On the Same Page or Not: Revisiting Interpreting Protocols and Guidelines in Australian Courts and Tribunals

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Interpreter protocols and guidelines represent the common ground on interpreting standards shared among all parties responsible in a multilingual courtroom. Tracing Hale's (2011) comprehensive examination of interpreter protocols and guidelines in the Australian justice system before 2010, this study revisits publicly available protocols, guidelines and policies in Australian courts and tribunals in the past decade to investigate if there now exists a consensus on what to expect when interpreters perform their duties in courtrooms. The past decade saw the establishment of a national protocol on working with interpreters in court settings and a renewed specialised credential for legal interpreters. Nonetheless, a survey of currently available guidelines and protocols shows the magnitude of work still to be done before jurists and policy makers across Australian jurisdictions are on the same page with regards to a consistent legal interpreting practice nationwide. As Australia continues to lead in the professionalisation of legal interpreting, the Australian experience yields valuable insights for countries in their pursuit of a standardised interpreting service as the arm of law.

Keywords: Interpreter protocols, guidelines for interpreters, professionalisation, legal interpreting, quality in interpreting

1. Introduction

Australia, as a multilingual society, is one of the first countries in spearheading the systematic organisation of community interpreting service, and to this date, the need for professional community interpreting continues to grow. According to the 2016 Census

(Australian Bureau of Statistics, 2017), over one-fifth of the Australian population reported speaking a language other than English at home. The changing demographics in multicultural Australia leads to a significant growth in the number of interpreter-mediated interactions in community services, among which legal interpreting is of great significance. The quality of legal interpreting service can induce so critical a consequence that the realisation of one's justice is at stake.

However, all too often, interpreters are hailed or criticised as the sole agent responsible for expediting or hindering justice within the law due to flawed interpreting practices, where little research departs from the standpoint of the institution and questions if they are equipped sufficiently enough to work with interpreters in multilingual cases. Interpreter protocols and guidelines, for one, provide valuable information for judicial officers and legal practitioners to benchmark their practices with sanctioned and theory-grounded principles. For a profession deeply rooted in social justice, it is essential to continually examine the interpreting standards issued by official jurisdiction bodies, to ensure that there is a shared understanding on what is considered quality legal interpreting.

Hale's (2011) pioneering survey on interpreting policies, practices and protocols in Australian courts and tribunals exemplifies how scholarly authorship contributes to reshaping the legal interpreting practice. The 2009 conference organised by the Australasian Institute of Judicial Administration (AIJA) revealed the daunting situation that a lack of uniformity was observed across states and jurisdictions regarding guidelines to interpreters working in legal interpreting settings. Hale took up this query by surveying 104 Australian judiciary websites for any existing interpreter protocols and guidelines up till the year 2010 and conducting a nationwide questionnaire survey, completed by 148 judicial officers and tribunal members and 138 practising interpreters. Her research paints in exquisite strokes on the interpreting practices in Australian courts and tribunals for bilingual and multilingual cases and yields strong theoretical underpinning to a consistent national protocol on working with interpreters in the judiciary system.

Almost a decade has passed since Hale's initial inquisition on the interpreting ecology in Australian courts and jurisdictions. It is high time that we look back on what has been published since 2010 on the apparatus of multilingual legal interpreting situations. Publicly available policies and protocols in Australian courts and tribunals in the past decade are investigated to see if there is now a uniformalised understanding of how interpreters should perform their duties in courtrooms. The results indicate that the

forecast for a consistent legal interpreting practice is encouraging, with the systematic infrastructure better established on the national level through the recent publication of a national protocol for interpreters working in court settings and the renewed specialised credential for legal interpreters. However, the enaction of these signs of progress on the state and territory level is far from uniformalised, and answers vary from jurisdiction to jurisdiction to questions concerning interpreter's competence, working conditions and procedures of an interpreter-mediated proceedings. It suggests that all stakeholders in a multilingual courtroom should remain committed to the ongoing dialogue on how to best facilitate interpreters' engagement in such settings, that can advance legal interpreting as a profession as well as justice and equity for community members of a culturally and linguistically diverse background.

The paper begins by situating the current study in the Australian context, where legal interpreting has long been systematically organised yet only recently specialised. It proceeds to review the literature on quality in legal interpreting, which is fundamental to a multicultural society like Australia and only achievable through the collaboration of all parties involved in multilingual proceedings. The examination of interpreter protocols and guidelines, though scarce, shines light on the scale of guiding resources available to judicial officers and courts in writing. Hale's monumental project commencing in 2009 is an epitome of such endeavours. The publication of *the Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals: A National Survey* in 2011 is also reviewed to provide a baseline for the comparison between situations now and then. It then moves on to the data surveyed in the current study, before delving into a more detailed discussion on changes on the national level and its enaction on the state and territory level, as reflected in the existing protocols and guidelines published by jurisdictions.

