

Participation of Muslims in court processes

The Australian National Imams Council (ANIC), with the assistance of the Judicial Commission of NSW, has prepared an "Explanatory Note on the Judicial Process and Participation of Muslims".

The effect of the explanatory note is two-fold: first, the ANIC is able to give practical guidance on the etiquette and behaviours that Australian Muslims need to observe when engaging in judicial processes; second, to provide accurate and authoritative information to judicial officers on Islamic concepts and practices as they relate to matters which may be raised in connection with Muslims participating in court processes.

The ANIC notes that those who enter a country have to adhere to the country's laws and regulations and they have no justification for breaking those laws (at 2.2). Part 3 of the explanatory note deals with court protocols. The note states that there is no prohibition or restraint on a Muslim standing up for (at 3.1), or lowering their head as a mark of respect (at 3.2), to a magistrate or judge. These practices are also consistent with court custom.

The explanatory note also addresses oaths and affirmations (at 4), including a procedure for administering an oath upon the Holy Quran. Dress standards are also provided, including dealing with a situation where a woman can uncover her face when she is appearing in court either as a witness or litigant. The ANIC states that "it is not contrary to Sharia law for a woman to uncover her face when she is giving testimony in court" (at 5.2). Therefore, neither the hijab, burka or nikab should present an obstacle to participation in the court room process (at 5.2). Section 6 deals with several issues including cultural nuances with regard to eye contact and shaking hands.

The explanatory note was referred to during the sentencing hearing of Raban Alou and subsequently in the sentencing decision.¹ Mr Alou had refused to stand at the commencement and conclusion of each court session. In his sentencing remarks, the Honourable Justice Peter Johnson confirmed, with reference to the explanatory note, that there is no prohibition or restraint on a Muslim standing up for a judicial officer as a sign of respect nor any prohibition or restraint on a Muslim, when entering or leaving a courtroom, to stand and lower their head in a mark of respect. His Honour described the explanatory note as "a powerful statement by the leadership of Islam in Australia concerning the approach to judicial proceedings".² The offender's lack of respect for the court touched on the issue of contrition and remorse and his prospects of rehabilitation.³

The explanatory note is available on JIRS under "Useful Links" at "Guides and standards" and the ANIC website at www.anic.org.au under the "Media Release" dated 12 December 2017.

¹ *R v Alou (No 4)* [2018] NSWSC 221 at [237]–[238].

² *ibid* at [238].

³ *ibid* at [236].

NSW Court of Appeal launches new website

The Honourable Justice M J Beazley AO, *President, NSW Court of Appeal*

The NSW Court of Appeal, with the support of the Judicial Commission, has launched its new website. We hope that it will be of assistance to judicial officers and practitioners across Australia and in the wider Asia-Pacific region.

A fortnightly bulletin summarises key decisions from the Court of Appeal, intermediate appellate jurisdictions, appellate courts from the Asia-Pacific region, and other international common law jurisdictions. Previous bulletins are also available on the website, and a search function is available to peruse decisions which pertain to particular topic areas.

The website contains an annotation of sections of the *Civil Liability Act 2002* (NSW) (the Act). This reproduces key provisions of the Act and sets them alongside significant cases decided by the Court of Appeal and the High Court of Australia since 1 October 2012.

Another component of the website deals with practice and procedure at the NSW appellate level. This includes hyperlinks to the sources of the Court of Appeal's jurisdiction, relevant procedural rules, and the recent Court of Appeal Practice Note (commenced 1 January 2018). There is a section which links to judgments addressing common procedural and preliminary issues arising in Court of Appeal proceedings, such as seeking leave to appeal, stay applications, security for costs, and amending and striking out notices of appeal.

There are links to speeches of Court of Appeal judges, as well as regularly updated lists of decisions currently reserved for judgment by the Court, and Court of Appeal decisions which are currently before the High Court of Australia.

Please address any feedback about the website to CourtOfAppealWebsite@courts.nsw.gov.au. The website address is: <https://nswca.judcom.nsw.gov.au/>