



## Minimising pre-trial detention

### CHECKLIST 1

For Chief Justice  
Judge, Magistrate and Court Staff



FEDERAL COURT  
OF AUSTRALIA



# Purpose Statement and User Guide

This is the 1st in a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

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

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

## Full Series of Human Rights Checklists

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

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## For Chief Justices to consider

- The right to be treated as innocent until proven guilty is a fundamental tenet of international fair trial standards and is also enshrined in most Pacific constitutions. Yet despite these robust legal protections, protracted pre-trial detention remains a major problem across many Pacific jurisdictions. The guidance provided in this Checklist is intended to support the existing efforts of Chief Justices to adopt court-wide systems to minimise the use of pre-trial detention and to ensure that it always remains lawful.....
- Consider endorsing this Checklist and encouraging or directing judges, magistrates and court staff to use this checklist in their daily practice to create an “all of court” coordinated response.

For further background and guidance see PIST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
especially Chapter 5

## RECOMMENDED ACTIONS

Chief Justices can lead efforts to minimise pre-trial detention by focusing on five main areas, to:

- 1 Provide and monitor implementation of a Pre-trial Detention Practice Direction applicable to all courts and judicial officers.
- 2 Set pre-trial detention targets for the court, and ensure regular collection and monitoring of pre-trial detention data towards meeting these targets.
- 3 Ensure that treatment of detainees/prisoners being transported to or held at the court meets minimum standards
- 4 Support or lead follow up with corrections, police and oversight bodies where issues of mistreatment or substandard conditions of detention become known to the court.
- 5 Ensure there is support for a regular roster of prison/detention visits by judicial officers.
- 6 Educate the public about the court’s duty to apply the presumption of innocence and address common community misunderstanding that pre-trial release indicates the suspect has been exonerated and will not face justice.

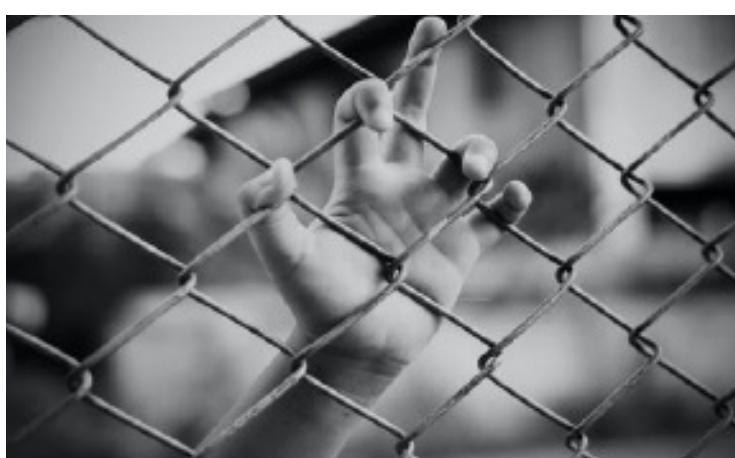


## 1 Pre-trial Detention Practice Direction and Implementation

- Promulgate a pre-trial detention Practice Direction across higher and lower courts (and consider including the points set out below).
- Ensure that each file concerning a detained person includes:
  - ▶ all detention review checklists signed-off by judicial officers;
  - ▶ prominent recording of pre-trial detention period; and
  - ▶ 'red flag' at 12 months system of recording in case management system.
- Monitor individual performance of all judicial officers regarding:
  - ▶ number of cases where pre-trial detention ordered; and
  - ▶ number of cases where detainees are held for longer than 12 months.
- Conduct case review with judicial officers responsible for conduct of trials where a suspect has been detained for 12 months and conduct ongoing monitoring of these matters.

## 2 Set pre-trial detention targets and data monitoring:

- Appoint court staff responsible for providing judges with monthly data on pre-trial detainees and to actively monitor data. Data should include:
  - ▶ Number of charges and length of pre-trial men/women/under 18/boy/girl detainees nationally/by province;
  - ▶ Number of sentenced men/women/under 18/boy/girl detainees nationally/by province (so % of pre-trial detainees can be monitored); and
  - ▶ Length of pre-trial detention should be prominently recorded on each criminal file and in electronic case management system (including a 'red flag' at 12 months and at monthly intervals subsequently).



### 3 Ensure adequate conditions at court and follow up complaints of mistreatment and sub-standard detention conditions

 Appoint staff member responsible for ensuring that detainees are properly treated at court including making sure they have:

- Adequate space, separation (juveniles and women) and ventilation while being transported to court;
- Cleanliness of holding cells and bathroom;
- Access to food and water; and
- Access to information about the process.

 Raising complaints with the head of police, corrections or other oversight bodies where allegations of mistreatment or substandard conditions are raised by judicial officers on behalf of detainees.

### 4 Prison/detention centre visits

-  Prepare an ongoing roster of prison/detention centre visits;
-  All judicial officers should be trained and participate as a scheduled part of their regular duties;
-  Visits should include police cells, remand centres, prisons, ie: all places where pre-trial detainees are held;
-  Visits include a mix of planned visits and spot checks.

See separate checklist for judicial officers to use during visits

### 5 Public Education

-  Use annual addresses, media interviews, and issue press releases clarifying court processes/judgments in high profile cases to incrementally build community knowledge of the court's duty to ensure fair trials, including presumption of innocence.
-  Seek support of Minister of Justice, Attorney General and other members of the Executive to defend the role of courts in providing fair trial standards, including the presumption of innocence.



# Judge and Magistrate responsibilities

## Overview of responsibilities

The right to be treated as innocent until proven guilty is a fundamental tenet of international fair trial standards and is also enshrined in most Pacific constitutions. Yet despite these robust legal protections, protracted pre-trial detention remains a major problem across many Pacific jurisdictions. It is the responsibility of judges and magistrates to minimise the use of pre-trial detention and to ensure that any detention always remains lawful and tightly managed.

Judges/Magistrates have responsibilities they need to proactively address in two stages:

- 1** First time a suspect appears before court
- 2** Ongoing detention review/case management hearings

The judicial officer assigned to a case is responsible for:

- Managing the pre-trial process to ensure that pre-trial detention only occurs as a last resort, for the shortest possible time, and never becomes 'unreasonable' or 'arbitrary'.
- Remaining in control of the case in all three phases to ensure that any pre-trial detention remains lawful.
- Monitoring detention conditions and treatment of detainees at each hearing.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjst/resources/toolkits/Human-Rights-Toolkit.pdf>  
especially Chapter 5

## RECOMMENDED ACTIONS

### Suspect's first appearance before the Court

#### The decision to detain

- Judicial officer to implement the Practice Direction regarding detention.
- If there is no practice direction then only order detention if you are satisfied of each element as per below.
- Require the prosecution to disclose to the defence the case file or the principal evidence on which the charges are based, prior to the first pre-trial detention review hearing.
- Judge/magistrate to provide case-specific reasons in writing for each decision to impose pre-trial detention.
- If suspect is under 18 years old, then the threshold for detaining is even higher. Court must always hear directly from the parents/responsible adult and social services to help identify any alternatives to detention. Use Checklist for cases involving child/juvenile suspects (under 18 years old).

## Detain only if you are satisfied of all of these, as a last resort:

Person charged with serious violent crimes against the person (never for property offences or minor offences).

Evidence has been presented which is of sufficient quality and lawfully obtained which could support a conviction.

Charges, if proven, would result in a substantial period of imprisonment which would be longer than the period of pre-trial detention.

There is no other way to ensure the suspect will attend court. Consider:

► **Bail:** Set at a reasonable and feasible level;

► **Reporting conditions:** Require evidence if it is submitted that reporting conditions would not be sufficient;

► **Other monitoring:** Require evidence if it is submitted that undertakings of family/friends to monitor/support would not be sufficient to ensure attendance at court; check if GPS electronic monitoring is an option.

