

Note 6:

Culturally and Linguistically Diverse Backgrounds

A person's demeanour, behaviour and use of language are influenced by their cultural and linguistic background. Understanding important cultural and linguistic differences can assist judicial officers to enhance the court's engagement with victims from diverse backgrounds.

The following information is largely drawn from the [Equal Justice Bench Book - Supreme Court of Western Australia](#) and the [Equality before the Law Bench Book - Judicial Commission of New South Wales](#).

Cultural diversity in Victoria

At the 2016 Census, Victoria's population was **5.93 million**. Of that total population:



Names and forms of address

Names and forms of address can be influenced by a person's family, cultural and/or religious background. Some ethnic groups have very different naming systems from the generally gender-specific "first" or "given" name, middle name and family name system often used by English-speaking Australians.

However, it is important not to assume all members of a particular group will follow the cultural norm for that group. Many have adopted the mainstream naming system or use alternative names when they deal with Australian bureaucracy.

Some examples of different naming systems involve:

- **Reversing the order of names:** starting with a family name and ending with a given name, for example, Chinese and Vietnamese;
- **No family name,** for example, Icelanders;

- **Not using a family name when referring to someone else,** for example, Russians tend to use their given name and middle name only;
- **Particular words, prefixes or suffixes** to indicate certain things such as:
 - Gender (the Vietnamese names of "Van" for men and "Thi" for women);
 - Marital status ("Achi" after some Indian women's names indicating marriage);
 - Son of, daughter of, father of or mother of (for example, the Muslim prefix "Ibn" or the Jewish "Ben" which both mean son of);
 - Terms like 'sister', 'brother', 'mother', 'father', 'aunty', 'uncle' and 'cousin' which can refer to extended family and community members in who are not blood relatives in Aboriginal and Torres Strait Islander communities (for more information see [Guidance Note 7: Aboriginal and Torres Strait Islander Peoples](#)).

- **Tonal language:** Some names may be difficult for English-speaking monolingual Australians to pronounce if the original language is tonal. In tonal languages each word has a marker that indicates the pitch or "shape" of the word, and therefore how it should be pronounced;
- **Formality:** Some people may prefer or expect to be addressed formally in court, or when addressed by someone younger than themselves or of the opposite gender.

For example, they may prefer to be addressed as Mr/Ms/Mrs given name, or Mr/Ms/Mrs family name. Others may prefer to be addressed by their given name only.



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Key points to consider

Approach of counsel: Counsel should have confirmed pronunciation when interacting with the witness or victim prior to the hearing.

Directing court staff to ask counsel about pronunciation before the hearing commences.

Using the phrase “given name” rather than “Christian name”.

Where necessary, **clarifying what each part of a person’s name represents** – that is, whether it is a given name, nickname, family name. This may be better done ahead of time.

Avoiding asking the victim or witness directly: If asked directly, they may feel uncomfortable at having to pronounce their name or preferred form of address, and/or may choose to agree to whatever the judicial officer suggests despite unease.

Useful resources containing further information about naming conventions and modes of address include:

- [Names and Forms of Address](#) – Equal Treatment Bench Book, Supreme Court of Queensland
- [Appendix B – Naming Systems](#) – Equal Treatment Bench Book, Judicial College – Courts and Tribunals Judiciary (United Kingdom)
- [Modes of Address](#) – Equal Justice Bench Book, Supreme Court of Western Australia
- [Modes of Address](#) – Equality before the Law Bench Book, Judicial Commission of New South Wales

Improving verbal communication in court

Victims may be reluctant to disclose their need for language services or they may overstate their linguistic ability for a range of reasons, including:

- Embarrassment;
- Fear of being mocked;
- Distressing prior experiences;
- Reluctance to disclose their story to a stranger;
- Privacy concerns; or
- A mistaken belief that they can communicate effectively in court.

If it is unclear whether an interpreter is required, judicial officers can invite the person to paraphrase what has been said to them, in their own words.

