

FACTSHEET 3

Assessing the Need for an Interpreter

It is important to raise the topic of working with an interpreter in a sensitive manner. There may be a number of reasons a party might say they do not want to work with an interpreter:

- they might not know what an interpreter does;
- they might have had a negative experience with an interpreter in the past;
- they may feel shame or anger because you are indicating their English isn't 'good enough'; or
- they might not want other people knowing about their business.

Before directly asking the party what they think about having an interpreter present, the interpreter's role should be explained so that the party can make an informed decision. For example:

'Before we start talking about this, I want to talk to you about what language we should use today.'

'Maybe we can talk in English, or maybe we can talk in your language. I don't speak your language, so if we think it's better to talk in your language I will ask for an interpreter.'



FOUR-PART TEST FOR DETERMINING THE NEED FOR AN INTERPRETER

Part 1: Ask the party or witness about an interpreter

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). For example:

What do you think about asking for an interpreter? Or What do you want to do?

If the party indicates they would like an interpreter, stop the discussion and arrange for an interpreter to be present.

If the party has difficulty answering this question, stop the discussion and arrange for an interpreter to be present.

If the party indicates they do not want an interpreter, proceed to [Part 2](#).

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

Ask the party to speak to you in narrative (story) form by asking open-ended background questions. Avoid yes or no questions or questions that can be answered with one or two words. For example:

Tell me about... What do you think will happen if...?

If the party does not respond with anything more than a few words to the first few questions, make several further attempts at eliciting a longer response.

If unsuccessful then it is likely the party cannot express herself or himself adequately or confidently in English. Stop the interview and arrange for an interpreter to be present.

If the party is able to give satisfactory or somewhat satisfactory responses, proceed to [Part 3](#).

Part 3: Assess speaking and comprehension relevant to the context

Write down two sets of two 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.”

For example:

When a person is guilty, it means that a judge or jury decided that the person 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?

Part 4: Assess communication

A person is likely to need an interpreter if:

- The person has difficulty articulating back what you said to them.

- The person only speaks in short sentences (4–5 words or less) or mainly gives one-word answers.
- The person consistently agrees with your questions or propositions you put to them.
- The person frequently responds inappropriately to your comments or questions (e.g. responding with “yes” to “what” or “where” questions).
- 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.
- The person appears to contradict themselves, and is unaware of the apparent contradictions.
- The person does not add significant amounts of new vocabulary to the conversation. They rely on using the words or phrases that you have previously said to them.
- The person does not use English grammatically. E.g. mixes up pronouns (“he” instead of “she”); uses the past tense incorrectly (“He look at me”). Note, however, that this is not necessarily an indicator of a lack of English language proficiency.
- You find yourself frequently needing to restate and simplify your utterances.

ASCERTAINING HEARING ABILITY AND OTHER DISABILITIES

Apart from language and hearing impairments, there may be other impairments that affect a person’s ability to comprehend, including cognitive disabilities, acquired brain injury, mental illness, and language impairment.

In a criminal case, the judicial officer is ultimately responsible for taking all of these factors into account to determine fitness to plead. Legal

representatives also have the responsibility to alert the court to these impairments.

Judicial officers and counsel must ensure that hearing-impaired people are provided with adequate support in both the courtroom and during instruction taking. Persons who speak a language other than English and also have a hearing impairment are unlikely to be able to hear simultaneous whispering interpreting. Therefore, either consecutive interpreting or the use of simultaneous interpreting equipment will be needed.

FURTHER INFORMATION

The Judicial Council on Cultural Diversity (JCCD) developed the *Recommended National Standards for Working with Interpreters in Courts and Tribunals*¹ to establish recommended and optimal practices for Australian courts, with the aim of improving access to justice and procedural fairness.

Standard 16 - Assessing the need for an interpreter provides extensive advice regarding assessing the need for an interpreter – refer to pages 55-54 of the Annotated Standards for detailed advice.

¹ <https://jccd.org.au/wp-content/uploads/2022/05/JCDD-Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals-second-edition.pdf>

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