



New South Wales

# **Uniform Civil Procedure (Amendment No 92) Rule 2019**

under the

Civil Procedure Act 2005

The Uniform Rules Committee has made the following rule of court under the *Civil Procedure Act 2005*.

Rebel Kenna  
Secretary of the Uniform Rules Committee

## **Explanatory note**

The object of this Rule is to amend the *Uniform Civil Procedure Rules 2005* to provide for rules concerning interpreters based on the Model Rules set out in the *Recommended National Standards for Working with Interpreters in Courts and Tribunals* prepared by the Judicial Council on Cultural Diversity.

## **Uniform Civil Procedure (Amendment No 92) Rule 2019**

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Civil Procedure Act 2005

### **1 Name of Rule**

This Rule is the *Uniform Civil Procedure (Amendment No 92) Rule 2019*.

### **2 Commencement**

This Rule commences on the day on which it is published on the NSW legislation website.

## Schedule 1      **Amendment of Uniform Civil Procedure Rules 2005**

### [1] Part 31, Division 3

Insert after Division 2—

#### **Division 3      Interpreters**

##### **31.55 Main purposes of Division**

The main purposes of this Division are as follows—

- (a) to ensure that the court has control over the giving of evidence that is interpreted or translated into English,
- (b) to recognise the special status of an interpreter in the administration of justice by declaring the duties of an interpreter in relation to the court and the parties to proceedings,
- (c) to provide for rules based on the Model Rules set out in the *Recommended National Standards for Working with Interpreters in Courts and Tribunals* prepared by the Judicial Council on Cultural Diversity.

##### **31.56 Definitions**

In this Division—

**accredited interpreter**, in relation to an other language, means an interpreter who is accredited, registered or recognised as an interpreter for the language by a recognised agency.

**accurately**, in relation to interpreting or translating, means optimally and completely transferring the meaning of the other language into English and of English into the other language, preserving the content and intent of the other language or English (as the case may be) without omission or distortion and including matters that may be considered inappropriate or offensive.

**code of conduct** means the Court Interpreters' Code of Conduct set out in Schedule 7A.

**interpret** means the process by which spoken or signed language is conveyed from one language (the source language) to another (the target language) orally.

**other language** means a spoken or signed language other than English.

**recognised agency** means—

- (a) the National Accreditation Authority for Translators and Interpreters (NAATI), or
- (b) any other organisation approved by the Chief Justice to be a recognised agency for the purposes of this Division.

**sight translate** means the process by which an interpreter or translator presents a spoken interpretation of a written text.

**translate** means the process by which written language is conveyed from one language (the source language) to another (the target language) in written form.

##### **31.57 Proceedings generally to be conducted in English**

Subject to this Division, proceedings in the court are to be conducted in English.

**31.58 When interpreters may be engaged**

- (1) If the court is satisfied that a witness cannot understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, questions that may be put to the witness, then the witness may give—
  - (a) oral evidence in the other language that is interpreted into English by an interpreter in accordance with this Division, or
  - (b) evidence by an affidavit or statement in English that has been sight translated to the witness by an interpreter in accordance with rule 31.62.

**Note.** Section 30 of the *Evidence Act 1995* provides that a witness may give evidence about a fact through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, questions that may be put about the fact.
- (2) The party calling a witness requiring an interpreter is responsible for engaging an interpreter who meets the standards and requirements imposed by this Division.
- (3) If the court is satisfied that a party cannot understand and speak the English language sufficiently to enable the party to understand and participate in the proceedings, the court must permit the party to use an interpreter who meets the standards and requirements imposed by this Division so as to communicate with the court (but for no other purpose).

**31.59 Who may act as an interpreter**

- (1) A person must not act as an interpreter in proceedings or proposed proceedings unless the person—
  - (a) is currently an accredited interpreter for the other language concerned or otherwise satisfies the court that the person is qualified to act as an interpreter, and
  - (b) has read and agreed to comply with the code of conduct, and
  - (c) takes an oath or makes an affirmation to interpret accurately to the best of the person's ability.
- (2) Also, a person must not act as an interpreter if the person—
  - (a) is or may become a party to, or a witness in, the proceedings or proposed proceedings (other than as the interpreter), or
  - (b) is related to, or has a close personal relationship with, a party or a member of the party's family, or with a witness or potential witness, or
  - (c) has or may have a financial or other interest of any other kind in the outcome of the proceedings or proposed proceedings (other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of the person's engagement or appointment), or
  - (d) is or may be unable to fulfil the person's duty of accuracy or impartiality under rule 31.60 for any reason including, without limitation, personal or religious beliefs, or cultural or other circumstances.
- (3) A person acting as an interpreter must—
  - (a) cease to act as an interpreter if the person becomes aware during a hearing of a matter referred to in subrule (2), and
  - (b) immediately disclose the matter to the court.

