

# **Lawyers working with interpreters in First Nations languages : a shared responsibility**

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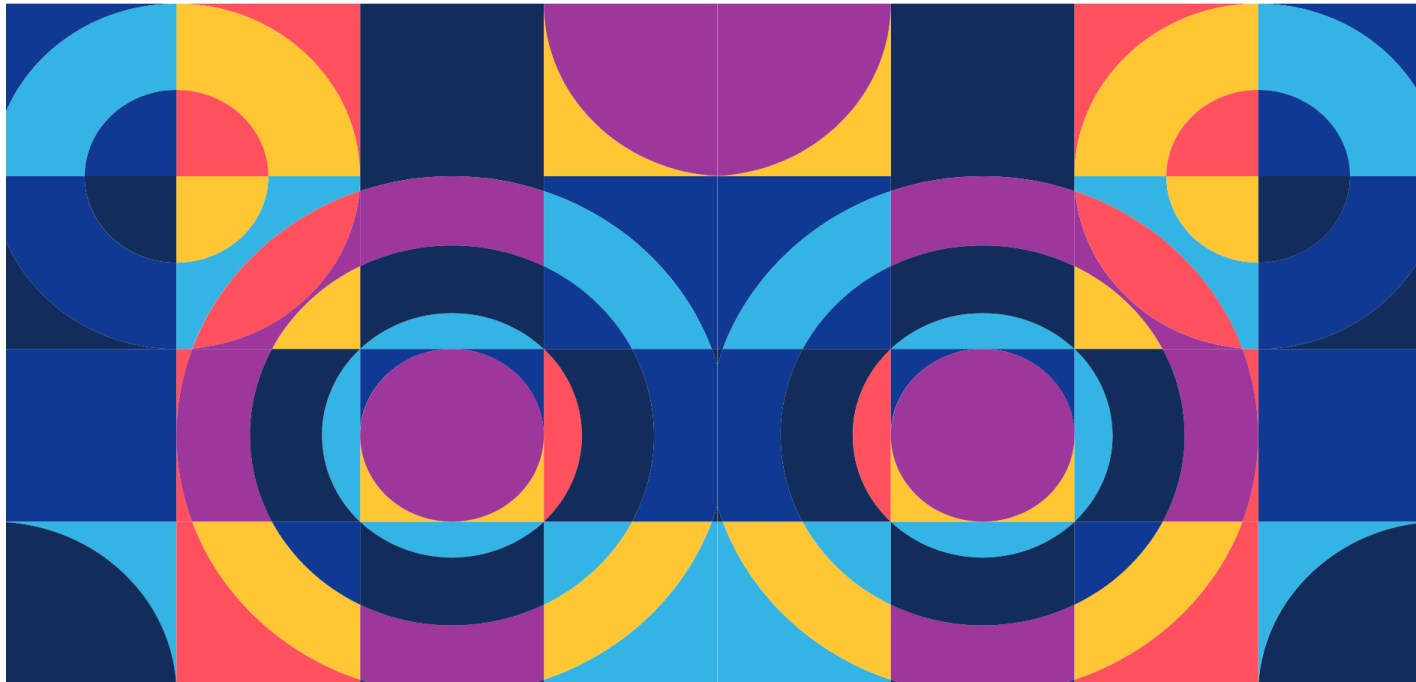


# Introduction

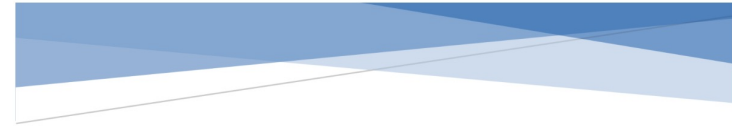
- Literature and policy on effective interpreted communication in court: the onus on the interpreter
- Literature on legal and court interpreting in Australian Aboriginal languages
- Interpretation users' role and responsibility:  
*Recommended National Standards for Working with Interpreters in Courts and Tribunals* (JCCD, 2nd ed. 2022)

Recommended National Standards for  
**Working with Interpreters  
in Courts and Tribunals**

