

Interpreter

# Interpreter Protocols

Issued by the ACT Supreme Court, ACT Magistrates Court and  
ACT Civil and Administrative Tribunal

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ACT Civil and Administrative Tribunal

**This guideline has been developed using information provided by:**

Judicial Council on Cultural Diversity - [www.jccd.org.au](http://www.jccd.org.au)

National Accreditation Authority for Translators and Interpreters - [www.naati.com.au](http://www.naati.com.au)

Australian Institute of Interpreters and Translators - [www.ausit.org](http://www.ausit.org)

Australian Sign Language Interpreters' Association - [www.aslia.com.au](http://www.aslia.com.au)

Translating and Interpreting Services National - [www.tisnational.gov.au](http://www.tisnational.gov.au)

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# 1 Protocols for working with interpreters

## 1.1 Introduction

The ACT Supreme Court, ACT Magistrates Court and the ACT Civil and Administrative Tribunal (ACAT) are committed to the principle of 'access to justice' by ensuring that court and tribunal users with:

- poor English proficiency; or
- hearing difficulties

are provided with interpreters when participating in court or tribunal matters.

These protocols are intended to provide guidance to judicial officers, tribunal members, registrars, court and tribunal staff, interpreters, agencies and legal practitioners.

There is a range of [resources](#) on the Judicial Council of Cultural Diversity's website at [www.jccd.org.au](http://www.jccd.org.au) to assist all parties to engage and work effectively with interpreters.

It is important that persons requiring interpreter assistance contact their legal representative or the contact area listed in section 3 of these protocols (see below) as early as possible to discuss their needs.

## 1.2 Role of the Interpreter

An interpreter would normally be engaged where a person has difficulty understanding English or is deaf and this affects the person's capacity to understand their rights and obligations and inhibits their ability to communicate with a court or ACAT.

The role of the interpreter is to deliver an oral translation in English of the words that a person is speaking in a different language or is signing. The interpreter provides a professional service ensuring accurate communication between English and non-English speakers, or those that use other communication methods.

## 1.3 Assessing the need for an interpreter

The need for interpreter assistance is assessed on a case by case basis.

If in doubt, a standardised test has been developed by the Judicial Council on Cultural Diversity (JCCD) and is available in their [Factsheet: How to assess if an interpreter is needed](#).

In summary, the need for an interpreter can be determined by:

- asking the person if they need access to an interpreter;
- assessing the person's speaking ability by asking questions that require a narrative response or explanation;
- assessing the person's comprehension and communication ability by asking questions that engage the person.

A video explaining the test is available through JCCD entitled [How to assess if an interpreter is needed](#).

An interpreter is not provided on the basis that a person prefers one language over another. There must be a need based upon poor proficiency in the English language. At times, a person may mistake the need for an interpreter with the need for legal representation or a legal representative explaining legal concepts. These are quite different in their role and function.

## 1.4 Obtaining the highest level of interpreter certification available for a hearing

The National Accreditation Authority for Translators and Interpreters (NAATI) works with industry professionals to set the minimum standards of performance across several areas of competency. A certification test assesses candidates against these standards. Candidates who demonstrate that they meet these standards are awarded NAATI certification.

The levels of NAATI Certification are outlined on the NAATI website being (in descending order):

- Certified Specialist Interpreter (Health and Legal)
- Certified Interpreter
- Provisional Certified Interpreter
- Recognised Practising Interpreter

When booking interpreters through providers, the highest level of certified or professional level available (for a legal environment) should be requested (noting the ACAT may also have a need for health interpreters on occasion). An interpreter should be asked their level of certification, qualification and experience when being introduced to the legal proceeding as outlined in section 4.2.

Please note that NAATI certification is not available in all languages. Where non-accredited interpreters need to be used, a team-based approach (using more than one interpreter) might need to be considered to improve accuracy. Another option is to arrange an interpreter in a second or third language the person may be proficient as outlined in section 1.7 .

