



Supreme Court of the Northern Territory

LAWYERS' GUIDE TO USING INTERPRETER SERVICES IN COURT PROCEEDINGS

1. Purpose of this Guide

- 1.1 The purpose of this Guide is to inform lawyers and other users of the Court about use of the services of an interpreter in or in relation to proceedings in the Supreme Court.
- 1.2 This Guide sets out the Court's expectations of lawyers and interpreters in relation to the use of the services of an interpreter.
- 1.3 This Guide also refers to what, generally speaking, the Court or a Judge might do in a proceeding involving the use of the services of an interpreter. This Guide does not operate to limit or direct the exercise of discretion by the Court or a Judge in any such proceeding.
- 1.4 This Guide is to be read in conjunction with Chapter 11 of the *Supreme Court Rules 1987* (NT), headed 'Interpreters' ('the Interpreter Rules').
- 1.5 This Guide is based on the Interpreter Protocols published by the Supreme Court and in effect from 2013 to 2025 and the Recommended National Standards for Working with Interpreters in Courts and Tribunals, 2nd Edition, published by the Judicial Council on Diversity and Inclusion ('Recommended National Standards').
- 1.6 In this Guide:

Court and **Judge** includes an Associate Judge and a Registrar who is conducting court proceedings;

party means any party to the proceedings, including the accused in a criminal matter;

witness means any witness called to give oral evidence in the proceedings, including the accused in a criminal matter if they give evidence.

2. Overarching principle: Proceedings must be conducted fairly

- 2.1 Fundamental principles of fairness and equity require that no person appearing before a Court should be disadvantaged in the proceedings

before the Court or in understanding the Court's procedures because of a language or other communication barrier.

2.2 Many residents of the Northern Territory, particularly but not exclusively Aboriginal people, do not speak English as their first language.

2.3 The provision of interpreters assists to ensure a fair trial to all parties.

2.4 In any case of doubt about whether a party or a witness requires an interpreter, the Court may determine whether an interpreter is required in accordance with the Interpreter Rules.

3. **Determining the need for an interpreter**

3.1 The four part test for determining the need for an interpreter set out in Annexure 4 to the Recommended National Standards is adopted as an appropriate process for determining whether a party or a witness requires an interpreter.

3.2 For ease of reference, that four part test is repeated here.

3.3 Part 1: Ask the party or witness about an interpreter

3.3.1 Explain the role of an interpreter and ask the party or witness, using an open question (then avoid reframing as a yes or no question if there is no response).

What do you think about asking an interpreter to help us?

What do you want to do?

3.3.2 If the party or witness:

- (a) indicates they would like an interpreter, stop the discussion and arrange for an interpreter to be present;
- (b) has difficulty answering this question, stop the discussion and arrange for an interpreter to be present;
- (c) indicates they do not want an interpreter, proceed to part 2.

3.4 Part 2: Assessing speaking ability – ask questions that require a narrative response

3.4.1 Ask the party or witness to speak to you in a narrative (story) form by asking open-ended background questions.

Tell me about ...?

What do you think will happen if ...?

For example, ask:

Tell me about any jobs or training that you have had?

Tell me everything that happened after the police arrived?

3.4.2 Avoid yes or no questions or questions that can be answered with one or two words.

For example, don't ask:

How long have you been staying in Alice Springs?

3.4.3 Include at least one question that seeks the party's or witness' thoughts or opinions.

For example, ask:

What do you think will happen to your children if you go to jail?

3.4.4 If the party or witness:

- (a) does not respond with anything more than a few words to the first few questions, make several further attempts at eliciting a longer response;
- (b) continues to respond with no more than a few words, it is likely they cannot express themselves adequately or confidently in English so stop the discussion and arrange for an interpreter to be present;
- (c) is able to give satisfactory or somewhat satisfactory responses, proceed to part 3.

3.5 Part 3: Assessing comprehension and speaking relevant to the context

3.5.1 Write down two sets of medium length sentences, using the style and some of the terms that the party or witness will encounter in the Court. Read each set to the party or witness and ask them to explain back to you what you just said.

Present the task in this way:

I need to tell you something important now, and then I will ask you to tell that story back to me. This way I can check that we understand each other. Are you ready?

Example 1:

Any suspect, defendant, victim or witness can ask for an interpreter, so that they can tell their story using their own language, and to make sure they understand everything people say.

Okay, now tell me back what I just said to you?

