

21. Interpreters in Criminal Proceedings

21.1 Legislation

[Last reviewed: October 2024]

Criminal Practice Rules 1999 (Qld)

[Chapter 11, Part 2](#) commencing at Rule 54AA - Interpreters

[Schedule 5A](#) - Code of Conduct for Interpreters

Evidence Act 1977 (Qld)

[Section 131A](#) - Court may order interpreter to be provided

Youth Justices Act 1992 (Qld)

[Section 72](#) – Explanation of proceeding

[Section 158](#) – Children entitled to explanation of sentence

Domestic and Family Violence Protection Act 2012 (Qld)

[Section 84](#) – Court to ensure respondent and aggrieved understand domestic violence order

Mental Health Act 2016 (Qld)

[Section 5](#) – Principles for persons with mental illness

Oaths Act 1867 (Qld)

[Section 27](#) – Interpreters' oath in civil causes on the voire dire

[Section 28](#) – Interpreters' oath for the arraignment – to interpret between prisoner and others

[Section 29](#) – Interpreters' oath to interpret between a prisoner, defendant or witness and others

[Section 30](#) – Where witness and prisoner are of different languages – first interpreter's oaths

21.2 Commentary

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In 2017, the [Judicial Council on Cultural Diversity](#) published Recommended National Standards for Working with Interpreters in Courts and Tribunals (the [JCCD](#))

[Standards](#)). In 2022, the [second edition](#) of the JCCD Standards was published. Many of the Standards have been adopted and implemented in Queensland in Chapter 11, Part 2 of the *Criminal Practice Rules 1999* (commencing at r 54AAA) and Chapter 11, Part 6 of the *Uniform Civil Procedure Rules 1999* (commencing at r 429VA). In this Chapter of the Benchbook, reference is made only to the *Criminal Practice Rules*.

Section 131A of the *Evidence Act 177* (Qld) provides the court with a discretion to order an interpreter for a complainant, defendant or witness, if the interests of justice so require. One such instance is where the absence of an interpreter will result in an unfair trial: see: *Ebataninja v Deland* [1998] HCA 62; [\(1998\) 194 CLR 444](#), 454 [26]-[27].

A fair trial requires the jury to be able to hear and understand a witness's evidence and the defendant to hear and understand a witness's evidence: see also *Johnson v The Queen* [\(1987\) 25 A Crim R 433](#).

For a case where the absence of an interpreter compromised the fairness of the trial: see *R v TAN* [\[2020\] QCA 64](#).

Under the *Criminal Practice Rules*, if the court is satisfied that a defendant in a proceeding cannot understand and speak the English language sufficiently to enable the defendant to (a) understand and participate in the proceeding; or (b) understand, and make adequate reply to, questions that may be put to the defendant in the proceeding, the court must ensure that the accused person is provided with an interpreter: r 54AD(1) and (2). In this circumstance, the court is responsible for engaging and bearing the costs of the interpreter: see r 54AD(3). When an interpreter is required for a witness, unless the court orders otherwise, the party calling the witness is responsible for engaging and bearing the costs of an interpreter: see r 54AE.

Other statutes that make express provision for interpreters in particular types of proceedings have been listed under the heading, 'Legislation' above (ss 72 and 158 of the Youth Justices Act, s 84 of the Domestic and Family Violence Protection Act and s 5 of the Mental Health Act).

For a further discussion of the law on interpreters in the legal system, see the [JCCD Standards \(2nd ed\)](#) at pp 75-86.

Ordinarily, the need for an interpreter will have been identified by the legal representatives before the trial or sentencing hearing commences. As to the timing of any application for the appointment of an interpreter, see [Supreme Court Practice Direction 4 of 2024](#). But if the need for an interpreter only arises during the proceedings, the judge should raise the matter with the legal representatives and ensure that they are aware of Chapter 11, Part 2 of the *Criminal Practice Rules*.

As to who may act as an interpreter generally see r 54AF of the *Criminal Practice Rules*, and r 54AG as to when the court may grant leave for a person to act as an interpreter, even if they do not fall within r 54AF.

The relevant Australian national standards and certifying authority for interpreters and translators is the National Accreditation Authority for Translators and Interpreters (NAATI). NAATI is the only officially accepted qualification for interpreters and translators in Australia.

