic violence. This awareness can inform:

- understanding the broader context of violence and disadvantage that may affect an Aboriginal and Torres Strait Islander woman's engagement with the court system,
- recognising that Aboriginal and Torres Strait Islander women appearing as victims of violence may have experienced multiple and ongoing incidents of abuse, and
- being alert to the possibility that an Aboriginal and Torres Strait Islander woman who appears as a defendant may herself be a victim of violence, given the high correlation between victimisation and offending for Aboriginal and Torres Strait Islander women.

4.12.2. Barriers to Reporting and Accessing Justice

Aboriginal and Torres Strait Islander women face significant barriers when attempting to report violence or access the justice system. An estimated 90% of violence against Aboriginal and Torres Strait Islander women goes unreported to police.³⁰⁴ Fear and distrust of police and the justice system particularly affects reporting by Aboriginal and Torres Strait Islander women.³⁰⁵ Barriers to reporting and seeking support include:

- lack of understanding of legal rights and options and how to access support,
- fear of child removal if disclosing family violence,
- fear of reprisal by perpetrator or "payback",
- community pressure not to report violence to avoid increased incarceration of Aboriginal and Torres Strait Islander men,
- mistrust of service providers and their ability to understand and respect the needs and wishes of Aboriginal and Torres Strait Islander women,
- lack of access to transportation and communication channels, especially in rural and remote areas, and
- previous negative experiences with the justice system.³⁰⁶

Aboriginal and Torres Strait Islander women may also experience court as potentially unwelcoming or hostile and not as a place to seek resolution for problems. These barriers to accessing justice for Aboriginal and Torres Strait Islander women are also recognised in the Judicial Council on Cultural Diversity's *National Framework to*

³⁰⁴ Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, 2018) [11.55] ('*Pathways to Justice*').

³⁰⁵ Ibid [11.56].

³⁰⁶ Australian Institute of Health and Welfare, 'Family, domestic and sexual violence: Aboriginal and Torres Strait Islander people' (Web Page) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>>; Australian Law Reform Commission, *Pathways to Justice* (n 304) [11.22].

Improve Accessibility to Australian Courts for Aboriginal and Torres Strait Islander Women and Migrant and Refugee Women (2017), which provides national best practice guidelines for Australian courts. To address these barriers and ensure Aboriginal and Torres Strait Islander women can participate fully and fairly in court proceedings, judges can:

- facilitate access to Aboriginal community-controlled organisations that provide culturally safe support services, including specialist family violence services and legal assistance,
- allow participation via video-link where appropriate,
- be aware that courtroom practices, including the placement of participants, the presence of victims and perpetrators in the same physical space, and the process of giving evidence and being cross-examined, may be particularly confronting for persons with a history of abuse,
- ensure separate waiting areas to prevent intimidation by perpetrators,
- be aware of when an interpreter may be needed and be alert to communication differences arising from Aboriginal English and cultural communication styles, and,
- recognise that Aboriginal and Torres Strait Islander women may resist attending court due to fears about the legal system.

4.12.3. Perpetrator Misidentification

Aboriginal and Torres Strait Islander women may be misidentified by police as “offenders” rather than “victims/complainants”.³⁰⁷ Research examining domestic violence fatality reviews and coronial files for Aboriginal and Torres Strait Islander women killed by male partners found that almost one-third of these women had been previously identified by police as domestic violence perpetrators.³⁰⁸ The same research found that police were likely to describe Aboriginal and Torres Strait Islander women as “uncooperative” or “unwilling” to work with police, with such terminology used in almost three-quarters of domestic violence homicides where police had previously been involved.³⁰⁹ Perpetrator misidentification can limit women’s access to support services, expose them to child protection intervention and the threat of child removal, and enable perpetrators to use legal systems to further abuse victim-survivors.³¹⁰

Some of these challenges are illustrated in *R v Kina*,³¹¹ where the defendant was an Aboriginal woman who was found guilty of the murder of her de facto husband. At trial,

³⁰⁷ See generally, Emma Buxton-Namisnyk, ‘Domestic Violence Policing of First Nations Women in Australia: “Settler” Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination’ (2022) 62(6) *British Journal of Criminology* 1323.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ [1993] QCA 480.

no evidence was led of the woman's history of physical and sexual violence inflicted by her husband, nor was the defence of provocation raised. The defendant had significant difficulty talking with her male solicitor and counsel about the events leading up to the stabbing, which included prolonged sexual violence and a threat of sexual violence against her niece. The Court of Appeal held that the trial had miscarried:

In this matter, there were, insufficiently recognised, a number of complex factors interacting which presented exceptional difficulties of communication between her legal representatives and the appellant because of:

- her Aboriginality;
- the battered woman syndrome; and,
- the shameful (to her) nature of the events which characterised her relationship with the deceased.

These cultural, psychological and personal factors bore upon the adequacy of the advice and legal representation which the appellant received and effectively denied her satisfactory representation or the capacity to make informed decisions on the basis of proper advice.³¹²

Judges should be alert to the possibility of perpetrator misidentification, and it is helpful to be aware that:

- an Aboriginal and Torres Strait Islander woman who appears as a defendant in a domestic violence matter may have been misidentified as the primary aggressor when she was in fact acting in self-defence or responding to a long-term pattern of abuse, and,
- Aboriginal and Torres Strait Islander women may be described by police as “uncooperative” or “unwilling” when such characterisations may reflect communication barriers, cultural differences, or trauma responses rather than non-cooperation.

4.12.4. Trauma and Overrepresentation in the Criminal Justice System

Aboriginal and Torres Strait Islander women's experiences of violence are closely linked to their overrepresentation in the criminal justice system. An estimated 87% of all Aboriginal women in custody have been victims of sexual, physical or emotional abuse, which most having suffered in multiple forms.³¹³ Aboriginal and Torres Strait Islander women are incarcerated at 21.2 times the rate of non-Indigenous women.³¹⁴

Research demonstrates that Aboriginal and Torres Strait Islander women's offending behaviours are often intimately connected to their experiences of victimisation and the resulting trauma.³¹⁵ Histories of sexual abuse have been noted as central features of

³¹² Ibid [63]-[64] (Fitzgerald P and Davies JA).

³¹³ Aboriginal Justice, *Underlying causes of Aboriginal over-representation* (Web Page) <<https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-over-representation-in-the-justice-system/underlying-causes-of-aboriginal>>.

³¹⁴ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020) Part 1, 53.

³¹⁵ Ibid 108.

women's pathways into offending, their experiences of custody, and their capacity to engage in rehabilitation programs.³¹⁶

It is helpful for judges to be aware that the experience of giving evidence may itself cause the witness to become confused, disoriented, anxious, or unable to understand or answer questions.³¹⁷

4.12.5. Gender Specific Cultural Considerations

Ensuring equal treatment for Aboriginal and Torres Strait Islander women is aided by judges understanding the specific barriers these women face and adopting practices that promote cultural safety and effective participation in court proceedings. For example, as discussed in section 4.5.3 above, Aboriginal and Torres Strait Islander cultures include gender-specific knowledge and practices, including "women's business" which refers to distinct cultural practices and ceremonies where women are custodians of special knowledge holding significant religious and spiritual power and authority. These gender-specific cultural protocols can create particular difficulties in legal proceedings. For example, it may be particularly difficult for an Aboriginal or Torres Strait Islander woman to give evidence concerning sexual assault or other intimate matters in the presence of men. Issues of modesty and shame often arise when a man asks a woman questions of sexual nature.

Judges can be aware that evidence involving Aboriginal and Torres Strait Islander women may implicate gender-restricted cultural knowledge or practices. In such cases, consideration may need to be given to:

- hearing evidence in closed court or with gender-appropriate restrictions,
- appointing a female judge to hear the matter where possible and appropriate,
- consulting with Aboriginal and Torres Strait Islander liaison officers about culturally appropriate ways to manage the proceedings while maintaining procedural fairness, and
- being aware that responses such as "I don't know" may indicate that it is culturally inappropriate for the woman to provide information in a certain way, rather than a lack of knowledge.

4.13. Aboriginal and Torres Strait Islander Children and Young People

Aboriginal and Torres Strait Islander children and young people face particular vulnerabilities when involved in the justice system. They comprise over half (54%) of all young people in youth detention nationally, despite representing only approximately

³¹⁶ Australian Law Reform Commission, *Pathways to Justice* (n 304) [11.23].

³¹⁷ National Domestic and Family Violence Bench Book, 'Trauma-informed judicial practice' (Web Page) <<https://dfvbenchbook.aija.org.au/fair-hearing-and-safety/trauma-informed-judicial-practice>>.

6.6% of the Australian youth population.³¹⁸ Aboriginal and Torres Strait Islander are also significantly overrepresented in out-of-home care.

Aboriginal and Torres Strait Islander children and young people face heightened communication difficulties in legal contexts due to developmental factors intersecting with cultural and linguistic differences. In *GPN v R*,³¹⁹ the District Court highlighted the particular vulnerabilities of Aboriginal Torres Strait Islander children, noting they ‘may be particularly susceptible to difficulties associated with giving oral evidence and police questioning.’³²⁰ The Court emphasised the importance of judges being aware of issues including gratuitous concurrence, ensuring that young people actually understand their rights (including the right to silence), respecting long silences during interviews, and providing access to appropriate support persons and legal representatives.³²¹

In addition to the information contained in [Chapter 3 \(Children and Young People\)](#), judges should be alert to:

- age-appropriate communication strategies that account for both developmental stage and cultural communication styles,
- the potential for misunderstanding or miscommunication, particularly in police interview settings,
- the importance of ensuring Aboriginal and Torres Strait Islander children have access to appropriate support persons who understand both the legal process and cultural context, and
- the heightened risk of gratuitous concurrence and other communication patterns that may affect the reliability of evidence.

4.14. Directions

It may be relevant in a criminal trial for the jury to be informed of linguistic or cultural matters which may affect their assessment of an Aboriginal or Torres Strait Islander person’s evidence. [Appendix B](#) includes some suggested jury directions for cases involving Aboriginal and Torres Strait Islander witnesses and defendants, which may require adaptation to the particular circumstances of a case.

4.15. Suggested Further Reading

Criminal Justice Commission, *Aboriginal Witnesses in Queensland’s Criminal Courts* (1996)

³¹⁸ Harrison et al (n 211) 533; Australian Institute of Health and Welfare, ‘Youth detention population in Australia 2024: First Nations young people’ (Web Page, 2024) <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/summary/first-nations-young-people-in-detention>>.

³¹⁹ [2018] QDCPR 34.

³²⁰ Ibid [21].

³²¹ Ibid [22], citing *R v D* [2003] 139 A Crim R 509, [11].

<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CJC/Aboriginal-witnesses-in-qld-criminal-courts-Report-1996.pdf>.

Eades, Diana, 'Taking Evidence from Aboriginal Witnesses Speaking English: Some Sociolinguistic Considerations' (2015) 126 *Precedent* 44.

Fryer-Smith, Stephanie, *Aboriginal Benchbook for Western Australia Courts* (2nd ed, 2008).

Judicial Council on Diversity and Inclusion, [*National Framework to Improve Accessibility to Australian Courts for Aboriginal and Torres Strait Islander Women and Migrant and Refugee Women*](#) (2017).

NSW Public Defenders, *Bugmy Bar Book* (2019) <https://bugmybarbook.org.au/>.

Queensland Government, 'Aboriginal and Torres Strait Islander Community Histories' (Web Page, 29 October 2025) <https://www.qld.gov.au/firstnations/cultural-awareness-heritage-arts/community-histories>.

CHAPTER 5. SELF-REPRESENTED LITIGANTS

*‘There should be no doubt and no room for misunderstanding. Procedural fairness is an immutable characteristic of a court’.*³²²

5.1. Introduction

Self-represented litigants (‘SRLs’) — also known as litigants in person — conduct court proceedings without legal representation. The number of SRLs is growing in Australian courts, although there is limited reliable data (especially in the civil jurisdiction) about prevalence and historical trends.³²³ SRLs appear more often in lower courts and tribunals than the superior courts.

Financial constraints are the most common reason for self-representation. Gaps remain in SRLs’ awareness of access to not-for-profit legal services.³²⁴ Gaps also exist in the types of matters that not-for-profit legal services provide to SRLs. There may be other, often overlapping, reasons for self-representation, such as disenchantment with the legal system or the belief that a lawyer is not required.³²⁵ Efforts to enhance access to civil justice via technology and specialised tribunals may have also contributed to the increase in SRLs in some jurisdictions.³²⁶

SRLs have diverse characteristics and circumstances. As Kyrou J observed, ‘each litigant in person is a unique individual and it would be a mistake to assume that identical strategies can be used to manage them’.³²⁷ Some commonalities, however, have been identified. “Clustering” of legal problems (where there are multiple concurrent court proceedings) occurs in almost one quarter of cases involving SRLs.³²⁸ This overlaps with other disadvantages — ‘[p]eople who are vulnerable through disability, unemployment, single parenthood, Indigenous heritage, and other socioeconomic disadvantage are more likely to experience substantial and multiple

³²² *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* (2013) 252 CLR 38; [2013] HCA 7, [194] (Gageler J).

³²³ Liz Richardson, Genevieve Grant, and Janina Boughey, *The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice* (Australasian Institute of Judicial Administration, 2018) 8.

³²⁴ *Ibid* 7.

³²⁵ *Ibid*.

³²⁶ See generally Paul Sheiner, *Litigants in Person Management Plans: Issues for Courts and Tribunals* (Australasian Institute of Judicial Administration, 2001).

³²⁷ Emiliou Kyrou, ‘Managing Litigants in Person’, in Judicial Commission of New South Wales, *Handbook For Judicial Officers* (Sydney, 2021) 889, 889.

³²⁸ Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Report, Access to Justice and Legal Needs Volume 7, 2012) xiv-xv.

legal problems'.³²⁹ Legal proceedings may further negatively affect the health and well-being of SRLs.³³⁰

5.2. Practical Challenges for Litigants in Person

Many difficulties for SRLs arise from the simple fact of unfamiliarity. They may:

- not understand legal and technical terminology,
- not be proficient in English,
- lack emotional distance and objectivity about their case,
- be less able to identify and/or enforce their rights,
- be unable to effectively articulate their case in written or oral submissions,
- be unskilled in advocacy and presenting evidence,
- fail to address the true issues or properly identify the redress sought,
- be unaware of courtroom etiquette and procedures,
- take their opponent's role personally and have difficulty forming a rapport with them for the purposes of negotiation or compromise,
- misunderstand events within the courtroom,
- rely on irrelevant information and laws, or
- lack research, administrative and communication skills.³³¹

The psychological and emotional impact of self-representing may adversely affect how an SRL presents their case. SRLs are less likely to achieve a negotiated settlement or favourable outcome. Litigation is uniquely stressful, and for some SRLs, feelings of fear, anger, confusion, frustration and distrust may be significant.³³² In certain cases, psychiatric and mental health conditions may be a contributing factor.

Some perceive that SRLs consume significantly more court time and resources.³³³ SRLs may increase the frequency of interim hearings or length of some trials, but there may also be shorter trials because SRLs 'did not know what to ask for in interim matters and trials were truncated because of lack of knowledge.'³³⁴

Conversely, SRLs may perceive bias against them. Professor John Baldwin notes: 'It is curious that lay litigants have been regarded ... as problems, almost as nuisances for the court system. This has meant that the focus has generally been upon the

³²⁹ Richardson, Grant, and Boughey (n 323) 11.

³³⁰ Ibid 12.

³³¹ See generally, *Equal Treatment Bench Book* (UK Judicial College, 2024, 10 May 2025 update) 10 ('*UK Equal Treatment Bench Book*').

³³² Richardson, Grant, and Boughey (n 323) 14.

³³³ Sheiner (n 326) 4.

³³⁴ Ibid.

difficulties that litigants in person pose for the courts rather than the other way around.³³⁵

Surveys consistently identify challenges for judges, court and registry staff, and lawyers in interacting with a small cohort of ‘persistent’ or ‘querulous’ SRLs.³³⁶ There has also been an increase, particularly in the lower courts and tribunals, of SRLs with so-called ‘pseudo-law’ beliefs.³³⁷

5.3. Legal Rights

All litigants have a right to appear in person in proceedings to which they are a party.³³⁸ As former Family Court Deputy Chief Justice Quinn has observed, however, Australia’s adversarial system necessarily assumes that parties are legally represented and that the court ‘has a substantially passive role and relies on the parties to present all material that will be relevant/necessary to enable the court to make its decision.’³³⁹

Unlike lawyers, SRLs are ‘independent of, and not governed by, the duties owed to a court by a legal practitioner upon which the operation of the court system is so highly dependent. Those duties are duties of disclosure to the court, of avoidance of abuse of the court process, to not corrupt the administration of justice and to conduct cases efficiently and expeditiously’.³⁴⁰

The courts have long recognised that ‘judicial intervention is not simply permissible but necessary’³⁴¹ where one or both parties are self-represented. Judges, however, must balance the right to a fair hearing with the principle of neutrality.³⁴² Fairness is contextual; the extent to which a judge intervenes depends on the litigant and their subjective features, as well as the nature of the case, the position of the other party (or parties) in the proceeding and the statutory framework of the litigation.

In criminal matters, there is no common law right to publicly funded legal representation, although representation may go to the separate question of a fair trial.³⁴³ SRLs in the criminal jurisdiction are often (involuntarily) self-represented because they cannot obtain Legal Aid or afford to pay for a private lawyer. Each person has a right to defend themselves against the state. As Dawson J (adopting an earlier

³³⁵ *UK Equal Treatment Bench Book* (n 331) 10.

³³⁶ Richardson, Grant, and Boughey (n 323).

³³⁷ Harry Hobbs, Stephen Young and Joe McIntyre (eds), *Pseudolaw and Sovereign Citizens* (Bloomsbury, 2025).

³³⁸ See, eg, *Collins (alias Hass) v The Queen* (1975) 133 CLR 120, 122; *Supreme Court Act 1995* (Qld) s 90.

³³⁹ J Faulks, ‘Self-represented litigants: tackling the challenge’, in Judicial Commission of New South Wales, *Handbook For Judicial Officers* (Sydney, 2021) 926, 927.

³⁴⁰ R Nicholson, ‘Australian experience with self-represented litigants’ (2003) 77(12) *The Australian Law Journal* 820, 821; quoted in Faulks (n 339) 927.

³⁴¹ *Kenny v Ritter* [2009] SASC 139, [17], [19], [23].

³⁴² *Cachia v Hanes* (1994) 179 CLR 403, 415.

³⁴³ *Dietrich v The Queen* (1992) 177 CLR 292.

statement by Brennan J) in *Dietrich* observed, judges are not expected to achieve a perfect trial:

If it be said that judicial measures cannot always secure perfect justice to an accused, we should ask whether the ideal of perfect justice has not sounded in rhetoric rather than in law and whether the legal right of an accused, truly stated, is a right to a trial as fair as the courts can make it. Were it otherwise, trials would be prevented and convictions would be set aside when circumstances outside judicial control impair absolute fairness.³⁴⁴

In civil matters, granting an adjournment to facilitate the needs of an SRL was discussed in *Titan v Babic*:

Where it is apparent that a party who does not have legal representation has misunderstood procedural requirements so that he or she is not in a position to complete the presentation of evidence, an adjournment might be considered in the interests of justice provided that no irreparable substantive or procedural injustice is done to the other party involved. In any such case the granting of an adjournment will be a matter of discretion. ... It may be that in some cases a tribunal should, to avoid possible injustice, inquire of an unrepresented person the reason for the failure properly to prepare his or her case. Again, that is a matter of discretion limited by the necessity that the tribunal be, and appear to be, impartial as between the parties.³⁴⁵

The courts cannot remedy the wider social, institutional and other problems that impact litigation. Rather, judges are obliged to assist SRLs to the extent 'necessary to diminish, so far as this is possible, the disadvantage which he or she will ordinarily suffer when faced by a lawyer, and to prevent destruction from the traps which our adversarial procedure offers to the unwary and untutored.'³⁴⁶

Assisting a SRL to have a fair trial, whilst balancing considerations of neutrality and over-interference, is a complex task. It is helpful for judges to be alive to the multitude of contextual factors to not inadvertently confer any forensic or practical advantage on the SRL. There are no concrete rules for what is necessary in a particular case, and as Edelman J recognised in *SDVC v Director-General of Security*, 'the mere fact that a procedure might be improved, or made fairer, is not sufficient' to mandate judicial intervention.³⁴⁷

5.4. Information Access

More legal information is available today for SRLs than previously thanks to online legal databases and assistance provided by courts, government agencies and community legal centres. Access to electronic information, however, still depends on

³⁴⁴ Ibid.

³⁴⁵ (1994) 49 FCR 546, 554-5.

³⁴⁶ *Rajski v Scitec Corporation Pty Ltd* (New South Wales Court of Appeal, unreported, 16 June 1986) [14] (Samuels JA).

³⁴⁷ (2022) 405 ALR 209, [237]. Note that this decision was in the context of administrative decision-making and judicial procedure.

the individual's knowledge of and capacity to utilise these sources effectively. Older people, those with low levels of formal education, prisoners and people with mental illnesses or physical disabilities and others may struggle to access electronic and/or hardcopy information. There is also very limited information available which has been interpreted into other languages.

SRLs increasingly turn to artificial intelligence ('AI') to craft submissions and other documents for their litigation. This poses risks, including reliance on confident-sounding but incorrect law, false citations, hallucinations and failing to appreciate jurisdictional and local procedural differences. SRLs may not appreciate the potential forensic and costs consequences of using AI in legal proceedings, to their disadvantage.

5.5. Strategies for Judges

The core consideration is ensuring a fair hearing; however, 'the scope of the duty of the court to the litigant in person is constrained by the fact that the judge must endeavour to maintain the appearance of impartiality'.³⁴⁸

The lack of knowledge and/or skill on the part of many SRLs may require judges to be more involved than where all parties are legally represented. Judges may need to take extra steps so that all relevant evidence may be heard and that the SRL knows and enforces their procedural rights. Where only one party is legally represented, the SRL may perceive partiality due to lawyers and judges being part of the same "system".³⁴⁹

It is not a judge's role to clarify every nuance of the proceeding; "fairness" encompasses broader considerations such as efficiency, court resources, and finality of litigation. The key goal is that all parties leave with a sense that they have been heard and that the process was fair, regardless of the outcome.³⁵⁰

Judges may make appropriate accommodations so that the SRL understands what is happening during proceedings. This may involve strategies such as:

- using direct, plain and neutrally informative language,
- informing the SRL about applicable practice directions, guidelines, rules and legislation,
- asking the SRL whether they can comply with any proposed timeframes for directions,
- ensuring that all parties have sufficient time to prepare,
- remaining sensitive to literacy, numeracy and communication problems, and any other particular disadvantage that the SRL appears to have due to their personal circumstances,

³⁴⁸ *Kenny v Ritter* [2009] SASC 139.

³⁴⁹ See, e.g. John Dewar, Barry W Smith and Cate Banks, *Litigants in Person in the Family Court of Australia* (Research Report No 20 to the Family Court of Australia, 2000) 59.

³⁵⁰ See *UK Equal Treatment Bench Book* (n 331).

- remaining conscious of the way (if any) that the proceedings involving the SRL may impact the other party,
- maintaining an even disposition and avoiding an emotional response to an SRL displaying combative or aggressive behaviour,
- providing relevant court contact information to all parties, and
- asking open-ended questions to ensure the SRL understands what the judge has told them.

Where appropriate, judges can refer SRLs to legal assistance organisations such as Legal Aid Queensland, LawRight, and other community legal centres.

5.5.1. Pre-Hearing Processes Generally

Poorly managed pre-hearing issues may negatively affect the efficiency and fairness of the final hearing. SRLs at the pre-hearing stage may:

- fail to identify a viable cause of action or defence,
- put forward matters which may be tactically prejudicial to the conduct of their case,
- inadequately describe the facts of their case,
- not meet filing deadlines, or
- use irregular forms, labels and terminology in their written materials.

Pre-hearing processes are important to ensure the matter is ready for hearing. For both civil and criminal pre-hearing processes, judges may assist SRLs by:

- setting the court's expectations for appearance, communication with the court, and the circumstances in which an adjournment may be granted,
- outlining the obligations of the parties in the proceedings, such as the requirement that all witnesses appear in person at the hearing,
- informing them that it is useful for documents they may rely upon being organised in a logical fashion, such as being in chronological order and paginated,
- so far as possible, keeping directions simple with discrete steps, and
- providing clear and timely reasons for the outcome of any pre-hearing or interim application.

5.5.2. Pre-Hearing Processes – Civil Proceedings

The Supreme Court of Queensland's *Supervised Case List Involving Self Represented Parties* outlines a process for the efficient and equitable management of Brisbane Registry civil cases and is a useful general guideline for lower courts.³⁵¹ SRLs are no less bound by the rules of the court than any other party; the main aim of the case

³⁵¹ Supreme Court of Queensland, *Practice Direction Number 13 of 2023: Supervised Case List for Proceedings Involving Self-Represented Parties: Civil Jurisdiction*, 12 June 2023.

management phase is to ensure that SRLs understand what is required of them for the final hearing.

In civil proceedings, the judge may assist the SRL by:

- in appropriate cases, informing the parties of alternative dispute resolution and other processes to resolve the matter,
- supervising disclosure by encouraging the parties to be specific and unambiguous about the documents sought, and,
- explaining that during the pre-hearing process there may be applications by the legally represented party/s for orders that a SRL pay their legal costs, and the process for hearing and decision such applications.

5.5.3. During a Hearing

A contested hearing is often deeply stressful for all parties. Many judges take the initiative at the outset and explain the court's processes, expectations and rules. This includes introducing those present by their names and role and outlining the procedure and timeframes for the day.³⁵² In *Re F: Litigants in Person Guidelines*,³⁵³ the Full Court of the Family Court considered the general guidelines developed in *Johnson v Johnson* ('*Johnson*')³⁵⁴ for judges to assist SRLs. These include:

- outlining trial procedures, such as the order of calling witnesses and the SRL's right to cross-examination of witnesses,
- taking introductory information from witnesses,
- explaining the potential effect of changes to usual procedures (such as calling a witness out of turn),
- explaining the parties' rights to object,
- informing a party about the right to claim privilege (should this exist),
- attempting to clarify the substance of submissions, and
- ensuring, as far as possible, that a level playing field is maintained.

Research has highlighted some of the practical challenges posed by the *Johnson* guidelines and, by extension, the inherent tensions in balancing procedural versus legal advice.³⁵⁵ This underscores the inherent contextual sensitivity of "fairness".

Some other practical measures that may be taken by judges include:

- encouraging parties to seek breaks and ask questions as necessary,
- explaining the distinction between evidence and submissions,
- explaining that the issue in dispute is decided on the evidence (documentary and oral) before the court,
- explaining the role of case law and precedent as authority,

³⁵² See *UK Equal Treatment Bench Book* (n 331).

³⁵³ [2001] FamCA 348, [253].

³⁵⁴ (1997) 139 FLR 384.

³⁵⁵ Dewar, Smith and Banks (n 349) 58.

- keeping language used simple and clear, and explaining any technical legal terms,
- providing for evidence-in-chief to be in written form as this often assists the SRL because they can take some time to prepare their evidence and it also assists the represented party because they know in advance the evidence they are required to meet,
- where possible, at the start of the trial (and with the agreement of the other party) identifying the real issues in the trial,
- encouraging the SRL to speak slowly and to take their time to present their case,
- refraining from pedantry in formal matters such as the correct form of the question in cross-examination or compliance with the rule in *Browne v Dunn* (subject to any objections or submissions from the other party),
- advising the SRL of the right to object to evidence being tendered and enquiring, in specific instances, if there is an objection to the tender of the evidence,
- if the SRL gives or calls evidence, at the end of their evidence, asking the SRL if they have said and adduced everything they intended to, and
- allowing breaks, if necessary, to compose final submissions and explain in clear, plain language the purpose of closing arguments.

SRLs often lack knowledge about the rules of evidence, admissibility and cross-examination and judges may have to ‘exercise greater control over the order and manner of presentation of the evidence by SRLs than would normally be the case.’³⁵⁶

SRLs may not understand how to present admissible evidence and may try to give evidence from the bar table. The distinction between evidence and submissions should be explained.

If another party seeks to tender evidence which is, or may be, inadmissible, the judge should advise the SRL of the right to object and enquire whether the SRL does in fact object to that material. If a question is asked or evidence is sought to be tendered in respect of which the SRL has a possible claim of privilege, the judge should inform the SRL of their rights in that regard.

SRLs may not appreciate the importance of putting their case to a witness and should generally be given guidance rather than have any failure held against them later.

Technical legal language should be avoided where possible. Some commonly arising plain language alternatives include:

- decide (instead of “determine”),
- pause/break/postpone (instead of “adjourn/adjournment”),
- among other things (instead of “inter alia”),

³⁵⁶ Australian Institute of Judicial Administration and the Federal Court of Australia, *Report on the Forum on Self-Represented Litigants* (Australian Institute of Judicial Administration, 2005) 10 (‘SRL Forum Report’).

- give a date (instead of “list”), and
- evidence that is not allowed (instead of “inadmissible”).³⁵⁷

5.5.4. Judgment

The outcome must be plainly stated. In factually or legally complex cases, it may be appropriate to also provide a judgment summary. For reserved judgments, a judge could consider advising the parties of the likely time-frame. Unexpected lengthy delays are a significant source of stress, and SRLs may not know how to enquire about the status of a late judgment.³⁵⁸

SRLs should be advised that no party should contact the court after judgment is reserved, unless all other parties have been given notice and provided consent.

If legal costs are sought against an unsuccessful SRL, the person should be given an opportunity to make submissions about whether a costs order should be made.

5.5.5. Special Considerations for Criminal Cases

As noted above, criminal defendants are less likely to be self-represented on a voluntary basis. Whilst Legal Aid funding is reasonably available for indictable offences, the criteria is restrictive for some types of hearings, such as Supreme Court bail applications.

Chapter 5 of the *Supreme and District Courts’ Criminal Directions Benchbook* sets out the form and content of model directions to be given to a self-represented defendant at various points in a criminal trial.³⁵⁹ The Queensland Court of Appeal has stated that ‘very careful consideration should be given before departing from the guideline directions so as to minimise appellable error and any departure or modification should be discussed with counsel ... to ensure avoidance of a miscarriage of justice.’³⁶⁰ It has been suggested that the directions may be appropriately adaptable to summary hearings in the Magistrates Court.³⁶¹

For indictable offences carrying the prospect of a sentence of actual custody, a judge should enquire with the defendant, and if necessary, adjourn the matter, to enable them to (re-)engage with Legal Aid Queensland. Defendants are entitled to act against any legal advice that they have received. Notwithstanding this, a judge may still provide guidance about the value of legal representation generally.

During mentions and other preliminary hearings, SRLs may undermine aspects of their defence because they do not appreciate the tactical implications of core principles

³⁵⁷ See *UK Equal Treatment Bench Book* (n 331) 22.

³⁵⁸ The Queensland Law Society and Bar Association Queensland have protocols permitting them to approach a court on behalf of a party (including SRLs) where there has been delay in delivering a reserved judgment.

³⁵⁹ Supreme Court of Queensland, *Supreme and District Courts Criminal Directions Benchbook*, ch 5.

³⁶⁰ *R v Douglas* [2019] QCA 215, [65].

³⁶¹ *Hoon v Queensland Police Service* [2025] QDC 71, [35].

such as the right to silence and the onus of proof. Again, these scenarios reinforce the complex balancing act for judges to achieve a “fair trial”.

Where an unrepresented defendant is to be arraigned, it is critical to ensure they understand the elements of the offence with which they are charged. Depending on the circumstances, open-ended rather than binary questions are preferable to ascertain true comprehension. The process of an arraignment should be explained in advance. Generally, a plea should be entered to each count on the indictment rather than an arraignment in bulk, and the potential for “decontextualisation” arising from video-links from prisons may be relevant.³⁶²

The Office of the Director of Public Prosecution’s *Prosecution Guidelines* caution that for prosecutors there is ‘an added duty of fairness and the prosecution must keep the accused properly informed of the prosecution case’.³⁶³ A judge should nonetheless be prepared to enquire whether the Crown has discharged its obligations towards a SRL, especially in respect of issues such as disclosure and alibi.

Prior to trial, it may be beneficial to provide written copies of relevant directions (such as the elements of the charge, calling evidence, the standard of proof, the roles of the judge and jury, jury selection, addresses, opportunities to test and present evidence and other matters) to all parties including the SRL. This is generally only possible in cases where the trial judge, prosecutor and any legally represented co-accused are known in advance.

Judges have an ongoing obligation to consider whether a trial becomes unfair at any point due to the defendant’s lack of representation.³⁶⁴

During a hearing, a judge is responsible for informing the SRL of the important procedural matters, for example the defendant’s rights in relation to a *voir dire*, although what is specifically required will depend according to the hearing.³⁶⁵

Calling or giving evidence in chief and cross-examination of witnesses are particularly difficult areas for SRLs. Gleeson CJ in *R v Birks*³⁶⁶ stated that ordinarily, an unrepresented accused should not be bound by the rule in *Browne v Dunne* and the High Court has cautioned about making adverse findings about parties who have not complied with the rule.³⁶⁷

Special statutory procedures prevent a self-represented accused from personally cross-examining a ‘protected witness’.³⁶⁸ A judge has no discretion in such cases to allow a SRL to personally cross-examine the witness, although the SRL may be able

³⁶² See also, [Chapter 2 \(Effective Communication in the Courtroom\)](#).

³⁶³ Department of Justice and Attorney-General, *Director’s Guidelines* (30 June 2016, currently under review).

³⁶⁴ *Dietrich v The Queen* (1992) 177 CLR 292. See also *R v Bosscher* [2024] QCA 253.

³⁶⁵ *MacPherson v The Queen* [1981] 147 CLR 512.

³⁶⁶ (1990) 19 NSWLR 677.

³⁶⁷ *MWJ v R* (2005) 222 ALR 436.

³⁶⁸ *Evidence Act 1977* (Qld) ss 21M, 21N.

to obtain legal representation through Legal Aid for the limited purpose of that cross-examination.³⁶⁹

Some self-represented defendants may have had their application for Legal Aid refused for the substantive criminal proceedings. It may sometimes be necessary to ascertain that the defendant understands that Legal Aid representation for the limited purposes under s 21M is distinct from the general eligibility guidelines.

5.6. McKenzie Friends

A McKenzie friend is a lay person who is permitted by the court to assist the SRL as they present their case; for example, by taking notes, making suggestions or providing support.³⁷⁰ A legally qualified McKenzie friend may only assist in an informal capacity. Whether to permit a McKenzie friend is a matter of discretion for the presiding judge on application by the SRL.³⁷¹ The discretion is less likely to be exercised where the SRL has not sought or accepted available legal assistance.³⁷² The subjective features of the proposed McKenzie friend may also be relevant to the exercise of the discretion. In *Damjanovic v Maley*, the High Court set out six principles to consider in exercising the discretion:

- the complexity of the case,
- the specific and genuine difficulties of the SRL,
- the fact that lay advocates are not bound by the ethical and professional duties of legal practitioners,
- protection of the SRL and their opponent,
- whether the matter involves lower or superior court proceedings, and
- the interests of justice generally.³⁷³

A McKenzie friend may enhance equal treatment where the SRL has a verified communication, literacy, mobility or other relevant difficulty. A McKenzie friend does not owe a duty to the court. They are not a substitute for a qualified legal practitioner, whether a barrister or solicitor, and do not have a right to address the court on behalf of the SRL. Unless the interests of justice demand otherwise, a McKenzie friend should generally not be permitted to address the court or conduct proceedings on behalf of the SRL.³⁷⁴

³⁶⁹ Ibid s 21O.

³⁷⁰ In *McKenzie v McKenzie* [1971] P 33; [1970] 3 WLR 472, the English case from which this term is derived, the individual who sought to assist the SRL was a young Australian barrister who was sent along by the person's former solicitor to assist the person informally (as opposed to formally representing them).

³⁷¹ *Schagen v The Queen* (1993) 8 WAR 410; *Smith v The Queen* (1985) 159 CLR 532, 534.

³⁷² John W Perry, 'The Unrepresented Litigant' (Paper, 6th Conference of the Australasian Institute of Judicial Administration, September 1998) 7.

³⁷³ (2002) 195 ALR 256, [69]-[87].

³⁷⁴ See the discussion in *Damjanovic v Maley* (2002) 195 ALR 256, [37]-[38], [46]-[48].

5.7. Pro Bono Assistance

Pro bono work is an aspect of access to justice and an inherent responsibility gladly accepted by many members of the legal profession. Many SRLs may not know how to access pro bono assistance. Similarly, however, the capacity of pro bono agencies to assist in particular cases may be limited due to funding, time and other constraints common to the volunteer sector. For civil matters, LawRight is a referral agency to refer SRLs to law firms and/or counsel who provide their services on a low or no fee basis. Strict criteria applies and the matter must:

- have reasonable prospects of success,
- require legal assistance, and
- meet public policy criteria (for instance, engage important social justice issues).

