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CREATING INCLUSIVE COURTS AND TRIBUNALS: BEST PRACTICE GUIDANCE TO SUPPORT PEOPLE WITH DISABILITY

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Creating inclusive courts and tribunals: Best practice guidance to support people with disability

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Executive summary

The Australian National University was commissioned to prepare a report on good practice service models for courts and tribunals in Australia and internationally, specifically England and Wales, Scotland, Northern Ireland, Ireland, New Zealand and Canada. This evidence-based report is designed to guide the Australian Capital Territory Courts and Tribunal's (ACTCT) service inclusion improvements, recognising that people with disabilities (PwD) encounter various issues, ranging from discrimination and housing to various criminal justice matters. The report includes disability-aware and disability-inclusive practices, screening approaches, judicial guidelines, and specialised court programs, drawing on both evaluative data and good practice principles. The introduction outlines that the report takes an intersectional approach, as disability intersects with other factors, such as Indigenous status, gender, cultural and linguistic diversity (CALD). The report includes vignettes designed to illustrate potential court accommodations for PwD, noting that adjustments should be tailored, through consultation with the individual and relevant support staff. The report adopts terminology aligned with the social model of disability, recognising that disability is often an integral part of people's identity. However, disabilities can also be hidden or invisible and some people may even be unaware they have a disability.

Key guiding principles

The report draws on international frameworks, set out in Chapter 2, including the United Nations *Convention on the rights of persons with disabilities* and *International principles and guidelines on access to justice for persons with disabilities*. The report also draws on *legal design principles*, which provide a

structured process for improving justice systems through collaborative design and evaluation, and *universal design principles*, which provide a model for accessibility across physical spaces, information systems, and processes for all users, regardless of ability. Together, these frameworks emphasise that courts must ensure comprehensive accessibility, to meet the needs of PwD. The report is also underpinned by trauma-informed principles, therapeutic jurisprudence, procedural justice and restorative justice. The chapter concludes by developing 15 guiding principles that emphasise dignity, respect, accessibility, clear communication, and the importance of involving people with disabilities in processes that affect them. Together, this chapter provides a comprehensive foundation for examining how courts can better serve people with disabilities while ensuring continuous evaluation and improvement of services.

Creating accessible courts and tribunals

This chapter sets out the steps required to create accessible courts and tribunals, including recognition of barriers to justice for PwD. It outlines the Federal Court of Australia and New Zealand Government's *Human rights toolkit* and associated checklists, which set out specific responsibilities and guidance to make the courts more accessible and inclusive for PwD, including the importance of data collection. The need for effective communication is highlighted, including the role of speech pathologists and intermediaries, and the specific issues that arise for people with complex communication needs. The report considers both technological advances in courts, including virtual hearings, apps and artificial intelligence, and physical accessibility requirements, including accessible pathways, signage, and support services. The importance of efficient case management for PwD, balancing quick resolution with fairness through early identification, data collection, and dedicated support is emphasised. Issues around architecture and the physical design of court facilities are also considered. Education and training for staff are critical, to ensure appropriate responses to PwD. Various bench books are summarised. This chapter also includes real-world examples from the Neighbourhood Justice Centre in Melbourne and New Zealand's court accessibility reforms, as well as discussing the growing role of lived experience perspectives, in shaping court policy and practice.

Things to consider before, during and after the hearing

Chapter 4 outlines a range of measures to be taken before, during and after hearings. The Victorian *Disability access bench book* emphasises the importance of identifying and addressing accessibility needs, before hearings to ensure equal participation for PwD. Early identification, including through the court staff or self-disclosure, is important to avoid barriers in the legal process. Measures such as familiarisation visits, clear information about accommodations, and the use of assistance animals can also make the court experience more accessible and less intimidating. During a hearing, it is crucial to monitor and adjust for disability-related needs that may emerge, especially if not identified beforehand. This includes ensuring physical accessibility, providing support persons, and adjusting questioning techniques to minimise stress. Judicial officers should offer breaks, extra time, and ensure clear communication for witnesses with disabilities. Various support roles are crucial in ensuring court accessibility for PwD, although judicial officers must ensure these roles maintain independence and professionalism. Additionally, adjustments should be continuously reviewed throughout a person's time in court or a hearing, to ensure they effectively support participation, with further accommodation made, if necessary. Adjustments during hearings may include accommodating different methods for oaths or affirmations, allowing the use of assistive technology, making time adjustments for breaks, medication or communication needs, and controlling witness examination. Judicial officers should actively monitor the effectiveness of these accommodations. After the hearing, it is also important to continue any necessary adjustments, as support may be needed to help individuals, particularly those who are unrepresented, to understand the outcome.

Criminal jurisdiction

This chapter considers the issues that apply to PwD, who are engaged with the criminal courts as suspects/defendants, witnesses (including complainants/victims) and jurors. PwD are overrepresented in the criminal justice system and their disability may affect their ability to stand trial, bail and/or sentencing. As such, screening for disabilities in court is crucial, to ensure fair treatment, but is often overlooked due to limited resources. To improve outcomes, the Royal Commission into

Violence, Abuse, Neglect and Exploitation of People with Disability recommended systematic screening and assessments and better information-sharing. Diversionary programs, such as mental health courts, offer alternatives to prison by addressing underlying issues and linking individuals to services. Expanding and evaluating these programs, ensuring they are accessible and culturally appropriate, is essential for reducing the overrepresentation of PwD in the justice system. Research also recommends trauma-informed training, improved communication, and specific accommodations for complainants with disabilities. Emphasis is placed on the fact that courts should avoid assumptions about a victim's disability and ensure decisions are based on evidence. The issues in relation to jurors with disabilities, including recent Australian reforms to promote inclusive participation, are also discussed.

It is recognised that some of these matters are beyond the scope of the courts and are more appropriately matters for the government, prosecution and/or defence to address.

Civil jurisdiction

This chapter reinforces the importance of upholding the rights of PwD in civil law matters. Research has highlighted the need for trauma-informed approaches especially in coronial matters. The ACT Civil and Administrative Tribunal (ACAT) deals exclusively with civil and administrative matters. ACAT is focused on accessibility and fair hearings and emphasises support for self-represented parties and PwD, through simplified processes. Notably, ACAT deals with a range of issues affecting PwD, including mental health, housing, guardianship, discrimination, and debt issues.

Crossover jurisdictions

In two jurisdictions, matters commonly 'cross over' between the criminal and civil jurisdictions. Chapter 7 focuses on the Children's and domestic and family violence (DFV) jurisdictions. Research shows significant overrepresentation of PwD in both systems, with studies indicating nearly half of 'crossover kids', who are before the Children's Court for both the child protection and youth justice matters, have neurodisabilities. The ACT deals with DFV in both civil and criminal jurisdictions, including dealing with criminal matters in the Family Violence Court. Some courts have sought to develop more trauma-informed and integrated approaches, such as Western Australia's 'Dandjoo

Bidi-Ak' program and the Queensland Specialist DFV Court. While various court models are in existence, the research suggests there ongoing barriers to justice for women with disabilities. Best practice emphasises the need for holistic support that takes into account issues such as disability, trauma, and cultural factors, while also ensuring coordinated delivery across civil and criminal jurisdictions.

Special considerations for specific disabilities

This chapter outlines key considerations for courts and tribunals, when accommodating different types of disabilities. It provides some examples of the specific accommodations needed for people with intellectual disabilities, acquired brain injury, mental health conditions, neurodiversity, sensory impairments, and physical disabilities. For intellectual disabilities and acquired brain injury, key considerations include clear communication, additional processing time, and regular breaks. Mental health conditions require trauma-informed approaches and careful management of potential triggers, while neurodiversity needs focus on sensory sensitivities and communication differences. For people with sensory disabilities, courts must consider accommodations such as accessible document formats and assistance with navigation, Auslan interpreters and appropriate acoustics, and tactile sign interpreters and specialised communication support. Physical disabilities necessitate attention to accessibility and mobility needs. Across all disability types, the common thread is the need for early planning, clear communication, tailored and individualised approaches and regular assessment of support needs, to ensure full and equitable participation in court proceedings.

Intersectional approaches

The final chapter explores how courts and tribunals can respond effectively to PwD from diverse backgrounds, acknowledging how different aspects of identity and experience intersect. Research shows that certain groups face compounded barriers in accessing justice, particularly Aboriginal and Torres Strait Islander people, women, people from culturally and linguistically diverse communities, and LGBTIQ+ people. Indigenous people face especially significant challenges, with 95% of Indigenous people appearing in criminal courts having an intellectual

disability, mental illness, or cognitive impairment. Initiatives like the Murri Court in Queensland demonstrate how culturally appropriate assessment tools, health checks, and National Disability Insurance Scheme support can improve outcomes. For women with disabilities, particularly in DFV matters, courts should address both gender-specific needs and disability-related barriers, for example, through appropriate separate waiting areas and childcare facilities. People from CALD backgrounds require coordinated cultural and disability support, especially around communication and interpreting services. Finally, the chapter highlights how LGBTIQ+ people with disabilities face unique challenges in court settings, particularly around respectful treatment and gender identity recognition. Throughout all these intersections, courts and tribunals must develop holistic and individualised approaches that recognise the ways in which different forms of disadvantage interact and compound each other. This requires moving beyond single-factor solutions to create truly inclusive justice systems that can respond to the full complexity of people's lived experiences.

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We recognise and celebrate all Aboriginal and Torres Strait Islander people and pay our respects to their Elders past and present.

Any errors remain the responsibility of the authors.

The body of this report was prepared in November 2024, with minor revisions in February, July, and November 2025.

Acronyms

AAC	Augmentative and assisted communication
ABI	Acquired brain injury
ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
ACTCT	ACT Courts and Tribunal
ADHD	Attention/Deficit Hyperactivity Disorder
AI	Artificial intelligence
AOD	Alcohol and other drugs
ASD	Autism Spectrum Disorder
BB	Bench book
CALD	Culturally and linguistically diverse
CCTV	Closed-circuit television
CIDP	Cognitive Impairment Diversion Program
CISP	Court Integrated Services Program
COAT	Council of Australasian Tribunals
Cth	Commonwealth
DAIP	Disability Action and Inclusion Plan
DFV	Domestic and family violence
DJAS 2024-28 2028)	<i>Disability justice action strategy: Second action plan (2024-</i>
DLO	Disability liaison officer
DRC	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission)
FASD	Foetal Alcohol Spectrum Disorder
L&D	Liaison and Diversion
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual and other diverse sexual orientations and gender identities
MHCs	Mental health courts
NDIS	National Disability Insurance Scheme
NSW	New South Wales
NSW BB	NSW <i>Equality before the law bench book</i>
PwD	People with disability
s/ss	sections (of legislation)
SC	Supreme Court
SLCNs	Speech, language and communication needs
UK	United Kingdom
Vic	Victoria/Victorian
Vic BB	Victorian <i>Disability access bench book</i>

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Part 1: Setting the foundations

Introduction

It is estimated that over 21% of Australians have a disability.¹ As such, people with disability (PwD) engage with the courts and tribunals in a wide range of roles, including as complainants/victims and other witnesses, defendants, jurors, legal practitioners, judicial officers and other court staff, and interpreters.

As the Law Council of Australia has recognised, PwD often experience cumulative disadvantages, such as social exclusion, discrimination, poverty, unemployment, homelessness, and heightened vulnerability to abuse.² For example, a national survey on legal need found that PwD ‘constitute the most socially excluded of all disadvantaged groups’,³ due to systemic barriers and the experience of cumulative disadvantage. The survey reported that 67% of PwD aged 15 years and over were financially disadvantaged, 18% had low education levels, 22% were from a culturally and linguistically diverse (CALD) background and 11% had poor English proficiency.

PwD ‘experience high levels of legal need and are vulnerable to substantial and multiple legal problems’.⁴ Common areas of legal need include consumer law, crime, housing, government processes, personal injury, social security, discrimination, employment, guardianship, child protection, domestic and family violence (DFV), and debt recovery.⁵ These legal problems were often related to non-legal needs, such as health problems or unemployment. Furthermore, the ‘strong link between disability and vulnerability to legal problems...strengthens as the severity of the disability increases’.⁶ The areas of legal need highlighted above demonstrate the critical importance of ensuring courts and legal services are fully accessible to PwD, with appropriate supports and accommodations in place. The discussion in this report also highlights the need for a collaborative and, to the extent possible, non-adversarial approach.

PwD may experience a number of issues in accessing justice, including:

- physical barriers (eg, courtroom layout, acoustics, lighting, inability to sit for long periods)
- information and communication barriers (eg, lack of language assistance or communication devices)
- negative attitudes, stigma and lack of understanding (by and about PwD)

¹ Australian Bureau of Statistics (2024). *Disability, ageing and carers, Australia: Summary of findings* <https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>. This figure has been rising, but may still underestimate the true number of people living with some form of disability, as there are concerns about the adequacy and quality of the data: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) (2023). *Executive summary: Our vision for an inclusive Australia and recommendations*, 183.

² Law Council of Australia (2018). *The Justice Project final report – Part 1: People with disability (PwD)*.

³ Coumarelos C et al (2012). *Legal Australia-wide survey: Legal need in Australia*. Law and Justice Foundation of New South Wales (NSW), 20.

⁴ Law Council of Australia, PwD, n 2, 4.

⁵ *Ibid*, 14-15.

⁶ Coumarelos C et al (2015). *Collaborative planning resource – Service planning*. Law and Justice Foundation of NSW, 63.

- lack of required and appropriate support services and legal assistance
- discriminatory laws and practices
- barriers to reporting a crime (eg, fear that support services will cease or they will lose access to children, lack of understanding about the justice system, discriminatory treatment)

general barriers (eg, inability to communicate requirements, power imbalances, inadequate time, assumptions about competence).⁷

Furthermore, many of the barriers that PwD may experience in court

are likely to be compounded if the person also happens to be First Nations, from an ethnic or migrant background, female, a child or young person, lesbian, gay or bisexual, transgender, or if they practise a particular religion or are representing themselves.⁸

In 2019, the Australian Government established the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission or DRC),⁹ in response to community concerns about reports of the violence, neglect, abuse and exploitation experienced by PwD. The DRC delivered its final report in September 2023¹⁰ and the DRC's findings and recommendations will inform this report.

Context for the report

The purpose of the ACT Courts and Tribunal (ACTCT) is to:

support the proper administration of justice by providing high quality support to judicial officers and tribunal members, and high quality services to those using the courts and tribunal...[and] providing equity of access to justice to the ACT community.¹¹

The ACTCT is made up of:

- the Supreme Court, including the Court of Appeal
- Magistrates Court, with the following divisions:
 - Coroner's Court
 - Children's Court
 - Industrial Court
 - Galambany and Warrumbul Indigenous Courts

⁷ Law Council of Australia, PwD, n 2; Judicial College of Victoria (2023). *Victorian disability access bench book* (Vic BB), 13-16; Graydon C (2021). *Human rights toolkit*. Federal Court of Australia and New Zealand Government (Toolkit).

⁸ Judicial Commission of New South Wales (NSW) (2024). *Equality before the law bench book* (NSW BB), 5141. See also Law Council of Australia, PwD, n 2.

⁹ DRC (2024). *About the Royal Commission* <https://disability.royalcommission.gov.au/about-royal-commission>.

¹⁰ DRC (2023). *Publications* <https://disability.royalcommission.gov.au/publications>.

¹¹ ACT Courts and Tribunal (ACTCT) (2024). *2023-24 business plan*, 1.

- Family Violence Court
- Civil and Administrative Tribunal (ACAT)

Most of the Supreme Court’s work and all of ACAT’s work relates to civil matters, while most of the Magistrates Court’s work and bulk of the ACTCT’s work overall is in relation to criminal matters.¹²

The ACTCT has already taken a range of steps to increase accessibility,¹³ including

- remote hearings and expanded use of technology, benefiting those with mobility limitations or geographical barriers
- translating ‘Coming to Court’ factsheets into 20 different languages
- the use of the canine therapy program
- rolling out the Bindi Maps wayfinding app
- establishing a Therapeutic and Client Services team
- establishing specialist courts and lists (eg, Family Violence Court, Drug and Alcohol Sentencing List, Warrumbul and Galambany), which address complex needs
- ACAT’s production of informational videos in multiple languages, enhancing access for culturally and linguistically diverse (CALD) communities.

Importantly, many of these adopt intersectional approaches. For example:

- recognition that people with disabilities are disproportionately affected by issues like domestic and family violence (DFV). The Family Violence Court and related support services aim to address these overlapping vulnerabilities
- mental health hearings are conducted at hospitals, acknowledging the intersection of health and legal needs
- Indigenous people may experience higher rates of disability and socioeconomic disadvantage, which can be supported through the Galambany and Warrumbul Courts.

There are also several targeted initiatives in relation to disability:¹⁴

implementation of the Disability Action and Inclusion Plan (DAIP) across the ACTCT.¹⁵ The DAIP has six focus areas:

- information and communication
- education and guidance
- identification, screening and assessment
- better service delivery

¹² See eg Productivity Commission (2025). *Report on government services 2023-24*, Tables 7A.1, 7A.2.

¹³ See eg, Magistrates Court of the ACT (2020). *Annual review 2019-20*; ACAT (2022). *Annual review, 2021-22*; ; Supreme Court of the ACT (2022). *Annual review, 2022-23*.

¹⁴ ACTCT (2021). *Disability action & inclusion plan (DAIP)*; ACT Government (2024). *Disability justice action strategy: Second action plan (2024-2028)* (DJAS 2024-28), Item 4.8.

¹⁵ For updates on the DAIP, see ACT Government (2022). *Third annual progress report*; ACT Government (2023). *Fourth annual progress report*.

- data, research and review
- modifications to facilities
- establishing the disability liaison officer (DLO) role, to provide specialised support. The DLO also participates in the Community of Practice, which helps people navigate the justice system¹⁶
- participation in the Intermediary Program
- ACAT's 'warm referral' process to legal assistance services, benefiting self-represented litigants who may face multiple barriers.

By focusing on these areas, the ACTCT demonstrates a nuanced understanding of the diverse needs of court users, particularly those facing multiple intersecting factors which have historically reduced or impeded access to justice. The ACTCT has shown adaptability in maintaining access to justice, while also recognising the ongoing work needed to provide equity of access to justice to the ACT community. There are some further challenges and opportunities, including:

- continued refinement of remote access technologies, to ensure they do not inadvertently exclude certain groups or 'snap back' to a pre-COVID state of affairs
- enhancing data collection on disability and diversity among court users, to inform future initiatives
- expanding training for staff on intersectional approaches to accessibility and cultural competency
- aligning the ACTCT's operations with the ACT *Disability justice action strategy: Second action plan (2024-2028)* (DJAS 2024-28).¹⁷

The ACTCT intends to implement a Therapeutic Framework, which encompasses all service provisions and interventions, guiding the practices for staff, including the judiciary, and tribunal members. This Framework will seek to deliver holistic and therapeutic outcomes for court and tribunal users, which will also benefit the wider ACT community. The Framework will also include guides for best practices, incorporating adjustments and supports for people with disabilities engaging with ACTCT systems. As part of this initiative, the ACTCT is progressing its second DAIP. This should be read in the context of the DJAS 2024-2028, which was launched in August 2024 and includes a range of initiatives relevant to the ACTCT. The ACTCT has lead responsibility for one action item: 4.10: Effective support for court users. It is also listed as having made a commitment in relation to the following action items:

Table 1. Disability justice action strategy: Second action plan – Action items for ACTCT

- 1.1 Development of accessible documents and resources
- 1.2 Accessible bail conditions
- 2.1 Tailored disability education and guidance for the justice sector
- 3.1 Identification of disability or reasonable adjustments needs
- 4.1 Criminal justice diversion

¹⁶ For information on the Community of Practice, see ACT Government (2024). *Disability justice strategy* <https://www.act.gov.au/open/disability-justice-strategy>, especially ACT Government (2020). *Disability justice strategy: First annual progress report*; ACT Government (2021). *Disability justice strategy: Second annual progress report*. See also DJAS 2024-28, n 14, Items 4.2 and 4.7.

¹⁷ DJAS 2024-28, *ibid*.

4.7 Community of Practice
4.9 Disability Action and Inclusion Plans
5.1 Data collection and analysis
5.2 Improved information sharing
5.7 Governance and oversight

Scope of the report

Against this background, the Australian National University (ANU) was contracted to prepare a report on good practice service provisions in similar contexts across Australia and the practices of progressive and inclusive courts and tribunals internationally. The international component of the project will focus on England and Wales, Scotland, Northern Ireland, Ireland, New Zealand and Canada, although other examples of good practice will also be considered, where relevant.

The report will provide an evidence-based and progressive platform to assist in guiding ACTCT's proposals and service inclusion improvements. The report covers issues across various jurisdictions, including adult, youth, criminal, and civil contexts. This recognises that PwD may encounter legal issues in a wide range of civil areas (eg, discrimination, housing, child protection, employment, and personal protection orders), as well as in criminal justice contexts (eg, bail, fitness to plead, jury trials, sentencing). It will provide specific examples of good practice, where identified approaches have been implemented, and their outcomes. The report will draw on evaluation data that considers disability-aware and disability-inclusive practices, to the extent possible, including where specialist court lists have been subject to independent evaluation. The report will also point to examples that may not have been evaluated, but are consistent with good practice principles, as well as universal design principles that promote accessibility and compliance with legal standards. In addition, the report will draw on informal consultation with PwD and organisations that support PwD.

The report considers:

- disability-aware and disability-inclusive practices designed for court and tribunal users currently in use in Australia or internationally
- approaches in other jurisdictions, such as screening and bench books/guidelines in which judicial advisory bodies guide courts and tribunals towards access to justice for all people who may experience barriers to justice, including PwD
- the development and operationalisation of sensory and diversion-based lists/programs

The report will take an intersectional approach, for example, considering the specific needs of PwD who are also Indigenous, female, children, from culturally and linguistically diverse (CALD) backgrounds, and/or LGBTIQ+. This aligns with the DJAS 2024-28.¹⁸

In preparing this report, we recognise that many social factors outside the courts' control operate on the courts' work, workload, efficiency, and effectiveness. In the present context, issues such as access to and the quality of housing, transport, education, employment, healthcare and social security may impact on PwD in ways that are relevant to their engagement with the courts. Other

¹⁸ Ibid, 6.

aspects of the legal system (eg, police, corrections, legislative frameworks, funding for legal aid) are also relevant. However, given the timeframe for undertaking this project and the focus on courts and tribunals, detailed consideration of these issues was considered beyond the scope of the project.¹⁹ Accordingly, to limit the review to what is meaningfully within the courts' remit, the report principally considers areas within the courts' locus of control, such as court programs, design, processes and education for those who work in the courts.

Structure of the report

This report is structured to reflect the progress of PwD through the courts: coming to court, at court, and after court. It spends some time setting up the nature of disability and how it might impact on all those who engage with the courts, whether as parties or practitioners; judges or jurors; staff or witnesses.

The report is structured in two parts, *Part 1: Setting the foundations*, establishes the fundamental framework through four chapters. It begins with an introduction that outlines the scope of the research to examine good practice in courts and tribunals across Australia and internationally (Chapter 1). This is followed by key guiding principles that establish the theoretical and conceptual frameworks for the report, including international guidelines, legal design and universal design principles, and alternative justice models. It also outlines 15 guiding principles that underpin the report. Chapter 3, *Creating accessible courts*, considers communication needs, the role of technology, case management, physical design and architecture, and training and education. The fourth chapter provides guidance on considerations before, during, and after court hearings, including early identification of needs, ongoing support requirements, and the importance of continuous evaluation and the adjustment of accommodations.

Part 2: Engaging with specific contexts comprises five chapters that apply the foundations set out in Part 1 to specific contexts, jurisdictions and demographic groups. Chapter 5 presents a detailed examination of the criminal jurisdiction, analysing screening processes, diversion programs, bail, and sentencing. It also considers the specific issues that arise for victims and jurors. This is followed by a chapter on the civil jurisdiction (Chapter 6), with attention to self-represented litigants and issues such as coronial matters, mental health, housing, and guardianship. Chapter 7 explores 'crossover jurisdictions', in relation to the Children's Court and domestic and family violence matters. Chapter 8 presents a brief overview of the issues and accommodations that may apply for different disability types and the need for tailored approaches. The final chapter examines intersectional approaches, exploring how disability intersects with other with factors, including Indigenous status and other cultural and linguistic diversity, gender and LGBTIQ+ status. This highlights the need for courts to develop specific individualised responses.

¹⁹ For a comprehensive analysis of these issues, see the Law Council of Australia (2018). *The Justice Project* <https://lawcouncil.au/justice-project/about-the-project>. This project involved 'a comprehensive, national review into the state of access to justice in Australia...focus[ing] on justice barriers facing those with significant social and economic disadvantage, as well as identifying what is working to reduce those barriers'. The final report, released in 2018, included separate chapters on PwD; people who are homeless; people experiencing economic disadvantage; LGBTIQ+ people; prisoners and detainees; Aboriginal people; people who experience family violence; people who have been trafficked and exploited; recent arrivals to Australia; asylum seekers; children and young people; older people; and rural, regional and remote Australians, as well as chapters on sector responses, including legal services; courts and tribunals; critical support services; broader justice system players; and governments and policy-makers.

Examples of evidence-based research, evaluation data, good practice examples, and practical examples using vignettes are presented throughout the report.

Vignettes

Vignettes demonstrate a variety of ways the courts can make reasonable adjustments, to accommodate the needs of PwD. These examples should be considered non-exhaustive and illustrative, not prescriptive. In each case, consideration should be given to the person's individual needs, based on discussion with them. This could also include advice from the court disability liaison officer (DLO) and, if relevant, any support person/s.

Tamara's story

Tamara grew up in a highly conservative and strictly religious household. As a teenager, she disclosed her sexual orientation to her parents, who told her she was no longer part of their family or welcome in their home. Since then, she has experienced ongoing housing insecurity: staying with friends, couch-surfing, house-sitting, living in public housing, and sometimes sleeping rough.

A few years ago, Tamara was brutally attacked, while sleeping on the street. This incident left her with an acquired brain injury. She now receives the Disability Support Pension, but it doesn't cover her basic expenses, let alone the specialised health care she requires.

Tamara currently lives in public housing in the ACT, where rent is calculated as 25% of her income. Despite this, she struggles to make ends meet. She has been having difficulty paying her rent, particularly because a new tenant in the neighbouring flat strongly reminds her of her attacker. This triggers an intense trauma response, causing her to frequently stay at a friend's place instead.

Recently, a housing official warned Tamara that she risks eviction if she doesn't address her rent arrears. Terrified of returning to homelessness, she reaches out to the DLO about her situation. The DLO connects her with:

- community legal services specialising in housing law
- LGBTQIA+-specific support services
- trauma-informed counselling services.

Tamara reconnects with her National Disability Insurance Scheme (NDIS) support coordinator, to discuss her current circumstances and explore additional support options, including assistance with daily living and mental health support.

Terminology

According to the Convention on the Rights of People with Disability, 'people with disability' are:

those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.²⁰

In addition, 'disability' is

an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.²¹

Recent years have seen a move away from the 'medical model' of disability, which construes disability as 'an individual defect to be eliminated, cured, or hidden away',²² in favour of the

social model [which] focuses on the environment in which a person with disability lives. This model sees people being disabled by social barriers, including discriminatory attitudes, inaccessible physical environments and forms of communication, and failures to provide adjustments needed to enable people with disability to participate in education, workplaces and the wider community.²³

The Disability Royal Commission (DRC) found that there are at least nine different 'definitions' of disability used nationally.²⁴ The Australian Bureau of Statistics defines someone a person with a disability, if 'they have a limitation, restriction or impairment, which has lasted, or is likely to last, for at least six months and restricts everyday activities'.²⁵ The Australian Bureau of Statistics²⁶ model identifies six elastic categories of disability.

Table 2. Australian categories of disability

Sensory: <ul style="list-style-type: none">• loss of <i>sight</i> (not corrected by glasses or contact lenses)• loss of <i>hearing</i>, where communication is restricted or an aid is used• <i>speech</i> difficulties
Learning and understanding difficulties
Physical <ul style="list-style-type: none">• shortness of breath or breathing difficulties that restrict everyday activities• blackouts, seizures or loss of consciousness

²⁰ United Nations (2006). *Convention on the Rights of Persons with Disabilities*, Art 1.

²¹ *Ibid*, Preamble.

²² DRC, Executive summary, n 1, x.

²³ DRC, *ibid*. See also Law Council of Australia, PwD, n 2; People with Disability Australia (2024). *Social model of disability* <https://pwd.org.au/resources/models-of-disability/>.

²⁴ DRC, *ibid*, 185.

²⁵ Australian Bureau of Statistics (2024). *Disability, ageing and carers, Australia, Key definitions*

<https://www.abs.gov.au/methodologies/disability-ageing-and-carers-australia-summary-findings-methodology/2022#key-definitions>.

²⁶ *Ibid*, *Disability groups* <https://www.abs.gov.au/methodologies/disability-ageing-and-carers-australia-summary-findings-methodology/2022#disability-groups>.

- chronic or recurrent pain or discomfort that restricts everyday activities
- incomplete use of arms or fingers
- difficulty gripping or holding things
- incomplete use of feet or legs
- restriction in physical activities or in doing physical work
- disfigurement or deformity that restricts everyday activities

Psychosocial

- nervous or emotional condition that restricts everyday activities
- mental illness or condition requiring help or supervision
- memory problems or periods of confusion that restrict everyday activities
- social or behavioural difficulties that restrict everyday activities

Head injury, stroke or other acquired brain injury (ABI) with long-term effects that restrict everyday activities

Other, where the person is receiving treatment or medication for any other long-term conditions or ailments and still restricted in everyday activities

Definitions will be important, when courts and tribunals need to use specific terminology about a person's disability. However, as the Judicial Commission of NSW notes in the *Equality before the law bench book* (NSW BB):

*in many cases, the precise name or type of a particular person's disability or disabilities will not be relevant in court. Much more important will be the need to accurately and appropriately determine whether that person requires any form of adjustment to be made, and if so, what type and level of adjustment.*²⁷

The NSW BB likewise emphasises the importance of a strengths-based approach:

Most people with disabilities prefer to talk about what they *can* do, not what they may be unable to do, and indeed, to talk about the additional activities many of them might be able to do if we as a community made some (often simple) reasonable adjustments.

The way language is used can have a profound impact on people with disabilities. Language can have the effect of stereotyping, depersonalising, humiliating or discriminating against people with disabilities. Language can result in a person with a disability feeling respected and worthwhile or disregarded and marginalised...

²⁷ NSW BB, n 8, 5106 (emphasis in original).

When referring to a person with a disability, always remember that people with disabilities are **people first**. The fact that a person has a disability is secondary to the fact that they are a person. Also note that to keep referring to a person's disability has the effect of giving the disability greater importance than the person.²⁸

Further guidance around language and communication is provided in 3.1.

Many people experience their disability as an integral part of who they are, rather than as something separate from their identity. It is also important to recognise that many disabilities are hidden or invisible.²⁹ In fact, the person with the disability may not even be aware they have a disability. In addition, a person may experience more than one type of disability.³⁰ Some disabilities may also be episodic.

As the NSW BB³¹ explains, 'ableism' is discrimination that favours able-bodied people without disability, while 'disableism' is defined as the 'systemic and interpersonal exclusion and oppression of people with disability'. This discrimination can have hard and soft forms. Hard disableism is a direct, conscious act of discrimination and abuse. By contrast, soft disableism can be ingrained in our language and social interactions and may be less easily identified as discrimination. A failure to make reasonable adjustments for a person with a disability may amount to discrimination under the *Disability Discrimination Act 1992* (Cth). An adjustment is 'reasonable', if it does not cause unjustifiable hardship to the person making it.³²

²⁸ Ibid, 5142-5143.

²⁹ See Australian Institute of Health and Welfare (2024). *People with disability in Australia – Prevalence of disability* <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/people-with-disability/prevalence-of-disability>.

³⁰ For further information, see Vic BB, n 7, 9-10.

³¹ Ibid, 5111.

³² Ibid, 5138.

1 Key guiding principles

International guidelines

This report is underpinned by a commitment to international best practice principles. Australia is a signatory to the United Nations *Convention on the rights of persons with disability*.³³ Article 13 provides that:

States Parties shall 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.³⁴

The United Nations *International principles and guidelines on access to justice for persons with disabilities* emphasise the importance of creating and enforcing laws, regulations, policies, guidelines, and practices, to ensure the accessibility of all facilities and services within the justice system. The guidelines state that:³⁵

1. All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.
2. Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.
3. Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.
4. Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.
5. Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.
6. Persons with disabilities have the right to free or affordable legal assistance.
7. Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.

³³ United Nations, n 20.

³⁴ *Ibid.*

³⁵ United Nation Human Rights Special Procedures (2020). *International principles and guidelines on access to justice for persons with disabilities* (United Nations, International principles).

8. Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.
9. Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.