Interpreting and translating are distinct qualifications and skills, although a person may be certified as both. See the definitions in the [JCCD Standards \(2nd ed\)](#) (at pp 11-12) where the word ‘interpret’ is defined to mean ‘the process whereby spoken or signed language is conveyed from one language (the source language) to another (the target language) orally’; and ‘translate’ is defined to mean ‘the process whereby written language is conveyed from one language (the source language) to another (the target language) in the written form’.

A high level of skill is required for interpreting and more than a person being bilingual and fluent in the spoken language and English is necessary. For a useful discussion of the skills required of an interpreter, see [JCCD Standards \(2nd ed\)](#) at pp 67-68 and 88-91. See also *DV016 v Minister for Immigration and Border Protection & Anor* [2021] HCA 12, [4]–[5].

Modes of interpreting

Interpreting can be performed using different modes, including the following (as described in the [JCCD Standards \(2nd ed\)](#) at pp 67-68 and 88-91):

- Consecutive interpreting: when a non–English speaker gives evidence, the most common mode of interpreting in Australian courts is the consecutive mode. The interpreter stands or sits (depending on the length of the testimony) next to the witness and interprets after each short segment. Trained interpreters will know how to take notes and how to coordinate the turns and will commence interpreting at the appropriate intervals. However, there will be interpreters who are not as competent and may not know how to take notes or are not as confident and may be reluctant to interrupt. Consequently, their interpretation may not contain all the elements of the original. For this reason, the judge must be alert to ensure that speakers stop at reasonable intervals to allow the interpreter to interpret. It is noted in the [JCCD Standards \(2nd ed\)](#) (for example, at p 30) that where evidence is to be given through an interpreter using the consecutive mode, a party should generally allow 2.5 hours for every hour that would have been estimated if the evidence was being given in English without an interpreter.
- Simultaneous interpreting: a mode of interpreting where the interpreter listens to the speech and interprets at the same time, with only a small lag between the source message and the interpretation in the target language. Interpreters interpret evidence given by other witnesses as well as any discussions or legal arguments to the defendant in the simultaneous mode. In Australia, interpreters usually perform simultaneous interpreting whispering while standing or sitting very close to the person. This is known as ‘chuchotage’ or

‘whispered interpreting’. Auslan interpreters generally work in simultaneous mode throughout the proceedings.

- Tandem interpreting: involves interpreters working in rotation at agreed intervals to avoid fatigue over extended periods of time. Paragraph 8.5 of the Guideline provides that ‘[w]here Auslan interpreters are engaged to work with a deaf party or witness, they should work in tandem with two (or more) interpreters, given the simultaneous mode of their work and risk of occupational injury’.

In a long trial where simultaneous interpreting is being provided, the Court may consider in the interests of the efficient running of the trial that more than one interpreter is necessary. But whether such an order is appropriate may depend on practicalities such as availability and cost.

Equipment available

To address security or cultural concerns identified by a Court and to facilitate ease of hearing for the interpreter, Queensland Courts recently and successfully trialled a technical solution to enable an in-court interpreter to be located outside the dock, away from a party requiring interpreting services. See the attached [brochure for information about this trial](#).

Other relevant links:

- [Form to hire the equipment if it is not available](#)
- [Information on the equipment, process and sites](#)
- [General Interpreter Hub page](#)

Checklists

A checklist of matters to assist judges presiding over criminal proceedings in which an interpreter is involved is contained at Appendix A to this Chapter.

Where a witness or defendant appears via video link, assistance may be gained from the information in annexure 6 to the [JCCD Standards \(2nd ed\)](#).

Explaining the role of the interpreter

The following are the key considerations to bear in mind with respect to the role of the interpreter which the judge may consider appropriate to outline at the commencement of a hearing.

Interpreters owe to the court paramount duties of accuracy and impartiality in the office of interpreter, which override any duty that person may have to any party to the proceedings, even if the interpreter is engaged directly by that party. See r 54AH of the *Criminal Practice Rules*.

It is the duty of the interpreter to diligently and impartially interpret communications in connection with a court proceeding as accurately and completely as possible. The role of the interpreter is to interpret everything accurately and impartially, as if they were the voice of the person speaking.

It is not the role of the interpreter to advocate for a witness or party, try to explain a concept or question, or try to explain or adapt an answer which is given. If a need for clarification or explanation arises, the interpreter should say: 'Your Honour, I am now speaking as the interpreter. I have a difficulty I would like to raise with you.'

