



18 January 2024

Tēnā koe

Official Information Act request

Thank you for your email of 15 December 2023, requesting information about advice provided around the introduction of the New Zealand Sign Language Act 2006 about the status of English as an official language.

I have considered your request under the Official Information Act 1982 (the Act) and in response have appended the following documents:

- **Appendix One:** Report, NZSL Bill – status of English as an Official Language, 22 November 2004
- **Appendix Two:** NZSL Briefing Report, 4 October 2004
- **Appendix Three:** NOTE legal status of languages in New Zealand, 27 October 2004

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp.

Magnus O'Neill
General Manager
Ministerial and Executive Services

22 November 2004

Chair
Social Services Select Committee

New Zealand Sign Language Bill

1. At its meeting on 13 October, the Committee requested background information on the basis for English being an official language of New Zealand.
2. We are unaware of a statutory provision declaring English to be an official language of New Zealand, however, this does mean it is not an official language. Its status as an official language is based on custom and practice. New Zealand's foundation documents are written in English, and English is the language the New Zealand Government uses for general official business.
3. In his second reading speech for the Maori Language Act 1987 Hon. K.T. Wetere said:

English is the language for most New Zealanders in general use and conversation, for commerce and for Parliamentary business. Its daily use and popular recognition have made it so, and no Act of Parliament can reproduce those conditions for any other language.

4. In a 1979 Supreme Court decision Justice Bisson said¹:

In New Zealand, by the English Laws, Act 1858, the laws of England as they existed on 14 January 1840 so far as applicable to the circumstances of the colony of New Zealand were taken to have been in force in New Zealand and after that day would continue to be applied in New Zealand in the administration of Justice. That Act is now part of the Consolidation of 1908. If any statutory authority were required for the conduct in English of proceedings in New Zealand Courts the English Acts I have cited coupled with the English Laws Acts of 1858 and 1908 would provide that authority.

5. This statement was approved by the Court of Appeal² which confirmed that English is the language of the Courts of New Zealand. The Court of Appeal went on to hold that no one has a right to require proceedings to be conducted in any other language. This judgment was one of the catalysts for the enactment of the Maori Language Act.

¹ Mihaka v Police [1980] 1 NZLR 453 at 459.

² Ibid at 462.

6. In summary we are unaware of a statutory provision declaring English to be an official language, its status as an official language is based on custom and practice.

Yours sincerely

Victoria Manning
Analyst
Office of Disability Issues

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OFFICIAL INFORMATION ACT

Office for Disability issues

Te Tari Mō Ngā Take Hauātanga
Administered by the Ministry of Social Development

4 October 2004

Chair
Justice and Electoral Select Committee

NEW ZEALAND SIGN LANGUAGE BILL

Introduction

- 1 This report provides the Committee with a background briefing on the New Zealand Sign Language Bill.

Policy intent

- 2 This Bill provides official recognition of New Zealand Sign Language (NZSL), the first or preferred language of Deaf New Zealanders.
- 3 This Bill addresses the uncertain legal status of NZSL. Language is not a separate prohibited ground of discrimination under New Zealand's human rights law but has usually been dealt with as an aspect of race or ethnicity. Furthermore, provisions for the use of NZSL interpreters are inadequate, with the current legislative scheme comprising an incomplete patchwork of explicit and implicit authorisations (for the use of NZSL).
- 4 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.
- 5 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.
- 6 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.

What the Bill does

- 7 The purpose of the Bill is to promote and maintain the use of NZSL by:
 - 7.1 declaring NZSL to be an official language of New Zealand

- 7.2 providing for the use of NZSL in legal proceedings
 - 7.3 empowering the making of regulations setting competency standards for the interpretation in legal proceedings of NZSL
 - 7.4 stating principles to guide Government departments in the use that they should make of NZSL in the promotion to the public of their services and in the provision of information to the public.
- 8 This Bill is largely based on the Maori Language Act 1987. The primary difference is that the Maori Language Act establishes the Maori Language Commission.

What the Bill does not do

- 9 The official recognition of NZSL will not affect the status of either of New Zealand's other two official languages, English and Maori, nor will it affect the rights of any other linguistic minorities in New Zealand.
- 10 No specific rights or obligations are imposed by the Bill apart from the right to use NZSL in legal proceedings.

