



Aboriginal & Torres Strait Islander  
Legal Service (Qld) Ltd

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# Staff Induction

Procedural Guide

## Culturally Competent Client Representation

Procedural Guide



February 2012

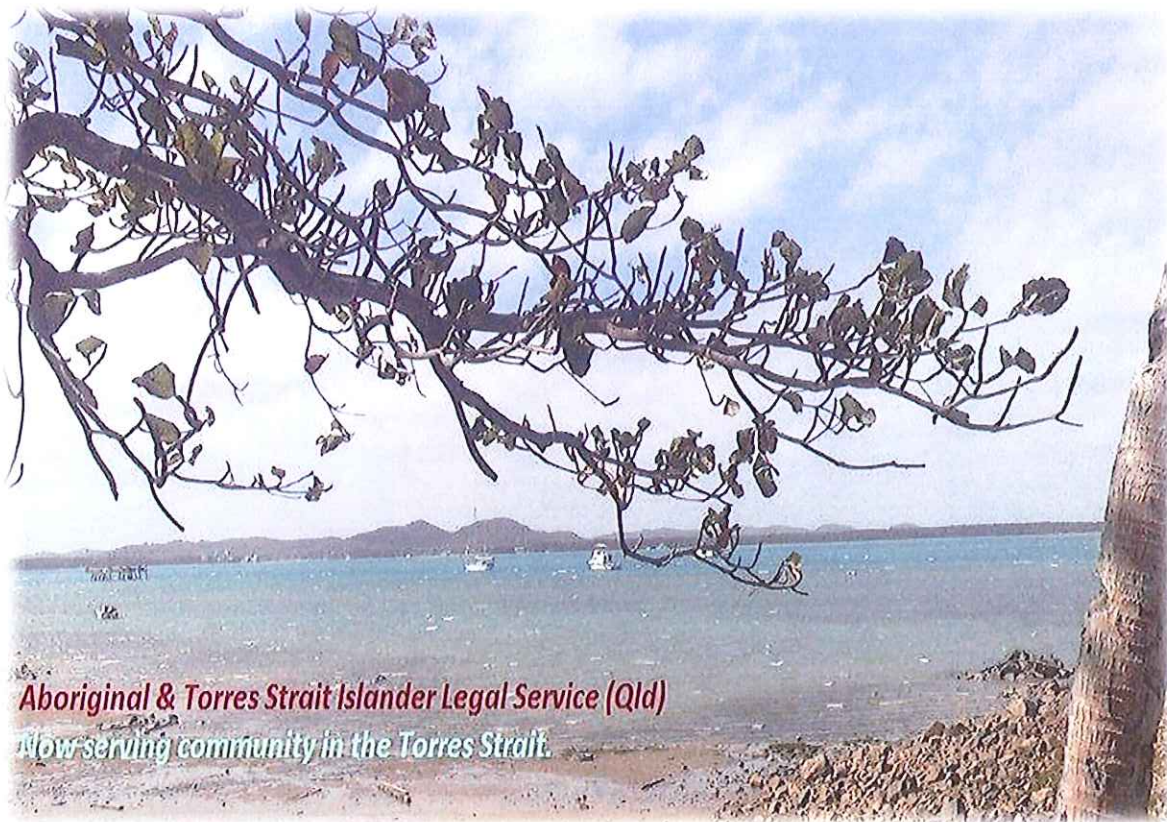
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## Acknowledgements

### Culturally Competent Client Representation

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# 1. Overview

## Culturally Competent Client Representation

Aboriginal and Torres Strait Islander people are over-represented in our prison and court systems, particularly young people and women.

The rate of imprisonment for Aboriginal and Torres Strait Islander peoples is much higher than for non-Indigenous Australians. According to the Australian Bureau of Statistics, Aboriginal and Torres Strait Islander people make up 24% of the prison population, while they only make up 2.5% of Australia's population.