All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.³⁶

Legal design

This report is also informed by Hagan's concept of *legal design*, which aims 'to make the legal system work better for people'.³⁷ It seeks to improve the legal system by making it more accessible to lay people, professionals, policy-makers and government officials 'who use the system to set standards, hold powerful interests accountable, and enforce compliance based on rights and obligations', by:

weav[ing] together design of documents, products, services, spaces, policies, and laws to make systemic changes that still pay close attention to front-line realities. It recognizes the value of having interdisciplinary, inclusive groups build and test new improvements to the system. Legal design draws on the creative exploration and making of design work, along with the systems thinking and analysis of legal work.³⁸

Hagan envisaged the following six-phase process for legal design:

1. *Participatory network*: A diverse group of professionals and the public are involved in discussions and design of how to reform the legal system.
2. *Human-centered research on needs and opportunities*: The interdisciplinary, participatory network can conduct research into what people's needs and opportunities are regarding the legal system. This research might consider, for example, the scope of the legal issues, experiential and process problems, usability breakdowns and legal mapping, to understand the relevant rules, policies, and legislation.
3. *Exploratory designs*: The research defines an agenda regarding new products, services, and policies that can make the legal system work better for people. This step involves exploratory design and research and combines new frontline programs (eg,

³⁶ Ibid.

³⁷ Hagan M (2020). Legal design as a thing: A theory of change and a set of methods to craft a human-centered legal system. *Design Issues*, 36: 3-15, 4.

³⁸ Ibid.

communications, products, technology, services, and spaces) with reform of backend structures (eg, rules, laws, regulatory structures, norms, and policies).

4. *Field pilots and evaluation*: The new interventions and policies that test well in the exploratory stage are then refined, so they can be piloted in the field. People's experiences and outcomes are evaluated (eg, level and quality of justice, efficiency and usability of the system, people's ability to understand the legal system).
5. *Scale and replication*: The piloted interventions/policies that are shown through early trials to have positive outcome are scaled, replicated and established, as the new standard for how the legal system should operate.
6. *Long-term evaluation*: The changes are evaluated for broader, downstream implications (eg, whether they improve rule of law, alleviate poverty, improve quality of life, the economy, people's relationships with the justice system and government more widely).

Karpin and Senova expanded on Hagan's framework above, by considering the role of trust in legal design. As they observed:

trust is fundamental to the smooth functioning of legal systems. Such systems typically exhibit significant power imbalances and interdependence, due to hierarchical and positional structures as well as knowledge and language structures. Consequently, court users can struggle to navigate and make sense of complex court environments. Court users may feel intimidated or overwhelmed by their lack of understanding of court procedures or dynamics...[and] many legal systems can be perceived as uncertain or high risk for court users, creating a significant need for trust as a counterbalance. *This need is further exacerbated for people with psychologically, socially or economically disadvantaged backgrounds. For instance, people who have experienced domestic violence, who are part of a cultural group that experiences discrimination, or who live with disabilities, may have heightened sensitivities and, hence, an increased need for trust in a court environment.* Trust thus functions as an invisible lubricant for social and legal interactions, as trust helps reduce feelings of uncertainty, risk and hesitation. The legal system as a whole benefits if court users trust the court, and if its staff and associated service providers are dependable.... Enabling trust in the legal system requires intentional design.³⁹

They went on to articulate various *levers* for design, namely:

- *place*, ie, the court environment
- *process*, ie, 'the tasks court users engage in, their order and cadence, and when and with whom they need to be performed'⁴⁰

³⁹ Karpin M and Melis Senova S (2021). Designing for trust: Role and benefits of human-centered design in the legal system. *International Journal for Court Administration*. 7: 1-18, 7-8 (emphasis added).

⁴⁰ *Ibid*, 9.

- *people*, eg, judicial officers, registry staff, legal practitioners, government department staff, police and security staff, support services staff and other court stakeholders
- *purpose*, ie, the court's reason for being
- *planet*, ie, environmental impact.

This approach supports the development of a best practice court model for PwD.

Universal design

Universal design is an approach that focuses on designing environments, so they can be accessed, understood and used to the greatest extent possible by all people, regardless of their age, (dis)ability or size.⁴¹ The principles of universal design are set out in Table 3.

Table 3. Principles of universal design

Principle	Example guideline
1. <i>Equitable use</i> : The design is useful and marketable to people with diverse abilities.	Make the design appealing to all users.
2. <i>Flexibility in use</i> : The design accommodates a wide range of individual preferences and abilities.	Provide adaptability to the user's pace.
3. <i>Simple and intuitive use</i> : Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills or concentration level.	Accommodate a wide range of literacy and language skills.
4. <i>Perceptible information</i> : The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.	Provide compatibility with a variety of techniques or devices used by people with sensory limitations.
5. <i>Tolerance for error</i> : The design minimises hazards and the adverse consequences of accidental or unintended actions.	Provide fail-safe features.
6. <i>Low physical effort</i> : The design can be used efficiently and comfortably and with a minimum of fatigue.	Minimise sustained physical effort.
7. <i>Size and space for approach and use</i> : Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture or mobility.	Provide adequate space for the use of assistive devices or personal assistance.

⁴¹ Centre for Excellence in Universal Design (2024). *The 7 principles* <https://universaldesign.ie/about-universal-design/the-7-principles>.

Universal design principles are central to making courts accessible. As set out in the introduction, the United Nations *International principles and guidelines on access to justice for persons with disability* state that '[f]acilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities'.⁴² This includes:

- making courts and related places (such as holding cells) accessible
- ensuring that information, communications, and technology services are accessible
- providing accessible transportation within the justice system
- co-designing appropriate adjustments when facilities and services do not meet accessibility needs (for example, attendance by technology).

Gooding et al have suggested, in the context of fitness to plead laws, that:

It is possible that 'universal design' in this area of law is harder to achieve in the adversarial system of common law compared to the inquisitorial approach of civil law systems which are predominant in Europe....However, this is not to suggest that common law jurisdictions such as Australia cannot achieve universal design in unfitness laws, as noted previously. Instead, it is to suggest that civil law and other non-adversarial systems, including restorative practices in common law jurisdictions, may prove a fruitful line of inquiry in this field of law reform.⁴³

The report now provides a brief overview of some non-adversarial models that are of particular relevance, when considering the needs of PwD.

Alternative justice frameworks

Several approaches to court-craft have emerged in recent years that are also relevant in this context.

Trauma-informed principles

Trauma-informed principles were initially developed in the mental health context, but have since been adapted for the courts. Indeed, the Judicial Commission of New South Wales (NSW) has noted that:

many court participants are trauma survivors and may continue to experience trauma to varying degrees...Communicating effectively and respectfully with court participants, eliminating unnecessary court procedures that could be perceived as threatening, and modifying the

⁴² United Nations, *International principles*, n 35, 14.

⁴³ Gooding P et al (2017). Unfitness to stand trial and the indefinite detention of persons with cognitive disabilities in Australia: Human rights challenges and proposals for change. *Melbourne University Law Review*, 40: 816-866, 862.

physical environment to create a sense of safety can help ensure that trauma survivors benefit from judicial interventions.⁴⁴

The Judicial Commission went on to recognise that many PwD experience more trauma in their lives than the general population. The key trauma-informed principles are:

1. *Safety*: throughout the courtroom, all participants feel physically and psychologically safe
2. *Trustworthiness and transparency*: operations and decisions are conducted with transparency, with the goal of building and maintaining trust with all court participants
3. *Peer support*: peers are understood as individuals with lived experiences of trauma; peer support and mutual self-help are key vehicles for establishing safety and hope
4. *Collaboration and mutuality*: importance is placed on partnering and levelling the power differences in the courtroom
5. *Empowerment, voice and choice*: the courtroom fosters a belief in the primacy of the people served, in resilience
6. *Cultural, historic and gender issues*: the courtroom actively moves past cultural stereotypes and biases (eg, based on race, ethnicity, sexual orientation, age, religion, gender); leverages the healing value of traditional cultural connections; incorporates policies, protocols, and processes that are responsive to the racial, ethnic and cultural needs of individuals served; and recognises and addresses historical trauma.

Therapeutic jurisprudence

Therapeutic jurisprudence considers the role of the law as a *therapeutic agent*. It suggests that legal rules (eg, case law), procedures (eg, court processes) and actors (eg, lawyers, judicial officers) can produce either therapeutic (ie, positive) or anti-therapeutic (negative) consequences.⁴⁵ Therapeutic jurisprudence can be seen as a framework for examining the operation of legal processes and behaviour of legal actors, to identify their impacts on people's wellbeing. This can help in designing a legal system that improves its effectiveness and its ability to contribute to a healthier and more resilient community.⁴⁶ This approach adopts a number of principles, in order to maximise the positive, therapeutic impact of the law and its processes:⁴⁷

⁴⁴ Judicial Commission of NSW (2023). *Trauma-informed courts: Guidance for trauma-informed judicial practices*, 5-6. See generally Blue Knot Foundation (2024). *Talking about trauma fact sheets* <https://blueknot.org.au/resources/blue-knot-fact-sheets/talking-about-trauma/>.

⁴⁵ Wexler D (1993-1994). An orientation to therapeutic jurisprudence. *New England Journal on Criminal and Civil Confinement*, 20: 259-264.

⁴⁶ Stobbs N et al (eds) (2019). *The methodology and practice of therapeutic jurisprudence*. Carolina Academic Press.

⁴⁷ King M et al (2014). *Non-adversarial justice*. Federation Press, 2nd ed.

- a focus on self-determination, autonomy, and active participation for people who come into contact with the legal system
- considering the emotional and psychological wellbeing of court users
- procedural justice values (see below)
- active judicial involvement and interpersonal skills, such as active listening and displays of empathy and compassion
- having an ethic of care and emphasising dignity
- interdisciplinary collaboration, to support therapeutic outcomes.

Therapeutic jurisprudence has been adopted in a wide range of contexts (eg, coronial law) but is best known in the criminal justice system and is perhaps most pronounced in the solution-focused court context. For further discussion, in the context of court-based diversionary programs, see 5.1.2.

Procedural justice

Procedural justice is about how fair processes are and are perceived to be.⁴⁸ Research shows that people's perceptions of fairness are strongly impacted by the quality of their experiences, not only the end result of these experiences.⁴⁹ Procedural justice theory has been applied to various settings, including the justice system. It is based on the four pillars of neutrality, respect, trust and voice (see Figure 1). Establishing these pillars is particularly important for PwD, who have often had negative experiences with authority figures.

⁴⁸ Yale Law School (2024). *Procedural justice* <https://law.yale.edu/justice-collaboratory/procedural-justice>.

⁴⁹ See eg, Tyler T (2006). *Why people obey the law*. Princeton University Press.

Figure 1. Pillars of procedural justice



There are clearly overlaps between the trauma-informed principles, therapeutic jurisprudence and procedural justice. They also align with Karpin and Senova's discussion above about building trust.

Restorative justice

Restorative justice represents a shift from traditional punitive approaches, focusing on healing and rebuilding relationships, rather than punishment. Definitions vary across the field – some view it as specific practices, others as guiding principles. This report aligns with Australian research and practice, by adopting Daly's definition:

Restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process – prearrest, diversion from court, presentence, and post sentence – as well as for offending or conflicts not reported to the police. Specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict.⁵⁰

Restorative justice in Australia has evolved over the past three decades and is now integrated into formal criminal justice systems, often underpinned by legislation.⁵¹ While its primary focus is on addressing harm caused by specific criminal acts, it can also create broader change, by transforming relationships between individuals, communities, and the justice system. Restorative justice can offer a pathway to justice that acknowledges the intersection between disability, marginalisation, and involvement in the justice system. This includes recognising that traditional punitive approaches may disproportionately impact people with disabilities and that restorative

⁵⁰ Daly K (2016). What is restorative justice? Fresh answers to a vexed question. *Victims & Offenders*, 11: 9-29, 21.

⁵¹ See Crimes (Restorative Justice) Act 2004 (ACT).

justice might provide more equitable and accessible justice outcomes, in a range of contexts.⁵² However, concerns have also been expressed about the ability of some PwD, especially those with cognitive and language impairments, to participate in restorative justice processes.⁵³

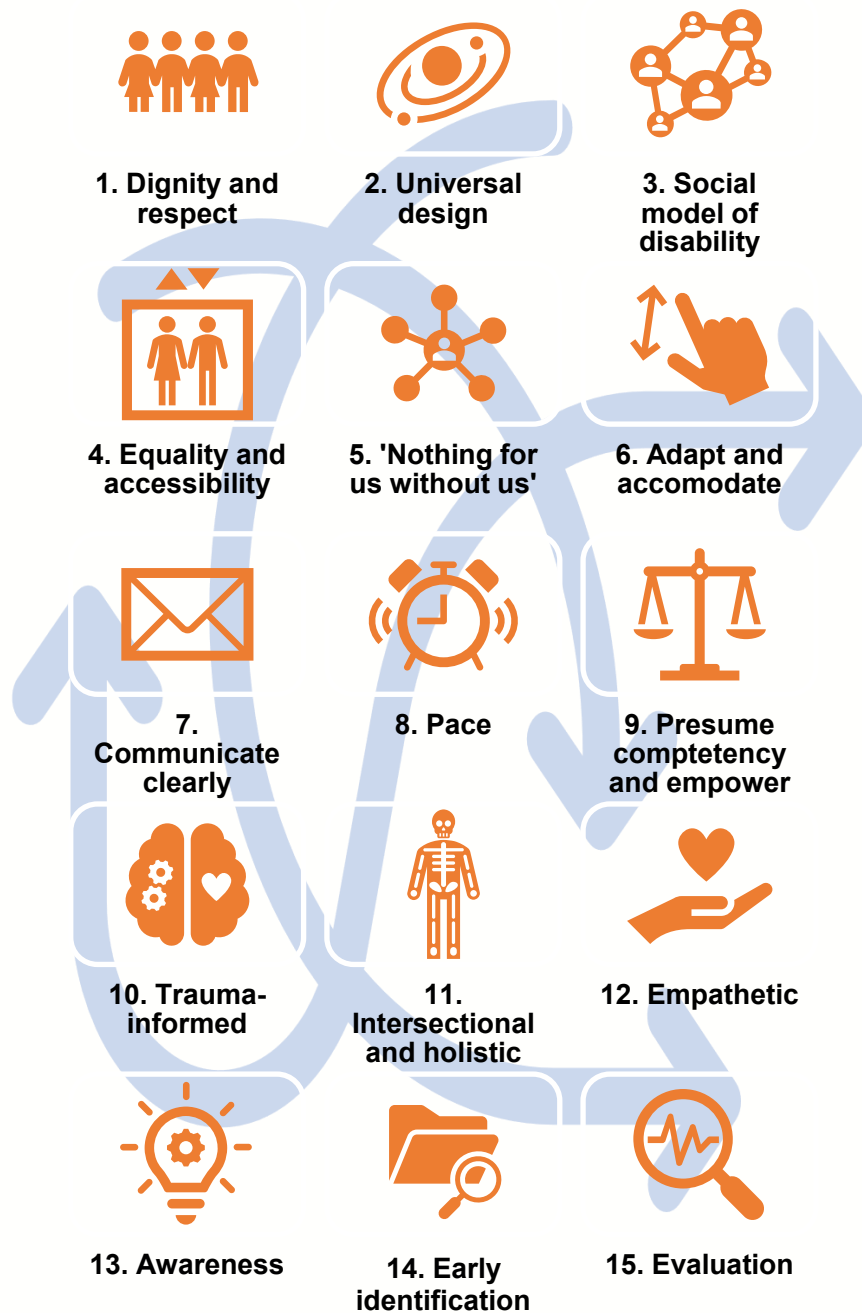
Guiding principles for this report

In light of the foregoing, this report is underpinned by 15 *guiding principles*, which underpin all aspects of this report.

⁵² See eg, Hughes J (2020). *Restorative justice can enhance the rights of people with a disability living in group homes* <https://cij.org.au/news-and-views/restorative-justice-can-enhance-the-rights-of-people-with-a-disability-living-in-group-homes/>.

⁵³ Snow P and Hayes H (2013). Oral language competence and restorative justice processes: Refining preparation and the measurement of conference outcomes. Australian Institute of Criminology.

Figure 2. Guiding principles to support people with disability in the ACTCT



Principle 1: Dignity and respect

Acknowledge the inherent dignity of people with disabilities and respect their unique personhood and lived experiences.

Principle 2: Universal design

Create environments, processes, and systems that are usable by all people to the greatest extent possible, without the need for adaptation or specialised design.

Principle 3: Social model of disability

Recognise that disability results from the interaction of people with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society.

Principle 4: Equality and accessibility

Ensure equal treatment and non-discrimination for all court users; enable access to justice and courts, by removing barriers.

Principle 5: 'Nothing for us, without us'

Actively involve people with disabilities in processes that affect them.

Principle 6: Adapt and accommodate

Adapt to individual circumstances and make reasonable adjustments⁵⁴ to meet individual needs.

Principle 7: Communicate clearly

Use clear, accessible communication methods tailored to each person's needs and preferences.

Principle 8: Pace

Allow sufficient time and breaks for individuals to participate effectively and to pace themselves; be conscious of the pace of proceedings, including the speed of speech.

Principle 9: Empower and presume competency

Support and enable people with disabilities to make their own choices and decisions; assume capacity and ability, unless proven otherwise and avoid stereotypes and unconscious bias.

Principle 10: Trauma-informed

Recognise and respond to higher rates of trauma among people with disabilities, by understanding, recognising, and responding to the effects of all types of trauma.

Principle 11: Holistic and intersectional

Consider the whole person, their identity, and their circumstances, not just their disability/ies; acknowledge the multiple intersecting identities that impact interactions with the courts, including Aboriginal and Torres Strait Islander peoples, cultural and linguistically diverse backgrounds, age, trauma, sexual orientation and gender identity and intersex status (LGBTIQ+), socioeconomic status, and that multiple disabilities and identities may intersect.

Principle 12: Empathetic

⁵⁴ *Discrimination Act 1991 (ACT)*, s 74.

Demonstrate understanding and feeling towards people with disabilities and the totality of their experiences. Foster a curious and open mindset to learn more, including honouring narratives. Be prepared to meet people where they are at.

Principle 13: Awareness

Promote education and training on disability issues for all justice system personnel.

Principle 14: Early identification

Identify disability-related needs as early as possible, ideally before the first court attendance. However, some people may choose not to identify, so this may need to be balanced with Principle 1: Dignity and respect.

Principle 15: Continuous evaluation and improvement

Regularly assess and improve practices related to disability access and inclusion and actively facilitate feedback from people with disabilities, their support people, and relevant stakeholders. Co-design improvements, where possible.

3 Creating accessible courts and tribunals

This chapter outlines a range of measures to help the ACTCT implement Item 4.10 of the DJAS 2024-2028: Effective support for court users. Access to justice for PwD requires a comprehensive approach to court processes and procedures that goes beyond basic physical accessibility. While structural and procedural barriers in courts affect many people, they can create particular challenges for PwD, especially those who face intersecting disadvantages, such as women with caring responsibilities (57% of PwD aged 35-44 had parenting responsibilities⁵⁵) or people from diverse cultural backgrounds (see 9.2 for further discussion).

Addressing these barriers requires both systemic changes to court processes and specific accommodations that recognise the diverse needs of PwD. The Law Council of Australia⁵⁶ has outlined the essential features of an appropriate and accessible court and tribunal system, namely:

- acknowledging the importance of the efficient, timely and fair resolution of matters
- ensuring courts and tribunals are sufficiently resourced, to avoid delays
- recognising that efficiency and fairness often depend on ready access to legal assistance
- active case management and triage, to facilitate efficiency and fairness
- understanding that the financial cost of accessing justice through the court and tribunal system is high
- ensuring procedural justice, by accommodating different communication needs (eg, plain English; communication intermediaries; interpreters; and flexible procedures)

⁵⁵ Australian Institute of Health and Welfare (2024). *People with disability in Australia* <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/people-with-disability>.

⁵⁶ Law Council of Australia (2018). *The Justice Project final report – Part 2: Courts and tribunals (Courts and tribunals)*.

- making courts and tribunals accessible (eg, disability-responsive approaches; geographic location; physical safety)
- developing greater cultural awareness and competency across the justice sector (eg, education and training; encourage positive diversity measures; implement a range of bail, sentencing and specialist court programs; use both technology and face-to-face interactions).

The Law Council also called for therapeutic, diversionary and problem-solving approaches, including for PwD, and addressing court fragmentation. Notably, the Law Council recognised that the ‘emphasis on expediency, minimising costs and fast resolution of disputes can place additional pressures on people with disability who require adjustments, such as regular breaks in court to maintain concentration or Auslan interpreters’.⁵⁷

The Federal Court of Australia and New Zealand Government have developed the *Human rights toolkit* (Toolkit), which aims to increase ‘the ability of judicial and court officers to apply human rights in their daily work and practice to improve the quality of justice provided by courts’.⁵⁸ It raises a number of barriers to access for vulnerable people and possible solutions, with illustrative examples set out in Table 4 below. It is recognised that some of these practices may already be in place in the ACTCT.

The Toolkit also suggests the inclusion of court-user exit surveys and focus groups with particular user groups, as well as an ‘access to justice’ survey with a wide range of stakeholders, to find out information about people who do not access the courts and why. The Toolkit also provides a standard form for data collection (see Appendix A) and notes that:

a decision by the courts to start collecting separated gender, age, disability data, might well trigger similar decisions in other institutions. When all key institutions in the justice chain collect agreed-on data fields, this provides a very powerful tool for more specifically diagnosing problems and remedies, resulting in a greatly strengthened sector.⁵⁹

A simple and streamlined data collection and analysis process is essential and is discussed further below, in the context of case management.

Table 4. Addressing access to justice issues for people with disability

Barrier to access	Cause	Possible solutions
Lack of knowledge of the law and courts’ roles, how to use the courts and help using the courts	PwD often miss out on the chance to learn about the legal system because information is not provided in ways accessible to them	Develop a court outreach program, to explain to people how they can use the courts to address their problems and the help available. Make sure special sessions are held for groups like PwD.

⁵⁷ Ibid, 9.

⁵⁸ Graydon, Toolkit, n 7, 1.

⁵⁹ Ibid, 8.

		Widely distribute information about the role of courts in accessible formats including using diagrams and pictures, social media, community radio and drama programs, that show ordinary people using the law.
Lack of ability to attend court, due to lack of mobility, time, money (for transport, accommodation, lost income, court fees)	PwD often cannot travel to attend court, especially on multiple occasions, and are less likely to have funds for travel or court applications.	Abolish court fees or establish a fee waiver system for poor and vulnerable groups, especially in family law or other civil law cases being brought by women, children or discrimination/other cases brought by PwD. Provide ways for court users to do more 'court business' remotely (eg, by telephone or internet). Provide allowances upfront for poor or vulnerable parties' court-related expenses (transport, food, accommodation).
Lack of access to legal assistance and support through the legal process	Vulnerable groups may find it impossible to put their cases forward and maintain their involvement in their case without free or low-cost legal and advocacy assistance.	Expand and develop the range of legal aid services provided by the court, including free duty lawyers at court, and female lawyers are available. Ensure Court staff are trained and in sufficient numbers to provide basic assistance at the court with form filling, navigation around the court and its services, able to arrange relevant support services for persons with disabilities etc.
Discriminatory laws, processes and decisions	Judicial officers and court staff may unconsciously display bias or think in stereotypes in relation to women parties, people with disabilities, or others, in the processes used by courts.	Provide training on unconscious judicial and court-staff bias and develop standard monitoring tools for cases involving vulnerable persons. Ensure good signage in court and help services (eg, providing information and assistance, systems for reimbursing expenses, arranging interpreters, aides etc).

The following checklists accompany the Toolkit, as part of an initiative to promote more accessible, efficient, just and responsive court services across the Pacific:

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

Their recommendations are equally applicable to Australian courts, as they are:

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.⁶⁰

The checklists set out specific responsibilities for the Chief Justice (or other relevant head of jurisdiction), judges and magistrates, and court staff. The checklist on *When people with disabilities come to court* (Checklist) provides detailed information for ensuring courts implement inclusive practice and will be referenced throughout the report.

The Checklist recommends that courts develop a disability policy that applies to all judicial officers and staff, as well as contracted service providers and court users. This reinforces the leadership role of the courts, in setting expectations of others, such as legal practitioners, when engaging with PwD in courtroom settings. This policy should include obligations for the court to develop processes and systems for responding and making reasonable adjustments to court procedures and facilities; take all reasonable steps to identify and eliminate discrimination against PwD, including in their ability to access court services/functions; and appoint a senior judicial officer and senior court staff member responsible for implementation of the policy, to report directly to the Chief Justice. The policy should also ensure:

- that responsibilities for implementation of the policy are assigned and resourced and all court actors are trained and aware of their responsibilities and how to implement their responsibilities under the policy
- all members of the court receive training on identifying, communicating with and supporting the needs of PwD, including treating people with disabilities and their families with dignity and respect
- public information (inside and outside the court) is accessible to PwD and promotes the services/supports available to PwD at the court
- there is a system of feedback and complaints and regular review of implementation of the policy

⁶⁰ Graydon C (2020). *Checklist 5: When people with disabilities come to court*. Federal Court of Australia and New Zealand Government (Checklist), 2.

- that court data systems include disaggregation of people with disabilities and the Chief Justice monitors application of the disability policy in these cases. Systems need to be in place so that disability liaison officers have data on:
 - How many people with disabilities are engaged with the court?
 - Which cases are they involved in?
 - What disabilities do they have?
 - How is the court responding to their needs?
 - What result/outcome did they receive from their engagement with the court?
 - What further assistance is needed from the court?
- an annual budget line is included in the court budget for supports for PwD
- that all court response capacities/services developed for PwD are documented and go through a review process, to continuously improve and establish best practices in court disability services
- that existing court infrastructure and scheduling is adapted to meet the needs of people with disabilities to the maximum extent possible and that all new infrastructure takes these needs into account in the planning stage.

The Checklist recognises the different roles that various stakeholders in the courts play. For example, court staff

make vital contributions towards ensuring that the special human rights protections owed to people with disabilities are fully observed by the court in any court processes. This includes ensuring that people with disabilities do not experience any discrimination in either the process or the outcome of any court cases they are involved in.⁶¹

The Checklist also includes suggestions for improving services over time, including:

- sharing knowledge with other staff and working with others to develop court services, systems and information for PwD

asking PwD for feedback on their experience in court and what the court could do to further improve and using this feedback to continuously improve court responses.

⁶¹ Ibid, 9.

Many of these items are consistent with the objectives of the DJAS 2024-28, including Item 5.1: Data collection and analysis, 5.2: Improved information sharing, and 5.5 Evaluation.⁶² In addition, *Checklist 6: Creating welcoming, inclusive courts* discusses the critical role court staff play:

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.⁶³

This checklist contains a list of recommended actions on:

- equality and fairness (eg, making everyone in the court house feel of equal importance and value)
- proactively offering assistance (eg, helping with filling forms)
- observing professional standards (eg, consistently maintaining accurate court data and documentation)
- preparing in advance (eg, prepare in advance to avoid adjournments for people with disabilities)
- being responsive (eg, think about impact of court processes on disadvantaged groups and take initiative to help these groups)
- the court environment (eg, accessible to all).

Consideration should also be given to reviewing the *International framework for court excellence*.⁶⁴ It makes only limited explicit reference to disability issues, but one of its areas of focus is affordable and accessible court services. The Framework recommends courts undertake a four-stage process: self-assessment, analysis, implementation, and evaluation.

⁶² DJAS 2024-28, n 14, 24-25.

⁶³ Graydon, Checklist, n 59, 6-7. In Canada, it has been recognised that 'culture' is 'essential to advance accessibility': Canadian Courts Administration Service (2022). *Accessibility plan 2022-2025* https://www.cas-satj.gc.ca/en/publications/accessibility_plans/2022-2025.shtml. For further international guidance, see eg, Pew Trusts (2024). *How to make courts accessible to users with disabilities and limited English proficiency – Steps for making civil courts more equitable* <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2024/01/29/how-to-make-courts-accessible-to-users-with-disabilities-and-limited-english-proficiency>.

⁶⁴ International Consortium for Court Excellence (2020). *International framework for court excellence*. 3rd ed.

Communication

Content note: This section contains historical ableist language, used only to demonstrate how terminology has evolved. These terms are included for educational purposes, not as acceptable current usage.

Importance of appropriate communication in court settings

Clear and respectful communication with PwD is fundamental to ensuring equal access to justice. Research shows that communication barriers impede court processes and are the leading source of complaints in the legal system.⁶⁵ Effective communication practices are therefore essential for maintaining the integrity of court proceedings and ensuring meaningful participation for all court users. The Checklist states that courts should:

[e]nsure that court public information is produced in formats/medium accessible to people with disabilities. In addition, ensure and that such information makes people with disabilities feel welcome and accepted in the Court: that it is their place too and that they have the same right to be protected by the law and to bring their cases and to participate, as anyone else.⁶⁶

‘Person/people with disability’ refers to individuals with any impairment, whether present from birth or acquired through illness, accident, or aging. This encompasses cognitive, physical, sensory, intellectual, and psychosocial disabilities. Language choices shape both societal attitudes and personal experiences of disability. As People with Disability Australia have emphasised, language impacts disability discourse at various levels:

The language (words and phrases) that people use about people with disability has an impact on the social narrative about people with disability, how we are perceived and treated by the general public, which affects the systemic structures in society. It also has an impact on our sense of self, how we feel about ourselves, how we navigate society, and interact with other people. It is important that there is awareness of the meaning behind the words that are used when talking to, referring to, or working with people with disability.⁶⁷

Language in disability discourse continues to evolve, reflecting changing social understanding and personal preferences. For example, according to People with Disability Australia:

person-first language (people with disability) and identity-first language (disabled people) are both used in Australia. People with disability often have strong preferences for one term or the other, so it is best to follow the lead of the person or group you are talking about. It’s okay to ask. If that isn’t possible, use person-first language or refer to a person by their name.⁶⁸

⁶⁵ Carry G and Perriman C (2023). When silence isn’t golden: Detecting early warning signs. *Law Society Journal Online* <https://lsj.com.au/articles/when-silence-isnt-golden-detecting-early-warning-signs/>.

⁶⁶ Graydon, Checklist, n 59, 5.

⁶⁷ People with Disability Australia (2021). PWDA language guide: A guide to language about disability, 3.

⁶⁸ *Ibid*, 6.

This approach ensures dignified and appropriate communication that acknowledges the diversity of views within the disability community. When language errors occur, which they sometimes do, corrections of terminology should be handled promptly but discreetly, respecting both the speaker and the individual's stated preferences.

People with Disability Australia also advise that, when referring to PwD:

reference a person's disability only when it is relevant

focus on the person, not the disability

use the word disability as an uncountable noun, eg, person or people with disability, NOT person with a disability or people with disabilities.⁶⁹

People with Disability Australia also recommends using neutral language instead of expressions that evoke pity or suffering. Rather than phrases like 'afflicted by', 'stricken with', or 'victim of', simply state the condition directly, for example: 'He has muscular dystrophy'.⁷⁰ However, it is acknowledged that legislative terminology, such as in the *Mental Health Act 2015* (ACT), may differ from current preferred usage. In such circumstances, it may be beneficial to explain to the person that this is the terminology required under the law.

The Vic BB and NSW BB include further guidance on appropriate communication and examples of terminology to avoid.⁷¹

Ensuring effective communication

As the NSW BB advises, meaningful access to justice requires more than mere physical presence in court – it demands full comprehension and effective participation:

Just the same as anyone else who appears in court, a person with a disability needs to understand what is going on, the meaning of any questions asked of them, and to be sure that their evidence and replies to questions are adequately understood by the court [...] It is also critical that people with disabilities are treated with the same respect as anyone else.⁷²

The Toolkit also makes it explicit that:

Courts need to identify and meet the communication needs of people with disabilities, wherever possible. Sometimes courts may need to allow the use of communication devices or show some flexibility regarding the rules of evidence to accommodate needs of people with disabilities, for example by permitting the use of audio-visual evidence, either in real-time or pre-recorded.⁷³

Communication difficulties can manifest in diverse ways and be either immediately apparent or hidden from view. Some people may experience speech disabilities that result in unclear or slurred

⁶⁹ Ibid, 11.

⁷⁰ Ibid.

⁷¹ NSW BB, n 8, 5142-5144; Vic BB, n 7, 3-5. See also Mental Health Coordinating Council (2022). *Recovery oriented language guide*. 3rd ed.

⁷² NSW BB, ibid, 5142.

⁷³ Graydon, Toolkit, n 7, 32.

speech. Some people may be unable to speak at all, requiring alternative methods of communication such as gestures, devices, or assistance from others. While some people with communication disabilities also experience cognitive challenges affecting memory, learning, and problem-solving, many retain full cognitive abilities and decision-making capacity. Communication disabilities often occur alongside other conditions, creating multiple challenges – for example, someone with cerebral palsy might have both speech and mobility limitations. Additionally, some communication disabilities, such as those resulting from minor strokes or learning disabilities, may not be immediately obvious, but can significantly impact a person's ability to comprehend or express themselves effectively.⁷⁴

To enable effective participation in court, communication accommodations may be required. This may mean that some simply need information presented in a more accessible way.⁷⁵ Other people may need assistive devices or interpreters to give evidence or understand proceedings. These adjustments help ensure that all court participants can meaningfully engage with the court process.