Legislative context

- 11 The Bill is set out in two Parts.

Part 1

- 12 The first part of the Bill contains the preliminary provisions of the Bill (Clauses 3, 4, and 5) that set out the purpose of the Bill, define the terms used in the Bill, and provides that the Act is to bind the Crown.

Part 2

- 13 Part 2 of the Bill declares NZSL to be an official language of New Zealand, and provides for the use of NZSL in legal proceedings (Clauses 6 and 7). Clause 8 sets out the effect of recognition of NZSL as an official language of New Zealand. This Part also sets out principles to guide government departments on how to give effect to the objectives of the Bill and a mechanism for reporting progress on implementing these principles (Clauses 9 and 10). The final clause of the Bill (Clause 11) empowers the making of regulations that set competency standards for the interpretation of NZSL in legal proceedings and for any other matters contemplated by the Bill or necessary for its administration or for giving it full effect.

Content Analysis

Enactment date

- 14 Clause 2 states that the Bill should come into force on 1 January 2005.
- 15 The introduction of the Bill to the House and the first reading of the Bill were delayed. The Bill was referred to the Justice and Electoral Select Committee on 23 June 2004 and we

understand the Committee intends to report back to the House on the NZSL Bill in December 2004. A request to extend the enactment date will be included in the Office for Disability Issues' (Ministry of Social Development) departmental report on the Bill.

Preliminary Provisions

- 16 Clause 3 sets out the purpose of the Bill which is to promote and maintain the use of New Zealand Sign Language by:
 - 16.1 declaring NZSL to be an official language of New Zealand
 - 16.2 providing for the use of NZSL in legal proceedings
 - 16.3 empowering the making of regulations setting competency standards for the interpretation in legal proceedings of NZSL
 - 16.4 stating principles to guide Government departments in the use that they should make of NZSL in the promotion to the public of their services and in the provision of information to the public.
- 17 Each component of the purpose of the Bill (as set out in Clause 3) is explained in the following sections of this report.

Interpretation

- 18 Clause 4 defines the terms used in the Bill. An explanation of these is provided here:
- 19 The **Deaf community** is defined for the purpose of the Bill to mean the distinct linguistic and cultural group of people who are deaf and who use NZSL as their first or preferred language and who identify with this group of people and Deaf culture.
- 20 This definition of the Deaf community does not include hearing members of the Deaf community (e.g. hearing family members and interpreters). The term 'Deaf community' is used in this Bill in the clause titled Principles (Clause 9). The first principle states that the Deaf community should be consulted on matters that affect their language. New Zealand Sign Language belongs to Deaf people and so it is Deaf people who should be consulted on matters that affect their natural language. The third principle of the Bill states that government services and information should be made accessible to the Deaf community. Again, this principle is intended to apply to Deaf people and not hearing people. More information about the principles is provided in paragraphs 50 to 56.
- 21 There are at least 210,000 deaf or hearing impaired New Zealanders, and an estimated 7,000 of these consider themselves a member of the Deaf community. Census data shows approximately 28,000 New Zealanders can use NZSL (including both Deaf and hearing people).
- 22 New Zealand's Deaf community is a strong and vibrant community who come together regularly at local Deaf clubs and local and national Deaf events. The Deaf community are very proud of their cultural identity. Deaf culture, like all cultures, incorporates a rich body of distinct Deaf customs, mannerisms, humour, art and history, as well as its language. NZSL is central to Deaf culture.

- 23 ***New Zealand Sign Language or NZSL*** is defined as 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”.
- 24 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. Being a wholly visual language, NZSL is the most accessible language for Deaf people. NZSL is essential for effective daily communication and interaction by many Deaf people. NZSL is different from Braille, which is the English language in code.
- 25 Historically, NZSL was actively prohibited, a likely result of long standing misconceptions that sign languages are not real languages and are inferior to spoken languages, and that deaf people did better if they used an oral only method of communication, requiring deaf people to speak and lip read (and not use NZSL). Today, linguistic research confirms that sign languages are real languages and that lip reading (a very difficult method of communication) is about 75 percent guess work. Through NZSL Deaf people can better access other languages, including English and Te Reo, resulting in improved literacy.
- 26 ***Government department*** as defined in this Bill means a Government Department named in Part I of the First Schedule of the Ombudsmen Act 1975 (Listed in Appendix 1).
- 27 The definition of ***interpretation*** in this Bill includes interpretations from NZSL to spoken language, and from spoken language to NZSL. This definition may apply whether English or Te Reo is spoken. There is currently one trilingual Te Reo/English/NZSL interpreter in New Zealand who is able to interpret

