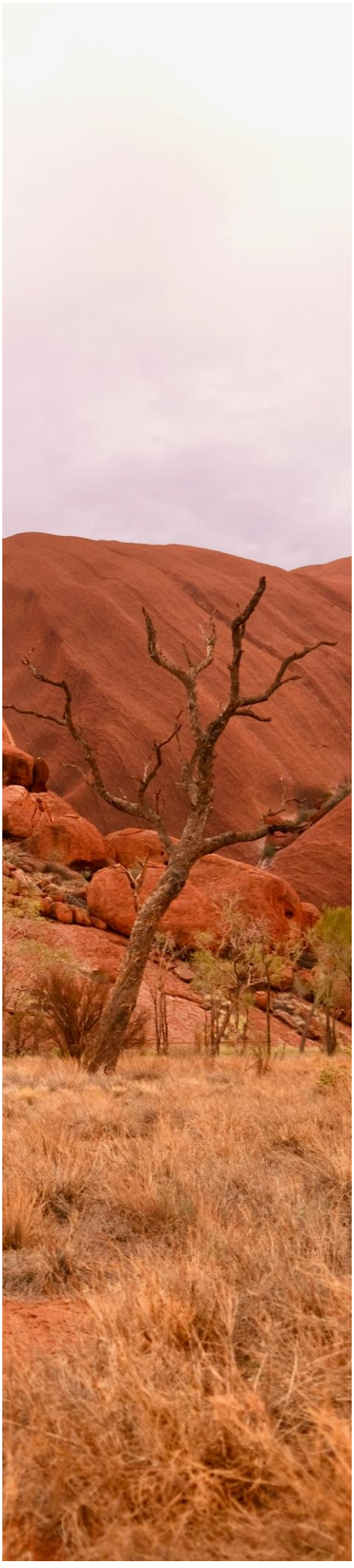
SUPERDIVERSITY ACTION PLAN

2025

ASIAN AUSTRALIAN
LAWYERS ASSOCIATION INC

Contents



Acknowledgements

AALA offers our respects to Aboriginal and Torres Strait Islander peoples as the Traditional Owners and Custodians of the lands on which we live, work and learn.

AALA acknowledges the past and continuing trauma caused by mistreatment and displacement.

As we launch the Superdiversity Action Plan, AALA celebrates and shares in the deep respect for Elders, land and community, and continues to advocate for intersectional diversity and the empowerment of all First Nations peoples in Australia and around the world.

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Foreword

> “The Superdiversity Action Plan sets out practical, forward-looking initiatives across research, judicial training, interpreter standards, professional development, and legal education. It aims to ensure that our courts, institutions, and legal profession truly reflect the rich diversity of modern Australia.”

Matt Floro
National President

I am honoured to introduce the Asian Australian Lawyers Association’s Superdiversity Action Plan – a landmark report aimed at advancing cultural diversity, equity, and inclusion within the Australian legal profession and justice system.

Australia is one of the most culturally and linguistically diverse nations in the world. As our communities continue to evolve, it is vital that our legal system keeps pace – ensuring that justice is accessible, fair, and responsive to all, regardless of cultural or linguistic background.

This Superdiversity Action Plan builds on the important insights from our collaboration with Ms Mai Chen and Professor Andrew Godwin on the issues paper *Culturally and Linguistically Diverse Parties in Australian Courts – Insights from New Zealand* (September 2022). That paper underscored the pressing need for systemic reform to address barriers faced by culturally and linguistically diverse litigants.

The Superdiversity Action Plan sets out practical, forward-looking initiatives across research, judicial training, interpreter standards, professional development, and legal education. It aims to ensure that our courts, institutions, and legal profession truly reflect the rich diversity of modern Australia.

This work is not only about representation – it is about equity, access to justice, and building a legal system that understands and serves the needs of all Australians. It is about ensuring that no person is disadvantaged because their culture, language, or lived experience differs from the majority.

On behalf of AALA, I extend my thanks to all those who have contributed to this groundbreaking initiative. We call on our governments, parliaments, courts and tribunals and our legal profession to act on our recommendations and proposals. Together, we can – and must – shape a legal system that is inclusive, culturally capable, and committed to justice for all.

Matt Floro
National President, 2023-2025
Asian Australian Lawyers Association

Background

AALA's Contribution to Date

The Asian Australian Lawyers Association ("AALA"), the national peak body for lawyers with an interest in Asia and Asian Australian lawyers, has been at the forefront of advancing cultural diversity and inclusion within the Australian legal profession for more than a decade. AALA's commitment to recognising and addressing the challenges faced by culturally and linguistically diverse ("CALD") communities is reflected in its collaborative work with leading experts Ms Mai Chen and Prof Andrew Godwin on the 2022 AALA Issues Paper, *Culturally and Linguistically Diverse Parties in Australian Courts – Insights from New Zealand*.[1]

The 2022 AALA Issues Paper draws on the groundbreaking findings of the New Zealand Superdiversity Institute's report titled *Culturally and Linguistically Diverse Parties in the Courts: A Chinese Case Study*,[2] authored by Ms Mai Chen. Recognising the parallels between New Zealand's and Australia's increasingly superdiverse societies, AALA supports the adoption and application of these insights in the Australian legal context. The Issues Paper identifies systemic barriers faced by CALD litigants such as language challenges, a lack of cultural understanding within the judiciary, and difficulties accessing justice. The Issues Paper also highlights strategies for reform, including enhanced case management, judicial training, improved professionalisation of interpreters, and increased representation of diverse communities within the legal profession and judiciary.

Building on the Issues Paper, this Superdiversity Action Plan focusses on practical recommendations and proposals to improve access to justice for CALD parties in Australia. AALA members provided critical review and feedback during the development of this Superdiversity Action Plan, ensuring that the recommendations and proposals are culturally sensitive and responsive to Australia's legal system.

AALA's work on "superdiversity" – a term used to describe a highly multicultural and multiethnic society – exemplifies its broader mission: advancing cultural diversity in law, advocating for systemic change, and empowering Asian-Australian and CALD lawyers and litigants alike.[3] By supporting research and thought leadership on superdiversity, AALA continues to shape a more inclusive and equitable future for Australia's legal system.

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[1] Mai Chen and Andrew Godwin, *Culturally and Linguistically Diverse Parties in Australian Courts – Insights from New Zealand* (Issues Paper, September 2022). See also Asian Law Centre (The University of Melbourne), 'Culturally and Linguistically Diverse Parties in Australian Courts – Insight from New Zealand' (YouTube, 13 October 2022) <https://www.youtube.com/watch?v=Q2qh09eU6DQ>.

[2] Mai Chen, *Culturally and Linguistically Diverse Parties in Courts: A Chinese Case Study* (Issues Paper, November 2019) <https://lawfoundation.org.nz/wp-content/uploads/2019/11/2019_46_6_RESEARCH-REPORT-Embargoed-till-8am-18th-Nov-2019.pdf>.

[3] *Dictionary of Human Geography* (2013) 'superdiversity' <https://www.oxfordreference.com/display/10.1093/acref/9780199599868.001.0001/acref-9780199599868-e-1821>.

Other Developments

Australian Law Reform Commission

Without Fear or Favour: Judicial Impartiality and the Law on Bias[4]

In response to the High Court of Australia's 2021 decision in *Charisteas v Charisteas*,[5] which exposed an instance of apprehended bias on the part of a trial judge as a result of inappropriate contact between the judge and counsel for one of the parties, the Australian Law Reform Commission ("ALRC") conducted an inquiry into judicial bias. The resulting report, *Without Fear or Favour: Judicial Impartiality and the Law on Bias*, explores how judicial impartiality can be strengthened to maintain public confidence in the courts.

A key theme of the report is that unconscious social and cultural biases may influence judicial decision-making. Among its key findings, the ALRC identified the need for better data collection, greater judicial diversity, improved cultural competency through judicial education, and procedural reforms to ensure equitable participation in court processes.

Particularly relevant to CALD communities, the report recommends measures such as the provision of interpreters, clearer guidance for self-represented litigants, and culturally appropriate court settings. These recommendations seek to foster a more inclusive judicial environment that acknowledges and addresses the unique needs of Australia's multicultural communities.

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[4] Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report No 138, December 2021) <https://www.alrc.gov.au/wp-content/uploads/2022/08/ALRC-Judicial-Impartiality-138-Final-Report.pdf>. For AALA's submission to this report, see https://www.alrc.gov.au/inquiry/review-of-judicial-impartiality/submissions/.

[5] *Charisteas v Charisteas* (2021) 273 CLR 289 was a long-running family property dispute, in which the High Court of Australia unanimously set aside property settlement orders and remitted the matter for rehearing, holding that there was apprehended bias where the trial judge had undisclosed social and private communications (meetings, calls, and texts) with the wife's barrister while the case was on foot and judgment reserved, and confirming that such conduct would lead a fair-minded lay observer to reasonably apprehend that the judge might not bring an impartial mind to the issues to be decided.

