



Indigenous Interpreting Service

Is there a need?



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NB: Some of the people consulted in the course of developing this paper, did so on the understanding that they remained anonymous. Their names have been deleted to protect their privacy. This is indicated by the use of [].

INTRODUCTION

In September 2006 the Substantive Equality Unit, through its work to address systemic racial discrimination in the Western Australian public sector, found the lack of Indigenous interpreting services to have a significant impact on the ability of Indigenous people to have equitable access to State Government services, particularly in the crucial areas of justice and health.

The Commission convened a meeting of stakeholders to consider the need for an Indigenous interpreting service.

Present at the meeting were representatives from the Department of Indigenous Affairs, the Office of Multicultural Interests, the Department of Corrective Services, the Department of the Attorney General, the Office of Aboriginal Health, the Supreme Court and the Equal Opportunity Commission.

The project specifications determined by the group of stakeholders were:

1. Identify a model for the establishment of a State based Indigenous Interpreting Service for Western Australia.
2. Within the model (as per 1 above) identify a framework that will meet the needs of the Western Australian community.
3. Develop a set of protocols for the purpose of considering whether an Aboriginal person needs an interpreter.
4. Develop accompanying guidelines for those who will work with Indigenous language interpreters.
5. Develop a funding proposal for the establishment of a state based Indigenous Interpreting Service for Western Australia.

It was agreed that the Equal Opportunity Commission would be best suited to coordinate and engage a suitable officer/consultant to explore an appropriate model for the establishment of a state based Indigenous Interpreting Service for Western Australia.

Dr Leela de Mel, a former Director of the Office of Multicultural Interests was requested to undertake the project.

Dr de Mel consulted extensively in the course of her investigations. She travelled widely throughout Western Australia, seeking the views of Aboriginal people, their advocates and representatives, government officials, judicial officers, community service providers and education providers.

This paper is the result of her work.

The need for a State wide Indigenous interpreting service remains as compelling in 2010 as it did when Dr de Mel completed her work.

YVONNE HENDERSON
Commissioner for Equal Opportunity

EXECUTIVE SUMMARY

Background

English is not the first language for many Indigenous people. For some, English can be the second, third or fourth language. One of the major issues relating to assessing the English language competence of Indigenous people is that accurate quantitative data on this is not available.

Census figures available through the Australian Bureau of Statistics (ABS) and the 2004 Environmental Health Needs Survey show that the highest number and proportion of community members whose main language is an Aboriginal language are found among the communities within the Western Desert, Kimberley, Goldfields and Pilbara regions. The Aboriginal Legal Service claims that approximately 1 in 5 Aboriginal and Torres Strait Islander people living in remote areas have difficulty understanding or being understood by service providers.

Research undertaken by Michael Cooke for the WA Law Reform Commission has shown that because Aboriginal people speak some English, it is often assumed that they are capable of comprehending more complex concepts and jargon associated with the justice and health systems.

The importance of Indigenous interpreting services has been well documented in several national reports including *The Royal Commission into Aboriginal Deaths in Custody (Recommendation 100)*, *The Recognition, Rights and Reform Social Justice Report (2000)* and *the Bringing Them Home Report: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families 1997*.

Priority Areas

From the perspective of an Indigenous person who is not fluent in the language of service delivery, every service area would seem a priority in terms of the need for interpreting. Aboriginal people who fall into this category can be traumatised by a visit to the bank, to shops, to real estate agents, to schools, to hospitals, to the police and most other places of business in terms of everyday living. However, health and justice have been identified as the two areas of highest priority due to their capacity for causing most distress and impacting directly on the lives of individual Aboriginal people.

Health

A [senior health worker] in Broome described the need for Aboriginal interpreters as 'overwhelming'. [The health worker's] view was that a significant number of Aboriginal patients did not understand interactions between themselves and health professionals. [The worker] had come across cases of Indigenous post surgery patients who were not aware of the nature of the surgical procedure they had recently undergone.

The Mental Health Service in Kalgoorlie said there was a desperate need for interpreters in the area of mental health. They argued that assessing mental health issues is particularly difficult because Aboriginal people who do not speak English well have a tendency to say yes to all questions. Currently, the service providers are forced to use relatives to interpret but they are not confident that this mechanism is in the patient's best interests. The service providers were concerned that relatives tended to exaggerate a patient's condition to ensure they were hospitalised. These situations raise major concerns about informed consent which, in the case of mental health, is legislated for in the most stringent terms.

Several health service providers also stated that communication difficulties made it difficult to make Indigenous patients comprehend the importance of medication, the need for medication to be taken regularly and to understand the correct dosage to be taken.

Consultation for this paper revealed an ever increasing volume of anecdotal evidence which showed that lack of effective communication between Aboriginal clients and service providers was a major concern for a majority of service providers consulted. They believed that grave mistakes could and were being made leading to potentially dangerous outcomes.

Justice

It is a fundamental principle of natural justice that an accused person be physically present for their case, and be able to understand the proceedings including the nature of the charge and the evidence against him/her. The Western Australian Chief Justice, the Hon Wayne Martin sets out the legal position clearly,

'...if the trial of an alleged offender occurs in circumstances in which that person is unable to comprehend the course of the trial because, for example, of an inability with English and the lack of an interpreter, the trial process is unfair and any judgement obtained would be set aside. The provision of adequate interpreting services for Aboriginal people is therefore an essential pre-requisite to the capacity of the courts of this State to deliver justice.'

In Kalgoorlie recently the District Court was forced to abort a case because of the unavailability of an adequate interpreter for the accused. The accused was charged with serious sexual offences. The presiding judge had previously also ruled at a directions hearing that a confessional interview conducted by the police with the accused was inadmissible due to the failure of the police to obtain an interpreter. Magistrates in the Pilbara and the Goldfields stated that in their view there are injustices happening everyday because Aboriginal people do not understand court proceedings including sentences and the consequences of breaching sentences/court orders such as community orders, bail undertakings and suspended prison sentences.

The Operating and Procedures Manual of the Western Australian Police directs police conducting interviews with Aboriginal and Torres Strait Islander people to comply with the principles established in Anunga. For a number of reasons, not least the availability and accessibility of suitably qualified interpreters, particularly at short notice, police personnel confirmed compliance is ad hoc at best.

Training and Accreditation of Interpreters

Currently, there are no accredited Indigenous interpreting training courses in Western Australia. In the mid 1990s through to 2003, through funding provided to Central TAFE by the Federal Government and the Department of Corrective Services, an Indigenous Interpreting course was developed, and delivered in the Kimberley, Pilbara and the Goldfields. The course has not been delivered since 2003 due to lack of funds. This course was accredited by the National Authority for the Accreditation of Translators and Interpreters (NAATI) at the paraprofessional level. EOC has successfully negotiated with the TAFE sector to develop course material and deliver the training in the identified regional centres.

Indigenous interpreting has not been accredited beyond the paraprofessional level in Australia. Although professional level trainers are preferred for interpreting in the courts (Advanced diploma or professional NAATI accreditation) and are provided for migrant languages, Indigenous interpreters are only accredited to the paraprofessional level. Currently, NAATI does not have a test for Indigenous interpreters beyond the paraprofessional level. This is an outstanding issue about which EOC is currently negotiating with the NAATI.

Proposed Model

Although there are many Aboriginal languages in each of these regions, advice from the Aboriginal Language Centres located in each of these regions is that interpreting should be provided at least in the following core groups of languages:

- Kimberley: Kriol, Kukatja, Walmajarri, Kija and Jaru
- Pilbara: Manjiljarra, Kartujarra, Warman, Nyangumarta, Yindjibarndi and Karriyarrarra
- Goldfields: Wangkatha, Ngaanyatjarra, Pitjanjatjarra, Cundeelee

In addition to the distinctiveness of languages, the cultural nuances associated with skin groups vary from region to region and can impact heavily on the provision of interpreter services.

Given the distinctiveness of Aboriginal languages in the three regions identified as having the greatest need, the most effective and efficient way of enabling the provision and utilisation of interpreters is to establish coordinating bodies charged with the responsibility of being the contact agencies in each of the three regions. In the Kimberley, the Kimberley Interpreting Service (KIS) is already well established in this role, and the provision of on-going funding to the service would enable it to consolidate its role. In relation to the Pilbara and the Kalgoorlie regions, the Aboriginal language centres present the most effective and efficient options to play the coordinating roles.

While emphasising the importance of regional diversity, it is equally important for there to be a unit within a government department with responsibility for language services to provide support to these established services in an on-going and timely manner. Prior to the Language Services Unit's location being decided it is important to determine whether the Unit would have responsibility for language services in Indigenous languages as well as migrant languages. The options that exist for its location are the Office of Multicultural Interests, the Department of Indigenous Affairs and the Department of Communities.

