



## **Guidelines for Interpreters in Legal Settings**

ASLIA is the professional association for Australian Sign Language interpreters and expects all members read these guidelines in conjunction with the ASLIA Legal Interpreting Policy and the ASLIA position statement for Deaf individuals in the court system of Australia. Other relevant policies include Code of Ethics, Code of Conduct, Deaf Interpreter Policy and Guidelines, OHS policy.

Legal settings include a diverse range of settings that span, but are not exclusive to:

- court rooms;
- interviews/consultations (policy, solicitors, barristers offices)
- mental health tribunals (hospital or mental health facility)
- child protection personnel (home, office, hospital, school)
- watch house
- hospitals (assault victims)

Legal settings can have different purposes including:

- police taking an initial statement from a complainant
- police charging a suspect
- detectives conducting an interview recorded as evidence
- interviews with potential witnesses
- mental health assessment to determine fitness for trial

The purpose of these guidelines is to provide some guidance for Auslan<>English and Deaf interpreters to help them navigate the legal context. Interpreters working in,

or wishing to work in, legal settings should undertake not only specific professional development in relation to the setting, but to also undergo direct, professional supervision from an experienced Interpreter.

## **Guidelines**

### **1. Professional Accountability**

(ASLIA Code of Ethics 1: Interpreters accept responsibility for all professional decisions made and actions taken. This includes 1.1 Confidentiality; 1.2 Professional Conduct; 1.3 Scope of Practice; and 1.4 Integrity of Service.)

#### **1.1. Confidentiality**

A cornerstone of legal interpreting practice is confidentiality. The following are some considerations regarding confidentiality unique to the legal context and some general guidelines for how confidentiality can be managed.

**1.1.1. Multiple interpreters.** The legal interpreter may find that more than one legal interpreter shares the responsibility for the interpreting work with a particular client. If this is the case, a handover of information between interpreters is essential to the interpreting process. Topics for handover may include:

- particular lexical items used in the source language by either a legal professional or a client and the choice of lexical items used by the legal interpreter in the target language,
- information about the type of discourse that may occur,
- how a client refers to certain things or people, particularly if they are unwell and disjointed or dysfluent in their communication

This information is important to assist the legal interpreter to manage the flow of the discourse between professional and client.

It is important to inform the legal professional of the value of consistency when engaging interpreters. Where possible the preferred interpreter for both parties should be engaged. The legal professional should be informed to look for patterns in disclosure related to which

interpreter is being engaged (willing to discuss something with one interpreter and not another) and may need to provide information about which interpreters were employed previously in order for the handover of any linguistically relevant information. The client should be made aware that such handovers are occurring.

**1.1.2. Managing privacy.** Sharing of information needs to be counterbalanced with the need to protect the client's privacy. The guiding principle about the sharing of information needs to be how doing so will enhance the interpreting process and, thus, the client's access. Specific information regarding the client's background should not be shared. The following are suggestions information that should be shared: describing how a 'scene' has been set up, any in situ signs that have been developed, specific language idiosyncrasies that impact on the communication process.

If the legal interpreter becomes aware of relevant information outside the legal appointment (e.g., immediately before or after the session, out in the community), the legal interpreter is NOT required to notify the legal professional or deaf person. Any disclosure made to the legal professional should also be disclosed to the deaf person.

To decrease the risk of becoming aware of such knowledge, it is recommended that during legal proceedings, legal interpreters do not spend time with the deaf person outside the presence of the legal professional. This includes in the waiting room and social settings. Where this cannot be avoided, legal interpreters should not engage in any discussions with the client concerning the case being considered. The legal interpreter should encourage the person to contact their legal professional if they have any further concerns.

**1.1.3. Discussions with legal professionals.** For effective communication to be achieved, it is imperative that all parties involved understand the interpreting process and any cultural factors that may impact on the accuracy of such transfer of information between the two interlocutors. Care should be taken to ensure that the legal professional's view of the

client is not skewed by knowledge that is too general and which may not be applicable to that particular client. Legal interpreters could suggest appropriate resources (websites, books) for further reading around Deaf culture, Auslan, common experiences etc. A list of these resources are provided at the end of this document.

