

LANGUAGE SERVICES GUIDELINES

Summary: This Circular sets out the Court's approach to the use of interpreters in criminal and civil proceedings as well as other issues relating to barriers to effective communication. The Court does not provide translators, but will arrange for interpreters in criminal proceedings and can book an interpreter for a party in a civil proceeding. Requests for the use of an interpreter must be made on the booking form annexed to this Circular not less than 14 days prior to the date of the hearing at which the interpreter is to be used. Lawyers should be alive to conflict of interest issues that may arise with the use of an interpreter. The Guidelines provide guidance to counsel appearing in hearings in which an interpreter is interpreting for a party or witness. The Guidelines also annexe a Protocol for the Use of Interpreters. The Protocol provides guidance to interpreters undertaking assignments for District Court hearings.

1. Background

Within the constraints of its resources, the Court endeavours to provide equitable access to justice to people who are unable to communicate effectively in English or who are deaf or hearing impaired. The language services guidelines of the Court, set out in this document, deal with the use of interpreters, translators and technical solutions.

An interpreter is a “person who conveys an oral or signed message or statement from one language into another with accuracy and objectivity to enable communication between two parties who use different languages”.¹ In this document, a “Court interpreter” is an interpreter arranged by the Court in distinction to a “private interpreter” who is an interpreter arranged by a party or a witness.

A translator is a “person who makes a written transfer of a message or statement from one language into another language with accuracy and objectivity to enable communication between two parties who use different languages”.²

In developing its language services guidelines, the Court has had regard to *The Western Australian Language Services Policy 2008* and the *Department of the Attorney General Language Services Policy 2009*.³ The guidelines have been developed in consultation with relevant interpreter service providers and industry bodies.

¹ As defined in *The Western Australian Language Services Policy 2008*, available online at: http://www.omi.wa.gov.au/resources/publications/Languages/language_services_2008.pdf. (“OMI Policy”), p 5.

² OMI Policy, n 1, p 6.

³ Available online at: http://www.department.dotag.wa.gov.au/l/language_services.aspx.

2. Translators

It is the responsibility of a party to a criminal or civil matter to arrange and pay for any documents which may need to be translated for the purposes of a hearing, to be translated by a suitably qualified translator. The party should request the translator to make an affidavit that:⁴

- (a) sets out their qualifications as a translator;
- (b) identifies the relevant documents translated; and
- (c) states that the English translation is accurate.

The affidavit of the translator should be available for the Court and the other parties at the hearing at which the documents are sought to be used.

The Court will not ordinarily permit an interpreter to orally translate a document in a Court hearing. Nor will the Court ordinarily permit a Court hearing to be adjourned to allow for a document to be translated by an interpreter.

3. Determining whether an interpreter is required

The ultimate responsibility for determining whether an interpreter is required rests with the presiding Judicial Officer. If necessary, the Court will adjourn a hearing while the issue of the need for an interpreter is dealt with.

*The Western Australian Language Services Policy 2008*⁵ contains guidance and a set of questions which may be of assistance in determining whether a person requires the use of an interpreter. A Judicial Officer may use these questions to assist in determining whether an interpreter is required.

The Court also considers that it is part of the duty of lawyers as officers of the Court to determine whether their clients or witnesses require the use of an interpreter or some form of interpretation assistance.⁶

4. Booking of interpreters – criminal cases

For a criminal hearing, the accused is to notify the Court not less than 14 days prior to each appearance in the District Court that he or she requires an interpreter. The request form is Annexure B.⁷

⁴ This approach is based on that in *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) s14(1).

⁵ See n 1.

⁶ For the different types of interpretation services available, see par 2.7 of the attached Protocol for the Use of Interpreters.

⁷ The Court is in the process of upgrading its IT systems so that a party need only request an interpreter once and the request is carried forward to all subsequent hearings

Where a party requires an interpreter for a witness, the party is to notify the Court of the need for an interpreter by no later than the first trial listing hearing after an indictment is filed. The booking form may be handed to the Judicial Officer presiding at the trial listing hearing. The request form is also Annexure B.

A party may arrange, and pay for, a private interpreter. If this occurs, the interpreter is to comply with the competency requirements set out in Part 7 of these guidelines and the Protocol for the Use of Interpreters in Part 8.