Example 2:

When a person is guilty, it means that a judge or jury decided that they broke the law. In court, 'guilty' has a different meaning from when people use the word outside of court. In court, 'guilty' does not mean that a person feels guilty. 'Guilty' means that the person broke the law. A judge can say that a defendant is guilty, even when the defendant does not feel guilty.

Can you tell me back what I said to you?

Example 3:

Bail is the law that decides if a defendant will wait in jail or if s/he will wait out of jail while waiting to come back to court. When a defendant gets bail, they will wait outside of jail for their court case. Bail is like this: The police or judge decide to let the defendant out of jail to wait for their court case. The defendant promises to come back to court at the right time for the court case, and to obey any other rules that are in the bail conditions. When a defendant does not get bail, they will wait in jail for their court case.

Can you tell me back what I said to you?

Example 4:

An oath is a promise. When a witness tells their story (gives evidence) in court, they must promise to tell the true story. To show that they will keep that promise, the witness might promise God that they will tell the true story in court. When they do that, their promise is called an oath. When a witness lies after they speak an oath, they are breaking the law and maybe the judge will punish them.

Okay, now tell me back what I just said to you?

Example 5:

An order is a law-paper that a judge writes for a person. There are rules (conditions) on the order that the person must obey. More information: The person will sign their name on that paper and that means they agree that they will obey the rules on the order. When a person does not obey an order from a judge, the person will go back to court and the judge might punish that person or give them a different order. In a sentencing order, the judge writes down all the rules the offender must obey as part of their punishment (sentence). There are other orders, like bail orders and domestic violence orders.

Can you tell me back what I just said to you?

3.6 Part 4: Assessing communication

3.6.1 Assess the party's or witness' response, and any other communication you have already had with them on the basis of the following:

	Likely to need an interpreter	Less likely to need an interpreter
Articulating back	The person has difficulty articulating back what you said to them.	The person is able to articulate meaningfully most of what you said to them, using their own words
Short or long answers	The person only speaks in short sentences (4-5 words or less) or mainly gives one word answers.	The person speaks in full sentences (6-7 words or more) and elaborates answers to questions.
Agrees or disagrees	The person consistently agrees with your questions or propositions.	The person is easily able to disagree and articulate a different point of view.
Inappropriate responses	The person frequently responds inappropriately to your comments or questions (eg, responding with 'yes' to 'what' or 'where' questions).	The person consistently responds meaningfully and appropriately to questions and comments.
Unsure of meaning	You are sometimes mystified as to what exactly the person is telling you even when the words and grammar they are using are clear to you.	You can process the person's speech clearly and understand what it is they are telling you.
Contradictions	The person appears to contradict themselves, and is unaware of the apparent contradictions.	The person does not contradict themselves, or if they do, they are aware of and can address the contradiction.
Uses new vocabulary	The person does not add significant amounts of new vocabulary to the conversation. They rely on using the words or	The person frequently adds new vocabulary to the conversation.

	phrases that you have previously said to them.	
Good grammar	The person does not use English grammatically, eg mixes up pronouns (uses 'he' instead of 'she'); uses the past tense incorrectly ('they look at me').	The person uses English grammatically.
Repeating and simplifying	You find yourself frequently needing to restate and simplify your utterances.	You can talk easily in a normal manner.

3.6.2 If two or more of the points in the 'likely to need an interpreter' column apply to the party or witness, it is advisable to work with an interpreter.

4. **Engaging an interpreter**

- 4.1 Interpreters are to be engaged by the relevant party in accordance with the Interpreter Rules.
- 4.2 Where interpreter services are required for a party in a trial, the party should consider engaging two interpreters to team interpret so that each interpreter can have timely breaks.
- 4.3 A party engaging an interpreter for a Court proceeding should provide as much notice as possible to the interpreter service. At least three to four weeks' notice is recommended.
- 4.4 A party engaging an interpreter for a Court proceeding should provide the interpreter service with any information of which they are aware to assist the interpreter service to select an interpreter in accordance with Section 5 below.
- 4.5 If an interpreter has been engaged for a hearing and the hearing is adjourned or cancelled, the party who engaged the interpreter should cancel or amend the booking as soon as practicable.
- 4.6 After the hearing, all parties are encouraged to provide feedback about the service provided by the interpreter to the relevant interpreter service.

5. **Selection of an interpreter by the interpreter service**

- 5.1 When a request for an interpreter to work in the Court is made, the interpreter service must ensure so far as practicable that the best interpreter available will be allocated for that work.

