

Working with interpreters in Boards and Tribunals

Presentation to the COAT National Conference

7 June 2019

Foundation principles

1. Australia courts and Tribunals must accommodate the language needs of users in accordance with the requirements of procedural fairness.
2. The language of the Tribunal is English.
3. Where the Tribunal is satisfied that a party does not understand or speak English to the level necessary to understand and respond to the matters required of the Tribunal, an interpreter will be required.
4. The interpreter is an officer of the Tribunal (irrespective of who engaged them) and owes a paramount duty of accuracy and impartiality to the Tribunal.

Conducting proceedings with interpreters

JUDICIAL COUNCIL
ON CULTURAL DIVERSITY

Conducting Proceedings with Interpreters



PRIOR TO PROCEEDINGS COMMENCING

After it has been determined that an interpreter is required, there are certain things judicial officers can do to assist the interpreter.

Briefing interpreters

In making directions as to the conduct of proceedings, judicial officers should consider whether and to what extent interpreters should be briefed by the parties on the nature of the matter prior to the commencement of proceedings.

Briefing may include the provision of materials that may otherwise have required sight translation¹. Unseen sight translation by interpreters of even simple or short documents should be avoided.

Interpreters should be afforded reasonable time to become familiar with materials that are provided.

APPROPRIATE CONDITIONS FOR INTERPRETERS

Facilitating appropriate working conditions for interpreters is vital, as it ensures that they can perform their duties to the best of their ability.

While it is not within the power of individual judicial officers to control such aspects as remuneration, there are some conditions you may be able to effect in your court/tribunal.

Waiting area

Where circumstances permit, ensure there is somewhere for interpreters to wait, leave their belongings, prepare materials and be briefed and debriefed.

Ideally the interpreter should not use the same waiting room as a party or witness, as this could potentially compromise the interpreter's ethical obligations and independent role.

Position in the courtroom

In the courtroom, interpreters need to be able to see and hear all parties in the court, and have as a minimum a chair and table and sufficient room to work, and access to a jug of water and a glass.

AT THE START OF PROCEEDINGS

At the start of proceedings and before an interpreter commences interpreting, the judicial officer should ask the interpreter to introduce themselves and state their level of NAATI certification, formal qualifications, membership of a professional interpreting association, court experience, and understanding of their ethical obligations.

The judicial officer should explain the role of the interpreter to the witness, party and jury (as relevant).

At the start of proceedings, judicial officers should also ask the interpreter to alert the court, 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; or
- ✓ needs a break.

DURING PROCEEDINGS

Speak slowly and in plain English

Even experienced interpreters need time to absorb the content of what all parties in the court are saying and consider the best way to express this in the target language. Judicial officers should therefore speak slowly and clearly, and with appropriate pauses, to help facilitate the interpreter to discharge his or her duty to interpret.

¹ Sight translation means the process whereby an interpreter or translator presents a spoken interpretation of a written text.

Judicial officers should also use plain English to communicate clearly and articulately during court proceedings. It is the responsibility of the judicial officer to explain all legal concepts, jargon, acronyms and technical terms. If there are no direct equivalents, the interpreter may ask for an explanation, which they will then interpret.

For further information about using plain English, refer to [Factsheet – Using Plain English](#).

Judicial officers should ask lawyers and witnesses to speak clearly and at a reasonable pace, to use plain English, and to pause after each complete concept to allow the interpreter to interpret.

Judicial officers should intervene whenever there is overlapping speech, complex questions, rapid-fire speech, or words or expressions that are likely to be difficult to interpret.

Breaks for interpreters

Interpreting is demanding work; therefore, interpreters need to have regular breaks during proceedings. Judicial officers should:

- ✓ ask interpreters if they need a break every 45 minutes for spoken language interpreters, and every 20 minutes for signed language interpreters;
- ✓ encourage interpreters to always notify the court if they need a break at any time during the proceedings; and
- ✓ take into account the additional time needed when working with interpreters – it can take more than double the time to take evidence with an interpreter than would be required for that witness to give their evidence in English.

Conflict of interest

If a judicial officer becomes aware that an interpreter has a conflict of interest in the proceedings, they should permit the interpreter to withdraw from the proceedings if necessary and adjourn the proceedings until another interpreter can be found, or consider another appropriate way to address the conflict.