► **Combination of these options**



## Make inquiries about detention conditions/treatment

Judge/magistrate should always make inquiries to the suspect about his/her treatment and conditions of detention including:

- Explain that the court has a role and powers to ensure detention conditions are humane and that detainees are not mistreated.
- Assure detainee they are safe to disclose any issues concerning their detention or treatment without fear of retribution, including by court staff, police, guards or other detainees.
- Ask detainee if they were safely transported to the court, and have had access to water, food, and the bathroom while held at the court.
  - **If not, raise these issues with the Chief Justice.**
- Observe condition of detainee, including if they have any visible injuries and ask them how they got them.
- Ask detainee if anyone, including guards, police or other detainees has physically harmed or threatened them since being detained, including during questioning.
  - If mistreatment used during questioning/obtaining admission, this then becomes part of the case and defence will need to call police involved as witnesses.
  - In addition, judicial officer can initiate new case against guard/police officer, lodge complaint with corrections/police/Ombudsman/human rights body, to ensure the alleged mistreatment is investigated and accountability.
  - **Also raise with Chief Justice.**
- Ask detainee if he/she is held with other pre-trial detainees or with sentenced prisoners
  - If with sentenced prisoners, report to corrections service/police that separation is required.
- Ask detainee if he/she has
  - adequate space, enough light, bedding, clean water, food, essential items (like toothbrush, toothpaste, soap, sanitary items for women or if they need any of these)
  - daily opportunity to exercise outside
  - **If any of these are lacking report to correction service/police that these must be provided and also raise with Chief Justice.**
- If they are under 18 years old, additionally ask if
  - they are being detained with others under 18 years old, or with adults
  - if family have been able to visit them
  - if they are receiving any regular education, training, sport or other activities
  - **If any of these are lacking report to correction service/police that these must be provided and also raise with Chief Justice.**
- If they are female, ask if they are being detained separately from men and guarded by women, if detainee has contact with male detainees or prisoners:
  - report to corrections service/police that full separation is required and that female guards must be provided or that male guards must be accompanied by a female guard
  - **and also raise with Chief Justice.**

## Ongoing Detention Review and Case Management Hearings

Judges and Magistrates to:

- Remain firmly in control of case timetabling and firm with parties who fail to meet the time frames as set down in Directions (if parties fail to comply with court directions/order, submit a complaint against them to the chief prosecutor or law society and, if necessary, warn parties you will find them in contempt).
- Monthly meaningful in-person (not 'on the papers') review of ongoing detention requiring 'sign off' on above criteria again each time AND
- Satisfaction via direct contact with prosecution and suspect's lawyer (and social services if case involves a minor) that there has been no change of circumstances which would enable release.
- Reasons for extending detention must be clear, particular to the case and in writing each time pre-trial detention is extended.
- Dismiss charges or grant conditional release where there is inadequate evidence put forward to support a conviction.
- At each hearing judge/magistrate Judicial officer to ask detainee about his/her treatment and conditions of detention and follow up appropriately (as per previous section).
- If delays are caused by difficulty in obtaining forensic evidence, prosecution requested to carefully consider if other available evidence will suffice in supporting conviction.
- Reduce adjournments by providing a 'last adjournment' warning and then if the matter was still not completed, proceed without it, including if it may result in discharge of charges.
- Include a 'red flag' period of 12 months maximum of pre-trial detention. Conduct fresh assessment and release detainee unless there is evidence that conditional release not possible (as per criteria above).  
**Accelerate trial timetable.** Chief Justices will conduct case reviews with judges/magistrates where detention has reached 12 months and will want to know why trial has been delayed for 12 months and why detainee should not be conditionally released or charges dropped.





## Court staff responsibilities

### Overview of responsibilities

Court staff make important contributions to ensuring that the rights of people who are detained are fully observed when they come to court. They also play important roles in producing data and managing cases so that pre-trial detention can be closely monitored and tightly managed by the judge or magistrate.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
especially Chapter 5

### RECOMMENDED ACTIONS

#### Prior to/on day of hearing

- Liaise with police/corrections to ensure adequate space, separation (juveniles and women) and ventilation while person/people are being transported to court
- Check and ensure cleanliness of holding cells and bathroom before they are used
- Be present/monitor during arrival at court and liaise with police/corrections officers
- Ensure that any child/juvenile is held separately from adult detainees while they wait at court and are given special care and attention.
- Ensure that all people detained have access to food, water and a bathroom while they wait.
- Ensure that all people detained are provided with information by court officer about:
  - ▶ What the process will be and
  - ▶ Role of judge, prosecutor and defender
  - ▶ How long they will likely need to wait
  - ▶ Court etiquette: how to address the judge, to stand and bow when they enter and leave the hearing room etc.
  - ▶ What will be expected of them during the hearing and that they should ask their lawyer/ the judge any questions they have during the hearing
  - ▶ Where bathroom/other facilities are
  - ▶ Who and how they can contact court staff if they need to communicate anything
  - ▶ Once person is in the court room, explain to person again where different court actors will be and what will happen once the hearing commences, and to ask their lawyer or the judge any questions they have during the hearing.

## Case management of detainee files

- Ensure that detainees' files are colour-coded and clearly flagged in data system.
- Ensure that length of pre-trial detention is prominently recorded and updated minimum monthly on each file and in electronic case management system.
- Ensure there is a 'red flag' in the system when detention reaches 12 months.
- Inform the presiding judge/magistrate at 11 months, that the 12 month limit is approaching
- Monitor court direction dates and provide reminders to parties of upcoming court deadlines and that they will need compelling reasons to be granted any adjournments.
- Prepare monthly data for the Chief Justice including:
  - ▶ Number people held in pre trial detention and length of pre trial detention broken down into men/women/under 18/boy/girl detainees nationally/by province; and
  - ▶ Number of sentenced men/women/under 18/boy/girl detainees nationally/by province (so % of pre-trial detainees can be monitored).



# 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



## When children/juveniles\* come to court

### CHECKLIST 2

For Chief Justice  
Judge, Magistrate and Court Staff

- \* Those under the age of 18 years old under international law; noting each country has different age-related provisions for age of criminal responsibility under domestic law



# Purpose Statement and User Guide

This is the 2nd in a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

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

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

## Full Series of Human Rights Checklists

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## For Chief Justices to consider

- Chief Justices can play a key role in providing leadership and setting into motion coordinated standards and practices to be applied across the court for when children and juveniles come to court. These are aimed at ensuring that the special human rights protections owed to children and juveniles are applied in any court process. This includes giving primary consideration to the best interests of the child/juvenile and ensuring that children/juveniles are able to understand and participate in the court process and have their views considered, to the maximum degree possible.....
- Consider endorsing this Checklist and encouraging or directing judges, magistrates and court staff to use this checklist in their daily practice to create an “all of court” coordinated response.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
especially Chapter 6

## RECOMMENDED ACTIONS

If there is no specific child/juvenile justice law and procedure in your jurisdiction, issue Practice Directions for Child/Juvenile Cases binding upon all courts and judicial officers.

### Guidance for content of Practice Direction

- Ensure an on-call judge is readily available 24 hours a day/7 days per week by telephone to hear applications regarding whether a child/juvenile can be detained or not.
- Case tracking systems/ case management systems need data fields to capture data concerning cases involving people under 18 years old. Ensure that court data systems include disaggregation of people with disabilities and that 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 to answer the following six questions:
  - **How many** children do we currently have engaged as parties with the court?
  - **Which** cases are they involved in?
  - **What** is their role in the case? (victim/suspect/witness?)
  - **How** is the court responding to their needs?
  - **What further assistance** is needed from the court?
  - **What result/outcome** did they receive from their engagement with the court?
- Judges must tightly control the timing of steps leading to trial and give early warning to the parties that adjournments will only be granted in the most exceptional circumstances, and that the case will proceed or be dismissed based on the evidence available.
- Timeframes should be monitored by judges and court staff with the average duration of family and sexual violence cases reported on in Court Annual Reports.
- The Court will schedule a particular day/schedule for hearing cases involving children/juveniles, so that they do not mingle with adult offenders and so different court arrangements and measures can be made for them.
- Ensure that judges/magistrates can only order pre-trial detention (for any period) of a child/juvenile as a last resort, for the shortest possible time and only for the most serious cases of violent crimes against the person (never for property offences or minor offences).



- Judges/magistrates should be encouraged to refer cases involving children/juveniles who plead guilty to a family conferencing process to identify recommendations for the judge for dispensation of the case.
- Sentences must take into account the child/juvenile's age and focus on rehabilitation more than punishment. Prison should only be used in the most serious cases as a last resort, and be for the shortest possible period in a facility separated from adults. Custodial sentence can always be supplemented with other community-based rehabilitation activities or probation, supervision orders, or educational/vocational programs.



## Request a briefing where judges order pre-trial detention of children/juveniles and monitor ongoing detention in these cases

- Ensure appropriate and separate facilities, and care of child/juveniles when they come to court, including during their transportation to court, by appointing a responsible court staff member who is trained in this role.
- Ensure there is a group of judges in each court who have received special training for handling cases involving children/juveniles, and that judges from this pool are appointed to all cases involving children/juveniles. Gradually expand this pool, as resources allow, until all judges have had training in handling cases involving children/juveniles.
- Allocate separate court hearing days to deal with cases involving children/juveniles more efficiently, discreetly and using a more informal layout for court room furniture.
- Support judicial officers with diversion approaches to the maximum degree permitted by the law.

Click here to access the Court Infrastructure checklist which considers the additional requirements of juveniles accessing the court building.



- If there is no specific child /juvenile justice law and procedure in your jurisdiction, advocate for the Parliament to pass one, and for the Government to provide resources for a child/juvenile court facility and training for judges/court staff.
- Work with prosecution service to ensure Standard Operating Procedure (SOP) in place guiding decision making around:
  - ▶ Ensuring compliance with criminal age of responsibility;
  - ▶ Diverting child/juveniles from prosecution;
  - ▶ Exercise of prosecutorial discretion not to lay charges;
  - ▶ Prioritising cases involving children/juveniles;
  - ▶ Ensuring children/juveniles are appointed legal representation from the outset;
  - ▶ Ensuring children/juveniles are only detained as a last resort, for the shortest possible period and only regarding serious violent charges against the person;
  - ▶ Monitoring timeframes and targets for completion of investigations, filing of indictments, reducing delay;
  - ▶ Standards for keeping child/juvenile defendants updated on progress of prosecutions.





