



Interpreter Protocols

South Australia

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1. Protocols for working with interpreters

Preamble

Fundamental principles of fairness and equity require that no person appearing before a court¹ should be disadvantaged in the proceedings or in understanding the procedures because of a language or other communication barrier. Many residents of South Australia do not speak English as their first language. The provision of interpreters assists to ensure fairness and equity to all parties.

These Protocols are intended to provide guidance to the court, interpreters, interpreter services and agencies, court staff and legal practitioners.

When to engage an interpreter

An interpreter should be engaged;

- 1.1 in any proceedings where a party or witness who speaks limited English, has difficulty communicating in English or is hearing impaired in a courtroom context is required to appear in the court or has any other business before the court;
- 1.2 in any case of doubt, the Judicial Officer² will determine whether an interpreter is required.

¹ Court means Supreme Court, District Court, Magistrates Court, Environment, Resources and Development Court, Youth Court, Wardens Court, Coroners Court or the Industrial Relations Court, as the context provides.

² Judicial Officer means judge, master, coroner, magistrate or commissioner.

2. Responsibility to engage an interpreter – procedural matters

- 2.1 This part deals with arrangements to be made to engage interpreters for the provision of interpreting services during court proceedings. The court, through the registry, on the request of a party will send requests for booking interpreters from the Interpreting and Translating Centre (ITC), or other appropriate agency (e.g. Auslan or other sign language interpreters). This process is outlined further in 2.3 below.
- 2.2 This procedure does not cover arrangements for the engagement of interpreters for work outside of the court, for example for taking instructions or proofing witnesses. These arrangements will continue to be made by the party seeking the services of the interpreter and the relevant interpreter service.
- 2.3 When an interpreter is required for any proceedings before the court, the party requiring the services of the interpreter will complete the “Interpreter Booking Request Form”. When completing the “Interpreter Booking Request Form”, the party requiring the services of the interpreter should note, where relevant, the specific dialect of the language spoken by the person for whom the interpreter is required. A copy of the “Interpreter Booking Request Form” is annexed to these Protocols.

The form may be filed, faxed or emailed to the appropriate registry. The registry will contact the relevant interpreter service to facilitate the booking. The “Interpreter Booking Request Form” should be completed by the registry and placed on the court file as confirmation of the booking. Alternatively, where the “Interpreter Booking Request Form” has not been completed by the party requiring the services of an interpreter, the appropriate registry may facilitate the booking of a request made in court and endorse the file accordingly.

- 2.4 To maximise the ability of the interpreter service to provide an appropriate interpreter for a particular proceeding, the party seeking to engage the services of the interpreter should allow as much notice as possible. Ideally, notice of **four weeks** in advance is required for the provision of an interpreter; however, jurisdictional rules of court or practice directions may specify minimum timeframes and must be observed.
- 2.5 When an interpreter service has identified and confirmed the availability of an interpreter for the particular assignment, the service will forward an “Interpreter Assignment Receipt” to the registry to be placed on the court file.
- 2.6 If the person requiring the assistance of an interpreter is attending a court registry unrepresented, the registry may take steps to arrange an interpreter for the conduct of any business conducted at the registry. This may include access to interpreters by telephone. If the person is legally represented, their lawyer or legal service will make those arrangements.

- 2.7 In civil matters, the party requiring an interpreter will arrange an interpreter via the registry.
- 2.8 If an interpreter is booked from an interpreter service for particular proceedings and those proceedings are adjourned or otherwise do not proceed, the party who requested the interpreter will inform the registry, to cancel the booking, as soon as practical. Annexed to these Protocols is the "Interpreter Cancellation Form" to be filed at the registry.
- 2.9 The registry is to be informed if an interpreter is required for any subsequent hearing.
- 2.10 Where an Aboriginal Language Interpreter is booked, this advice should be provided to the Manager, Aboriginal Programmes, Court Services, who will seek to arrange, where possible, an Aboriginal Justice Officer (AJO) to meet the interpreter on site on the first day to assist in their familiarisation of the court environment and court processes.