The Vic BB and NSW BB highlight that judicial officers and others who work in the courts can adapt their communication style in a range of ways to support people with disabilities. At a minimum, judicial officers should adapt their language in court, to ensure clear understanding. The Vic BB emphasises that 'plain and concrete language' should be used wherever possible (for example, 'follow' rather than 'comply').⁷⁶ This recognises that 'unfamiliar legal terminology and jargon may be difficult for people to understand and can make people feel confused, disempowered and overwhelmed'.⁷⁷ Similarly, the NSW BB advises that language should be tailored to everyone's needs and judicial officers should 'adjust language to the person's disability, ie, style and/or level, may differ, based on whether the person has a physical and/or intellectual disability'. It is also important to be mindful of issues such as experiences of institutionalisation and domestic/sexual violence and the need to show empathy (eg, nodding, maintaining eye contact, pausing proceedings and making people comfortable in the hearing). Clear and compassionate communication is empowering – *especially* in an environment filled with language *mostly* designed to be accessible *only* to lawyers.

Pace and tone are some other aspects of effective communication:

- Avoid speaking too slowly or quickly; ask if the pace is suitable and adjust accordingly.
- Ask individuals if they can hear what people in the courtroom are saying and the volume is appropriate.
- Do not rush the person, appear impatient or interrupt. It is particularly important to be calm and respectful with people with intellectual disabilities and ABIs.
- Always face the person, to ensure they can benefit from lip reading, if required.

⁷⁴ Communication Disabilities Access Canada (2018). *Communication intermediaries in justice services*, 16.

⁷⁵ NSW BB, n 8, 5142.

⁷⁶ Vic BB, n 7, 37.

⁷⁷ *Ibid*, 37.

- Tone is particularly important for people with a disability, who may have experienced trauma, such as violence or sexual assault.

It is also important to recognise that some people may interrupt proceedings, if they do not understand a word or a sentence. This is not a sign of disrespect. Instead, it should be seen as a necessary strategy for some people to understand the judicial process.

Written communication

It is estimated that 44% of the adult population can find everyday reading and writing challenging, while 53% find everyday numeracy challenging.⁷⁸ Ensuring forms can be read and understood by people with low literacy levels is crucial for promoting their participation and engagement in the legal process.⁷⁹

The Law and Justice Foundation provides a range of materials on this issue, including *Designing forms*⁸⁰ and *Writing in plain language*.⁸¹ The Australian Council for Adult Literacy has also developed a guide to promoting reader-friendly communication, which explains that designing effective communication includes consideration of:

Language (eg, word choice, simple sentences)

Layout (eg, headings, tables)

Location: make it easy to find.⁸²

This guide also explains the impact of numeracy issues, such as paying bills and managing money. This may be relevant to following court orders. In addition, the guide references research showing that making forms easier to find, understand, fill in and return saves time and money, and people will follow instructions more often when they are reader-friendly.

The guide encourages organisations to do an audit of everything their customers (here, court users) need to read, bearing in mind their likely reading levels.⁸³ Steps in such an audit could include involving court users, developing a culture that promotes inclusive literacy approaches, and meeting the needs of diverse communities. There are a range of tools that can help with this (eg, tools that turn text to speech or speech to text).

In addition, the NSW Government now encourages ‘sludge audits’, ‘to identify, quantify and remove sludge (unnecessary frictions) from government services’.⁸⁴ Sludge can include information

⁷⁸ Australian Bureau of Statistics (2013). Programme for the International Assessment of Adult Competencies, Australia, 2011-12.

⁷⁹ The ACTCT has already taken steps to make information more accessible, including preparing plain language versions of information sheets and ‘request for assistance’ pamphlets, braille and large print copies of oaths and affirmations, and videos about the ACTCT’s processes: ACT Government, *Second annual progress report*, n 16; ACT Government, *Third annual progress report*, n 15; ACT Government, *Fourth annual progress report*, n 15.

⁸⁰ Law and Justice Foundation of NSW (2024). *Designing forms*.

⁸¹ Law and Justice Foundation of NSW (2024). *Writing in plain language*. See also United States Government (2024). *Use simple words and phrases* <https://www.plainlanguage.gov/guidelines/words/use-simple-words-phrases/>.

⁸² Medlin J (2022). Reader friendly communication: A guide to using plain language. Australian Council for Adult Literacy.

⁸³ See also Canadian Courts Administration Service, n 62.

⁸⁴ Medlin, n 81. See also Sunstein C (2022). *Sludge: What stops us from getting things done and what to do about it*. MIT Press; Varazzani C et al (2024). *Spotting the sludge: Behavioural audits to improve public services across countries*. Observatory of Public Service Innovation <https://oecd-opsi.org/blog/behavioural-science-spotting-the-sludge/>.

being hard to find, lengthy forms and processes, processes that lead to anxiety, and design that is not inclusive. The NSW Government has developed a range of tools, to help agencies undertake such audits.

The Flesch Reading Ease Score assesses the complexity of written language. A score of 0-30 is considered 'very difficult to read' and that a person would need a university degree to understand it, while a score of 90-100 can be read by someone with a 6th grade education. Free online calculators are available to assess this.⁸⁵ We recognise that some court documents may need to be framed in more complex language level. However, many documents (eg, bail conditions) should be simplified. This aligns with Action items 1.1 and 1.2 of the DJAS 2024-28.⁸⁶

Particular attention is required for the ACTCT's online presence, as digital literacy raises additional issues for some people (eg, older people, people who are not able to afford internet access, people who are or have been in prison). When the Canadian Court Administration Service⁸⁷ reviewed its materials, it found that the website was not easy to navigate and content was difficult to understand. Action items in response therefore included providing guidance and templates to staff on how to create accessible content, including the use of plain language. The Judicial Council on Cultural Diversity⁸⁸ has also highlighted the need to translate information into key community languages, to ensure it is accessible to people from CALD backgrounds.

The Australian Law Reform Commission⁸⁹ has examined the links between low adult literacy levels and

- negative interactions with the criminal justice system
- someone's ability to understand their legal rights and obligations and read official documentation, such as court attendance notifications or bail conditions. A failure to appear in court or comply with bail conditions can in turn lead to breaches and additional charges being laid
- the over-representation of Indigenous peoples in the justice system.

This may be as simple as drawing their attention to the Reading Writing Hotline.⁹⁰ The Victorian Drug and Alcohol Treatment Court also incorporates literacy training.⁹¹ As another example, the Neighbourhood Justice Centre in Melbourne has a room on its ground floor that is available for

⁸⁵ See eg, Good Calculators (2024). *Flesch Kincaid Calculator* <https://goodcalculators.com/flesch-kincaid-calculator/>. The following text on the ACTCT website yields a score of 28.3 (ie, university graduate): 'The ACT Courts and Tribunal is required to ensure that persons are not disadvantaged when accessing the courts or tribunal because of their disability. Some people may also require additional support because of their vulnerability'. The following text has a score of 62 (Year 8-9): 'Some people who use the ACT Courts and Tribunal have disability and other vulnerabilities. We need to make sure this does not cause disadvantage. They may need extra support'.

⁸⁶ Proposed activities include creating videos and culturally appropriate resources for Indigenous PwD: DJAS 2024-28, n 14, 12.

⁸⁷ Canadian Courts Administration Service, n 62.

⁸⁸ Judicial Council on Cultural Diversity (2021). *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women*.

⁸⁹ Australian Law Reform Commission (2017). *Pathways to Justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples* (Pathways to justice).

⁹⁰ See Reading Writing Hotline (2024). *Home* <https://readingwritinghotline.edu.au> or 1300 6 555 06.

⁹¹ County Court Victoria (2024). *Drug and alcohol treatment court* <https://www.countycourt.vic.gov.au/going-court/criminal-division/drug-and-alcohol-treatment-court>.

community activities. This has been used to hold adult literacy classes. Literacy issues are discussed further in 9.1, in relation to Aboriginal and Torres Strait Islander people.

Effective communication in court settings requires skill, time, patience and empathy. The following checklist draws on various bench books and practice guides.⁹² These steps will help to promote respectful, clear, and trauma-informed communication with PwD. This is particularly important for people who do not have legal representation, as this can increase feelings of disempowerment.

Table 5. Practical steps to improve communication in court

- Uphold procedural fairness through effective communication.
- Use inclusive language that emphasises the person, not the disability.
- Communicate directly with the person, not their support person.
- Ask how the person would like to be addressed and use that when speaking to them.
- Use plain language, short sentences and active tense. Avoid double negatives, legal jargon and hypotheticals (eg, 'do you want a break?', not 'if you think you might want a break, do let me know').
- Speak clearly, explain processes, signpost topics, and regularly check understanding.
- Recognise diverse communication needs and adjust for the person's individual needs, including appropriate supports.
- Do not assume that a person with communication needs is less intellectually capable than someone without such adjustment needs.
- It may be appropriate to let the person give their evidence in narrative form.
- Be flexible and patient – allow extra time and breaks as needed.
- Make sure written communication is at the right level.
- Create a safe, respectful environment that minimises stress.
- Consider the impacts of trauma and avoid re-traumatisation; be aware that trauma can affect memory and behaviour.

⁹² See NSW BB, n 8; Vic BB, n 7; Judicial Commission of NSW, Trauma-informed courts, n 43; Waterworth R (2024). Therapeutic jurisprudence: A practical guide to developing therapeutic intervention skills for judicial officers in specialist courts. Judicial Commission of NSW.

Social scripts

Canberra Community Law, in partnership with Autism Spectrum Australia, has designed a series of scripts that are specifically crafted to assist 'autistic people, people with lived experience of mental ill health, and those with low levels of English literacy to access legal services and legal processes'.⁹³

Social scripts are person-centred narratives, designed to familiarise people with new situations and interactions within the legal system. Using a carefully crafted combination of simple text and images, they can help people understand what to expect and how to process potential responses to new situations. By providing clear, accessible explanations of legal concepts and procedures, these scripts are designed to reduce anxiety and increase understanding of legal processes. They include both ready-to-use scripts and customisable templates that organisations can adapt to their specific needs.

Maria's story

Maria is an unrepresented defendant. She has one minor assault charge, for which she received a good behaviour bond. This was followed by a long list of failures to appear and breaches of her bond. When the magistrate asks about this, Maria explains tearfully that she has always struggled to understand, read and remember things. She recounts how a minor disagreement in the city landed her in court. Maria also shares that, until recently, she had lived at home with her father, who cared for her and read everything to her. However, since her father moved to a nursing home, Maria has been left to navigate the legal system alone and she doesn't know who to ask for help. She says that listening to complex information later, in her own time, helps her process it. The magistrate lets Maria put her phone on the bar table, to make a voice recording of the order. She dismisses the charges and explains her decision in simple terms. She also suggests some services, where Maria can seek support to help her navigate her challenges. Maria can play this information back, when she needs to jog her memory.

⁹³ Canberra Community Law (2024). *Home* <https://canberracommunitylaw.org.au/social-scripts/>.

Talking Trouble Aotearoa New Zealand

Talking Trouble is an organisation in *Aotearoa New Zealand* focused on ‘addressing the speech, language and communication needs of children, youth and adults involved with justice, care and protection, mental health and behaviour services’.⁹⁴ It is part of a working party chaired by a judge, exploring how to address communication issues in the New Zealand courts.

Speech-language therapists from Talking Trouble have filled court-appointed ‘Communication Assistant’ roles, for witnesses and defendants. This involves a collaborative and specialised assessment of the person’s SLCNs. The assessment includes a report with specific recommendations for the court for consideration. This approach is ‘trauma-informed approach [and] ensures that the person feels affirmed, has more control over their engagement in justice contexts and more agency over the outcome’.⁹⁵

Talking Trouble have also suggested the following steps, to help people understand legal proceedings:

- Signal when a complex legal discussion is about to happen and reassure the person they will be told the outcome. This lets them know they do not have to keep straining to pay attention. They can rest, knowing they will get a simpler explanation of the important information.
- Recap in simpler language any complex conversations that have taken place in ‘legal jargon’ during the proceeding.
- Recap the main things that have been discussed or decided. This helps the person to keep track of the conversation and understand the outcome.
- Clearly and simply state what is going to happen afterwards – any events, expectations, rules, conditions that need to be clearly understood.⁹⁶

Speech pathologists

Addressing communication needs in the justice system can require a broader understanding of speech, language and communication needs (SLCNs). For example, communication challenges can include complex social interaction skills, understanding and using verbal and nonverbal communication, as well as physical difficulties, such as dysphagia (swallowing problems).

Speech pathologists can play a crucial role in addressing these needs across the justice system, working with people as witnesses, victims, or defendants. Their expertise encompasses diagnosing and treating communication disorders, supporting proper swallowing function, and facilitating better interactions between justice system participants and legal professionals. According to *Speech Pathology Australia*:

⁹⁴ Talking Trouble (2024). *Home* <https://www.talkingtroublenz.org>.

⁹⁵ Maylea C et al (2023). *With you toolkit: Empowering trauma-informed rights-based organisations*. National Legal Aid, 26.

⁹⁶ Talking Trouble (nd). *Actions to take to improve communication accessibility in legal spaces*.

Speech pathologists are important members of the justice workforce and enhance the health, wellbeing and participation of people in, or at risk of, contact with the justice system through prevention, early detection, assessment, and treatment of speech, language, communication and swallowing difficulties.⁹⁷

The scope of speech pathology services in justice settings is comprehensive, ranging from developing oral and written communication skills to providing expert testimony in legal proceedings. Speech pathologists can also help people develop their communication skills and social interaction skills.⁹⁸

It is well established that people with SLCNs are over-represented in the criminal justice system.⁹⁹ They may also experience challenges with the civil justice system (eg, listening and understanding complex language in a matter involving housing or child protection issues). SLCNs can occur by themselves or as part of other conditions that are common justice contexts (eg, intellectual disability, autism, Attention Deficit/Hyperactivity Disorder (ADHD), Foetal Alcohol Spectrum Disorder (FASD), ABI). Speech Pathology Australia's justice position statement calls for speech pathologists to be 'recognised as a core discipline in youth and adult justice workforces'.¹⁰⁰

Economic modelling by the University of NSW on behalf of Speech Pathology Australia found significant cost savings from speech pathology intervention, even after accounting for the cost of the intervention. The size of the benefits ranged, depending on the point in the person's life when the intervention happened (ie, earlier is better), the type of intervention and the person's risk profile. The benefit from a 'base' case, involving a 'typical trajectory for someone with an average youth offending risk profile who participates in a 'childhood intervention'¹⁰¹ was \$6,524, although the estimated benefits for higher-risk young people were up to \$15,169.

Intermediaries

Intermediary schemes bridge the gap between vulnerable people and the justice system, by providing specialist communication support. Intermediaries are trained professionals, who help vulnerable witnesses and defendants communicate effectively during legal proceedings. They assess an individual's communication needs, advise legal professionals on the best ways to communicate, and facilitate clear understanding during court appearances. This ensures that vulnerable people, including those with disabilities, communication difficulties, and young children, can give their best evidence and participate fully in the justice process.

The United Kingdom (UK) introduced intermediaries in 2004 and has led the way on their implementation.¹⁰² According to the Ministry of Justice Witness Intermediary Scheme 2023 annual

⁹⁷ Speech Pathology Australia (nd). *Speech pathology and justice* <https://www.speechpathologyaustralia.org.au/Public/Public/services/About-speech-pathologists/Speech-pathology-and-justice.aspx>.

⁹⁸ Communication Hub (nd). Communication difficulties and contact with the justice system.

⁹⁹ For a summary of the research, see Speech Pathology Australia (2019). *Speech pathology in justice – Position statement*; Addo R et al (2020). *Economic evaluation of the impact of speech pathology services on criminal justice outcomes*. University of Technology Sydney.

¹⁰⁰ Speech Pathology Australia, n 95, 8.

¹⁰¹ Addo et al, n 97, 33. For recent discussion of the role of speech pathologists in youth justice, see Reid C et al (2024). *Exploration of how youth justice staff perceive the speech-language pathology role and service provision in an Australian youth justice setting*. *International Journal of Speech-Language Pathology*. DOI: 10.1080/17549507.2024.2330500.

¹⁰² For an overview, see Cooper P and Mattison M (2017). *Intermediaries, vulnerable people and the quality of evidence: An international comparison of three versions of the English intermediary model*. *International Journal of Evidence & Proof*, 21: 351-370; UK Victims' Commissioner (2018). *A voice for the voiceless: The Victims' Commissioner's review into the provision of*

report, 95% of requests were successfully matched and the scheme received 99% ‘positive end-user feedback’.¹⁰³ In 2023, the Ministry of Justice planned to strengthen the scheme in three ways:

- continuing national recruitment and training of registered intermediaries, using data analysis to target recruitment based on regional needs
- focusing on communication and awareness, by creating a new, clearer definition of the intermediary role and launching a communication plan to help stakeholders better understand intermediary services
- improving services, by working with the courts and tribunals, to enhance data collection about intermediary usage and build stronger stakeholder relationships, to maintain quality across criminal, family and civil courts. The overall goal is to create a more effective and responsive intermediary service that meets justice system needs.¹⁰⁴

A review of communication intermediaries in the Canadian criminal justice system found ‘empirical data and knowledge to support the work of communication intermediary organisations like [Communication Access to Justice, which operates the scheme] and inform other practitioners and policy makers in this field’.¹⁰⁵ The review also found that communication intermediaries enhance justice processes, by helping police to develop appropriate interviewing techniques, supporting lawyers in planning court accommodations, and advising judges about potential challenges witnesses and victims may face during testimony. Further, the review found that:

the need for a ‘standard norm’ of practice in involving communication intermediaries in criminal justice activities will ensure an ‘enabling environment’ where people with communication disabilities are able to fully participate in the criminal justice system.¹⁰⁶

Nearly every jurisdiction in Australia now operates a 24/7 intermediary scheme.¹⁰⁷ The ACT Intermediary Program¹⁰⁸ was established in 2020, in response to the Royal Commission into Institutional Responses to Child Sexual Abuse. The program includes accredited court officers, typically allied health professionals, who assist vulnerable witnesses (such as children, PwD, or those impacted by trauma) in communicating effectively during police interviews and court proceedings. In 2022-23,¹⁰⁹ the program received requests in 25 Supreme Court matters, 21 Magistrates Court matters, five Children’s Court requests and two referrals from lawyers. Across

registered intermediaries for children and vulnerable victims and witnesses; Giuffrida J and Mackay A (2021). Extending witness intermediary schemes to vulnerable adult defendants. *Current Issues in Criminal Justice*, 33: 498-516.

¹⁰³ UK Ministry of Justice (2023). *Witness intermediary scheme: Annual report 2023*.

¹⁰⁴ *Ibid*, 9.

¹⁰⁵ Heath S (2023). Communication intermediaries in the Canadian criminal justice system. University of Winnipeg, 18.

¹⁰⁶ *Ibid*.

¹⁰⁷ See Government of South Australia (nd). *A guide for communication partners*; Government of Western Australia (2024). *Communication partners* <https://www.wa.gov.au/organisation/court-and-tribunal-services/communication-partner-program>; NSW Queensland Courts (2024). *Queensland intermediary scheme* <https://www.courts.qld.gov.au/services/queensland-intermediary-scheme>; Tasmanian Government (2024). *Witness intermediary scheme* <https://www.justice.tas.gov.au/carcru/witness-intermediary-scheme>; Victorian Government (2024). *About the intermediary program* <https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/intermediary-program/about-the-intermediary-program>. For discussion, see eg, Cashmore J et al (2017). *Evaluation of the child sexual offence evidence pilot: Process evaluation report*. University of NSW; South Australian Law Reform Institute (2021). *Review of the use of communication partners in South Australia*; Vandenberg M (2022). *Process evaluation of the witness intermediary scheme pilot in Tasmania*. Sprout Labs.

¹⁰⁸ ACT Human Rights Commission (2024). *ACT Intermediary Program* <https://www.hrc.act.gov.au/intermediaries>.

¹⁰⁹ ACT Human Rights Commission (2023). *Annual report 2022-23*. See also ACT Government, *First annual progress report*, n 16; ACT Government, *Second annual progress report*, n 16; ACT Government, *Third annual progress report*, n 15; ACT Government, *Fourth annual progress report*, n 15; DJAS 2024-28, n 14, Item 4.9.

these courts, 39 intermediary communication recommendation reports were received. Nearly all referrals related to complainants and witnesses, with one referral relating to an accused, and most related to sexual assault matters. The majority of referrals (74%) identified as female, 7% were Indigenous and 11% involved a person from a CALD background. The ACT is one of relatively few intermediary programs that is also available for vulnerable defendants (this is also available in South Australia, the UK, Northern Ireland and New Zealand).¹¹⁰ Giuffrida and Mackay have endorsed this model, on the basis that it may prevent wrongful convictions, promote human rights and help ensure defendants are tried fairly.

Complex communication needs

Where people before the court have complex comprehension and communication needs, these should be assessed on a case-by-case basis, rather than making assumptions about the impact of particular disabilities. Responding to these needs will generally involve a holistic combination of measures and adjustments. Advice from communication experts may be helpful. Adequate communication support is crucial for ensuring the autonomy of people with complex communication needs, because court systems have traditionally privileged oral accounts over alternative forms of communication.

White et al¹¹¹ conducted focus groups with nine international experts about the needs of individuals with severe communication disabilities (also known as ‘complex communication needs’ or being ‘non-verbal’). A range of accommodations were suggested, to ensure equal participation in the court system, including: access to pen and paper, the use of intermediaries, and augmented and alternative communication (AAC) methods. To avoid a ‘one size fits all’ approach, it was recommended that a variety of strategies be employed, each tailored to different participants’ needs.

AAC encompasses various methods of communication that can supplement or replace speech, so people with complex communication needs can participate effectively in legal proceedings and exercise their right to access justice. AAC can include both physical aids and assistive technology, which serve to enhance communication for people with speech or language difficulties. AAC is effective, because it makes communication more accessible and ‘visible’, by incorporating visual supports, including pictures, written words, objects, and signs. This visibility helps convey messages more clearly and provides users with the necessary time to think and understand. This fosters a more inclusive environment, where everyone can engage in meaningful communication. By using these tools, PwD can ensure their thoughts and needs are recognised and understood by those around them. Light and McNaughton have argued that AAC devices help individuals with complex communication needs to cultivate ‘communicative competence so [they] have access to the power of communication – to interact with others, to have an influence on their environment, and to participate fully in society’.¹¹² This is especially important in legal contexts, where clear communication can impact access to justice for individuals.

¹¹⁰ Giuffrida and Mackay, n 100; Lindell J (2023, July 16). ACT leads as scheme to assist vulnerable people in court prepares for expansion. *Canberra Times* <https://www.canberratimes.com.au/story/8270872/act-leads-as-scheme-to-assist-vulnerable-people-in-court-expands/>.

¹¹¹ Vic BB, n 7.

¹¹² Light J and McNaughton D (2014). Communicative competence for individuals who require augmentative and alternative communication: A new definition for a new era of communication? *Augmentative and Alternative Communication*, 30: 1-18, 1.

AAC can be categorised into two main types: ‘low-tech’ and ‘high-tech’. Low-tech aids are non-electronic and typically paper-based, such as communication boards with symbols or pictures to point to. Some examples include symbol charts, communication boards and books, keyring cards and eye gaze boards, such as an E-Tran (Eye Transfer) board. An E-Tran board is a specialised communication tool that enables individuals to select letters using their eyes. It is intended for people with very limited movement, who can spell and make intentional eye movements. Users can operate by the direct method (one or two eye movements for the fastest letter selection) or scanning, which is simpler but slightly slower. High-tech aids use electronic devices, like speech-generating devices or apps, voice output devices and eye-tracking software technology, to facilitate communication.

A notable case in British legal history involved someone paralysed by motor neurone disease, giving evidence in court using eye-tracking technology. This case highlights the potential of high-tech AAC tools, such as the Eyegaze system, which allowed him to communicate effectively during cross-examination and marked a significant milestone in legal proceedings.¹¹³

Technology

Courts are increasingly embracing technology to improve their services.¹¹⁴ There is significant potential for digital solutions to benefit PwD. Principle 3 of the United Nations *Principles and guidelines on access to justice for people with disabilities* calls for the inclusion of ‘technical and other support necessary for parties, witnesses, claimants, defendants and jurors [...] to ensure their full participation’.¹¹⁵ This includes a range of technologies, such as:

- assistive listening systems and devices
- open, closed and real-time captioning, and closed caption decoders and devices
- voice, text and video-based telecommunications products
- video-text displays
- computer-assisted real-time transcription
- screen reader software, magnification software and optical readers
- video description and secondary auditory programming devices that pick up audio feeds for television programs.

It is beyond the scope of this report to discuss all of these technologies and these will of course evolve over time. However, some important points are worth noting. Firstly, a person-centred approach is required, to respond to individual needs and preferences. Secondly, the limitations of technologies must also be recognised. For example, listening systems and devices enhance sound, making it easier for people with hearing impairments to understand speech.¹¹⁶ Courtroom hearing loops connect hearing aids directly to the court’s audio system, making legal proceedings more

¹¹³ Mortimer C (2017, Feb 14). Dying man with MND gives evidence against sex abuser using eye motion software in court. *The Independent* <https://DRC.independent.co.uk/news/uk/crime/dying-man-motor-neurone-disease-evidence-court-cross-examination-first-time-legal-history-eyegaze-a7580466.html>.

¹¹⁴ See eg, Supreme Court of Victoria (2024). *Technology and the court* <https://www.supremecourt.vic.gov.au/going-to-court/digital-litigation-resources>.

¹¹⁵ United Nations, *International principles*, n 35, 16.

¹¹⁶ *Ibid.*

accessible for people with hearing impairments. Communicourt,¹¹⁷ an organisation supporting people with communication difficulties, recognises these systems as valuable tools for equal access to justice. However, they noted that technical issues and limited availability of equipment can create barriers. This highlights the need for both proper maintenance of existing systems and wider implementation of hearing loop technology across courts.

This section considers virtual court hearings, apps and artificial intelligence. AAC and online familiarisation tools are discussed elsewhere in this report (see 3.1.5 and 4.1.3).

Virtual courts

Virtual court proceedings, which include both video and telephone appearances, allow participants to attend court, remotely rather than in person. These systems enable a range of people, including PwD, to participate in legal proceedings from different locations. The United Nations has provided some examples of the use of remote technology in courts:

- remote or virtual appearances of expert or incarcerated witnesses into courtrooms
- public and media viewing of courtroom proceedings
- telephone or video appearances for procedural matters, like scheduling
- hearings involving parties and judicial officers in different locations or jurisdictions
- completely virtual courtrooms, with all parties and staff participating from different locations
- crisis-based temporary capacity to hold court virtually (eg, during a pandemic)
- virtual appearances from remote/rural areas

virtual hearings for multi-country disputes.¹¹⁸

Virtual courtrooms are transforming access to justice, by removing physical barriers. This technology particularly helps people from remote areas, those with financial constraints, and PwD to participate in legal proceedings. Despite these benefits, Rossner et al identified some significant challenges to the design and delivery of virtual courts, and remote court participation can also create unexpected barriers to justice.¹¹⁹ For example, participants are typically required to have a neutral background and quiet private space for virtual hearings. Not everyone has access to such conditions and this requirement may unfairly disadvantage people, based on their living situations or available resources. Adequate internet speed or the availability of devices may also be an issue for some participants. Understanding how to log on remotely may also require significant technical

¹¹⁷ Communicourt (2024). *Home* <https://www.communicourt.co.uk/>.

¹¹⁸ United Nations Development Programme (2021). *Emerging technologies and judicial integrity in ASEAN: A toolkit*, 16

¹¹⁹ Rossner M et al (2021). *Justice reimaged: Challenges and opportunities with implementing virtual courts*. *Current Issues in Criminal Justice*, 33: 94-110, 103.

expertise.¹²⁰ To counter this, Rossner et al proposed that community legal centres or ‘justice hubs’ could provide suitable spaces for virtual court attendance, offering an alternative for those who lack appropriate facilities (or technical expertise) at home. Consideration should be given to ensuring that the use of virtual court proceedings promotes access to justice for PwD, rather than impeding it.

Apps

Recent years have seen the emergence of ‘justice apps’, ie, applications designed for mobile technology that aim to address legal issues. Melbourne University Law School teaches a graduate course, *Law apps*. In 2018, some students this course developed an app, in partnership with a disability advocacy organisation, to help users navigate the discrimination complaints process.¹²¹ As Sourdin et al¹²² have noted, these have the potential to demystify the legal process and improve access to justice. However, they also raise ethical and practical challenges. For example, there are real concerns about privacy and access to data and these may be heightened for people with certain mental illnesses. The following are some examples that highlight the potential value of such apps:

*Ava*¹²³ uses artificial intelligence to support live-captioning for people who have hearing issues *BindiMaps*¹²⁴ is a digital wayfinding system to make buildings easier to navigate and is already used by the ACTCT *Legal Literate*¹²⁵ is designed to help break down barriers to justice, by explaining over 500 common Australian legal terms in simple, everyday language. It is a plain English glossary that makes court and tribunal proceedings more understandable, helping people navigate the legal system without getting lost in complex legal jargon. It serves as a resource for anyone dealing with Australian courts, particularly those who might find traditional legal terminology challenging.

*Sunny app*¹²⁶ is 1800RESPECT’s app for PwD who have experienced violence and abuse. Co-designed by women with disability, it aims to help PwD to tell their story, understand what has happened, know their rights, find people who can help, understand what abuse is and learn about different types of abuse.

¹²⁰ We note that ACAT provides clear instructions for how to attend a matter remotely: ACAT (2024). *ACAT’s remote attendance webpage* <https://www.acat.act.gov.au/remote>.

¹²¹ Melbourne Law School (2018). *Law app helps people living with a disability seek support* <https://law.unimelb.edu.au/news/pili/law-app-helps-people-living-with-a-disability-seek-support>.

¹²² Sourdin T et al (2021). *Digital technology and justice apps*. Routledge.

¹²³ Ava (2024). *Captions for all* <https://www.ava.me>.

¹²⁴ BindiMaps (2024). *Home* <https://bindimaps.com>.

¹²⁵ Legal Literate App (2024). *Home* <https://www.legalliterate.org.au>. See also Victoria Law Foundation (2015). *Legal glossary: A plain language guide to common legal terms*.

¹²⁶ 1800Respect (2024). *Sunny app* <https://www.1800respect.org.au/sunny>.

'Askizzy'

Askizzy¹²⁷ is an Australian website that aims to connect people in need with housing, food, clothing, financial support, health issues, family violence support, and more. It lists over 450,000 support services. Askizzy draws on the expertise of a lived experience disability reference group.¹²⁸ The health and wellbeing listings include mental health, dental health, eye health, general practitioners, and substance use issues. The listings can be searched by postcode, with intersectional needs accommodated (eg, Aboriginal and/or Torres Strait Islander, don't speak English, LGBTQIA+).

Artificial intelligence

Some of the apps described above already use artificial intelligence (AI). AI will have far-reaching impacts on the courts' operation, in ways that cannot yet be fully anticipated. In a report on AI decision-making and the courts, Bennett-Moses et al noted:

The use of AI systems in the courtroom has consequences for open justice, accountability, impartiality and equality before the law, procedural fairness, access to justice and efficiency. ...Ultimately, each AI system is different – so it is necessary to ask *each time* whether, in relation to a *particular* system, there are *particular* concerns which could jeopardise the open, accountable, impartial, fair and efficient delivery of justice...An alternative approach is to develop a set of rules or principles for the use of AI systems in courts.¹²⁹

They suggested a range of considerations, including:

Why is AI being used? What problem does it solve?

- *In what contexts* is AI being used, and is its use in those contexts appropriate? Does the context involve high stakes, vulnerable people, novel situations, or high levels of emotion?
- *How* is AI being used? How will the system be checked, tested and evaluated to ensure it meets those requirements?
- *Who is consulted* about the deployment of AI systems? Are all stakeholders including users and litigants included in decision-making about whether and how AI will be used?

¹²⁷ Askizzy (2024) Home <https://askizzy.org.au>.

¹²⁸ InfoXchange (2022). *Improving accessibility with Jody* <https://www.infoexchange.org/au/news/2022/07/improving-accessibility-jody>

¹²⁹ Bennett-Moses L et al (2023). *AI decision-making and the courts: A guide for judges, tribunal members and court administrators*. Australasian Institute of Judicial Administration, 60. See also Sourdin T (2024). Replacing, supporting or enhancing judges? Judge AI considerations for the future. *Australian Law Journal*, 98: 696-707.

- Will the use of AI impact on *public confidence in the judiciary*? Will the use of AI in courtrooms and tribunals be accepted by the public?¹³⁰

The Victorian Law Reform Commission is currently undertaking a reference on AI. Its consultation paper considers the benefits and risks of AI and proposes eight principles, including:

Principle 6: Access to justice: People should be able to access the justice system in a fair, timely and cost-effective way. The use of AI should support access to justice and minimise existing barriers or inequalities. Courts and tribunals should consider how any proposed use of AI may create new barriers to accessing justice, or any unintended consequences.¹³¹

The Commission expressed concern that the use of AI may increase the ‘digital divide’ between those with and without access to technology and/or digital literacy and that this could especially impact PwD and Indigenous people, who are more likely to experience disability. However, the scope for AI to remove access to justice barriers is also significant. For example, it could be used to simplify court forms and processes (eg, using AI tools to rewrite standard orders, so they can be more easily understood or to create pictorials of typical adjustments that can be placed around the court precinct).