## 1.5 Sign Language Interpreters

Sign Language Interpreters also receive their certification through NAATI. Resources for sign language interpreters are available on the Australian Sign Language Interpreters' Association ([ASLIA](https://aslia.com.au/)) website at <https://aslia.com.au/>. This includes [Australian Sign Language Interpreter's Association code of conduct, guidelines](#) for its members operating in legal settings and a [policy](#) for legal interpreting.

Auslan-English interpreters need to be able to adjust to a broad range of language use and/or preferences of deaf people in relation to interpretation. A number of different sign languages are used in Australia. These include:

- Australian Sign Language (Auslan), which is the primary language of most deaf individuals. Auslan is a language with its own grammar, structure and pragmatics. It is not English nor is it a visual form of English. It is unique to Australia [that is, sign language is not universal]. There are two clear, distinguishable Auslan dialects, known as the Northern and Southern dialects. As well, like spoken English, there are notable language variations between states and, sometimes, even within states.
- Auslan signed in English, which is used by some deaf people – often professionals – whereby Auslan signs are produced in a grammatical structure that more closely reflects English grammatical structures. Often, fingerspelling of English words is more heavily used.
- Signed English, which is a system – not a language in its own right – of signing to exactly replicate the English language. This system is usually used in compulsory educational settings and consists of signs that have been specifically contrived for the purpose of replicating the English language as well as including some Auslan signs that have been



borrowed. After leaving compulsory education, most deaf people cease using Signed English as a “total” language approach; however, they often retain some of the lexical items (signs) from Signed English, using them in a more traditional Auslan grammatical structure.

- Indigenous Sign Language is used by some deaf people from an indigenous background. These individuals may use a dialect or even a variation of standard Australian Sign Language. For example, deaf people from Far North Queensland may use Torres Strait Islander Sign Language, Aboriginal Sign Language or a mixture of both.

A professional interpreter is expected to understand language variation and be flexible enough to work within this wide spectrum.

### **1.5.1 Team interpreting**

In the Auslan-English interpreting field, for assignments that are highly demanding and/or that exceed two hours in length, two interpreters are used. This is done to allow physical breaks to avoid overuse injuries and to ensure that the quality of interpretation is maintained over time. Even though one interpreter is “resting” he or she will still be supporting the other interpreter.

On occasion, a Sign Language interpreter may also be required to work in tandem with an Auslan-English interpreter. This person may be fluent in a language other than English or Auslan (such as an Indigenous Sign Language or a foreign sign language) or may have specialised skills in ‘unpacking’ Auslan and delivering a modified, highly visual form of signs and gestures for Deaf clients who may have special language needs.

## **1.6 The need for multiple interpreters**

There are situations when two or more interpreters may be required to avoid breaks in proceedings and reduce interpreter fatigue. This includes where there is likely to be a long hearing, different languages will be used during in the same hearing or when there is a requirement for sign interpreting. Multiple interpreters may also be used in a team approach when there is difficulty arranging certified or qualified interpreters as outlined in section 1.4 & 1.7.

## **1.7 Arranging an interpreter for a person’s second or third language when their first language is not available**

The preferred option is to find an interpreter who can interpret between the person’s first or dominant language and English. However, in some instances the non-English speaking party may speak several languages with considerable proficiency. This may be the situation with speakers of some Aboriginal or Torres Strait Islander languages in Australia and with speakers from African and West Asian countries characterised by high levels of linguistic diversity. Sometimes it is difficult to secure the services of any interpreter in the person’s first or dominant language but possible to find an interpreter for a second or third language in which the person is also proficient. In such cases, a team-based interpreting approach using relay can be considered, subject to the parties consenting to this arrangement and careful monitoring undertaken by all parties.

## **1.8 Interpreter Ethics and Code of Conduct**

Each interpreter accredited with NAATI must adhere to a strict [code of ethics](#) developed by the Australian Institute of Interpreters and Translators (AUSIT). The code of ethics is divided into several sections that include a Code of Conduct (which explains how ethical principles are to be applied) and separate sections on conduct issues specific to translators and interpreters.