- (4) The court may, where it is in the interests of justice, grant leave for a person to act as an interpreter despite not complying with the requirements under subrules (1)–(3), if (to the extent practicable)—
- (a) the court is satisfied that, because of the person’s specialised knowledge based on the person’s training, study or experience, the person is able to interpret and, if necessary, sight translate accurately to the level the court considers satisfactory in all the circumstances from the other language into English and from English into the other language, and
  - (b) the person takes an oath or makes an affirmation to interpret accurately to the best of the person’s ability, and
  - (c) the court is satisfied that the person understands and accepts that, in acting as an interpreter, the person—
    - (i) is not the agent, assistant or advocate of the witness or the party for which the person is to act as an interpreter, and
    - (ii) owes a paramount duty to the court to be impartial and accurate to the best of the person’s ability, and
  - (d) the court directs that the evidence and interpretation be sound recorded for spoken languages and video recorded for sign languages, and
  - (e) the person is over the age of 18 years.
- (5) Subrules (1)–(3) are subject to subrule (4).

### **31.60 Functions of interpreters**

- (1) An interpreter owes a paramount duty to the court to be impartial and accurate to the best of the person’s ability.
- (2) The duty to the court overrides any duty the person may have to a party (regardless of whether the party engaged the person).
- (3) Unless the court otherwise orders, an interpreter must—
- (a) interpret questions and all other spoken communications in the hearing of the proceedings for the party from English into the other language and from the other language into English, and
  - (b) subject to subrule (4), sight translate, whether before or during the course of the witness’ evidence, documents shown to the witness.
- (4) An interpreter may refuse to sight translate if—
- (a) the interpreter considers that the interpreter is not competent to do so, or
  - (b) the task is too onerous or difficult by reason of the length or complexity of the text.
- (5) Unless the court otherwise orders, an interpreter may not assist a party or the party’s legal representatives in their conduct of proceedings or proposed proceedings (including a hearing) except by—
- (a) interpreting questions and other spoken or signed communications in connection with the proceedings or proposed proceedings from English into the other language and from the other language into English, or
  - (b) sight translating documents in connection with the proceedings or proposed proceedings from English into the other language and from the other language into English.

### **31.61 Code of conduct for interpreters**

- (1) An interpreter must comply with the code of conduct.

- (2) Unless the court otherwise orders, as soon as practicable after an interpreter is engaged or appointed for proceedings or proposed proceedings, a copy of the code of conduct is to be provided to the interpreter by—
  - (a) if an interpreter is engaged by a party—the party, or
  - (b) if the interpreter is appointed by the court—the court.
- (3) Unless the court otherwise orders, a witness may not give evidence using an interpreter unless the court is satisfied that the interpreter has read the code of conduct and agreed to be bound by it.
- (4) Subrules (1) and (3) have effect subject to rule 31.59(4).

### **31.62 Interpreted evidence**

- (1) Unless the court otherwise orders, a party seeking to read a translated affidavit or statement of a witness who requires an interpreter is not entitled to rely on the affidavit or statement unless it includes a certification in the approved form by an accredited interpreter for the other language concerned, or such an accredited interpreter separately verifies by affidavit in the approved form, to the following effect—
  - (a) before sight translating the affidavit or statement to the witness, the interpreter—
    - (i) had read the code of conduct and agreed to be bound by it, and
    - (ii) had been given an adequate opportunity to prepare to sight translate the affidavit or statement,
  - (b) the interpreter sight translated the entire affidavit or statement to the witness and the witness then—
    - (i) informed the person responsible for the preparation of the affidavit or statement through the interpreter that the witness had understood the interpreter and agreed with the entire contents of the affidavit or statement, and
    - (ii) swore or affirmed the affidavit or signed the statement in the presence of the interpreter.
- (2) Unless the court otherwise orders, the interpreter referred to in subrule (1) may, but is not required to, be the interpreter who acts as the interpreter for that witness in any hearing in the proceedings.
- (3) The court may at any time, either of its own motion or on the application of a party, request an interpreter to correct, clarify, qualify or explain the interpreter's interpretation of the evidence or sight translation of a document.

### **31.63 Court may give directions concerning interpreters**

Without limiting the court's powers to control its own procedures, the court may at any time give directions concerning all or any of the following matters having regard to the nature of the proceedings (including the type of allegations made and the characteristics of the parties and witnesses)—

- (a) any particular attributes required or not required for an interpreter, including, without limitation, gender, age or ethnic, cultural or social background so as to accommodate any cultural or other reasonable concerns of a party or the witness,
- (b) the number of interpreters required in any proceedings and whether relay interpreting should be used,
- (c) establishing the expertise of an interpreter,

