



**Professionals  
Australia**

# Australian National Standards for Working with Interpreters in Courts and Tribunals

Professionals Australia Submission to Public Consultation  
by the Judicial Council on Cultural Diversity

July 2016





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## Introduction

Professionals Australia thanks the Judicial Council on Cultural Diversity Specialist Committee for the opportunity to participate in this consultation process. We have provided comments on the Minimum and Optimal standards, the Model Rules and Model Practice Note which give effect to the Standards including the Court Interpreters' Code of Conduct and the Supplementary Materials that together comprise the proposed National Standards framework.

We agree there is a need for nationally consistent standards and guidelines concerning working with interpreters in Courts and Tribunals and that interpreters are fundamental to ensuring access to justice and procedural fairness for people with limited or no English proficiency. We commend the work of the members of the specialist committee who prepared the proposed framework.

The objective of Professionals Australia's submission is to emphasise how the National Standards have the potential to help drive/incentivise positive change and embed good practice in the interpreting workforce that operates in Courts and Tribunals.

We ask the Committee to note our two key areas of expertise. Our primary expertise is in the area of professional workforce development. In the context of the translator and interpreter workforce, this includes:

- aligning reward and recognition systems with strategic skill development
- where relevant looking at ways to incentivise and build into procurement strategies a focus on quality rather than relevant providers competing solely on price;
- building workforce capacity and capability for the future
- stemming attrition from the sector; and
- attracting the next generation of professionals to ensure a sustainable workforce for the future.

Our second key area of expertise arises from our broad member base giving us a strong combined interpreter capability and, in turn, the authority to comment on the framework from the point of view of practising interpreters.

The National Standards Framework for Working with Interpreters in Courts and Tribunals provides an opportunity to build into the National Standards practices that will ensure a greater emphasis on the quality of interpreting services and make the industry more sustainable while at the same time enhancing access to justice and procedural fairness for people with limited or no English proficiency.

The potential for the Standards to be utilised in this way is not stated explicitly as an aim or objective but acknowledged in the Introduction to the framework:

*By implementing these Standards, courts will be supporting a sustainable and highly-skilled interpreting and translating profession in Australia and contribute to system-wide improvements in interpreting (p.11).*

## Workforce development in context of proposed framework

Interpreters endure stressful work, lack of recognition of their skills and insecure employment - but they do so generally because they are passionate about their work and their communities - their commitment is the bedrock of this vital workforce. Embedding strong and explicit standards in the National Standards framework will support positive and strategic workforce development while playing an important role in ensuring access to justice and procedural fairness for people with limited or no English proficiency. Ensuring the Standards incentivise and reward positive practices by interpreters, judicial officers and legal practitioners will contribute not only to maximising interpreting service quality but driving workforce development and helping address the some of the professional frustrations of Court interpreters.

We hope that the development of the National Standards framework is an opportunity to change and/or improve existing practices that contribute to reduced interpreting service quality in Courts and Tribunals. With interpreters the key to ensuring procedural fairness, properly recognising the needs of the interpreter workforce in the Standards would mean the framework could play a vital role in addressing some of the systemic issues that now impact the sustainability of the sector. To fail to see that a comprehensive framework could positively impact workforce development in this way would be a missed opportunity. It is essential that the framework is drafted in such a way as to ensure the Standards do not simply reproduce the problems that characterise current practice.

*Note: We respectfully refer the Committee to the Professionals Australia publication “The Case for Change: Consequences and costs of failures in the translating and interpreting industry” attached in support of our Submission. This publication provides examples of the cost of failure to provide proper interpreting services in the legal/court setting (refer pp.10-14) and demonstrates the urgency of putting in place National Standards that will address some of the current Court/Tribunal system’s shortcomings.*

## Stated aims/objectives

We believe that the framework would benefit from an Aims or Objectives section as part of the Introduction. This would provide for the main objectives to be clearly stated. We suggest that the main aims of developing and implementing the National Standards are to:

- *support access to justice and procedural fairness for people with limited or no English proficiency (Explanatory paper under heading Background to this Project), and*
- *support a sustainable and highly-skilled interpreting profession in Australia and contribute to system-wide improvements in Court /Tribunal interpreting (derived from p.11).*

## Status of National Standards

We note that a number of Courts and Tribunals already publish their own guidelines/Standards for working with interpreters. We suggest there needs to be some clarification of, or guidance on, the status of the proposed National Standards in relation to existing guidelines/Standards.