## 2 Interpreter services by telephone, video-conference or on-site

### 2.1 Considerations when booking an interpreter

The availability and cost of interpreters are factors in the ACT courts and ACAT when considering using interpreter services by telephone, videoconference or on-site. As a small jurisdiction, there is greater availability of certified interpreters when used by telephone or videoconference from interstate, particularly certified specialist legal interpreters. Telephone or videoconference may be the most suitable method where a matter is expected to require an interpreter for less than 1 hour or there is difficulty in getting access to an on-site interpreter given the date, time or language required.

### 2.2 Interpreters services by videoconference

Videoconferencing allows the interpreter to be seen and for the interpreter to view the proceedings. Videoconferencing facilities can be found at most interstate courts and tribunal facilities and in other locations such as universities or business facilities. Some interpreters, particularly Auslan interpreters, may even have their own video conference facilities. Videoconference facilities that transmit and receive both video and audio and can be dialed by the ACT's courts and tribunal with either a SIP address (something that looks similar to an email address) or an ISDN (something that looks like a phone number). These arrangements and venue booking need to be put in place well in advance of any proceeding.

### 2.3 Recording of interpreter services during a hearing

The courts and ACAT audio systems capture the sound of any translation during proceedings, whether this is broadcast via telephone, delivered by videoconference or on-site. Audio transcripts of hearings are available to the parties from the courts and ACAT transcription provider. As outlined in section 4.6, it is important for interpreters to be situated within the hearing room so their oral interpreting is captured by the audio system.

For the video recording of sign language interpreters during videoconferencing or onsite interpretation, specific arrangements need to be put in place by our Court Assistance Officers who can be contacted by emailing [courtassistance@courts.act.gov.au](mailto:courtassistance@courts.act.gov.au) or telephoning (02) 6205 0322. Court Assistance Officers will require advance notice (at least 7 days) to arrange for the hearing room to set up with equipment to record the video (usually the day before). The video recording of the on-site sign language interpreter will require the interpreter to be positioned in a designated location so the video camera can be focused on the interpreter's location.



### **3 When an interpreter will be provided for a trial, hearing or other court or ACAT event**

#### **3.1 Criminal matters**

Interpreters are arranged by either the [Director of Public Prosecutions](#) (DPP) or [ACT Policing](#) for witnesses and defendants involved in criminal hearings in the Supreme Court and the Magistrates Court.

For Supreme Court matters please contact the DPP on (02) 6207 5399.

For Magistrates Court matters please contact the AFP case officer for the matter by calling 131444.

#### **3.2 Protection orders**

An interpreter will be arranged by the Magistrates Court. Please contact the Protection Unit on (02) 6205 4939 or email [protectionunit@courts.act.gov.au](mailto:protectionunit@courts.act.gov.au).

#### **3.3 Care and protection applications in the Children's Court**

An interpreter may be arranged by the Community Services Directorate. Please contact the caseworker in the [Community Services Directorate](#) (CSD) responsible for the matter.

#### **3.4 Coronial matters**

Interpreters may be arranged by the Coroners Court for witnesses called to give evidence at a hearing. Please contact the Coroners Unit on (02) 6207 1754 or email [coroners@court.act.gov.au](mailto:coroners@court.act.gov.au).

#### **3.5 Civil, appeal and other non-criminal matters in the courts**

Parties are required to organise interpreters at their own cost, including for any witnesses that require an interpreter.

#### **3.6 ACAT matters**

The ACAT will arrange an interpreter where required. Please contact the ACAT Registry on (02) 6207 1740 or email [tribunal@act.gov.au](mailto:tribunal@act.gov.au).

#### **3.7 Other situations**

In circumstances where an interpreter is not provided by another agency, a judicial officer, ACAT member, registrar or conferencing officer may direct the court or ACAT registry to arrange an interpreter in the interests of justice.



## **4 Commencement of proceedings when an interpreter is engaged**

### **4.1 Interpreters should make themselves known to the Court or Tribunal**

Interpreters should arrive at the designated court or hearing room 15 minutes before the hearing is listed to commence. The interpreter should make themselves known to the Associate, Sheriff Officer or Registry staff.

