

New Zealand Sign Language Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the New Zealand Sign Language Bill and recommends that it be passed with the amendments shown.

Introduction

The purpose of the bill is to promote and maintain the use of New Zealand Sign Language, which according to the 2001 census is used by approximately 28,000 people (according to the Deaf Association an estimated 7,000 of these people are deaf). To achieve this, it declares New Zealand Sign Language to be an official language of New Zealand, provides for the use of New Zealand Sign Language in legal proceedings, enables the making of regulations to set competency standards for the interpretation in legal proceedings of New Zealand Sign Language, and sets out principles to guide government departments in the use that they should make of New Zealand Sign Language.

This commentary does not cover minor or technical amendments; it focuses on the main amendments that we recommend. It also includes a section on the existing law as it affects people who are deaf in courts, police and Corrections contexts.

Commencement date

We recommend an amendment to clause 2, to change the commencement date to 1 March 2006. The bill was drafted on the understanding that the Act would come into force on 1 January 2005. In selecting a date other than the first day of a year we were mindful of the likely difficulty of securing interpreters' services at such a time. We are advised that a commencement date of 1 March 2006 will allow time to deal with administrative matters and make any necessary regulations, taking into account the Christmas holiday period.

Deaf community

We recommend amendments to clarify the definition of "Deaf community" in clause 4. The bill included people in paragraph (b) of the definition (ie. those people who are deaf who identify with New Zealand Sign Language users but do not use New Zealand Sign Language as their first or preferred language) as a subset of those in paragraph (a) (people who are deaf and who use New Zealand Sign Language as a first or preferred language). We recommend the deletion of the word "include" in paragraph (b) and the deletion of the reference to "Deaf culture" in paragraph (b), to broaden the definition of "Deaf community" to include those Deaf people who identify with the people in paragraph (a) but not with Deaf culture.

We note that the definition of "Deaf community" does not refer to hearing people. Having considered the desirability of avoiding the delays and costs that could be incurred if a hearing person chose to use New Zealand Sign Language in legal proceedings, we are supportive of the definition in the bill in this regard.

New Zealand Bill of Rights Act 1990

We recommend the insertion of new clause 10B, to clarify that nothing in the bill affects the New Zealand Bill of Rights Act 1990.

We recommend the inclusion of an explicit statement to confirm that, aside from conferring the right to use New Zealand Sign Language in any legal proceedings, the bill does not extend rights to the Deaf community beyond those already provided in the New Zealand Bill of Rights Act, and does not limit those rights in any way.

Existing law relating to legal proceedings

The New Zealand Bill of Rights Act provides a statutory basis for a person who is deaf to access a New Zealand Sign Language interpreter in connection with criminal proceedings. Section 24(g) confirms the right of persons charged with an offence who cannot understand or speak the language used in court to have the free assistance of an interpreter. Our advisers informed us that the provisions of the New Zealand Bill of Rights Act would require that a person who is deaf and is involved in any processes that have a bearing on the resolution of proceedings, including preparation for trial, has access to a New Zealand Sign Language interpreter when necessary.

Our advisers informed us that the New Zealand Bill of Rights Act provides sufficiently broad rights to ensure that a person who is deaf who has been arrested or detained is not disadvantaged or discriminated against on the grounds of their disability during the police interview process.

When the police provide information to a person upon arrest or detention, it must be sufficient for the person to make informed choices about whether to respond to questions or to elect to be represented. In order for accused/detained persons to understand their rights and exercise them to the best of their abilities, the police must communicate with them in a language that they can sufficiently understand and communicate in.

Several submitters contended that the right to use New Zealand Sign Language in legal proceedings is too narrow to be effective in ensuring equal access to justice for people who are deaf. Concerns were raised that people who are deaf can miss the nuances of spoken legal proceedings and therefore enjoy less protection than that afforded to others. Having said that, we consider it unnecessary to expand the right to use New Zealand Sign Language to matters outside the definition of “legal proceedings” as defined in the bill especially in light of the same definition in the Maori Language Act 1987. We consider that the New Zealand Bill of Rights Act protections are sufficient to cover police interviews, pre-court meetings and Corrections settings.

Making interpreters available

We recommend several amendments to clause 7, to clarify certain process matters around the entitlements to use New Zealand Sign

Language in legal proceedings. The most significant of these is the rewording of clause 7(3), which establishes that the obligation on a presiding officer to ensure that a competent interpreter is available arises when the presiding officer is aware that a person entitled to use New Zealand Sign Language in those proceedings intends to do so. We note that this should encourage Judges to establish whether an interpreter is required at an early stage of proceedings.