During consultations the cost of interpreting services was often raised. Many service providers referred to costs being prohibitive. Given the structure being proposed and the limited appreciation among public sector service providers of the need for interpreter services for Indigenous people, the following funding options are presented for consideration:

- A centralised allocation for Indigenous interpreter services managed by the Language Services Unit to cover fees for all public sector agencies;
- A centralised allocation for interpreting services for the priority areas identified in this paper;
- A centralised allocation to cover a percentage of the interpreting services utilised by public sector agencies, after which services can be charged directly to agencies; and
- Fee for service basis for all agencies.

Available literature and consultations have shown that there are many service providers who believe the need for interpreters for Indigenous people is overstated because most Aboriginal people speak basic English. Compounding these difficulties are other linguistic issues such as gratuitous concurrence and scaffolding which are presented in the main paper that need to be understood by service providers. What this means is that an awareness raising strategy is required to educate service providers on the communication difficulties confronting Indigenous people.

Conclusion

The provision of interpreters for Indigenous people for whom English is not the first language and who experience communication difficulties as a result of this, has at best been ad hoc. This paper shows that there is a considerable need for Indigenous interpreters in all spheres of activity to provide basic services to Indigenous people. Currently, there is an insufficient number of Indigenous interpreters to cater to the needs of Indigenous people, none of whom are trained at a professional level of competence which is required for complex communication exchanges such as in the areas of health and justice. It is ironical that despite the enormity of the need, even the available Indigenous interpreters are not being fully utilised, reflecting the lack of appreciation of the need for Indigenous interpreters by some service providers.

The financial outlay in establishing a credible Indigenous interpreter service can be considerable. However, the benefits of this outlay will be evident in the medium term in a variety of ways. Firstly and most importantly, it will contribute towards Indigenous people, particularly in the remote areas, receiving a level of service that most other Australians take for granted. The improvement in service provision is likely to lead to an equally important benefit of improved outcomes which will contribute to bridging the gap in positive outcomes that currently exists between Indigenous people and non-Indigenous people in every sphere of activity. Thirdly, the availability and utilisation of interpreters in the provision of services to Indigenous people will lead to efficiency in service provision by minimising duplication and wastage. For example, magistrates have stated that they have been required to postpone court cases due to a suitable interpreter not being available. When a credible interpreting service is available the need for this type of postponement will be minimised, making court services more efficient.

BACKGROUND

Western Australia's Language Services Policy which was first developed in 1992 was designed to ensure that language was not a barrier to accessing services and for communicating with agency officers for people who have either a limited or no competence in the English language. The policy was designed to enable clients to access services fairly and equitably, and to ensure that a high quality service delivery is responsive to clients' need.

Under the current Language Services policy, Western Australian Government agencies are required whenever possible to:

- Establish coordinated measures that address the communication difficulties of clients and facilitate access to programs, services and information;
- Introduce strategies such as working with qualified interpreters and translators to maximise the social and economic benefits of Western Australia's cultural diversity;
- Ensure the efficient provision of adequate language services to assist people who require assistance in English, including speakers of Indigenous languages and people who are deaf, to access the services provided by the public sector; and
- Plan their language services in consultation with the appropriate target groups.

The policy states that public sector agencies need to acknowledge clients' entitlement to interpreters and translating services and linguistically appropriate information. It also states that protocols for the engagement of qualified interpreters, translators and note-takers be established by agencies which need to recognise that the provision of interpreting is the responsibility of the agency, rather than that of the client.

A needs analysis commissioned by the Office of Multicultural Interests in 2003 at the direction of the former Premier and then Minister of Citizenship and Multicultural Interests, Dr Geoff Gallop found that whilst migrant languages were reasonably well catered for in the State, a considerable service gap existed in the provision of Indigenous interpreting services.

A discussion paper on Indigenous Interpreting Services prepared by Prime Focus, the consultants reviewing the Language Services Policy, states that 'although there is clear evidence of need (of Indigenous language interpreting), the usage by Government agencies is very low and this is compounded by the limited availability of qualified Indigenous interpreters throughout the State.'

Through the Substantive Equality Program being managed through the Equal Opportunity Commission, the limited availability and use of interpreters in Indigenous languages for the delivery of services to Aboriginal people for whom English can be the second, third or fourth language has been identified by the Equal Opportunity Commissioner as a major gap in service delivery.

ENGLISH LANGUAGE COMPETENCE AMONG INDIGENOUS PEOPLE

English is not the first language for many Indigenous people. As stated before, for some Indigenous people English can be the second, third or fourth language. One of the major issues relating to assessing the English language competence of Indigenous people is that accurate quantitative data is not available.

Census figures available through the Australian Bureau of Statistics (ABS) provide data on the use of Aboriginal languages and English among Indigenous people. Census data of 1966 indicated that in parts of the Kimberley, Pilbara, Western Desert and Goldfields more than 79% of the Indigenous population spoke an Indigenous language or Creole. The table below provides information relating to the 2001 census.¹

Region	Population	Speak English only	Speaks English and Aboriginal language well	Speaks Aboriginal but does not speak English well	Other
Perth	20,015	17,823	479	20	
South West	3442	3175	49	-	
Lower Great Southern	1631	1497	3	-	
Upper Great Southern	851	802	11	-	
Midland	2052	1879	62	3	
South Eastern	5111	2974	1321	478	
Central	6083	5185	263	46	
Pilbara	5736	3473	1282	322	
Kimberley	13,555	8688	3065	890	

According to these figures, 75 per cent of Indigenous Western Australians stated that they spoke English well. In addition, 17 per cent of Indigenous Western Australians spoke an Aboriginal language at home, with that percentage increasing to 51 per cent in some remote areas.

The 2004 Environmental Health Needs Survey recorded 94 Indigenous communities within Western Australia where an Indigenous language was the main language spoken. This represents around one-third of communities which participated in the Survey. There were 7,704 people within these communities who indicated that their main language was an Aboriginal language. This represents 45% of the total population of these communities. The table below summarises this data².

¹ Figures presented are for 2001 census. The Census figures for 2006 are not available as yet.

² Environmental Health Needs Coordinating Committee, 2005 *Environmental Health Needs of Indigenous Communities in Western Australia. The 2004 Survey and its findings*. Government of Western Australia

Location	ATSCIC REGION	Community population <20		Community population ≥20			
		No. of people whose Main Language is Indigenous	% of Total Community Population	No. of people whose Main Language is Indigenous	% of Total Community Population	TOTAL	%
Western Desert	Western Desert	15	65%	2648	80%	2663	80%
Kimberley	Malarabah	68	34%	2230	57%	2298	56%
Kimberley	Wunan	86	33%	1500	39%	1586	38%
Kimberley	Kullari	74	21%	468	17%	542	17%
Goldfields	Mulga Mallee	n/a	n/a	325	45%	325	45%
Pilbara	Ngarda Ngarli Yamdu	7	19%	253	28%	260	28%
Gascoyne-Murchison	Yamatji	n/a	n/a	30	7%	30	7%
Wheatbelt-South West	Country Noongar	0	0%	0	0%	0	0%
Metro Area	Perth Noongar	n/a	n/a	0	0%	0	0%
TOTAL		167	28%	4806	46%	5041	45%

This data shows that the highest number and proportion of community members whose main language is an Aboriginal language are found among the communities within the Western Desert, Kimberley, Goldfields and Pilbara regions.

It is important that the two sets of data are interpreted with some caution because census information is based on self-reporting. In the case of Indigenous people it is particularly important to do so because amongst those that stated they spoke English well, are speakers of Aboriginal English, Pidgin, Kriol and Learner's English. Although they differ markedly from Standard Australian English in sounds or accent, grammar, vocabulary, meaning, use and style, these languages have lexical items derived from English. From the perspective of those Indigenous persons who speak these languages, they would speak English well. At the same time, it would be difficult for people who are not familiar with these languages to determine the Standard Australian English competence of these language speakers.

The Aboriginal Legal Service claims that approximately 1 in 5 Aboriginal and Torres Strait Islander people living in remote areas have difficulty understanding or being understood by service providers. One of the recurring points made during consultations undertaken for this initiative³ is that most service providers are so used to just providing a service to Indigenous people without taking the trouble to find out how Aboriginal people feel about the service or whether it is assisting them, that the need for an interpreter does not usually cross their minds.

In addition, cultural aspects of some Aboriginal behaviour can also contribute to camouflaging their limited English fluency making it difficult for service providers to determine the need for interpreter services. Professor Ian Malcolm who was professor of Applied Linguistics states that Aboriginal people's linguistic behaviour demonstrates gratuitous concurrence where speakers being posed polar questions (yes/no) respond predictably 'yes' to appease the questioner rather than as an affirmation of consent. Another issue is 'scaffolding' which refers to a tendency among Indigenous people to adopt the wording and grammatical structure of the other speaker in their responses, without conveying the expected meaning, creating an impression the person has a

³ Funding for the consultations was provided by the Department of Indigenous Affairs.

greater fluency than they do.⁴ These situations are more likely to occur in the presence of people perceived to be authority figures.

