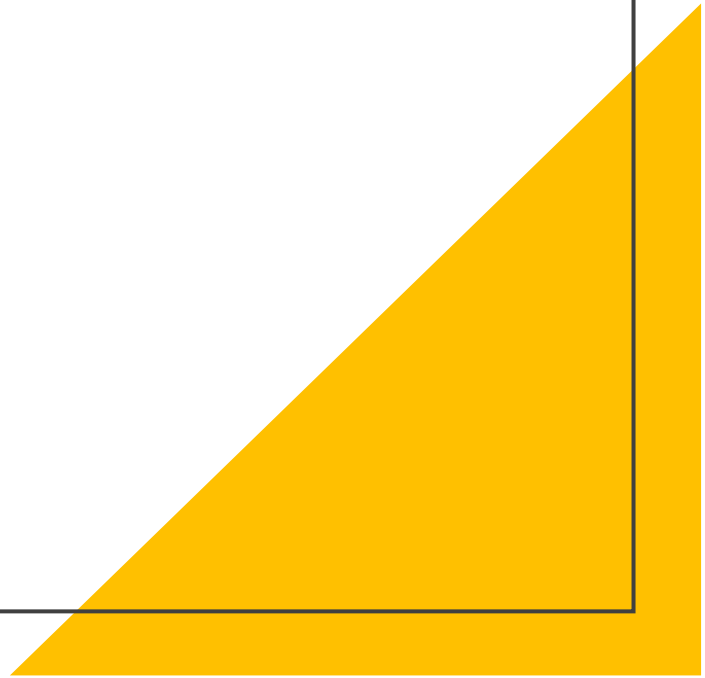


*Working with interpreters  
in tribunals.*

*Achieving an optimum  
practice in interpreted  
proceedings*

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# Working with interpreters in courts and tribunals

1. Back to basics: Interpreters' role and responsibilities. What makes interpreting in courts and tribunals challenging?
2. Expectations vs reality: Courts' and tribunals' assumption of responsibilities in interpreted proceedings
3. How can tribunal members assist interpreters, optimise communication, and ensure procedural fairness in interpreted proceedings?

# Background: a growing demand for interpreters

- 22.3% of people used a language other than English at home (2021)
- 4.7% speak English not well or not at all (2021)
- The most spoken languages in Australia: Mandarin, Arabic, Vietnamese, Cantonese, Punjabi, Greek, Italian, Filipino/Tagalog, Hindi, Spanish
- In NSW - Multicultural NSW 2022-23 Annual report
  - 52% born overseas
  - 1 in 4 households speak a language other than English at home
  - At least 284 languages spoken at home
  - 26% growth in interpreting assignments (serviced 21,000+ interpreting assignments)

- ARC Linkage project *Access to justice in interpreted proceedings: The role of Judicial Officers* (CIs Stern, Hale, Doherty, Schwartz (UNSW), Lim (UTS) <https://research.unsw.edu.au/projects/access-justice-interpreted-proceedings-role-judicial-officers>)
- Zhefei Wang, *Interpreting in migration and refugee review hearings at the Administration Appeal Tribunal (AAT) of Australia*, PhD thesis (in progress)
- Australian and international domestic policies for courts and tribunals, incl. *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (JCDDI, 2<sup>nd</sup> ed., 2022) <https://jccd.org.au/wp-content/uploads/2022/05/JCDD-Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals-second-edition.pdf>

# 1. Interpreters' role and responsibilities

- **Role:** enable communication between persons with limited English proficiency and courts/tribunals
  - Make a non-English speaking person 'linguistically present' (i.e., follow the proceedings)
  - Assist courts/tribunals in rendering non-English speaking party's message (i.e., evidence, responses) into English
- **Responsibilities:** interpret only; abide by overriding professional principles of accuracy, impartiality and confidentiality for interpreters in courts and tribunals (see AUSIT Code of Ethics)
- Onus for effective interpreted communication is on the interpreter : AUSIT Code of Ethics and Professional conduct; NSW AAT Handbook for Interpreters

