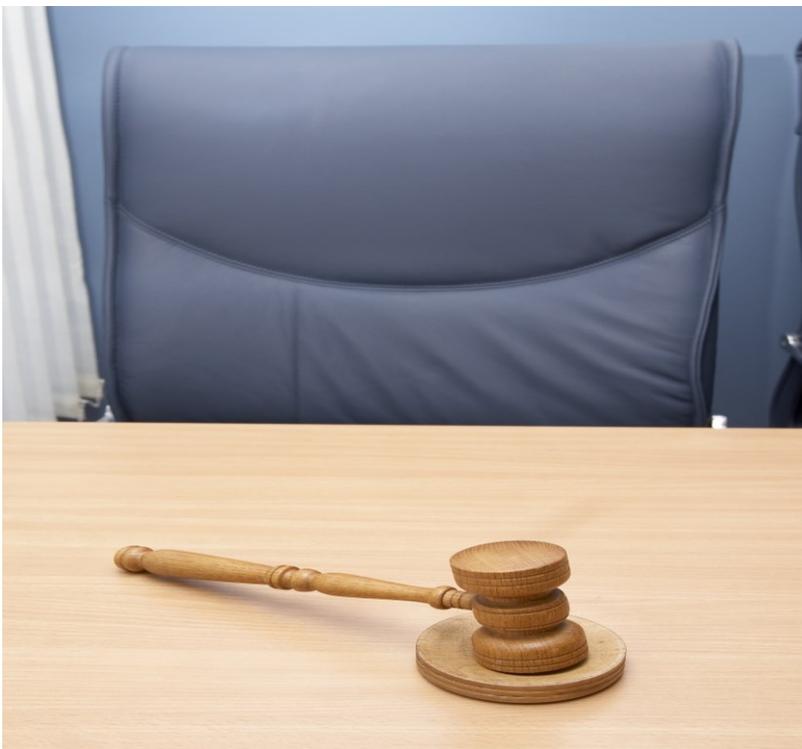


Discussion Paper

Dealing with linguistic diversity in courts and tribunals



Accessing Interpreters 
QUEENSLAND ACCESSING INTERPRETERS WORKING GROUP

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About the Queensland Accessing Interpreters Working Group

The Queensland Accessing Interpreters Working Group (QAIWG) is made up of a number of non-government organisations concerned with equitable service provision for people from culturally and linguistically diverse communities in Queensland. The working group has released several position papers and reports since 2008 drawing on key stakeholders from the community, social services sector and language services industry. It has provided significant input to the development and review of the Queensland Government's Language Services Policy and continues to undertake work to improve the delivery of quality language services in Queensland.

QAIWG is made up of representatives from:

- Amparo Advocacy
- Centacare, Cairns
- Immigrant Women's Support Service
- Mater Health Services
- MDA
- NAATI, Queensland Manager (advisory role)
- Nambour Community Centre
- Queensland Council of Social Service (QCOSS)

Introduction

One in five Queenslanders are born overseas, more than a third are either overseas born or have at least one parent born overseas, Queenslanders speak more than 220 languages and approximately one in 10 speaks a language other than English at home. Overseas migration continues to be the largest contributor to the state's growing population. In 2013-14, Queensland received 10,610 permanent settlers from countries where English is a second language. From 2011 to June 2014, almost 7000 new humanitarian entrants have settled in the state. (Department of Immigration and Border Protection, 2014).



Queensland is also home to an estimated 203,000 persons of Aboriginal and Torres Strait Islander backgrounds, with many residing in regional and remote communities where they retain their own language.

Taking all this into the context of Australia's justice system provides a unique and challenging environment dealing frequently with cross-cultural issues.

How do the courts respond when the main language and culture of defendants, victims and witnesses are not of the dominant culture? This is a question of equal access to the law for Australians of non-English speaking backgrounds. The responsiveness of courts and tribunals to culturally and linguistically diverse communities is a measure of a society's commitment to equality before the law.

“If access to English is an issue then there is no access to justice.”

Cairns Magistrate

Source: Lauchs 2010

Policies for engaging interpreters in Queensland courts and tribunals

While the Queensland Government's *Language Services Policy and Guidelines 2014* does not apply to the courts, the Queensland courts have in place a number of practice directives and procedures in relation to the engagement of interpreters.

There are three key practice directives to streamline the process of engaging an interpreter in criminal proceedings:

- Magistrates Court Practice Direction No. 7 of 2010 issued by Chief Magistrate Judge Butler
- District Court of Queensland Practice Direction 1 of 2010 issued by Chief Judge PM Wolfe
- Supreme Court of Queensland Practice Direction 3 issued by Chief Judge Paul de Jersey

Under these practice directions, engagement of interpreters occurs when ordered by the judicial officer and when the matter has been listed. The cost is incurred by the party calling the witness or giving evidence unless the court is satisfied that the interests of justice require that an interpreter be appointed.

