

RACS Guide 4:

Interviewing Asylum Seekers and Refugees

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Refugee Law Practice and Procedure Guide Series

This Guide is a practice oriented guide for Registered Migration Agents to providing advice and assistance regarding onshore Protection Visa applications. The information contained in this guide represents the law and procedures as they are at July 2006. While every effort has been made to ensure that the information in this guide is free from error and/or omissions, the law is complex and constantly changing. We advise readers to consult current legislation and seek further information when faced with specific problems. This guide should not be used as a substitute for legal advice.

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4.0 Interviewing Clients

4.1 Confidentiality

All staff and volunteers are required to sign a confidentiality agreement. In interviewing clients, it is essential to spend some time explaining the meaning of the duty of confidentiality of the Agent and Interpreter. It is useful to provide examples. Ensure that clients understand that appropriate and full legal advice can only be provided if RACS understands all aspects of the client's situation. See the RACS Evening Advice Intake Sheet for an explanation of confidentiality and of RACS independence. Ensure this is explained to the client and marked on the intake sheet accordingly.

4.2 Working with NESB Clients & Interpreters

4.2.1 Professional Responsibilities to a Client

It is established in law as a professional responsibility that all communications with clients should foster understanding, and be conducted in a form and manner consistent with the client's knowledge and sophistication.¹ For example the client needs to be able to understand the adviser so as to be able to provide instructions to complete a form. The adviser should assist clients to understand the issues in their case sufficiently and their possible rights and obligations so as to enable them to provide proper instructions.

The Lawyers' Professional Conduct and Practice Rules, contained in the Legal Profession Act 1987² state:

Statement of Principle for Rules 1-16 Relations with Clients

Practitioners should serve their clients competently and diligently. They should be acutely aware of the fiduciary nature of the relationship with their clients, and always deal with their clients fairly, free of the influence of any interest which may conflict with a client's best interests. Practitioners should maintain the confidentiality of their clients' affairs, but give their clients the benefit of all information relevant to their clients' affairs of which they have knowledge. Practitioners should not, in the service of their clients, engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

¹ *EVBJ Pty Ltd v Greenwood* (1988) 88 ATC 4977 at 4979 – 80 per Brownie J.

² These Rules were made under the 1987 Act which are deemed (by virtue of Schedule 9 clause 24 of the 2004 Act) to have been made under the 2004 Act.

Many asylum seekers will not speak English or not have English as a first language. As it is extremely important to be able to communicate clearly with a client in preparing Visa applications accredited interpreters should be used when required to assist communication.

4.2.2 Interpreters at RACS

RACS processes in booking an interpreter

When a client requests an appointment at RACS, RACS asks:

- Do you require an interpreter
- What language and/or dialect do you speak?
- Do you have a preference for an interpreter from a particular country (for example, due to dialect issues, and issues related to the client's need for asylum)
- Do you have a preference for a male or female interpreter?
- Are you able to bring an interpreter with you to the appointment?

Best Practice

It is best practice to use NAATI Accredited Level 3 interpreters, not children, relatives and unqualified bilingual staff as interpreters. This is because the issue of confidentiality, linguistic competence, proficiency, impartiality and professionalism must also be taken into account.

However, RACS faces budget constraints, and is not eligible for free access to the Translation and Interpreting Service (TIS), as this is not accessible to clients who are not permanent residents. RACS requests that if possible clients bring a friend or family member to assist interpret. As the advice appointments are made by RACS caseworker staff after ascertaining the nature of the issue, if any issues arise as to the use of people acting as interpreters known to the client, another appointment and interpreter will be booked.

RACS utilises the following interpreting services at advice appointments:

- Friends, family, staff from ethnic and cultural organisations.
- Volunteer interpreters arranged by RACS. These interpreters have been inducted as interpreters to RACS and generously provide their services in person or by telephone. They have signed RACS Confidentiality Agreements. Many volunteer interpreters are NAATI accredited, some are in the process of studying to become accredited and others are not accredited.