³⁷⁵

LawRight also operates a Self-Representation Service, which connects SRLs with panel law firms for a legal advice appointment. Applicants are subject to a means test to determine eligibility.³⁷⁶

Many other community legal centres provide pro bono legal advice and casework assistance on criminal, civil and family law matters. [Appendix C](#) is a non-comprehensive list of community legal centres who receive government funding. Many of these community legal centres confine their assistance to specific areas of the law (usually stated on their website).

The Court of Appeal Pro Bono List comprises barristers and solicitors who undertake predominantly criminal law appeals in the Queensland Court of Appeal where Legal Aid has been refused.³⁷⁷ According to data from 2024/2025, the impact of the scheme was considerable, with successful appeal outcomes in a sizeable number of cases.³⁷⁸

Supreme Court Practice Direction 17/2022 establishes a scheme for pro bono mediation in civil proceedings involving SRLs.³⁷⁹

There are, of course, ethical and practical challenges associated with pro bono services, which are an adjunct and not a solution to achieving equitable access to justice. Questions of liability (including whether there is professional indemnity insurance) arise if a SRL is not satisfied with the quality of their pro bono representation. As Faulks has cautioned:

It seems dangerous for the profession to chastise those who are willing to provide help when others will not, but whose performance does not meet a client's expectations. On the other hand, it is very important that the assistance provided to individuals in

³⁷⁵ LawRight, 'About LawRight' (Web Page) <<https://lawright.org.au/about/>>.

³⁷⁶ LawRight, *Pro Bono Connect* <<https://lawright.org.au/find-legal-help/pro-bono-connect/>>.

³⁷⁷ Pro bono assistance via the scheme has been provided on at least one occasion for a civil appeal.

³⁷⁸ Joshua Jones 'Pro Bono – Court of Appeal' (Paper, 2025 Bar Association of Queensland Annual Conference, 2025).

³⁷⁹ Supreme Court of Queensland, *Practice Direction Number 17 of 2022: Scheme for Pro Bono Mediation in Proceedings Involving Self-Represented Litigants*, 27 July 2022.

these settings be held to an objective standard, and failure to meet that standard means something must be done. Determining this standard, however, may be more difficult.³⁸⁰

There is also the pressure point of “just causes” criteria for pro bono services. Whilst strictly speaking the “public good” is served by assisting those in need, regardless of the merits of the case, pro bono advocates have finite time, administrative support and other resources.

5.8. Vexatious Litigation

Litigation is vexatious when it is an abuse of the process of a court, was commenced or conducted to harass, annoy, cause delay or detriment or for another wrongful purpose, or was brought without reasonable ground.³⁸¹ The *Vexatious Proceedings Act 2005* enables the Supreme Court to make an order prohibiting a person from continuing or instituting proceedings if satisfied that the person has frequently instituted or conducted vexatious proceedings in Australia.³⁸² Once a declaration is made, a proceeding may not be commenced without leave of the court.

In *Re Cameron*, the Queensland Court of Appeal outlined considerations for deciding whether proceedings are vexatious:

The broad test potentially concerns such factors as the legitimacy or otherwise of the motives of the person against whom the order is sought, the existence or lack of reasonable grounds for the claims sought to be made, repetition of similar allegations or arguments to those which have already been rejected, compliance with or disregard of the court’s practices, procedures and rulings, persistent attempts to use the court’s processes to circumvent its decisions or other abuse of process, the wastage of public resources, and funds, and the harassment of those who are the subject of the litigation which lacks reasonable basis.³⁸³

While the focus of the *Vexatious Proceedings Act 2005* is the nature of the proceedings, SRLs are an overrepresented cohort. This likely arises from the absence of restraints in the form of legal advice and legal knowledge and not being bound by a lawyer’s ethical duties. There also appears to be some relationship between poorly managed mental health conditions and the propensity to engage in unmeritorious litigation, although more research in this area is needed.

A declaration under the *Vexatious Proceedings Act 2005* imposes a significant restriction on a person’s right to bring future proceedings and should not be made

³⁸⁰ E Anderson, ‘Unbundling the ethical issues of pro bono advocacy: articulating the goals of limited-scope pro bono advocacy for limited legal services programs’ (2010) 48(4) *Family Court Review* 685, 694, quoted in Faulks (n 339) 932.

³⁸¹ *Vexatious Proceedings Act 2005* (Qld).

³⁸² *Ibid* s 6.

³⁸³ [1996] 2 Qd R 218, 220.

lightly.³⁸⁴ Where possible, judges should seek to confine the operation of any declaration.³⁸⁵

5.9. Suggested Further Reading

Department of Justice and Attorney-General, [*Director's Guidelines*](#) (as at 30 June 2024, currently under review).

Justice Debra Mullins, '[*Vexatious Litigation – Dealing with Vexatious Litigants*](#)' (Paper, September 2015).

Queensland Law Society, '[*Guidance Statement No. 9: Dealing with Self-Represented Litigants*](#)' (Web Page, 11 December 2017).

Richardson, L, Genevieve Grant, and Janina Boughey, [*The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice*](#) (Australasian Institute of Judicial Administration, 2018).

Supreme Court of Queensland, [*Practice Direction Number 13 of 2023: Supervised Case List for Proceedings Involving Self-Represented Parties: Civil Jurisdiction*](#), 12 June 2023.

³⁸⁴ Re Attorney General (Cth); ex parte Skyring (1996) 70 ALJR 321, 323.

³⁸⁵ Justice Debra Mullins, '[*Vexatious Litigation – Dealing with Vexatious Litigants*](#)' (Paper, September 2015).

CHAPTER 6. PEOPLE WITH PHYSICAL DISABILITIES

*‘Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences.’*³⁸⁶

6.1. Introduction

Treating all persons with a disability with respect and making appropriate adjustments is an ethical duty, a legal obligation and essential to the proper administration of justice.

Disabilities affect individuals in various ways in the courtroom. They take many forms, exist on a spectrum, can fluctuate over time, and may co-occur with other conditions. Some disabilities are not obvious and can be difficult to identify.

Australia ratified the Convention on the Rights of Persons with Disabilities (‘CRPD’) in 2008. The CRPD aims to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.’³⁸⁷ Article 9 of the CRPD requires signatories to:

ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.³⁸⁸

The CRPD is not enshrined in any domestic legislation but nonetheless informs frameworks for equal treatment.

Section 101 of the *Anti-Discrimination Act 1991* prohibits discrimination in the administration of state laws and applies to statutory authorities performing functions under state law. Judges are generally bound by the Act’s principles of non-discrimination when acting in their judicial capacity in administering state laws.

A similar provision is found in the equivalent federal statute.³⁸⁹ The *Disability Discrimination Act 1992* (Cth) requires a ‘reasonable adjustment’ to be made unless it causes unjustifiable hardship. The legislation requires judges to consider the individual needs of the disabled person and, where an identified adjustment or accommodation

³⁸⁶ *Law v Canada* [1999] 1 SCR 487, [53] (Iacobucci J).

³⁸⁷ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, vol 2515 UNTS 3 (entered into force 3 May 2008) art 1.1.1.

³⁸⁸ *Ibid* art 9.

³⁸⁹ *Disability Discrimination Act 1992* (Cth) s 29.

can be made without unjustifiable hardship to the courts, or unfairness to another party or undue delay, it ought to be made.

Different types of disability can result in very different equal treatment accommodations. This chapter — focusing on people with physical disabilities — should be read in conjunction with the following chapter focusing on issues affecting cognition, communication and mental health.

6.2. What is a Physical Disability?

Approximately 18% of Queensland's population report having a disability.³⁹⁰ Some people have more than one disability, including a combination of physical and mental disabilities. The prevalence of disability increases with age.

“Disability” has different statutory definitions, depending on the context in which it applies.³⁹¹ This chapter describes “physical disability” as any physical or sensory impairment which may give rise to a need for adjustments or accommodation to allow the person equal participation in court proceedings.

Physical disabilities encompass a wide range of conditions that affect a person's mobility, dexterity, stamina, continence, circulation or other physical functions. A physical disability may have been present since birth, or it could have resulted from an accident, illness, or injury. A physical disability may be mild, moderate or severe in terms of the way it affects the person's life.

A person with a mobility or motor function disability may require assistive technology or other adaptations to enable them to participate fully. Common examples include quadriplegia, paraplegia, cerebral palsy, and arthritis.

Sensory disabilities involve the long-term reduction or absence of function in one or more of the sensory systems — primarily vision, hearing, touch, taste, or smell. These disabilities affect how a person receives, processes, or interprets sensory information from their surrounding physical environment. For example:

- Vision-related disabilities include blindness, low vision, legal blindness, or specific conditions such as cataracts, glaucoma, macular degeneration, diabetic retinopathy, and cortical visual impairment.
- Hearing-related disabilities include complete deafness, partial hearing loss, conductive hearing loss (problems with the outer or middle ear), sensorineural hearing loss (problems with the inner ear or auditory nerve), mixed hearing loss, or other auditory processing disorders that result in difficulty processing auditory information despite normal hearing.

³⁹⁰ Australian Institute of Health and Welfare, 'People with disability in Australia' (Web Page) <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/summary>>.

³⁹¹ Various definitions of “disability” are included in the following statutes: *Disability Discrimination Act 1992* (Cth) s 4; *National Disability Insurance Scheme Act 2013* (Cth) s 24; *Disability Services Act 2006* (Qld) s 11. A definition of “impairment” is found in the *Anti-Discrimination Act 1991* (Qld) sch 1.

- Deaf-blindness is a combination of vision and hearing loss that creates unique communication and navigation challenges.
- Other sensory disabilities include tactile disabilities (reduced sense of touch or pain sensation), vestibular disorders (problems with balance or spatial orientation) or sensory processing disorders (difficulty organising and responding to sensory information).

Some physical impairments or medical conditions may be largely or totally invisible, for example, cancer or chronic pain. These conditions may significantly impact an individual's ability to participate in legal proceedings without being immediately apparent, if at all, to the judge. The courtroom environment, where people are ordinarily expected to sit for much of the proceedings, can further mask or obscure a disability.

6.3. Definitional Framework

It is beneficial to discuss the different models of disability and contemporary terminology as these inform the adjustments and accommodations that may be required.

6.3.1. Disability Models

A disability model is a conceptual approach that informs how society understands, categorises, and responds to disability. Older and now outdated models of disability, such as the *moral model*, associated disability with sin or moral failure and employed negative and deeply stigmatising language to describe disabled people.³⁹²

The *medical model* of disability situates disability as an innate characteristic or condition of a person and emphasises diagnostic characterisations and pathology. Terminology is accordingly clinical in nature ("the blind" or "the mentally ill").³⁹³

The *social model* of disability is evident in currently accepted definitions, like that of the World Health Organisation's International Classification of Functioning, Disability and Health. Here, "disability" is an umbrella term that captures interactions between impairments, activity limitations and participation restrictions.³⁹⁴ This model also aligns with the CRPD's definition of disability as long-term physical, mental, intellectual or sensory impairments, which in interaction with various other barriers may hinder a

³⁹² Terms used to describe disability associated with the moral model include "gimp", "cripple", "handicap", "imbecile" etc: Erin E Andrews, Robyn M Powell and Kara Ayers, 'The evolution of disability language: Choosing terms to describe disability' (2022) 15(3) *Disability and Health Journal* 101328:1-5, 2.

³⁹³ Ibid 2.

³⁹⁴ World Health Organisation, 'International Classification of Functioning, Disability and Health (ICF)' (Web Page 2001) <<https://www.who.int/standards/classifications/international-classification-of-functioning-disability-and-health>>.

person's full and effective participation in society on an equal basis with others.³⁹⁵ Disability is recognised as 'a function of the interaction of an individual's personal attributes (clinical or medical issues) and the contexts in which they live (social and systemic issues)'.³⁹⁶

The social model informs this book because it emphasises how participation barriers may be reduced through accommodations and environmental modifications.

6.3.2. Person-First and Identity-First Linguistic Models

The language and terminology used to describe disability and people with disabilities is neither neutral nor static. It reflects broader social attitudes and can impact how individuals are perceived and treated.³⁹⁷ Understanding current disability terminology and discourse is useful for communicating effectively to and about people with disabilities.

Contemporary disability discourse centres on two primary linguistic approaches: person-first language and identity-first language. Person-first language is closely associated with the social model of disability and places the person first. This approach emphasises disassociating the disability as an individual's primary defining characteristic. The disability is viewed as one of several features of the whole person. Examples include "person with a disability" or "person who is blind". Proponents of person-first language advocate that this approach does not objectify or stereotype a person by their disability and encourages respect and equal treatment.³⁹⁸

Identity-first language emphasises that a disability is entwined with the person's identity. It positions the disability as one aspect of identity, much like race, gender, or sexual orientation.³⁹⁹ This approach accepts, and encourages, identity-first language (terms like "disabled person" or "autistic person") as an 'expression of pride in a collective disability community' and a way of 'deliberately affirming and reclaiming disability identity'.⁴⁰⁰ Some disability groups have used identity-first terms for decades,

³⁹⁵ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, vol 2515 UNTS 3 (entered into force 3 May 2008).

³⁹⁶ McVilley et al (n 181) 792.

³⁹⁷ Erin E Andrews et al, '#SaytheWord: A Disability Culture Commentary on the Erasure of "Disability"' (2019) 64(2) *Rehabilitation Psychology* 111, 111.

³⁹⁸ Carol L Russell, 'How Are Your Person-First Skills? A Self-Assessment' (2008) 40(5) *Teaching Exceptional Children* 40; M Ellmer, 'Socially and culturally sensitive communication: Using person first language' *Semantic Scholar*; Jensen et al, 'Championing person-first language: A call to psychiatric mental health nurses' 19(3) *Journal of the American Psychiatric Nurses Association* 146; Amy F Crocker and Susan N Smith, 'Person-first language: are we practicing what we preach?' (2019) 12 *Journal of Multidisciplinary Healthcare* 125.

³⁹⁹ See MS Janiszewski et al, 'The Relationship Between Disability Identity and Use of Person-First and Identity-First Language' (2025) (advance online publication) *Rehabilitation Psychology* 1-11.

⁴⁰⁰ Andrews et al (n 397) 112.

notably the Deaf⁴⁰¹ community, whereas other groups have adopted identity-first terms more recently in disability advocacy work (for example, some autistic rights groups).⁴⁰²

While person-first language is now widely accepted, there is a growing use of identity-first language and criticism of the person-first terminology.⁴⁰³ Academic debate about preferred disability language remains unsettled.⁴⁰⁴

People with disabilities are not a homogenous group; what one person perceives as incorrect may be preferred by another. This lack of consensus partly reflects the diversity of disabilities present, some visible and some less so, and the different stages of life during which a person may experience or acquire disability.

6.3.3. Choosing the Right Terminology in Practice

Given the lack of consensus about appropriate terminology, it is best to simply ask the person (or their legal representative) how they wish to be referred, where this is relevant to the proceeding. When individual preferences cannot be determined, the priority is to avoid stigmatising language.⁴⁰⁵

Euphemisms for disability (for example, terms like “differently abled”, “special needs” or “handicapable”) should be avoided entirely, unless the disabled person themselves indicates that is their preferred terminology.⁴⁰⁶

Terminology in some legislative instruments is outdated and may be viewed as inappropriate or offensive in contemporary settings. Judges must nonetheless work with these statutory definitions in the ordinary legal sense but should endeavour to

⁴⁰¹ Deaf culture has long used the capitalised term “Deaf” to signify cultural identity.

⁴⁰² See generally A Taboas, K Doepke and C Zimmerman, ‘Preferences for identity-first versus person-first language in a US sample of autism stakeholders’ (2022) 27(2) *Autism* 565; MacKenzie Smith, RaMonda Horton and Meredith Fitzgibbons, ‘Preferences for Person-First Language and Identity-First Language in Autistic Communities’ (2023) 1(2) *Journal of Critical Study of Communication and Disability* 106; Elizabeth Pineo, “‘But the Bumpies Hurt?’: Autism and the Importance of Identity-First Language’ (2022) 2 *Naming Disability* 27.

⁴⁰³ See, for example, Morton Ann Gernsbacher, ‘Editorial Perspective: The use of person-first language in scholarly writing may accentuate stigma’ (2017) 58(7) *Journal of Child Psychology and Psychiatry* 859, 860-861; Andrews, Powell and Ayers (n 392) 3; M Botha, J Hanlon and GL Williams, ‘Does language matter? Identity-first versus person-first language use in autism research: a response to Vivanti’ (2023) 53(2) *Journal of Autism and Developmental Disorders* 870; G Vivanti, ‘As the editor: what is the most appropriate way to talk about individuals with a diagnosis of autism?’ (2020) 50(2) *Journal of Autism and Developmental Disorders* 691.

⁴⁰⁴ See generally, Lisa B Grech, Donna Koller and Amanda Olley, ‘Furthering the person-first versus identity-first language debate’ (2023) 58(4) *Australian Psychologist* 223; Patrick Dwyer, ‘Stigma, Incommensurability, or Both? Pathology-First, Person-First, and Identity-First Language and the Challenges of Discourse in Divided Autism Communities’ (2022) 43(2) *Journal of Developmental and Behavioral Pediatrics* 111; Krista L Best et al, ‘Language matters! The long-standing debate between identity-first language and person-first language’ (2022) 34(2) *Assistive Technology* 127.

⁴⁰⁵ Andrews, Powell and Ayers (n 392).

⁴⁰⁶ While such terms were coined as ostensibly less offensive than “disabled” or “disability”, they have been largely rejected by the disability community as condescending and patronising: Andrews, Powell and Ayers (n 392) 3.

engage appropriately and in an informed manner with people with disabilities in the courtroom.

6.4. Challenges for People with Physical Disabilities

People with physical and sensory disabilities face numerous barriers in court proceedings that may impede equal access and treatment. Across Queensland, the infrastructure and design of courthouses and associated facilities vary significantly in the challenges they present for people with disabilities. Some examples of potential challenges are listed here, along with potential adjustments, but this list is not comprehensive or universally applicable.

Type of Disability	Practical Challenges	Possible Adjustments
Mobility impairment and wheelchair use	- Physical barriers to access the courtroom, witness box or jury box. - Inability to stand for long periods, or at all. - Wheelchair users may have sight line issues. - Difficulty standing for traditional court protocol.	- Thought given to seating arrangements. - Courtroom walkways kept clear. - Blanket permission to remain seated during proceedings. - Breaks as needed.
Visual impairment and blindness	- Inability to read court documents or view exhibits. - Cannot observe body language and facial expressions. - May have difficulty navigating unfamiliar court layout.	- Documents in large print, Braille, audio, or screen reader-compatible formats. - Audio description of evidence. - Assistance navigating courtroom.
Hearing impairment and deafness	- Unable to hear oral testimony, questions, or court directions, bar table conversations or softly spoken people. - Difficulty following rapid exchanges between multiple speakers. - Difficulty lipreading if speaker not directly facing the person. - Difficulty with telephone appearances or remote hearings.	- Sign language interpreters. - Assistive devices such as hearing loops or real time transcription technology. - Reduction of background noise. - Ensuring the person speaking is facing the person with a hearing impairment. - In-person hearings.

Type of Disability	Practical Challenges	Possible Adjustments
Speech impairment	• Difficulty responding to cross-examination/being understood. • Misinterpretation of speech patterns as uncertainty. • Needing extra time to communicate. • Transcription services may not accurately record the person's evidence.	• Patient communication approach. • Communication devices or written responses. • Breaks as needed.
Limb differences and amputations	• Difficulty handling documents or evidence. • Problems with handwriting or signing legal documents. • Challenges operating assistive devices under courtroom stress. • Potential bias from visible prosthetics or other assistive devices.	• Assistance with document and evidence handling. • Electronic signature options. • Adequate time and space for use of assistive devices. • Adaptive equipment for document review.
Chronic pain and fatigue conditions	• Standard seating may cause increased pain during lengthy proceedings. • Need for frequent breaks not accommodated. • Medication schedules conflicting with court schedules. • Medication wears off before end of court proceedings. • Cognitive effects where pain interferes with giving evidence. • Inability to sit or stand for extended periods.	• Ergonomic seating or permission to bring cushions. • Frequent breaks as needed. • Flexible scheduling around medication needs. • Shorter hearing lengths. • Permission to stand, sit or change positions as required.
Tremors and movement disorders	• Difficulty controlling involuntary movements. • Involuntary movements may be misinterpreted.	• Assistance with document signing and/or handling.

Type of Disability	Practical Challenges	Possible Adjustments
	- Problems with fine motor tasks, such as signing documents. - Medication timing affecting symptom control. - Potential bias due to visible symptoms. - Stress exacerbating movement symptoms.	- Scheduling proceedings around medication timing. - Stress-reduction measures (support person, allowing person to see the court before giving evidence, telling the person they can ask for a break etc.). - Alternative methods for indicating yes/no responses.
Balance and coordination disorders	- Risk of falls when moving around the court room. - Problems standing for extended periods. - Need for mobility aids.	- Ensuring court room walkways and aisles are clear of any obstacles. - Permission to remain seated during court proceedings.

6.5. Hearing Management

Adjustments for a person with a disability may be required at any or all stages of the proceeding. The remainder of this chapter outlines some of the issues that may arise and associated adjustments.

6.5.1. Pre-Hearing Adjustments

It is largely up to a party's legal representatives to raise any necessary adjustments arising from a party's disability. This may not be possible, however, where the legal representative is unaware of the issue or if the party is self-represented.

Judges well appreciate the benefits of advance planning to ensure hearings proceed expeditiously. When a need for adjustments is raised, the judge should liaise with registry staff to ascertain what arrangements the court may facilitate.

Some adjustments that may need advance preparations are:

- provision of materials in a different format (e.g. enlarged font, Braille, digital format etc),
- avoiding setting too many different dates with which the person with a disability must comply,
- considering any extension of time limits as appropriate,
- more accurate hearing estimates allowing for a greater number of breaks, or shorter days,
- booking sign language interpreters or intermediaries,
- ensuring witnesses can access the witness box if accessibility is an issue, and

- special witness measures, such as giving evidence remotely.

If it comes to the attention of the judge that a court participant may need adjustments, but no request has been made, the judge should simply ask the person.

6.5.2. Hearing Adjustments

Other adjustments or considerations that may be required in addition to those listed above for a trial or final hearing include:

- the layout of the court and whether any changes are required to the witness box, jury box, dock, or bar table,
- the size, position and format of trial bundles, e-trial material, and other materials,
- whether the person with a disability would find it useful to see the layout of the courtroom before the hearing to familiarise themselves and raise any further adjustments that are required,
- how technology and other equipment will be used in the trial (e.g. if a different means of showing exhibits to a person other than on a screen is required) and whether the person needs specific equipment to communicate,
- the order in which any witnesses will be called so that the person with a disability is not kept waiting unnecessarily,
- allowing a carer or support person to be present when the person is giving evidence, and
- being aware of signs of fatigue, distress, or discomfort during the hearing and whether the person may require additional breaks.

The person with a disability should be addressed directly and in the usual manner, unless their circumstances require a different approach. Judges should focus on what the person needs, rather than on the condition or impairment (e.g. asking the person whether they need reading assistance, not whether their sight is impaired).

Ideally, it should be agreed at the start of the hearing with counsel (or the self-represented party) how the person with a disability should indicate they need something (e.g. a break).

6.5.3. Jurors

A person is ineligible for jury service if they have a 'physical or mental disability that makes the person incapable of effectively performing the functions of a juror'.⁴⁰⁷ Whether a physical disability makes a person incapable of effectively performing jury duty will depend on the nature of the disability and whether appropriate accommodations can be made by the court.

Adjustments such as wheelchair accessibility and hearing loop systems are reasonably commonplace in Queensland courtrooms. Judges must consider a person

⁴⁰⁷ *Jury Act 1995* (Qld) s 4(3)(l).

with a disability's right to expect reasonable adjustments to allow them to effectively discharge their duties as a juror. This must be balanced against, and compatible with, the defendant's right to a fair trial.

Section 20 of the *Jury Act 1995* empowers the court to excuse a person from jury service for a particular jury service period or permanently, on the court's own initiative or on application by a member of a jury panel who wants to be excused from jury duty. Section 21 of the *Jury Act 1995* sets out the criteria to be applied in excusing a person from jury service. The court must have regard to, *inter alia*, whether the jury service would result in substantial hardship to the person because of the person's personal circumstances.

Section 56 of the *Jury Act 1995* sets out the process for exercising the discretion to discharge a single juror after they are sworn, if in the judge's opinion the juror becomes incapable of continuing to act. The circumstances calling for the exercise of the discretion may vary.⁴⁰⁸

The High Court, in *Lyons v State of Queensland*,⁴⁰⁹ held that a profoundly deaf person who required an Auslan interpreter to communicate with others was not eligible for jury service under s 4(3)(l) of the *Jury Act 1995* because Queensland law does not permit an Auslan interpreter to be present during the jury's deliberations:

Absent specific statutory provision, the contention that disclosure of the jury's deliberations to an Auslan interpreter is "allowed by law" must be rejected. The common law has long required that the jury be kept separate. The possibility that, while the jury is kept together, one or more jurors may have communicated with a person other than a fellow juror (or officer of the court) is an irregularity which has been held to vitiate the verdict. The presence of a person other than a juror in the jury room during the course of deliberations is an incurable irregularity regardless of whether the person takes any part in the jury's deliberations. The prohibition on the presence of a thirteenth person in the jury room protects the jury from the suggestion of external influence and promotes the frank exchange of views. It is the latter consideration that informs the exclusionary rule which precludes the admission of evidence of the deliberations of the jury. Each member of the jury is free to speak in the knowledge that no one other than fellow jurors, each of whom is bound by the oath taken at the commencement of the trial and each of whom will be responsible for the ultimate verdict, hears what is said.⁴¹⁰

The High Court's conclusion was reinforced by the absence of any provision to administer an oath to an interpreter assisting a juror.⁴¹¹

⁴⁰⁸ For a discussion of the procedures to be followed see: *R v Roberts* [2005] 1 Qd R 508; *R v PAR* [2015] 1 Qd R 15; *R v Rickards*; *R v Turner* [2020] QCA 21, 19-20 [104]-[108].

⁴⁰⁹ (2016) 259 CLR 518.

⁴¹⁰ *Lyons v State of Queensland* (2016) 259 CLR 518, 529-530 [33]. See also *Re the Jury Act 1995 and an application by the Sheriff of Queensland* [2014] QSC 113.

⁴¹¹ *Lyons v State of Queensland* (2016) 259 CLR 518, 530 [35].

6.5.4. Giving Evidence

Section 9 of the *Evidence Act 1977* presumes every person competent to give evidence in a proceeding, and competent to give evidence in a proceeding on oath. More information on competency to give evidence, both sworn and unsworn, is in 3.2.1.⁴¹²

Special Witnesses

A person with a disability may be declared a ‘special witness’ under s 21A of the *Evidence Act 1977* if, in the court’s opinion, they are likely to be disadvantaged as a witness because of a mental, intellectual or physical impairment.⁴¹³

Where the declaration is made, the court can make directions for the special witness’s evidence; for example, directions about breaks and the format, length and topics of questioning.⁴¹⁴

Intermediaries

Where a person with a disability gives evidence for the prosecution in a child sexual offence proceeding, the court may appoint an intermediary if the person has an ‘impairment of the mind’ as defined under the *Criminal Code* or ‘has difficulty communicating’.

More information on intermediaries is in 3.2.4.

Improper Questions

Section 20A of the *Evidence Act 1977* contains the court’s powers to control improper questioning. Improper questions include questions that have no basis other than a stereotype based on a witness’s mental, intellectual or physical disability.⁴¹⁵ In considering the propriety of a question, the court must consider any mental, intellectual or physical disability of the witness.⁴¹⁶

More information on improper questions is in 3.2.5.

6.5.5. Witnesses with a Vision Impairment

The appropriate method of communicating with a visually impaired person should be established, if possible, prior to the hearing. Documents may need to be provided to the witness in Braille or Moon,⁴¹⁷ or in large print. The judge may need to direct the parties to enlarge copies of documents or provide them in an alternative format. While

⁴¹² For judicial commentary on competence to give evidence in circumstances where the complainant has an intellectual disability, see *R v Manikam* [2024] QDCPR 74; *R v Porter (No. 2)* [2018] QDCPR 4; *R v Johnston* [2014] QDCPR 4.

⁴¹³ *Evidence Act 1977* (Qld) s 21A (definition of ‘special witness’).

⁴¹⁴ *Ibid* s 21A(2)(f).

⁴¹⁵ *Ibid* s 20A(2)(d).

⁴¹⁶ *Ibid* s 20A(3)(b).

⁴¹⁷ Braille and Moon are codes of raised symbols that correspond to the alphabet.

the judge should speak clearly so that a visually impaired person can hear them, it is not necessary to raise one's voice (as may inadvertently occur). It may be beneficial for some visually impaired persons to be given the opportunity to familiarise themselves with the courtroom prior to giving evidence. They may also be accompanied by a service dog.

6.5.6. Witnesses with a Hearing Impairment

Witnesses who have a hearing impairment may rely on speech and lipreading in the courtroom. "Gaps" may nonetheless arise for a person who relies on lipreading. Deaf Services Queensland observes:

Lipreading (sometimes called speech reading) is the ability to watch a person's lips and understand what they are saying. Many deaf children will learn to lipread naturally but their skills will vary widely. Only about 30% of speech sounds can be seen on the lips alone; the rest are hidden such as /k/, /t/, /ng/. So lipreading is a lot of guess work, filling in gaps and using the context of the situation to understand what has been said. Deaf and hard of hearing children will also watch for facial expressions and natural gestures to understand. Some useable hearing helps when lipreading so that what can be heard can be combined with what can be seen on the face to aid understanding.

The ability to lipread depends on having a good understanding of English vocabulary and structure. This means the person who is lipreading needs to know how sentences are put together and what words are likely to be used so that they can fill the gaps for the words and phrases they miss when lipreading.

It also helps to speak in whole sentences rather than single words. Single words are much more difficult to understand because there is no context to help understanding.⁴¹⁸

Judges may consider whether the following adjustments will assist a witness who has a hearing impairment:

- providing hearing equipment, such as hearing loops,
- arranging additional amplification in the court room,
- ensuring that background noise is kept to a minimum,
- modifying lighting conditions in the courtroom to ensure glare-free lighting to enable speech and lipreading,
- always face the witness and speak clearly and ensure that other people who speak to the witness do likewise,
- ensure the witness can read any printed material (in the format that best assists them to do so),
- whether the witness can give evidence in a room with sound reinforcement,
- remember that a person with a hearing impairment may not "hear" the case being called, so someone will need to physically alert them,
- consider whether captions (text or Auslan) should be put on any video evidence required to be put to a witness with a hearing impairment at trial, and

⁴¹⁸ Deaf Children Australia, *Communication Methods* (Paper, 2012).

- facilitate any request for an Auslan interpreter and ensure requests are received and made as soon as possible to reduce undue delay.

6.5.7. People who are Deafblind

People who are deafblind may use a range of communication techniques. Communication may be facilitated through an interpreter and/or note-taker. People with severe vision and hearing impairments may adopt a “hands-on” signing method, where the person places their hands lightly on the signing person’s hands to comprehend Auslan, Deafblind Sign Language or any other manual system such as the deafblind alphabet. In the latter method, the person communicating the message spells it out on the hands of the person who is deafblind.⁴¹⁹

A more modern method is the use of digital applications to allow real time transcription of questions to be translated to Braille for answering by a deafblind witness.⁴²⁰

6.6. Technology

Technology may assist disabled witnesses and other court participants. This includes:

- real time transcripts,
- audio recordings and transcripts,
- in-court playback,
- infrared hearing assist systems, which can be used in conjunction with interpreters for witnesses and defendants,
- document viewers, which can be used to magnify some evidence using zoom and auto focus controls,
- using screens to display evidence, and
- video conferencing systems for linking to other rooms in the courthouse or remote locations.

6.7. Suggested Further Reading

Australian Human Rights Commission, [*Equal Before The Law: Towards Disability Justice Strategies*](#) (Report, February 2014).

Erin E Andrews, Robyn M Powell and Kara Ayers, ‘[The evolution of disability language: Choosing terms to describe disability](#)’ (2022) 15(3) *Disability and Health Journal* 101328:1-5.

Judicial College of Victoria, [*Disability Access Bench Book*](#) (2023).

⁴¹⁹ Ibid.

⁴²⁰ Used at first instance in *Mules v Ferguson & Anor* [2015] QCA 5.

CHAPTER 7. PEOPLE WITH CONDITIONS THAT MAY AFFECT COGNITION, COMMUNICATION OR MENTAL HEALTH

‘Our law admits of no discrimination against the ... disadvantaged in their human dignity.’⁴²¹

7.1. Introduction

This chapter discusses a broad selection of cognition, communication and mental health conditions that may affect a person’s participation in legal proceedings. These effects can be seen across several functional domains:

- communication,
- cognitive or intellectual functioning, including reasoning, comprehension, and memory,
- executive functioning, including planning, organisation, attention, and impulse control,
- sensory processing and sensory sensitivities, and
- mental state.

The diverse range of conditions which may affect these domains can be categorised according to their developmental pattern.

Neurodevelopmental conditions are often evident in childhood and include intellectual disabilities, autism spectrum disorder, attention deficit hyperactivity disorder (‘ADHD’), specific learning disabilities such as dyslexia and dyscalculia, and Tourette syndrome.

Acquired conditions arise from external causes including injuries and medical conditions, and include traumatic brain injury, the sequelae of stroke, neurodegenerative conditions such as dementia and Parkinson’s disease, and cognitive disorders caused by medication or substance use.

Some conditions are *episodic or fluctuating*, particularly mental health conditions, including psychotic disorders, mood disorders, anxiety disorders, and trauma-related conditions.

This chapter groups this broad variety of conditions because of the commonalities in the principles which can be applied. These principles include:

- being mindful of potential barriers to an individual fully participating in the court process,
- considering the specific individual and the specific task at hand, rather than applying a blanket approach to a particular diagnostic label,

⁴²¹ *Secretary, Department of Health and Community Services v JWB and SMB (Marion’s Case)* (1992) 175 CLR 218, 266 (Brennan J).

- making fair and appropriate adjustments, and
- avoiding stigma and respecting the dignity of every individual.

This chapter concerns those individuals whose level of functioning affects their participation in legal processes. Most of these cases can be managed with appropriate adjustments, whilst a minority will result in a lack of capacity.⁴²²

7.2. Legal Frameworks

Much jurisprudence about mental, cognitive or psychiatric disability in court proceedings focuses on lack of legal capacity. Although this chapter is about people with a condition falling short of incapacity, some key concepts overlap.

Questions about capacity and disability go to the heart of fairness. A proceeding where a party lacks legal capacity (without proper recognition or adjustment) is not fair. Conversely, fairness encompasses respect for autonomy. As Hayek observed: 'The law thus serves to enable the individual to act effectively on his [sic] own knowledge.'⁴²³

Every adult is presumed to have competence and capacity to make decisions, until the contrary is shown.⁴²⁴ The presumption of capacity is not displaced by the mere presence of personal characteristics or vulnerabilities such as mental illness or a particular condition. Similarly, there is a distinction between impaired decision-making and exercising poor judgment.⁴²⁵

Capacity is context-specific, not a global attribute of an individual. The most recent *Queensland Government Capacity Assessment Guidelines*⁴²⁶ highlight some key considerations:

- Capacity is decision-specific: A person might have capacity to make certain types of decisions and not others. They may be capable of simple and not complex decisions.
- Capacity may fluctuate: A person may temporarily lose capacity due to a medical condition and later regain it. Others (such as some adults with dementia or delirium) may have capacity on certain days or times of the day and not others.
- Capacity may be enhanced with support: An adult cannot be taken to lack capacity until all reasonably practical treatment, support and information options have been explored.

⁴²² *Guardianship and Administration Act 2000* (Qld) sch 4 (definition of 'capacity').

⁴²³ F A Hayak, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960) 156-7.

⁴²⁴ *Guardianship and Administration Act 2000* (Qld) ss 7(a), 11, 11B.

⁴²⁵ *Masterman-Lister v Brutton & Co* [2003] 3 All ER 162, 189.

⁴²⁶ See generally Queensland Government, *Queensland Capacity Assessment Guidelines 2020* <<https://www.publications.qld.gov.au/dataset/capacity-assessment-guidelines/resource/23e5bde1-40d7-4115-a15d-c15165422020>>.

Capacity also depends on the nature of the legal proceeding — '[a] finding as to the existence of a lack of capacity to comprehend and deal with a highly complex and intricate matter will not result in the presumption applying where the matter at hand is of a significantly less complex and intricate nature.'⁴²⁷

Determining a person's legal capacity involves objective considerations as well as a subjective inquiry into their opinions, values and wishes.⁴²⁸ This is influenced by the range of factual scenarios that affect capacity, as well as the 'distinctly medical values and ideologies [that] will inform how the legal framework is applied.'⁴²⁹ The legal context is highly relevant and '[t]he level of understanding a person is required to possess in order to retain the requisite cognition or decision-making faculties in a given case is susceptible to different outcomes as between judges ...'.⁴³⁰

7.3. Overview of Some Common Conditions

Barriers to participation can be compounded by misconceptions, stigma, and a lack of knowledge or information about a person's circumstances. This may necessitate sensitive awareness and inquiry. Some conditions may not be immediately obvious and, in some instances, may be misinterpreted as a person being difficult or deliberately non-responsive, especially if the person is self-represented and unwilling or unable to articulate their condition. This section provides a brief overview of some common conditions that judges may encounter in court proceedings.

