

FACTSHEET 2

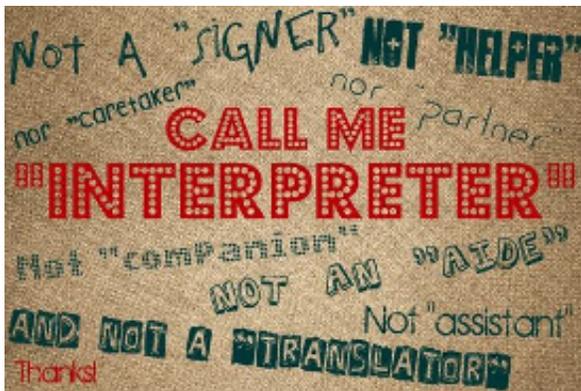
Understanding the Role of the Interpreter

ROLE OF THE INTERPRETER

The interpreter's role is to remove the language barrier so that the party can be made linguistically present at the proceedings and therefore be placed in the same position as an English-speaking person. This means that a party is entitled to participate in the proceedings in their own language.

Further, in the case of criminal proceedings, if the accused needs an interpreter (refer to [Fact Sheet – Assessing the need for an interpreter](#)) the trial cannot proceed until an interpreter is provided.

As such, the work of interpreters is essential to ensuring access to justice and procedural fairness in Australian courts and tribunals for people with limited or no English proficiency.



RESPONSIBILITY OF THE JUDICIAL OFFICER

It is a fundamental duty of any judicial officer to ensure the proceedings are conducted fairly. It is therefore the responsibility of the judicial officer not only to determine whether an interpreter is needed, but also to ensure that the interpreter is suitably qualified and appropriate to interpret in the specific situation.

ASSESSING THE PROFESSIONAL SUITABILITY OF THE INTERPRETER

Unless a Qualified Interpreter¹ has been engaged, judicial officers should ascertain the competence of an interpreter by reference to:

- their certification status from the National Accreditation Authority for Translators and Interpreters (NAATI);
- their qualifications;
- their court experience; and
- whether they are members of the Australian Institute of Interpreters and Translators (AUSIT), Australian Sign Language Interpreters' Association (ASLIA) or other recognised State or Territory based association requiring adherence to a code of ethics and/or standards.

¹ **“Qualified Interpreter”** means a person qualified for court interpreting because she or he has all of the following attributes:

- a tertiary (VET or university) qualification in interpreting; and
- certification from NAATI; and
- membership with a professional body; and
- experience interpreting in court.

NAATI Certification

NAATI certifies interpreters at a number of levels, according to their proficiency and skill.

The current NAATI certification model (effective January 2018) specifies the following relevant levels² :

- Certified Specialist Interpreter – Legal;
- Certified Interpreter;
- Certified Provisional Interpreter; and
- Recognised Practising Interpreter (not certified).

Wherever possible, a ‘Certified Interpreter’ or a ‘Certified Specialist Interpreter – Legal’ should be engaged, especially for those languages for which there are many interpreters at that level: Arabic, Auslan, Cantonese, Greek, Italian, Japanese, Mandarin, Persian, Spanish, Turkish and Vietnamese.

Assessing competence of interpreters

During proceedings, the following are general guidelines on how to assess the competence of a person other than a Qualified Interpreter:

- **Technique:**

A person is less likely to be accurate in their renditions if they:

- interpret in the third person (e.g. he said that he wanted to go) instead of the first person (e.g. I wanted to go);
- engage in private discussions without seeking leave to ask for a clarification or repetition;

- offer lay opinions; and
- do not take notes during long segments in consecutive interpreting.

- **English Proficiency**

the higher the proficiency, the more likely the person performing the interpretation will render an adequate interpretation (although this may not always be the case).

- **Delivery:**

A competent interpreter is usually also confident and will stop proceedings to seek clarifications if needed.

If the judicial officer is concerned about any of these matters, they may raise this with the parties to ascertain whether another interpreter is available, and may consider adjourning the proceedings until a suitably qualified interpreter is available.

ASSESSING THE APPROPRIATENESS OF THE INTERPRETER

When determining whether or not an interpreter is appropriate for the proceedings, the judicial officer should have regard to cultural and other sensitivities, including:

- the **language and dialect** used by non-English speaking person(s) for whom the interpreter has been engaged to interpret;
- any **cultural sensibilities**, such as kinship obligations or avoidance relationships in Indigenous cultures, or where there may be political, religious or other tensions between different cultural or linguistic groups;
- the **gender** of the interpreter compared with the non-English speaker, particularly in domestic or sexual violence cases;

² The interpreter’s certification can be verified by checking the interpreter’s ‘NAATI number’ at www.naati.com.au/online

- the **nature of the proceedings**, for example, in domestic violence cases, separate interpreters should be engaged for each party; or
- whether the interpreter has a **conflict of interest** in the proceedings.

If it becomes apparent either at the beginning of or during proceedings that an otherwise qualified or suitable interpreter is not appropriate, the judicial officer or the legal representatives should raise the matter, and consider whether it may be necessary to adjourn the matter until an appropriate interpreter can be found, or to determine another acceptable strategy.

INTERPRETERS AS OFFICERS OF THE COURT

Interpreters owe paramount duties of accuracy and impartiality to the court, which override any duty they may have to any party to the proceedings, even if they are engaged directly by that party. For this reason, it is desirable for courts to amend their rules to recognise interpreters as officers of the court, insofar as they owe those paramount duties to the court.

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* to establish recommended and optimal practices for Australian courts, with the aim of improving access to justice and procedural fairness.

The **Model Rules** recognise and affirm the important role of interpreters by confirming the desirability of their status being that as officers of the court, owing their responsibility first to the court before any other party to the proceedings. Also, the Court

Interpreters' Code of Conduct, outlining the responsibilities of interpreters, is contained in Schedule 1 to the Model Rules.

Standard 17 – Proceedings with an interpreter covers the role of the interpreter – refer to pages 55-62 of the Annotated Standards for detailed advice.

CONTACT

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