Interpretation and translation

We recommend the definition of “interpretation” in clause 4 be reworded to make specific mention of spoken words in English and New Zealand’s other official language, Maori. Similarly, we recommend the definition of “translation” be reworded to clarify that it refers to the signed expression of written words in English or Maori, and the written expression in English or Maori of messages expressed in New Zealand Sign Language. These proposed changes clarify that “interpretation” occurs in real time and involves spoken or signed communication, whereas “translation” involves written text.

We were advised that the bill is technologically neutral, and capable of allowing for foreseeable technological advances in the provision of interpretation services.

We were asked by some submitters to provide a definition of “competent interpreter” in the bill. We do not wish to pre-empt the conclusions of the interdepartmental working groups that are looking into this area.¹ If necessary, regulations prescribing competency standards can be made under clause 11(1)(a). We recommend the insertion of new clause 11(2), which requires that any such regulations must include the criteria by which the competence of a person to act in legal proceedings as an interpreter of New Zealand Sign Language may be assessed.

Consultation by government departments

We recommend the insertion of new clause 9(1A), to provide that government departments must endeavour to consult with people or organisations that the chief executive considers to be representative of the interests of the Deaf community on matters that relate to New

¹ The interdepartmental working groups involve the Office for Disability Issues, officials from the Ministry of Justice, Deaf experts, and New Zealand Sign Language interpreters, in consultation with relevant government agencies.

Zealand Sign Language. New clause 9(1A) allows consultation with representative organisations.

We note that it is very important for departments to take responsibility for engaging directly with the Deaf community, rather than leaving it to the Office for Disability Issues.

Review of operation of Act

We recommend the insertion of new clause 10A, to provide that the Minister must, as soon as it is practicable after 1 March 2009, require a report to be prepared on the operation of the Act, and whether any amendments to its scope and contents are necessary or desirable. Several submitters commented on the need for ongoing and strategic funding to ensure that New Zealand Sign Language can be effectively maintained and promoted. However we considered that there was a need to monitor and report on the legislation before making any recommendations about funding. The other options are discussed below.

New Zealand Sign Language Commission or advisory group

We discussed with submitters the prospect of establishing a New Zealand Sign Language Commission, with functions similar to the Maori Language Commission (Te Taura Whiri i te Reo Maori). The main differences between the bill and the Maori Language Act 1987 are that the Maori Language Act establishes the Maori Language Commission. We do not consider that a commission is necessary but at the same time we considered the establishment of an advisory group, which would have the role of monitoring the effects of the legislation against its stated purposes. We consider that such a group could provide a focus for contact between government and the community, and look at new areas in which work could be done. We consider this matter is better left to the Government to progress separately from this bill, but would recommend its serious consideration.

Submitters' comments

No submitters opposed the bill, and all expressed strong support for the recognition of New Zealand Sign Language as an official language of New Zealand. Many submitters commented that while it

represented an important first step, the bill could do more to maintain and promote New Zealand Sign Language, and made suggestions about how to best achieve these desired goals.

Further development to the legislation

A large number of submitters mentioned the barriers faced by deaf people when accessing services and information. Many recommended provision be made for the use of New Zealand Sign Language in education. While we are sympathetic to submitters' concerns, we note that interdepartmental working groups are working towards the development of long-term plans for the removal of language barriers for the Deaf community in four priority areas: health, education, employment, and public broadcasting. We recommend also that the rest of the justice sector be added to that list.

Advisers and interpreters

None of the members of the select committee could communicate in New Zealand Sign Language, so it is appropriate that we pay tribute in this respect to our advisers and our interpreters for their understanding and support.

We also thank the Deaf Studies Research Unit of Victoria University for providing us with a training session in New Zealand Sign Language which enabled us to welcome Deaf submitters to the committee and to thank them for their submissions.

Appendix

Committee process

The New Zealand Sign Language Bill was referred to the committee on 22 June 2004. The closing date for submissions was 30 July 2004. We received and considered 195 submissions. Six of the submissions were videotape submissions, which recorded 104 people signing their individual submissions in New Zealand Sign Language. We heard 26 submissions, at hearings in Auckland and Wellington and by videoconference. Hearing of evidence took 8 hours and 26 minutes and consideration took 9 hours and 42 minutes.

The Office for Disability Issues and the Ministry of Social Development were appointed as advisers to the committee. We also received advice from the Ministry of Health, the Ministry of Justice, the Department of Corrections, New Zealand Police, the Ministry of Education, and the Law Commission.