- (d) the steps to be taken to obtain an interpreter who is an accredited interpreter for the other language concerned or is otherwise qualified to act as an interpreter,
- (e) the steps to be taken before an order under rule 31.59(4) is made,
- (f) what information concerning the proceedings (including, without limitation, pleadings, affidavits, lists of witnesses and other documents) may be provided to a person in advance of any hearing to assist that person to prepare to act as an interpreter at that hearing,
- (g) when, in what circumstances and under what (if any) conditions the information referred to in paragraph (f) may be provided,
- (h) whether an interpreter is to interpret the witness' evidence consecutively, simultaneously or in some other way,
- (i) other resources such as dictionaries or other reference works that an interpreter may require to consult in the course of acting as an interpreter,
- (j) the length of time for which an interpreter should interpret during a hearing without a break,
- (k) security for an interpreter including, where necessary, arrangements to preserve the anonymity of the interpreter,
- (l) practical matters concerning an interpreter such as seating for and the location of the interpreter,
- (m) the disqualification, removal or withdrawal of an interpreter, including on the application of the interpreter or any party to the proceedings or by the court of its own motion,
- (n) the payment of interpreters.

#### **31.64 Application of Evidence Act 1995 unaffected**

This Division applies subject to the provisions of the *Evidence Act 1995*.

#### **[2] Schedule 7A**

Insert after Schedule 7—

### **Schedule 7A Court Interpreters' Code of Conduct**

(Rule 31.61)

#### **1 Application of code**

This code of conduct applies to any person (the *Interpreter*) who, whether or not for fee or any other reward, is engaged, appointed, volunteers or otherwise becomes involved in proceedings or proposed proceedings to act as an interpreter by interpreting or sight translating from any spoken or signed language (the *other language*) into English and from English into the other language for any person.

#### **2 General duty to the court**

- (1) An Interpreter has an overriding duty to assist the court impartially.
- (2) An Interpreter's paramount duty is to the court and not to any party to or witness in the proceedings (including the person retaining or paying the Interpreter).
- (3) An Interpreter is not an advocate, agent or assistant for a party or witness.

### **3 Duty to comply with directions**

An Interpreter must comply with any direction of the court.

### **4 Duty of accuracy**

- (1) An Interpreter must at all times use the Interpreter's best judgment to be accurate in the Interpreter's interpretation or sight translation.
- (2) In this code, *accurately*, in relation to interpreting or translating, means optimally and completely transferring the meaning of the other language into English and of English into the other language, preserving the content and intent of the other language or English (as the case may be) without omission or distortion and including matters that may be considered inappropriate or offensive.
- (3) If an Interpreter considers that the Interpreter's interpretation or sight translation is or could be in any way inaccurate or incomplete or requires qualification or explanation (including, without limitation, where the other language is ambiguous or otherwise unclear for any reason), then the Interpreter must—
  - (a) immediately inform the party who engaged them and provide the necessary correction, qualification or explanation to that party, and
  - (b) if the evidence is being given or was given in court, immediately inform the court and provide the necessary correction, qualification or explanation to the court.

### **5 Duty of impartiality**

- (1) An Interpreter must at all times act impartially so as to be without bias in favour of or against any person including but not limited to the witness whose evidence the Interpreter is interpreting, the party who has engaged or is remunerating the Interpreter or any other party to or person involved in the proceedings or proposed proceedings.
- (2) Unless the court otherwise orders, an Interpreter must not accept an engagement or appointment to act as an interpreter in relation a proceeding or proposed proceeding if the Interpreter—
  - (a) is or may become a party or a witness, or
  - (b) is related to, or has a close personal relationship with, a party or a member of the party's family, or with a witness or potential witness, or
  - (c) has or may have a financial or other interest of any other kind in the outcome of the proceeding or proposed proceeding (other than an entitlement to a reasonable fee for the services provided by the Interpreter in the course of the Interpreter's engagement or employment), or
  - (d) is or may be unable to fulfil the Interpreter's duty of accuracy or impartiality for any reason including, without limitation, personal or religious beliefs or cultural or other circumstances.
- (3) Other than carrying out an engagement or appointment as an interpreter, the Interpreter must not provide any other assistance, service or advice (including by way of elaboration) to—
  - (a) the party, legal representative or other person who has engaged them, or
  - (b) any witness or potential witness, in relation to the proceeding or proposed proceeding.

## **6 Duty of competence**

- (1) An Interpreter must only undertake work the Interpreter is competent to perform in the languages for which the Interpreter is qualified by reason of the Interpreter's training, qualifications or experience.
- (2) If it becomes apparent in the course of a matter that expertise beyond the Interpreter's competence is required, the Interpreter must inform the court immediately and work to resolve the situation, either withdrawing from the matter or following another strategy acceptable to the court.

## **7 Confidentiality**

Subject to compulsion of law, an Interpreter must keep confidential any information that the Interpreter acquires in the course of the engagement or appointment as an interpreter (including any communication subject to client legal privilege) unless—

- (a) that information is in, or comes into, the public domain other than by an act of the Interpreter in breach of this duty of confidentiality, or
- (b) the beneficiary of the client legal privilege has waived that privilege.