

Creating welcoming, inclusive courts

CHECKLIST 6

For Chief Justice
Judge, Magistrate and Court Staff



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Aid Programme



**FEDERAL COURT
OF AUSTRALIA**



Purpose Statement and User Guide

This is the last in a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

Each checklist has separate sections containing guidance for judges/ magistrates and court staff which can be ticked off by the user as each step is taken. While not every recommended action will be attainable for all courts from the outset, Courts are encouraged to also use the checklists as an end-point for guiding ongoing reform of court processes.

The Checklists are designed to be used alongside the PJSI Human Rights Toolkit, (available here <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>), which provides further background about the human rights standards that the recommended actions in the checklists are based upon. The Checklists are designed to provide general guidance for Pacific court actors and not specific legal advice. Court actors should always ensure that the actions they take are also consistent with national laws and in accordance with the guidance and direction provided by Chief Justices.

Full Series of Human Rights Checklists

- **Checklist 1** Minimising Pre-Trial Detention
- **Checklist 2** When juveniles/children come to court
- **Checklist 3** Judicial visits to places of detention
- **Checklist 4** When victims of family or sexual violence come to court
- **Checklist 5** When people with disabilities come to court
- **Checklist 6** Creating welcoming, inclusive courts

The information in this publication may be reproduced with suitable acknowledgement.

© New Zealand Ministry of Foreign Affairs and Trade.

Published in October 2020.

Prepared by Dr Carolyn Graydon for the Federal Court of Australia.

Enquiries

Federal Court of Australia
Locked Bag A6000, Sydney NSW 1235

Email pjsi@fedcourt.gov.au

Web <http://www.fedcourt.gov.au/pjsi>



For Chief Justices to consider

- A court's physical environment conveys strong messages to the public regarding the institution of justice. A well maintained, secured and clean court environment conveys a message of respect and care for the institution of providing justice. When careful thought goes into the functionality and amenity of the facilities for court users, courts can better serve the purpose of providing access to justice, especially for court users who may be particularly vulnerable or have special needs.
- Creating welcoming, inclusive courts is also about making sure that court users feel that the court is 'living its values' of justice, equality and fairness in the way that it operates in practices, including the way people are treated when they come to court.
- All court users should experience a court environment which treats them with respect, dignity, fairness and equality, no matter their background. The work culture and attitudes of all court actors in being helpful, proactive and patient, can go a long way towards creating a welcoming and inclusive environment in the court.

For further background and guidance see PJST Human Rights Toolkit <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf> especially Chapter 4

RECOMMENDED ACTIONS

This guide provides recommendations for how create welcoming, inclusive, user-friendly courts in:

- 1 Planning new/renovated court infrastructure and court environment
- 2 Maintaining systems for maximising amenity of existing infrastructure.

1 Considerations for planning new/renovated court infrastructure

- Consult as widely as possible both internally (judges, magistrates, court staff) and externally with diverse court users, (including men, women, people with disabilities, people from remote areas), civil society organisations and police, prosecution and lawyers to ensure a wide range of experiences and suggestions are taken into account.
- Separate entrance and separated waiting areas for victims and children to prevent their intimidation by the defendant, their family, or the prying curiosity of others. Areas need safe access to bathroom facilities, adequate seating and facilities for younger children (eg. toy box).
- At least two rooms or private booths right next to the registry desk for court staff to provide confidential assistance to relevant court users (eg. assistance completing Family Protection Applications).

- Ensure any court holding cell is built with adequate space, ventilation, lighting, accessible bathroom and drinking water facilities, and emergency alert, and close to the separate court entrance and court hearing rooms to minimise public viewing of detainees and minimise the need to move them a lot within the court.
- Ensure there is a separate, lockable waiting room (but not a cell, and not a facility mixed with adults) for juvenile suspects, with access to bathroom and drinking water.
- Provide furniture that can be readily re-arranged for a less formal setting for when the court hears cases involving juveniles.
- At least 3-4 small, sound-proof rooms for lawyers to confidentiality take instructions from their clients.
- Ensure court room layout is not intimidating to court users: ensure court rooms do not overly elevate or distance the decision maker, ensure witness box is not elevated or intimidating, ensure there is no 'cage' or other enclosure in the court room that by its nature suggests the suspect is guilty.
- Adequate perimeter fencing and security.
- Adequate public male and female separated bathrooms and regular cleaning roster/ inspection and supplies of soap, toilet paper etc.
- Adequate shade, seating, device charging facilities, fixed drinking water fountains and rubbish bins in public areas of the court.
- Disability access (considering the width of doorways and existence of ramps), and adequate space for wheelchairs to move around in at least some courts, with at least one disability accessible bathroom.
- Information booth located close to the public entrance of the court with space for relevant information court orientation leaflets and pamphlets advertising the support services of relevant organisations (eg. Family Violence Legal Aid Centre, Ombudsman leaflet and complaint form).
- Good 'info graphic' signage including for court listings, a large sign showing a map of the court facility and highlighting the different locations, and facilities and plenty of notice boards for court information regarding, for example: process for making family protection applications (including the fact that it is free), court waiver criteria and process, posters advertising services the court offers to people with disabilities, posters encouraging people to ask the friendly court staff for assistance, etc.
- Adequate seating in the registry waiting area with queuing system (can be electronic or as simple as laminated numbers) to ensure users are served in order of arrival not in order of social status.
- Suggestions and complaints devices/boxes with forms and posters inviting court user feedback and ratings on their experience using the court.