- 5.2 In making that determination, the interpreter service will consider the accreditation level of the interpreter and their experience in interpreting in Court proceedings.
- 5.3 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.
- 5.4 When an interpreter is assigned by the interpreter service and an interpreter assignment confirmation is completed, that confirmation should be provided to the party who engaged the interpreter prior to the hearing. The confirmation will include relevant information about the interpreter's qualifications, accreditation with NAATI (if relevant) and experience in interpreting, both generally and in legal matters.
- 5.5 The assigned interpreter should ensure that they have read and understand the Code of Conduct in accordance with the Interpreter Rules.
- 5.6 At the start of a hearing, the Court may ask the party who has engaged the interpreter, or the interpreter directly, about their acknowledgment of the Code of Conduct, their qualifications and experience and to be provided with the interpreter assignment confirmation.
- 5.7 If the Court has concerns about the interpreter's qualifications and experience, the Court may require a different interpreter to be engaged.

6. Briefing the interpreter

- 6.1 The party who has engaged the interpreter must provide the interpreter with sufficient information, and with sufficient time, to prepare for their task of interpreting.
- 6.2 Documents should be provided to the interpreter prior to the Court hearing. If it has not been possible to do so, any document not provided should be available to the interpreter at the Court hearing.
- 6.3 In any trial, the interpreter should be provided with:
 - 6.3.1 the names of the parties and a list of witnesses, so the interpreter can consider whether any of the disqualifying matters in r 96.06(2) of the Interpreter Rules apply to them;
 - 6.3.2 any glossary of technical terms (for example, legal, medical, scientific or other technical language) to be used in the proceedings;
 - 6.3.3 the names of the Judge and the Judge's Associate, particularly if the trial will be lengthy.
- 6.4 In a criminal case, the interpreter should be provided with the following:
 - 6.4.1 the indictment;

- 6.4.2 where the accused is pleading guilty, a statement of the agreed facts;
 - 6.4.3 any documents that will be shown to the witness or discussed in submissions (for example, photographs or maps);
 - 6.4.4 any witness statements or other documents that will be read to a witness or the Court;
 - 6.4.5 any character references, victim impact statements or other documents that will be read onto the transcript.
- 6.5 In a civil case, the interpreter should be provided with:
- 6.5.1 if the interpreter is interpreting for a party, the statement of claim and the defence;
 - 6.5.2 any documents that will be shown to the witness or discussed in submissions (for example, photographs or maps);
 - 6.5.3 any witness statements or other documents that will be read to a witness or the Court.

7. Methods of interpreting in Court

- 7.1 There are various different methods of interpreting that may be used in Court proceedings, namely:
- 7.1.1 consecutive interpreting – when the interpreter listens to a segment, may take notes while listening, and then interprets while the speaker pauses;
 - 7.1.2 simultaneous whispered interpreting – interpreting while listening to the source language that is being spoken and interpreting while listening to the ongoing statements, with the effect that the interpretation lags only a few seconds behind the speaker;
 - 7.1.3 simultaneous audio interpreting – when the interpreter speaks the interpretation into a microphone which provides an audio feed, via headphones, to the person requiring interpreting services;
 - 7.1.4 Auslan interpreting – uses both consecutive and simultaneous methods of interpretation, depending on the context and content of the material and the needs of the person requiring interpreting services;
 - 7.1.5 Sign language interpreting, Deaf Relay Interpreting, Deaf Indigenous Sign and other forms of sign interpreting (where Auslan is not the primary method used) may require a range of strategies and methods to be used by the interpreter, such as gesture or visual supports like drawings and maps;

7.1.6 summarising – when the interpreter gives a summary of dialogue that is not directed at the person requiring interpreting services, such as legal argument, discussions between counsel and the Judge about procedural or logistical matters;

7.1.7 language assistance – where the party or witness does not need interpreting services at all times, but may have difficulty from time to time with particular words, phrases or concepts and require limited interpreting services.

7.2 It is recommended that:

7.2.1 for the evidence of a witness, the consecutive interpreting method is used;

7.2.2 when there is direct speech to or from a party or witness, the consecutive interpreting method is used;

7.2.3 for the reading of charges, agreed facts, victim impact statements, character references or other documents onto the transcript, the consecutive interpreting method is used;

7.2.4 in relation to interpreting services for a party, for legal argument, objections, discussion about logistical or procedural matters, jury directions by the Judge or witness directions by the Judge and the evidence of witnesses, the whispered simultaneous interpreting method is used;

7.2.5 for persons who are deaf or hard of hearing, the simultaneous Auslan interpreting method or other sign interpreting (as appropriate) is used;

7.2.6 the language assistance interpreting method is not used.

