

[Ms/Mr Witness], in a moment I am going to ask you to draw on the tablet in front of you which is an Annotation Device. Before I do that, I want to make sure you are comfortable with the system.

[Ms/Mr] Usher is going to hand you a special stylus pen to use.

I would like you to draw a square on the page. Now a circle. You will need to hold the pen straight (perpendicular) against the screen.

If you make a mistake, let us know, and we can erase what you have drawn.

Once you have completed your drawing, we are going to save the image and print it for use in the trial.

[Ms/Mr Witness], do you feel comfortable with the Annotation Device?

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 CPG 5 - Language Services and Communication Support.
- 1.2 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.
- 1.3 The protocol draws on material contained in the *Recommended National Standards for Working with Interpreters in Courts and Tribunals (National Standards)*.¹ In the event of a perceived conflict with the National Standards, the protocol is to prevail for assignments in the Court.
- 1.4 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.

2. General Principles

- 2.1 Guidance on the court's practice in relation to the provision of interpreters generally is set out in CPG 5.
- 2.2 It is important that participants understand what is occurring in court proceedings. In particular, in a criminal trial:
- (a) 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 judicial officer; and
 - (b) 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) 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;
 - (b) 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; and

¹ Available online at: <https://icdi.org.au/wp-content/uploads/2022/05/JCDD-Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals-second-edition.pdf>

- (c) if the lawyer for an accused wishes to use a Court interpreter to have a private conversation with the accused, they may do so only with the permission of the presiding judicial. Any such conversation should not prejudice the ability of the interpreter to fulfil their role of assisting the Court.
- 2.4 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 to the effect 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) s 102(1)*.
- (a) 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.
- (b) There is a serious criminal penalty for an interpreter who knowingly fails to translate or translates falsely any material matter: *Evidence Act 1906 (WA) s 102(2)*.
- (c) 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.

2.9 Interpreters should their best endeavours to provide a continuous and seamless flow of communication, expressed in the words of the person speaking (eg: “I went to school” instead of “He says he went to school”). If done well, the interpreter effectively becomes invisible in the communication.

3. Procedural Matters

3.1 When an interpreter is engaged by the court, the booking information will set out the time period in which an interpreter is required. As a general guide:

- (a) civil trials usually run from 10:30am to 1:00pm and then from 2:15pm to 4:15pm;
- (b) criminal trials run from 10:00am to 1:00pm and then from 2:15pm to 4:15pm;
- (c) where the Court is considering sitting outside these times, the judicial officer will usually inquire of the interpreter whether this is convenient; and
- (d) the Court has a minimum callout time of 3 hours.

The interpreter should arrive at the Court 30 minutes before the scheduled starting time. The booking from the Court will reflect this practice.

3.2 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.

3.3 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.

3.4 There are interview rooms outside most of the court rooms in the District Court Building that may be used by an interpreter to review the materials provided and prepare for the hearing.

- 3.5 The interpreter should:
- (a) attend the court room 15 minutes prior to the hearing commencement time;
 - (b) upon entering the court room, make themselves known to the associate or usher, who will provide any specific instructions required; and
 - (c) direct any queries or concerns to the presiding judicial officer's associate, who is the primary point of liaison between the interpreter and the judicial officer (and if the associate is not immediately available, then the usher).
- 3.7 On occasion, 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.
- 3.8 An interpreter for an accused will usually be sworn in at the commencement of the hearing.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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. This should always be done immediately if, at any point in time:
- (a) the interpreter cannot hear what is being said in the Court room with sufficient clarity to enable them to optimally interpret; or
 - (b) the interpreter does not have a clear line of sight to the person speaking and this is impeding the optimal interpretation of their statements; or
 - (c) the interpreter does not understand any word used in a question or does not understand the question; or
 - (d) the witness or counsel (or judicial officer) is speaking too fast to allow the interpreter to optimally interpret, or if the questions or answers given are too lengthy and/or the delivery is too fast.
- 3.13 A judge is to be addressed as "Your Honour".