The number of Aboriginal and Torres Strait Islander people in prison is increasing, and the gap between the numbers of Aboriginal and Torres Strait Islander and non-Indigenous people in prison has been increasing. Aboriginal and Torres Strait Islander adults were 13 times more likely than other Australians to be in prison in 2008. In 2000, it was only 10 times. Today Aboriginal and Torres Strait Islander young people are 28 times more likely to be detained in a juvenile detention centre.

Aboriginal & Torres Strait Islander children represent 6.5% of all young people (aged 0 – 17years) in Queensland. However, more than 37% of children subject to child protection orders are Aboriginal & Torres Strait Islander children.

## 2. Why is this important?

As a highly skilled service provider to Aboriginal and Torres Strait Islander people you are specialising in an area that requires special knowledge and skills that will allow you to conduct your role to its utmost efficiency.

Cultural-competency knowledge/training is integral to your ability to have the requisite awareness, skills and competencies to be able to work with and support Aboriginal and Torres Strait Islander people in accessing appropriate legal representation and other related services.

Whilst this induction material is designed to assist you in your initial stages of your cultural competency training – there is also a more detailed Cultural Competency Training Package which will be made available to you (and other existing staff) to assist you in what will doubtless be a continuing journey of cultural awareness. It is an aim of this material to instill within participants a deeper psychological understanding of the reasons for the real and perceived barriers to legal assistance and learn strategies to help overcome such in order to provide your clients with better access to our services (and those of relevant referral agencies). Similarly the local Aboriginal or Torres Strait Islander communities will feel “safe” in wanting to access our services when the need arises.

### 3. What is “Cultural Competence”?

Cultural Competence is described simply as having the means and skills to understand, empathise, communicate and interact effectively with people from different cultures.

In organisations, Cultural Competence relates to the skills and abilities to cater effectively for clients with diverse values, beliefs and behaviours, including tailoring delivery to meet clients’ social, cultural and linguistic needs (Betancourt, 2002)<sup>1</sup>. It encompasses a coherent set of behaviours, attitudes, and policies to enable a system, agency or profession to work effectively in cross-cultural situations.

At a service delivery level the ability to honour and respect customary and religious beliefs, attitudes and behaviours is of utmost importance to both the clients and our staff who are providing services. In doing so, it incorporates these values at the level of policy, administration and practice (Roberts 1990)<sup>2</sup>.

### 4. Who is this Guide written for?

This cultural competency awareness information is for all ATSILS and formally placed legal students staff that provide services directly or indirectly to Aboriginal and Torres Strait Islander clients/communities – in other words, for all of our staff. It might also be suitable/useful reference material for any other person who is placed in a situation of interacting with our clients/communities.

#### In the meantime...

As you have already started in your position – and in that regard we warmly welcome you to your new role - it will probably be necessary for you to “hit the ground running”. The following guidelines have been developed to assist you until more comprehensive cultural competency training can take place. Further information can be found by accessing the following folder on the ATSILS ‘G’ drive at: [G:\Staff Cultural Training\](#).

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<sup>1</sup> Betancourt, J., Green, A. & Carrillo, E. (2002). *Cultural competence in health care: Emerging frameworks and practical approaches*. The Commonwealth Fund

<sup>2</sup> Roberts, R., et al. (1990). *Developing Culturally Competent Programs for Families of Children with Special Needs* (monograph and workbook); Georgetown University Child Development Center



## 5. Our values: Care, Share and Respect

As part of your induction you should by now have been referred to a copy of our strategic or *Corporate Plan*. It will be noted that the core values of our organisation relate to the principles of **Care, Share and Respect**. Dealing with our clients and communities in a culturally competent manner is fundamental to putting these core principles into practice.