## Standards

### Standards for courts

Professionals Australia generally endorses the Standards and makes particular note of the following:

#### Training of judicial officers and court staff (Minimum Standard 5)

The issue of the training of judicial officers and court staff is included in the framework at Items 5.1 to 5.3 of Minimum Standard 5 under Standards for Courts, and at Items 11.1 to 16.7 of the Standards for judicial officers. It is impossible to overstate the importance of this training to the effective implementation of the National Standards framework.

#### Court budget for interpreters (Minimum Standard 6)

In the Introduction to the framework, the draft states:

*Implementing these Standards will have cost implications. It is essential that governments, in order to ensure equality and access to justice for all, provide courts with adequate funding to give effect to these Standards.*

At Item 6.1, the draft says:

*Courts should have dedicated budget allocations to provide and support interpreting services to court users with limited or no English proficiency.*



We note the disturbing number of complaints dismissed because of the cost of interpreter services and that proper funding for Courts and Tribunals for these services will be fundamental to the successful implementation of the framework. We note the profound cost to individuals and the community of under-investment in interpreting services including lack of social inclusiveness and cohesion.

#### Support for interpreters (Minimum Standard 8)

We endorse all the Standards in relation to support for Interpreters set out at Items 8.1 to 8.10. In addition, we note the following:

##### *Working conditions (Minimum Standard 8.1)*

We endorse the general requirement to provide appropriate working conditions outlined in Minimum Standard 8.1 (p.13) as well as provision for:

- a dedicated interpreters' room;
- a dedicated location in the courtroom;
- an interpreters' portal for booking and briefing materials;
- regular breaks; and
- two-way feedback for interpreters;

##### *Remuneration (Minimum standard 8.2)*

#### Relevant payments

In relation to 8.2 Remuneration (p.13), we strongly endorse payment for interpreters for preparation time, travelling time, travel and accommodation costs and for the time contracted regardless of whether the matter finishes earlier.

#### Fee scales

While we agree that:

*Interpreters should be provided with remuneration commensurate with their level of qualifications, skill and experience (Minimum Standard 8.2, p.13),*

we are of the view that rather than saying Courts should agree a scale of fees for Interpreters, it is essential that the proposed framework includes such a scale. Advice on payment levels beyond the relevant minima will be critical to ensuring the framework is implemented in an orderly and effective way, that it does not lead to widely divergent pay outcomes across Courts and Tribunals that could distort the labour market. Guidance on proper payment levels will ensure the framework operates as a mechanism for improving the quality of interpreting services. To fail to consult with relevant stakeholders to develop such a pay scale and to neglect to see the promulgation of the proposed pay rates as an opportunity to ensure proper fees for, and quality of, interpreting work in this specialised context would be a wasted opportunity.

We are equally concerned with the wording around remuneration and fee scales mentioned at 4.11 (p.46) and in the Model Practice Note at Item 13 (p.27) with reference to the Professionals Australia recommended rates. The draft says:

*Courts should give consideration to differential rates depending on the qualifications of the Interpreter, with a discretion to allow a higher or lesser amount than the standard rates in any circumstances which appear to be just and reasonable (p.46).*

In our view, this provides unacceptable scope for discretionary reduction of payment levels and allows for payment below the level set out in the recommended rates which are intended to be the relevant minima.

#### [Risk attached to widely divergent pay rates and underpayment](#)

We reiterate that the Professionals Australia recommended rates are intended to be taken as the relevant minima and that leaving rates unregulated in the Court/Tribunal context will encourage agencies to continue to compete on price rather than quality which leads to compromised professional standards and the engagement of non-accredited or accredited at lower level interpreters as a cost-reduction strategy.

While we stop short of proposing a set of rates specific to the Court and Tribunal system in this Submission, we maintain that it is essential that rates are determined by an interpreter's qualifications, skill and experience and that the Professionals Australia recommended rates should be specified as the minima only. We are of course prepared to participate in a stakeholder consultation on the setting of fees for Courts/Tribunals.

#### [Vicarious trauma \(Minimum standard 8.7\)](#)

We note that Minimum Standard 8.7 outlines the need for support for interpreters in the form of debriefing or counselling. At 4.17 in the Supplementary Materials (p.48) we note the issue of vicarious trauma and secondary stress and the need for debriefing or taking a break from a particular type of work. We suggest that the framework should suggest that agencies/providers should provide or cover the cost of counselling support services.