When arriving at the court or ACAT, interpreters may wish to make contact the enquiry counter to advise of their arrival and to confirm where they should be.

### **4.2 Presiding Officer to ask the interpreter to introduce themselves**

#### **4.2.1 Introduction of the interpreter to the court or tribunal**

At the start of proceedings and before an interpreter commences interpreting, the judicial officer or ACAT member who is presiding should ask the interpreter to introduce themselves and state their:

- name and language being interpreted
- level of accreditation and certification through [NAATI](#)
- formal qualifications
- membership of a professional interpreting association such as AUSIT or ASLIA
- court and/or tribunal experience, and
- understanding of their ethical obligations.

### **4.3 Presiding Officer to advise interpreter to interrupt proceedings in certain situations**

At the start of proceedings, judicial officers and ACAT members may also ask the interpreter to alert the court or tribunal, 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;
- needs a break.

### **4.4 Presiding officer to explain the role of the interpreter**

The presiding officer may explain the role of the interpreter to the witness, party and jury (if relevant) in the following terms:

*An interpreter is not an advocate for any party and must provide unbiased and impartial interpreter services to the Court or Tribunal.*

Where an interpreter is interpreting for a witness, including an accused giving evidence, if the presiding officer thinks it appropriate, he or she may explain the role of the interpreter to the witness. The explanation may be to the following effect:

*This person is an interpreter.*

*Their job is to interpret everything the lawyers and I say to you in your language, and to interpret everything you say into English.*

*Please give your answers in short sections to give the interpreter an opportunity to interpret what you say.*

*If you have any questions about what is happening or do not understand something, please do not ask the interpreter.*

*It is not the interpreter's job to explain things to you or answer your questions.*

*If you have a question ask me directly, and the interpreter will interpret your question to me.*

#### **4.5 Interpreter's oath or affirmation**

At the commencement of most court or tribunal proceedings, an interpreter will be required to take the Interpreter's Oath or Affirmation. Section 8 of the [Oaths and Affirmations Act 1984](#) provides that interpreters can take an oath or make an affirmation in Schedule 3 as outlined below.

##### **Schedule 3 - Oath and affirmation by interpreter**

###### **Oath**

I swear (or the person taking the oath may promise) by Almighty God (or the person may name a god recognised by the person's religion) that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

###### **Affirmation**

I solemnly and sincerely declare and affirm that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

The practices of the courts and ACAT are to require the interpreter to take an oath or make an affirmation in any proceeding when evidence is being interpreted. When no evidence is taken, generally an interpreter is not required to take an oath or make an affirmation. Whether an interpreter will be required to take an oath or make an affirmation for proceedings that do not involve evidence being given, is a matter for the presiding officer.

#### **4.6 Position of the Interpreter in the hearing room**

In order for interpreters to provide professional interpreting services to the courts and tribunal as outlined in section 7, interpreters should not necessarily sit beside the person whose evidence they are interpreting. It is important for interpreters to be situated in the hearing room so their oral interpreting or visual signing can be captured by the court or tribunal audiovisual recording systems.

## **5 Briefing an interpreter**

The party or legal practitioner requiring the assistance of an interpreter should provide the interpreter with enough information to prepare for the task of interpreting. What will be required will vary from case to case. The parties should cooperate to agree on material that can be provided to an interpreter as part of any briefing.

An appropriate briefing may include any relevant documents counsel are aware will be shown to witnesses or discussed in submissions, such as photographs or maps, character references, victim impact statements, correspondence, contracts and other documents that are to be read onto the transcript.

In any trial, a list of witnesses should be provided so that the interpreter may consider whether they know any of the witnesses and whether this creates a conflict for them being able to interpret the evidence of the witness or witnesses. (For a discussion of possible conflicts see Section 7 below).

If a glossary of any technical terms is to be used in the proceedings, this should be provided to the interpreter. This includes legal or medical terms, or other technical terms depending on the subject of the proceedings.

The interpreters should be told the name of the judicial officer or tribunal member, court officer or the associate, particularly if the proceedings are lengthy.