The Queensland Supreme Court's *Equal Treatment Benchbook, 2005*, provides information on dealing with racial, ethnic, linguistic and religious diversity in the courts. It also contains detailed information on the use of interpreters in civil and criminal courts.

As Domestic Violence Court falls under civil jurisdiction, the practice directives do not apply to hearings for Domestic Violence Order applications. Interpreter use for Domestic Violence Court is covered by the *Domestic and Family Protection Act (2012)*.

More recently in 2015, the report of the Queensland Taskforce on Domestic and Family Violence (*Not now, not ever*) made a number of recommendations to strengthen the use of interpreters by police and in the criminal and civil courts. These are listed in the following table.

(113) The Queensland Police Service strengthens policy and guideline documents to ensure the use of interpreters for victims of domestic and family violence and their families, where required.

(114) The Queensland Police Service and the Department of Justice and Attorney-General ensure that applicants, including police and private, for a protection order or a variation of a protection order, have indicated either "yes" or "no" to interpreter requirements on each application filed.

(115) The Chief Magistrate issues a practice direction to require the court to engage an interpreter, where a party has difficulty communicating in English, at the first mention for all domestic and family violence civil proceedings before the Magistrates Court.

(116) The Department of Justice and Attorney-General identifies opportunities to streamline systems for engagement of interpreters for civil domestic and family violence court proceedings to ensure best practice.

It is important to note that the Queensland Police Service, the Department of Justice and Attorney-General and tribunals such as the Queensland Civil and Administrative Tribunal (QCAT) must operate under the Queensland Government's *Language Services Policy*.

The importance of using credentialed and trained interpreters

It is essential that courts use only credentialed and trained court interpreters given the demands of interpreting in a legal context. Professor Hale, an expert in court interpreting, has published widely on the challenges of court interpreting (Hale 2007).

Hale speaks of the complexity at hand for the court interpreter who must consider not only the grammatical content but also the cultural conventions of expression before analysing and deciding how best to render the words. This process includes for the interpreter taking into account, for example, the propositional content of the words, the intention of the speaker, the force of the utterance, how it is delivered and the likely effect of the utterance on the listener.

A recent study by Lee drawing on the analysis of the discourse of witness examinations in Australian court proceeding posits that in the absence of cultural and/or linguistic explanations by the interpreter, evidence given by witnesses from culturally or linguistically different backgrounds may not be accurately or fully interpreted. He argues that this can have serious consequences for the witness in an adversarial context (Lee 2009). The study highlights the significance of interpreters' disclosure of linguistic and cultural issues which are related to the accuracy of interpreting during courtroom examination. It suggests that "conduit" interpreters who act simply as a "translation machine" may in fact adversely influence adversarial court proceedings.

Interpreters in the courts must endeavour to interpret truly and faithfully. A word for word translation will not produce a faithful rendition. Faithfulness does not translate to literalness and thus a "pragmatic translation" is required.

“ It has been speculated that the long term costs of providing interpreters would probably be less than the cost of mis-trials and appeals”

Kimberley Interpreting Services, 2004
Cited in Lauchs, 2010

Cultural competence of judicial officers and legal practitioners

Ensuring good and faithful interpretation in the court is a two-way process. Not only do interpreters need to be culturally competent but so too do legal practitioners, members and jurists. They need to know how to work with interpreters. Training in how to work with interpreters will cover some basic rules such as:

- Don't have more than one speaker speaking at the same time
- Don't speak too quickly or for too long
- Provide background material to the interpreter to prepare for the case

Studies illustrate the potential for cross-cultural misunderstandings when interpreting in the courts. There need to be clear protocols given about when and how interpreters can raise such potential misunderstandings as part of the proceedings (Hale 2014). It falls to the presiding officers to provide guidelines to interpreters according to their expectations in the court room or tribunal.

And even then there can be cross-cultural misunderstandings. An interpreter may become aware that a cross-cultural misunderstanding has occurred but may be unsure as to whether seeking to make the court or tribunal aware of the misunderstanding is within the professional boundaries of the interpreter. This remains an issue that many interpreters cannot agree on. There is little in the existing code of ethics for interpreters to guide them on this issue and it may require the judge or presiding member to ask about any possible cross-cultural misunderstanding and to invite the interpreter to address the issue.

The Australasian Institute of Judicial Administration funded a survey of judicial officers, tribunal members and court interpreters in 2010 on cross-cultural issues in interpreting. According to the survey a little over half of the interpreters, particularly the more experienced interpreters working in the higher courts, advised the court if and when they felt there had been cross-cultural misunderstanding. Many interpreters did not offer cultural insights and some believed that it was not appropriate for interpreters to do so. Significantly, the difference between what judicial officers and tribunal members expected and what interpreters report doing was considerable. (Refer to the Australian Refugee Tribunal and Migration Review Tribunal *Interpreters Handbook* for some guidance in this regard).

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