2. Becoming Legal Interpreters: The Australian Context

When it comes to community interpreting, Australia is undoubtedly one of the pioneers and continues to standardise its legal interpreting credential system to remain among the high-end set of countries. A systematic accreditation scheme was established as early as 1977, overlooked by the National Accreditation Authority for Translators and Interpreters (NAATI henceforth) (Hale, 2004). As the national accreditation body, NAATI

performs a range of functions relevant to the professionalisation of translators and interpreters in Australia, including setting and maintaining of industrial standards, issuing accreditation through testing or training, and assessing eligibility of qualifications obtained elsewhere (NAATI 2008a, Cf. Taibi, 2012). Its mission, as summarised in its current annual report (2018-19), is "to set and maintain high national standards for the translating and interpreting sector to ensure a supply of appropriately certified professionals to meet the changing needs of Australia's culturally and linguistically diverse society" (National Accreditation Authority for Translators and Interpreters, 2019: 5).

However, NAATI had long been faulted for the absence of specialised accreditation for legal interpreting (Hale, 2004, 2011). From the 90s through 2018, a five-tiered accreditation system was implemented, where the only specialisation was for conference interpreters. According to Hale (2004, 2011), interpreters working in the court setting are usually accredited at the third tier, or otherwise known as "Professional Interpreter". They are likely to be untrained interpreters who have never gone through pre-service training specific to interpreting, let alone legal interpreting. Besides, for an extended period of time, the accreditation test was designed to assess interpreters as generalists, rather than specialists in certain settings. The tasks were criticised for their lack of rigour in representing the modes, registers and context specific to legal interpreting (González et al., 1991).

This much-contended flaw was finally addressed in 2017, as NAATI proposed a new five-tier certification scheme to replace the previous accreditation system. Five credential types were introduced: "Recognised Practicing", "Certified Provisional Interpreter", "Certified Interpreter", "Certified Specialist Legal/Health Interpreter" and "Certified Conference Interpreter". Upon recertification of their previous credentials, Professional Interpreters were transitioned into Certified Interpreters. However, to become Certified Specialist Legal Interpreter, it would require an additional application that examines the "minimum standards of performance across a number of areas of competency" (National Accreditation Authority for Translators and Interpreters, 2018: 30). A review of certification scheme published by NAATI (2016: 12) highlights several areas of knowledge, skills and attributes, which it had been previously criticised for lacking, specifically those in relation to the idiosyncrasies of a specialised setting:

> Subject-matter specific knowledge refers to specific areas of knowledge in the professional fields in which interpreters work. Moreover, interpreting assignments

often occur in specific institutional settings. Interpreters are required to have Institution-specific knowledge to deal with the particular structures, personnel and practices of those institutions. This includes knowledge of specific institutional protocols, terminology and communication dynamics.

The certification test is also updated to reflect this progress. Interpreters aspiring to receive the credential as a Certified Specialist Legal Interpreter are now subject to stricter pre-requisite screening. To be deemed eligible for the certification test, the interpreter needs to either sit in a pre-requisite screening test or provide evidence on their interpreting qualifications and working experience, as well as legal qualifications or professional development in the area of specialisation. The specialised certification test consists of a knowledge test on legal interpreting, and four interpreting tasks that are "based on real-life exchanges as encountered by interpreters in specialised legal contexts" (National Accreditation Authority for Translators and Interpreters, 2020: 2).

The current specialised credential ensures that interpreters possess a set of key competencies to work competently in court interpreting. This is realised through compulsory formal training and extended period of working experience and safeguarded by passing the minimum requirements as epitomised in the specialised certification test. Since the new certification scheme only began to roll out in late 2019 (National Accreditation Authority for Translators and Interpreters, 2019), scarce was this new credential mentioned in current interpreter protocols and guidelines available just yet. However, it is only a matter of time that Certified Specialised Legal Interpreters rise to the challenge between Scylla and Charybdis of defence and prosecution.

3. Quality in Legal Interpreting: A Shared Responsibility

One cannot over-emphasise the significance of community interpreting to linguistically diverse societies, where issues of language and culture intertwine with that of social justice and equity (Bancroft, 2015). The gravity of community interpreting resides in the real need for those who do not speak the societal language to access basic service equally as those who do. The service of community interpreters can induce so critical a consequence, that Hale (2007: 33) asserts that, when it comes to performing a quality job, the responsibility weighs heavily on interpreters working in the community, even

more than those working in conferences and international plenary sessions.

Legal interpreting is a much established and institutionalised strand of community interpreting, that traditionally meant court interpreting exclusively but gradually extends to include interpreting of quasi-legal services or processes outside the courtrooms, such as those provided by the legal aid offices (Bancroft et al., 2013). The quality of legal interpreting is subject to constant investigation by researchers of T&I professions (González et al., 1991; Hale, 2004; Mikkelson, 2016; Prieto Ramos, 2020; Shlesinger & Pöchhacker, 2010). It is widely acknowledged that legal interpreting is not a game of solitaire. Interpreters serve as the arm of law in the collaboration of jurist and policy makers, without whom the rights to equity cannot possibly be delivered (Morris, 2010). As aptly put by Ozolins and Hale (2009: 3) in the introduction to the fifth Critical Link Conference, the quality of interpreting is not to be assumed by interpreters solely, but by all those who are involved in the process of multilingual litigation, and beyond:

> Each speaker needs to assume responsibility for what they say and how they say it; employers need to assume responsibility for providing suitable conditions and remuneration; the different systems need to assume responsibility for ensuring that minimum standards are demanded; educational institutions need to assume responsibility for providing adequate resources and support; researchers need to assume responsibility for making their research relevant, applicable and accessible to practitioners; and interpreters need to assume responsibility for their own professional development and professionalism.