Official recognition

Consultation with the Deaf community

- 33 In May – June 2003 officials from the Office for Disability Issues consulted with the Deaf community in five main centres of New Zealand in order to get an appreciation of the need and priorities for the NZSL Bill. Officials met with over 250 members of the Deaf community and key organisations.
- 34 Consultation with Deaf New Zealanders revealed serious difficulties with both the status of NZSL and access to government services under the current law. In relation to the status of NZSL, acknowledgement of NZSL as a real language equal to that of spoken languages is very poor, and this results in injustices. For example, Deaf people reported difficulties in having their needs for an interpreter recognised and of their signing being misunderstood as aggressive behaviour.
- 35 Official recognition of NZSL was seen by the Deaf community as a means to acknowledge their unique New Zealand language and give it status equal to that of spoken languages.

Official recognition

- 36 Clause 6 declares NZSL to be an official language of New Zealand.
- 37 In New Zealand, the legal status of NZSL is unclear and the overall legislative scheme for recognition of NZSL is fragmented, lacking a coherent and simple focus. Section 20 of the New Zealand Bill of Rights Act 1990 provides that a person who belongs to a linguistic minority cannot be denied the right, in community with others, to use the language of that minority. The meaning of this is unclear because, for example, there is debate about whether this imposes a positive duty on the State or only requires a State not to undermine the rights of minorities.
- 38 Language is not a separate prohibited ground of discrimination under our human rights law but is usually dealt with as an aspect of race or ethnicity. In relation to NZSL, complaints by Deaf people have sometimes been treated as an aspect of discrimination on the ground of disability, but such complaints are dealt with on a case by case basis and little consistency is available to NZSL users and the Deaf community. 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.
- 39 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, by way of the NZSL Bill.
- 40 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, that 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.

Right to use NZSL in legal proceedings

- 41 Clause 7 provides the right to use NZSL in legal proceedings where a person's first or preferred language is NZSL.

42 Similar to the provisions of the Maori Language Act 1987, the Bill provides that any of the following persons may use NZSL where the person's first or preferred language is NZSL:

42.1 any member of the court, tribunal, or body before which the proceedings are being conducted

42.2 any person before whom the proceedings are being conducted

42.3 any party of witness

42.4 any counsel or other person representing a party in the proceedings

42.5 any other person with leave of the presiding officer.

43 The inclusion of 41.2 above is unnecessary given the inclusion of members of the court, tribunal, or body before which the proceedings are being conducted (41.1 above) and that any other person can seek leave to use NZSL from the presiding officer (41.5 above). A request to omit clause 7(1)(b) (42.2 above) from the Bill will be included in the Office for Disability Issues' (Ministry of Social Development) departmental report on the Bill.

44 Clause 7(3) provides that where any person intends to use NZSL in any legal proceedings, the presiding officer must ensure, in accordance with any regulations made, that a competent interpreter is available. Further work is being done on options for implementing interpreter standards in legal proceedings. This work is discussed further in the section on Regulatory powers beginning at paragraph 62 below.

45 Clause 7(4) provides that where any question arises as to the accuracy of any interpretation or translation into or from NZSL, the question must be determined by the presiding officer as they think fit.

46 Clause 7(5) provides that any regulations made under the Bill (when passed), rules of the court, or other appropriate rules of procedure may require that anyone intending to use NZSL must give reasonable notice of that intention. These rules and regulations may also generally regulate the procedure to be followed in such cases.

47 Clause 7(6) provides that a person may not be denied the right to use NZSL in legal proceedings because of any failure to give the required notice of the intention to use NZSL. However, this failure may be considered in relation to any award of costs.