7.3.1. Neurodevelopmental Conditions

Intellectual disabilities are characterised by significant limitations in both intellectual functioning and adaptive behaviour, affecting conceptual, social, and practical skills.⁴³¹ Severity levels (mild, moderate, severe, and profound) are based on adaptive functioning and support needs rather than specific IQ scores.⁴³² People with intellectual disabilities are overrepresented in the criminal justice system as both

⁴²⁷ B Ashdown, 'Legal Capacity and Case Guardians' (2014) 4(1) *Family Law Review* 1-14, 9.

⁴²⁸ Ibid 4.

⁴²⁹ M Hall, 'Mental Capacity in the (Civil) Law: Capacity, Autonomy, and Vulnerability' (2012) 58(1) *McGill Law Journal* 61.

⁴³⁰ Ibid.

⁴³¹ Australian Institute of Health and Welfare, 'Disability in Australia: Intellectual Disability' (Web Page, 2007), <<https://www.aihw.gov.au/reports/disability/intellectual-disability-australia/summary>>.

⁴³² Australian Institute of Health and Welfare, 'The definition and prevalence of intellectual disability in Australia' (Web Page, 1999), <<https://www.aihw.gov.au/reports/disability/definition-prevalence-intellectual-disability-au/contents/summary>>.

complainants and defendants.⁴³³ Nearly 30% of the Australian prison population has some form of intellectual disability.⁴³⁴

Foetal alcohol spectrum disorder ('FASD') encompasses a range of lifelong disabilities due to the effects of prenatal alcohol exposure affecting cognition, behaviour, and adaptive functioning.⁴³⁵ FASD is an umbrella term that includes *foetal alcohol syndrome*, which presents with characteristic facial features, and other conditions that may lack obvious physical signs.⁴³⁶ It requires specialised assessment and support services, and often overlaps with other neurodevelopmental conditions such as autism, ADHD, and intellectual disability, with overlapping developmental challenges.⁴³⁷ A study in Western Australia found that 36% of young people in youth detention had FASD.⁴³⁸

Specific learning disabilities affect the acquisition and use of reading (dyslexia), writing (dysgraphia), or mathematical abilities (dyscalculia) despite adequate intelligence and education.⁴³⁹

Tourette Syndrome is a neurological condition characterised by persistent motor and vocal tics, typically emerging in childhood.⁴⁴⁰

Autism Spectrum Disorder ('ASD') is a neurodevelopmental condition involving differences in social communication, restricted interests, and repetitive behaviours.

⁴³³ See, eg, Rose et al, 'Mental Health, Psychological Distress, and Coping in Australian Cross-Cultural Prison Populations' (2020) 33(5) *Journal of Trauma and Stress* 794; Vicky Sandy-Davis, 'Prisoners with Intellectual Disabilities' in Joanne Brooke (ed), *Nursing in Prison* (Springer, 2023) 135; Pellicano et al, 'Health and incarceration research in Australia: a scoping review' (2025) 56 *The Lancet Regional Health – Western Pacific* 101500:1-14; Ruth McCausland and Eileen Baldry, "'I Feel like I Failed Him by Ringing the Police": Criminalising Disability in Australia' (2017) 19 *Punishment and Society* 290; *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report: Criminal Justice and People with Disability, September 2023) vol 8; Calum AF Henderson and Melissa Bull, 'Sentencing and the Over-Representation of People with Cognitive Disability in the Australian Criminal Justice System' (2024) 36(1) *Current Issues in Criminal Justice* 81; Dowse et al, *Police Responses to People with Disability* (Research Report, October 2021).

⁴³⁴ Eileen Baldry et al, 'Reducing Vulnerability to Harm in Adults With Cognitive Disabilities in the Australian Criminal Justice System' (2013) 10(3) *Journal of Policy and Practice in Intellectual Disabilities* 222, 222–4; *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (n 433).

⁴³⁵ National Health and Medical Research Council, *Early diagnosis of fetal alcohol spectrum disorder in Indigenous children* (2025), retrieved from <<https://www.nhmrc.gov.au/about-us/resources/early-diagnosis-fetal-alcohol-spectrum-disorder-indigenous-children>>.

⁴³⁶ Health Direct Australia, *Fetal alcohol spectrum disorder (FASD)* (2024), retrieved from <<https://www.healthdirect.gov.au/fetal-alcohol-spectrum-disorders>>.

⁴³⁷ Australian Institute of Family Studies, *Fetal Alcohol Spectrum Disorder (FASD): An update on policy and practice in Australia*, retrieved from <<https://aifs.gov.au/resources/policy-and-practice-papers/fetal-alcohol-spectrum-disorder-fasd-update-policy-and>>.

⁴³⁸ Carol Bower et al, 'Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia' (2018) 8(2) *BMJ Open* e019605

⁴³⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (Text Revision, 5th ed, 2022) ('*DSM 5*').

⁴⁴⁰ Natalia Szejko et al, 'European Clinical Guidelines for Tourette Syndrome and Other Tic Disorders: Summary Statement' (2021) 30(11) *European Child & Adolescent Psychiatry* 1747.

There is a wide variation in presentation. ASD is classified as level 1, 2, or 3 depending on the level of support needs. This has replaced terminology such as “Aspergers syndrome”, “high- or low-functioning”, and “mild or severe”, which should be avoided. People with ASD may face particular challenges with the pragmatic aspects of courtroom communication.⁴⁴¹ They may interpret legal language too literally, struggle with implied meanings or abstract concepts, have difficulty understanding the unspoken social rules of court proceedings,⁴⁴² misread nonverbal interactions and respond inappropriately in conversations.⁴⁴³ Sensory processing issues common in autism can also significantly impact communication ability when courtrooms are overstimulating environments.⁴⁴⁴

Attention deficit hyperactivity disorder (‘ADHD’) is characterised by persistent patterns of inattention, hyperactivity, or impulsivity that interfere with functioning, typically manifesting before age 12 and often continuing into adulthood.⁴⁴⁵ People with ADHD are significantly overrepresented in the criminal justice system.⁴⁴⁶ Access to evidence-based ADHD treatment for adults in Australia is often limited by an individual’s capacity to pay for private psychiatric care.⁴⁴⁷ Impulsivity may cause people with ADHD to interrupt or respond before fully processing questions, while distractibility can make it difficult to maintain focus in busy courtrooms.⁴⁴⁸

Neurodiversity is not a diagnostic term, but rather a way of describing neurological differences like ADHD, autism, and other neurodevelopmental conditions as natural variations rather than deficits requiring correction. The term emerged in the 1990s and has gained significant support in advocacy circles and among many individuals with these conditions.⁴⁴⁹ The neurodiversity framework emphasises acceptance and accommodation rather than normalization to “neurotypical” standards. While many find this approach empowering and validating, it is not universally embraced, and views

⁴⁴¹ Colleen M Berryessa, ‘Defendants with Autism Spectrum Disorder in Criminal Court: A Judges’ Toolkit’ (2021) 13 *Drexel Law Review* 841, 857-8.

⁴⁴² Ibid.

⁴⁴³ Danielle Shelton, ‘Accommodating Victims with Mental Disabilities’ (2022) 127(1) *Dickson Law Review* 163, 167.

⁴⁴⁴ Berryessa (n 441) 857-8.

⁴⁴⁵ Australasian ADHD Professionals Association, *Australian Evidence-Based Clinical Practice Guideline for ADHD* (June 2024) 65–71.

⁴⁴⁶ See, eg, Susan Young et al, ‘A Meta-Analysis of the Prevalence of Attention Deficit Hyperactivity Disorder in Incarcerated Populations’ (2015) 45(2) *Psychological Medicine* 247; Elizabeth Moore, Suzana Sunjic and Sharlene Kaye, ‘Adult ADHD Among NSW Prisoners: Prevalence and Psychiatric Comorbidity’ (2016) 20(11) *Journal of Attention Disorders* 958.

⁴⁴⁷ See generally Senate Community Affairs References Committee, *Assessment and Support Services for People with ADHD* (Report, Parliament of Australia, November 2023) ch 4.

⁴⁴⁸ See generally Ian Freckelton, ‘Attention Deficit Hyperactivity Disorder (ADHD) and the Criminal Law’ (2019) 26(6) *Psychiatry, Psychology and Law* 817.

⁴⁴⁹ Harvard Health Publishing, ‘What is neurodiversity?’ (Web Page, 23 November 2021) <<https://www.health.harvard.edu/blog/what-is-neurodiversity-202111232645>>.

within affected communities and among professionals vary.⁴⁵⁰ It is helpful to be familiar with this terminology and respectful where possible of individual preferences in how people describe their own experiences.

7.3.2. Examples of Acquired Conditions

Some examples of acquired conditions affecting cognition include:

- *Traumatic brain injury* ('TBI'), ranging from mild concussion to severe injury, with potential impacts on cognition, behaviour, and emotional regulation.⁴⁵¹ It is not uncommon for people who have been the victim of a crime, for example choking or other assaults, to be suffering a TBI. Unless diagnosed, they can be difficult to identify.
- *Stroke-related cognitive impairment*, which can affect attention, memory, language, and executive function, alongside physical impairments.⁴⁵²
- *Neurodegenerative conditions*, such as Alzheimer's disease and Parkinson's disease are characterised by a gradual decline in cognitive and/or motor functions.
- *Medication-induced cognitive effects*, which may or may not be reversible upon discontinuation.
- *Substance-induced cognitive disorders*, resulting from alcohol or drug use, ranging from acute intoxication effects to persistent deficits from chronic use.⁴⁵³

7.3.3. Episodic and Fluctuating Conditions

Some conditions are episodic or fluctuating in their presentation and impact on functioning, particularly mental health conditions like bipolar disorder, schizophrenia, and schizoaffective disorder. During acute episodes, these conditions can profoundly affect judgment, reality testing, impulse control, and the ability to understand consequences of actions.⁴⁵⁴ The fluctuating nature of these conditions means that a person's capacity to participate in legal proceedings, understand charges, or make decisions about their case may vary significantly over time. Between episodes, individuals may function well and have full insight into their condition and circumstances or may have significant ongoing functional impairment.

⁴⁵⁰ Ginny Russell, 'Critiques of the Neurodiversity Movement' in Bertilsdotter-Rosqvist et al (eds), *Neurodiversity Studies: A New Critical Paradigm* (Routledge, 2020) 287.

⁴⁵¹ Brain Injury Australia, *The Prevalence of Acquired Brain Injury in Australia* (Report, 2021).

⁴⁵² Stroke Foundation, *Clinical Guidelines for Stroke Management* (Clinical Guidelines, 2023).

⁴⁵³ American Psychiatric Association, *DSM5* (n 439).

⁴⁵⁴ Royal Australian and New Zealand College of Psychiatrists, *Clinical Practice Guidelines for the Management of Schizophrenia and Related Disorders* (Clinical Practice Guidelines, 2016), <<https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/schizophrenia-cpg>>.

Conditions arising from traumatic experiences can significantly impact a person's ability to regulate emotions, maintain relationships, and function in daily life.⁴⁵⁵ These trauma-related difficulties may affect concentration, memory, and decision-making, particularly under stress. The effects of prolonged or repeated trauma, especially in childhood, can result in ongoing difficulties with emotional regulation, self-perception, and interpersonal relationships.⁴⁵⁶

Psychiatric conditions present unique challenges in court processes. A person with depression may have difficulty concentrating or responding promptly to questions.⁴⁵⁷ Anxiety may lead to a person becoming overwhelmed by the court environment.⁴⁵⁸ In both cases, the psychiatric condition may negatively impact how the person presents, or lead to misunderstandings or bias against them.

Individuals experiencing psychotic symptoms may have disorganised thought patterns that make their communication difficult to follow,⁴⁵⁹ and auditory hallucinations may interfere with their ability to focus on proceedings.

7.4. Case Management

Effective case management is important where a participant may have a mental disability. Prescribed statutory processes apply where the person may lack legal capacity.⁴⁶⁰ Some *Criminal Code* provisions, for instance s 348B (mistake of fact: cognitive impairment), s 348C (mistake of fact: mental impairment) and s 216 (abuse of persons with an impairment of mind), presuppose that the defendant or complainant may be mentally or cognitively impaired.

Where a party is legally represented, it is generally the responsibility of their legal representatives (or the Crown for prosecution witnesses) to appropriately raise a person's condition with the court so that necessary and reasonable accommodations may be considered. The nature and extent of any adjustments will depend, to some degree, on the evidence before the court.

⁴⁵⁵ Phoenix Australia Centre for Posttraumatic Mental Health, *Australian Guidelines for the Prevention and Treatment of Acute Stress Disorder, Posttraumatic Stress Disorder and Complex PTSD* (Clinical Practice Guidelines, 2021) <<https://www.phoenixaustralia.org/australian-guidelines-for-ptsd/>>.

⁴⁵⁶ National Health and Medical Research Council, *Clinical Practice Guideline for the Management of Borderline Personality Disorder* (2012) <<https://www.nhmrc.gov.au/about-us/publications/clinical-practice-guideline-borderline-personality-disorder>>.

⁴⁵⁷ See generally Lauren S Hallion, Shari A Steinman and Susan N Kusmierski, 'Difficulty concentrating in generalized anxiety disorder: An evaluation of incremental utility and relationship to worry' (2018) 53 *Journal of Anxiety Disorders* 39.

⁴⁵⁸ A person with social anxiety disorder feels symptoms of anxiety or fear in situations where they may be scrutinised, evaluated, or judged by others: National Institute for Mental Health, *Social Anxiety Disorder: What You Need to Know* (2025) <<https://www.nimh.nih.gov/health/publications/social-anxiety-disorder-more-than-just-shyness>>.

⁴⁵⁹ Shelton (n 443) 167.

⁴⁶⁰ For civil cases, see, eg, *Uniform Civil Procedure Rules 1999* rr 93 and 150(1)(t). For criminal cases, see, eg, *Mental Health Act* (Qld), s 27; *Criminal Code* (Qld) s 613.

7.4.1. Competency to Give Evidence

Section 9 of the *Evidence Act 1977* presumes the competence of every person to give evidence in a proceeding.⁴⁶¹

More information on competency to give evidence is in 3.2.1.

7.4.2. Special Witnesses

A person may be declared a ‘special witness’ under s 21A of the *Evidence Act 1977* if, in the court’s opinion, they are likely to be disadvantaged as a witness because of a mental, intellectual or physical impairment.⁴⁶²

More information on special witness measures is in 3.2.3.

7.4.3. Protected Witnesses

In criminal proceedings, other than summary proceedings under the *Justices Act 1886*, a witness with an impairment of the mind is a ‘protected witness’ under s 21M(1)(b) of the *Evidence Act 1977*.⁴⁶³

An accused person is prohibited from personally cross-examining the protected witness.⁴⁶⁴ More information on the prohibition of a self-represented defendant cross-examining a protected witness is in 5.5.5.

7.4.4. Intermediaries

The court may appoint an intermediary where a prosecution witness has an ‘impairment of the mind’ or has ‘difficulty communicating’ and where their evidence concerns a child sexual offence.⁴⁶⁵

More information on intermediaries is in 3.2.4.

7.4.5. Improper Questions

Section 20A of the *Evidence Act 1977* sets out the court’s powers to deal with improper questions. Improper questions include questions that have no basis other than a stereotype based on a witness’s mental, intellectual or physical disability.⁴⁶⁶ In considering the propriety of a question, the court must consider any mental, intellectual or physical disability of the witness.⁴⁶⁷ Cross-examination techniques that may be

⁴⁶¹ *Evidence Act 1977* (Qld) s 9A. For judicial commentary on competence to give evidence in circumstances where the complainant has an intellectual disability, see *R v Manikam* [2024] QDCPR 74; *R v Porter* (No. 2) [2018] QDCPR 4; *R v Johnston* [2014] QDCPR 4.

⁴⁶² *Evidence Act 1977* (Qld) s 21A.

⁴⁶³ Note that a witness with an impairment of the mind in summary proceedings under the *Justices Act 1886* for a domestic violence offence is also taken to be a protected witness in those proceedings.

⁴⁶⁴ *Evidence Act 1977* (Qld) s 21N.

⁴⁶⁵ *Ibid* s 21AZJ, 21 AZL(1).

⁴⁶⁶ *Ibid* s 20A(2)(d).

⁴⁶⁷ *Ibid* s 20A(3)(b).

appropriate for neurotypical witnesses may be confusing or distressing for some witnesses with conditions affecting comprehension or communication.⁴⁶⁸

More information on improper questions is in 3.2.5.

7.5. Communication and Language

This section should be read with [Chapter 2 \(Effective Communication in the Courtroom\)](#).

Clear communication underpins equal treatment. For people with relevant conditions, symptomatology varies considerably, and so will the nature of any adjustments. Whether an accommodation is suitable and reasonable will depend on the type of proceeding, the individual's needs and any detriment to the other party/s.

Unusual communication patterns, delayed responses, or apparent non-compliance may be misinterpreted as indicators of credibility, understanding or disrespect rather than as manifestations of underlying disability.⁴⁶⁹ One academic review of court transcripts found that judges did not intervene more to ensure that witnesses with learning disabilities understood compared with witnesses from the general population.⁴⁷⁰

Communication barriers are a significant challenge for people with intellectual and cognitive impairments.⁴⁷¹ These may include difficulty understanding complex questions, literal interpretation of figurative language, challenges with working memory that affect their ability to follow lengthy proceedings, and difficulty expressing

⁴⁶⁸ See generally Joanne Morrison et al, 'Communication and cross-examination in court for children and adults with intellectual disabilities: A systematic review' (2019) 23(4) *The International Journal of Evidence and Proof* 366; Phoebe Bowden, Terese Henning and David Plater, 'Balancing Fairness to Victims, Society and Defendants in the Cross-Examination of Vulnerable Witnesses: An Impossible Triangulation?' (2014) 37(3) *Melbourne University Law Review* 539; Paula Reavey et al, 'Legal professionals and witness statements from people with a suspected mental health diagnosis' (2016) 46 *International Journal of Law and Psychiatry* 94; Penny Cooper, 'Vulnerable and intimidated witnesses: Special measures, competence, consent and cross-examination', in Alison Brammer and Jane Boylan (eds), *Critical Issues in Social Work* (Palgrave, 2107) 119.

⁴⁶⁹ See generally A Lim, RL Young and N Brewer, 'Autistic Adults May Be Erroneously Perceived as Deceptive and Lacking Credibility' (2022) 52 *Journal of Autism and Developmental Disorders* 290; Rachel Slavny-Cross et al, 'Autism and the criminal justice system: An analysis of 93 cases' (2022) 15(5) *Autism Research* 904; Ralph Bagnall, 'Police suspect interviews with autistic adults: The impact of truth telling versus deception on testimony' (2023) 14 *Frontiers in Psychology* 10.3389: 1-12; Ann-Christin Cederborg and Clara Gumpert, 'The challenge of assessing credibility when children with intellectual disabilities are alleged victims of abuse' (2010) 12(2) *Scandinavian Journal of Disability Research* 125; Katie Maras, Imogen Marshall and Chloe Sands, 'Mock Juror Perceptions of Credibility and Culpability in an Autistic Defendant' (2018) 49(3) *Journal of Autism and Developmental Disorders* 996.

⁴⁷⁰ Caitriona ME O'Kelly et al, 'Judicial intervention in court cases involving witnesses with and without learning disabilities' (2003) 8(2) *Legal and Criminological Psychology* 229.

⁴⁷¹ See generally Joanne Morrison, Jill Bradshaw, and Glynis Murphy, 'Reported communication challenges for adult witnesses with intellectual disabilities giving evidence in court' (2021) 25(4) *The International Journal of Evidence and Proof* 243; Shelton (n 443) 195-6; Michelle H Walton, 'Barriers to Justice: Inaccessibility of New York's Criminal Justice System for Individuals with Intellectual and Developmental Disabilities' (2021) 14 *Albany Government Law Review* 71.

themselves clearly under stress.⁴⁷² People with intellectual disabilities may not have well developed speech or may be non-verbal.⁴⁷³ They are 'generally taught from childhood to be compliant, to obey, to go along with people.'⁴⁷⁴ People with Down Syndrome may have difficulties 'articulating ideas, comprehending questions, and producing easily understandable speech.'⁴⁷⁵

Some practical case management suggestions for people with conditions affecting cognition, communication and mental health are set out below:

- Effectively communicate about the nature and nuances of the legal process.⁴⁷⁶
- Use simple vocabulary and avoid technical terms or jargon.
- Where possible, use second person ("you") or first-person plural ("we") instead of third person ("the respondent") language.
- Provide detailed, explicit directions that spell out seemingly obvious details (such as specifying exactly who should receive documents or clarifying that "send to the respondent" means their legal representative when applicable).
- Avoid complex instructions that may be liable to misinterpreted.⁴⁷⁷
- Limit the number of orders, instructions, or tasks given simultaneously.
- Allow extended deadlines for required actions.
- Break down complex requirements into manageable steps.
- Schedule longer timeframes for case management and preliminary hearings.
- Avoid making too many orders or giving too many directions and tasks at once, or which are to be completed at one time.
- Consider whether time limits for taking action should be extended.

Judges may also consider whether any of the below accommodations should be made for a person with a mental, cognitive or psychiatric impairment at the trial or hearing:

- Ensure hearings have definite start times to minimise stress for participants with underlying anxieties.
- When multiple cases are scheduled together, prioritise the hearing involving the person with a disability.
- Speak at an appropriate pace and allow adequate time for processing of information.⁴⁷⁸
- Keep sentences brief with simple grammar and/or punctuation.

⁴⁷² Shelton (n 443) 195-6.

⁴⁷³ Ibid 167.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid 167, quoting Lucy A Henry et al, 'Children with Intellectual Disabilities and Developmental Disorders', in Lamb et al (ed), *Children's Testimony: A Handbook of Psychological Research and Forensic Practice* (2011), 256.

⁴⁷⁶ Berryessa (n 441) 858.

⁴⁷⁷ Ibid 865.

⁴⁷⁸ Mary Elizabeth Wood et al, 'Reasonable Accommodations for Meeting the Unique Needs of Defendants with Intellectual Disability' (2019) 47 *The Journal of the American Academy of Psychiatry and the Law* 310, 317.

- Simplify language used during questioning,⁴⁷⁹ for example, by using short, one-subject questions, in chronological order and at a slow pace, and avoid tags, statements, negative questions and non-literal language.⁴⁸⁰
- Consider whether there are alternative mechanisms through which a person with an intellectual disability may clarify information.⁴⁸¹
- Consider whether witnesses who are non-speaking may be able to write their answers on a notepad.⁴⁸²
- Be alert to signs that the person may not be understanding the proceedings, such as inappropriate responses, excessive compliance, monotone, excessive fidgeting, or visible distress.

7.6. Environmental Considerations

The physical courtroom may also create participation challenges for people with conditions affecting cognition, communication and mental health. Excessive formality may exacerbate anxiety and confusion for people who may already have sensory processing difficulties.⁴⁸³ A person with ASD, for instance, may be overwhelmed by ‘the barrage a sensory information’, such as lighting, noise levels, or the presence of multiple unfamiliar people, and may attempt to get out of the situation, become combative, shut down, or have a ‘meltdown’.⁴⁸⁴

Judges may consider whether:

- any adjustments to the courtroom can be made such as limiting distractions, lowering lighting, or removing anything or anyone that may lead to a ‘sensory overload’,⁴⁸⁵
- the person would benefit from being familiarised with the courtroom layout prior to proceedings,⁴⁸⁶

⁴⁷⁹ Berryessa (n 441) 858.

⁴⁸⁰ Morrison, Bradshaw, and Murphy (n 471) 257.

⁴⁸¹ Wood et al (n 478) 317.

⁴⁸² Robyn White et al, ‘Investigating Court Accommodations for Persons with Severe Communication Disabilities: Perspectives of International Legal Experts’ (2021) 23(1) *Scandinavian Journal of Disability Research* 224, 229.

⁴⁸³ For example, Mallory and Keehn identify that, for autistic children, ‘[v]isual, auditory, and tactile stimuli in the classroom can be overwhelming, and filtering irrelevant sensory input is difficult in an unpredictable, multi-sensory environment’ where ‘sensory experiences may impact a child’s participation whether or not they have any other neurodevelopmental condition, with a low threshold potentially resulting in increased negative behaviors and psychosocial states (e.g., anxiety, shyness)’: Courtney Mallory and Brendon Keehn, ‘Implications of Sensory Processing and Attentional Differences Associated With Autism in Academic Settings: An Integrative Review’ (2021) 27(12) *Frontiers in Psychology* 10.3389: 1-14. See also Elysa Jill Marco et al, ‘Sensory Processing in Autism: A Review of Neurophysiologic Findings’ (2011) 69(5) *Paediatric Research* 48.

⁴⁸⁴ Clare S Allely, *Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment* (Centre for Health Sciences Research, University of Salford, England, 30 October 2015) 2.

⁴⁸⁵ Berryessa (n 441) 865.

⁴⁸⁶ Ibid 858.

- the person could use a sensory aid while they are in the courtroom (e.g. stress balls or fidget spinners),⁴⁸⁷ and/or,
- there is a quiet or private space for a person to wait before giving their evidence.⁴⁸⁸

Some mental health conditions and developmental disabilities involve fluctuations of symptoms or capacity, and so timing of proceedings may be a relevant consideration. For example, people taking certain medication may experience cognitive side effects during particular times of the day.⁴⁸⁹ Someone may become agitated or distressed at having to wait long periods of time for their matter to be heard, or for them to give evidence.

A hearing schedule that assists a person to fully participate in proceedings may need to be considered. Some relevant questions to be asked are:

- Is an adjournment appropriate to allow for treatment or stabilisation of symptoms?
- Should more frequent or longer breaks be permitted?
- Should a support person be present?
- Should a flexible schedule be made for a person who, for example, takes medication that has the side effect of making it difficult to wake up in the mornings or be coherent at certain times during the day?⁴⁹⁰
- Should a matter be given priority where it involves a person with a mental, cognitive or psychiatric impairment for whom a long wait in court might exacerbate agitation or confusion?⁴⁹¹

7.7. Technology

Technology in court proceedings presents both opportunities and challenges for people with conditions affecting cognition, communication and mental health. For some, remote participation may be beneficial by reducing anxiety associated with physical participation in a non-familiar environment or eliminating transport barriers. People with certain types of social anxiety or ASD may find remote participation less overwhelming than in-person attendance.⁴⁹²

⁴⁸⁷ White et al (n 482) 229.

⁴⁸⁸ Kevin M Cremin et al, 'Ensuring a Fair Hearing for Litigants with Mental Illnesses: The Law and Psychology of Capacity, Admissibility, and Credibility Assessments in Civil Proceedings' (2009) 17(2) *Journal of Law and Policy* 455, 490.

⁴⁸⁹ See, eg, Duy Do and Jason Schnitker, 'Utilization of Prescription Medications with Cognitive Impairment Side Effects and The Implications for Older Adults' Cognitive Function' (2020) 32(9) *Journal of Aging Health* 1165.

⁴⁹⁰ Cremin et al (n 488) 490.

⁴⁹¹ Ibid 490.

⁴⁹² See, eg, Kengo Yuruki and Masahiko Inoue, 'Stress and benefits of video calling for people with autism spectrum disorders' (2023) 18(4) *PLOS One* 10.1371: 1-13.

Conversely, AVL proceedings may exacerbate existing barriers, especially if the technology is difficult to understand or operate or the connection is of poor quality. The reduced visual and audio cues available through video links may make it harder for people with intellectual or cognitive impairments to follow proceedings or for the judge to assess their understanding or wellbeing.

Support persons may be particularly important for remote proceedings, as they may be required to assist the person with technology while also providing emotional and practical support.

Some general guidelines when considering the appropriate use of AVL evidence are in 2.10.

7.8. Suggested Further Reading

CME O'Kelly et al, '[Judicial intervention in court cases involving witnesses with and without learning disabilities](#)' (2003) 8(2) *Legal and Criminological Psychology* 229.

Danielle Shelton, '[Accommodating Victims with Mental Disabilities](#)' (2022) 127(1) *Dickson Law Review* 163.

International Commission of Jurists, '[Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings](#)' (2024).

Morrison, J, Jill Bradshaw, and Glynis Murphy, '[Reported communication challenges for adult witnesses with intellectual disabilities giving evidence in court](#)' (2021) 25(4) *The International Journal of Evidence and Proof* 243.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, '[Final Report – Volume 8, Criminal Justice and People with Disability](#)' (Final Report, 29 September 2023).

CHAPTER 8. WOMEN

*'The failure to acknowledge and tolerate difference is, in truth, cruel oppression.'*⁴⁹³

8.1. Introduction

Women⁴⁹⁴ face inequality in public, social, economic and private life. The interaction between sex, gender and the law — including its history and institutions — is complex.⁴⁹⁵ Equal treatment involves recognition that some courtroom processes may perpetuate unfairness.

Some matters disproportionately affect women's participation in the justice system, including pregnancy and childbirth, caring responsibilities, sexual harassment, access to financial resources, domestic, family and sexual violence, gender stereotypes and societal undervaluing of women's contributions.⁴⁹⁶

The impact of gender inequality may intersect with co-existing factors such as age, ethnicity, socio-economic status, marital and parental status, religion, cultural background, sexual orientation and disability.⁴⁹⁷

In this chapter, "sex" is a biological descriptor and "gender" encompasses 'partly a psychological question, one of self-perception, and partly a social question, how society perceives the individual.'⁴⁹⁸

Some more specific issues experienced by Aboriginal and Torres Strait Islander women are discussed in [Chapter 4 \(Aboriginal and Torres Strait Islander Peoples\)](#), and people who are transgender, non-binary or intersex in [Chapter 10 \(Gender Identity and Sexual Orientation\)](#).

8.2. Language

Sensitive choices about language help to maintain public confidence in the justice system.

English language semantics distinguish gender by personal pronouns (compared to grammatical gender in languages such as French and German). Gender bias may

⁴⁹³ M Gaudron, 'Speech to launch Australian Women Lawyers' (Speech, High Court of Australia, 19 September 2017) 6.

⁴⁹⁴ It is recognised that many people may be affected by some of the issues discussed herein, including some transgender, non-binary and intersex people. This chapter should be read together with [Chapter 10 \(Gender Identity and Sexual Orientation\)](#).

⁴⁹⁵ See, eg, Katherine T Barlett, 'Feminist Legal Methods' (1990) 103 *Harvard Law Review* 829; Kathryn Abrams, 'Sex Wars Redux: Agency and Coercion in Feminist Legal Theory' (1995) 95(2) 304; Catharine A MacKinnon, *Towards a Feminist Theory of State* (Harvard University Press, 1989).

⁴⁹⁶ *UK Equal Treatment Bench Book* (n 331) 10.

⁴⁹⁷ Alysia Blackham and Jeromey Temple, 'Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework' (2020) 43(3) *UNSW Law Journal* Vol 773.

⁴⁹⁸ *Secretary, Department of Social Security v SRA* (1993) 43 FCR 299, 325.

occur by designating the masculine as the generic pronoun (“he” / “him”) or noun (“policeman” / “chairman”) or by describing men and women in non-parallel terms (“man and wife” / “bailiff and madam bailiff”).⁴⁹⁹

The *Australian Government Style Manual* recommends using gender-neutral and/or gender-inclusive terminology.⁵⁰⁰ The Australian Guide to Legal Citation also recommends generally using gender-neutral language except where gender-specific language ‘accurately conveys the intended meaning in the relevant context.’⁵⁰¹

Gender-neutral language avoids gendered terminology if it does not bear on the issue.⁵⁰²

Examples of gendered language	Examples of gender-neutral language
“He” / “him” as the generic pronoun	“They” as generic pronoun
Policeman, Chairman	Police officer, Chairperson
“A reasonable man”, mankind	“A reasonable person”, humankind ⁵⁰³

Older legal texts often contain gendered language.⁵⁰⁴ Whilst judges are bound to work with laws as they find them, they may nonetheless consider how gendered language may ‘communicate subtle sexism, distract the reader and create ambiguity.’⁵⁰⁵ It may be appropriate to acknowledge dated terminology, depending on the context.

The use of gender-neutral language remains debated in some contexts, such as gendered violence.⁵⁰⁶

8.3. Pregnancy, Breastfeeding and Childcare

Pregnancy, breastfeeding and parental status are protected attributes under the *Anti-Discrimination Act 1991*.⁵⁰⁷ They are critical social functions, and judges may consider making sensitive and practical accommodations where appropriate.

⁴⁹⁹ Judith D Fischer, ‘Framing Gender: Federal Appellate Judges’ Choices About Gender-Neutral Language’ (2009) 43 *University of South Florida Law Review* 473, 486.

⁵⁰⁰ See, eg, Australian Government, *Australian Government Style Manual* (updated 15 July 2024), retrieved from <<https://www.stylemanual.gov.au/accessible-and-inclusive-content/inclusive-language/gender-and-sexual-diversity>>.

⁵⁰¹ Melbourne University Law Review, *Australian Guide to Legal Citation* (4th ed, 2018) 28.

⁵⁰² Australian Government, *Australian Government Style Manual* (n 500).

⁵⁰³ Melbourne University Law Review, *Australian Guide to Legal Citation* (n 501) 28.

⁵⁰⁴ Other historical factors may also inform the language of older cases.

⁵⁰⁵ Leslie M Rose, ‘The Supreme Court and Gender-Neutral Language: Setting the Standard or Lagging Behind?’ (2010) 17 *Duke Journal of Gender Law & Policy* 81.

⁵⁰⁶ See, eg., Evan Stark, *Coercive Control: The Entrapment of Women in Personal Life* (Oxford University Press, 2007) 102-7.

⁵⁰⁷ *Anti-Discrimination Act 1991* (Qld) s 7.

8.3.1. Pregnancy

Pregnancy and childbirth are health-related conditions that may affect how a person engages in public and social life. The effects of pregnancy on an individual are varied and unpredictable. Some women may not experience any significant impediments to participation, whereas others may suffer debilitating symptoms or require prolonged monitoring or hospitalisation.⁵⁰⁸

Pregnancy is conventionally divided into three trimesters of roughly three months duration. Nausea and vomiting (“morning sickness”) are most common in the first trimester but can persist throughout the pregnancy. Roughly one in six pregnancies will miscarry during the first trimester.⁵⁰⁹ The second trimester is when the pregnancy typically becomes visibly apparent to others and when many foetal abnormalities are detected. The third trimester is recognised as a high-risk period with increased physical demands,⁵¹⁰ including the need for more frequent comfort breaks and physical difficulties relating to standing for long periods of time. Stressful antenatal events are associated with an increased risk of negative outcomes such as preterm birth, low birth weight and small gestational age.⁵¹¹

The circumstances in which a pregnant or post-natal witness gives evidence may bear on the broader question of a fair trial.

In *F (A Child: Adjourment)*,⁵¹² a child welfare case, the English Court of Appeal considered an adjournment application by a party in her third trimester of pregnancy. The Court emphasised the ‘touchstone of justice’, even in paramountcy principle cases, and conveyed some general guidelines:

- Courts should aim to achieve a ‘sensitive listing’.
- A person in late pregnancy, or who has just given birth, should not be expected to attend court unless they wish to (whether the attendance is physical or remote).
- A “try and see” approach should be avoided.
- For expectant mothers, the absence of additional medical reasons to ground a request should not be held against them.
- An intention to allow breaks (or other accommodations) is not a remedy if the hearing should not occur at all.

The Court added:

A hearing in these circumstances is bound to be exceptionally stressful for a person in this young mother’s position, and her experience of her first pregnancy can only

⁵⁰⁸ National Health and Medical Research, ‘Australian pregnancy care guidelines’ (Web Page, 2025) <<https://app.magicapp.org/?language=hi#/guideline/jm83RE>>.

⁵⁰⁹ Ibid.

⁵¹⁰ Ibid.

⁵¹¹ X Ding et al, ‘The impact of prenatal stressful life events on adverse birth outcomes: A systematic review and meta-analysis’ (2021) 287 *Journal of Affective Disorders* 406.

