

Note 8:

Diverse Religious Backgrounds

Aspects of religious belief and practice may affect a victim's participation in criminal proceedings, such as commitments on certain religious holidays or days and times of the week, or gender specific norms that can affect how a victim feels in court.

The following information is largely drawn from the [Equal Justice Bench Book](#) - Supreme Court of Western Australia and the [Equality before the Law Bench Book](#) - Judicial Commission of New South Wales.

Appropriate account should be taken of the relevant religious affiliation of those attending court (particularly if they come from orthodox or conservative traditions within their religion), to limit the potential for them to:

- Feel uncomfortable, resentful or offended by what occurs in court;
- Feel that an injustice has occurred; or
- Receive unfair and/or unjust treatment.

Religious beliefs and practices

There are many religions practised in Victoria. At the 2016 Census, Victoria's population was **5.93 million**.

Of that total population, 59% (3,493,927) followed one of more than 130 different faiths.

The top five religions listed were Western Catholic, Anglican, Uniting Church, Islam and Buddhism.

Awareness of different religious faiths and practices and how they may impact on participation in proceedings can improve courtroom interactions.

Useful resources that provide descriptions of religious beliefs and practices of most impact in court situations include:

- [People with a particular religious affiliation](#) – Equality before the Law Bench Book, Judicial Commission of New South Wales. This publication contains a brief overview of belief and court-relevant practices of five common religions in Australia: Christianity, Buddhism, Islam, Hinduism and Judaism.
- [Appendix D: Glossary of Religions: Religious Practices and Oath-Taking Requirements](#) – Equal Treatment Bench Book, Judicial College – Courts and Tribunals Judiciary (United Kingdom).
- [Religions Affiliations](#) – Equal Justice Bench Book, Supreme Court of Western Australia.

Practical considerations

Swearing in witnesses

Witnesses must take an oath or affirmation before giving evidence. Victims who are giving evidence can swear an oath on a religious text, such as the Bible or the Qur'an. Court staff must treat all religious books and objects with respect.

The correct form of oaths for witnesses in Victoria can be found in Schedule 1 of the [Evidence Act 2008](#).

Considering significant days and times when scheduling hearings

Certain days of the week, or dates in a year, are significant to victims who are religious. The Harmony Week website maintains a [calendar of cultural and religious dates](#).

Judicial officers can consider whether it is necessary to make allowances for regular breaks for those who need to pray at certain times of the day, adjourning for relevant holy days and making allowances for religious festivals.

Names and forms of address

Names and forms of address can be influenced by a person's family, cultural and/or religious background.

In most cases, religious leaders should be addressed by their religious leadership title followed, in most cases, by their family name.

However, it might be appropriate to ask the religious leader or legal representative (if they have one) what form of address they would prefer.

For more information about naming conventions, see [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#).

Note 8: Diverse Religious Backgrounds

Key points to consider: Appearance, behaviour and body language

Do not generalise: Most, if not all, religions have many approaches and forms. For more information, see the [Equality Before the Law Bench Book](#) – Judicial Commission of New South Wales.

Exercise discretion before asking someone to remove religious dress in open court:

The [United Kingdom's Equal Treatment Bench Book](#) contains detailed guidance in relation to the wearing of veils in court. As in the United Kingdom, the wearing of a veil in court remains a matter of judicial discretion.

That discretion will, to some extent, be fact-dependent and jurisdiction-dependent, and what may be appropriate in one situation may not be appropriate in another.

Judicial officers can ask for the removal of a veil during evidence but only if a fair trial requires it. It should be done only if the judge reasonably believes it necessary in the interests of justice and only after reflection on whether, in the context, effective evidence (which includes the court's effective ability to assess the evidence) could be given without removal.

Consideration should be given to alternative measures such as the use of screens, closed circuit television or closing the court, where appropriate.

See Chapter 9 of the [United Kingdom's Equal Treatment Bench Book](#) and *Elzahed v NSW* [2018] NSWCA 103 for further guidance.

Lack of eye contact: As discussed in [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#), not looking someone in the eye is not necessarily an indication of dishonesty.

There are some religions for which it is taboo for some people to make direct eye contact with others (particularly the opposite sex).

Be aware of touching or court staff standing too close: Many religions have rules that members of the opposite sex who are not family members should not touch each other or, in some cases, stand too close to each other.

Use appropriate language to describe any God(s) or religious values or practice. For example, always use 'the' before any reference to the Buddha or the Dharma/Dhamma.

Avoid discussion of morality or rationality: When making orders that are contrary to a religious practice, explain the decision on the basis of jurisdiction and avoid discussing morality or belief.

An example might involve a situation in which medical treatment is being ordered which may be inconsistent with a religious practice.

Seek clarification if unsure about whether a behavioural trait is to be expected within a particular religious group, or how best to deal with it to ensure justice is both done and seen to be done.

Judicial officers may consider either asking the person's legal representative (if they have one), the person themselves, or their interpreter (if they have one, and are from the same religious background as the person themselves).

It should be noted that some interpreters may be skilled in language but may not be the most suitable source of information about behavioural traits.

Consider whether the court requires evidence from someone with expert knowledge about the particular religion. It may be difficult to get that clarification from the person themselves or the interpreter as they may feel it is not their place to inform the court, they may not understand why the explanation is needed or they may be reluctant to explain for some other reason.