## Judge and Magistrate responsibilities

### Overview of responsibilities

Judges and Magistrates are responsible for ensuring that the special human rights protections owed to children and juveniles are applied in any court process. This includes giving primary consideration to the best interests of the child/juvenile and ensuring that children/juveniles are able to understand and participate in the court process and have their views considered, to the maximum degree possible.....

To meet these responsibilities, it is necessary for judges/magistrates to actively manage cases involving children/juveniles as per the recommended actions below.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjst/resources/toolkits/Human-Rights-Toolkit.pdf>  
 especially Chapter 6

### RECOMMENDED ACTIONS

- Are identified as early as possible and given priority.
- Always have legal representation appointed to them.
- Case tracking systems/ case management systems need data fields to capture data on whether a person under 18 years is legally represented. [drop-down menu options: self-represented/private lawyer/legal aid (state/NGO/other)]
- Are diverted from criminal justice processes wherever possible. This would usually occur at police/prosecution with decisions not to charge, however judges may additionally be able to refer cases involving guilty pleas to a family conference and then consider its recommendations for dispensation of the case. This is especially for cases where the child/juvenile has been charged with low-level offences and who have little or no prior history of offending.

#### Family Conference Process

- A family conference will involve the child/juvenile as well as their family, victim, police, lawyer, conference convener and any other interested and relevant party.
- Family conferences provide a good opportunity for the child/juvenile to hear how their offending impacted on the victim.
- Family conferences provide recommendations to the judge for a plan for dispensing with the case. If the plan is satisfactorily completed the court will consider granting an absolute discharge so that it is as if the charge was never laid.
- Family conferences can recommend accountability measures such as: community work, meaningful apology, reparation/restitution, and counselling and working with the young offender and his/her family.
- Family conference can also recommend that probation/correctional services provide a report to the Court.

- Always follow the Practice Direction's guidance on timeframes for finalising the case and provide early warning to the parties that adjournments will not be granted, except in truly exceptional circumstances which are beyond the control of the parties.
- Strong emphasis by judge on young person's participation in the court process, and commitment to find out young person's views and as far as practicable to give effect to them.
- Are only detained as an absolute last resort, for the shortest possible period, and only for the most serious cases of violent crimes against the person and never for property offences or minor offences, and always in age-appropriate and separated facilities that meet minimum conditions (see separate 'prison/detention visits checklist').
- Understand and can participate in court processes to the maximum degree possible, including through use of their native language (through an interpreter arranged by the court, if necessary).
- If guilty, are given a sentence that focuses on rehabilitation more than punishment by minimising custodial sentences and supplementing with other community-based rehabilitation activities.
- Prison should only be used in the most serious cases as a last resort and for the shortest possible period in a facility separated from adults.

The Judge has responsibilities they need to proactively address in three stages: pre-hearing, during hearings and post hearing/sentencing.



## Stage One Pre hearing

- Ensure the court contacts relevant Government department for child/juvenile welfare (eg. social services, probation officer) to ensure child/juvenile is linked in to available supports and that some assessment of the child/juvenile's circumstances is completed.
- Determine the exact age of the child/juvenile at the time of the alleged offence, based on their birth certificate or other documents, where possible. If none are available, determine age based on statements of parents, other relatives and the child/juvenile themselves. Conduct a hearing and take evidence from relevant parties regarding child's age if necessary.
- Based on your age finding, determine if the child/juvenile can be legally charged or prosecuted: that is, you must be satisfied the child/juvenile is above the criminal age of responsibility in your jurisdiction. If not, dismiss the charges.
- Apply specific child/juvenile justice law and procedure in your jurisdiction, and if there is no one, then apply the Court Practice Directions for Child/Juvenile Cases or the standards provided for in this guidance. Ensure you apply those standards consistently with the Convention on the Rights of the Child (see PJSI Human Rights Toolkit for a summary) and your National Constitution ('Bill of rights' section).
- Look for any opportunity to divert the case from the criminal justice process or to refer cases involving guilty pleas to case conferences (as outlined above in 'overarching roles' section).
- Ensure that court staff are appointed to make arrangements for the care of children/juveniles attending the court well before the day of the hearing. (See below for details of arrangements they need to make).

## Stage Two First and subsequent hearings

- Cases involving children/juveniles should be held in closed court, as the privacy of children/juveniles must be specially protected.
- Make sure the court is set up in a less formal way. Ideally U-shape or horse shoe configuration to allow for participation by young person and his/her family.
- Ideally the child/juvenile will attend court on a day allocated only for hearings of young people so they do not mix with adult offenders and to make it easy for arrangement of furniture for the day.
- Adopt a more informal manner: introduce yourself, ask the child/juvenile how they are, and ask if they have anyone with them at court that day.
- Make sure the child/juvenile has a lawyer. If child/juvenile does not have a lawyer:
  - Ask police/prosecution why they have not arranged a lawyer.
  - Make an order for legal aid/appoint a lawyer to provide assistance and stand the matter down to next possible date.
  - But where child/juvenile is detained, proceed to determine the issue of release but do not progress the substantive matter until next hearing when the child/juvenile has legal representation.



Explain to the child/juvenile in simple, clear language appropriate to their age and in short sentences:

- Why they are at court and the purpose of the hearing;
- That their participation in the hearing is encouraged and that you will take their views into account at all stages, to the maximum degree possible;
- If there is anything confusing or he/she cannot understand then he/she must tell the judge straight away so that problem can be fixed;
- Set out which laws the child/juvenile is accused of breaking;
- Explain the role of the judge, prosecutor and the role of their lawyer;
- Explain the sequence of the hearing. This will depend on the nature of the hearing, but for example:
  - First the prosecution will be presenting the proof they have gathered that you did this;
  - Then your lawyer will speak on your behalf to tell the court whether you will be pleading guilty or not. If you are pleading not guilty, then your lawyer will be leading evidence to show you did not do this; and
  - If you are pleading guilty then the court may agree to refer the case to a family group conference, (see pop out above), which will produce a plan for the court to consider. If the plan is satisfactorily completed the court will consider granting an absolute discharge so that it is as if the charge was never laid.
- If the child/juvenile is going to give evidence, explain that the role of the judge is to make sure the questions by the prosecution are clear, relevant and fair.
- Explain that he/she should not answer any questions unless they fully understand them, and that the questions can be further clarified or simplified.
- Set out anything further expected of the child/juvenile and their lawyer that day.
- Set out the possible outcomes of the hearing (including the process for deciding whether child/juvenile will continue to be detained or released).
- Check that child/juvenile understands what you have explained to them. Ask them to explain back to you their understanding and then fill any gaps and adjust your communication style to make it easier for them to understand going forwards.
- Explain that after the hearing a court staff member (ensure you name them) will be in regular touch to provide regular updates on how the case is progressing and likely timeframes.

## If child/juvenile is detained

### A Inquiries into detention and treatment to date

Explain that because they are under the age of 18, the court has a special responsibility to make sure they are being treated according to the rules and you are going to ask them some questions about their situation.

Explain that they are safe to disclose any issues concerning their detention or treatment without fear of retribution, including by court staff, police, guards or other detainees/prisoners.

Start with the easier questions, for example, ask the child/juvenile how they were brought to court:

- If they were brought with other adults or separately?
- If there was enough air in the vehicle?
- If they had to wait a long time in the vehicle?
- If they were handcuffed or shackled?
- Where they have been held in the court (with adults or separately)?
- If they have had access to water, food, bathroom while held at the court (if not, raise these issues with the Chief Justice)?

Ask them:

- How many hours or days they have been detained.
- To explain the sequence of what happened from when they were arrested.
- If any force was used during arrest (and make inquiries to help clarify if this was the minimum needed, and proportionate).
- If the police explained to them the reason for their arrest at the time they were arrested.
- If they were given the chance to call their parents/guardian, whether they first came to the police station, and whether parents/guardian were present during any questioning.
- If the police arranged for a lawyer for them prior to questioning and if they had a lawyer present during any questioning.

If they are healthy or not.

- If not, ask if they have received any medical treatment.

Ask them if they have any physical injuries or not.

- Be observant. Look for any signs of physical injury.
- If they have any visible injuries ask them how they got them.
- Ask them if they have received any medical treatment.

- Ask them if anyone, including guards, police or other child/juveniles, has physically harmed or threatened them since being detained, including during questioning.
- If so obtain details from the child/juvenile.
  - If mistreatment was used during questioning/obtaining admission, this then becomes part of the case and the defence will need to call police involved as witnesses.
  - In addition, the judge/magistrate can initiate a new case against the guard/police officer, and lodge a complaint with corrections/police/Ombudsman/human rights body, to ensure the alleged mistreatment is investigated.
  - Also raise with Chief Justice.
- Ask child/juvenile if he/she has been held with other pre-trial child/juveniles or with adults or sentenced prisoners
- If with adults or sentenced prisoners, report to corrections service/police that separation is required.
- Ask if he/she has adequate space, enough light, bedding, clean water, food, essential items (like toothbrush, toothpaste, soap, sanitary items for girls or if they need any of these).
- If any of these are lacking, report to correction service/police that these must be provided and also raise with Chief Justice.