Research undertaken by Michael Cooke for the WA Law Reform Commission has shown that because Aboriginal people speak some English, it is often assumed that they are capable of comprehending more complex concepts and jargon associated with the justice and health systems,

“...while most Indigenous people from remote regions do not speak English as their first language, they usually have enough to ‘get by’. They may be able to answer simple questions about their background or family, ask for things at the shop, and hold short conversations about everyday topics like weather or sport. They may even be able to respond to quite complex propositions if expressed in a leading form, in which case the tendency of Aboriginal interviewees to answer yes/no questions in the affirmative may promote the illusion of effective English communication.”⁵

Consultation with Aboriginal people, representatives from the community sector, non-government sector and the government sector undertaken for this project confirmed that many Aboriginal people, particularly those living in communities, in the Kimberley, Pilbara and Goldfields do not have a level of competence in English that would enable effective communication between them and a majority of service providers. Since interpreter services have not been provided for Indigenous people in a consistent way, it is difficult to quantify the actual demand for these services. Nevertheless, service providers that have an engaging relationship with Indigenous people such as the Aboriginal Legal Service, the Aboriginal Medical Service, the hospitals, the prisons and the courts have confirmed that there is a sizeable unmet demand for interpreter services⁶, and a likely unrevealed⁷ demand.

Although some Aboriginal language centres provide interpreting services on an informal basis, the Kimberley Interpreting Services (KIS) is the only established Indigenous interpreting service in Western Australia. KIS is attached to the Mirima Dawang Woorlab-Gerring Language and Cultural Centre (MIRIMA), and provides a service in the Kimberley region. KIS began operating in 2000 when the Department of Training provided a one-off grant, and continued its operations through additional funds provided by the Department of Indigenous Affairs, the Department of Justice and the Department of Health. In May 2004 eight public sector agencies combined to commit funding to the service for three years, at a rate of \$120,000 per year. The current arrangements cease in June 2007.

There are 80 interpreters registered with KIS of whom 30 are accredited. They provide interpreting services in 23 languages. Between March 2006 and March 2007, KIS provided interpreters to cover 144 episodes, of which 80 were for health related matters. From the consultations it is clear that these figures do not reflect the real need. For

⁴ Government of Queensland, *Equal treatment Bench Book*, Chapter 9, Indigenous Language and Communication.

⁵ Cooke, Michael, *Caught in the Middle: Indigenous Interpreters and Customary Law*, Background paper, Law Reform Commission of WA, 2004.

⁶ Where the need for an interpreter has been identified but access to an interpreter is not available, this often happens in the courts.

⁷ Due to there not being a culture of providing interpreters to Indigenous people, the need for an interpreter has not been identified despite communication difficulties existing.

example, despite the overwhelming majority of patients in the Fitzroy Crossing hospital being Indigenous people from remote communities only 1 of 144 interpreting episodes was for the hospital. [It was] stated that communication was particularly difficult when visiting medical officers were overseas trained doctors. Similarly, despite the overwhelming contact between the Police and Indigenous people, only 1 of the 144 episodes was for the police. The regional office of the Department of Community Development in the Kimberley confirmed that while they used interpreters for Indigenous people rarely they had found it very useful when they did so.

The importance of Indigenous interpreting services has been well documented in several national reports including:

- *The Royal Commission into Aboriginal Deaths in Custody (Recommendation 100),*
- *The Recognition, Rights and Reform Social Justice Report (2000) and the*
- *Bringing Them Home Report: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families 1997.*

The need for Indigenous interpreting has also been acknowledged in international law via a number of agreements and conventions, including:

- *The International Covenant on Civil and Political Rights 1966, Articles 9 and 14,*
- *The Universal Declaration of Human Rights , Article 7; The Convention on the Elimination of All Forms of racial Discrimination, Article 5;*
- *The Convention on the Rights of the Child 1990 Articles 2, 12 and 40; Universal Declaration on Linguistic Rights and The Indigenous and Tribal People's Convention 1989, Article 12⁸.*

At the State level, three recommendations of the Western Australian Law Reform Commission's Discussion Paper on Aboriginal Customary Law relate to the use and training of Indigenous interpreters. The Gordon's Inquiry's recommendations relating to community engagement, collaboration, inclusiveness and capacity building could not be effectively implemented without the assistance of a credible Indigenous interpreting service.

⁸ Note that this convention applies to Aboriginal and Torres Strait Islander peoples, but has not yet been ratified by Australia.

PRIORITY AREAS OF NEED FOR INDIGENOUS INTERPRETERS

From the perspective of a person who is not fluent in the language of business including service delivery, every service area would be an area of priority in terms of the need for interpreting. Aboriginal people who fall into this category can be traumatised by a visit to the bank, to shops, to real estate agents, to schools, to hospitals, to the police and most other places they need in the course of everyday living. The Equal Opportunity Commission's inquiry into housing, *Finding a Place* found that many Aboriginal people in rural and remote locations did not understand correspondence they received from the Department of Housing and Works on important issues relating to housing which impacted heavily on them well into the future. Aboriginal people have said that the policy of banks to communicate only with the account holder causes much anxiety for those Aboriginal people who cannot communicate in English. They also feel marginalised in other areas such as child protection, resources development, and matters relating to native title.

Despite the need for interpreters in most areas health and justice have been identified as areas of highest priority due to their capacity for causing the most distress and impacting directly on the lives of individual Aboriginal people.

Health

The Kimberley Interpreting Service (KIS) states that '*Low levels of communication between health professionals and their patients lead to inadequate diagnosis and poor treatment...The legal system remains a mystery for many Indigenous people. Police, magistrates and lawyers are conducting their business in a foreign language for many of their Aboriginal clients.*'⁹

Every well-being indicator points to Aboriginal people being the most disadvantaged in our society. A major piece of work undertaken by the Department of Indigenous Affairs (DIA) in 2005, *Overcoming Indigenous disadvantage in Western Australia Report*, gives a full account of Indigenous disadvantage in the State. In the health area for instance the following statistics give an indication of this disadvantage¹⁰ :

- Life expectancy of Indigenous persons is about 15-20 years less than that of non-Indigenous persons;
- An estimated 39 per cent of the Indigenous population aged 15 years and over had a disability or long term health condition in 2002;
- In 2002 peri natal deaths were three times more prevalent among births to Indigenous mothers than non-Indigenous mothers. There has been little consistent improvements in the mortality rates for Indigenous babies in the last decade;
- The hospital separation rate in WA for Indigenous children aged 0-3 is four times higher than that of non-Indigenous children. Rates are highest in remote regions;
- Indigenous Australians have significantly higher rates of mortality than other Australians. The ratio of the Indigenous mortality rate to the total population rate was the highest in WA at 2.7 in the period 2000-2002

⁹ Kimberley Interpreting Service, Discussion Paper, Indigenous Language Interpreting Service, 2004.

¹⁰ Figures listed are sourced from, Department of Indigenous Affairs, *Overcoming Indigenous Disadvantage*, WA Report 2005.

While there is much activity associated with attempting to lessen this disadvantage, it is not matched by a similar improvement in outcomes. These indicators, together with available anecdotal evidence, suggest that Aboriginal people are either not accessing available services or are accessing them in an ad hoc manner. It is equally likely that available services are not able to cater to the needs of Indigenous people.

During consultations for this project in the Kimberley, Pilbara and the Goldfields it was clear that there was an urgent need for interpreters in the health area. Figures of interpreter usage related to KIS presented in a previous section showed that a majority of the episodes was health related. Although the figures showed that Government health services, particularly the Broome hospital, did use interpreters, more frequent use of interpreters was made by non-government and community sector health services. This trend was consistent in all areas.

The public health services often relied on Aboriginal liaison officers to facilitate communication between service providers and Indigenous people. Even where the Aboriginal liaison officer spoke the relevant Aboriginal language, there are obvious and considerable risks associated with the use of persons not trained as interpreters to play this role, particularly in the health field. In addition, although Aboriginal liaison officers were expected to be the conduit between service providers and Aboriginal patients in effective communication, often they were not persons from the region and were not competent in the relevant Indigenous language.

The [senior health worker] in Broome described the need for Aboriginal interpreters as 'overwhelming'.¹¹ [The health worker] stated that a significant number of Aboriginal patients did not understand interactions between with health professionals, adding that she had come across cases of Indigenous post surgery patients who were not aware of the nature of the surgical procedure they had undergone. Two long terms residents of the Kimberley region [who work with service providers] reiterated the point made by the [health workers], adding that these cases were not infrequent, particularly for Aboriginal people in the remote areas. Sections of the health services in Kalgoorlie reiterated this claim. These claims raise serious issue relating to informed consent.