3. The selection of an interpreter by the interpreter service

- 3.1 When a request is received by an interpreter service for an interpreter to work in proceedings in the court, the service will ensure so far as possible that the best interpreter available will be appointed.
- 3.2 In making this determination, the interpreter service will assess the interpreter's NAATI accreditation level, their formal training and their experience in interpreting in court proceedings.
- 3.3 The interpreter service will, on all of the available material, assess if there are any conflict issues likely to arise including cultural matters that may mean a particular interpreter is inappropriate for the particular assignment.
- 3.4 As well as providing information required on the "Interpreter Booking Request Form", the parties will provide any information they may be aware of to the registry to assist the assessment of an appropriate interpreter.
- 3.5 At the commencement of a proceeding, the Judicial Officer or a party may make enquiries about the experience and qualifications of an interpreter. If the Judicial Officer has concerns about the qualifications or effectiveness of an interpreter, the Judicial Officer may raise those concerns with the parties and seek a more suitable interpreter prior to or at the start of proceedings. If a party has concerns about the qualifications or effectiveness of an interpreter, the party may raise those concerns with the Judicial Officer.
- 3.6 The interpreter service will provide relevant information about the interpreter's accreditation, qualification and experience in the "Interpreter Assignment Receipt" and any further information that may be requested by the court should a particular issue relevant to qualification or experience arise.

4. Taking an Interpreter's Oath

- 4.1 At the commencement of most court proceedings, an interpreter will be required to take the Interpreter's Oath. This may be in a religious form or non-religious form. The forms of interpreter's oaths are as follows:

If religious:

"Do you swear that you will do your best to interpret accurately and clearly, so help you God? Say I swear."

If non-religious:

"Do you solemnly and truly affirm that you will interpret accurately and clearly to the best of your ability? Say I do solemnly and truly affirm."

- 4.2 The practice of the court is to require the interpreter to take an oath for trials or hearings, or in any proceeding when evidence is being interpreted. When no evidence is taken, generally an interpreter is not required to take an oath. Examples are proceedings following pleas of guilty, pre-trial and case management proceedings. Whether an interpreter will be required to take an oath for proceedings that do not involve evidence being given is a matter for the Judicial Officer.

5. Commencement of proceedings when an interpreter is engaged

- 5.1 Interpreters should arrive at the designated courtroom 15 minutes before the hearing is listed to commence.
- 5.2 Prior to the commencement of the hearing, the interpreter will provide the judge's associate/magistrates clerk with an assignment form. At the conclusion of the hearing, the judge's associate/magistrates clerk will note the time the hearing commenced, along with the duration of time the interpreter was required. The judge's associate/magistrates clerk will then sign this form and return it to the interpreter.

The judge's associate/magistrates clerk must make the same notations on the "Interpreter Booking Request Form" located on the court file.

- 5.3 At the start of proceedings where an interpreter has been assigned, the court and the parties should ensure that the interpreter does not have any difficulty hearing all of the relevant parties.
- 5.4 The court should ensure the interpreter has a clear view of all persons who will be speaking.
- 5.5 At the start of proceedings, the court may introduce the interpreter and explain the role of the interpreter. The form of the introduction is a matter for the Judicial Officer, however may be to the following effect:

Today we are assisted by [name of interpreter], an interpreter with the Aboriginal Interpreter Service/Interpreting and Translating Centre/Auslan who will be interpreting between the [name of language] and English languages. The interpreter's role is to facilitate communication for people who do not speak English by interpreting faithfully what each speaker says. Interpreters abide by a professional code of ethics and must interpret everything that is said in the manner it is said. They are not advocates for either party, are not to get personally involved, are not to conduct the questioning and are not to provide cultural advice. Mr/Madam interpreter, if at any stage you require a repetition or a clarification, I invite you to stop proceedings by raising your hand/standing up/stopping the interpretation and saying "Your Honour, I have a difficulty I would like to raise with you". Similarly, if you require a break, please let me know. I thank you for your assistance today.

6. Methods of interpretation used in court

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

- (a) consecutive interpreting is when the interpreter listens to a segment, may take notes while listening and then interprets while the speaker pauses;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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
- (g) “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.