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, for example, exercising caution when judging the demeanour of the witness from the interpreter's answers.

FOLLOWING PROCEEDINGS

Debriefing interpreters

Ideally interpreters should have access to counselling or debriefing following proceedings, as interpreters may be vulnerable to vicarious trauma and secondary stress when interpreting sensitive or distressing material.

RECOMMENDED NATIONAL STANDARDS FOR WORKING WITH INTERPRETERS IN COURTS AND TRIBUNALS

The Judicial Council on Cultural Diversity (JCCD) developed the [Recommended National Standards for Working with Interpreters in Courts and Tribunals](#)² to establish recommended and optimal practices for Australian courts, with the aim of improving access to justice and procedural fairness.

Standard 17 provides extensive advice on conducting proceedings with interpreters – refer to pages 67-76 of the [Annotated Standards](#) for detailed advice.

Contact

For further information, please contact:

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Email: secretariat@jccd.org.au
Telephone: 02 6162 0361

² <http://jccd.org.au/wp-content/uploads/2017/11/Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals.pdf>

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Tandem interpreting

Tandem interpreting - is when two or more interpreters rotate at agreed intervals .

- This may occur to avoid fatigue, particularly in the case of sign interpreting.
- It can also avoid a perceived or actual advantage – where there are two parties needing interpreters in the same language.
- Having the interpreters interpret in tandem evens out any skill difference between the interpreters. Neither party is advantaged through a better interpreter.
- It also provides informal checks and balances on the interpretation. This occurs in a non adversarial fashion and reinforces the independence of the interpreter from the parties. No one ‘owns’ the interpreter.

Adversarial interpreting

Adversarial interpreting – where an interpreter is engaged to check the quality of another interpreter.

- This is discouraged.
- Challenges can be time consuming and undermining for the Tribunal and the interpreter.
- Suggestions for dealing with challenges are provided in the annotations to the Standards.

Relay interpreting

Relay interpreting - is another method involving more than one interpreter.

This requires one interpreter interpreting from language A to B and another interpreter interprets from B to C.

Language A – *interpreter* – Language B – *interpreter* – Language C

This is useful where a person speaks a dialect which is interpreted into a mainstream language and then from that language into English.

Or where a person uses a sign language other than Auslan – into a spoken language and from that spoken language into English.

Team interpreting

Team interpreting - when two or more interpreters are engaged to work together as a team to improve accuracy or fidelity.

- It is useful when a qualified interpreter is not available and a professional mentor is appointed to support an interpreter or bilingual of lesser competence.
- It is considered very appropriate for the languages in Tier D in the Standards – where there are no or few accredited interpreters in the language.

Briefing interpreters

Judicial officers should consider whether and to what extent interpreters should be briefed on the nature of a matter prior to the commencement of proceedings and, if so, give consideration as to the time which an interpreter may reasonably require to become familiar with the briefing material.

Briefing may include the provision of materials which may otherwise have required sight translation, subject to Standard 26.

Standard 17.2

Booking information to be provided to interpreters

Detailed booking and briefing information should be provided to interpreters, preferably through an online interpreters' portal (see Optimal Standard 4).

Ideally, a brief should be prepared for every case where an interpreter will be booked. The brief should be made available to the interpreter when booking their services, potentially through an interpreters' portal.

Any confidential documents that are provided to the interpreter as part of the brief must be returned to the court.

The following material should be provided on booking an interpreter:

- name(s) of parties;
- type of case;
- type of charge(s) or claim;
- type of appearance;
- major topics to be discussed (if known);
- list of technical or specialised terms likely to be used;
- address of the court;
- contact person on arrival;
- notice of requirement to produce evidence of their qualification(s) and accreditation;
- interpreter's Code of Conduct relevant to the court, including information on confidentiality;
- length of time for which the interpreter is booked.

The interpreting process

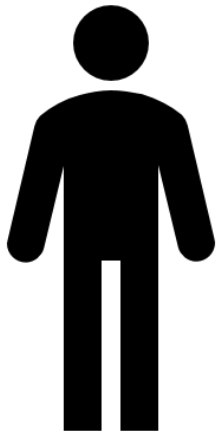
The interpreting process is complex and involves three main steps: **comprehension, conversion and delivery.**

Comprehension

The level of the interpreter's comprehension will depend on many factors, including:

- high level proficiency of the languages in all registers;
- knowledge of the subject matter;
- knowledge of the terminology; and
- knowledge of the context.