The interpreter should attend the court or tribunal with enough time before the commencement of proceedings to familiarise themselves with the briefing information.

The interpreter should be asked if there are any cross-cultural issues that the court or tribunal should be aware of – such as social conventions, inappropriate gestures or any taboos.

If the interpreter requires an introductory conversation with the person for whom they are interpreting to satisfy themselves of the accuracy of interpretation and the court or tribunal is in session, the interpreter should tell the presiding officer. If court has not commenced, the interpreter should tell the court officer or associate. The court or tribunal will ensure appropriate arrangements can be made.

## **6 Assistance for interpreters from the court or tribunal**

Wherever possible, the court or tribunal should ensure that the interpreter has a glass of water and a place to sit with enough room to take notes if necessary.

Wherever possible an interpreter will be provided with identification (such as a badge or other insignia) specifying their status as an “Interpreter”.

The court or tribunal should indicate to the interpreter how the interpreter should get the presiding officer’s attention if a difficulty arises.

Interpreters are encouraged to seek clarification of unclear, technical or ambiguous terms or unclear questions. Interpreters should be given regular and timely breaks and encouraged to ask for a break if required, for example, every 45 to 60 minutes.

There are counselling services available to interpreters involved in Court and Tribunal matters through TIS National’s Employment Assistance Program (EAP) by contacting Interpreter Liaison at TIS National on 1300 132 621 (within Australia) or [interpreters@homeaffairs.gov.au](mailto:interpreters@homeaffairs.gov.au).

## 7 Professional conduct of interpreters

An interpreter has an overriding duty to assist the court or tribunal by interpreting the evidence, the statements of counsel and the presiding officer to:

- persons who are unable to communicate effectively in English, or
- persons who are deaf or hard of hearing.

This duty overrides any duty to a party of the case.

An interpreter must accurately convey the meaning from the source language to the receptor language. This includes the content and the manner of the speech.

**An interpreter is not an advocate for any party and must provide unbiased and impartial interpreter services to the Court and Tribunal.**

**An interpreter must not act as an interpreter if they know of any conflict of interest.**

A conflict of interest can include personal acquaintance or cultural relationship with a party or a witness. The interpreter should disclose to the agency or party engaging them of any possible conflict of interest. Any potential conflict of interest should be brought to the attention of the presiding officer by the interpreter. If a conflict of interest arises at the commencement of, or during proceedings, the interpreter must advise the court or tribunal immediately.

**An interpreter must not accept an assignment to interpret in a matter in which their impartiality may be at risk because of personal beliefs, cultural or other circumstances.**

An interpreter should seek to withdraw from the assignment if their impartiality is affected.

**An interpreter must undertake only work they are competent to perform in the language areas for which they are trained and familiar.**

If during an assignment it becomes clear that the work is beyond an interpreter's competence, the interpreter should inform the court or tribunal immediately and ask the presiding officer to be excused from the proceedings or for appropriate assistance.

**An interpreter must acknowledge and promptly rectify any interpreting mistakes.**

If anything is unclear, the interpreter should ask for repetition, rephrasing or explanation. If an interpreter becomes aware that they have made a mistake, they should immediately alert the presiding officer that there may have been a mistake. The interpreter should endeavor to correct the mistake and assist the court or tribunal to correct any consequences of the mistake.

**An interpreter should interpret in the first or second person and relay what is said precisely and accurately**

The interpretation should be given only in the first and second grammatical person, unless the interpreter is summarising legal argument or dialogue in the hearing room not directed at the person requiring the assistance of the interpreter.

If the circumstances permit, an interpreter must relay precisely, accurately and completely all that is said by the witness – including derogatory or vulgar remarks and even things that the interpreter considers to be incoherent, irrelevant or suspects to be untrue.

**An interpreter should explain all and any conversations held or undertaken during proceedings.**

If a witness seeks clarification from the interpreter as to the meaning of a statement or question being interpreted to them, then the interpreter must interpret the requested clarification for the court or tribunal. The interpreter should then provide their response in English and then to the witness in the witness's language. If the clarification involves ensuring the accuracy of the interpretation, the interpreter may engage in conversation with the witness, however, the interpreter should advise the court or tribunal of this prior to engaging in conversation with the witness.

