

Conducting Proceedings with Interpreters



PRIOR TO PROCEEDINGS COMMENCING

After it has been determined that an interpreter is required, there are certain things judicial officers can do to assist the interpreter.

Briefing interpreters

In making directions as to the conduct of proceedings, judicial officers should consider whether and to what extent interpreters should be briefed by the parties on the nature of the matter prior to the commencement of proceedings.

Briefing may include the provision of materials that may otherwise have required sight translation¹. Unseen sight translation by interpreters of even simple or short documents should be avoided.

Interpreters should be afforded reasonable time to become familiar with materials that are provided.

APPROPRIATE CONDITIONS FOR INTERPRETERS

Facilitating appropriate working conditions for interpreters is vital, as it ensures that they can perform their duties to the best of their ability.

While it is not within the power of individual judicial officers to control such aspects as remuneration, there are some conditions you may be able to effect in your court/tribunal.

Waiting area

Where circumstances permit, ensure there is somewhere for interpreters to wait, leave their belongings, prepare materials and be briefed and debriefed.

Ideally the interpreter should not use the same waiting room as a party or witness, as this could potentially compromise the interpreter's ethical obligations and independent role.

Position in the courtroom

In the courtroom, interpreters need to be able to see and hear all parties in the court, and have as a minimum a chair and table and sufficient room to work, and access to a jug of water and a glass.

AT THE START OF PROCEEDINGS

At the start of proceedings and before an interpreter commences interpreting, the judicial officer should ask the interpreter to introduce themselves and state their level of NAATI certification, formal qualifications, membership of a professional interpreting association, court experience, and understanding of their ethical obligations.

The judicial officer should explain the role of the interpreter to the witness, party and jury (as relevant).

At the start of proceedings, judicial officers should also ask the interpreter to alert the court, and if necessary to interrupt, if the interpreter:

- ✓ did not accurately hear what was said;
- ✓ cannot interpret a question or answer for any reason;
- ✓ needs to consult a dictionary or reference material;
- ✓ needs a concept or term explained;
- ✓ needs to correct an error;
- ✓ is unable to keep up with evidence; or
- ✓ needs a break.

DURING PROCEEDINGS

Speak slowly and in plain English

Even experienced interpreters need time to absorb the content of what all parties in the court are saying and consider the best way to express this in the target language. Judicial officers should therefore speak slowly and clearly, and with appropriate pauses, to help facilitate the interpreter to discharge his or her duty to interpret.

¹ *Sight translation* means the process whereby an interpreter or translator presents a spoken interpretation of a written text.

Judicial officers should also use plain English to communicate clearly and articulately during court proceedings. It is the responsibility of the judicial officer to explain all legal concepts, jargon, acronyms and technical terms. If there are no direct equivalents, the interpreter may ask for an explanation, which they will then interpret.

For further information about using plain English, refer to [Factsheet – Using Plain English](#).

Judicial officers should ask lawyers and witnesses to speak clearly and at a reasonable pace, to use plain English, and to pause after each complete concept to allow the interpreter to interpret.

Judicial officers should intervene whenever there is overlapping speech, complex questions, rapid-fire speech, or words or expressions that are likely to be difficult to interpret.

Breaks for interpreters

Interpreting is demanding work; therefore, interpreters need to have regular breaks during proceedings. Judicial officers should:

- ✓ ask interpreters if they need a break every 45 minutes for spoken language interpreters, and every 20 minutes for signed language interpreters;
- ✓ encourage interpreters to always notify the court if they need a break at any time during the proceedings; and
- ✓ take into account the additional time needed when working with interpreters – it can take more than double the time to take evidence with an interpreter than would be required for that witness to give their evidence in English.

Conflict of interest

If a judicial officer becomes aware that an interpreter has a conflict of interest in the proceedings, they should permit the interpreter to withdraw from the proceedings if necessary and adjourn the proceedings until another interpreter can be found, or consider another appropriate way to address the conflict.

Summing up

It may be necessary to give a direction to the jury about how to evaluate the evidence of a witness given through an interpreter, for example, exercising caution when judging the demeanour of the witness from the interpreter's answers.

FOLLOWING PROCEEDINGS

Debriefing interpreters

Ideally interpreters should have access to counselling or debriefing following proceedings, as interpreters may be vulnerable to vicarious trauma and secondary stress when interpreting sensitive or distressing material.

RECOMMENDED NATIONAL STANDARDS FOR WORKING WITH INTERPRETERS IN COURTS AND TRIBUNALS

The Judicial Council on Cultural Diversity (JCCD) developed the *Recommended National Standards for Working with Interpreters in Courts and Tribunals*² to establish recommended and optimal practices for Australian courts, with the aim of improving access to justice and procedural fairness.

Standard 17 provides extensive advice on conducting proceedings with interpreters - refer to pages 67-76 of the Annotated Standards for detailed advice.

Contact

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² <http://jccd.org.au/wp-content/uploads/2017/11/Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals.pdf>