A Court interpreter arranged for one of the accused may also be directed by the Court to interpret for a witness who speaks the same language as the accused.

If an accused has used an interpreter for the purposes of conferral with his or her lawyers, the lawyer is to advise the Court at the time of lodging the request form of:

- (a) the name of the interpreter; and
- (b) whether the accused objects to the Court booking that interpreter.

The lawyer is also to advise the Court of any other information that may be relevant to the choice of the interpreter, for example, any ethnic or cultural sensitivities (see generally, Part 6 below).

5. Booking of interpreters – civil cases

The Court is able to arrange for an interpreter for a party to attend at trial or at a hearing, to be paid for by the party, but taking advantage of the Court's service provision contract. A party wishing the Court to do so is to file a request in the form of Annexure B:

- (a) for a trial, not less than 14 days prior to the listing conference at which the action is to be allocated hearing dates; and
- (b) for all other hearings, not less than 14 days prior to the hearing.

The Court will ascertain whether a competent interpreter can be provided and, if so, provide a cost estimate to the party. The party will need to pay a deposit of 75% of the estimated cost of the interpreter. The Court does not charge a booking fee for this service.

A party may arrange, and pay for, a private interpreter. If this occurs, the interpreter is to comply with the competency requirements set out in Part 7 of these guidelines and the Protocol for the Use of Interpreters in Part 8.

Where an interpreter is to be used at a civil trial, the party seeking to use the interpreter is to advise the Registrar presiding at the listing conference of this fact. The Registrar will then make appropriate case management orders, usually as set out in Annexure C.

6. Conflicts of interest

A party or a lawyer requesting the use of an interpreter must inform the Court of any potential conflicts of interest that may arise with the provision of an interpreter or like reasons why a particular interpreter or interpreter from a particular cultural background may not be appropriate. This information should be provided in the - “Any other information” - section of the booking form in Annexure B. Examples of the sort of relevant information that should be provided include:

- (a) the names of any interpreters used by the accused (or party or witness) to date who may know information extraneous to the trial process; and
- (b) cultural sensitivities which mean that an interpreter of a particular cultural background should not be retained.

If the lawyer for a party becomes aware of any information of this kind after the booking form is submitted, the lawyer is requested to advise the Court of the relevant information in writing.

In a civil case, the usual case management orders in Annexure C provide that the certificate filed by a party’s lawyer when using a private interpreter contain a certification regarding conflicts of interest.

7. Competency of interpreters

The Court will consider an interpreter to be prima facie competent if the interpreter:

- (a) holds a National Accreditation Authority for Translators and Interpreters Ltd credential as a Professional Interpreter (formerly known as a Level 3 interpreter); or
- (b) holds a nationally accredited Advanced Diploma in Interpreting.

If the Court or a party proposes to use an interpreter who does not hold one of these qualifications, the presiding Judicial Officer will need to be satisfied that the interpreter is competent and has read and understood the Court’s Protocol for the Use of Interpreters (Annexure A).

A party proposing to use a private interpreter who does not hold one of the credentials set out above, is to cause the interpreter to make an affidavit in which the interpreter:

- (a) sets out their qualifications as an interpreter;
- (b) sets out their experience as an interpreter; and
- (c) deposes that they have read and understood the Court’s Protocol for the Use of Interpreters and agree to abide by it.

The affidavit is to be given to the Judicial Officer at the commencement of the hearing at which the private interpreter is to be used.

8. Protocol for the Use of Interpreters

Annexure A is the Court's Protocol for the Use of Interpreters ("Protocol"). This document sets out the Court's expectations of interpreters and what an interpreter can expect from the Court in order to assist them to complete an interpreting assignment.

The Protocol provides, among other things, that the role of a Court interpreter is an independent role to assist the Court. This means, for example, that a Court interpreter may interpret proceedings in the Court for an accused and then interpret the evidence of a prosecution witness in the same hearing. If a defence lawyer wishes to use an interpreter to have a private conversation with the accused, they will need to obtain the permission of the presiding Judicial Officer. Any such conversation should not prejudice the ability of the interpreter to fulfil their role of assisting the Court.

