



PRACTICE NOTE SC GEN 21

Interpreters in Civil Proceedings

Commencement

1. This Practice Note was issued on 4 March 2020 and commences on 4 March 2020.

Application

2. This Practice Note applies to all civil proceedings commenced after its commencement and to any existing proceedings which the Court directs should be subject to this Practice Note in whole or in part.

Definitions

3. In this Practice Note:

“National Standards” means the Australian National Standards for Working with Interpreters in Courts and Tribunals, a copy of which may be found on the website of the Judicial Council for Cultural Diversity.

“Recognised Agency” means the National Accreditation Authority for Translators and Interpreters (NAATI) and such other organisations as are approved by the Chief Justice for the purposes of UCPR Part 31 Division 3.

Purpose

4. The Court has resolved to implement and apply the National Standards. As part of that implementation the Court has adopted UCPR Part 31 Division 3, which is based on the Model Rules prescribed by the National Standards. The Court has also adopted this Practice Note as part of its implementation of the National Standards. This Practice Note and UCPR Part 31 Division 3 are to be read together.

Construction and application of UCPR Part 31 Division 3

5. The Court will take into account and, unless the Court considers it for any reason impractical or undesirable in the circumstances of the particular case, give effect to the National Standards when the Court is construing and applying UCPR Part 31 Division 3.

When parties are assessing the need for an interpreter

6. In considering whether a person requires an interpreter a party must take into account the matters set out in the National Standards, in particular the tiered approach to the qualification of interpreters.

Matters to be considered when an interpreter is engaged

7. When engaging an interpreter a party must give early consideration to the matters set out in UCPR 31.63(a) and whether any directions should be sought from the Court having regard to those matters or otherwise in connection with the participation of an interpreter in the proceedings. Such directions must be sought at the earliest possible stage in the proceedings.
8. For the purposes of providing any time estimate to the Court 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. The use of the simultaneous mode can significantly expedite the proceedings.
9. A party engaging an interpreter to interpret in proceedings in the Court must inform the interpreter that he or she will be required by the Court to produce evidence of the interpreter's current accreditation, registration or recognition as an interpreter for the relevant language by a Recognised Agency or other evidence to satisfy the Court that he or she is qualified to act as an interpreter.

Conduct of proceedings

10. In addition to compliance with UCPR Part 31 Division 3 and the other provisions of this Practice Note, each party must, to the extent it is reasonably practicable, conduct proceedings in accordance with and so as to give effect to the National Standards.
11. Interpreting accurately for the purposes of UCPR Part 31 Division 3 involves skilled and sophisticated judgments on the part of the interpreter. An accurate interpretation does not equate to a literal or "word for word" translation. The Court recognises that, in general, the obligation to interpret accurately is not intended to compel, and will not necessarily be satisfied by, literal or "word for word" interpretation.

Fees for interpreters

12. The Court acknowledges that interpreters, in particular those who are accredited by a Recognised Agency, are entitled to charge reasonable fees commensurate with their level of qualifications, skill and experience. While what fees may be reasonable can vary depending on the circumstances, as a general guide the Court accepts as reasonable minima the rates published from time to time by Professionals Australia for the purpose of any assessment where an interpreter has been retained by a party.

Issues concerning the availability of interpreters and implementation of the National Standards

13. It is expected that the National Standards will be regularly reviewed. The Court encourages parties to provide comments, especially where they have encountered difficulties in obtaining suitably qualified interpreters, about the operation of the National Standards to the National Accreditation Authority for Translators and Interpreters at info@naati.com.au.



T F Bathurst AC
Chief Justice of New South Wales

4 March 2020