In directing questions to the person being interpreted, the questioner should frame questions directly to the person NOT to the interpreter. The judge should ensure counsel's questioning follows that format. For example: 'What did you do next' and not 'What did he do next' or 'Ask him what he did next'. The interpreter should also respond in direct speech. That is 'I did that' and not 'He did that'.

These general rules of interpreting should also be explained (interpreted) to the witness so that the witness also responds directly (see the second sample direction below).

The judge should ensure that questioning is in plain English and is slow and short enough for the interpreter to do their job as well as possible. This may require intervention to stop excessively long questions or to require rephrasing.

Interpreters should not be expected to undertake the role of an expert in cultural matters. Such matters exceed an interpreter's expertise. Those matters should be addressed by counsel and may require expert evidence.

Where two interpreters are being used (one for a witness and one for a defendant), disputes may arise in a matter of interpretation. These should be dealt with in the absence of the jury with perhaps the necessity of evidence on a voir dire being heard.

Cultural assumptions, stereotypes, and subconscious bias

A premise of our legal system is that juries are well-equipped for the task of judging human behaviour. This task may pose challenges in the context of defendants, complainants, or witnesses from culturally and linguistically diverse backgrounds. Cultural norms may impact on a jury's assessment of credibility and there is the risk of the jury misunderstanding demeanour because of cultural difference. The defendant or witness may belong to a culture or race which has a negative image or stereotype in some parts of the community. There is a risk of negative bias or that prejudice or assumptions may intrude in the jury's fact-finding. A trial judge might consider it appropriate to enable the jury to be aware of the limitations of their knowledge and to guard against subconscious biases. If this is to be done, it would be appropriate to canvass the terms of any proposed direction with counsel in advance. An example is set out in the sample five direction below.

Useful guidance in relation to drafting jury directions to counter cultural assumptions, stereotypes and cultural bias may also be found here:

- Judicial Commission of NSW, *Equality before the Law Bench Book*, 2020, [Aboriginal people](#) [2.1] – [2.5] and for [sample jury directions see \[2.3.7\]](#);
- Judicial Commission of NSW, *Equality before the Law Bench Book*, 2020, [People from culturally and linguistically diverse backgrounds](#) [3.1] – [3.5] and for [sample jury directions see \[3.3.7\]](#);
- Judicial Commission of NSW, *Criminal Trial Courts Bench Book*, 2021, [Witnesses – Cultural and linguistic factors](#) at [1.900] – [1.910];
- Australian Institute of Judicial Administration (AIJA), [Aboriginal Benchbook for Western Australia Courts \(2nd ed\)](#), CH. 5 (in particular, [sections 5.3 and 5.4](#));
- Supreme Court of Queensland, [Equal Treatment Benchbook \(2nd edition\)](#) - has useful jury directions for cases involving speakers of Aboriginal English and Torres Strait Creole in appendix C (which starts on p 194) covering language, cultural differences and demeanour;
- Supreme Court of Western Australia, *Equal Justice Bench Book* (2nd edition), 2017: [Ch 1: Equal Justice](#); [Ch 7: People from Culturally and Linguistically Diverse Backgrounds](#).

21.3 Suggested Directions

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Sample One: At commencement of trial – where interpreter for defendant

(To the jury): **Today we are assisted by [name of interpreter], an interpreter who will be interpreting between the English language and [name of language] for the defendant.**

The interpreter’s role is to interpret everything said in court for the defendant, who does not speak English [or does not speak English well enough to properly understand and participate in this proceeding]. The interpreter plays an important role by removing the language barrier in order for the defendant to fully understand and participate in the court proceedings.

The interpreter has a duty to interpret accurately and impartially. The interpreter does not take sides and has confirmed that they will follow the Court’s Code of Conduct for Interpreters. (If appropriate, add the following): the interpreter is sitting next to the defendant so they can hear them. The interpreter is not part of the defence team.

The interpreter has made a formal promise to the Court, in the form of an [oath/affirmation], to convey accurately the meaning of what is said from one language to the other.

It may be that from time to time the interpreter has an issue they wish to raise. If that occurs, I may need to deal with that in your absence.

Sample Two: Where interpreter for a defendant or witness giving evidence

(Note: this direction may be given just before the evidence of a witness/defendant who is giving evidence).