## B Deciding to release or extend pre-trial detention

### Detention of a child/juvenile can only be ordered:

As an absolute last resort; Follow the points below to make sure all alternatives are covered:

- **Bail:** Require evidence for why bail cannot be set at a reasonable/feasible level;
- **Reporting conditions:** Require evidence why reporting conditions/undertakings by adults would not be sufficient to ensure attendance at court;
- **Undertakings from parent/responsible adult:** Exhaust all safe family/friends/social services accommodation options (court should hear directly from the parents/responsible adult and social services to help identify all options);
- **Require evidence for why undertakings** of family/friends to monitor/support reporting conditions/behaviour would not be sufficient to ensure attendance at court); **AND**

Only for the most serious cases of violent crimes against the person and never for property offences or minor offences; **AND**

Based on assessment/evidence there is an ongoing substantial risk of:

- Harm to others; or
- Interference with evidence/witnesses; or
- Risk the suspect will abscond/not appear before court.

**Only order detention if all of these conditions above are met; AND**

Only detain for the shortest possible time (ie detention should be reviewed again in no more than one week); **AND**

Set down a tight timetable for steps to the trial with a clear direction to the parties that extensions will not be given, and that if the parties do not comply with directions then unless there are truly exceptional circumstances, the suspect will be released or the charges dismissed.

## Stage Three Prior to and at sentencing hearing

- Sentences must be based on the child's age at the time of the offence** and aim at promoting social reintegration and the child's constructive role in society. Focus on rehabilitation not punishment.
- Check national laws** for any other sentencing options, for example, a youth control order, where the child/juvenile can be required not to commit any further offences for its duration, attend work or study, report to the court monthly or as required, notify if they change address or leave location etc.
- Consider other optional orders** such as that they:
  - ▶ Participate in community service
  - ▶ Undergo alcohol or drug treatment if available
  - ▶ Abstain from drinking alcohol or using drugs
  - ▶ Attend counselling
  - ▶ Reside at a specific address
  - ▶ Abide by a curfew
  - ▶ Not have contact with specified persons
  - ▶ Participate in cultural programs
  - ▶ Not go to particular places or areas, and/or
  - ▶ Not use specified social media, if this is required to protect the child/juvenile or the community.
- Prison sentences** should only be used in the most serious cases as a last resort and be for the shortest possible period in a facility separated from adults. Custodial sentence can always be supplemented with other community-based rehabilitation activities or other measures including providing probation, supervision orders, and educational/vocational programs.
- No death penalty or life imprisonment** without the possibility of release for anyone under the age of 18 at the time of the offence.
- Give a fresh chance:** Permanently remove/'expunge' juvenile criminal records after person turns 18 or after a maximum of five years.
  - ▶ Juvenile records that show up on background checks can be used to deny young people a place to live, a job, admission to school/university or a line of credit.
  - ▶ This goes against the philosophy that young people who have made mistakes should be given the opportunity to 'turn over a new leaf', without the risk of them facing stigma or discrimination.



## Court staff responsibilities

### Overview of responsibilities

Court staff play essential roles in ensuring that the special human rights protections owed to children and juveniles are applied across all stages of any court process including before, during and after their hearings, as per the recommendations below.....

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
especially Chapter 6

### RECOMMENDED ACTIONS

#### Pre hearing Preparation



Ensure arrangements are made for child/juvenile well in advance of their hearing date.

- ▶ How they will get to court?
- ▶ Who will accompany them to court?
- ▶ Explain what they need to bring (food, ID etc)?
- ▶ Who from the court will receive them and look after them while at court (to ensure they are provided with information about what will happen including the hearing process and the details of what is expected of them, as well as food, water and safe access to bathroom while at court)?
- ▶ Where will they wait so they are safe from seeing people connected with the case or questioned by curious people?
- ▶ Ensure they have legal representation appointed and if not, arrange referral to legal aid if necessary.
- ▶ Do they need an interpreter? (organise one if necessary).
- ▶ Ensure any case involving a person under 18 years is identified in the Court case tracking systems/ case management systems and that a pseudonym is allocated in the court data system and is used whenever data is exported for printing case listings or publishing court judgment etc.
- ▶ Privacy: Make sure child's name is not included in any public listing notices, as well as in the judgement, to protect the privacy of the child/juvenile.



## Day of hearing

- Make sure the court is set up in a less formal way. Ideally U-shape or horse shoe configuration to allow for participation by young person and his/her family.
- Meet child/juvenile at court as previously arranged.
- If child/juvenile is detained ensure they are held separately from adult detainees while they wait and that they have access to food, water and a bathroom.
- What information to give child/juvenile suspect when they come to court
- Provide all child/defendants at court information in simple, local language, about:
  - ▶ What the process will be and
  - ▶ Role of judge, prosecutor and defender
  - ▶ How long they will likely need to wait
  - ▶ Court etiquette: how to address the judge, to stand and bow when they enter and leave the hearing room etc.
  - ▶ What will be expected of them during the hearing and that they should ask their lawyer/ the judge any questions they have during the hearing
  - ▶ Where bathroom/other facilities are
  - ▶ Who and how they can contact court staff if they need to communicate anything
  - ▶ Once person is in the court room, explain to person again where different court actors will be and what will happen once the hearing commences, and to ask their lawyer or the judge any questions they have during the hearing.
- Accompany all child/juveniles to the court room and show them where they will sit and explain again the roles of the court actors, the process, and what will be expected of them.
- Ensure that all child/juveniles have someone to take them home/means of transport after the hearing.

## After hearing

- Make sure child/juvenile safely leaves the court with an adult.
- Ensure that child/suspect and their lawyer are regularly updated on progress of the case and upcoming hearing dates.

# 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



## Judicial visits to places of detention

### CHECKLIST 3

For Chief Justice  
Judge, Magistrate and Court Staff



FEDERAL COURT  
OF AUSTRALIA



# Purpose Statement and User Guide

This is the 3rd in a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

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

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

## Full Series of Human Rights Checklists

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

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## For Chief Justices to consider

- Judicial inspections and visits to places of detention and imprisonment are provided for by law in most Pacific jurisdictions yet are often under utilised. Such visits provide a powerful means for supporting the transparency and accountability of detention and prison conditions and help to prevent unlawful detention and mistreatment. Judges benefit from such visits through being exposed to the realities of detention and imprisonment, while detainees and prisoners benefit from the opportunity to raise their concerns and receive redress if their complaints are made out.
- Support from Chief Justices for a roster of regular and unannounced judicial visits and follow-up of arising complaints, can be a very effective way of supporting cultural and systemic change in place of detention and imprisonment.
- Consider endorsing this Checklist and encouraging or directing judges, magistrates and court staff to use this checklist in their daily practice to create an “all of court” coordinated response.

## RECOMMENDED ACTIONS



Delegate a staff member to map all places of detention, noting their location, capacity and purpose/demographic (ie for pre-trial/sentenced prisoners/for men, women, boys, girls).



Ensure a regular roster of prison/detention visits by all judges/magistrates at all places of detention/imprisonment. This should occur every two or three months, and at least every six months and more frequently in places identified as having continuing issues.



Establish a process for judges/magistrates to report back to you/other delegated senior judge any issues detected and monitoring of follow up steps regarding directing complaints/issues to relevant authorities.



Make direct representations to senior authorities as needed on individual cases and especially regarding systemic issues detected regarding conditions of, or mistreatment in detention/imprisonment environments.



Ensure establishment and maintenance of a record keeping system regarding all judicial visits and follow up complaints/steps taken arising out visits.  
Appoint Court staff member with responsibility for this.



Ensure all judges/magistrates receive training and regular fresher training on conducting judicial visits to places of detention/imprisonment.



## Judge and Magistrate responsibilities

### Overview of responsibilities

A routine program of regular and unannounced judicial visits to places of detention and prisons can be a very effective means for the court to support cultural and systemic improvements in accountability for the treatment and conditions of detention. The following actions are recommended for three stages:

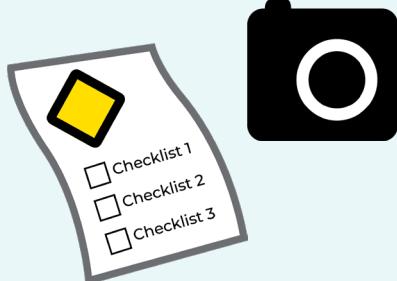
- 1 Preparing for the visit;
- 2 During the visit;
- 3 After the visit.

## RECOMMENDED ACTIONS

### Preparing for the visit

- Know your mandate and powers: which law/delegation are you conducting your visit under?
- Set aside adequate time (depending on size, at least a half day or full day).
- What to take:

- Any letter of authorisation/delegation for the visit;
- Your Judicial Officer ID;
- Charged telephone (camera);
- This checklist;
- Notebook and pen;
- Small empty cardboard box, extra pens.



## During the visit

### Setting things up

- Introduce yourself to the police/corrections staff and explain the purpose of your visit.  
Always be polite and comply with all directions which do not interfere with your role.  
Politely resist any ones that do (ie resist requests not to take in with your telephone/camera, not to see detainees/prisoners in a particular section etc.)