Case management

Efficient case management is a crucial factor in ensuring access to justice. It is important to resolve matters as quickly as is consistent with achieving justice, while recognising that efficiency should not come at the expense of accessibility or fairness. This approach aligns with ACAT’s guiding principle of providing procedures that are ‘as simple, quick, inexpensive and informal as is consistent with achieving justice’.¹³²

The DAIP and DJAS 2024-28 do not make any mention of case management. The Checklist¹³³ recommends ensuring:

- that court registry and case management processes are in place to identify PwD at the earliest possible stage, capture data on their cases and provide them with consistent, reliable, high-quality support
- there are fields on forms for recording disability needs on standard registry case file documents in all cases (civil and criminal):
 - Do any parties in this case have a disability? Yes/No/Don’t know
 - What kind? Mobility/Visual/Hearing/Intellectual

¹³⁰ Ibid, 61.

¹³¹ Victorian Law Reform Commission (2024). *Artificial intelligence in Victoria’s courts and tribunals*, 79. Submissions on the proposed principles were open until December 2024.

¹³² Civil and Administrative Tribunal Act 2008 (ACT), s 7.

¹³³ Graydon, Checklist, n 59, 9-10.

- What kind of special assistance will they need from the court?
- there is a colour-coded or other system in place in the registry, to enable ready identification of cases involving PwD, so special care can be taken with managing these files
- the person's needs are recorded on the case file
- that court users with disabilities are given a specific 'point of contact', so they have a consistent person to deal with in liaising with the court and who is responsible for making necessary arrangements for them in advance of their cases, so they are not delayed or adjourned, due to the court's lack of preparedness. Necessary arrangements may include things like:
 - arranging for a family member/support person to accompany them to court
 - arranging for transportation to and arrival at court
 - liaising with the judicial officer, to make sure they are aware of the person's disabilities and all arrangements.

The accompanying *Human rights toolkit*¹³⁴ includes a standard minimum form for data collection by courts. This is included in Appendix A and includes fields on whether any parties have a disability, the type/s of disability and what kinds of special assistance they require.¹³⁵ This aligns with Item 5.1 in DJAS 2024-28, which calls for improved data collection.¹³⁶

It is also worth noting that the final point in the Checklist above aligns closely with the recommendation from the recent ACT Legislative Assembly inquiry into bail administration that the ACT Government:

shift towards establishing a system that allows each person in the justice system to have a single case manager in the courts, to assist people with access and referrals to necessary legal, mental health, addiction and disability support programs.¹³⁷

This also aligns with the finding of a recent report from Queensland, which called for:

A system-wide relationally based case management approach was identified by participants as a key factor that would improve outcomes for people with disability in contact with the CJS. This approach was described as person-centred, strengths-based, trauma-informed and rights-based. The helping relationship with the person with disability would be ongoing, so that trust could be established.¹³⁸

¹³⁴ Graydon, Toolkit, n 7, 12.

¹³⁵ The ACTCT now collects some data on court clients' reasonable adjustment needs: ACT Government, *Third annual progress report*, n 15; ACT Government, *Fourth annual progress report*, n 15.

¹³⁶ DJAS 2024-28, n 14, 24. Data are to be included in the progress reports.

¹³⁷ Legislative Assembly for the ACT (2024). *Inquiry into the administration of bail*, Recommendation 12.

¹³⁸ Ellem K et al (2023). Insights from people with lived experience of disability and the justice system. University of Queensland, 12-13.

Physical design and architecture

In line with the universal design principles in the previous chapter, modifying buildings to accommodate wheelchair users enhances accessibility for individuals using crutches, canes, bicycles, prams, and wheeled bags. Accordingly, the advantages of these initiatives flow to all court users, not only those with disability. The Australian Human Rights Commission¹³⁹ provides general tips for maintaining accessible premises, including:

- not locking accessible bathrooms or lifts, while the premises are in use by the public.
- not using accessible bathrooms or change rooms as storage areas
- making sure there are continuous accessible paths of travel around and within premises, especially to accessible bathrooms
- ensuring that counter heights, lift buttons, door handles, etc are within reach of a person using a wheelchair
- ensuring that lift buttons have raised tactile and Braille information and that the lifts provide audible information, telling passengers what floor they have arrived at
- maintaining adequate lighting levels
- providing adequate signage for PwD accessing or using the premises
- providing designated parking spaces for PwD.

It is important to recognise that arriving at court can be an intimidating and lengthy process. Navigating through security, finding the correct courtroom, and understanding the procedures can be challenging for anyone, but these difficulties can disproportionately affect individuals with disabilities. As the Toolkit explains,

Often people with disabilities are not aware of services the court could provide to support them. If courts do not provide public information about what help can be organised, people with disabilities may miss out on securing important rights in their cases. Information about how the court can assist people with disabilities should be easy to find and displayed in posters/pamphlets at the court and in other public locations. The list of services courts can provide should gradually expand as courts gain experience in accommodating the needs of people with disabilities.¹⁴⁰

To promote accessibility, the Checklist¹⁴¹ suggests asking:

- Is courtroom signage clear?

¹³⁹ Australian Human Rights Commission (2016). Access for all: Improving accessibility for consumers with disability.

¹⁴⁰ Graydon, Toolkit, n 7, 32.

¹⁴¹ Graydon, Checklist, n 59.

- Are staff available and trained to help users to navigate their way around the court?
- Is disability-inclusive information available in a range of formats (eg, phone, email, in person at the registry, via the court website)? Does it include information about the law, the process and the help available (eg, from court, legal aid, other specialised services)?

The Federal Court of Australia and New Zealand Government's *Checklist 6: Creating welcoming, inclusive courts* sets out useful considerations for planning new or renovated court infrastructure, including:

- consult as widely as possible, both internally (eg, magistrates, court staff) and externally with diverse court users (eg, people with disabilities, civil society organisations, lawyers), to ensure a wide range of experiences and suggestions are taken into account
- separate entrance and separated waiting areas for victims and children
- at least two rooms or private booths right next to the registry desk, for court staff to provide confidential assistance to relevant court users
- 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 close to the public court entrance, with space for relevant information court orientation leaflets and pamphlets advertising the support services of relevant organisations (eg, Legal Aid)

'info graphic' signage, including for court listings, a large sign showing a map of the court facility and highlighting the different locations and facilities, with notice boards for court information (eg, the process for making family protection applications (including the fact that it is free), court waiver criteria and processes, posters advertising services the court offers to PwD, posters encouraging people to ask the friendly court staff for assistance etc.¹⁴²

Thunder Bay Courthouse in Ontario, Canada contains several design features that ensure the accessibility of facilities and services for PwD. The main entrance is accessible via a dedicated route. In addition, signage throughout the facility includes Braille, tactile lettering, as well as large, high-contrast fonts for improved readability.¹⁴³ Additional amenities include wide corridors and aisles, height-adjustable lecterns and witness boxes, and barrier-free jury and witness boxes, all aimed at accommodating individuals with various needs.¹⁴⁴

¹⁴² Graydon C (2020). *Checklist 6 – Creating welcoming, inclusive courts*. Federal Court of Australia and New Zealand Government, 5.

¹⁴³ Sweet C (nd). *The Thunder Bay courthouse*. Ontario Ministry of the Attorney-General, 45.

¹⁴⁴ Ibid, 30.

The current ACT Courts building opened in 2019 and ACAT moved into new premises in 2022. The DAIP noted that ‘new facilities have provided the organisation with a new platform on which to build our inclusion foundations.’¹⁴⁵ It may be some time before there is scope for significant changes to the overall physical design of the ACTCT precinct. However, best practice is to embed inclusion from the ground up.

Training and education

The Toolkit explains that:

Sometimes court staff and judges do not know how to assist people with disabilities or mistakenly assume they cannot fully participate in the justice system. Judges may wrongly assume that because a person needs assistance to give evidence, their evidence is less reliable or that evidence from someone else as well, may be needed. This can result in people with disabilities receiving less protection under the law than others, as often happens to women or girls with disabilities who are victims of sexual violence. In all cases involving people with disabilities, judges need to take special care to check their own attitudes and assumptions towards the person due to their disability. They also need to make sure that no one else involved in the case is permitted to influence the outcome of the case based on wrong assumptions or stereotypes about the person, due to their disability.¹⁴⁶

According to the accompanying Checklist,

Judges and Magistrates are responsible for ensuring that the special human rights protections owed to people with disabilities are fully observed by the court in any court processes. This includes ensuring that people with disabilities do not experience any discrimination in either the process or the outcome of any court cases they are involved in.

To meet these responsibilities, it is necessary for judges/magistrates to actively manage cases involving people with disabilities...¹⁴⁷

The Checklist sets out a number of recommended actions, including the need to:

- be aware of any cases in your docket involving PwD, including the nature of their disability and their needs to engage with their case
- manage all aspects of the person’s participation in the case, to ensure their disability is taken into consideration, so they receive both a fair outcome in the case and a fair, non-discriminatory process from the court

¹⁴⁵ ACT DAIP, n 14, 3.

¹⁴⁶ Graydon, Toolkit, n 7, 32. See also Law Council of Australia, PwD, n 2, 34-37.

¹⁴⁷ Graydon, Checklist, n 59, 5-6.

- ensure a court staff member is appointed as the ‘point of contact’ for the case and work closely with them to help you meet your responsibilities to manage all aspects of the case
- work out what is needed and then act accordingly.

Other recommended actions in the Checklist have been included elsewhere in this report. In line with this, the ACT Government accepted in principle the following recommendation by the DRC:

Information for courts and legal practitioners: The Commonwealth, state and territory criminal justice systems should provide information about seeking or making adjustments and supports and services for people with disability, and the circumstances in which they may be required. This information should be made available to judicial officers, legal practitioners and court staff, including through practice notes or bench books.¹⁴⁸

The ACTCT recently committed to Item 2.1: *Tailored disability education and guidance for the justice sector*, under the DJAS 2024-28.¹⁴⁹ In order to be effective, it is essential that such training involve real engagement with how PwD experience the world and how behaviours and court practices can and should consequently be modified.

In order to manage cases involving PwD effectively, court staff, including judicial officers, need ready access to relevant educational material. The Law Council of Australia has suggested that the

National Judicial College of Australia should consider establishing a dedicated disability committee with experts on disability, including people with relevant lived experience of disability. A primary purpose of the committee would be to develop and promote disability training for judges, magistrates and tribunal members, with the overarching aim of championing cultural change across the legal profession with regards to disability.¹⁵⁰

This does not appear to have occurred yet, although the *National curriculum for Australian judicial officers* does include modules on vulnerable witnesses and mental illness.¹⁵¹ Generally, there is increasing recognition that ‘judicial education can be *transformative*, an agent for change’ and includes ‘coverage of Indigenous, gender, and disability issues but also anything “aimed at ensuring that as far as possible judicial officers understand the people and situations that come before them”’.¹⁵²

A number of judicial guides already contain extensive relevant contextual information and research about PwD. Their content has been used to inform this report and key points are summarised below.

¹⁴⁸ DRC, Executive summary, n 1, Recommendation 8.11. See also Law Council of Australia, PwD, n 2, 83.

¹⁴⁹ DJAS 2024-28, n 14. The ACTCT has already undertaken several steps to promote education and training, including providing a factsheet for staff on promoting inclusion for PwD and developing an e-learning module on disability rights and awareness: ACT Government, *First annual progress report*, n 16; ACT Government, *Second annual progress report*, n 16; ACT Government, *Third annual progress report*, n 15; ACT Government, *Fourth annual progress report*, n 15.

¹⁵⁰ Law Council of Australia, PwD, n 2, 83.

¹⁵¹ National Judicial College of Australia (2024). *Unit four: Vulnerable people in the courtroom* <https://www.njca.com.au/units/unit-4/>.

¹⁵² Appleby G et al (2022). Judicial education in Australia: A contemporary overview. *Journal of Judicial Administration*, 31: 187-206, 191, citing Doyle J (2005). How do judges keep up to date? Speech delivered at LawAsia Downunder, 21-22 March, 5.

Disability access benchbook

The most comprehensive source of information for judicial officers on disability prepared for is the Victorian *Disability access benchbook*¹⁵³ (Vic BB). It was informed by extensive consultations with a range of PwD and organisations that support PwD (eg, Brain Injury Australia, Office of the Disability Services Commissioner and Women with Disabilities Victoria). The Vic BB ‘acknowledges that ‘[c]ourts can be a disabling environment, requiring targeted support and adjustments to ensure people with a disability can participate on an equal basis with others and are better able to access their rights’.¹⁵⁴ It is designed to apply to both courts and tribunals, with general best practice principles that will assist judicial officers ...[It] may also assist others including police, court staff such as clerks and associates, Bail Justices, barristers and solicitors, and other court users – including disability advocates, jurors, interpreters and support people.¹⁵⁵

It includes the following topics:

- PwD and the justice system
- equality and human rights protections
- considerations before, during and after hearings and for people with specific disabilities.

Equality before the law bench book

The Judicial Commission of NSW *Equality before the law bench book* (NSW BB)

is based on the recognition that access to, and the delivery of, justice requires understanding of and sensitivity to the requirements of particular sections of the community and/or people with particular characteristics...[and] provides relevant information about seeking or making adjustments and supports and services for such people and the circumstances in which they may be required.¹⁵⁶

The chapter on disability¹⁵⁷ includes discussion of:

- the DRC
- definitions, prevalence and types of disabilities
- intersectional issues
- legal protections for PwD
- capacity issues
- practical considerations for judicial officers.

¹⁵³ Vic BB, n 7.

¹⁵⁴ Ibid, 5.

¹⁵⁵ Ibid, 96.

¹⁵⁶ NSW BB, n 8.

¹⁵⁷ Ibid, Section 5.

Equal justice bench book

The chapter on PwD in the *Equal justice bench book* (WA BB)¹⁵⁸ includes discussion of:

- data
- crime, imprisonment and discrimination
- capacity issues
- practical considerations.

Practice manual for tribunals

As discussed further in 6.2, many legal matters involving PwD are dealt with in ACAT. Australian tribunals use the *Practice manual for tribunals*.¹⁵⁹ This includes a section on communication, as well as further guidance on communicating with people with cognitive impairment.

Other relevant judicial guides

The *Solution-focused judging bench book*¹⁶⁰ also has a range of helpful information. It explains problem-solving courts, including mental health courts, and includes a chapter on mental health. In addition, it considers substance use, family violence, judicial communication and listening skills, processes and strategies to promote behaviour change, solution-focused judging in mainstream courts, and challenges in solution-focused judging.

As discussed in 2.4.1, the NSW Judicial Commission has prepared a guide on trauma-informed practice,¹⁶¹ recognising that this is of particular relevance to PwD. It also examines why courts should be trauma-informed and practical ways to embed trauma-informed practice. The NSW Judicial Commission also recently published *Therapeutic jurisprudence: A practical guide to developing therapeutic intervention skills for judicial officers in specialist courts*.¹⁶² This aims to move courts from therapeutic jurisprudence in theory to practice. It includes trauma-informed and procedural justice approaches. Significantly, it includes sections on adapting therapeutic interventions in a courtroom and intervention skills for non-neurotypical people who offend (eg, sensory issues).

The *National domestic and family violence bench book* is a central resource for Australian judicial officers making decisions relating to DFV. Several sections are particularly relevant to PwD.¹⁶³ The information on disability, impairment and mental illness is mostly focused on victims, although it is acknowledged that perpetrators of DFV may also experience these issues. The section on people affected by substance use is focused mostly on people who commit DFV, while the section on people with poor literacy skills is framed in general terms.

¹⁵⁸ Department of Justice Western Australia (2021). *Equal justice bench book* (WA BB). 2nd ed, Chapter 4.

¹⁵⁹ Council of Australasian Tribunals (2020). *Practice manual for tribunals*. 5th ed.

¹⁶⁰ King M (2009). *Solution-focused judging bench book*. Australasian Institute of Judicial Administration.

¹⁶¹ Judicial Commission of NSW, *Trauma-informed courts*, n 43.

¹⁶² Waterworth, n 91.

¹⁶³ Australasian Institute of Judicial Administration (2024). *National domestic and family violence bench book* <https://aija.org.au/publications/national-domestic-and-family-violence-bench-book/>.

Neighbourhood Justice Centre

The Neighbourhood Justice Centre in Melbourne is multi-jurisdictional: the Magistrates' Court, criminal division of the Children's Court, and Victims of Crime Tribunal all operate in the one facility. There are a range of on-site services, including mental health, alcohol and other drug (AOD), housing, women's services, homelessness, financial support, and DFV. The Centre also offers support for Indigenous, LGBTIQ, and refugee and migrant communities,¹⁶⁴ as well as free tea or coffee. In addition, Court Network volunteers 'can help you, your family or friends with non-legal support and information' (eg, information about court procedures, referrals to community services, company).¹⁶⁵

The Centre adopts an embedded specialist services model, which:

- provides clients with a single point of entry: a referral to one is a referral to any and all. This saves people from repeating their story and reduces the number of meetings clients and case-workers need to attend
- saves clients travel, leading to simpler treatment pathways and better outcomes
- means clients are engaged and have plans in place, before they leave the building; for many, this rapid triage approach can be a significant turning point
- means case-workers can more easily transition clients from the Centre to appropriate services in their community, without disrupting treatment progress
- provides a multidisciplinary team approach, with treatment plans that everyone agrees and understands
- ongoing support: if there is a delay getting a client into community-based support, the Centre supports the client until the gap is filled.¹⁶⁶

Research by the Australian Institute of Criminology¹⁶⁷ found that people who proceeded through the Centre:

- had a 25% lower rate of reoffending than at other comparable magistrates' courts
- were three times less likely to breach community corrections orders
- had lower breach rates for intervention orders.

The Law Council of Australia has also noted that this model

represents many key aspects of successfully responding to the justice needs of people experiencing disadvantage. It employs outreach strategies, joined-up services, therapeutic justice and problem-solving approaches, and offers timely and tailored responses to individuals' needs.¹⁶⁸

¹⁶⁴ Neighbourhood Justice Centre (2024). *What we do* <https://www.neighbourhoodjustice.vic.gov.au/about-us/our-story/what-we-do>.

¹⁶⁵ Neighbourhood Justice Centre (2024). *Court network* <https://www.neighbourhoodjustice.vic.gov.au/find-a-service/support-services/court-network>.

¹⁶⁶ Neighbourhood Justice Centre (2024). *Embedded specialist services* <https://www.neighbourhoodjustice.vic.gov.au/learn-visit/our-model/embedded-specialist-support-service>.

Improving accessibility in New Zealand's courts

The New Zealand court system has implemented comprehensive strategies, to ensure all people can fully participate in court proceedings.¹⁶⁹ At the core of these initiatives is a fundamental shift away from traditional legal terminology, toward plain language. The courts have also established a system of court-appointed communication assistants, who provide essential support to both defendants and complainants who require additional assistance to engage effectively with court processes. A milestone in advancing these accessibility efforts was reached in 2023, when the Te Awa Tuia Tangata (Judicial Diversity Committee) and Tomo Mai (Inclusive Workplace and Courtrooms Committee) jointly convened a Disability and Access to Justice conference. This provided a platform for people with lived experience to share insights about the barriers PwD face in accessing justice. The feedback from this conference was intended to shape and inform future judicial initiatives.

Communication assistance services are also offered to participants in two pilot sexual violence courts: the Whāngārei and Auckland District Courts. According to Judge Eddie Paul of the District Court of New Zealand:

Critical to the successful use of communication assistants is that counsel take their recommendations on board and use them throughout the trial, and that they are not afraid to meet with the communication assistant and seek their advice on the correct way to deliver their questions. In this way, the complainant can better understand and reply to the questions.¹⁷⁰

New Zealand's Family Court has also introduced two significant roles to enhance court accessibility: Family Court Associates, due to commence in 2024, are judicial officers empowered to make early-stage decisions and handle interlocutory hearings. Kaiārahi (Family Court navigators), who serve as bridges between the community and the court, help families navigate court processes and access services, with 51 now operating across the country.¹⁷¹

Court start times are also staggered, to minimise waiting times. For example, Christchurch courts list matters at 8.30, 9.30, 10.30 and 11.45 am and 1 and 2.30 pm. The Christchurch court precinct also has signs that ask 'Do you need court support?' These signs include the name, photograph and contact details of a 'court navigator' and He Waka Tapu, a non-government organisation that provides personalized health consultations, community health initiatives, mental health crisis intervention, addiction support services, reintegration programs, family

¹⁶⁷ Ross S (2015). *Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program*. Australian Institute of Criminology.

¹⁶⁸ Law Council of Australia, *Courts and tribunals*, n 55, 99.

¹⁶⁹ Chief Justice of New Zealand (2023). *Annual report 2023*. Courts of New Zealand.

¹⁷⁰ Paul E (nd). *The value of communication assistants in sexual violence courts*. District Court of New Zealand <https://www.districtcourts.govt.nz/about-the-courts/judges-review-the-year/the-value-of-communication-assistants-in-sexual-violence-courts/>

¹⁷¹ Chief Justice of New Zealand, n 167.

violence prevention, and educational offerings... a cost-effective General Practice, Tinana Community Gym, and various other community initiatives and partnerships.¹⁷²

New Zealand's *Digital strategy for the courts and tribunals of Aotearoa New Zealand*¹⁷³ was launched in 2023. The strategy focuses on four key initiatives:

- Te Au Reka (a digital document and case management system)
- enhanced remote hearing technology
- improved physical infrastructure
- comprehensive training support.

While recognising technology's potential to improve court accessibility and reduce costs, the strategy emphasises careful implementation, to ensure the benefits do not compromise the fundamental human aspects of justice delivery. The initiative acknowledges that successful implementation will require time and flexibility from participants, while they adapt to new systems and processes. The strategy identified 13 core principles for the implementation of digital technology in the New Zealand courts, including:

- core values alignment
- people-centred and inclusive design (digital solutions should reduce, not create, barriers for PwD, non-English speakers, and those with limited means or digital disadvantage)
- transparency
- adaptable design
- implementation support.¹⁷⁴

¹⁷² He Waka Tapu (2025). *Kō wai mātou? Who are we?* <https://www.hewakatapu.org.nz>.

¹⁷³ Chief Justice of New Zealand, n 167.

¹⁷⁴ Ibid.

Lived experience insights

PwD with lived experience of the justice system can play an important role in the courts, influencing policy and practice.¹⁷⁵ This is recognised in the DJAS 2024-28, through the proposed inclusion of ‘lived experience audits’.¹⁷⁶

Peer mentors with lived experience support participants in the Victorian drug courts, offering one-on-one and group mentoring, as well as practical guidance.¹⁷⁷ Speaking from Experience, a group of people with lived experience of the mental health system, has also provided advice to Victoria Legal Aid. A Victorian project co-designed with people with lived experience of mental health also led to the *Principles for consumer-centred lawyering at the Mental Health Tribunal*.¹⁷⁸

Mental Health Matters 2 is a lived experience charity in Western Australia ‘dedicated to improving understanding of, and responses to, individuals and families experiencing mental health, alcohol and other drug challenges and criminal justice involvement’.¹⁷⁹ A delegation of five lived experience representatives recently met with two judges, to share their experiences and knowledge. This led to a further invitation to speak to a larger cohort of Western Australian judicial officers.¹⁸⁰

Another example of lived experience input into court processes involved two Indigenous young people sharing their experiences of the court, child protection and youth justice systems in a video, ‘to better educate Judges and Magistrates when dealing with Aboriginal people who appear before the courts...and the role the courts can play in ensuring their voices are heard’.¹⁸¹

¹⁷⁵ See Antojado D et al (2024). Criminal justice, representation and the lived experience scholar. *Incarceration*. <https://doi.org/10.1177/26326663241275807>; Bartels L and Linnane B (in press). Moving from ‘offenders’ to partners: Reflections on the potential for courts as co-designed institutions. In D Antojado and Maycock M (eds), *Lived experiences of the justice systems*. Routledge.

¹⁷⁶ DJAS 2024-28, n 14, 24.

¹⁷⁷ SHARC (2024). *Peer mentors in justice* <https://www.sharc.org.au/sharc-programs/peer-projects/peer-mentors-in-justice/>.

¹⁷⁸ P Karanikolas et al 2022. *Principles of consumer-centred lawyering at the Mental Health Tribunal*, La Trobe University.

¹⁷⁹ Mental Health Matters 2 (2024). *Home* <https://mentalhealthmatters2.com.au>.

¹⁸⁰ Mental Health Matters 2 (2024, June 21). *Judging the change*. Presentation at the Reintegration Puzzle Conference, Sydney.

¹⁸¹ South Australian Office of the Guardian for Children and Young People (2020). *Cultural training project gives young people their voice* <https://gcyp.sa.gov.au/2020/03/10/cultural-training-project-gives-young-people-their-voice/>.

Dorothy Armstrong is a peer support worker at the Centre for Innovative Justice in Melbourne. She has an acquired brain injury, as a result of domestic violence, and has experience of the Victorian justice system, as both a victim and defendant. She has also drawn on her

experience to contribute to inquiries,¹⁸² present at conferences¹⁸³ and engaged with the media.¹⁸⁴

Damien Linnane has spoken publicly about his post-traumatic stress disorder and autism. Since his time in prison in NSW, his activities have included editing an art and creative writing magazine for and by people in prison,¹⁸⁵ advocating for access to Medicare in prison,¹⁸⁶ co-authoring a trauma-informed toolkit for the legal sector,¹⁸⁷ and speaking at a legal assistance conference.¹⁸⁸

Research shows that peer mentoring supports PwD effectively.¹⁸⁹ Generally speaking, participants expressed satisfaction with their programs, reporting that they felt ‘happy and content’ and developed valuable skills and gained greater self-awareness.¹⁹⁰ There are a number of best practice frameworks to guide engagement with people with lived experience.¹⁹¹ Core values underpinning such engagement include hope, equity, respect, authenticity, and justice. Key guiding principles include self-determination and adopting strengths-based and trauma-informed approaches.

3 Things to consider before, during and after the hearing

Before the hearing

The Vic BB highlights that:

¹⁸² See eg, Armstrong D (2021). *Written statement to Disability Royal Commission* <https://disability.royalcommission.gov.au/system/files/exhibit/STAT.0090.0001.0001.pdf>.

¹⁸³ See eg, National Judicial College of Australia and Australian National University (2023). *Therapeutic jurisprudence conference program*.

¹⁸⁴ See eg, Hope Z (2021, February 20). Cognitively impaired admitting to crimes they say they didn't commit. *The Age* <https://www.theage.com.au/national/victoria/cognitively-impaired-admitting-to-crimes-they-say-they-didn-t-commit-20210205-p5700p.html>.

¹⁸⁵ PaperChained (2024). *Home* <https://www.paperchained.com>.

¹⁸⁶ See Linnane D et al (2023). Ensuring universal access: The case for Medicare in prison. *Alternative Law Journal*, 48: 102-109; Linnane D et al (2024). Challenges for Medicare and universal health care in Australia since 2000. *Medical Journal of Australia*, 220: 276-276.

¹⁸⁷ Maylea C et al, n 93. This toolkit is designed to promote a trauma-informed legal assistance sector and includes the steps for undertaking a trauma-informed audit. See also Mental Health Coordinating Council (2024). *Trauma-informed care and practice organisational toolkit (TICPOT)* <https://mhcc.org.au/resource/ticpot-stage-1-2-3/>.

¹⁸⁸ Australian Pro Bono Centre (2023). *National access to justice and pro bono conference: Program* <https://www.probonocentre.org.au/events/national-access-justice-pro-bono-conference-2023/>.

¹⁸⁹ Schwartz A and Levin M (2022). Feasibility of a peer mentoring programme for young adults with intellectual and developmental disabilities and co-occurring mental health conditions. *British Journal of Learning Disabilities*, 50: 433-444.

¹⁹⁰ *Ibid*, 433.

¹⁹¹ Queensland Health (2023). *Lived experience (peer) workforce framework*. See also Byrne L et al (2021). *Lived experience workforce guidelines*. National Mental Health Commission; Maylea et al, n 93.

Identifying specific requirements, particularly communication requirements, is crucial to ensure people with a disability can participate on an equal basis with others. Failing to identify these requirements before hearings can present significant barriers for people with a disability that can continue during the hearing.

*Ideally, individual accessibility requirements should be identified before hearings, to ensure individuals can participate effectively. However, there will be circumstances where this has not occurred. Individuals may self-report specific requirements before or on arrival at court, or court staff may assist in determining what accommodations are sought. Where this has not occurred, judicial officers have a role in determining what adjustments are required for people with a disability.... [and] should not assume this has occurred before the hearing.*¹⁹²

As the NSW BB recognises, it ‘may take some discussion to work out exactly what is required, and then some time to organise’ appropriate adjustments’.¹⁹³ To support this, the following issues should be considered *before a hearing*.¹⁹⁴

Early identification and disclosure of disability

Early identification of disability and support needs is crucial for ensuring effective equal access to justice. As the Toolkit explains,

Sometimes people with disabilities may not be identified by courts as being in need of assistance. This is often because courts do not have the knowledge, experience or resources to detect disabilities. This can result in courts simply proceeding with cases without taking account of the person’s disability...can result in unfair trial processes or outcomes. For example, the result will not be fair if statements are taken from a deaf person without an interpreter present and are relied on by courts; or if a person with an intellectual disability pleads guilty but without understanding what this means or what the consequences might be.¹⁹⁵

It may be apparent from a range of sources, including legal practitioners and court records, that a person engaging with the ACTCT has a disability. However, there may also be reasons why a person may not disclose (eg, fear, privacy concerns, lack of awareness about their disability or its relevance). We note that the ACTCT now uses a pamphlet, to help people identify the reasonable adjustments they need.¹⁹⁶

Research in the UK¹⁹⁷ showed that some court users, whose vulnerabilities went unrecognised, indicated that they were either willing to disclose their issues or had actively wanted to do so. However, in some cases, their reluctance to disclose without being prompted was partly due to feelings of shyness. This was especially true for individuals experiencing depression and anxiety, who were unsure whether it was appropriate to disclose their condition and felt embarrassed to

¹⁹² Vic BB, n 7, 22 (emphasis added).

¹⁹³ NSW BB, n 8, 5134.

¹⁹⁴ Vic BB, n 7, 23-38.

¹⁹⁵ Graydon, Toolkit, n 7, 32.

¹⁹⁶ ACT Government, Third annual progress report, n 15.

¹⁹⁷ McLeod R et al (2010). Court experience of adults with mental health conditions, learning disabilities and limited mental capacity – Report 2: Before court. UK Ministry of Justice, 10.

bring it up. Many had also become adept at hiding issues like reading issues and were unlikely to disclose them, unless they received encouragement and reassurance.

Some people may also not have a concept of disability. This is particularly the case for people from some Indigenous and CALD communities. It may therefore be appropriate to make general statements, for example, 'Before we start, if anyone needs help to participate today, including if you have a disability, please tell me or my clerk/associate, so we can help you'.¹⁹⁸

Measures to help people feel comfortable disclosing their disabilities and/or to identify if someone may need accommodations can include:

- training all staff to respond recognise potential indicators of disability and how to appropriately to people who indicate they have disabilities
- providing clear information about available accommodations
- collaborating with disability support services and advocacy groups
- ensuring confidentiality and sensitivity in handling disability-related information
- systematic screening processes (in the criminal justice context, see 5.1.1).

Issues associated with capacity

It should generally be assumed that PwD have legal capacity, as long as appropriate adjustments are made, where required. Nevertheless, there may be some instances where the nature of the disability is such as to limit capacity. In such circumstances, specific provisions may apply, for example, the person may have a guardianship or power of attorney. In the criminal context, issues may also arise as to fitness to plead and the defence of mental impairment. Both of these are discussed further in Chapter 5.

The NSW BB notes that there is a risk of people with mental disorders or intellectual disabilities being subject to prejudicial assessments of their competence, reliability and credibility, if judicial officers (and, if relevant, jurors) have preconceived views about such people. They also are vulnerable to having their evidence discredited, because of behavioural and communication issues associated with their disability. This can give rise to 'testimonial injustice', if the person hearing the evidence does not take the speaker as seriously as they deserve to be taken, due to negative stereotypes.¹⁹⁹ It is therefore important to avoid stereotypes and biases. The educational materials discussed in 3.4 can help in addressing this issue.

¹⁹⁸ Vic BB, n 7, 24.

¹⁹⁹ NSW BB, n 8, 5130-5131. See also Fricker M (2019). Testimonial injustice. In J Fantl et al (eds), *Contemporary epistemology: An anthology*. Hoboken.

Familiarisation

Courts can be intimidating environments, especially for PwD. Court staff and judicial officers can play an important role in making people feel more comfortable, to ensure they can participate on an equal basis with others. Familiarisation with court processes can greatly improve a person's ability to participate effectively. This may be achieved through:

- pre-trial court visits
- explanations of court roles and procedures and/or practice, with any special measures or technologies to be used
- developing an easy-read webpage, explaining what will happen on the day they go to court
- providing a visual map outside the courtroom, displaying who does what.

These approaches may be particularly important for people who are blind or have low vision. It is suggested that, in such cases, judicial officers describe where people are positioned in the courtroom at the start of hearings and offer to announce when people leave and arrive. Where people have cognitive impairments, it may also be helpful for judicial officers and other court staff to describe the physical environment and explain the court (or tribunal) processes.