The Court has processes in place to ensure that all Court interpreters are aware of the Protocol.

In a civil case, the usual case management orders in Annexure C provide that the certificate filed by a party's lawyer when using a private interpreter contain a certification that the Protocol has been provided to the interpreter and that the interpreter agrees to abide by it.

In a criminal case, the Judicial Officer may question counsel and/or the private interpreter to satisfy themselves that the interpreter is aware of, and agrees to abide by, the Protocol.

The Protocol will take effect from 1 November 2011.

9. Guidance for counsel

In order to ensure that an interpreter is able to relay precisely, accurately and completely each communication, counsel will need to adjust the way in which they make submissions and ask questions. Specifically, counsel should:

- Be conscious of the speed of the interpreter and pace themselves accordingly.
- Use short sentences.
- Avoid the use of legalese (for example, expressions like: "I put it to you" and "learned friend").
- Avoid idiomatic phrases (for example: "Can I take you back to what happened on 6 July" or "You must have been over the moon when the warship was sighted?").
- Ask only one question at a time.
- Avoid complex or loaded suggestions or questions (for example: "Ultimately you then went and checked the fuel level before reporting to the skipper?").
- Avoid questions containing negative assertions, as they are highly likely to be unfair and confusing, and difficult to interpret accurately (for example, what does the answer "no" mean to a question like "You didn't tell the passengers not to panic " - no I did tell them or no I didn't tell them).

- Not mix topics or switch between topics.
- Deal with events in a logical and/or chronological sequence.

10. Witnesses or accused with a hearing impairment

The District Court Building is equipped with a hearing aid loop amplifier to assist any hearing impaired person within each courtroom. The audio system transmits audio directly to hearing aids with telecoils (T-coils). Any person with a hearing aid will need to switch their hearing aid to the 'T' position to receive this audio feed.

There have been occasions where a witness or accused person who suffers from impaired hearing has attended court without their hearing aid. Arrangements can be made by the Court to provide such a person with a sound amplification system for use in Court, however prior notice of this requirement is essential so that the relevant equipment can be made available.

MICHAEL GETHING
Principal Registrar

Annexure A to the Language Services Guidelines of the District Court

**District Court of Western Australia
Date of Issue: 27 September 2011**

PROTOCOL FOR THE USE OF INTERPRETERS

1. Background

- 1.1 This protocol provides guidance to interpreters undertaking interpreting assignments for District Court (“Court”) hearings. It does not deal with translation, as to which see Circular to Practitioners GEN 2011/2 Languages Services Guidelines (“LSG”), which is available on the Court’s website.
- 1.2 An interpreter will be able to ascertain from this protocol the Court’s expectations of interpreters and what an interpreter can expect from the Court in order to assist them to complete the interpreting assignment.
- 1.3 If an interpreter reads this protocol and forms the view that they are not able to undertake the interpreting assignment in accordance with the expectations set out in this document, they should inform either their service provider or the Associate to the presiding Judicial Officer of their position. The interpreter should offer to withdraw from the assignment.
- 1.4 The protocol deals with the three main types of interpreter services used in the Court:
 - (a) interpretation of indigenous spoken languages from and into spoken English;
 - (b) interpretation of other spoken languages other than English (referred to as migrant languages) from and into spoken English; and
 - (c) interpretation of sign language (AUSLAN) from and into spoken English.
- 1.5 This protocol draws on material contained in the Australian Institute of Interpreters and Translators Code of Ethics.⁸ In the event of a perceived conflict between this Code of Ethics and the protocol, the protocol is to prevail for assignments in the Court. If this proves problematic for the interpreter, the interpreter should inform either their service provider or the Associate to the presiding Judicial Officer of their position. The interpreter should offer to withdraw from the assignment.

2. General Principles

- 2.1 In all Court hearings it is important that all participants understand what is occurring in the proceedings. The Court’s practice in relation to the provision of interpreters generally is set out in the LSG.
- 2.2 In particular, in a criminal trial the accused and the jury must be able to understand the evidence of the witnesses as well as all other audible communications in the Court room. This includes exchanges between lawyers and between the lawyers and the

⁸ Available online at: <http://www.ausit.org/eng/showpage.php3?id=650>.