7.3 Subject to any ruling or order of the Court, the interpreter may use the method of interpreting they consider to be most appropriate to the circumstances and their qualifications and experience.

8. Prioritisation of interpreter's services when interpreting for a party

8.1 When interpreting for a party, ideally, the interpreter should interpret everything said during Court proceedings.

8.2 Recognising that is not always possible or practicable, the interpreter should interpret what is said in Court proceedings in accordance with the following priorities:

8.2.1 The interpreter must interpret all direct speech to the party, including:

(a) charges;

- (b) sentencing remarks, including the sentence, or ex tempore decisions;
- (c) explanations from the Judge about adjournments and court processes;
- (d) questions to the party by the Judge or the other party or their lawyer; and
- (e) the conditions of bail, a suspended sentence or other order made by the Court.

8.2.2 The interpreter must interpret all speech specifically about the party, including:

- (a) the reading of agreed facts, victim impact statements, character references or other evidence about the party;
- (b) comments by the Judge or the other party or the party's lawyer about the party's character, such as their criminal history or prospects of rehabilitation.

8.2.3 The interpreter must interpret all examination and cross-examination of non-expert witnesses.

8.2.4 It is highly desirable that the interpreter interpret:

- (a) any proposed conditions or Court orders;
- (b) the Judge's directions to the jury.

8.2.5 The interpreter may summarise and interpret:

- (a) directions from a Judge or a lawyer to a witness;
- (b) objections made by a party, responses to objections and the Judge's decision;
- (c) examination and cross-examination of expert witnesses;
- (d) discussions between parties and the Court about logistical or procedural matters such as adjournments, service of evidence, length of the hearing, etc;
- (e) legal argument.

9. Lawyers' assistance to the interpreter

9.1 All lawyers appearing in the Court when interpreting services are being used should adapt their advocacy and speech to enable the interpreter to accurately interpret what they say. In particular, counsel should:

9.1.1 use plain English;

- 9.1.2 use short sentences and avoid complex questions or propositions;
 - 9.1.3 give the interpreter sufficient time to accurately interpret questions and answers or other speech;
 - 9.1.4 permit the interpreter to finish what they are interpreting before speaking;
 - 9.1.5 avoid speaking over other speakers;
 - 9.1.6 avoid questions in the form of negative assertions as they frequently give rise to mis-communication;
 - 9.1.7 avoid innuendo, figurative language and implicit accusations as they are difficult to interpret accurately;
 - 9.1.8 be explicit about which meaning is being used where a word has more than one meaning.
- 9.2 A lawyer acting for a person being sentenced by the Court using an interpreter should:
- 9.2.1 ensure the interpreter's engagement extends to the interpretation of the formal terms of the Court's sentencing order, including any conditions to which the person will be subject; and
 - 9.2.2 facilitate the interpreter's attendance in the Sheriff's Office, Registry or other designated area to enable the interpreting of the Court's order to the sentenced person.

10. **The Court's assistance to the interpreter**

- 10.1 Before an interpreter begins interpreting in the Court, the Court may:
- 10.1.1 ensure that the interpreter meets the requirements in r 96.06 of the Interpreter Rules; and
 - 10.1.2 administer the interpreter's oath.
- 10.2 If the Court is not satisfied that the interpreter has been properly briefed, the Court may direct the relevant party to do so, and may adjourn the proceedings for that to occur.
- 10.3 If the interpreter informs the Court that an introductory conversation with the person for whom they are interpreting is required, the Court may ensure arrangements are made for that to occur.
- 10.4 In the court room, the interpreter should have:
- 10.4.1 a place to sit with sufficient room to take notes;
 - 10.4.2 a microphone;

