

# **INTERPRETING IT ALL WRONG: THE CONSEQUENTIAL FAILURE OF AUSTRALIA'S LEGAL SYSTEM TO SUPPORT THE IMPORTANCE OF ABORIGINAL INTERPRETERS**

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A paper exploring access to Aboriginal interpreters in civil law matters  
in the Northern Territory

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## I INTRODUCTION

Accessing an interpreter in legal proceedings has often been framed as fundamental to observing the principles of procedural fairness,<sup>1</sup> or ensuring access to justice for all.<sup>2</sup> In Australia's civil law system, there are a number of barriers which hinder the ability of an Aboriginal person to access an interpreter. In addition to impinging on procedural fairness, the failure to provide Aboriginal people with an interpreter presents a much broader issue. By denying access to an interpreter, Australia's legal system passively perpetuates and reinforces the notion of 'whiteness'. In doing so, it contributes to continuing Australia's dark past of culturally genocidal practices towards First Nations peoples. Section II of this paper elaborates on this notion of whiteness and how it is maintained where an Aboriginal person cannot adequately access an interpreter. Section III explores some of the key existing barriers that prevent sufficient access to an interpreter in the Northern Territory ('NT'). Section IV of this paper highlights how Australia's legal and political institutions are ultimately responsible for the prevalence of many of those barriers. Section V suggests possible avenues to improve access to Aboriginal interpreters in the NT.

## II UNDERSTANDING THE ISSUE

An interpreter engages in a process of conveying spoken or signed language from one language (the source) to another (the target), and vice-versa.<sup>3</sup> In the Australian judicial system, the target language is exclusively English. This paper focuses on Aboriginal interpreters in the NT – specifically, those who engage in conveying and communicating spoken language from an Aboriginal language to English, and vice-versa. In civil law matters, unlike criminal proceedings,<sup>4</sup>

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<sup>1</sup> Judicial Council on Cultural Diversity, *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (Report, 2017) 105 ('*Recommended National Standards*').

<sup>2</sup> See Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 320.

<sup>3</sup> *Recommended National Standards* (n 1) 3.

<sup>4</sup> In criminal matters the right to an interpreter is firmly established. It is a strict principle and one that bars a matter from proceeding: See *Ebatarinja v Deland* (1998) 194 CLR 444, [27]; Judicial Council on Cultural Diversity (n 1) 105.

there is no established right to an interpreter.<sup>5</sup> Instead, accessing one is largely a ‘matter in the exercise of the discretion of the ... judge to determine’.<sup>6</sup>

At a basic minimum, an interpreter needs to be able to facilitate effective communication between all persons involved in a legal matter (eg client ↔ lawyer, client ↔ judge/judicial officers/the court, client ↔ interpreter, lawyer ↔ interpreter) so that communication operates at a level of clear and mutual understanding.<sup>7</sup> Oftentimes, the lack of a qualified and professional interpreter can have a negative impact on reaching this threshold of effective communication. Thus, what constitutes *sufficient* access to an Aboriginal interpreter should entail the following. Firstly, the interpreter should abide by the Australian Institute of Interpreters and Translators’ (‘AUSIT’) Code of Ethics. The code consists of general principles – such as impartiality, confidentiality and professionalism – that govern the practice of the interpreting profession.<sup>8</sup> All interpreters employed by the NT’s Aboriginal Interpreter Service must follow this code.<sup>9</sup> Secondly, an interpreter should be formally trained (ideally with a Diploma of Interpreting) and/or hold national certification in interpreting through the National Accreditation Authority for Translators and Interpreters (‘NAATI’). Finally, given this paper focuses on interpreters in civil law matters, a *sufficient* access to an interpreter in this context should require that an interpreter is well-versed in interpreting in legal settings.

Denying an interpreter, or heavily impeding access to one, carries the potential legal consequence of not affording procedural fairness.<sup>10</sup> However, the problem is larger than that. A lack of sufficient access to an Aboriginal interpreter, where that interpreter is manifestly needed, equates to the

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<sup>5</sup> *Recommended National Standards* (n 1) 105.

<sup>6</sup> *Dairy Farmers Co-operative Milk Co Ltd v Acquilina* (1963) 109 CLR 458, 464.