**An interpreter should inform the court or tribunal if a statement or question is likely to cause confusion or cannot be accurately interpreted due to cultural or linguistic differences between the source language and receptor language.**

The interpreter should assist counsel or the court or tribunal in reformulating the question or statement in a manner that can be accurately interpreted.

**An interpreter needs to inform the court or tribunal of any issue affecting the interpretation of proceedings.**

If at any stage an interpreter requires a break, a repetition, clarification, or for a speaker to slow down, the interpreter should inform the court or tribunal.

## **8 Legal practitioners**

Legal practitioners appearing in proceedings when an interpreter is assisting should adapt their advocacy accordingly. Short sentences are preferable and complex questions should be avoided.

Timeframes must be adjusted to take account of the time needed for interpreting. The interpreter should be able to finish the interpretation. Do not interrupt or stop the interpreter.

Avoid the use of negative assertions in questions as they are frequently a source of miscommunication.

Minimise the use of innuendo, implied accusations and figurative language as these linguistic features are difficult to interpret accurately.

When words have multiple meanings, be explicit about which meaning is relied on.

Legal practitioners should provide copies of relevant briefing documents to the interpreter before the interpreting assignment. Unless such documents, or other documents that may require interpretation, have been provided to the interpreter in advance, legal practitioners should ensure that copies of these documents are available at the court appearance.

## 9 Guide for interpreters in criminal matters

**When interpreting, the interpreter will generally be expected to interpret:**

- direct speech to the accused, including
  - criminal charges;
  - sentencing remarks;
  - explanations from the bench about adjournments and court process;
  - any questions put to the accused from the presiding officer or defence lawyers; and
  - bail or any other conditions imposed by the court.
  
- speech expressly about the accused, including:
  - reading of the agreed facts;
  - comments by the prosecution, presiding officer or defence lawyer about the accused's character, such as criminal history or prospects of rehabilitation; and
  - reading of character references or similar statements.
  - a prosecutor, presiding officer's associate or victim reading a victim impact statement;
  - examination and cross-examination of witnesses;
  - a sentence or conditions proposed by any party;
  - the terms of any sentencing orders; and
  - jury directions.

**The following dialogue *may be summarised* for the accused by the interpreter:**

- directions from a presiding officer or counsel to a witness;
- objections made by legal practitioners and answers to objections by counsel and the bench;
- questions and answers to/from expert witnesses;
- discussion between parties about logistical or procedural matters (suitable adjournment dates, where and when a brief should be served, the length of time required for a hearing, etc.); and
- legal argument between legal practitioners and the bench.

## 10 Judicial Officer direction to the jurors concerning interpreters

During the 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.

The judicial officer could consider modifying the direction depending on whether a qualified interpreter was engaged, compared to an inexperienced bilingual person.

A suggested direction from the *Judicial Council on Cultural Diversity* report on [Recommended standards for working with interpreters in Courts and Tribunals](#) (page 75-76) is:

There are dangers in attempting to assess the truthfulness of a witness by reference to their body language or demeanour where different cultural backgrounds are involved. This problem may be exacerbated even more when evidence is given through an interpreter.

