

PART **3** **INTERPRETING SERVICES**

3.1 PROFESSIONAL LANGUAGE AND INTERPRETER SERVICES

Access to interpreting services is a major determinant in ensuring that clients of a non-English speaking background can achieve full and equitable participation in the legal process. In order to enhance access for clients and provide an efficient court system, court staff need to be aware of clients' rights and entitlements, current guidelines, and the operational requirements for obtaining the services of an interpreter. The present Local Courts Practice and Procedure manual is being rewritten so that any uncertainty regarding entitlement to interpreters, liability for payment and associated issues can be removed.

Outlined below are the initiatives which were implemented at Fairfield Court to enhance the provision of language and interpreter services to clients. They include:

- Interpreting Booking Diary Sheet
- Interpreters for the First Court Appearance
- Pre-Court Multilingual Document

3.1.1 Interpreter Booking Diary Sheet

When the project commenced interpreter bookings were marked only on the bench sheet of the court papers. This meant that Magistrates could not readily identify when interpreters had been booked. Also, due to the shortage of interpreters in certain high demand languages many cases had to be adjourned a number of times due to interpreters not being available.

Description of the Trial Project

An Interpreter Booking Diary Sheet was developed using the Microsoft Office Excel computer program. A minimum of one page per calendar month was allowed with data entry on each page under the following categories:

- Date of Court Hearing
- Language Requested
- Name of Defendant/client
- How Case Is Listed (for hearing, mention, plea etc.)
- Confirmed by Ethnic Affairs Commission (this column ticked when confirmation received from Ethnic Affairs Commission that an interpreter is available.)

The monitors in each courtroom complete the sheet during the day as the Magistrate requests interpreters. This means that the Magistrate has an up to date copy of the sheet available in court and can consult the diary when necessary. This is especially useful for languages of high demand where few interpreters are available as it allows the Magistrate to see when interpreters in the same language have already been requested and their attendance confirmed. This allows for more efficient listing practices.

At the end of each day the monitors update a master copy of the diary in the office. This master copy is available to office staff when they receive enquiries at the counter or by telephone regarding interpreter attendance and availability. The office staff note all bookings made by them on the master copy.

The other benefit of the diary sheet is that it allows the Ethnic Affairs Commission access to interpreter booking data from Local Courts, their biggest customer. Lack of statistical ethnicity and interpreter use data means that the Commission can not otherwise access this information. This will assist the Language Services Division in planning and allocation of resources.

Results of the Trial

An overall increase in interpreter bookings has occurred. In 1996 bookings of interpreters increased from 15 in January to 78 in October. During January-March 1996 bookings ranged from 5 to 9 whilst in November there were 43 bookings for mentions. In October to December 1996 there were 107 bookings for plea or mention, 71 for a hearing, 11 for a sentence and 2 for discussion with the Chamber Magistrate - a total of 191.

LANGUAGE BOOKED	NUMBER OF BOOKINGS 1996	PERCENTAGE OF TOTAL BOOKINGS
Vietnamese	174*	29.95%
Cambodian/Khmer	45	7.75%
Cantonese	39	6.71%
Spanish	38	6.54%
Arabic	38	6.54%

* Does not include two block booking interpreters for each Wednesday and Thursday.

Whilst Vietnamese was the language most in demand (30% of the 581 bookings made in 1996) 35 other languages were requested. The top five languages in addition to Vietnamese were Cambodian/Khmer, Cantonese, Spanish and Arabic. The great benefit of the new system was that it was possible to monitor the need for assistance with emerging languages such as Macedonian and Bosnian.

It should be noted that this increase may also be due to staff at Fairfield receiving training on interpreting issues and cross-cultural communication. The Clerk of the Court also issued a guideline that no assessment of language capability was to be undertaken by staff and an expression by a client, their friend or relative, legal representative or the prosecuting authority is now sufficient for staff to request an interpreter for any type of case covered by the Ethnic Affairs Commission's exemption guidelines.

3.1.2 Interpreters for first appearance dates

The project identified three major areas of concern.

1. Many persons appearing in court on the first court appearance date had no interpreter available and consequently cases were often adjourned. This wasted the time of all parties involved at the court and caused unnecessary case delays.

The problem was most severe for those defendants in custody overnight, bail refused. Lack of interpreter availability for the bail application meant further time in custody as cases had to be adjourned until an interpreter was available.

2. In the Fairfield Local Government Area there are an estimated 60 languages spoken and many of these languages are used by clients of the court. One major problem for the project was that there was no ethnicity data, interpreter use data or data on language need available for Local Courts.
3. Local Courts have an exemption from paying Ethnic Affairs Commission interpreter fees for all criminal and apprehended violence cases and Chamber Magistrate interviews. Police do not have an exemption from Ethnic Affairs Commission fees. Police could request an interpreter for the first court appearance dates but this was not happening because they are charged for any request for an interpreter they make even where it is for court.