SECOND EDITION

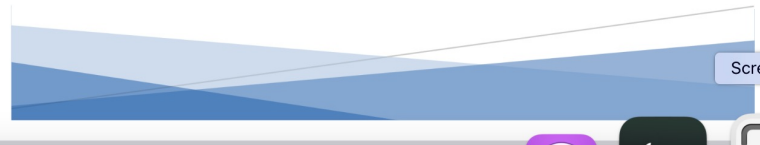


# Interpreter Protocols Northern Territory Local Court (2019)



## Interpreter Protocols

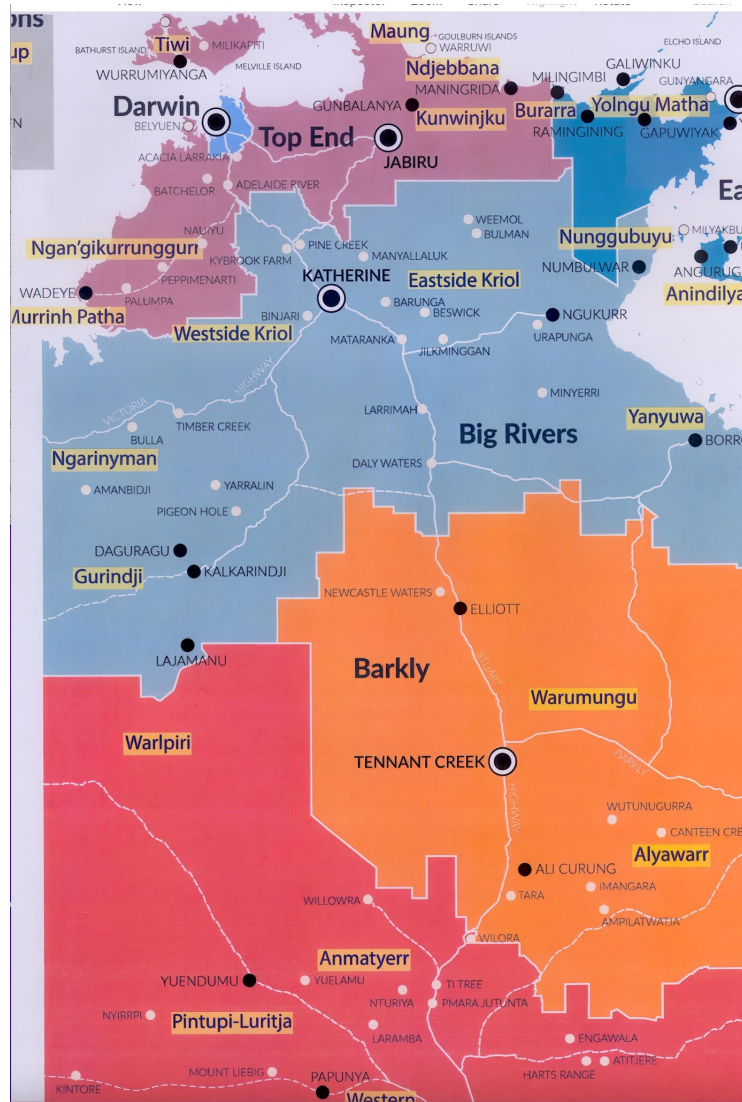
Northern Territory Local Court





## **ARC Linkage research project *Judicial officers working with interpreters in courts and tribunals: Implications for access to justice***

- What is the ARC Project about? (2020-22)
- NT field trip (2023): Observations of interpreted proceedings in Australian Aboriginal languages in a regional Local court (Katherine), Local and Supreme courts of NT (Darwin), and a bush court (Wadeye/Port Keats)
- 15 interviews with interpreters in Aboriginal languages, nine with lawyers (including a prosecutor), two with judges, five with AIS administrators, four with experts; 17 observations in Wadeye, three in Katherine; and four in Darwin Supreme court
- Interpretation in languages observed: Kriol, Yolngu Matha, Murrinh Patha, Burrara, Ngarinyman, Djambarrapuingu, Kriol/Guriindji



# Aboriginal Interpreter Service (AIS)

- Recruitment and training of interpreters
- Training in professional ethics and discourse management
- NAATI certification
- AIS initially observes new interpreters
- No quality control at a later stage
- Feedback from users

# Katherine Courthouse





Inside  
Katherine  
local court



# How do AIS interpreters work in court?

- NT NAAJA or Legal Aid lawyers book interpreters from AIS
- AIS on-site interpreters rostered in courts (Katherine, Darwin local, bush court)
- Remote interpreting in 'unusual languages'

# The impact of court interpreting on communication

- Mixed reports and observations about interpretation competence
- Divergent levels of bilingual proficiency and interpreting skills
- Interpreting modes: short consecutive; limited if any whispered simultaneous interpreting; sight translation by few
- Local courts: Interpretation of isolated stages, i.e., plea and sentencing – only when the judge addresses the defendant
- Supreme court: updating defendants on legal arguments
- Observation of no interpretation



# Wadeye/Port Keats courthouse





# Other challenges

- Interpreter (un)availability and pressures : kinship relations ('avoidance relations), clan tensions
- Explaining **impartiality**: misunderstanding of the interpreter' role; are interpreters blamed for the outcome?
- Interpreting **legal concepts** and procedures in the absence of equivalents: *bail, breech [of bail], suspended sentence, report, jail, judge, court, consent, medical report* – loan word or paraphrase?  
*Pleading guilty*
- Discourse management – interpreters interrupting proceedings to ask for explanation of 'big words' and to repeat/speak more slowly. Reports v observations. Interpreter (in)visibility.
- The challenges of remote interpreting (reception, unprofessional settings)

# Does the presence of an interpreter ensure that the client is 'linguistically present'?

- Incomplete interpretation over the phone.
- No interpretation in dock or during shorter hearings (e.g., no justification of sentence)
- 'Thank you for coming today, Mr X.' [interpreter begins to interpret as the judge continues to address the defendant who stands up and leaves]
- Defendant turns to the interpreter who has just interpreted the sentence, asking him something. They involve the lawyer for the explanation of the sentence in court.
- Outside the court, a defendant is unable to repeat the bail conditions that had been explained to him.

