Religious affiliations
Contents

3. Religious affiliations ........................................................................................................... 3.0.5

3.1 Some statistics .................................................................................................................. 3.1.1

3.1.1 Religious affiliation .................................................................................................... 3.1.1

3.1.2 No religious affiliation ............................................................................................... 3.1.2

3.2 Some information ............................................................................................................ 3.2.1

3.2.1 Christianity ................................................................................................................. 3.2.1

3.2.1.1 Profile .................................................................................................................. 3.2.1

3.2.1.2 The breadth of Christianity ................................................................................. 3.2.1

3.2.1.3 Main beliefs ......................................................................................................... 3.2.2

3.2.1.4 Holy books and scriptures ................................................................................. 3.2.2

3.2.1.5 Religious leaders ................................................................................................. 3.2.3

3.2.1.6 Forms of worship and feast days ....................................................................... 3.2.3

3.2.1.7 Diet ..................................................................................................................... 3.2.4

3.2.1.8 Practices and customs relevant to appearance before the court ..................... 3.2.4

3.2.1.8.1 Status of women ......................................................................................... 3.2.4

3.2.1.8.2 Touching ...................................................................................................... 3.2.4

3.2.1.8.3 Dress ........................................................................................................... 3.2.4

3.2.1.8.4 Names and titles ............................................................................................ 3.2.4

3.2.1.8.5 Worship and festival times ......................................................................... 3.2.5

3.2.1.8.6 Seating ......................................................................................................... 3.2.5

3.2.2 Buddhism .................................................................................................................... 3.2.5

3.2.2.1 Main beliefs ......................................................................................................... 3.2.5

3.2.2.2 Holy books and scriptures ................................................................................. 3.2.6

3.2.2.3 Religious leaders ................................................................................................. 3.2.6

3.2.2.4 Forms of worship and festivals ....................................................................... 3.2.7

3.2.2.5 Practices relevant to appearance before the court ......................................... 3.2.7

3.2.2.5.1 Status of women ......................................................................................... 3.2.7

3.2.2.5.2 Respectful behaviour ............................................................................... 3.2.7

3.2.2.5.3 Eye contact ................................................................................................. 3.2.7

3.2.2.5.4 Touching ...................................................................................................... 3.2.7
3.2.2.5.5 Dress ................................................................. 3.2.8
3.2.2.5.6 Names and titles ............................................... 3.2.8
3.2.2.5.7 Language and communication .......................... 3.2.8

3.2.3 Islam ........................................................................ 3.2.8
3.2.3.1 Profile ................................................................. 3.2.8
3.2.3.2 Major groups ......................................................... 3.2.9
3.2.3.3 Main beliefs ........................................................... 3.2.9
3.2.3.4 Holy books and scriptures ....................................... 3.2.10
3.2.3.5 Religious leaders ................................................... 3.2.11
3.2.3.6 Forms of worship and festivals ............................... 3.2.11
3.2.3.7 Practices relevant to appearance before the court ....... 3.2.12
  3.2.3.7.1 Status of women .............................................. 3.2.12
  3.2.3.7.2 Touching ........................................................ 3.2.12
  3.2.3.7.3 Dress .............................................................. 3.2.12
  3.2.3.7.4 Names and titles .............................................. 3.2.14
  3.2.3.7.5 Language and communication ......................... 3.2.14
  3.2.3.7.6 Body language and behaviour ......................... 3.2.15
  3.2.3.7.7 Seating .......................................................... 3.2.15

3.2.4 Hinduism ................................................................ 3.2.16
3.2.4.1 Main beliefs ........................................................ 3.2.16
3.2.4.2 Holy books and scriptures ...................................... 3.2.17
3.2.4.3 Religious leaders ................................................... 3.2.17
3.2.4.4 Forms of worship and festivals ............................... 3.2.17
3.2.4.5 Practices relevant to appearance before the court ........ 3.2.18
  3.2.4.5.1 Status of women .............................................. 3.2.18
  3.2.4.5.2 Touching ........................................................ 3.2.18
  3.2.4.5.3 Names and titles .............................................. 3.2.18
  3.2.4.5.4 Body language and behaviour ......................... 3.2.19
  3.2.4.5.5 Dress .............................................................. 3.2.19

3.2.5 Judaism ................................................................... 3.2.20
3.2.5.1 Main beliefs ........................................................ 3.2.20
3.2.5.2 The Sabbath ........................................................ 3.2.20
3.2.5.3 Holy books and scriptures ................................................................. 3.2.21
3.2.5.4 Religious leaders ........................................................................... 3.2.21
3.2.5.5 Forms of worship and festivals ....................................................... 3.2.21
3.2.5.6 Practices relevant to appearance before the court ......................... 3.2.22
   3.2.5.6.1 Status of women .................................................................. 3.2.22
   3.2.5.6.2 Touching .............................................................................. 3.2.22
   3.2.5.6.3 Dress .................................................................................... 3.2.22
   3.2.5.6.4 Names and titles ................................................................... 3.2.23
   3.2.5.6.5 Seating ................................................................................ 3.2.23

3.3 Practical considerations ........................................................................ 3.3.1
3.3.1 Modes of address for religious leaders .............................................. 3.3.1
3.3.2 Oaths and affirmations ....................................................................... 3.3.1
3.3.3 Appearance, behaviour & body language .......................................... 3.3.4
3.3.4 Language .......................................................................................... 3.3.5
3.3.5 The impact of religious values on behaviour relevant to the matter(s) before the court ................................................................. 3.3.5
3.3.6 Appropriate breaks for religious practices ......................................... 3.3.7
3.3.7 Directions to the jury ......................................................................... 3.3.7
3.3.8 Sentencing, other decisions and judgment or decision writing ............ 3.3.8

3.4 Further information or help .................................................................. 3.4.1
3.4.1 Christianity ....................................................................................... 3.4.1
3.4.2 Buddhism ......................................................................................... 3.4.3
3.4.3 Islam ................................................................................................. 3.4.3
3.4.4 Hinduism ........................................................................................... 3.4.4
3.4.5 Judaism .............................................................................................. 3.4.4
3.4.6 Multicultural interests ....................................................................... 3.4.4

3.5 Further reading ..................................................................................... 3.5.1

3.6 Your comments ..................................................................................... 3.6.1
3 RELIGIOUS AFFILIATIONS

This chapter provides a brief overview of the beliefs and court-relevant practices of the five most common religions in Western Australia in the order of the most commonly practised: Christianity, Buddhism, Islam, Hinduism and Judaism.

The material used in this chapter was drawn from the New South Wales Judicial Commission’s *Equality before the Law Bench Book*, with modifications that incorporate local legislation, data and reference material.

As noted in the NSW *Bench Book*, not all people who practise the various religions described will accept these descriptions as accurate. The NSW Judicial Commission advises, however, that its descriptions were confirmed by representatives of each particular religion as representing a mainstream understanding of that religion. The Steering Committee overseeing the production of this *Bench Book* has also sought to confirm the general acceptability of the descriptions presented with locally-based representative organisations.

The Committee gratefully acknowledges the following organisations and individuals, whose submissions and contributions have resulted in the substantial revision of this chapter:

- The Uniting Church in Australia — Social Justice (WA) (11 May 2007);
- The Jewish Community Council of Western Australia (Inc) (14 August 2007);
- The Bodhinyana Buddhist Monastery (5 September 2008);
- Dar al Shifah Islamic Inc (9 September 2008);
- The Catholic Archdiocese of Perth (12 September 2008);
- The Catholic Social Justice Council (18 September 2008);
- The Jewish Society (WA) (24 September, 2008);
- The Buddhist Council of Australia (30 September 2008);
- The Archbishop of Perth, the Anglican Church of Australia, Diocese of Perth (12 November 2008); and
- The Centre for Muslim States and Societies, University of Western Australia (1 December 2008).

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3.1 Some statistics

The numeric breakdown of religious affiliations and the percentage of the WA population represented by each group, based on the 2006 Census results, are shown in Table 3-1.

Table 3-1 Religious affiliation of WA population

<table>
<thead>
<tr>
<th>Religious affiliation</th>
<th>Number of WA residents</th>
<th>% of WA population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian</td>
<td>1,162,529</td>
<td>59.3%</td>
</tr>
<tr>
<td>Buddhist</td>
<td>34,351</td>
<td>1.8%</td>
</tr>
<tr>
<td>Muslim</td>
<td>24,185</td>
<td>1.2%</td>
</tr>
<tr>
<td>Hindu</td>
<td>8,155</td>
<td>0.4%</td>
</tr>
<tr>
<td>Jewish</td>
<td>5,293</td>
<td>0.3%</td>
</tr>
<tr>
<td>Other religions</td>
<td>11,181</td>
<td>0.6%</td>
</tr>
<tr>
<td>No religious affiliation</td>
<td>448,436</td>
<td>22.9%</td>
</tr>
<tr>
<td>Not declared/inadequately described</td>
<td>264,956</td>
<td>13.5%</td>
</tr>
</tbody>
</table>

Total WA population 1,959,086 100%

Source: Australian Bureau of Statistics

3.1.1 Religious affiliation

- Of the 59.3% (1.16 million) who are Christian, in descending order of affiliation:
  - 464,004 people (23.7% of the population) are Catholic — 99.9% of whom are Western Catholic, with the rest comprising such denominations as Maronite Catholic, Melkite Catholic and Ukrainian Catholic;
  - 400,384 people (20.4% of the population) are Anglican;
  - 74,331 people (3.8% of the population) are Uniting Church;
  - 39,470 people (2.0% of the population) are Presbyterian;
  - 32,733 people (1.7% of the population) are Baptist;
  - 11,948 people (0.6% of the population) are Lutheran;
  - 10,641 people (0.5% of the population) are Jehovah’s Witnesses;
  - 5,655 people (approx 0.3% of the population) are Salvation Army;
  - 5,509 people (approx 0.3% of the population) are Seventh Day Adventists; and

---


4 This includes members of the Anglican Catholic Church; see above.
the remainder are affiliated with such religions as Latter Day Saints, Assemblies of God and Church of Christ.