## 6. Best Practice Guidelines

### a. Respect

- ♦ Honour and respect the breadth and diversity of Aboriginal and Torres Strait Islander customary and religious beliefs within their particular cultures. When dealing with clients, do so in a manner which acknowledges and respects their cultures;
- ♦ Recognise the need to seek input from, and involve Court Support or Field Officers in the client communication process. Similarly, guidance from Aboriginal or Torres Strait Islander administration staff can also be an invaluable asset. Whilst saying that, do not expect administration staff to have knowledge above their level of training. Remember the diversity of cultures extends to all communities;
- ♦ Appreciate the fact that because individual clients, do not appear to use traditional language or practise traditional customs, it does not necessarily diminish that person's standing as being either an Aboriginal or Torres Strait Island person. This is a matter for each family/language group and should not be interfered with by persons outside of that group;
- ♦ There are cultural differences which directly impact upon how a legal practitioner can effectively advise and represent clients;
- ♦ Respect the role of Elders in the client's community. Similarly, understand and respect the role of Community Justice Groups including their role in sentencing and providing cultural advice to the courts about their communities;
- ♦ Understand the significance for Aboriginal and Torres Strait Islander people to participate in customary law practices such as attending to sorry business, tombstone unveilings, "Marigeth" responsibilities, men's and women's business and the impact such can have on issues such as court attendances;
- ♦ Be aware that many Aboriginal and Torres Strait Islander people respect customary law by not speaking the name of a deceased person for a period of time and by not displaying their image;

- ♦ Be sensitive that being an Aboriginal or Torres Strait Islander person is not at all dependent upon skin colour. Be aware, however, that significant prejudices surrounding this issue are present at all levels of society. Today, as a result of both negative and positive relationships, many Aboriginal and Torres Strait Islander people are of varying degrees of skin colour, facial and bodily appearance. This is a vital component of respectful best practice.

## **b. Effective Communication**

- ♦ Recognise that providing a quality service to our clients involves taking into account many different communication barriers;
- ♦ Be aware that English might not be the first or even second language of a client;
- ♦ Understand that through “Kinship” and “Moiety” systems of ‘Customary Law’, Aboriginal and Torres Strait Islander family structures differ greatly and that the value of family relationships is very high. Similarly, understand that there might be customary law requirements upon family and extended family to support a client through the legal process. Consider and appreciate the historical and current experiences of our client base;
- ♦ Appreciate the need to establish a relationship with clients so as to engender trust and rapport. These relationships are best built upon an understanding of the client’s background, family and customary law responsibilities as well as properly introducing yourself;
- ♦ Remember to utilise the skills and knowledge of Field or Court Support Officers in establishing effective client communications. In some situations, recourse to external interpreters or advocates might be necessary. Please do not expect Court Support or Field Staff to have “all the answers”;
- ♦ Remember that many Aboriginal and Torres Strait Islander staff also have community of family responsibilities and indeed, from time to time, conflicts of interest occur that do not allow them to perform at peak level with some clients; exceptions should be made to accommodate these circumstances;
- ♦ Be aware that asking direct questions of clients is, as a general rule, considered to be culturally inappropriate and might also lead to **gratuitous concurrence**. So where possible – avoid direct questions. Please refer to the **“Equal Treatment Benchbook” – Supreme Court of Queensland – Section 9.7.3**.  
It can be found on the following link-  
[http://www.courts.qld.gov.au/The\\_Equal\\_Treatment\\_Bench\\_Book/S-ETBB.pdf](http://www.courts.qld.gov.au/The_Equal_Treatment_Bench_Book/S-ETBB.pdf)
- ♦ Be aware that some non-verbal features of communication by clients include avoiding direct eye contact (as direct eye contact is often perceived as disrespectful



or confrontational) and the use of silence or long pauses before responding (which should not be confused with avoidance or uncertainty);