# Interpreting process and modes

- Interpreting process:
  - Occurs in real time (unlike translation)
  - Comprehension in source language > conversion/reformulation > delivery in target language
  - Comprehension and rendition at discourse level, and not word level
  - Accuracy of content and style – but not verbatim
  - Aiming to achieve the same effect as intended in the source language
- Interpreting modes:
  - Consecutive interpreting (with and without note taking)
  - Simultaneous interpreting, incl. whispered simultaneous (*chuchotage*)
  - Sight translation

# What makes interpreting in courts and tribunals complex?

- Institutional and cross-cultural differences (Hale, 2013b; Stern 2011)
- Use of legal language, difficulties in achieving linguistic equivalence (Hale, 2007; Stern 2011)
- Limited training opportunities in legal interpreting (Stern, Liu, 2019a), especially in N&E and First Nations languages, to develop skills such as cross-linguistic transfer and ethical behaviour; NAATI certification; membership in professional association; professional development

What is NAATI (National Accreditation Authority for translators and Interpreters)? <https://www.naati.com.au/>

Levels of certification:

1. Certified Specialist Legal Interpreter (Spanish, Mandarin)
2. Certified Interpreter
3. Certified Provisional Interpreter
4. Recognised Practising Interpreter (newly Recognised in 2022-23: Khmer, Mongolian, Telugu, Dari, Ukrainian, Swahili, Kinyarwanda, Amharic, Tamil, Kurdish Kurmanji, Hazaragi, S'gaw Karen, Cook Islands Māori, Kannada, and Krio.)
5. Suitable Person

# External factors that impact on the interpreting process

- Less-than-ideal and inconsistent physical working conditions in courts and tribunals (Hale & Napier, 2016; Stern et al., 2015)
- Logistical and technical issues (e.g., mode, technology and location) (Braun, 2013; Stern, Ozolins, & Hale, 2015)
- Participants' limited understanding of the interpreting process and interpreters' role and requirements, incl. expectation of literal transfer rather than that of meaning; lack of awareness of the lexical/semantic asymmetry (Colin, Morris, 1994; J. Lee, 2009; Morris, 1995, 1999, 2008)
- Interpreters are 'slotted' into monolingual proceedings – no accommodation by the end users

## 2. Expectations vs. reality

- **Expectations:** interpreting of high quality and professional ethical conduct.
  - ‘the interpreting service [...] is adequate and competent in all circumstances.’ (AAT Handbook for Interpreters, 2020)
  - ‘quality sufficient to safeguard the fairness of the proceedings;’ quality sufficient to ensure justice and fairness (EU Parliament Directive 2010/64/EU)