#### [Reporting shortages \(Minimum standard 8.9\)](#)

We fully endorse Courts reporting to NAATI on shortfalls in interpreter availability including data on the tier level at which the shortfalls occurred as well as encouraging NAATI acting to address the reported shortfalls.

#### [Engaging an interpreter \(Minimum Standard 10\)](#)

Professionals Australia endorses the provisions for engaging an interpreter as set out in Item 10.1 including preference for engaging NAATI accredited interpreters, those who have engaged with professional associations or who have undertaken formal or legal interpreting training. We note the serious consequences when an interpreter is engaged without accreditation and the appropriate level of training. These include serious failure to interpret accurately by non-interpretation, misinterpretation and lack of impartiality.

At Item 10.3, we note the provision for engagement of an Interpreter in the Court/Tribunal setting that may not be NAATI accredited or at the Level 3 Professional Level. Our view is that every effort must be made to get the best-qualified interpreters, including consulting the interpreters about their available dates when setting the date for the hearing or trial, adjourning if no interpreter is available, flying an interpreter in from another state or using video link before considering the engagement of an unqualified and/or non-accredited Interpreter. Non-accredited and unqualified bilinguals should only be engaged when there are no qualified or accredited interpreters in existence in that language combination.

#### [Tiered approach to interpreting standards \(Minimum Standard 10.3\)](#)

The Standards divide all languages in Australia into four tiers and preference the engagement of interpreters at Professional Interpreter level. We highlight the need for recognition and reward systems that embed within them professional development and specialist training as our main comment on the tiered system based on availability, accreditation level and training set out in the Introduction (p.11, Item 10.3) and the Supplementary Material (pp.53-60). We reiterate the comments we made in relation to 8.2 Remuneration.



We note that the Standards acknowledge the current availability and diversity of training and qualifications of interpreters but would like to ensure that the judicial sector plays the central role it should in encouraging NAATI and industry stakeholders to address gaps and shortages with a view to improving quality of service provision over the longer-term – that is, we would be disappointed if the languages as classified under each tier as it currently stands remained static over time.

#### Provision of professional mentors for bilinguals (Optimal standard 4)

We note the suggestion in Optimal Standard 4 – Provision of professional mentors (p.15) that professional mentors qualified in other languages should be made available to bilinguals in the case of engagement of Tier C or D languages. We suggest that, as set out at 6.11 (p.66) in the Supplementary Materials, as a minimum those mentors should be members of AUSIT and experienced in court interpreting but also that the guidelines specify the accreditation level and type of professional development required to undertake this role.

While we endorse a mentorship program, we raise the issue of the need for a plan to introduce such a program, the form a consultation process might take and details of relevant funding sources/budget allocation.

#### Provision of professional development to interpreters on the Standards (Optimal standard 5)

We endorse agencies/providers supporting professional development for interpreters to ensure they understand their responsibilities under the Code of Conduct. We would suggest however that the booking agencies are not necessarily best placed to provide this training or induction - that is, they are well placed to support professional development but not necessarily deliver it. We note that this is included in the framework as an Optimal Standard – it is our view that this should be a Minimum Standard or that preference be given to those agencies/providers who support professional development on the Code of Conduct in the Court/Tribunal setting for their interpreters.

#### Interpreters/bilinguals

We note that bilinguals are sometimes referred to as interpreters throughout the draft framework. We object to this in the strongest possible terms. It is only appropriate for those who are appropriately trained and/or accredited to be referred to as interpreters.

#### Standards for Judicial Officers

We endorse the Minimum Standards for Judicial Officers.

#### Cultural sensitivity

We endorse the need for judicial officers to endeavour to ensure that any cultural or other sensitivities are taken into account in the selection of an interpreter. However, while cultural sensitivities should inform the selection of an interpreter, every effort should be made to ensure the most skilled and qualified interpreter is provided in Court and Tribunal settings whilst taking such sensitivities into account.

#### Standards for Interpreters

We endorse the Minimum Standards for Interpreters.

We note with concern however the requirements of Minimum Standard 19 – Duties of Interpreters to sight translate written communications beyond those specified under NAATI-guidelines. Under the Model Rules item 1.3 (p.13), an interpreter can be required to sight translate a statement and this is outside the limits of sight translation as set by NAATI. It is common practice and is practical to sight translate statements of limited length. We do not see that the right to decline to translate lengthy or complex documents set out in 1.11 (p.21) adequately addresses the issues that may arise.