⁵¹² *F (A Child: Adjourment)* [2021] EWCA Civ 469.

exacerbate matters. Her evidence will doubtless be significant, and she will face cross-examination. The Local Authority has suggested that she need not attend court in person and that she could give evidence by video link and attend the rest of the hearing ‘from the comfort of her home.’ This overlooks the important fact that a party participating in a court hearing remotely is still attending court and should be able to engage fully in the process. The mother is in any event entitled to expect that she could attend for the whole of the hearing in person if she wants, and certainly that she should be able to choose to attend court to give evidence: indeed we are told that the court was willing to accommodate that.⁵¹³

8.3.2. The Post-Natal Period

The post-natal convalescence period is typically between six to twelve weeks.⁵¹⁴ In addition to feeding, new mothers may experience other stressors including severe sleep deprivation, significant hormonal changes, adjustment to parenthood, and long-term child-birth complications. These factors may affect concentration, memory, emotional regulation, and physical health.⁵¹⁵

Postnatal depression affects approximately 10-15% of new mothers.⁵¹⁶

If a court participant has recently given birth, it may be appropriate to enquire about or implement any practical accommodations, such as:

- shorter hearing days,
- maintaining the usual daily court sitting schedule (i.e., avoid sitting earlier or later than the usual court hours),
- allowing some flexibility for medical appointments, and
- encouraging the person to inform the court if they cannot adequately concentrate on the proceedings or experience any other difficulties.

8.3.3. Breastfeeding and Feeding Infants

The *Anti-Discrimination Act 1991* prohibits direct or indirect discrimination on grounds of breastfeeding. Similar issues may arise where a parent needs to bottle feed an infant in court.

The issue of breastfeeding and/or bottle feeding in courtrooms may arise for defendants, parties, witnesses and public attendees. Ultimately, it is a matter for the presiding judge. Fairness is the overriding consideration, and factors such as the

⁵¹³ Ibid 8.

⁵¹⁴ HL Paladine, CE Blenning and Y Strangas, ‘Postpartum care: An approach to the fourth trimester.’ (2019) 100(8) *American Family Physician* 485.

⁵¹⁵ National Health and Medical Research Council, ‘Australian Postnatal Care Guidelines’ (Web Page, 2025) <<https://app.magicapp.org/#!/guideline/jW0ZbL>>.

⁵¹⁶ Smitha Ramadas and Ramesh Kumar, ‘Postnatal depression: a narrative review’ (2015) 9(2) *International Journal of Culture and Mental Health* 97; PK Mallikarjun and F Oyeboode, ‘Prevention of postnatal depression’ (2005) 125(5) *Journal of the Royal Society for the Promotion of Health* 221.

nature of the case, the feeding parent's role in proceedings, and the infant's age will be relevant.

In Victoria in 2023, a judge asked a woman to leave the courtroom due to an unsettled infant in one case, and in another because breastfeeding would 'be a distraction for the jury at the very least.'⁵¹⁷ The cases prompted public discussion.⁵¹⁸

For very young breastfeeding infants, Australian medical guidelines recommend responsive feeding – offering the breast regularly and often – for most full-term infants up to 6-12 months.⁵¹⁹ Physical separation from the primary caregiver even for short periods can be distressing for the infant and hinder lactation and latching.⁵²⁰

Personal factors may also influence feeding accommodations. Some mothers and babies will breast- or bottle- feed easily in public, whereas others may prefer a shield or private room. Regular breaks may not always be suitable, depending on the infant's age and feeding and latching ability.⁵²¹ Breastfeeding and bottle feeding are often not interchangeable, and some infants will be disrupted by an unfamiliar environment or caregiver. Chronic stress may hinder lactation.⁵²²

Lack of ability to feed flexibly, and/or prolonged physical separation from a young infant may impact some women's ability to "give their best evidence" or otherwise engage in the court process. Conversely, judges are bound to consider whether any accommodations, such as regular breaks, might engender jury sympathy or prejudice⁵²³ or otherwise diminish the integrity of the testimonial process.

Judges may consider canvassing any special requirements of caregivers at the hearing's outset (or earlier) either on request or receipt of evidence. The affected person may need sensitive encouragement to articulate their needs without perceiving that their circumstances are inconvenient or exceptional.

Any adjustment depends on the resources reasonably available. Many courthouses do not have dedicated feeding or infant changing facilities, and private or residential

⁵¹⁷ Floyd Hunt, 'Divided Opinions: The arguments over breastfeeding in a courtroom' (Law Society Journal, 27 March 2023) <<https://lsj.com.au/articles/divided-opinions-the-arguments-over-breastfeeding-in-a-courtroom/>>.

⁵¹⁸ Ibid.

⁵¹⁹ National Health and Research Council, *Australian Government, Eat for Health: Infant Feeding Guidelines. Information for Health Workers* (2012).

⁵²⁰ See, eg, K Howard et al, 'Early mother–child separation, parenting, and child well-being in Early Head Start families' (2011) 13(1) *Attachment & Human Development* 5; W Barnett et al, 'Caregiver–child proximity as a dimension of early experience' (2022) 34(2) *Development and Psychopathology* 647.

⁵²¹ Johns Hopkins Medicine, *Breastfeeding*, retrieved from <<https://www.hopkinsmedicine.org/health/conditions-and-diseases/breastfeeding-your-baby/breastfeeding>>.

⁵²² Chloe C Josefson, Lucelia De Moura Pereira and Amy L Skibiel, 'Chronic Stress Decreases Lactation Performance' (2023) 63(3) *Integrative and Comparative Biology* 557.

⁵²³ *R v Green* [2025] QCA 148.

access to audio-visual and telephone connections is variable. In some cases, an adjournment may be the fairest remedy.⁵²⁴

Some of the above considerations may also apply to legal practitioners.

8.3.4. Childcare Responsibilities

Although men account for a growing proportion of primary carers, childcare responsibilities continue to disproportionately affect women. Teenage girls are also disproportionately expected to contribute as caregivers compared to teenage boys.⁵²⁵ The burdens of childcare are higher for young people and those from low socioeconomic or single parent households, disadvantaged communities, and culturally or linguistically diverse backgrounds.⁵²⁶

Caregivers who attend court as a party or witness may encounter difficulties arranging childcare, especially for lengthy hearings. Occasional childcare is expensive and may be available only for short hours. Parties involved in protracted litigation who cannot find suitable childcare face serious difficulties in accessing justice. These problems can be exacerbated when court is convened outside regular hours or matters are adjourned to later in the day.

The court is also a primary workplace for legal practitioners and many others, and challenges can arise where appearances are required at short notice or outside of usual hours, or where court sits longer without notice. Some legal practitioners may feel uncomfortable articulating these matters to a court.

For certain short administrative hearings, it may be feasible to fairly convene the court in the presence of an infant or young child. This will rarely be appropriate for a final determination or substantive proceeding.

Some busy court lists, such as domestic violence applications in the Magistrates Court, experience high volumes of unrepresented parties with young children. Where possible, such cases should be heard earlier in the day.

8.4. Reproductive Health Conditions

Reproductive health conditions such as dysmenorrhoea, endometriosis, pelvic pain, PCOS, fertility treatment, and menopause can affect courtroom participation. Historically, these medical conditions have been dismissed as non-legitimate and stigmatised as private or shameful.⁵²⁷

⁵²⁴ *F (A Child: Adjournment)* [2021] EWCA Civ 469.

⁵²⁵ Diana Warren and Ben Edwards, *Young Carers – LSAC Annual Statistics Report, Growing Up in Australia* (The Australian Government, 2017).

⁵²⁶ *Ibid.*

⁵²⁷ J Wiggleton-Little, “‘Just’ a painful period: A philosophical perspective review of the dismissal of menstrual pain’ (2024) 20 *Women’s Health* 10.1177:1-6.

8.4.1. Endometriosis and Polycystic Ovary Syndrome

Endometriosis affects approximately 10% of reproductive age women, though remains underdiagnosed.⁵²⁸ It can cause chronic pelvic pain, severe menstrual pain, heavy and prolonged bleeding, nausea, fatigue, bladder and bowel issues, depression and other debilitating symptoms.⁵²⁹ The unpredictable nature of endometriosis means that a woman may appear well one day but be in severe pain the next.⁵³⁰ Treatments including surgery and hormonal therapies can cause additional side effects affecting concentration and energy.⁵³¹

Polycystic Ovary Syndrome ('PCOS') affects 6% to 15% of reproductive age women of reproductive age.⁵³² Like endometriosis, it is also underdiagnosed.⁵³³ The condition causes irregular or absent menstrual periods, unexpected heavy bleeding, weight gain, fatigue, mood changes, anxiety, and depression.⁵³⁴ PCOS is also associated with insulin resistance, causing energy fluctuations and difficulty maintaining stable blood sugar levels.⁵³⁵ PCOS can also impair 'visuospatial working memory, episodic and verbal memory, attention, and executive function'.⁵³⁶

The following accommodations, where possible, may be appropriate:

- flexible scheduling around medical appointments and symptom patterns,
- regular breaks during lengthy proceedings,
- remote participation options when travel or sitting for long periods is difficult, and

⁵²⁸ Sawsan As-Sanie et al, 'Endometriosis: A Review' (2025) 334(1) *Journal of the American Medical Association* 64, 64. See also, Catherine Allaire, Mohamed A Bedaiwy and Paul J Young, 'Diagnosis and management of endometriosis' (2023) 195(1) *Canadian Medical Association Journal* 363.

⁵²⁹ See generally Andrew W Horne and Stacey A Missmer, 'Pathophysiology, diagnosis, and management of endometriosis' (2022) 14 *British Medical Journal* 10.1136, 1-19.

⁵³⁰ Sarah J Drabble et al, 'Constellations of pain: a qualitative study of the complexity of women's endometriosis-related pain' (2021) 15(3) *British Journal of Pain* 345, 350-1.

⁵³¹ Ibid. See also, Venla Oikonen and Elina Helosyö, 'Living with acuteness in chronic illness: The temporal underpinnings of endometriosis' (2024) 39(4) *Medical Anthropology Quarterly* 10.1111:1-13.

⁵³² Studies in different geographic contexts have yielded different prevalence statistics: Shilpa Karkera, Earlina Agard and Larysa Sankova, 'The Clinical Manifestations of Polycystic Ovary Syndrome (PCOS) and the Treatment Options' (2023) 11(1) *European Journal of Biology and Medical Science Research* 57, 59.

⁵³³ Renae C Fernandez et al, 'Diagnosis delayed: health profile differences between women with undiagnosed polycystic ovary syndrome and those with a clinical diagnosis by age 35 years' (2021) 36(8) *Human Reproduction* 2275.

⁵³⁴ Ibid.

⁵³⁵ See generally Ananya Purwar and Shailesh Nagpure, 'Insulin Resistance in Polycystic Ovarian Syndrome' (2022) 14(1) *Cureus* 30351:1-5; Decio Armanini et al, 'Controversies in the Pathogenesis, Diagnosis and Treatment of PCOS: Focus on Insulin Resistance, Inflammation, and Hyperandrogenism' (2022) 23(8) *International Journal of Molecular Science* 4110.

⁵³⁶ J Pinto, N Cera, and D Pignatelli, 'Psychological symptoms and brain activity alterations in women with PCOS and their relation to the reduced quality of life: a narrative review' (2024) 47 *Journal of Endocrinological Investigation* 1599.

- temperature control considerations (as both conditions can cause temperature sensitivity).

8.4.2. Fertility Treatments

In vitro fertilisation ('IVF') and other fertility treatments present unique challenges for women's participation in legal proceedings. These treatments require intensive medical monitoring and can impact a person's physical and emotional health.⁵³⁷ IVF treatment requires frequent visits to a medical specialist that must be scheduled according to the woman's biological response to medication, often with less than 24 hours' notice. Appointments cannot be easily re-arranged, as they are timed to specific phases of the treatment cycle. Treatment cycles can extend over several weeks, and many women require multiple cycles over months or years. The unpredictable nature of this scheduling alone can create challenges for court attendance and participating in proceedings.

Fertility treatments may cause physical side effects, including bloating, discomfort from hormone injections, fatigue, and severe mood fluctuations.⁵³⁸ Women undergoing fertility treatment commonly experience depression,⁵³⁹ and treatment-related stress can significantly affect performance, concentration and productivity.⁵⁴⁰

A judge may, where appropriate, consider accommodations such as:

- flexible court scheduling to accommodate unpredictable medical appointments,
- short-notice adjournments where treatment cycles require immediate clinical attention,
- remote participation options to facilitate treatment, and/or,
- regular breaks during lengthy proceedings.

8.4.3. Menopause

Menopause usually occurs when a woman is aged between 45 and 55, but it can happen much earlier and lasts for several years.⁵⁴¹ The period of hormonal change leading up to menopause is known as perimenopause. The most common symptoms affecting performance include fatigue, headaches, difficulty sleeping, poor

⁵³⁷ See generally Lindsay Leigh and Alysha Skuthan, 'The Effect of IVF Treatment for Infertility on Occupational' (2024) 45(1) *Occupational Therapy Journal of Research* 12; Jelena Opsenica Kostic, Milica Mitrovic and Damjana Panic, 'The Experience of Infertility and Quality of Life of Women Undergoing the IVF Process – A Study in Serbia' (2021) *Psychological Applications and Trends* 22.

⁵³⁸ Colorado Centre for Reproductive Medicine, *IVF Medications: Possible Side Effects* (22 November 2024), retrieved from: <<https://www.ccrmivf.com/blog/ivf-medications-side-effects/>>.

⁵³⁹ Paulina Gdanska et al, 'Anxiety and depression in women undergoing infertility treatment' (2017) 88(2) *Ginekologia Polska* 109.

⁵⁴⁰ Clazien AM Bouwmans et al, 'Absence from work and emotional stress in women undergoing IVF or ICSI: An analysis of IVF-related absence from work in women and the contribution of general and emotional factors' (2008) 87 *Acta Obstetrica et Gynecologica* 1169.

⁵⁴¹ The Senate Community Affairs References Committee, Commonwealth of Australia, *Issues Related to Menopause and Perimenopause* (Final Report, September 2024) 4-7.

concentration and memory problems, as well as hot flashes, palpitations, mood changes, and anxiety.⁵⁴² For women who need to participate in court proceedings these symptoms can affect concentration and emotional regulation.

Very often, women will not want to draw attention to the fact they are experiencing menopausal symptoms⁵⁴³. It is not recommended to draw attention to the issue because the adjustments that can be made are general in nature. Possible accommodations include:

- ensuring the hearing room has working air-conditioning and the temperature is cool enough to accommodate people in professional clothing,
- ensuring there is ready access to cold water,
- shorter sitting days, and/or
- frequent breaks.

8.5. Domestic, Family and Sexual Violence

8.5.1. Domestic and Family Violence

Domestic and family violence is a major social, health and welfare issue in Australia. Although domestic violence occurs across all demographic groups, it overwhelmingly affects women and children.⁵⁴⁴ Domestic and family violence has serious consequences for victims, families, workplaces and the community, including increased disease burden, homelessness and unemployment.⁵⁴⁵

Often, the salience of domestic violence to a case will be obvious, such as an application under the *Domestic and Family Violence Protection Act 2012* or a criminal prosecution. Here, mandatory statutory criteria will regulate how parts of these proceedings are conducted.⁵⁴⁶ In other cases, domestic violence will not be an issue in dispute per se, yet considering broader power dynamics may be relevant to fairness.

One barrier to equal protection for non-physical domestic violence is conceptual. Some scholars have suggested that traditional adversarial processes may not adequately capture the nuanced and highly contextualised features of coercive control. Stark, for instances, describes the conventional criminal law approach as a 'violent incident model' which prioritises discrete acts of violence over patterns of control.⁵⁴⁷ Others have highlighted that coercive control, which emerged from social

⁵⁴² Ibid 10.

⁵⁴³ Ibid 22-23.

⁵⁴⁴ Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019* (2019).

⁵⁴⁵ Ibid.

⁵⁴⁶ See, eg, *Evidence Act 1977* (Qld) pt 2, div 4.

⁵⁴⁷ Evan Stark, 'Looking Beyond Domestic Violence: Policing Coercive Control' (2012) 12 *Journal of Police Crisis Negotiations* 199, 200.

science and clinical disciplines, is 'relatively unchartered' as a legal and statutory construct.⁵⁴⁸

The empirical literature also identifies that some victims experience social, psychological and structural barriers to participation. These include:

- fears about not being believed,⁵⁴⁹
- the prospect of retaliatory or vexatious legal action by the other party (also known as legal systems abuse),⁵⁵⁰
- victim misidentification,⁵⁵¹
- the impact of trauma on giving evidence,⁵⁵²
- lack of faith in the police and/or legal system,⁵⁵³
- a desire to remain in the relationship,⁵⁵⁴
- insufficient social and economic support to leave the relationship,⁵⁵⁵ or
- fears of future or escalating violence.⁵⁵⁶

These barriers may operate alone or in combination. They may also be compounded by other marginalising factors such as age, caregiving responsibilities, homelessness, race, cultural and ethnic background, economic status, disability, location, sexuality, illness and education level.⁵⁵⁷

A perpetrator's presence in court may be intimidating, especially where there are few or no physical barriers. Fear of immediate retaliation, such as during court breaks or after proceedings, may cause some women to disengage or accept an unfavourable outcome.

Financial abuse is another barrier in and of itself. A woman may not have access to funds for legal representation, essential documents or time off work to attend court.

⁵⁴⁸ Michele Burman and Oona Brooks-Hay, 'Aligning police and law? The creation of a domestic abuse offence incorporating coercive control' (2018) 18(1) *Criminology & Criminal Justice* 67, 74; Walklate et al, 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories' (2018) 18(1) *Criminology & Criminal Justice* 115, 127.

⁵⁴⁹ Heather Douglas, 'Policing Domestic and Family Violence' 8(2) *International Journal for Crime, Justice and Social Democracy* 31.

⁵⁵⁰ Heather Douglas, 'Legal Systems Abuse and Coercive Control' (2018) 18(1) *Criminology & Criminal Justice* 84

⁵⁵¹ E Reeves et al, 'Incredible Women: Legal Systems Abuse, Coercive Control, and the Credibility of Victim Survivors' (2023) 31(3-4) *Violence Against Women* 767.

⁵⁵² D Epstein and LA Goodman, 'Discounting women: Doubting domestic violence survivors' credibility and dismissing their experiences' (2019) 167(2) *University of Pennsylvania Law Review* 399.

⁵⁵³ Stark (n 547).

⁵⁵⁴ Australian Institute of Health and Welfare (n 544).

⁵⁵⁵ Special Taskforce on Domestic and Family Violence in Queensland, *Not now, not ever - Putting an end to domestic and family violence in Queensland* (Report, 2015).

⁵⁵⁶ Ibid.

⁵⁵⁷ E Reeves et al, *Criminalising coercive control: An Australian Survey: Data snapshot* (Monash Gender and Family Violence Prevention Centre, 2021).

Power imbalances may also undermine processes like non-adversarial processes such as mediation, which rely on both parties negotiating on an equal footing.

Both the *National Domestic and Family Violence Bench Book* and the *Domestic and Family Violence Protection Act 2012 – Benchbook* contain comprehensive recommendations and best practice guidelines for judges in cases involving domestic and family violence.

8.5.2. Sexual Violence

In this section, sexual violence includes rape, other sexual assaults, sexual coercion, unwanted sexual advances and harassment, being forced to watch or engage in pornography, involuntary prostitution and trafficking.⁵⁵⁸ Sexual violence may occur separately or as part of domestic and family violence.

Victims of sexual violence may encounter challenges at various stages of the legal process. Although increasing,⁵⁵⁹ underreporting of sexual violence offences continues for reasons such as victim shame and embarrassment, distrust of authorities, language and cultural issues or a belief that the incident was not sufficiently serious.⁵⁶⁰ Populations at higher risk of experiencing sexual violence include Aboriginal and Torres Strait Islander women and children, women with a physical or mental disability and sex workers.⁵⁶¹

Victims of sexual violence may suffer a range of immediate and/or enduring negative effects on physical and mental health and social wellbeing. These impacts may be heightened by other co-existing forms of disadvantage or vulnerability.⁵⁶²

Victims may also experience additional barriers or ‘secondary victimisation’ arising from contact with the court system, especially if they are a primary trial witness.⁵⁶³

Some Queensland courts have adopted case management processes for sexual violence offences, following the *Hear Her Voice*⁵⁶⁴ reports in 2022, to ‘minimise delay

⁵⁵⁸ Australian Institute of Health and Welfare (n 544).

⁵⁵⁹ Queensland Government, *Queensland’s Framework to address sexual violence* (September 2019) 5-6, 8-10.

⁵⁶⁰ Ibid 9; Australian Institute of Family Studies and Victoria Police, *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners* (2017) 3.

⁵⁶¹ Australian Institute of Family Studies and Victoria Police (n 560).

⁵⁶² Australian Institute of Health and Welfare (n 544).

⁵⁶³ AJ George and V Lowik, ‘Rethinking cross-examination: Reducing retraumatisation for victims and survivors of sexual assault’ (2025) 50(3) *Alternative Law Journal* 204.

⁵⁶⁴ Women’s Safety and Justice Taskforce, *Hear Her Voice Report 1: Addressing coercive control and domestic and family violence in Queensland* (Report, 2 December 2021); Women’s Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and girls’ experiences across the criminal justice system* (Report, 1 July 2022).

in the Court process, provide greater certainty to all Court users and reduce the potential for re-traumatisation of witnesses.⁵⁶⁵

The 2021 Australian National Community Attitudes towards Violence Against Women Survey by Australia's National Research Organisation for Women's Safety⁵⁶⁶ shows that a shrinking minority of the population harbour attitudes that may rationalise sexual violence against women, for example. The survey found that a larger minority of the public overestimate the prevalence of false complaints.⁵⁶⁷

A 2020 survey of 605 real jurors in the United Kingdom suggested that jurors were less likely than the general public to subscribe to "rape myths".⁵⁶⁸ The researcher, Professor Cheryl Thomas, suggested that 'better guidance for jurors may be helpful' in two areas where many jurors were mistaken or unsure: the question of 'stranger versus acquaintance rape' and 'whether a rape complainant will necessarily be emotional when giving evidence about a rape'.⁵⁶⁹

The Queensland Court of Appeal has acknowledged the appropriateness of judicial directions in sexual violence cases to counter any risk of impermissible reasoning based on assumptions:

...the evident purpose of directions of this kind is to ensure that where a complainant attests to the fact that the subject sexual activity was nonconsensual, a jury does not assess the complainant's evidence of what occurred and what they did or did not do, by reference to outdated, but perhaps still commonly held, misconceptions and stereotypical assumptions about how sexual offences are perpetrated and how a "real victim" of a sexual offence would behave or respond to non-consensual sexual activity. The directions achieve this purpose through their educative and corrective content and by a judicial instruction that prohibits assessments based on preconceived ideas.⁵⁷⁰

Many sexual violence complainants report experiencing distress during their testimony when their honesty, motive, delay in complaint and post-offence conduct and demeanour may be questioned.

⁵⁶⁵ District Court of Queensland, *Practice Direction No 3 of 2024: Sexual Violence Case Management*, 19 July 2024; Magistrates Courts of Queensland, *Practice Direction No 11 of 2024: Sexual Assault Offence Callover (Brisbane Magistrates Court cases only)*, 19 December 2024.

⁵⁶⁶ See, eg, *UK Equal Treatment Bench Book* (n 331); A Grubb and E Turner, 'Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming' (2012) 17(5) *Aggression and Violent Behaviour* 443; K Webster et al, *Australians' attitudes to violence against women and gender equality: Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)* (ANROWS, Research Report No 03/2018) 50, 84; Cheryl Thomas, 'The 21st century jury: contempt, bias and the impact of jury service' (2020) 11 *Criminal Law Review* 97.

⁵⁶⁷ C Coumarelos et al, *Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey (NCAS), Findings for Australia* (Research Report, February 2023).

⁵⁶⁸ Cheryl Thomas, 'The 21st century jury: contempt, bias and the impact of jury service' (2020) 11 *Criminal Law Review* 97.

⁵⁶⁹ Ibid.

⁵⁷⁰ *R v LBK* [2025] QCA 111 [130].

8.5.3. Practical Measures

There are various practical adjustments, in addition to mandatory statutory processes, that may be appropriate during a hearing involving alleged sexual and/or domestic violence.

A person may be declared a special witness if they are the alleged victim of domestic violence or a sexual offence committed by the person against whom they are giving evidence.⁵⁷¹ More information about special witness measures is in 3.2.3.

It is well established that judges may stop oppressive questioning that harasses or abuses a witness for no forensic purpose (see 3.2.5).

In *R v Ta*⁵⁷² Spigelman CJ said that:

Judges play an important role in protecting complainants from unnecessary, inappropriate and irrelevant questioning by or on behalf of an accused. That role is perfectly consistent with the requirements of a fair trial, which requirements do not involve treating the criminal justice system as if it were a forensic game in which every accused is entitled to some kind of sporting chance.

Contemporary approaches to courtroom advocacy emphasise that the purpose of cross-examination is to elicit evidence, and ‘advocates must adapt to the witness, not the other way around’.⁵⁷³ From a fairness perspective, the English Court of Appeal has stressed a court’s obligation to ‘take every reasonable step to encourage and facilitate the attendance of vulnerable witnesses and their participation in the trial process.’⁵⁷⁴

Judges may:

- check that a witness understands the question and has a proper opportunity to respond,⁵⁷⁵
- disallow repetitive or confusing questions, or those containing multiple propositions,
- encourage respectful questioning,
- ascertain in advance any special needs of the witness, and
- so far as possible, ensure that a remote witness gives their evidence in an appropriate, private location free from technical or other distractions.

Judges may also foster witness perceptions of a ‘less hostile’ courtroom through politeness, being sensitive to the complainant’s emotional state, and calling for breaks.⁵⁷⁶

⁵⁷¹ *Evidence Act 1977* (Qld) s 21(1)(e)–(f).

⁵⁷² (2003) 57 NSWLR 444, 446.

⁵⁷³ *R v Lubemba; R v JP* [2014] EWCA Crim 2064 [45] (Hallett LJ). See also *Whisprun Pty Ltd v Dixon* (2003) 200 ALR 447, 477 (Kirby J).

⁵⁷⁴ *R v Lubemba; R v JP* [2014] EWCA Crim 2064 [45] (Hallett LJ).

⁵⁷⁵ Australian Institute of Family Studies and Victoria Police, *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners* (2017).

⁵⁷⁶ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, November 2021), ch 21: Respecting victim survivors in sexual offence trials.

There are now also certain mandatory directions which must be given to the jury in matters involving domestic violence or sexual offences.⁵⁷⁷

Section 210 of the *Evidence Act 1977* prohibits a self-represented defendant from cross-examining a ‘protected witness’, which includes an alleged victim of a domestic violence-order related offence and certain sexual offences (see 5.5.5). There are similar restrictions on cross-examination of the aggrieved in domestic violence proceedings under ss 150 and 151 of the *Domestic and Family Violence Protection Act 2012*.

In some situations, it may facilitate fairness to refer non-represented parties or others to domestic and/or sexual violence support or legal assistance services. [Appendix D](#) is a non-exhaustive list of publicly funded Queensland domestic violence support services.

While it is necessary for judges to understand how family, domestic and sexual violence can hinder participation in legal proceedings, it is equally important to avoid paternalistic assumptions.

8.6. Suggested Further Reading

Australasian Institute of Judicial Administration, [National Domestic and Family Violence Bench Book](#) (2023, updated July 2024).

Baston, J, ‘Judicial Education on “Gender Awareness” in Australia’ in Judicial Commission of New South Wales, [Handbook for Judicial Officers](#) (Sydney, 2021) 619.

Douglas, H, ‘[Legal Systems Abuse and Coercive Control](#)’ (2018) 18(1) *Criminology and Criminal Justice* 84.

McLoughlin, K, *Law, Women Judges and the Gender Order: Lessons from the High Court of Australia* (Routledge, 2022).

Nomchong, K, ‘Sexual Harassment and the Judiciary’, in Judicial Commission of New South Wales, [Handbook for Judicial Officers](#) (Sydney, 2021) 612.

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Women’s Safety and Justice Taskforce, [Hear Her Voice – Addressing Coercive Control and Domestic and Family Violence in Queensland](#) (Report One, 2 December 2021).

Women’s Safety and Justice Taskforce, [Hear Her Voice – Women and Girls’ Experiences Across the Criminal Justice System](#) (Report Two, 1 July 2022).

⁵⁷⁷ *Evidence Act 1977* (Qld) div 3, pt 6A-6B.

CHAPTER 9. RELIGION

*‘Freedom of religion, the paradigm freedom of conscience, is the essence of a free society.’*⁵⁷⁸

9.1. Introduction

Australia’s multicultural society is reflected in the religious diversity of the justice system. People of many faiths participate in court processes as parties, witnesses, jurors, judges, legal practitioners, bailiffs and members of the public. Others hold no religious beliefs or identify as secular or atheist.

Section 116 of the *Australian Constitution* underpins religious freedom, prohibiting the Commonwealth from making laws for establishing any religion, imposing religious observance, or prohibiting the free exercise of religion.

The *Anti-Discrimination Act 1991* prohibits discrimination based on religious belief or activity,⁵⁷⁹ including in court proceedings and justice administration generally. The *Human Rights Act 2019* explicitly protects freedom of ‘thought, conscience, religion and belief’.⁵⁸⁰

The intersection of religion and law is complex, with tensions between religious freedom on one hand, and neutral processes on the other. Religiosity may also influence how some people interact with the law and understand their obligations.

9.2. Ethnicity and Religion

Ethnic groups may be multi-religious, and religious practices may transcend single ethnic communities. There is also significant intra-faith diversity driven by cultural and social factors and individual doctrinal interpretations.

Ethnic faith practices evolve in response to migration patterns, generational differences, local community structures, and individual choices.⁵⁸¹ South Asian communities, for instance, may encompass Hindu, Muslim, Sikh, Buddhist, Christian and other religious traditions, with substantial intra-faith variations.⁵⁸²

⁵⁷⁸ *Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* (1983) 154 CLR 120, 130 (Mason CJ and Brennan J).

⁵⁷⁹ *Anti-Discrimination Act 1991* (Qld) s 7(i).

⁵⁸⁰ *Human Rights Act 2019* (Qld) s 20.

⁵⁸¹ Kim Knott, ‘Religion and Identity, and the Study of Ethnic Minority Religions in Britain’ in Victor C Hayes, *Identity Issues and World Religions: Selected Proceedings of the Fifteenth Congress of the International Association for the History of Religions* (The Australian Association for the Study of Religions, 1986) 167.

⁵⁸² *Ibid.*

Religious identity formation is highly contextual. Younger generations may adopt, adapt, or reject their inherited religious traditions.⁵⁸³ Others may develop religious affinities because they ‘have a spouse, family member or close friend who belongs to the group, or because their ancestors belonged to the group – even though they don’t consider it their own religion.’⁵⁸⁴

People may engage in faith with varying levels of observance and practice, for instance:

- Some Christians may acknowledge Christmas and Easter but not attend Church or Mass.
- Some Muslims may observe Ramadan but not practise Salah/Salat (prayer obligation).
- Some Jewish people may observe Passover but not Shabbat.

Religious identity is personal, unique and not necessarily derived from ethnic identifiers such as names, appearance, cultural dress and community affiliations. Religious identity and cultural identity may overlap, but they are not the same. Treating them as one can lead to misunderstanding.

9.3. Modes of Address

Religious leaders may appear in court as parties, witnesses, experts, interpreters or support. Some leaders may use their secular titles in legal contexts whereas others may use their religious designation. Sometimes, judges may need to consider whether a religious title — particularly if unconnected to the person’s role in proceedings — might undermine perceptions of neutrality.

Religious titles carry significance within faith communities beyond simple courtesy. They often connote years of religious study or qualification, community recognition and authority, spiritual ordination or consecration. As a function of equal treatment, acknowledging appropriate religious titles promotes public confidence in the justice system.

Usually, religious leaders are addressed by their specific title followed by their family or religious name. A person may be asked their preferred mode of address where there is uncertainty.

⁵⁸³ See generally, Pamela Ebstyn King, ‘Religion and Identity: The Role of Ideological, Social, and Spiritual Contexts’ (2003) 7(3) *Applied Developmental Science* 197; Sam A Hardy et al, ‘Community and religious involvement as contexts of identity change across late adolescence and emerging adulthood’ (2010) 32(5) *International Journal of Behavioral Development* 125.

⁵⁸⁴ Pew Research Centre, *Decline of Christianity in the US Has Slowed, May Have Levelled Off: Findings from the 2023-24 Religious Landscape Study* (Report, 26 February 2025) 113–4.

A non-exhaustive summary of major religious titles is set out below:

Religion	Titles
Buddhism	Monk, Nun, Lama, Rinpoche, Venerable, Bhante, Ajahn
Christianity	- Pastor, Reverend, Father, Mother (various Protestant denominations) - Bishop, Father, Sister, Brother (Catholic) - His/Her Grace, Archbishop, Bishop, Canon, Archdeacon (Anglican/Episcopal) - Elder, Minister, Preacher (various traditions)
Hinduism	Pandit, Swami, Guru, Acharya, Pujari
Islam	- Imam, Sheikh, Mufti, Maulana, Maulvi - Hafiz or Hafiza (referring to men and women who have studied the Quran and have become memorisers of the Quran).
Judaism	- Rabbi, Cantor, Reb - Chief Rabbi (for senior positions)
Sikhism	- Giani, Singh/Kaur (though these may be part of personal names) - Bhai (for respected religious teachers)

9.4. Oaths and Affirmations

An oath is a solemn declaration or undertaking that calls upon a faith-based higher power to witness the truthfulness of the statement a person makes. A solemn affirmation is the secular equivalent. Some religions do not accept the use of oaths.⁵⁸⁵ There are also differences within faiths as to the appropriateness of the use of their holy texts for the purposes of an oath.

9.4.1. A Flexible Approach

The case law articulates flexibility to oath-taking, emphasising a person's intention to be bound over strict adherence to form. An oath is valid 'without physically touching a bible, and that is equally so for when the oath is given for the purpose of swearing an affidavit. All that is required is that the form of oath employed should be considered by the oath-taker as binding his or her conscience to speak the truth.'⁵⁸⁶

⁵⁸⁵ Sections 18 and 19 of the *Oaths Act 1867* set out affirmations that can be given by Quakers and Moravians, and religious separatists.

⁵⁸⁶ *McShane v Higgins* [1997] QCA 59, 7.

In *R v O'Sullivan; ex parte Attorney-General* ('O'Sullivan'),⁵⁸⁷ the Queensland Court of Appeal held that saying "yes" rather than "so help me God" did not invalidate an oath. The statutory form was not an exhaustive prescription, and the principal focus was the oath-maker's assent and intention to be bound in conscience.⁵⁸⁸

9.4.2. Potential for Bias

There are limited studies about bias arising from a person's religiosity or lack thereof.⁵⁸⁹ One 2023 study found that approximately 15% of surveyed Australians and one third of Americans viewed belief in God as 'an essential component of morality.'⁵⁹⁰ The authors tentatively surmised that atheists may encounter bias in some contexts.⁵⁹¹

An earlier study of 3,200 participants across 13 countries found that participants were more than twice as likely to believe that egregious crimes like murder were committed by atheists rather than persons of faith.⁵⁹² The authors concluded that 'across the world, religious belief is intuitively viewed as a necessary safeguard against the temptations of grossly immoral conduct.'⁵⁹³

American research suggests that religiosity, or lack thereof, substantially influences jury verdicts.⁵⁹⁴ It is unclear how this applies to the Australian context due to significant jurisdictional and cultural differences.⁵⁹⁵

In 2013, the British Columbia Court of Appeal allowed an appeal⁵⁹⁶ after a trial judge considered an accused's decision to affirm rather than swear an oath in assessing his credibility. Other Canadian trial courts have permitted adverse inferences to be drawn against Muslim witnesses who swear an oath on the Bible.⁵⁹⁷ The choice to swear an oath or not is personal, and there are legitimate reasons why some people of faith may instead wish to take an affirmation.

⁵⁸⁷ [1988] 1 Qd R 672.

⁵⁸⁸ *R v O'Sullivan; ex parte Attorney-General* [1988] 1 Qd R 672, 676 (McPherson J).

⁵⁸⁹ Colton Fehr, 'Re-thinking the Process for Administering Oaths and Affirmations' (2020) 43(2) *Dalhousie Law Journal* 637, 642.

⁵⁹⁰ Janell Fetterolf and Sarah Austin, 'Many people in U.S., other advanced economies say it's not necessary to believe in God to be moral', *Pew Research Centre* (Short read, 20 April 2023) <<https://www.pewresearch.org/short-reads/2023/04/20/many-people-in-u-s-other-advanced-economies-say-its-not-necessary-to-believe-in-god-to-be-moral/>>.

⁵⁹¹ *Ibid.*

⁵⁹² Will M Gervais et al, "Global Evidence of Extreme Intuitive Moral Prejudice Against Atheists" (2017) 1 *Nature Human Behaviour* 1, 3.

⁵⁹³ *Ibid.*

⁵⁹⁴ See Brian Bornstein & Monica Miller, *God in the Courtroom: Religion's Role at Trial* (New York: Oxford University Press, 2009), 67-81.

⁵⁹⁵ For instance, Australian jurors are prohibited from disclosing their deliberations: *Jury Act 1995* (Qld) s 70.

⁵⁹⁶ *R v J(TR)* [2013] BCCA 449, [6].

