



Position Statement for Deaf Individuals in the Court System of Australia

ASLIA is the professional association for Australian sign language interpreters. Auslan interpreters certified by NAATI (National Accreditation Authority for Translators and Interpreters), facilitate access to communication between deaf individuals and legal professionals in the court system of Australia. Auslan<>English interpreters can also work in tandem with a Deaf interpreter to enhance the accuracy of communication in legal settings for legal professionals and deaf people with specific language difficulties, intellectual or mental disabilities or cultural differences.

Auslan (Australian Sign Language) is the recognised community language of the Australian Deaf Community, a minority community of people who share a language and identity that is based on their shared experiences of living with deafness in a hearing world. In line with the Disability Discrimination Act of Australia (1992), ASLIA asserts that all Deaf people have the right to, and must be provided with a NAATI credentialed Auslan<>English interpreter to access any and all parts of the legal system. Further, that the legal rights of deaf people can only be assured, and the integrity of the legal process can only be safeguarded, by using NAATI Certified Interpreters in all legal settings. Within this document, legal settings include 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)

Language and Communication

Not all deaf people use Auslan as their preferred method of communication. Due to social and educational circumstances, no two deaf individuals are the same in respect to their communication preferences:

- a deaf person may use Australian Sign Language (Auslan) which is the recognised language of the Australian Deaf Community
- some deaf individuals make use of their residual hearing, technology such as hearing-aids or cochlear implants, and/or speech and lipreading to facilitate oral methods of communication
- some deaf individuals may use a range of non-standard communication methods that include family signs, or signs from a particular age group, region or ethnic community or systems of communication such as Signed English
- Aboriginal and Torres Strait Islander deaf people may use a variant of Auslan that is unique to their community or a sign system that is unique and community-based.

It should also be noted that some sign language users with a physical or mental illness, or a cognitive disability may also present with specific linguistic challenges.

Each individual has specific communication difficulties that need a NAATI Certified Auslan interpreter, or a Deaf interpreter, who has specialised training in one or all of these different communication methods. Appropriately trained and certified Auslan<>English and Deaf interpreters will adhere to the Code of Ethics and the quality of the interpreting process is assured. Certified Interpreters are required to bridge communication between hearing and deaf people in the legal context.

Deaf People in Court

Language. The ability to converse in written or spoken English does not necessarily indicate that a person comprehends the style of English spoken by magistrates, lawyers, police officers etc. or that the person understands written English. It is the position of ASLIA that a NAATI Certified and experienced Auslan<>English interpreter who has training in English and Auslan is required for

deaf people in all court appearances and all legal appointments. Further, that any legal documents must be translated into Auslan by a NAATI Certified Interpreter.

Assessing competence. The court may need to recognise that in regard to some deaf defendants, the issue of linguistic and legal incompetence to stand trial may be of concern. Deaf people may be denied the justice other people routinely receive because they lack the opportunity to learn and capacity to understand what transpires in legal settings and court. ASLIA recommends that where there is concern, the client may need to be assessed and then given the opportunity to develop linguistic and conceptual competency in basic legal Auslan and procedures relevant to the legal process. In the instance where the client is assessed to not be competent, ASLIA recommends proceedings be adjourned, to provide the client with training in basic legal terminology and Auslan equivalents, and instruction in the applicable elements of legal procedures.

Style of interpreting. The court may need to acknowledge and allow for consecutive rather than simultaneous interpreting. Consecutive interpreting occurs when the interpreter delivers the message in the other language after the speaker has finished speaking. Simultaneous interpreting allows the interpreter to begin delivering the message in the other language at the same time as the speaker continues to speak in the first language. There will be some time lag in the delivery. Interpreters may prefer to wait for the court speaker to say a few sentences, then pause, to allow the information to be interpreted accurately into Auslan. This affords the interpreter more time to explain, define words, give examples, draw pictures or even mime or act out situations for clients with minimal language skills.

Use of uncertified or inappropriate people as interpreters. It is the view of ASLIA that family members and friends are never appropriate in the role of interpreter in legal settings. The interpreting process is undermined due to a potential lack of competence, bias, or personal interest of the family member or friend. Communication may be altered due to lack of competence in English and or Auslan (or varieties thereof), or due to bias or personal interest of the family member. Further, family members, friends and non-certified people are not required to adhere to a Code of Ethics or confidentiality.

The court may need to appoint an advocate or support person, such as a community legal worker who has basic knowledge of the law and deafness and can ensure that the client's rights are protected. The interpreting agencies in each state of Australia can be contacted for further information and assistance on the use of Auslan or Deaf interpreters, and for booking interpreters.

Version History

<i>Version Date</i>	<i>Prepared by</i>	<i>Checked by</i>	<i>Approved by motion</i>	<i>Summary of updates</i>
V1.0 2006	Information for the legal system of Australia by Meredith Bartlett			
V2.0 2018	Danielle Ferndale Gaye Lyons	David McQuiggin Christy Filipich	Yes	Formatting, structure, content