

**Judicial Council on Cultural Diversity**  
**Meeting at Judicial College of Victoria Learning Centre**  
**William Cooper Justice Centre**  
**Level 7, 223 William Street, Melbourne**  
**Friday 14 August**  
**Time: 10.00am AEST**

**Chair:** Chief Justice Wayne Martin AC

**Participants:** Justice David Berman; Mr Nigel Browne; Ms Samantha Burchell; Ms Frances Byers; Ms Maria Dimopoulos; Ms Veronica Finn; Magistrate Anne Goldsbrough; Justice Emiliios Kyrou; Justice Lucy McCallum; Justice Melissa Perry; Professor Greg Reinhardt; Mr Ernie Schmatt; Mr Henry Sherrell; Professor Anne Wallace; Ms Carla Wilshire; Justice Helen Wood

**Apologies:** Justice Jenny Blokland; Dr Bernadette Boss; Ms Leisha Lister; Judge Nick Samios; Judge Rauf Soulio; Judge Josephine Willis

**Outcomes**

**1. Chair's welcome and endorsement of minutes from previous meeting**

- Chair opened the meeting, acknowledged apologies and thanked the Judicial College of Victoria for hosting the meeting.
- Chair introduced Ms Byers who has been seconded from the Department of Prime Minister and Cabinet to the JCCD Secretariat for six months to assist with developing the Indigenous strategy for the JCCD. She will be closely involved in the women's project as well as the translating and interpreting project.
- Members approved the minutes of the previous meeting.

**2. Presentation of amended scoping study of the courts and next steps**

- It was noted that the scoping study has been refocused to the court system and shortened so that it is more usable as a resource.
- Members noted that there are some minor additions and corrections that need to be made. Some were provided at the meeting and anything additional can be provided to the Secretariat.
- Members agreed to publish the scoping study electronically on the JCCD website.
- Chief Justice Martin will write to the head of each court inviting comments or suggestions for inclusion.
- Members discussed the need to include tribunals in the work of the JCCD, as the majority of matters involving culturally and linguistically diverse Australians are heard in Magistrates Courts or tribunals.
- Chief Justice Martin will write to the Presidents of each of the umbrella tribunals inviting them to nominate a cultural diversity champion.
- Members also noted that the work of tribunals should be included in the scoping study. The scoping study will be provided to each President with a request for

material relating to their tribunal. The executive summary will be amended to note that this additional material will be included.

**Action: Secretariat to make minor amendments to the scoping study and publish it on the JCCD website.**

**Action: Chief Justice Martin to write to the head of each court inviting comments on or suggested inclusions in the scoping study.**

**Action: Chief Justice Martin to write to the President of each umbrella tribunal inviting them to nominate a cultural diversity champion and to provide material for inclusion in the scoping study.**

### **3. Update on translating and interpreting protocol project**

- Justice Perry and Ms Byers provided an overview of the development of the project so far.
- The working group has met once by teleconference and will meet face to face in Sydney on 22 August 2015.
- They have agreed on an approach which will see the development of three documents:
  - a bench-book/educative document;
  - sample model rules, including an interpreters code of conduct; and
  - a practice note/protocol that will give practical guidance to judicial officers and administrators.
- These three documents will be consistent.
- Members discussed whether interpreters should be considered expert witnesses or officers of the court. It was agreed this issue needed to be explored further by the working group.
- Members also discussed whether it is feasible to have a set of rules covering both criminal and civil cases, given that there are differences as to whose responsibility it is to provide an interpreter. Further, there are differences between different jurisdictions that need to be taken into account, including the particular issues affecting high-volume jurisdictions.
- It was agreed that these issues need to be explored further.
- It was noted that, whether the case is criminal or civil, the interpreter must still be of an adequate standard and must remain independent and impartial.
- It was noted that the benefit of a code of conduct for interpreters is that it would create an incentive for interpreting services to train staff to work in accordance with it. Further, in situations where it may be necessary to use a less qualified interpreter, the interpreter would be required to familiarise themselves with the duties before interpreting in courts or tribunals.
- Ms Dimopoulos provided an overview of some of the issues that have been raised in the consultations with migrant women and stakeholders. She noted that in every jurisdiction there were reports of interpreters telling women to withdraw their applications during court proceedings.
- Other issues included underutilisation of interpreters or lack of availability, particularly in new languages. Further, many women did not feel comfortable using male interpreters or knew the interpreter.

- Members discussed the importance of assessing English proficiency and the need to ensure this is done at an early stage, which will also allow an opportunity for recognition of cultural and gender considerations.
- Members agreed that it is important to consider imposing sanctions on interpreters who breach the code of conduct and to consider what form they could take.
- It was noted that it would be beneficial to consult with interpreters to gain feedback.
- Members agreed to approach VCAT to nominate a representative to join the working group.
- It was noted that the UK courts have a system of registered intermediaries who assist witnesses who are deemed to be vulnerable on the grounds of age or incapacity, and where a court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress. The intermediaries help translate and interpret evidence.
- Members noted the importance of this project to the efficiency and fairness of the justice system and thanked the working group for the work conducted so far.