⁵⁹⁷ *R v K(AH)* [2011] ONSC 5510, [27]-[28]; *R v Bell* [2011] ONSC 1218, [57]. See also *R v Daud*, where a Sunni Muslim chose to take an affirmation rather than swear an oath on the Qur'an: [2007] BCPC 68, [12].

9.4.3. Practical considerations

Consistent with *O'Sullivan*, some practical matters arising for oaths and affirmations are:

- Legal representatives should inform the court beforehand of any witness who requires special accommodations, such as a non-Christian religious text.
- Witnesses and jurors should understand the option of an oath or affirmation.
- A person who takes an oath should not be compelled to use the Bible for practical reasons or efficiency. Ideally, the person should be asked if they have a preferred religious text.
- The appropriate holy book should be available if required. However, a religious text is not essential for a valid oath.⁵⁹⁸
- When a specific religious text is unavailable, the witness may have the option to swear without the relevant holy book, or to give an affirmation instead, even if they are prepared to swear on the Bible.

9.4.4. Cultural Considerations

Religious traditions vary in the importance placed on sacred texts. Some faiths rely on oral traditions or non-scriptural foundations. Others incorporate multiple sacred writings or prioritise a single primary text. All sacred books should be handled carefully and respectfully.

Some faith traditions require adherents to maintain ritual cleanliness via ceremonial washing before touching holy scriptures or texts. A person might express this by mentioning their "need to cleanse themselves" or asking to "wash their hands, face, or feet."

Certain religious customs stipulate that menstruating or postpartum women cannot achieve ritual purity. Here, the witness may choose to give an affirmation instead of handling their sacred text. Some people of faith may only handle a religious book with their right hand. Others may remove their shoes or cover their heads when swearing an oath.

Accommodating these preferences where possible is beneficial to public faith in the justice system and the integrity of the testimonial process.

[Appendix E](#) sets out some relevant practices of different faith traditions.

9.5. Religious Dress and Symbols

Religious dress encompasses clothes, head coverings, religious symbols (crosses, Stars of David, crescents, religious bracelets like the Sikh kara), prayer beads, and other ceremonial items with spiritual significance.

⁵⁹⁸ See *McShane v Higgins* [1997] QCA 59.

Although religious clothing and symbols are common, they may not unambiguously demarcate the wearer's collective or spiritual identity, particularly in secular contexts.⁵⁹⁹ Perceptions of "religious dress" may be more closely associated with a person's culture than religion.⁶⁰⁰

People who wear non-Christian religious dress face higher rates of religious or ethno-religious discrimination in Australia.⁶⁰¹ This discrimination may be compounded by other factors such as race, language and migration status.

Some forms of religious dress and symbols raise complex issues where religious freedom intersects with legitimate concerns about identification, security, and institutional neutrality.⁶⁰²

Generally, people should be permitted to wear religious dress and head coverings in court proceedings. Any apprehended issues about religious dress should ideally be addressed at the pre-trial stage.

Permitting religious dress in the courtroom is ultimately a matter for the judge in the exercise of their discretion. Often, accommodations will be fact and jurisdiction dependent, as will the interests of justice in particular cases. The right to manifestation of religion or belief is not absolute, but as the United Kingdom Upper Tribunal has stated:

In an increasingly multi-ethnic and culturally diverse society, we would emphasise that issues concerning attire and symbols motivated by religious belief and conviction must be handled by all judicial bodies with great tact and sensitivity. This will serve the twin goals of promoting fairness and avoiding insult or offence. The exercise to be carried out will not infrequently involve the striking of delicate balances. [Courts and] Tribunals

⁵⁹⁹ See generally J Beckford, 'The politics of redefining religion in secular society', in J Platvoet and A Molendijk (eds), *The Pragmatics of Definition Religion: Contexts, Concepts and Contexts* (Brill, 1999) 23.

⁶⁰⁰ Linda Arthur Bradley and Torsten Homberger, 'Recent Work on the History and Culture of Religion and Dress' (2016) 50(2) *Canadian Journal of History* 317; Susanna Mancini, 'The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence' (2009) 30(6) *Cardozo Law Review* 2629, 2631.

⁶⁰¹ See generally Maria Bhatti, Maryam Hashimi and Sandy Noakes, 'Anti-discrimination laws in Australia—are Muslim women protected?' (2023) 29(1) *Australian Journal of Human Rights* 1. The Australian Human Rights Commission has found that Australia's Muslim communities 'experience widespread discrimination' with one in four (23%) survey respondents saying they felt unable to speak up or act when they experienced discrimination: Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, 2021) 9. Fox has also concluded that Australia is experiencing rising 'socially-based' discrimination against religious minorities, especially against Jews and Muslims, and notes that 'secularist policies are also increasingly being adopted by Western governments which place religious believers under mounting restrictions and regulations, such as controls on religious dress or restrictions on religious speech': Jonathon Fox, *Thou Shalt Have No Other Gods Before Me: Why Governments Discriminate against Religious Minorities* (Cambridge University Press, 2020), quoted in Nicholas Aroney, 'New Research Shows Religious Discrimination Is on the Rise around the World, Including in Australia' (2020) *The Conversation*, 24 July 2020, retrieved from <<https://theconversation.com/new-research-shows-religious-discrimination-is-on-the-rise-around-the-world-including-in-australia-141789>>.

⁶⁰² See generally, Eva Brems et al, 'Head-Covering Bans in Belgian Courtrooms and Beyond' (2017) 39(4) *Human Rights Quarterly* 882.

should be considerate and respectful in their approach. They should also be resourceful and imaginative in their quest to explore and discover solutions.⁶⁰³

Full face coverings for witnesses or defendants may create equal treatment challenges.

In some cases, the issue may be resolved by having a court officer (of the same sex as the person wearing the face covering) privately verify the person's identity.

Where a judge decides that removal of face coverings is necessary, alternative arrangements may be considered. These include screens, limiting the number of observers, or prohibiting visual images/drawings of the unveiled witness. In some cases, such as women who wear a burka or niqab, it may be necessary to consider if being unveiled would diminish the person's capacity to give evidence.⁶⁰⁴

In *R v D(R)*,⁶⁰⁵ (in the context of art 9 of the *European Convention on Human Rights*) the Crown Court had to balance a Muslim defendant's right to wear a niqab with the fundamental fairness requirements of an adversarial criminal trial. The presiding Judge, Murphy J, summarised the tension:

A criminal trial in the Crown Court is, by definition, a serious matter. It has the potential to change lives – not only that of the defendant, but also that of victims, witnesses and even jurors. The rights of all participants in the trial must be considered. I accept that a rule prohibiting the wearing of the niqab in court at any stage would cause a defendant some degree of discomfort. That is a matter which cannot be overlooked. The court may, however, be able to mitigate that sense of discomfort in some ways, for example by forbidding the making or dissemination of images of the defendant in court, a minor but justified restriction on the freedom of the press, and by using its inherent powers to permit some limited special measures.

On the other hand, there is the question of the comfort – and beyond comfort, the rights and freedoms – of others whose participation in the trial is essential. In my view, it is unfair to ask a witness to give evidence against a defendant whom he cannot see. It is unfair to ask a juror to pass judgment on a person whom she cannot see. It is unfair to expect that juror to try to evaluate the evidence given by a person whom she cannot see, deprived of an essential tool for doing so: namely, being able to observe the demeanour of the witness; her reaction to being questioned; her reaction to other evidence as it is given. These are not trivial or superficial invasions of the procedure of the adversarial trial. At best, they require a compromise of the quality of criminal justice delivered by the trial process. At worst, they go to its very essence, and they may render it altogether impotent to deliver a fair and just outcome... I would add that, although of lesser significance in the case of a judge, it is also unfair to require a judge to sentence a person he cannot see.⁶⁰⁶

⁶⁰³ *AAN (Veil)* [2014] UKUK 00102.

⁶⁰⁴ The potential fallibility of appearance-based credibility assessments is discussed in more detail in 2.7.2.

⁶⁰⁵ (Crown Court at Blackfriars, 16 September 2013, Judge Peter Murphy).

⁶⁰⁶ *R v D(R)* (Crown Court at Blackfriars, 16 September 2013, Judge Peter Murphy) [58]-[59].

Murphy J noted that although a defendant is compelled to appear, they are nonetheless free to choose how their trial is conducted, including to give evidence.⁶⁰⁷ Ultimately, the Crown Court permitted the defendant to wear the niqab during her trial, but not whilst giving evidence.⁶⁰⁸

Murphy J made some general observations:

- A defendant should generally be free to wear a face covering during court proceedings. The judge may advise the defendant in the absence of the jury of the possible consequences of doing so.⁶⁰⁹
- Where a defendant chooses to remain covered, the judge may nonetheless invite the defendant to remove their face covering, give them time to reflect and take advice if they wish to do so.⁶¹⁰
- If there is an issue of visual identification to be decided by the jury, it may be necessary to order that the face covering be removed, at least while evidence relevant to that issue is given.⁶¹¹

In *NS v The Queen*,⁶¹² a decision of the Supreme Court of Canada, a Muslim sexual assault complainant wished to testify while wearing her niqab. The trial judge's decision to unveil her was upheld on appeal. MacLachlan CJ observed: 'Where the liberty of the accused is at stake, the witness's evidence is central to the case and her credibility vital, the possibility of a wrongful conviction must weigh heavily in the balance, favouring the removal of the niqab.'⁶¹³ Similar determinations have been reached by trial courts in New Zealand,⁶¹⁴ New South Wales,⁶¹⁵ and Western Australia.⁶¹⁶

Some general considerations may be derived from the relevant cases:

- The need for face visibility may be reduced where the evidence is uncontested or formal, and/or credibility assessment is not crucial.
- Whether screens, female-only environments or other accommodations could resolve the issue.
- The centrality of the witness's evidence and whether cross-examination is anticipated.
- The broader impact of a direction to remove a face covering on a witness's participation in the justice system.

⁶⁰⁷ Ibid [65]

⁶⁰⁸ Ibid [69], [83]. The defendant in that case chose not to remove the niqab and did not give evidence.

⁶⁰⁹ Ibid [82].

⁶¹⁰ Ibid.

⁶¹¹ Ibid.

⁶¹² [2012] 3 SCR 726.

⁶¹³ Ibid 751 [44].

⁶¹⁴ *Police v Razamjoo* [2005] DCR 408.

⁶¹⁵ *Elzahed v NSW* [2018] NSWCA 103.

⁶¹⁶ *R v Anwar Sayed* (19 August 2010), Perth 164/2010 (WADC).

9.6. Prayer and Religious Observance

Some religious obligations may conflict with courtroom scheduling and participation. Some faiths have specific daily prayer requirements. In appropriate cases, judges may consider brief adjournments to accommodate prayer times, particularly for lengthy proceedings.

Some individuals, including interpreters, may have difficulties attending court during a period of religious observance. Judges may wish to consider, on a case-by-case basis, whether alternative scheduling is feasible if the issue is raised.

Various faith traditions observe varying dietary requirements and fasting periods, such as Muslim halal restrictions and Ramadan fasting, Jewish kosher principles and Shabbat and Yom Kippur observance, Catholic Lenten fasting, or certain Sikh food prohibitions. These restrictions may impact upon a person's ability to fully participate in court proceedings at certain times of the day (for example, in the afternoon where they have been fasting since sunrise).

Some religious communities observe modesty principles. This may influence preferences for seating arrangements in the public area or on jury panels.

While courts cannot always accommodate every religious preference, sensitive awareness allows judges to consider reasonable adjustments in individual cases.

More information about prayer, religious holy days and festivals, and dietary requirements as they relate to specific faith traditions is set out in [Appendix E](#).

9.7. Communication

Religiosity may influence how some people communicate, interpret questions, and interact with legal processes. Understanding these dynamics may enhance courtroom participation.

Some religious concepts do not translate directly into secular legal frameworks and may necessitate careful consideration when they arise in proceedings. Concepts of religious law (for instance, Islamic Sharia, Jewish Halacha, or Christian Canon law) may influence how adherents understand their obligations, rights, or the nature of certain relationships. Judges are well-positioned to recognise and if necessary, intervene, when religious concepts are material to legal proceedings.⁶¹⁷

Religious background may also influence communication styles, such as attitudes toward authority figures. Many religious traditions emphasise respect for religious leaders, elders, and established hierarchies. These conventions may not neatly translate to an adversarial context. For instance, faith-based deference to authority

⁶¹⁷ See, for example, *Commissioner of Police v Deya* [2025] QMC 9, where the learned Magistrate was required to consider whether a Muslim defendant had a 'reasonable excuse' for refusing to provide police with his telephone pin code because, inter alia, there were photos of his sister and mother on the phone without their hijabs.

may manifest as reluctance to question decisions, difficulty advocating for oneself, or hesitation to correct misunderstandings.⁶¹⁸

9.7.1. Cross-Examination on Religious Matters

In *SE & ME v State of Queensland*⁶¹⁹ two applicants, who were Christian, sought to update their Queensland driver licences. They declined to be photographed for this purpose on the basis of their sincere religious belief that the Second Commandment prohibited them from being photographed.⁶²⁰ The applicants claimed that they were discriminated against by Queensland Transport's refusal to issue updated licences without photographs. The matter was dismissed at first instance.⁶²¹

On appeal, the applicants contended, among other things, that their cross-examination at trial was 'irrelevant, lengthy and intrusive' and involved counsel 'mocking of their beliefs'.⁶²² It was held that the cross-examination covered legitimate issues such as how long the applicants had held their beliefs, and that counsel was respectful and courteous with 'no evidence of him mocking the applicants' religious beliefs'.⁶²³

Judges are empowered under s 21 of the *Evidence Act 1977* (Qld) to disallow improper questions, including those based on religious stereotypes. More information on improper questions is in 3.2.5.

9.7.2. Directions

In some cases, the combination of religious, cultural and language factors may compound barriers to effective communication. Judges may on occasion need to consider directing juries about stereotypes or false assumptions based on adherence to a particular faith.

9.8. Suggested Further Reading

Australia New Zealand Policing Advisory Agency, [*Religious and Spiritual Diversity Guide for Operational Police*](#) (4th ed, 2022).

Colton Fehr, '[Re-thinking the Process for Administering Oaths and Affirmations](#)' (2020) 43(2) *Dalhousie Law Journal* 637.

Council of Chief Justices, [*Guide to Judicial Conduct*](#) (3rd ed, 2023), Chapter 4: Impartiality and Conflicts of Interest.

⁶¹⁸ Issues of cross-cultural communication are discussed in more detail in [Chapter 2 \(Effective Communication in the Courtroom\)](#).

⁶¹⁹ [2014] QCATA 022.

⁶²⁰ Ibid [1].

⁶²¹ Ibid [2].

⁶²² Ibid [5], [8].

⁶²³ [2014] QCATA 022, [23], [25].

Eugene R Milhizer, '[So Help Me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America](#)' (2009) 70(1) *Ohio State Law Journal* 1.

Queensland Government, [Multicultural Queensland Charter](#) (2022).

Carolyn Evans, [Legal Protection of Religious Freedom in Australia](#) (Federation Press, 2012).

Neil Foster, '[Religious Freedom in Australia](#)' (Paper, 2015 Asia Pacific JRCLS Conference Sydney, Australia).

Australian Law Reform Commission, [Traditional Rights and Freedoms - Encroachments by Commonwealth Laws](#) (ALRC Report 129, 2015), Chapter 7: Religious Freedom.

CHAPTER 10. GENDER IDENTITY AND SEXUAL ORIENTATION

*'Every person has the right to recognition as a person before the law.'*⁶²⁴

10.1. Introduction

This chapter discusses equal treatment of people who identify as lesbian, gay, bisexual, transgender, intersex, queer, asexual, and other sexual orientations or gender identities ('LGBTIQA+').

Although legal protections for LGBTIQA+ people have evolved significantly in recent decades, the legacy of historical discrimination continues to impact how some LGBTIQA+ people experience legal and court processes.⁶²⁵

Approximately 4.5% of Australians aged 16 and over identify as LGBTIQA+.⁶²⁶ Among people aged 16-24 years, the proportion is 10%.⁶²⁷ LGBTIQA+ communities are diverse, and the equal treatment implications of sexuality and gender identity may intersect with other factors such as age, ethnicity, socio-economic status, family status, religion, cultural background and disability.

10.2. Understanding Distinct Groups and Communities

The acronym "LGBTIQA+" encompasses discrete but sometimes overlapping categories of sexual orientation, gender identity and biological sex characteristics.

The Australian Bureau of Statistics' *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables, 2020*⁶²⁸ and the Australian

⁶²⁴ *Human Rights Act* (Qld) s15(1).

⁶²⁵ Toby Lea, John de Wit and Robert Reynolds, 'Minority Stress in Lesbian, Gay, and Bisexual Young Adults in Australia: Associations with Psychological Distress, Suicidality, and Substance Use' (2014) 43 *Archives of Sexual Behavior* 1571, 1572. See also Bethany Moorhead, Hannah Kate Lewis and Liam Arnall, 'LGBT Sexuality and Gender Minority Experiences of Minority Stress: A Comparison of Models and Theories' (2024) 58 *Quality and Quantity* 3973; Noah Riseman, *Transgender Australia: A History Since 1910* (Melbourne University Press, 2023); Kelly Richards and Angela Dwyer, 'Unspeakably present: the (un)acknowledgement of diverse sexuality and gender human rights in Australian youth justice systems' (2014) 20(2) *Australian Journal of Human Rights* 63; Destiny Rogers, 'A history of Queensland Police and LGBTIQA+ Queenslanders', *QNews* (online, 15 January 2023, *Q News*) <<https://qnews.com.au/a-history-of-queensland-police-and-lgbtiqua-queenslanders/>>; Rachel Walters et al, 'LGBT people in prison in Australia and human rights: A critical reflection' (2024) 49(1) *Alternative Law Journal* 40.

⁶²⁶ Australian Bureau of Statistics, *Estimates and characteristics of LGBTI+ populations in Australia, 2022* (19 December 2024) <<https://www.abs.gov.au/statistics/people/people-and-communities/estimates-and-characteristics-lgbti-populations-australia/latest-release>>.

⁶²⁷ *Ibid.*

⁶²⁸ Australian Bureau of Statistics, *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (Standard, 14 January 2021) <<https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>>.

Government's *Guidelines on the Recognition of Sex and Gender*⁶²⁹ provide guidance around these concepts.

Sexual orientation refers to a person's pattern of emotional, romantic, and/or sexual attraction to others.

There is no categorical scientific definition of an individual's sex.⁶³⁰ A person's sex is defined by reference to characteristics such as chromosomes, hormones and gametes.⁶³¹ A person's sex at birth may be male, female, or ambiguous.⁶³² Intersex variations are observed in approximately 1.7% of births, and some people may be unaware of their intersex status until later in life.⁶³³

Gender refers to social and cultural identity, expression and experience. It encompasses a person's subjective gender identity, how they express it and whether it aligns with their sex recorded at birth.⁶³⁴ A person's sex and gender may not be the same.⁶³⁵ Gender fluidity relates to a person's gender changing over their lifetime.⁶³⁶

The conceptual separation of sex and gender as distinct categories remains unsettled, with different perspectives on how these concepts should be understood and applied.⁶³⁷

The Supreme Court of the United Kingdom has recently observed that, '[i]t is not the role of the court to adjudicate on arguments in the public domain on the meaning of

⁶²⁹ Australian Government, *Guidelines on the Recognition of Sex and Gender* (Guideline, July 2013, updated November 2015) <<https://www.ag.gov.au/sites/default/files/2020-03/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.pdf>>.

⁶³⁰ Anne Fausto-Sterling, 'Gender/Sex, Sexual Orientation, and Identity are in the Body: How Did They Get There?' (2019) 56(4-5) *The Journal of Sex Research* 529. See also, C Ainsworth, 'Sex redefined' (2015) 518 *Nature* 288; MR Kaufman, EL Eschliman and TS Karver, 'Differentiating sex and gender in health research to achieve gender equity' (2023) 101(10) *Bulletin of the World Health Organisation* 666; Augustin Fuentes, *Sex is a Spectrum* (Princeton University Press, 2025); Carolyn M Mazure, 'What Do We Mean By Sex and Gender?', *Yale School of Medicine* (Article, 19 September 2021) <<https://medicine.yale.edu/news-article/what-do-we-mean-by-sex-and-gender/>>; 'What is gender? What is sex?', *Canadian Institutes of Health Research* (Article, 8 May 2023) <<https://cihr-irsc.gc.ca/e/48642.html>>; Australian Bureau of Statistics, *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (n 528).

⁶³¹ Australian Bureau of Statistics, *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (n 528).

⁶³² *Corbett v Corbett* [1970] 2 All ER 33, 83 [100]; *Bellinger v Bellinger* [2003] 2 AC 467, 472; *AB v Western Australia* (2011) 244 CLR 390, 402; *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11, 1.

⁶³³ M Blackless et al, 'How sexually dimorphic are we? Review and synthesis' (2000) 12(2) *American Journal of Human Biology* 151; Victorian Department of Health, 'Health of people with intersex variations' (Web Page, 2023) <<https://www.health.vic.gov.au/populations/health-of-people-with-intersex-variations>>; Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (Basic Books, 2000). Cf L Sax, 'How common is intersex? A response to Anne Fausto-Sterling' (2002) 39(3) *Journal of Sex Research* 174.

⁶³⁴ Australian Bureau of Statistics, *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (n 528).

⁶³⁵ Australian Government, *Guidelines on the Recognition of Sex and Gender* (n 629).

⁶³⁶ *Ibid.*

⁶³⁷ Fausto-Sterling (n 630).

gender or sex, nor is it to define the meaning of the word “woman” unless required as a matter of statutory interpretation.⁶³⁸

“Sex” and “gender” are also often used interchangeably in legal and social language. The *Births, Deaths and Marriages Act 2023*, for instance, defines “sex descriptor” to include male and female, and also “agender”, “genderqueer” and “non-binary”.⁶³⁹

10.3. Equal Treatment Barriers for LGBTIQA+ People

LGBTIQA+ individuals continue to experience stigma, harassment and discrimination within society.⁶⁴⁰ These broader issues are echoed in some specific participation barriers identified by LGBTIQA+ people in legal proceedings, including fear of social rejection, prejudice or public disclosure of their sexual orientation.⁶⁴¹ An early (2006) English study of LGB+ court participants found that:

nearly two thirds of all respondents had heard negative comments, ridicule and snickering or jokes directed at gay men and lesbians in the court service (though not in open court). In open court over one in four respondents heard negative comments and over one in five reported ridicule, snickering and jokes about gay men and lesbians. In their combination, existing scholarship on bias in the law and the court service research, limited and problematic though it may be offers some support for the hypothesis that sexual orientation bias in the courts in general, and the judiciary in particular, may fail to serve the needs of a sexually diverse community and thereby fail to establish and maintain legitimacy in the service of a sexually diverse democracy.⁶⁴²

Relative to cisgender and heterosexual populations, LGBTIQA+ people experience disproportionately higher levels of psychological distress.⁶⁴³ Others may have institutional mistrust: in an American study of 489 LGBTQ adults, 26% perceived being unfairly treated by the courts because of their LGBTIQA+ identity.⁶⁴⁴

⁶³⁸ *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16, [2].

⁶³⁹ *Births, Deaths and Marriages Registration Act 2023* (Qld) sch 2 (definition of ‘sex descriptor’).

⁶⁴⁰ TB Godø et al, ‘Personality Traits, Ideology, and Attitudes Toward LGBT People: A Scoping Review’ (2024) 72(4) *Journal of Homosexuality* 733.

⁶⁴¹ See generally, Paul Williams, ‘Witnesses on the periphery: Young lesbian, gay, bisexual and queer employees witnessing homophobic exchanges in Australian workplaces’ (2012) 65(8) *Human Relations* 1107; Walters et al (n 625); Jenni Millbank, ‘Burdened by Proof: How the Australian Refugee Review Tribunal has Failed Lesbian and Gay Asylum Seekers’ (2003) 31(2) *Federal Law Review* 299; Anonymous, ‘Australia’s Criminal Justice System Fails Lesbian and Gay Men’ (1996) 3(2) *Murdoch University Electronic Journal of Law* 13.

⁶⁴² Leslie Moran, ‘Judicial diversity and the challenge of sexuality: some preliminary findings’ (2006) 28(4) *Sydney Law Review* 565, 568.

⁶⁴³ IH Meyer, ‘Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence’ (2003) 129(5) *Psychological Bulletin* 674; D Nowaskie, Y Choi, and S Kerswill, ‘LGBTQ + health factors and outcomes differences across gender identity: Comparisons between cisgender minorities, transgender minorities, and nonbinary/genderqueer minorities’ (2023) 28(3) *Journal of Gay and Lesbian Mental Health* 1.

⁶⁴⁴ LS Casey et al, ‘Discrimination in the United States: Experiences of lesbian, gay, bisexual, transgender, and queer Americans’ (2019) 54 *Health Services Research* 1454.

Transgender and gender diverse ('TGD') people may experience instances of misrecognition, including deadnaming and misgendering.⁶⁴⁵ One study of TGD people's interactions within the Victorian criminal justice system, found that:

TGD participants were often unsure whether they had been treated worse by a judge or magistrate based on their gender identity. For instance, they reported that judges were inconsistent in using their correct pronouns. However, three out of five participants reported feeling that they were treated disrespectfully in court to some degree. All participants were uncomfortable presenting their gender identity authentically in court, and most felt 'extremely uncomfortable' disclosing their gender identity.⁶⁴⁶

TGD legal practitioners may also experience adverse treatment. One participant in the study stated that they were called a "man" by a judge whilst attired in a skirt suit and were also 'told by a Magistrate that it takes more than surgery to make a woman.'⁶⁴⁷

There is very limited Australian research about intersex people's experiences in the legal system.⁶⁴⁸ However, intersex people may face unique challenges, including medical privacy concerns,⁶⁴⁹ ongoing health impacts from historical medical interventions,⁶⁵⁰ and documentation issues where legal sex markers misalign with lived identity.⁶⁵¹

10.4. Domestic Violence

A large Australian survey conducted in 2019 found high rates of domestic and family violence within LGBTIQ+ communities:

- 41.7% of respondents reported 'ever being in an intimate relationship where they felt they were abused in some way by their partner/s'.
- 25% of all respondents reported having experienced physical violence from an intimate partner.
- 21% reported experiencing a sexual assault from an intimate partner.

⁶⁴⁵ Matthew Mitchell et al, 'Criminalising Gender Diversity: Trans and Gender Diverse People's Experiences with the Victorian Criminal Legal System' (2022) 11(4) *International Journal for Crime, Justice and Social Democracy* 99.

⁶⁴⁶ Ibid 103.

⁶⁴⁷ Ibid 106-7.

⁶⁴⁸ M Carpenter, 'Intersex variations, human rights, and the International Classification of Diseases' (2020) 28(1) *Sexual and Reproductive Health Matters* 1.

⁶⁴⁹ T Jones et al, *Intersex: Stories and Statistics from Australia* (Cambridge, 2016).

⁶⁵⁰ Natalie Amos et al, 'Health intervention experiences and associated mental health outcomes in a sample of LGBTQ people with intersex variations in Australia' (2022) 25 *Culture, Health and Sexuality* 833.

⁶⁵¹ Australian Human Rights Commission, *Sex Files: The legal recognition of sex in documents and government records* (Report, 2009); M Carpenter, 'The "normalisation" of intersex bodies and "othering" of intersex identities' in Jens Sherpe, Anatol Dutta and Tobias Helms (eds), *The Legal Status of Intersex Persons* (Cambridge, 2018) 445; A Sharpe, 'Sexual intimacy, gender identity and intersex status' (2020) 28(2) *Feminist Legal Studies* 163.

- 38.5% of respondents reported ever feeling abused by a family member.⁶⁵²

LGBTIQ+ people may experience additional forms of abuse that specifically target their identity, such as threats of unwanted disclosure, coercion around gender expression, family rejection, forced conversion practices, and sexual violence used to punish perceived non-conformity.⁶⁵³

Evidence suggests that LGBTIQ+ people are less likely to seek help for domestic and family violence.⁶⁵⁴ Barriers to seeking help include perception of stigma, privacy fears, lack of specialist LGBTIQ+ services, and gendered service models.⁶⁵⁵

Domestic violence frameworks were traditionally developed around a model of male perpetrators and female victims. Despite better awareness of violence within LGBTIQ+ relationships over recent years, many established systems and services remain grounded in a gendered model.⁶⁵⁶ Workers in domestic, family, and sexual violence services have reported a lack of training and capability in supporting LGBTIQ+ clients.⁶⁵⁷

10.5. Language and Terminology

There are diverse views within LGBTIQ+ communities about appropriate language and terminology. This is partly a legacy of historical language which contributed to the marginalisation of LGBTIQ+ people. Examples include legal language used in prosecuting 'homosexual offences',⁶⁵⁸ and the medical pathologisation of same sex

⁶⁵² Adam O Hill et al, 'Private Lives 3: The Health and Wellbeing of LGBTIQ People in Australia', *Australian Research Centre in Sex, Health and Society* (Monograph Series No 122, 2020).

⁶⁵³ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022–2032* (Report, October 2022) 46.

⁶⁵⁴ Ruth McNair et al, 'Experiences of Reporting Family Violence Among LGBTQ+ Adults in Australia: Findings from the Private Lives 3 National Survey' (2023) 39 *Journal of Family Violence* 1873.

⁶⁵⁵ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into Family, Domestic and Sexual Violence* (Report, March 2021) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report>.

⁶⁵⁶ M Ball and S Hayes, 'Same-sex intimate partner violence: Exploring the parameters', in B Scherer (ed), *Queering Paradigms* (Peter Lang, 2009) 161; Australian Institute of Family Studies, *LGBTIQ+ glossary of common terms* (Resource Sheet, February 2022) <https://aifs.gov.au/sites/default/files/publication-documents/22-02_rs_lgbtqi_glossary_of_common_terms_0.pdf>.

⁶⁵⁷ Peta Cullen et al, *Voices from the Frontline: Qualitative Perspectives of the Workforce on Transforming Responses to Domestic, Family and Sexual Violence* (Research Report, 21/2022, ANROWS).

⁶⁵⁸ See, eg, *Buggery Act 1533* (UK) which became Queensland law by way of s 24 of the *Australian Courts Act 1828* (UK).

attraction,⁶⁵⁹ both of which continued well into the 20th century.⁶⁶⁰ Many previously common terms are now considered anachronistic and offensive.

Legal, institutional and social prejudices also inhibited many people from sharing or acknowledging their identity. Among other things, this led to labelling without reference to an individual's own conception of their identity.⁶⁶¹ The importance of language in LGBTIQ+ history, identity and culture is demonstrated by the development of historical and contemporary subcultural argots.⁶⁶²

Certain historically pejorative words, such as “queer” have now been embraced by some LGBTQIA+ community members.⁶⁶³ For others, it may be difficult to identify with reclaimed terms because of the historical negative connotations.

10.5.1. Terminology

As Spiegelman J recognised, ‘[o]urs is a profession of words. We must continue to express ourselves in a way that demonstrates respect for others.’⁶⁶⁴

Respectful, appropriate language choices foster a courtroom environment where all participants can participate effectively.

During evidence, judges are obliged to restrict “improper” questions, including those that have ‘no basis other than a stereotype’.⁶⁶⁵ This restriction explicitly encompasses stereotypes about sex, sex characteristics and sexuality. More information about improper questions is in 3.2.5.

As noted above, there is significant diversity about language within LGBTIQ+ communities. Different people may prefer different terms. Some recommendations and notes about terminology are as follows:

- “A gay man” is accepted terminology. While some gay men may self-identify as homosexual, for others that term is old-fashioned and may have negative connotations.

⁶⁵⁹ I Crozier, ‘The Medical Construction of Homosexuality and its Relation to the Law in Nineteenth Century England’ (2001) 45 *Medical History* 61.

⁶⁶⁰ De-criminalisation of consensual homosexual relations occurred in Queensland in 1990 via s 5 of the *Criminal Code and Another Act Amendment Act 1990* (Qld). Homosexuality was removed from the American Psychiatric Association’s Diagnostic and Statistical Manual (DSM) in 1973.

⁶⁶¹ Riseman (n 625); Richards and Dwyer (n 625); Ilan H Myer, ‘Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence’ (2023) 129(5) *Psychological Bulletin* 674; Lea, De Wit and Reynolds (n 625); Moorhead, Lewis and Arnull (n 625); John E Pachankis, ‘The Psychological Implications of Concealing a Stigma: A Cognitive-Affective-Behavioral Model’ (2007) 133(2) *Psychological Bulletin* 328.

⁶⁶² Rictor Norton, *A Critique of Social Constructionism and Postmodern Queer Theory* (online publication, 16 July 2002, updated 2 July 2011), ‘Queer Language’ <<https://library.gayhomeland.org/0002/EN/index.htm>>.

⁶⁶³ M Stein, *Rethinking the Gay and Lesbian Movement* (Routledge, 2012).

⁶⁶⁴ James Spigelman, ‘Opening of NSW Law Term Dinner’ (Speech, Opening of Law Term Dinner Law Society of New South Wales, 29 January 2008).

⁶⁶⁵ *Evidence Act 1977* (Qld) s 20A.

- “A lesbian or gay woman” is accepted terminology. Some lesbians self-identify as “gay” whereas others may adopt language that connotes a distinct identity from gay men. Some lesbians may refer to themselves as homosexual or “a homosexual woman”.
- Category nouns like “gays/a gay” and “homosexuals/a homosexual” generally should not be used in formal language, even where they are used by the person themselves.
- “A bisexual person” is accepted terminology.
- The acronym LGBTIQ+ and variants thereof are widely accepted.
- People who identify with a gender/sex which is different from their biological sex are most widely referred to as “trans” or “transgender”. The term “transsexual” is outdated.
- A person who is intersex may refer to themselves as such or according to their legal sex/gender.

The Australian Government Australian Institute of Family Studies has published a comprehensive (although not definitive) glossary of LGBTIQ+ common terms.⁶⁶⁶ This is included as [Appendix F](#).

10.5.2. Pronouns, Titles and Names

Recognising preferred forms of address is a matter of respect.⁶⁶⁷ The Supreme Court has issued a [practice direction](#) for respectful clarification of a person’s pronouns and other forms of address. The District Court, Land Court and Magistrates Courts have issued similar practice directions.

A person’s pronouns and title may not align with how they present or appear to others. It is better not to presume a person’s pronouns or title from external indicators such as name, voice, or appearance.

Some non-binary people may use non-standard pronouns, such as they/them/theirs.

Neo-pronouns are newly created or less common pronouns used by some individuals as alternatives to traditional pronouns.⁶⁶⁸ They include ze/zim/zir, xe/xir/xem and ae/aer/aer. Neo-pronouns follow the same grammatical pattern as traditional pronouns (ze gave zir book to zim/he gave his book to him).

⁶⁶⁶ Australian Institute of Family Studies, *LGBTIQ+ glossary of common terms* (n 656).

⁶⁶⁷ Supreme Court of Queensland, *Practice Direction Number 10 of 2023: Pronunciation of Names and Preferred Forms of Address*, 3 April 2023. District Court of Queensland, *Practice Direction 2 of 2023: Pronunciation of Names and Preferred Forms of Address*, 5 April 2023; Magistrates Courts of Queensland, *Practice Direction Number 2 of 2023: Pronunciation of Names and Preferred Forms of Address*, 6 July 2023.

⁶⁶⁸ Kirby Conrod, ‘Pronouns Raising and Emerging’ (2019) 6(1) *Glossa: A Journal of General Linguistics* 1; Lal Zimman, ‘Transgender Language Reform: Some Challenges and Strategies for Promoting Trans-Affirming, Gender-Inclusive Language’ (2017) 4(1) *Journal of Language Discrimination* 84.

“Mx” (pronounced “mix” or “mæx”) is a common non-binary alternative to the gendered “Mr”, “Ms”, “Mrs”, or “Miss”.

Generally, a person’s preferred name and pronouns should be used to refer to or about them.⁶⁶⁹ Judges have a discretion, however, where non-standard terminology may be inappropriate or give rise of a perception of bias. The singular they/them/theirs may be an appropriate default in such cases, or where the person’s preference is unknown.

Misgendering (using pronouns, titles, or gender references that do not align to the person’s gender identity) or deadnaming⁶⁷⁰ (referring to a former name, particularly one that does not reflect the person’s gender identity) may be distressing for some individuals. Judges may wish to ensure that counsel and other court participants properly use a person’s pronouns, titles and name during proceedings. Judges may also consider acknowledging the circumstances if use of a person’s deadname is unavoidable.

In writing, quotation marks around a person’s non-binary title or pronouns are best avoided.

10.6. Suggested Further Reading

Australian Government, [*Guidelines on the Recognition of Sex and Gender*](#) (Guideline, July 2013, updated November 2015).

Sackar, J, [*Special Commission of Inquiry into LGBTIQ Hate Crimes*](#) (Report, 18 December 2023).

Campo, M and Sarah Tayton, [*Intimate Partner Violence in Lesbian, Gay, Bisexual, Trans, Intersex and Queer Communities*](#) (Practice Guide, Australian Institute of Family Studies, December 2015).