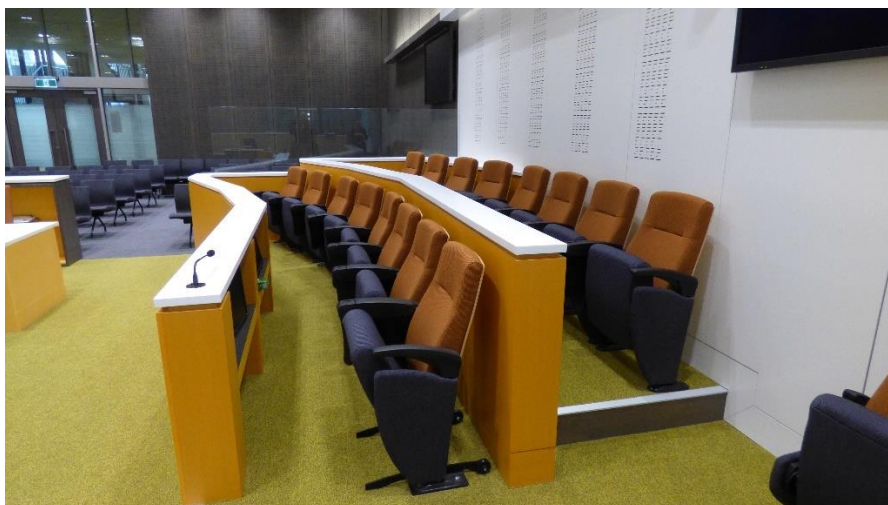
Judging the demeanour of the witness from the tone of the interpreter's answers is likely to be unreliable [unless the interpreter is highly trained]. Judging the demeanour of the witness from the witness' own answers in a foreign language requires a high degree of familiarity with that language and of the cultural background of its speakers.

If a witness' answers appear to be unresponsive, incoherent or inconsistent, and appear to lack candour, this may be due to the difficulty of interpreting concepts from one language to another. [However, when a highly trained interpreter is involved, such features should be attributed to the original speaker, as qualified interpreters are trained to maintain accuracy of content and manner.]

Nevertheless, the trial process does involve you in making an assessment of the witness' reliability and truthfulness notwithstanding that the witness has given evidence in a foreign language.

Other situations might demand a direction by the trial judge that although the witness was able to speak some English, because English is not the witness' first language, the law recognises the right of the witness to give evidence through an interpreter in their own language, and why this is so.

If a submission is made by the opposing party that the witness was hiding behind the interpreter, any question of whether or not the witness had abused their right to use the services of an interpreter is a matter for the jury even if no objection had been taken to the use of the interpreter.



## 11 Methods of interpretation used in courts and tribunals

Subject to any ruling from the presiding officer, an interpreter may use the mode of interpreting most appropriate to the circumstances and within their expertise.

### 11.1 Methods of Interpretation

There are various methods of interpretation that may be used in court:

- **consecutive interpreting** is when the interpreter listens to a segment, may take notes while listening and then interprets while the speaker pauses;
- **simultaneous whispered interpreting** is interpreting while listening to the source language that is being spoken and interpreting while listening to the ongoing statements – thus the interpretation lags only a few seconds behind the speaker;
- **simultaneous audio interpreting** is when the interpreter speaks the interpretation into a microphone which provides an audio feed to the persons requiring interpretation services who each have a set of headphones;
- **Auslan interpreting** utilises both consecutive and simultaneous modes of interpreting depending on the context and content of the material and the needs of the person requiring the interpreter;
- **sign language interpreting**, Deaf Relay Interpreting, Deaf Indigenous Sign and other forms of sign interpreting where Auslan is not the primary communication method used, may require a range of strategies and methods to be used by the interpreter to effect clear communication. Examples are gestures, and the use of visual supports such as drawings, maps and alphabet boards;
- **sight translation** involves translating a written witness statement by reading it aloud in another language during court or tribunal proceedings. The result is not quite interpreting (where the focus is on oral communication) and not quite translating (which deals with written communication), but a technique that falls somewhere in the middle. Sight translation can serve as an important tool when other translation or interpreting services are not readily available, but sight translation should be used with caution.
- **summarising** is when the interpreter gives a summary of matters such as legal argument, dialogue between the bench and bar table about procedural or logistical matters and other similar courtroom dialogue that is not directed at the person requiring the assistance of the interpreter; and
- **language assistance** is where the accused or witness does not need interpretation assistance at all times, but may have difficulty from time to time with particular words, phrases or concepts and requires limited interpretation. Generally, “language assistance” is not considered to be ideal and other modes of interpreting are to be preferred.