In the same volume, Roberts-Smith (2009) lends strong support to this statement through his observations made as a senior legal officer of the Supreme Court of Western Australia. He cites several cases where inconsistent practices of judges and lawyers when dealing with an interpreter impinge on forensic procedures, resulting in errors that are usually at the expense of the litigant. In the same light, Morris (2010) resonates that the judiciary's "not playing the game", that is, not assuming responsibility for a competent legal interpreting process, encroaches on the fundamental rights of the minority-language-speaking clients. These findings are barely new, yet once again highlight the significance of research examining existing protocols and guidelines in an effort to identify the "missing stitches" and thread in updated concepts and knowledge on the legal interpreting profession.

However, rarely were interpreter protocols and guidelines put under scrutiny in

previous research to assess if they adequately inform the practice on the part of the institution when dealing with litigants from a different cultural and linguistic background. Examinations as such are essential to ascertain flaws and strengths in the current practice. In his survey of language access policies, standards and guidelines in the United States justice system, Killman (2020) found that, while interpreting services are reliably provided by different courts, court-related translation nonetheless receives barely as much attention. Court interpreters are obliged by this lacuna in principle to take up the role of ad hoc translators and perform duties irrelevant to their credential. By the same token but specific to health interpreting, Angelelli et al. (2007) also highlight the significance of reviewing existing healthcare interpreter standards, including *the Code of Ethics* developed by the Australian Institute for Interpreters and Translators (2012), in the process of developing and validating *the California Standards for Healthcare Interpreters.*

A uniform and consistent framework is warranted to promote common understanding of the work of a legal interpreter among all parties, across all jurisdictions and throughout all interactive episodes of a legal proceeding. To my knowledge, there has not been a systematic enquiry on interpreter protocols and guidelines in the Australian justice system since Hale's (2011) initial study, which this study seeks to redress. Firstly, the subsequent section looks at Hale's work in further details that laid the backdrop to the current study.

4. AJIA Conference and the Enquiry Therefrom

Despite being at the forefront of community interpreting, Australia lay inert when it comes to the professionalisation and standardisation of interpreting in courtrooms. The 2009 conference held by the Australasian Institute of Judicial Administration (AIJA) revealed the dire need of a consistent national protocol on working with interpreters in the justice system. Following this call, a research project, led by Professor Sandra Hale, was rolled out Australia-wide to provide an overview of interpreting practices in Australian courts and tribunals. The objective is to identify strengths and weaknesses in the practices then, which could be included in the recommendations for a protocol that extends to all interpreters working in the justice system. The result of this project was compiled and published in *the Interpreter Policies, Practices and Protocols in Australian*

Courts and Tribunals: A National Survey (Hale, 2011).

The project consisted of a survey of policies, protocols and guidelines for working with interpreters in courts and tribunals, as well as two questionnaires, respectively addressed to judicial officers and tribunal members and interpreters. A total of 104 websites relevant to all Australian jurisdictions were reviewed during the period of December 2009 and June 2010. Under analysis were three types of policy documents or guidelines available on these websites (Hale, 2011: 5): General policy documents on "access and equity issues, multiculturalism or language services", or with "some mention of interpreter provision and minimum requirements"; Guidelines for judicial officers or tribunal members on how to work with interpreters; and Guidelines for interpreters on how to work with the court or tribunals. In addition, two questionnaires were distributed online, covering a range of issues concerning interpreting practices in court settings, such as those on quality, process and remuneration. They were met with responses from 148 judicial officers, including tribunal members, judges and magistrates and registrars, and 138 interpreters.

The results suggested a staggering lack of uniformity across jurisdictions at a national level, not only in the types of guidelines available but also in how these guidelines are implemented in practice. According to Hale (2011: xii), there was a diverse range of documents accessible, but hardly any specifically catered to the legal sector. However, the ones that did provide a reasonably comprehensive account on working with interpreters were not necessarily familiar to the judicial officers, let alone been implemented consistently across the nation.

Variations were observed in courts' requirement for interpreting qualifications or training, as well as their understanding in the interpreting process. While the poor quality of interpreting was much complained about among judicial officers, the priority in hiring an interpreter was not always their level of qualification or training, but accessibility, both time- and price-wise. It also reflected misconceptions among the majority of judicial officers on the nature of legal interpreting, presuming that it only entails "word-for-word" rendition in a different language and that provision of background materials is unwarranted. The interpreters nonetheless conveyed frustration over being mistrusted, not allowing contextual information required to perform a quality job and feeling uncomfortable to ask for clarifications. Despite the mentioning of basic working conditions in existing guidelines, it was also conceded by judicial officers and interpreters that breaks are rarely provided. Many interpreters took issue in remuneration, which was mostly unregulated, and fell in the hands of agencies. A formal interpreting

education would barely result in a raise in payment, leaving no incentive for further development.

