

Note 9: Disability



Disability is a broad term, encompassing varying types and levels of impairment. A person may have multiple disabilities, with each disability affecting them in a different way and requiring its own adjustments. Victims who have a disability can face barriers to effective participation in criminal proceedings, from inaccessible courtrooms to misconceptions about their reliability as witnesses.

Capacity

Judicial officers should be aware of orders or appointments affecting a person's legal capacity before hearings in criminal proceedings occur.

Key questions to consider

Does the victim have a disability that may impact their participation?

Does the victim have any difficulty seeing or hearing or need additional time to answer questions?

Is the victim giving evidence? Will additional time be required?

Is there a need to familiarise the victim with the courtroom and court facilities?

Has the victim been connected with support services?

Should an intermediary be appointed?

Would a Ground Rules Hearing be beneficial?

Does the victim use assistive devices and technologies? Can they access them in court?

Examples of assistive devices and technology

- Wheelchairs
- Prostheses
- Hearing and visual aids
- Courtroom hearing loop
- Computerised software/hardware that increases mobility, hearing, vision or communication
- Assistance dog or animal

Does the victim require access to an audio frequency induction loop?

Is information in accessible formats wherever possible? (Easy English, Braille, larger fonts, audio)

Does the victim have a support animal? Does the animal require breaks or access to water?

Does the victim require an interpreter? (language or Auslan – see [Guidance Note 6: Culturally and linguistically diverse backgrounds](#))

Are any adjustments to procedural matters necessary? For example, a person's disability or level of literacy may affect the manner in which they swear on the religious text, or their ability to read or speak to a script.

For more information about the law on capacity, see [Orders and Appointments Affecting Capacity – Disability Access Bench Book](#).



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Challenging assumptions

Understand the difference between speech problems and language problems: a speech problem does not necessarily mean there is a language or cognitive problem.

Expect some unexpected behaviour: Some people with disabilities may behave in ways that appear disruptive, disrespectful or confronting, such as giggling, laughing, smirking, or expressions, eye contact or other behaviours that seem inappropriate and out of context.

Sexual offences against people with a disability

- People with disabilities are over-represented as victims of sexual offences, and often face additional barriers to reporting offences.
- Many offenders target people with disabilities because they perceive them as powerless, vulnerable, and unable to make reports that will be taken seriously.
- People with disabilities are capable of relaying accurate details about their abuse, particularly if they are interviewed in a developmentally sensitive and non-intimidating manner. Judicial officers may consider whether the appointment of an intermediary would be of assistance to the person giving evidence.

Family violence against people with a disability

For more information about family violence against people with a disability, see:

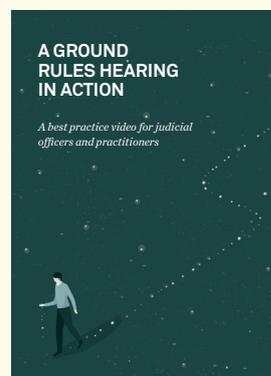
- [People with Disabilities \(Cognitive, Physical or Mental Health\)](#) – Family Violence Bench Book
- [People with Disability and Impairment in the National Domestic](#) – Family Violence Bench Book
- [Interpreters and Translators](#) – National Domestic and Family Violence Bench Book

For more information on Ground Rules Hearings and intermediaries, see the Judicial College's [best practice video](#).

Consider statutory provisions that assist victims: Judicial officers can give directions on the way in which witnesses who cannot hear or speak adequately can appropriately give evidence.

For more information on these provisions, see:

- [Deaf and Mute Witnesses](#) – Uniform Evidence Manual
- [Adjustments for Witnesses who Cannot Hear or Speak](#) – Disability Access Bench Book



Further resources

- [People with a Disability and the Justice System](#) – Disability Access Bench Book
- [Types of Disabilities, Considerations for People with Specific Disabilities and Glossary](#) – Disability Access Bench Book
- [Disability Glossary: Impairments and Reasonable Adjustments](#) – UK Equal Treatment Bench Book