‘[*Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables*](#)’, *Australian Bureau of Statistics* (Standard, 14 January 2021).

⁶⁶⁹ Supreme Court of Queensland, *Practice Direction Number 10 of 2023: Pronunciation of Names and Preferred Forms of Address*, 3 April 2023. District Court of Queensland, *Practice Direction 2 of 2023: Pronunciation of Names and Preferred Forms of Address*, 5 April 2023; Magistrates Courts of Queensland, *Practice Direction Number 2 of 2023: Pronunciation of Names and Preferred Forms of Address*, 6 July 2023.

⁶⁷⁰ Australian Institute of Family Studies, *LGBTIQ+ glossary of common terms* (n 656).

APPENDIX A. NAMING CONVENTIONS

This appendix provides general information about naming conventions across different cultures and regions. Its purpose is to be used as a reference guide to assist with culturally sensitive and respectful communication with court participants.

Some general recommendations:

- If unsure, ask: “What is your full name?” and “How would you like me to address you?”
- If uncertain about pronunciation, ask: “Could you please help me pronounce your name correctly?”
- Avoid anglicising or shortening names without permission.
- Don’t use “Christian name” (assumes religious affiliation).
- Be aware that legal documents may show names differently than preferred names.
- Be sensitive when dealing with individuals who may have changed names due to migration, safety concerns, marriage, or gender transition.

Glossary of Terms

Compound name:	Two names used together (may or may not be hyphenated)
Diacritical mark:	Accent or mark that modifies pronunciation (é, ñ, ü)
Family name/Surname:	Name shared by family members
Given name:	Name given at birth or chosen by individual
Honorific:	Title of respect (Mr., Dr., etc.)
Hyphenated name:	Two names joined by hyphen
Matronymic:	Name derived from mother's name
Mononym:	Single name (no surname)
Patronymic:	Name derived from father's name
Teknonym:	Name derived from child's name
Transliteration:	Converting name from one writing system to another

European Naming Conventions

Western European Patterns

Country	Name Structure	Example	Notes
Western European Patterns			
United Kingdom	Given name(s) + family name	John William Smith	May have multiple middle names
Ireland	Given name + family name	Seán O'Brien	Prefixes like O', Mc, Mac are part of surname
France	Prénom(s) + Nom de famille	Marie-Claire Dubois	Hyphenated first names are common
Germany	Vorname(n) + Nachname	Hans-Peter Müller	Multiple first names, compound surnames
Netherlands	Voornaam + Tussenvoegsel + Achternaam	Jan van der Berg	Tussenvoegsels (van, de, etc.) are particles
Spain	Nombre + Apellido paterno + Apellido materno	Maria García López	Two surnames: father's + mother's
Portugal	Nome próprio + Apelido	João da Silva Santos	Similar to Spanish but may include "da/de"
Italy	Nome + Cognome	Giuseppe Rossi	Saints' names very common

Eastern European Patterns

Eastern European Patterns			
Russia	Имя + Отчество + Фамилия	Father's name + suffix	Иван Петрович Сидоров
Poland	Imię + Nazwisko	No patronymic	Andrzej Kowalski
Czech Republic	Jméno + Příjmení	No patronymic	Pavel Novák
Hungary	Családnév + Keresztnév	Surname first	Nagy János

Lithuania	Vardas + Pavardė	Gendered endings	Jonas Petraitis (m) / Jūratė Petraitienė (f)
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Pronunciation Notes for European Names

Language	Common Sound	Examples
French	Silent final consonants, nasal vowels	Pierre [pee-AIR], Jean [zhahn]
German	'ch' as in 'ach', umlauts ä/ö/ü	Bach [bahkh], Müller [MYOOL-er]
Polish	'sz' = 'sh', 'cz' = 'ch'	Kowalski [ko-VAHL-skee]
Russian	Palatalization, stress patterns	Владимир [vlah-DEE-meer]
Italian	Double consonants pronounced	Rossini [ros-SEE-nee]

East Asian Naming Conventions

Element	Position	Characters	Example	Notes
Family name	First	1 character (usually)	王 (Wang)	~100 common surnames
Given name	Last	1-2 characters	小明 (Xiaoming)	Meaningful combinations
Generation name	Middle (traditional)	1 character	志 (Zhi)	Shared within generation

Complete Example: 王志明 (Wang Zhiming)

- 王 = Wang (surname)
- 志 = Zhi (generation name)
- 明 = Ming (personal name)

Japanese Naming System

Element	Kanji	Hiragana	Romaji	Usage
Family name	田中	たなか	Tanaka	First in order
Given name	太郎	たろう	Tarō	Last in order
Full name	田中太郎	たなかたろう	Tanaka Tarō	Family + Given

Honorifics:

- さん (-san): Universal polite suffix
- 君 (-kun): For males, juniors
- ちゃん (-chan): Affectionate, for children/close friends

Korean Naming System

Component	Hangul	Romanization	Position
Family name	김	Kim	First
Given name (2 syllables)	민수	Min-su	Last
Full name	김민수	Kim Min-su	Family + Given

Younger generations and those living internationally may increasingly use Western name order (given name first). In legal contexts it should be confirmed which order the individual uses in official documents.

Vietnamese Naming System

Element	Example	Position	Notes
Family name	Nguyễn	First	~40% of population
Middle name	Văn	Second	Often generational/gender marker

Full Example: Nguyễn Văn Minh

- Address as "Minh" (given name)
- Formal: "Mr./Ms. + Given name"

South Asian Naming Conventions

Indian Subcontinent Patterns

Region/Group	Structure	Example	Key Features
North India (Hindi)	Given + Father's name + Family name	Raj Kumar Sharma	Patronymic system
South India (Tamil)	Given + Father's initial + Family name	Raj K. Sharma	Father's name abbreviated
Bengali	Given + Family name	Rabindranath Tagore	Simple two-part system
Sikh	Given + Singh/Kaur + Family name	Harpreet Singh Patel	Religious middle name
Muslim	Given + bin/ibn/binte + Family name	Ahmed ibn Rashid	Patronymic indicators

Pakistani and Bangladeshi Patterns

Component	Male Example	Female Example	Notes
Given name	Muhammad	Fatima	Religious names common
Father's name	Ahmad	Ahmad	Often included
Family/tribal name	Khan	Khan	May indicate heritage
Complete name	Muhammad Ahmad Khan	Fatima Ahmad Khan	Traditional structure

Sri Lankan Patterns

Community	Structure	Example	Notes
Sinhalese	Given + Father's name	Mahinda Rajapaksa	No family surnames traditionally
Tamil	Given + Father's name + caste name	Priya Devi Sharma	Multiple identifiers
Burgher	Given + Family name	David Fernando	Western-influenced

Middle Eastern and North African Naming Conventions

Arabic Naming System

Component	Arabic	Transliteration	Meaning
Given name	أحمد	Ahmad	Personal name
Patronymic	ابن محمد	ibn Muhammad	"son of Muhammad"
Family/tribal	الخالدي	al-Khalidi	"of the Khalid family"
Complete	أحمد ابن محمد الخالدي	Ahmad ibn Muhammad al-Khalidi	Full traditional name

'Ibn' (son of) may be shortened to 'bin' in modern usage and in Gulf states. Women use 'bint' (daughter of). Some families may use simplified forms with just given name and family name.

Persian/Iranian Patterns

Element	Persian	Pronunciation	Usage
Given name	رضا	Reza	[REH-zah]
Family name	پهلوی	Pahlavi	[pah-lah-VEE]
Title/honorific	آقای	Agha-ye	[ah-GHAH-yeh] (Mr.)

Turkish Naming Conventions

Component	Example	Notes
Given name	Mustafa	Personal name
Family name	Özkan	Surname (adopted 1934)
Complete	Mustafa Özkan	Western order since 1934

Turkish surnames do not carry gender markers. Surnames were adopted in 1934 as part of modernization reforms.

Hebrew/Israeli Patterns

Component	Hebrew	Transliteration	English
Given name	דוד	David	David
Patronymic	בן־אברהם	ben-Avraham	son of Abraham
Family name	כהן	Cohen	Cohen

Sub-Saharan African Naming Conventions

West African Patterns

Country/Group	Structure	Example	Cultural Notes
Nigeria (Yoruba)	Given + Family name	Adebayo Ogundimu	Names have meanings
Nigeria (Igbo)	Given + Father's name	Chinedu Okafor	Patronymic system
Ghana (Akan)	Day name + Given + Family	Kofi Asante Mensah	Day of birth determines first name
Senegal (Wolof)	Given + Family name	Aminata Diallo	Islamic influence common

East African Patterns

Country/Group	Structure	Example	Notes
Ethiopia	Given + Father's + Grandfather's	Haile Selassie Tafari	Three-generation naming
Kenya (Kikuyu)	Given + Father's name	Wangari Maathai	Patronymic tradition
Tanzania (Swahili)	Given + Family name	Julius Nyerere	Simplified structure

Southern African Patterns

Country/Group	Structure	Example	Cultural Elements
South Africa (Zulu)	Given + Clan name	Mandela Nelson	Clan names important
South Africa (Xhosa)	Given + Father's name + Clan	Rolihlahla Nelson Mandela	Multiple identifiers
Botswana (Tswana)	Given + Family name	Seretse Khama	Straightforward structure

Latin American Naming Conventions

Spanish-Speaking Countries

Country	Pattern	Example	Notes
Mexico	Nombre + Apellido paterno + Apellido materno	José García López	Two surnames standard
Argentina	Nombre + Apellido	María Fernández	Often one surname
Colombia	Nombre + Apellido paterno + Apellido materno	Carlos Pérez Rodríguez	Full double surname
Peru	Nombre + Apellido paterno + Apellido materno	Ana Vargas Llosa	Indigenous names increasing

In formal/legal contexts, both surnames are used. Informally, often only the paternal surname is used.

Women traditionally retain their birth surnames after marriage (unlike Anglo naming traditions). They may add ‘de [husband’s surname]’ but this is increasingly uncommon. Children take both parents’ surnames: first from father, second from mother.

Portuguese-Speaking Countries

Country	Pattern	Example	Notes
Brazil	Nome + Sobrenome(s)	João da Silva Santos	Multiple surnames possible
Portuguese influence	Nome + Apelido paterno + Apelido materno	Maria Santos Oliveira	Similar to Spanish pattern

Indigenous Latin American Patterns

Group	Traditional Pattern	Modern Adaptation	Example
Quechua	Single name + place	Given + Spanish surname	Tupac Amaru
Guaraní	Given + clan identifier	Given + family name	Karai Poty
Mayan	Calendar name + given	Given + Spanish surnames	Itzamná García

Aboriginal and Torres Strait Islander Naming Practices

Aboriginal Naming Practices

Aboriginal naming systems are diverse and complex, varying significantly between language groups and regions across Australia. Traditionally, Aboriginal people often had multiple names used in different contexts, including personal names, kinship terms, ceremonial names, and what are known as “skin names”.

Today, some Aboriginal people use both European-style names (for official purposes) and traditional names (within family and community contexts). Some have legally changed their names to traditional Aboriginal names, while others maintain dual naming practices.

In some Aboriginal communities, for example in Central and Northern Australia, people belong to kinship subsections commonly called “skin names” or “skins”. These are formal identifiers within complex kinship systems. Key features of skin name systems are:

- Skin names are inherited at birth based on parents' skin names (not simply passed from one parent).
- They determine kinship relationships, marriage eligibility, and ceremonial responsibilities.
- Different regions use different system (for example, some have 4 sections and others have 8).
- Male and female forms differ.
- Skin names are not nicknames—they are formal kinship identifiers.
- Many people with the same skin name may exist in a particular community—surnames help differentiate individuals.
- Spellings vary across language groups and regions.

Impact of Colonisation

Aboriginal naming practices have been significantly impacted by colonization. During the “protection” era and Stolen Generations policies, Aboriginal children were forcibly removed from their families. Removed children were often given European names by missionaries, government institutions, or adoptive families. Many Aboriginal people were assigned arbitrary English surnames, and traditional names were deliberately suppressed as part of assimilation policies.

Contemporary implications of these practices mean that historical records may not reflect a person's traditional name or may contain inaccurate spellings, family connections can be difficult to trace through official documentation, and some Aboriginal people have European legal names but use traditional names in cultural contexts.

Kinship and Family Relationships

Aboriginal kinship systems differ from Western nuclear family models:

- Terms like “mother”, “father”, “brother”, and “sister” have broader meanings within kinship systems.
- A person's “mother” may include the biological mother and other women in that kinship category.
- Surnames may be shared among a wider kinship network than a traditional Western “family”.

Torres Strait Islander Naming Practices

Torres Strait Islander people are culturally distinct from Aboriginal people, with their own naming conventions. Some general characteristics are as follows:

- There is general usage of Western naming formats (given name + family surname).
- European-origin surnames are common, reflecting missionary contact and Pacific Islander heritage.
- Given names may be traditional Torres Strait Islander names or English names.
- There may be a strong connection to a person's island of origin.
- Island-specific customs and preferences exist.

Other Indigenous Naming Conventions

Indigenous North American

Nation/Group	Traditional Pattern	Modern Usage	Cultural Notes
Navajo (Diné)	Clan-based names	Given + Family name	Four clans determine identity
Cherokee	Given + clan name	Given + English surname	Seven clans traditionally
Inuit	Given + father's name	Given + family name	Names may change with age
Lakota	Given + descriptive name	Given + family name	Names reflect characteristics

Māori (New Zealand)

Component	Māori	English	Usage
Given name	Aroha	Love	Meaningful names
Family name	Ngata	(Family name)	May be traditional or adopted
Iwi connection	Te Arawa	(Tribal affiliation)	Important for identity

Modern Naming Considerations

Mononyms (Single Names)

Some individuals legally use only one name. This is more common in some Indonesian, Afghan and other cultural communities.

Transliteration Variations

The same name may be spelled multiple ways—for example, Mohammad/Muhammad/Mohamad, Li/Lee. This is not an error but reflects different transliteration systems. It is best to confirm which spelling the person uses legally.

Migration and Refugee Contexts

Some individuals may have changed their names for safety reasons. Documentation may be incomplete, inconsistent, or in different scripts. Some refugees may have had names assigned by authorities.

Marriage and Name Changes

Practices vary by culture. Some cultures do not change surnames on marriage and in some countries, it is not allowed at law.

Diacritical Marks and Special Characters

Names may include accents, umlauts, and other marks (José, Müller, Søren). These are part of a person's legal name and should be preserved in court records where possible.

General Pronunciation Guidelines

These pronunciation guides are approximate. Phonetic systems vary, and the best practice is to ask the person to pronounce their name for you.

Common Phonetic Patterns by Language Family

Language Family	Key Sounds	Examples	Guidelines
Romance	Rolled R, clear vowels	Rodriguez [ro-DREE-ge-th]	Stress often on penultimate syllable
Germanic	Guttural sounds, compound words	Schwarzenegger [SHVAR-tsen-eg-er]	'ch' varies by region

Slavic	Palatalization, consonant clusters	Kowalski [ko-VAHL-skee]	Stress patterns vary
Arabic	Pharyngeal sounds, emphasis	Muhammad [mu-HAM-mad]	Emphatic consonants
Chinese	Tonal languages	Zhang [jahng]	Tone affects meaning
Japanese	Even stress, long vowels	Yamamoto [yah-mah-mo-to]	No stress accent

Stress Patterns by Region

Region	Typical Stress Pattern	Examples
Spanish	Penultimate syllable	García [gar-SEE-ah]
Italian	Penultimate syllable	Rossini [ros-SEE-nee]
French	Final syllable	Dubois [du-BWAH]
German	First syllable (often)	Wagner [VAH-gner]
Polish	Penultimate syllable	Kowalski [ko-VAHL-skee]
Russian	Variable, marked by accent	Владимир [vlah-DEE-meer]

Generational Naming Patterns

Culture	System	Example	Purpose
Chinese	Generation characters	志明, 志华, 志强	Family cohesion
Korean	Generation syllables	민수, 민정, 민호	Confucian tradition
Jewish	Hebrew naming	Moshe ben Avraham	Religious identity
Arabic	Nasab system	Ahmad ibn Muhammad ibn Ali	Genealogical record

APPENDIX B. JURY DIRECTIONS FOR CASES INVOLVING SPEAKERS OF ABORIGINAL ENGLISH AND TORRES STRAIT CREOLE

This Appendix includes some suggested jury directions for cases involving Aboriginal and Torres Strait Islander witnesses or defendants whose first language is not Standard English (either because a traditional language is their first language, or because Aboriginal English is their first language).

The directions should be adapted having regard to the particular circumstances of a case.

In determining whether the directions, or and adaption of them, are required, the trial judge should be guided by the legal representatives; and raise the issue with the legal representatives if in any doubt. The trial judge should also be mindful of rules 54AD and 54AE of the *Criminal Practice Rules 1999* (as to whether the accused or a witness may require an interpreter⁶⁷¹), in which case additional directions will be required. A trial judge should not make assumptions about an Aboriginal or Torres Strait Islander person's ability to speak or understand Standard English.

Speakers of Aboriginal English

Aboriginal English

Some Indigenous people in [region/location] do not speak Standard English as their first language. And many, in all parts of the State, whether or not they speak an Aboriginal language as their first language, have learnt to speak English in a manner which is different from other speakers of Standard English in Australia: in both cases they are speakers of Aboriginal English.

People of Aboriginal heritage may speak a local Aboriginal language or a form of Aboriginal English or both.

Aboriginal English is not the same all over the State, and varies from person to person, and situation to situation. It ranges from “heavy” Aboriginal English to “light” Aboriginal English. Heavy Aboriginal English is harder for non-Indigenous people to understand fully, but even with speakers of light Aboriginal English there are some important features of which you should be aware.

Remember also that skin colour is not a reliable indicator of the way that an Indigenous person communicates.

I mention these features as being within the common knowledge of the Courts and probably, to varying extents, within your own knowledge as residents of

⁶⁷¹ In this context, consideration may also need to be given to whether an Aboriginal English interpreter is required, or alternatively, evidence from an appropriately qualified expert in relation to Aboriginal English language, or relevant cultural considerations more generally.

[region/location]. The fact I am mentioning these things does not mean they will all feature in the communication of Indigenous people in evidence before you. I mention them merely to ensure you are alive to the possibility of the presence of such features when considering the evidence. Whether these features are present and, more broadly, how you weigh what evidence you accept, is a matter for you.

None of what follows is intended to signal in any way that the presence of the features I mention means the witness is somehow unreliable. To the contrary, it is aimed at ensuring you will not be diverted from your task of impartially considering the evidence in this case or its merits rather than under some flawed pre-conception that all people communicate the same way.

Word Meaning, Grammar and Accent

There are a number of grammatical differences between Aboriginal English and Standard English.

The order of the words in a sentence, or the phrasing of those words, might be different for a speaker of Aboriginal English compared to someone speaking Standard English. For example, a witness may have left out articles such as “the” or “a”, or prepositions such as “to” or “from”. They may have used verbs differently (for example, “he been walk outside naked”, or “we run away”). The verb “to be” may not be used in sentences, and all the verbs may be used in present tense, even though the context shows that it is the past or the future that is being talked about. Pronouns, such as “he”, “she” and “you”, may be used differently, or without distinction, at times.

Many Indigenous people have trouble with some of the consonants used in the English language, especially f, v and th. F and v are often replaced with p or b, so the word “fight” might sound like “pight” or “bight”, and so on.

A witness may use certain words to describe their family relationship to a person that are different from Standard English. For example, a person may describe someone as their “cousin brother” or “cousin sister”, even though they may not be a direct biological sibling. They may refer to an elder as mum, aunty or uncle as a mark of respect, even if they are not related by blood or marriage. The concept of a family in Aboriginal culture is different from traditional Western families. Positions within the family are not necessarily fixed. For example, aunts can take on the role of mothers and be called the same name as mother, uncles can take on the role of fathers and cousins can be considered and called brothers and sisters. The extended relationships within the family are central to Aboriginal kinship systems and are fundamental to the organisation of Aboriginal society and to the way culture is passed on.

Ways of Communicating

Aboriginal English speakers may also have different cultural values which affect the way they speak and behave. The things I will tell you about now are common with a wide range of speakers of Aboriginal English, even among many who speak light

Aboriginal English. Many Aboriginal cultural values and ways of communicating are strong even in places like [region/town/city].

Different languages have different ways of telling stories. Don't assume that a witness who speaks Aboriginal English or who does not speak Standard English as their first language is a poor witness just because they might tell their story in a way which might seem strange to you or unusual.

For example, that witness might not include details that someone who speaks Standard English as a first language might expect to be included. They might not tell their story in a strictly chronological or linear way; that is, telling the first thing that happened all the way through to the last thing that happened. They might tell it in a circular way, or a roundabout way, starting at the end of the story or in the middle of the story, and then filling in the details later.

You might feel as though the witness is unnecessarily repeating themselves or was confused about the order in which things occurred. The witness might have a different concept of a particular word in English. The witness might not be able to repeat back someone's speech in exactly the same way in which it happened.

The witness might pronounce sounds differently or use different grammar. The order of the words in their sentences might be different. The witness might use words or phrasing that may seem unfamiliar or unusual if Standard English is your first language.

The demeanour of an Aboriginal witness – that is, their body language, or the way they appear when giving evidence – is also something you need to keep in mind. In most non-Aboriginal societies people who avoid direct eye contact with those speaking to them might be regarded as shifty, suspicious or guilty. However, it is common for Aboriginal people to avoid direct eye contact with those speaking to them, because it is considered to be impolite in some Aboriginal societies to stare. Aboriginal people may avert their gaze, by looking down or away from the speaker, as a way of showing politeness, respect or deference to a person in authority. You should be very careful not to jump to conclusions about the demeanour of an Aboriginal witness on the basis of the avoidance of eye contact, as it may not be a reliable indicator of the Aboriginal witness's truthfulness.

It is common among many Aboriginal people to have long pauses of silence from time to time when speaking, even in everyday speech. This will sometimes also occur during questioning. You should be careful not to jump to the conclusion that a witness who is silent for a while after a question is being evasive or untruthful about the matter he or she is being asked about. Many Aboriginal English speakers are not used to direct questioning in the way in which it is used in the courtroom, and they are used to having the chance to think carefully before talking about serious matters, so it may take time for them to adjust to this method of imparting information.

In a court context, it is very common for witnesses to be asked questions in a form in which the answer to the question is suggested by the question itself. Lawyers call this type of question a "leading question". An example of such a question is one like this:

“You saw the red car hit the blue car, didn’t you?” Many Aboriginal English speakers will answer “yes” to this type of question, even if they do not agree with the proposition being put to them in the question, and even if they do not understand the question. That can be because of their discomfort with the direct form of question; or out of deference or a desire to please or not disrespect someone in authority.

Similarly, the answers “I don’t know” and “I don’t remember” do not always refer directly to the Aboriginal English speaker’s knowledge or memory. They can be responses to the length of the process, or to the length of the question, or to the difficulty which some Aboriginal people have in adjusting to the use of repeated questioning. Answers like that may also be given as a way of avoiding talking about an embarrassing or inappropriate subject matter with a particular person. This may be due to cultural reasons [for example, a young Aboriginal woman answering questions from an older man about matters of a sexual nature].

You should also be aware that many Aboriginal English speakers use gestures which are often very slight and quick movements of the eyes, head or lips to indicate location or direction.

Some concepts, such as time and number, are understood and expressed by Aboriginal English speakers very differently from Standard English speakers. Aboriginal English speakers may struggle to articulate specific measurements or estimates of time, distance or quantity when questioned about those matters.

Hearing Problems

Sometimes, especially in formal situations, Indigenous people may speak very softly to non-Indigenous people and are hard to hear, even with a microphone.

Hearing problems are more prevalent amongst Indigenous people than non-Indigenous people. It may be that if a witness has a hearing difficulty, he or she may have had problems understanding questions put to him or her. In such a situation the witness might have answered inappropriately or asked for the question to be repeated.

Conclusion

These are some examples of how Aboriginal English differs in many important ways from Standard English. Whether any such features emerge here remains to be seen. But the features I have mentioned should be borne in mind by you to aid your consideration of the evidence on its merits, rather than under the flawed assumption that we all communicate the same way. Even if an Aboriginal person uses words that sound like Standard English, we can’t always make the same assumptions about the meaning of those words as we would when spoken by someone who speaks Standard English. And you must exercise some caution when considering that person’s body language because it might not necessarily be in accordance with your assumptions if Standard English is your first language.

Speakers of Torres Strait Creole

Note to Judges

Torres Strait Creole is spoken mainly by Torres Strait Islander people, but some Aboriginal people from communities in the Cape York Peninsula also speak a variety of Torres Strait Creole as their first language. The following introduction can be substituted for the introduction relating to Aboriginal English. The rest of the direction remains the same [with the necessary adaptation to refer to a Torres Strait Islander person or people]. Note that Torres Strait Islander people and Aboriginal people may use Torres Strait Creole.

Torres Strait Creole

Some Indigenous people in [location/region] do not speak Standard English as their first language. Many Aboriginal people from the Northern Peninsula area of Queensland and Torres Strait Islands also speak a language called Torres Strait Creole. Torres Strait Creole is also sometimes called 'Yumplatok', 'Ailan Tok', 'Kriol', 'Broken' or 'Pidgin'.

Torres Strait Creole is similar to Standard English; in fact, a lot of the words in Creole come from English. But a Standard English speaker cannot always understand people who speak Creole, and many Creole speakers have never learnt to speak Standard English. Not all Creole speakers speak Creole in the same way: some people speak a Creole which sounds very much like Standard English, while others speak a Creole which does not sound like English at all and is therefore hard for Standard English speakers to understand. Sometimes Creole speakers know enough English to get by in everyday life, but they find it very difficult to speak Standard English in formal situations. Remember that speakers of Torres Strait Creole live all over the State, including in Brisbane and other towns.

APPENDIX C. COMMUNITY LEGAL CENTRES

The below is a non-exhaustive list of publicly funded Queensland community legal centres. Additional local and regional services may be available. For the most current information about services and contact details, individuals should contact Community Legal Centres Queensland.

Statewide Peak Body

Community Legal Centres Queensland (CLCQ)

Peak body for 34 independent community legal centres operating across Queensland.

Phone: (07) 3392 0092

Website: www.communitylegalqld.org.au

Metropolitan Brisbane and Surrounding Areas

Bayside Community Legal Service

Provides free legal advice and mediation services for Brisbane Bayside residents with emphasis on low income and priority groups. Servicing areas including family law, civil law, domestic violence and property matters.

Phone: (07) 3162 3282

Address: 1st Floor Wynnum Community Centre, 105 Florence Street, Wynnum QLD 4178

Hours: Monday to Thursday 8:30am-4:30pm, Monday evenings 6:30pm-8:30pm (phone appointments only)

Website: www.bcls.org.au

Caxton Legal Centre

Queensland's oldest community legal centre, providing free legal advice, social work services, information and referrals to people on low income or who face other disadvantage.

Phone: (07) 3214 6333

Address: 1 Manning Street, South Brisbane QLD 4101

Hours: Monday-Friday 9am-4:30pm, evening advice sessions Monday-Wednesday 6pm-9pm by appointment

Website: www.caxton.org.au

HUB Community Legal

Formerly Southwest Brisbane Community Legal Centre, provides free and confidential legal advice. Operated by HUB Community Projects/Encircle Community Services. Focus on family law, domestic violence, child protection, consumer law, employment and youth legal matters.

Phone: (07) 3372 7677

Address: Inala (main office - part of HUB Community Projects neighbourhood centre)

Hours: Monday to Thursday 9am-4pm, Friday 9am-1pm

Website: www.hubcommunity.org.au/community-legal-centre

LawRight

Independent, non-profit community-based legal organisation coordinating pro bono legal services and providing direct civil law services in areas including homelessness, refugees, self-representation, administrative law and mental health law.

Phone: (07) 3846 6317 (main), (07) 3052 4309 (Federal Court), (07) 3564 7561 (QCAT), (07) 3738 7800 (State Courts)

Address: Level 6, Harry Gibbs Commonwealth Law Courts, 119 North Quay, Brisbane QLD 4000

Hours: Monday to Friday 9am-5pm

Website: www.lawright.org.au

Northside Connect

Not-for-profit organisation based in Nundah offering legal advice through Brisbane North Community Legal Service, domestic violence support and family/community services to those living on the north side of Brisbane.

Phone: (07) 3260 6820

Address: 14 Station Street, Nundah QLD 4012

Mailing Address: PO Box 386, Nundah QLD 4012

Hours: Monday to Thursday 9am-4:30pm (closed Friday), Wednesday evening appointments 6pm, 6:45pm and 7:30pm by appointment

Website: www.northsideconnect.org.au

Pine Rivers Community Legal Service

Generalist community legal service providing free legal advice, information and referrals as well as community legal education for vulnerable people. Services include mediation, duty lawyer services for domestic and child protection matters, and mental health legal service. Operated by Encircle Community Services.

Phone: (07) 3881 3500

Address: 4A/481 Gympie Road, Strathpine QLD (main office)

Outreach locations: Caboolture, Redcliffe, Deception Bay, Kallangur, Bribie Island

Hours: Monday to Friday 9am-4:30pm by appointment, Thursday evening walk-in service 5:45pm-7:30pm (no appointment needed)

Website: www.encircle.org.au/pine-rivers-community-legal-service

YFS Legal

Community legal centre in Logan, specialising in providing information, advice and representation for clients aged 10-25 years with criminal law matters, as well as one-off free legal advice on family, civil, tenancy and criminal law.

Phone: (07) 3826 1500

Address: 1/13 Cameron Street, Beenleigh, Qld 4207

Website: www.yfs.org.au/yfs-legal

Regional Services

Cairns Community Legal Centre

Not-for-profit government funded organisation providing free legal services for people experiencing disadvantage in Far North Queensland. Services include general legal advice, discrimination and human rights, mental health legal service, consumer law service, and seniors legal and support service.

Phone: (07) 4031 7688, 1800 062 608 (Discrimination & Human Rights)

Address: 2nd Floor, Main Street Arcade, 82 Grafton Street, Cairns

Website: www.cclc.org.au

Central Queensland Community Legal Centre

Independent non-profit organisation providing free access to legal services for the vulnerable and disadvantaged in Central and Northwest Queensland, including general legal assistance, domestic and family violence support, elder abuse prevention, and family law.

Phone: 1800 155 121

Offices: Rockhampton, Gladstone, Emerald, Mount Isa

Hours: Monday to Friday 9:30am-3pm

Website: www.cqclc.org.au

Gold Coast Community Legal Centre and Advice Bureau

Generalist community legal centre providing free legal advice, casework, community legal information and referrals for Gold Coast residents. Areas include family law, domestic violence, consumer law, employment law, criminal and traffic matters, and seniors legal service.

Phone: (07) 5532 9611

Address: 34 Railway Street, Southport QLD 4215

Hours: Monday to Friday 8:30am-4pm by appointment

Website: www.gcclc.org.au

Hervey Bay Neighbourhood Centre / Wide Bay Burnett Community Legal Service

Hervey Bay Neighbourhood Centre manages the Wide Bay Burnett Community Legal Service, an independent non-profit providing free legal advice and support across the Fraser Coast, Bundaberg, Gympie and North Burnett regions. Services include general legal assistance, Seniors Legal and Support Service, and flood recovery legal support.

Phone: (07) 4194 2663

Address: Hervey Bay Community Centre, 22 Charles Street, Pialba QLD 4655

Outreach locations: Maryborough, Bundaberg, Gympie, Childers, Gin Gin, and North Burnett towns

Website: www.wbbcls.com.au (legal service) and www.hbnc.com.au (neighbourhood centre)

Mackay Regional Community Legal Centre

Provides free legal assistance in various areas of law to eligible clients in the Mackay region.

Phone: (07) 4953 1211

Address: Suite 9, The Dome, 134 Victoria Street, Mackay QLD 4740

Hours: Monday to Friday 9am-4pm

Website: www.mrclc.com.au

Suncoast Community Legal Service

Independent, non-profit community organisation providing legal advice, referrals and education across the Sunshine Coast. Offers general legal assistance, elder abuse clinic, and tenancy advice service (QSTARS regional provider).

Phone: (07) 5376 7800 or (07) 5443 7827

Address: TAFE Building, 170 Horton Parade, Maroochydore QLD 4558

Mailing Address: PO Box 423, Maroochydore QLD 4558

Hours: Monday to Thursday 9am-5pm, with evening appointments available at multiple outreach locations including Maroochydore, Nambour, Caloundra, Noosa, Maleny, Landsborough and Pomona

Website: www.suncoastcommunitylegal.org

Townsville Community Law

Provides free, accessible and holistic legal services including general legal advice, family law service, Queensland Coronial Legal Service, Seniors Legal and Support Service, Seniors Financial Protections Service, Veterans' Legal Service, and Social Security Rights Service.

Phone: (07) 4721 5511

Address: Ground Floor, 271-279 Sturt Street, Townsville QLD 4810

Hours: Monday to Friday 9am-5pm (closed 1pm-2pm), after hours Tuesday and Thursday 6pm-8pm by appointment

Website: www.townsvillecommunity.law

TASC National

Provides legal services in Toowoomba, Ipswich, Roma, Darling Downs, Maranoa and greater south-west region. Services include legal advice in family law, domestic violence law, civil and consumer law, and minor criminal matters.

Phone: (07) 4616 9700

Address: 223 Hume Street, Toowoomba QLD 4350

Hours: Monday to Friday 8:30am-4:30pm (phone)

Website: <https://www.tascnational.org.au/services/legal-services/>

Specialist Statewide Services

ADA Law (Aged and Disability Advocacy Law)

Community legal centre providing legal advice, representation and non-legal advocacy for people with cognitive impairments or questioned capacity regarding QCAT guardianship/administration matters, Enduring Power of Attorney, Advance Health Directives, and Mental Health Review Tribunal hearings.

Phone: 1800 232 529

Address: 121 Copperfield Street, Geebung, Brisbane QLD 4034

Hours: Monday to Thursday 9am-4pm

Service Area: Southeast Queensland (Bundaberg to Gold Coast, including Toowoomba), with limited services to other areas on a case-by-case basis.

Website: www.adalaw.com.au

Basic Rights Queensland

Statewide specialist community legal centre providing free telephone advice, advocacy and legal services to people having problems with social security (Centrelink), disability discrimination, and women's employment matters.

Phone: 1800 358 511

Hours: Monday to Friday 9am-4pm

Mailing Address: PO Box 496, Brisbane QLD 4001

Website: www.brq.org.au

Women's Legal Service Queensland (WLSQ)

Free legal and social work help with domestic violence, complex family law and sexual assault counselling privilege matters for women and people who live and identify as women in Queensland.

Advice Line: 1800 957 957 (Monday-Friday 9am-4:30pm)

Rural Regional Advice Line: 1800 457 117 (Tuesday 9:30am-1:30pm)

Address: 387 Ipswich Road, Annerley QLD 4103

Website: www.wlsq.org.au

North Queensland Women's Legal Service (NQWLS)

Free legal service run by women, for women, servicing North Queensland communities from Sarina to Torres Strait and west to the Northern Territory border.

Free Legal Advice Line: 1800 244 504

Address: Ground Floor, 42 Sturt Street, Townsville QLD 4810

Website: www.nqwls.com.au

Tenants Queensland

Specialist statewide community legal service for tenancy law matters providing free tenancy law advice for residential tenants.

Phone: 1300 744 263

Address: Level 1, 87 Wickham Terrace, Spring Hill QLD 4000

Hours: Monday to Friday 9am-5pm (Tuesday and Wednesday evenings 5pm-7pm)

Website: www.tenantsqld.org.au

Queensland Advocacy for Inclusion (QAI)

Independent, community-based individual, systemic and legal advocacy organisation for people with disability in Queensland. Services include individual legal advocacy, NDIS Appeals Support, Justice Support, Human Rights Legal Service, Mental Health Legal Service, and Disability Royal Commission support.

Phone: (07) 3844 4200

Address: Level 2, South Central, 43 Peel Street, South Brisbane QLD 4101

Website: www.qai.org.au

Prisoners' Legal Service

Provides free and confidential legal information, advice, minor legal assistance and representation to prisoners in Queensland and their families.

Phone: (07) 3846 5074 (administration only). Prisoners can access PLS for free through the internal prison telephone system (ARUNTA) using the prompts.

Mailing Address : GPO Box 257, Brisbane QLD 4001

Website: www.plsqld.com

Youth Advocacy Centre

Free confidential legal and welfare assistance to young people under 17 years who live in or around Brisbane.

Phone: (07) 3356 1002

Address: Level 4, 16 Peel Street, South Brisbane QLD 4101

Hours: Monday to Friday, 9am-5pm

Website: www.yac.net.au

Refugee and Immigration Legal Service (RAILS)

Provides free legal assistance to refugees, asylum seekers and migrants in Queensland.