- Introduce yourself to the detainees/prisoners

- Explain that the court has a role and powers to ensure detention/imprisonment conditions are humane and that detainees/prisoners are not mistreated.
- Assure detainee/prisoner they are safe to disclose any issues concerning their detention or treatment without fear of retribution, including by court staff, police, guards or other detainees.
- Explain that you are available to speak to individuals on a confidential and entirely voluntary basis. Explain that you will obtain their consent (agreement or permission) before taking up any complaint they disclose to you with any authorities.
- Invite them to approach you directly to talk to them or invite them to write their name on a small note and place it in the card board box to allow them to privately indicate they would like to meet you.
- Meet with each person in a private place or at least out of earshot of others.



## Conducting the investigation/making inquiries

### Identify situation of detainee

Ask the person how they are. Then take down name and date of birth of each person you speak to and telephone contact details (if they are allowed to have phone with them or landline you can call them on).

Ask detainee if they are in pre-trial detention or a sentenced prisoner.

Note/observe if detainee may be under 18 years of age and ask further questions re their age.

► If under 18, ask them whether they are being detained/imprisoned only with others under 18 years old or if they are mixed in/have contact with adult detainees/prisoners

Note/observe if detainee/prisoner is female. If so, ask whether they are being:

► detained/imprisoned in a separate facility from men, or if within the same facility, entirely separately from men

► guarded by only women, or male guards always accompanied by a female guard.

Note/observe If detainees/prisoner may have a mental or disability, ask whether the centre/prison is aware of this and whether necessary facilities/treatment/equipment is being provided to support them. Physical and mental disabilities to watch out for may include:

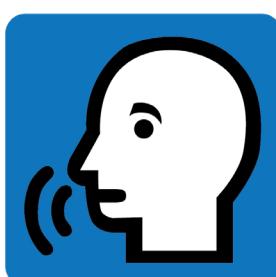
► Difficulty communicating or understanding/being understood;

► Difficulty concentrating or remembering;

► Difficulty moving around, walking or climbing steps;

► Difficulty seeing, hearing or speaking;

► Difficulty with self-care including washing or dressing.



### Details to get: Pre-trial detainees ask them

- If he/she is held with other pre-trial detainees or with sentenced prisoners.
- Charges faced;
- Stage of the process;
- Length of time detained;
- Whether person has legal representation;
- Time since last time taken before court;
- Note if detention reviews have occurred at relevant intervals or whether detention may be unlawful.

### Details to get: Sentenced prisoners ask them

- If the prison has separate sections for different categories of prisoners and restrictions/privileges which apply to each.
- Any issues with individual's current classification.
- If they are required to work and how they are recognised/compensated for this.

### Details to get from both pre-trial detainees and sentenced prisoners

- Ask detainee/prisoner if they feel safe where they are. Get details of any factors/people making them feel unsafe.
- Ask detainee/prisoner if anyone, including guards, police or other detainees has physically harmed or threatened them since being detained, including during questioning. If so obtain:
  - Chronology and details from detainee/prisoner, exactly what physical treatment or threats occurred;
  - Who was involved (names or identifying features such as rank or position of perpetrator/s and details of any witnesses);
  - Any injuries incurred, any medical treatment provided and place of treatment, any ongoing medical needs (take photographs of any injuries with person's consent);
  - If detainee/prisoner consequently signed any statements or made admissions and if questioning/incident was audio or video recorded.
- Ask them if the guards/police treat them with dignity and respect. Get a general understanding of the dynamics between guards/police and detainees/prisoners.

**Ask to see detainee/ prisoner's living quarters  
(sleeping, bathroom and communal areas)**



Take photographs of any issues raised if possible.



Check/ask if he/she has:

- Adequate space per person in the room;
- Adequate natural and artificial light (sufficient for reading without strain);
- Adequate ventilation and heating;
- Own bed and sufficient, clean bedding;
- Sufficient clothing suitable for climate, regularly cleaned;
- Clean drinking water available at all times;
- Nutritious meals three times a day, hygienically prepared and served;
- Privacy in showering and toileting;
- Cleanliness of facilities;
- Well maintained and safe facilities and any safety issues addressed;
- Access to water in bathroom facilities sufficient for showering at frequency needed to maintain hygiene; and
- Adequate essential items (like toothbrush, toothpaste, soap, comb, means to shave/cut hair, sanitary items for women or if they need any of these).



**Ask detainee/prisoner about other aspects of their detention**  
Do they have:



Daily opportunity to exercise in the open air for at least one hour.



Access to adequate medical treatment, medication, and dental treatment as required.



Experience of any punishments for disciplinary offences in the centre (noting any corporal punishment, punishment by placing in a dark cell, solitary confinement or in small space, reduction of food, use of restraints including handcuffs, chains, irons and strait-jackets).



Ability to immediately inform family where held, ongoing access to visits, all reasonable facilities for communication with family, others.



Anyone visiting them?



Access to religious lead and place/means to worship.



Adequate light and ventilation during transfer/transportation to other places.



If they are a minor (under 18 years old) also ask:

- If they have received family visits, mail, communication or contact;
- Double check that they have legal aid or lawyer to assist them;
- Find out if family have any capacity to post bail, where person would live if released, openness to reporting conditions; and
- If they are receiving any regular education, training, sport or other activities.

## Discussing with detainee next steps

If issues with treatment or conditions of detention arise during your visit:

- Ask detainee for their consent to raise the issue in a way that identifies them.  
Confirm you will respect their wishes, and explain what you plan to do with their information
- If you are not yet sure of next steps, tell them when you will contact them to discuss options
- If they do not want to be identified, ask if they consent to you raising the issues in a de-identified way and explain what you plan to do with their information.
- Manage expectations and never make promises you may not be able to keep.
- Ensure you keep dated/detailed/legible report/records of all contacts you have with detainees/prisoners. Ideally each Court will have a template report you can use.



## "Do no Harm": Factors to Consider in Following up Complaints

- Always place the safety and protection of the detainee first (ie: if directly raising the issue may put them at risk of further mistreatment or abuse, then seek advice from the Chief Justice as to the best approach. Don't rush your decisions around how to proceed).
- Carefully consider the full range of options and the pros and cons of each option. Never try to address issues to junior officers, always communicate with person of your rank or higher.



## Follow up options to consider

- Provide Chief Justice with a report of all issues raised (identifying and de-identifying complaints based on consent of complainant).
- Refer detainees without legal representation to legal aid, especially any minors who should all have legal representation.
- Raise general issues directly with senior police/corrections in charge of the facility (Eg: de-identified complaints relating to general conditions for multiple detainees/prisoners).



- Raise issues relating to individual prisoners where you have consent to do so and have established that this will not place personal security of the detainee/prisoner at risk.
- Consider requesting Chief Justice to raise any particularly sensitive issues (ie: physical or sexual abuse of detainee/prisoner by guard/police/other prisoner or where a person is particularly fearful of retribution from guard/police/other prisoner).
- Prepare a contemporaneous statement regarding details of any specific incidents reported to you of mistreatment/coercion/duress used to procure admissions or statements, as you may become a witness in the case.
- Consider whether to raise issues with other authorities (in consultation with Chief Justice) which may include:
  - Police oversight or internal investigations unit;
  - Corrections oversight or internal investigations unit;
  - Ombudsman;
  - National Human Rights Institution;
  - Minister of Justice;
  - Legal Aid service; and/or
  - Human rights organisations.

## After the visit

- Make sure you have completed all your notes/records as soon as possible after the visit.
- Discuss with Chief Magistrate/Justice as soon as possible any follow up steps needed and agree on a plan.
- Be reliable in following up with detainees as you have committed to, including within the timeframes you said. This is key to building trust with detainees/prisoners and the integrity/reliability of the inspection process.
- Check in (by telephone) within a week of your visit to check that no negative consequences have occurred for detainee since you met with them/raised a complaint. If so, then immediately inform the Chief Justice for his/her follow up.
- Follow up in a timely way to progress follow up plan agreed with Chief Magistrate/Justice, subject to consent/wishes of detainee
- Key detailed records of all follow up steps taken (file note all telephone conversations, correspondence, follow up visits, discussions with Chief Justice/Magistrate etc.)
- Ensure that all records/notes regarding the visit/follow up steps are filed according to procedures in place.
- Ensure that detainees are kept updated/informed as to progress of any complaints/follow up and the outcomes.



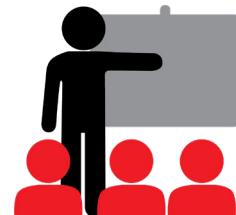
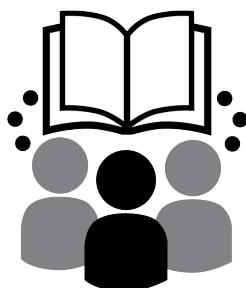
## Court staff responsibilities

### Overview of responsibilities

Court staff play an important part in supporting a program of regular and unannounced judicial visits to places of detention and prisons. These can help ensure that the basic rights of detainees and prisoners are consistently upheld and help to prevent any lapses in these standards.