- Of the 0.6% of people (11,181) who practise the wide range of religions other than the five most common religions, the most popular are Baha’i (1,948) Sikhism (1,393), Spiritualism (1,501) and Paganism (1,500).

- The Australian Bureau of Statistics census data includes the following religious affiliations of specific relevance to Aboriginal people in WA: the Aboriginal Evangelical Missions (707 people) and Australian Aboriginal Traditional Religions (656 people); although of course, Aboriginal people have a broad range of religious affiliations. More detailed information on Aboriginal people’s traditional spirituality is included at section 2.3 of the Aboriginal Benchbook for Western Australian Courts.

- The religious affiliations of people born overseas or with recent overseas ancestry, whether from English speaking countries or non-English speaking countries, are various and do not necessarily match the dominant religion within the particular country of origin. For example, Vietnamese Australians may be Christian or Buddhist or practise other religions. Indians may be Hindus, Muslims, Sikhs or Christians. Religious practice is not always confined to a single ethnic community. For example, Muslims can be Indonesian, Iranian, Iraqi, Bosnian, Pakistani, Indian, Malaysian, Somali, Turkish, Indigenous or Anglo-Australian, to name a few.

- There is generally a wide diversity within religious groups, dependent on such things as cultural factors and doctrinal differences. It is important not to make assumptions or stereotypes. For example:

  - Many religions include people for whom their religion is the critical defining factor in their values and the way they behave, as well as people for whom their religion is of a less significant defining influence or importance.
  - Many religions include a range of doctrinal differences, from the orthodox or fundamentalist (strict adherence to very specific religious rules) to more relaxed practices.

### 3.1.2 No religious affiliation

Although this chapter is concerned with particular religious affiliations, it is significant to note at the outset that, in the 2006 census, the second most common response for the religious affiliation of persons normally resident in WA was “No Religion” (448,436 people). This chapter does not seek to make generalisations about the beliefs of this group, due to the diversity of views it encompasses (i.e. agnosticism, atheism, apathy towards religion etc). However, it is important that such a significant group is recognised and treated appropriately to ensure that non-belief does not lead to discriminatory or unequal treatment.

Non-belief in religion is particularly relevant to whether a person will take an oath or make an affirmation prior to giving evidence. With more than one fifth of the community identifying as having no religious affiliation, and therefore likely to make an affirmation rather than take an oath, it is important to acknowledge that an affirmation is neither an exceptional nor a lesser way of attesting to the veracity of a person’s evidence: for further information see section 3.3.2 below.

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3.2 Some information

This section provides a brief overview of the beliefs and court-relevant practices of the five most common religions in WA in the order in which they are most commonly practised.

3.2.1 Christianity

As outlined in section 3.1.1 above, there is a wide variety of Christian denominations or traditions practised in WA. In addition, people who practise Christianity come from a wide variety of culturally and linguistically diverse origins.

Christianity is based on the teachings of Jesus Christ, who lived 2000 years ago in the Middle East region. The annual dating system used in Australia has its origins in Christianity — BC (Before Christ) and AD (Anno Domini or the Year of the Lord) — although there has recently been some movement to the more religiously neutral BCE (Before the Common Era) and CE (Common Era). Almost all public holidays in Australia derive from the Christian calendar of festivals, as did, until recently, the notion of not working on Sundays.

Many Christian denominations contain strands ranging from liberal to conservative.

3.2.1.1 Profile

Christians have been in WA since 1827, and have been providing religious and other services to the community since 1830. There are more than 1,000 Christian churches or other worship centres in WA. Christian churches are divided into a variety of “denominations”, each with its own ways of worshipping and teaching.

3.2.1.2 The breadth of Christianity

Christians in WA worship in over 30 languages. They come from many different countries, which means they share the culture of their homeland as well as being part of the worldwide Christian church. Western Australian Christians may be:

- from a variety of European countries such as the United Kingdom, Italy, Greece, Spain, Holland and Germany;
- from Aboriginal communities utilising several different languages;
- from Asian countries including the Philippines, Indonesia, Malaysia, Vietnam, Korea and China;
- from Pacific Island countries including Tonga and Samoa;
- from African countries including Egypt, Sudan, Sierra Leone, Ethiopia, Eritrea and South Africa;
- from Latin American countries including Chile and Peru; or
- from North America.

Some of these cultural Christian communities arrived in Australia as refugees.
3.2.1.3 **Main beliefs**

Christians believe Jesus Christ is the son of God, and that God and humankind were reconciled through the death and resurrection of Jesus Christ. For many Christians, belief in a Triune God — one God revealed in three persons, Father, Son and Holy Spirit — is a fundamental creedal position.

Many Christians also believe in the ethical principles listed in the Ten Commandments, given to Moses by God on Mount Sinai. One description of the commandments follows:

1. Have no other God besides God.
2. Make no idols.
3. Do not misuse the name of God.
4. Keep the Sabbath holy.
5. Honour one’s parents.
6. Do not commit murder.
7. Do not commit adultery.
8. Do not commit theft.
9. Do not give false evidence.
10. Do not be covetous of another’s property.

Note, however, that various Christian denominations describe these commandments differently. For example, in its submission the Catholic Archdiocese of Perth does not include reference to the second of the commandments referred to above, but does include a commandment “you shall not covet your neighbour’s wife”. The Catholic Archdiocese also cites the “new commandment” of Christ as important: “I give you a new commandment: to love one another. As I have loved you, so you also should love each other.”

3.2.1.4 **Holy books and scriptures**

The Bible is considered to be sacred by many Christians, and includes the Old Testament and the New Testament. The Old Testament is essentially shared with Judaism and consists of the Hebrew Scriptures. The New Testament contains Gospels that detail the life and teachings of Jesus Christ as well as the writings of early Christian leaders.

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7 Submission from the Catholic Archdiocese of Perth (12 September 2008).
3.2.1.5 Religious leaders

Christian religious leaders have various names depending on the type of Christianity being followed — for example, “priest” for Catholics and Orthodox Eastern European Christian denominations, “minister” for most other denominations. They are responsible for conducting religious services and providing religious instruction and guidance.

There are strong leadership hierarchies in most Christian denominations, often with many levels of ordained priests or ministers with various titles, headed, for example, by the Pope in Catholicism and the relevant country’s Primate in Anglicanism. In some Christian denominations (for example, the Uniting Church) both ordained and non-ordained people can hold any role in the church leadership.

In some Christian denominations there are groups of religious sisters (or nuns) and religious brothers (or monks); some live relatively cloistered lives while others live and work in the community, usually providing various forms of charitable work.

3.2.1.6 Forms of worship and feast days

Christians can pray at any time of the day or night, in any place and in any physical posture, although it is considered essential by most Christians to be able to go to a place set aside and consecrated for public and private worship. As a result, many Christians tend to pray congregationally in a church of their particular denomination, usually on Sundays, and on religious feast days, although they also may do so on any other day of the year. Church services vary between denominations from highly ritualised to informal. Leaders may wear liturgical garments, a clerical collar or a cross pinned onto a shirt, or no particular distinguishing dress (see section 3.2.1.8.3).

Christian feast days include:

- Christmas — the birth of Christ — on 25 December in Western churches. (In its submission, the Uniting Church in Australia — Social Justice (WA) notes that the Christian celebration of Christmas may be regarded as very different to the secular holiday of Christmas. 8)

- Good Friday and Easter Sunday (two days after Good Friday) — the crucifixion and resurrection of Christ respectively — in March or April in Western churches.

These feast days are celebrated by all Christian denominations, although they may be celebrated at slightly different times. For example, the Eastern European Orthodox calendar runs approximately 14 days later than the standard Australian calendar, and different rules are used to calculate the date of Easter.

There are many other feast days that have more or less significance depending on the particular denomination. For example, some denominations recognise many different saints’ days, and some pay more attention to particular religious events such as the Assumption of the Virgin Mary (or the Dormition of the Holy Mother of God, as Eastern Christians refer to it).

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8 Submission from the Uniting Church in Australia — Social Justice (WA) (11 May 2007).
3.2.1.7 Diet
There are no particular dietary requirements in most Christian denominations. However, Seventh Day Adventists are expected to be vegetarian and not drink alcohol. Catholics of a particular age are required to fast and abstain from eating meat on Ash Wednesday and Good Friday. Other Christians may also fast during Lent the name given to the weeks leading up to Easter/the Resurrection of Jesus Christ. Some Christians may fast at times other than Lent.

3.2.1.8 Practices and customs relevant to appearance before the court
The following are the practices of most impact in court situations.

3.2.1.8.1 Status of women
Women generally have an equal status to men in Christian denominations. However, only some Christian denominations allow female clergy; for example, Catholic and Orthodox churches do not allow women to be priests.

3.2.1.8.2 Touching
There are no particular taboos on touching. However, note that there are some Christian denominations that forbid some forms of medical treatment — for example, Jehovah’s Witnesses will refuse blood transfusions and all other forms of treatment involving the use of biological donations from others.