**Action: Chief Justice Martin to write to VCAT to nominate a representative to join the working group.**

#### **4. Presentation on internal court surveys**

- Professor Wallace provided an overview of the different types of court survey options that are available.
- It was agreed that it would be desirable to conduct surveys targeted at particular court users.
- It was noted that it would be worth examining the recommendations made in Professor Stephen Parker's 1998 publication 'Courts and the Public' as to the types of surveys courts can conduct.
- Members agreed that it would be beneficial to examine other surveys that have been conducted to identify questions that can be used by courts with respect to CALD communities.
- It was noted that the information gained from the women's consultations could also be used to develop questions and focus areas.
- It was agreed that the surveys would need to be translated into other languages.
- Members discussed various ways in which surveys could be administered, including working with universities to identify volunteer students to distribute them, or working with court support services or other organisations as intermediaries.
- Members agreed that the Secretariat should work with Professor Reinhardt and Professor Wallace to collate what has been done in previous surveys and develop a set of questions to be discussed at the next meeting. Once these questions have been agreed upon, they could then be translated and provided to courts, along with a guide of how to administer the surveys.

**Action: Secretariat to work with Professor Reinhardt and Professor Wallace to collate existing surveys.**

**Action: Secretariat to develop a set of questions to discuss at the next JCCD meeting.**

## **5. Update on the CALD women's project**

- Ms Dimopoulos and Ms Wilshire provided an update on the progress of the CALD women's project.
- Over 100 stakeholders and over 100 women have been consulted to date. State roundtables have been held in each capital city and a national roundtable was held in Canberra with representatives from peak national bodies.
- It was noted how important it had been to partner with an organisation in each state, as this ensured that the women were supported through the process.
- Ms Dimopoulos noted that, while there had been some positive stories, a number of key themes had emerged during the process that highlighted the need for a framework to improve court responses.
- It was noted that the findings from the consultations should be fed into the development of the National Family Violence Bench Book that is being developed by the AIJA.
- It was noted that the strategy for consultations on issues affecting Indigenous women is currently being finalised. Further, a desktop review of existing resources and recommendations in relation to access to justice for Indigenous women has been completed.

## **6. Discussion of work plan in relation to Aboriginal and Torres Strait Islander Communities**

- Ms Byers outlined a proposed new inclusion on the JCCD work plan – the creation of a tool kit to assist courts and tribunals to develop Reconciliation Action Plans.
- It was noted that the Federal Circuit Court was the first court to develop a Reconciliation Action Plan.
- Members noted various strategies already in place in different jurisdictions to improve Indigenous employment within the justice system, including Indigenous law student mentoring programs and placements in judges' chambers and/or with barristers.
- It was also noted that the Victorian Department of Justice has developed a Koori Inclusion Action Plan, which covers Victorian courts.
- Members agreed that the Secretariat should commence work on developing a toolkit for use by courts and tribunals.

**Action: Secretariat to begin developing a toolkit.**

## **7. Discussion of online training tool for administration staff**

- At the last meeting of the JCCD, members agreed that it would be beneficial to consider developing a cultural competency online training tool for judicial officers, similar to that developed by the Family Court for use by administrative staff.

- The Judicial College of Victoria, the Judicial Commission of NSW and the AIJA have agreed to collaborate to produce such a package and are planning to approach the NJCA with a view to involvement.
- It was noted that the Family Court are willing to make their work available to be modified and developed for a judicial audience.
- The aim is to run a pilot in the second half of next year.
- It was noted that once the training package is developed, judicial leadership will be required to encourage take up.

#### **8. Discussion of coverings and dress in court settings.**

- Members discussed whether the JCCD should develop guidelines on how judicial officers should respond to requests to wear facial coverings in court.
- It was agreed that the Secretariat would undertake work to identify the issues and principles coming out of cases, with a view to considering the production of a summary/explanatory document for judicial officers.

**Action: Secretariat to undertake further research.**

#### **9. Next meeting date and other business**

- Members discussed the appointment of cultural diversity champions in each of the courts.
- Ms Wilshire noted that they have each been provided with the JCCD work plan, previous minutes and a summary document of the JCCD's current projects.
- Members agreed that it would be beneficial to gain their feedback on the framework for CALD women and the translating and interpreting project when they are developed.
- The Secretariat will circulate the list of champions to each member.
- The JCCD website will be updated.
- Members agreed that it would be beneficial to have a tribunal representative attend the next JCCD meeting to give a presentation on their work.
- Members agreed to meet twice next year – once in March and once in September. The meetings will be held on a Friday. The Secretariat will circulate an email with proposed dates.

**Action: Secretariat to circulate list of cultural diversity champions.**

**Action: Secretariat to circulate proposed dates for the next JCCD meeting.**

**Action: Secretariat to update website.**

**Meeting closed**