Judicial Commission of New South Wales

Equality Before the Law: Bench Book[6]

The *Equality Before the Law*: *Bench Book* ("the Bench Book"), published by the Judicial Commission of New South Wales ("JCNSW"), offers practical guidance to judicial officers, legal practitioners, and court users in identifying and addressing barriers to equal access to justice. As a living document, it is continually updated to reflect Australia's evolving cultural and social diversity, with the most recent updates made in April 2025. A central principle of the Bench Book is that "injustice inheres as much in treating unequals the same as it does in treating equals differently" – in other words, achieving substantive equality before the law requires an appreciation of how social, cultural, linguistic, and personal circumstances shape an individual's experience of the legal system.[7]

In relation to CALD communities, the Bench Book offers guidance to judicial officers on practical and legal matters such as the appropriate use of interpreters and translators, respectful handling of non-English names and naming conventions, recognition of culturally influenced demeanour and communication styles, and awareness of family structures and roles. It also addresses the risk of cultural bias in juries and offers best practices for delivering decisions in ways that improve understanding and compliance. In doing so, the Bench Book serves as a valuable resource for promoting cultural competence and ensuring that the legal system in New South Wales ("NSW") is accessible and responsive to the needs of its diverse population.

Cultural Diversity: Reflections on the Role of the Judge in Ensuring a Fair Trial[8]

The article *Cultural Diversity: Reflections on the Role of the Judge in Ensuring a Fair Trial*, authored by the Honourable Justice Helen Wood and published by the JCNSW, explores how judges can address the barriers faced by culturally diverse individuals in criminal jury trials. A key concern is that jurors, unlike judges, do not receive cultural awareness training and may unintentionally bring personal biases to their assessment of evidence, demeanour, or credibility.

Such misinterpretations can undermine the fairness of criminal trials for CALD individuals. Justice Wood calls for the Bench and Bar to be more explicit throughout proceedings, particularly in explaining trial processes and reinforcing the principles of procedural fairness. Further, Justice Wood advocates for greater judicial intervention – including tailored jury directions to counter potential prejudice – and emphasises the important role of counsel in identifying issues that may lead to unfairness and raising them with the trial judge.

Judicial Council on Diversity & Inclusion

Publications[9]

The Judicial Council on Diversity & Inclusion ("JCDI") is an advisory body committed to promoting procedural fairness and equal treatment for all court users, including those from CALD backgrounds. It develops frameworks, best practice guidelines, and practical resources to support

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[6] Judicial Commission of New South Wales, *Equality Before the Law: Bench Book* (Report, Release 26, April 2025) <https://jirs.judcom.nsw.gov.au/public/assets/benchbooks/equality/>.

[7] Ibid i.

[8] Judicial Commission of New South Wales, *Cultural Diversity: Reflections on the Role of the Judge in Ensuring a Fair Trial* (Report, October 2021) 114–124 <https://jirs.judcom.nsw.gov.au/public/assets/benchbooks/judicial_officers/>.

[9] 'Publications', *Judicial Council on Diversity & Inclusion* (Web Page) <https://jcdi.org.au/publications/>.

courts and judicial officers in delivering inclusive and equitable justice. Notable publications include recommendations on the effective use of interpreters in courts and tribunals, as well as proposed frameworks aimed at improving access to justice for First Nations peoples, migrants, and refugee women. Through this work, the JCDI contributes to building a more accessible and culturally responsive legal system across Australia.

Australian Institute of Judicial Administration

Suggested Criteria for Judicial Appointments[10]

In September 2015, the Australasian Institute of Judicial Administration ("AIJA") published a short booklet, *Suggested Criteria for Judicial Appointments*. It was later referenced in ALRC's *Without Fear or Favour: Judicial Impartiality and the Law on Bias* report, contributing to renewed attention on the process of judicial appointments. In 2024, the AIJA released an updated version of the booklet, expanding the original criteria with expert commentary and contemporary insights. The central theme of the update is a broader understanding of what constitutes a "good judge" – recognising that judicial excellence encompasses not only legal knowledge and sound decision-making, but also emotional intelligence, impartiality, and strong communication and interpersonal skills.[11]

Importantly for CALD communities, the booklet challenges the false dichotomy between merit and diversity, arguing that merit has too often been narrowly defined through traditional career paths that overlook candidates with different but equally valuable experiences. It positions diversity as a strength, advocating for more inclusive appointment practices that widen the talent pool and ensure equal opportunity for capable candidates from all backgrounds to serve on the Bench.

2024 Judicial Gender Diversity Statistics Report[12]

The *2024 Judicial Gender Diversity Statistics Report*, published by the AIJA, presents a comprehensive overview of gender representation across all federal, state, and territory courts in Australia, as well as courts in New Zealand, with comparisons to trends over the past decade. As of 30 June 2024, women make up 46% of judicial officers nationwide – an encouraging milestone on the path toward gender parity. This progress reflects sustained efforts to promote a more inclusive and representative judiciary.

For CALD communities, the report's findings are particularly relevant when considered through an intersectional lens. Ensuring diversity in the judiciary is not only about gender but also about how gender intersects with culture, language, and lived experience. While this data provides valuable insight into gender representation, there is now a pressing need for intersectional data that captures other dimensions of diversity – such as ethnicity, cultural background, and language – to more fully

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[10] Australasian Institute of Judicial Administration, *Suggested Criteria for Judicial Appointment* (Report, January 2024) <https://aija.org.au/wp-content/uploads/2024/02/AIJ_suggested-criteria-for-Judicial-Appointment_Digital.pdf>.

[11] Ibid 6.

[12] Australasian Institute of Judicial Administration, *AIJA Judicial Gender Statistics: Number and Percentage of Women Judges and Magistrates at 30 June 2024* (Report, September 2024) <https://aija.org.au/wp-content/uploads/2024/09/AIJA-Judicial-Gender-Statistics-2024_for-publication_SA-revised.pdf>. Since this Superdiversity Action Plan was drafted, the 2025 statistics have been released, showing broadly positive improvements in gender diversity across all Australian states and territories: Australasian Institute of Judicial Administration, *AIJA Judicial Gender Statistics: Number and Percentage of Women Judges and Magistrates at 30 June 2025* (Report, September 2025) <https://aija.org.au/wp-content/uploads/2024/08/AIJA-Judicial-Gender-Statistics-2025_for-publication-1.pdf>.

understand and address representation gaps. Such an approach lays the foundation for a judiciary that reflects the full breadth of Australia's population and is better equipped to serve all communities with fairness and cultural sensitivity.

Australian Judicial Officers Association

Judicial Independence in Australia[13]

This research paper examines the current state of judicial independence in Australia, using a framework developed by the American Bar Association. The paper identifies twelve pressure points threatening judicial independence, including growing political commentary on court decisions, resource constraints, judicial stress, and emerging risks related to artificial intelligence ("AI"). It argues that these pressures can undermine public confidence in the judiciary and the fair administration of justice.

A key recommendation is to better support the judiciary through clearer protections, improved institutional structures, and investment in wellbeing initiatives. It also emphasises the importance of diverse judicial appointments, noting that representation from a range of social and cultural backgrounds strengthens public trust.

For CALD communities, the paper reinforces the need for judicial officers to understand how lived experiences – including migration background, language, and cultural identity – shape perceptions of fairness and legitimacy. It also supports calls for greater cultural awareness training within the judiciary.

Judicial College of Victoria

Judicial Training in Cultural Awareness[14]

Cultural awareness initiatives facilitated by the Judicial College of Victoria aim to improve cultural awareness among judicial officers, including in relation to First Nations people. Such training programs provide practical guidance on how historical disadvantage, systemic discrimination, and cultural difference can influence people's interactions with the justice system.

These programs encourage judicial officers to reflect on their own potential biases and to recognise the social context of legal matters, including how culture may affect demeanour, language use, and courtroom behaviour. Training topics include culturally appropriate communication, understanding intergenerational trauma, and identifying where procedural fairness may be at risk.

These efforts promote a more inclusive and respectful courtroom environment and help ensure that diverse cultural practices and communication styles are not misunderstood or unfairly judged.

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[13] Jessica Kerr, 'Judicial Independence in Australia' (Research Paper, Australian Judicial Officers Association, August 2024).

[14] See, eg, 'First Peoples Cultural Awareness', *Judicial College of Victoria* (Web Page, 2025) <https://judicialcollege.vic.edu.au/events/first-peoples-cultural-awareness>.