- Translation and Interpreting Service (TIS) (generally by telephone), NAATI accredited interpreters.
- Oncall Language Services On Site, NAATI accredited interpreters.

RACS process for interviews working with interpreters

Before the interview

- Ask the interpreter about his/her experience in interpreting in legal situations.
- Brief the interpreter on the following:
 - Terminology which you may expect to use. Note RACS will have provided a sheet with some common terminology to RACS Volunteer Interpreters.
 - To interpret everything in the interview, even casual comments by the client or yourself.
 - To ask for clarification of terms from you or client if needed, and explain to the client when the interpreter does so.
 - Remind the interpreter to stop you or the client if the client is speaking in overly lengthy segments.

At the interview

- Introduce yourself and the interpreter.
- Explain your role and the role of the interpreter (that the interpreter is present to help with communication by interpreting what is said).
- Explain that interpreters are bound by their code of ethics to treat everything as confidential, and if the interpreter is a RACS volunteer, that the interpreter has signed a contract to maintain confidentiality.
- Ensure that the seating is arranged in a “triangle” with the interpreter between you and the client, or if there are more people attending the appointment, in a circle.

Issues

- Remember it is the responsibility of the RMA to maintain the direction of the interview, and intervene if necessary, for example if the interpreter and client/others appear to start to have a private conversation. If you can hear the interpreter saying words that you have not referred to, eg talking to the client about the Refugee Review Tribunal when you have only mentioned DIMA stage, then let both the client and the interpreter know that the appointment will stop for a short break. Remind the interpreter that their role is not to provide advice but to interpret. Remind the interpreter that refugee law is a constantly changing area of law, and that it is important that client hear advice only from a RMA. Remember that there are penalties for providing migration advice without being registered.
- Refusal of interpreter services: Some people may refuse to use an interpreter, or not be comfortable with a particular interpreter because, for example they believe the interpreter will not keep matters confidential and the interpreter is part of the same ethnic/religious/other community, or the client believes the interpreter

originates from a group on the other side of a conflict such as civil war or ethnic conflict, of the client. If this occurs, advise the RACS staff member supervisor.

Examples of unsatisfactory practices by interpreters include:

- Not interpreting everything which is said;
- Adding to the interpreting by providing advice or speaking on behalf of you;
- Carrying on side or social conversation with the client/ others;
- Speaking on behalf of the client/ other for example by providing information on cultural practices etc;
- Demeaning behaviour or attitude towards the client.

**4.2.3 Tips for Using Interpreters – Prepared by Conference Language Service
(translation and interpreting agency)**

The Interview

It is necessary to be a little more careful with your interview preparation when using an interpreter. Be confident about the information you need to give or obtain prior to the interview.

Your interpreter and the client may arrive at the same time. It may be useful to call the interpreter in first. It is not necessary to brief the interpreter about the interview however you may wish to alert the interpreter to any sensitive issues especially if there is a history with the client.

Please take care with your seating arrangements. The interpreter should ideally be seated between you and the client. It is useful to explain that the interpreter is present to facilitate communication and he/she will interpret/translate everything that is said from this point on.

Follow these easy steps:

- *Always speak in the first person, that is address the client directly and not the interpreter*
- *Speak in short sentences or phrases to allow the interpreter to interpret accurately*
- *Don't use jargon, as this is difficult to translate*
- *Take care with questions to avoid ambiguity and clarify past and present as in some languages this is not immediately obvious eg are you able to work now?*
- *After 10 minutes or so it is always a good idea to check if your client is understanding you through the interpreter, you can ask " Are you understanding me through the interpreter"*

Generally, it is not anticipated that you will have major difficulties. For Arabic for example, your client may specify Lebanese or Egyptian if you let us know then we will endeavour to allocate an appropriate interpreter.

The interpreter should:

- Arrive at least 5 minutes before the scheduled interview;
- Interpret **everything** you and your client say;
- Seek clarification when they do not understand your question by saying, “the interpreter seeks clarification”;
- Facilitate communication so that you are communicating effectively with your client.