4. Code of Conduct for Interpreters in Legal Proceedings

4.1 Interpreters are to comply with the *Code of Conduct for Interpreters in Legal Proceedings* set out in Schedule 1 of the National Standards. For convenience, that Code is set out below:

1. Application of code

This Code of Conduct applies to any person (the “Interpreter”) who whether or not for fee or any other reward is engaged, appointed, volunteers or otherwise becomes involved in proceedings or proposed proceedings to carry out the office of interpreter by interpreting or sight translating from any spoken or signed language (the “other language”) into English and from English into the their language for any person.

2. General duty to the Court or Tribunal

1. *An Interpreter has an overriding duty as an officer of the Court/Tribunal to assist the Court/Tribunal impartially.*
2. *An Interpreter’s paramount duty is to the Court/Tribunal and not to any party to or witness in the proceedings (including the person retaining or paying the Interpreter).*
3. *An Interpreter is not an advocate, agent or assistant for a party or witness.*

3. Duty to comply with directions

An Interpreter must comply with any direction of the Court/Tribunal.

3. Duty of accuracy

1. *An Interpreter must at all times use their best judgment to be accurate in their interpretation or sight translation. In this code “accurate” means the optimal and complete transfer of the meaning of the other language into English and of English into the other language, preserving the content and intent of the other language or English (as the case may be) without omission or distortion and including matters which the interpreter might consider inappropriate or offensive.*
2. *If an Interpreter considers that their interpretation or sight translation is or could be in any way inaccurate, incomplete or requires qualification or explanation (including, without limitation, where the other language is ambiguous or otherwise unclear for any reason), then:*
 - a. *the Interpreter must immediately inform the party who engaged them and provide the necessary correction, qualification or explanation to that party; and,*
 - b. *if their evidence is being given or was given in Court, immediately inform the Court and provide the necessary correction, qualification or explanation to the Court.*

5. Duty of impartiality

1. *An Interpreter must at all times carry out the office of interpreter impartially so as to be without bias in favour of or against any person including but not limited to the person whose evidence the interpreter is interpreting, the party who has engaged or is remunerating the Interpreter or any other party to or person involved in the proceedings or proposed proceedings.*

2. *Unless the Court/Tribunal orders otherwise, an Interpreter must not accept an engagement or appointment to carry out the office of interpreter in relation to a proceeding or proposed proceeding if the Interpreter:*
 - a. *is or may become a party or a witness;*
 - b. *is related to or has a close personal relationship with a party or a member of the parties, or with a witness or potential witness;*
 - c. *has or may have a financial or other interest of any kind whatsoever in the outcome of the proceeding or proposed proceeding (other than an entitlement to a reasonable fee for the services provided by the Interpreter in the course of their engagement or employment);*

or

 - d. *is or may be unable to fulfil their duty of accuracy or impartiality for any reason including, without limitation, personal or religious beliefs and cultural and other reasonable concerns.*
3. *Other than carrying out their engagement or appointment in the office of interpreter, an Interpreter must not provide any other assistance, service or advice (including by way of elaboration) to:*
 - a. *the party, legal representative or other person who has engaged them; or*
 - b. *any witness or potential witness,*
 - c. *in relation to the proceeding or proposed proceeding.*

6. Duty of competence

An Interpreter must only undertake work they are competent to perform in the languages for which they are qualified by reason of their training, qualifications or experience. If it becomes apparent in the course of a matter that expertise beyond their competence is required, the Interpreter must inform the Court/Tribunal immediately and work to resolve the situation, either withdrawing from the matter or following another strategy acceptable to the Court/Tribunal.

7. Confidentiality

Subject to compulsion of law, an Interpreter must keep confidential all information in any form whatsoever which the interpreter acquires in the course of their engagement or appointment in the office of interpreter (including any communication subject to client legal privilege) unless:

1. *that information is or comes into the public domain other than by an act of the interpreter in breach of this duty of confidentiality; or*
2. *the beneficiary of the client legal privilege has waived that privilege.*