[Health workers] in Kalgoorlie said there was a desperate need for interpreters in the area of mental health.¹² They argued that assessing mental health issues is particularly difficult because Aboriginal people who do not speak English well have a tendency to say yes to all questions. Currently, the service providers are forced to use relatives to interpret but they are not confident that this mechanism serves the best interests of the patient. The service providers were concerned that relatives tended to exaggerate a patient's condition to ensure they were hospitalised. In addition the service providers were also concerned about confidentiality matters. The service believed that hospital admissions, would reduce if trained interpreters were available. They also stated that if interpreters were available, initial assessment could be undertaken through video links rather than having to using the Royal Flying Doctor services to fly the patient over.

Part 5 of the Mental Health Act 1996 relates to the treatment of patients. Sections in this part emphasises the need for informed consent, and sets out the processes for obtaining

¹¹ Meeting with [medical practitioner], 2.2.2007

¹² Interview with [health worker],

informed consent. One of the essential factors is that a patient is capable of understanding the information being provided including the proposed treatment and any inherent risks. Section 97(4)(a) states that 'anything that is required by this section to be communicated to a patient is not to be considered to have been effectively communicated unless it is in a language or form that is readily understood by the patient using a competent interpreter if necessary.' The consultations showed that the limited availability of Indigenous interpreters is contravening an essential requirement in the Act for obtaining informed consent.

Several health service providers also stated that communication difficulties made it difficult to make Indigenous patients comprehend the importance of medication, the need for medication to be taken regularly and the correct dosage to be taken. [A health administrator] in Broome recounted overhearing a conversation between two nurses at the Broome hospital just prior to discharging an Indigenous patient who did not speak English. She said that having wondered what to do with the prescribed medication, the nurses decided to just put it in his bag because they felt 'he wouldn't take it in any case'.¹³ This type of incident was repeated often during consultations. [A health professional in the Kalgoorlie region] stated that service providers struggle when providing services in the remote communities. While stating it is not ideal, she said services get by through picking up key words in language.¹⁴ Similar sentiments were expressed by the Bega Garnbirringu Aboriginal Health Service which stated that it had prepared a list of key words in language for ambulance staff, and the Kimberley Aged Care Services has prepared a booklet of key phrases in Kriol for staff to assist newcomers to the Kimberley who are often shocked when they realise that their clients do not understand them and they do not understand the clients – in other words that communication is not happening.¹⁵

Consultations for this initiative revealed an ever increasing volume of anecdotal evidence which showed that lack of effective communication between Aboriginal clients and service providers is a major concern for a majority of service providers consulted. They believed that grave mistakes can and are being made leading to potentially dangerous outcomes.

A recent report¹⁶ by the Australian Institute of Health and Welfare (AIHW) on Aboriginal and Torres Strait Islander people and coronary heart disease found that Indigenous Australians were considerably more likely to suffer a heart attack and to die from it, regardless of whether or not they were admitted to hospital. Even where they were admitted to hospital, they were less likely than other Australians to receive some medical investigations or common lifesaving procedures. Some of the Report's findings are that Indigenous people had three times the rate of major coronary events such as heart attacks compared with other Australians. When admitted to hospital for coronary heart disease, Indigenous Australians had:

- More than twice the chance of dying in hospital;

¹³ Interview with [a health administrator], 2.1.2007

¹⁴ Interview with [health professional], 4.4.2007

¹⁵ Interviews with [health administrator] 2.1.2007; Interview with [community workers], 4.4.2007. Cited in *Kimberley Word Tool*.

¹⁶ Cited in Koori Mail, 11 October 2006. The study included data from Queensland, Western Australia, South Australia and the Northern Territory.

- A 40 per cent lower rate of being investigated by angiography;
- A 40 per cent lower rate of coronary angioplasty or stent procedures;
- A 20 per cent lower rate of coronary bypass surgery.

The AIHW Report found the size of the disparities in health outcomes and treatment disturbing. These statistics may reveal either that correct diagnoses are not being made or where correct diagnoses are being made Indigenous people are not being provided effective treatment. Either situation is disturbing.

While there may be complex factors that contribute to these statistics, they make a compelling case for ensuring that ways must be found to better understand and eliminate existing disparities. Given the issues presented in this section, it is likely that the lack of effective communication between service providers and Aboriginal people contribute to less effective treatment procedures being recommended for Indigenous people.

Justice

It is a fundamental principle of natural justice that an accused person be physically present for their case, and be able to understand the proceedings including the nature of the charge and the evidence against him/her. In *Ebatarinja vs Deland* (1998) 194 CLR 44 the accused, an Indigenous person who was both deaf and dumb, was facing a committal hearing in relation to a charge of murder. When it was not possible to find a suitable interpreter, the High Court held that as the defendant was not capable of understanding the proceedings, the court had no power to continue with the committal proceedings. The effect of the decision was that the murder charge was permanently stayed. In paragraph 26 of the judgement the High Court stated that in '*a trial for a criminal offence, it is well established that the defendant should not only be physically present but should also be able to understand the proceedings and the nature of the evidence against him or her*'.

A similar sentiment was expressed by the Judicial Committee of the Privy Council in *Kunnath v The State* when it states that '*It is an essential principle of criminal law that a trial for an indictable offence should be conducted in the presence of the defendant. ...the basis of the principle is not simply that there should be corporeal presence but that the defendant, by reason of his presence should be able to understand the proceedings*'.

The Western Australian Chief Justice, the Hon Wayne Martin sets out the legal position clearly,

'...if the trial of an alleged offender occurs in circumstances in which that person is unable to comprehend the course of the trial because, for example, of an inability with English and the lack of an interpreter, the trial process is unfair and any judgement obtained would be set aside.

The provision of adequate interpreting services for Aboriginal people is therefore an essential pre-requisite to the capacity of the courts of this State to deliver justice...If an interpreter is not available for the trial of a person who lacks the capacity to adequately comprehend English, the trial will have to be aborted. If a trial proceeds without the court identifying the fact that an alleged offender lacks adequate comprehension of English, and no interpreter is provided, any

judgement obtained will be liable to be set aside, with the result that the trial would have to be conducted again'.¹⁷

The indicators presented below show that Indigenous people in Western Australia have considerably more contact with the criminal justice system than other Western Australians¹⁸:

- Indigenous people are vastly over-represented in the prison population. Despite making up 3.5 per cent of the prison population, 38 per cent of prisoners were Indigenous. This was 15 times more than the non-Indigenous population;
- Indigenous people represented 51 per cent of offenders received on remand and 45 per cent of sentenced prisoners;
- An indigenous person was 10 times more likely to be arrested than a non-Indigenous person. The total number of people arrested at least once in the South Eastern, Central, Pilbara and Kimberley regions was 4827 or 59 per cent of all Indigenous people arrested by police for that year; and
- Indigenous juveniles were 40-50 times more likely to be detained in juvenile facilities than non-Indigenous juveniles.

Courts can be an intimidating experience for anyone. More so for people who have low levels of literacy and are not able to understand the language of the court proceedings. The ALS believes that an interpreting service would go a long way towards addressing the over-representation of Aboriginal and Torres Strait Islander people within the criminal justice system. Similar sentiments were also expressed by the [legal professional] who said that his agency which provides assistance to many Indigenous people even in remote locations '*...is well aware of the barriers, errors and injustices that can and do occur because of language difficulties...*'¹⁹

The urgent need for interpreters voiced by the Chief Justice was echoed by the magistrates including the Chief Magistrate and the Chief Judge. The Chief Judge states that '*For some time the District Court has been concerned with the lack of an interpreter service in the Kimberley region and elsewhere in the State where English is often the second or third language of witnesses or accused. This affects the fairness of the investigative process and ultimately the trial process. The police are often hampered in their investigations because of language difficulties. The court process is often very difficult because witnesses are unable to make themselves understood or the accused does not fully understand what the evidence against him or her is*'.²⁰

In Kalgoorlie recently the District Court was forced to abort a case because of the unavailability of an adequate interpreter for the accused. The accused was charged with serious sexual offences. In addition to the difficulties in obtaining an accredited interpreter, there was the problem that the interpreter needed to be male due to cultural sensitivities relating to females speaking to males about sexual matters. The presiding judge attempted to proceed with the trial using a non-accredited interpreter who had no court experience, but when the interpreter learnt of the charges against the accused he did not wish to sit near the accused in case he was 'shamed' by association. Being related to the complainant the interpreter withdrew before the judge had a chance to rule

¹⁷. Letter from the Chief Justice of Western Australia to the Equal Opportunity Commissioner, 27 February 2007.

¹⁸ DIA, op cit.

¹⁹ Cited in letter to [legal professional] 15 March 2006.