Familiarisation before coming to court can greatly improve a witness' ability to achieve the best evidence, recall events accurately and to present a coherent narrative. Thorough preparation not only enhances the quality of a witness' testimony, but also supports emotional well-being, contributing to a smoother post-trial adjustment and reducing potential long-term psychological effects.²⁰⁰ In the UK, pre-trial preparation best practice includes several measures designed to support vulnerable and intimidated witnesses (including people with mental health conditions and learning disabilities).²⁰¹ The Ministry of Justice practice guidance recognises that '[w]itnesses are likely to benefit considerably from a pre-trial court visit'.²⁰² When undertaking needs assessments of witnesses as part of the pre-trial preparation, Witness Care Units will discuss with each witness whether they might benefit from a pre-trial familiarisation visit. A detailed explanation of this service will be offered, to help witnesses make an informed decision. If an intermediary is involved to assist the witness with communication in court, the intermediary should accompany the witness during the pre-trial visit.

Web-based familiarisation tools can play a vital role in making courts more accessible and less intimidating, especially for PwD. These digital resources allow people with mobility, anxiety, cognitive and/or sensory disabilities to prepare for their court attendance, by familiarising themselves with the environment beforehand. The Intellectual Disability Rights Service in NSW has prepared a simple fact sheet, *Your first day at court*.²⁰³ The Bendigo Law Courts²⁰⁴ provide video

²⁰⁰ UK Ministry of Justice (2022). Achieving best evidence in criminal proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures.

²⁰¹ McLeod R et al (2010). Court experience of adults with mental health conditions, learning disabilities and limited mental capacity – Report 5: Policy processes, services and practices. UK Ministry of Justice.

²⁰² UK Ministry of Justice (2022), n 200, 126.

²⁰³ Intellectual Disability Rights Service (2018). *Your first day at court* https://idrs.org.au/site18/wp-content/uploads/2018/11/8-Your_day_at_court_2.pdf.

²⁰⁴ Bendigo Law Courts (2024). *Plan your visit* <https://bendigo.courts.vic.gov.au/plan-your-visit>.

content specifically demonstrating wheelchair accessibility routes and facilities, helping people with mobility needs understand how they can navigate the building. Interactive virtual tours, such as those offered by the County Court Victoria²⁰⁵ and Neighbourhood Justice Centre,²⁰⁶ enable people with disabilities to identify potential barriers, locate accessible facilities, and plan their journey through the courthouse at their own pace. This preparation can reduce anxiety, increase confidence, and allow for better planning of support needs. Similar initiatives by the UK Supreme Court²⁰⁷ demonstrate how 360-degree virtual tours can assist people with disabilities to make informed decisions about their access requirements before arriving at court. Expanding such offerings in the ACT could significantly enhance the familiarisation process.

Assistance animals

Assistance animals are trained to support people with disabilities in a range of ways. They are most commonly known for their use with people with impaired vision but may also be used more broadly by people with impaired hearing, mental health issues, epilepsy and other disabilities. Courts are increasingly recognising the benefits of support animals in supporting people with trauma and mental health issues. A recent study on the use of an assistance dog in the Children’s Court of Western Australia found that children and the caregivers had significantly reduced stress and anxiety levels associated with attending court, after interacting with the facility dog. The authors therefore suggested that ‘justice systems could implement similar positive therapeutic programs at other courts to reduce negative impacts on people attending and working at the facilities’.²⁰⁸

To support the use of assistance animals, courts should:

- ensure security screening procedures are appropriate for people with assistance animals
- allow assistance animals in all public-facing court areas
- provide water and areas for animals to rest and relieve themselves
- engaging with best practice around assistance animals, including not touching, looking or otherwise distracting assistance animals whilst working.

Pre-hearing checklist

Appendix B sets out a checklist of issues to be considered before a hearing, although this is not exhaustive.²⁰⁹ It should be read in conjunction with the guiding principles underpinning this report (see 2.5).

²⁰⁵ County Court Victoria (2024). *Virtual tour* <https://captur3d.io/view/county-court-victoria/foyer?m=imxkG5xSL7K&wh=1#>.

²⁰⁶ Neighbourhood Justice Centre (2016). *The Neighbourhood Justice Centre: Helping tackle the underlying causes of crime* <https://www.youtube.com/channel/UCuia7HDIugVf9kbTiRFQ70w>.

²⁰⁷ Supreme Court of the UK (2024). *360° virtual tour* <https://www.supremecourt.uk/visiting/360-degree-virtual-tour.html>.

²⁰⁸ Rock S and Gately N (2024). Kids, courts and canines: Evaluating the Justice Facility Dog Program through a therapeutic lens in the Perth Children’s Court. *Journal of Criminology*, 57: 469-487.

²⁰⁹ See also Vic BB, n 7, 35-37; NSW BB, n 8, 5135-5138, 5156-5157.

During the hearing

Many of the issues that apply *before* hearings will continue to be relevant *during* hearings. Some issues of specific relevance during hearings are discussed below.²¹⁰

Identification of disability

Where a person's disability has not been identified before a hearing, this (and associated support needs and reasonable adjustments) may become apparent as a hearing progresses. In a recent article on supporting people with ABI who are involved in the criminal justice system, 'judicial and court officers spoke about young people's behaviours in court... that would and should raise "red flags".²¹¹ The effect of a disability may vary; for example, some mental health disabilities are episodic, while physical disabilities may change over the course of the day. It is important to be sensitive, as the person may be unaware of how their disability affects their courtroom participation. This is their normal, after all. Accordingly, '[e]ach person's support needs must be individually assessed and monitored throughout a hearing, in particular for a hearing over several days, to make adjustments as and when needed'.²¹²

Physical adjustments

As noted elsewhere in this report, physical adjustments may be required, to allow people with a disability to participate on an equal basis. Things to consider include:

- asking/confirming that a person is able to access the court (eg, for people using a wheelchair or ensuring jurors can access jury boxes)
- where necessary, offer witnesses, jurors etc alternative places to give and hear evidence
- ensure lighting is appropriate (eg, people with low vision may require strong lighting, while those who are light sensitive may need to have the lights dimmed)

people who are deaf/hard of hearing and use an Auslan interpreter or rely on lip reading need clear lines of sight (eg, make sure lips are not hidden by a microphone)

- other adjustments may include ensuring venues are accessible, providing hearing loops, ordering the court to be closed and permitting a person with disability to use a comfort object.

²¹⁰ See also Vic BB, *ibid*, 35-68.

²¹¹ Saunders B et al. (2024). Supporting people with an acquired brain injury (ABI) involved in the criminal justice system: justice and allied health professionals' insights. *Psychiatry, Psychology and Law*. <https://doi.org/10.1080/13218719.2024.2416637>, 9.

²¹² Vic BB, n 7, 39.

Support people and other roles

A range of people can play various roles to support PwD. This can include independent communication support workers; interpreters and communication supports; emotional support people; lawyers; support for self-represented people with a disability; McKenzie Friends; disability advocates; carers and support workers; and victims and witness assistance services in criminal matters. Sometimes, specific legislative provisions apply to hearings involving people with disabilities, including in relation to support people. Some important points worth noting are:

- judicial officers should reinforce the need for independent communication support workers, to accurately relay the communication between the person and court, without unduly influencing or speaking on behalf of a party or witness. Judicial officers should ensure this role is not prejudicial to other parties (including an accused)
- judicial officers should generally exercise caution against using family, friends and support workers as communication assistants in court, due to the right to privacy, conflicts of interest, undue influence and lack of professional training
- children should not generally be used as a communication assistant
- some lawyers may be inexperienced in assisting people with a disability, so judicial officers should look for signs of disconnectedness between a lawyer and client. It may be necessary to adjourn a hearing, so the lawyer and client can communicate effectively and confidentially
- lawyers can help the court identify disability, but it is the role of judicial officers to ensure equality before the law. They may need to make inquiries about people's requirements and necessary adjustments
- lawyers may also have disabilities and judicial officers should invite lawyers to identify their requirements directly or to court staff

judicial officers have a responsibility to provide certain assistance to self-represented people. Where they are aware a self-represented person has a disability, they should take time to advise a person of their right to obtain independent legal advice, suggest they see the duty lawyer (if available)²¹³ or, if applicable, advise of the right to apply to Legal Aid. They should not allow a person to self-represent, where the person lacks the requisite capacity

²¹³ Recent research has highlighted the crucial role that duty lawyers play in relation to PwD. Data from South Australia indicated that a quarter of duty lawyer services were provided to clients with a disability or mental illness: see Nickson R and Neikirk A (2024). Legal first responders: duty lawyers as an essential service. *Current Issues in Criminal Justice*. <https://doi.org/10.1080/10345329.2024.2373628>.

- judicial officers may grant leave to a self-represented person with a disability to be assisted by a 'McKenzie Friend', who may help an accused (eg, by taking notes).

As the Vic BB also explains:

judicial officers have broad discretion to consider a range of adjustments that will assist witnesses to 'overcome incapacity' to participate in hearings and give evidence on an equal basis as others.²¹⁴

Issues for judicial officers to consider, in exercising this discretion, include the nature of the proceedings, the specific needs and required adjustments of the individual, the impact of these adjustments on all parties, and the importance of the evidence.

Third-party support services

Some Canadian courts have appointed dedicated accessibility coordinators. These specialised staff serve as key points of contact for court users with disabilities, providing information about accessibility services and managing accommodation requests. They also help with accommodations and ensure full participation in the justice system.²¹⁵

The NSW Justice Advocacy Service²¹⁶ is administered by the Intellectual Disability Rights Service and provides support for people with cognitive impairment in contact with the justice system. It is accessible across NSW and provides a support person to help clients through their legal process, ensuring their needs are met and they receive fair treatment. The program advocates for reasonable adjustments to be made and ensures that individuals with cognitive impairments are provided with the necessary accommodations, so they can participate in legal proceedings more fully. Evaluation of the program²¹⁷ found it was being implemented as intended. Most of the clients in the program were defendants (87%), followed by victims (12%); 1% were witnesses. People who received support from the program were less likely to be found guilty and more likely to comply with their court orders and receive diversionary orders. The evaluation determined that, if the program were delivered at full capacity, every \$1 invested would yield a return of \$3.37.

Other adjustments

A number of other adjustments may be necessary during the hearing.²¹⁸ For example, PwD can generally take an oath or affirmation, but some adjustments may need to be made. Some technological adjustments may include assistive communication devices, CCTV, and video-conferencing. Judicial officers may also consider time adjustments, including:

²¹⁴ Ibid, 57. See also Law Council of Australia, PwD, n 2, 50-52.

²¹⁵ British Columbia Ministry of Justice (2023). *Courthouse accessibility* <https://www2.gov.bc.ca/gov/content/justice/courthouse-services/courthouse-roles/courthouse-accessibility>.

²¹⁶ Intellectual Disability Rights Service (2024). *Justice Advocacy Service* <https://idrs.org.au/jas/>.

²¹⁷ Ernst Young (2021) Evaluation of the Justice Advocacy Service for the Department of Communities and Justice.

²¹⁸ See Vic BB, n 7, 55; NSW BB, n 8, 5148-5149, 5152.

- breaks to minimise fatigue for people using augmented communication devices or Auslan or provide relief from prolonged sitting, to take medication, eat or manage incontinence issues
- extra time to communicate with lawyers and understand legal advice and proceedings or give evidence, especially where there are communication impairments
- being alert to ‘pleasing behaviour’ among people with intellectual disabilities
- checking the language of a prior confession of a person with intellectual disabilities against the language used they use in court (and assessing the confession against their intellectual ability).

The NSW BB also notes:

It is a good idea to specifically give a person with a disability, and any support person, interpreter or carer, permission to ask for a break if they need one, and then to give them a break when they do ask.

But, as they will not always ask, you also need to watch for signs that a break might be needed — for example, wandering concentration, stress and/or discomfort and insert a break wherever appropriate.

It is also a good idea to use any breaks to make sure there is sufficient water available on the witness stand, and elsewhere — many people who are taking medications need to drink water frequently.²¹⁹

Further adjustments may be required where the person is very mentally ill, eg, if they are threatening self-harm or have delusions. The NSW BB sets out guidance on this, eg, setting ground rules, calling security, explaining ‘I understand you believe you are X ... but it is not real to me’.²²⁰

Controlling witness examination

Judicial officers can make directions on witness questioning and cross-examination, taking into account the right to a fair hearing and parties’ rights to proceedings. Some cross-examination techniques may affect a witness’ ability to continue questioning, recall events or give clear responses. This issue is especially important for some people with disabilities, eg, witnesses with mental health and intellectual disabilities and ABIs. Other options to reduce confusion, especially during cross-examining, include:

- using the person’s first name, if they prefer
- requiring legal practitioners not to robe or to remain seated, while (cross-)examining a witness.

²¹⁹ NSW BB, *ibid*, 5153. Emphasis in original.

²²⁰ *Ibid* 5151-5152.

- intervening, to avoid unnecessary distress.

Monitoring the impact of the person's disabilities and adjustments

Judicial officers should carefully review the impact of the person's disability and any adjustments on the matter before the court.²²¹ This can include decisions such as closing the court, suppressing the person's name or health status (eg, HIV status). It may also mean deciding whether the law permits the person's disability is to be taken into account in decision-making, for example, in sentencing outcomes (see 5.1.4). This should be explained to the person with disability and (if relevant and appropriate) to others, so justice is both done and seen to be done.

Any adjustments provided to support a person with a disability (eg, a support person) should also be monitored, to ensure they are effective in achieving their purpose. If necessary, the person may need further adjustments. Some possible questions to facilitate this include:

- 'Have you got a good view of that?'
- 'Is the format appropriate for you?'
- 'Please tell me in your own words what think that means'.

After the hearing

After the hearing has finished,²²² some important factors to bear in mind are:

- the need to maintain adjustments until the matter is finalised
- that help may be required to understand the outcome, especially where someone is unrepresented. Other steps include:
 - using plain language
 - taking extra time to explain the outcome and allow for questions
 - repeating important information
 - clarifying the person's level of understanding
 - using alternative formats (eg, large font, an audio recording of the written transcript of the decision or an informal video recording of the decision, with prior approval)
- if required, referral to services (eg, disability, legal, medical services, emotional support), especially where this may support compliance with an order
- additional considerations may apply in criminal matters (see 5.1.1).

²²¹ Ibid 5153-5154. See also Vic BB, n 7, 68.

²²² Vic BB, ibid, 74-77.

Part 2: Engaging with specific contexts

4 Criminal jurisdiction

As discussed in Chapter 1, most of the ACTCT's work relates to the criminal justice jurisdiction. This chapter considers the particular issues that apply to PwD who engage with the criminal courts as suspects/defendants, victims and jurors. Critically, extensive data confirms the common victim/offender overlap for many PwD.²²³

Suspects/defendants

If a PwD is a suspect in a criminal matter, their disability may have bearing on their capacity to stand trial, their guilt and/or their level of culpability in sentencing. The DRC considered criminal justice issues at length, noting:

People with disability, particularly those with cognitive disabilities, are significantly over-represented at all stages of the criminal justice system, from police contact and arrest, through to court processes and correctional settings...[and] also come into contact with the justice system at high rates as victims of crime....

The disproportionate rate of imprisonment of people with disability is not the result of any inherent causal relationship between disability and crime. Rather, it reflects the disadvantages experienced by many people with disability, such as poverty, disrupted family backgrounds, family violence and other forms of abuse, unstable housing and homelessness.²²⁴

The Centre for Innovative Justice has developed a comprehensive visual map of the causal relationships, which increase or decrease the risk of a person with disability 'becoming entrenched in cycles of disadvantage by a criminal justice system that does not adequately support them or respect their rights'.²²⁵ This includes:

- their personal history (eg, ability to read)

²²³ See DRC, Volume 8, n 233; Ellem et al, n 136; Ringland C et al (2023). *People with disability and offending in NSW: Results from the National Disability Data Asset pilot*. NSW Bureau of Crime Statistics and Research.

²²⁴ DRC, Executive Summary, n 1, 123. See also Ellem et al, *ibid*.

²²⁵ Centre for Innovative Justice (2019). *System map – Supporting justice* <https://cij.org.au/cms/wp-content/uploads/2020/06/supporting-justice-system-map-v14-1.pdf>.

- support services (eg, disclosure of justice involvement to support services)
- stigma and discrimination (eg, stigmatisation of justice-involved people)
- clinical assessment and treatment (eg, funding available for pre-sentence reports)
- diagnosis (eg, disclosure of disability to justice workers)
- policy (eg, funding for healthcare in prison)
- police (eg, trust in police)
- courts (eg, ability to follow an order)
- corrections (eg, disability services available in prison).

The other factors that are presented in relation to the courts are: delay, referral to support services or therapeutic court, availability of court-based services, community-based order with disability plan, judicial officer's awareness of person's capacity, breaches and remand. This concept map highlights the myriad potential points of intervention across the system, including in the courts. Some good practice examples are discussed further below.

Capacity issues were already discussed in Chapters 1, 3 and 4 (see also 6.2.3). Where a person suspected of criminal activity may have an intellectual disability or mental illness, it is critical to determine if they lack sufficient mental or intellectual capacity to understand the proceedings and to make an adequate defence.²²⁶ In the absence of this, the person cannot be tried. Mental impairment may also give rise to a defence. A person's capacity to form the requisite level of intent or engage in decision-making may also be relevant to some charges. These issues are governed by legislation²²⁷ and will not be discussed in detail here, although the DRC has recommended review of the *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment*.²²⁸

A determination that someone is not fit to plead or a finding of mental impairment²²⁹ can lead to adverse outcomes, as the person may be subject to detention for an uncertain period. It is also important to be aware that some innocent people plead (or are advised to plead) guilty, in order to avoid the consequences of unfitness to stand trial.²³⁰

To ensure appropriate court responses for people charged with offences who have or may have intellectual disability or mental illness that may impact on their culpability, it is vital to implement

²²⁶ See Graydon, Checklist, n 59.

²²⁷ Crimes Act 1900 (ACT), Pt 13.

²²⁸ DRC, Executive summary, n 1, Rec 8.12. The ACT Government has indicated its support for this recommendation: ACT Government (2024). *ACT Government response – Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability final report*, 87.

²²⁹ See *Crimes Act 1900 (ACT)*, ss 321-329. For discussion, see eg Gooding et al, n 43.

²³⁰ Law Council of Australia, PwD, n 2, 45-46; Hope, n 180.

effective screening and diversion measures. These issues are discussed further below and align with the following items in the DJAS 2024-2028:

3.1: Identification of disability or reasonable adjustments needs – Continued use of needs identification tool during intake or induction processes to identify reasonable adjustment needs.

4.1: Criminal justice diversion – Scoping of effective court-based diversionary programs for people with cognitive impairment and disability.

Identification/screening

Some estimates suggest that over 50% of people appearing in the NSW local court had a mental illness and a quarter had a suspect intellectual disability.²³¹ The DRC recognised the importance of screening ‘to identify defendants with any type of disability in the courts’.²³² However, the DRC also acknowledged the restrictions that prevent screening occurring and implications that flow from this:

judicial officers, prosecutors and defence lawyers in lower courts are under significant pressure to work efficiently through high workloads and have limited opportunity for flexibility or individualised approaches. This increases the risk that a person’s disability and support needs will not be identified or understood in the absence of screening mechanisms. When that risk materialises, it contributes to the disproportionate representation of people with disability, particularly cognitive disability, in the criminal justice system.²³³

The Checklist places a positive obligation on courts, in these circumstances, noting:

Consider how the person’s disability may interact with the substance or relevant legal tests concerning their case. If the person with a disability is a suspect in a criminal matter, their disability may have bearing on their capacity to stand trial, or their guilt or their level of culpability in sentencing.

If the person may have an undiagnosed intellectual disability, mental illness or has not been recently assessed, then order that an assessment be conducted by a psychologist/ forensic or other psychiatrist or other relevant expert and filed with the court as early as possible.

If your jurisdiction does not have capacity to undertake such assessments, you will need to seek other evidence. This could be evidence from regular doctors, other health providers or from family members, neighbours, teachers, or friends who have knowledge of the person and how they have responded in analogous life situations. You will have to decide how much

²³¹ Intellectual Disability Rights Service (2008). Enabling justice: A report on problems and solutions in relation to diversion of alleged offenders with intellectual disability from the New South Wales Local Courts System – with particular references to the practical operation of s32 of the Mental Health (Criminal Procedure) Act 1990 (NSW), cited in DRC (2023). Criminal justice and people with disability – Volume 8 (Volume 8), 35.

²³² DRC, *ibid*, 173. See also Law Council of Australia, PwD, n 2, 38-39.

²³³ DRC, *ibid*, 173-174. Notably, the DRC found that most PwD who receive custodial sentences do so in the local courts: 40.

weight to place upon the evidence based on your assessment of the level of expertise, independence and credibility of those who provide it.²³⁴

These findings and guidance make the case for systematic screening clear. Unfortunately, there do not appear to be any best practice screening initiatives in place, in relation to defendants appearing before the Australian courts. For example, McCarthy et al found that there were no systems for comprehensive screening of those with potential intellectual disability or ASD appearing before the courts in any Australian jurisdiction.²³⁵ The ACTCT has recently made positive steps in this regard, by developing a pamphlet to allow people to identify reasonable adjustments they require. Frontline staff also use this tool, to identify reasonable adjustments for people coming to court and the DLO uses the Needs Identification Tool, based on the Washington Group questions,²³⁶ when engaging with court users with disabilities who may require reasonable adjustments and support to enable them to navigate the justice system.²³⁷ This information should be collected in simple wording on all court forms (see also discussion in Chapters 3 and 6 and Appendix A).

However, more is required in relation to defendants who may have disabilities, especially where this could impact on the outcome of their legal proceedings (including their liberty). We are aware that some screening and liaison services exist, including the ACT Mental Health Court Assessment and Liaison Service,²³⁸ but have also heard of instances, where a defendant's disability was not identified throughout their involvement with the ACT court system. The ACT Government piloted a trial of including a support person at the City police watchhouse between 2021 and 2023, but found people were reluctant to consent to referrals.²³⁹ There may be greater uptake in the courts, as these may be seen as more independent. To this end, we note Item 4.10 under DJAS 2024-28, which will make an advocate available at the courts, to help 'court staff and court users with matters, while also engaging in consultation and research to find solutions that better protect and promote the rights of vulnerable court users'.²⁴⁰

In the UK, the National Health Service Liaison and Diversion (L&D) services embed medical practitioners in both police stations and criminal courts.²⁴¹ A key aspect of these services is the systematic screening of individuals in custody for pre-existing medical conditions, as well as assessment of their communication needs. This process ensures that vital health information is systematically communicated to the courts, which can lead to more informed and fair judicial decisions. L&D professionals are seen as more independent and impartial, compared to the police, which can encourage people to disclose their health and communication needs more openly. This impartiality fosters trust and can lead to better identification and management of issues.

²³⁴ Graydon, Checklist, n 59, 7.

²³⁵ McCarthy J et al (2022). Defendants with intellectual disability and autism spectrum conditions: The perspective of clinicians working across three jurisdictions. *Psychiatry, Psychology and Law*, 29: 698-717.

²³⁶ Washington Group on Disability Statistics (2024). Home <https://www.washingtongroupdisability.com>.

²³⁷ ACT Government, Third annual progress report, n 15; ACT Government, Fourth annual progress report, n 15.

²³⁸ ACT Mental Health Court Assessment and Liaison Service (2024). Home <https://www.canberrahealthservices.act.gov.au/services-and-clinics/services/mental-health-court-assessment-and-liaison-service>. See also Davidson F et al (2016). A critical review of mental health court liaison services in Australia: A first national survey. *Psychiatry, Psychology and Law*, 23: 908-921.

²³⁹ ACT Government, Fourth annual progress report, n 15.

²⁴⁰ DJAS 2024-28, n 14, 22. This item will also involve a research project/service initiative to 'service enable more effective justice support for court users needing reasonable adjustments, including people with disability'.

²⁴¹ United Kingdom Equality and Human Rights Commission (2020). *Inclusive justice: A system designed for all*.

Evaluation of this program²⁴² found that most stakeholders considered the program to be useful and it led to an increase in:

the number of people being identified with vulnerabilities, such as mental health needs, substance use and learning disabilities;

relevant and timely information available to police, courts and partner agencies, which enhanced police officers' and magistrates' confidence in their decision-making and sometimes sped up processes.

More recent research has investigated the possibility of identifying people with neurodiversity through this model. This found that the L&D service was 'successful in identifying and supporting the needs of those defendants. Benefits of this service included knowledge sharing, awareness raising and promoting good practice such as making reasonable adjustments'.²⁴³

In addition, some L&D teams have developed specialised expertise, focusing on specific groups, such as women or people experiencing homelessness. These specialisations allow for tailored support that addresses these populations' unique challenges. In some regions, L&D staff are also involved in training police officers, helping them build a deeper understanding of particular impairments and how to manage them effectively. This training can improve the way police interact with vulnerable individuals, leading to better outcomes at the point of arrest and beyond, with follow-on implications for the courts. A notable example of innovation within L&D services is in one area of England, where nursing assistants systematically screen all detainees, rather than relying on police referrals. This approach ensures that no one slips through the cracks, and that all individuals in custody receive appropriate health assessments and interventions.

The Kent L&D service has also expanded on this model and operates across six magistrates' courts and seven custody suites, assessing detainees identified by the police as potentially at risk. The service had concerns that the police's initial screening primarily focused on immediate health risks, particularly self-harm. In response, a new model was introduced in 2019, to assess everyone entering police custody for a broader range of conditions. These conditions include learning disabilities, ASD, mental health issues, drug and alcohol addiction, and other factors, such as debt or homelessness. This new system is designed to be cost-effective, by employing more staff with less formal qualifications who conduct initial screenings using tablet-based software. Detainees who require further evaluation are then referred to a small team of specialists for more comprehensive assessments. These specialists can identify communication and comprehension difficulties, as well as conditions like brain injuries that may have previously gone undiagnosed. All gathered information is directly integrated into the detainee's NHS medical records. If the detainee is charged, this data is routinely shared with their defence team and the courts, including recommendations for any necessary adjustments during hearings. The process also involves obtaining the detainee's consent to share this information.²⁴⁴

²⁴² Disley E et al (2016). Evaluation of the Offender Liaison and Diversion trial schemes. RAND.

²⁴³ Chaplin E et al (2024). A realist evaluation of an enhanced court-based liaison and diversion service for defendants with neurodevelopmental disorders. *Criminal Behaviour and Mental Health*, 34: 117-133, 117.

²⁴⁴ United Kingdom Equality and Human Rights Commission, n 241.

One of the key aspects of this model is that relevant information about a person's disability among key agencies is shared, enabling a more appropriate response. There are of course challenges and risks around doing this appropriately. However, if managed carefully, the benefits can outweigh the risks and accurate and comprehensive data on the needs of PwD is vital to responding to their needs. Anecdotally, we are aware of some relevant information about PwD involved in the justice system already being shared through the Community of Practice. Furthermore, improved information sharing is Action item 5.2 under DJAS 2024-28. A recent Queensland report involving PwD with criminal justice experience and their family members²⁴⁵ identified information and data sharing as a key issue, raising concerns about negative impacts on housing and sentencing outcomes. The report made seven recommendations on this issue, including:

- the need to balance the right to privacy of individuals and their personal information with the need for information that can be critical for safeguarding and well-being and effective service delivery
- implementing a supported decision-making model, to enable people with cognitive disability or at risk of decision-making capacity limitations to provide informed consent about information shared about them
- using the learnings from the National Disability Data Asset Pilot, to build system capability for effective data capture and linkage across justice and disability support systems
- considering the introduction of a system-wide 'at risk' flag, subject to privacy considerations. This may be raised alert criminal justice system personnel to the possible presence of vulnerabilities related to the need for supports, to ensure equitable access, with potential markers including adult guardianship orders, a support person having been called by police, a family member having made representation to CJS agencies and self-identification as a person with disability.

²⁴⁵ Ellem et al, n 136, 82-83.

Diversivory court programs

Mental health courts

Mental health courts (MHCs) originated in the United States (US) in the late 1990s and there are now over 300 in operation there, in nearly every state. As a result, the United States has led research and practice in this context. According to their Bureau of Justice Assistance,²⁴⁶ the following are the 10 essential elements of MHCs:

1. Planning and administration
2. Target population
3. Timely participant identification and linkage to services
4. Terms of participation
5. Informed choice
6. Treatment supports and services
7. Confidentiality
8. The court team
9. Monitoring adherence to court requirements
10. Sustainability

Research generally supports MHCs' effectiveness. For example, Fox et al's²⁴⁷ meta-analysis of 30 evaluations conducted between 1997 and 2020 found that participation corresponded with a 74% decrease in recidivism, with similar results for adult and juvenile participants. These findings were also stable across varied follow-up periods, study design features, and after controlling for prior criminal history, gender and race/ethnicity.

Despite this, Brian²⁴⁸ critiqued the lack of best practice principles in this context. It also is not clear if the benefits of MHCs translate to people with cognitive impairments. Brian suggested that three features of MHCs that improve outcomes are:

- adopting broad program phases, with individualised goals
- creating a broad and durable support network
- establishing a culture of collaboration within the staffing team, by adopting therapeutic jurisprudence as a shared goal.

²⁴⁶ Bureau of Justice Assistance (2007). Improving responses to people with mental illnesses: The essential elements of a mental health court.

²⁴⁷ Fox B et al (2021). Assessing the effect of mental health courts on adult and juvenile recidivism: A meta-analysis. *American Journal of Criminal Justice*, 46: 644-664.

²⁴⁸ Brian S (2020). Three evidence-based practices to improve mental health court outcomes. *Utah Journal of Criminal Law*, 5: 1-10.

Research on MHC participants in the United States²⁴⁹ found trauma experiences were very high, especially among women. The authors called for trauma-informed and gender-responsive approaches, including trauma-specific screening tools and programming.

The approach in parts of Canada aligns with this and is worth considering more generally. The Nova Scotia MHC Program was established in 2009 and evaluation indicated that 86% of participants completed the program and graduated. All graduates were satisfied with the program and experienced positive change in their lives.²⁵⁰ An independent evaluation²⁵¹ found no statistically significant difference in recidivism outcomes between the MHC participants and a control group, although the small sample size limited the conclusions that could be drawn. Overall, the evaluators found that the program was meeting the needs of defendants with significant mental health concerns in a sensitive and compassionate way.

The model has since evolved into the Dartmouth Wellness Court Program. The change of name is significant, as the goal of this model 'is to improve the wellbeing of adults involved with the criminal justice system without compromising community safety'²⁵² and 'helps destigmatize mental health and substance abuse issues for the individuals involved in the programs, by putting the focus on wellness'.²⁵³

Wellness courts can address a range of issues, including mental health, as substance use, gambling and/or family violence. The *Best practice framework for Nova Scotia wellness court programs* outlines the process for establishing such courts, including key considerations for programs focusing on mental health. Notably, the framework places emphasis on working with victims and restoring and repairing relationship, noting that victims are often the Victims are often the family members, friends, neighbours, and caregivers of the person before the court. The Nova Scotia court website also include a cultural competence guide and program evaluation framework.²⁵⁴ Other information on the implementation of four wellness courts²⁵⁵ provides guidance around their structure; issues such as resources and partnerships; the court team; and issues around change, including participants' readiness for change.

The DRC considered diversion from the criminal justice system, especially court programs, at length.²⁵⁶ The DRC noted:

The over-representation of people with cognitive disability in adult prisons and youth detention suggests existing diversion and early intervention programs are not reaching sufficient numbers of these people when they come into contact with the criminal justice

²⁴⁹ Honegger L and Dewald S (2023). Making a case for gender-responsive, trauma-informed mental health courts: An exploration of participant trauma histories. *Journal of Forensic Social Work*, 7: 72-90.

²⁵⁰ Provincial Court of Nova Scotia (2014). *Nova Scotia Mental Health Court report*.

²⁵¹ Campbell M et al (2015). Prospective evaluation of the Nova Scotia Mental Health Court: An examination of short term outcomes. Centre for Criminal Justice Studies.

²⁵² Provincial Court of Nova Scotia Wellness Court Programs Steering Committee (2019). *Best practice framework for Nova Scotia wellness court programs*.

²⁵³ Nova Scotia Courts (2019). *Nova Scotia's Wellness Courts: Progressing justice*.

²⁵⁴ Provincial Court of Nova Scotia Wellness Court Programs Working Group (2018). *A cultural competence guide for Nova Scotia wellness court programs*; Provincial Court of Nova Scotia Wellness Court Programs Steering Committee (2019). *Evaluation framework*. See generally Nova Scotia Courts (2024). *Wellness court programs* <https://www.courts.ns.ca/courts/provincial-court/wellness-court-programs>.

²⁵⁵ Nova Scotia Courts (2024), *ibid*.

²⁵⁶ DRC, Volume 8, n 233, 290-305.

system. Court-based diversion programs are essential, both to respond to the needs of people with cognitive disability and to address their significant over-representation in the criminal justice system.²⁵⁷

As the DRC has noted, these programs ‘provide an opportunity to respond to the underlying causes of offending by linking participants to support services, rather than proceeding straight to conviction’.²⁵⁸ The DRC also suggested that such programs should ‘connect the participant with the services they need, such as housing, health, employment, education, and domestic violence support’.²⁵⁹

The DRC made it clear that such programs ‘should not seek to diminish responsibility for offending behaviour but rehabilitate the offender and prevent reoffending’.²⁶⁰ Furthermore, the DRC expressed concern that:

Conferring powers on courts to make diversionary orders does not necessarily mean they will be exercised in all cases where they may be appropriate. We received evidence that diversionary schemes available to the courts have historically been under-used, especially for First Nations defendants, due to systemic issues. These include difficulties linking defendants to supports because of a lack of viable community options, insufficient time for solicitors to speak with their clients, and delays in obtaining formal reports needed to justify diversion options to the court.²⁶¹

The DRC ultimately made a broad recommendation about diversion. The relevant part was:

Recommendation 8.21: Diversion of people with cognitive disability from criminal proceedings

The [ACT Government] should develop and fund court-based diversion programs for people with disability charged with summary offences in local or magistrates’ courts which:

- are accessible and culturally appropriate, particularly in regional and remote areas
- provide support for defendants to access the NDIS
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.