This may assist the court to determine their level of comprehension. Should the need for language services become evident, judicial officers can reassure witnesses that the aim of language services is to ensure their full participation.

Judicial officers, court staff and the prosecution can:

- **Consider whether the victim speaks more than one language** other than English. It may be easier to arrange language services for one language compared to another;
- **Consider the use of multiple interpreters** particularly where the accused also requires language assistance;
- **Consider whether interpreting services can be provided by telephone or videoconferencing**, where they will not be available to be delivered in person;
- **Consider causes of reluctance:** A witness may be reluctant to use an interpreter, particularly if the interpreter is likely to be drawn from their community, due to concerns about privacy and confidentiality. Can these concerns be addressed by emphasising the professional nature of the role of interpreter and their obligations of confidentiality?

Working with an interpreter

Interpreting faithfully does not mean interpreting ‘literally’ as word-for-word translations may produce nonsensical renditions. However, interpreters must interpret everything including questions and answers, evidence, objections and legal arguments, and vulgar language.

National Accreditation Authority for Translators and Interpreters (NAATI)

NAATI is the only body in Australia authorised to issue accreditations for interpreters and translators, but there is no statutory requirement for accreditation. At times, there may be no NAATI accredited provider available.

Australian Sign Language (‘Auslan’) Interpreting

Sign languages are unique to each country. Auslan is the sign language used by Australians who are hearing impaired. It is a visual-spatial language that uses hands, eye gaze, facial expressions, and arm, head and body postures.

Auslan has its own grammar and syntax, which are quite distinct from English. People who are hearing impaired often acquire sign language as their primary means of communication, along with the written or spoken language of the local community, but their English proficiency should not be assumed.

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Key points to consider: Working with an interpreter

For a detailed guide, see the [Recommended National Standards for Working with Interpreters in Courts and Tribunals](#) produced by the Judicial Council on Cultural Diversity.

Before a hearing

Briefing: Consider whether and to what extent the interpreter should be briefed by the parties before proceedings begin. Materials may be provided in advance to avoid an unseen sight translation of documentation.

Access and conditions: Consider whether a private area can be made available to the interpreter to store their belongings and material.

Time: Ensure additional time has been allocated for the giving of evidence. Giving evidence through an interpreter will usually take at least twice as long as without an interpreter.

At the start of the hearing

Ask for an introduction: Ask the interpreter to introduce themselves and state whether they are accredited and their level of certification with NAATI, their formal qualifications, membership with a professional interpreting association, court experience and understanding of their obligations.

Give an explanation: Explain the role of the interpreter to ensure that participants in the court understand the conduct of the proceedings.

- If an interpreter has not worked in court before, judicial officers should explain that the interpreter's role is **'to interpret everything faithfully and impartially in the first or second grammatical person'**.

Swear in the interpreter: Interpreters are required to take an oath or make an affirmation when they interpret in criminal proceedings. Courts must swear an interpreter in before administering an oath or affirmation of a witness through an interpreter. The correct form of oaths and affirmations for interpreters can be found in Schedule 1 of the [Evidence Act 2008](#).

Give instruction: Instruct the interpreter to alert the court or interrupt if they:

- Did not accurately hear what was said;
- Cannot interpret a question or answer for any reason;
- Need to consult a dictionary or reference material;
- Need a concept or term explained;
- Need to correct an error;
- Are unable to keep up with evidence; or
- Need to take a break for any reason.

Confirm resources required: Ensure the interpreter has copies of the documents being referred to and read aloud so that they can follow the process more easily. Ask whether the interpreter requires any other resources in court such as a dictionary.

Appropriate location: Ensure the interpreter is in a position where they can easily see and hear all participants.

During the hearing

Breaks: Give the interpreter regular breaks or allow a swap with another interpreter.

- Spoken language interpreters: every 45 minutes;
- Auslan interpreters: every 20 minutes.