Judicial Officer. The provision of a competent interpreter is an essential element to a person receiving a fair trial.

- 2.3 The role of an interpreter is an independent role to assist the Court. This means, for example, that a Court interpreter may interpret proceedings in the Court for an accused and then interpret the evidence of a prosecution witness in the same hearing. In particular, a lawyer for an accused should not generally expect the interpreter to be available for the purpose of taking instructions outside the courtroom during breaks in the proceedings. If the lawyer for an accused wishes to use a Court interpreter to have a private conversation with the accused, they may do so with the permission of the presiding Judicial Officer. Any such conversation should not prejudice the ability of the interpreter to fulfil their role of assisting the Court.
- 2.4 The parties may use the services of a privately engaged interpreter. A private interpreter is expected to comply with the same competency and conduct obligations as a Court appointed interpreter.
- 2.5 The interpreter must have sufficient ability to completely and accurately communicate both in the English language and the language being used by the witness.
- 2.6 The interpreter is required to be sworn in by either taking an oath or make an affirmation that: “I will to the best of my ability, well and truly translate any evidence that I am asked to translate in this case”: *Evidence Act 1906 (WA) s102(1)*. There is a similar oath for interpreting for an accused person. It may be that an interpreter is required to be sworn in on two or more occasions at a hearing: once at the commencement to interpret for the accused, and once before interpreting for a witness. There is a serious criminal penalty for an interpreter who knowingly fails to translate or translates falsely any material matter: *Evidence Act 1906 (WA) s102(2)*. The practice of the Court is to require the interpreter to take an oath or affirmation for trials and proceedings where pleas are taken, but not for Trial Listing Hearings, Sentence Mention Hearings and other case management hearings.
- 2.7 There are five main methods of interpretation used in the Court;
- (a) **consecutive interpreting** is when the interpreter listens to a segment, takes notes while listening and then interprets while the speaker pauses;
 - (b) **simultaneous whispered interpreting** is interpreting while listening to the source language that is speaking while listening to the ongoing statements - thus the interpretation lags a few seconds behind the speaker;
 - (c) **simultaneous audio interpreting** is where 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;
 - (d) **simultaneous AUSLAN interpreting**; and
 - (e) **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 interpretation

assistance to fully understand what is being said and to accurately convey their response in spoken English.

2.8 Generally speaking:

- (a) where an interpreter is interpreting the evidence of a witness, the consecutive interpreting method is used;
- (b) where an interpreter is interpreting at the hearing for an accused, whispered simultaneous interpreting is used; and
- (c) for hearing impaired people, simultaneous AUSLAN interpretation is used.

3. General Professional Conduct Rules

- 3.1 An interpreter has an overriding duty to assist the Court to provide justice to people who are unable to communicate effectively in English or who are deaf or hearing impaired.
- 3.2 An interpreter is not an advocate for any party.
- 3.3 An interpreter's paramount duty is to the Court and not to any party, including any party who may have retained the interpreter.
- 3.4 An interpreter must not allow anything to prejudice or influence their work. The interpreter should disclose to the Court any possible conflict of interest. Examples include:
 - (a) where the interpreter knows the accused or victim in a criminal case, one of the parties in a civil case or a witness; and
 - (b) where the interpreter has undertaken work for the accused and thereby knows information about the accused extraneous to the trial process.
- 3.5 An interpreter must not accept an assignment to interpret in Court in which their impartiality may be at risk because of personal beliefs or circumstances. They should withdraw from the assignment if this becomes an issue.
- 3.6 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 immediately and withdraw.
- 3.7 The interpretation must be given only in the first person, eg, "I went to school" instead of "He says he went to school".
- 3.8 An interpreter must use their best endeavours to provide a continuous and seamless flow of communication. If done well, the interpreter effectively becomes invisible in the communication.

