

When victims of family & sexual violence come to court

CHECKLIST 4

For Chief Justice
Judge, Magistrate and Court Staff

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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Published in October 2020.

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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.



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 court staff. 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

Overview of 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 week 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 are feeling safe from the suspect/anyone else around them
- ☐ Has anyone used to 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).



