



National Legal Aid Secretariat  
GPO Box 1422  
Hobart TAS 7001

Executive Officer: Louise Smith

t: 03 6236 3813

f: 03 6236 3811

m: 0419 350 065

e: [louise.smith@legalaid.tas.gov.au](mailto:louise.smith@legalaid.tas.gov.au)

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Meaghan Powell  
Secretariat  
Judicial Council on Cultural Diversity  
PO Box 1895  
Canberra ACT 2601

[secretariat@jccd.org.au](mailto:secretariat@jccd.org.au)

Dear Ms Powell,

**Re: Consultation Paper: *Australian National Standards for Working with Interpreters in Courts and Tribunals***

### **Introduction**

National Legal Aid (NLA) considers that this Consultation is extremely important as implementation of National Standards for Working with Interpreters in Courts and Tribunals will help to facilitate access to justice including to some of the most disadvantaged people in Australia.

We apologise that it was only lately that we became aware of the Consultation and accordingly that we were unable to provide a submission to you within the stated time frame.

Given the importance of the work being undertaken by the Judicial Council, we ask that you accept this short communication late. We note that NLA is also keen to be involved in any further work of the Judicial Council that will enhance access to justice to disadvantaged people.

### **About National Legal Aid and Legal Aid Commissions**

NLA represents the Directors of the eight state and territory legal aid commissions (LACs) in Australia. The LACs are independent statutory authorities established under respective state or territory enabling legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

Notwithstanding significant funding constraints, LACs are the largest providers of legal services to disadvantaged people in Australia across a range of law types including criminal law, domestic violence, child protection, family law and civil law matters such as mental health, guardianship and administration, housing, debt, and social security.

Whilst LACs provide a range of different legal services to disadvantaged people, those services directly relevant in the context of this Consultation Paper, Australian National Standards for Working with Interpreters in Courts and Tribunals, are the legal representation services provided by our in-house lawyers and legal aid panel/list private practitioners, and the duty lawyer services LACs provide at a range of courts and tribunals. We also provide dispute resolution, legal advice and information, and community legal education services. For many people, the provision of these services, and the ability to access justice, necessitates the involvement of an interpreter.

Each of Legal Aid Western Australia and Legal Aid NSW has made a detailed submission to the Judicial Council.

### **Access to Justice for the Most Disadvantaged People**

NLA generally supports the proposed National Standards, Rules and Supplementary Materials.

#### Availability of appropriately qualified (or any) interpreters

LACs have been involved in many matters where, notwithstanding the best efforts of the court and/or the LAC, difficulties have been experienced finding appropriately qualified (or indeed any) interpreter.

In the context of Aboriginal and Torres Strait Islander (ATSI) interpreter services, NLA notes the recommendations of the Australian Government Productivity Commission Report on its Inquiry into Access to Justice Arrangements and particularly Recommendation 22.3<sup>1</sup>:

"The Australian, State and Territory Governments should continue to work together to explore the use of the Northern Territory Aboriginal Interpreter Service as a platform for a National Indigenous Interpreter Service funded by ongoing contributions from the Australian, State and Territory Governments. While this service is being developed governments should focus their initial efforts on improving the availability of Aboriginal and Torres Strait Islander interpreter services in high need areas, such as in courts and disputes in rural and remote communities."

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<sup>1</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview*, Inquiry Report No. 72, Canberra, p 41.

NLA is particularly pleased to note Minimum Standard 8.9: “In order to respond to shortfalls in interpreter availability, Courts should report to NAATI when they have been unable to secure the services of an interpreter.” We anticipate that this, together with the encouragement by the courts to parties to notify NAATI of difficulties in obtaining suitably qualified interpreters (Model Practice Note 14 attached), will help to build a better picture of the size and skills of the work force needed both in relation to ATSI and other languages, and the resources required to create it.

#### Responsibility for engaging an appropriately qualified interpreter in accordance with the Rules.

Whilst NLA agrees that “Members of the legal profession - along with judicial officers, court staff and interpreters - share responsibility for the provision of quality interpreting services in Australia’s legal system”<sup>2</sup>, a concern of LACs is the suggestion in Draft Standard 9.1 and Draft Rule 1.4 (attached), that except in criminal cases, it is the party calling the witness who requires the interpreter who is to have responsibility for engaging an appropriately qualified interpreter in accordance with the Rules.

The rationale<sup>3</sup> for separating criminal law matters out from other law types is understood, however, we suggest that it is also appropriate for the courts to also have responsibility for engaging interpreters in some other matters. For example, applications for protective orders in connection with domestic violence<sup>4</sup> where there may well be two parties ultimately before the court and children involved (sometimes in our experience called upon inappropriately to interpret as there is no-one else available); matters before mental health tribunals; and matters involving guardianship and administration by reason of disability. In such cases particularly there is often the potential for conflict between the party and his or her family member who could be relied on to interpret. The need for this responsibility to be with the courts is also emphasised in the context of self-representing litigants.

Minimum Standard 6.1 states that “Courts should have dedicated budget allocations to provide and support interpreting services to court users with limited or no English proficiency”. Resourcing to ensure appropriately qualified interpreters is clearly a significant issue which goes beyond resourcing to the courts. Regardless of whether dedicated budget allocations are made for interpreting services, resourcing to the courts and all other organisations involved in providing and/or arranging for interpreter services needs to be adequate to address the need presenting to the particular court or organisation. The recommendation to inform NAATI of issues in relation to securing suitably qualified interpreters should help to build a picture of need. In this regard it would also be helpful for all organisations involved to initiate or build on relevant data bases.

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<sup>2</sup> 9. Duties of Legal Practitioners, Supplementary Materials, p. 89

<sup>3</sup> As set out in the Supplementary Materials 3. Engagement of interpreters to ensure procedural fairness - legal requirements for interpreting p. 32

<sup>4</sup> Applications are brought variously across the States and Territories by police or individuals

**Summary**

We support the good work of the Judicial Council on Cultural Diversity in developing the Australian National Standards for Working with Interpreters in Courts and Tribunals.

We are more than happy to be involved in further consultation about this matter, whether by attendance of a representative at the public forums to be held in Melbourne and Sydney or otherwise, e.g. by way of national video/teleconference to provide a more national picture if this was thought useful.

Please do not hesitate to contact us if you require anything further.

Yours sincerely,

A handwritten signature in black ink that reads "Suzan Cox". The signature is written in a cursive, flowing style.

Suzan Cox QC  
Chair

## Model Practice Note

### Issues concerning the availability of interpreters and implementation of the National Standards

(14) It is expected that the National Standards will be regularly reviewed. The Court encourages parties to provide comments, especially where they have encountered difficulties in obtaining suitably qualified interpreters, about the operation of the Standards to the National Accreditation Authority for Translators and Interpreters at [insert email address].

[Head of Jurisdiction]

[Date]

## Standards for Courts

### Minimum Standard 9 – Assessing the need for an interpreter

9.1 To ensure that proceedings are conducted fairly and there is no miscarriage of justice, in criminal cases courts should ensure an interpreter is provided to persons of no or limited English proficiency.

## Model Rules

### Division 3: When interpreters may be engaged

1.4 The party calling a witness who requires the services of an interpreter is responsible for engaging an appropriately qualified interpreter in accordance with these rules, unless that party is an accused person in criminal proceedings in which case the Court will cause an appropriately qualified interpreter to be engaged.