(To the jury): Today we are assisted by [name of interpreter], an interpreter who will be interpreting between the English language and [name of language] for the witness, [name].

The interpreter's role is to interpret everything said to the witness, and by the witness, accurately and impartially, as if they were the voice of the person speaking.

The interpreter has a duty to interpret accurately and impartially. The interpreter does not take sides and has confirmed that [she/he] will follow the Court's Code of Conduct for Interpreters. The interpreter has made a formal promise to the Court, in the form of an [oath/affirmation], to convey accurately the meaning of what is said from one language to the other.

The evidence you are to consider is that provided through the interpreter. Although some of you may know the non-English language used, all jurors should consider the same evidence. Therefore, you must base your decision on the evidence presented through the interpreter. You must disregard any other meaning of the non-English words, such as may be based on your own understanding of the language.

You should not make any assumptions about a witness or a party based solely on the use of an interpreter to assist the witness or party. (Where a defendant is giving evidence through an interpreter, the judge might also say something along the lines of 'you should not allow any sympathy or prejudice, because of the use of an interpreter, to intrude upon your deliberations about the matter'). You must deal with this evidence, and evaluate the evidence, in the same way you would if the person was speaking directly, without an interpreter.

The process will be that questions will be put directly to the witness through the interpreter and the responses will also be given in direct speech. The questions and answers will not be framed in the third person. For example, the question would be 'What did you do next' and not 'What did he do next'. The response from the interpreter would be 'I did this' not 'He did this'.

(To the witness): This person is an interpreter. Their job is to interpret everything that the lawyers and I say to you in your language, and to interpret everything

you say into English. The interpreter cannot add anything to what you say or leave anything out. 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 to answer your questions. If you have a question, ask me directly and the interpreter will interpret your question to me.

Sample Three: Where the interpreter for a defendant or witness, who has some proficiency in English, is giving evidence

(Note: there may be cases where there is a legitimate concern that the jury may consider that a witness' or a defendant's grasp of English is such that in giving evidence she/he does not really 'need' an interpreter, potentially giving rise to a perception of an unfair advantage. In this case, the judge might think it is appropriate to add a comment effectively giving curial approval to the provision of an interpreter, by adding the following (perhaps after the second paragraph above ending with 'person speaking')):

Even when a witness has a good grasp of English, it is often considered best that the witness gives evidence in their own language. This is so their evidence is not restricted to the English words they know. It is the Court's experience and well understood that even witnesses who are quite fluent in English as a second language can be disadvantaged when giving evidence in the formality of the court room.

Sample Four: Where it is necessary for a tape recording of a conversation in a language other than English to be played to the jury with a transcript in English being provided

(Note: in such a case, the usual warning about the conversation being the evidence and not the transcript becomes meaningless. A suggested direction would be):

(To the jury): You are about to listen to a recording in a language other than English. Each of you has been provided with a transcript of the recording, which has been admitted into evidence. The transcript is a translation of the foreign language recording.

Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must accept the English translation contained in the transcript and disregard any different meaning of the non-English words.

Sample Five: Where, during the summing up, a direction is needed on how to evaluate the evidence of a witness given through an interpreter.

(A suggested direction as elicited from page 61 of the [JCCD Standards \(2nd ed\)](#) is as follows):

There are dangers in attempting to assess the truthfulness of a witness by reference to their body language or demeanour where different cultural backgrounds are involved. This problem may be exacerbated even more when evidence is given through an interpreter.

Judging the demeanour of the witness from the tone of the interpreter's answers may be unreliable. Judging the demeanour of the witness from the witness' own answers in a foreign language requires a high degree of familiarity with that language and of the cultural background of its speakers. If a witness' answers appear to be unresponsive, incoherent or inconsistent, and appear to lack candour, this may be due to the difficulty of interpreting concepts from one language to another.

Nevertheless, the trial process does involve you in assessing the witness' reliability and truthfulness notwithstanding that the witness has given evidence in a foreign language.