Phone: (07) 3846 9300

Address: Level 3, 43 Peel Street, South Brisbane QLD 4101

Hours: Monday to Friday, 11am-12:30pm and 1:30pm to 4:30pm

Website: www.rails.org.au

LGBTI Legal Service

Provides free and confidential legal services on a range of matters for LGBTI people.

Phone: (07) 3124 7160 or text 0485 908 380

Hours: Monday to Friday, 10am-4pm

Website: www.lgbtilegalservice.org

Environmental Defenders Office (EDO)

Provides free legal advice and representation on environmental law matters.

Phone (Northern Queensland): (07) 4028 3739

Phone (Central and Southern Queensland): (07) 3211 4466

Website: <https://www.edo.org.au/free-legal-advice/>

knowmore

National community legal centre providing free, specialist legal advice and representation to survivors of child sexual abuse.

Phone: 1800 605 762

Hours: Monday to Friday, 9am-5pm

Website: www.knowmore.org.au

Aboriginal and Torres Strait Islander Services

Aboriginal and Torres Strait Islander Legal Service (ATSILS)

Community-based organisation providing legal services for Aboriginal and Torres Strait Islander people across Queensland.

Phone: 1800 012 255 (24/7 hotline)

Address: Level 5, 183 North Quay, Brisbane QLD 4000

Website: www.atsils.org.au

Queensland Indigenous Family Violence Legal Service (QIFVLS)

Provides culturally appropriate legal and support services for Aboriginal and Torres Strait Islander people who are victims of family violence.

Phone: 1800 019 123

Address: Level 1, Suite 4 and 5, 101-111 Spence Street, Cairns QLD 4870

Hours: Monday to Thursday, 8:30am-5pm and Friday, 8:30am-4pm

Website: www.qifvls.com.au

First Nations Women's Legal Service Qld

Provides culturally safe legal services to Aboriginal and Torres Strait Islander women and families.

Phone: 1800 082 600

Address: Level 3, 42 Sturt Street, Townsville QLD 4810

Hours: Monday to Friday, 9am-5pm

Website: www.fnwlsq.org.au

APPENDIX D. DOMESTIC AND FAMILY VIOLENCE SERVICES

The below is a non-exhaustive list of publicly funded Queensland domestic violence support services. Additional local and regional services may be available. For the most current information about services and contact details, individuals should contact DVConnect or the Queensland Governments Domestic and Family Violence Service Finder.

Statewide Crisis and Helpline Services

DVConnect

Women's line: 1800 811 811 (24/7)

Men's line: 1800 600 636 (9am-midnight, 7 days)

Sexual Assault Helpline: 1800 010 120

Website: www.dvconnect.org

1800 RESPECT

National domestic violence counselling and information service

Phone: 1800 737 732 (24/7)

Website: www.1800respect.org.au

VictimConnect

Statewide confidential service that can provide specialist counselling and case management to assist with the practical impacts of violent crime

Phone: 1300 318 940 (24/7)

Website: www.victimconnect.org.au

Legal Assistance Services

Women's Legal Service Queensland (WLSQ)

Free legal and social work help with domestic violence, complex family law and sexual assault counselling privilege matters

Advice Line: 1800 957 957 (Mon-Fri 9am-4:30pm)

Rural Regional Advice Line: 1800 457 117 (Tues 9:30am-1:30pm)

Address: 387 Ipswich Road, Annerley

North Queensland Women's Legal Service (NQWLS)

Serves the North Queensland region.

Free Legal Advice Line: 1800 244 504

Legal Aid Queensland

Women's Domestic Violence Court Assistance Service at Brisbane Magistrates Court

Application Assistance Program: Mondays and Fridays (9am-1pm, drop-in service)

Domestic Violence Unit: (07) 3917 0590

Community Legal Centres Queensland

Provides information about local community legal centres and statewide services and referral service for legal issues

Phone: (07) 3392 0092

Website: www.communitylegalqld.org.au

Specialist Court Support Services

PACT (Protect All Children Today)

Court support services for children and vulnerable adult victims and witnesses

Phone: 1800 449 632

Website: www.pact.org.au

Regional and Community-Based Services

Brisbane Domestic Violence Service (BDVS)

Micah Projects' support and services arm for women and children experiencing or at risk of domestic and family violence

Phone: (07) 3217 2544 (Monday to Friday, 9:00am to 5:00pm)

After Hours: 3029 7000

Website: www.micahprojects.org.au

Centre Against Sexual Violence (CASV) - Logan and Redlands

Appointment based, community sexual assault and domestic and family violence service, servicing Logan, Beenleigh, Beaudesert communities and Redlands area

Phone: (07) 3808 3299

Website: www.casv.org.au

Centacare Domestic Violence Assistance Program (DVAP)

Court-based legal advice for both women applicants to domestic violence orders, servicing Beenleigh, Caloundra, Hervey Bay, Noosa, Maroochydore, and Maryborough, and to men who are respondents to domestic violence orders in Southport

Phone: (07) 3807 7622

Hours: Monday-Thursday 8:30am-3:00pm (telephone and face-to-face), Friday 8:30am-3:00pm (telephone only)

Website: www.centacare.com/family-and-relationship-care/domestic-and-family-violence-court-support

Centre Against Domestic Abuse (CADA)

Risk assessment/safety planning, court support, assistance with protection orders, advocacy, home safety upgrades and referral service for both women experience and men/boys perpetrating domestic violence, servicing Redcliffe, Strathpine and Caboolture

Caboolture: (07) 5498 9533

Redcliffe: (07) 3283 6930

Strathpine: (07) 3205 5457

Website: www.cada.org.au

Cairns Regional Domestic Violence Service

Counselling and court support in Far North Queensland (Cairns, Douglas Shire, Tablelands Atherton, and Tablelands Mareeba)

Phone: (07) 4033 6100

Website: www.dvcairns.org

Gladstone Women's Health Centre & Gladstone Region Sexual Assault Centre

Provides free sexual assault and family and domestic violence counselling.

Phone: (07) 4979 1456

Website: <https://www.gladstone.qld.gov.au/directory-record/4545/gladstone-women-s-health-centre-gladstone-region-sexual-assault-centre>

My Community Legal

Provides free legal services to those who need but cannot afford them.

Phone: (07) 5578 9009

Website: www.mycommunitylegal.org.au

South Burnett CTC Youth and Family Services

Supports people experiencing homelessness, domestic violence, health, parenting, education, employment and community issues in the South Burnett region

Phone: (07) 4162 9000

Website: www.sbctc.com.au

Culturally Specific Services

Immigrant Women's Support Service (IWSS)

Free confidential support to immigrant and refugee women from non-English speaking backgrounds and their children who have experienced domestic and/or sexual violence

Phone: (07) 3846 3490 (Monday to Friday, 9:00am to 4:00pm)

Website: www.iwss.org.au

Murrigunyah Family & Cultural Healing Centre

Community-based sexual assault support service for Aboriginal and Torres Strait Islander women in the Beenleigh/Logan area

Phone: (07) 3290 4250

Website: www.murrigunyah.org.au

The Bangle Foundation

Domestic abuse support service primarily for women of South Asian heritage

Phone: 1800 Bangle (1800 226 453)

Website: www.banglefoundation.com.au

Islamic Women's Association of Australia

Offers the support service, Salam Safe House, which provides a refuge for women from culturally and linguistically diverse backgrounds who are experiencing domestic and family violence

Phone: 1800 004 922

Website: www.iwaa.org.au

Specialist Services

54 Reasons

Operates refuges and support services, for women and children experiencing domestic and family violence, and the SHIELD program provides trauma-informed support for boys (14+) and men in Queensland who have experienced sexual violence

SHIELD Phone: 1800 874 996

Website: www.54reasons.org.au

Children by Choice Association Inc.

Offers counselling and referral services for pregnant women who face domestic violence in relation to pregnancy choices

Phone: 1800 177 725

Website: www.childrenbychoice.org.au

Elder Abuse Prevention Unit

Telephone helpline for older people who are experiencing elder abuse, including domestic and family violence from a spouse or relative

Phone: 1300 651 192

Website: www.eapu.com.au

Royal Brisbane and Women's Hospital Sexual Assault Response Team (SART)

Provides support and information following a recent sexual assault to both males and females aged 14 and above, including in-person response to acute presentations at RBWH Emergency Department and post-acute counselling and referral services (servicing Brisbane, Redlands, Logan, Caboolture, Redcliffe)

Phone: (07) 3646 5207

Website: www.metronorth.health.qld.gov.au/rbwh/healthcare-services/social-work

WWILD-SVP (Sexual Violence Prevention)

Support for people with intellectual or learning disabilities who are victims or survivors of sexual violence or have been victims of crime

Phone: (07) 3262 9877

Website: www.wwild.org.au

Additional Support Services

Lifeline

Phone: 13 11 14

Website: www.lifelineqld.org.au

Kids Helpline

Free, confidential 24/7 online and phone counselling service for young people.

Phone: 1800 551 800

Website: www.kidshelpline.com.au

Parentline

Confidential telephone service providing free counselling and support for parents and carers in Queensland and Northern Territory

Phone: 1300 30 1300 (7 days a week, 6:00am to midnight)

Website: www.parentline.com.au

Family and Child Connect

Confidential telephone service providing free, unlimited advice for overwhelmed and at-risk families

Phone: 13 32 64

Website: www.familychildconnect.org.au

APPENDIX E. RELIGIOUS TRADITIONS

This appendix provides general guidance on religious practices, texts, dietary requirements, holidays, and oath-taking preferences across various faith traditions.

It is important to recognise that individual adherents may interpret their religious obligations differently, that distinct denominations or subsections within each religion may have varying requirements, and that ethnic and cultural influences may further shape how religious practices are observed within different communities.

The information in this appendix is general in nature only and if any particular aspect of a religion is relevant to a person's participation in a proceeding, it is preferable that the judge confirm with the person.

The Bahá'í Faith

The Bahá'í Faith is a universalist religion founded in mid-19th century Iran by Bahá'u'lláh (meaning "Glory of God").⁶⁷² The cornerstone of Bahá'í belief is the conviction that Bahá'u'lláh, and his forerunner known as the Báb, were manifestations of God, who in his essence is unknowable.⁶⁷³ The principal Bahá'í tenets are the essential unity of all religions and the unity of humanity.⁶⁷⁴

Bahá'ís believe that all the founders of the world's great religions have been manifestations of God and agents of a progressive divine plan for the education of humanity.⁶⁷⁵ Bahá'ís believe that their primary duty is the independent investigation of the truth.⁶⁷⁶ The faith has no priesthood and does not observe ritual forms in its worship. Local leaders are elected annually.⁶⁷⁷ Monasticism, the priesthood and mendicancy are prohibited.⁶⁷⁸ Alcohol is also prohibited.⁶⁷⁹

Sacred Texts

The writings and spoken words of the Báb, Bahá'u'lláh, and 'Abd al-Bahá' form the sacred literature of the Bahá'í Faith.⁶⁸⁰ Bahá'u'lláh revealed over a hundred volumes of sacred texts, including prayers, and meditations, a book of laws, mystical passages

⁶⁷² 'Bahá'í Faith' in *Encyclopedia Britannica* (online encyclopedia, 2025) <<https://www.britannica.com/topic/Bahai-Faith>>.

⁶⁷³ Ibid.

⁶⁷⁴ Ibid.

⁶⁷⁵ Ibid.

⁶⁷⁶ 'Abdu'l-Bahá, 'Paris Talks', *Bahá'í Reference Library* (Web Page) <<https://www.bahai.org/library/authoritative-texts/abdul-baha/paris-talks/5>>.

⁶⁷⁷ 'Bahá'í Faith' in *Encyclopedia Britannica* (n 672).

⁶⁷⁸ Ibid.

⁶⁷⁹ 'Divine Law' in *What Bahá'ís Believe* (Web Page, 2025) <<https://www.bahai.org/beliefs/life-spirit/character-conduct/divine-law>>.

⁶⁸⁰ 'Bahá'í Faith' in *Encyclopedia Britannica* (n 672).

and the Book of Certitude,⁶⁸¹ with the most significant being the Kitáb-i-Aqdas, Bahá'u'lláh's book of laws, written in Arabic around 1873.⁶⁸²

Bahá'í writings should be handled with respect and kept in clean, elevated places. They should not be placed on the floor or treated carelessly.

Oaths and Affirmations

Bahá'ís believe in the importance of truthfulness as a fundamental principle.⁶⁸³ As Hornby writes:

There can be no objection to Bahá'ís conforming to the requirements of the law court whatever they may be in such matters, as in no case would they constitute in any way a denial of their own beliefs as Bahá'ís.

The above direction makes it clear that Bahá'ís may take an oath, if required, on any sacred book. The Universal House of Justice considers that it may be preferable for them to do so on a Bahá'í book, if possible.

In practice, this means that Bahá'ís can take oaths in legal proceedings without any religious conflict, they can swear on any sacred book, but preferably a Bahá'í text if available, where the emphasis is on truthfulness rather than the specific form of the oath. They may also choose to affirm their evidence.

Religious Holidays

The Bahá'í faith uses its own calendar called the Badí' calendar, which consists of 19 months of 19 days each (361 days), plus 4-5 intercalary days called Ayyám-i-Há to align with the solar year. The Bahá'í year begins at the spring equinox (around March 20-21).

The Bahá'í faith observes the following major holy days:

- Birth of the Báb (20 October)
- Birth of Bahá'u'lláh (12 November)
- Nowruz or Bahá'í New Year (20 to 21 March)
- Festival of Ridván for 12 days (21 April to 2 May), with work suspended on 1st, 9th, and 12th days
- Declaration of the Báb (23 May)
- Ascension of Bahá'u'lláh (29 May)
- Martyrdom of the Báb (9 July)
- Ascension of 'Abdu'l-Bahá (28 November)

⁶⁸¹ 'The Bahá'í Faith – Baha'is of the United States' (Web Page, 2025) <<https://www.bahai.us/beliefs/>>.

⁶⁸² 'The Kitáb-i-Aqdas' (Web Page, 2025) *Bahá'í Reference Library* <<https://www.bahai.org/library/authoritative-texts/bahauallah/kitab-i-aqdas/>>.

⁶⁸³ Helen Hornby (ed), *Lights of Guidance (Second Part)* (online compilation, Bahá'í works) <https://bahai-library.com/hornby_lights_guidance_2.html&chapter=4#n1464>, 1464 'Taking of Oaths'.

- Ayyám-i-Há, or Days of Há (26 February to 1 March), with days of gift-giving and charity
- The Fast for 19 days (2 to 20 March, ending at Naw-Rúz)

Most holy days fall on fixed dates in the Gregorian calendar, though some astronomical dates like Nowruz can vary slightly.

Buddhism

Buddhism was founded in northern India in the 6th or 5th century BCE by Siddhartha Guatama, who became known as the Buddha (meaning “the Awakened One”).⁶⁸⁴ Buddhism spread from India throughout Asia beginning in the 3rd century BCE under Emperor Ashoka, developing into three major branches: Theravada (prevalent in Sri Lanka, Thailand, Cambodia, Laos, and Myanmar), Mahayana (prevalent in China, Japan, Korea, Taiwan, and Vietnam) and Vajrayana (prevalent in Tibet, Nepal, Mongolia, and Bhutan).⁶⁸⁵ Today, Buddhism is practiced predominantly in East and Southeast Asia and is estimated to have anywhere from 500 million to one billion followers globally.⁶⁸⁶ As a non-theistic faith with no god or deity to worship, some scholars describe Buddhism as a philosophy or a moral code rather than an organised religion.⁶⁸⁷

The foundational teaching of Buddhism is the Four Noble Truths: that life involves suffering, suffering is caused by craving and attachment, suffering can cease, and there is a path leading to the cessation of suffering known as the Noble Eightfold Path.⁶⁸⁸ Central to Buddhist teaching is the concept of karma – that intentional actions have consequences – and the belief in rebirth until one achieves enlightenment (nirvana).⁶⁸⁹

Sacred Texts

The earliest and most complete collection of Buddhist sacred literature is the Pali Tipitaka, meaning “Three Baskets”, and is considered authoritative by all Buddhist

⁶⁸⁴ ‘Buddha’, *Encyclopedia Britannica* (online encyclopedia, September 2025) <<https://www.britannica.com/biography/Buddha-founder-of-Buddhism>>.

⁶⁸⁵ Lise F Vail, ‘The Origins of Buddhism’, *Asia Society* (Web Page) <<https://asiasociety.org/education/origins-buddhism>>.

⁶⁸⁶ ‘Buddhism: Definition, Founder & Origins’, *History* (Web Page, May 2025) <<https://www.history.com/articles/buddhism>>.

⁶⁸⁷ Ibid.

⁶⁸⁸ Donald S Lopez, ‘Four Noble Truths’, *Encyclopedia Britannica* (online, July 1998) <<https://www.britannica.com/topic/Four-Noble-Truths>>. See also, Rupert Gethin, *Foundations of Buddhism* (Oxford University Press, 1998); Carol S Anderson, *Pain and its Ending: The Four Noble Truths in the Theravada Buddhist Canon* (Curzon, 1999).

⁶⁸⁹ Peter Harvey, ‘Karma’ in Daniel Cozort and James Mark Shields (eds), *The Oxford Handbook of Buddhist Ethics* (Oxford University Press, 2018) 7.

schools of thought.⁶⁹⁰ It contains the foundational teachings attributable to the historical Buddha.

Mahayana Buddhism also recognises a vast collection of additional works written in Sanskrit, which were later translated and expanded in Tibetan, Chinese, and Japanese. Buddhist texts should be handled with respect and kept in clean, elevated places. They should not be placed on the floor or treated carelessly.

Oaths and Affirmations

Buddhism places great emphasis on truthfulness as a fundamental ethical principle. The Fourth Precept instructs Buddhists to abstain from false speech, and Right Speech is one of the elements of the Noble Eightfold Path.⁶⁹¹ Some Buddhists may prefer to make an affirmation rather than swear a religious oath. Buddhists wishing to swear an oath should be asked to state the form of oath which they regard as binding on their conscience.

Religious Dress

Monastic dress in Buddhism is highly distinctive. Monks wear robes called kasaya, traditionally dyed in shades of saffron, orange, ochre, or brown. The colour and style of monastic robes vary by tradition and region.

Religious Holidays

Buddhist holidays and observances vary by tradition and country, with dates often determined by the lunar calendar.⁶⁹² Major Buddhist holidays include:

- Vesak (Wesak, Buddha Day, Buddha Purnima): The most important Buddhist holy day, celebrated on the full moon in May (or the fourth lunar month). It commemorates three significant events in the Buddha's life: his birth, enlightenment, and death.
- Bodhi Day: Celebrated primarily in Mahayana Buddhism on 8 December, commemorating the historical Buddha's enlightenment under the Bodhi tree.
- Parinirvana Day (Nirvana Day): Observed on 15 February, commemorating Buddha's death and final passage into nirvana. It is a day for contemplating impermanence and the continuation of the Dharma.
- Magha Puja (Sangha Day): Celebrated by Theravada Buddhists on the full moon of the third lunar month, honouring the spontaneous gathering of 1,250 enlightened disciples before the Buddha.

⁶⁹⁰ 'Buddhism: The Pali Canon, Tipitaka', *Encyclopedia Britannica* (online, September 1998), <<https://www.britannica.com/topic/Buddhism/The-Pali-canon-Tipitaka>>.

⁶⁹¹ Barbara O'Brien, 'An Introduction to the Fourth Buddhist Precept: Truthfulness', *Learn Religions* (Web Page, March 2019) <<https://www.learnreligions.com/the-fourth-buddhist-precept-450102>>.

⁶⁹² 'Buddhist Holidays and Observances', *Diversity Resources* (Web Page, 2024) <<https://www.diversityresources.com/buddhist-holy-days/>>.

- Asalha Puja (Dharma Day, Dhamma Day): Observed in Theravada Buddhism on the full moon of the eighth lunar month, commemorating the Buddha's first sermon and the establishment of the Sangha.
- Kathina: A Theravada festival held at the end of the three-month monastic rain retreat, during which laity offer new robes and other requisites to monks.
- Obon (Japan): A festival honouring deceased ancestors, observed in mid-August, involving offerings, lanterns, and traditional dances.
- Buddhist New Year: Celebrated on different dates depending on tradition and country. Many Buddhist cultures following the lunar calendar celebrate in autumn (March to April), while Japanese Buddhists observe New Year on 1 January.

In addition to the above major observances, different Buddhist traditions and regional communities celebrate various other festivals, saint's days, and cultural observances throughout the year.

Dietary and Cultural Practices

Buddhist dietary practices vary significantly between traditions. While vegetarianism is not universally required in Buddhism, it is widely practiced, particularly in the Mahayana traditions of China, Taiwan, Vietnam, and Korea.⁶⁹³ The First Precept – to refrain from taking life – is interpreted by some Buddhists as requiring vegetarianism.⁶⁹⁴ Other Buddhists interpret this more flexibly. Some Buddhists who follow a vegetarian diet also avoid the “five pungent spices” (garlic, onion, chives, leeks, and shallots), believing that they can stimulate undesirable emotions such as anger when eaten raw and desire when cooked.⁶⁹⁵

Some Buddhists practice fasting and may abstain from solid food from noon until dawn the following day.⁶⁹⁶ Some Buddhists consider that the Fifth Precept – to refrain from intoxicants – prohibits the consumption of intoxicating substances, including alcohol, that can impair mindfulness and self-control.⁶⁹⁷

Buddhists generally prefer cremation over burial, which was the example of Buddha. Cremation is regarded as being consistent with the idea of liberation from the body. The body is usually left for some time after death to allow consciousness to be released. Buddhists have no rules as regards organ transplants and an individual is

⁶⁹³ NDB Hiep and S Mahathanadull, 'The Concept and Practices of Mahayana Buddhist Vegetarianism in Vietnamese Society' (2019) 12(1) *The Journal of International Association of Buddhist Universities* 77.

⁶⁹⁴ See generally, Peter Harvey, *An Introduction to Buddhism: Teachings, History and Practices* (Cambridge University Press, 2013).

⁶⁹⁵ C P Salguero, 'Garlic and the Five Pungent Spices' in *Buddhism and Medicine: An Anthology of Premodern Sources* (Columbia University Press, 2017).

⁶⁹⁶ Tzu-Lang Chiu, 'The Practice of Fasting After Midday in Contemporary Nunneries' (2015) 9 *Oxford Centre for Buddhist Studies* 1-24.

⁶⁹⁷ See generally, Harvey (n 694).

generally permitted to decide for themselves. Donation is regarded as an act of self-sacrifice and as an expression of compassion.

Christianity

Christianity stems from the life, teachings, death, and resurrection of Jesus of Nazareth (Jesus Christ) in the 1st century CE. It is the world's largest religion with over 2.3 billion followers, comprising approximately 28.8% of the world's population.⁶⁹⁸ According to Christian tradition, Jesus was born between 2 BCE and 7 CE to a young Jewish woman named Mary in Bethlehem.⁶⁹⁹ Jesus was a Jew, as were all the apostles, and Christianity began as a movement within Judaism.⁷⁰⁰ Christians believe that Jesus was the Messiah prophesied in the Hebrew Bible (Old Testament), that he was the Son of God, and that his teachings offer salvation to humanity.⁷⁰¹

Core Christian beliefs centre around Jesus's crucifixion as a sacrifice for human sins and his resurrection from the dead three days later.⁷⁰² Christians are monotheistic, believing in one God who exists in three persons – God the Father, Jesus Christ the Son, and the Holy Spirit – a doctrine known as the Trinity. The largest branches of Christianity are the Eastern Orthodox churches, the Roman Catholic Church, and the Protestant churches. Significant movements within Christianity include Pentecostalism, Evangelicalism, and various other denominational traditions.⁷⁰³

Sacred Texts

The Christian Bible consists of two main divisions: the Old Testament and the New Testament, which together are regarded as the sacred scripture by Christians. The Old Testament consists of Hebrew scriptures that Christians share with Judaism, though the number and arrangement of books varies among denominations. These books document ancient Israel's history, provide moral teachings, and are considered the foundation of the Christian faith. The New Testament is a collection of 27 texts written during the 1st and 2nd centuries CE. It documents the life, teachings, death, and

⁶⁹⁸ 'The World's Religious Groups: How Their Sizes Changed from 2010 to 2020', *Pew Research Center* (Web Page, 9 June 2025) <<https://www.pewresearch.org/religion/2025/06/09/how-the-global-religious-landscape-changed-from-2010-to-2020/>>.

⁶⁹⁹ 'Christianity', *History* (Web Page, published 13 October 2017, updated 27 February 2025) <<https://www.history.com/articles/history-of-christianity>>.

⁷⁰⁰ 'History of Early Christianity', *Encyclopedia Britannica* (online, December 2022) <<https://www.britannica.com/topic/history-of-early-Christianity>>.

⁷⁰¹ Ibid.

⁷⁰² Ibid.

⁷⁰³ 'Pentecostalism', *Encyclopedia Britannica* (online, updated 22 August 2025) <<https://www.britannica.com/topic/Pentecostalism>>; James K Wellman, 'Christianity: Evangelicalism', *Worldmark Encyclopedia of Religious Practices* (online) <<https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/christianity-evangelicalism>>.

resurrection of Jesus Christ, as well as the establishment and early history of the Christian church.

As with all religious texts, the Bible should be handled with respect.

Oaths and Affirmations

Christians typically take oaths by placing their hand on the Bible and swearing “So help me God”. This practice is widely accepted across most Christian denominations and by the courts. The oath emphasises the sacred nature of truth-telling and calls upon God as witness to the truthfulness of one’s statements.

Some people of certain Christian denominations, including Quakers, may prefer to make an affirmation based on Jesus’s teachings in the Sermon on the Mount about not swearing oaths.⁷⁰⁴

Religious Dress

Christian dress varies significantly by denomination and role within the church. Clergy may wear distinctive vestments during religious services. Catholic, Orthodox and Anglican clergy, for example, wear elaborate liturgical vestments including albs, chasubles, stoles, and other garments specific to their role and the type of service. Protestant clergy dress varies from simple robes to business attire. Members of religious orders (monks and nuns) wear habits which are distinctive religious garments that vary by order and tradition.

There are generally no prescribed religious dress requirements for lay Christians. Some Christian traditions require or encourage women to wear head coverings in church.

Religious Holidays

Major Christian holy days and festivals are as follows:

- Christmas (25 December in Western churches, 6-7 January in some Eastern Orthodox churches): Celebrates the birth of Jesus Christ in Bethlehem approximately 2,000 years ago.
- Advent: A season of preparation beginning four Sundays before Christmas, looking back to Christ’s birth and forward to his second coming.
- Epiphany (6 January): Commemorates the visit of the Wise Men to the infant Jesus and, in some traditions, Jesus’s baptism.
- Lent: A 40-day period of fasting, reflection, and repentance beginning on Ash Wednesday and leading up to Easter. Many Christians observe Lent by giving up certain foods or activities.

⁷⁰⁴ ‘Affirmation’, *Encyclopedia Britannica* (online, 20 July 1998) <<https://www.britannica.com/topic/affirmation>>.

- Ash Wednesday: The first day of Lent, marked by services where ashes are placed on foreheads as a sign of repentance.
- Palm Sunday: The Sunday before Easter, commemorating Jesus's triumphant entry into Jerusalem when crowds waved palm branches.
- Holy Week: The week beginning with Palm Sunday and culminating in Easter, including Maundy Thursday (commemorating the Last Supper) and Good Friday (commemorating the crucifixion).
- Good Friday: Commemorates Jesus's crucifixion and death. Considered one of the most solemn days in the Christian calendar.
- Easter (date varies annually, dates differ for Orthodox Christians): The most important Christian festival, celebrating Jesus's resurrection from the dead.
- Pentecost: Celebrated 50 days after Easter, commemorating the descent of the Holy Spirit upon the apostles and the birth of the Christian church.
- All Saints' Day (1 November): Commemorates all Christian saints, known and unknown.
- The Assumption (15 August, observed by Catholics and Orthodox Christians): Marks the taking of Mary, the mother of Jesus, into heaven.

Dietary Practices

Christianity does not generally impose specific dietary restrictions and most Christians may eat any type of food, though some traditions and individuals choose to observe certain practices. Some Christians practice fasting during Lent, particularly on Ash Wednesday and Good Friday. Some Catholic and Orthodox traditions practice abstinence from meat on Fridays, especially during Lent. Specific practices vary by denomination and individual interpretation.

The most significant food elements in Christian practice are bread and wine (or grape juice in some traditions) used in the Eucharist or Communion, symbolising the body and blood of Jesus Christ.

Some Christian groups, such as Seventh Day Adventists, encourage vegetarianism and abstinence from alcohol, though these are generally recommendations rather than absolute requirements.⁷⁰⁵

Hinduism

Hinduism is a major world religion originating on the Indian subcontinent, comprising several varied systems of philosophy, belief, and ritual.⁷⁰⁶ With more than 1 billion followers, Hinduism is the third-largest religion worldwide, after Christianity and Islam, with approximately 94% of Hindus living in India.⁷⁰⁷

⁷⁰⁵ Duane C McBride et al, 'Health Beliefs, Behavior, Spiritual Growth, and Salvation in a Global Population of Seventh-Day Adventists' (2021) 63(4) *Review of Religious Research* 535.

⁷⁰⁶ 'Hinduism', *History* (Web Page, October 2017) <<https://www.history.com/articles/hinduism>>.

⁷⁰⁷ Ibid.

The history of Hinduism in India can be traced to approximately 1500 BCE, with its earliest literary source being the Rigveda, consisting of hymns composed during the last centuries of the 2nd millennium BCE.⁷⁰⁸ Hinduism has no single founder, no specific date of origin, and – according to the faith – the teachings contained in the Vedas have always existed, simply being recorded by ancient sages.⁷⁰⁹ Central themes in Hindu beliefs include Dharma (ethics and duties), Samsara (the continuing cycle of birth, death, and rebirth), Karma (the principle that actions have consequences), and Moksha (liberation from the cycle of rebirth).⁷¹⁰ Hinduism teaches that living creatures have a soul, and the ultimate goal is to achieve salvation, which ends the cycle of rebirths to become part of the supreme soul (Brahman).⁷¹¹

Sacred Texts

Hinduism values many sacred writings rather than a single holy book. The primary sacred texts are the Vedas, composed around 1500 BCE.⁷¹² This collection of verses and hymns was written in Sanskrit and contains revelations received by ancient saints and sages. Hindus believe that the Vedas transcend all time and have no beginning or end.⁷¹³

The four Vedas are Rigveda, Yajurveda, Samaveda and Atharvaveda, and were handed down orally over approximately ten centuries from the 15th to the 5th century BCE.⁷¹⁴

Some Hindus believe that sacred Hindu texts require ritual purity, which involves individuals performing ablutions (washing hands, face, and feet) before touching sacred texts.⁷¹⁵ In some traditional observance, menstruating women avoid handling sacred texts.⁷¹⁶ Hindu scriptures should be kept in clean, elevated places and not placed on the floor.

⁷⁰⁸ Vasudha Narayanan, 'The History of Hinduism', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/topic/Hinduism/The-history-of-Hinduism>>.

⁷⁰⁹ Joshua J Mark, 'Hinduism', *World History Encyclopedia* (online, 8 June 2020) <<https://www.worldhistory.org/hinduism/>>.

⁷¹⁰ 'Hinduism – Karma, Samsara, Moksha', *Encyclopedia Britannica* (20 July 1998) <<https://www.britannica.com/topic/Hinduism/Karma-samsara-and-moksha>>.

⁷¹¹ 'Hinduism', *History* (n 706).

⁷¹² 'Hinduism', *History* (n 706).

⁷¹³ 'Hinduism', *History* (n 706).

⁷¹⁴ 'Vedic Religion', *Encyclopedia Britannica* (online, 5 March 2015) <<https://www.britannica.com/topic/Vedic-religion>>.

⁷¹⁵ 'Ablution', *Encyclopedia Britannica* (online, 20 July 1998) <<https://www.britannica.com/topic/ablution>>.

⁷¹⁶ Deborah L Cohen, 'Menstruation and Religion: Developing a Critical Menstrual Studies Approach', in *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave, 2020).

Oaths and Affirmations

Hindus may choose to take an oath on the Bhagavad Gita or other sacred Hindu texts. When taking an oath, ritual purity may be required, including washing hands before handling the text. Hindus may also choose to affirm their evidence.

Religious Dress

Hindu religious dress varies significantly by region, tradition, and occasion. Some Hindu traditions require head coverings in temples. Other traditions may involve the application of religious markings on the forehead.

Religious Holidays

Hinduism observes numerous festivals and holy days throughout the year, with celebrations varying by region, tradition, and deity worship. The Hindu calendar is lunar-based. Major Hindu festivals include:

- Diwali: The Festival of Lights, typically celebrated in October or November, is one of the most important Hindu festivals. It celebrates the victory of light over darkness, good over evil, and knowledge over ignorance.
- Holi: The Festival of Colours (February/March), marks the arrival of spring and the victory of good over evil.
- Navarati/Durga Puja: A nine-night festival (September/October) dedicated to the worship of the goddess Durga and her various forms.
- Dussehra (Vijayadashami): Celebrated on the tenth day after Navarati.
- Janmashtami (Krishna Jayanti): Celebrates the birth of Lord Krishna, typically in August/September.
- Maha Shivaratri: The 'Great Night of Shiva', observed in February/March, is dedicated to Lord Shiva.
- Ganesh Chaturthi: A ten-day festival (August/September) celebrating the birth of Lord Ganesha, the elephant-headed god of beginnings and remover of obstacles.
- Raksha Bandhan: A festival celebrating the bond between brothers and sisters, observed in July/August.
- Ram Navami: Celebrates the birth of Lord Rama in March/April.
- Makar Sankranti/Pongal: A harvest festival celebrated in January.

Many other regional festivals, temple celebrations, and observances occur throughout the Hindu calendar, reflecting the diversity of traditions within Hinduism.

Dietary and Cultural Practices

Many Hindus practice vegetarianism, based on the principle of non-violence toward all living beings.⁷¹⁷ Some Hindus may only abstain from eating animal products during religious festivals, fasting periods, or specific holy days. The cow is considered sacred in Hinduism, and most Hindus do not consume beef.⁷¹⁸ Fasting is a common religious practice in Hinduism and may be observed on specific days of the week dedicated to particular deities, during festivals, or on auspicious occasions.

Cremation is generally preferred over burial in Hinduism because it acts as the final, purifying ritual to release the soul from its physical body and aid its journey towards liberation or reincarnation. Cremation generally occurs as soon as possible after death, after the body is washed and dressed in new clothes.

Islam

Islam was promulgated by the Prophet Muhammad in Arabia in the 7th century CE,⁷¹⁹ and is today the world's second largest religion with an estimated 1.8 billion followers worldwide.⁷²⁰ According to Islamic tradition, Muhammad was born around 570 CE in Mecca. He married Khadijah, a wealthy widow, with whom he had six children, including his daughter Fatimah. In 610 CE, Muhammad received his first revelation from the angel Gabriel in a cave on Mount Hira near Mecca. These revelations continued over a number of years and were later compiled into the Quran, Islam's sacred scripture. Muhammad began preaching publicly around 613 CE, calling for monotheism, the destruction of idols, and social justice including caring for the poor.⁷²¹

Facing persecution in Mecca, Muhammad and his followers migrated to what is now called Medina in 622 CE in an event known as the Hijra.⁷²² This migration marks the beginning of the Islamic calendar and by Muhammad's death in 632 CE much of the Arabian peninsula had converted to Islam.⁷²³

Islam teaches strict monotheism – Allah is viewed as the sole God. Muslims view Muhammad as the last of a series of prophets (including Adam, Noah, Abraham, Moses, and Jesus) and his message completes the revelations attributed to earlier prophets.⁷²⁴

⁷¹⁷ 'Ahimsa', *Encyclopedia Britannica* (online, 20 July 1998) <<https://www.britannica.com/topic/ahimsa>>.

⁷¹⁸ 'Sanctity of the Cow', *Encyclopedia Britannica* (online, 20 July 1998) <<https://www.britannica.com/topic/sanctity-of-the-cow>>.

⁷¹⁹ Fazlur Rahma, Musin S Mahdi, and Annemarie Schimmel, 'Islam', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/topic/Islam>>.

⁷²⁰ Ibid.

⁷²¹ Ibid.

⁷²² 'How was Islam founded?', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/topic/How-Was-Islam-Founded>>.

⁷²³ Ibid.

⁷²⁴ Rahma, Mahdi, and Schimmel (n 719).

Islam's two main branches are Sunni Islam and Shia (or Shi'i) Islam. The division between the two branches arose out of disputes about Muhammad's successor – Shia Muslims in favour of Muhammad's son-in-law, Ali, and Sunni Muslims in favour of the first elected caliph, Abu Bakr. Within Sunni Islam, there are four major schools of Islamic jurisprudence (madhabs): Hanafi, Maliki, Shafi'i, and Hanbali. Shia Islam has its own schools of jurisprudence, with the Ja'fari school being the most prominent.