Mediator Standards Board

Australian Mediation Dispute Resolution Accreditation Standards[15]

The 2024 *Australian Mediation Dispute Resolution Accreditation Standards* ("AMDRAS") is Australia's national standard for mediator accreditation. It emphasises the importance of impartiality, accessibility, and cultural responsiveness, with cultural safety now a key requirement in mediator training and practice. This new framework replaces the National Mediator Accreditation System and introduces higher expectations around mediator conduct, training, and skills.

The AMDRAS introduces values such as accessibility, cultural responsiveness, and trauma-informed practice. It explicitly includes cultural awareness as a core component of mediator competency. The AMDRAS requires mediators to understand how cultural background may influence a person's approach to conflict, communication, and resolution.

AMDRAS aims to make mediation more inclusive and effective for CALD communities, with processes that are culturally safe and better suited to parties' needs. These updated standards aim to ensure that mediators are better equipped to manage intercultural disputes sensitively and fairly.

Bar Associations and Law Societies

Introducing Cross-Cultural Communication Training and Building Cultural Capabilities

Legal institutions and professional bodies across Australia are increasingly recognising the need for cross-cultural communication training. For example:

- The Victorian Bar considered proposals to require cultural awareness training as part of continuing professional development, particularly in response to findings from the Yoorrook Justice Commission which highlighted systemic discrimination in the justice system.[16]
- The Law Society of NSW has published guidance on promoting cultural diversity in the legal profession.[17] The *Cultural Diversity Guidance* paper encourages law firms to implement inclusive hiring and leadership practices, such as recognising language skills and lived cultural experience as assets in legal practice. It also recommends that firms build cultural competency into professional development and internal policies.

For CALD communities, this shift is an important step toward ensuring that lawyers are better prepared to engage with cultural diversity in legal practice and have a greater ability to understand and advocate for clients from diverse backgrounds. Improved cultural communication helps prevent misunderstandings, supports fairer advocacy, and builds greater trust between clients and legal representatives.

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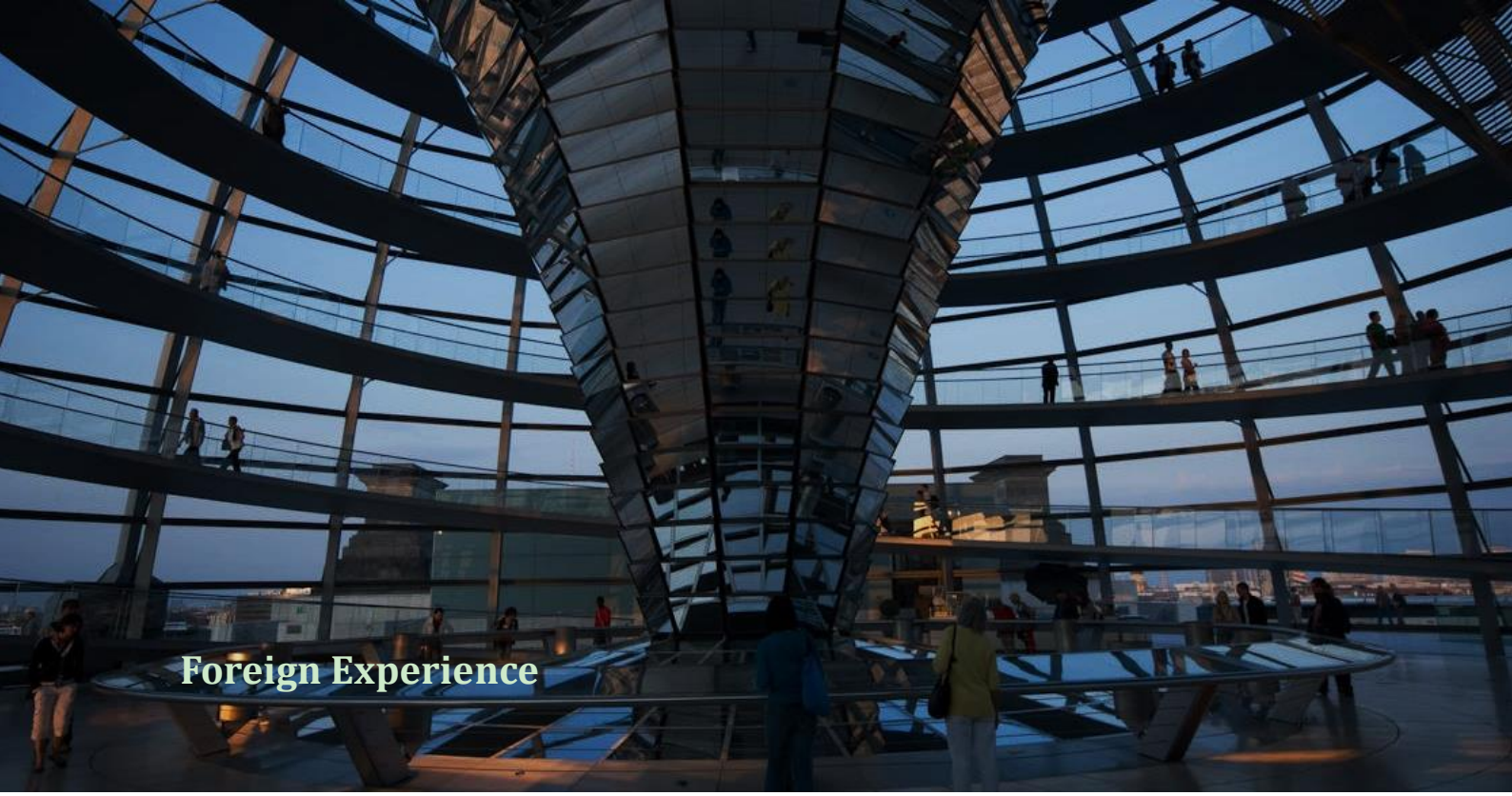
[15] Mediator Standards Board, *The Australian Mediator and Dispute Resolution Accreditation Standards* (Standards, 1 June 2024) <https://msb.org.au/themes/msb/assets/documents/AMDRAS%20-%201%20June%202024.pdf>.

[16] Jaynaya Dwyer et al, *Legal Education Reforms for First Nations Justice* (Submission, 8 February 2024) <https://law.unimelb.edu.au/__data/assets/pdf_file/0006/4851303/Final-Legal-Education-Reforms-for-First-Nations-Justice58.pdf>.

[17] Law Society of New South Wales, *Cultural Diversity Guidance* (Guidance Paper, October 2021) <https://www.lawsociety.com.au/sites/default/files/2021-10/LS3641_PAP_CulturalDiversityGuidance_2021-10-18.pdf>.



Foreign Experience

United Kingdom

Equal Treatment Bench Book

The Judicial College's *Equal Treatment Bench Book*, updated most recently in May 2025, offers a model of institutionalised, regularly updated guidance to address unconscious bias. A similar Australia-wide judicial resource could help unify fragmented state-level initiatives and promote a consistent approach to cultural competence.

This Bench Book emphasises that "fair treatment" is a fundamental principle embedded in the judicial oath, making it a vital judicial responsibility. It also highlights the importance of understanding – and being aware of – individuals' different circumstances, to ensure effective communication and address any inequalities arising from differences or disadvantages. It also provides practical suggestions for judges to ensure fairness for all involved in the justice process.[18]

The United Kingdom's *Judicial Diversity and Inclusion Strategy 2020/25* embeds judicial outreach and public confidence into structural policy.[19] Australia could adopt a similar approach to make judicial appointments and court culture more reflective of superdiverse realities.

Judicial Diversity Statement

The 2013 *Judicial Diversity Statement*, issued jointly by the then Lord Chief Justice of England and Wales, The Rt Hon the Lord Thomas of Cwmgiedd, and the Senior President of Tribunals, The Rt Hon Sir Jeremy Sullivan, highlights the benefits of a more diverse judiciary in England and Wales.[20] It commissions a judicial diversity strategy, to be developed by the Judicial Diversity Committee of the Judges' Council, chaired by the Lord Chief Justice, with a threefold focus on supporting diversity and progression within the judiciary, encouraging suitably qualified candidates from all backgrounds

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[18] Judicial College (United Kingdom), *Equal Treatment Bench Book* (Report, July 2024) <https://www.judiciary.uk/wp-content/uploads/2025/05/ETBB-July-2024-May-2025-update.pdf>.

[19] Courts and Tribunals Judiciary (United Kingdom), *Judicial Diversity and Inclusion Strategy 2020/25* (Report, 2020) <http://judiciary.uk/wp-content/uploads/2022/07/Judicial-Diversity-and-Inclusion-Strategy-2020-2025-v2.pdf>.