Committee membership

Tim Barnett, Chairperson (Labour)

Stephen Franks, Deputy Chairperson (ACT)

Lianne Dalziel (Labour)

Russell Fairbrother (Labour)

Dave Hereora (Labour)

Dail Jones (NZ First)

Moana Mackey (Labour)

Hon Clem Simich (National)

Murray Smith (United Future)

Nandor Tanczos (Green)

Dr Richard Worth (National)

Nandor Tanczos, Hon Clem Simich, and Murray Smith were replaced by Sue Bradford, Sandra Goudie, and Paul Adams respectively for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Ruth Dyson

New Zealand Sign Language Bill

Government Bill

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Schedule
Courts and tribunals before which New Zealand Sign Language may be used

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the New Zealand Sign Language Act **2004**.
- 2 Commencement**
This Act comes into force on *(1 January 2005)* 1 March 2006.

Part 1 **Preliminary provisions**

- 3 Purpose**
The purpose of this Act is to promote and maintain the use of New Zealand Sign Language by—
 - (a) declaring New Zealand Sign Language to be an official language of New Zealand; and
 - (b) providing for the use of New Zealand Sign Language in legal proceedings; and
 - (c) empowering the making of regulations setting competency standards for the interpretation in legal proceedings of New Zealand Sign Language; and

- (d) stating principles to guide government departments in the promotion and use (*that they should make*) of New Zealand Sign Language (*in the promotion to the public of their services and in the provision of information to the public*).

4 Interpretation

In this Act, unless the context otherwise requires,—

Deaf community means—

- (a) (*means*) the distinct linguistic and cultural group of people who are deaf and who use New Zealand Sign Language as their first or preferred language; and
- (b) (*includes*) people who are deaf and who identify with (*both*) the group of people referred to in **paragraph (a)** (*and Deaf culture*)

government department means a Government Department named in Part I of the First Schedule to the Ombudsmen Act 1975

Struck out (unanimous)

interpretation, in relation to New Zealand Sign Language, means the expression of New Zealand Sign Language in spoken language and the signed expression in New Zealand Sign Language of spoken language

New (unanimous)

interpretation, in relation to New Zealand Sign Language, means—

- (a) the expression in New Zealand Sign Language of words spoken in English or Maori or both; and
- (b) the oral expression in English or Maori or both of messages expressed in New Zealand Sign Language

legal proceedings means—

- (a) proceedings before any court or tribunal named in the **Schedule**; and
- (b) proceedings before any coroner; and
- (c) proceedings before—

- (i) a Commission of Inquiry under the Commissions of Inquiry Act 1908; or
- (ii) a tribunal or other body having, by or pursuant to an enactment, the powers or any of the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908,—

that is required to inquire into and report upon any matter of particular interest to the Deaf community

Minister means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

New Zealand Sign Language or **NZSL** means the visual and gestural language that is the first or preferred language in New Zealand of the distinct linguistic and cultural group of people who are deaf

presiding officer, in relation to any legal proceedings, means the Judge or other person who is presiding over the proceedings

Struck out (unanimous)

translation, in relation to New Zealand Sign Language, means the expression in written text of New Zealand Sign Language and the signed expression in New Zealand Sign Language of written text.

New (unanimous)

translation, in relation to New Zealand Sign Language, means—

- (a) the written expression in English or Maori or both of messages expressed in New Zealand Sign Language; and
- (b) the signed expression in New Zealand Sign Language of words written in English or Maori or both.

Compare: 1987 No 176 s 2

5 Act binds the Crown

This Act binds the Crown.

Part 2 New Zealand Sign Language

Recognition

6 **New Zealand Sign Language to be an official language of New Zealand**

New Zealand Sign Language is declared to be an official language of New Zealand.

Compare: 1987 No 176 s 3

7 **Right to use New Zealand Sign Language in legal proceedings**

- (1) In any legal proceedings, any of the following persons may use New Zealand Sign Language, where the person's first or preferred language is NZSL:
- (a) any member of the court, tribunal, or body before which the proceedings are being conducted:

Struck out (unanimous)

- (b) any person before whom the proceedings are being conducted:
- (c) any party or witness:
- (d) any counsel or other person representing a party in the proceedings:
- (e) any other person with leave of the presiding officer.
- (2) The right conferred by **subsection (1)** to use NZSL does not—
- (a) entitle any person referred to in that subsection to insist (on being addressed or answered in NZSL) that any person who is not an interpreter for the purposes of the proceedings address or answer him or her in NZSL; or
 - (b) entitle any such person other than the presiding officer to require that the proceedings or any part of them be recorded in NZSL.

Struck out (unanimous)

- (3) Where any person intends to use NZSL in any legal proceedings, the presiding officer must ensure, in accordance with any regulations made under this Act, that a competent interpreter is available.