Effect of recognition

48 Clause 8 sets out the effect of recognising NZSL as an official language of New Zealand. Subclause (1) makes it clear that other than the rights set out in clause 6 (which recognises NZSL as an official language) and clause 7 (which provides for the use of NZSL in legal proceedings) the Bill does not create any legally enforceable rights. Subclause (2) makes it clear that the provisions of the Bill that make NZSL an official language and allow for its use in legal proceedings are not intended to affect the right any person has to seek, receive or impart any communication in NZSL that exist outside the Bill. It also makes it clear that these provisions are not intended to affect the rights of other linguistic minorities.

49 Similar provisions are included in the Maori Language Act 1987.

Principles

- 50 Clause 9 sets out principles by which government departments should be guided in giving effect to the objectives of the Bill, especially those of transition and maintenance. "Government departments" are those named in Part I of the First Schedule of the Ombudsmen Act 1975 and are listed in Appendix 1.
- 51 Information from the consultation with the Deaf community was used to develop these principles.
- 52 The principles are that a government department should, when exercising its functions and power, be guided, so far as reasonably practicable, by the following:
- the Deaf community should be consulted on matters that affect their language (including, for example, the promotion of the use of NZSL)
 - NZSL should be used in the promotion to the public of government services and in the provision of information to the public
 - government services and information should be made accessible to the Deaf community through the use of appropriate means (including the use of NZSL).
- 53 These principles provide a focus for government agencies to address language barriers for Deaf people.
- 54 In order to assist with a planned and co-ordinated approach, in preparation for the Bill, two working groups have been established. One working group is considering options for implementing interpreter standards in legal proceedings and interpreter funding mechanisms. The second working group is developing long-term plans for the removal of language barriers limiting the participation of Deaf people in four priority areas identified by the Deaf community: education, health, employment and public broadcasting.
- 55 These working groups are being chaired by the Office for Disability Issues and include officials from relevant government departments.
- 56 These working groups will report back to Cabinet's Social Development Committee by 28 February 2005.

Reporting

- 57 Clause 10 provides that the Minister may report on the progress being made in implementing the principles of the Bill.
- 58 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. Cabinet has directed government departments to develop annual implementation plans towards realising the objectives of the Disability Strategy [CAB Min (01) 23/2 refers].
- 59 The Bill provides 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.

60 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 this is clarified in Clause 9 (2).

Regulatory powers

61 Clause 11 provides that regulations may be made to prescribe the standards of competency that a person who is to act in legal proceedings as an interpreter must attain. It also includes 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.

62 The Bill provides that where any person intends to use NZSL in any legal proceedings, the presiding officer must ensure, in accordance with any regulations made, that a competent interpreter is available (Clause 7 (3)).

63 A regime for recognition of competency standards for NZSL interpreters in legal proceedings is needed. However, an extensive certification system is not needed as there are existing competency standards that do not need to be incorporated in regulations. If needed, regulations will probably be around forms for the use of NZSL interpreters in courts.

64 This regulation-making power enables competency standards to be prescribed at a later stage, if this were to be considered desirable.

65 To prepare for this a working group has been established (noted at paragraph 53) to consider:

65.1 options for implementing interpreter standards by the time the Bill is passed, including regulations if necessary for ancillary matters (such as forms); and

65.2 the current funding mechanisms for NZSL interpreters, including an assessment of whether these can be more efficient and effective.

66 This working group is being chaired by the Office for Disability Issues and includes officials from the Ministry of Justice, Deaf experts, and NZSL interpreters. The working group intends to consult with relevant agencies, including the Ministries of Health, Education and Social Development, where appropriate.

67 This working group is to report back on progress to the Cabinet Social Development Committee by 28 February 2004.

Appendix 1

The following government departments should, when exercising their functions and powers, be guided so far as reasonably practical by the principles set out in clause 9.