[20] Judicial Diversity Statement, *Courts and Tribunals Judiciary* (Statement, December 2013) <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Statements/diversity-statement-lcj-spt-dec13.pdf>.

in the legal profession to consider judicial office, and strengthening public understanding of the judiciary and the rule of law.

The more recent *Diversity and Inclusion Statement*, issued by The Rt Hon the Baroness Carr of Walton-on-the-Hill, Lady Chief Justice, reiterates this commitment by emphasising that judicial officeholders should work in an environment free from harassment, victimisation and bullying, where everyone is treated with dignity and respect and enjoys equality of opportunity.[21]

Muslim Arbitration Tribunal[22]

The Muslim Arbitration Tribunal ("MAT") was created in 2007 to provide a viable alternative for the Muslim community seeking to resolve disputes in accordance with Islamic legal principles while avoiding expensive and slow litigation in the courts. The MAT operates under the *Arbitration Act 1996* (UK) and deals with commercial and civil disputes, forced marriage cases, family disputes, inheritance disputes, mosque disputes, and the drafting of sharia-compliant wills.[23]

However, it is *ultra vires* – that is, beyond its power – for the MAT to determine civil divorce proceedings, children custody matters, or any criminal law issues, which must be referred to the appropriate courts or authorities.[24] Matters before the MAT are heard by an adjudication panel which consists of an Islamic scholar and a lawyer who must be qualified in the United Kingdom with at least three years' experience,[25] selected through a rigorous recruitment process to ensure the suitability of panel members.

South Africa

Constitution of South Africa

Section 174(2) of the *Constitution of the Republic of South Africa* provides that "the need for the judiciary to reflect broadly the racial and gender composition of South Africa *must* be considered when judicial officers are appointed" (emphasis added).[26] This provision makes judicial diversity a constitutional imperative rather than a discretionary goal. It has significantly shaped the work of South Africa's Judicial Service Commission, which is responsible for assessing and recommending judicial appointments, and has been central to advancing racial and gender transformation of the bench since the end of apartheid.

However, the implementation of s 174(2) has not been without contest. In *Kroukamp and Another v Minister of Justice and Constitutional Development and Others*,[27] the Equality Court considered

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[21] 'Lady Chief Justice: Diversity and Inclusion Statement', *Courts and Tribunals Judiciary (United Kingdom)* (Web Page) <https://www.judiciary.uk/about-the-judiciary/diversity/message-from-lcj-judicial-diversity/>.

[22] See Femi Owolade, 'Sharia Law Isn't Taking Over Britain: It's an Inevitable Legacy of its Colonial Legal History', *The Conversation* (online, 31 October 2025) <https://theconversation.com/sharia-law-isnt-taking-over-britain-its-an-inevitable-legacy-of-its-colonial-legal-history-267262>.

[23] Anna Marotta, 'Question of Geo-Legal Perspective: Geopolitical Links as a Potential Driver of Legal Developments' (2023) 1(1) *Opinio Juris in Comparatione* 27, 37 <https://www.opiniojurisincomparatione.org/wp-content/uploads/2023/12/Opinio_Template-Marotta.pdf>.

[24] Judicial Council on Cultural Diversity, *Cultural Diversity Within the Judicial Context: Existing Court Resources* (Report, 15 February 2016) 96 <https://jcdi.org.au/wp-content/uploads/2021/06/JCCD_Cultural_Diversity_Within_the_Judicial_Context_-_Existing_Court_Resources.pdf>.

[25] See ibid.

[26] *Constitution of the Republic of South African Constitution* (South Africa) s 174(2).

[27] *Kroukamp and Another v Minister of Justice and Constitutional Development and Others* (74236/2013) [2021] ZAGPPHC 526 (16 August 2021).

a claim of unfair discrimination arising from the Minister of Justice and Constitutional Development's refusal to appoint Mr Martin Kroukamp, a white male, to a Senior Magistrate position. Despite receiving a positive recommendation from the Magistrates Commission, the Minister had declined to appoint Mr Kroukamp on the basis that the pool of candidates was small and inadequate to advance "the constitutional imperative regarding the transformation of the judiciary".

In upholding Mr Kroukamp's claim, the Equality Court held that s 174(2) "provides no basis for absolute and unconditional priority to be given to women and black people" and affirmed that the provision does not "[prohibit] the recommendation, or appointment, of a white male".

At paragraph 48, the Court further observed:

> "The position of the Minister in this case, seems to be that no matter how hard the Magistrates Commission tried to explain the suitability of the first complainant to be appointed as Senior Magistrate at Alberton, he was not prepared to appoint a white male to that post... **Nothing in section 174(2) of the Constitution prohibits the recommendation, or appointment, of a white male**." (emphasis added)

This decision to uphold the claim was later affirmed by the Supreme Court of Appeal in *Magistrates Commission and Others v Richard John Lawrence*.[28] These cases demonstrate that efforts to advance judicial diversity must be pursued through transparent and legally sound processes that appropriately balance the goal of representation with the principles of merit, equality, and fairness that underpin the administration of justice.

New Zealand

Te Ao Mārama

Te Ao Mārama – literally meaning "the world of light" – is a transformative judicial initiative led by the New Zealand District Court aimed at making the court system more culturally responsive, accessible, and restorative.[29] While initially rooted in efforts to better serve Māori communities, who are significantly overrepresented in the criminal justice system, the initiative is explicitly designed to benefit all court users, including Pacific peoples and other CALD groups.

Te Ao Mārama is not a parallel or specialist court – rather, it reflects a fundamental shift in how mainstream courts operate, embedding principles of cultural safety, procedural fairness, and community participation across the system. In practice, this involves adapting courtroom language, processes, and settings to make them more inclusive and less adversarial. Judges are encouraged to speak directly to participants in plain language, make use of cultural reports to better understand offenders' backgrounds, and actively engage with local Iwi (tribes) and community-based service providers.

The initiative builds on the success of specialist courts such as the Rangatahi and Pasifika Courts, both youth-focused, but aims to extend culturally informed practices into the mainstream of the court system.[30] As of now, Te Ao Mārama is operating across eight District Court locations: Kaitāia,

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[28] *Magistrates Commission v Lawrence* (388/2020) [2021] ZASCA 165 (2 December 2021).

[29] District Court of New Zealand, *Te Ao Mārama: Best Practice Framework* (Report, 20 December 2023) 4 <https://www.districtcourts.govt.nz/assets/Uploads/Te-Ao-Marama-/Te-Ao-Marama-Best-Practice-Framework-for-website.pdf>.

[30] 'Rangatahi Courts & Pasifika Courts', *Youth Court of New Zealand* (Web Page) <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>.

Kaikohe, Whangārei, Hamilton, Tauranga, Gisborne, Napier, and Hastings.[31] By grounding procedural justice in approaches that reflect the values, experiences, and identities of diverse communities, Te Ao Mārama offers a promising model for reimagining how courts engage with the public and for addressing the systemic barriers that continue to affect Indigenous and minority groups.

Dialogue and Awareness

New Zealand continues to promote dialogue and awareness in respect of CALD issues. For example, on 19 May 2025, the New Zealand Asian Lawyers led the conference *Considering Possible Settlement: Asian Parties in Court*, held with support from the Ministry of Justice and in association with the New Zealand Bar Association and the New Zealand Law Society, which explored the unique issues, challenges and opportunities for settlement by Asian civil litigants in the New Zealand courts.[32]

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[31] 'About Te Ao Mārama', *District Court of New Zealand* (Web Page) <https://www.districtcourts.govt.nz/te-ao-marama/about-te-ao-marama>.

[32] 'Considering Possible Settlement: Asian Parties in Court', *New Zealand Law Society* (Web Page, 22 May 2025) <https://www.lawsociety.org.nz/news/newsroom/considering-possible-settlement-asian-parties-in-court/>. See also Mai Chen, 'Considering Possible Settlement: Asian Parties in Court' (2025) *New Zealand Law Journal* 149.

Policy and Law Reform

Building on the developments outlined above, AALA proposes a suite of reforms across policy, institutional practice, and legislative change. These recommendations aim to improve access, equity, and cultural responsiveness for CALD parties in all areas of the Australian legal system.

Recommendation 1: Legal Literacy and Community Education

- Collaborate with CALD community service providers to develop and deliver targeted legal literacy and education strategies, ensuring court and tribunal support services are accessible to CALD parties and culturally responsive.[33]
- Fund and expand multicultural legal outreach by supporting mobile and embedded legal clinics in high-migrant areas and providing stable funding to community legal centres ("CLCs") with proven CALD engagement, including recruitment of multilingual staff.
- Develop and distribute multilingual legal resources by creating plain-language materials in key community languages across priority legal areas, including basic information about the legal system in Australia and how it might differ from legal systems in other countries, and establishing a national multilingual legal portal with accessible written and audio-visual content linked to CLCs.