## 1.2. Professional Conduct

Interpreters will, before accepting a legal assignment, assess the information provided by the booking agency to determine if they are qualified for the particular setting. Reasons for not accepting the assignment may include certification level or experience, communication modes of the deaf client/s, personal knowledge or bias in the case.

Interpreters will adhere to the Code of Ethics including professional attitude and behaviour. Legal interpreters should, where appropriate, provide information about relevant services, agencies, organisations that may be appropriate for the legal professional and the client. However, the legal interpreter should not show bias or preferential treatment towards particular individuals, services, agencies or organisations. Any conflict of interest should be disclosed.

Interpreters must, if asked to provide expert testimony on language, deafness, or matters related to the case, either decline to do so, or withdraw as an interpreter from the case. Instead, an Auslan/deafness consultant or advocate should be appointed for this purpose.

Interpreters will adhere to appropriate dress standards for all legal settings. Clothing should be commensurate with the legal setting. For example, in court, wear formal clothing in keeping with the other professionals within the court; any jewellery should also be discreet and in with courtroom decorum. Interpreters should be well groomed. When attending sessions with police, solicitors, barristers or other legal personnel, interpreters should be well groomed, appropriately dressed in plain coloured clothing that accommodates the needs of the sign language user. While

personal preferences need to be considered, the overall appearance should promote the profession.

Interpreters will adhere to the ASLIA Occupational Health and Safety Policy, keeping to recommended times of working with breaks and appropriate recovery time.

### 1.3. **Scope of Practice**

Interpreters will be bound by the ASLIA Code of Ethics to facilitate communication accurately and impartially between all parties. Interpreters will execute this role with total absence of bias and must maintain strict confidentiality.

When working with legal professionals, whether that be one-to-one or as a part of an interdisciplinary team, the legal interpreter will limit their expertise to interpretation, cultural and linguistic factors. The legal interpreter is not an advocate for the deaf client. At times, it may be appropriate to assist the legal professional(s) with general information about deafness and its implications, including cultural, linguistic,) social, educational, and familial, and how this may differ from the life experience of the wider, community. This may also include information about the barriers to communication that deafness creates and the important role that both interpreters and deaf-specific services play in overcoming these barriers.

Interpreters in legal settings may interpret in *consecutive* or *simultaneous* mode, depending on the linguistic complexity of the context, the linguistic needs of the Deaf client, and the speed of delivery of English or Auslan.

Interpreters must, if asked to provide expert testimony on language, deafness, or matters related to the case, either decline to do so, or withdraw as an interpreter from the case. Instead, an Auslan/deafness consultant or advocate should be appointed for this purpose.

### 1.4. **Integrity of Service**

Like any interpreter, the legal interpreter is expected to demonstrate sound professional judgement at all times and to accept responsibility for his or her decisions. Legal interpreters will make every attempt to avoid working in legal settings that may create a vulnerability of their own, as this will affect, and potentially damage, the work being undertaken by the legal professional and client.

Interpreters will be bound by the ASLIA Code of Ethics to facilitate communication accurately and impartially between all parties. Interpreters will execute this role with total absence of bias and must maintain strict confidentiality.

Interpreters should not interpret for family members or friends in legal settings. Communication may be altered due to lack of competence in English/Auslan (or varieties thereof), or due to bias or personal interest of the family member. This can seriously undermine the whole interpreting process.

## **2. Professional Competence**

(ASLIA Code of Ethics 2: Interpreters provide the highest possible quality of service through all aspects of their professional practice. This includes 2.1 Qualifications to Practice; 2.2 Faithfulness of Interpretation; 2.3 Accountability for Professional Competence; and 2.4 Ongoing Professional Development.)