**How do courts  
and judicial  
officers work  
with interpreters?**



**Northern Territory Supreme  
Court in Darwin**

# Judicial officers communicating through an interpreter

- *Recommended National Standards* for Judicial officers
- Are JOs aware of and adhere to the *RNS*?
- Observations and interviews in the NT:
  - Different practices by different judges
  - From awareness and acknowledgement of court interpreters to their disregard
  - Switching from legal language to lay persons' English (i.e., sentencing)
  - Switching between the 3<sup>rd</sup> to 1<sup>st</sup> person
  - Inconsistent speech accommodation: irregularly slowing down and pausing for interpretation

# How do legal professionals work with interpreters?



NAAJA office in Katherine court

# The *RNS* Standards 21-26 for legal professionals

- 21.1 To ensure that **proceedings are conducted fairly and that there is no miscarriage of justice**, legal practitioners should ensure an interpreter is provided to parties and witnesses of limited English proficiency.
- 22.1 To **maximise the ability of interpreting services to provide an appropriate interpreter** for a particular case, the party seeking to engage the services of the interpreter should give **as much notice as possible**.
- 24.1 The legal representatives for a party are to use their best endeavours to ensure that interpreters who are engaged are familiar with, understand and are willing to adopt the Code of Conduct for Interpreters in Legal Proceedings and **understand their role as officers of the court** or tribunal.

- 24.2 The legal representatives for a party should ensure that **interpreters** (whether or not engaged by those legal representatives) are **appropriately briefed on the nature of the case prior to the commencement** of proceedings. The interpreter should be provided with all **relevant materials**, including those that the interpreter will need to either sight translate or interpret, subject to Standard 26.
- 24.3 An interpreter should be afforded a reasonable amount of **time to familiarise themselves with materials** that are relevant for the process of interpretation in the particular case.
- 25.1 Legal practitioners should use their best endeavours to **use plain English to communicate clearly and coherently during a proceeding**. Legal practitioners should **speak at a speed and with appropriate pauses** so as to facilitate the discharge by the interpreter of their duty to interpret.
- 26.2 Legal practitioners should **not require interpreters to sight translate** during the course of a hearing without prior notice (“sight unseen”) long, complex or technical documents. Sight unseen translation by interpreters of even simple or short documents should be avoided as far as possible.



# Legal practitioners in NT proceedings: different practices

- NAAJA/Legal Aid book an interpreter through AIS for court and preceding conference(s)
- Engaging with the interpreter and briefing before court
- **Outside court:** lawyer explains to the defendant what to expect; uses 'plain English', maintains a reasonable pace of speech and pauses to allow interpretation. After court, provides explanation, through the interpreter, also in 'plain English' (e.g., short sentences, clear message, one idea per sentence).
- A barrister's view: an imperfect, difficult process, different level of interpreters' proficiency, different interpreters. Expectations of accurate translation cannot be met.



# Inside the courtroom: legal professionals' voices

- Interpreters' role explained only to the jury
- Are defendants 'linguistically present'? - 'No, we don't pause enough. Interpreters don't interpret, most interpreters sit silent in dock – it is difficult to interpret legal argument. Interpreters have to be proactive and put up their hand. Competent interpreters do that so they can interpret. **The courts rush through and expect the lawyer to explain after.'**

# Modifying the language during examination/cross examination

- Trying to provide a clear explanation; using 'plain English' (and in one case) speaking Aboriginal English when necessary. Being mindful of not appearing to be disrespectful.
- Lawyers have been trained to avoid double negatives; they are being pulled up by a judge - hard as it's the main tool of cross examination. Modifying the cross-examination by making sure that there is only one concept in a question.
- Avoid or replace 'puttage' by adding a response trigger that can be interpreted explicitly, 'What do you say to this?'
- There should be a standard way of explaining concepts and procedures.

## Ensuring and checking client's comprehension

- Impact of the lack of interpretation or poor interpretation on the client's understanding of the proceedings: 'the bulk of the work with the client is done before court.'
- Lawyers check with the clients if they understand by asking to explain it back to them. In bush court the defence lawyer asks the defendant after court to explain the rules of the bail. 'What is the first rule? What else?'
- **JO:** Ms X, I expect you to go out and check with your client with the interpreter. - Yes, Your Honour, we'll do that.
- 'It would be unworkable in NT to have a different interpreter before, and during court.'

# What can lawyers do better to ensure effective communication?

- Speak to the interpreter before court, give proper briefing, ensure that enough time is left to talk
- Ongoing training and workshops/PD on working with interpreters, including WIT delivered by AIS
- Involvement in 'Blurred borders' – an initiative with WA on presenting pictorial ways of explaining legal concepts and procedures:

<https://blurredborders.legaid.wa.gov.au/>

# The need for a two-pronged approach

- Aiming towards a better selection of prospective **interpreters**, ensure better education and training for interpreters, including a proper understanding of the legal process and the necessary skills, membership in AUSIT
- Consistent adherence to *RNS* by the courts, JOs and lawyers, working with interpreters as a team, **meeting the interpreters' requirements in court**, and ensuring cultural awareness.