- 3.9 An interpreter is not responsible for what a witness says. An interpreter should not voice any opinion on anything said by the witness.
- 3.10 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 suspects to be untrue.
- 3.11 An interpreter must not alter, add or omit anything that is said by the witness.
- 3.12 An interpreter must use their best endeavours to convey any hesitation or changes in the witness' answer.
- 3.13 An interpreter must acknowledge and promptly rectify any interpreting mistakes. If anything is unclear, the interpreter must ask for repetition, rephrasing or explanations. If an interpreter has a lapse of memory which leads to inadequate interpreting, they should inform the Court (see point 4.12 below) and ask for a pause and time to reconsider.
- 3.14 There should not be any non-interpreted lengthy exchanges between the interpreter and the witness. It is the function of the interpreter to relate to the Court anything the witness says.
- 3.15 If a witness seeks a clarification from the interpreter as to the meaning of a statement or question being interpreted to them, then the interpreter must interpret this question for the Court. The interpreter should then provide their response in English and then to the witness in the witness's language.
- 3.16 The interpreter must not disclose to any person any information acquired during the course of an assignment.
- 3.17 The interpreter must be, and be seen to be, impartial when undertaking the assignment. For example, an interpreter should not engage in general social conversation with the person for whom they are interpreting or the lawyers for one or other party. The interpreter should promptly disengage from the person for whom they are interpreting when the Court adjourns.
- 3.18 The interpreter must act in a manner which maintains the dignity and solemnity of the Court.

4. Procedural Matters

- 4.1 The booking information will set out the time period in which an interpreter is required. As a general guide, District Court civil trials run from 10:30am to 1:00pm and then from 2:15pm to 4:15pm. Criminal trials run from 10:00am to 1:00pm and then from 2:15pm to 4:15pm. Where the Court is considering sitting outside these times, the Judicial Officer will inquire of the interpreter whether this is convenient. The Court has a minimum callout time of 3 hours.
- 4.2 The interpreter should arrive at the Court 30 minutes before the scheduled starting time. The booking from the Court will reflect this practice. On the first day of a trial the interpreter should attend the Registry counter on the ground level of the District

Court Building (“DCB”) (500 Hay Street) to collect some initial briefing information an hour before the commencement of the trial. Again, this time will be reflected in the Court’s booking. In circuit locations, the information will be available at the Registry counter of the relevant court.

4.3 The initial briefing information will usually comprise:

- (a) a copy of this Protocol;
- (b) a note with the name of the Judicial Officer, the Associate, the Usher and the accused/ witness the interpreter will be interpreting for and the Court room number;
- (c) the indictment (criminal case) or statement of claim and defence (civil case);
- (d) a list of witnesses (in particular to allow the interpreter to check for people they may know);
- (e) a glossary of technical terms (if any); and
- (f) any other document the Judicial Officer thinks it useful for the interpreter to have.

These documents are not to be taken outside the Court building and, once the hearing commences, are to be left in the Court room (in a place designated by the Associate) or handed to the Associate or Usher when the interpreter leaves the Court room.

- 4.4 There are interview rooms outside most of the Court rooms in the District Court Building, in particular on the south end of level 1. An interpreter should feel free to use any of these interview rooms to review the materials provided and prepare for the hearing.
- 4.5 The interpreter should attend the Court room 15 minutes prior to the commencement time. Upon entering the Court room the interpreter should make themselves known to the Associate or Usher to the presiding Judicial Officer. They will provide any specific instructions required.
- 4.6 The Associate is the primary point of liaison between the interpreter and the presiding Judicial Officer. Any queries or concerns at any point in the trial should be directed to the Associate (or if the Associate is not immediately available, the Usher).
- 4.7 On occasions, an interpreter may require a short general conversation with the person for whom they are interpreting to ensure that both can clearly understand each other’s speech. If this is required, the interpreter should liaise with the Associate who will advise of the appropriate arrangements for this to occur.
- 4.8 An interpreter for an accused will usually be sworn in at the commencement of the hearing.
- 4.9 An interpreter may take as many breaks as they require. The Judicial Officer will allow more breaks than usual when an interpreter is being used. The timing of the

breaks will depend on the flow of the evidence. The interpreter shall inform the Associate prior to the commencement of the hearing how long it is anticipated he or she will be able to interpret without requiring a break. The interpreter and Associate may wish to agree a subtle signal for the interpreter to use to signify that a break is required.