- 10.4.3 a clear view of, and no difficulty hearing (with headphones if required), all persons who will be speaking;
- 10.4.4 water;
- 10.4.5 some visible means of identifying them as a court interpreter.
- 10.5 The Court may inform the interpreter how to get the Judge's attention if necessary.
- 10.6 The Court may ensure the interpreter is given regular and timely breaks, and encourage the interpreter to ask for a break if they need one.
- 10.7 The Court may ensure that:
 - 10.7.1 all speech in the Court is at a speed and with appropriate pauses, and does not overlap, such as to facilitate the interpreting service being provided; and
 - 10.7.2 the interpreter has finished interpreting before another person speaks.
- 10.8 Recognising that seeking clarification by an interpreter is usually a sign of an experienced and competent interpreter:
 - 10.8.1 the Court may encourage the interpreter to seek clarification of unclear, technical or ambiguous speech;
 - 10.8.2 the Court may, if appropriate, encourage the interpreter to use dictionaries or glossaries (whether via the internet or otherwise), and give the interpreter time to use them if required;
 - 10.8.3 no suggestion may be made in the Court to the effect that, if the interpreter seeks clarification, they are hindering the proceedings or are in any way incompetent.
- 10.9 The Court may consult the interpreter and provide direction to the interpreter about what speech must be interpreted and what speech can be summarised or need not be interpreted. In particular, the Court may:
 - 10.9.1 if the speech (eg, legal argument) would not ordinarily be understood by the average English first language speaker, direct the interpreter that it need not be interpreted; or
 - 10.9.2 provide the interpreter with a brief summary of the speech which is to be interpreted.
- 10.10 If the interpreter is interpreting in a jury trial, at the start of the proceedings, or at another more appropriate time, the Court may introduce the interpreter and explain their role to the jury. The form of the introduction is a matter for the Court. For example:

Today we are assisted by [name of interpreter], an interpreter with the [name of interpreter service], who will be interpreting between the [name of relevant language] and English languages.

The interpreter is bound by a Code of Conduct that requires the interpreter to interpret impartially and accurately. This means the interpreter does not take sides and does not change the meaning of what is said.

The interpreter plays an important role by making sure that the accused or witnesses are not disadvantaged because they do not speak English as their first language.

Interpreting between English and [name of relevant language] is a difficult task. Often, English words do not have an exact match in [name of language]. In addition, many English legal terms must be unpacked and explained in [name of language]. The same may be true when interpreting [name of language] concepts and terms into English. From time to time you may notice that the interpretation is longer than the original statement or question. You should not take this as an indication that the interpreter is adding in words or changing the original meaning. Explaining and unpacking difficult terms or ideas is part of accurate interpreting.

Mr/Ms Interpreter, if I or anyone else in the Court uses words that are unclear, please stop the proceedings and seek clarification. You can stop the 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'.

I thank you for your assistance today.

- 10.11 If team interpreting is being used in the trial, the Court may also add the following information for the jury:

Legal interpreting is a demanding task. From time to time you will see the interpreters change. This is done to ensure that the interpreters do not become mentally tired or lose concentration.

- 10.12 If the interpreter is interpreting for a witness, the Judge may explain the role of the interpreter to the witness. The form of the explanation is a matter for the Court. For example:

The person sitting next to you is an interpreter. Their job is to interpret everything the lawyers and I say to you in your language, and to interpret everything that you say into English.

Please give your answers in short sections so the interpreter can 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.

10.13 If an interpreter is engaged to interpret for a person being sentenced by the Court:

10.13.1 the engagement should extend to the interpretation of the formal terms of the Court's sentencing order, including any conditions to which the person will be subject;

10.13.2 the interpreter should attend the Sheriff's Office, Registry or other designated area to interpret the Court's formal order to the sentenced person.

11. The interpreter's assistance to the Court

11.1 The interpreter should:

11.1.1 prior to the hearing, familiarise themselves with the information with which they have been briefed; and

11.1.2 arrive at Court before the commencement of the proceedings with sufficient time to ensure they are ready to perform the interpreting services for which they are engaged.

11.2 If the interpreter requires an introductory conversation with the person for whom they are interpreting to fulfil the interpreter's duty of accuracy, the interpreter should tell the party who engaged them, or the Judge (if Court is in session) or the court officer or Judge's Associate.

11.3 Consistently with the interpreter's duty of accuracy, the interpreter should:

11.3.1 acknowledge and promptly correct any interpreting mistake and the consequences of the mistake, for example:

Your Honour, I think there may have been a mistake.

The mistake was ...

11.3.2 seek clarification of any unclear, technical or ambiguous speech by, for example, asking for speech to be repeated, rephrased or explained;

11.3.3 if interpreting for a witness who seeks clarification of the meaning of speech being interpreted to them:

(a) interpret for the Court the witness' request for clarification;

(b) if a conversation between the interpreter and the witness is required to ensure accuracy, advise the Court of this before having that conversation;

- (c) subject to any direction or clarification by the Court, tell the Court in English what the interpreter's response to the request for clarification will be;
- (c) interpret the interpreter's response for the witness in the witness' language;

11.3.4 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 the receptor language:

- (a) inform the Court of the difficulty;
- (b) assist counsel or the Court to reformulate the question or statement in a way that can be accurately interpreted.
