

Fair and effective communication with Aboriginal clients and witnesses

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A checklist for new practitioners and overview of useful resources and protocols

NT practitioners will likely be aware of the unique and rich linguistic demographics of the NT; 25% of people in the NT are Aboriginal and nearly 70% of Aboriginal Territorians speak an Aboriginal language at home,¹ meaning that nearly one out of five Territorians speaks an Aboriginal language as their primary language. Kriol and Djambarrpuyngu are the second and third most commonly spoken languages in the NT, followed by Greek as the fourth most commonly spoken language.²

Linguists and Aboriginal interpreters have been working for decades to bridge the communication gap that exists between the (usually) monolingual English speakers who make up the legal profession and fill positions of power in the NT with Aboriginal Territorians whose primary language and worldview is fundamentally different to 'normal' ways of English thinking and communicating. Over recent years, various parts of our legal system have made important steps to improve practices and understanding around these areas of miscommunication. Because of busy practices and high staff turnover, however, many practitioners are still unaware of the resources available, or haven't yet prioritised the time to incorporate these resources and protocols into their practice.

A new lawyer in the NT might be aware that they

need to be upskilled in cross-cultural communication, but won't know where to start. Equipping yourself to minimise negative communication and maximise good communication from the start of your time in the NT will not only help you do your job as a lawyer better (and more ethically), it will give you a much more rewarding time in the NT generally.

In this article, I aim to do two things; 1) set out a recommended language and communication orientation checklist for practitioners who are new to the NT, and 2) list the protocols, resources and research that are particularly relevant for lawyers working with Aboriginal clients and witnesses. This isn't intended to be an exhaustive list, but rather an attempt to highlight documents that are most relevant and useful for NT practitioners. These resources focus primarily on language and communication, rather than on culture, worldview or Indigenous disadvantage. Please let me know if you have suggestions for improving either of these lists.

Identifying and avoiding miscommunication and learning to speak and seek information in clear and appropriate ways are skills that can and should be developed by lawyers in the NT. Like other areas of practice, developing these skills takes knowledge, practice and experience.

Basic orientation checklist



10 MINS

Download and print a copy of the AIS map of Aboriginal languages¹

- Put the map on the wall near your desk for quick reference.
- Read through the list of languages by community for the areas that are relevant for your practice.



1-2 HRS

Attend an Aboriginal Interpreter Service 'Working with Interpreters Training'²

Gives you the basic skills of working with an interpreter and a chance to practice.

This session also highlights other cross-cultural considerations.



20 MINS

Learn some Plain English skills

- Print and read the AIS 'Guide to Plain English'.⁷ Keep it for quick reference.
- Read pages 4-11 of The Plain English Legal Dictionary (NT Criminal Law),⁸ choose 5 definitions relevant to your practice and incorporate the definitions into your practice (in a client letter or client conference for example). Even though the dictionary is focused on criminal law, there are many key words, such as 'lawyer', 'evidence', 'proof', 'adversarial system' that are relevant to other areas of law.



Familiarise yourself with the resources on the following page

Scan through the list of protocols and resources below, so that at a minimum, you're aware of what is available in the event that a case requires more detailed knowledge. Choose one or two resources that are most relevant to your area of practice and read them in detail.



30 MINS

Read the NT Law Society *Indigenous Protocols for Lawyers* (2nd ed)¹

A concise, easy-to-read document that covers key skills like:

- How to decide if you need an interpreter
- How to explain your role to a client
- Basics of Plain English
- Your ethical and professional obligations
- Basic information on Kriol and Aboriginal English



30 MINS

Read Prof Diana Eades' conference paper 'Aboriginalised English: Implications in legal contexts in the Northern Territory' (2015)⁹

This paper provides a concise overview of decades of linguistic experience, written specifically for an NT legal audience.



20 MINS

Read pages 12-29 of 'An Absence of Mutual Respect' (2008)¹⁰

This research paper provides good illustrations of miscommunication with Aboriginal people in the legal system.



Bonus: Buy and read a copy of Prof Diana Eades' book *Aboriginal Ways of Using English* (2013)

This book captures much of the good work done by Prof Eades in relation to communication with Aboriginal speakers of English. A significant amount of the material is focused on legal communication issues, and the book uses court transcripts and cases to illustrate key points.

Note that this book is relevant to communication with Aboriginal people who are first language speakers of Aboriginal languages and English.