Trial Project

1. The Project Co-ordinator proposed that a prompt be added to the COPS charging system for the Police Charge sheet form. Police advised that they could not change the system at a local level. The solution agreed on was that a prompt be added to the Police File Caption sheet, the sheet used at court by the Police Prosecutor or DPP Prosecutor. This was organised by the Police Prosecutor's office at Fairfield Police Station. The prompt reads thus:

Interpreter required for Court? Yes / No
Language Required _____

The police advised that the informant police officer (one of the arresting officers) had to complete this caption sheet at the time of charging and have it checked by a senior officer.

2. After the informant police officer completes the paperwork, the file goes to the Court Process office at Fairfield Police Station, which is responsible for pre and post court work on court papers for police cases. At this stage a pink Interpreter Slip is attached to the front of the courthouse copy of those court papers which indicate an interpreter is required.

When the papers arrive at the courthouse, court officers then request an interpreter for the first appearance date for those papers that have an Interpreter Slip.

In conjunction with this, local legal service providers and community workers at the local Migrant Interagency were notified that an interpreter could be requested for any court dates in criminal and apprehended violence cases, by contacting the court by phone or sending a written request.

Results of the Trial

The police court process office indicated a slow start to requests, with local police neglecting the prompt. Papers were sent back to informant police when the request was not completed. The police also advised that, due to high staff rotation there were difficulties in training and advising police of new initiatives.

Due to these identified problems, the following modifications were introduced.

1. The Police Service to add a prompt to their charge sheet document produced on the COPS on-line charging computer system in line with the process used at Fairfield. This would mean that every police officer in the State would then be prompted to consider the need for an interpreter at the time a person is charged.
2. Ethnic Affairs Commission to add a new booking code to their Languages Services interpreter booking system, allowing police to request interpreters for first court appearance dates without being charged for these requests and promote this booking code to courthouses and police stations.
3. Awareness training about this change would also be necessary since police may not always recognise the vast difference between ability in basic conversational English and the ability necessary to comprehend complex language and terminology used in the court setting. Training would also need to address the reported presumption that interpreters are required only for non-English speakers, that is, persons who speak no English at all, and not for all persons experiencing difficulty in English.

3.1.3 Pre-court multilingual document

People receive initiating legal documents that are difficult to understand because of their complex language. Many people are unsure of what to do next or of the services available to assist them and so do nothing before the first court date. As a result, some people fail to appear at court and many cases are adjourned because a person has not sought legal advice prior to the court date.

Some court documents are delivered by post, allowing no direct contact with the service provider. Many persons whose first language is not English are unable to read or understand the document. This can have dire consequences for them, including the issue of warrants for their arrest, the making of orders in their absence, or a Sheriff attending their home to claim their goods.

Description of Trial Scheme

A multilingual document was developed as an attachment to all initiating process documents in all court jurisdictions (eg summons, charge sheets, applications, complaints and civil claims). All recipients would receive a short explanation about the document and a recommendation to seek legal advice. The front page of the document provides this information in as many languages as would fit on an A4 page and the reverse side provides names and contact numbers for local organisations that can assist the person with information, advice or referral.

The document was drafted by the Project Co-ordinator and sent to both Departments involved in the project. After editing, a final version of the explanatory information was prepared and sent to the Ethnic Affairs Commission for translation into nine high demand languages, the maximum number that could fit on a page.

It reads as follows:

“Attention: The attached document has been issued by a Court. It contains important information about a legal matter that concerns you. We recommend that you give it your immediate attention and seek legal advice. For information about what to do next, you may contact one of the services listed on the back of this sheet or a private solicitor. If you do not speak English, you may call the Telephone Interpreter Service on 131-450, and ask them to connect you to one of these services through an interpreter (a fee may be charged for this service).”

Since October 1996 it has been in use at Fairfield Court for all initiating process. It is attached to the service copies of documents when they are issued. The Sheriff’s Office at Fairfield also uses the document when serving process throughout the local area. Copies have been forwarded to Police Commanders in the area seeking their approval for police to attach it to defendant copies of Charge Sheets.

3.2 JUDICIAL DISCRETION IN PROVIDING AN INTERPRETER

The latest development in legislation relating to interpreters at court is amendments to the N.S.W *Evidence Act 1995*. The changes have, in effect, reversed the onus of proof of language proficiency by giving responsibility to the court to show that an individual does not understand English sufficiently. The Act states:

“A witness may give evidence about a fact through an interpreter unless the witness can understand and speak English sufficiently to enable the witness to understand, and to make an adequate reply to questions that may be put about the fact.” (Ref: Division 3, Part 2.1, Chapter 2, Clause 30).

These changes are a positive step toward improvement of judicial discretion in provision of interpreters, but the effects may take some time to be felt. The legislation alone may not be sufficient to improve the situation at the court level without more directive action in the form of departmental guidelines, regulations or procedures.