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Our ref: [LP:MC]

Confidential

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE 3
24 Lonsdale Street
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple

**Recommended National Standards for Working with Interpreters in Courts and Tribunals
– Third Edition**

The Queensland Law Society (**Society**) appreciates the opportunity to provide feedback on the development of the Third Edition of the Recommended National Standards for Working with Interpreters in Courts and Tribunal (**the Standards**) to ensure they reflect current practice and need.

This response has been compiled with input from the Society's committee members with expertise and lived experience in this area. The Society is committed to advancing accessibility, procedural fairness and the effective administration of justice.

In this regard, the Society has written to the Australian Institute of Interpreters (**AUSIT**) specifically regarding its proposal of video-based interpreting as a minimum standard for remote proceedings (copy **enclosed**). The Society acknowledges and supports the value of both video-based and in-person interpreting. For those unable to attend court proceedings in person, QLS recommended qualified AUSLAN interpreters be available and assistive listening systems be installed in all courtrooms and public areas. We also supports, as consistent with best practice, providing interpreters with hearing loops and using tandem interpreting where possible.

Feedback in response to the consultation questions is set out below.

What challenges do your members encounter when working with interpreters?

In the Society's correspondence to AUSIT we identified several challenges, including late cancellations of interpreter bookings, inconsistent communication about interpreter availability, delays caused by last-minute efforts to secure interpreters, and the lack of standardised procedures for managing interpreter needs in complex or multi-party proceedings.

In our members' experience, it is not uncommon for court or tribunal staff to not have arranged interpreters, resulting in delays that cause safety impacts and financial burdens. In such cases, judicial officers and public prosecutors sometimes elect to proceed without an interpreter and rely on the legal representative speaking to the client through interpreting apps outside the courtroom for updated instructions.

For those who use AUSLAN, access to registry offices is often impacted as written documents are sometimes not useful due to some varied English comprehension within the Deaf community and there is no opportunity for interpreting services at court front desks in any language to enter court/tribunal buildings. Interpreters should be readily available at the Registries to facilitate access to justice and ensure the individual's human rights are being upheld.

We also note many availability issues where interpreters for rarer languages are not commonly available, and not all people who can speak the language for interpretation are qualified to provide legal interpretation skills. This is frequently experienced in matters requiring First Nations interpreters for particular dialects but is also seen with common languages including French. Such difficulties often lead to advice being postponed or trials being de-listed due to an interpreter's conflict in having been engaged by both parties in a proceeding. Relatedly, our members have observed the importance of different dialects is misunderstood.

Finally, practitioners have observed that interpreters do not always uphold confidentiality standards. Examples include interpreters dialling in from inappropriate or public spaces with significant background noise or only admitting to knowing the parties and the matter after proceedings have occurred. Further education about the Standards would assist in alleviating these issues.

What changes or additions to the standards are needed?

The Society understands the Standards were primarily designed for people of non-English speaking backgrounds. Further, that many deaf individuals do not use AUSLAN, instead communicating primarily in spoken English supplemented by hearing the use of technology and captioning. Likewise, there is a common misunderstanding written communications will subvert the need for AUSLAN interpretation, despite not being a direct interpretation of English.

Additionally, deaf people from non-English speaking backgrounds may use another signed language. As such, communication needs may be more complex where a court user is deaf and from a culturally and linguistically diverse background.

The Standards recognise interpreter welfare and trauma support, but there is little discussion of trauma-informed practice for culturally and linguistically diverse court users. This is particularly important for refugees and asylum seekers and other vulnerable persons such as victims of and witnesses to violence.

Annexure 4 of the Standards includes the four-part test for determining whether an interpreter is required. A potential issue is that disabilities including hearing loss, intellectual disability, acquired brain injuries and cognitive impairment may be mistaken for limited English proficiency. We recommend where there is uncertainty, courts should consider whether communication difficulties arise from language barriers, disability-related needs, or a combination.

The Standards could also acknowledge those who experience both language barriers and disability-related communication barriers simultaneously so that consideration can be given to whether a person requires additional or specialised interpreting arrangements.

In our view, further training regarding approaching the cultural nuances and context of different languages should be implemented to combat current practice where interpretation focuses on providing a direct copy from one language to another.

Formatting

Members report that when accessing the Standards, the layout can be challenging to navigate. For example, individuals who prefer hard copy materials can only print the document two to a page which reduces font size and visibility. We recommend the Standards be available to print one page per sheet and accessible in a Microsoft Word version for court users who prefer a digital copy.

In addition, a clearer summary at the beginning of the Standards would ensure the practical takeaways are not hidden at the conclusion of the document.

References to relevant state, federal and/or territory protections for compliance with interpreting may also be useful in an Annexure. This could include the Australian Solicitor Conduct Rules, Bar Rules, Victims of Rights Charter, various state human rights and anti-discrimination legislation.

Guidance for legal practitioners and capability to engage and work effectively with interpreters

The legal profession engages with interpreters in several capacities. These broadly include private solicitors with an ongoing solicitor-client relationship, duty lawyers providing limited scope services, community legal centres in their advice clinics, public prosecutors in engaging with witnesses and complainants, and judicial officers explaining what occurs during a demanding duty list. Apart from an ongoing solicitor-client relationship, the majority of these interactions are short engagements, meaning the Standards are often not able to be strictly applied due to time constraints.

Additional guidance could require that judicial officers and practitioners use plain language, avoid complex multi-part questions, allow additional time for responses and check understanding throughout proceedings. Frequently, individuals can understand and speak basic English, but do not understand complex legal issues being explained to them, even where no language barrier exists. Allocating time to encourage the party to clarify their understanding with their interpreter could encourage more informed decision-making throughout proceedings.

Further training regarding approaching the cultural nuances and context of different languages should be implemented to combat current practice where interpretation focuses on providing a direct copy from one language to another.

Understanding of practitioner responsibilities under the Standards

It is our members' experience that briefing of interpreters rarely occurs. This can create confusion later in a proceeding. Extensive briefing is difficult to facilitate and is often inappropriate from a confidentiality perspective. We suggest a brief introduction by practitioners can assist in contextualising complex concepts for the proceeding conversation. This allows the

individual to remain at the heart of the conversation, and a human rights approach is adopted by practitioners in their decision-making.

Briefing and the use of gender preferences are also vital for transgender clients to avoid misgendering. Some cultural definitions of trans are not accepted as the English term, meaning this should be clarified and briefed in advance to support the client in judicial proceedings. This also applies to certain phrases within the disability space in dialects which may cause offence or confusion to court users.

Tools, professional development and resources

Our members also note that more materials and resources should be available in multiple languages, particularly for Court, Tribunal and Commission guidelines. This will remove part of the financial burden on community legal centres to have translated materials and ensure accessibility of information so clients can readily review materials like other English-speaking clients.

Increasing awareness of the Standards

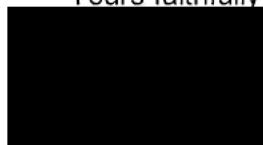
In our members' experience it is rare for the Standards to be readily brought to a practitioner's attention.

In the Magistrate Courts, members report it is uncommon for the Magistrate to confirm the interpreter is aware of the Code of Conduct, the Standards or the matters in Model Rules 17.7. Making this a requirement would contribute to increasing awareness about the Standards and ensuring interpreters are informed of their obligations.

Information material could accompany the launch of the revised Standards via law societies, bar associations, universities and practical legal training providers. The Society would be pleased to assist with awareness and engagement of the Standards more broadly.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
President