### **2.1. Qualifications to practice**

Interpreters working in legal settings will be NAATI Certified Interpreters accredited (formerly Professional Interpreter Accreditation or Level 3) and will have qualifications and/or training in working and interpreting in the legal system of Australia. Working as a legal interpreter, it is essential to have a solid understanding of the various desired outcomes in the broad range of legal settings. This is best gained through professional development, provided either by ASLIA or an interpreting agency in conjunction with legal professionals, prior to commencing work in any legal setting. Legal interpreters should undertake ongoing professional development and/or training in tandem interpreting with other Auslan<>English interpreters and/or Deaf Interpreters

Deaf Interpreters will undertake specialised training and ongoing professional development including the use of gesture, mime, props, drawings and/or other tools which will increase the understanding of the deaf client and improve the communication between the client and the legal professional and/or the court

In addition, ASLIA highly recommends that no interpreter should work in a legal setting without first undergoing a minimum of 25 hours of professional development that specifically addresses the multi-faceted nature of the legal context. In the absence of interpreter-specific PD in the legal interpreter's area, it is recommended that legal interpreters undertake training from other providers.

Further, ASLIA recommends that legal interpreters undertake ongoing reading and/or professional development in order to develop an understanding of legal settings as well as the task of language transfer in such settings (e.g. how discourse may vary in legal settings, the source language terminology that may be used and its possible equivalence in the target language, etc.).

## **2.2. Faithfulness of interpretation**

In a legal setting, faithfulness of interpretation is difficult to quantify. When working as a legal interpreter, it is essential to understand how the legal professional works and the types of cues and information that they wish to have to enable them to do their job. (This can mean that the legal interpreter works without seeking clarification,) instead providing the legal professional with the information that something of what the client said was missed.

In a legal setting, depending on the working framework and/or the intent of the legal professional in that setting, faithfulness of interpretation can mean working as a linguistic informant to the legal professional noting when language is disjointed, lacks cohesion and/or is incoherent. It is important for the legal interpreter to realise that they are working faithfully even when the interpretation does not make sense, it is essential for the legal interpreter to be able to "let go" of making sense. In this way, the legal

interpreter provides the legal professional with the text they need to work with the client. It would be appropriate to engage a DI when the legal interpreter recognises the limit of their linguistic and cultural skills.

It may be far more useful, depending on the legal professional, to make comment about unusual aspects of the client's language; for example, that a client who is talking about three family members has placed them all in the same signing space instead of in three separate referential locations rather than simply rendering an interpretation of whatever the Auslan text may be. It is crucial for the legal interpreter to be aware of the legal professional's framework and the intent and goal of the interaction.

Interpreters in legal settings may interpret in *consecutive* or *simultaneous* mode, depending on the linguistic complexity of the context, the linguistic needs of the Deaf client, and the speed of delivery of English or Auslan.

- 2.3. The legal interpreter should explain to the legal professional the 'Deaf nod' as behaviour common within the Deaf community, where the person will physically nod as an indication of comprehension (rather than agreement).

### **Accountability**

At all times, the legal interpreter is accountable for their professional practice, accepting responsibility for the quality of their work and professional decisions made during the course of the assignment. As noted in "qualifications to practice", interpreters must be appropriately credentialed to work in legal settings and need to be adequately prepared for the setting.

Part of preparation for the setting must be a dialogue with the legal professional to ascertain the nature of the setting as well as the legal professional's wishes regarding the provision of linguistic information.

### **2.4. Ongoing professional development**

As previously noted, this is an essential component of professional practice for the legal interpreter. In order to work in the many and varied settings that comprise "legal interpreting", it is necessary to be proactive in gaining of



knowledge about the legal profession and legal systems (currency in knowledge is essential to enabling effective interpretation to occur).

### **3. Non-discrimination**

(ASLIA Code of Ethics 3: Interpreters approach professional services with respect and cultural sensitivity towards all participants. This includes 3.1 Non-discrimination; 3.2 Communication Preferences; and 3.3 Deaf Interpreters.)