The interpreter should not under any circumstances:

- Summarise your client’s responses;
- Answer on behalf of your client;
- Put forward an opinion on what your client means;
- Offer a view about your client’s truthfulness;
- Advocate on behalf of your client;
- Have long conversations with your client without your involvement.

You as the interviewer need to

- Maintain control of the interview at all times by addressing yourself directly to your client;
- Explain the purpose of the interview and the role of the interpreter;
- Check occasionally to see if your message is being conveyed accurately, for example you could say “is this making sense or have you understood what it is I need from you?”;
- Be relaxed and try not to have pre-conceived ideas about certain cultures or nationalities; and
- Treat all your non-English speaking clients as individuals.

4.2.4 Further resources on working with interpreters

Refugee Review Tribunal, ‘Refugee Review Tribunal Interpreters’ Handbook’, 3rd edition, February 2003, Refugee Review Tribunal, Available at: <http://www.rrt.gov.au/publications/InterpreterHandbook.pdf>, accessed on 27 February 2006.

Migration Review Tribunal, 'Migration Review Tribunal Interpreter Handbook', Available at: <http://www.mrt.gov.au/interphandbook.html>, accessed on 27 February 2006.

Community Relations Commission For a Multicultural NSW, 'Good Practice When Working with Interpreters', *Use of Interpreters in Domestic Violence and Sexual Assault Cases: A Guide for Service Providers*, June 2002, Available at: <http://www.crc.nsw.gov.au/publications/domesticviolence/goodpractice.pdf>, accessed on 27 February 2006.

Law Society of NSW, *Guide to Best Practice: Lawyers, Interpreters, Translators: Lawyers working with interpreters & translators in a legal environment*, 1996, Available At: http://www.lawsociety.com.au/uploads/filelibrary/1074124554875_0.5260733413613279.pdf, accessed on 27 February 2006.

Michael Cooke & Elaine Wylie (National Legal Aid), 'Is an Interpreter Necessary? A Test of English to Assess the Need For an Interpreter for People Involved in Legal Proceedings From a Non-English Speaking Background', undated, Available at: <http://www.nla.aust.net.au/html/interpreters.html>, accessed on 28 February 2006.