With all the divergences, there was a unitary demand for a national protocol that "would uniformalise practices across jurisdictions at a national level" (Hale, 2011: xiv), upon which sixteen recommendations were made (2011: xv). Table 1 summarises these recommendations by categorisation into the three main issues discussed in Hale (2011). These recommendations serve as an integral whole to elevate the quality of interpreting provided to culturally and linguistically diverse community members seeking justice services. The issue of competence came to the fore in this discussion, landing especially hard on the lack of specialised accreditation and formal training and their recognition in the hiring process and remuneration. The recommendations also encourage communications between practitioners of the law and interpreters, fostering trust and understanding in interpreters as the conducive collaborator in the multilingual courtrooms.

Table 1. Recommendations Attributed to Issues in Court Interpreting

Issue	Relevant Recommendations
Competence (Accreditation, Training, Experience, etc.)	Recommendation 1 – Preference for best-qualified interpreters Recommendation 3 – Formal legal interpreting training Recommendation 5 – NAATI accreditation for specialist legal interpreter
Work Conditions, Status, Remuneration	Recommendation 8 – Provision of adequate working conditions Recommendation 9 – Briefing Recommendation 10 – Team interpreting Recommendation 11 – Differential pay rates Recommendation 12 – Interpreter booking and remuneration
Process of Engaging an Interpreter	Recommendation 2 – Qualification stated at the commencement of proceedings Recommendation 7 – Training for courts, judicial officers and legal practitioners on working with interpreters Recommendation 13 – Transparent contracting Recommendation 14 – Feedback mechanism for judicial officers, courts and interpreters

> Recommendation 16 – A national protocol on working with interpreters in courts and tribunal

Almost ten years have gone by since the blueprint was laid out for a consistent guideline on working with interpreters in Australian courts and tribunals. To what extent have these recommendations informed institutional guidelines published thereafter? Is there more consistency in legal interpreting practice in Australian courts and tribunals that are, at least, discernible on paper? This study sets out to address these two questions.

5. Current Study

5.1. Methodology

During June and October 2020, a total of 121 websites across all Australian jurisdictions (Federal, State and Territories) were reviewed to identify protocols, guidelines and policies relevant to working with interpreters in courts and tribunals. On the basis of 104 websites included in Hale's original search (2011: 57-61), an additional 17 websites were sourced, mainly professional bodies such as Legal Aid. The websites constitute three categories as proposed by Hale (2011: 4): Government or Professional (Government home page, Departments of Justice and Attorney General, multicultural affairs, professional councils, etc.); Courts; and Tribunals. Ninety-eight entries were recorded that contains reference to the involvement of interpreters in public and justice services, published or updated after 2010. The following types of policy documents or guidelines fell under scrutiny:

Policies and information on access to interpreter, multiculturalism or language services published by government departments, or courts and tribunals: The majority of policy documents in this category were addressed to the Language-other-than-English (LOTE) speaking clients wishing to access services with the help of an interpreter. Some were also addressed to service providers, namely staff of government agencies, or judicial officers and tribunal members.

Guidelines or protocols for service providers on how to work with interpreters:

These were usually published separately as a guiding document detailing the involvement of an interpreter, or enclosed as a section in the practice direction for the court. While some documents associated the use of language services with multicultural affairs in general, there were also documents developed by jurisdictions both at the federal and local level that specifically addressed how their officers or members could work with interpreters in multilingual cases.

Guidelines for interpreters on how to work in courts and tribunals: Little information was available for interpreters on how they are expected to be involved in these settings.

Due caution was taken to make sure that the entries included a comprehensive list of available resources on language services. They were corroborated with a jurisdiction-by-jurisdiction overview of policies and procedures available in Australian courts with regards to culturally diverse population groups, *the Cultural Diversity Within the Judicial Context: Existing Court Resources* (Judicial Council on Cultural Diversity, 2016). This overview was based on a scoping study commissioned by the Migration Council Australia.

Upon identification of policies and guidelines, a distinction was drawn between documents on language services as a general multicultural affair and those specifically explicating on interpreting in a judiciary section, where the latter were subject to a more detailed analysis. They were also distinguished according to the intended recipient of the information, be it the service provider, the client or the interpreter. The content of these documents was reviewed against the three major categories of issues laid out in Hale (2011): Quality of interpreting, including certification, qualification, and training required for an interpreter to work in court settings; Working conditions, status and remunerations; Process of engaging an interpreter before and during proceedings. References to other guidelines were also noted, as these commonalities constitute potentials for a consistent practice across jurisdictions. The following section provides an overview of the data, as well as observations made on these initial sketches.

5.2. Data Overview

A review of interpreter protocols and guidelines published post-2010 yields a promising outlook to legal interpreting as a profession growingly standardised by

consistent practices, especially on the federal level. Hale's (2011) initial inquiry is monumental in that it not only contributes to the professionalisation of legal interpreter but also lays the groundwork for an overhaul of how the judiciary system engages an interpreter. In line with her recommendations, legal interpreting now becomes a specialist credential, awarded only to those with formal training and working experience, upon their successful completion of a certification test on knowledge and tasks specific to legal interpreting. A recommended framework on working with interpreters in the Australian judiciary system was published, following the established of a national advisory body on cultural and linguistic diversity.

