

New Zealand Sign Language Bill

Government Bill

Explanatory note

General policy statement

This Bill provides official recognition of New Zealand Sign Language (NZSL), the first or preferred language of Deaf New Zealanders.

This Bill addresses the uncertain legal status of NZSL. The legal status of the right to language has caused problems with the recognition of NZSL. Language is not a separate prohibited ground of discrimination under our human rights law but has usually been dealt with as an aspect of race or ethnicity. Provisions for the use of NZSL interpreters are inadequate, with the current legislative scheme an incomplete patchwork of explicit and implicit authorisations (for the use of NZSL) and of gaps. Deaf New Zealanders have not been afforded the same right to their language as other New Zealanders. The language of Deaf New Zealanders needs specific legal status as a unique New Zealand language.

Sign languages are not universal, which means that NZSL is unique to New Zealand and is not used anywhere else in the world. NZSL also includes signs that express concepts from Maori culture. Deaf Maori describe NZSL as a linguistic tool for accessing their Maori language and culture.

The capitalised “D” in “Deaf” is used internationally to denote a distinct linguistic and cultural group of people who are deaf and who use sign language as their first or preferred language, and includes those deaf people who identify with that group and with Deaf culture. Levels of deafness vary widely among Deaf people, though most have a profound or severe pre-lingual hearing loss.

This Bill will provide official recognition of NZSL as a unique New Zealand language and will contribute to achieving the vision of the New Zealand disability strategy: a fully inclusive New Zealand society.

Summary of key measures

Official recognition

The Bill will declare NZSL to be an official language of New Zealand. The official recognition of NZSL will not affect the status of either of New Zealand's other 2 official languages, English and Maori, nor will it affect the rights of any other linguistic minorities in New Zealand. There is a wide range of other languages spoken in New Zealand and the Bill is not intended to diminish the status of these. These languages generally share a common feature, namely, they are legally recognised in their home countries or countries of origin. Official recognition of NZSL would provide an equality of language status with those other languages through recognition in its home country.

Use of NZSL in legal proceedings

The Bill provides the right to use NZSL in legal proceedings where a person's first or preferred language is NZSL and where the person would otherwise speak.

Regulatory powers

At this stage it is not proposed that there be an extensive certification system as to the competency of NZSL interpreters as there are existing competency standards that do not need to be incorporated into regulations. However, the Bill does contain a regulation-making power that would enable competency standards to be prescribed at a later stage, if this were to be considered desirable. Further work is being done to assess mechanisms for implementing standards and to prepare any administrative matters, such as forms for legal proceedings.

The Bill also contains a general regulation-making power to provide for any matters contemplated by the Bill, necessary for its administration, or necessary for giving it full effect.

Principles

The Bill sets out, in *clause 9*, principles that government departments should be guided by in giving effect to the objectives of the Bill, especially those of transition and maintenance.

The government departments that should be so guided by those principles are those named in Part I of the First Schedule of the Ombudsmen Act 1975.

The Bill provides for progress reports to be made on implementing the principles. Rather than creating a new reporting mechanism, the Government considers it appropriate to use an existing mechanism that relates to the New Zealand disability strategy. Under section 8(4) of the New Zealand Public Health and Disability Act 2000, the Minister who is responsible for disability issues must report annually on progress in implementing the New Zealand disability strategy. The Bill states that a report on the progress being made in implementing the principles set out in *clause 9* of the Bill may be included in any report made under section 8(4) of the New Zealand Public Health and Disability Act 2000.

Reporting on the implementation of those principles as part of the New Zealand disability strategy is not intended to result in unfair advantage of the Deaf community over other groups, and a provision to that effect is included in the Bill.

Clause by clause analysis

Clause 1 sets out the title of the Bill.

Clause 2 provides that the Bill is to come into force on 1 January 2005.

Part 1

Preliminary provisions

Clause 3 provides that the purpose of the Bill 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 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.

Clause 4 defines terms used in the Bill. The definition of **legal proceedings** is based on the definition of that term in section 2 of the Maori Language Act 1987.

Clause 5 provides that the Act is to bind the Crown.

Part 2

New Zealand Sign Language

Recognition

Clause 6 declares New Zealand Sign Language to be an official language of New Zealand.

Clause 7 provides for the use of New Zealand Sign Language in legal proceedings.

Clause 8 sets out the effect of the recognition of New Zealand Sign Language as an official language of New Zealand.

Subclause (1) provides that, subject to *clause 7*, *clause 6* does not create any legally enforceable rights.

Subclause (2) provides that nothing in *clause 6* or *clause 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 to use the language of that community.

Principles to guide government departments

Clause 9: Subclause (1) provides that 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 (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).

Subclause (2) provides that nothing in *subclause (1)* is to be read as conferring on Deaf people advantages not enjoyed by other persons.

Clause 10 authorises the Minister to report from time to time on the progress being made in implementing the principles set out in *clause 9*.

Regulations

Clause 11 authorises the making of regulations, including, in particular, regulations prescribing the standards of competency that a person who is to act in legal proceedings as an interpreter of NZSL must attain.

Schedule

The Schedule specifies, for the purposes of *paragraph (a)* of the definition in *clause 4* of the term **legal proceedings**, the courts and tribunals before which New Zealand Sign Language may be used.

The Schedule is based on the First Schedule to the Maori Language Act 1987. However, the Schedule to the Bill—

- (a) includes a reference to the Supreme Court; and
 - (b) includes, instead of a reference to Planning Tribunals, a reference to the Environment Court (which change is required by section 6(2)(a) of the Resource Management Amendment Act 1996); and
 - (c) includes, instead of a reference to the Equal Opportunities Tribunal (which has been renamed twice), a reference to the Human Rights Review Tribunal; and
 - (d) omits the redundant reference to Children and Young Persons Courts.
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Hon Ruth Dyson

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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.

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 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—

- (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

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

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

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.

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;
 - (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; 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.
- (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.
- (4) Where, in any proceedings, any question arises as to the accuracy of any interpretation or translation from NZSL into spoken language or from spoken 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 (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).
- (2) 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.

*Regulations***11 Regulations**

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.
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Schedule
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 Tenancy Tribunal

Disputes Tribunals established under the Disputes Tribunals
Act 1988