Appendix A

Checklist

1	Identify the Interpreter
<p>If the court has not already been provided with the following information, the judge should, in open court, ask the interpreter:</p> <ul style="list-style-type: none">• Their full name.• Their formal qualifications, in particular their level of NAATI certification.• Their Membership of a professional interpreting association body (for example, AUSIT).• The language they are interpreting from (source language).• Their experience interpreting generally and particularly in the context of a court proceeding.• Whether they have met the defendant/accused/witness for whom they are to interpret and whether they can understand each other.• (If necessary, particularly in a hearing involving expert evidence), whether the interpreter is familiar, in a general sense, with the likely content of the evidence to be called at the hearing, and whether the nature of the content poses any difficulty for their interpretation.	
2	Ensure familiarity with Rule 54AH and agreement to comply with the Code of Conduct for Interpreters
<p>The judge should confirm that:</p> <ul style="list-style-type: none">• The interpreter has been provided with and has read rule 54AH (duties of interpreter) and the Code of Conduct for Interpreters, set out in schedule 5A to the <i>Criminal Practice Rules</i>.• The interpreter agrees to comply with the Code of Conduct for Interpreters.	

- The Code of Conduct for Interpreters (at paragraph 8) includes an obligation on the interpreter to keep confidential all information which the interpreter acquires during their engagement or appointment in the office of interpreter.
- The legal practitioners are familiar with the relevant provisions of the *Criminal Practice Rules* including the need to speak plainly and at an appropriate speed to assist the interpreter.

3 Ensure the interpreter is sworn, where appropriate

Depending on a judge's preference, if the hearing is simply a procedural hearing it may not be necessary for the interpreter to be sworn/affirmed.

If an interpreter wishes to take an oath on a religious text other than the bible, ensure that the relevant text is available, if practicable: otherwise see section 39 and 40 of the *Oaths Act* 1867.

Subject to the legislation, interpreters should be sworn for most other proceedings such as bail, interlocutory proceedings, arraignment, sentencing hearing, or trial.

4 Ensure there are appropriate and adequate physical working conditions

The judge's associate, with the assistance of the bailiff, should ensure the interpreter has been provided with appropriate and adequate physical working conditions – for example, subject to the logistics of the particular court:

- A place to wait and work until called.
- A table and chair in an appropriate position in the court room, where they can see and hear all participants – and where best suits the purpose of their interpretation (for example either close to a witness or a party).
- Any necessary equipment (such as headphones), subject to availability; and
- Access to wireless internet services, to enable the interpreter to use online resources such as dictionaries.
- Water, and a place to leave their belongings.

The interpreter should be asked if they would be assisted by provision of a headset (such as is commonly provided to a juror requiring hearing assistance), or access to a hearing loop in the court where there is one, to facilitate hearing what is said in the court room with ease.

5 Determine whether and to what extent the interpreter should be briefed

The judge ought to consider the following matters.

- Should the interpreter be briefed on the nature of the matter prior to the proceedings commencing, and to what extent?
- How much time should be given to the interpreter to become familiar with the briefing materials?
- If the matter involves material which might be considered intimate, vulgar or offensive, ensure that the interpreter is aware of the nature of the material likely to require interpretation; and the necessity for them to interpret the material regardless. Ensure that the interpreter has no difficulty (cultural or otherwise) interpreting material of that nature.
- If the matter is likely to involve questioning about a document; ensure that the interpreter has a copy of the document or will be given a copy of the document at a relevant time.

6 Use of plain English and appropriate pace of speaking

- Judicial officers and legal practitioners should use plain English to communicate clearly and articulately during court proceedings.
- Judicial officers and legal practitioners should speak at an appropriate pace, and with appropriate pauses, to facilitate the discharge by the interpreter of her or his duty to interpret accurately.
- Judicial officers may need to direct witnesses to use plain English or speak at an appropriate pace.

7 Regular breaks

Interpreting requires a high level of concentration. Regular breaks will be required (generally, every 45 minutes for spoken language interpreters, and every 20 minutes for signed language interpreters).

Judicial officers should check with the interpreter how frequently they would like to take a break, and that they should feel free to request a break at any time.

Associates should keep an eye on the time and remind the judge (in a subtle way) when a break may be required.

8 Encourage the interpreter to ask for assistance if required

At the commencement of any proceeding, the judge should ask the interpreter to alert the Court and interrupt the proceedings [*by saying “Your Honour, I am now speaking as the interpreter, I would like a break or I require assistance because...”*] if they:

- Become aware they may have a conflict of interest in the proceedings.
- Cannot interpret the question or answer for any reason.
- Did not accurately hear what was said.
- Need to correct an error that they have made.
- Need to consult a dictionary or other reference material.
- Need a concept or term explained.
- Are unable to keep up with the evidence.
- Need a break.