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[33] Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (Report, 1 February 2012) 8 <https://www.ag.gov.au/sites/default/files/2020-08/ImprovingtheFamilyLawSystemforClientsfromCulturallyandLinguisticallyDiverseBackgrounds.PDF> ("*Improving the Family Law System for CALD Clients*"). See also Recommendation 14 in Judicial Council on Cultural Diversity, Submission No 120 to Productivity Commission, *Inquiry into Access to justice Arrangements* (29 November 2013) 22 <https://assets.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub120-access-justice.pdf> ("*Judicial Council on Cultural Diversity Submission*"), reading: "It is recommended that a cultural diversity curriculum be developed for judicial officers in alignment with the National Judicial College of Australia's standards."

Recommendation 2: Building Cultural Competence

- Introduce cultural competency training for all judicial officers and tribunal members, aligned with the professional standards of the National Judicial College of Australia, and set expectations in respect of such training, including making it mandatory where possible.[34]
- Develop ongoing awareness programs for judicial officers and tribunal members to address unconscious bias, stereotyping, and assumptions when working with CALD communities.[35]
- Commission practice-specific "good practice" guidelines for CALD service delivery.[36]
- Develop a national Bench Book on cultural diversity as a readily accessible guide to the types of issues that judicial officers may need to consider in order to ensure a fair trial for CALD litigants – including First Nations peoples.[37]
- Embed cultural competency in legal education and professional development by encouraging its inclusion in Australian law school curricula and promoting it as a core component of continuing professional development for legal practitioners.

Recommendation 3: Enhancing Service Integration

- Address fragmented service pathways for CALD parties by creating a centralised, culturally responsive "resource pool" or services map, integrating it into Legal Aid's "Law Access" platform to improve navigation and access to appropriate legal and support services.[38]

Recommendation 4: CALD Community Liaison and Workforce Support

- Increase funding for Community Liaison Officers from CALD backgrounds to support courts and tribunals in engaging effectively with CALD clients and improve communication.[39]

Recommendation 5: Engagement and Consultation

- Establish structured, ongoing engagement between courts, legal service providers, and CALD communities – such as through Community Advisory Groups – to ensure services are culturally responsive, trusted, and informed by lived experience.[40]

Recommendation 6: Enhancing the Use of Interpreters

- Provide fully-funded, accredited interpreters in all courts across Australia for parties with limited English proficiency at every stage of legal proceedings, to ensure equal access to justice and uphold procedural fairness.

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[34] *Improving the Family Law System for CALD Clients* (n 33) 90.

[35] See Recommendation 13 in *Judicial Council on Cultural Diversity Submission* (n 33) 19, reading: "It is recommended that cultural awareness and competency programs, particularly addressing attitudes and bias, be developed for courts and their staff."

[36] *Improving the Family Law System for CALD Clients* (n 33) 93–4.

[37] See Recommendation 15 in *Judicial Council on Cultural Diversity Submission* (n 33) 22, reading: "It is recommended that a national bench book on cultural diversity be developed as a readily accessible guide to the kinds of issues that may need consideration by judicial officers to ensure a fair trial for Indigenous and CALD litigants."

[38] *Improving the Family Law System for CALD Clients* (n 33) 47.

[39] Ibid 64.

[40] Ibid 96–8.

- Introduce specialist legal interpreting qualifications by embedding practice-specific modules – such as family law – into interpreter accreditation pathways, which can expand into other practice areas.[41]
- Adopt court-specific interpreter protocols for contracting, engaging, selecting, briefing, and assisting interpreters, to reduce the disadvantage experienced by many CALD court users and ensure consistent, high-quality interpreting services.
- Adopt court-specific interpreter protocols for contracting, engaging, selecting, briefing, and assisting interpreters, to reduce the disadvantage experienced by many CALD court users and ensure consistent, high-quality interpreting services.[42]

Recommendation 7: Legislative Review

- Review key legislation (*e.g., Family Law Act 1975* (Cth), *Migration Act 1958* (Cth), and the respective *Evidence Act* regimes in states and territories) to ensure cultural connection and identity are adequately recognised where relevant, particularly in relation to parenting orders, cultural evidence, and community-based outcomes.[43]

Recommendation 8: Research, Review, and Data Collection

- Undertake a systematic review of CALD communities' experiences with the legal system to inform ongoing reform, using consultation methods that are culturally sensitive and adequately resourced to ensure meaningful participation.[44]

Recommendation 9: Equitable Briefing

- Expand the Law Council of Australia's *Equitable Briefing Policy* to include data in respect of CALD barristers by setting voluntary interim targets and requiring annual reporting by Commonwealth agencies. This will promote greater representation of CALD advocates and ensure briefing practices reflect Australia's multicultural society.[45]
- Develop a national definition of, and opt-in register for, CALD barristers in partnership with Bar Associations and the Law Council of Australia. The register should be secure, respect privacy and self-identification, and allow government agencies to identify and brief CALD counsel based on merit and expertise.

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[41] *Improving the Family Law System for CALD Clients* (n 33) 69–71. See Recommendation 11 in *Judicial Council on Cultural Diversity Submission* (n 33) 18, reading: "It is recommended that special legal interpreting qualifications be introduced."

[42] See Recommendation 12 in *Judicial Council on Cultural Diversity Submission* (n 33) 19, reading: "It is recommended that court specific interpreter protocols be adopted for contracting, engaging, selecting, briefing and assisting interpreters to remove the disadvantage experienced by many CALD court users."

[43] *Improving the Family Law System for CALD Clients* (n 33) 99.

[44] Ibid 101.

[45] Law Council of Australia, *Equitable Briefing Policy* (Policy, November 2022) <https://lawcouncil.au/files/pdf/policy-guideline/Equitable%20Briefing%20Policy%20%20updated%20Nov%202022.pdf>.

Action Plan

Introduction

Australia's growing superdiverse population, characterised by the dynamic interplay of migration histories and cultural differences, has presented new challenges and complexities for courts and tribunals – particularly in ensuring access to justice for CALD parties participating in the legal system. Decision-makers regularly adjudicate matters involving parties with limited English proficiency and/or little familiarity with the Australian legal system.

Given the issues outlined above, AALA has formulated this Superdiversity Action Plan to provide proposals to the Australian judiciary, tribunals, decision-makers, and the wider public for addressing challenges faced by CALD parties in the Australian legal system and process.

AALA's proposed Action Plan focusses on the following priority areas and questions:

1. **Information**: What measures could improve CALD parties' access to information about the Australian legal system, including pre-trial procedures and legal education?
2. **Managing proceedings**: What best-practice approaches and practical tips are available for managing proceedings involving CALD parties?
3. **Evidence**: What considerations should be taken into account when identifying, assessing, and admitting cultural evidence?
4. **Training**: What measures could increase awareness of the impact of culture and superdiversity through training for judicial officers and the legal profession?

Proposals

Based on opinions and observations from AALA's members, including experienced litigators, AALA makes the following proposals under the heading of each priority area:

1. Information

In relation to information that is available to or being provided to CALD parties, AALA proposes the following recommendations to increase access by CALD parties to information about the Australian legal system and process, including pre-trial management and education:

1.1. **Translating self-represented litigant guidelines and materials**: Many courts have published resources for self-represented litigants on their websites,[46] but often these resources are only in English. Providing access to multilingual resources would improve access to justice for CALD litigants. In addition, it is recommended that any resources for non-English speaking self-represented litigants should make clear the court's expectations for dealing with foreign language documents and evidence (*e.g.,* that they be translated by a translator certified by the National Accreditation Authority for Translators and Interpreters, herein referred to as "NAATI").

1.2. **Translating legal aid materials into multiple languages and providing interpreter services at legal aid offices**: We note that some legal aid offices have already been doing this. For example, Legal Aid NSW provides translation of their website in a few Asian

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[46] See, eg, 'Self-Represented Litigant Program', *County Court of Victoria* (Web Page) <https://www.countycourt.vic.gov.au/self-represented-litigant-program>; 'Representing Yourself', *Supreme Court of Victoria* (Web Page) <https://www.supremecourt.vic.gov.au/going-to-court/help-with-court-processes/representing-yourself>.

languages such as Chinese, Burmese, Lao, Korean, and Indonesian.[47] Further, Victoria Legal Aid recruits staff that speak other languages and organises an interpreter for certain languages when providing telephone services to CALD parties.[48] However, not all the states' and territories' legal aid offices have translations for their websites or written resources and not all of them have interpreters for their phone services.

1.3. **Directories**: Many law societies maintain directories and referral services to assist people in finding lawyers with appropriate expertise, including appropriate language skills. However, the websites for accessing these services are only in English. This makes it difficult for CALD parties to find or access these services. AALA recommends that information about such directories and referral services be made available in other languages.