The five pillars of Islam are the five fundamental religious obligations that all Muslims are encouraged to observe. They are:

- The Shahadah (or profession of faith): The declaration that "There is no god but Allah, and Muhammad is the messenger of Allah."
- Salat (Prayer): Prayer five times daily facing Mecca.
- Zakat (Charity): Giving a portion of one's wealth to the poor and needy.
- Sawm (Fasting): Fasting from dawn to sunset during the month of Ramadan.
- Hajj (Pilgrimage): Making a pilgrimage to Mecca at least once in a lifetime if physically and financially able.

Sacred Texts

The Quran is the most sacred scripture of Islam and is regarded as the word of God as delivered to Muhammad through the archangel Gabriel. The Quran consists of 114 chapters, called surahs. The surahs delivered at Mecca during the earlier part of Muhammad's career are concerned mostly with ethical and spiritual teachings, while those revealed at Medina focus more on social rules and the politico-moral principles for ordering the community.⁷²⁵

The Quran requires ritual purity for handling. The Australian National Imams Council's 'Explanatory Note on the Judicial Process and Participation of Muslims' provides that individuals who are not in a state of ritual purity, including menstruating women, may choose not to touch the Quran directly.⁷²⁶ The Quran should generally be kept elevated and wrapped in a clean cloth.

Oaths and Affirmations

Muslims can affirm their evidence or make an oath on the Holy Quran or swear by the name of God or any of the attributes of God.⁷²⁷ It is not necessary that the Quran be used in taking the oath, or for the person to place their hands on the Quran.⁷²⁸ The Australian National Imams Council recommends the following procedure:

- The person should be handed the Quran in a cover.

⁷²⁵ Ibid.

⁷²⁶ 'Explanatory Note on the Judicial Process and Participation of Muslims', *Australian National Imams Council* (Web Page, 12 December 217) <<https://anic.org.au/downloads/>>.

⁷²⁷ Ibid.

⁷²⁸ Ibid.

- The person should remove the Quran from the cover and be asked if they recognise the ok as a true copy of the Quran.
- The oath should be administered.
- The person should return the Quran to its cover and hand it back to the person administering the oath.

When someone is not in a state of ritual purity, it is appropriate to have the person make an oath by reference to the Quran without touching it directly.⁷²⁹

Religious Dress

Islamic dress varies by culture and interpretation, but modesty in dress is emphasised for both genders. Men may wear traditional clothing including thobes and head coverings such as the kufi or taqiyah. Women may choose to cover their hear with a hijab, and some may wear a full-face veil (the niqab or burqa). Other women may simply dress modestly by wearing loose-fitting clothing or the abaya. Specific forms of Islamic dress vary significantly by region, cultural tradition, and individual and community interpretations of religious scripture.

Religious Holidays

Islam has two major canonical festivals: Eid al-Fitr and Eid al-Adha. The timing of both holidays is set by the lunar Islamic calendar:

- Ramadan: Ramadan is the ninth month of the Muslim calendar and the holy month of fasting. Islamic tradition states that it was during Ramadan that Muhammad received the first revelations of the Quran. During Ramadan, Muslims fast from dawn until sunset.
- Laylat al-Qadr (Night of Power): One of the last ten nights of Ramadan, commemorates the night when Muhammad received his first revelation and is considered the holiest night of the year.
- Eid al-Fitr: Marks the end of Ramadan and is celebrated during the first three days of Shawwal, the tenth month of the Islamic calendar.
- Eid al-Adha: Marks the culmination of the hajj (pilgrimage to Mecca) and is celebrated on the tenth day of Dhu al-Hijjah, the twelfth month of the Islamic calendar.
- Al-Hijra: Marks the Islamic New Year.
- Mawlid: Celebrates the Prophet Muhammad's birthday.

Dietary and Cultural Practices

Muslims generally fast from dawn to sunset during Ramadan, abstaining from food, drink, and sexual relations. Pregnant or nursing women, children, the elderly, the ill,

⁷²⁹ Ibid.

the disabled, those with mental health issues and those on long journeys are exempt from the fasting requirements.

Islam distinguishes between permitted (halal) and forbidden (haram) foods. Alcohol and pork are always forbidden. Animals must be slaughtered according to Islamic ritual requirements to be considered halal.

Burial of a Muslim should generally occur as soon as reasonably practicable after death. The body is ritually washed by same-sex family members or community members and wrapped in simple white shroud cloth. Cremation is generally prohibited in traditional Islamic practice.

Jainism

Jainism was founded approximately 2,500 years ago in India.⁷³⁰ It is older but much smaller in size than Buddhism. The religion emphasises non-violence as its central principle, along with asceticism and the pursuit of spiritual liberation.⁷³¹ Jainism traces its teachings through twenty-four spiritual teachers called Tirthankaras, with Vardhamana Mahavira being the twenty-fourth and most recent.⁷³² Jainism has two major sects: Svetambara and Digambara.⁷³³ The religion has approximately 4-6 million followers globally, with most residing in India.⁷³⁴

Sacred Texts

Jainism does not have a single holy book but rather a collection of scriptures called the Agamas. The canonical literature differs between sects, because the Svetambaras accept certain texts that Digambaras consider to be lost.⁷³⁵

Oaths and Affirmations

Jains emphasise truthfulness as a fundamental principle.⁷³⁶ Jains may express a preference to take an oath on Jain scripture or to make an affirmation. Given there are different branches of Jainism, there is no singular agreed sacred text. Some may choose to swear on a text called the Kalpa Sutra. The person should be asked their

⁷³⁰ Christopher Key Chapple, *Jainism and Ecology: Nonviolence in the Web of Life* (Harvard University Press, 2002). See also, Padmanabh S Jaini, *The Jaina Path of Purification* (University of California Press, 1979); Paul Dundas, *The Jains* (Routledge, 2002).

⁷³¹ Chapple (n 730). See also, Jaini (n 730); Dundas (n 730).

⁷³² The Pluralism Project, 'Celebrating Mahavira: Mahavira Jayanti and Divali', *Harvard University* (Web Page) <<https://pluralism.org/celebrating-mahavira-mahavira-jayanti-and-divali>>.

⁷³³ Paul Dundas, Umakent Premanand Shah and G Ralph Strohl, 'Jainism', *Encyclopedia Britannica* (online, updated July 2025) <<https://www.britannica.com/topic/Jainism/additional-info#history>>.

⁷³⁴ Kelsey Jo Starr, '6 facts about Jains in India', *Pew Research Center* (Web Page, 17 August 2021) <<https://www.pewresearch.org/short-reads/2021/08/17/6-facts-about-jains-in-india/>>.

⁷³⁵ 'Jaina Canon', *Encyclopedia Britannica* (online, updated March 2012) <<https://www.britannica.com/topic/Jaina-canon>>.

⁷³⁶ Peter Flugel, 'Truthfulness and Truth in Jaina Philosophy' (2010) 50(2) *Anunsandhan Patrika-Vijnana Parishad* 166.

preference. While there are parallels between Jainism and Hinduism, they are not the same and should not be treated as such for the purposes of an oath. The witness may swear an oath by elevating the text above their head. The witness may need to ritually purify themselves prior to taking an oath.

Religious Dress

Svetambara ascetic monks and nuns wear white clothing. Digambara monks do not wear clothing. Some carry a broom to sweep away living creatures that might otherwise be stepped on and to clean the space where they sit/sleep as they are prohibited from killing living creatures.

Religious Holidays

Major Jain observances are based on the lunar calendar and include:

- Paryushan/Das Lakshan (August-September): The most important festival, lasting 8-10 days depending on sect. A time for fasting and forgiveness.⁷³⁷
- Mahavir Jayanti (March-April): Celebrates Mahavira's birth and is a national holiday in India.⁷³⁸
- Diwali (October-November): For Jains, commemorates Mahavira's attainment of liberation.⁷³⁹

Dietary Practices

Jainism maintains strict dietary restrictions based on its underlying non-violence principle, which includes vegetarianism, no root vegetables (as consumption is said to destroy the entire plant) and no honey. Pew Research Center has found that 'roughly nine-in-ten Indian Jains (92%) identify as vegetarian, and two-thirds of Jains (67%) go further by abstaining from root vegetables such as garlic and onion.'⁷⁴⁰ During Paryushan, Jains may observe various forms of fasting.⁷⁴¹

Jehovah's Witnesses

Jehovah's Witnesses are members of a Christian-based religious movement that developed within the larger 19th-century Adventist movement in the United States and has since spread worldwide. While there are a number of ideological differences between Jehovah's Witnesses and Christians, witnesses appearing in court proceedings may self-describe as Christian.

⁷³⁷ Kirit Daftary, 'Jainism's Paryushan Period a Time for Fasting and Forgiveness', *Parliament of Religions* (Web Page, 20 August 2014) <<https://parliamentofreligions.org/blog/jainisms-paryushan-period-a-time-for-fasting-and-forgiveness-august-22-31-2014/>>.

⁷³⁸ The Pluralism Project, 'Celebrating Mahavira: Mahavira Jayanti and Divali (n 732).

⁷³⁹ Dundas, Shah and Strohl, 'Jainism' (n 733).

⁷⁴⁰ Starr (n 734).

⁷⁴¹ Daftary (n 737).

Jehovah's Witnesses believe that the Bible is inspired by God and true. However, Jehovah's Witnesses reject the Christian idea of the trinity and believe that Jesus is the son of God (Jehovah) and that it is through Jesus whom sinful humans can be reconciled to God.⁷⁴² Jehovah's Witnesses do not believe that the soul is immortal.⁷⁴³ They believe that earth will last forever and everyone who accepts Jesus will live there, where only 144,000 people will be led by Jesus to heaven.⁷⁴⁴

Jehovah's Witnesses follow Jesus's words that "My Kingdom is not part of this world" and as such, they generally do not partake in politics, military service or sing national anthems.⁷⁴⁵ They do not give or receive blood transfusions.⁷⁴⁶ They also have no clergy, because each member is a witness to the faith and places of worship are called kingdom halls.⁷⁴⁷ Rather, Jehovah's Witnesses are governed by a President and Directors and go door-to-door spreading the word.⁷⁴⁸

Sacred Texts

The New World Translation of the Holy Scriptures (NWT) is the official Bible translation used by Jehovah's Witnesses. It was first published in the 1950s. The NWT is distinctive for its restoration of the divine name "Jehovah" throughout the text and its particular translations that reflect the religion's non-trinitarian theology.

Oaths and Affirmations

Jehovah's Witnesses may choose to take an oath on the NWT or the Christian Bible or may take an affirmation.

Religious Holidays

Jehovah's Witnesses generally do not celebrate birthdays, Christmas or Easter, because these are not specifically provided for in the Bible. The only celebrated holy day is the Memorial of Christ's Death, also known as the Lord's Evening Meal, which commemorates Jesus' death and sacrifice.

Religious Dress

Women generally wear skirts and dresses to kingdom halls and head-coverings when praying in public. Men generally wear suits with ties, or similar attire at kingdom halls and when preaching.

⁷⁴² J Gordon Melton, 'Jehovah's Witness', *Encyclopedia Britannica* (online, updated 1 October 2025) <<https://www.britannica.com/topic/Jehovahs-Witnesses>>.

⁷⁴³ Based on the statement at Ezekial 18:14 that 'the soul that sins, it shall die'.

⁷⁴⁴ 'What Do Jehovah's Witnesses Believe?', *Jehovah's Witnesses* (Web Page) <<https://www.jw.org/en/jehovahs-witnesses/faq/jehovah-witness-beliefs/>>.

⁷⁴⁵ Melton (n 742).

⁷⁴⁶ Ibid.

⁷⁴⁷ Ibid.

⁷⁴⁸ Ibid.

Dietary Practices

Jehovah's Witnesses may not eat foods that contain blood or its primary components including un-bled meat.

Judaism

Judaism is the oldest of the Abrahamic religions. It is a monotheistic religion that is characterised by a belief in one transcendent God who revealed himself to Abraham, Moses, and the Hebrew prophets and by a religious life in accordance with scriptures and rabbinic traditions.⁷⁴⁹ Judaism has more than 14 million followers worldwide and has three main branches: Orthodox, Conservative, and Reform, each with different approaches to traditional observance.⁷⁵⁰ Judaism emphasises both written law (Torah) and oral law (Talmud), with Orthodox Judaism maintaining that both 'are immutably fixed and remain the sole norm of religious observance.'⁷⁵¹

Sacred Texts

The primary sacred texts of Judaism are the Hebrew Bible (which includes the Torah) and the Talmud. The Torah consists of the Five Books of Moses and is central to Jewish religious life. The Talmud represents rabbinic interpretation and discussion of the Torah.

Oaths and Affirmations

Jewish tradition places great emphasis on truthfulness, as reflected in the Ten Commandments prohibition against bearing false witness. Some Jewish people may express a preference to take an oath on the Hebrew Bible or Torah rather than the Christian Bible, though practice will vary among different denominations and individual preferences. Some Jews may also choose to affirm their evidence.

Religious Dress

Religious dress varies significantly among the different movements. In traditional or orthodox practice, men may wear the kippah (yarmulke) at all times, and during prayer may also wear a prayer shawl. Women in orthodox communities may cover their hair after marriage and dress modestly. Some Jews may not wear any distinctive religious dress at all. Some Jewish women may prefer to keep their heads covered during court proceedings.

⁷⁴⁹ Schlomo Pines and Louis H Feldman, 'Judaism', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/topic/Judaism>>.

⁷⁵⁰ Ibid.

⁷⁵¹ 'Orthodox Judaism', *Encyclopedia Britannica* (online, updated August 2025) <<https://www.britannica.com/topic/Orthodox-Judaism>>.

Religious Holidays

Judaism observes several major holidays:

- Sabbath (Shabbat): Weekly observance from Friday evening to Saturday evening. Some Jews may not travel or conduct business during the Sabbath.
- Rosh Hashanah (Jewish New Year): A two-day festival in early spring.
- Yom Kippur (Day of Atonement): The holiest day in Judaism, sometimes involving complete fasting for 25 hours.
- Passover (Pesach): Eight-day festival commemorating the exodus from Egypt.
- Simchat Torah: Celebrates the giving of the Torah at Mount Sinai.
- Sukkot: Seven-day festival.

All major Jewish holidays begin at sunset the evening before and may require abstinence from work and travel.

Dietary and Cultural Practices

Judaism maintains detailed dietary rules known as kashrut (kosher rules). Traditional dietary observance includes 'the exclusion of swine, carrion eaters, shellfish, and certain other creatures, the separation of meat and dairy products, and the ritual slaughtering of animals.'⁷⁵² Key restrictions include: no pork or shellfish, no mixing of meat and dairy products, animals must be slaughtered according to ritual requirements, supervision of food preparation and ingredients. There are variations in dietary practices as between the different denominations, where for example, orthodox Jews may maintain strict adherence to all dietary rules, conservative Jews may generally observe kosher with some modern adaptations, and reform Jews may leave dietary observance entirely to individual choice.

In Judaism, burial generally occurs quickly after death, though may be delayed for Shabbat or to allow family to travel. The body is ritually washed and dressed in simple white linen shroud. Cremation may be discouraged in some Orthodox and conservative Jewish communities.

Shintoism

Shintoism encompasses the indigenous religious beliefs and practices of Japan.⁷⁵³ The word "Shinto" means "the way of kami" (generally sacred or divine power, specifically the various gods or deities), came into use to distinguish indigenous Japanese beliefs from Buddhism, which had been introduced into Japan in the 6th century CE.⁷⁵⁴

⁷⁵² Pines and Feldman (n 749).

⁷⁵³ Naofusa Hirai, 'Shinto', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/topic/Shinto>>.

⁷⁵⁴ Ibid.

Shintoism has no recognised founder, and scholars debate when Shinto began to be referred to as a distinct religion.⁷⁵⁵ The religion is polytheistic and animistic, revolving around supernatural entities called the kami, which are believed to inhabit all things, including forces of nature and important landscape locations.⁷⁵⁶ Shintoism's core principle is the belief in the kami's mysterious creating and harmonising power.⁷⁵⁷

Sacred Texts

Shintoism has no major text or scripture which outlines its principal beliefs. Its mythology is collected in ancient chronicles.⁷⁵⁸ The most important texts are the Kojiki (Record of Ancient Things), Nihon Shoki (Chronicle of Japan), Engishiki (a collection of 50 books covering the rules, rituals and prayers of Shinto).

Oaths and Affirmations

Shintoists may choose to take an oath or affirmation according to their personal preference.

Religious Dress

Shintoism does not prescribe specific religious dress for lay followers. Certain ceremonial and ritual contexts may involve traditional attire. For example, during festivals and ceremonies, participants may wear traditional Japanese clothing such as the kimono, while others may wear white to symbolise ritual cleanliness.

Religious Holidays

The major Shinto religious holidays are:

- Shogatsu Matsuri/Oshogatsu (Japanese New Year): A three-day festival that is among the most important annual celebrations, involving shrine visits and purification rituals.
- Setsubun (3 or 4 February): Marking the end of winter and beginning of spring.
- Hinamatsuri (Girls Day, 3 March): Festival of dolls to celebrate daughters in the family.
- Tanabata (7 July or 7 August): Celebrates the romantic legend of the oxherd and the weaver.
- Obon (August): Festival of the dead.
- Spring/Autumn Festivals that celebrate seasonal cycles.

⁷⁵⁵ Elizabeth Hammer, 'Shinto', *Asia Society* (Web Page, 25 July 2017) <<https://asiasociety.org/education/shinto>>.

⁷⁵⁶ Ibid.

⁷⁵⁷ Hirai (n 753).

⁷⁵⁸ Ibid.

- Niiname-sai (November): Rice harvest festival that involves offering grains and fruits of the season to the kami at shrines.

Sikhism

Sikhism is a monotheistic religion founded in the Punjab region of the Indian subcontinent in the late 15th century by Guru Nanak.⁷⁵⁹ The faith developed from Nanak's spiritual teachings and those of the nine Sikh Gurus who succeeded him. Sikhs refer to their faith as "Gurmat" (in Punjabi, "the way of the Guru") and its adherents are known as Sikhs (in Punjabi, "learners"). Sikhism has approximately 25-30 million adherents worldwide.⁷⁶⁰

Sikhism originated with Guru Nanak's mystical encounter with God around age 30, after which he emerged from three days of disappearance declaring "There is neither Hindu nor Muslim."⁷⁶¹ The religion emphasises belief in one God, the teachings of the ten spiritual masters (Gurus) and the salvation and liberation from the cycle of reincarnation which is achieved by meditation and service to others.⁷⁶²

Sacred Texts

The Guru Granth Sahib is the central holy scripture of Sikhism. Originally compiled by the fifth Guru, it was completed by the tenth and final Guru who affirmed the text as his successor.⁷⁶³ The Guru Granth Sahib is considered a living Guru rather than a book, and as such is treated with utmost reverence by Sikhs. It should be handled with respect and is generally kept covered with decorative cloths when not in use.⁷⁶⁴

Oaths and Affirmations

Sikhs may choose to take an oath on the Guru Granth Sahib. Some Sikhs may choose to place their hand on the Guru Granth Sahib while taking an oath, and some may choose to make an affirmation.

⁷⁵⁹ William McLeod, 'Sikhism', *Encyclopedia Britannica* (online, updated July 2025) <<https://www.britannica.com/topic/Sikhism>>.

⁷⁶⁰ 'Sikhism by Country 2025', *World Population Review* (Web Page, 2025) <<https://worldpopulationreview.com/country-rankings/sikhism-by-country>>.

⁷⁶¹ The Pluralism Project, 'Guru Nanak', *Harvard University* (Web Page) <<https://pluralism.org/guru-nanak>>.

⁷⁶² Tamanna Nangia, 'Guru Gobind Singh', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/biography/Guru-Gobind-Singh>>.

⁷⁶³ 'Adi Granth', *Encyclopedia Britannica* (online, updated September 2025) <<https://www.britannica.com/topic/Adi-Granth-Sikh-sacred-scripture>>.

⁷⁶⁴ The Pluralism Project, 'The Guru Granth Sahib', *Harvard University* (Web Page) <<https://pluralism.org/the-guru-granth-sahib>>.

Religious Holidays

- Guru Nanak Jayanti: Celebrates the birth of Guru Nanak, typically observed in November.
- Vaisakhi (13/14 April): Celebrates the harvest festival.
- Guru Gobind Singh Jayanti (December/January): Celebrates the birth of the tenth Guru.
- Martyrdom Days: Commemorating the sacrifice of Guru Arjan and Gurug Tegh Bahadur, who were executed by Mughal emperors.
- Diwali: Commemorating Guru Hargobind's release from imprisonment.

Religious Dress

Sikhs are encouraged to wear the five articles of faith (known as the Five Ks), which include:

- Kesh (uncut hair): All body hair is generally kept uncut to honour God's creation and accept the perfection of the divine form.
- Kangha (wooden comb): A small comb worn in the hair, symbolising cleanliness and the importance of maintaining a tidy appearance both externally and spiritually.
- Kara (steel bracelet): An iron or steel bracelet worn on the wrist, circular in shape to represent God's eternal nature with no beginning or end.
- Kachera (cotton undergarments): Knee-length cotton undergarments worn by both men and women, symbolising chastity, modesty, and self-control.
- Kirpan (ceremonial sword): A small sword or dagger representing the duty to protect the innocent and defend justice, never to be used in anger.

Sikh men, and some Sikh women, may wear a turban to cover their uncut hair. Sikh women may also wear traditional Punjabi dress (salwar-kameez with dupatta) and some baptised women wear a small turban to cover their hair.

Dietary Practices

Sikhism generally prohibits "kutha" meat (ritually slaughtered meat), which includes halal, kosher and any other religiously slaughtered meat.⁷⁶⁵ Tobacco and alcohol are also prohibited.⁷⁶⁶

⁷⁶⁵ Eleanor Nesbitt, "The fools argue about flesh and meat": Sikhs and vegetarianism' (2015) 9(1) *Religions of South Asia* 81.

⁷⁶⁶ See generally, Garima Bhatt, Sonu Goel and Gagandeep Shergill, 'One size doesn't fit all: contouring and addressing social vials in reversing tobacco epidemic in Punjab, India' (2020) 13(3) *Global Health* 10.1136: 1-7; Jasbir Singh Sarna, 'Prohibition of Drugs and Intoxicants in Sikhism: A Theological and Ethical Perspective' (Web Page, 30 September 2024) <<https://www.sikhnet.com/news/prohibition-drugs-and-intoxicants-sikhism>>.

Taoism

Taoism (or Daoism) is a belief system that originated in China, holding that humans and animals should live in balance with the Tao, or the universe.⁷⁶⁷ Taoism primarily follows the teachings of Confucius, but it is not uncommon for Taoists to also practise other faiths, such as Buddhism or Christianity.

Sacred Texts

The foundational text of Taoism is the Tao Te Ching, a short collection of prose poems that outlines the Way, setting out man and his place in the universe. Wu Wei is the core principle of acting in alignment with the natural course of the universe.⁷⁶⁸ Yin Yang is the widely accepted symbol of Taoism, emphasising the relatively of all values and the dimensions of polarity, where everything has opposite dimensions (positive/negative, dark/light, active/passive, male/female).⁷⁶⁹

Oaths and Affirmations

Taoists may choose to affirm or take an oath. Some Taoists may consider themselves to be adherents of Confucianism. Given that Taoism and Confucianism permit followers to adhere to other religious teachings, some may self-describe as Christian, Buddhist, Muslim etc and take an oath on one of those religious texts. Others may prefer to take an oath on the Tao Te Ching.

Religious Holidays

There are various religious festivals and observances, mostly centred on the Chinese lunar calendar, which may include

- Chinese New Year
- Lantern Festival: Celebrated on the 15th day of the first lunar month.
- Qingming Festival (Tomb Sweeping Day): Held around 5 April and involves visiting and cleaning ancestors' graves and making offerings.
- Dragon Boat Festival: Commemorates the life of the poet Qu Yuan.
- Zhongyuan Festival (Ghost Festival): Held in the 7th lunar month where offerings are made to ghosts.
- Harvest Festival celebrated on the 15th day of the 8th lunar month.
- Chongyang Festival: Celebrated on the 9th day of the 9th lunar month, to show respect for the elderly.

⁷⁶⁷ 'Taoism', *Encyclopedia Britannica* (online, updated August 2025) <<https://www.britannica.com/topic/Taoism>>.

⁷⁶⁸ Matt Stefon, 'Wuwei', *Encyclopedia Britannica* (online) <<https://www.britannica.com/topic/wuwei-Chinese-philosophy>>.

⁷⁶⁹ 'Deciphering Taoist Concepts and Symbols: The Yin Yang and Beyond', *Philosophy Institute* (Web Page, 14 December 2023) <[https://philosophy.institute/religions-of-the-world/taoist-concepts-yin-yang-symbols/](https://philosophy.institute/religions-of-the-world/taoist-concepts-yin-yang-symbols/#yin-and-yang-opposites-in-harmony) #yin-and-yang-opposites-in-harmony>.

The family is considered the most important unit in Taoism and rituals centre around birth, marriage and death. A family may have its own alter and a shrine to ancestors.

Zoroastrianism

Zoroastrianism is an ancient, monotheistic religion, originating in ancient Persia. It is based on the teachings of Zarathustra, who lived in Iran before the advent of writing. It holds that there is one supreme deity/eternal God, Ahura Mazda (Lord of Wisdom), who created the world so that the forces of good could reign over the evil spirit.⁷⁷⁰ From the 10th century onward, groups of Zoroastrians emigrated to India and adapted themselves to Indian culture and today are known as Parsis.⁷⁷¹ Zoroastrianism remains a minority religion in parts of Iran and India.

Sacred Texts

The central beliefs and practices of Zoroastrianism are contained in the Avesta, a compendium of sacred texts assembled over several centuries.

Oaths and Affirmations

Zoroastrians may choose to either affirm or possibly swear an oath on the Avesta.

Religious Holidays

There are seven religious festivals (Gahambars), each lasting five days:

- Nowruz: The holiest of the seven festivals, marking the start of the New Year (also Persian New Year) and coinciding with the spring equinox.
- Maidyozarem: The mid-spring festival, which celebrates the creation of the sky or heaven.
- Maidyoi-shema: The midsummer festival, which celebrates the creation of water.
- Paitishahema: The harvest festival, which celebrates the creation of the earth.
- Ayathrem: The mid-autumn festival, which celebrates the creation of plants.
- Maidyarem: The mid-winter festival, which celebrates the creation of animals.
- Hamaspathmaedyem: This festival commemorates human creation and the souls of the dead (also known as Frawardigan)

Religious Dress

Some Zoroastrians may wear the sudreh (white cotton undershirt) and/or the kustī (sacred cord traditionally woven from 72 woollen threads) as a symbol of faith.

⁷⁷⁰ Jacques Duchesne-Guillemin, 'Zoroastrianism', *Encyclopedia Britannica* (online, updated August 2025) <<https://www.britannica.com/topic/Zoroastrianism>>.

⁷⁷¹ Ibid.

Dietary Practices

Zoroastrians generally do not practise fasting, as Zoroastrianism does not see the body and spirit as opposing forces where the body needs to be weakened to strengthen the spirit. Instead, both body and spirit are considered essential for righteousness, and weakening the body through fasting is seen as reducing one's ability to fight evil.⁷⁷² Some Zoroastrians abstain from eating beef or pork (beef being associated with the holy status of the cow in India, and pork in association with the month of Bahram in which the divine is often depicted as a boar).

⁷⁷² Ibid.

APPENDIX F. LGBTIQA+ GLOSSARY OF COMMON TERMS

The below glossary is extracted from the Australian Institute of Family Studies' LGBTIQA+ glossary of common terms dated February 2022. The full resource sheet is available [here](#).

This glossary is not exhaustive and should be used as a guide. Terminology is organised around the following categories (listed in alphabetical order):

- Bodies and variations in sex characteristics
- Gender
- Sexual orientations
- Societal attitudes/issues.

Bodies and Variations in Sex Characteristics

Endosex: A term used to describe people whose innate sex characteristics meet medical and conventional understandings of male and female bodies (Intersex Human Rights Australia, 2021).

Intersex: An umbrella term that refers to individuals who have anatomical, chromosomal and hormonal characteristics that differ from medical and conventional understandings of male and female bodies. There are at least 40 different variations that may be apparent at different life stages or may remain unknown to the individual and their medical practitioners. Some people with an intersex variation are LGBTQ, many are heterosexual and most are cisgender.

Sex: A classification that is often made at birth as either male or female based on a person's external anatomical characteristics. However, sex is not always straightforward, as some people may be born with an intersex variation, and anatomical and hormonal characteristics can change over a life span.

Sex characteristics: A term used to refer to physical parts of the body that are related to body development, regulation and reproductive systems. Primary sex characteristics are gonads, chromosomes, genitals and hormones. Secondary sex characteristics emerge at puberty and can include the development of breast tissue, voice pitch, facial and pubic hair, etc.

Gender

Cisgender/cis: A term used to describe people whose gender corresponds to what they were assigned at birth.

Dead name: An informal way to describe the former name a person no longer uses because it does not align with their current experience in the world or their gender. Some people may experience distress when this name is used.

Dysphoria: The distress or unease sometimes experienced from being misgendered and/or when someone's gender and body personally don't feel connected or congruent. Many trans people do not experience gender dysphoria at all and, if they do, they may cease with access to gender affirming healthcare and/or peer support. With or without the presence of gender dysphoria, being trans is not a mental illness. Gender dysphoria does not equal being trans (TransHub, 2021).

Gender/gender identity: One's sense of whether they are a man, woman, non-binary, agender, genderqueer, genderfluid, or a combination of one or more of these definitions. Gender can be binary (either a man or a woman), or non-binary (including people who have no binary gender at all and people who have some relationship to binary gender/s).

Gender affirmation: The personal process or processes a trans person determines is right for them in order to live as their defined gender and so society recognises this. This may involve social, medical and/or legal steps that affirm a person's gender. A trans person who hasn't medically or legally affirmed their gender is no less the man, woman or non-binary person they've always been. A person's circumstances may inhibit their access to steps they want to take to affirm their gender (TransHub, 2021).

Gender binary: Something that is binary consists of two things or can refer to one of a pair of things. When talking about genders, binary genders are male and female, and non-binary genders are any genders that are not just male or female, or aren't male or female at all (TransHub, 2021).

Gender euphoria: The experience of comfort, connection and celebration related to a trans person with their internal sense of self and gender. The pride of feeling and being affirmed as who they are.

Gender expression: Refers to how a person chooses to publicly express or present their gender. This can include behaviour and outward appearance, including clothing, hair, make-up, body language and voice. Western expectations of gender expression are based on a binary of men as masculine and women as feminine but many people do not fit into binary gender expressions. Failing to adhere to the norms associated with one's gender can result in ridicule, intimidation and violence (Hill et al., 2020; Robinson, Bansel, Denson, Ovenden, & Davies, 2014).

Gender fluid: A term used to describe a person with shifting or changing gender.

Gender pronouns: Refer to how a person publicly expresses their gender identity through the use of a pronoun. Pronouns can be gender-specific or gender-neutral (Rainbow Health Australia (formerly GLHV), 2016). This can include the traditional he

or she, as well as gender-neutral pronouns such as they, their, ze and hir (see Transgender/Trans).

Genderqueer: A gender identity that does not conform to traditional gender norms and may be expressed as other than woman or man or both man and woman, including gender neutral and androgynous.

Gender questioning: Not necessarily an identity but sometimes used in reference to a person who is unsure which gender, if any, they identify with.

Non-binary: An umbrella term for gender identities that sit within, outside of, across or between the spectrum of the male and female binary. A non-binary person might identify as gender fluid, trans masculine, trans feminine or could be agender (without a feeling of having any gender or having neutral feelings about gender) (TransHub, 2021).

Sistergirl/Brotherboy: Terms used for trans people within some Aboriginal or Torres Strait Islander communities. How the words Sistergirl and Brotherboy are used can differ between locations, countries and nations. Sistergirls and Brotherboys have distinct cultural identities and roles. Sistergirls are Indigenous people assigned male at birth but who live their lives as women, including taking on traditional cultural female practices (Rainbow Health Australia, 2016). Brotherboys are Indigenous people assigned female at birth but are a man or have a male spirit (Rainbow Health Australia, 2016).

Transgender/Trans: Umbrella terms used to refer to people whose assigned sex at birth does not match their gender identity. Trans people may choose to live their lives with or without modifying their body, dress or legal status, and with or without medical treatment and surgery. Trans people may use a variety of terms to describe themselves including but not limited to: man, woman, trans woman, trans man, non-binary, agender, genderqueer, genderfluid, trans guy, trans masculine/masc, trans feminine/femme.

Trans people have the same range of sexual orientations as the rest of the population. Trans people's sexual orientation is referred to in reference to their gender identity, rather than their sex. For example, a woman may identify as lesbian whether she was assigned female or male at birth.

Trans people may also use a variety of different pronouns (see Gender pronouns). Using incorrect pronouns to refer to or describe trans people is disrespectful and can be harmful (see Misgendering under 'Societal attitudes/issues' below).

Sexual orientations

AFAB/AMAB: An acronym for Assigned or presumed Female/Male at Birth.

Aromantic/aro: Refers to individuals who do not experience romantic attraction. Aromantic individuals may or may not identify as asexual.

Asexual/ace: A sexual orientation that reflects little to no sexual attraction, either within or outside relationships. People who identify as asexual can still experience romantic attraction across the sexuality continuum. While asexual people do not experience sexual attraction, this does not necessarily imply a lack of libido or sex drive.

Bisexual/bi: An individual who is sexually and/or romantically attracted to people of the same gender and people of another gender. Bisexuality does not necessarily assume there are only two genders (Flanders, LeBreton, Robinson, Bian, & Caravaca-Morera, 2017).

Gay: An individual who identifies as a man and is sexually and/or romantically attracted to other people who identify as men. The term gay can also be used in relation to women who are sexually and romantically attracted to other women.

Heterosexual: An individual who is sexually and/or romantically attracted to the opposite gender.

Lesbian: An individual who identifies as a woman and is sexually and/or romantically attracted to other people who identify as women.

Pansexual: An individual whose sexual and/or romantic attraction to others is not restricted by gender. Pansexuality can include being sexually and/or romantically attracted to any person, regardless of their gender identity.

Queer: A term used to describe a range of sexual orientations and gender identities. Although once used as a derogatory term and still considered derogatory by many older LGBTIQ+ people, the term queer now encapsulates political ideas of resistance to heteronormativity and homonormativity and is often used as an umbrella term to describe the full range of LGBTIQ+ identities.

QTPOC: An acronym for Queer and Trans People of Colour.

Sexual orientation: Refers to an individual's sexual and romantic attraction to another person. This can include, but is not limited to, heterosexual, lesbian, gay, bisexual and asexual. It is important to note, however, that these are just a handful of sexual orientations – the reality is that there are an infinite number of ways in which someone might define their sexuality. Further, people can identify with a sexuality or sexual orientation regardless of their sexual or romantic experiences. Some people may identify as sexually fluid; that is, their sexuality is not fixed to any one identity.

Societal Attitudes/Issues

Biphobia: Refers to negative beliefs, prejudice and/or discrimination against bisexual people. This can include a dismissal of bisexuality, questioning whether bisexual identities are authentic or a focus on the sexual desires and practices of bisexual people (Ross et al., 2018).

Cisgenderism: Where something is based on a discriminatory social or structural view that positions (either intentionally or otherwise) the trans experience as either not existing or as something to be pathologised. Cisgenderism believes that gender identity is determined at birth and is a fixed and innate identity that is based on sex characteristics (or 'biology') and that only binary (male or female) identities are valid and real (TransHub, 2021).

Cisnormativity: Assumes that everyone is cisgender and that all people will continue to identify with the gender they were assigned at birth. Cisnormativity erases the existence of trans people.

Heteronormativity: The view that heterosexual relationships are the natural and normal expression of sexual orientation and relationships. This is an extension of cisgenderism, which is a discriminatory social structure that positions cis and binary genders as the only real or valid experiences of gender.

Heterosexism: Describes a social system that privileges heteronormative beliefs, values and practice. Heterosexism provides the social backdrop for homophobic and transphobic prejudices, violence and discrimination against people with non-heteronormative sexualities, gender identities and intersex varieties (McKay, Lindquist, & Misra, 2019).

Homonormativity: A term that describes the privileging of certain people or relationships within the queer community (usually cisgender, white, gay men). This term also refers to the assumption that LGBTIQ+ people will conform to mainstream, heterosexual culture; for example, by adopting the idea that monogamy, marriage and having children is a natural and normal relationship progression.

Homophobia: Refers to negative beliefs, prejudices, stereotypes and fears that exist towards same-sex attracted people. It can range from the use of offensive language to bullying, abuse and physical violence; and can include systemic barriers, such as being denied housing or being fired due to a person's sexual orientation.

Misgendering: An occurrence where a person is described or addressed using language that does not match their gender identity (Rainbow Health Australia, 2016). This can include the incorrect use of pronouns (she/he/they), familial titles (dad, sister, uncle, niece) and, at times, other words that traditionally have gendered applications (pretty, handsome, etc.).

Transphobia: Refers to negative beliefs, prejudices and stereotypes that exist about trans people.