6.2 In general:

- (a) where an interpreter is interpreting the evidence of a witness, the consecutive interpreting method is used and segments must be kept short;
- (b) 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;
- (c) consecutive interpreting is also used for the reading of charges, agreed facts, victim impact statements and character statements or similar documents onto the transcript;

- (d) 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 and directions from a Judicial Officer or counsel to a witness; interpreting witness evidence to an accused; and interpreting legal argument;
- (e) 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
- (f) for persons who are deaf or hard of hearing, simultaneous Auslan interpretation or other sign language is appropriate.

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

7. General professional conduct guide for interpreters

- 7.1 An interpreter has an overriding duty to assist the court by well and truly interpreting the evidence, the statements of counsel and the Judicial Officer to persons who are unable to communicate effectively in English or who are deaf or hard of hearing. This duty overrides any duty to a party of the case.
- 7.2 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. This is the paramount principle.
- 7.3 An interpreter is not an advocate for any party.
- 7.4 An interpreter must be unbiased and impartial. They must not act as an interpreter if they know of any conflict of interest. A conflict of interest can include personal acquaintance 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 Judicial Officer by the interpreter. If a conflict of interest arises at the commencement of or during court proceedings, the interpreter must advise the court immediately.
- 7.5 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. They should seek to withdraw from the assignment if this becomes an issue.
- 7.6 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 ask the Judicial Officer to be excused from the proceedings or for appropriate assistance.
- 7.7 The interpretation should be given only in the first and second grammatical person, unless the interpreter is summarising legal argument or courtroom dialogue not directed at the person requiring the assistance of the interpreter.
- 7.8 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.
- 7.9 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 say words to the effect of: "Your Honour, I think there may have been a mistake". The interpreter should endeavour to correct the mistake and assist the court if necessary to correct any consequences of the mistake.
- 7.10 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. 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 of this prior to engaging in conversation with the witness.

- 7.11 An interpreter should inform the court 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 in reformulating the question or statement in a manner that can be accurately interpreted.
- 7.12 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.

8. Assistance for interpreters from the court

- 8.1 Wherever possible, the court should ensure that the interpreter has a glass of water and a place to sit with sufficient room to take notes if necessary.
- 8.2 The court should indicate to the interpreter how the interpreter should get the Judicial Officer's attention if a difficulty arises. [See also 5.5 above].
- 8.3 Interpreters are encouraged to seek clarification of unclear, technical or ambiguous terms.
- 8.4 Interpreters should be given regular and timely breaks and encouraged to ask for a break if required. For example, every 60 minutes or so.
- 8.5 Where an interpreter is interpreting for a witness, including an accused giving evidence, if the Judicial 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.

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

9. Briefing of an interpreter

- 9.1 The party or legal practitioner requiring the assistance of an interpreter should provide the interpreter with sufficient information to prepare for the task of interpreting. What will be required will vary from case to case.
- 9.2 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 and other documents that are to be read onto the transcript.
- 9.3 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.
- 9.4 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.
- 9.5 The interpreters should be told the name of the Judicial Officer, court officer or the judge's associate, particularly if the proceedings are lengthy.
- 9.6 The interpreter should attend the court with enough time before the commencement of proceedings to familiarise themselves with the briefing information.
- 9.7 If the interpreter requires an introductory conversation with the person for whom they are interpreting to satisfy themselves of the accuracy of interpretation, the interpreter should tell the Judicial Officer, if court is in session. If court has not commenced, the interpreter should tell the court officer or judge's associate. The court will ensure appropriate arrangements can be made.

10. Legal practitioners

- 10.1 Legal practitioners appearing in proceedings when an interpreter is assisting should adapt their advocacy accordingly.
- 10.2 Short sentences are preferable and complex questions should be avoided.
- 10.3 Time frames must be adjusted to take account of the time needed for interpreting. The interpreter should be able to finish the particular interpretation. Do not cut the interpreter off.
- 10.4 Avoid the use of negative assertions in questions as they are frequently a source of miscommunication.
- 10.5 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.
- 10.6 Legal practitioners should provide copies of relevant briefing documents noted in paragraph 9 to the interpreter prior to 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.

