

New Zealand Sign Language Bill

2 December 2003

Attorney-General

LEGAL ADVICE

Consistency With The New Zealand Bill of Rights Act 1990: New Zealand Sign Language Bill

1. We have considered whether the New Zealand Sign Language Bill (PCO 5544/7) (the Bill) is consistent with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). We understand that this Bill is to be considered by the Cabinet Legislation Committee on Thursday, 11 December 2003.
2. The Bill provides official recognition of New Zealand Sign Language (NZSL), which is the first or preferred language of Deaf New Zealanders. The stated purpose of the Bill is to provide recognition of Deaf people's language as a unique New Zealand language and through this recognition to give NZSL equal status to that of spoken languages.
3. In particular, the Bill provides a right for any person involved in legal proceedings to use NZSL in those proceedings. The presiding officer is required to ensure that a competent interpreter is available in such cases. The person cannot, however, insist on being addressed or answered in NZSL (clause 7 (1) - (3)). Clause 8 of the Bill makes it clear that these provisions do not affect the right of any person to use the language of any other linguistic community in New Zealand.
4. The Bill also provides that Government departments should, as far as reasonably practicable, be guided by certain principles about their interaction with the Deaf community (clause 9). Nothing in this clause is to be read as conferring advantages on the Deaf community not enjoyed by others (clause 9(2)).
5. In summary, the Bill is a remedial measure that provides both recognition of NZSL and practical support to those who use the language.

Discrimination

Section 19 of the Bill of Rights Act

6. We have considered whether clause 7 of the Bill could give rise to an issue of discrimination under section 19 of the Bill of Rights Act. Section 19(1) of the Bill of Rights Act provides the right to freedom from discrimination on the grounds set out in section 21 of the Human Rights Act 1993. These grounds include, *inter alia*, ethnic or national origin, and disability.

7. In our view, taking into account the various domestic and overseas judicial pronouncements as to the meaning of discrimination, the key questions in assessing whether discrimination under section 19 exists are:
 - i. Does the legislation draw a distinction based on one of the prohibited grounds of discrimination?
 - ii. Does the distinction involve disadvantage to one or more classes of individuals?
8. If these questions are answered in the affirmative, we consider that the legislation gives rise to a *prima facie* issue of "discrimination" under section 19(1) of the Bill of Rights Act. Where this is the case, the legislation falls to be justified under section 5 of the Bill of Rights Act.

Possible Discrimination on Grounds of Ethnic or National Origin, and Disability

9. As outlined above, clause 7 of the Bill provides the right to use NZSL in legal proceedings where a person's first or preferred language is NZSL. For the purpose of the Bill, the term "legal proceedings" is defined as proceedings before any court or tribunal (named in the Schedule to the Bill), coroner or Commission of Inquiry that is required to inquire into and report upon any matter of particular interest to the Deaf community. There may be members of other linguistic communities and disabled groups for whom there is difficulty in participating in legal proceedings. It could be argued that because the Bill is concerned only with the position of the deaf people, clause 7 gives rise to a distinction on the grounds of ethnic or national origin, and disability (defined in section 21 of the Human Rights Act 1993 as including physical disability or impairment).
10. However, we do not consider that any question of discrimination arises. Firstly, the Bill does not appear to disadvantage other linguistic minorities or disabled groups. The Office of the Minister for Disability Issues has noted that:
 - The clause seeks to facilitate the rights of a group of individuals who have been historically disadvantaged as a result of a long-standing misconception that sign languages were not real languages and were inferior to spoken languages. Historical theories were that deafness should be hidden and that deaf people would do better if they used an oral method of communication requiring them to only speak and lip read.
 - NZSL is a real language. It is a wholly visual language with its own grammatical structure different from that of English or Maori. NZSL is not an improvised sequence of gestures or mime and, like all other human languages, it is able to communicate a full range of ideas and to serve a wide range of functions.
11. Secondly, the Bill focuses on the recognition of NZSL and does not affect the right of any other linguistic community in New Zealand or the right of any person to participate meaningfully in legal proceedings. The Bill of Rights Act

itself guarantees the right to effective participation in criminal proceedings through the right to use an interpreter (section 24(g)), the right to a fair trial (section 25(a)), and more generally, in all proceedings through the right to the observance of the principles of natural justice (clause 27(1)). Further, the ability of persons who do not understand or speak English or Maori to have the assistance of an interpreter is specifically guaranteed by some statutes (for instance, the Children, Young Persons & their Families Act 1989 and the Mental Health Compulsory Assessment & Treatment Act 1992). Moreover, Rules 510 and 512 of the District Court Rules and High Court Rules respectively allow parties to submit affidavits that are prepared in languages other than English so long as an English translation is annexed thereto.

12. In summary, we do not consider that the remedial measures in Clause 7 of the Bill, which provides the right to use NZLS in legal proceedings, can be regarded as discriminatory, either in intent or effect.

Conclusion

13. We have concluded that the provisions of the Bill do not appear to be inconsistent with the rights and freedoms contained in the Bill of Rights Act.

14. In accordance with your instructions we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Minister for Disability Issues, if you agree.

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CC Minister of Justice
Minister for Disability Issues

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