²⁰ Letter by Chief Judge, Antoinette Kennedy, 12 October 2006.

on his suitability to interpret. The presiding judge had previously also ruled at a directional hearing that a confessional interview conducted by the police with the accused was inadmissible due to the failure of the police to obtain an interpreter.²¹

Magistrates in the Pilbara and the Goldfields stated that in their view there are injustices happening everyday because Aboriginal people do not understand court proceedings including sentences and the consequences of breaching sentences/court orders such as community orders, bail undertakings and suspended prison sentences.²²

Magistrates believed that Aboriginal people would benefit enormously in having their court orders, including those referable to simple driving licence offences (breach of which can potentially result in goal terms) explained in their own languages. They also urge that suspended sentences in particular be explained carefully and thoroughly in Aboriginal languages to minimise dire consequences resulting from breaches. The magistrates in the Goldfields noted that they could count on one hand the number of times they had access to trained interpreters for Indigenous people in the last four years, despite requiring interpreters for cases on a weekly basis. They were also concerned that due to the increase in police presence in the Western Desert lands region, with multi function police posts at Warburton and Warakurna the lack of interpreters would be felt even more keenly because the reach of the legal system for victims of crime and for defendants and perpetrators would be ever increasing.

The Magistrate in the Pilbara said that having failed to obtain interpreters when they were required, and being reticent about continuing to hold Indigenous people in Custody, she now makes every effort to hear cases quickly. They attempt to strike a balance between holding people in custody until they are able to obtain a suitable interpreter, often postponing cases and hearing cases quickly so that Indigenous people are not held in custody unnecessarily. She explained further that language difficulties usually denied Aboriginal defendants the benefits of pre-sentence reports which are powerful tools and in some instances can mean the difference between a term of imprisonment or not. The magistrate stated that 'Given the importance of this document and its power as a sentencing tool it is an injustice that negative judgements are formed by the court officers and sometimes by the judicial officer when an accused cannot fully participate in the process or is being misunderstood due to language barriers'.²³

The miscarriages in justice were also spelt out by the Aboriginal Legal Service lawyers who stated that on circuit courts in the Kimberley region the magistrate hears between 80 and 100 cases a day, and that defendants met their lawyers for the first time only a few of minutes before cases were heard. They said most of them had no idea about what was happening to them because they were not fluent in English and it was rare for an interpreter to be provided.²⁴ They said that some of the defendants had so little English, if any, that they did not understand whether they were convicted or not and what their penalties were when they were convicted.

The magistrates as well as Professor Harding, Inspector of Custodial Services have stated that prisoners are often used to interpret for Indigenous defendants and prisoners.

²¹ Letter to Equal Opportunity Commissioner from Judge Kevin Sleight, 8.5.2007

²² Interview with Magistrate Campione 19.2.2007; Interview with Magistrates Auty & Temby 2.4.2007

²³ E-mail from Magistrate, 19 February 2007.

²⁴ Meeting with [ALS lawyers], 31.1.2007

This again raises the issue of confidentiality which is of paramount importance in the interpreting profession and also raises the issue of accuracy in interpreting. Use of untrained people to interpret can also have legal ramifications for Government. Often family and friends are used to interpret and [legal professionals] in South Hedland stated that families may not always convey what is being told to them. [They] stated there was a tendency among family and friends to ignore the solicitor's advice and urge the defendants to 'tell the truth'. They also said that there is a culture among Indigenous defendants to plead guilty.

Judicial recognition of the need for interpreters in the context of police interviews was recognized in 1976 in the landmark Northern Territory case, *R vs Anunga*. The principles established in that case have been recognized by the Western Australian courts as a measure of fair interrogation. In particular, the case highlighted the need for utilising an interpreter where an Aboriginal suspect did not have a similar level of understanding of English as a non-Aboriginal person of 'English descent'. The Operating and Procedures Manual of the Western Australian Police directs police conducting interviews with Aboriginal and Torres Strait Islander people to comply with the principles established in *Anunga*. For a number of reasons, not least the availability and accessibility of suitably qualified interpreters, particularly at short notice, Police personnel confirmed compliance is at best ad hoc.

Police personnel interviewed during the consultation process were divided about the need for interpreters. In the Kimberley region for instance, some acknowledged the need for interpreters and the positive difference a service of qualified interpreters would make, while others were less convinced of the need stating that plain English spoken slowly would be understood by all Aboriginal persons. They claimed that while all Aboriginal people understand English, for strategic reasons some of them pretended they did not understand. This position was refuted by [a senior police officer] in the Kimberley who advised that for many Aboriginal people in the Kimberley English is about the second or third language, and acknowledged that an Indigenous interpreter service could be an important conduit between Aboriginal people and service providers. A representative from the Kalgoorlie Police stated that it was likely that police officers fell into the trap of thinking that Aboriginal people understood English because they spoke Kriol or Aboriginal English.

[A Kimberley] Aboriginal elder who is an accredited interpreter claimed that he was able to have charges against three Indigenous people dropped by police once he was able to explain to the police the correct version of events that led to the charges being laid.²⁵ It was clear that the police, even in the Kimberley region where an interpreter service is available, did not have a culture of using interpreters, preferring where possible to use family and community members to assist whenever communication difficulties arose.

[Officers] of the Department of Community Development were concerned about the lack of use of interpreters in very sensitive child sexual abuse interviews. Currently, police processes do not allow anyone who is not trained in specialist sexual abuse interviews to be in the room. The Department's representative said this caused a lot of stress, particularly to children who have been abused. Some of the police personnel interviewed during consultation also raised concerns about this process.

²⁵ Interview with [Aboriginal elder], 1.2.2007

ISSUES RELATED TO THE ESTABLISHMENT OF AN INDIGENOUS INTERPRETING SERVICE

The major challenges confronting the establishment of an Indigenous interpreting service are listed below:

- The currently available pool of Indigenous interpreters is small making their accessibility at short notice difficult. The limited pool is also not large enough to accommodate the diversity of Aboriginal languages, or cultural practices such as avoidance relationships prevalent among remote Aboriginal communities;
- There appears to be a resistance among service providers, particularly in the Government sector, to use Indigenous interpreters. One of the more obvious reasons for this appears to be a misconception among many service providers that most Aboriginal people have an adequate command of English. Public Sector service providers also find the cost associated with the purchase of interpreter services prohibitive;
- There is confusion amongst Indigenous people about the role of an interpreter. Some expect them to be cultural brokers on their behalf while others view them antagonistically as part of the system, particularly in relation to criminal justice. As a result, the fear of reprisal makes Indigenous interpreters reluctant to become court interpreters;
- Being largely community languages rather than structured languages there are large gaps relating to medical and legal terminology in Indigenous languages which makes conventional practices relating to interpreting difficult. This is said, at times, to cause confusion amongst the legal fraternity;
- Currently, there are no accredited Indigenous interpreting training courses in Western Australia. In the mid 1990s, through funding provided to Central TAFE by the then Department of Corrective Services, an Indigenous interpreting course was developed, and delivered in the Kimberley, Pilbara and the Goldfields. This course was accredited by the National Authority for the Accreditation of Translators and Interpreters (NAATI) at the paraprofessional level. The Aboriginal Interpreting Service in the Northern Territory provides training to its own interpreters, but has admitted its training is far from satisfactory;
- Indigenous interpreting has not been accredited beyond the paraprofessional level in Australia. Although professional level trainers are preferred for interpreting in the courts (Advanced diploma or professional NAATI accreditation) and are provided for migrant languages, Indigenous interpreters are only accredited to the paraprofessional level. Currently, NAATI does not have a test for Indigenous interpreters beyond the paraprofessional level. As the Western Australian member for NAATI, the Minister for Multicultural Interests may be able to bring pressure to bear on the Authority to develop such a test.

Each of these issues would need to be addressed to enable the establishment of a viable Indigenous interpreter service that is sustainable in the long term. The sections that follow which provide a draft model for an Indigenous interpreter service also proposes mechanisms and strategies for addressing these issues

THE PROPOSED MODEL AND THE CASE FOR IT

Despite references often made to an Aboriginal community in Western Australia, the reality is that a single Aboriginal community does not exist. Culturally and linguistically, there are several Aboriginal communities, each with its own culture, language, customs and traditions. Even within a region such as the Kimberley, there are several Aboriginal communities and any perception that all Aboriginal people share a common language or that the languages in the Kimberley are all dialects of a single language, is inaccurate.

Language groups are skin based with speakers of a particular language usually occupying a specific area within a broader region. At the outset it is therefore important to acknowledge and recognise the distinctiveness of Aboriginal languages. In the Kimberley region for instance, speakers of a particular Aboriginal language may not be able to comprehend another Aboriginal language in the same region, much less another Aboriginal language in a different region such as the Pilbara or the Goldfields. KIS has often been requested to provide interpreters for service delivery in the Goldfields, causing it considerable difficulties.

