

24 February 2023

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Service Improvement
Ministry of Justice

By email c/o: ServiceImprovement-CSI@justice.govt.nz

Tēnā koe Laura,

Re: Feedback on draft Interpreter Services Quality Framework

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the draft Interpreter Services Quality Framework (**draft framework**) prepared by the Ministry of Justice (**Ministry**).
- 1.2 We have received feedback on the draft framework from our Civil Litigation & Tribunals Committee, Legal Services Committee, and Youth Justice Committee.¹ This feedback is set out below and includes general observations on the draft framework and specific feedback in relation to various sections.

2 General observations

- 2.1 The Law Society supports the introduction of a draft framework to monitor and regulate the use of interpretation services in our courts and tribunals, ensuring those services are consistent and to a high standard. Interpreters play a key role in proceedings by enabling access to justice for those who do not speak English as their first language and encouraging active court participation by breaking down the language barriers and allowing participants to communicate effectively.
- 2.2 The draft framework does not refer to the current Guidelines for interpreters² which set out the conduct expected of all Ministry-appointed interpreters in a hearing, nor does it clarify how the framework sits alongside (or replaces) the Guidelines. Although the supplementary factsheet notes that the new interpreter code of conduct “updates the old Guidelines for Interpreters”, this should be clarified and made explicit in the draft framework. The current

¹ Information on our committees can be found here: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>

² See <https://www.justice.govt.nz/about/lawyers-and-service-providers/service-providers/interpreting-in-courts-and-tribunals/guidelines-for-interpreters/>.

Guidelines contains sections on, for example, professional behaviour, confidentiality, impartiality, and disclosing conflicts, and it should be clear to interpreters whether this new framework is intended to supersede those Guidelines or not.

- 2.3 Finally, and for completeness, we note the relevant links to various websites and further information (for example at page 5 of the draft framework) are currently missing and anticipate these will be inserted once the draft framework is finalised. We also suggest that it would be helpful, especially to those new to interpreting, to include a glossary of key definitions and personnel (for example Court Registry Officers and Judicial Officers) in the draft framework.

3 Feedback relating to specific sections of the framework

Chapter 1 – Introduction

Types of interpretation and translation

- 3.1 The draft framework (at page 9) indicates the interpreter’s main task is to interpret oral statements, evidence, and legal exchanges for those who are not fluent in English. It then goes on to note the primary type of interpreting used in courts and tribunals is ‘consecutive interpreting’, where the interpreter translates what was said in short segments into the target language. However, ‘sight translation’, where the interpreter verbally converts written materials from one language into another, is considered out of scope of the framework. It is not clear how the verbal translation of written evidence used in court proceedings fits into the draft framework and we suggest this be clarified.

Chapter 2 – Qualifications, training, and induction

Who can provide interpreter services?

- 3.2 At 2.1, the draft framework sets out who can provide interpreter services in courts and tribunals including the relevant qualifications that are required. One of the requirements is that a person wishing to provide interpreter services must ‘comply with the code of conduct’ including the New Zealand Society of Translators and Interpreters (**NZSTI**) Code of Ethics and Code of Conduct and if applicable, the Sign Language Interpreters Association of New Zealand (**SLIANZ**) Code of Ethics and Code of Conduct.³
- 3.3 It is unclear why interpreters must comply with the code of conduct (as set out in the draft framework) but also comply with the NZSTI and SLIANZ codes of ethics and conduct, even if they are not members of those organisations. To avoid confusion, we suggest including a brief explanation of why all three codes must be complied with.
- 3.4 Further, if a person is required to comply with the code of conduct, it may be appropriate to include compliance as part of their oath at page 46 of the draft framework. By analogy, expert witnesses confirm in their evidence that they are bound by and have complied with the code

³ We note that this organisation is listed by its acronym and for completeness recommend the full name is provided at 2.1(g).

of conduct for expert witnesses. It may similarly be reasonable for interpreters to explicitly agree to comply with the code of conduct in each case they are involved in.

Orientation

- 3.5 At 2.3.4, the draft framework confirms the Ministry will provide a welcome pack for all interpreters who are new to court interpreting. This includes information on how to arrange a court or tribunal orientation. At 2.3.5, further information is provided on what the court or tribunal orientation should cover, including that court staff will provide an overview of the tikanga of the court. Although it is not clear in the framework, we anticipate this task will be carried out by someone who has the requisite knowledge and understanding of tikanga in the court.
- 3.6 Further, the draft framework does not specify whether interpreters will be paid for their orientation in Court. As it appears this is a mandatory requirement for any new interpreter to complete, the Ministry may wish to consider whether it is appropriate for the interpreter to be remunerated for their time. It is desirable that new interpreters undertake a court or tribunal orientation so that they are aware of the relevant court environment and processes prior to the hearing.

