

VLA INTERPRETER AND TRANSLATOR POLICY

1. PURPOSE

1.1 The aim of this policy is to:

- set out VLA's responsibility to use professional interpreters and translators when providing information and legal services to the community;
- set out the standards VLA expects all employees to comply with in relation to the use of interpreters and translators;
- authorise and assist VLA employees to engage interpreters and translators whenever they are required in accordance with this policy;
- assist VLA employees to work effectively with interpreters and translators.

1.2 For more information on the rationale behind the content of this policy and tips on its practical application, see the: ***VLA Guide to Interpreting and Translating***

2. DEFINITIONS:

2.1 The following definitions apply throughout this policy:

Auslan	the sign language used by the Australian Deaf community
interpreting	the action of transferring the <i>spoken</i> word from one language to another
interpreter	a professional who is qualified to interpret the <i>spoken</i> word from one language to another
people who cannot communicate effectively in English	includes : <ul style="list-style-type: none">▪ people whose first language is a language other than English▪ people who are deaf, hearing impaired or have other communication difficulties requiring the use of an interpreter or relay service (eg. AUSLAN, National Relay Service).
translating	the action of transferring the <i>written</i> word from one language to another
translator	a professional who is qualified to interpret the <i>written</i> word from one language to another

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3. PRINCIPLES:

- 3.1 VLA values and respects diversity in Victoria's community and is committed to principles of access and equity in the delivery of legal services.
- 3.2 VLA acknowledges that people who cannot communicate effectively in English face a critical barrier in accessing essential legal services.
- 3.3 VLA is required by law to provide legal aid services which are easily accessible and are provided on an equitable basis to all Victorians.¹ The law further requires VLA to provide legal services in a fair and non-discriminatory manner to all persons.²
- 3.4 This policy complies with Victorian government policy in relation to language services by ensuring that :
- all people who contact VLA, who are not able to communicate effectively in English, receive quality legal services in a timely manner;
 - all VLA employees use professional interpreting and translating services when providing legal services to people who are not able to communicate effectively through spoken or written English when:
 - (i) essential information needs to be communicated to the person to inform their decision making; or
 - (ii) the person is required to make significant decisions concerning their lives.³

4. SCOPE

What matters does this policy cover ?

- 4.1 This policy covers a range of issues relevant to the use of interpreters and translators, including:
- when an interpreter or translator must and may be used
 - who is responsible for determining whether an interpreter or translator is required
 - what accreditation 'level' the interpreter or translator must have (and who must not be used)
 - how the use of an interpreter or translator is to be recorded
 - how a complaint about an interpreter or translator or agency is to be made.

¹ *Legal Aid Act 1978* (Vic), section 4.

² *Equal Opportunity Act 1995* (Vic), the *Racial Discrimination Act 1975* (Cth) and the *Disability Discrimination Act 1992* (Cth)

³ The requirements set out in 3.4 are in line with Victorian Government policy in relation to the use of interpreters: VOMA, *Improving the Use of Translating and Interpreting services : A guide to Victorian Government Policy and Procedures* (2003) p. 9

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4.2 In relation to translations, this policy covers translations that may be required to provide individual legal services to clients, but does not cover translations of information for bulk distribution to the public (eg. publications, brochures fact sheets).⁴

Who does this policy apply to and when?

4.3 This policy applies to all VLA employees in the performance of all of their duties at VLA.

4.4 This policy applies when VLA employees are in contact with any person who cannot communicate effectively in English. That is, the policy is *not* limited to 'clients' of VLA (as entered into LAO). The policy is to be followed when assisting people who contact VLA to making initial enquires about VLA's services, correspondence, forms or policies (including people who VLA cannot assist but may require referral to other legal or non-legal services).

5. PROCEDURE:

When 'must' an interpreter be used and when 'may' an interpreter be used

5.1 VLA employees *must* arrange for and use a professionally accredited interpreter for people who are not able to communicate effectively in English when:

- (i) providing legal advice or legal assistance
- (ii) clients are swearing court documents (eg. an affidavit)
- (iii) working with clients at court (eg. duty lawyer services)
- (iv) providing people with an explanation of VLA's policies, forms or correspondence

For further examples / guidance on each of the above: see *VLA Guide to Interpreting and Translating*

5.2 VLA employees *may* arrange for and use a professionally accredited interpreter for people who are not able to communicate effectively in English when:

- (i) providing legal information⁵
- (ii) arranging a legal advice or other appointment⁶
- (iii) providing people with any other help that is related to VLA's functions and services

For further examples / guidance on each of the above: see *VLA Guide to Interpreting and Translating*

When 'must' a document be translated and when and 'may' a document be translated

5.3 VLA employees *must* arrange for and use a professionally accredited translator to translate documents required when:

⁴ Translations for bulk distribution are co-ordinated by the Communication and Community Education section of VLA's Knowledge Services division.