1.4. **Access to interpreting and translating services**: The costs of interpreters and translators can often be significant for CALD parties in litigation. This cost disproportionately affects CALD parties' access to justice. One way to address this access to justice issue would be for the courts to fund translators and interpreters for CALD litigants in appropriate cases. Many lower courts already offer free interpreting services to CALD litigants at hearings, but consideration should be given to extending those free services to translation costs, and for matters heard by superior courts. In Victoria, the Magistrates' Court of Victoria and the Victorian Civil and Administrative Tribunal offer a translating and interpreting service for CALD parties at court hearings, at no cost to the parties. There should be consideration as to whether such services could be expanded to court hearings in intermediate and superior courts. This would reduce cost barriers to CALD litigants and improve access to justice.

2. **Managing proceedings**

AALA proposes the following best practice and practical tips for managing proceedings:

2.1. **Case management**: The Courts should be encouraged to proactively consider and manage translating and interpreting issues in the ordinary course of case management and have recommended processes included in Practice Notes so that there is a uniform approach to these concerns. It is often the case that parties consider matters relating to translation and interpretation too late in the litigation process, resulting in unnecessary cost and/or delay. In particular:

2.1.1. **Time for witness evidence via interpreters**: The time taken to give evidence via interpreters – as reported by our AALA members – is, on average, at least double, if not more, of the usual time taken to give evidence in English. If this additional time is not taken into account when setting down a matter for trial, the allotted time may suffice. This may result in delays and wasted resources to the parties and the court.

2.1.2. **Interpreting for parties during trials**: Parties to litigation are usually permitted to observe during the trial, but are excluded from observing during other witness testimonies. Generally, interpreters are only used during witness testimony, but are not commonly used to permit non-English speaking parties to understand what is going on in the case beyond witness testimony. This may potentially

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[47] 'Help in Other Languages', *Legal Aid New South Wales* (Web Page) <https://www.legalaid.nsw.gov.au/help-in-other-languages>.

[48] 'Speak To Someone in Your Language', *Victoria Legal Aid* (Web Page) <https://www.legalaid.vic.gov.au/speak-us-your-language>.

disadvantage non-English speaking parties if they do not understand what is being said during the hearing.

Accordingly, in the course of case management, consideration should be given to whether any person requires an interpreter during the trial generally – not just whilst giving evidence – and, if so, whether leave should be granted for an interpreter to interpret throughout the trial. However, the desirability of having an interpreter throughout the hearing may need to be weighed against the disruption to the flow of the hearing by having to wait for an interpreter to finish interpreting what is said.

Courts may consider investigating whether the use of technology would assist in striking a balance. For example, granting leave to use machine translation services coupled with live transcripts may assist in allowing CALD litigants to understand what is happening at the hearing, without disrupting the flow of the hearing generally.

2.1.3. **Translation of documents**: There is presently no standard procedure for identifying how documents ought to be translated, when they ought to be translated, or who ought to pay for the costs of translation. AALA recommends developing Bench Books or Practice Notes that provide guidance on how to deal with these issues in a uniform way. These resources can answer questions such as whether, when parties undertake discovery and one party discloses a large tranche of foreign language documents, every other party who is receiving the documents should be required to obtain their own translations of these documents, so that they can understand them. If so, that results not only in increased costs to the parties, given everyone is incurring the costs of getting their own translations, but also carries with it a substantial risk of further disputes about the "proper" translation of the material, because each party may have a slightly, or even significantly, different translation of the document. Further, there is generally no requirement for a party to disclose translations of discoverable documents that they have obtained for their own benefit. This means that the parties' differences in beliefs about what documents mean may not become apparent until late in the litigation process.

One possible approach may be for the court to order that the parties confer at an early stage about which foreign language documents are to be formally translated, which foreign language documents do not need to be translated (for example, because the effect of those documents is common ground), and who is to bear the costs of those translations in the first instance.

As to the costs of translation, in some cases, it may be appropriate for the parties to appoint a joint translator and bear the costs equally (for example, where the documents are critical to the issues in dispute). In other cases, it may be appropriate for only one party to bear the costs of translating some documents (for example, where only one party seeks to rely on the documents and the other party disputes their relevance).

2.1.4. **Admissibility of informal translations**: Translation costs can represent a significant cost barrier for CALD parties in litigation, especially where there are large volumes of relevant documents in foreign languages. As an example, one AALA member reported a recent case in which the estimate for translating a bundle of documents of around 140 pages was over $50,000, not including the further legal costs involved in arranging and reviewing the translations.

Machine translation (*e.g.,* translation services like Google Translate and AI services like ChatGPT) are becoming increasingly adept at translating foreign language documents to English with a relatively high level of accuracy. In appropriate cases, parties and courts may consider whether to permit machine translations – which are not certified by a NAATI interpreter – to be admissible, subject to each party having the right to raise objections in respect of any translation they consider to be inaccurate.

2.1.5. **Interpreters for mediations**: Courts should consider whether orders should be made for a mediator to have their own interpreter. Although this is currently not common practice, the courts may find that there is merit in making orders for the mediator to have their own interpreter in appropriate cases, balancing the cost of doing so with the benefits in facilitating settlement discussions.

It is often important for the mediator, as an independent facilitator, to have their "own" voice. If the mediator can only communicate through the same interpreter as the party's lawyer and barrister, the effect of having one's "own" voice is somewhat lost. Further, one AALA member reports participating in multiple mediations where a party's lawyer and family member have acted as informal interpreters. Whilst this approach may be cost effective, the risk is that an informal interpreter is not independent and may consciously or subconsciously act as a filter to what the mediator is really saying.

2.1.6. **The language used in court must be simplified or easy to understand to enable the translator to properly translate**: Often, NAATI translators do not have any legal training. They sometimes ask for clarification of certain words or concepts. This is a problem where a barrister does not speak the relevant language and cannot address any incorrect translations.

2.1.6.1. The importance of accurate translation or interpretation is illustrated in *DVO16 v Minister for Immigration and Border Protection* (2021) at [54]:[49]

> "The errors that can arise from interpretation are not limited to the consequences of incorrect interpretation. They extend also to the pernicious effect of adverse credibility assessments based upon matters of demeanour and impression."

2.1.7. It is recommended that, where interpreters are being used in court, the court endeavours to use plain English and avoid technical legal jargon, in order to reduce the risk of translation errors.

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[49] *DVO16 v Minister for Immigration and Border Protection* (2021) 273 CLR 177.

2.1.8. AALA members have also provided the following examples:

2.1.8.1. Example 1: One of our AALA committee members, who is a multilingual barrister, has reported situations where the translator translated incorrectly. In such cases, our AALA committee member reported that she had to ask the translator to re-translate what had been said. She also had clients telling her that a particular translator did a poor job in translating for another CALD party, where the client understood the other language.

2.1.8.2. Example 2: An AALA member reported that they have attempted to object to family members translating in matters. However, they noted that the court generally takes the view that any translation is better than no translation. Confusion can arise when judges try to explain orders to a family member of a CALD party, but the family member often does not translate everything the judge has said in the same way NAATI translators do. Sometimes, such family members may be the relevant party's child, who may not have the experience to be able to properly translate. There are sometimes also difficulties when it comes to the family dynamics which hinder a family member's ability to translate.

2.1.8.3. Example 3: An AALA member shared a matter in which the court sent a letter to a CALD party in English, with a Google Translate version of the letter attached. While the use of technology should not be discouraged, there should be proper protocols in place to ensure proper translation of communications, which should also be made available for CALD parties when they are communicating with the court.

2.1.9. **Increased cost barriers to CALD litigants:** Cases involving CALD litigants are almost always more expensive, having regard to the added cost of translators and interpreters. Trials are also usually longer, as set out above. As such, AALA submits that there are three things that the profession can do to reduce the cost barriers to CALD litigants:

2.1.9.1. Earlier consideration should be given to how best to manage such cases to reduce costs. For example, consideration may be given to whether some or all of the evidence-in-chief should be given by way of witness statements rather than viva voce evidence at trial, as this may cut down on the trial time.

2.1.9.2. The profession should have more senior CALD practitioners to reflect the diversity of the people coming before the court. For example, costs can quickly spiral out of control when all advice, meetings, and communications with the client need to go through a translator or interpreter – which is unfortunately a not uncommon experience for CALD parties in court. Such costs can be substantially reduced where the lawyer is capable of communicating to the client in their native language. The responsibility is on the profession to promote cultural diversity within the profession.