4.3 Torture, Trauma, and Health

4.3.1 Factors affecting the interview of clients include:

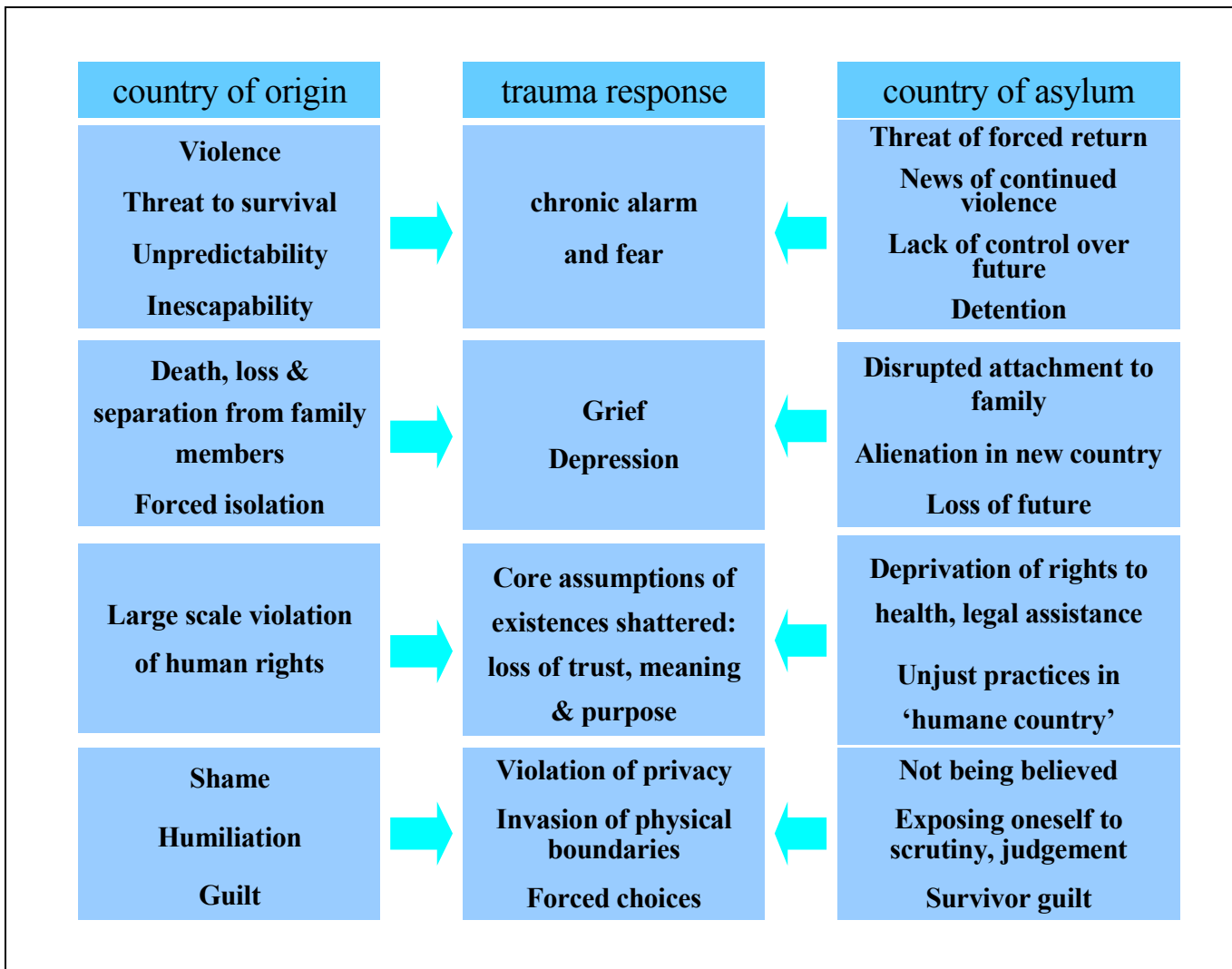
- Experience living in a totalitarian state with experiences of harm such as detention, torture or arbitrary arrest.
- Torture and trauma.
- Sexuality as gay, lesbian, bisexual, transgender and intersex.
- Experience of domestic violence.
- Experience of sexual assault.
- Experience of immigration detention in Australia.

These experiences may affect clients in a variety of ways. For example: Clients might provide "yes" answer to authority figures such as lawyers, DIMA and government authorities. Clients may face difficulties in being specific about their experiences due to shame, cultural taboos, or the desire to avoid traumatic memories.

The following information was produced by STARTTS – the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors.

Client Trauma Responses

Prepared by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)



Strategies for interviewing survivors of torture and trauma

Prepared by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)

<p>Be aware of the impact of environment:</p> <ul style="list-style-type: none"> ➤ ask the person where they would like to sit ➤ aware of impact of interpreter 	<p>Begin with general and gentle discussion</p> <ul style="list-style-type: none"> ➤ explore specific detail only if necessary; ➤ reinforce a feeling of safety
<p>Use open questions and give time</p> <ul style="list-style-type: none"> ➤ do not be afraid of silence or rush the person's recall ➤ avoid sounding interrogative 	<p>Observe the person for signs of anxiety:</p> <ul style="list-style-type: none"> ➤ closed body language ➤ shaking or sweating ➤ fast breathing ➤ avoidance of eye contact

	<ul style="list-style-type: none"> ➤ physical pain and discomfort ➤ sighing
<p>Be encouraging in difficult periods, using:</p> <ul style="list-style-type: none"> ➤ body language ➤ supportive statement ➤ reflection 	<p>Anticipate that there could be strong reactions:</p> <ul style="list-style-type: none"> ➤ prepare yourself so you do not appear shocked

4.3.2 Referrals to mental health services

Refer to mental health services where appropriate for example, if the client shows signs of any emotional or psychological distress.