⁵ Alternatively, VLA employees may refer people who do not speak English as a first language to VLA's telephone Legal Information Service (LIS) to receive legal information. Many of VLA's Legal Information Officers are multi-lingual and all can arrange for a telephone interpreter to have a three-way phone conversation in which they can provide legal information of a general nature – see *VLA Guide to Interpreting and Translating*.

⁶ Alternatively, if they are available, employees may use relevant LIS officers or bi-lingual staff or, if necessary, the client's family member or friend (where over 18) to assist with the administrative arrangements of making an appointment only (eg. time / date only). An interpreter should be booked to attend the appointment.

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- (i) the client has a grant of legal assistance; and
- (ii) the document
 - is to be tendered in a court or tribunal; or
 - needs to be understood by the client and the lawyer in order to make decisions about the legal issue, and an explanation of the document via an interpreter is insufficient; and
 - the translation is approved by grants.

For further examples / guidance on each of the above: see *VLA Guide to Interpreting and Translating*

5.4 VLA employees *may* arrange for document translation in circumstances not covered by paragraphs 5.3 (above) only after discussion with and approval by their manager.

VLA staff are responsible for determining if an interpreter or translator is required

5.5 It is the responsibility of VLA employees to assess whether an interpreter (or translation) is required when providing legal help to a member of the public, and to insist on using a professional interpreter or translator where required to do so by this policy.⁷

5.6 In general, VLA employees should always use an interpreter if requested by the client. VLA should not decline a request for an interpreter unless there is an exceptional reason to do so – and this refusal should be approved by a manager or senior employee and recorded on the client's record or file.

VLA may decline to provide legal advice if a client refuses to use an interpreter

5.7 VLA employees may decline to provide legal advice to a client if the client refuses to agree to the use of a professional interpreter, and the VLA employee feels an interpreter is needed.

5.8 A refusal of this type should be approved by an employee's manager or a senior VLA employee. In such cases, the VLA employee should explain the reason for the refusal of services to the client (with reference to this policy) and may provide the client with basic legal information, legal information publications (including translated publications) and referral information.

Interpreters and translations to be secured as soon as need identified

5.9 When an interpreter is needed, every effort must be made to secure one immediately, or, if not possible, as soon as one is available.⁸

⁷ This is because VLA staff have a legal and professional obligation to ensure they fully understand the nature of the client's enquiry and that the client fully understands any legal advice provided – for further information see *VLA Guide to Interpreting and Translating*.

⁸ It is unacceptable for VLA employees to delay the provision of legal help just because it is administratively 'easier' to refer the client to another service (ie. from a drop-in clinic to an appointment time in three weeks). To do so may constitute indirect discrimination in contravention of the *Equal Opportunity Act 1995* (Vic).

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- 5.10 If an on-site interpreter is not available immediately, a telephone interpreter should be used, at least to allow the client to convey initial information about their matter (such as the nature and urgency of the matter). The provision of legal services should only be delayed when a VLA employee considers that the use of an in-person interpreter is essential to providing the service, and that the delay would not prejudice the client. The reason for the delay should be communicated to the client (using a telephone interpreter if necessary).
- 5.11 Given that the cost of translations increases with the urgency of the translations required, the need for translation should be identified by VLA employees as early as possible and the translators given the maximum time possible to provide the translation.

VLA staff must use NAATI accredited (professional – level 3) interpreters and translators.

- 5.12 All VLA staff should use interpreters and translators that are accredited by NAATI⁹ at 'professional' level (e.g. a 'Level 3' interpreter or translator, now known as a 'professional' interpreter or translator).¹⁰
- 5.13 Interpreters and translators accredited by NAATI at a lower level (ie. para-professional, language aide, recognised practitioner) should only be used by VLA staff if:
- (i) no interpreters or translators have been accredited at a professional level by NAATI in the required language; or
 - (ii) VLA is unable to secure a professionally accredited interpreter or translator and is unlikely to be able to secure one in the future and the use of a lower level interpreter or translator is approved by their managing lawyer or senior lawyer.
- 5.14 If an interpreter or translator accredited at a lower level is ever used, the reasons must be documented on the client's record or file.
- 5.15 A list of agencies supplying NAATI accredited interpreters and translators is available in the ***VLA Guide to Interpreting and Translating***. The level of accreditation (professional, level 3) should be specified by VLA when booking.