# Reality

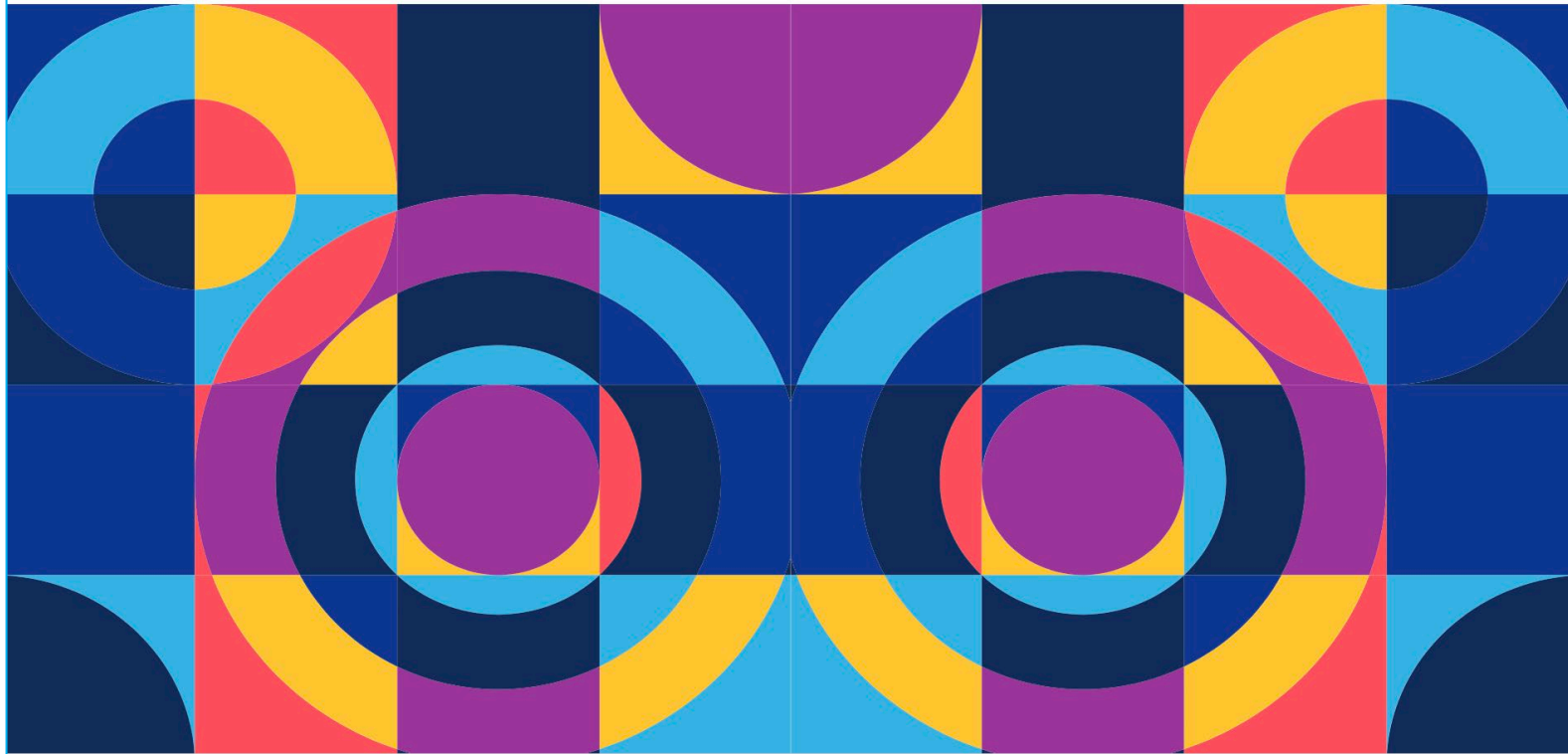
- shortage of interpreters in some languages and areas (rural and regional);
- limited training and NAATI certification in most languages – different levels of competence;
- inadequate working conditions impact on the quality of interpreted interactions;
- interpretation users unaware of interpreters' professional requirements: lack of preparation and briefing, working alone, poor acoustics, often remotely (with and without visual input), insufficient breaks, etc.

# Courts' and tribunals' limited assumption of responsibility (Hale, Ozolins and Stern, 2009)

- For providing adequate working conditions (conditions are generally better in tribunals, e.g., AAT, than in courts)
- For assisting interpreted communication
- International legislation and policy documents on working with interpreters mostly in criminal proceedings but also some on tribunals, (e.g., *AAT Interpreter Handbook 2020*, Immigration and Refugee Board of Canada Tribunal, 2017)
- In Australia – some policy documents, e.g., *AAT Handbook for Interpreters*, 2020.
- *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (2<sup>nd</sup> edition, 2022) informs the practice of Australian domestic courts and tribunals and interpretation users.

Recommended National Standards for  
**Working with Interpreters  
in Courts and Tribunals**

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### 3. How can *RNS* assist Tribunals and Tribunal members to optimize their work with interpreters?

- *Recommended Standards for Courts and Tribunal, incl. Annotated Standards:*
  - Standards 1-12
  - Optimal Standards 1-4
- *Standards for Judicial officers, incl. Annotated Standards*
  - Standards 13-17
- Annexures 3 Plain English, 4 Four-part test for determining need for an interpreter, 5 What judicial officers can do to assist the interpreter, and 6 Remote interpreting

# Assessing the need for an interpreter

- General acceptance of the right to an interpreter; if in doubt, apply the four-part test for determining need for an interpreter
- Risk of overestimating the non-English speaking person's English-language proficiency
- Risk of the non-English speaking person's overestimating their own English-language proficiency
- Persons who refuse to conduct communication through an interpreter
- Standards 10 and 16, including 16.3 Annotated Standards, and Annexure 4.