### RECOMMENDED ACTIONS

- Manage support for roster of visits and ensure judges/magistrates have what they need to conduct the visits including transportation, access to a phone etc.
- Establish and maintain detention visit/follow up record keeping system regarding all judicial visits and follow up complaints/steps taken arising out visits.
- Follow up with judges/magistrates:
  - ▶ Soon after their visits to ensure all documentation is completed and filed
  - ▶ Concerning documentation for ongoing follow up and complaints.
  - ▶ Ensure that outcomes of complaints are recorded and that detainees have been informed of these.
- Support arrangements for training of judges/magistrates on conducting judicial visits to places of detention/imprisonment.



# 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



**When victims of family &  
sexual violence come to court**

## **CHECKLIST 4**

For Chief Justice  
Judge, Magistrate and Court Staff



**FEDERAL COURT  
OF AUSTRALIA**



# Purpose Statement and User Guide

This is the 4th of a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

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

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

## Full Series of Human Rights Checklists

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

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## For Chief Justices to consider

- Chief Justices can play a key role in providing leadership and setting into motion coordinated standards and practices to be applied across the court for when victims of family and sexual violence come to court. These are aimed at ensuring that victims of family and sexual violence feel supported and protected by the court during the court process so that they can participate without fear, while also ensuring fairness to the defendant.
- Consider endorsing this Checklist and encouraging or directing judges, magistrates and court staff to use this checklist in their daily practice to create an "all of court" coordinated response.

## Overview of responsibilities



**ACCESS:** Aim to ensure an on-call judge is readily available 24 hours a day/7 days per week by telephone to hear applications for protection orders.



**CASE MANAGEMENT:** Establish procedures so that cases involving cases of family violence or sexual violence are identified by court staff as early as possible and then colour coded and prioritised for allocation of an early court date.

Case tracking systems/case management systems need data fields to capture data concerning cases involving family and sexual violence that include sex and age of the defendant and victim/ survivor/ witness as well as the relationship between the parties.

Ensure that court data systems include disaggregation of people with disabilities and that the Chief Justice monitors application of the disability policy in these cases. Systems need to be in place so that courts have data to answer the following six questions:

- **How many** children do we currently have engaged as parties with the court?
- **Which** cases are they involved in?
- **What** is their role in the case? (victim/suspect/witness?)
- **How** is the court responding to their needs?
- **What further assistance** is needed from the court?
- **What result/outcome** did they receive from their engagement with the court?



**SET TARGET TIMEFRAMES** for family and sexual violence cases (possibly three months for finalisation of regular cases, with up to six months for most complex cases) and ensure that timeframes are monitored by judges and court staff with the average duration of family and sexual violence cases reported on in Court Annual Reports. Judges to be guided to tightly control the timing of steps leading to trial and give early warning to the parties that adjournments will only be granted in the most exceptional circumstances.



**SUPPORT:** Appoint a senior court staff member as Vulnerable Persons Court Liaison to:

- Map local support services (including operational hours and location);
- Update referral lists and train other court staff in referral;
- Develop and implement plans to support vulnerable victims or witnesses attending the court (as per details below in Court Staff Responsibilities)
- Ensure court staff are adequately trained to confidentially assist protection order applicants and find practical solutions to provide:
  - **Separate entrance and separated waiting areas for victims and children** to prevent their intimidation by the defendant, their family, or the prying curiosity of others. Areas need safe access to bathroom facilities, adequate seating and facilities for younger children (e.g. toy box).
  - **Room or private booth right next to the registry desk for court staff** to provide confidential assistance to relevant court users (e.g. assistance completing Family Protection Applications).



### COURT CAPACITY BUILDING

Ensure there is a group of judges/magistrates in each court who have received special training for handling family and sexual violence cases and that judges from this pool are appointed to all cases involving victims of family or sexual violence.

Gradually expand this pool, as resources allow, until all judges have had training in handling cases involving victims of family or sexual violence.

Take a similar approach with training for Court Staff.



**COORDINATION:** Appoint judge or magistrate to:

- Participate in sector referral pathway coordination meetings with police, prosecution, safe houses etc.
- Work with prosecution service to ensure coordinated Standard Operating Procedures (SOPs) are in place guiding decision making around:
  - Timeframes for completion of investigations, filing of indictments, and reducing delay;
  - Exercise of prosecutorial discretion not to lay charges;
  - Prohibition of informal resolution of family/sexual violence complaints;
  - Laying appropriate charges in cases of family/sexual violence;
  - Allocation of women prosecutors (wherever possible) to take statements from victims of family/sexual violence; and
  - Standards for keeping victims updated on progress of prosecutions.



## Judge and Magistrate responsibilities

- The judge/magistrate is responsible for ensuring that victims and witnesses of family and sexual violence feel supported and protected by the court during the court process so that they can participate without fear, while also ensuring fairness to the defendant.
- The judge/magistrate has responsibilities they need to proactively address, working closely with court staff, in three stages: pre-hearing, during hearing and post hearing/sentencing.
- The Judge is responsible for remaining in control of the case in all three phases.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
 especially Chapter 7

### Stage One Pre hearing

- Check there are interim protection orders already in place and if needed, to provide these. Consider: risk of further violence, intimidation, threats, and likelihood of interference with justice process.
- Ensure that protection orders are enforced throughout the pretrial period, including orders for payments of maintenance to victims (from joint assets if necessary).
- Decide if case will be heard in open or closed court and inform victim.
- Decide if cases involves child victims/witnesses, and where law provides, whether victim/witness will give evidence in court or via another medium (i.e.: by video from another room or a place where they may feel more comfortable).
- Tightly manage pre-trial processes and minimise adjournments.
  - Ensure that any timeframe targets set by the Chief Justice are met.
  - If none are set, then aim to finalise regular cases within three months or complex cases within six months, as a guide.
  - Work backwards from finalization targets to provide directions to the prosecution/defence regarding time frames for interlocutory steps, (finalisation of investigation, indictment filed, evidence brief provided to defence etc.)
  - Take all possible steps to reduce delay such as give early warning to the parties that adjournments will only be granted in the most exceptional circumstances and carefully assess whether there is a need for forensic evidence, especially where it will take a long time to procure.



Work closely with Vulnerable Persons Liaison Officer, or if none is appointed, another court staff member, to complete the steps set out in **Court staff responsibilities** section [page 8]:



- To ensure victim/witness is currently in a safe situation.
- To ensure victim/witness is provided with regular updates on how the hearing is progressing and likely timeframes.
- To develop and manage a safety plan for the victim/witness while at court.

## Stage Two Judge's role during the hearing

### Before entering the court room

- Ensure that the victim/witnesses and the defendant have been briefed by court staff about what will happen when the court is in session, and that all parties are aware of court etiquette rules including, that the judge will not allow anyone to be present who interjects or attempts to intimidate witnesses etc.
- Ensure that any screening is in place so the victim/witness not intimidated by eye contact with suspect.

### Once hearing in session

- Introduce the hearing: explain the purpose of the hearing, the roles of the judge, prosecutor, defender, and set out the sequence of what will happen.
- Judge to reiterate that the victim/witnesses are safe to tell the truth, and that the court will protect them from any threats or intimidation, including after the hearing, and reminding all that harsh penalties apply for anyone obstructing justice or interfering with a witness.
- Judge to remain in control of hearing at all times.
- Judge to ensure that defence lawyer/defendant questions are allowable, that questions to victims/witnesses are relevant and appropriate, and to intervene and prevent questions if the prosecution does not raise valid objections.
- Judge to ensure that an unrepresented defendant never directly questions a victim or vulnerable witness. Judge should ask the unrepresented defendant to direct their questions to the judge and then the judge will ask the question to the victim/witness, or guide the defendant to reframe the question so that it is a relevant/appropriate question.
- Judge to ensure any protection orders necessary remain in place.

## Stage Three After the hearing

### Ensure that court staff complete their responsibilities to

- Implement the plan for the victim/witness' safe departure from the court; and
- Check in with the victim/witness to ensure they are safe/okay.
- Ensure that judge/magistrate is informed and police respond to any report of intimidation/threat/harm to the victim/witness after the hearing.

### Ensure that prior to and at sentencing hearing

- The prosecution are prepared to present the victim impact statement.
- The prosecution are prepared to provide evidence of harm/loss to victim for criminal compensation (where this is the responsibility of the prosecutor and dealt with concurrently with criminal charges).
- Court staff have a victim/witness safety plan in place (as per below) if they are attending the sentencing hearing.
- The sentence fits the crime and is not impacted by gender myths or stereotypes including reductions based on transferring blame to the victim, or discriminatory customary practices.
- Protection orders remain in place for safety of the victim/witness, if necessary.
- Criminal compensation orders are made if laws allow for this to be rolled into finalisation of a criminal matter.
- An order is made, directed to the Corrections Service, that the victim be notified at least two weeks prior to release of the defendant from custody, whether upon completion of their sentence or on parole.





## Court staff responsibilities

Court staff share responsibility with the judge/magistrate to ensure that victims and witnesses of family and sexual violence feel supported and safe (physically and psychologically) to participate in the court process without fear.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
 especially Chapter 7

### Preparation for the hearing

- **Treat confidentiality of the victim/witness very carefully** (especially when having any contact with the suspect, victim or suspects' family members or other community members).