VLA staff not to use LIS staff, family members, friends or children to interpret or translate

- 5.16 VLA employees *must never* use:
- (i) a child (ie. any person who is under 18 years of age); or
 - (ii) a VLA employee's family member or friend

⁹ National Accreditation Authority for Translators and Interpreters (NAATI)

¹⁰ This requirement is in line with Victorian Government policy in relation to the accreditation of interpreters: refer VOMA, *Improving the Use of Translating and Interpreting services : A guide to Victorian Government Policy and Procedures* (2003) p. 14 – see further *VLA Guide to Interpreting and Translating*.

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to provide interpreting or translation services.

- 5.17 VLA staff may *not* use staff employed at VLA's Legal Information Service (LIS) or bi-lingual staff members to provide interpreting or translation services¹¹, except to
- (i) provide basic legal information; and / or
 - (ii) where available, to assist with short procedural arrangements (eg. to make an appointment time – at which a professional interpreter should be booked to attend).
- 5.18 VLA staff may *not* use a client's family member or friend to interpret, except to :
- (i) assist with procedural arrangements (such as to make an appointment time – at which a professional interpreter should be booked to attend); or
 - (ii) provide basic legal advice where there are very exceptional, urgent circumstances and the use of the client's family member or friend is approved by a manager or senior VLA employee.

If a family member or friend is ever used to interpret or translate, the reasons must be documented on the client's record or file.

- 5.19 All VLA employees should be mindful of the confidentiality provisions set out in s 43 of the *Legal Aid Act 1978* (Vic) and protection of the client's legal professional privilege when interviewing clients. Using a professionally accredited interpreter to interview a client is not inconsistent with the client's intention to protect the confidentiality of communications. However, the presence of a non-professional third party (eg. a client's family member or friend) can affect a client's ability to provide full and frank instructions to a lawyer and, in certain circumstances, could be argued to be a waiver of client privilege. VLA employees should use an interpreter to explain these matters to the client and their family or friends.

Use of an interpreter or translator is to be recorded

- 5.20 On each occasion an interpreter or translator is used it should be recorded on the client's file or record, in LAO (check interpreter box in client details screen) and as required to comply with any local area policies.

Complaints about an interpreter or translator or supply agency.

- 5.21 Complaints about the quality of interpreting services should be raised with the interpreter or translator at the time the service is provided.¹²
- 5.22 A complaint (verbal and / or written) can also be made to the interpreting agency through whom the interpreter was booked.

¹¹ LIS staff and bilingual staff are not professionally accredited interpreters / translators.

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5.23 In addition, complaints should also be notified (by phone or email) to VLA's Access and Equity Officer [lizmm@vla.vic.gov.au], so that a central repository of information about interpreter services can be kept and used to inform service delivery in the future.

6. GUIDELINES:

6.1 A resource entitled *VLA Guide to Interpreting and Translating* has been developed to help VLA staff to comply with the requirements of this policy. The Guideline includes practical tips, examples, details of interpreting and translating agencies, and is cross-referenced to this policy. It is available at <http://intranet.vla.vic.gov.au/xwf/vlanet/6048.htm> and in hard-copy from the VLA library.

7. REFERENCES:

VLA Guide to Interpreting and Translating

Improving the Use of Translating and Interpreting Services : A guide to Victorian Government Policy and Procedures, Victorian Office of Multicultural Affairs (VOMA), 2003.

Language Services Policy and Guidelines for working with Interpreters and Translators, Department of Justice (DOJ) 2006.

Legal Aid Act 1978 (Vic)

Legal Profession Act 2004 (Vic)

Legal Profession Regulations 2005 (Vic)

Professional Conduct and Practice Rules Legal 2005 (Vic)

Equal Opportunity Act 1995 (Vic),

Racial Discrimination Act 1975 (Cth)

Disability Discrimination Act 1992 (Cth)

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¹² For more details re the complaints procedures see – see *VLA Guide to Interpreting and Translating*.