Situation 1

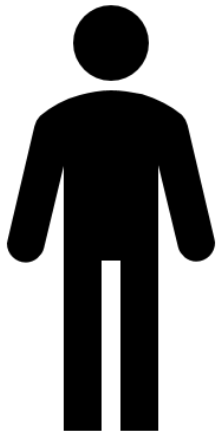


Jim arrives.

He appears to speak a language other than English.

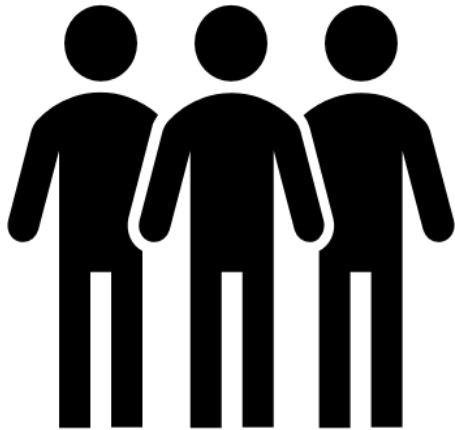
What do you do?

Situation 1, cont'd



- Assess the need for an interpreter.
- Determine the language required.
- Consider what type of interpreting will be appropriate.

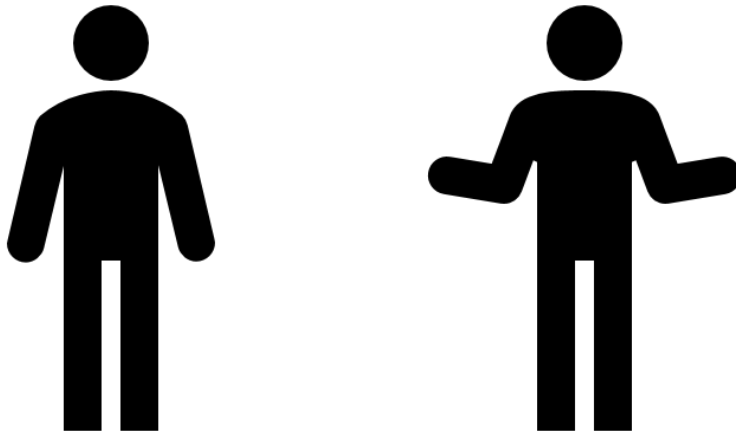
Situation 2



Jim brings a friend or family member.

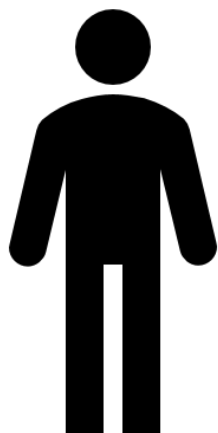
Can they be Jim's interpreter?

Situation 3



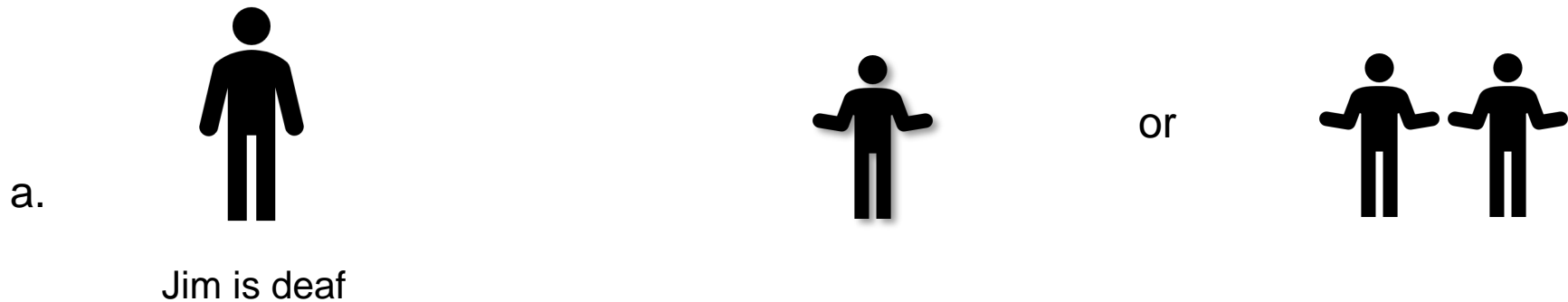
Jim and an interpreter are present. You have doubts about the competence of the interpreter.