2.1.10. **Using artificial intelligence and technology to reduce costs where appropriate**: AALA recommends that consideration should be given as to whether it is possible for CALD parties to use online software or AI to translate court materials, without sharing any confidential information. This method could replace the need for NAATI interpreters, particularly at earlier stages of the proceeding, and thereby reduce the costs of interpretation. AALA further recommends that consideration should be had as to any existing guidelines or

Practice Notes on AI issued by court – for example, some jurisdictions, such as Victoria, require parties to disclose the use of AI for discovery[50] – as well as continuing developments in, and understanding of, the use and ethics of AI in litigation.

2.1.11. **Applying testing or quality control methods**: AALA encourages further consideration surrounding the creation of quality control processes or methodologies to ensure proper translations, such as having development programs for NAATI interpreters to verify the quality of their interpretation. For example, the Federal Court of Australia has issued Practice Notes requiring that interpreters do their interpretation "accurately" and to grant leave for a person to act as an interpreter if that person "takes an oath or makes an affirmation to interpret accurately to the best of the person's ability".[51]

3. Evidence

AALA suggests that practitioners and/or the court consider the following factors in identifying, considering, and admitting cultural evidence:

3.1. **Witness preparation**: When conferring with CALD witnesses, it is important for practitioners to take additional care in explaining the court process, the nature of the cross-examination process, and how to interact with interpreters. For example, it is important for CALD witnesses to know that they are allowed to seek clarification when they are unsure about the meaning of a translated question put to them, or when they think a question or answer may have been translated incorrectly. It is also important for CALD witnesses to understand that context can easily be lost in the translation process. Whilst witnesses should be encouraged to use their own words when giving evidence, it is good practice for practitioners to remind non-English speaking witnesses that things like local idioms and phrases, words with dual meanings or nuanced meanings, sarcasm, and rhetoric often do not translate well without further elaboration.

CALD witnesses may also sometimes give evidence that carries implicit cultural assumptions, which may not be apparent without further elaboration. For example, in Korean culture, a person's age may influence their position in the social hierarchy within interpersonal relationships – therefore, a Korean witness who gives evidence about another person's age may intend to demonstrate a hierarchical relationship with that other person by their age difference, but that cultural context may be lost unless the legal practitioner is sensitive to that context. It is therefore important for practitioners to keep in mind cultural issues and contexts when considering the evidence of CALD witnesses, and, where appropriate, to be inquisitive about the cultural context when conferring with witnesses.

3.2. **Credibility and cultural issues**:

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[50] See, eg, 'Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation', *Supreme Court of Victoria* (Web Page) <https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>.

[51] See, eg, Federal Court of Australia, *General Practice Note: Working with Interpreters*, 24 March 2023. <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-interpret>.

3.2.1. In the context of Indigenous Australian witnesses, it has been well-recognised that cultural factors can lead to the misinterpretation of a witness's credibility, to the prejudice of that witness.[52]

3.2.2. In more recent cases, some judges have also recognised the need to exercise great caution in making findings based on the demeanour of witnesses from Asian backgrounds. For example, see:

3.2.2.1. *Huang v Wei (No 2)* [2022] NSWSC 473 at [18] (Kunc J);
3.2.2.2. *Guojin Huang v Jinghong Wei* [2022] NSWSC 222 at [50] (Kunc J);
3.2.2.3. *Wang v Yang* [2022] QDC 162 at [53] (Rosengren DCJ); and
3.2.2.4. *Zhu v Wang* [2021] NSWCA 240 at [93]–[94] (Emmett AJA, Gleeson and Payne JJA agreeing) ("*Zhu v Wang*").

3.2.3. AALA agrees that such caution is appropriate.

3.2.4. In addition, the court should be cautious about requiring a witness, who appears to be a second-language English speaker, to give evidence in English – even if their English appears to be adequate. A witness who is not a native English speaker may have more difficulty giving evidence wholly in English, and this could potentially translate to poorer quality evidence being given and/or adverse findings as to credit arising from their demeanour or manner of responding.

3.2.5. It is recommended that a witness who appears to be a second-language English speaker should be informed that they have the option to give evidence in their native language if they prefer to do so, or have an interpreter available to assist where required.

3.2.6. The court should also be cautious about making assumptions about a person's English language ability *in the past*, based on their level of language ability *at trial*. A person may improve in their English ability over time by studying English or just by living in Australia. Conversely, a person who has been the subject of abuse and isolation from society may experience regression in their English ability.

3.2.7. In jury trials, the court may have the difficult task of striking a balance between informing the jury of the potential effect of cultural biases, without inadvertently biasing the jury *towards* the witness.[53] This perhaps highlights the need for acceptable standard wording to be developed for use where culturally diverse witnesses are involved in jury trials.

3.3. **Cultural evidence**: Caution should be given to the concept of "cultural evidence".

3.3.1. "Cultural evidence" (that is, evidence as to what cultural norms and expectations apply for a particular class of people) should be distinguished from "cultural bias" (that is, the making of adverse credit findings against a witness based on the way they speak or act when giving evidence, without having regard to the way in which the witness's culture may affect the way they speak and act).

3.3.2. In many cases involving CALD parties, what needs to be proven in court is what was assumed, expected, or understood between the parties themselves. In

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[52] See, eg, Australian Human Rights Commission, 'Submissions of the Aboriginal and Torres Strait Islander Social Justice Commissioner on Common Difficulties Facing Aboriginal Witnesses', Submission in *Giblet & Ors v Qld & Anor*, QUD300/2005, 20 March 2007 <https://humanrights.gov.au/our-work/legal/commission-submission-common-difficulties-facing-aboriginal-witnesses>.

[53] See *Stack v The State of Western Australia* (2004) 29 WAR 56 at [9]–[19] (Murray J).

cases involving CALD litigants, sometimes allegations about the assumptions, expectations, or understandings between the parties can seem unlikely when viewed through the lens of Australian commercial practices and norms. In those circumstances, cultural evidence may be introduced to provide context that influences the credibility of those allegations.

3.3.3. It is important to bear in mind that the usual purpose of cultural evidence is not to positively prove the existence of a particular culture as an "end goal" or as a determinative question in a case, but to assist the court to assess a witness's credibility by properly situating their evidence within its cultural context.

3.3.4. For example, a Chinese litigant who is a sophisticated businessperson may suggest that they made a multimillion-dollar investment based on an oral discussion and a handshake, because they were introduced to the other party by a trusted friend. Such conduct may seem implausible or unreasonable when viewed from the lens of Australian commercial norms. It may, however, seem more plausible and reasonable in the relevant cultural context.

3.3.5. Courts should be cautious about making broad or definitive findings about "culture" itself. For example, it will often be unnecessary to determine that a particular culture existed in a specific form, at a particular time, and governed the parties' relationship: in the view of some AALA members, such a finding goes too far. Rather, it may be sufficient to find that a witness held certain beliefs about the cultural norms and expectations that applied (or that they adopted those norms), and that those beliefs were not unreasonable or unlikely because expert evidence shows that others of a similar background hold similar beliefs. That, in turn, may support a conclusion that the witness's evidence is credible and should be accepted.

3.3.6. On the other hand, a court may find that a particular culture existed, but that the relevant parties did not adopt it. For example, a court might accept that a culture of trust and informality in business dealings existed by reason of the Chinese concept of *guanxi*, but nevertheless conclude that the parties did not operate in accordance with that culture because they engaged lawyers and entered into a detailed written contract.

3.3.7. One reason courts should be cautious about making findings about "culture" is that it is extremely difficult to define the class of people to whom a particular culture is said to apply. Overly broad findings risk stereotyping, which is itself a form of cultural bias. Countries such as China, India, or the United States, for example, are internally diverse and contain multiple linguistic, regional, and professional sub-cultures. It is rarely accurate to assume that there is a single, uniform "Chinese" or "Indian" culture, for example, that operates in the same way for all people from that background. Cultures also change over time: people from the same cultural background born in the 1970s may conduct business in ways that differ markedly from those born after 2000.

3.3.8. The two cases below give contrasting examples of how cultural evidence may be dealt with at trial:

3.3.8.1. In *Zhu v Wang*,[54] the plaintiff, Ms Zhu, invited the court to accept that, as a matter of Chinese business culture, "the principals made agreements that were binding upon themselves, irrespective of the legal

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[54] *Zhu v Wang* [2021] NSWCA 240, [93]–[94] (Emmett AJA, Gleeson and Payne JJA agreeing).

entities" potentially involved in the relevant transaction. The court declined to do so, finding no evidentiary basis for such a general cultural norm and rejecting the submission.

3.3.8.2. In *Bi v Wu*,[55] the plaintiff alleged that the parties who had signed certain contracts also intended that their respective corporate identities would be bound, even though those entities were not named as parties. The court found in favour of the plaintiff, accepting that the evidence demonstrated such a cultural understanding and that the companies were intended to be bound:

"This unsophisticated understanding of legal personality is at least consistent with how Mr Wu perceived such matters … Mr Wu said he was not worried about contracting with Mr Liu rather than Ms Bi, stating that 'in Chinese culture, we don't think so much about which party should be involved. If the money is from a family, it doesn't matter if it's paid back in the wife's name, husband's name, son's name, or company name, it's paid back to the family.'"