However, disparities are observed on the state and territory level, as jurisdictions vary drastically in the number of guidelines available. As shown in Figure 1 below, Victoria (VIC), New South Wales (NSW) and Western Australia (WA) top the list, altogether contributing over half of the total number of guidelines. The Northern Territory (NT), Queensland (QLD) and South Australia (SA) are similar in the number of policies and guidelines, almost half as many as the top three, whereas Tasmania (TAS) and the Australian Capital Territory (ACT) have the fewest number. A breakdown of the 98 entries according to jurisdictions and addressee also found the variations across jurisdictions on who these guidelines are for. Policies and guidelines at the federal level are predominantly intended for service providers, so are those states with fewer numbers of guidelines. The states with the higher numbers nonetheless mostly address these documents to LOTE-speaking clients. To a certain extent, the sheer numbers reflect the attention to multicultural affairs and the size of the population that may require access to language services, as New South Wales and Victoria are also the two states with the highest percentage of LOTE-speaking households according to the 2016 census (Australian Bureau of Statistics, 2017).

The close-up examination of guidelines and protocols designed specifically for legal settings renders a more balanced number across jurisdictions, with the majority having three to four protocols of such nature. Nonetheless, the level of standardisation and uniformity may not be fully interpreted through the numbers. The Australian Capital Territory, albeit with seemingly the fewest guidelines, published an overarching interpreter protocol in 2020 that applies to all courts and tribunals in the territory, contributary to higher consistency in legal interpreting practice within the territory's justice system.

One thing to be noted is the increasing awareness on competent legal interpreting being a shared responsibility, as protocols and guidelines were published by a broader

range of professional bodies and took into account of all episodes that lead up to the proceeding. For example, legal aid commissions across all jurisdictions now have their guiding policies or even well-established protocols on working with interpreters in legal counselling. The Queensland Police (2016) published their Best Practice Guide on working with interpreters in domestic and family violence incidents. There is also an extended mention of modalities previously under-theorised, translating current research in the field of T&I into practices, such as sight translation and remote interpreting through video/telephone.

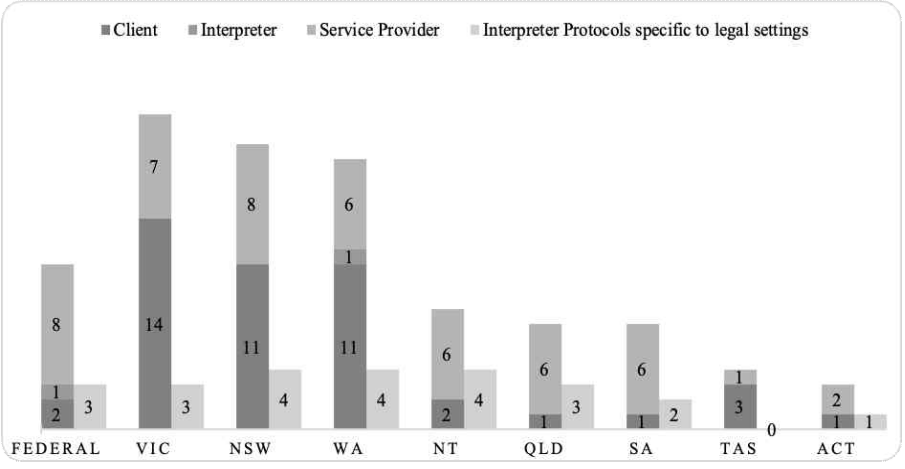

Figure 1. Number breakdown of protocols, guidelines & policies based on jurisdictions

We will now move on to discuss in further details the efforts made on the federal and state and territory level respectively towards a more standardised and uniformalised interpreting practice in the Australian judiciary system. On the federal level, the endeavours were exemplified through the national framework that makes recommendations on quality legal interpreting practices in courts and tribunals. However, it may require enduring efforts for such uniformity to pervade the legal interpreting practice on the state and territory level, where there is yet to be a unified response to the transformations from the top.

6. Long-Awaited Debut: The Recommended National Standards

The establishment of the Judicial Council on Cultural Diversity (JCCD henceforth) in Australia marks the cornerstone of solidarity, as members from across judiciaries and community and legal bodies join efforts to support justice and equality in culturally and linguistically diverse community members' access to legal services. Established in 2014 under the endorsement of the Council of Chief Justices of Australia, the JCCD is a national advisory body to aid Australian courts, judicial officers and administrators in their response to the diverse needs of a multicultural Australia. The council constitutes members nominated across all jurisdictions and court levels. In supporting "procedural fairness and equality of treatment for all court users", one of the critical missions of JCCD is to "develop and provide independent advice on protocols, best practice guidelines and proposals for dealing with cultural and linguistic diversity-related issues in Australian courts and tribunals" (Judicial Council on Cultural Diversity, 2014).

This mission was promptly fulfilled in 2017, following the launch of *the Recommended National Standards for Working with Interpreters in Courts and Tribunals (The Standards*) in 2017 (Judicial Council on Cultural Diversity, 2017). It was prepared by a specialist committee appointed by the JCCD, the members of which include Professor Sandra Hale herself. In many ways, the Standards makes apparent reference to Hale's original work in 2011 and is substantiated with extensive annotations by Hale, quoting latest research on legal interpreting for validations. A total of 26 standards are divided into four sections, directed respectively to different parties responsible for the facilitation of court interpreting: courts, judicial officers, interpreters and legal practitioners. In accordance with the categorisation in Hale (2011), Table 2 shows how the standards are assigned depending on their pertinence to the three topics: competence, work conditions and processes of engaging an interpreter.