3.2.1.8.3 Dress
Some churches have distinctive dress to distinguish their leaders from others, and many church leaders use liturgical vestments when they lead worship:

- The “Roman collar”, a plain, often black, shirt with a white tab in the collar, may be the distinctive dress of some church leaders. Others wear a cross or crucifix prominently, as a way of defining their role in the church.
- Orthodox priests wear black tunics (soutanes) and distinctive headdress.
- Salvation Army members, as well as officers, wear a uniform with distinctive badges.
- Some church leaders wear no distinguishing religious dress at all.
- Religious sisters (or nuns) and religious brothers (or monks) tend not to wear distinguishing religious dress as often as they used to; those in enclosed orders are still likely to wear simple religious habits.
- Many Christians wear a cross around their neck, but not everyone who wears a cross is a Christian; the cross may be just an item of jewellery.

3.2.1.8.4 Names and titles
Many Christian leaders are given honorific titles. A common title used instead of, or as an alternative to, “Mr” or “Ms/Mrs/Miss” is the word “Reverend”, such as “The Reverend John Jones” or “The Reverend Jane Jones”; an alternative, if addressing a male, is “Father Jones”. Catholic priests are always referred to as “Father” when being addressed orally, and as “Reverend” in writing. Note however, that the title “Mother” usually refers to a female leader of nuns, and that other female Christian leaders are usually called not “Mother” but “Reverend”:
There are many honorific titles for Christian leaders in higher leadership positions in the church. These titles may include Archbishop, Bishop, Archdeacon, Moderator or President.

Other Christian leaders may prefer the word “Pastor” instead of “Reverend”. Some prefer to be known by their own name and not by their title.

Salvation Army officers are given titles which are taken from the regular army, such as “Captain” or “Major”.

The members of the Society of Friends (Quakers) do not use honorific titles at all. Many will not use “Mr” or “Ms/Mrs/Miss”.

3.2.1.8.5 Worship and festival times
See section 3.2.1.6 above.

3.2.1.8.6 Seating
Many Christian communities are happy for men and women to sit together in a public meeting, but some Christians from particular cultural groups may prefer men and women to sit separately.

3.2.2 Buddhism
The Buddhist community can be divided into two groups: the first may be referred to as “ethnic” Buddhists (people who are ethnically Asian); and the second as “Western” Buddhists (generally people who, not having grown up in a Buddhist tradition, have chosen to become Buddhists). Most Buddhists in Australia belong to the first group.

There are two main Buddhist traditions:

- One is Theravada (pronounced “Teravada”), which has its roots in Sri Lanka and Southeast Asia.
- The other is Mahayana, which is prevalent in China, Japan, Tibet, Nepal, Mongolia, Korea, Taiwan, Viet Nam, Bhutan and India.

Both traditions agree about the main beliefs and key practices outlined below.

3.2.2.1 Main beliefs
Buddhism is founded on the teachings of Siddhartha Gautama, “the Buddha” or “the Awakened One”, who was born around 480 BC near the present India-Nepal border. The Buddha realised all phenomena in life are impermanent and that the cause of suffering is craving, which in turn is bound up with the illusion of a permanent self.

---

There are four noble truths in Buddhism:\textsuperscript{10}

1. There is suffering.
2. The cause of suffering is craving.
3. The giving up of craving is the end of suffering.
4. There is an eightfold path that leads to the end of suffering.

By following the noble eightfold path, a person develops compassion, kindness and wisdom, and overcomes greed, hatred and delusion. The noble eightfold path describes the practice of morality, concentration in mind and wisdom:

- Morality is based upon the Five Precepts — not to destroy life, not to steal, not to commit improper sexual behaviour, not to lie, and to refrain from alcohol and drugs which will lead to moral heedlessness. For monks and nuns this moral code is much expanded.
- Deep mediation is the outcome of the effort to overcome all unwholesome mental qualities and the development of clear mindfulness.
- Wisdom is the understanding of and the experiential insight into the Buddha’s teachings.

Practising Buddhists do not believe in taking life; however they are not required to be vegetarians, which is at the individual’s discretion.

\subsection*{3.2.2.2 Holy books and scriptures}

There are numerous holy scriptures associated with the many forms of Buddhism. They are collectively known as the Tripitaka (or Three Baskets), consisting of:

- Vinaya Pitaka or monastic rules;
- Sutra Pitaka or discourses; and
- Abhidharma Pitaka or higher philosophy.

The teachings of the Buddha are collectively known as “the Dharma” in Mahayana Buddhism and “the Dhamma” in Theravada Buddhism.

Often temples will provide talks or lessons about the teachings of the Buddha for its adherents. Buddhism is not based on reverence for holy books but on a clear understanding of the Buddha’s teachings together with the practical application of those teachings.

\subsection*{3.2.2.3 Religious leaders}

Monks, nuns and some lay people are regarded as spiritual leaders. Buddhist monks and nuns should not be addressed as “Mr” or “Ms”. They may be addressed as “Venerable”, “Roshi”, “Ajahn”, “Master”, “Bhante” or “Sister”, depending on their tradition.\textsuperscript{11}


3.2.2.4 Forms of worship and festivals

Many Buddhists perform devotional practices or meditation in the early mornings and evenings. This may include chanting, prostration and/or silent meditation. Buddhist practices need not be done in a temple, but many temples do offer services weekly and at festivals.

The following key religious festivals and significant cultural and religious days are celebrated:12

- Vesak Day (Vesakha Puja) is the full moon in May. It commemorates the birth, Enlightenment, and passing away of the Buddha. It is the major Buddhist festival of the year.
- The Rains Retreat (Vassa) runs approximately from the full moon of July to the full moon of October. During this time Theravada monks and nuns devote more time to meditation and study and do not travel from their monastery for long.
- The Kathina ceremony falls some time in October/November (depending on individual monasteries). Monastic supplies are offered following the monks’ and nuns’ three-month annual retreat.
- The Uposatha is observed roughly every seven to eight days (on the new, waxing and full moon days). It is a popular day for visiting a monastery.

3.2.2.5 Practices relevant to appearance before the court13

The following are the practices of most impact in court situations.

3.2.2.5.1 Status of women

Women have an equal status to men in the Buddhist religion.

3.2.2.5.2 Respectful behaviour

Putting the palms of the hands together in a prayer-like gesture is common among Buddhists — especially when greeting a person in authority. This may or may not be accompanied by bowing the head.

3.2.2.5.3 Eye contact

Monks and nuns in the Theravada tradition often do not look directly at a member of the opposite sex. The same is true of some Mahayana monks and nuns. There is no such rule for lay Buddhists.

3.2.2.5.4 Touching

Theravadin monks and nuns should never be touched by a member of the opposite sex; and some do not receive or give any item directly to or from the hand of a member of the opposite sex. The item should be placed in front of them for them to pick up.

This rule does not generally apply to monks and nuns of the Mahayana tradition.

---

Touching a monk or nun on the head is unacceptable and generally touching Buddhists on the head is regarded as impolite.

Some cultures have general sensitivities about touching people of the opposite sex.

3.2.2.5.5 Dress
Monks and nuns must wear robes at all times. Robes vary in colour and may be maroon, saffron, grey, brown, yellow or black. The different colours reflect the country in which individuals took their monastic vows. Monks and nuns either shave their heads or have very short hair.

Lay Buddhists may wear medallions, prayer beads and/or coloured strings around their wrists or necks.

3.2.2.5.6 Names and titles
Refer to 3.2.2.3.

3.2.2.5.7 Language and communication
Some Asian Buddhists may be reluctant to disagree or refuse requests directly, as this would be considered impolite. “No” may be expressed or hinted at indirectly. For many Asian Buddhists, direct public criticism may lead to “loss of face”. For them, this is a state of severe humiliation, loss of reputation and emotional upheaval.

3.2.3 Islam
The definition of “Islam” in Arabic means “submission” and refers to submission to Allah, the Arabic word for God. It is incorrect to use the term “Muhammadanism”, which suggests the worship of Muhammad.

3.2.3.1 Profile
Contemporary population estimates for followers of Islam are usually between one billion and 1.8 billion. The one billion figure appears to be dated, however, with relatively high birth rates in Muslim countries making Islam a fast-growing religion.

Muslims are from many races, nationalities and cultures throughout the world and in 2008 the Muslim population was estimated to include:

- 462.36 million African Muslims;
- 1103.75 million Asian Muslims;
- 51.46 million European Muslims;
- 7.13 million North American Muslims;
- 2.41 million South American Muslims; and
- 0.50 million Oceanic Muslims.

---

Muslims in Australia come from over 70 different countries and are therefore culturally and linguistically diverse.

3.2.3.2 Major groups

There are two main groups within Islam — Sunni and Shi’a. In most Muslim populations, the Sunni form the majority. The exceptions are Iran and Iraq, where the Shi’a form the majority.

The two groups differ over the successor to Muhammad — that is, who is to be the leader of the Muslim community (the Imam). Shi’ites believe that the leader must be a descendent of Muhammad himself, whereas the Sunni elect their leader from those who are pious and able to do the job effectively.

There is another approach to Islam, known as Sufism. It is more mystical than other forms of Islam. There have been identifiable Sufi groups at different times and in different places and there is a small group of Sufi in Perth.

3.2.3.3 Main beliefs

Muslims believe in one unitary and omnipotent God, Allah. The ultimate purpose of humanity is to worship Allah in every aspect of life, including in everyday activities, family and social interactions and work. Islam is strongly monotheistic and abhors both the attribution of divinity to any human and the notion that Allah might be divisible.

Islam teaches that prophets are sent by Allah to correct moral and spiritual behaviour: 16

- The prophets are human, but they provide an example for individuals and nations to follow.
- The final prophet was Muhammad, and the Qur’an is the final revelation of God.

Every Muslim is required to believe in six Articles of Faith: 17

1. Belief in the Oneness of God: Islam enjoins faith in the oneness and sovereignty of God, which makes people aware of the meaningfulness of the universe and of their place in it.

2. Belief in the Angels: Muslims believe in the angels of God. They are purely spiritual and splendid beings whose nature requires no food and drink or sleep.