# Ensuring interpreting quality ahead of booking

- 'the highest level of interpreter certification available' (*ACT Courts and Tribunal Interpreter Protocol, 2020*)
- 'qualified interpreter' as having tertiary qualifications, NAATI accreditation (sic), membership with a professional association (AUSIT/ASLIA), and having court interpreting experience, thus recommending giving preference for qualified interpreters (*Working with Interpreters in Queensland Courts and Tribunals, 2019*).

# Engaging an interpreter – ensuring quality of interpretation

- Ensure correct language/dialect, certification level, culturally appropriate, gender, age (Standards 6.8. and 11)
- Levels of NAATI certification: Language Tiers
- Tier A: 10 spoken international languages and Auslan, with high number of Certified interpreters,
- Tier B: 17 spoken international languages, with fewer Certified and more Provisional Certified Interpreters,
- Tier C: 50 languages with fewer Certified interpreters but more Provisional certified
- Tier D: 200 other languages, international and indigenous; Certified Provisional or Recognised (Annotated Standards 11.4-11.5) – availability of NAATI certified interpreters
- Allow the interpreting service as much notice as possible (2-4 weeks)

# When the interpreter in a particular language is unavailable

- Is remote interpreting appropriate? (To be discussed later)
- Report to NAATI :
  - When the Tribunal was unable to secure the services of an interpreter (Standard 9.8)
  - when an interpreter was not available and the court/tribunal made a decision to adjourn or stay a case, or to proceed with a less qualified interpreter (Standard 8.2).

# Training judicial officers and court and tribunal staff to work with interpreters

- Understanding the role of interpreter (interpret only), incl. the role of interpreter as an officer of the court or tribunal, in that they owe paramount duties to the court or tribunal (cf., impartiality);
- ‘Working with interpreters in accordance with these Standards’.  
(Standards 5 and 15).
- Checking that preparation materials/briefing have been provided to interpreters, and time given for preparation (Standard 8.3, Annotated Standards).

# Material to be provided to interpreter during booking (Annotated Standard 8.3)

- Name(s) of parties;
- Type of case or matter;
- Type of proceeding;
- Major topics to be discussed (if known);
- List of technical or specialised terms likely to be used;
- Address of the court or tribunal;
- Contact person on arrival;
- Notice of requirement to produce evidence of their qualification(s) and certification;
  - *Q1: Is it appropriate to let the applicant/family brief the interpreter?*
  - *Q2: How to ensure preparation or briefing when the interpreter is provided at short notice, remotely?*

# Judicial Officer or Tribunal Member working with interpreters during the proceedings

(Standards 9 and 17, and Annexure 5)

## Before the start of the proceedings:

- Is the interpreter provided with appropriate working conditions? a waiting area outside the tribunal? a dedicated place inside the tribunal, e.g. desk and chair, place to take notes and any electronic equipment?
- Have they been briefed, including the provision of preparation material? Have they been given sufficient time for preparation?
- Has the interpreter been introduced at the beginning of the proceedings and their role explained to participants?
- Has the interpreter been informed that they should alert the tribunal, if necessary, to interrupt – in case there are interpreting difficulties, they couldn't hear accurately, they need repetition or explanation, cannot keep up with communication, need a break, etc.)? (Standard 17.7, Annotated).

# During the proceedings

- Modifying one's own speech (Annexure 5): Member should speak at a reasonable speed, with pauses, to assist interpretation.
- Monitoring the interpreter (Annotated Standard 17): are they interpreting in the 1<sup>st</sup> person? Are they reporting challenges to the Member? Are they refraining from speaking to the non-English speaking person? Is the length of interpretation in stark contrast to that of the original?
- Are interpreters offered breaks during lengthy hearings? (Annotated Standard 9.5). *Note* – the frequency of breaks depends on the interpreting mode; simultaneous interpreting requires more frequent breaks, e.g. 15 min for every 45 min work).
- [*Note*: discuss interpreting mode when interpreting from English into LOTE; conditions of interpreters who interpret for the non-English speaking person].
- Managing challenges to accuracy of interpretation (Annotated Standard 17) – who is the expert?
- Monitoring other speakers (intervening when there is overlapping speech, ensuring questions are short and manageable; monitoring that the interpreter is keeping up; monitoring that the interpreter is not interrupted)