<sup>7</sup> See Biyu (Jade) Du, ‘Multilingualism in legal space: the issue of mutual understanding in ELF communication between defendants and interpreters’ (2019) 16(3) *International Journal of Multilingualism* 317, 317; Law Society Northern Territory, *Indigenous protocols for lawyers* (Report, 2015) 6; Darwin Community Legal Service, *Use of Interpreters Policy* (Policy, 2021), 2.

<sup>8</sup> Australian Institute of Interpreters and Translators Inc, ‘AUSIT Code of Ethics and Code of Conduct’ (2012), 4 <<https://ausit.org/code-of-ethics/>>.

<sup>9</sup> ‘Aboriginal interpreter training’, *NT.GOV.AU* (Web Page, 8 January 2016) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-interpreter-training>>.

<sup>10</sup> Specifically, the court must make sure it follows the *audi alteram partem* rule, that is, that ‘each party is given an opportunity to make submissions and lead evidence’. This rule would be obstructed, and procedural fairness would not be observed, if the parties were limited or prevented in ‘giving or calling evidence due to the absence of an interpreter’: *Recommended National Standards* (n 1) 105.

denying of an Aboriginal person a sufficient ability to conceptualise and speak of his/her experiences adequately in a legal setting.<sup>11</sup> For many First Nations peoples, particularly whose first language is not English, ways of communicating and detailing experiences may be guided and shaped by a knowledge system that is distinct from the Western, Anglo-based knowledge system that underpins our legal system.<sup>12</sup> As Martin Nakata, a leading Torres Strait Islander academic, notes, Indigenous knowledge systems and Western knowledge systems work off different notions of ‘what constitutes knowledge, [the] sources of evidence for constructing knowledge, what constitutes truth, [and] how truth is to be verified’.<sup>13</sup> It is ignorant to expect that when an Aboriginal person confronts an Australian legal setting without an interpreter that they will be intimately familiar with its practices, its methods of communication and its ways of framing knowledge.<sup>14</sup> For example, within Australia’s legal system there is an assumption that the most effective approach to find out information about a matter is to ask questions; the greater the number of questions, the more effective a person may be in finding out a lot of information.<sup>15</sup> However, amongst certain Aboriginal communities, asking many questions is rude and is a ‘very ineffective way of finding out information’.<sup>16</sup>

Where an adequate interpreter cannot be obtained, the legal system passively renders the experiences of an Aboriginal person unintelligible in a legal setting. It forces them to operate within the walls of its own framework – normalising ways of communicating and conceptualising experiences that it is familiar with and grounded in (ie those detailed from an Anglo, English-speaking background). Thus, as part of the following section demonstrates, the presence of non-English speakers is tacitly perceived by the courts as a burden or a problem in civil law matters and one which the relevant person needs to address themselves. In doing this, Australia’s legal institutions are normalising and reinforcing ‘whiteness’ – the structures and practices which function to protect and maintain white, Anglo privilege and dominance.<sup>17</sup> In particular regards to

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<sup>11</sup> See generally Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press, 2007) 147.

<sup>12</sup> See Diana Eades, 'Taking evidence from Aboriginal witnesses speaking English: Some sociolinguistic considerations' [2015](126) *Precedent* 44, 46.

<sup>13</sup> Martin Nakata, 'The Cultural Interface' (2007) 36(S1) *The Australian Journal of Indigenous Education* 7, 8.

<sup>14</sup> See Jill Stauffer, *Ethical Loneliness* (Columbia University Press, 2015) 101.

<sup>15</sup> Eades (n 12) 46.

<sup>16</sup> *Ibid.*

<sup>17</sup> Anna Lindner, 'Defining Whiteness: Perspectives on Privilege' (2018) 18(2) *gnovis* 43, 44.

First Nations peoples, this notion presents an even more troubling dimension. Many of Australia's historical culturally genocidal policies towards Indigenous people – perpetrated and reinforced by our political and legal institutions – were directed at eliminating First Nations identity and culture in order to promote and reinforce a homogenous, white culture (ie whiteness).<sup>18</sup> Barriers that prevent sufficient access to an interpreter are one such example of how 'whiteness' continues to be normalised in Australia's legal institutions and how culturally genocidal practices towards First Nations peoples continue to passively perpetuate.<sup>19</sup>

### III BARRIERS TO ACCESSING ABORIGINAL INTERPRETERS IN THE NT

Whilst there are a number of barriers to accessing an Aboriginal interpreter in the NT, this paper focuses on barriers which exist from the court's end and the interpreter's end.