#### **3.1. Non-discrimination**

Legal interpreting is an area of professional practice that places unique demands on the interpreter. In the legal domain, it is possible to be confronted with both settings and linguistic content that the interpreter may find worrying, distressing and even abhorrent. It is essential for the legal interpreter to have the intrapersonal skills to manage such content and settings in a respectful and non-judgemental manner, maintaining professional demeanour at all times.

Should it be the case that the legal interpreter requires assistance following a disturbing assignment, they are advised to seek professional supervision and/or their own therapeutic process as soon as possible. By undertaking supervision and/or therapy, the legal interpreter is assisted to process and manage what has been a disturbing situation and, thereby, reduce the possibility of vicarious trauma.

#### **3.2. Communication preferences**

As in any setting, a deaf client's communication preferences and choices need to be respected. However, it may be important to act in a linguistic informant capacity to the legal professional to advise them of the varying communication choices made, especially if the legal interpreter is aware that those choices are somehow different, unusual or have changed in some way for the client.

#### **3.3. Deaf interpreters**

Legal interpreting is a field where the services of a Deaf Interpreter (DI) may be required for full access. It is equally as important for a DI working as a

legal interpreter to resist the urge to “make sense” of the client’s utterances that may be incomplete or incoherent. Rather, it is the DI’s role to enhance the legal professional’s access to the language as used by the deaf client and to facilitate the deaf person’s access to legal information.

A DI should be recommended and engaged when any party requests one or if the deaf client:

- uses idiomatic non-standard signs or gestures that may be unique to a family, community, region, or a particular ethnic/cultural or age group within the community.
- uses a foreign sign language
- is of Aboriginal and/or Torres Strait Islander descent and uses a unique variety of Auslan or a community-based sign system.
- has minimal or limited communication skills
- has an additional disability such as mental illness, physical disability or a cognitive disorder
- is deafblind or deaf with a vision impairment
- first language is other than Auslan or English

#### **4. Integrity in Professional Relationships**

(ASLIA Code of Ethics 4: Interpreters deal honestly and fairly with participants and colleagues while establishing and maintaining professional boundaries. This includes 4.1 Professional Relationships; 4.2 Impartiality; 4.3 Respect for Colleagues; and 4.4 Support for Professional Associations.)

##### **4.1. Professional Relationships**

Other relationships that the deaf client may have with the legal interpreter, be they personal, social or even at a working level, may be confused within the legal setting by the deaf client and, indeed, by the legal interpreter. As well, it is possible for the integrity of the interpreting to be compromised by this confusion of relationship and boundaries. ASLIA strongly recommends that under no circumstances should a legal interpreter engage in personal

and/or social interaction with a deaf client 'while in the commission of a legal interpreting assignment.' Where appropriate, this may need to be explained to the deaf client. The legal interpreter may need to reassure or explain to the deaf client that if/when they see them outside the professional context there will be no reference made to the appointment.

Even when only a professional relationship exists, a legal interpreter needs to carefully consider undertaking other interpreting work with a deaf client outside of the legal setting. This is recommended for both the client and the legal interpreter's wellbeing. For the interpreter, it may create a situation that can manifest itself with a blurring of boundaries and/or present challenges in relation to impartiality. For the client, it may provoke distress or embarrassment to see the legal interpreter in another setting.

The legal interpreter is responsible for maintaining strict professional boundaries with any deaf person met through the context of a legal setting. Conversely, if a legal interpreter has a personal and/or social relationship with a deaf person, they should not knowingly accept an assignment with that deaf person in a legal setting. If, upon arrival at an assignment, they discover that the deaf client is someone within that personal/social circle, the legal interpreter must inform the legal professional of this and discuss the possible need to withdraw from the assignment, even if this means delays in legal proceedings.