#### Checking victim/witness is in a safe situation

- If they are still in home environment, carefully consider how to contact the witness/victim safely. (i.e. call them on their telephone and check first if it is safe/good time for them to talk).
- Find out where the victim/witness is currently living and whether they are in a safe situation. Ask them:
  - Are they feeling safe from the suspect/anyone else around them
  - Has anyone used or threatened violence against them since they made a complaint to the police/court?
  - Discuss with person their options for being in a safer place or how to make their current situation safer. (see guidance below on making a safety plan)



#### If they are not in a safe situation, then seek the consent of the victim/witness to:

- Call the police and later follow up to check that the police do respond to any report of intimidation/threat/harm to the victim/witness after the hearing and repeat steps
- Contact the court and advise victim/witness needs urgent protection orders
- Refer them to shelter or relevant women's organisation for protection, support and assistance if one is available
- If they are going to stay where they are, provide advice about preparing a safety plan (following)



## Advice you can provide to victim/witness about making a safety plan

- Remove or secure any items in the house that could be weapons like knives, garden tools
- Speak to neighbours you know and trust. Ask them to call the police if they hear violence or abuse
- Have an escape plan ready for when you feel that it's not safe to stay where you are. Plan where you will go and how you will get there in case you need to leave in a hurry.
- Plan and practice (with your children) how you might escape from your home safely and quickly
- Teach children that in a dangerous situation, their responsibility is their own safety, not to protect you.
- Have a code word or phrase that you can use with someone you trust by phone or text so they know you are in danger and need help from them or the police, even if the perpetrator can hear you.
- Pack an escape bag in case you need to leave the house quickly ready with phone, charger, keys, money, important papers, medication, any essential items for you and children



## Once victim/witness is in a safe situation

- Explain to the witness/victim the steps of the court process, what is expected of them during each step of the process and how to contact the court if they have any concerns or questions (a script should be developed for this to ensure consistency).
- Provide regular updates to the witness/victim on how the hearing is progressing and likely timeframes.

## Preparing a safety plan for while victim/witness is at court

Court staff should liaise with the victim/witness well before the day of the court hearing to discuss how they will get to court, what they need to bring (food etc.) and to outline details of what will happen when they come to court, including:

- How will they enter the court compound safely? (Is there a back entrance or private way for them to enter the court building?)
- Who from the court will receive them and look after them while at court (ensuring they have food, water and safe access to bathroom while at court)?
- What measures are in place to ensure they are not harmed, threatened or intimidated while at court?

- Where will they wait so they are safe from seeing people connected with the case or feeling intimidated, threatened or questioned by curious people?
- Who will check none of the witnesses/community members are armed and to manage their behavior while in court or waiting?
- How will they be protected during the hearing?
  - Any screen/physical barrier so victim/witness does not have eye contact with defendant in the court room?
  - Any arrangement for victim/witness to give evidence by video/another location?

- Who will provide them with information about what will happen, including the hearing process and the details of what is expected of them including:

- Roles of the judge, (to ensure process is fair to everyone and no one is intimidated or fearful in their role), prosecutor (to bring the case on behalf of the state and also to ensure process is fair to victim/ prosecution witnesses) and defender (to ensure the process is fair to the defendant, defendant witnesses).
- Where they will stand/sit in the court room?
- Who will be present in the court room?
- Is it an open or closed hearing?
- Will they see the suspect or will there be a screen in place?
- Who will question them? Will the suspect question them directly? Judge's role in ensuring the questions are fair etc.

- How will they safely leave the court, where will they go and with who?
- Do they know what to do/who to contact if anyone threatens or harms them, following the hearing?

## On the day of the hearing

- Meet the victim/witness as planned and accompany them to the private waiting area.
- Brief them about what will happen when the court is in session, and that all parties are aware of court etiquette rules including, that the judge will not allow anyone to be present who interjects or attempts to intimidate witnesses etc.
- If there is time/opportunity, take them to the court hearing room before the hearing and show them where they will be sitting/standing as well as the suspect, judge, prosecutor, defence lawyer.
- Ensure that any screening is in place so the victim/witness not intimidated by eye contact with suspect.
- Accompany the victim/witness to the hearing room and get them settled in. If they have no one with them, stay with them during the hearing. Provide assurance and support.

## After the hearing

 Make sure that the victim/witness safely departs from the court and has money for transport and somewhere to go.

 The next day check in with the victim/witness by telephone to ensure they are safe and ok. Follow steps above Check victim/witness is in a safe situation and If they are not in a safe situation.

## Prior to and at sentencing hearing

- Follow directions of judge/magistrate to liaise/prompt prosecution to provide a victim impact statement and any evidence regarding harm/loss to the victim.
- Ensure the victim/witness will be accompanied by someone to the court if they are attending the sentencing hearing and that a safety plan is in place (as per above).



# 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.

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- **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)
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- 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)
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  - Police/prosecution/civil investigation not completed
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  - Court scheduling delay
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## 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



## When people with disabilities come to court

### CHECKLIST 5

For Chief Justice  
Judge, Magistrate and Court Staff



FEDERAL COURT  
OF AUSTRALIA



# Purpose Statement and User Guide

This is the 3rd in a series of six Human Rights Checklists designed to support coordinated “best practice” actions to apply human rights in the daily practice of judges, magistrates and court staff. The Checklists provide practical step-by-step guidance for applying relevant human rights standards to particular groups of court users and for making courts more inclusive and welcoming.

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

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

## Full Series of Human Rights Checklists

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

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## For Chief Justices to consider

- Chief Justices can play a key role in providing leadership and setting into motion coordinated standards and practices to be applied across all aspects of court functions when people with disabilities come to court. These are aimed at ensuring that the human rights of people with disabilities are fully observed by the court. This includes ensuring that court actors know how to manage cases involving people with disabilities so that they do not experience any discrimination in either the process or the outcome of any court cases they are involved in. This may require the court to make reasonable accommodations to ensure that people with disabilities can fully participate in court processes.
- Consider endorsing this Checklist and encouraging or directing judges, magistrates and court staff to use this checklist in their daily practice to create an “all of court” coordinated response.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjst/resources/toolkits/Human-Rights-Toolkit.pdf>  
especially Chapter 8

## RECOMMENDED ACTIONS

Develop a court **Disability Policy** setting out basic principles and rights concerning people with disabilities including:

- Equality before the law;
- Non-discrimination;
- Access to justice;
- Obligation to make ‘reasonable adjustments’ to provide equal opportunity/access to court facilities and processes;
- Other legal protections provided by national laws for people with disabilities; and
- Treatment of all people with disabilities equitably and respectfully, including in relation to their rights to confidentiality and privacy.



## The policy should:

- Apply to all judicial officers and staff working in all of the courts, all contracted service providers to the Court as well as all court users.
- Include obligations for the court to:
  - ▶ Ensure that responsibilities for implementation of the policy are assigned and resourced, and all court actors are trained and aware of their responsibilities;
  - ▶ Take all reasonable steps to identify and eliminate discrimination against people with disabilities including in their ability to access court services/functions;
  - ▶ Develop processes and systems for responding and making reasonable adjustments to court procedures and existing facilities (to the maximum extent possible) to meet the needs of people with disabilities;
  - ▶ Ensure court public information is also accessible to people with disabilities; and
  - ▶ Ensure there is a system of feedback and complaints, and regular (minimum annual) review of implementation of the policy across all levels of the court.
- Appoint
  - ▶ a senior judicial officer and
  - ▶ a senior court staff member as disability liaison officers

responsible for implementation of the policy amongst judicial officers and court staff who report directly to the Chief Justice.
- Ensure that court data systems include disaggregation of people with disabilities and that 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 to answer the following six questions:
  - ▶ **How many** people with disabilities do we currently have engaged with the court?
  - ▶ **Which** cases are they involved in?
  - ▶ **What** disabilities do they have?
  - ▶ **How** is the court responding to their needs?
  - ▶ **What further assistance** is needed from the court?
  - ▶ **What result/outcome** did they receive from their engagement with the court?



- Ensure an annual budget line is included in the court budget for supports for people with disabilities.
- Ensure that court public information is produced in formats/medium accessible to people with disabilities including both PDF and Word formats for information accessible on Websites. 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.
- Ensure all members of the court receive training on identifying, communicating with and supporting the needs of people with disabilities, including treating people with disabilities and their families with dignity and respect, and how to implement their responsibilities under the Disability Policy.
- Ensure that all court response capacities/services developed for people with disabilities are documented and go through a review process to continuously improve and establish best practices in court disability services.
- Ensure that public information is provided inside and outside of the court advertising/ promoting the services/supports available to people with disabilities at the court.
- Ensure 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.





## Judge and Magistrate responsibilities

### Overview of responsibilities

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. This requires the court to make reasonable accommodations to ensure that people with disabilities can fully participate in court processes.

