

How to decide if you should work with an interpreter – Legal

Things you should consider before you decide whether to work with an interpreter

Deciding how well a person speaks English (assessing English proficiency) is a complex task that is ideally done by a trained linguist. Untrained people tend to significantly underestimate the amount of miscommunication that occurs when communicating with someone for whom English is a second language.

If a person speaks English as a second language and has had limited education in English, it is likely that you should work with an interpreter. This is especially true when you are dealing with specialised language and unfamiliar situations such as court and police interviews.

In some cases it is obvious that an interpreter is needed for effective communication. However, in many cases you will need to think carefully to identify people who can communicate in English about everyday familiar situations, but need the assistance of an interpreter to communicate in unfamiliar situations with technical language.

There are many things that will reduce the ability of a non-native speaker of English to communicate effectively in English:

- Stress
- Unfamiliarity with the situation or uncertainty about what is expected
- An imbalance in power/knowledge between the parties
- Background noise
- A conversation involving more than two people, especially if there is overlapping speech
- An inability to see the speaker's face
- People speaking too quickly
- The use of technical terms, figurative language, abstract nouns and complicated sentences.

The benchmark for communication

Ask yourself, how close am I to the ideal communication benchmark – does my client/witness **fully understand** me, and can they **fully express themselves** in this situation?

Another question to ask yourself is if you were facing charges in a foreign, non-English speaking country and had to rely on your client/witness to interpret for you into English, would you be happy to proceed?

If you'd be hesitant relying on your client/witness to adequately communicate to you what was going on, you shouldn't ask them to go through the same process without the assistance of an interpreter.

If you decide that your client/witness does not need the assistance of an interpreter, you must be satisfied that your client/witness can handle the full range of language, including speed, technical terms, implied accusations and nuance, that they will encounter in the court or interview situation.

Otherwise, you are putting your client/witness at a disadvantage compared to a native speaker of English in the same situation.

The dangers of biographical data

Most Aboriginal Territorians who speak English as a second language will have had repeated experience providing biographical data to service providers (e.g. *'where do you live, what's your date of birth, are you employed'*).

Don't rely on your client's/witness' ability to provide biographical data as the basis for deciding whether to work with an interpreter.

Just because a client/witness can adequately answer simple questions about their life, does not mean they have sufficient English proficiency to understand court proceedings, discuss legal concepts or listen to and give evidence in court.

In order to get an accurate picture of a person's English proficiency, you must move the conversation into topics and styles that your client/witness does not use on a regular basis.

The dangers of overly modifying your speech

Often when we get the impression that a person does not fully understand us, we intuitively compensate by reframing unanswered open questions (e.g. *'Why do you think the police arrested you?'*) as **either/or** questions or even closed **yes/no** questions (e.g. *'Were you arguing with the police when they arrested you?'*).

When you do this, your client/witness becomes heavily reliant on your prompts, suggestions, tone of voice and other cues to enable the conversation to proceed. In other words, your client's/witness' ability to communicate is limited to the questions you ask.

In these situations, even though your client/witness appears to easily answer questions with a yes/no response, you have not provided them with the option of fully expressing their own story or opinion.

Relying on yes/no questions is not a good method of deciding whether you should work with an interpreter.

Awareness of Aboriginal English and Kriol

Assessing English proficiency for Aboriginal Territorians can be complicated because of the use of Aboriginal English or Kriol. Aboriginal clients or witnesses may use English words, but the meaning of those words can differ significantly from the Standard English meaning of the same words.

The result is that you might hear a person using English words and mistakenly assume they can communicate proficiently in Standard English.

Examples of differences between Aboriginal English and Standard English meanings:

Aboriginal English	Meaning (in Standard English)
kill	to hurt physically (hit, kick, punch etc.)
don't have to	must not
cheeky	aggressive or dangerous
can't	will not (e.g. 'I can't help you' = 'I won't help you')
force	tease or tempt

How to talk with your client/witness about 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 your client/witness might not want to work with an interpreter:

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

Remember that the interpreter is not there 'for' the client/witness. The interpreter is there for both of you – to help you communicate with each other.

A suggested way to discuss the need for an interpreter is

'Before we start talking about this business, 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 an interpreter to help me.'

Before you directly ask your client/witness what they think about having an interpreter present, you should explain the interpreter's role so that your client/witness can make an informed decision.

'An interpreter is someone who speaks your language and speaks English and has had training to help them understand the legal words that you will hear today.'

'The interpreter will put everything I say into your language, and everything you say into English. The interpreter must follow rules. They can't take sides.'

'They must keep the message the same; they can't add anything or leave anything out. The interpreter will also keep everything we talk about secret.'