#### A *On the Interpreter's End*

The primary service which provides Aboriginal interpreters in the NT is the Aboriginal Interpreter Service ('AIS').<sup>20</sup> Overseen by the NT Department of Local Government, Housing and Community Development, the AIS employs approximately 208 interpreters (52 of whom are nationally accredited or hold a Diploma of Interpreting) which cover close to 100 Aboriginal languages throughout the NT.<sup>21</sup>

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<sup>18</sup> See generally Aileen Moreton-Robinson, 'The paradox of race in Australian legal thought: making the invisible visible' (Alice Tay Lecture Series, Herbert and Valmae Freilich Project for the Study of Bigotry, 23 September 2021) <[https://www.youtube.com/watch?v=03ergrN9UX8&ab\\_channel=Arts%26SocialSciencesatANU](https://www.youtube.com/watch?v=03ergrN9UX8&ab_channel=Arts%26SocialSciencesatANU)>; Shamiran Mako, 'Cultural Genocide and Key International Instruments: Framing the Indigenous Experience' (2012) 19(2) *International Journal on Minority and Group Rights* 175, 178.

<sup>19</sup> See generally Irene Watson, 'Buried alive' (2002) 13(3) *Law and Critique* 253, 253.

<sup>20</sup> Letter from CEO, National Accreditation Authority for Translators and Interpreters (NAATI), to National Indigenous Australians Agency Employment Branch, 10 September 2021, 3 <<https://www.niaa.gov.au/sites/default/files/submissions/isep-sub-014-naati.pdf>>.

<sup>21</sup> Northern Territory Government Department of Local Government, Housing and Community Development, *Strengthening our Community* (Annual Report, 2019-20) 21; 'About the Aboriginal Interpreter Service', *NT.GOV.AU* (Web Page, 25 June 2021) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/about-the-aboriginal-interpreting-service>>.

## 1 *Limited Tertiary Education Opportunities*

Limited tertiary education opportunities for interpreters to undertake training in Aboriginal languages may affect the provision of *sufficient* interpreting services for civil law matters. In a 2019 analysis of TAFE institutes, Stern finds only TAFE South Australia ('TAFESA') offers a Diploma of Interpreting that includes training 'dedicated to Aboriginal languages interpreting'.<sup>22</sup> The course is funded by the South Australian Government, but only South Australian residents are eligible to enrol.<sup>23</sup> Historically, the NT Batchelor Institute of Indigenous Tertiary Education offered a Diploma of Interpreting in Indigenous languages.<sup>24</sup> However, this course is no longer offered.<sup>25</sup> Merely one tertiary program Australia-wide (and only to SA residents) is concerning, and may explain why less than one quarter of interpreters with the AIS hold a Diploma of Interpreting.

## 2 *Limited Number of NAATI-Certified Interpreters for Aboriginal Languages*

Certification from the NAATI is seen as the benchmark for interpreting competence.<sup>26</sup> The NAATI is responsible for 'setting, maintaining and promoting high professional standards' and is recognised nationally and globally as a quality assurance scheme for interpreter services.<sup>27</sup> The NAATI currently has 123 certified interpreters in 20 Aboriginal languages throughout the NT.<sup>28</sup> There are over 100 Aboriginal languages in the NT,<sup>29</sup> meaning less than 20% have NAATI-certified interpreters. Not only is this gap concerning as a barrier in itself, but it is further

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<sup>22</sup> Ludmila Stern and Xin Liu, 'Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers' perspectives on their role' (2019) [July 2019](32) *The Journal of Specialised Translation* 90, 93; Ludmila Stern and Xin Liu, 'See you in court: how do Australian institutions train legal interpreters?' (2019) 13(4) *The Interpreter and Translator Trainer* 361, 376.

<sup>23</sup> TAFESA, 'Interpreting Skills for NAATI Certification (Indigenous languages - Pitjantjatjara/Yankunytjatjara)', *Languages, Interpreting and Translating* (Web Page) <[https://www.tafesa.edu.au/xml/course/sc/sc\\_T083682715.aspx](https://www.tafesa.edu.au/xml/course/sc/sc_T083682715.aspx)>.

