

19 July 2016

Ms Veronica Finn
Policy Officer – JCCD Secretariat
P O Box 1895
CANBERRA ACT 2601

Email: secretariat@jccd.org.au

Dear Ms Finn

Thank you for seeking feedback from this office on the consultation draft of the *Australian National Standards for Working with Interpreters in Courts and Tribunals* (the national standards).

The Public Advocate is an independent statutory office established under the *Guardianship and Administration Act 2000* (Qld) to protect and promote the rights, autonomy and participation of people with impaired decision-making capacity. We do this by undertaking systemic advocacy to influence government and non-government agencies and preparing reports on a range of matters affecting the people whose interests this office is charged to protect.

I have briefly reviewed the consultation paper and draft national standards and I commend the Council on their quality and comprehensiveness.

Considering my statutory responsibilities, I have a particular interest in protecting the rights and interests of people with impaired decision-making capacity.

I note that document 3 in the Supplementary Materials, titled *Engagement of interpreters to ensure procedural fairness – legal requirements for interpreting*, makes reference to the international legal rights framework, including the *United Nations Convention on the Rights of Persons with Disabilities* and the obligations on signatory countries to provide people with a disability with “assistance and intermediaries, including guides and professional sign language interpreters” (p. 33 of the Consultation Draft). I also note that document 5 in the Supplementary Materials, titled *Assessing the need for an interpreter or translator*, also has a section “5.1.5 Ascertaining hearing ability and other disabilities” which recognises the high levels of learning impairment, cognitive disabilities, acquired brain injury, mental illness and language impairment that people who interact with the criminal justice system often have, and the responsibilities of judicial officers and counsel to alert the court to these impairments. These references are welcomed.



However, I note that neither the draft national standards, nor the Interpreters' Code of Conduct make any reference to the possibility that the person receiving the interpreter services may have a disability, that may impact on the person's decision-making capacity and therefore their fitness to be a party or a witness to the proceedings or, that requires reasonable accommodation for the person to participate in the proceedings. The difficulties ordinarily associated with identifying a person's fitness or competence can be exacerbated when the person does not speak English as a first language. There is a risk that the conduct and demeanour of a person with a disability can be wrongly interpreted as the person resisting engagement with the court process rather than not understanding the proceedings and their consequences.

In these circumstances, the person most likely to identify a capacity issue for a witness who speaks a language other than English is the interpreter. As a consequence, interpreters have a critical frontline role in identifying the possibility of impaired decision-making capacity in the people they are interpreting for in legal proceedings, so that they can be provided with the necessary supports and legal protections.

I recognise it is not reasonable or appropriate to expect interpreters to have any expertise in identifying impaired decision-making capacity, but it may be possible to include some provisions in the national standards that give them the opportunity to raise concerns. Perhaps "Minimum Standard 16.6 – Proceedings with an interpreter" in the draft national standards could include reference to judicial officers informing interpreters that they should alert the court if concerned that the person for whom they are interpreting may not understand the proceedings or has other comprehension or cognitive difficulties.

Similarly, there could be provision made under "Minimum Standard 19 – Duties of interpreters" for interpreters to alert the court (with the judicial officer's leave) about concerns about a witness not understanding the proceedings or having comprehension or cognitive difficulties.

While the suggestions above constitute only minor changes to the draft national standards, they could potentially have significant benefits for people with impaired decision-making capacity, for whom English is not a first language, when appearing in courts and tribunals.

Thank you for your consideration of this submission.

Yours sincerely,



Mary Burgess
Acting Public Advocate
Office of the Public Advocate