

Annexure A to the Language Services Guidelines of the District Court

**District Court of Western Australia
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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.¹ 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.

¹ Available online at: <http://www.ausit.org/eng/showpage.php3?id=650>.

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 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.