To meet these responsibilities, it is necessary for judges/magistrates to actively manage cases involving people with disabilities as per the recommended actions below.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
 especially Chapter 8

### RECOMMENDED ACTIONS

- Be aware of any cases in your docket involving people with disabilities, including the nature of their disability and the reasonable adjustments you will need to make to ensure their needs are met 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.
- 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. Use the court staff checklist below to make sure that the 'point of contact' has provided all relevant support including taking all steps necessary to ensure their case is not adjourned due to lack of court preparedness.
- Take a practical and flexible approach (eg: allow processes such as family members to help those with disabilities so they can participate and understand the process).
- Adjust your style of communication according to what is relevant and needed.  
Do not make assumptions or inappropriate adjustments, for example:
  - ▶ do not speak loudly to a person who is blind
  - ▶ or assume that a person with a physical disability cannot understand or participate and speak to their carer instead of them, etc.
- Work out what is needed and then act accordingly.
- Where needed, take special care and time to explain things more simply, or repeatedly, or in different ways. Keep testing that the person has understood and checking with them if they would like you to explain it again. Make sure that time is taken throughout the hearing to continuously explain what is happening now, its significance, what is happening next etc and not only at the beginning of the case. Make sure that you also explain or summarise what other court actors have done or said. Allow regular breaks for the person or their interpreter/supporter as needed.

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



## Where suspect may have an intellectual disability or mental illness

 A person cannot be tried if they lack sufficient mental or intellectual capacity to understand the proceedings and to make an adequate defence. For some charges the person's capacity to form the requisite level of intent or to engage in decision making will also be relevant. Some questions to consider in assessing competence to stand trial are, does the person have the ability to:

- ▶ form a layperson's understanding of the nature of the charges and the court proceedings;
- ▶ challenge jurors and understand the evidence;
- ▶ decide what defence to offer; and
- ▶ explain his or her version of the facts to counsel and the court.

 If you determine the person does not have capacity to be tried then refer to relevant domestic law on alternative process/care/diversion of people lacking capacity to stand trial. Bear in mind that depending on the laws that apply in your jurisdiction, this can in practice, lead to adverse outcomes for the individuals concerned, who may be subject to detention, for an uncertain period, in prison or in secure hospital facilities—although hopefully most jurisdictions have legislated to divert such people away from the criminal justice system. The risk is that incentives may exist for innocent people to plead (or be advised to plead) guilty, in order to avoid the consequences of unfitness to stand trial.

 Even where the person has legal capacity, faces trial and is found guilty, then evidence of their intellectual disability or mental illness will still be very important in sentencing.

## Where victim has intellectual disability or mental illness

 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.



## Court staff responsibilities

### Overview of responsibilities

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.

This requires the court to make reasonable accommodations to ensure that people with disabilities can fully participate in court processes as per the recommended actions below.

For further background and guidance see PJST Human Rights Toolkit  
<https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf>  
 especially Chapter 8

## RECOMMENDED ACTIONS

### Case Management



Ensure that court registry and case management processes are in place to identify people with disabilities at the earliest possible stage, capture data on their cases and then to provide them consistent, reliable, quality support.



Ensure there are fields on forms for recording disability needs on standard registry application/originating proceeding forms and case file documents regarding all case types (civil and criminal). For court application forms:

- ▶ Do you/any of the other parties in this case have a disability?
  - Yes
  - No
  - Don't know
- ▶ 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?

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

What kind of special assistance will they need from the court?

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For court registry form:

Do any of the parties in this case have a disability?

Yes     No     Don't know

What kind of disability/ies? [please circle]:

mobility, sight, hearing, intellectual disability/mental illness, multiple.

What kind of special assistance will they need from the court?

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 Ensure there is a colour-coded or other system in place in registry to enable ready identification of cases involving persons with disabilities so special care can be taken with managing these files.

 Record the person's needs and your responses on the case file.

## Planning and Preparation

 Ensure 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 to ensure 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 person's transportation to and arrival at the court;
- ▶ Liaising with the judge/magistrate to make sure they are aware of the person's disability/ies and all arrangements.

### For people with hearing or speech impairments

What is needed to enable them to understand and participate in the hearing?

- ▶ Do any bookings need to be made for a sign interpreter or other aides?
- ▶ Does there need to be permission given by the judge/magistrate for a family member to assist the person with communication?

### For people with visual impairments

Ensuring that information about the process has been provided to them beforehand, including reading and explaining to them all relevant written documents beforehand;

- ▶ On the day/s of the hearing, accompany them to the courtroom and remain with them throughout the hearing to read to them any relevant documents and to explain who is present, and provide a commentary on what is occurring.
- ▶ If a guide dog is coming to court, ensure court staff are aware that guide dogs are permitted.

### For people with intellectual impairments

- ▶ Checking if they have legal representation and if not, make a referral to legal aid or private lawyer.
- ▶ Ensuring all aspects of the process are explained beforehand and throughout the hearing in a way they understand.
- ▶ Ensuring that the judge/magistrate is aware of their intellectual disability in advance of the hearing.
- ▶ Supporting provision/collection of any medical reports/information requested by the judge/magistrate.

### For people with mobility impairments

Ensuring that planning is done regarding allocation of hearing room:

- ▶ Is it the closest and easiest one for them to get to?
- ▶ Is it accessible to the person? (ie will they be able to manage any stairs?)
- ▶ If they are in a wheelchair, is there a ramp?
- ▶ Is the court door wide enough to accommodate wheelchairs?
- ▶ Is there space for wheelchair users to move around the courtroom?
- ▶ Where will a person in a wheelchair sit in the courtroom when they are giving evidence?
- ▶ Are court hallways wide and clear of furniture or debris?
- ▶ Arranging for bathroom access for the person (this may require creative practical thinking if depending on court infrastructure).

## Improve services as your court gains experience

- Share your knowledge with other staff.** Work with others to develop court services, systems and information for people with disabilities.
- Ask people with disabilities for their feedback** on their experience in court and what the court could do to further improve it and use this feedback to continuously improve court responses.
- Develop public information** about the work/processes of the court in formats/medium accessible to people with disabilities. Ensure 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.
- All Court staff to be trained** in being able to implement the above checklist and being (more generally) friendly, welcoming and how to offer proactive respectful assistance to people with disabilities and their families.

# 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



## Creating welcoming, inclusive courts

### CHECKLIST 6

For Chief Justice  
Judge, Magistrate and Court Staff



FEDERAL COURT  
OF AUSTRALIA



# Purpose Statement and User Guide

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

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

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

## Full Series of Human Rights Checklists

- **Checklist 1** Minimising Pre-Trial Detention
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## For Chief Justices to consider

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

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

## RECOMMENDED ACTIONS

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

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

### 1 Considerations for planning new/renovated court infrastructure

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

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

See separate checklist for supporting court users with a disability





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

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

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



## Judge and Magistrate responsibilities

### Overview of responsibilities

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

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

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

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

### RECOMMENDED ACTIONS

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





## Court staff responsibilities

### Overview of responsibilities

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

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

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

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

### RECOMMENDED ACTIONS

#### Court approach to equality and fairness

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

#### Proactively offering assistance

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

## Observing professional standards

Especially:

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

## Preparing in advance

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

## Responsive

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

## Court physical environment

Need for the court environment to be:

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

Court staff should be allocated responsibility to:

- Manage small infrastructure projects, such as developing infographic signage, information booth/court information posters, feedback box and collection system;
- Manage public information/feedback projects:
  - ▶ Develop posters/fliers explaining court services,(eg help with completing protection applications, help for people with disabilities, fee waivers, contact details for legal aid etc.);
  - ▶ Regular collection of court user feedback (from feedback box or simple survey provided in person).
- Conduct daily inspection of court environment prior to court opening and ensure that:
  - ▶ All courts, waiting areas, cells and bathrooms are clean;
  - ▶ Court security in place;
  - ▶ Re-arrangement of furniture prior to day when child/juvenile cases are scheduled.
- Implement practical solutions for court users needing:
  - ▶ Private way to enter court precinct;
  - ▶ Private place to wait for their case to be heard.

# Standard Recommended Court Form Disaggregated Data Fields

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

## Type of Case

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

## Information about the parties

### TYPE OF PARTY

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

### RELATIONSHIP BETWEEN VICTIM/PLAINTIFF AND OPPOSING PARTY

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

### EXTRA QUESTIONS IN CRIMINAL CASES

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

### EXTRA QUESTIONS FOR FAMILY LAW AND PROTECTION ORDER CASES\*

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

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

## Remaining Fields For all Case Types

### GENDER

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

### AGE

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

## DISABILITY/IMPAIRMENT\*

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

## Legal Representation

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

## Court Fees\*

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

## Case Management

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

## Case Outcome

### CRIMINAL CASE

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

### FAMILY/PROTECTION/OTHER CIVIL CASE

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

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

### NOTE: QUESTIONS FOR CIVIL/ FAMILY CASE FORMS

**Q1** Do you have a disability, impairment or long-term health condition that may affect your participation in court?  
Yes/ No

**Q2** Tick any of the following that are appropriate:

- Do you have difficult seeing?
- Do you have difficulty hearing?
- Do you have difficulty walking or moving around?
- Do you have difficulty understanding or concentrating?
- Do you have difficulty being understood by others?

**Q3** Would you like the court to contact you to discuss beforehand what help can be provided to you to make it easier for you to participate in and be ready for your court case? Yes/ No