However, the examination of protocols and guidelines available at state and territory level indicates that the national standards cannot be regarded as the silver bullet to the inconsistency observed in court interpreting practices Australia-wide. In fact, it would be almost mythical for jurisdictions to instantaneously subscribe to the new standards in a narrow time window. Nonetheless, its implication is far-reaching. On the one hand, the Standards establish sanctioned and optimal practices in the courts' facilitation of interpreting services for people from culturally and linguistically diverse backgrounds. On

the other hand, it is also an official nod to legal interpreting as a profession, acknowledging interpreters' indispensable role as "officers of the court" (2017: 5).

Table 2. Standards Attributed to Issues in Court Interpreting

Issue	Relevant Standard
Competence (Accreditation, Training, Experience, etc.)	Standard 11 – Engaging an Interpreter Standard 19 – Court Interpreters' Code of Conduct Standard 20 – Duties of interpreters
Work Conditions, Status, Remuneration	Standard 7 – Court budget for interpreters Standard 9 – Support for interpreters Optimal Standard 1 – Simultaneous interpreting equipment Optimal Standard 2 – Provision of tandem or team interpreting Optimal Standard 4 – Establishment of an interpreters' portal Standard 24 – Briefing interpreters
Process of Engaging an Interpreter	Standard 3 – Engagement of interpreters to ensure procedural fairness Standard 11 – Engaging an Interpreter Standard 14 & 25 – Plain English Standard 16 & 21– Assessing the need for an interpreter Standard 17 – Proceedings with an interpreter Standard 26 – Documents

7. On the Same Page or Not: Enaction of the Standards across Jurisdictions

Recognising the existing jurisdictional differences in the use of interpreters in court proceedings, the *Standards* recommends "practices and procedures to be considered and adopted by courts where and when resources permit" (2017: 6), and so the courts

oblige. It becomes evident that the *Standards* informs a number of current documents and guidelines, including *Interpreting at AAT* (Administrative Appeals Tribunal, 2020), *Interpreter Protocols* (ACT Courts and Tribunals, 2020), *Equity before the Law Benchbook* (Judicial Commission of NSW, 2018), and *Guideline: Working with Interpreters in Queensland Courts and Tribunals* (Queensland Courts and Tribunals, 2019).

However, as demonstrated in the following sections, the enaction on the state and territory level is often of reduced efficacy and barely to an equal breadth as the *Standards*. The question on who may be considered eligible to work in court settings was met with dissonant answers jurisdiction by jurisdiction, with insufficient consideration of the current certification system, let alone the specialised credential. Moreover, with the institutional power invested in them, judicial officers and tribunal members exercise the duality of service and control in their interaction with the interpreter during court interpreting. This results in contrasting approaches across jurisdictions when adopting recommendations from the Standards in their local practice.

7.1. Who can be court interpreters?

The Standards makes comprehensive and language-specific suggestions on who is qualified to be engaged in interpreting for courts and tribunals. According to Standard 11, in any case, should an interpreter be required by either the court or other legal bodies, it is advised that "a Qualified Interpreter" be prioritised (2017: 40-52). The court or legal practitioners responsible for the engagement are encouraged to take into consideration potential candidates' interpreting training, especially that with regards to legal interpreting, NAATI credentials, membership with recognised professional association, and experience working in court. The criteria are, to a large extent, aligned with the requirement for Certified Specialised Legal Interpreter. In the addendum to the Standards released in 2019, the new certification system is introduced with reference to specialised legal interpreter (Judicial Council on Cultural Diversity, 2019). In any case, it is recommended that interpreter with the highest credential be recruited whenever possible.

However, in most guidelines and protocols published on the state and territory level, the specialised credential is given little consideration and rarely factors into hiring an interpreter. As illustrated in Figure 2, when it comes to who can serve as court

interpreters, 44% of the existing documents adopt a generalist title "interpreter", especially the ones intended for LOTE-speaking client. Guidelines for judicial officers and tribunal members are also not short of ambiguity as such: "when required, the tribunal provides interpreter" (Mental Health Tribunal, 2019).