All states and territories should commission independent evaluations of their diversion programs. Any evaluation should assess and, where feasible, quantify economic and social benefits for both individual defendants and the community as a whole.²⁶²

The ACT Government accepted this recommendation in principle and noted that:

²⁵⁷ Ibid, 283.

²⁵⁸ Ibid, 13.

²⁵⁹ Ibid, 296.

²⁶⁰ Ibid, 290.

²⁶¹ Ibid, 294 (references omitted).

²⁶² Ibid, Recommendation 8.21.

the development and implementation of any diversionary program would be subject to significant additional investment, and would likely require legislative change. An examination of options to divert people with disability from the criminal justice system occurred during the First Action Plan of the *ACT Disability Justice Strategy 2019-2029*. This work will continue into the Second Action Plan, with additional framing provided by this recommendation.²⁶³

As set out in Chapter 1, the DJAS 2024-28 includes as an action item ‘Criminal justice diversion: Scoping of effective court-based diversionary programs for people with cognitive impairment and disability’.²⁶⁴ This section of the report will support this.

Most Australian states and territories have some form of diversionary court program for defendants with mental health issues and/or cognitive disability (variously described).²⁶⁵ Court-based diversionary programs adopt a therapeutic approach, usually including:

- regular court hearings, to review participants’ progress
- a dedicated court team, with consistent judicial officers, dedicated prosecutors and defence lawyers, mental health workers and court staff
- a plan for defendants to receive treatment and engage with services
- a non-adversarial approach to hearings and regular court hearings, to review defendants’ progress
- support for defendants to comply with their treatment plan, although persistent non-compliance may result in changes to the treatment plan, sanctions and ultimately program termination.²⁶⁶

The non-adversarial approach is particularly important, as the Law Council of Australia has noted that ‘the adversarial nature of court proceedings were a common source of stress and anxiety for people with disability’.²⁶⁷

Unless otherwise stated, all the programs discussed below operate in the magistrates’ court. They also require the participant’s consent. Table 5 sets out the programs that are currently available. Programs of this nature are available both with and without a guilty plea, with post-plea programs generally of longer duration. Notably, most operate without a specific legislative framework.

²⁶³ ACT Government, *ACT Government response*, n 222, 92.

²⁶⁴ DJAS 2024-28, n 14, 20.

²⁶⁵ Most jurisdictions also operate police-based diversionary programs, which are not discussed here.

²⁶⁶ DRC Volume 8, n 233, 290, citing NSW Law Reform Commission (2012). *People with cognitive and mental health impairments in the criminal justice system: Diversion*. See also Australian Institute of Criminology (2011). *Court-based mental health diversion programs*; Edgley M (2014). *Why do mental health courts work? A confluence of treatment, support and adroit judicial supervision*. *International Journal of Law and Psychiatry*, 37: 572-580. Bartels L (2024). *Sentencing review 2023*. *Criminal Law Journal*, 47: 406-432.

²⁶⁷ Law Council of Australia, *PwD*, n 2, 32.

Table 6. Current Australian court-based diversionary programs for people with disabilities

Program name	Guilty plea required	Eligibility criteria
Assessment and Referral Court (Vic)	Yes	Mental illness; intellectual disability; ABI; ASD; neurological impairment, including but not limited to dementia.
Court Integrated Services Program (Vic)	No	Magistrates' Court: PwD; mental health needs; cognitive impairment, including ASD (as well as AOD; crisis and supported accommodation). County Court: Mental health issues; disability, ABI or cognitive impairment (as well as AOD issues; family violence; inadequate social, family and economic support contributing to offending; homelessness; other relevant clinical support need).
Court Link (Qld)	No	Physical/mental health issues; impaired decision-making capacity (as well as AOD; homelessness).
Diversion List (Tas)	No	Mental illness, intellectual disability, impaired intellectual functioning; ABI; ASD.
Intellectual Disability Diversion Program Court (WA)	Yes	Intellectual disability; cognitive disability; ASD.
Links Court (Youth) (WA)	No	Mental health and psychosocial needs
Start Court (Adults) (WA)	Yes	Mental illness, including psychotic disorders (eg, schizophrenia), affective disorders (eg, major depressive disorder) and anxiety disorders (eg, social phobia).
Treatment Intervention Court (SA)	Yes	Mental health or impairment (as well as AOD issues; problem gambling). Sometimes available in Youth and Indigenous courts.

Richardson has characterised the Australian evidence in this context as 'limited but slowly growing'.²⁶⁸ She recommended that future directions for these courts also include understanding that the relationship between mental illness and crime is contextualised and include peer support programs (see Chapter 4 on peer-based initiatives).²⁶⁹ It is also worth noting the following recommendation from the Law Council of Australia:

²⁶⁸ Richardson L (2019). Mental health courts: Providing access to justice for people with mental illness and cognitive impairments. *Alternative Law Journal*, 44: 100-107, 104. See also Law Council of Australia, Courts and tribunals, n 55, 91-96.

²⁶⁹ Richardson, *ibid*.

Given that problem-solving courts and therapeutic jurisprudence-based judging are only effective if underpinned by alternative, non-custodial sentencing options and diversionary programs, state and territory governments should:

- ensure there is legislative support for such sentencing options; and
- ... invest in accessible, disability-responsive and culturally appropriate support services and diversionary programs to underpin non-custodial supervisory sentences.²⁷⁰

New South Wales

The rest of the programs discussed in this report are currently operational. However, the CIDP has also been included, as the DRC ‘consider[s] the CIDP to be a best practice model for diversion programs...[and] recommend[s] that all states and territories revise or develop diversion programs with reference to the CIDP’.²⁷¹ This program operated in two local courts in NSW in 2017-2020. An evaluation²⁷² found that the program:

- was effective in diverting people, with 87% of matter being diverted from the criminal justice system
- proactively identified people with cognitive impairment eligible for diversion
- secured and maintained effective connections to the right services
- improved the health and welfare of people with a cognitive impairment and complex need
- reduced the likelihood of further interaction with the criminal justice system.

The evaluation identified a number of strengths, barriers and opportunities, as well as making recommendations to improve the program’s operation. The key elements of the program were:

screening and clinical assessment, to provide evidence of a participant’s cognitive impairment to the court

support planning: case management support to access the NDIS and/or other services to meet the participant’s needs

monitoring and court reporting: progress reports help inform magistrates about a participant’s compliance with their support plan (where monitoring by a community corrections officer has been included in the diversionary order, at the discretion of the magistrate).

According to the DRC, the program

²⁷⁰ Law Council of Australia, Courts and tribunals, n 55, Recommendation 4.14.

²⁷¹ DRC Volume 8, n 233, 304. This point was included in the text of the report, but did not form part of the actual recommendation on this issue.

²⁷² Westwood Spice (2019). Cognitive Impairment Diversion Program (CIDP): Final process evaluation report.

delivered collaborative, accessible and high-quality supports due to its intensive case management and attention to wrap-around services. It connected people with cognitive disability to the NDIS – many for the first time – and helped them to obtain an NDIS plan...[and] demonstrated that diversion programs should take into account the participant's various financial, emotional, social and psychological needs.²⁷³

In addition, one of its strengths was

the duration of support by case managers. Participants received up to eight months of assistance...Together with the CIDP's ability to link participants to wrap-around services such as housing support, this meant the CIDP delivered a 'life-changing' program for people with cognitive disability.²⁷⁴

Queensland

Court Link²⁷⁵ is a 12-week bail support program, supporting participants with a range of issues, including mental and physical health issues. A recent outcome and impact evaluation²⁷⁶ found it improved participants' lives and wellbeing and reduced the seriousness and frequency of reoffending, as well as delaying its onset. Notably, 97% of participants reported that their mental health was better than before the program (78% said it was 'a lot better' and 19% said it was 'a little better'). In addition, 72% and 23% respectively said their physical health was 'a lot' or 'a little' better. The report also found that:

the program contributes to cost-savings to the criminal justice system. The program is highly valued by the range of stakeholders who engage with it, including participants, magistrates, legal representatives, police, and so on.²⁷⁷

Anecdotally, participants in this program have been able to use the brokerage funds to obtain ADHD diagnoses and treatment.²⁷⁸

South Australia

The Treatment Intervention Program²⁷⁹ is a post-conviction program in several South Australian magistrates' courts that runs for 6-12 months. It seeks to respond to the needs of people with mental health or impairment issues, as well as AOD issues and problem gambling. In 2022-23, 71 people were accepted into the program.²⁸⁰ In addition, two Aboriginal sentencing courts

operate as treatment courts in a similar manner to the Treatment Intervention Court by providing supervised access to programs for Aboriginal defendants to address substance

²⁷³ DRC, Volume 8, n 233, 304.

²⁷⁴ Ibid, 302 (references omitted).

²⁷⁵ Queensland Courts (2024). *Court Link* <https://DRC.courts.qld.gov.au/services/court-programs/court-link>.

²⁷⁶ Deloitte Access Economics (2023). Final outcomes and impact evaluation report: Evaluation of Court Link – Department of Justice and Attorney-General.

²⁷⁷ Ibid, 13.

²⁷⁸ For discussion of the relevance of ADHD to offending and evidence-based guidelines supporting diagnosis and treatment, see Bartels L (2022). Paying attention to Attention Deficit Hyperactivity Disorder: An analysis of cases in an Australian Supreme Court. *Criminal Law Journal*, 46: 245-268.

²⁷⁹ Courts Administration Authority of South Australia (2024). *Treatment Intervention Court* <https://www.courts.sa.gov.au/going-to-court/court-locations/adelaide-magistrates-court/court-intervention-programs/treatment-intervention-court/>.

²⁸⁰ Government of South Australia (2023). Courts Administration Authority annual report 2022-23.

dependence and mental impairment when these issues are identified as criminogenic factors related to offending.²⁸¹

In addition, this program operates on an as needs basis in the Adelaide Youth Court, one of relatively few programs in the youth justice space. Where the young person is assessed as eligible, they

will be required to plead guilty to the most serious of their offences before being accepted to participate. However, if the young person has a diagnosed mental impairment they will only be required to agree to the objective elements of the charges.²⁸²

This program does not appear to have been subject to any evaluation, but the expansion into the youth justice and Indigenous contexts demonstrates an understanding of the importance of addressing mental health issues among these cohorts.

Tasmania

The Mental Health Diversion List²⁸³ has been operating in the Hobart Magistrates Court since 2007. A small-scale evaluation²⁸⁴ indicated that the program had:

- provided a more therapeutic approach to the criminal justice system for defendants with mental illness
- reduced participants' re-offending rates
- improved coordination between the criminal justice agencies and health service providers
- saved court resources and time.

The procedural manual for this program clarifies that eligibility applies to a defendant who 'has (or is likely to have)'²⁸⁵ the conditions listed in Table 5. This appropriately acknowledges that a person may not have been formally diagnosed with a specific condition, as this process can be time-consuming and expensive.

Victoria

The Court Integrated Services Program²⁸⁶ (CISP) is a 4-month bail support program in the Magistrates' Court, with a broad range of eligibility criteria (see Table 5). In 2022-23, 5,135 people were referred to CISP for support, 2,764 new participants were accepted into the program and

²⁸¹ Ibid, 20.

²⁸² Courts Administration Authority of South Australia (2024). *Youth Treatment Intervention Court* <https://www.courts.sa.gov.au/2021/10/08/youth-treatment-intervention-court/>.

²⁸³ Magistrates Court of Tasmania (2024). *The Diversion List* https://www.magistratescourt.tas.gov.au/about_us/criminal_division/diversion_list.

²⁸⁴ Newitt E and Victor Stojcevski V (2009). *Mental Health Diversion List: Evaluation report*. Magistrates Court Tasmania.

²⁸⁵ Magistrates Court Tasmania (2014). *Magistrates Court Diversion List: Procedural manual*. Version 1.4, 6.

²⁸⁶ *Magistrates' Court Act 1989* (Vic), ss 4S-4Y; Magistrates' Court of Victoria (2024). *Assessment and Referral Court (ARC)* <https://www.mcv.vic.gov.au/find-support/assessment-and-referral-court-arc>.

1,327 people completed the program.²⁸⁷ An economic evaluation²⁸⁸ found that every dollar spent on the program yielded between \$1.70 and \$5.90. Another evaluation²⁸⁹ found participation in the program resulted in ‘statistically significant improvements in self-reported physical and mental health for clients’.²⁹⁰ It also resulted in a reduction in offending and, where participants did offend, reduced offending frequency. In his introduction to the evaluation, then Attorney-General, Rob Hulls, noted:

Sentences handed down to participants are much more informed and, therefore able to be more effective, while the number of referrals to services and treatment reflect the very acute need of many participants. In fact, for some, their involvement in CISP has been the first time that conditions, such as acquired brain injury, have been identified and therefore received support.²⁹¹

Data provided to the DRC indicated that 44% of all CISP participants were registered as a current disability services client, around two-thirds had a mental health diagnosis and one in 10 had an ABI or intellectual disability diagnosis.²⁹²

Since 2021, there has been a pilot CISP program in the County Court in Melbourne, with adaptations for the indictable court context. This includes different eligibility criteria (see Table 5) and incorporating advanced case managers and continuity of care for participants transferring from the magistrates’ court. For defendants with such significant support needs that they may be unable to comply with program requirements, a recommendation is made to the Court about the most appropriate treatment and support pathway.²⁹³

Victoria also has the Assessment and Referral Court (ARC), which runs for up to 12 months. One of the unusual features of this program is that it is underpinned by a comprehensive legislative framework.²⁹⁴ To participate in ARC, the accused must plead guilty and be diagnosed with at least one of the conditions set out in Table 5. This diagnosis must also cause a ‘substantially reduced capacity in the person’s self-care, self-management, social interaction and/or communication’.²⁹⁵ As noted above, the model adopted in Tasmania is more flexible, especially where there may be delays or challenges in obtaining access to a diagnosis. A core feature of the ARC model is that participants engage with the same magistrate, case manager and police throughout the program.²⁹⁶ The treatment team also includes the participant’s lawyer and treating professionals.

²⁸⁷ Magistrates’ Court of Victoria (2023). *Annual report 2022-23*.

²⁸⁸ PriceWaterhouseCoopers (2009). *Economic evaluation of the Court Integrated Services Program (CISP): Final report on economic impacts of CISP*.

²⁸⁹ Victorian Department of Justice (2010). *Court Integrated Services Program – Tackling the causes of crime: Executive summary evaluation report*.

²⁹⁰ *Ibid*, 2.

²⁹¹ *Ibid*, 3.

²⁹² More recent data suggested that 44% of all CISP participants were registered as a current disability services client, around two-thirds had a mental health diagnosis and one in 10 had an ABI or intellectual disability diagnosis: Magistrates’ Court of Victoria (2020). *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Response to criminal justice system issues paper*, 10-11.

²⁹³ County Court Victoria (2024). *Court Integrated Services Program* <https://www.countycourt.vic.gov.au/going-court/criminal-division/court-integrated-services-program>.

²⁹⁴ Magistrates’ Court Act 1989 (Vic), ss 4S-4Y; Magistrates’ Court of Victoria, Assessment and Referral Court (ARC), n 288.

²⁹⁵ Magistrates’ Court Act 1989 (Vic), s 4T(3).

²⁹⁶ Royal Commission into Victoria’s Mental Health System (Victorian Royal Commission) (2021). *Final report: Volume 3*, 369.

Research by Chesser and Smith²⁹⁷ found that successfully completing ARC significantly reduced recidivism rates. They also found that the program was effective in reducing the seriousness of reoffending and increasing the time to any further offending. The Royal Commission into Victoria's Health System (Victorian Royal Commission) concluded that the program 'is achieving positive outcomes for participants and is well regarded by police, participants and the legal system...[and] has received support from across the justice sector and from participants'.²⁹⁸ It accordingly recommended that the model be expanded to all 12 headquarter magistrates' courts in Victoria,²⁹⁹ suggesting that:

This reform will contribute to addressing the over-representation of people living with mental illness in Victorian prisons and increase access to support services. It is anticipated that these benefits will contribute to improved mental health outcomes for people living with mental illness who are in contact with the criminal justice system...[and] improved cohesion between the mental health, justice and broader support service systems.³⁰⁰

Western Australia

As set out in Table 5, Western Australia is the only jurisdiction to operate two models, with clear criteria that exclude participants from one or other programs. The Start Court program lasts for up to six months and deals with mental health issues. However, a primary diagnosis of antisocial, histrionic or narcissistic personality disorder, intellectual disability or impaired functioning arising predominantly from AOD use will not qualify.³⁰¹ In addition, the Intellectual Disability Diversion Program Court³⁰² lasts for 4-6 months. Defendants with a primary diagnosis of mental illness are not eligible for this program, even the guidelines recognise that people with these conditions experience higher rates of mental health issues and a goal of the program is to 'identify undiagnosed or untreated disability or impairment as well as physical and/or mental health issues'.³⁰³ There were 160 referrals to this program in 2022-23.³⁰⁴

Given that many people who may come before courts of this nature will have co-morbidities (ie, mental health issues and intellectual impairment) and the services that support both cohorts will likely also overlap, this seems to be an inefficient use of resources. It would therefore be better to develop a model where one court can address all relevant mental health and intellectual impairment issues.

The programs dealing with mental health issues (Start for adults and Links for young people) have been evaluated. A summary of these evaluations³⁰⁵ showed that both programs cost significantly more than mainstream community corrections supervision, but less than adult or youth

²⁹⁷ Chesser B and Smith K (2016). The Assessment and Referral court List program in the Magistrates Court of Victoria: An Australian study of recidivism. *International Journal of Law, Crime and Justice*, 45: 141-151.

²⁹⁸ Victorian Royal Commission, n 290, 372.

²⁹⁹ Victorian Royal Commission (2021). *Final report – Summary and recommendations*, Recommendation 37.1.

³⁰⁰ Victorian Royal Commission, n 290, 374. ARC currently operates in seven locations: Magistrates' Court of Victoria, *Assessment and Referral Court (ARC)*, n 288.

³⁰¹ Government of Western Australia (2020). *Start Court guidelines*; Magistrates Court of Western Australia (2024). *Start Court* https://www.magistratescourt.wa.gov.au/s/start_court.aspx.

³⁰² Magistrates Court of Western Australia (2024). *Intellectual Disability Diversion Program court* https://www.magistratescourt.wa.gov.au/i/intellectual_disability_diversion_program_court.aspx.

³⁰³ Government of Western Australia (2020). *Intellectual Disability Diversion Program (IDDP) court guidelines*, 5.

³⁰⁴ Department of Justice Western Australia (2023). *Annual report 2022-23*.

³⁰⁵ Western Australian Mental Health Commission (nd). *Mental Health Court Diversion and Support Program summary of 2014 evaluation* <https://www.mhc.wa.gov.au/media/1556/summary-of-2014-court-diversion-evaluation.pdf>.

incarceration respectively. The evaluation also found that Start was established effectively and 442 people were referred to the program between March 2013 and July 2014. This number 'indicates that Magistrates and lawyers have confidence in the court and confirms the need for it'.³⁰⁶ Over the evaluation period, 104 people received intensive judicial supervision and support and '[p]articipants and their families reported valued improvements in family relationships, access to treatment and overall wellbeing, as well as in their understanding of their own, or their family member's, mental illness'.³⁰⁷

Information in the evaluation summary on Links indicated that the program appeared to be unique in Australia. There were 217 young people referred to it during the evaluation period and it

fills a gap by providing an essential clinical mental health capacity at Perth Children's Court...The Links team is skilled at building the trust of young people who have previously been disengaged from services and connecting them to community based treatment, school, accommodation and other services.³⁰⁸

More recent data on Links³⁰⁹ indicated that:

the program provided advice, assessment or assistance to 3,595 young people over 10 years
86% of cases referred to Links received a formal mental health assessment
57% of young people referred to Links had no history with public mental health services and
92% were not currently engaged with a mental health service
88% of young people case managed by Links experienced clinical improvement, 82%
reduced their risk of harm to self or others, 81% experienced improved mental health and
73% reduced their substance use.

Bail

A person's disability may impact significantly on bail outcomes. For example, the lack of disability-appropriate accommodation can have negative impacts on bail decisions.³¹⁰ In addition,

A lack of effective communication coupled with needs not being met results in people with disabilities being vulnerable to the negative effects of the criminal justice system. This includes having bail refused, breaching bail due to a lack of understanding of the bail conditions, repeated contact with the criminal justice system, and a heightened likelihood of imprisonment.³¹¹

³⁰⁶ Ibid, 1.

³⁰⁷ Ibid, 2.

³⁰⁸ Ibid.

³⁰⁹ The evaluation is not publicly available, but these data are described in Weiss M and Andrew McDonald A (nd). *LINKS: Managing mental health in the Perth Children's Court, A collaborative Approach* <https://anzsebpconference.com.au/2724>; Government of Western Australia (2023, June 30). *Milestone for court mental health programs that give people a fresh start*. Media release; Department of Justice Western Australia, *Annual report*, n 298. See also Children's Court of Western Australia (2024). *Links - Youth mental health support program* <https://www.childrenscourt.wa.gov.au/l/links.aspx>.

³¹⁰ Law Council of Australia, PWD, n 2, 52.

³¹¹ Hughes D et al (2022). Police and vulnerability in bail decisions. *International Journal for Crime, Justice and Social Democracy*, 11: 122-138, 124-125.

Action item 4.1 under the DJAS 2024-28³¹² is 'Accessible bail conditions'. This calls for scoping the accessibility of bail conditions, with the aim to improve understanding and compliance. The section in this report on communication (3.1) will assist in developing more accessible bail conditions. The ACTCT should also work with disability advocacy organisations and the Community of Practice, to ensure appropriate bail conditions are imposed (eg, not imposing conditions that will discriminate against people with mobility issues).

The recent Legislative Assembly inquiry into bail administration³¹³ made several relevant recommendations, including that the ACT Government:

review procedures at intake to ensure that courts have sufficient information on the person's full criminal history, physical health, issues with alcohol and other drugs, mental health and disability when making bail decisions (Recommendation 7)

implement a 'wraparound' bail support program for all people on bail in the ACT (Recommendation 9)

introduce an early intervention program for people who are at risk of not complying with bail orders with a focus on young people (Recommendation 10)

qualitatively research the reasons why individuals fail to appear in court, with a view to addressing systemic reasons (Recommendation 16).

Two of the diversionary programs described above (CISP in Victoria and Court Link in Queensland) operate as 'wraparound' bail support programs available on a voluntary basis to all people on bail. Many of the features of effective MHCs are also consistent with the Legislative Assembly's recommendation to introduce a single case manager in the courts (see 3.3).

The Federal Court of Australia and New Zealand Government checklist on minimising pre-trial detention also recommends that judicial officers note whether detainees may have a mental or disability and, if so, ask whether the centre is aware of this and necessary facilities/treatment/equipment are being provided to support them.³¹⁴ This highlights the positive obligation on judicial officers, in this context.

Sentencing

A person's disability may be relevant to sentencing in a range of ways, including moral culpability; general and specific deterrence; protection of the community; appropriate treatment options; and imposing conditions to enhance prospects of rehabilitation.³¹⁵ In addition, judicial officers should consider the following, when sentencing a PwD:

³¹² DJAS 2024-28, n 14, 13.

³¹³ Legislative Assembly for the ACT, *Inquiry into bail*, n 135, Recommendation 2.

³¹⁴ Graydon C (2020). *Checklist 1 - Minimising pre-trial detention*. Federal Court of Australia and New Zealand Government.

³¹⁵ See eg, *Crimes (Sentencing) Act 2005* (ACT), ss 33(1)(m), (t); *R v Verdins & Ors* [2007] VSCA 102. The Bugmy Bar Book is designed to help in preparing relevant material for sentencing and includes several material on relevant topics: see eg, *Acquired brain injury* <https://bugmybarbook.org.au/chapters/acquired-brain-injury/>; *Fetal alcohol spectrum disorder (FASD)* <https://bugmybarbook.org.au/chapters/fasd/>; *Hearing impairment* <https://bugmybarbook.org.au/chapters/hearing-impairment/>. Other material may be of indirect relevance, eg, *Early exposure to alcohol and other drug abuse* <https://bugmybarbook.org.au/chapters/exposure-aod/>.

the need for the sentencing decision(s) and/or written decision to be fair and non-discriminatory and preferably be seen as such by all those involved (eg, any person with a disability and carers)

ensuring a person with communication needs is told about the decision in a way they can understand

that a person's disability may impact on whether to allow a victim impact statement to be read out in court

many people with disabilities struggle financially, because of the barriers against employment and/or financial costs associated with their disability, so fines will often mean considerably more than the same level of fine for others. The financial costs should also be taken into account in relation to compensation.³¹⁶

Witnesses

The UK has a structured process for identifying witnesses with disabilities, which aims to ensure that witnesses receive the necessary support and accommodations. A specific form is used to record a witness' statement, including the following section:

Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? (*youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case*) ...

Does the witness have any particular needs? If 'Yes', what are they? (If 'Yes' what are they? (*Disability, healthcare, childcare, transport, disability, language difficulties, visually impaired, restricted mobility or other concerns?*)).³¹⁷

The relevant form includes a detailed evaluation of the witness' needs. Officers completing this form are trained to assess and note any factors that may require special measures or additional support.³¹⁸

Witness Care Units also play a crucial role in the early identification of witnesses with disabilities. They are responsible for maintaining contact with witnesses and gathering information about any support needs as early as possible. They liaise with police officers, legal representatives, and other relevant agencies, to ensure that this information is communicated effectively. Once a witness is identified as having a disability, staff in these units work to coordinate the necessary support services. This can include arranging for special measures, such as pre-trial visits, pre-recorded evidence, alternative access to the court buildings, video-links, screens to shield the witness, or the provision of intermediaries to assist in communication during the trial. They also collaborate with other agencies, including social services and health care providers, to gather comprehensive information about the witness's needs and ensure that these are met throughout the court process.

³¹⁶ NSW BB, n 8, 5155-5156.

³¹⁷ See eg, Cheshire Police (nd). *Form MG11: Witness statement*.

³¹⁸ McLeod et al, n 193.

In addition, the Citizens Advice Witness Service can arrange pre-trial visits for PwD and provide practical and emotional support on the day of the hearing, including accompanying them while they give evidence either in court or via video link. They are informed in advance about any vulnerable or intimidated witnesses, including those with disability, who are due to attend court and will greet the witness upon arrival and guide them to the witness waiting room. They also liaise with lawyers, the police and court staff, to ensure the correct support is in place.³¹⁹

Complainants/victims

Research by the NSW Bureau of Crime Statistics and Research³²⁰ has found that rates of victimisation among people who have contact with disability services were 1.5-1.7 times higher than in the general population. Victimisation rates were particularly elevated for DFV-related and violent offences and for Aboriginal and Torres Strait Islander women, reinforcing the need for an intersectional approach.

Specific issues may arise for the courts, where a(n alleged) victim has a disability. For example, the Checklist notes:

If the person with a disability is a victim, then their disability may also impact on application of relevant legal tests. For example, you may need an expert opinion to help you decide whether a victim had capacity to consent and wider evidence regarding whether or not they did/did not consent to sexual contact in relation to allegations of sexual offences.

It is important not to make any assumptions which result in excluding, dismissing or reducing the weight given to the evidence provided by people with disabilities unless there is clear medical, expert or other credible evidence for doing so.³²¹

Mark's story

Mark, who has cerebral palsy, was bullied by other boys at school. After a particularly severe incident, the police were called and the case went to court. Mark was granted special measures and was scheduled to give evidence via video-link from within the court building. However, before the hearing, the defendants attempted to intimidate Mark in a public corridor, leaving him extremely distressed and fearful of testifying. Mark told the prosecutor he was too frightened to be a witness. In response, the prosecutor asked that Mark be allowed to give pre-recorded evidence, for use during the trial. The judge granted this request, ensuring that Mark would not have to face the defendants, either in or out of court. This allowed Mark to provide his best evidence and the case proceeded as planned.

³¹⁹ See McLeod et al, n 193; Crown Prosecution Service (nd). *Support for disabled victims and witnesses* <https://www.cps.gov.uk/sites/default/files/documents/publications/guide-to-support-for-disabled-victims-and-witnesses-of-crime.pdf>.

³²⁰ NSW Bureau of Crime Statistics and Research (2024). *Victimisation of people with disability* <https://bocsar.nsw.gov.au/topic-areas/disability/victimisation-and-people-with-disability.html>.

³²¹ Graydon, Checklist, n 59, 8.

A recent study on justice system experiences of complainants in sexual offences³²² found that matters involving complainants with communication barriers, including PwD and especially those experiencing intellectual and psychosocial disability, rarely proceeded to trial. Incidents cited in the report included one complainant being told her evidence was not credible, because of her disability, while another had no contact with the prosecutor until the day of the trial. It was also noted that people with intellectual disabilities and cognitive impairments are disproportionately likely to have had interactions with the police and may therefore be reluctant to report their experiences. Issues with language barriers and cross-examination were also raised. George et al's research on improving responses to sexual offences³²³ has led to best practice proposals, including:

- specialist, trauma-informed training
- provision of information and communication
- addressing victim/survivor needs and safety
- reducing delays
- measures pre-trial, during the trial and post-trial
- specific considerations in relation to sexual assault complainants with disabilities (for example, concerns about being institutionalised, as a result of reporting).³²⁴

Jurors

In 2018, the ACT changed its laws to be more inclusive of jurors with disabilities³²⁵ and, in 2023, became the first jurisdiction in Australia to allow a person the use of an Auslan interpreter.³²⁶ The Victorian Law Reform Commission has also recommended reforms to ensure more inclusive jury participation.³²⁷

Where a *juror* has a disability,³²⁸ judges will need to consider issues such as:

- Is the jury room accessible?
- Are written aids (transcript, written directions, jury guide, diagrams, charts and other aids) in a form suitable for all jury members to read? If not, adjustments may need to be made to provide them in an accessible format
- Does a juror require more frequent breaks, due to the effects of a disability?

³²² KPMG (2023). 'This is my story. It's your case, but it's my story': Exploring justice system experiences of complainants in sexual offence matters. NSW Department of Communities and Justice.

³²³ George A-J et al (2023). *Specialist approaches to managing sexual assault proceedings: An integrative review*. Australasian Institute of Judicial Administration; Lowik V et al (2024). The 'trauma-informed' court: Specialist approaches to managing sexual offence proceedings – Part 1' (2024). *Journal of Judicial Administration*, 33: 29-41; George A-J et al (2024). The trauma-informed court: Specialist approaches to managing sexual offence proceedings – Part 2. *Journal of Judicial Administration*, 33: 45-85.

³²⁴ Lowik et al, *ibid*.

³²⁵ Burgess K (2018, April 24). People with disabilities can now be jurors in Canberra. *Canberra Times* <https://www.canberratimes.com.au/story/6021685/people-with-disabilities-can-now-be-jurors-in-canberra/>.

³²⁶ ACTCT (nd). *ACT Supreme Court delivers Australia's first inclusive jury* https://www.courts.act.gov.au/_data/assets/pdf_file/0004/2510446/b5cb4c629df33c8c5152a98c8c3bac42557c8537.pdf.

³²⁷ Victorian Law Reform Commission (2023). Inclusive juries – Access for people who are deaf, hard of hearing, blind or have low vision.

³²⁸ Vic BB, n 7, 65-67; NSW BB, n 8, 5154.

How will a juror's disability affect their communication with other jurors, participate in group discussion and decision-making processes and refer to the evidence?

Additional considerations may be required in long and/or complex trials.

Where jurors must consider evidence from a *witness with a disability*, the judge may need to help the jury review this evidence fairly, including:

reminding them of any evidence led about the effects of the witness' disability and its impact (or non-impact) on reliability and credibility. This may include a caution to avoid making any false assumptions about the evidence of people with disabilities where appropriate, reminding the jury not to place undue weight on a witness' behaviours, which are a consequence of their disability and not relevant to their reliability or credibility giving any other appropriate jury directions, relying where relevant on medical evidence.

Chris' story

Chris lives with a painful physical disability. This can make it hard for him to sit still for a long time and he often needs medication to manage his pain. He also fatigues easily, especially if he has to walk long distances. He has been called up for jury duty and is willing to perform his civic duty, but worried about how he will manage this. After discussion with the Sheriff's officer, he is allocated to a trial that is only expected to run for three days. It is listed in a courtroom close to the lifts and extra breaks are scheduled, so he can do his physiotherapy exercises and take his medication. He is concerned about being a burden, but another juror tells him she is relieved to have the extra breaks, because she gets anxious and also needs regular breaks. Chris finds his jury experience very meaningful and asks to remain on the jury roll, so he can participate in another trial in the future.