3. Belief in Books of Allah: Allah revealed His books to various Prophets for guidance of their nations. The four main books that were revealed were Taurah (the major part of the Old Testament), Zaboor (Psalms), Injeel (the Gospels or New Testament) and the Holy Qur’an.

4. Belief in Prophets: Muslims believe that Allah has sent prophets to each and every nation on earth, from the prophet Adam to Abraham, to Moses, to Jesus, to Muhammad. According to Islam, God Almighty created us for a noble purpose: to worship Him and to lead a virtuous life based on His guidance.

5. Last Day (The Day of Judgement): The world, according to Islam, is a place of trial and people are tested for their faith in Allah. On the Day of Judgement all humans from the beginning of time will be raised to be judged. Those who have obeyed Allah will enter paradise and those who disobeyed will be punished in hell.

6. Divine Decree and Destiny: The true Muslim, according to Islam, believes in the timeless knowledge of God and in His power to plan and execute His plans.

The Five Pillars (or duties) of Islam are regarded as central to the life of the Islamic community: 18

1. The profession of faith (Al-Shadah) — “There is no God but Allah and Muhammad is his Prophet”.

2. The five daily prayers.

3. Giving alms to the poor (zakat).

4. Fasting in the month of Ramadan.

5. The pilgrimage to Mecca (hajj).

Islam does not promote violence in any form. Muslims must not initiate violence or commit violence. Muslims have the right to jihad (to struggle or strive) only if their religion is threatened. Jihad can encompass spiritual, intellectual, theological, literary and, if necessary, physical forms. The personal or inner struggle is the most significant, as it reflects the quest for perfection of self.

Muslims are forbidden to eat carrion and certain animals and animal products such as pork, except in life-threatening situations. These foods are considered haram (forbidden). The animals that may be eaten are sheep, cattle, poultry, camels, goats and seafood; but only when they have been slaughtered in a humane way and using the name of God. Muslims must avoid toxins and harmful products including drugs and alcohol. Food that fits the approved criteria and/or has been prepared in the approved way is called Halal (permissible) food.

3.2.3.4 Holy books and scriptures

The Holy Qur’an is considered as the final, unaltered and unalterable word of Allah, as conveyed to Muhammad by the angel Gabriel and transmitted to his followers by Muhammad. Questioning it is viewed as a very grave error.

The Qur’an is effectively a comprehensive guidebook. It includes codes of conduct on morality, nutrition, modes of dress, marriage and relationships, business and finance, crime and punishment, laws and government.

The Qur’an is highly revered and must be handled with respect; for example the Qur’an should be kept above the navel and placed in a covering before touching.

The Sunna are the recorded teachings and practices of the Prophet Muhammad, and are the second most important source of authority in Islam.

The Qur’an and Sunna together provide the primary sources for Shari’ah (meaning “the way”).

3.2.3.5 Religious leaders
There is no priesthood or institutionalised universal “church” for most Muslims. Alem, Ulama, Hafeez, Moulana or Mufti are Islamic religious theologians who fulfil a role similar to priests in many other religions, but they are appointed by their own community, large or small. Ustaz or Ustadz means a teacher, usually an Islamic religious theologian, as referred to above. Imam means leader and generally refers to a qualified religious leader (usually an Alem) who leads the five daily prayers in the mosque.

3.2.3.6 Forms of worship and festivals
Muslims pray five times a day: before sunrise, midday, afternoon, after sunset and at night. These are obligatory prayers for all adults, starting from puberty, which determines adulthood. There are exceptions for women who are menstruating or have recently given birth. A person cannot pray until they have completed ablutions first — washing their hands, mouth, nose, face, arms to the elbow, ears and eyes, head and feet, three times. Prayers must be conducted in a clean area.

During prayer, Muslims stand, bow and prostrate themselves on the ground with their face towards the Ka’ba — the Grand Mosque in Mecca — which is north-west of Perth.

Prayers are congregational and generally performed in a mosque, but can be performed individually, if necessary, at any clean and respectable place. A formal call to prayer is usually made from a minaret (tower) of a mosque where congregational prayers are conducted; however, the call to prayer can be made individually in any setting:

- Friday is considered a holy day. Muslim men pray at the mosque at midday on Friday, when the Imam holds a special congregational prayer and a sermon is delivered. Women may choose, but are not obliged, to attend.

- There are two main festivals in Islam which occur at any time during the calendar year:
  - Eid-ul-Fitr (breaking of the fast) — this festival signifies the end of the month of fasting called Ramadan. Ramadan is the ninth month of the lunar calendar. It is the month during which the Qur’an was revealed to the Prophet Muhammad. Fasting lasts for 29 to 30 days, from dawn until sunset each day. During this time, Muslims must not only abstain from eating, drinking, smoking and sexual relations, but must also abstain from any form of gossip, slander or activity that may cause harm to any person. The aim is to advance oneself spiritually, to consider the needs and struggles of others and to develop oneself so as to become the best example for the rest of humanity.
  - Eid-ul-Adha (the feast of sacrifice) — this festival commemorates the sacrificing of a sheep by the prophet Ibrahim (Abraham). A Muslim sacrifices a sheep and shares it with the poor, neighbours and friends on that day. The great pilgrimage to Mecca in Saudi Arabia is also observed at this time and Muslims from all over the world congregate to perform the obligations of the pilgrimage.
3.2.3.7 Practices relevant to appearance before the court

The following are the practices of most impact in court situations.

3.2.3.7.1 Status of women

Men and women have equal, but not necessarily identical, rights and responsibilities. Women are considered individuals and are attributed with rights of property, inheritance, education, work and family. Mothers are highly revered.

3.2.3.7.2 Touching

Muslims must not generally shake the hand of or touch someone of the opposite sex. The general rule is that men and women, even if they are related, must not shake hands or have any physical contact at all. The only relatives exempted from this general rule are mothers, daughters, sisters, aunts and nieces or fathers, brothers, uncles, grand-fathers and fathers-in-law — basically, those who are considered not lawful to marry. Husbands and wives are exempted. Strangers are not generally allowed to stand close to, or to touch, a Muslim woman.

The left hand is seen as unclean and should not be used to touch a holy book.

3.2.3.7.3 Dress

Islam prescribes a modest dress code for both men and women. Generally, loose-fitting, non-transparent clothing and the covering of hair are requirements for women.

There is diversity of opinion and practice regarding the hijab (scarf or veil). Some Muslims believe women must cover their faces and heads, while others believe only the hair and head need to be covered. There are also Muslims who believe it is not an Islamic requirement for women to wear veils. Views on wearing or not wearing the hijab may be determined by cultural and ethnic background as much as by religious conviction or theory. Women who do wear a hijab or burqa (full veil covering the entire body but leaving an opening for the eyes) should not remove the garment in public.

In Australia, many Muslim women choose to wear a type of hijab that covers the head and hair only. Few wear the burqa. Women who wear the hijab tend to do so in order not to display or expose their physical attractions to strangers, as a sign of modesty or to maintain a moral dignity. In Australia, wearing the hijab is largely a woman's choice.

The issue of religious dress in court, in particular the wearing of the hijab, has recently received considerable attention in the United Kingdom. The Judicial Studies Board has produced a detailed guide to assist judicial officers in relation to the matters that should be borne in mind if presented with this issue by participants in court and tribunal processes. The guide, available at www.jsboard.co.uk/downloads/ettb_veil.pdf, acknowledges that there is room
for diversity in the system of justice and that there should be a willingness to accommodate different practices and approaches to religious and cultural observance.

The Judicial Studies Board guide concludes that when an issue relating to the wearing of the hijab does arise, the judicial officer must reach a decision on how to proceed having regard to the interests of justice in the particular case. This will include combining sensitivity to any expressed wish not to remove the hijab with a clear explanation, where appropriate, of the reasons for any request for its removal, and the disadvantages for the judicial officer and/or a jury of not removing it. In many cases, there will be no need for a woman to remove her hijab, provided that the judicial officer is of the view that justice can be properly served.

A good example of the kind of accommodation that can be struck in the interests of justice when such issues arise is provided by the 2005 New Zealand case of Police v Razamjoo. In that case, District Court Judge Lindsay Moore ruled as follows:

On the authorities placed before the Court by the informant and in all the circumstances here, the Court is reluctantly forced to the conclusion that there could be a fair trial even if Mrs Salim and other witnesses of like belief gave evidence wearing their burqas.

But Mr Razamjoo (and indeed the public) has a legitimate expectation of trial by the normal processes of the Court except to the extent that departure from those processes is merited in the interests of justice. Mrs Salim has the right to manifest her religious beliefs by wearing her burqa in public, but (as she herself recognised) there can be situations in which that manifestation has to yield to other needs. She also has the right, as a witness, of equality with others in terms of how her evidence is evaluated. The public have rights and legitimate expectations in the context of the public nature of the criminal process. The Court has an obligation to the community it serves to recognise and uphold the values of a free and democratic society.

In all the circumstances here it would be contrary to the interests of justice to require that whilst giving evidence Ms Salim and others of like belief have their faces exposed to the view of the public or the defendant.

Authorising the giving of evidence beneath what is effectively a hood or mask would be such a major departure from accepted process and the values of a free and democratic society as to seriously risk bringing the Court into disrepute. Though there might conceivably be circumstances where major considerations of state security (particularly in times of war or the threat of it) or threats to the lives of many people, could be held to justify such a process, for my own part I would hope there would always be a preferable alternative.

So the Court rules that screens may be used to ensure that only Judge, counsel, and Court staff (the latter being females) are able to observe the witness’s face. Appropriate ancillary arrangements are to be made so that when the witness is entering and leaving the courtroom the intent of this decision is not defeated. Counsel and Court staff will understand that it would be a grave breach of their duties to the Court to convey to any third party (including the defendant) a description of the facial features or hair of any witness to whom this order is applied.