See separate checklist for supporting court users with a disability





2 Considerations for maintaining systems to enhance experience of court users and customer service systems

As per Court Staff Responsibilities below, appoint senior court staff member with responsibility and modest budget to:

- Manage small infrastructure projects;
- Manage public information/feedback projects;
- Conduct daily inspection of court environment prior to court opening;
- Manage special arrangements for particular groups of court users (children/juveniles, vulnerable victims/witnesses, people with disabilities etc).



Judge and Magistrate responsibilities

Overview of responsibilities

Judges and Magistrates play vital roles in creating welcoming and inclusive court environments. Checking that the court's physical environment is clean and well maintained for hearings helps to convey strong messages to the public of respect and care for the institution of providing justice.

Creating welcoming, inclusive courts is about making sure that court users feel that the court is 'living its values' of justice, equality and fairness in the way that it operates in practices, including the way people are treated when they come to court.

All court users should experience a court environment which treats them with respect, dignity, fairness and equality, no matter their background. The work culture and attitudes of judges and magistrates and their roles in supervising court staff to ensure they helpful, proactive and patient in the performance of their duties, can go a long way towards creating a welcoming and inclusive environment in the court.

For further background and guidance see PJST Human Rights Toolkit <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf> especially Chapter 4

RECOMMENDED ACTIONS

- Leading by example with the attitudes and behaviours set out in **Court staff responsibilities**. 
- Be aware of and support court staff in performing their responsibilities below.
- Being proactive in managing court staff to ensure that the services needed by people in your cases (such as vulnerable victims/witnesses, child/juvenile court users, people with disabilities, people from remote areas etc are planned for in advance, and in place when needed.
- Following up with senior court staff/Chief Justice if court rooms or facilities require attention
- Participating in court user feedback system, to achieve continuous improvement in justice services to the public.





Court staff responsibilities

Overview of responsibilities

Court staff play critical roles in creating a welcome, inclusive and dignified court environment.

This involves more than just looking after the physical environment of the court. It's also about making sure that court users feel that the court is 'living its values' of justice, equality and fairness in the way that it operates in practices, including the way people are treated when they come to court.

All court users should experience a court environment which treats them with respect, dignity, fairness and equality, no matter their background. The work culture and attitudes of court staff in offering assistance, being proactive and demonstrating patience in their contact with court users can go a long way towards creating a welcoming and inclusive environment in the court. especially Chapter 4

For further background and guidance see PJST Human Rights Toolkit <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>

RECOMMENDED ACTIONS

Court approach to equality and fairness

- Making everyone in the court house feel of equal importance and value;
- Treating all court users with dignity, respect and patience in customer service;
- Not showing favouritism to people staff know/relatives/those with power or wealth;
- Making sure people are served in turn and not according to their social status.

Proactively offering assistance

- Helping with form filling including applications for protection visas;
- Providing information detailed information in simple, clear language.
- Providing referral to other available services (like legal aid, women's shelters, etc)
- Assisting with offering and completing court fee waivers,
- Attitude of staff: motivated and committed to high quality public service, friendliness, humility and patience.

Observing professional standards

Especially:

- Confidentiality of court user information;
- Punctuality and reliability;
- Consistently maintaining accurate court data and documentation.

Preparing in advance

- Identifying special needs in cases and preparing in advance to avoid adjournments (eg for women, children, people with disabilities, elderly, people from remote locations, other).

Responsive

- Seek and act on court user feedback to make improvements,
- Advertise improved services;
- Think about impact of court processes on disadvantaged groups and take initiative to help these groups.

Court physical environment

Need for the court environment to be:

- Safe;
- Accessible to all;
- Functional; (ie furniture and equipment);
- Clean, (including cells, bathrooms, court rooms, waiting areas);
- Easy to navigate facilities (clear, infographic signage);
- Public information available (posters, fliers and friendly, helpful staff offering help and answering questions).

Court staff should be allocated responsibility to:

Manage small infrastructure projects, such as developing infographic signage, information booth/court information posters, feedback box and collection system;

Manage public information/feedback projects:

▶ Develop posters/fliers explaining court services,(eg help with completing protection applications, help for people with disabilities, fee waivers, contact details for legal aid etc.);

▶ Regular collection of court user feedback (from feedback box or simple survey provided in person).

Conduct daily inspection of court environment prior to court opening and ensure that:

▶ All courts, waiting areas, cells and bathrooms are clean;

▶ Court security in place;

▶ Re-arrangement of furniture prior to day when child/juvenile cases are scheduled.