ASLIA acknowledges that this principle may be difficult to adhere to in remote and regional settings, where availability of legal interpreters is limited. However, for the reasons outlined, ASLIA recommends that, whenever possible, this principle is observed and employed by the legal interpreter.

#### **4.2. Impartiality**

It is essential for the legal interpreter to maintain impartiality and objectivity throughout the legal context and process, even when confronted with disturbing behaviour or linguistic content in relation to religious beliefs and practice, race and gender, sexuality or personal situation. If the legal

interpreter is not able to remain impartial and objective, then the legal interpreter should withdraw either from the assignment. In compliance with ASLIA Code of Conduct, legal interpreters should not use their knowledge of the client in any way outside of the legal context.

#### **4.3. Respect for Colleagues**

As in any other interpreting situation, the legal interpreter needs to treat fellow interpreters and all personnel involved with respect and fairness.

#### **4.4. Support for Professional Associations**

4.5. Interpreters who are working in a professional capacity in a legal context are recommended to be members of professional associations such as ASLIA and Australian Institute for Interpreters and Translators

### **5. Integrity in Business Relationships**

(ASLIA Code of Ethics 5: Interpreters establish and maintain professional boundaries with participants and colleagues in a manner that is honest and fair. This includes 5.1 Business Practices; 5.2 Accurate Representation of Credentials; and 5.3 Reimbursement for Services.)

#### **5.1. Business Practices**

As in any interpreted setting and as outlined in the ASLIA Code of Ethics, the legal interpreter must conduct themselves in a professional manner. Work should not be terminated unless there are fair and reasonable grounds for doing so. This means that it is important for the legal interpreter to carefully assess work that is offered, endeavouring to ensure that not only appropriate skills are possessed, but also to ensure that the legal interpreter has the intrapersonal resources to manage the work. Where possible, booking agencies should provide appropriate information to allow the interpreter to make an informed decision. The legal interpreter should also ensure that appropriate external supervision is available to them to adequately support them to manage the demands of the work. Supervision cannot and should

not be managed by the legal professional(s) involved in the work, this is a conflict of interest for the legal professional and client.

### **5.2. Accurate Representation of Credentials**

As in any interpreted setting and as outlined in the ASLIA Code of Ethics, the legal interpreter needs to be mindful of the skills and experience that they have and be careful not to misrepresent those to others in any way or form.

### **5.3. Reimbursement for Services**

As in any interpreted setting and as outlined in the ASLIA Code of Ethics, the legal interpreter, when undertaking the work as a freelance interpreter, will undertake negotiation and collection of fees for interpreting services provided in a professional manner, mindful of the factors outlined in the ethics.

## **Resources**

De Jongh, E.M. (2008). Court interpreting: Linguistic presence v. linguistic absence. *Florida Bar Journal*, 82 (7), 21- 32.

Judicial Council on Cultural Diversity (2017). Recommended national standards for working with interpreters in courts and tribunals.

NAJIT (2007). Team interpreting in the courtroom. Retrieved from:

[http://www.najit.org/publications/Team%20Interpreting\\_052007.pdf](http://www.najit.org/publications/Team%20Interpreting_052007.pdf)

Russell, D., & Association of Visual Language Interpreters of Canada (2011).

Interpreting legal discourse and working in legal settings” An AVLIC position paper.

Witter-Merithew, A. (1992). Phases of Work. In *Interpreting in the American Judicial System: ASL/ English*. (pp. 7-8). Unit G: Team Interpreting: Types, Function, Roles and Protocol and Teams with Deaf and Hearing Interpreters, (unpublished document, copyright held by RID/CSUN)

## Version History

<b><i>Version Date</i></b>	<b><i>Prepared by</i></b>	<b><i>Checked by</i></b>	<b><i>Approved by motion</i></b>	<b><i>Summary of updates</i></b>
V1.0 2006	Meredith Bartlett			
V2.0 2018	Merie Spring	David McQuiggin Christy Filipich	Yes	New template, content revisions, accreditation language.