In adopting that solution the Court has been mindful of evidence indicating the likelihood of Mrs Salim’s beliefs admitting of some relaxation in relation to being unveiled in the presence of relatively aged male authority figures as opposed to males generally.

22 Police v Razamjoo [2005] DCR 408 (DC) [146]-[153] (Judgment of the District Court, New Zealand).
Well within my time in the law it was considered obligatory for a woman giving evidence in the then Supreme Court to wear a hat, indeed gloves also. There was a time when failure to do so risked judicial displeasure. All that has changed, but I mention it as a prelude to the final direction. Provided a witness’s face is fully exposed to view, the Court has no objection to her expressing her religious sensibilities by wearing a hat or scarf which covers her hair. Dark glasses would not be acceptable.

These orders apply to Mrs Salim and to any other witness, in this case who satisfies the Court of beliefs to the same effect as hers.

3.2.3.7.4 *Names and titles*\(^{23}\)

There is no uniformity in Muslim naming systems as Muslims come from different cultural backgrounds. There are, however, three systems by which Muslim names can be categorised:

- **Muslims who have a surname or family name.** In general, Muslims coming from Turkey, India, Pakistan, South Africa and Arab countries have surnames or family names. Certain Muslim ethnic groups coming from Indonesia, Malaysia and Singapore (especially those of Arab descent) and Indonesian Batak or Mandailing (from Sumatra), and some influential families from Java, have family names.

- **Muslims whose fathers’ names or second names are treated as surnames.** The Malay people coming from Malaysia, Singapore, Christmas Island, Cocos Island and some African countries, and some of those from Indonesia, have their father’s name as their surname. Most Malaysian and Singaporean Malays have, before their father’s name, the word “Bin” or “Binti (Bte)” respectively, meaning “son of” or “daughter of”. For example, “Osman bin Ali” is “Osman, son of Ali”. He would probably be called Mr Osman, not Mr Ali; as Mr Ali would be Osman’s father.

- **Muslims who have only single names.** This applies to Muslims from Indonesia only. In Indonesia the first given name is important, while the father’s name is unimportant. As a result many Indonesians have only a single name, such as Suharto, Sudomo, etc. People arriving in Western countries such as Australia have some difficulties completing government forms that often require and emphasise a surname or family name.

- In some cultures within Islam, women keep their own surname.

- In some cultures within Islam, when a woman has given birth her name changes to “ummu” (or “ummul”) joined to her son’s name, for example “Ummu Zahid” meaning “the mother of Zahid”. This is likely to be more relevant for some new immigrants to Australia, but generally does not apply to Muslims growing up in Australia.

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3.2.3.7.5 **Language and communication**

Interpreter service arrangements should be made according to the sex of the person concerned: a male interpreter for a man and female for a woman, if available. As far as a woman is concerned, the translation can also be done by a male interpreter in the presence of her male relative.

Additional information is provided in chapter 7, on culturally and linguistically diverse people, at section 7.3.1 “The need for an interpreter or translator”.

3.2.3.7.6 **Body language and behaviour**

Some of the sensitivities in this area include:

- Beckoning “come here” with the palm upwards or pointing to a person or object with your index finger or hand (or foot) is offensive to certain Muslim ethnic groups.

- Islam teaches functional divisions between the right hand and the left hand. Each hand has different functions. The functions of the right are to give and take, to eat and drink, to shake hands and wave. Using the left hand for these purposes is offensive. The functions of the left hand are to remove dirt and filth, to remove dirty or filthy things and to wash and wipe the private parts after going to the toilet. Using the right hand for these purposes is offensive.

- Muslims will often not make direct eye contact with members of the opposite gender.

3.2.3.7.7 **Seating**

Muslim clerics prefer not to be seated next to women. Muslim men and women prefer to sit in separate groups to avoid mixing with one another.

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3.2.4 Hinduism

Hinduism is one of the oldest religions in the world. Different communities in India have practised and developed it over thousands of years.

Hinduism is almost exclusively practised by people of Indian origin, although those who have visited Bali, for example, will be aware of the prevalence of that religion among people there. It is of note that there are many other religions practised in India as well: for example, Sikhism.

Hindus believe that their religion is a continuous process — without beginning or end — preceding the existence of this earth and other worlds beyond. Hinduism is therefore called Sanatan Dharma — the Eternal Religion.

Hinduism is unique as a religion, as it has no single founder, and no central administration, leadership or hierarchy. In fact, the Hindu Association of Western Australia (Inc) states that it is “somewhat misleading” to refer to Hinduism as a religion, as it is “more a way of life”.

Hinduism is based on the divine revelations contained in the ancient holy books called the Vedas. It has a number of denominations and therefore there are variations in religious practices among its followers. For example, the Hindus of North India may have some practices that are not followed by those from Sri Lanka, and vice versa.

The major tenets of Hinduism are:

- Karma — the law of cause and effect.
- Reincarnation.
- Non-violence.
- Tolerance of differences within Hinduism and towards other religions.
- Many manifestations of reality or God.
- An omnipresent God who resides in the heart of every living being; thus all human beings are potentially divine and the aim of life is to realise this divinity within.

3.2.4.1 Main beliefs

The Hindu ethical code is exemplified by a saying: “Punya (virtue or good) is doing good to others; and Papa (sin or evil) is harming others”.

Hindu scriptures give universal moral and ethical principles applicable to all sections of society. Designated as Samanya Dharma or common virtues, the list comprises Ahimsa (non-violence), Satya (speaking the truth), Asteya (not stealing), Day (compassion), Dana (giving gifts), Titiksh” (forbearance), Vinaya (humility), Indriyanigraha (restraining the senses), Santi (keeping the mind at peace), Saucha (purity of body), Tapas (austerity) and Bhakti.

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(devotion to God). Other virtues include Ksama (forgiveness), Dhriti (steadfastness), Aarjava (honesty) and Mitahara (moderation in diet).

The word “Om” is used in Hindu worship and is composed of three Sanskrit letters, “a”, “u” and “m”, which represent the Trinity of three separate Hindu Gods: Brahma the creator; Vishnu the preserver and Shiva the destroyer. Om is recited before any chant, and Hindus believe it invigorates the body. The symbol for Om represents the universe.

Hindus do not believe in taking life, and traditionally most are vegetarian. Australian Hindus have relaxed the rules relating to food and many are vegetarian only during Hindu festivals. Eating beef is strictly forbidden, and this rule extends to a ban on any utensils which may have been used in cooking beef.

Hindus often fast for a day, and sometimes a vow is taken to fast for a number of days.

3.2.4.2 Holy books and scriptures
There are numerous Hindu holy books. The Vedas are the oldest, and are written in Sanskrit, an ancient language spoken only by scholars. The Laws of Manu contain 2685 verses of instruction.

Other holy texts are:

- the Ramayana, which contains the life and deeds of Sri Rama;
- the Mahabharata, which tells of the Pandava and Kaurava princes and Sri Krishna; and
- the Bhagavad Gita, which is a popular scripture from the Mahabharata and depicts the story of a meeting between Lord Sri Krishna and the warrior Arjuna; the message is that one should discharge one’s duty, however hard and unpleasant, bravely and with selfless dedication.

3.2.4.3 Religious leaders
There are two aspects to the Hindu religious leadership:

1. Ritualistic — mainly male Hindu priests conduct prayers in the temples and various religious ceremonies and rites.
2. Spiritual — there are both male and female holy persons of great wisdom acquired through their devotion, dedication and austere living. Such a male person is called a Swami or Guru. A spiritual female person is called a Mataji or Sanyasini, or Pravarajika. They are revered because they provide religious discourses and guidance.

Hindu religious facilities are managed by leaders of the local community.

3.2.4.4 Forms of worship and festivals
Hindus are encouraged to pray at dawn and dusk, but the actual time is not critical. Most Hindus worship at least once a day at sunrise. Worship times at Hindu Temples are between 6.30 am and 8.00 am, and 7.00 pm and 8.30 pm.

Hindus must wash thoroughly and change their clothes before praying.  

Hindus maintain shrines or designated rooms for worship at home, with pictures or small statues, where oil and incense are burnt.

Hindu festivals are based on the lunar calendar. The main festivals are:

- Thaipusam — in January
- Holi — in February/March
- Sivarathiri — in March (whole night vigil)
- Hindu New Year — in April
- Krishna Jeyanthi — in September
- Navarathiri — in September/October (10 day festival)
- Deepavali — in October/November.

3.2.4.5 Practices relevant to appearance before the court

The following are the practices of most importance in court situations.

3.2.4.5.1 Status of women

In general, women have an equal status to men. However, Hindu women usually prefer to have a male relative with them when dealing with anyone in authority.

3.2.4.5.2 Touching

Orthodox Hindus avoid all physical contact with strangers, and especially with members of the opposite sex. However, in Australia, Hindus generally do not object to formal handshakes.

3.2.4.5.3 Names and titles

The use of family surnames is not universal among Hindus. The practice varies between regions in India. The use of surnames is common among people who have arrived in Australia from northern, eastern and western parts of India.

In Tamil Nadu in southern India and Sri Lanka, the use of surnames is uncommon. The following is an indication of the practice among Tamil speaking Hindus:

- A male uses the name or initial of his father’s name first, followed by his own personal name. For example, “Vijay Thiruselvan” is “Thiruselvan, son of Vijay”. For legal purposes he would be known as Mr Thiruselvan.
• Hindu female names follow the same pattern: father’s initial plus personal name. When an Indian woman marries, she usually ceases to use her father's initial; instead she follows her personal name with her husband’s name. For instance when S Kamala (female) marries V Thiru (male) she will go by the name of Mrs Kamala Thiru.