Situation 4

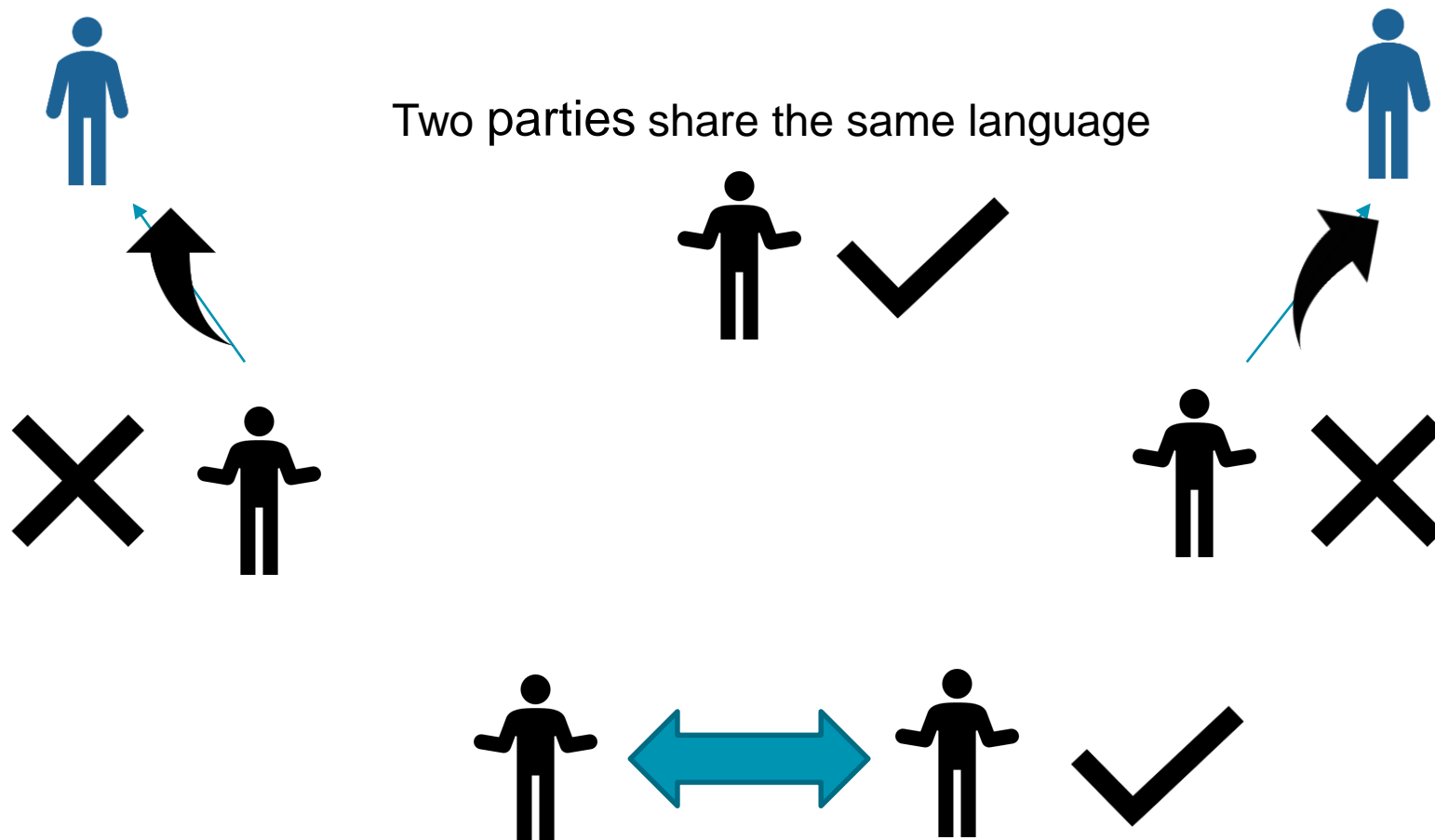


Jim says he doesn't want an interpreter.