5 Civil jurisdiction

Ensuring the rights of PwD are upheld in civil law matters is critical. To support this, the *Human rights toolkit*³²⁹ recommends collecting the following data on all civil case forms:

Do you have a disability, impairment or long-term health condition that may affect your participation in court? Yes/No

Do you have difficulty:

seeing?

hearing?

walking or moving around?

understanding or concentrating?

being understood by others?

Would you like the court to contact you beforehand to discuss 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

This model is based on the Washington Group questions (see 5.1.1) and is aligned with Recommendation 2 (see Chapter 3).

ACT courts

As set out in the introduction, the ACT Supreme Court deals mostly with civil matters, while the Magistrates Court deals mostly with criminal matters (and the majority of the ACT Courts' matters overall). The ACT courts' civil jurisdiction includes industrial and coronial matters, as well as protection orders and child protection matters. The DFV and child protection jurisdictions are considered in the following chapter, as they cross over between the civil and criminal jurisdictions.

³²⁹ Graydon, Toolkit, n 7. See also Appendix A. For further guidance in the civil context, see Pew Trusts, n 62.

Beata's story

Beata is a brilliant personal injury lawyer, who thrives in last-minute high-adrenaline situations, but her organisational skills leave something to be desired. Early in her career, an older lawyer told Beata never to mention that she had ADHD and she has followed this advice. One day in court, her bag falls off the desk and her ADHD medication falls out. She is mortified, but the lawyer on the other side of the bar table picks it up for her, winks and says 'you'll be needing that. My son and I couldn't get through the day without it!' This makes her realise that perhaps she doesn't need to keep her situation hidden. She speaks to her boss and they develop some strategies to help her manage her work better. This includes ensuring she attends court mostly in the morning, when her medication is most effective. She also explains to the judicial officers before whom she regularly appears that she sometimes juggles her feet, fiddles with her pen, and otherwise behaves in ways that might look like she's not taking proceedings seriously. One judge grumbles about this, but most are understanding and thank her for telling them. She finds that being more open about her issues also helps her connect with her clients better.

Coroner's court

Issues relating to disability are likely to arise in this jurisdiction, as the person who is the subject of the inquest may have had a disability. This is particularly likely to be the case in relation to deaths in care or custody, given the over-representation of PwD in such settings. In addition, the loved ones of the person who died might be living with disability, including as a result of the loss of their loved one. Delay, poor access to legal representation, and unenforceable recommendations have been identified as key sources of distress for families.³³⁰ Furthermore, given the nature of the proceedings, the coronial jurisdiction is inherently likely to cause distress, including to staff.³³¹

Canadian research has developed a framework to evaluate police and coronial investigations, including items such as 'Coroner's report uses accessible language', 'Families provided support resources and liaison' and Chief Coroner may...alter cause of death determinations as necessary'.³³² There has been significant pressure in recent years to adopt a more trauma-informed and restorative approach to coronial matters in the ACT.³³³ Research indicates that more empathetic engagement can also benefit coroners.³³⁴ This aligns with calls for greater application of

³³⁰ Carpenter B et al (2022). Managing families' expectations in the coronial jurisdiction: Barriers to enacting an ethic of care. *Journal of Law and Medicine*, 29: 1040-1051

³³¹ Ibid.

³³² Palys T et al (2024). A method for evaluating the adequacy of police and coroner investigations into suspicious unnatural deaths. *Decolonization of Criminology and Justice*, 6: 25-50, 32.

³³³ See eg, ACT Law Reform Advisory Council (2018). *Canberra - Becoming a restorative city: Final report*; Brewer P and Savyasachi B (2024, May 30). 'I'm sorry': ACT's first outdoor Coroners Court opens with apology. *Canberra Times* <https://www.canberratimes.com.au/story/8645033/coronial-inquest-opens-near-murrumbidgee-river-for-nathan-booth/>; Legge A (2024). *Coronial restorative reform process: Overview, outcomes, priorities for next steps and a recommendation to support future restorative reform processes*.

³³⁴ Tait G et al (2016). Decision-making in a death investigation: emotion, families and the coroner. *Journal of Law and Medicine*, 23: 571-581.

therapeutic jurisprudence principles in this context.³³⁵ Recent research has suggested the need for guidance on best practice in carrying out death investigations, including in relation to:

- respecting, caring for and communicating with family members and others directly affected by death investigations
- the conduct of inquests, with particular emphasis on procedural flexibility to maximise their restorative potential
- working collaboratively as a multidisciplinary team to conduct and manage death investigations efficiently and effectively.³³⁶

Specific consideration also needs to be given to ensuring a culturally appropriate approach, when the inquest relates to an Indigenous person.³³⁷ This is likely to be intensified, where the death occurred in custody.³³⁸

ACT Civil and Administrative Tribunal

ACAT only deals with civil and administrative (ie, not criminal) matters. ACAT is guided by the Council of Australasian Tribunals (COAT), *Australia and New Zealand tribunal excellence framework* (COAT Framework),³³⁹ which provides that:

A fair hearing involves the opportunity for each party to put their case – the right to be heard – and have the case determined impartially and according to law. It involves identifying the difficulties experienced by any party, whether due to lack of representation, unfamiliarity with the law, language, culture, disability or any other matter, and finding ways to assist parties through the tribunal process.

An important element of this obligation is the duty to provide assistance to self-represented parties (sometimes called litigants in person). Members and staff should identify the difficulties experienced by any party whether due to the law, language, culture, disability or any other matter, and find ways to assist them through the tribunal process.³⁴⁰

The COAT Framework also make it clear that ‘tribunals exist for users, and not the other way round...[and] do not fulfil their function unless they are accessible by the people who want to use

³³⁵ Freckelton I (2016). Minimising the counter-therapeutic effects of coronial investigations: In search of balance. *Queensland University of Technology Law Review*, 16: 4-29; McCabe L and George A (2021). Improving Indigenous family engagement with the coronial system in New South Wales. *Alternative Law Journal*, 46: 212-218.

³³⁶ Dillon H (2024). Recognition, respect and the practice of coronership: learning from a case study of the New South Wales coronial system. Unpublished PhD thesis, University of NSW, 361. See also Queensland Government (2023). Model inquest principles.

³³⁷ See eg, Brewer and Savyasachi, n 327; McCabe and George, n 329.

³³⁸ Whittaker A (2021). Indigenous deaths in custody: inquests can be sites of justice or administrative violence. *The Conversation* <https://theconversation.com/indigenous-deaths-in-custody-inquests-can-be-sites-of-justice-or-administrative-violence-158126>; Walsh T et al (2022). Coroners' perspectives on deaths in custody in Australia. *International Journal of Law, Crime and Justice*, 71, 100558.

³³⁹ Council of Australasian Tribunals (COAT) (2017). *Australia and New Zealand tribunal excellence framework*. 2nd ed. See generally COAT (2024). *Home* <https://coat.asn.au>.

³⁴⁰ COAT (2017), *ibid*, 16.

them, and unless the users receive the help they need to prepare and present their cases'.³⁴¹ The COAT Framework is grouped into eight themes, including accessibility, which:

goes beyond the ease of obtaining physical access to the tribunal building but incorporates the ease of entry to the tribunal's processes (including for example reasonable filing fees and access to an interpreter), and a party's ability to obtain accurate and complete information about the tribunal process.³⁴²

The COAT Framework includes 95 questions and a scoring guide, so tribunals can assess their performance. ACAT has taken a range of steps, in line with the COAT Framework, to promote accessibility. This includes review of its website, videos to explain processes, an easy English guide about guardianship, simplified forms, improved use of technology and physical accessibility at the ACAT premises, warm referrals to support services, and holding guardianship hearings at hospitals.³⁴³

The ACAT website³⁴⁴ provides comprehensive information about accessibility services and support for PwD. There is also a detailed video that explains what to expect on arrival at the ACAT building. The website outlines various communication supports, including relay services for deaf or hearing-impaired clients and free interpreter services across multiple languages. For those requiring visual assistance, ACAT offers electronic displays, online listings, disability parking, a canine support program and personal escort services to help navigate the premises. The website includes tools such as refreshable braille displays, screen readers, and magnifiers to ensure accessibility for all users.

Most people appearing before ACAT are self-represented.³⁴⁵ The *Practice guide for tribunals* provides guidance on self-represented parties in tribunals. The comments of Graeme Neate, who was ACAT President until 1 January 2024, should be noted. He suggested a number of measures to support self-represented parties and added that 'people with disabilities that affect their capacity to engage readily with ACAT...[need] additional assistance to participate fully in a hearing, and ACAT needs to make appropriate arrangements for them on a case-by-case basis'.³⁴⁶ In some circumstances, a person's disability will be to the extent that they will require a litigation guardian.³⁴⁷ More general guidance in relation to PwD who are self-represented is set out in the Vic BB.

ACAT's scope is wide-ranging and includes:

- administrative review
- civil disputes (up to \$25,000)
- discrimination
- energy and water
- guardianship

³⁴¹ Ibid, citing Leggatt A (2001). *Tribunals for users – One system, one service: Report of the review of tribunals*, [6].

³⁴² COAT, *ibid*.

³⁴³ ACAT, *Annual review*, n 12.

³⁴⁴ ACAT (2025). *Home* <https://www.acat.act.gov.au/general/accessibility>.

³⁴⁵ ACAT, *Annual review*, n 12.

³⁴⁶ Neate G (2019). *Dealing with self-represented parties*. *AIAL Forum*, 96: 37-64, 41.

³⁴⁷ ACT Civil and Administrative Tribunal Procedures Rules 2020 (ACT), Div 2.5.3.

- mental health
- professional/occupational disciplines
- residential tenancy
- unit titles/retirement villages

Some of these are discussed below.

Mental health

There were 496 new mental health applications received in ACAT in 2021-22 (13% of applications) and 796 psychiatric treatment orders made.³⁴⁸ The *Guide to solution-focused hearings in the Mental Health Tribunal* considers the use of solution-focused approaches in mental health tribunal hearings. It also considers practical techniques to promote such techniques (eg, communication and listening skills, processes and strategies), as well as the needs of particular consumers (eg, young people, older people, support people). Treatment and risk are also examined through a solution-focused lens.

Housing

Residential tenancy was the second largest category of matters lodged in ACAT in 2021-22 (26%).³⁴⁹ PwD are more likely to experience issues with housing, including a shortage of accessible housing, violence and abuse in supported housing, and financial stress. Specific issues may arise, where a tenant experiences hoarding disorder, a recognised mental health condition.³⁵⁰ Over a third (36%) of social housing households include at least one person with disability.³⁵¹ Housing issues may be further exacerbated for Aboriginal and Torres Strait Islander people.³⁵² For further guidance on the issues associated with housing stress, see the WA BB.³⁵³ In recognition of the complex and intersectional nature of issues associated with housing and disability, the NSW BB notes that:

Health, income and accommodation can be linked. The sometimes precarious nature of renting in the private rental market, where no social housing is available, has more profound negative impacts on the health and quality of life of older people than the general population. This is due, in part, to the relatively large amount of time older people spend inside their home. It is especially so for those with a disability (including a disability such as dementia) or other health and mobility issues. Older people have a greater likelihood of ill health, disability, widowhood and living alone, in addition to low incomes.³⁵⁴

³⁴⁸ ACAT, *Annual review*, n 12.

³⁴⁹ Ibid.

³⁵⁰ See eg Mowbray R (2020). *Housing people with a hoarding disorder – What should a best practice approach look like?* <https://www.tenants.org.au/blog/housing-people-hoarding-disorder-what-should-best-practice-approach-look>.

³⁵¹ Australian Institute of Health and Welfare, *People with disability in Australia*, n 54.

³⁵² See eg Australian Institute of Health and Welfare (2023). *Housing circumstances of First Nations people* <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>.

³⁵³ WA BB, n 161, 66-74. See also Law Council of Australia (2018). *The Justice Project final report – Part 1: People who are homeless*. There have also been calls for a specialist criminal justice diversionary list for people experiencing homelessness: see eg, McNamara L et al (2021). Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia. *International Journal for Crime, Justice and Social Democracy*, 10: 111-129.

³⁵⁴ NSW BB, n 8, 11109.

Guardianship

ACAT received 183 new guardianship and management applications in 2021-22. Dementia was the most common condition in guardianship matters and this has been rising year on year (from 37% of matters in 2017-18 to 59% in 2021-22). Specialist training and support may therefore be required for tribunal members around the needs of people with dementia.

The Australian Guardianship and Administration Council³⁵⁵ developed guidelines for tribunals, in consultation with PwD to increase participation by the person about whom the guardianship order is being made. This includes information about support and representation, training, the participation of Aboriginal and Torres Strait Islander people, and data collection. The DRC has recommended legislative reforms in relation to guardianship, to include supported decision-making principles.³⁵⁶ The ACT Government accepted this in principle and noted that the ACTCT ‘will also progress work to ensure all court and tribunal users have the appropriate supports, adjustments, and mechanisms to exercise independence and participation in decisions pertaining to their court and tribunal matters’.³⁵⁷ Under the DJAS 2024-28 future reforms will ‘seek to address systemic issues and structural barriers and reduce reliance on substitute decision-making’.³⁵⁸

Other legal issues

The single largest category of new applications to ACAT in 2021-22 (31%) related to civil disputes and over 60% of these (18% of applications lodged during the year) related to debt or debt declaration. PwD are more likely than the general population to experience financial adversity.³⁵⁹ Accordingly, it is vital that ACAT members have a comprehensive understanding of disability issues and how this may impact on the financial circumstances of people appearing in relation to debt matters.

The overall number of discrimination matters before ACAT is small (76 out of 3,797 applications lodged in 2021-22). However, disability was the most common ground of complaint in such matters (in 47% of matters).³⁶⁰ Some PwD may also not pursue discrimination claims, due to access to justice issues.

³⁵⁵ Australian Guardianship and Administration Council (2019). Maximising the participation of the person in guardianship proceedings: Guidelines for Australian tribunals.

³⁵⁶ DRC, Executive summary, n 1, Rec 6.6.

³⁵⁷ ACT Government, *ACT Government response*, n 222, 26.

³⁵⁸ DJAS 2024-28, n 14, Item 1.3. See also Item 1.4.

³⁵⁹ Australian Institute of Health and Welfare (2024). *People with disability in Australia – Income and finance* <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/income-and-finance>. See also Law Council of Australia, PwD, n 2; NSW BB, n 8.

³⁶⁰ ACAT, *Annual report*. See also Law Council of Australia, *ibid*, 17-18.

Frank and Rose's story

Frank is in his late eighties. He has dementia and difficulties communicating after a stroke. He lives with his daughter, Rose, who is his carer. She rarely leaves his side, but was unable to attend a recent doctor's appointment. Frank has been seeing the same doctor for many years and he understands Frank well. When the doctor asked about a big bruise down the side of his body, Frank said that Rose did it and has been violent towards him for a long time. The police were called and have charged Rose, but she says that it is all a mistake and is evidence of his dementia. Rose has anxiety issues and these have become much worse lately, as she is now worried about what will happen to Frank, if she can't care for him. She says that, if anything, she is the victim, because he is sometimes violent towards her and she also has bruises to prove it. An intermediary has been working with Frank, to try to get his witness statement, but it is difficult to establish competency. Over time, it becomes clear that Frank lacks competency and guardianship proceedings commence in ACAT. The assault charge against Rose is discontinued. Frank and Rose also get help to have independent support people with them. The presiding tribunal member emphasises the importance of a fair process, recognising the complexities of their situation and ensuring that all perspectives are heard.

6 Crossover jurisdictions

Children's Court

Children and young PwD may engage with the Children's Court in the youth (criminal) justice jurisdiction, as defendants and (alleged) victims and/or in civil jurisdiction (in child protection matters). They may also be involved in the court's adult jurisdiction, especially in family violence matters, in both the civil and criminal justice context.

Extensive research demonstrates that children and young people with disability are over-represented in the youth justice system.³⁶¹ They are also more likely to experience the child protection system.³⁶² In particular, there is increasing understanding of the links between disability and the youth justice and child protection systems.³⁶³ Children and young people who appear in both the youth justice and protection jurisdictions are often known as 'crossover kids'. Baidiwi and Piquero's study of 300 children who appeared in three Victorian children's courts and also had statutory child protection involvement found that 48% had a neurodisability. These issues are particularly acute for Aboriginal and Torres Strait Islander children and young people, who are over-represented in all three populations (ie, youth justice, child protection and among PwD).³⁶⁴

Lansdell et al conducted research on young people with ABI in the Victorian justice system. They found that 'judges, magistrates and lawyers readily presented ideal scenarios and solutions resting on the provision of supportive and rehabilitative responses to young people with ABI and associated cognitive disabilities or impairments'.³⁶⁵ This included:

- introducing compulsory screening and early intervention for young people entering the system, especially those exhibiting challenging behaviours
- prioritising rehabilitation through treatment and support, including pro-social behavioural programs
- ensuring that all staff in criminal justice institutions are responsive to the various circumstances, experiences and needs of young people with an ABI
- providing young people with an ABI with the individualised supports and skills they need to integrate into their communities
- increasing access to specialist lists

³⁶¹ See eg, Ringland C et al (2022). Trends in rates of victimisation and offending for people with disability in NSW. NSW Bureau of Crime Statistics and Research; Boiteux S and Poynton S (2023). Offending by young people with disability: A NSW linkage study. NSW Bureau of Crime Statistics and Research. DRC, Volume 8, n 233; Baidawi S et al (2023). Children aged 10 to 13 in the justice system: Characteristics, alleged offending and legal outcomes. Australian Institute of Criminology.

³⁶² For a recent discussion, see Gatwiri K et al (2024). Experiences of children and young people with a disability in out-of-home care in Australia: A scoping review, *Health and Social Care in the Community*. <https://doi.org/10.1155/2024/3456823>.

³⁶³ See eg, Victorian Sentencing Advisory Council (2020). 'Crossover kids': Vulnerable children in the youth justice system report 3: Sentencing children who have experienced trauma; Baidiwi S et al (2023). Care criminalisation of children with disability in child protection systems, Report prepared for the Royal Commission into Violence, Abuse and Neglect of People with Disability.

³⁶⁴ For discussion, see Baidiwi et al, n 353; DRC, Volume 8, n 233; DRC (2023). *First Nations people with disability* – Volume 9.

³⁶⁵ Lansdell G et al (2022). Young people with acquired brain injury: Preventing entrenchment in the criminal justice system. Australian Institute of Criminology, 48.

- broadening the criteria for prevention and diversion initiatives, to include young persons with an ABI
- requiring clear and constructive communication during police interviews and court questioning.

This research reinforces the need for approaches that are attuned to young people’s complex needs, including age, disability, trauma and cultural identity.³⁶⁶ Baidiwi and Piquero also suggested that ‘[t]argeted strategies from both child welfare and youth justice systems...may help prevent a continuation of adversity into adolescence, emerging adulthood, and adulthood’.³⁶⁷ There is therefore good reason to think about the Children’s Court holistically, rather than separating out its youth justice and protection responsibilities. This research aligns with the findings of the Victorian Sentencing Advisory Council, which called for measures to ‘bridge the gap’ between child protection and youth justice responses in Victoria. Specifically, the Council suggested a ‘crossover list...[which] would provide courts with a more holistic view of a child’s history and current circumstances and would potentially provide a broader suite of options for responding to offending behaviour’.³⁶⁸ This aligns with several action items under DJAS 2024-28.³⁶⁹

The Federal Court of Australia and New Zealand Government³⁷⁰ have developed a checklist for when children and young people come to court. Although this does not explicitly mention disability, it includes a number of recommended actions for the head of jurisdiction, judges and magistrates, and court staff that will support the needs of young people with disability. This includes practical suggestions, such as:

- ensuring there are judicial officer in each court who have received special training for handling cases involving children/juveniles
- considering who from the court will receive and look after the young person, while at court (to ensure they get information about what will happen, as well as food, water and safe access to bathroom)
- asking a young person who has been detained if they have received any medical treatment.

In 2020, the Centre for Innovative Justice undertook a service design project, on behalf of the Children’s Court of Victoria. This acknowledged, amongst other things, ‘the complexity of the issues being experienced by young people and families appearing in court, including in relation to intergenerational disadvantage, disability, mental health, substance abuse and family violence’.³⁷¹ It was proposed that children’s courts should:

³⁶⁶ See eg, Judicial Commission of NSW (2023). *Children’s Court of NSW resource handbook*. 2nd ed.

³⁶⁷ Baidawi S and Piquero A (2021). Neurodisability among children at the nexus of the child welfare and youth justice System. *Journal of Youth and Adolescence*, 50: 803-819, 816.

³⁶⁸ Victorian Sentencing Advisory Council, n 355. See also Bowles J (2014). ‘What can be done?’ Residential therapeutic treatment options for young people suffering substance abuse/mental illness. Churchill Memorial Trust of Australia.

³⁶⁹ See DJAS 2024-28, n 14, Items 4.11: Youth justice throughcare and 4.12: Youth justice.

³⁷⁰ Graydon C (2020). *Checklist 2 – When children/juveniles come to court*. Federal Court of Australia and New Zealand Government.

³⁷¹ Centre for Innovative Justice (2020). *Specialist children’s court approaches*.

- be child-focused
- promote the participation of children and families in the court processes
- incorporate problem-solving, collaborative and multidisciplinary practices
- be supported by a specialised and trained workforce
- provide culturally-responsive approaches.

Dandjoo Bidi-Ak

‘Dandjoo Bidi-Ak’ is the therapeutic child protection list in the Western Australian Children’s Court and means ‘together on a path’. It supports participants to work towards more therapeutic outcomes and quicker reunifications between children and their parents. It is underpinned by procedural justice and self-determination principles. Analysis of a case involving an Aboriginal family³⁷² found the program promoted healing, enabled the participants to communicate freely, and encouraged self-determination. It also respects cultural protocols and its use of Aboriginal liaison officers creates a culturally safe space.

Education Justice Initiative

The Education Justice Initiative in the of Victoria is run by the Department of Education and Training at multiple Children’s Court locations across Victoria. It is available to children and young people aged 10-17 with a criminal or Koori Court matter before a participating court. This program involves someone working with the young person and their family, support person and/or case worker. It aims to link the person with the most appropriate school, education or training provider and support them on their education or training pathway.³⁷³

An evaluation³⁷⁴ found that the program had contact with 47% of the people appearing in the Children’s Court during the evaluation period and worked closely with 23% of these young people. Of those classified as ‘full clients’:

- formal enrolment in education increased from 51% to 75%
- attendance increased from 9% to 54% and moderate/high attendance increased from 3% to 42%.

³⁷² Howieson J and Dhu A (2023). Investigating the legitimacy of a pilot therapeutic court: A rationale for ‘flipping the default’? *Journal of Judicial Administration*, 32: 156-179.

³⁷³ Children’s Court of Victoria (2024). *Education justice initiative* <https://www.childrenscourt.vic.gov.au/criminal-division/education-justice-initiative#referring-to-eji>.

³⁷⁴ te Riele K and Rosauer K (2015). *Education at the heart of the Children’s Court. Evaluation of the Education Justice initiative*. Victoria Institute for Education, Diversity and Lifelong Learning.

Clasby et al's research on neurodiverse young adults in New Zealand's court system³⁷⁵ presents a range of recommendations to support neurodiverse young people in court. Although these examples are designed with neurodiverse young people in mind, many of the suggestions are also more generally applicable. Table 7 sets out some illustrative examples of both the universal and targeted supports they proposed.

Table 7: Recommendations for court support for neurodiverse young people

	Universal supports	Targeted supports
Introduction to courtroom	Introduce key individuals in court, reassure that other individuals are in the courtroom to support other people.	If person is particularly anxious or has experienced previous trauma, give support person opportunity to better support them (eg, seated beside them).
Location/physical attributes of the courtroom	Ensure signage is easy-read, with images alongside wording.	Provide sensory cushion/reduce lighting, where sensory/attention issues.
Engagement with courtroom	Give extra thinking time; strength-based approach.	Develop visual and easy-read materials; avoid saying 'do you understand?'
Engage with multi-disciplinary team	Co-locate services; multi-disciplinary team, including neurodiversity, cultural support, and AOD services.	Additional support may be required.
Effective communication*	Avoid metaphors, similes and legal jargon; speak slowly and directly to person.	Give person opportunity to contribute; explain stages in the process.
Wellbeing*	Ensure water is available; seek support for snacks to be made available, if no access to food.	Have quiet room outside court to decompress; ensure trauma-informed education.
Executive functioning supports*	Develop strategies to prevent lost, forgotten or damage items.	Think of creative ways for tasks that do not involve writing and are suited to those with theory-of-mind difficulties.
Training	Training for all courtroom staff and judiciary on neurological difficulties, how they may present, intersecting factors, behavioural presentations,	Be aware of sensory issues and keep extra materials out of view.

³⁷⁵ Clasby B et al (2022). Responding to neurodiversity in the courtroom: A brief evaluation of environmental accommodations to increase procedural fairness. *Criminal Behaviour and Mental Health*, 32: 197-211.

	and establishing support strategies.	
Screening*	Brief screening for all who interact with the justice system, develop repository of support networks for court staff and users.	Link accommodations to screening responses.

* Items have further individualised supports, eg, access to communication assistants, where required.

Hester's story

Hester is a young person with a learning disability. She faced significant challenges when attending court. The atmosphere was chaotic, filled with noise and distractions, making it difficult for her to focus on the proceedings. Hester struggled to understand legal terminology, like 'bail'. This added to her anxiety. Recognising her vulnerability, the court staff made an effort to accommodate her needs. They provided her with a quiet space to wait before her hearing and allowed extra time for her to process questions during the proceedings. However, the lack of adequate seating and lengthy waiting periods exacerbated her distress. During the hearing, Hester expressed her discomfort and difficulty in communicating her needs. The magistrate, understanding the importance of a supportive environment, paused the proceedings, to ensure Hester felt comfortable. The magistrate encouraged Hester to voice her thoughts, allowing her to articulate her perspective more clearly. This approach fostered a more inclusive dialogue and created a more respectful and accommodating atmosphere for all participants.

Domestic and family violence

As discussed elsewhere in this report (see Chapters 1 and 9), PwD are more likely to be involved in DFV. Much of the research focuses on this in the context of women with disability who are victims of DFV.³⁷⁶

³⁷⁶ See eg, DRC, Volume 8, n 233, Chapter 10. See also People with Disability Australia and Domestic Violence NSW (2016). *Women with disability and domestic and family violence: A guide for policy and practice.*

Amy's story

Amy has a brain injury, from when her ex-husband attempted to strangle her. She has struggled financially and been unemployed since the attack, due to ongoing trauma and physical pain. She started gambling, but this only increased her financial stress. She has now been charged with fraud, after making Medicare claims she was not entitled to. When she appeared in court, the duty lawyer told her he was 'not interested in her sob story' and was 'just here to find out how long you're going away for'. She was very relieved when the case was adjourned and she got a new lawyer, who took an interest in her circumstances. This lawyer facilitated access to the court's support dog program and DLO and took steps to make sure that the family violence order against her ex-husband was still in place. He also put relevant information about her situation before the magistrate, who took it into account on sentencing and imposed a community-based order. The order included financial, mental health and employment counselling. Amy also received information about community support for gambling and family violence issues and services for people with disabilities.

The barriers that women with disability who are victims of DFV experience in accessing justice include issues around legal capacity and numerous barriers to reporting violence, such as:

- the normalisation of violence in service systems
- disbelief by police
- lack of understanding of disability across the criminal justice system
- lack of resources and accessible resources in the legal sector
- fears of reprisal.³⁷⁷

A key theme that emerged in response to this research was the need to listen to women and that 'justice takes time. Time to talk, to trust, to listen, to hear, to be taken seriously, to make decisions and to heal'.³⁷⁸ Ideally, [f]or women with disability being able to tell their story in court and have the perpetrator held to account provides an opportunity to experience justice by being heard, validated, recognised as a victim and/or having the experience of the perpetrator being held to account'.³⁷⁹

Research is increasingly also recognising the role of disability, especially neurodivergence, in the perpetration of DFV.³⁸⁰ In particular, where a perpetrator of intimate partner violence has ADHD, the combined treatment of such violence with treatment for ADHD has been shown to be more effective in reducing violence.³⁸¹ This highlights the importance of addressing defendants' disability needs, as part of holding them accountable for their actions.

³⁷⁷ Maher J et al (2018). *Women, disability and violence: Barriers to accessing justice*. Australia's National Research Organisation for Women's Safety.

³⁷⁸ Ibid, 48.

³⁷⁹ Ibid, 51.

³⁸⁰ See eg, Hwang Y et al (2020). Domestic violence events involving autism: A text mining study of police records in New South Wales, 2005-2016. *Research in Autism Spectrum Disorders*. <https://doi.org/10.1016/j.rasd.2020.101634>; Arrondo G et al (2023). Attention-deficit/hyperactivity disorder as a risk factor for being involved in intimate partner violence and sexual violence: A systematic review and meta-analysis. *Psychological Medicine*, 24: 7883-7892.

³⁸¹ Buitelaar N et al (2021). The impact of ADHD treatment on intimate partner violence in a forensic psychiatry setting. *Journal of Attention Disorders*, 25: 1021-1031.

The ACT courts deal with DFV in a range of ways, including when granting family violence orders in the civil jurisdiction, and when dealing with breaches of such orders in the criminal jurisdiction. Many substantive offences are also committed in circumstances of DFV. The ACT Family Violence Court is a specialised criminal court list in the ACT Magistrates Court for hearing family violence offences, which ‘allows for a more integrated approach to dealing with violence in the home and recognises the complexities of these types of matters and the special interest in protecting individual victims and the community as a whole’.³⁸² The program includes a volunteer program for victims, managed by the Victims of Crime Commissioner.

Specialist lists or courts of this nature have been established in a number of jurisdictions in Australia and overseas, as an attempt to develop a more appropriate response to the complex dynamics of DFV.³⁸³ The guidelines and best practices on creating a domestic violence court³⁸⁴ outline the components of such a court, including:

- early access to advocacy and services
- coordination of community partners
- victim-and child-friendly court
- specialised staff and judges
- integrated information system
- evaluation and accountability
- ongoing training and education
- compliance monitoring.

There are a range of models. The most common, like the ACT Family Violence Court, is the criminal model. Others involve dedicated civil protection order lists, while some models incorporate related criminal and civil jurisdictions (ie, crossover matters).³⁸⁵ In some instances, these also incorporate any related child protection and youth justice matters. The

[a]dvantages of this model include centrality of location, or ‘one-stop shopping’ for families before the court. The court has access to complete information on a family, which lends itself to consistency of orders and outcomes. For example, if one judge issues an order of protection, that same judge will make a child visitation order compatible with that [civil protection order]. Overall disadvantages include the fact that if a court is focussed on the criminal aspects of a caseload, it might not pay adequate attention to the related civil matters, or vice versa. For example, if the judge in a case is a criminal court judge, he or she may not be as well versed in matters such as custody. And, there is the problem of having ‘all your eggs in one basket’: that is, if participants do not like a particular judge, they are nonetheless reliant upon that judge for decisions on every aspect of their various cases.

³⁸² ACT Magistrates Court (2024). *Family violence court* <https://www.courts.act.gov.au/magistrates/about-the-courts/areas-in-the-act-magistrates-court/family-violence-court>.

³⁸³ For an overview, see eg, McGowan J (2016). *Research brief: Specialist family violence courts*. Monash University; Gover A et al. (2021). *Courting justice: Tracing the evolution and future of domestic violence courts*. *Feminist Criminology*, 16: 366-381.

³⁸⁴ Sack E (2002). *Creating a domestic violence court: Guidelines and best practice*. Family Violence Prevention Fund.

³⁸⁵ It should also be noted that issues arise from the bifurcation of child-related matters between state/territory courts and the Commonwealth family courts. In this context, see also Lighthouse, which ‘plays a central role in the [Federal Circuit and Family Court of Australia’s] response to cases which may involve risk relating to family violence, mental health, drug and alcohol misuse and child abuse and neglect, by shaping the allocation of resources and urgency given to such cases’: Federal Circuit and Family Violence Court (2024). *Lighthouse overview* <https://www.fcfcqa.gov.au/fl/fv/lighthouse>.

Information-sharing can also be problematic because of privacy, safety and confidentiality issues, as well as the potentially conflicting objectives of various courts.³⁸⁶

The Queensland Specialist DFV Court adopts a crossover model and incorporates many best practice features, including:

- dedicated magistrates and prosecutors
- a court coordinator, to oversee operations and the continuous improvement of the specialist DFV courts approach, including stakeholder engagement
- a specialist DFV court registry, where specialist court staff are trained to offer support and information to people involved in DFV court matters
- specialist DFV duty lawyers and DFV court support services
- dedicated Queensland Corrective Services' officers (where there is coordination of criminal and civil)
- cross-agency governance groups
- infrastructure and security features to support safety
- on-site triage and reception connecting clients to specialist services.³⁸⁷

Evaluation of the program found that it was 'fulfilling its purpose to ensure a coordinated, respectful, and fair justice response to DFV, which prioritises the safety of the victim and their children, holds perpetrators accountable and promotes changes in attitudes and behaviour'.³⁸⁸ In particular, the model 'supports perpetrator accountability by being an integrated civil and criminal court, operating within a therapeutic jurisprudential framework'.³⁸⁹ The evaluation also found that application forms allow people to indicate whether they have a disability, although this information was not collected electronically. Across the three evaluation sites, data from Legal Aid Queensland indicated that about 12-25% of clients had a disability. The evaluators found that 'more work [is] required to make the court equally accessible for, and responsive to, the needs of people with disability'.³⁹⁰ This demonstrates that, even in a court model that is found to be meeting its objectives, the needs of PwD are often not well served and require further consideration. In addition, the report found that some clients (both aggrieved people and respondents) had substantial unmet social support needs, including mental health issues. This suggested scope for developing the court's case management support capacity. Notwithstanding the scope for improvement, the Queensland model highlights the benefits of a model that bridges the gap

³⁸⁶ Sack, n 375, 26.