3.2.4.5.4 Body language and behaviour

Some Hindus from India show agreement by moving their head from side to side, which may be misinterpreted as “no”.

Most Hindus avoid public contact between men and women.

3.2.4.5.5 Dress

• Hindu women often put on glass bangles when they get married and do not remove them until their husband dies, at which point the bangles are ceremonially shattered. Breaking or removing these bangles is considered an extremely bad omen and would greatly distress a Hindu woman.

• Married women may wear a Thali or Mangal Sutra, a necklace of special design around their neck that traditionally symbolises marriage.

• The wearing of red powder in the parting in a woman’s hair also symbolises marriage.

• Hindu women may wear a red dot on their forehead.

• Some Hindus wear a thread around their bodies which is worn at the Upanayana religious ceremony and signifies the assumption of responsibilities for becoming a link in the transmission of knowledge and for maintaining cosmic truth and order. It passes diagonally across the body from the shoulder to about waist height and traditionally should never be removed.

• Men of one particular Hindu sect (Swami Narayan) may wear a necklace. Some Hindus wear a religious talisman on a chain as protection from evil action by others.

• Traditional clothing is worn when participating in worship or religious festivals.

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3.2.5 Judaism

Judaism is one of the world’s oldest religions.

Any person whose mother was Jewish is considered to be Jewish. However, progressive communities also accept descent through the father if the child is being brought up as Jewish. Conversion to Judaism is possible after a rigorous course of instruction. People often convert to Judaism to ally themselves with the family they are marrying into or have married into.

In Australia, there are many different Jewish congregations, ranging from progressive to ultra-orthodox. The Jewish Community Council of Western Australia (Inc) advises that the great majority of the WA Jewish community is affiliated with Orthodox Judaism, but a smaller number in the community is associated with the reform or progressive practice of Judaism, which varies from orthodox practice in a number of respects.41

Jewish people believe in a single God who created the universe and who continues to govern it. Moses received the Ten Commandments and the Torah from God on Mt Sinai. The Torah revealed the way God wished to be served, the basic principles of Judaism and instructions on how Jewish people should live.

3.2.5.1 Main beliefs

Judaism is based upon 13 principles of faith:

1. God created all things.
2. There is only one God.
3. God has no bodily form.
4. God is eternal.
5. We must pray only to God.
6. All the words of the prophets are true.
7. Moses was the greatest of the prophets.
8. The Torah we have is the same as that given to Moses.
9. The Torah will never change.
11. God rewards good and punishes evil.
12. The Messiah will come to redeem Israel and the world.
13. There will be a resurrection of the dead.

However, the more progressive Jewish traditions may dispute many of these principles.

3.2.5.2 The Sabbath

The Sabbath or Shabbat is a holy day for Jewish people, extending from sunset on Friday to nightfall on Saturday (or with the appearance of three stars). Observing Sabbath involves attending synagogue services on Friday evenings and family gatherings at home. The Jewish Community Council of Western Australia (Inc) advises that, in keeping the Sabbath, more

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Religiously observant Jews are required to prepare early on Friday afternoon. Observant Jews are not allowed to work on the Sabbath or perform many non-arduous secular activities, including using any forms of electricity, transport or writing materials.

Kashrut (from the Hebrew meaning “fit, proper or correct”) states which foods can be eaten and how food is to be prepared. For example, meat (the flesh of birds and mammals) cannot be eaten with dairy, and must be prepared and served with separate utensils. Kosher describes food prepared according to these standards. Observant Jews eat only kosher food:

- Certain animals must not be eaten43 — including, the flesh, organs, and milk of pork, birds of prey and their eggs, insects and shellfish.
- The permitted animals, birds and fish must be killed in accordance with Jewish law. This involves slaughtering by a qualified person in a manner that is as pain-free as possible. Certain parts of permitted animals must not be eaten.

3.2.5.3 *Holy books and scriptures*

Mitzvot are the 613 commandments contained in the Torah (the five Books of Moses), and include the Ten Commandments. The Mitzvot have been expanded through interpretations by Jewish spiritual leaders. Jewish law (Halakhah) comprises the Torah and the interpretations, and covers theology, ethics, marriage, food, clothing, education, work and holy days.

3.2.5.4 *Religious leaders*44

In Orthodox Judaism, only men can become rabbis; Liberal and progressive Jews allow women to become rabbis and cantors (prayer leaders).

The rabbi’s authority comes from extensive study, and a rabbi is considered to be a teacher rather than an anointed priest. A cantor is used to read the Torah, as few modern Jews can read the poetic Hebrew.

3.2.5.5 *Forms of worship and festivals*

Observant Jews pray three times a day — morning, afternoon and evening — although spontaneous prayer may be offered at any time. Most Jews manage to fit these prayer times into their normal work schedule. However, Sabbath and festival observances require special arrangements and consideration.

As indicated earlier, the first holy day for Jews (when praying is most important) extends from sunset on Friday to nightfall on Saturday. Festivals may occur on any day of the week, and the observance of these also extends from sunset to nightfall, or the appearance of three stars.

Sabbath and festival worship is performed congregationally in a synagogue, where prayer takes place facing Jerusalem. In an Orthodox synagogue men and women are separated — the women sit upstairs or behind a partition or grille — and services are conducted by males in Hebrew. In liberal and progressive synagogues, men and women sit together.

42 Submission from the Jewish Community Council of Western Australia (Inc) (14 August 2007).
43 “Any animal that does not both chew its cud and possess a cloven hoof cannot be eaten”: submission from the Jewish Society (WA) (24 September 2008).
The most important festivals are:

- **Pesach (Passover)** — lasts eight days and marks the deliverance of the Israelites from slavery in Egypt, usually in March or April.

- **Shavu’ot (Pentecost)** — celebrates God’s giving of the Torah on Mount Sinai to the Jewish people. It is held 50 days after Passover and usually falls in May or June.

- **Rosh Hashanah (New Year)** — the anniversary of the creation of the world it usually falls in September or October.

- **Yom Kippur (Day of Atonement)** — a 25-hour fast and period of abstinence, spent largely in prayers for forgiveness. Yom Kippur is the holiest day in the Jewish year and usually falls in September or October.

- **Succot (Tabernacles)** — recalls the journey of the Jews through the desert on the way to the Promised Land. It is held five days after Yom Kippur and lasts seven days, usually falling in October.

### 3.2.5.6 Practices relevant to appearance before the court

The following are the practices of most impact in court situations.

#### 3.2.5.6.1 Status of women

In Orthodox Judaism women have no formal role in liturgy. The Jewish Community Council of Western Australia (Inc) advises, however, that there is equal status between men and women although some religious responsibilities are shared differently. But the fact that being a Jew is generally determined through the matriarchal line is an important factor in family relationships.

#### 3.2.5.6.2 Touching

Handshaking is generally considered appropriate and acceptable. However, many observant Jews avoid all physical contact with non-family members of the opposite sex. They also limit other forms of association with them.

#### 3.2.5.6.3 Dress

Some Jewish men wear a kippah or yarmulke (religious skullcap) at all times. This is associated with the concept of reverence to God. Others wear the skullcap only during the Sabbath or on festivals. For reasons of integration some Jewish men wear a hat rather than a kippah or yarmulke. Observant men also wear an undergarment with fringes on its corners; these fringes are sometimes worn in a visible manner. Ultra-Orthodox or Hasidic male Jews wear dark apparel, hats, earlocks and beards.

Many observant married women keep their hair covered with a hat, scarf or wig. Jewish women may observe a code of modesty. Generally, observant orthodox Jewish women do not wear trousers, but wear dresses that cover the knees and blouses that cover the elbows.

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45 Submission from the Jewish Community Council of Western Australia (Inc) (14 August 2007).
3.2.5.6.4 **Names and titles**

Although Jewish people are given Hebrew names at birth, for example David “ben” (son of) Abraham or Sarah “bat” (daughter of) Abraham, most Jewish people use their given names followed by their family name or surname. Jewish clerics are addressed with the title Rabbi followed by their family name.

3.2.5.6.5 **Seating**

Observant orthodox Jewish men should not be seated between two women, nor should a woman be seated between two men.47
3.3 Practical considerations

Unless appropriate account is taken of the relevant religious affiliation of those attending court, people practising religions (particularly if they come from orthodox or conservative traditions within their religion) are likely to:

- feel uncomfortable, resentful or offended by what occurs in court; and
- feel that an injustice has occurred.

They are also liable, in some cases, to be treated unfairly or unjustly.

It should be noted that members of religions with the most obvious dress differences, or the greatest divergence from the more common forms of Christianity practised in Australia, tend to be discriminated against on religious or ethno-religious grounds much more frequently than other people.

The following section provides additional background information and practical guidance about ways of treating people with various types of religious affiliation during the court process, in order to reduce the likelihood of these problems occurring.

3.3.1 Modes of address for religious leaders

**Points to consider**

- In most cases, religious leaders should be addressed by their particular religious leadership title followed by their family name.
- To avoid offence, it is best to ask the particular religious leader what mode of address he/she would prefer.
- Be alert to the prospect that a departure from the usual honorific given to a religious leader may be used as a tactic and, in criminal matters where the religious leader is the accused, to subtly undermine the presumption of innocence.

3.3.2 Oaths and affirmations

Witnesses presenting evidence in a court, subject to a number of exceptions, are required to first take an oath or make an affirmation, to ensure that what they are saying will be truthful.48 Interpreters are also required to take a specific oath or make an affirmation to “well and truly translate” the evidence in the case.49

Section 4(2) of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) provides that the validity of an oath is not affected by fact that, at the time of taking the oath, a person had no religious belief.