## Standards for Legal Practitioners

We endorse the Minimum Standards for Legal Practitioners.

## Model Rules and Practice Note

We understand that the Model Rules and Practice Note give effect to the Standards. We endorse the Model Rules and Practice Note and make the following comments.

### Court Interpreters' Code of Conduct

We acknowledge that the Court Interpreters' Code of Conduct mirrors the AUSIT Code of Ethics and endorse it accordingly.

### Court directing interpreters on mode of interpreting

We note that at Item 1.18(h) of the Model Rules, the Court can direct the interpreter on the mode of interpreting. We respectfully note that currently NAATI credentialing at Professional level does not provide for simultaneous interpreting.

### Payment of interpreters

We note that item 1.18(n) relating to payment of interpreters is ambiguous as currently written and requires clarification.

### Recognised Agency

We note with concern the definition of "Recognised Agency" which appears at Item 13 (p.27) as part of the Model Practice Note. Currently there is only one authority in Australia that can grant accreditation to interpreters and translators and we query the inclusion of the words: "*and such other organisations as are approved by the Chief Justice*".

## Supplementary Materials

### Most frequently spoken languages

We note with concern that Greek, Italian, Serbian, Croatian and Auslan do not appear to have been included in the list of most frequently spoken languages at home detailed in item 1.1 (p.29) and that no emerging languages are included.

### English and plain English in Courts

We suggest that the second paragraph (p.31) should be reworded as follows (inserted words in italics):

It is unrealistic to expect even the most competent interpreters to provide a full and accurate interpretation of legal discussions between the judicial officer and the lawyers if they have not been fully briefed *<and given material in advance in order to prepare>*, or if they are referring to information that is unfamiliar or too complex.

### Feedback mechanism

We note in relation to item 4.18 (p.49) that the interpreter should be given an opportunity to respond to any issues raised in relation to their conduct/performance.



### Professional interpreters

We suggest that the paragraph at 6.2.1 Tier A – Professional interpreters (p.54) should be reworded as follows (inserted words in italics):

Courts should never employ an interpreter of lesser standard than NAATI Professional for these Tier A languages. Moreover, within Tier A, preference should be given to interpreters who have also undertaken tertiary qualifications in interpreting and are a current member of AUSIT, ASLIA *<or other credible (proven) state based professional association e.g. WAITI>*.

### Professional level mentor

We note that the words “or other approved provider” should follow the word/acronym AUSIT in the first and second paragraphs at item 6.11 The Professional level mentor (p.66).

### Proximity to accused

We note that at Item 8.3.2 in the Supplementary Materials (p.82) the interpreter may be seated next to the accused/witness in the dock. While it is acknowledged that this proximity can be uncomfortable and unprofessional for interpreters, the protection of the interpreter must be accorded a high priority; we suggest that the framework should explicitly state that the safety and professional distance of the interpreter should be a primary consideration when their services are used in the Court/Tribunal setting.

### Court interpreting technologies

We note that interpreting technologies are mentioned at Item 4.15. We suggest that the judicial sector should play a role in encouraging the introduction of, and training in, these assisting technologies.

### Law enforcement

While we note that there are standards included for legal practitioners, judicial officers and interpreters, standards for law enforcement officers are notably absent. This is an issue because:

- law enforcement officers utilise interpreter services in investigations and evidence collection which can end up in Court; and
- where an interpreter has been utilised during the course of an investigation, any bilingual material arising from that investigation has the potential to impact the interpreting process during any hearing or trial.

In terms of the Standards, as a minimum these issues need to be included in the interpreter briefing and also taken into consideration in relation to the requirement for interpreters to sign off on sight translation of written testimony.

We therefore suggest that parallel standards should exist for law enforcement officers, and that measures should be introduced to ensure that any relevant materials utilised during investigations or proceedings prior to the Court proceedings are made available to the interpreter.

### Contact us

If you have any questions relating to this Submission, please contact either Dr. Kim Rickard at [krickard@professionalsaustralia.org.au](mailto:krickard@professionalsaustralia.org.au) or Ms. Niki Baras at [NBaras@professionalsaustralia.org.au](mailto:NBaras@professionalsaustralia.org.au) (telephone: 03 9695 8813).