

Interpreters and translators

To ensure a fair hearing in domestic and family violence related proceedings and the full participation by parties, it may be appropriate for [judicial officers to facilitate the engagement of interpreter or translator \(“language”\) services](#) where a party has [limited linguistic ability, hearing impairment or other physical or mental disability](#). For example, among the groups identified in this bench book as being at greater risk of experiencing domestic and family violence or more vulnerable to its impacts, [people from culturally and linguistically diverse](#) [JCCD, [The Path to Justice \(CALD\) 2016](#)] or [Aboriginal and Torres Strait Islander](#) backgrounds, and people who experience [disability, mental illness, or poor literacy](#) may indicate a need for language services. Where people are unable to access language services to ensure their full participation in proceedings, they may experience heightened vulnerability to the impacts of domestic and family violence [Wakefield & Taylor 2015].

Research acknowledges the complexity of the issues [Hale [The Need to Raise the Bar 2011](#)], for the parties involved and the [judicial officers making decisions about the use and nature of language services](#) in a given case [Wakefield & Taylor 2015]; and the value of best practice guidelines [Eckert 2013-14] to assist in decision making [JCCD, [The Path to Justice \(ATSI\) 2016](#), JCCD, [The Path to Justice \(CALD\) 2016](#)]. Some of the issues judicial officers may need to consider include:

- A party’s need for language services. A party may be reluctant to disclose a need for language services or may overstate their linguistic ability for a variety of reasons including: embarrassment and shame, fear of being mocked by the other party, distressing prior experience with a language service provider, reluctance to disclose their story to an unknown person or a person known to both parties, privacy and confidentiality concerns, or a mistaken belief that their linguistic ability will be sufficient in a courtroom environment [Hunter 2008].

Where a judicial officer questions a party to determine the need for language services, it is important to reassure the party that the purpose is to ensure a fair hearing and their full participation in proceedings [Barassi-Rubio 2011]. Where it is determined that a party requires language services, it may be appropriate for the judicial officer to take steps to ensure that these services will be made available to the party for the duration of all proceedings.

- The consequences of a party being denied access to language services during the police process [Cavallaro 2010] prior to the matter coming before the court and the steps that may need to be taken to ensure the party’s understanding of the matter and confidence in the ongoing judicial process.
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The availability of language service providers appropriate to the party's specific needs [[Hale Breaking Through the Language Barrier 2011](#)]. For example, there is a widespread shortage throughout Australian jurisdictions of language service providers who have a specialised understanding of domestic and family violence matters and the legal terminology used in related proceedings. Further, there may be limited language service providers available for some Aboriginal and Torres Strait Islander and new and emerging languages, and this may be more prevalent in rural and remote communities. Where it is established that a party speaks more than one language, it may be possible to access language service providers more readily for one language than for another. In some countries it is not uncommon for people to speak three or four languages. It is important not to make assumptions about a party's predominant language based on their country of origin or residence; they may have moved often, or spent extended periods in refugee camps, which may influence their language choice and usage. Certain countries and territories may also have multiple distinct language groups.

In some circumstances, based on a belief that there are no alternative options they would be comfortable or confident with, a party may express a preference for their own linguistically able child to provide the language services they require. It is important for judicial officers to appreciate the range of potential adverse impacts on **children** providing language services to a parent in legal proceedings [[Hale Breaking Through the Language Barrier 2011](#)] especially when they involve allegations of domestic and family violence.

- The qualifications and competencies of language service providers. The National Accreditation Authority for Translators and Interpreters (NAATI) is Australia's national standards and accreditation body. While it is the only agency authorised to issue accreditations for practitioners who wish to work in these roles in Australia, the profession is unregulated, and there is no statutory requirement that translators and interpreters be accredited. At times, there may be no NAATI-accredited language service provider available, or the language service provider is not accredited at the appropriate level. In these circumstances a judicial officer may need to consider options for the best possible practice taking into account the practicalities of the particular case.
- The appropriate gender of the language service provider [[Hale Breaking Through the Language Barrier 2011](#)]. A party requiring language services may feel more comfortable and confident with a provider of the same gender.
- Whether it is appropriate to engage separate providers for each party requiring language services [[Beutz 2004](#)]. A party may be reluctant to disclose their story to a provider who is also providing language services to the other party, and therefore may feel more comfortable and confident with an independent provider. It is likely that a party will not object to the same provider for themselves and their witnesses.
- The independence and neutrality of the language service provider having regard to the familial, social, financial and proprietary interests of all parties to the proceedings [[Hunter 2008](#)]. This is especially important in the context of a small community where parties are likely to be concerned about privacy and confidentiality [[Ostapiej-Piatkowski & Allimant 2013](#)]. It may in some circumstances be necessary for

parties to access language services located outside the particular community.

- > The most appropriate and practical means of providing the language services, whether face-to-face or via telephone [[Barassi-Rubio 2011](#)]. These considerations extend to the availability of appropriate language service providers and technical facilities in the courtroom, and arrangements necessary for the payment of associated expenses.
- > The potential for injustice [[Cussen & Lyneham 2012](#)] where a party is not provided with the language services they require, or the services are inadequate, incompetent or poorly managed [[Assafiri & Dimopoulos 1995](#)].