Chapter 3 – Code of conduct

Conflict of interest

- 3.7 Chapter 3 sets out the conduct the Ministry expects of all interpreters. At 3.1.2, the draft framework sets out what circumstances may constitute a conflict of interest and the obligations of interpreters where such a conflict arises, including disclosing a conflict prior to accepting a case. If a conflict arises after the case has commenced, an interpreter must disclose the conflict to the judge. However, the draft framework does not stipulate how an interpreter should do this. We suggest it would be helpful to provide specific guidance on how interpreters can raise a conflict (or any relevant matter) with the judge during a hearing to ensure matters are appropriately raised.

Disclosure of information

- 3.8 At page 25 of the draft framework, interpreters are advised how they should manage information that has been disclosed to them by a court participant. Interpreters are instructed to raise disclosures relevant to the case with the officer in charge/prosecutor or defence lawyer and if it is confirmed that information is substantive new information about the case, they must submit an affidavit confirming what was disclosed. However, if the participant discloses information during the trial, the interpreter is required to raise this with the judge directly. Although it appears the former arises for any disclosures made prior to the start of the proceedings, this should be clarified in the draft framework.
- 3.9 The draft code of conduct also notes an interpreter is instructed to inform the Court Registry Officer if they feel their role is being misused by any party (a carryover from the current Guidelines). We suggest that for clarity a glossary is included as to who relevant key people are including the role of a Court Registry Officer (as noted above).

Respect for participants and cultural safety

- 3.10 The draft code of conduct requires an interpreter to “engage in ongoing self-reflection and self-awareness of their own views and biases to understand how they can impact on the delivery of their work”. We suggest this section specifies exactly what the interpreter should be doing to comply with this requirement including, for example, whether an interpreter should complete relevant training or a course to ensure they are culturally competent.

Chapter 4 – Providing interpreter services

Briefing Interpreters

- 3.11 The draft framework sets out the obligations of legal counsel to ensure that interpreters are adequately briefed before the hearing. The onus is on the interpreter to inform the court or tribunal if they feel they have not been adequately briefed. The briefing by counsel should include the provision of certain materials where appropriate. The draft framework includes examples of these in relation to specific jurisdictions. However, it appears the list for civil proceedings is out of date. The notice of claim and information capsule procedure is no longer applicable, and the references to “Notice of claim” should be to “Statement of claim”.
- 3.12 Further, by including “information capsule” at the District Court level, is this intended to capture some of the documentary evidence? If so, should some of the discovered documents be included in civil cases in the District or High Court? This could potentially be unwieldy. If only the pleadings are intended to be listed, this should include ‘Replies’, where these have been filed in court.

During the proceedings

- 3.13 At 4.4.1, the draft framework confirms what situations requires an interpreter to inform the court, for example, if they become aware of a conflict of interest. As discussed above, it would be helpful if the draft framework provided more detail on how interpreters raise any issue/s with the judge during a hearing (i.e., if the matter should be heard in chambers).

Oath and affirmation

- 3.14 The draft framework requires an interpreter to take an oath or make an affirmation that they will interpret to the best of their skill and ability and sets out what the oath or affirmation is depending on who the participant is. Aligned with our comments on the code of conduct above, we invite the Ministry to consider whether the oath or affirmation should also include compliance with the code of conduct.

Chapter 5 – Performance monitoring and ongoing quality improvement

Complaints management

- 3.15 The draft framework confirms that interpreters are audio recorded in court and that some cases will be reviewed to analyse and review the quality of interpreting or respond to complaints. Further, an audit may be undertaken ‘from time to time’. We suggest that further information is provided in this section to include *how* interpreters are reviewed or audited to ensure quality is maintained.

4 Conclusion

4.1 We hope these comments have been helpful. If you wish to discuss this further or have any questions, please feel free to contact me via the Law Society's Senior Law Reform and Advocacy Advisor, Amanda Frank (amanda.frank@lawsociety.org.nz / (04) 886 6547).

Nāku noa, nā

A handwritten signature in blue ink, appearing to be 'Taryn Gudmanz', written over a long horizontal line.

Taryn Gudmanz
NZLS Vice-President