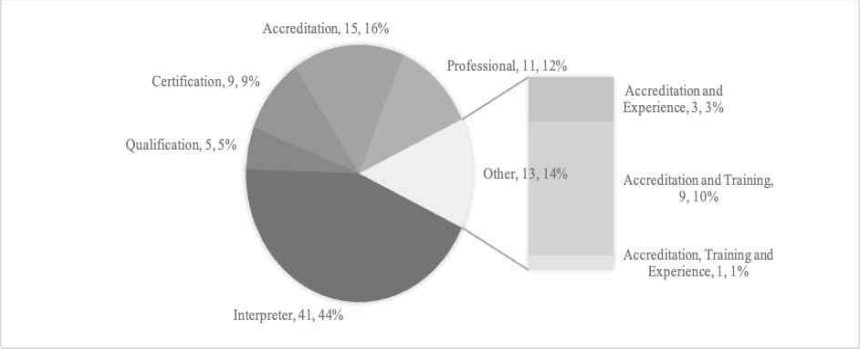

Figure 2. Requirement for interpreters working in courts and tribunals

With the ones that do explicate on qualifications required to serve, jurisdictions employ different credential systems to determine suitability of a potential interpreter, with less than 10% keeping abreast with the current certification system. For example, the Queensland Guideline, despite citing the addendum in its footnote, follows the outdated accreditation system: "a Professional Interpreter should be engaged" (2019: 7). The rest generally avoid the mentioning of specific credential but highlight the provision of a "competent" (The Supreme Court of Victoria, 2015a), "accredited" (Community Justice Centres, 2015), or "qualified" (Legal Aid ACT, n.d.) interpreter.

Experience and formal training in interpreting are also taken into account to a less extent. A mere 13% of the available guidelines mention one or both aspects in their selection of interpreters, with specialised training being the prioritised criterion when credentials are unavailable:

> The Court will consider an interpreter to be prima facie competent if the interpreter: … (b) holds a nationally accredited Advanced Diploma in Interpreting.
> (The Supreme Court of Western Australia, 2012: PD 9.13)
>
> It is advisable to give preference to those practitioners who, in addition to their NAATI credential, also hold a university degree or a TAFE advanced

diploma in interpreting and/or translation.

(Judicial Commission of NSW, 2018: 3.3.1.3)

Lastly, the lack of regards for specialised credential is also reflected in remuneration. While Standard 9 calls on courts to consider differential rates to incentivise higher level of qualification and specialised experience, there is barely any mention as such in the protocols and guidelines on the state and territory level. Moreover, the analysis found remuneration generally not covered in the guidelines and protocols, as under most circumstances this is subject to the multicultural strategy plan laid out at the State level, or rates proposed by interpreting agencies.

7.2. Working with Interpreters: Service and Control

The institutional position of judicial officers and courts obliges them to serve other present parties, while at the same time, empowers them to control the flow of the proceeding. The *Standards* embodies this balance through its suggestions to judicial officers, who are the support person to interpreters in times of need and uncertainties, while also in control interpreter's engagement in the first place and disengagement when there is a conflict of interest or incompetence. The examination of existing protocols and guidelines indicates that this duality is exercised to varying degrees across jurisdictions, sometimes even within the same document. More often than not, the support warranted in writing is barely equal to the control that interpreters are subject to thereof.

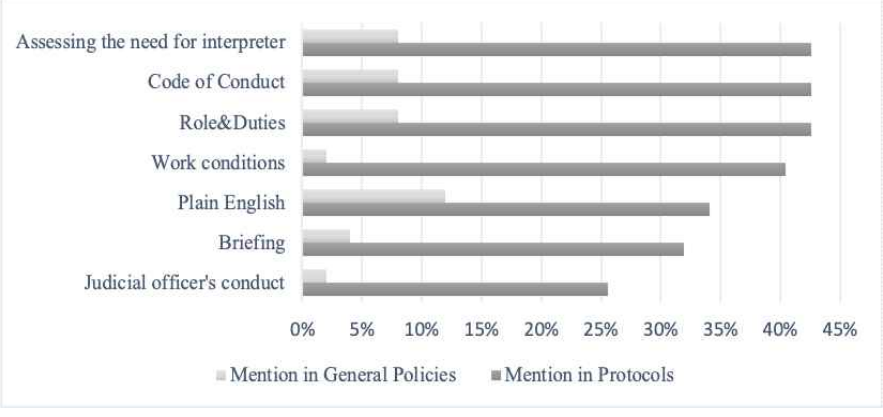

Figure 3. Procedural issues covered in interpreter policies and protocols

As shown in Figure 3, compiled protocols are considerably more informative than web page-based policies on how interpreters should be engaged during court proceedings. Albeit all issues raised in the figure are relevant to procedures in multilingual litigation, more emphases land on issues on the part of interpreters. Over 40% of existing protocols include requirements on interpreter's adherence to the Code of Ethics and explications on their sanctioned role and duties. The least discussed issue is, nonetheless, how judicial officers are expected to interact with interpreters during the process, signifying disproportionate assumptions on responsibilities.

7.2.1. Interpreter's Role and Duties

The *Standards* acknowledges interpreters' vital role in the courtroom as "officer of the court", who "owes to the court paramount duties of accuracy and impartiality" (2017: 30). However, in protocols and guidelines on the state and territory level, seldom are interpreter regarded as an institutional insider as suggested in the *Standards*, but more frequently as language professionals merely present for the sake of information transposition. The reluctance to bequeath institutional power to interpreter is evident in some guidelines, which maintain that interpreters "effectively become invisible during communication, if done well" (The Supreme Court of Western Australia, 2012: PD 9.13.1).