# Endeavour to use plain English

(Annotated Standard 14, and Annexure 3)

Eleven 'plain English' strategies:

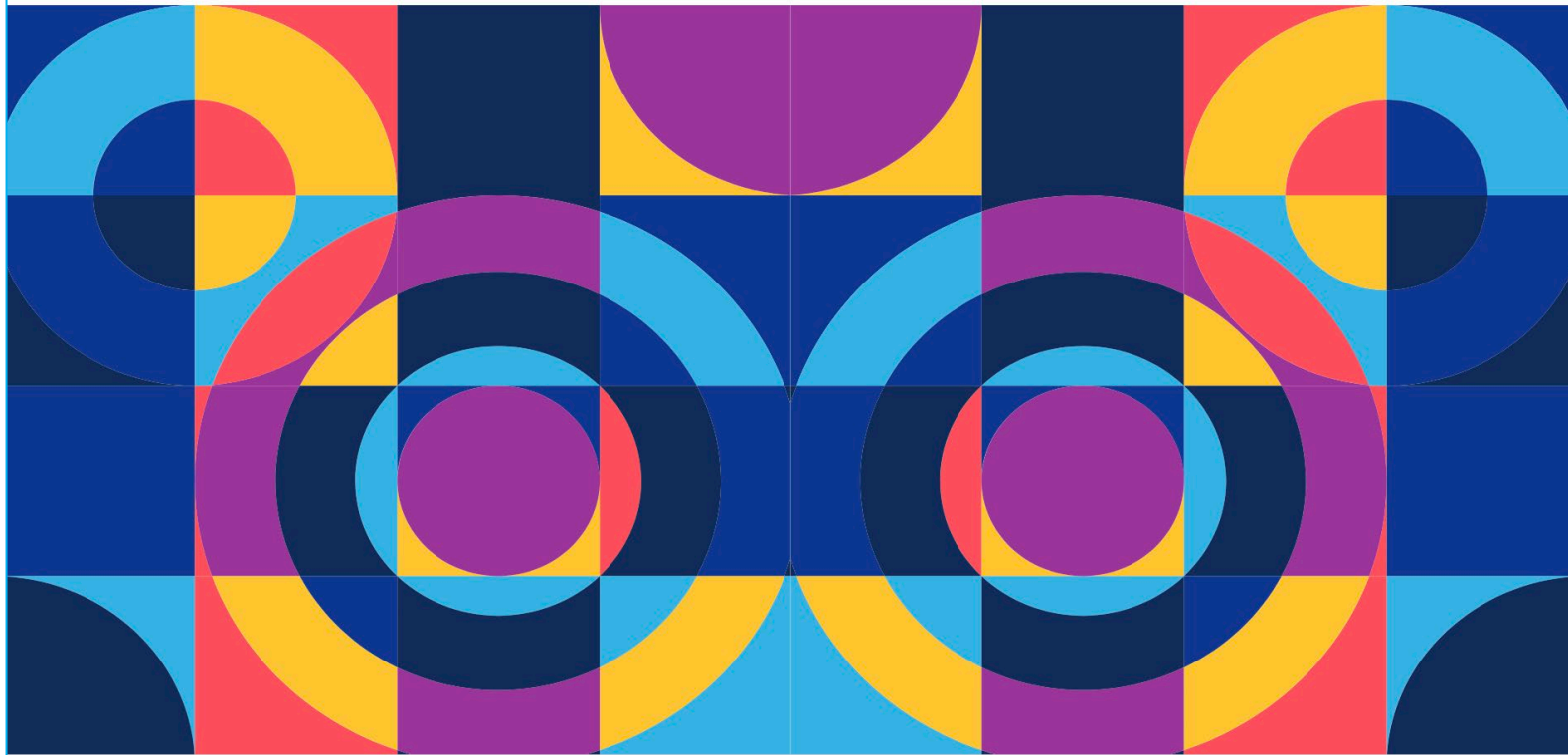
- use active voice, avoid passive voice;
  - avoid abstract nouns;
  - avoid negative questions;
  - define unfamiliar words;
  - use one idea per sentence, etc.
- Judicial officers on using 'plain English'