11. Guide for interpreters in criminal matters

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

- 11.1 direct speech to the accused, including
 - (a) charges;
 - (b) sentencing remarks;
 - (c) explanations from the bench about adjournments and court process;
 - (d) any questions put to the accused from the Judicial Officer or defence lawyers; and
 - (e) bail or any other conditions imposed by the court.
- 11.2 speech expressly about the accused, including
 - (a) reading of the agreed facts;
 - (b) comments by the prosecution, Judicial Officer or defence lawyer about the accused's character, such as criminal history or prospects of rehabilitation; and
 - (c) reading of character references or similar statements.
- 11.3 a prosecutor, judge's associate or Judicial Officer reading a victim impact statement;
- 11.4 examination and cross-examination of non-expert witnesses;
- 11.5 a sentence or conditions proposed by any party;
- 11.6 the terms of any sentencing orders;
- 11.7 Jury directions.

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

- 11.8 directions from a Judicial Officer or counsel to a witness;
- 11.9 objections made by legal practitioners and answers to objections by counsel and the bench;
- 11.10 questions and answers to/from expert witnesses;
- 11.11 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.);

11.12 legal argument between legal practitioners and the bench.

16. Interpreter Booking Request Form

COURTS ADMINISTRATION AUTHORITY INTERPRETER BOOKING REQUEST	
To: [Insert relevant registry]	
<i>This form is to be used by all persons requiring an interpreter for a court hearing. This form must be completed for each person requiring an interpreter and filed in accordance with the Interpreter Protocols South Australia. The registry will forward the booking to ITC, or the appropriate agency (including Auslan or other sign language), as the case may be.</i>	
Details of proceedings	Court file no.: Names of parties to proceedings:
Details of person/organisation requesting the services of an interpreter	Name of person/organisation requesting the interpreter: Contact name: Email: _____ Phone: _____ Fax: _____ Mobile: _____
Details of person for whom the interpreter is required:	Name: Language: Dialect (if relevant): Country / Community of origin: Accused Adult Child Civilian Witness Expert Witness Age: Any particular issues relating to the person:
Case type & estimated requirement of interpreter:	CRIMINAL: Directions Hearing / Trial / Sentence / Submission (circle) Bail / Custody (circle) CIVIL : Conference / Hearing / Trial (circle) Date of Hearing: / / Time of Hearing: am / pm Estimated Duration: days hours minutes
OFFICE USE ONLY	
Booking details:	Registry Officer: Date booking made: / / Interpreter service used: Booking no.:
COURT USE ONLY	
Interpreter appearance details:	Interpreter attended: YES / NO Time of attendance: Duration of attendance: Service assignment sheet signed: YES / NO Name of Court Officer:

17. Interpreter Cancellation Form

COURTS ADMINISTRATION AUTHORITY INTERPRETER CANCELLATION FORM	
To: [Insert relevant registry]	
<i>This form is to be used when an interpreter has been booked though the Interpreter Booking Request Form and the interpreter is no longer required.</i>	
Details of proceedings	Court File No: Names of parties to proceedings:
Details of person/organisation requesting the services of an interpreter	Name of person/organisation requesting the interpreter: Contact name: Email: _____ Phone: _____ Fax: _____ Mobile: _____
Details of cancellation:	The interpreter booked for the above proceedings on: / / is no longer required. Details (e.g. adjournment, trial vacated etc): <p><i>Note: If the proceedings have been adjourned and an interpreter will be required on a new date, file a new / amended Interpreter Booking Request Form.</i></p>
COURT USE ONLY	
Cancellation of booking received: Date: / / Interpreter service requested (including Auslan or other sign language): Date of cancellation forwarded to Interpreter service: / /	

18. Interpreter Assignment Receipt

COURTS ADMINISTRATION AUTHORITY INTERPRETER ASSIGNMENT RECEIPT

This form is to be filed by the relevant interpreter service when an interpreter has been assigned. The interpreter service will forward a copy to the person requesting an interpreter.

Assignment:	
Court Registry:	
Court file no.:	
Person requiring the interpreter:	
Language required:	
Dialect (if relevant):	
Date(s) required:	
Time:	
Location:	
Interpreter selected:	
Relevant qualifications and experience:	
Interpreter service:	
Comments on interpreter's performance:	

NB: *The parties to the relevant proceedings may inspect or obtain a copy of the Interpreter Assignment Receipt from the court file.*