³⁸⁷ Queensland Courts (2024). *Specialist Domestic and Family Violence Court* <https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>.

³⁸⁸ ARTD Consultants (2022). *Southport Specialist Domestic and Family Violence Court: Process and outcomes evaluation 2017-2021*. Queensland Department of Justice and Attorney-General, ii-iii.

³⁸⁹ *Ibid*, 146.

³⁹⁰ *Ibid*, 100.

between the criminal and civil jurisdictions and adopts a therapeutic jurisprudence model to DFV. More generally, approaches to DFV in the ACT need to be responsive to all PwD, whether they are engaging as people causing or responding to violence.³⁹¹

7 Special considerations for specific disabilities

It is beyond the scope of this report to describe all the specific disabilities that people who engage with the courts may experience. This section briefly describes some key considerations, based on certain disabilities, to provide guidance on making the courts accessible. It is crucial to remember that disability manifests in diverse ways and requires varied and individualised accommodations, to create an inclusive environment that acknowledges and promotes full participation in court proceedings. The accommodations outlined below represent baseline considerations, but each person's needs are unique and may require additional or different adjustments. Regular communication with individuals about their specific requirements is essential.

This section draws on the Checklist and bench books³⁹² which should be consulted for further detailed guidance on specific disabilities.

Intellectual disability/cognitive impairment

Various terms, such as 'intellectual disability', 'intellectual impairment', 'cognitive disability' and 'cognitive impairment' are commonly used, often interchangeably and/or inconsistently. As the NSW Law Reform Commission observed that:

Cognitive and mental health impairments are variously and inconsistently defined and described in relevant legislation Sometimes different terms are used in different contexts and sometimes the same, or similar, terms are used but defined differently.³⁹³

Intellectual disability affects both cognitive function and adaptive behaviour, impacting how a person communicates, socialises, and manages daily life. While it varies in type and degree, common characteristics include taking longer to process information, struggling with abstract concepts, having attention and memory difficulties, and experiencing increased fatigue. This disability can affect understanding and processing of both written and verbal information, as well as the ability to live independently.

All court personnel should communicate directly with the person, using clear, plain language and at an appropriate pace. Information should be provided in multiple formats (eg, verbal, written, visual). Regular breaks should be provided and understanding checked frequently. It is particularly important to be aware of the potential for acquiescence or suggestibility in questioning.

³⁹¹ DJAS 2024-28, n 14, 14. Item 1.6 acknowledges the ACT Government's 'commitment to a Domestic Family and Sexual Violence (DFSV) prevention and response system that is inclusive of people with intersecting needs and experiences'. See also Item 4.2.

³⁹² Graydon, Checklist, n 59, 10; NSW BB, n 8, 5111-5129; Vic BB, n 7, 78-94. See also WA BB, n 161, 194-221.

³⁹³ NSW Law Reform Commission, n 260, xvii.

Acquired brain injury

ABI is any brain damage occurring after birth, which can result from various causes, including accidents, strokes, tumours, or disorders (eg, Parkinson's disease). Its effects vary significantly and can be difficult to predict long-term. Common effects of ABI include physical and sensory changes, cognitive difficulties (eg, memory loss and concentration problems), behavioural and personality changes, communication challenges, and medical issues like epilepsy.

ABI is often described as an 'invisible disability', because its impacts are not always obvious. This can create challenges in legal settings, particularly regarding disclosure and making appropriate accommodations. Additionally, since people may still be adjusting to their ABI, they might not recognise its relevance or be willing to disclose it. Importantly, ABI is not a static condition - a person's situation may change over time, meaning previous assessments or decisions may need to be reconsidered.

Some key adjustments to support communication in court for people with ABI include:

- establishing communication needs and necessary accommodations before the hearing begins (eg, access to communication devices)
- using simple, clear language and avoiding complex terminology; repeat, if needed, as ABI can impact attention and concentration
- allow additional time for responses and avoid interrupting or completing sentences
- consider associated conditions, such as fatigue, depression, or substance use issues that may impact proceedings.

Mental health conditions

Mental health conditions can include mood, anxiety, trauma-related and psychotic disorders. All of these can impact how people think, feel, and interact. Mental health conditions are among the most prevalent forms of disability and there are especially high rates among people with other disabilities and people involved in the criminal justice system. In particular, Post-Traumatic Stress Disorder (PTSD) and Complex PTSD are significant psychosocial disabilities that can arise from single or multiple traumatic incidents. Court proceedings can potentially trigger or worsen trauma, including through giving evidence, cross-examination, or being in proximity to perpetrators. A trauma-informed approach is therefore essential to ensure fair hearings. This is especially important, where there are additional challenges (eg, lack of legal representation, language barriers, repeated court appearances).

Accommodating mental health disabilities in court requires careful consideration. These conditions are often 'invisible' and episodic and many people are reluctant to disclose them, due to stigma. While individual needs vary significantly, key considerations include being mindful of potential triggers in court processes, managing hostile questioning, and providing appropriate communication adjustments, such as breaks and adjusted pace. It is crucial to avoid assumptions, while remaining aware that undisclosed mental health disabilities may be present, given their

prevalence. Any accommodations should recognise that a person's condition may fluctuate over time, meaning current arrangements may need future adjustment. Appropriate adjustments include:

- frequent breaks and/or a quiet space, to manage heightened reactions
- ensuring any necessary medications can be taken
- considering the use of support animals
- ensuring staff have relevant qualifications (eg, mental health first aid training)
- use empathetic, non-threatening and non-judgmental communication, to avoid triggering trauma responses
- provide clear explanations of court processes and procedures and keep person informed about scheduling
- ensure courtroom safety and consider physical positioning of participants
- consider safety measures, when planning courtroom layout and witness procedures.³⁹⁴

Neurodiversity

Neurodiversity refers to natural variations in how people's brains work, affecting how they experience, understand, and interact with the world. This includes conditions like autism and ADHD, FASD and dyslexia. All of these are overrepresented in the criminal legal system. Neurodivergent people may experience:

- communication differences (eg, literal interpretation, difficulty with social context, verbal expression)
- sensory sensitivities (eg, to light, sound)
- issues with attention, concentration, impulse control, time management, organisation and emotional regulation.

Some appropriate adjustments include:

- minimising sensory overload in the courtroom environment (eg, low lighting)
- allowing 'stimming' or other self-regulating behaviours (eg, fidget tools, flexibility in seating and movement)

³⁹⁴ For further guidance, see Mental Health Coordinating Council, n 70.

- providing clear, concrete instructions, schedules and expectations (avoid metaphors and open questions for someone who is autistic)
- allowing extra time for processing information
- using visual aids or written information, to supplement verbal communication (eg, written reminders about important dates may be helpful for someone with ADHD)
- considering timing of proceedings (eg, morning may be better, when medication is more effective)
- not misinterpreting behaviours like lack of eye contact as signs of dishonesty or disrespect
- considering one-to-one instruction, when possible.

See also 7.1, in relation to best practice approaches to neurodivergent young people.

Sensory disabilities

People may experience a range of sensory disabilities, that vary in their intensity (eg, from no to partial hearing). In some circumstances, it may be appropriate for a family member or some other support person to assist the person with communication. Ongoing communication is required, as each person's needs are unique and may require different accommodations throughout the court process.

Vision impairments

People with vision impairment may use various aids, such as assistance dogs, canes, or laser sensors for mobility, and access written information through Braille, screen readers, or audio formats. Access to information in a person's preferred format is crucial, especially in legal settings. People with vision impairments might be asked to accept alternatives, like having documents read to them. However, digital formats and assistive technologies should be accommodated whenever possible, to ensure fair access to justice. Some key measures include:

- asking individuals about their preferred formats for information and documenting these preferences for use throughout the court process
- making physical accommodations (eg, appropriate lighting adjustments)
- training court staff in sighted guide techniques
- making sure all staff know a guide dog is allowed in the courtroom
- familiarisation with the court environment, including describing the physical layout, announcing participant positions and movements, and speakers identifying themselves
- facilitating access (eg, walking the person to court)
- emailing documents in advance, so they can be read with appropriate software
- managing proceedings (eg, allowing recall through other sensory information).

Hearing impairments

Early planning is essential for people who are deaf or hard of hearing and may include arranging Auslan interpreters (minimum of two required), facilitating lip-reading and/or providing written communication (including a text message service on the court's telephone number). The physical environment also needs consideration, including the acoustics in the courtroom, proper positioning of all parties, appropriate lighting, and ensuring clear sightlines for lip-reading. Hearing loops should be used, where available and preferred. It is also important to:

- address the person directly, not their interpreter
- ask the person how they prefer to communicate (eg, 'do you sign, lip-read, write?')
- speak naturally, without shouting or exaggerating
- allow adequate response time
- regularly check understanding
- explain proceedings clearly
- rephrase rather than repeat if not understood
- be mindful that breaking eye contact can disrupt communication.

People who are deafblind

Deafblindness affects both vision and hearing, though the degree varies for each person. Most people who are deafblind retain some level of sight or hearing. For communication support, many deafblind people use tactile sign interpreters. These specialists may modify Auslan, by adding signs that convey emotional information and facial expressions and/or tactile signing. The issues that can arise for people with complex communication needs are discussed in 3.1.5 and should also be noted.

Physical disabilities

Physical disabilities can include loss of a limb or use of a body part, cerebral palsy, arthritis and epilepsy. A person may have experienced this disability from birth or later in life and the extent of the disability may range from minor to severe.

There are a number of considerations to ensure equal access for individuals with physical disabilities. This could include listing matters in the closest and easiest courtroom, facilitating bathroom access, allowing for flexible seating arrangements, providing accessible witness stands and jury boxes, providing more frequent breaks, making sure there are handrails in place, and ensuring staff are equipped to provide first aid. Where a person uses a wheelchair, this may include whether there is a ramp, where the person will sit while giving evidence and ensuring the pathways are wide and clear.

Other disabilities

The Vic BB also includes information on other disabilities. For example, people with Down syndrome may experience issues with intellectual and/or physical disability, as well as communication issues.

People with dementia may also experience issues with memory, communication and understanding court processes, as well as emotional dysregulation. It is important to recognise that capacity can fluctuate over time. It can be helpful to link names and relationships (eg, 'Jack, your son').

8 Intersectional approaches

It is crucial to recognise that people are multifaceted and complex. Accordingly, those appearing in the courts may experience multiple, intersecting forms of marginalisation or disadvantage. The Law Council of Australia³⁹⁵ recognised the additional access to justice issues that some PwD may experience, including those who are also Aboriginal and Torres Strait Islander, female, and/or from CALD or non-English speaking backgrounds. The DRC likewise noted that:

Particular groups of people with disability are even more likely to have contact with the criminal justice system. These include First Nations people with cognitive disability; women with disability experiencing violence; and people with co-occurring cognitive disability, psychosocial disability and other disabilities such as hearing impairments. The over-representation of First Nations people with cognitive disability in custody, particularly in youth detention, is a largely hidden national crisis.³⁹⁶

In this section, we discuss some common intersectional issues and examples of good practice. The NSW BB and WA BB also contain relevant information on a range of topics, including:

- people with a religious affiliation
- LGBTIQA+ people
- children and young people (see also 7.1)
- older people
- self-represented parties
- people experiencing poverty and/or homelessness (see 6.2.2).

Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people experience disability at an increased rate, compared with the general Australian population.³⁹⁷ It is also important to recognise that the concept of ‘disability’ may not be recognised within some Indigenous communities.³⁹⁸ Aboriginal and Torres Strait Islander people are also more likely to experience a range of legal issues and challenges with access to justice, including in relation to crime, family law and family violence, child protection, tenancy, discrimination, social security, credit and consumer issues, and Native Title, land rights and stolen wages claims.³⁹⁹

The issues are particularly stark in the criminal justice context, with evidence before the DRC estimating that 95% of Indigenous people appearing in court charged with a criminal offence have an intellectual disability, mental illness or cognitive impairment.⁴⁰⁰ Issues in relation to (dis)trust

³⁹⁵ Law Council of Australia, PwD, n 2.

³⁹⁶ DRC, Volume 8, n 233, 33.

³⁹⁷ DRC, Volume 9, n 356.

³⁹⁸ Ibid. See also Law Council of Australia (2018). The Justice Project final report – Part 1: Aboriginal and Torres Strait Islander people.

³⁹⁹ Ibid. See also Australian Law Reform Commission, *Pathways to justice*, n 88.

⁴⁰⁰ See Walsh C et al (2023). Supporting Indigenous people with disability in contact with the justice system: A systematic scoping review. *Disability & Society*, 39: 2697-2733.

are likely to be particularly amplified amongst Indigenous PwD.⁴⁰¹ As the First Peoples Disability Network has noted:

By the time an Aboriginal or Torres Strait Islander person with disability first comes into contact with the criminal justice system, they will most likely have had a life of unmanaged disability. Coupled with discrimination, based on their Aboriginality and disability, they will have faced barriers from the time they are born, of poverty, early exposure to life in institutions through the child protection system, struggles at school, lack of appropriate health care and an inability to secure employment. Coming into contact with the police, courts, juvenile detention and prisons is normalized in their life trajectory.⁴⁰²

Ellem et al recently found that:

Appearing before the court for participants with disability and their families was described as a highly stressful experience. Participants conveyed a sense of alienation in court processes, related to a lack of understanding and acceptance of disability by court authorities, as well as a lack of cultural responsiveness to First Nations Australians with disability...Having a family member or other advocate present at the time of a court hearing was seen as extremely helpful to some participants, as they could assist the person with disability to feel more at ease within the courtroom, as well as provide important information regarding the person's disability and the community supports available to them.⁴⁰³

The Australian Law Reform Commission has highlighted how communication barriers can particularly affect Aboriginal and Torres Strait Islander people and can make it difficult to understand court processes and obligations, including bail, community-based sentences and other court orders. This can include poor literacy, the use of legal terminology and lack of plain language materials. These challenges are often compounded for Aboriginal and Torres Strait Islander people who have a disability, who may face intersecting barriers related to language, cultural communication, trauma, and disability-related communication needs. Understanding these intersecting challenges is crucial for developing appropriate communication supports.

Aboriginal and Torres Strait Islander PwD are particularly likely to experience literacy issues, because they are disproportionately excluded from education.⁴⁰⁴ The First Peoples Disability Network has also identified a number of challenges, in terms of access to the NDIS.⁴⁰⁵ In addition, Walsh et al⁴⁰⁶ recently noted the lack of research on the effectiveness of courts based on therapeutic jurisprudence principles (eg, drug and mental health courts) for Indigenous people with disability and lack of systematic screening in Indigenous courts.

⁴⁰¹ Australian Law Reform Commission, *Pathways to justice*, n 88; Ellem et al, n 136.

⁴⁰² First People's Disability Network, cited in Law Council of Australia, *Aboriginal and Torres Strait Islander people*, n 390, 76.

⁴⁰³ Ellem et al, n 136, 10.

⁴⁰⁴ Graham L et al (2021). Suspensions and expulsions could set our most vulnerable kids on a path to school drop-out, drug use and crime. *The Conversation* <https://theconversation.com/suspensions-and-expulsions-could-set-our-most-vulnerable-kids-on-a-path-to-school-drop-out-drug-use-and-crime-166827>.

⁴⁰⁵ First Peoples Disability Network, cited in Law Council of Australia, *Aboriginal and Torres Strait Islander people*, n 390.

⁴⁰⁶ Walsh et al, n 392.

There are numerous ways that the courts can seek to address these issues, including through interpreters; culturally appropriate support services; increasing connection to family and community; addressing cultural and communication barriers; and the establishment of Indigenous sentencing courts.

A recent study⁴⁰⁷ found that participation in an Indigenous community-controlled adult literacy campaign resulted in a 50% reduction in serious reoffending. Qualitative data suggested that program participants were better able to engage with their lawyers and magistrates ‘looked more favourably on defendants who provided evidence that they were enrolled in the literacy campaign’.⁴⁰⁸ Courts can play an active role here, through creative sentencing approaches that engage with Indigenous-led literacy programs.

Three initiatives from Queensland are worth noting. The DRC noted that the Guddi Way Screen, a culturally appropriate assessment tool used to screen for cognitive disability among Indigenous people aged 16 and over, was being used in the Brisbane Murri Court.⁴⁰⁹

In addition, the Murri Court routinely orders ‘715 health checks’ (named after the relevant Medicare claim number) for all incoming participants. This free annual comprehensive health check is available to all Aboriginal and Torres Strait Islander people at Indigenous medical services and bulk-billing clinics and seeks to identify whether someone is at risk of illnesses or chronic conditions.⁴¹⁰ According to the advice provided to the authors of this report by a Murri Court Elder, participants appreciate the Elders’ concern about their wellbeing and report back on any health issues identified. However, it is important to ensure that any failure to undertake the health check does not result in a punitive response by the court.

A partnership between the Murri Court, Carers Queensland and the National Disability Insurance Agency focused on facilitating participants’ access to the NDIS.⁴¹¹ Over 18 months, nine people obtained access to the NDIS and none of them reoffended. One of the participants, Owen, was 32 and has an ABI. He was unaware of the NDIS until participating in Murri Court. Under his plan, he accessed supports for the first time, including a speech pathologist, physiotherapist, dietitian and support worker. He was planning to work on his ancestry and family tree with his support worker.

Blurred Borders resources are a range of communication tools developed by Legal Aid Western Australia⁴¹² for legal and community service providers working with Aboriginal people. They use visual art and storytelling to help explain legal concepts in a culturally accessible way. The resources include story cards, fact sheets and process maps, and cover legal issues relating to bail and the criminal process, family violence, child protection, fines, tenancy, and decision-making. These resources have won an Institute of Public Administration award and a children’s court registrar in the Northern Territory said they had ‘made a massive...[and] improved courts service

⁴⁰⁷ Beetson J et al (2022). Impact of a community-controlled adult literacy campaign on crime and justice outcomes in remote Australian Aboriginal communities. *International Journal for Crime, Justice and Social Democracy*, 11: 56-68. See also Wise J et al (2018). *Impact of the ‘Yes, I Can!’ adult literacy campaign on interactions with the criminal justice system*. Australian Institute of Criminology.

⁴⁰⁸ Beetson et al, *ibid*, 63.

⁴⁰⁹ DRC, Volume 8, n 233, 192.

⁴¹⁰ See eg, Australian Government (2024). *715 health check* <https://www.health.gov.au/news/715-health-check>.

⁴¹¹ Carers Qld (2021). Bridging the gap: how the Murri Court is working with Carers Queensland to support people to access the NDIS. Media release.

⁴¹² Legal Aid Western Australia (2024). *Blurred borders* <https://blurredborders.legalaid.wa.gov.au>.

delivery immensely'.⁴¹³ The *Plain English legal dictionary*⁴¹⁴ is another valuable resource for Indigenous people, especially those who do not speak English as their first language.

The literature consistently recognises that self-determination and capacity-building are central to improving justice outcomes for Aboriginal and Torres Strait Islander people. An intersectional approach recognises that Aboriginal and Torres Strait Islander PwD must be empowered to drive decision-making, with their lived experience (including of disability and the criminal justice system⁴¹⁵) and cultural knowledge informing any decisions that affect them. Programs for Aboriginal and Torres Strait Islander PwD should be both culturally safe and disability-responsive, addressing systemic issues of racism and ableism, while ensuring practitioners are competent in both cultural and disability contexts. This integrated approach recognises that cultural safety and disability access are not separate considerations, but interconnected aspects of inclusive justice. It also aligns with several action items under the DJAS 2024-28.⁴¹⁶

Keria's story

Keria is a Kamillaroi woman, who recently turned 18. She has a long history of involvement with the youth justice and child protection systems. She has been diagnosed with FASD, cognitive impairment and complex post-traumatic stress disorder. She sometimes lashes out violently, especially when she feels under threat. This has sometimes led to her being forcefully removed from court by security. To help her feel more comfortable in court, the magistrate, DLO, Aboriginal liaison officer, prosecutor, and Keria's lawyer arrange to spend some time with her in the courtroom, before the proceedings start. They realise Keria does not really understand what court is about, even though she has been to court many times before. They explain each person's role and what happens in court. She asks to sit in different parts of the courtroom and laughs when she gets to sit in the 'big white boss chair'. They agree to let her have a soft toy and some paper and pens to draw with, during her next hearing. This time, she is much calmer, which provides scope for a more in-depth discussion about next steps. The magistrate asks Keria for her ideas. She engages constructively and draws some pictures about what she would like to happen.

Other culturally and linguistically diverse people

People from culturally and linguistically diverse communities may face language and cultural barriers, in addition to disability-related challenges. In particular, these people and their communities may have more negative experiences with court and cultural mistrust of authority. The Judicial Council on Cultural Diversity⁴¹⁷ provides a range of relevant sources, especially in relation to the use of interpreters. The *Recommended national standards for working with*

⁴¹³ See Maylea et al, n 93, 27.

⁴¹⁴ Aboriginal Resource and Development Services et al (2015). *The plain English legal dictionary: A resource for judicial officers, Aboriginal interpreters and legal professionals working with speakers of Aboriginal languages.*

⁴¹⁵ See Ellem et al, n 136, 14.

⁴¹⁶ DJAS 2024-28, n 14, item 1.5: Aboriginal and Torres Strait Islander People and Reasonable Adjustment Rights project; 4.2: Build and expand upon success of Disability Liaison Officers across justice sector; 4.6: Partnerships with Aboriginal and Torres Strait Islander community; 4.7: Community of Practice; 5:6: Review of culturally safe practices.

⁴¹⁷ Judicial Council on Cultural Diversity (2024). *Home* <https://jcdi.org.au>.

*interpreters in courts and tribunals*⁴¹⁸ include a brief discussion of PwD. Where a person from a CALD background has a disability, it may be necessary to obtain support for both their cultural and disability needs, as well as any other relevant issues.

Farouk's story

Farouk needs to give evidence about an issue that has arisen with his landlord. He has impaired vision and uses a guide dog, Dalia. Although Farouk has lived in Australia for many years, he sometimes has issues with technical English, especially when he is stressed. He has arrived at court to meet with the DLO for a tour of the building, so he and Dalia will know their way around. The DLO and court staff will also arrange for there to be a bowl of water available for Dalia. When she hears Farouk talking to Dalia in Arabic, the DLO asks if he will need an interpreter in court. Farouk says he doesn't think that will be necessary, but he would like to think about this again after the tour. The DLO also offers to connect him with a cultural liaison officer, to see what other cultural supports Farouk may need.

Women and girls

Girls and women with disabilities may face additional challenges, related to gender-based discrimination. Their engagement with the courts and broader justice system therefore requires nuanced understanding and targeted responses. Issues may arise in relation to any aspect of the legal system, for example, housing or employment. However, much of the literature has focused on the needs of women in the criminal justice system. For example, the Queensland Women's Safety and Justice Taskforce observed that:

Women coming before courts as accused persons and offenders are likely to have specific needs in relation to domestic and family violence, child caring arrangements, child protection issues, trauma history, economic security and housing. The Taskforce has consistently heard that women should be connected to suitable (in many cases gender-specific) supports at the court stage to better meet their needs, support them in the community and reduce their likelihood of receiving a prison sentence and/or reoffending.⁴¹⁹

The overlap between disability, victimisation and offending are noted above. However, these are particularly stark for women and girls, especially as a result of DFV.⁴²⁰ The DRC expressed concern about the experiences of girls and women with disability, who said they were not believed or taken seriously by police, when reporting incidents as victims of family, domestic or sexual violence.⁴²¹ In some instances, they were misidentified as the perpetrator. Although this part of the DRC's report was focused on police responses, its implications flow through to the courts. DFV issues are discussed more in 7.2.

⁴¹⁸ Judicial Council on Cultural Diversity (2022). Recommended national standards for working with interpreters in courts and tribunals. 2nd ed.

⁴¹⁹ Women's Safety and Justice Taskforce (2022). *Hear her voice - Women and girls' experiences across the criminal justice system: Report 2, Volume 2*, 539.

⁴²⁰ See eg, Derkley K (2024). Inside stories: A voice for change in recognising disability. *Law Institute Journal* https://www.liv.asn.au/web/law_institute_journal_and_news/web/lij/year/2024/02february/a_voice_for_change_in_recognising_disability.aspx.

⁴²¹ DRC, Volume 8, n 233.

The Judicial Council on Cultural Diversity developed the National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.⁴²² This made several recommendations for how courts can provide ‘affordable and accessible court services’ that would also benefit PwD to engage meaningfully with court services. For example, they stated:

Women have reported finding the process of arriving at court to be highly intimidating and noted that there is often insufficient information available about where to go for assistance and how to determine when and where their matter will be heard. Courts should consider improving the signage and information available upon arrival at court.⁴²³

Another crucial accessibility factor they identified was about ensuring the physical safety of people, while they are participating in court processes. Addressing this need can significantly improve participants’ experience and interaction with the courts, enhancing their overall confidence in the justice system. Given this, the Framework recommended that all Australian courts should establish separate waiting areas for women, particularly those attending court for DFV matters (see 7.2).⁴²⁴ This consideration is vital in creating a more secure and supportive environment for any vulnerable group, especially given the over-representation of women with disability who experience violence.

All attendees at court, and especially parents with disabilities, can face significant challenges in accessing and participating in court proceedings, due to their caring responsibilities, particularly when they lack adequate support networks. These challenges can impact their ability to attend court, provide instructions to legal representatives (if they have no alternative but to attend court with their children present, this can be a distraction) or engage fully in proceedings. For PwD who are primary carers, these barriers are often compounded by accessibility issues, communication challenges, and the need to manage their own support requirements, alongside their children’s needs.

Some jurisdictions have started to address these challenges, through subsidised childcare programs or on-site facilities. For instance, Western Australia’s Family Court⁴²⁵ operates a creche service, caring for approximately 1,500 children annually. However, while helpful, this model may not fully address the needs of parents with disabilities, who require additional support or accommodations. Parents with disabilities may need specialised facilities, flexible timing arrangements, and staff trained in disability awareness, to ensure equitable access to justice. The intersection of disability and caring responsibilities presents a complex set of challenges that courts should take into consideration in their service design and delivery.

LGBTIQA+ people

LGBTIQ+ individuals with disabilities may experience unique forms of stigma and discrimination, for example, in employment. LGBTQ+ people are also disproportionately represented in the criminal

⁴²² Judicial Council on Cultural Diversity, *National framework*, n 87.

⁴²³ *Ibid*, 20.

⁴²⁴ *Ibid*, 19.

⁴²⁵ Family Court of Western Australia (2024). *Child minding service*
https://www.familycourt.wa.gov.au/c/child_minding_services.aspx.

justice system, and may face higher rates of arrest, prosecution, and incarceration, compared to the general population.⁴²⁶ Trans and gender-diverse individuals also experience higher rates of contact with the criminal justice system and encounter distinct challenges, when navigating legal processes.⁴²⁷ In a study in Victoria on trans and gender-diverse individuals,⁴²⁸ individuals reported varied experiences in court. Some judges inconsistently used correct pronouns and most trans and gender-diverse participants felt some degree of disrespect in the court setting. All participants expressed discomfort about authentic gender expression in court, with most feeling 'extremely uncomfortable' about gender identity disclosure.⁴²⁹

Transgender people are 3-6 times more likely than cisgender people to identify as autistic.⁴³⁰ This reinforces the need for awareness about communication barriers, sensory processing issues and cognitive differences that make navigating court processes even more complex. The combination of disability-related needs, and sex and gender identity concerns, can create additional stress and barriers to full participation in court proceedings and requires a nuanced approach.

The Mental Health Coordinating Council's *Recovery oriented language guide* provides guidance around the use of appropriate language for LGBTIQ+ people and explains the reasons why this is so important.⁴³¹ For further guidance on responding to the needs of LGBTIQ+ people, also see the relevant sections of the WA BB and NSW BB.⁴³²

⁴²⁶ See eg Law Council of Australia (2018). *The Justice Project final report – Part 1: LGBTI+ people*.

⁴²⁷ Green A and Gray S (2023). Trans and gender diverse people's court experiences in Victoria: A call for culturally safe courts. *International Journal for Crime, Justice and Social Democracy*, 12: 81-94.

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Warrier V et al (2020). Elevated rates of autism, other neurodevelopmental and psychiatric diagnoses, and autistic traits in transgender and gender-diverse individuals. *Nature Communications*, 11, 3959 <https://doi.org/10.1038/s41467-020-17794-1>.

⁴³¹ Mental Health Coordinating Council, n 70.

⁴³² WA BB, n 161, 721-791; NSW BB, n 8, 8101-11100.

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Appendix A: Standard recommended court form⁴³³

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

Appendix B: Pre-hearing accessibility checklist

<p>General points</p>	<p>Be flexible (eg, allow family members to help PwD).</p> <p>Do not make assumptions about what may or may not be the needs of a particular person with a disability.</p> <p>In some cases, providing adjustments might delay proceedings and/or cost money to provide. This needs to be balanced against the person's right to participate (eg, give evidence effectively, act as a juror).</p>
<p>Assessing requirements</p>	<p>Do the parties/witnesses/lawyers have any disabilities? If so, what are their requirements/what support and adjustments are necessary?</p> <p>Requirements may be determined in a range of ways and may include physical or communication adjustments or support people.</p> <p>Court staff should contact a person with a disability <i>as early as possible</i>, to determine their requirements and provide the necessary information for the hearing in appropriate formats.</p> <p>Some people (especially from certain cultural backgrounds) may be reluctant to identify as having a disability and/or find direct questions related to any disability intrusive.</p> <p>The court should investigate the option(s) <i>closest</i> to providing the usual court experience.</p>
<p>Physical access</p>	<p>Has the person received a tour of the courtroom and court facilities?</p> <p>Does the court need to move (eg, to a hospital bed) or be adapted (eg, witness giving evidence from a stretcher)?</p> <p>Judicial officers can play a role in familiarising court users at the start of and during hearings.</p> <p>Will the person be using a wheelchair, scooter or mobility aid? If so, can they move around the courtroom?</p> <p>Is the person using an assistance animal? If so, is there a bowl of water? What about toilet breaks?</p> <p>Are there bright lights that might be distracting for a person with a sensory disability?</p>
<p>Language/communication</p>	<p>Adjust your style of communication according to what is relevant and needed. Do not make assumptions or inappropriate adjustments (eg, speaking to carer instead of person with disability).</p> <p>Explain things simply, repeatedly, in a range of ways and check if the person has understood.</p> <p>Are alternative communication options required? If so, have registry staff arranged this (eg, Auslan, deaf or other language interpreters)?</p> <p>Some people may need an independent communication support worker, if they have little/no speech and/or use aids and augmentative and alternative communication.</p> <p>Do people have direct line of sight, eg, if they are deaf/hard of hearing and using an Auslan interpreter or lip reading?</p> <p>Are the court acoustics adequate for someone who is hard of hearing? If they rely on lip reading, speaking louder/slower may not assist but distort the lips instead, making it difficult to interpret.</p>

	<p>How will the person indicate that they need a break or communicate common answers, such as 'yes', 'no' and 'I don't understand'?</p> <p>Will judicial offers need to introduce informalities in the hearing, to communicate effectively and ensure people can participate?</p> <p>Court staff or judicial officers should ask PwD or people supporting them about their communication methods and any adjustments before the hearing. They should continue checking in with them, to ensure they can understand.</p> <p>If English is not the person's first language, follow the <i>Recommended national standards for working with interpreters in courts and tribunals</i>.</p>
Support people	<p>What additional supports might the person need (eg, to enter the courtroom)?</p> <p>Is the level of support (including from advocates and other support people) adequate?</p> <p>Has the person had access to legal advice?</p>
Technology, equipment and information access	<p>Does the person need to use a hearing loop? If so, is this available/operational? Are people able to use other equipment they need (eg, palliative or therapeutic devices)?</p> <p>Is information (eg, documents and forms) in accessible formats (eg, plain language, Braille, larger fonts, audio), wherever possible?</p> <p>Other technological options (eg, CCTV, closed captioning) should also be considered, where required.</p> <p>Is information available in languages other than English?</p>
Time considerations	<p>Take the time to explain things carefully (eg, what is happening, its significance).</p> <p>Allow regular breaks.</p> <p>Is the time of day for the hearing suitable? Has consideration been given to the impact of the person's disability (eg, timing for medication)? Will the person have to wait for an extended and uncertain period?</p> <p>Have documents been provided before hearings in a timely manner, to allow enough time to read and absorb materials?</p> <p>Does the person to additional time for breaks or to communicate? When will adjournments be necessary and appropriate?</p>
Other procedural considerations	<p>Are any adjustments to procedural matters necessary? (eg, a person's disability or literacy level may affect how they touch or hold a text or ability to read or speak to script).</p> <p>Is it appropriate to close the court?</p> <p>It may also be appropriate to seek advice from the court's media liaison officer, to minimise sensationalised reporting.</p>