- ♦ Be aware that pronunciation, grammar and sentence structure differ and can lead to miscommunications. Please refer to the handbook entitled ***“Aboriginal Language in the Courts”*** based upon the work by Dr Dianna Eades. It can be found at the following link –  
<http://www.courts.qld.gov.au/Factsheets/M-MC-AboriginalEnglishHandBook.pdf>
- ♦ Use other strategies where appropriate to assist in the communication process – such as the use of diagrams or the supply of hard copy materials (see for example our ***Court Flow Chart*** and client information Facts Sheets);
- ♦ Use plain English and seek feedback from clients in order to clarify understanding. For example, ask a client to explain back to you in their own words what they understood from your advice. Avoid legalese where possible (e.g. terms such as *ex officio indictment*). Having said that, avoid causing offence by being perceived as being patronising – couch your language in terms appropriate to individual clients;
- ♦ Further assistance can be gained by reading the document –***Interviewing Aboriginal Clients- Knowledge of relevant Cultural Factors***. This can be found locally on the ATSILS ‘G’ drive at: [G:\Staff Cultural Training\Interviewing](#);
- ♦ Recognise that different concepts of “time” can have an impact upon instructions provided in terms of the timing of events etc. Clarify by way of examples; e.g. “*was it before or after sunset*”? This issue might also impact upon client punctuality in terms of attending appointments or court;
- ♦ Distinguish “Murri time” from true “contempt of court” situations in breach of bail matters as a mitigating factor. (eg. “Murri time” is usually applied in relation to cultural tradition in grieving);
- ♦ Appreciate that it is often difficult (for a number of reasons including literacy and numeracy issues) for clients to respond to mailed enquiries. Where it is necessary to ask a client to respond in such a manner – it should generally be the case that a stamped self-addressed envelope is provided and that a contact is made available for queries in regard to the information required. This practice also allows the client to request assistance from other community members that might be in a position to assist;
- ♦ Importantly, ensure you provide each client with clear information regarding the client/lawyer relationship. Ensure they understand what is to be done for them – and what if anything, they need to do to facilitate their representation.



## 7. Aboriginal and Torres Strait Islander languages in Queensland



According to the State Library of Queensland, over 100 Aboriginal and Torres Strait Islander languages and dialects were once fluently spoken.

Today around 50 of these remain spoken (in varying degrees), with less than 20 being used as first languages, predominantly in the north of the state (Wik Munkan) and in the Torres Strait Islands (Kalaw Kawaw Ya and Kalaw Lagaw Ya).

Much more information can be found at this website:

<http://www.slq.qld.gov.au/info/ind/languages/qld>

Many Aboriginal and /or Torres Strait Islander clients in Queensland will speak a number of languages including languages that have evolved since colonisation.

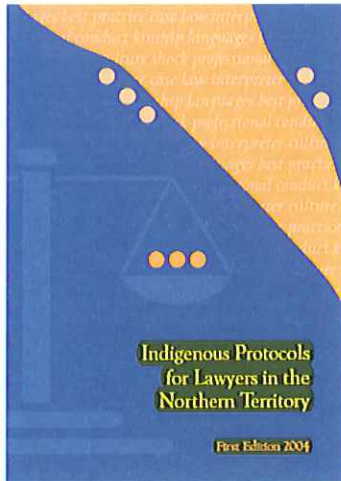
### Aboriginal English

Linguists use “Aboriginal English” as a term to denote dialects of English used among Aboriginal people. Dr Diana Eades, a leader in the field of Aboriginal English and the law argues that “Aboriginal English” is not a fixed dialect but a range of dialects. Some of those dialects are closer to Standard English while others are closer to Kriol languages.

A document written by Dr Eades entitled – **Aboriginal English in the Courts** is available at this link - <http://www.courts.qld.gov.au/Factsheets/M-MC-AboriginalEnglishHandBook.pdf> or at <G:\Staff Cultural Training\Languages>

The following link is to a map [pictured above] of languages across Queensland. This map is provided by the State Library of Queensland and can be found at their website: <http://www.slq.qld.gov.au/info/ind/languages/qld> or at <G:\Staff Cultural Training\Languages>.

## 8. Aboriginal and Torres Strait Islander Interpreter need: Recognition Guidelines



These guidelines are to help you determine if an Aboriginal or Torres Strait Islander language interpreter is required. They are adapted from existing guidelines developed by Kristina Karlsson for *The Law Society of the Northern Territory* in their document - *Indigenous Protocols for Lawyers in the Northern Territory First Edition 2004*. This document can be found at: <http://lawsocietynt.asn.au/publications/indigenous-protocols-for-lawyers>.

### Strategic data collection

These guidelines can be utilised to determine and record the need for Aboriginal and Torres Strait Islander interpreters in Queensland. Whilst a fully accredited Aboriginal and Torres Strait Islander Interpreter Service still does not exist within Queensland, the need to ensure that each individual client's needs within this area is recorded to present data to appropriate authorities responsible for the provision of such services is obvious. This data can also be utilised by ATSILS in presentation of a client's basic needs when appearing on their behalf in any matters pertaining to legal representation.