15-20 MINS

Ask a field officer, Aboriginal interpreter or staff member from an organisation like ARDS for help pronouncing Aboriginal names and places. **TIP – Ask a first language speaker if you can use your phone to record them saying common names/ places, then you can practice later.**

- Linguists didn't develop consistent spelling conventions across Aboriginal languages, so you'll need to learn several different spelling conventions for the same sound in different languages.
- Remember that sounds and letters are not the same thing.
- Pay particular attention to vowel sounds; Australian English tends to have 18-24 vowel sounds, Aboriginal languages have 3-6 vowel sounds.
- Pay attention to differences between 'r' and 'rr', between 'ŋ' or 'ng' and 'ngg'. Understand the sound made by tj/dj.
- The CLC has a good article on spelling and pronunciation for Central Desert languages.¹¹



20 MINS

Read Russell Goldflam's conference paper 'Ngayulu nyurranya putu kulini: The Legal Right to an Interpreter' (2012)¹²

This paper uses a number of NT cases to illustrate both legal and practical issues related to Aboriginal interpreters in NT courts.

This research paper provides good illustrations of miscommunication with Aboriginal people in the legal system.



Bonus: Enrol in a CDU Yolngu Matha short course¹³

Making an effort to study one Aboriginal language will give you language awareness and communication skills that will be useful in other language contexts.

Information and resources



Protocols/standards

- NT Law Society, *Indigenous Protocols for Lawyers* (2nd ed) (2015)²¹
- NT Supreme Court, *Interpreter Protocols* (2012)²⁴
- NT Local Court, *Interpreter Protocols* (2015)²⁵
- NT Police, *General Order on Interpreters and Translators* (2012)
- NT DPP, *Guideline 11 Witness Assistance Service and Guideline 15 Interpreters*²⁶
- Judicial Council on Cultural Diversity, *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (2017)²⁷



Resources

- Map of Aboriginal Languages in the NT and list of languages by community, Northern Territory Government Aboriginal Interpreter Service²⁸
- 'The Guide to Plain English', Northern Territory Government Aboriginal Interpreter Service²⁹
- *The Plain English Legal Dictionary (NT Criminal Law)*, (2015)³⁰
- *Aboriginal Languages*, Central Land Council website³¹
- 'Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA' (2015), Best-practice guidelines developed by an international group of linguists, psychologists, lawyers and interpreters³²
- Standardised Audio Police Caution recorded in 18 Aboriginal languages³³
 - Standardised Audio Police Caution English front-translation for a suspect in custody³⁴ and a suspect not in custody³⁵
- The CDU Yolngu Studies website³⁶



Government policy documents

- *Language Services Policy*; Northern Territory Government (2012)³⁷
- *Protocol on Indigenous Language Interpreting for Commonwealth Government Agencies*; Department of Prime Minister and Cabinet (2017)³⁸



Articles

- Diana Eades, 'Aboriginalised English: implications in legal contexts in the Northern Territory' (2015), NT Supreme Court Language and the Law Conference Paper.²⁸
- Diana Eades, 'Judicial Understandings of Aboriginality and Language Use' (2016), *The Judicial Review* 12(4).³⁰
- Michael Walsh, (2008) 'Which Way? Difficult Options for Vulnerable Witnesses in Australian Aboriginal Land Claim and Native Title Cases' (2008) *Journal of English Linguistics*. Volume 36 Number 3, 239-265.
- Russell Goldflam, 'Ngayulu nyurranya putu kulini: The Legal Right to an Interpreter' (2012), NT Supreme Court Language and the Law Conference Paper³¹
- David Moore, 'Unfriendly terms in court: Aboriginal language and interpreting in the Northern Territory' (2014) *Indigenous Law Bulletin*. Volume 8, Issue 12, 8-10.
- Ben Grimes and Peter Bellach, 'Interpreting at Bush Courts – the new model' (2013) *Balance (Law Society Northern Territory)* 1/2013, 23-26.
- Les McCrimmon, 'The Uniform Evidence Act and the Anunga Guidelines: Accommodation or Annihilation?' (2011) 2 NTLJ 91.
- Michael Cooke, 'Aboriginal evidence in the cross-cultural courtroom' (1995) *In Language in evidence: issues confronting Aboriginal and multicultural Australia* edited by Diana Eades. Sydney: UNSW Press, 55-96.