The data in an earlier section together with information gathered through consultations, shows the greatest need for interpreters in Indigenous languages is in the Kimberley, Pilbara and Goldfields. Although there are many Aboriginal languages in each of these regions, advice from the Aboriginal Language Centres located in each of these regions is that interpreting should be provided at least in the following core groups of languages:

- Kimberley : Kriol, Kukatja, Walmajarri, Kija and Jaru
- Pilbara: Manjiljarra, Kartujarra, Warman, Nyangumarta, Yindjibarndi and Karriyarra
- Goldfields : Wangkatha, Ngaanyatjarra, Pitjanjatjarra, Cundeelee

In addition to the distinctiveness of languages, the cultural nuances associated with skin groups vary from region to region and can impact heavily on the provision of interpreter services. Given this diversity, any interpreter service that is established would need to have a strong regional focus where the body/agency responsible for the provision of interpreters has an in-depth understanding of language use, regional cultures, customs and traditions, and also be supported by strong regional networks.

The proposed model incorporates some features of the Northern Territory's Aboriginal Interpreter Service but departs from that model to take account of Western Australia's unique features. Given the considerable need for Indigenous interpreter services in and around Darwin, the Territory's Central Coordinating Unit located in Darwin is also its major service delivery unit, being the point of contact for the majority of requests for interpreting services. In addition AIS has a branch in Alice Springs and contracts the Aboriginal Language Centres in Tennant Creek and Katherine to provide interpreter services in those regions. The important aspect of the Territory's model is the recognition it gives to the regional distinctiveness of Aboriginal languages which need to be coordinated at a regional level.

Regionally Based Coordinating Bodies

Given the distinctiveness of Aboriginal languages in the three regions identified as having the greatest need, the most effective and efficient way of enabling the provision and

utilisation of interpreters is to establish coordinating bodies charged with the responsibility of being the contact agencies in each of the three regions. In the Kimberley, KIS is already well established in this role, and the provision of on-going funding to the service would enable it to consolidate its role. KIS' role as the coordinator of interpreting services is enhanced by its strong links with the two Aboriginal language centres in the Kimberley region.

In relation to the Pilbara and the Kalgoorlie regions, the Aboriginal language centres present the most effective and efficient options to play the coordinating roles. In addition to their current involvement in providing interpreting and translating services – in written and audio-visual formats, the following factors strengthen their case to be the coordinating bodies for their regions:

- The centres are incorporated bodies with governing boards comprising Indigenous people and providing culturally appropriate services;
- The centres include linguists and others working towards cultural heritage and language preservation and maintenance;
- The centres have the ability to provide supporting services such as cross-cultural training and awareness raising;
- The centres have strong community connections, foster a sense of “ownership” and are able to recruit and develop Indigenous interpreters through their extensive community networks;
- The centres have the potential to play a major role in the professional skills of interpreters by coordinating access to further training and specialist skills such as health and legal interpreting; and
- The strong community connections enable the centres to match the interpreters to specific job requirements to ensure that problems associated with “avoidance” relationships, gender and other kinship constraints are minimised.

Given these advantages, State Supply Commission's approval would need to be obtained to enable these language centres to be contracted as coordinating bodies without the need to call for tenders.

The major roles of the coordinating bodies would be to :

- Assess the suitability of people who express an interest in becoming interpreters;
- Manage an up to date register of interpreters able to interpret between English and several Indigenous languages including progressively assessing their suitability to remain on the register and where necessary exclude interpreters from the register;
- Maintain a list of languages in which interpreters are available;
- Be the contact point for all service providers requiring interpreters in Indigenous languages;
- Ensure that requests for an interpreter by service providers are adequately answered including assigning the right interpreter to a job, notifying the agency and following up the request until the job is completed;
- Ensure that bookings are registered, the identified interpreter for a job is contacted and, where necessary, make travel arrangements for the interpreter's appearance at the place , date and time of the assignment;

- With the assistance of the Language Services Unit, raise awareness of the role of interpreters with Indigenous people and communities;
- At the regional level promote the use of interpreters with service providers in the government, non-government and community sectors;
- Provide advice to service providers on the use of interpreters in Indigenous languages and receive feedback from service providers when they have utilised interpreter services;
- In conjunction with the Language Service Centre make arrangements to provide on-going professional development to interpreters on their lists;
- Collect data on the use of interpreting service by categories of users;
- Develop mechanisms for identifying the need for interpreters across the regions;
- Through their networks and in conjunction with regional TAFEs identify persons suitable to be trained as interpreters and make arrangements for their involvement in training;
- Provide six monthly progress reports on interpreting, including the issues they have confronted during that period to the Language Services Unit;
- Provide an independently audited financial report at the end of each financial year to the Language Services Centre.

Consultation showed that for a variety of reasons Aboriginal people prefer face to face interpreting. It is important that coordinating bodies ensure that their registers include interpreters from across each region. While face to face interpreting is considered ideal there would be situations when this may not either be practically possible or may be inefficient. There are times when Indigenous people are sent to Perth primarily either for medical reasons or to face criminal charges in the courts. During consultations, Aboriginal organisations were particularly critical of the lack of support provided to Indigenous people in these situations. There is little doubt that an Indigenous person who is not fluent in English would find a visit to Perth a daunting exercise if he/she is unaccompanied. Both the Health Department and the courts have provision for an Indigenous person to be accompanied but it is understood that this does not always happen.

For purposes of providing interpreting services in these situations, three options are possible:

- to have an interpreter accompany the Indigenous person;
- where appropriate use phone interpreting; or
- utilise interpreters through video link.

The need for each interpreting episode would need to be assessed to determine to most suitable method and guidelines would need to be developed for this purpose.

Perth Based Language Services Unit

While it is important for the model for an Indigenous interpreting service to reflect the regional diversity inherent amongst Western Australia's Aboriginal communities, it is equally important to ensure that a Unit within a government department has the responsibility for Language Services and that issues relating to these services are addressed in an on-going and timely manner. The Unit's specific roles would be to:

- Support the coordinating bodies to fulfil their roles;
- Ensure, that in conjunction with the TAFE sector, training for interpreters in Indigenous languages is on-going and conducted in a consistent way;
- Negotiate with the National Authority for the Accreditation of Translators and Interpreters on matters relating to accreditation, with a particular emphasis on the accreditation of interpreters in Indigenous languages;
- In conjunction with the coordinating bodies identify areas of need for interpreters in Indigenous languages;
- Develop materials to promote the use of interpreters in conjunction with the coordinating bodies and professional bodies of interpreters;
- Develop material to raise an understanding of interpreters amongst Indigenous people and communities;
- Develop material to train service providers on the use of interpreters including the ability to assess the need for interpreters;
- Provide on-going training to service providers on the use of interpreters;
- Develop and implement accountability mechanisms, including performance measures for the coordinating bodies;
- Provide an annual report on the achievements and issues in languages services to the Director General of the Department in which the Unit is located.

Currently, there is no obvious place for the Unit's location. Prior to the Unit's location being decided it is important to determine whether the Unit would have responsibility for language services in Indigenous languages as well as migrant languages. Economies of scale together with the need to enhance public sector skills in language services in a consistent manner would suggest that a single Language Services Unit with responsibilities for supporting services in migrant and Indigenous languages be established. On the other hand, since language services in migrant languages are already well established, a case could be made for a separate Language Services Unit for Indigenous Languages to ensure that its focus is solely on Indigenous language services.

On the assumption that a single Language Services Unit would serve both sets of languages, the following options are presented for consideration for the Unit's location:

- The Office of Multicultural Interests (OMI) – OMI currently has responsibility for the State's language services policy and through this role has acquired considerable knowledge on language services. It is also the State's direct link to NAATI. However, while OMI may have knowledge on migrant language services, by its own admission it has limited knowledge on Indigenous language services.
- Department of Indigenous Affairs – The Department has played the lead role in providing funding to the Kimberley Interpreting Service. A few years ago the Department also provided a phone service for Indigenous interpreting. However, this service has not been provided for several years. While it may have limited knowledge on language services, the department has a strong network among Aboriginal organisations and the best understanding of Aboriginal disadvantage as well as Aboriginal culture and traditions;
- The Department of Communities – While the new Department's role has not been fully clarified as yet, the Unit's location in it may provide language services a whole

of community focus, rather than a purely Indigenous or migrant focus, particularly if the Unit is to be responsible for both sets of languages.

Employment Status of Interpreters

Currently, interpreters registered with KIS work as hobbyists who earn a fee for each interpreting episode they undertake. This status means they do not require an Australian Business Number (ABN) and are exempt from Income Tax. Given the relatively few episodes of interpreting each interpreter undertakes in a year, the hobbyists model appears to best serve the needs of the interpreters attached to KIS. The statistics provided by KIS indicate that on average each interpreter undertook approximately two interpreting episodes between March 06 and March 07. It also means that the earnings from interpreting do not impact on CDEP, Centrelink or other payments they may receive. The obvious disadvantage of this status is the recognition that there is no career path for Indigenous interpreting.