### Consistent assessment and understanding our client's communication needs

When working with Aboriginal and Torres Strait Islander people, it is essential that time be taken to accurately assess the level of understanding of the English language that each client has. There are numerous levels dependent upon factors such as the person's language group, geographical area, cultural status, their personal level of involvement with English within remote, urban and rural settings, etc..

Getting to know the local communities that you work within is one of the most important keys to understanding local language variations. This can take quite some time and involvement and mistakes can still be made.

A quiz or test will help you in the early stages of your work with ATSILS.



### Test ("Quiz") method

This quiz or test method was developed in the Northern Territory but the practicality of the test remains applicable in Queensland settings as well. **Where required**, it only takes a few minutes to complete and it is designed to determine the individual's understanding of English and their level of response using English.

"Word Traps" are used within the test to uncover the potential for un-recognised miscommunication.

A lack of response might indicate that the question was not understood and further investigation might be needed. It is at this stage that the following type of question could be asked - "Do you understand what I asked you just now?".

If the person's answer is "no", repeat the original question; it is important to follow this through immediately with a statement such as, "I need to know if you understood my question, so please repeat back what I just asked you in your own words."

If they answered "yes", then also immediately follow this response with the same check.

In either case, if the interviewee is unable to restate the sense of your questions, then an interpreter's assistance is required.

Remember also that cultural obligations and expectations upon the client can also interfere with the ability of an individual to respond; these, although difficult to define, must be taken into account.

### Tips for administering an interpreter need quiz:

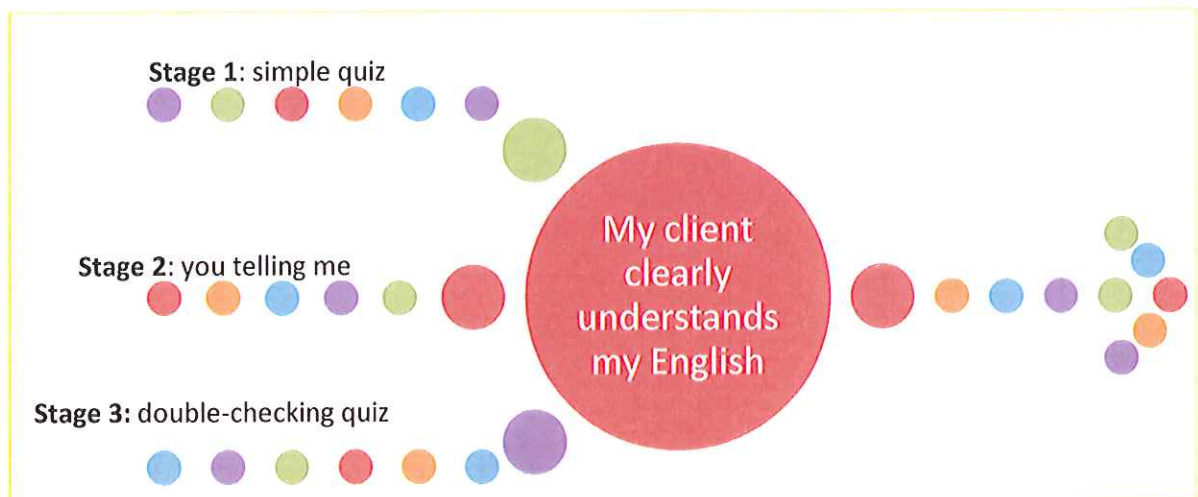
- Notes should be taken of all responses the person being interviewed makes. It is important to ensure this is carried out in case cross-referencing or checking needs to occur at a later time.
- Speak clearly in plain English language. If English is not **your** first language, it is important to remember that in some circumstances this might in fact be an impediment to understanding for the client.
- Give adequate time for a response after you ask each question.
- A client might respond that they did not understand the question. You might then have to reframe the question or try to ask it in more simpler terms of English, remember, in many areas English is rarely used, so the higher level of jargon used, the less comprehension is achieved.