Further, section 5 of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) provides that any person who is required to take an oath is entitled to affirm instead, particularly if:

- the person says that the taking of an oath is contrary to his or her religious belief or conscience;

48 Evidence Act 1906 (WA) ss 97, 105; Oaths, Affidavits and Statutory Declarations Act 2005(WA) s 5(1).
49 Evidence Act 1906 (WA) s 102.
• it is not reasonably practicable, without inconvenience or delay, at the time when and the place where the oath has to be taken, to administer to the person an oath in a manner that will bind the person’s conscience; or

• for any other sufficient reason, the taking of an oath is found not to be appropriate.

Points to consider

• The form of an oath is immaterial providing the oath is binding upon a witness’s conscience.\textsuperscript{50}

• The legality of administering an oath depends upon two matters: \textsuperscript{51}
  – whether the oath appears to the court to be binding on the witness’s conscience; and
  – if so, whether the witness considers it to be binding on his or her conscience.

• If a person is required to take an oath, and is happy to take an oath rather than make an affirmation, the oath is to take the form of any of the following, according to the person’s preference:\textsuperscript{52}

  \textit{I swear by Almighty God that the evidence I will give in this case will be the truth, the whole truth and nothing but the truth.}

  \textit{I swear by [name of deity recognised by his or her religion] that the evidence I will give in this case will be the truth, the whole truth and nothing but the truth.}

  \textit{I swear, according to the religion and the beliefs I profess, that the evidence I will give in this case will be the truth, the whole truth and nothing but the truth.}

• For those who practise Islam the following oath may be used:

  \textit{I swear with the sacred Qur’an in my hand, that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.}

  The witness first places their right hand flat on the (covered) Qur’an, puts their hand to their forehead, and then brings the top of their forehead down to and upon the book; after looking at the book for some time they declare that they are by such a ceremony bound to speak the truth.

• Note that if the Qur’an is stored in a bookshelf, then it should be placed somewhere in the highest position; it should not be placed on the floor as this is seen as offensive. The Qur’an should be handed to the person in court covered, and should not be touched by the left hand.

• It is of note that Muslims usually do not swear on the Qur’an as this is seen by many as idolatry. In these circumstances it may be more appropriate for the witness to make an affirmation rather than take an oath.\textsuperscript{53}

\textsuperscript{50} \textit{R v Sossi [1986] WAR 163; (1985) 17 A Crim R 405}

\textsuperscript{51} \textit{R v Kemble (1990) 91 Cr App R 178 at 180.}

\textsuperscript{52} \textit{Evidence Act 1906 (WA) s 97(3); Oaths, Affidavits and Statutory Declarations Act 2005 (WA) s 5(1).}

\textsuperscript{53} \textit{Oaths, Affidavits and Statutory Declarations Act 2005(WA) s 5(2)(a).}
• For those who practise Judaism the following oath may be used:

I do swear by the great God of Israel and the five books of Moses to speak the truth the whole truth and nothing but the truth.\(^{54}\)

• Although this form of oath is rarely heard, and a Jewish witness usually takes the ordinary form of oath, a Jewish witness may request a copy of the Old Testament or the Pentateuch (the first five books of the Old Testament, in Hebrew). The witness will also often wear a hat or other head covering.

• In WA, administering an oath to another person requires that the person taking the oath hold or touch a religious text acceptable to that person or, in the absence of such a religious text, to hold up one of their hands and to state the oath aloud.

• Some witnesses who have religious affiliations may nonetheless prefer to make an affirmation (see next). Usually they will object to taking an oath because they believe that a religious oath sets up a double standard of truthfulness, whereas sincerity and truth should be practised in all dealings of life. In other words, members of these groups are duty-bound to tell the truth in the same way in all facets of life and do not take the oath.

• For those who have no religion, and for others who do not wish to take an oath, there is a standard affirmation that makes no reference to religion:

I sincerely declare and affirm that the evidence I will give in this case will be the truth, the whole truth and nothing but the truth.\(^{55}\)

• In most cases, the person’s legal representative, or person calling the particular witness, will have found out whether the person wishes to be sworn in on the basis of their religion or not. This should help ensure that the appropriate religious text is available if required by that person.

• In other cases, the court may need to determine whether the person wishes to be sworn in on the basis of their religion or not. In such cases, note that:

  – Some witnesses may not realise that they are able to swear to tell the truth in a way which is appropriate for them; and if not guided about this may simply agree to take the standard oath with the Bible.

  – Many people do not know the difference between an oath and an affirmation, so it is usually best to state that it is important that the person swears to tell the truth in the way that will mean the most to them.

  – It is always important to respect the wishes of the particular person in their choice of whether to take an oath or make an affirmation.

• It is important not to assume that someone who refuses or is unable to take an oath is any less likely to tell the truth than someone who chooses to make no reference to religion.


\(^{55}\) Evidence Act 1906 (WA) s 97(3); Oaths, Affidavits and Statutory Declarations Act 2005 (WA) s 5.
### Points to consider

- **Dress:** Careful consideration needs to be given before asking someone to remove their religious dress in open court even when it might appear necessary — for example, to check the extent of someone’s injury or their identity. Where it is necessary to see under someone’s religious clothing, it will be necessary to check with that person, or with someone who can advise you of the appropriate religious practice, what may be done, and how it can be done appropriately:
  - There is a range of different possible approaches, depending on the circumstances of the particular case and the individual concerned. A good understanding of the special measures that may be of use in the particular case, and of the need to identify the need for such adaptations at a preliminary hearing, are key (see 3.2.3.7.3 and 3.3.5.).
  - The interests of justice remain paramount; and in essence, it is for the judicial officer, in any set of circumstances, to consider what difference, if any, would be made to those interests by the religious garment being worn. It may well be that after consideration it will be found that there is no necessity to take any steps at all.

- **Eye Contact:** As indicated previously, there are some religions for which it is taboo for one person to make eye contact with another, particularly with another of the opposite sex. For these people, not looking someone in the eye will not necessarily have anything to do with their honesty or credibility.

- **Touching/standing too close:** Many religions have rules that members of the opposite sex who are not family members are not allowed to touch each other, or in some cases, stand close to each other:
  - If you are unsure whether a particular behaviour trait is to be expected within a particular religion, or unsure how best to deal with it to ensure justice is both done and seen to be done, either ask the person’s legal representative (if they have one), ask the person themselves, or consider whether the court needs to obtain “expert” advice from someone who has knowledge about the particular religion.
  - Note that it may be hard to get the information you need from the person themselves as they may not feel it is their place to inform you, or they may not understand why you need the information, or they may be reluctant to give you the information for some other reason that is religiously or culturally appropriate to them.

- All or some of these differences in appearance, behaviour and body language may need to be taken into account whenever you make any assessment based on the demeanour of a person with a particular religious affiliation.

- If appropriate you may also need to alert the jury to the fact that any assessment they make based on the demeanour of a person with a particular religious affiliation must, if it is to be fair, take into account any relevant religious difference.

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• As prescribed by law, you may also need to intervene if it appears that any cross-examination is alluding to any particular religious difference in appearance, behaviour or body language in an unduly annoying, harassing, intimidating, offensive, or oppressive way.

3.3.4 Language

Points to consider

• Use the appropriate language to describe any god(s) or religious values or practices. For example, always use “the” before any reference to the Buddha or the Dharma/Dhamma. There must be no blasphemy or apparent blasphemy.

• Do not use any form of discriminatory or discriminatory-sounding language — be careful not to describe a religious practice as immoral or irrational, even when it is unlawful in WA. For example, it would be inappropriate to state that it is immoral to follow a religious practice that denies a particular form of medical treatment. In the case where that belief extends to the treatment of a child, for example, the court may have jurisdiction to make an order contrary to the practice. In such a case, the court should explain its decision on the basis of its jurisdiction, rather than engaging in discussion of the morality or otherwise of the belief.

• Be careful not to generalise about a particular religion.

• Treat everyone as an individual, and do not make statements that imply that all those from a particular religious background are the same, or likely to act in the same way. Never assume or imply that what you suspect or know to be the majority way of behaving or thinking for a particular religious group is the standard by which an individual member of that group should be judged.

• Be aware that for many who practise a religion, some words, concepts, values and ways of living may be much more problematic than for those who are not so orthodox about their religion, or for those who do not practise any religion. For example, the word “bugger” is a word used quite casually by some Anglo-Australians, often with no thought as to its literal meaning. In most religions, homosexuality and/or “practising” homosexuals or lesbians are considered unacceptable at best and sinful at worst. In many religions, sex before marriage is unacceptable and/or sinful.

3.3.5 The impact of religious values on behaviour relevant to the matter(s) before the court

In most cases, a person’s religion will have some influence on their values, and therefore on how they behave; in some cases the influence may be critical.

In other words, any of the values implied within the descriptions of the various religions referred to previously could (depending on the matter before the court) be a major influence on the way in which a person who practises that religion behaves, has behaved, or presents themselves, their expectations or their evidence in court.

57 Evidence Act 1906 (WA) s 26.
Points to consider

- Be careful not to let personal views about a particular religion’s views or practice unfairly influence your (or others’) assessment.

- Have the particular person’s religious values or practices been an influencing factor in the matter(s) before the court? If so, where possible, you may need to take appropriate account of these influences. For example, you may need to decide whether the law allows you to take account of any such influences and then, as appropriate and at the appropriate time in proceedings, to ensure that justice is done and seen to be done, explain why such influences can/should be taken into account, or cannot/should not be taken into account. You may need to explain this in the direction you make to the jury during the proceedings or before they retire, and in your decision-making or sentencing.