Books and research

- Diana Eades, *Sociolinguistics and the Legal Process* (Multilingual Matters, 2010).
- Diana Eades, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013).
- Michael Walsh and Colin Yallop (eds), *Language and Culture in Aboriginal Australia* (Aboriginal Studies Press, 2007).
- Michael Cooke, *Indigenous Interpreting Issues for Courts* (Australian Institute of Judicial Administration, 2002).³²
- Alex Bowen, "It's your rights, ok?": explaining the right to silence to Aboriginal suspects in the Northern Territory (MA Thesis, Australian National University, 2016)
- Ben Grimes, *Telling my story in court: how differences in narrative discourse patterns impact the way evidence from Aboriginal witnesses is received in court* (MA Thesis, University of New England, 2017).
- Aboriginal Resource and Development Services, *An Absence of Mutual Respect* (2008)³³
- Commonwealth Ombudsman, *Talking in Language: Indigenous language interpreters and government communication*, Report No 05, 2011.³⁴

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- 1 http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/IQS7#languageLink
- 2 <http://www.abs.gov.au/ausstats/abs@nsf/mediareleasesbyCatalogue/C73D7CC81CA1FD2FCA258148000A4067?OpenDocument>
- 3 <https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>
- 4 http://lawsocietynt.asn.au/images/stories/publications/indigenous_protocols_for_lawyers.pdf
- 5 <https://www.clc.org.au/index.php?/articles/info/aboriginal-languages/>
- 6 <https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/working-with-interpreter-training>
- 7 <https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-language-and-plain-english-guide>
- 8 <http://www.supremecourt.nt.gov.au/conferences/documents/presenter-info/PLAIN%20ENGLISH%20LEGAL%20DICTIONARY%20-%20The%204249a55b.pdf>
- 9 <http://www.supremecourt.nt.gov.au/conferences/documents/presenter-info/Diana%20Eades.pdf>
- 10 https://ards.com.au/uploads/Downloads/114/39-114.Absence_of_mutual_respectFINAL.pdf
- 11 http://www.supremecourt.nt.gov.au/about/documents/r_goldflam_ngayulu_nyurranya_putu_kulini.pdf
- 12 <http://learnline.cdu.edu.au/yolngustudies/study.html>
- 13 Above n 4.
- 14 <http://www.supremecourt.nt.gov.au/media/documents/InterpreterProtocols.pdf>
- 15 <http://www.localcourt.nt.gov.au/documents/MagistratesCourtInterpreterProtocols.pdf>
- 16 <http://www.dpp.nt.gov.au/about-us/Publications/DPP%20Guidelines%20-%20Current%202016.pdf>
- 17 <http://jccd.org.au/wp-content/uploads/2018/02/JCCD-Interpreter-Standards.pdf>
- 18 Above n 3.
- 19 Above n 7.
- 20 Above n 8.
- 21 Above n 5.
- 22 <https://www.aaal.org/guidelines-for-communication-rights>
- 23 <https://dhcd.nt.gov.au/our-services/aboriginal-language-police-cautions-aboriginal-interpreter-service>
- 24 https://dhcd.nt.gov.au/_data/assets/pdf_file/0007/433393/ENG001a-Standardised-Audio-Police-Caution-SAPC-in-custody.pdf
- 25 https://dhcd.nt.gov.au/_data/assets/pdf_file/0008/433367/ENG001b-Standardised-Audio-Police-Caution-SAPC-not-in-custody.pdf

- 26 <https://learnline.cdu.edu.au/yolngustudies/>
- 27 Currently not available online; contact the Northern Territory Government Department of Housing and Community Development or the Northern Territory Aboriginal Interpreter Service.
- 28 <https://www.pmc.gov.au/sites/default/files/publications/protocol-indigenous-language-interpreting.pdf>
- 29 Above n 9.
- 30 https://www.judcom.nsw.gov.au/wp-content/uploads/2016/05/Judicial_understanding_Aboriginality_Language_12TJR_.pdf
- 31 Above n 11.
- 32 http://www.naclc.org.au/cb_pages/files/Cooke%20-%20Indigenous%20interpreting%20issues%20for%20courts.pdf
- 33 Above n 10.
- 34 https://www.ombudsman.gov.au/_data/assets/pdf_file/0014/30281/April-2011-Talking-in-Language-Indigenous-language-interpreters-and-government-communication.pdf

NOTICE

Contract of Sale

Members please note that a revised Contract of Sale, approved by the Council of the Law Society Northern Territory on 31 May 2018 is now available in the Members Only section of the Society's website.