## Interpreter need quiz

## Aboriginal and Torres Strait Islander Interpreter need: Recognition Guidelines continued.

### Background information

Please refer to the following document – [Interviewing Aboriginal Clients, Knowledge of relevant cultural factors](#) . It can also be found at [G:\Staff Cultural Training\Interviewing](#).



### STAGE 1 – Interpreter Need “Quiz” (test)

#### Talk with your client.

Before we talk about \_\_\_\_\_, I need to be sure that we can communicate effectively in English.

*I’m going to ask you some questions and see how you answer them. This will help us work out if you need an interpreter. Let me ask you this question first:*

***“Do you have any difficulties with speaking or understanding English?”***

#### NOTE:

If the interviewee does not respond or if they answer yes, but can give no clear details, there is no need to proceed further; an interpreter is warranted.

If they answer clearly, proceed to Stage 2 →



## Aboriginal and Torres Strait Islander Interpreter need: Recognition Guidelines continued.

### STAGE 2 - Interpreter Need “Quiz” (test):

*Now I’m going to ask you a few questions about yourself so that I can check that you are able to give me information in English. Please listen to my questions and answer as well as you can.*

1. *Where were you were born and what is your date of birth?*
2. *What education have you had?*
3. *Do you know how to read and write English?*  
*(If the answer is yes, then ask them to*
  - *read a newspaper headline and*
  - *write: “I know how to read and write in English”.**)*



4. *I would like to find out if you have enough English to tell me a story. So tell me a little bit about your country where you come from - for example, things like where you come from and what it looks like.*

#### NOTE:

If the interviewee’s responses are inappropriate to the questions OR if answers are only one or two words long OR if the interviewee cannot come up with a few clear sentences for the last question, then there is no need to proceed further as an interpreter is warranted.

If they answer clearly, proceed to Stage 3 →

### STAGE 3 - Interpreter Need “Quiz” (test):

Now I’m going to ask you just a few more questions. This time I might try to make some questions a little bit tricky or ask them in another way so I can see if you stay on track.

- When you were growing up in Sydney, was the food good?
- Gough Whitlam comes from your community too! That’s right isn’t it?
- How long did you go to school in Canberra; was it more than one year?
- Okay, this is the last question: are you satisfied that we can go ahead in English or do you think we need an interpreter?

#### NOTE:

If the responses do not match the questions - for example, if the interviewee responds to either/or questions with yes or no, or fails to recognise and rectify the false insertions about Sydney and Canberra - then an interpreter is required.

You can find these guidelines at:

<http://lawsocietynt.asn.au/publications/indigenous-protocols-for-lawyers>.

## 9. Follow-up after the test/quiz re Interpreter need

Please ensure that where applicable, the data fields on our Courtsheets pertaining to interpreter requirements are completed.

The form is titled 'COURT SHEET - CRIMINAL' and includes a 'Diarised?' checkbox in the top right corner. It is divided into two main sections. The left section contains fields for 'Service Outlet ID' (with 'ADULT' and 'JUVENILE' checkboxes), 'TITLE' (with 'Mr', 'Mrs', 'Miss', 'Ms', and 'Other' checkboxes), 'SURNAME', 'GIVEN NAMES', 'ALIAS/aka', 'ADDRESS', and 'Post Code'. It also has checkboxes for 'Interpreter Required?' (Yes/No), 'Interpreter Used?' (Yes/No), 'Mental Disability?' (Yes/No), and 'Physical Disability?' (Yes/No). The right section contains fields for 'CASE MATTER No(s):', 'Gender' (Male, Female, Other checkboxes), 'DATE OF BIRTH', 'TELEPHONE', 'CONTACT No.', 'Aboriginal' (checkbox), 'TSI' (checkbox), 'Other' (checkbox), 'Parent/Guardian', 'Tel', 'Current Employment', and 'Previous Employment'. A red circle is drawn around the 'Interpreter Required?', 'Interpreter Used?', 'Mental Disability?', and 'Physical Disability?' fields.



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