## 11.2 Where to use each type of interpreting

The primary method of interpreting for each court or tribunal activity is outlined below:

- where an interpreter is interpreting the evidence of a witness, the **consecutive interpreting** method is used and segments must be kept short;
- whenever there is any direct speech to or from the accused or witness who is assisted by an interpreter, the **consecutive interpreting** method is used;
- **consecutive interpreting** is also used for the reading of charges, agreed facts, victim impact statements and character statements or similar documents onto the transcript;
- **whispered simultaneous interpreting** may be used when:
  - interpreting submissions to an accused;
  - interpreting objections made by counsel;
  - interpreting discussion about logistical or procedural matters;
  - interpreting jury directions
  - directions from the presiding officer or counsel to a witness;
  - interpreting witness evidence to an accused; and
  - interpreting legal argument;
- **sight translation** may be used when interpreting a written document. For this method of interpretation, the interpreter must have access to the written material; and
- for persons who are deaf or hard of hearing, simultaneous **Auslan interpretation** or another sign language is appropriate.



## 12 Translation of Documents

### 12.1 Level of NAATI accreditation

There are three levels of NAATI accreditation for translators being:

- Certified Advanced Translator
- Certified Translator
- Recognised Practising Translator

NAATI provides an [online directory](#) of translators and interpreters by language and certification.

### 12.2 Translation of documents to be undertaken before proceedings

Legal practitioners should ensure that any document in a language other than English which is to be referred to or tendered into evidence in proceedings or for service has been translated into English or the other language by an accredited translator.

Legal practitioners should not require interpreters to sight translate long, complex or technical documents during a hearing without prior notice ("sight unseen"). Sight unseen translation by interpreters of even simple or short documents should be avoided as far as possible.

The minimum level of certification of the translator of documents or materials should be at the Certified Translator level. The court or tribunal should be informed when a NAATI Certified Translator is not available in a specific language and steps taken to ensure the quality of the documents, for example, the use of two recognised practicing translators, engaged independently to verify the translation.

Translated documents should bear a certificate in English signed by the translator stating —

- a. that the translation is an accurate translation of the document; and
- b. the translator's full name, address, certification level and qualifications for making the translation.

## 13 Further Information

**Judicial Council on Cultural Diversity (JCCD)** is an advisory body formed to assist Australian courts, judicial officers and administrators to positively respond to our diverse needs, including the issues that arise in Aboriginal and Torres Strait Islander communities. JCCD's purpose is to develop a framework to support procedural fairness and equality of treatment for all court users – regardless of their race, colour, religion, or national or ethnic origin – and to promote public trust and confidence in Australian courts and the judiciary. In 2018, JCCD released a report entitled *Recommended National Standards for Working with Interpreters in Courts and Tribunals* to improve practices for Australia's courts. More information can be found on its website: [www.jccd.org.au](http://www.jccd.org.au)

**National Accreditation Authority for Translators and Interpreters (NAATI)** is the national standards and certifying authority for translators and interpreters in Australia. It is the only organisation to issue certification to practitioners who wish to work in this profession in Australia. NAATI is a not for profit company that is jointly owned by the Commonwealth, State and Territory governments. NAATI is governed by a Board of Directors, who are appointed by the owners. More information can be found on its website: [www.naati.com.au](http://www.naati.com.au)

**The Australian Institute of Interpreters and Translators (AUSIT)** is the national professional association open to interpreters and translators of all languages. It represents the interests of the profession and promotes the highest professional and ethical standards for its members and provides ongoing professional development. AUSIT's Code of Ethics has become the standard for the profession. AUSIT offers a range of Professional Development courses and works in close collaboration with other organisations, including educational institutions. More information can be found on its website: [www.ausit.org](http://www.ausit.org)

**Australian Sign Language Interpreters' Association (ASLIA)** provides professional development courses and looks after the interests of Auslan interpreters. Members of ASLIA are required to abide by the Code of Ethics and follow the Guidelines for Professional Conduct as a condition of membership of the association. More information can be found on: [www.aslia.com.au](http://www.aslia.com.au)

**The Translating and Interpreting Service (TIS National)** is an interpreting service provided by the Department of Home Affairs for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients. More information can be found on: [www.tisnational.gov.au](http://www.tisnational.gov.au)