To make this referral provide the following:

- A multilingual leaflet about STARTTS.
- The RACS Non Legal Referral List of free services, and circle STARTTS and Transcultural Mental Health Services

4.3.3 Further resources on the impact of torture and trauma on interviews

Jane Herlihy, Peter Scragg, and Stuart Turner “*Discrepancies in autobiographical memories— implications for the assessment of asylum seekers: repeated interviews study*” British Medical Journal 2002 February 9; 324(7333): 324–327, 2002, Available at <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=65293> Accessed 27 February 2006.

This study finds that:

- Discrepancies arise between two accounts of the same event even when there is no reason for fabrication
- Refugees with high levels of post-traumatic stress are more likely to give inconsistent accounts if they have a long time to wait between interviews
- Interviewees are more likely to be inconsistent in details that they rate as peripheral to their experiences than details they consider to be central
- Inconsistent recall does not necessarily imply that asylum seekers are fabricating their accounts

The Medical Foundation for the Care of Victims of Torture provides a ‘Clinical Bibliography on the Physical Effects on Torture’ and ‘Psychological Effects of Torture.’ Available at <http://www.torturecare.org.uk/articles/bibliography/c221/> and <http://www.torturecare.org.uk/articles/bibliography/c222/> Accessed 27 February 2006.

4.4 Physical Health

If a client has special needs in relation to hearing, sight, access or illness, RACS will generally schedule an appointment during the day with appropriate support as required.

Ensure clients advise DIMA and the RRT of any needs for interview or effective communication. Investigate if this affects the substance of refugee or humanitarian claims.

Refer to health assistance as required. Provide the client with RACS Non Legal Referrals Sheet. Both the Asylum Seekers Centre and the House of Welcome may assist clients in accessing health and welfare services and also involve volunteer health professionals. The Refugee Health Service will assist people without Medicare cards. The AIDs Council of NSWs' Positive Living Centre is open to people living with HIV and AIDS.

4.5 Gender sensitivity

At the first appointment it is important to assess whether there are any gender based sensitivities in the matter. If an appointment is for a family group including both male and female members, ensure that you allow time to interview each separately.

Tips

- Reiterate confidentiality.
- Remember that many women may not have confided details of a sexual assault or other matters to their family members.
- Interview the female applicant separately, even if she is a secondary applicant. If the woman has claims you need to consider whether she should be advised to forward her own claims. Alert the RACS staff member if you feel her claims need to be investigated further in a different setting.
- Ask clients if they would feel more comfortable talking about these issues with a male/female adviser/ interpreter?
- Research reported experiences of women and men in your client's situation. Is there a possibility they may have experienced sexual assault? It is important for experiences of harm to be disclosed as early as possible.
- This research may also assist you in interviewing in relation to gender based harm so as to assess which person in a family group has the strongest claims. Many families or women may not recognise gender based persecution as a valid claim for refugee status.

4.5.1 Further resources

Nahla Valji and Lee Anne De La Hunt, "*Gender Guidelines for Asylum Determination*" 1999. Published by: University of Cape Town Legal Aid Clinic, as a member of the National Consortium on Refugee Affairs, The European Foundation for Human Rights (EUFHR). Available at <http://www.web.net/~ccr/safr.PDF> Accessed 27 February 2006. Pages 10-14 of this paper examine interviewing procedures for gender persecution cases.

4.6 Cultural factors

Do not make assumptions based on understandings that emerge from cultural signals. For example, Western culture generally read a lack of eye contact as indicative of dishonesty. In some cultures women and men may avert their eyes in the presence of authority, and direct eye-contact with a stranger may be seen as "bold", or show that a person is sexually available. Treat each client as an individual – remember cultures and nationalities are not homogenous.