Speak to the witness: Speak directly to the person being assisted by the interpreter and avoid directing the question to the interpreter. Instruct counsel to do the same, if necessary.

Communicate clearly: Speak slowly and in plain English – pause after each concept and instruct counsel and witnesses to do the same.

Explain legal concepts: Consider explaining legal concepts, jargon, acronyms and technical terms if required. If there are no direct equivalents for a legal term, the interpreter may ask for an explanation which they will then interpret.

Avoid complex questions and double negatives: Avoid complex forms of questioning that rely on double negatives or tag questions. Encourage counsel to do the same. Tag questions are statements which add a question to the end of a statement: 'You went to work on that day, didn't you?'

Intervene if necessary: Intervene as required to avoid courtroom participants speaking over each other or in complex language.

Direct the witness to give the answer in stages (if required): If the witness appears to be giving lengthy answers that appear to have the potential to be lost in translation, the judicial officer can direct the witness to give their answer in stages to allow for the interpreter to accurately convey the full detail of the answer.

Be alert to signs the interpreter may be paraphrasing: Consider whether there is any marked disparity between the length of answer and the length of interpretation.

What to do if someone criticises the interpretation? Do not take the criticism at face value. People who are bilingual, but not trained interpreters, can overestimate their competence. Consider comparing qualifications and giving the interpreter a chance to respond to criticism.



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Improving other forms of communication – behaviour and body language

Assessment of credibility is often informed by perceptions of demeanour. However, demeanour is often influenced by cultural norms and so cross-cultural demeanour assessments are especially unreliable.

It is therefore vital that judicial officers are equipped to identify culturally-determined assumptions that have the capacity to influence assessments of credibility. Judicial officers should be able to take measures to counter such influence in their own decision-making and in directing other decision-makers, such as the jury.

Some common differences in appearance, behaviour and body language:

- **No direct eye contact** with a questioner, or someone in authority, or someone of a different gender may be the cultural norm. For example, it would generally be considered culturally inappropriate for Vietnamese people and women from most other South-East Asian backgrounds to make direct eye contact with persons in authority. For many Aboriginal and Torres Strait Islander people, avoidance of eye contact is customarily a gesture of respect.
- **Dress that appears eccentric:** This may or may not be eccentric for someone of that culture. It may also reflect their understanding of what they are expected to wear in court.
- **Hand, finger and other gestures and movements**, such as eye movements and head nods, head shakes, a lowered head or bowing. These movements may not necessarily mean the same thing as they mean in mainstream English-speaking Australian culture.
- **Silence or appearing to avoid answering:** This may not mean that the person is dishonest or evasive. It may mean:
 - There is a lack of understanding about what is going on or expected of the particular person;
 - The person feels they cannot answer such a question because it is considered too personal or intimate;
 - The person considers that it should not be answered in front of someone in authority or in front of a particular family member or someone of the opposite gender.

To deal with this issue, judicial officers might consider measures such as:

- Making sure the person fully understands what is going on and/or why the question is being asked;
- Excluding people from the courtroom while the witness is giving evidence;
- Allowing the witness to give evidence remotely by video-link or at a pre-recorded special hearing;
- Allowing a support person to attend.



Further Resources: For more detailed information about working with interpreters, see [Recommended National Standards for Working with Interpreters in Courts and Tribunals](#) – Judicial Council on Cultural Diversity

See also:

- [Providing Auslan and Other Interpreters](#) – Disability Access Bench Book
- [Right to an Interpreter](#) – Victorian Criminal Proceedings Manual
- [Interpreters to Act on Oath or Affirmation](#) – Uniform Evidence Manual
- [Interpreters](#) and [Culturally and Linguistically Diverse People](#) – Family Violence Bench Book
- [People from Culturally and Linguistically Diverse Backgrounds](#) and [Interpreters and Translators](#) – National Domestic and Family Violence Bench Book
- [Equality before the law Bench Book](#) – Judicial Commission of New South Wales