On the other hand, as a public sector agency, the interpreters attached to the Northern Territory's AIS are employed as casual public service employees. This provides them a status in terms of career path and also entitles them to superannuation. In addition to providing interpreter services through direct employment of interpreters, the AIS also contracts interpreting services through the Aboriginal Language Centres at Tennant Creek and Katherine. Interpreters attached to the language services are not casual public servants; rather they are casual employees of the relevant language centre.

The private interpreter service providers in Western Australia which provide interpreter services in migrant languages employ interpreters on a fee for service basis, meaning that an interpreter registered with a private interpreter service has no claims against the service other than being paid the fee for service.

Given the models available, the employment status of interpreters would need to be considered in conjunction with the coordinating bodies to ensure they meet the needs of current and potential Indigenous interpreters.

Funding model for interpreter services

Recurrent funding to the Northern Territory's AIS is provided by the Commonwealth Government as well as the Territory Government. In 2006 the Commonwealth Government committed \$ 5.1 million over a four year period to 2010.

Administrative costs associated with the delivery of interpreter services are covered by the recurrent funding and are not passed on to the client. All AIS services are provided on a fee for service basis. However, the fees for services provided to some public sector agencies are allocated through a centralised fund. This means that rather than the agency being charged directly when interpreter services are utilised, the centralised allocation that the AIS has for that agency is charged the fee instead. These departments with the centralised allocation are the Territory's Health Service, Director of Public Prosecutions, Police, Office of Courts Administration and the Department of Corrective

Services. All other services requesting interpreter services, including other public sector agencies, are charged directly for the interpreter services they are provided with.

AIS charges for interpreter services are based on the qualification and experience of the interpreters. The Service recognises four levels on interpreters based on these two criteria. The fee for an interpreting episode of up to two hours can vary from \$60.04 for a level 1 interpreter to \$ 100.74 for a level 4 interpreter required for a more complex interpreting task.

During consultations the cost of interpreting services was often raised. Many service providers referred to costs being prohibitive. Given the structure being proposed and the limited appreciation among public sector service providers of the need for interpreter services for Indigenous people, the following funding options are presented for consideration:

- To have a centralised allocation for Indigenous interpreter services managed by the Language Services Unit to cover fees for all public sector agencies;
- Following the model of the Northern Territory to have a centralised fund for interpreting services for the priority areas identified in this paper;
- Have a centralised fund to cover a percentage of the interpreting services utilised by public sector agencies, after which services can be charged directly to agencies;
- Direct fee for service basis for all agencies.

A STRATEGY TO RAISE AWARENESS AMONG SERVICE PROVIDERS AND INDIGENOUS PEOPLE

Available literature and consultations have shown that there are many service providers who believe the need for interpreters for Indigenous people is overstated because most Aboriginal people speak basic English. Michael Cooke who writes extensively on Indigenous interpreting in the courts and trains Indigenous interpreters in the Northern Territory states that within any profession there would be supporters and sceptics of Indigenous interpreting.²⁶ He points out that while:

- some police utilise an interpreter only to assist in satisfying the legal requirement that they properly explain the effect of the police caution and continue the interview in English once this is done, others find the use of interpreting enables more forthcoming responses from Aboriginal interviewees.
- there are lawyers who perceive interpreters as impediments to easily leading Aboriginal witness during cross examination, others rely heavily on interpreters to protect their clients from linguistic manipulation.
- some magistrates and judges are reluctant to permit interpreters for witnesses who have some English because they feel interpreters may interfere with the court's capacity to evaluate a witness directly, or may allow the witness the

²⁶ Cooke, Michael, Indigenous Interpreting Issues for the Courts, The Australian Institute of Judicial Administration.

advantage of extra time to answer a question. Others halt trials to attempt to locate a suitable interpreter.

What this means is that an awareness raising strategy is required to educate service providers on the communication difficulties confronting Indigenous people. Compounding these difficulties are other linguistic issues such as gratuitous concurrence and scaffolding which were presented earlier and others listed below that need to be understood by service providers.

Often Aboriginal people will not understand abstract concepts. For instance if you ask 'what is a court?' the response may be to point to a building. Similarly, silences, for example, can be interpreted by non-Aboriginal people as guilt whereas from an Aboriginal perspective there may be a cultural reason for not speaking about an issue. Aboriginal people, particularly from the remote communities are also caught between two legal traditions, the Aboriginal law and the Western law. This situation can have a major impact on Aboriginal witnesses and defendants whose responses in the Western courts can primarily be influenced by possible impacts to responses under Aboriginal law.

Being largely community languages rather than structured languages there are large gaps relating to technical terminology which makes the conventional interpreting practices difficult to adhere to in Indigenous interpreting. Some legal words, for example, mean nothing in Aboriginal languages. A question and answer situation may not be adequate to convey the real meaning and when a narrative form is adopted by the interpreter, lawyers can be suspicious.

Indigenous people are also confused about the role of an interpreter. Unlike the situation with migrants, there is no culture among Indigenous people of requesting an interpreter, so when one is available, some Indigenous people perceive them as advocates, court mediators and cultural brokers, which can lead to interpreters being blamed for the outcome of the criminal justice proceedings. As a consequence many are afraid to undertake legal interpreting. Indigenous interpreters believe that it would help them enormously if the person in charge whether in the courts or hospital or any other place could briefly explain the role of an interpreter so that any misunderstanding of their role is minimised.

All interpreters are bound by a code of conduct which includes professional conduct, confidentiality, competence, impartiality and accuracy. When there is confusion about the role of an interpreter the principles of impartiality, confidentiality and accuracy frequently raise difficulties for Indigenous interpreters. Impartiality can be problematic when the interpreter is related to the client and in the case of Aboriginal interpreters this is frequent. Confidentiality is an issue where an interpreter is pressed by elders for information. Accuracy is challenged where customary law demands the use of a particular speaking style by an interpreter to a client that may not reflect how the non-indigenous interviewer is addressing the client.

Indigenous interpreters are required to observe customary law governing the form and style of language to be used with Indigenous clients as well as restrictions upon verbal communications in particular circumstances. Relevant considerations include ceremonial status, kinship position, age, gender and the subject being discussed. Rules of behaviour based on kinship may also affect the willingness or ability of a witness to

speak to or in the presence of others. For example, in some communities mothers can rarely speak or even be in the presence of sons in law.²⁷

An awareness raising strategy that targets Aboriginal people and communities on the role of interpreters, including their right to have an interpreter, is also required.

THE PROVISION OF TRAINING

Currently in Western Australia, there are no training courses for interpreting in Indigenous languages. To date the only accredited Indigenous interpreting training was conducted by the Central Metropolitan College of TAFE, Perth Campus (now Central TAFE) in the 1990s through funding obtained from the Commonwealth Attorney General's Office (1993 to 1998) and the WA Ministry of Justice (1998 to 2003) in response to Recommendations 97 and 98 of the Royal Commission into Aboriginal Deaths in Custody. The training was delivered by [a trainer] of the Perth Campus at regional and remote centres including Derby, Fitzroy Crossing, Halls Creek, Balgo Hills, Warmun, South Hedland, Roebourne, Jigalong, Kalgoorlie and Warburton. Forty students graduated with a Certificate (earlier in the 1990s) and a Diploma of Interpreting (from 1997 onwards) and qualified for NAATI accreditation as Paraprofessional interpreters. As a result of the funding ceasing the courses stopped and have not been delivered since that time. More importantly, no follow up or skills maintenance training has been conducted, and it can be assumed that a majority of the interpreters will require substantial re-training.

Although Indigenous language centres provide cultural awareness training and the Kimberley Interpreting Centre provides some professional development to interpreters attached to them, courses to train new Indigenous interpreters are not available in Western Australia.

For Indigenous interpreting to be sustainable, on-going training is critical. It is equally important that training and professional development are community based, or at the very least localised, to ensure accessibility and to minimise the drop-out rate from these courses, which can be a major concern.

For the training to be conducted locally – and thus being independent of special purpose funding – the issue of availability of suitable and qualified trainers also needs to be addressed.

EOC has successfully negotiated for the TAFE sector to be responsible for the training of Indigenous interpreters. Being the only TAFE college with experience in Indigenous interpreter training and the development of relevant course materials, Central TAFE has willingly committed to develop the course materials for a Diploma in Indigenous Interpreting in collaboration with input from the relevant regions, and to train the trainers at the regional centres. Since the courses being developed would not be utilised for

²⁷ Eades, D, Aboriginal English and the Law: Communicating with Aboriginal English Speaking Clients, A handbook for Legal Practitioners, 1992, Brisbane, Queensland Law Society.

training Central TAFE's cohort of clients, funding for their development as well as for an initial Train-the-trainers program would need to be provided.

Regional TAFEs, namely Kimberley TAFE, Pilbara TAFE and Kalgoorlie TAFE have agreed to train Indigenous interpreters regionally once trainers are available. They will offer the accredited Diploma of Interpreting, customised to Indigenous student needs, and thus will be able to include the course in their profile, which is planned for delivery in 2008. Consequently no additional funding would be required. Indigenous people wishing to access this training would have access to Abstudy to assist them financially.