4. **Training**

AALA makes the following proposals to increase awareness of the impact of culture and superdiversity through training for judicial officers and the legal profession.

4.1. AALA recommends providing more training for judicial officers on cultural awareness and cultural sensitivity.

4.2. **Effects of cultural assumptions**: Given the diversity of cultures (and subcultures) that may come before the court, it is impossible for judicial officers to be trained in the nuances of every culture. Rather, AALA considers that judicial officers should receive training about the effects of cultural assumptions generally, and develop what Justice Emilios Kyrou has described as a "mental red flag cultural alert system which gives them a sense of when a cultural dimension may be present so that they may actively consider what, if anything, is to be done about it".[56]

4.2.1. It has long been recognised, in the context of matters involving Indigenous Australian witnesses, that cultural assumptions (for example, about eye contact or body language) should be treated with caution. However, similar observations are not commonly made in relation to CALD litigants in Australian judgments. Training would assist in promoting greater awareness of these issues.

4.2.2. By way of illustration, in some Asian cultures, it may be considered impolite to give a strong "no" or to disagree directly, with a corresponding preference for indirect responses or "soft no's". In court, this may create an impression that a witness is unsure or not firmly opposed to a proposition, when that is not in fact the case. AALA members have observed a number of cases in which Chinese witnesses have been described as "evasive" or in similar terms: it is difficult to determine whether this reflected genuine evasiveness, or whether cultural influences played some part in how their evidence was perceived.

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[55] *Bi v Wu* [2021] VSC 447, [126] (M Osborne J).

[56] Emilios Kyrou, 'Judging in a Multicultural Society' (2015) 24(4) *Journal of Judicial Administration* 223, 226.

4.2.3. Judicial officers may therefore wish to be proactive in seeking clarification where it is unclear whether a witness's response has been influenced by a cultural factor or by a translation issue.

4.3. **Incorporating a statement acknowledging different cultural background**: Where cultural issues and CALD litigants are involved, judicial officers should be encouraged to include in their reasons a short statement acknowledging the cultural and linguistic background of the witness. For example, a judgment might record:

"*[Witness] was born overseas and lived there most of their life. They did not speak English and gave evidence through an interpreter. I have taken into account [witness's] cultural background and considered its possible relevance when assessing their evidence*."

This achieves two purposes:

4.3.1. First, including such a statement focuses the judicial officer's attention on the witness's different cultural background and helps ensure that it is not overlooked.

4.3.2. Second, it promotes public confidence in the justice system by demonstrating that the court is cognisant of cultural issues and is taking them into account.

4.4. **Avoiding the "echo chamber" effect:**

4.4.1. Where non-English speaking CALD litigants engage lawyers who speak their language, those lawyers may become the primary or only source of information about the litigation process. This can create difficulties where the lawyer effectively becomes a "filter" through which all information flows. For example, the litigant may be unable to read court documents or correspondence, may not fully understand what is said in court, and may struggle to follow advice given by counsel in English.

4.4.2. This issue is exacerbated where there is a lack of accessible external resources in the litigant's first language (as discussed above) and may result in an "echo chamber" in which the litigant hears only what their lawyers choose to convey.

4.4.3. AALA recommends that, where non-English speaking litigants are involved, the court give consideration to early and proactive case management to address these issues. This may involve, for example, requiring the parties and their interpreters to attend initial directions hearings so that the court can explain directly what it expects from the parties and what the parties should expect from the litigation process.

4.4.4. A similar approach is already taken in the shareholder oppression list in the Supreme Court of Victoria under the *Practice Note SC CC 8: Oppressive Conduct of the Affairs of a Company*.[57] At the commencement of an oppression proceeding, the court lists an initial conference that must be attended by both the parties and their lawyers. At that conference, the judicial registrar is able to speak directly to the parties about the costs, risks and practical impacts of litigation. While these are matters on which lawyers should advise their clients in any event, the Court has recognised that, at least in oppression proceedings, there is value in having them communicated by the Court itself. AALA recommends that a similar approach be adopted, where appropriate, in cases involving CALD litigants.

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[57] See Supreme Court of Victoria, *Practice Note SC CC 8: Oppressive Conduct of the Affairs of a Company*, 18 May 2018.

4.5. **Cultural reports**: Australian courts may wish to consider obtaining further information about a CALD party's background through the use of "cultural reports". In New Zealand, courts may rely on such reports, addressing an offender's background where cultural issues are relevant in a criminal matter.[58] The statutory basis for such reports is s 27 of the *Sentencing Act 2002* (NZ), which permits an offender to call one or more people to speak about the offender's personal, family, whānau, community, and cultural background, and the way in which that background may have related to the commission of an offence.

4.6. **Cultural immersion**: Judicial officers should be encouraged to participate in international programs and to collaborate with their overseas counterparts.[59] Such engagement provides valuable opportunities to learn about different cultural contexts and legal systems from a judicial perspective.

4.7. **Development of Bench Books**: While states and territories have varying resources to assist judicial officers in understanding CALD litigants, the information is often limited. It is therefore recommended that material on CALD parties be compiled, expanded, and made more readily accessible – for example, through Bench Books. The Supreme Court of Western Australia publishes an *Equal Justice Bench Book* for judges, which includes a chapter on CALD parties and interpreters.[60] However, some AALA members consider that the information currently published does not address issues affecting CALD litigants in sufficient depth.

4.8. **Translation of court forms**: Pursuant to the *Uniform Civil Procedure Rules 2005* (NSW), applications for possession of land must include a prescribed "coversheet" that sets out, in multiple languages, the serious nature of the application, its consequences, and where to obtain legal or interpreting assistance.[61] This is a commendable initiative that recognises the importance of giving CALD defendants a fair opportunity to respond and seek advice in relation to applications with serious consequences. AALA recommends that consideration be given to developing similar coversheets for other kinds of court applications, particularly where unsophisticated defendants and/or short timeframes to respond are likely to be involved. This may include, for example, small claims matters in the Local or Magistrates' Courts, residential and retail lease possession applications, injunction applications, and similar proceedings.

4.9. **Mandatory Cross-culture training**: The judiciary may wish to introduce structured training focused on cross-cultural communication and implicit bias. Such training should be evidence-based and strongly encouraged for judicial officers.

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[58] 'Cultural Reports NZ – Information for Defendants', *Whakakupu* <https://www.whakakupu.nz/for-defendants>.

[59] See, eg, 'International Programs: Work with International Judiciaries', *Federal Court of Australia* (Web Page) <https://www.fedcourt.gov.au/about/international-programs>.

[60] Supreme Court of Western Australia, *Equal Justice Bench Book* (Report, 24 September 2021) ch 7 <https://www.supremecourt.wa.gov.au/_files/Equal_Justice_Bench_Book.pdf>.

[61] *Uniform Civil Procedure Rules 2005* (NSW) r 6.8A.

Conclusion

Superdiversity is a defining feature of contemporary Australian society. Over recent decades, migration patterns have continued to evolve and the landscape in which CALD parties come before the courts has also changed, but one thing has remained constant: the Australian judicial system is still particularly difficult for many to navigate. The recommendations and proposals presented in this paper – ranging from the use of cultural reports to explain an offender's background where cultural issues are relevant, through to equitable briefing practices and the adoption of modern technology to enhance interpreter services – are designed to promote procedural fairness and uphold the fundamental right to equal treatment under the law.

Despite these aspirations for reform, implementing such changes are not without cost. Interpreter services delivered by humans can be expensive and logistically challenging to coordinate. Providing translated transcripts or mandatory training for judicial officers and court staff requires not only funding, but also time away from judicial duties. Likewise, the development of updated Bench Books and other practical guidance materials addressing cultural issues in court proceedings, as well as the creation of multilingual court resources, depends on adequate resourcing. In times of government budgetary concerns, these costs may be perceived as prohibitive. But what is the cost of justice? A justice system befitting a democratic society is one that is well-resourced and well-funded. Of course, there is scope for collaboration with pro bono professionals, AI technology providers, universities, social enterprises, grassroots organisations, and language service providers to help reduce costs, but that does not obviate the responsibility of all branches of government to act.

The above observations are based on general discussions with AALA members and are not intended to reflect the views of all barristers and solicitors working with CALD parties. Should any of AALA's recommendations and proposals be adopted, data and empirical evidence should be collected to evaluate outcomes for CALD litigants. That data should, in turn, inform future reforms and help identify any other systemic issues for the better treatment of diverse litigants in the Australian legal system.