Government Departments

Crown Law Office	Ministry of Health
Department of Child, Youth and Family Services	Ministry of Housing
Department of Conservation	Ministry of Justice
Department of Corrections	Ministry of Maori Development
Department of Internal Affairs	Ministry of Pacific Island Affairs
Department of Labour	Ministry of Research, Science, and Technology
Department of Prime Minister and Cabinet	Ministry of Transport
Education Review Office	Ministry of Women's Affairs
Inland Revenue Department	Ministry of Youth Affairs
Land Information New Zealand	National Library Department
Maori Trust Office	National Provident Fund Department
Ministry of Agriculture and Forestry	New Zealand Customs Service
Ministry for Culture and Heritage	New Zealand Defence Force
Ministry of Defence	Office of State Services Commission
Ministry of Economic Development	Parliamentary Counsel Office
Ministry of Education	Serious Fraud Office
Ministry for Environment	Ministry of Social Development
Ministry of Fisheries	Statistics New Zealand
Ministry of Foreign Affairs and Trade	Treasury

Appendix 2

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

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

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

Legal status of languages in New Zealand

New Zealand has two official languages: English and Maori. English is an official language *de facto* (in fact because it is the most common language) and Maori is an official language *de jure* (in law by virtue of the Maori Language Act).

Before the Maori Language Act 1987 came into force, the Maori language had only very limited status in legal proceedings. From the earliest colonial days, English had been the customary language of the Courts in New Zealand, although the common law ensured that a Court would take appropriate steps – by the use of interpreters or otherwise – to prevent a party or witness not proficient in the English language from being disadvantaged.²

From as early as 1856, rules governing procedure in the Supreme Court required the service of documents on Maori to be accompanied by a translation in the Maori language, written by an authorised interpreter¹. However, there was no general right within the legal system, either by statute or the common law, to use Maori.² Relatively recently – in 1974 – an amendment to the now-repealed Maori Affairs Act 1953 provided official recognition to the Maori language in all its various forms, as the ancestral language of the Maori people³; however, this came to be criticised as an “empty provision” that stated the obvious, and otherwise achieved nothing.⁴

There were two main catalysts for the enactment of the Maori Language Act 1987. The first was the Court of Appeal's confirmation in 1980 that English was the language of our Courts in New Zealand, and that no one had a right to require proceedings to be conducted in any other language.⁵ The second was a claim submitted to the Waitangi

¹ *Regulae Generales* 1856, R 566. For the comparable Rules today, see the

District Courts Rules 1992, R 65 and the High Court Rules, R 62. However, the current Rules are not the equivalent of the original rule; they apply only to the civil jurisdiction of the respective Courts, and the receipt of a translation now occurs on the application of the Maori person on whom the documents are served. Nor are the modern day Rules the equivalents of each other: R 62 of the High Court Rules contains a requirement, not present in the District Courts Rules, by which the Maori person making the request must satisfy the Registrar that he or she is unable to read the document, but could read it if it were translated into Maori. See further CIVIL PROCEDURE: HIGH COURT paras 16 and 17, and CIVIL PROCEDURE: DISTRICT COURTS paras 30 and 31. See also the Summary Proceedings Act 1957, s 30 which imports the entitlement granted in the District Courts Rules, R 65, into proceedings under that Act.

² *Mihaka v Police* [1980] 1 NZLR 453 (SC and CA) at 458.

³ Maori Affairs Act 1953 (repealed), s 77A. The same section empowered the Minister of Maori Affairs to encourage the use and learning of the Maori language within and outside the Department of Maori Affairs and, in particular, to provide to government departments and other institutions information concerning the Maori language, and translations from or into it.

⁴ Waitangi Tribunal “Report of the Waitangi Tribunal on the te reo Maori claim” (Wai 11) (Wellington, Waitangi Tribunal, 1986) para 8.1. See also *Mihaka v Police* [1980] 1 NZLR 453 (SC and CA) at 459 (SC) and 462 (CA), and DL Bates “Maori Language: Some observations upon its use in criminal proceedings” [1991] NZLJ 55 - 61.

⁵ *Mihaka v Police* [1980] 1 NZLR 453 (SC and CA) at 462

Tribunal that sought official recognition of the Maori language⁶. Following its inquiry into the claim, the Tribunal found the Maori language to be a taonga that was guaranteed the protection of the Treaty of Waitangi.

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⁶ Waitangi Tribunal, “Te Reo Maori claim”, (Wai 11), submitted by Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo Incorporated Society. In fact, the government introduced the Maori Language Bill into Parliament before the Waitangi Tribunal had reported on the claim.