Expectations on interpreter's dutifulness hinge on how their role is interpreted primarily. For example, what extent of liberty should be allowed in their rendition before it is considered to be inaccurate. When explicating on interpreter's duties, a much-warranted discussion is set out in Standard 20 on accuracy in a socio-pragmatic sense, which received much scholarly attention on the cross-cultural issues involved in court interpreting (Hale, 2014; Lee, 2010). The *Standards* alerts judicial officers to the danger of mistaking literal, word-for-word translation for accuracy: " Most literal translations will simply render nonsensical utterances in the target language" (2017: 81). The vast majority of guidelines and protocols embraced this advice as received wisdom, noting that interpreting and translation cannot be taken as "exact science": "Translating from one language to another always involves the interpreter in making a decision as to how best to convey the sense of what has been said rather than just a word for word translation" (Local Court of NSW, 2017: 14-160). However, it is not unfound that in some courts, the normative view of interpreter persists, and formal equivalence is

preferred: "Court interpreters must be accredited and repeat the exact words spoken or signed by each person and cannot provide legal advice or give opinions" (Magistrates' Court of Victoria, 2019).

One of the best-enacted standards is nonetheless that in regard to the Code of Ethics. As conveyed in Standard 19, interpreters, or any untrained bilinguals to fill this position, are expected to adhere to the *Code of Ethics* developed by the Australian Institute of Interpreters and Translators (AUSIT) (The Australian Institute of Interpreters and Translators, 2012) and the Court Interpreters' Code of Conduct outlined in Schedule 1 of the Standards (2017: 22-23). Over 40% of the protocols surveyed concurred, including reference to the AUSIT *Code of Ethics*.

7.2.2. Mediating Service and Control

The *Standards* sets out in incredible intricacies the working conditions in support of interpreters performing their duties, including those on- and off-site. It suggests that a designated room for working be provided, ideally in a location with clear visual and audio reception of all parties or even simultaneous interpreting equipment, as well as access to the internet for online dictionaries and reference materials. The interpreters need to have regular breaks and even another interpreter to work in tandem for proceedings in excruciating length or complexity. Furthermore, Optimal Standard 2 advocates for team interpreting as the "standard practice" to be employed for the optimal purpose of the *Standards* (2017: 54).

One-third of the protocols reviewed include parts on supporting interpreters on-site to ensure the basic working conditions, including seating arrangements and the provision of water. Most jurisdictions demonstrate awareness on the mental strain of interpreting and allow breaks during proceedings. However, breaks are granted with ranging generosities jurisdiction by jurisdiction, from entirely at the discretion of the court to upon request of the interpreter.

> Court may give directions concerning interpreters: … (j) the length of time for which an interpreter should interpret during a hearing without a break.
>
> (The Supreme Court of Victoria, 2015b: 44A.07)

> An interpreter may take as many breaks as they require. The Judicial Officer will allow more breaks than usual when an interpreter is being used. The timing of the breaks will depend on the flow of the evidence.

(The Supreme Court of Western Australia, 2012: 9.13.1)

In general, it is noted that there is a lack of mention of technical support provided for simultaneous interpreting and team interpreting. While hearing loops can be extremely helpful when the proceeding is not conducted in a volume optimal for interpreting, its use is mainly restricted to community members with a hearing impairment or hard of hearing.

Briefing is another essential support required for interpreters' familiarisation with relevant contextual and situational knowledge prior to the assignment. The *Standards* suggests that relevant documents be passed onto the interpreter prior to the proceeding, especially the ones that may require sight translation (2017: 93). The recommendation of briefing in several existing protocols, nonetheless, often read that any materials revealed to interpreter should be provided alongside a copy of protocol or Code of Ethics, shining light on the recurring concern on the issue of confidentiality. *Language Service Guideline* published by Multicultural Affairs Queensland (2016: 15) specifically suggests that a non-disclosure agreement may also be applicable in this process, "if there are any concerns regarding confidentiality the interpreter".

In summary, the Standards undeniably represents a critical stride towards standardisation of legal interpreting practices across Australian jurisdictions, with a rather progressive and optimal framework in mind. However, the discrepancies observed in existing protocols and guidelines on the state and territory level indicate that more work needs to be done before its efficacy could permeate to a more local level, particularly on an elevated recognition of the specialised legal interpreting credential and a better equilibrium of the service and control.

8. Conclusion

Quality legal interpreter builds around a shared responsibility of all parties responsible in a multilingual courtroom, among which judicial officers and tribunal members have an integral part to play, yet are less likely to subject to scrutiny in comparison with interpreters. This paper seeks to claim further attention on the part of the institution, specifically, how they are guided by practice protocols and guidelines in their interaction with interpreters during proceedings. Following Hale's (2011) ground-breaking inquisition, this research revisits language service policies and interpreter protocols and guidelines

published or updated after 2010 to examine if current practices across jurisdictions are directed by a more consistent interpreting standard nationwide. The answer to this enquiry seems to be stratified on the national and state level. On the national level, legal interpreting is steering into the course of becoming a more specialised and standardised profession, with specialised credential for legal interpreters and a national protocol in place. However, on the state and territory level, discrepancies are observed in practice guidelines across jurisdictions, signalling the magnitude of work yet to be done before a consistent legal interpreting practice can be in place nation-wide. Examination as such reviews the monumental advancement in the profession that yields valuable Australian experience to countries in pursuit of a similar systematic overhaul of language services, while at the same time, warns against complacencies when the predicament of inconsistency in legal interpreting practices at local level awaits to be addressed.

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