

Judicial Council on Cultural Diversity
Meeting at Family Court, 97-99 Goulburn Street, Sydney
Friday 28 November 2014
Time: 10.00am AEDT

Chair: Chief Justice Wayne Martin AC

Participants: Justice David Berman; Justice Jenny Blokland; Magistrate Bernadette Boss; Ms Samantha Burchell; Magistrate Anne Goldsbrough; Justice Emilios Kyrou; Justice Lucy McCallum; Justice Melissa Perry; Professor Greg Reinhardt; Judge Nick Samios; Mr Ernie Schmatt; Judge Rauf Soulio; Judge Josephine Willis; Ms Carla Wilshire; Justice Helen Wood

Apologies: Ms Maria Dimopoulos

Outcomes

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

- Chair opened the meeting, acknowledged apologies and welcomed new members.
- Members approved the minutes of the previous meeting.
- A potential Indigenous representative and a potential representative of administrators for the JCCD have been identified.

Action: Chair to write to the proposed representatives for the JCCD.

2. Report of the meeting of the Council of Chief Justices

- Chair reported on the recent meeting of the Council of Chief Justices. He noted that the Council has endorsed the work plan of the JCCD and was impressed by the quality of the composition of the JCCD.

3. Update on the Cultural Diversity and the Law conference

- Ms Wilshire and Professor Reinhardt provided a brief update on the progress of the Cultural Diversity and the Law conference.
- The conference will be held at the Sofitel Sydney Wentworth on 13-14 March 2015.
- The target audience is judicial officers, tribunal members, administrators, members of the legal profession and the settlement sector.
- A Harmony Day Dinner will be held on 13 March. Chief Justice French will deliver a toast on behalf of the courts and Mr Peter Scanlon will deliver a toast on behalf of the settlement sector.
- A conference website has been developed and is at www.cdjc.org.au
- Members discussed the importance of active promotion of the conference, as its themes will mirror the work of the JCCD.

4. Presentation on translation policy and data collection

- Justice Perry presented an overview of the link between the provision of interpreters and procedural fairness. She outlined recent Federal Court decisions and their effect upon standards of interpretation.
- Some of the particular issues Justice Perry raised include the difficulty in obtaining NAATI accredited interpreters and the lack of confidence in the judicial system amongst migrant communities.
- It was noted that the Federal Court is compiling statistics on the number of unrepresented parties appearing in migration cases who require an interpreter and the effect of the cessation of funding for legal assistance for asylum seekers upon this.
- Members discussed a number of issues relating to interpreters, including the difficulty in establishing interpretation errors, challenges in obtaining interpreters for languages spoken in smaller communities, and identifying when interpreters are required. It was noted that it is particularly important to have tools to identify interpreter need given the increasing numbers of self-represented litigants.

5. Presentation on the findings of the scoping study

- Ms Dimopoulos provided an overview of the scoping study report.
- She noted that there is a lack of documentation of activities undertaken by courts and that more needs to be done to improve upon this.
- Ms Dimopoulos noted that many initiatives have been undertaken to improve access to justice for Indigenous Australians, but much less has been done in relation to migrant communities.
- The study confirmed the work plan of the JCCD, namely the need for a national bench book, a national protocol on interpreting and translating, and the development of a resources portal on the JCCD website to share best practice.
- Members agreed that it would be worthwhile to make the document publicly available. It was agreed that it was necessary to review the report for accuracy and define the ambit of the document.
- Members agreed to provide initial comments on the section covering their jurisdiction, as well as the report generally, by Friday 13 February 2015. These amendments will then be incorporated into the document and sent to members. The report will be reviewed at the next meeting of the JCCD on Thursday 12 March 2015. After this, the report will be sent to the courts and organisations identified in the report for their approval.

Action: All members to review the content of the section of the report covering their jurisdiction, as well as the report generally. Members to provide feedback to the Secretariat by Friday 13 February 2015.

6. Discussion of gaps in existing court policies and procedures and forward work plan

- Development of a national bench book
 - The scoping study identified this as a resource that should be developed.
 - Members agreed that a national bench book should focus on providing information about the different cultural and linguistic communities in Australia.
 - It was agreed that the JCCD should initially provide links on its website to publicly available resources that provide this information.
- Judicial education
 - Members noted that judicial education on cultural diversity is currently provided as part of the judicial orientation program run by the NJCA.
 - It was noted that the Judicial College of Victoria and the Judicial Commission of NSW provide judicial education on cultural diversity and these programs are available to judges from other jurisdictions.
 - Members discussed the importance of providing continuing judicial education in all jurisdictions and ensuring that all judicial officers have access to this.
 - Members agreed that the JCCD should develop a national policy on multiculturalism for courts to adopt as a standard.
- Need for judicial leadership
 - The scoping study identified the need for judicial leadership in relation to cultural diversity.
 - Members agreed that each court should appoint a representative responsible for cultural diversity. It was suggested that it may also be beneficial for this representative to be supported by a committee. It was agreed that the Chair should write to all Courts with this suggestion.
- Members agreed that public education and community engagement should remain on the long-term work plan.

Action: Chair to write to heads of all courts recommending the appointment of a judicial officer to oversee issues pertaining to cultural diversity.

7. Discussion on the development of a national protocol on interpreting and translating

- Members discussed the three main topics that a national protocol should cover: identifying the circumstances in which an interpreter is needed; minimum standards to be met by interpreters used in courts; and guidelines in relation to conflicts of interest.
- Members also discussed the importance of the courts meeting standards for interpreters, for example, by providing information about the case prior to proceedings, rest breaks, and adequate pay.
- It was agreed that the protocol should set a best practice standard that will be promoted and will encourage interpreters to undertake additional training.
- Members agreed that a judicial officer and an interpreting specialist should develop the protocol. It was agreed to approach The Hon Dean Mildren RFD QC AM and Professor Sandra Hale.

8. Presentation on Scanlon Social Cohesion Survey

- Professor Andrew Markus presented an overview of the findings and trends of the Scanlon Social Cohesion Survey. He noted that support for immigration and multiculturalism is relatively high in Australia, but that issues of discrimination and negative views towards particular groups remain.
- Professor Markus also explained that migrant communities have higher levels of trust and confidence in the police than they do in the courts. Further, levels of confidence in the courts among migrant communities decreases with length of time spent in Australia.

9. Discussion on options for survey of community attitudes to the courts

- Professor Markus outlined various options for a survey of community attitudes to the courts.
- It was agreed that both a survey of user satisfaction levels conducted by the courts and an external survey of attitudes to the court system would be beneficial.
- Members agreed that an external survey might focus on understanding why levels of confidence in courts are low and why they decrease over time. Questions for the survey could focus on what contact respondents have had with the courts, in what capacity that contact has occurred, and where respondents find information about the courts.

10. Next steps/other business

- Members agreed to actively encourage as many colleagues to attend the conference as possible.

11. Next meeting date

- Members agreed to meet on the afternoon of Thursday 12 March 2015 in Sydney.

Meeting closed