# Remote interpreting

- Risks of using telephone interpreting (Xu, Hale, Stern, 2020; ongoing ARC research on the loss of information and loss of control).
- Telephone interpreting and interpreting using audio-visual links (Annotated Standard 9.4, Optimal Standard 1, and Annexure 6):
- Where an interpreter is unable to be present, audio-visual links should be preferred over telephone interpreting.
- Audio-visual link to be used only when interpreter is unavailable, and if adequate equipment is available.
- Telephone interpreting to be used only for short meetings/proceedings, with good headsets or acoustics for all parties (Annexure 6).
- Before the hearing or meeting begins, establish protocol by explaining to all parties how you will proceed and how to communicate. Ensure that interpretation is complete and use checking questions for verification.

Recommended National Standards for  
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# References

- Braun, S. (2013). Keep your distance? Remote interpreting in legal proceedings. *Interpreting. International Journal of Research and Practice in Interpreting*, 15(2), 200-228. Hale, S. B. (2007). *Community Interpreting*. Basingstoke: Palgrave Macmillan.
- Colin, J. Morris, R. (2014). *Interpreters and the Legal Process*. Waterside Press.
- Hale, S. B. (2013b). Interpreting culture. Dealing with cross-cultural issues in court interpreting. *Perspectives*, 22(3), 321-331. doi:10.1080/0907676x.2013.827226
- Hale, S. B., & Napier, J. (2016). “We’re just kind of there” Working conditions and perceptions of appreciation and status in court interpreting. *Target. International Journal of Translation Studies*, 28(3), 351-371. doi:10.1075/target.28.3.01hal
- JCDI (2022, 2<sup>nd</sup> edition). *Recommended National Standards for Working with Interpreters in Courts and Tribunals* <https://jccd.org.au/wp-content/uploads/2022/05/JCDD-Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals-second-edition.pdf>
- Lee, J. (2009). Conflicting views on court interpreting examined through surveys of legal professionals and court interpreters. *Interpreting*, 11(1), 35–56.
- Morris, R. (1995). The Moral Dilemmas of Court Interpreting. *The Translator*, 1(1), 25-46.
- Morris, R. (1999). The gum syndrome: predicaments in court interpreting. *Forensic Linguistics*, 6(1), 6-29
- Morris, R. (2008). Missing stitches. *Interpreting. International Journal of Research and Practice in Interpreting*, 10(1), 34-64.
- Stern, L. (2011). Courtroom Interpreting. In K. M. a. K. Windle (Ed.), *The Oxford Handbook of Translation Studies*.
- Stern L; Liu X, (2019a). See you in court: How do Australian institutions train legal interpreters? *The Interpreter and Translator Trainer*, 13, pp. 361 - 389,
- Stern, L., & Liu, X. (2019b). Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers’ perspectives on their role. *The Journal of Specialised Translation*(32).
- Stern, L., Ozolins, U., & Hale, S. (2015). Inefficiencies of court administration despite participants goodwill. *Journal of Judicial Administration*, 25(2).
- Stern, L., Hale, S., Doherty, S., Schwartz, M. (UNSW), Lim, J. (UTS) ARC Linkage project *Access to justice in interpreted proceedings: The role of Judicial Officers* <https://research.unsw.edu.au/projects/access-justice-interpreted-proceedings-role-judicial-officers>
- Wang, Zhefei. *Interpreting in migration and refugee review hearings at the Administration Appeal Tribunal (AAT) of Australia*, PhD thesis (in progress)
- Xu, H, Hale, S, & Stern, L. (2020). Telephone interpreting in lawyer-client interviews: An observational study. *The International Journal for Translation and Interpreting Research*, 12, 18 – 36.

Q&A