Implement practical solutions for court users needing:

▶ Private way to enter court precinct;

▶ Private place to wait for their case to be heard.

Standard Recommended Court Form Disaggregated Data Fields

Case management systems can include data fields to ensure the court is adequately protecting the human rights of particular groups of court users. Below are the data fields recommended in order to give the Court adequate visibility of these court users so that the Court is able to ensure universal access to justice and ensure the full and effective participation in any court proceeding for all court users.

Type of Case

- **Criminal:** property-related/crimes against the person (broken down further into physical/sexual/other crimes);
- **Family Protection Orders:** interim/ final
- **Family:** Divorce, child custody, maintenance (spousal/child/both), adoption, property settlement. Note Y/N if violence was a factor in each case type; and
- **Other Civil:** Discrimination/ inheritance/ land/ contractual/ other.

Information about the parties

TYPE OF PARTY

- family/protection/other civil cases: applicant or respondent
- criminal cases: defendant, victim, witness
- any case type: witness

RELATIONSHIP BETWEEN VICTIM/PLAINTIFF AND OPPOSING PARTY

- Data Field drop down menu: family member, intimate partner, known person (ie neighbour/friend/ employer/ work colleague), stranger, other (space to specify)

EXTRA QUESTIONS IN CRIMINAL CASES

- Is the defendant currently in pre-trial detention?
- Duration of pre-trial detention (in days)
More than 12 months? Y/N (Yes, red flag)
- Is the defendant under 18 years old? Y/N
- Place of detention (space to write location)
- Next hearing date: D/M/Y

EXTRA QUESTIONS FOR FAMILY LAW AND PROTECTION ORDER CASES*

Has the respondent/ defendant allegedly behaved in a manner that:

- is physically or sexually abusive
- is emotionally or psychologically abusive (including by threatening the affected person or another, repeated verbal abuse or 'put downs', controlling behaviours such as socially isolating the person or so the person fears for their safety or for another)
- is economically abusive (including; taking or selling property without permission, or forcing the person to hand over control of assets, income or finances, or preventing person from working)
- is emotionally or psychologically abusive (including by threatening the affected person or another, repeated verbal abuse or 'put downs', controlling behaviours such as socially isolating the person or so the person fears for their safety or for another)
- combination of above

Remaining Fields For all Case Types

GENDER

Data Field: **drop down menu:** M/F / X (indeterminate, intersex, unspecified)

AGE

- Data Field: Date of birth (D/M/Y)
- Under 18 years at filing: Y/N
- Under 18 years at time of alleged offence/incident: Y/N

DISABILITY/IMPAIRMENT*

- Data Field 1: Disability **drop down menu:** Do any parties in this case have a disability? Y/N/Don't know
- Data Field 2: Type of impairment **drop down menu:** vision/hearing/ mobility/ intellectual impairment/mental illness/multiple
- Data Field 3: What kind of special assistance will they need from the court? (with space to write notes)

Legal Representation

Data Field **drop down menu:** self-represented/ private lawyer/ legal aid (state/NGO/other)

Court Fees*

- Fee waiver sought: Data Field drop down menu: Y/N
- Application fee: Data Field drop down menu: paid/waived

Case Management

- Data field: Number of days from filing application to final determination
- Data field: Number of adjournments
- Data field: Reason for each adjournment (drop down menu)
 - Parties not present:(further drop down, suspect, victim, witness, prosecutor, defence lawyer).
 - Parties not prepared: (further drop down suspect, victim, witness, prosecutor, defence lawyer)
 - Police/prosecution/civil investigation not completed
 - Delay in receiving forensic evidence results
 - Court scheduling delay
 - Other

Case Outcome

CRIMINAL CASE

Data field: **drop down menu:** Acquittal/Conviction.
If Conviction, **drop down menu:** Custodial Sentence (Duration), Suspended Sentence (Duration), Fine, Order of compensation, Community Service, Other (space to write)

FAMILY/PROTECTION/OTHER CIVIL CASE

- Data Field Options: Interim Protection Order Granted/ Interim Protection Order Not Granted/ Final Protection Order Granted/ Final Protection Order Not Granted

* These data fields require corresponding questions in either police/ prosecution initiating files or civil case forms depending on the type of case. An example of the disability questions to include in civil forms based on the Washington Group Short Questions are below:

NOTE: QUESTIONS FOR CIVIL/ FAMILY CASE FORMS

- Q1** Do you have a disability, impairment or long-term health condition that may affect your participation in court?
Yes/ No
- Q2** Tick any of the following that are appropriate:
- Do you have difficult seeing?
 - Do you have difficulty hearing?
 - Do you have difficulty walking or moving around?
 - Do you have difficulty understanding or concentrating?
 - Do you have difficulty being understood by others?
- Q3** Would you like the court to contact you to discuss beforehand what help can be provided to you to make it easier for you to participate in and be ready for your court case? Yes/ No