- While explaining and upholding Australian law where it conflicts with particular value(s) or practice(s), the religious values and practices of a particular person need to be accorded respect (rather than disrespect) by everyone in court. For example, this may mean lawfully intervening if cross-examination becomes disrespectful.58

- Be aware that measures can be put in place should you declare a witness to be a “special witness”. You can make such a declaration if a witness is likely to suffer severe emotional trauma, or to be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily, by reason of cultural background, the nature of the subject-matter for the evidence, or any other factor that the court considers relevant.59

- There is also provision in s 121 the Evidence Act 1906 (WA) for you, on your own initiative or on the application of any party to the proceedings, to allow evidence to be taken by video-link from outside the place where the court is sitting — although you should not do so if satisfied that this is not in the interests of justice.

- In addition to the restrictions on unrepresented persons directly cross-examining witnesses who are children, complainants in serious sexual assault proceedings or certain witnesses in restraining order matters,60 you have discretion to allow the cross-examination by an unrepresented accused of any witness to be by video-link, while screened, or without questions being put directly — having regard to the nature of the charge, the wishes of the witness, and the availability of any necessary facilities or equipment.61

- Instruct the jury that declaring a witness to be a special witness, or using alternative means for a witness to present evidence, are routine practices of the court and these measures should not affect how they consider the evidence.

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58 Evidence Act 1906 (WA) s 26.
59 Evidence Act 1906 (WA) ss 106R, 106RA.
60 Evidence Act 1906 (WA) s 106G; Restraining Orders Act 1997 (WA) ss 44C, 53D.
61 Evidence Act 1906 (WA) s 25A.
• If you are unsure whether a particular behaviour is the result of an adherence to a particular religion, or unsure how best to deal with it to ensure justice is both done and seen to be done, either ask the person’s legal representative (if they have one), or the person themselves. But note that it may be hard to get the information you need from the person themselves as they may not feel it is their place to inform you, or they may not understand why you need the information, or they may be reluctant to give you the information for some other reason that is religiously or culturally appropriate to them.

• Be careful not to generalise about a particular religion; check the particular person’s own religious values and practices.

3.3.6 Appropriate breaks for religious practices

Court times and holidays are generally more suited to those who practise any form of Christianity than those who practise a non-Christian religion.

If requested, wherever possible:

• Make appropriate allowances for those who need to pray at certain times of the day (for example, Muslims) — that is, have a break in proceedings.

• Make the appropriate allowances for relevant holy days of the week and do not insist that someone be called to give evidence on that day, or when they are meant to be at their place of religious worship.

• Make the appropriate allowances for (particularly important) religious festivals and do not insist that someone be called to give evidence during such times.

3.3.7 Directions to the jury

It is important that you ensure that the jury does not allow any ignorance of religious difference, or stereotyped or false assumptions about people practising (or not practising) a particular religion, to unfairly influence their judgement.

In your final directions to the jury, you may need to provide specific guidance as follows:

• They must try to avoid making stereotyped or false assumptions — and what is meant by this. For example, it may be wise to give them specific examples of religious stereotyping (for example, that all Muslims are violent towards non-Muslims).

• It may also be wise to give them specific examples of making false assumptions based on their own religious practice or lack of it — for example, it would be false and legally unfair to conclude that anyone who follows a particular religious norm that happens to conflict with a juror’s religious or other values (for example that people of the opposite sex should not generally touch each other in public), is therefore a strange person, untrustworthy or lacking in credibility.
• On the other hand, they also need to assess the particular person’s evidence alongside what they have learned in court about the way in which people from that religious background tend to behave, speak and hold of value, as opposed to the way in which the jurors themselves might act, or the way in which people from their own religion are expected to act.

• In doing this, you may also need to provide guidance on any legal limitations that exist in relation to them taking full account of any of these matters. You may also need to be more specific about the particular religious aspects that they need to pay attention to.

• Remind them of any directions you made earlier in the proceedings in relation to how they must treat evidence that was presented in any alternative manner.

3.3.8 Sentencing, other decisions and judgment or decision writing

Your sentencing, decision(s) and/or written judgment or decision must be fair and non-discriminatory to, and preferably be considered to be fair and non-discriminatory by, everyone affected or referred to, regardless of their religion or lack of religion.

Points to consider

• In order to ensure that any person with a religious affiliation referred to or specifically affected by your sentencing, decision(s) and/or written judgment or decision also considers it/them to be fair and non-discriminatory, you may need to pay due consideration to (and indeed specifically allude to) any of the points raised above.

• If a witness is not personally capable of giving a victim impact statement for any reason, consider whether it is appropriate for some one else to do so on the victim’s behalf.62

• Consider whether to quote from a victim impact statement in court.63

• Be particularly careful when dealing with any matter directly related to a particular religion — for example, a development application for an Islamic place of worship — to ensure that the matter is, and is seen to be, assessed in a similar way to the way in which the matter would be assessed if it were related to, say, a Christian religion — while at the same time, and only if appropriate, taking fair and reasonable account of any proven, different requirements that relate to the particular religion.

62 Sentencing Act 1995 (WA) s 24(2).
63 See Part 3, Division 4 of the Sentencing Act 1995 (WA). Note that a court may make a written victim impact statement available to the prosecutor and to the offender, on such conditions as it thinks fit.
3.4 Further information or help

The following organisations can provide further information or expertise about the most common religions briefly described in this section.

3.4.1 Christianity

Anglican Diocese of Perth
Level 2, 573 Hay Street
Perth WA 6000
Phone: (08) 9325 7455
Fax: (08) 9221 4118

Assemblies of God
15 Finlay Place
Wangara WA 6065
Phone: (08) 9409 2021

Baptist Church Union of WA
21 Rowe Avenue
Rivervale WA 6103
Phone: (08) 6313 6300
Fax: (08) 9470 1713
Email: admin@baptistwa.asn.au
Web: www.baptistchurch.net.au

Catholic Archdiocese of Perth
21 Victoria Square
Perth WA 6000
Phone: (08) 9223 1351
Fax: (08) 9221 1716
Email: office@perthcatholic.org.au
Web: www.perthcatholic.org.au

Council of Churches of WA Inc
Unit 24, Stafford Court
8-12 Stafford St
Midland WA 6056
Phone: (08) 9874 3888
Fax: (08) 9274 3848
Email: administrator@churcheswa.com.au
Jehovah’s Witnesses
Victoria Park Congregation — Perth
Cohn St
Carlisle WA 6101
Phone: (08) 9479 1746

Lutheran Church of Australia — Western Australian District Inc
16 Aberdeen St
Perth WA 6000
Phone: (08) 9227 8072
Web: http://members.iinet.net.au/~blc/lcawa

Macedonian Community of WA (Inc)
51 Albert Street
North Perth WA 6006
Phone: (08) 9328 7852

Presbyterian Church of WA
6 Goy Court
Palmyra WA 6157
Phone: (08) 93192208
Web: www.pcwa.org.au

Russian Orthodox Church
161 Whatley Crescent
Bayswater WA 6053
Phone: (08) 9272 6864
Salvation Army
WA Division Headquarters
333 William Street
Northbridge WA 6003
Phone: (08) 9260 9500
Fax: (08) 9227 7134 (General Office)

Serbian Orthodox Church of St Sara
31 Smith Street
Highgate WA 6003
Phone: (08) 9328 6753

Seventh Day Adventist Church
Western Australian Conference of the Seventh Day Adventist Church
44–60 Station Street
Gosnells WA 6110
Phone: (08) 9398 7222
Web: www.adventist.org.au

Uniting Church in Australia, Western Australian Synod
85–89 Edward Street
East Perth WA 6000
Phone: (08) 9260 9800
Email: wasynod@wa.uca.org.au
Web: www.wa.uca.org.au

3.4.2 Buddhism
Buddhist Council of WA
PO Box 102
Northbridge WA 6000
Phone: (08) 9367 4817
Mobile: 0408901306
Web: www.wa.buddhistcouncil.org.au

3.4.3 Islam
Islamic Council of WA
7 Malvern St
Rivervale WA 6103
Phone: (08) 9362 2210
Fax: (08) 93622210
3.4.4 Hinduism

Hindu Association of WA Inc.
41 Warton Road
Canning Vale WA 6155
Phone: (08) 9455 2097
Email: emailus@hindu.org.au

3.4.5 Judaism

Jewish Community Council of WA (Inc)
843a Beaufort Street
Inglewood WA 6052
Phone: (08) 9371 5300

Perth Hebrew Congregation
Freedman Rd (cnr Plantation St)
Menora WA 6050
Phone: (08) 9271 0539
Fax: (08) 9271 9455
Web: www.theperthshule.asn.au/contact.html

3.4.6 Multicultural interests

The following WA government agency can provide information about the appropriate religious organisation(s) for any other religion:

Office of Multicultural Interests (WA)
Level 26/197 St Georges Terrace
Perth WA 6000
Phone: (08) 9222 8800
Fax: (08) 9222 8801
Web: www.omi.wa.gov.au
3.5 Further reading


Griffiths D, “‘There’s no art to find the mind’s construction in the face’: some thoughts on the Burqa case in New Zealand” (2005) 1(2) *New Zealand Postgraduate Law E-Journal*, available at: www.nzpostgraduatelawejournal.auckland.ac.nz/Back%20Issues/BackIssue.htm (accessed 2 September 2009)


3.6 Your comments

Feedback on how this *Equality before the Law Bench Book* can be improved is welcomed.

We would be especially interested in receiving relevant practice examples, including any relevant model directions that you would like to share with other judicial officers.

Additionally, you may discover an error, or wish to advise further references to legislation, case law, specific sections of other bench books, discussion or research material.

Please refer to chapter 14, which contains information about how to send us your comments and/or feedback.