Situation 5



Situation 6



Situation 7



A and B




B and C

a  A or B



 C

b  B

Adelaide Court highlights interpreter problems in revenge porn case

Examination in Chief and Cross Examination of the complainant in this matter was lengthy. The complainant gave evidence via an interpreter. Some of her answers were extremely lengthy and made under circumstances of mental distress. I could discern this myself, observing the witness in the witness box as expressed by her tone of voice and facial expressions, extreme distress from time to time and frustration.

I make no criticism of the interpreter who, I thought, was endeavouring to perform a very difficult job. I doubt, however, that the interpreter was able on a number of occasions to communicate/translate verbatim what was said by the complainant because of the extreme length of the answers she gave. It would have been impossible, in my view, for anyone to remember sentences as lengthy as those frequently given by the complainant in evidence and then to interpret them accurately.

Frequently the interpretation process means that a Judge is not able to get the flavour of what a witness is saying and assess its accuracy or the witness's truthfulness as easily as if the witness speaks the same language as the Judge.

From time to time the complainant appeared frustrated. I gained the feeling that she felt frustrated that she was not able to get her explanation across to the Court due to the intermediary of the interpreter.

I am prepared in a general sense to accept that the defendant was holding over the head of the complainant an ongoing sometimes expressed and otherwise implied threat to release the photographs.

I am prepared to find as much based on the appearance of genuineness and conviction expressed by the complainant in her evidence so far as I could discern it, given the intermediary of the interpreter.

Issue 1

Some of her *answers were extremely lengthy*.

I doubt, however, that the interpreter was able on a number of occasions to *communicate/translate verbatim* what was said by the complainant because of the extreme length of the answers she gave.

It would have been impossible, in my view, for anyone to remember sentences as lengthy as those frequently given by the complainant in evidence and then to interpret them accurately.

Issue 2

From time to time the complainant appeared frustrated.

I gained the feeling that she felt frustrated that she was not able to get her explanation across to the Court due to the intermediary of the interpreter.

Language choice

The following are the languages with the greatest number of speakers (data from the [CIA World Factbook](#)):^[1]

- [Persian](#) 53%
- [Azerbaijani](#) and other Turkic dialects 18%
- [Kurdish](#) 10%
- [Gilaki](#) and [Mazandarani](#) 7%
- [Luri](#) 6%
- [Arabic](#) 2%
- [Balochi](#) 2%
- Other languages comprise 1%, and include [Tati](#), [Talysh](#), [Georgian](#), [Armenian](#), [Circassian](#), [Assyrian](#), etc.
- Total population 75,149,669 (2012 census)^[6]

Official Name

Islamic Republic of Iran

Population Full

80,227,000 (2016 UNDESA)

Principal Languages

Iranian Persian

Literacy Rate

85% (2017 World Bank)

Immigrant Languages

Eastern Punjabi (34,000), Karakalpak (51,000), Tajik (84,000), Turkish (11,000), Urdu (84,000)

General References

Anonby 2016, Bulut 2014, Drower 1937, Oberling 1974, Schmitt 1989, Sebeok 1970, Stilo 1981, Windfuhr 2009

Deaf Population

3,978,100

Language Counts

The number of individual languages listed for Iran is 80. Of these, 79 are living and 1 is extinct. Of the living languages, 65 are indigenous and 14 are non-indigenous. Furthermore, 6 are institutional, 10 are developing, 22 are vigorous, 32 are in trouble, and 9 are dying.

From Ethnologue

Issue 3

I could discern this myself, observing the witness in the witness box as expressed by her tone of voice and facial expressions, extreme distress from time to time and frustration.

Issue 4

I have no doubt that a threat to release photographs of the complainant having sex with a man that was not her husband would have been distressing and a matter of shame for the complainant, especially in her community.

She is Iranian.

Summary

- Procedural fairness requires consideration of parties communication level in the language of the Tribunal – English
- An interpreter can improve communication in the hearing room
- There are insufficient qualified interpreters available to satisfy the need.
- Working with interpreters in a collaborative, efficient and flexible way can improve communication in the hearing room.