- 4.10 An interpreter usually sits next to the accused in the dock. There will also be a security guard in the dock at all times. If an interpreter has any concerns at all about their personal safety either at the commencement of the trial or during it, these should be raised with the Associate. The Associate will raise the issue/s with the presiding Judicial Officer and appropriate arrangements will be made to address the concern/s.
- 4.11 The interpreter should bring with them a pen and paper to assist with the interpreting process. They will be permitted to make notes during the Court hearing.
- 4.12 If during the proceedings it becomes necessary for the interpreter to raise an issue with the Judicial Officer, the correct way to do this is for the interpreter to raise their hand to attract the attention of the Judicial Officer, wait until they have the Judicial Officer's attention and communicate to the Judicial Officer their concerns. The Judge is to be addressed as "Your Honour".
- 4.13 If at any point in time the interpreter cannot hear what is being said in the Court room with sufficient clarity to enable them to optimally interpret, the interpreter should immediately raise this with the Judicial Officer (as set out in point 4.12). Likewise, the attention of the Judicial Officer should be attracted if the interpreter does not have a clear line of sight to the person speaking and this is impeding the optimal interpretation of their statements.
- 4.14 If the interpreter does not understand any word used in a question or does not understand the question, then the interpreter should inform the Judicial Officer or the questioner immediately (as set out in point 4.12). Likewise if the witness or counsel (or Judicial Officer) is speaking too fast to allow the interpreter to optimally interpret or if questions or answers given are too lengthy and/or the delivery is too fast then the interpreter should raise his or her concerns with the Judicial Officer.

Annexure B

DISTRICT COURT OF WA

INTERPRETER BOOKING REQUEST

To: Senior Court Support Officer, Customer Service, District Court

Facsimile: 9425 2268

Email: districtcourt@justice.wa.gov.au (attention: Senior Court Support Officer, Customer Service)

This form is to be used by all persons requiring an interpreter for any District Court hearing, including circuit sittings.

It is the responsibility of the person making the request for an interpreter to give the Court the notice set out in the Circular to Practitioners, Language Services Guidelines, GEN 2011/2. This form must be completed for each person requiring an interpreter and filed prior to each hearing. Failure to do so may result in no interpreter being available.

Details of Proceedings	Court file no: _____ Party Names: _____ -v- _____
Details of Applicant	Party requesting interpreter : _____ Name of person making request: _____ Organisation/Firm : _____ Address: _____ Tel No: (Office) _____ (Mob): _____ Fax No: _____ Email: _____ Your ref: _____
Details of person for whom the interpreter is required	Name: _____ Language: _____ Dialect: _____ Accused <input type="checkbox"/> Adult <input type="checkbox"/> Child <input type="checkbox"/> Civilian Witness <input type="checkbox"/> Police Officer <input type="checkbox"/> Expert Witness <input type="checkbox"/> Any other information (including as to conflicts of interest) _____ _____ _____
Details of hearing	Date of ____ / ____ / 2011 Time of Hearing ____ : ____ am/pm (WA time) Est. duration ____ hrs/days Location _____ Trial <input type="checkbox"/> Sentencing <input type="checkbox"/> Trial Listings Hearing <input type="checkbox"/> Directions Hearing <input type="checkbox"/> Other comments: _____ _____
Agreement to pay fees (civil cases only)	<i>On behalf of the Applicant, I agree to pay the State of Western Australia the following fees for this request, within 30 days an invoice being rendered :</i> <ul style="list-style-type: none">• Daily rate or part thereof• All reasonable travel costs for interpreters being booked for outside the metro area. <i>The Court will provide an estimate of the fees before confirming the booking. The Court does not add any administration fee, but passes on the fees charged by its service providers. Once the booking has been arranged, the Court will issue an invoice for a 75% deposit of the fees. Once the final fee is set, the Court will issue a further invoice for the balance or refund the unused deposit.</i> Signed: _____ Dated ____ / ____ /20____

COURT USE ONLY	
Interpreter Details	On Call <input type="checkbox"/> TIS <input type="checkbox"/> Booking Confirmed: <input type="checkbox"/> Date Confirmation Received: _____ Name of Interpreter: _____ Contact at Interpreter Service: _____ Any other comments: _____ _____
Travel	Travel required: <input type="checkbox"/> Interstate: <input type="checkbox"/> Outside Metro Area <input type="checkbox"/> Any other comments: _____ _____
Invoice details (civil cases)	Date invoice sent (attach copy to booking form): _____ Amount: _____ _____ Date payment received: _____