While the training course comprises 300 hours plus thirty hours work experience, its delivery is able to be in short "blocks" not exceeding five days at a time to enable potential Indigenous students to attend, because experience has shown that most students are of mature age and generally tend to have important roles in their community they need to continue to fulfil at the same time. Also, as the degree of complexity and difficulty increases with each block of training, this approach will enable students to absorb and practise what they have learnt prior to attending the next block.

In view of the above, it is proposed:

- to review and re-develop the existing course materials. These materials were last updated in 1998 and do no longer reflect present delivery practices. Also some background material is no longer up-to-date. However, overall it is still considered the best material available for Indigenous interpreter training.
- to develop a short course to train potential interpreter trainers with the focus on interpreting/ethical issues, delivery strategies, problem solving and flexible responses to student needs.
- to pilot the train-the-trainer course in Perth with volunteers from Kalgoorlie (Language Centre and TAFE)
- to conduct the train-the-trainer course in Broome and in South Hedland to enable the Kimberley and Pilbara Colleges of TAFE to deliver the Diploma of Interpreting to Indigenous students.

These measures will ensure that regional TAFE colleges will be able to offer, well into the future, accredited Indigenous interpreter training independently and cost-effectively. They will also redress the present inequity in the provision of training in migrant languages compared with Indigenous languages.

Once the Languages Services Unit is established, one of its future roles would be to negotiate for Indigenous interpreter training at the professional level. This issue is briefly discussed in the following section on accreditation.

ACCREDITATION

The National Authority for the Accreditation of Translators and Interpreters (NAATI) has been established jointly by governments of all Australian jurisdictions to accredit interpreters and translators. Although NAATI is managed by an independent board, the ministers of Immigration and Multicultural Affairs across all Australian jurisdictions jointly own NAATI in their role as its members.

NAATI has established four levels of accreditation, Paraprofessional Interpreter (PPI), Interpreter (hereafter referred to as professional interpreter), Conference Interpreter and Conference Interpreter (Senior). Currently, Indigenous interpreters have only been accredited at the paraprofessional level.

Paraprofessional accreditation for Indigenous interpreters is obtained in one of the following ways:

- completion of a NAATI approved course – The certificate and diploma courses delivered by the Central Metropolitan College of TAFE (Perth Campus) in the 1990s were NAATI approved and led to accreditation at a paraprofessional level without further testing. Most Indigenous interpreters in WA have been accredited through this process.
- delivery of intensive interpreter workshops by a reputable consultant often in remote locations followed by NAATI testing in conjunction with a NAATI-approved consultant. This method is often utilised in the Northern Territory to accredit Indigenous interpreters, through funding made to the Aboriginal Interpreter Service by the Commonwealth Government.

The PPI represents a level of competence in interpreting at a non-specialised level – and is often referred to as “community interpreting” – where specialised terminology or more sophisticated conceptual information is not required. NAATI acknowledges that the PPI level is not sufficient for interpreting in the courts or hospitals, but accepts that in many of the low demand/newly emerging languages and the Indigenous languages, the lack of supply at the professional level means that interpreters with PPI accreditation are the only people available to do such interpreting. In the case of Indigenous interpreters, most of those accredited at the paraprofessional level immediately interpret at a much higher level in the courts or in the hospitals.

Currently, a career as an interpreter is not an attractive option for two reasons, firstly, the use of interpreters is ad hoc preventing a steady flow of work for interpreters. Secondly, there is no access to training and professional development at the professional level, thereby denying Indigenous interpreters the career paths available to interpreters in migrant languages.

EOC has had several discussions with the NAATI administration regarding accreditation, and while there appears to be a willingness to give a greater focus than it has thus far to Indigenous interpreting, its position is that it is not funded by government to cover Indigenous languages. As a result, NAATI perceives the testing process for accrediting Indigenous interpreters to be outside its core business. When testing for accrediting

Indigenous interpreting is requested by a jurisdiction, as in the case of the Northern Territory, it is provided on a fee for service basis.

NAATI also advised EOC that it is reluctant to develop professional level tests for Indigenous languages because it does not believe there would be a demand for them as Indigenous people are unlikely to have the required level of English competence required for accreditation at the professional level. This generalised opinion may not necessarily be accurate. For instance, the public sector has a cohort of Indigenous workers who may combine a high level of English with fluency in an Indigenous language. Consultation with Government service providers has shown that agencies would be willing for them to be trained as interpreters on a voluntary basis. Current Government policy provides for the payment of an allowance for bilingual workers who have the skills to provide language services. It is understood that this policy is only implemented sporadically. If Indigenous public sector workers volunteer to be trained as interpreters, the argument that insufficient numbers do not make the running of a test worthwhile would not be valid. When a racial group is denied access to the only avenue for obtaining a level of accreditation that other groups are entitled to, the 'numbers' argument is neither valid nor defensible.

For the national body for accrediting interpreters and translators, to not focus equally on Indigenous interpreting as they do on interpreting in migrant languages represents an institutional barrier that needs to be urgently addressed. Towards this end, the Western Australian Minister for Multicultural Interests would be writing to the Chair of the NAATI Board to raise these matters.

An alternative option to NAATI accreditation is currently being developed in the form of a national framework of competency standards for interpreters and translators through a consortium of National Skills Councils, namely Health and Community Care, Business, Government and Tourism and Hospitality.

The introduction of national competency standards from which curriculum is developed will enable training providers to meet the requirements of the Training Accreditation Council (TAC) and gain recognition for graduates of the Diploma and Advanced Diploma courses as qualified interpreters without NAATI approval, and without the cost and constraints associated with the approval – a major deterrent as regards the implementation of interpreter training in TAFE colleges which are not funded for these additional costs. In effect, this means that training will become an alternative entry route into the interpreting and translating profession.

Broadening the definition of 'competent interpreter and translator' in any government language services policy to include interpreters and translators who have obtained a Diploma or Advanced Diploma of Interpreting or Translating, therefore, represents a significant shift from the previous policy requirement of NAATI accreditation or recognition. The main benefit of the change is the opportunity to broaden the range of languages in which translating and interpreting services are available, in particular, Indigenous languages and languages of new and emerging communities. However EOC understands that the completion of the National Competency Standards for Interpreters and Translators is still at least 18 months away.

CONCLUSION

The provision of interpreters for Indigenous people for whom English is not the first language and who experience communication difficulties as a result of this, has at best been ad hoc. This paper has clearly shown that there is a considerable need for Indigenous interpreters in all spheres of activity to provide basic services to Indigenous people. Currently, there is an insufficient number of Indigenous interpreters to cater to the needs of Indigenous people, none of whom are trained at a professional level of competence which is required for complex communication exchanges such as in the areas of health and justice. Despite the enormity of the need, even the available Indigenous interpreters are not being fully utilised, reflecting the lack of appreciation of the need for Indigenous interpreters by service providers and the ad hoc nature of the services. Factors which contribute to this situation are provided in the body of this paper. At present there is no effective mechanism in Western Australian for either training Indigenous interpreters or for enabling Indigenous interpreters to be accredited beyond the paraprofessional level, both of which are available to interpreters in most migrant languages.

The financial outlay in establishing a credible Indigenous interpreter service can be considerable. However, the benefits of this outlay will be evident in both the short and medium terms in a variety of ways. Immediate benefit will be seen in ensuring that Indigenous people are afforded natural justice in the court system which may result in fewer convictions and incarcerations. In the health arena the availability of interpreters will assist Indigenous people to better understand the importance of medication leading to improvements in health outcomes.

In the immediate to long term, firstly and most importantly, it will contribute towards Indigenous people, particularly in the remote areas, receiving a level of service that most other Australians take for granted. The improvement in service provision is likely to lead to an equally important benefit of improved outcomes which will contribute to bridging the gap in positive outcomes that currently exists between Indigenous people and non-Indigenous people in every sphere of activity. Thirdly, the availability and utilisation of interpreters in the provision of services to Indigenous people will lead to efficiency in service provision by minimising duplication and wastage. For example, magistrates have stated that they have been required to postpone court cases due to a suitable interpreter not being available. When a credible interpreting service is available the need for this type of postponement will be minimised, making court services more efficient. In the health area too, it is likely that cost efficiencies would be made by fewer hospital readmissions due to more effective service being provided during the initial admission. In addition, the need to hospitalise Indigenous mental health patients as a risk reduction strategy, rather than as a necessary treatment procedure when communication difficulties exist between patient and service provider, can also be minimised. Police too will be more confident about the integrity and credibility of the evidence they obtain for court cases when communication barriers are removed through the use of interpreters, instead of risking its permissibility in court as a result of communication barriers.

While these situations present a sprinkling of likely efficiencies, many more will become apparent when the engagement of interpreters for service delivery to Indigenous people becomes more frequent.

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