New (unanimous)

- (3) Where the presiding officer in any legal proceedings is aware that any person entitled under **subsection (1)** to use NZSL in those proceedings intends to do so, the presiding officer must ensure that a competent interpreter is available.
- (4) Where, in any proceedings, any question arises as to the accuracy of any interpretation or translation from NZSL into spoken or written language or from spoken or written language into NZSL, the question must be determined by the presiding officer in such manner as the presiding officer thinks fit.
- (5) Regulations made under this Act and rules of court or other appropriate rules of procedure made under any enactment may require any person intending to use NZSL in any legal proceedings to give reasonable notice of that intention, and generally regulate the procedure to be followed where NZSL is, or is to be, used in such proceedings.
- (6) Any such regulations or rules of court or other appropriate rules of procedure may make failure to give the required notice a relevant consideration in relation to an award of costs, but no person may be denied the right to use NZSL in any legal proceedings because of any such failure.

Compare: 1987 No 176 s 4

8 Effect of recognition

- (1) Subject to **section 7**, **section 6** does not create any legally enforceable rights.
- (2) Nothing in **section 6** or **section 7**—
- (a) affects any right that any person has, otherwise than by virtue of those sections, to seek, receive, or impart any communication in NZSL; or

- (b) affects the right of any other linguistic community in New Zealand or the right of any person to use the language of that community or person.

Compare: 1987 No 176 s 5

Principles to guide government departments

9 Principles

- (1) A government department should, when exercising its functions and powers, be guided, so far as reasonably practicable, by the following principles:
- (a) the Deaf community should be consulted on matters *(that affect their language)* relating to NZSL (including, for example, the promotion of the use of NZSL):
 - (b) NZSL should be used in the promotion to the public of government services and in the provision of information to the public:
 - (c) government services and information should be made accessible to the Deaf community through the use of appropriate means (including the use of NZSL).

New (unanimous)

(1A) Consultation carried out by a government department under **subsection (1)(a)** is to be effected by the chief executive of the government department consulting, to the extent that is reasonably practicable, with the persons or organisations that the chief executive considers to be representative of the interests of the members of the Deaf community relating to NZSL.

- (2) *(Nothing)* The purpose of the principles in **subsection (1)** is to promote access to government information and services for the Deaf community, but nothing in **subsection (1)** is to be read as conferring on the Deaf community advantages not enjoyed by other persons.

10 Reporting

- (1) The Minister may from time to time report on the progress being made in implementing the principles set out in **section 9**.
- (2) A report under **subsection (1)** may be included in any report made under section 8(4) of the New Zealand Public Health

and Disability Act 2000 on the progress being made in implementing the New Zealand (*disability strategy*) Disability Strategy.

New (unanimous)

Miscellaneous provisions

10A Review of operation of Act

- (1) The Minister must, as soon as is practicable after 1 March 2009, require a report to be prepared on—
 - (a) the operation of this Act since its commencement; and
 - (b) whether any amendments to the scope and contents of this Act are necessary or desirable.
- (2) The Minister must ensure that persons or organisations that are representative of the interests of the members of the Deaf community are consulted on the matters to be considered in the report.
- (3) The Minister must present a copy of the report to the House of Representatives.

10B New Zealand Bill of Rights Act 1990 not affected

Nothing in this Act affects the New Zealand Bill of Rights Act 1990.

Regulations

11 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
 - (a) prescribing the standards of competency that a person who is to act in legal proceedings as an interpreter of NZSL must attain;
 - (b) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

New (unanimous)

- (2) Regulations made under **subsection (1)(a)** must include (or provide, among other things, for the determination and publication of) the criteria by which the competence of a person to act in legal proceedings as an interpreter of NZSL may be assessed.
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Schedule s 4
**Courts and tribunals before which New Zealand Sign
 Language may be used**

A. Courts

The Supreme Court
 The Court of Appeal
 The High Court
 District Courts
 The Employment Court
 Family Courts
 Youth Courts
 The Maori Land Court
 The Maori Appellate Court
 The Environment Court

B. Tribunals

The Waitangi Tribunal
 The Employment Relations Authority
 The Human Rights Review Tribunal
The Motor Vehicle Disputes Tribunals established under
 section 82(1) of the Motor Vehicle Sales Act 2003
 The Tenancy Tribunal
 Disputes Tribunals established under the Disputes Tribu-
 nals Act 1988

Legislative history

7 April 2004	Introduction (Bill 124-1)
22 June 2004	First reading and referral to Justice and Electoral Committee