Annexure C

USUAL CASE MANAGEMENT ORDERS FOR CASES INVOLVING AN INTERPRETER AND/OR TRANSLATOR

(To be used where there is to be an interpreter for witnesses from a spoken language other than English)

1. at least 42 days before the date fixed for the commencement of the trial, the party requiring the use of an interpreter (“applicant”) shall serve on each other party:
 - (a) a signed and dated written statement of the proposed evidence in chief of each witness proposed to be called by the applicant requiring the use of an interpreter (“interpreted witness”) in the language spoken by the witness;
 - (b) an English translation of the witness statement in par 1(a); and
 - (c) an affidavit of the translator complying with Part 2 of the Circular to Practitioners GEN 2011/2 Language Services Guidelines;
2. at least 42 days before the date fixed for the commencement of the trial, the applicant is to serve on each other party:
 - (a) a notice setting out the documents to be used at the trial of the action which the applicant has had translated;
 - (b) a copy of the document in the translated language; and
 - (c) an affidavit of the translator complying with Part 2 of the Circular to Practitioners GEN 2011/2 Language Services Guidelines;
3. at least 42 days prior to the date fixed for commencement of the trial, the applicant is to file and serve a certificate setting out:
 - (a) the name and qualifications of the interpreter proposed to be used for the interpreted witness at the trial of the action;
 - (b) the time or times during the trial at which the interpreter has been booked;
 - (c) the fact that the applicant has provided the interpreter with a copy of the Court’s Protocol for the Use of Interpreters; and
 - (d) the fact that the applicant is not aware of any conflicts of interest impacting on the independence of the interpreter;
4. at least 28 days before the date fixed for the commencement of the trial, each other party is to notify the applicant in writing of:
 - (a) any objections to the qualifications of any interpreter or translator used or proposed to be used;
 - (b) any objections to the admissibility of the witness statement served and the grounds therefore;

- (c) any other documents that the party requires the applicant to have translated for the purpose of cross examination of the interpreted witness; and
 - (d) a list of witnesses pursuant to *District Court Rules 2005* (WA) rule 45I;⁹
5. at least 21 days before the date fixed for the commencement of the trial, the applicant is to respond in writing to any notification pursuant to par 4;
6. at least 14 days before the date fixed for commencement of the trial, the applicant is to serve on each other party:
- (a) a copy of each document referred to in par 4(c) translated into the language of the interpreted witness, with sufficient identification so that the version of the document in English is readily apparent; and
 - (b) an affidavit of the translator complying with Part 2 of the Circular to Practitioners GEN 2011/2 Language Services Guidelines;
7. in the event of non-compliance with any of the orders set out above or a dispute in relation to the translation of documents or the proposed use of an interpreter at trial which remains unresolved for more than 3 business days, the applicant is to immediately write to the Court and request the Court to list the action for a directions hearing;
8. at the trial of the action:
- (a) save with the leave of the Court, the applicant may not lead evidence from the interpreted witness if the substance of the evidence is not included in the statement served;
 - (b) the Court may direct that the statement, or any part of it, stand as the evidence in chief of the witness;
 - (c) the applicant must have the original statement and the translation ready for tender at the trial together with copies for each other party, the witness and the court;
 - (d) save with the leave of the Court, the applicant may not lead evidence from any other witness requiring the use of an interpreter;
 - (e) save with the leave of the Court, a party other than the applicant may not object to any evidence in a statement served pursuant to this order other than on grounds set out in a notice of objection served pursuant to par 4; and
 - (f) save with the leave of the Court, a party other than the applicant may not cross-examine the interpreted witness on a document that is not in the lists in par 2(a) and 4(c);

⁹ This is required to allow the applicant to check for possible conflicts of interest between the witnesses and the proposed interpreter.

9. each witness statement is to be prepared having regard to the Best Practice Guide 01/2009 issued by the Western Australian Bar Association entitled “Preparing witness statements for use in civil cases”; and
10. each witness statement filed is to be accompanied by a certificate from the practitioner most responsible for the preparation of the statement to the effect that the order in par 9 has been complied with.