<sup>24</sup> Letter from CEO, National Accreditation Authority for Translators and Interpreters (NAATI), (n 20) 6.

<sup>25</sup> *Ibid.*

<sup>26</sup> Stern and Liu, 'Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers' perspectives on their role' (n 22) 12.

<sup>27</sup> 'What We Do', NAATI (Web Page, 2021) <<https://www.naati.com.au/about-us/what-we-do/>>.

<sup>28</sup> Email from Project Manager, Indigenous Interpreting Project, NAATI, to Angus Mackie-Williams, 30 September 2021.

<sup>29</sup> 'Aboriginal languages in NT', *NT.GOV.AU* (Web Page, 19 July 2018) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>>.

troublesome that the level of certification for interpreting in Aboriginal languages is limited compared to other non-Indigenous languages. Certification is only offered at a provisional certified level,<sup>30</sup> which merely requires the ability to ‘transfer non-complex, non-specialised messages from a source language into a target language’.<sup>31</sup> According to the NAATI this is a ‘strategic decision’ based on ‘the need for more certified interpreters at this level’, and ‘the opportunity cost of offering ... more technical certifications, given the limitations of [its] current funding’.<sup>32</sup> Nevertheless, it still brings into doubt how provisionally certified interpreters would be intimately familiar with working in a specialised, detailed and complex setting that is interpreting in civil law matters.<sup>33</sup>

### 3 *Limited Training for Interpreters in Legal Settings*

Training for Aboriginal interpreters in legal settings faces some limitations.<sup>34</sup> Stern argues that there is little evidence to suggest that language service providers (‘LSPs’), such as the AIS, are ‘able to provide sufficient training in legal interpreting’.<sup>35</sup> Unfortunately, the burden often falls on providers to familiarise their interpreters with a legal environment, as tertiary institutions (eg TAFESA) include basic legal components to their programs that do not give their graduates a sufficient ability to accept assignments in a specialised legal setting.<sup>36</sup> However, short, on-the-spot legal interpreting training run by LSPs is likewise ‘insufficient to prepare interpreters to work competently’ in this area.<sup>37</sup> A ten-day training course run for novice legal interpreters in South Africa found that the training was insufficient in improving interpreters’ understanding of legal jargon, ‘especially in fast-paced cross examination’, and their handling of pressure in a courtroom environment.<sup>38</sup> Legal interpreting training conducted by the AIS may encounter a similar problem.

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<sup>30</sup> Email from Project Manager, Indigenous Interpreting Project, NAATI (n 28).

<sup>31</sup> ‘Certified Provisional Interpreter’, NAATI (Web Page, 2021) <<https://www.naati.com.au/become-certified/certification/certified-provisional-interpreter/>>.

<sup>32</sup> Email from Project Manager, Indigenous Interpreting Project, NAATI, (n 28).

<sup>33</sup> See Xin Liu and Sandra Hale, ‘Achieving accuracy in a bilingual courtroom: the effectiveness of specialised legal interpreter training’ (2018) 12(3) *The Interpreter and Translator Trainer* 299, 299.

<sup>34</sup> See Stern and Liu, ‘Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers’ perspectives on their role’ (n 22); Stern and Liu, ‘See you in court: how do Australian institutions train legal interpreters?’ (n 22).

<sup>35</sup> Stern and Liu, ‘Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers’ perspectives on their role’ (n 22) 115.

<sup>36</sup> Stern and Liu, ‘See you in court: how do Australian institutions train legal interpreters?’ (n 22) 382-3.

<sup>37</sup> Stern and Liu, ‘Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers’ perspectives on their role’ (n 22) 115.

<sup>38</sup> *Ibid* 96.

After passing a generalised induction session and subsequent 10 hour on-the-job observation, the AIS offers opportunities for interpreters to undertake a 3-day legal training course.<sup>39</sup> Whilst interpreters cannot undertake legal interpreting jobs unless they have passed this training,<sup>40</sup> the course is almost exclusively focused on understanding criminal law matters.<sup>41</sup> Thus, the extent to which this training equips interpreters to be experienced and confident in interpreting in civil law contexts is brought into doubt by Stern's analysis.

#### 4 *Remoteness*

Even if one is able to access a sufficiently qualified and experienced Aboriginal interpreter in legal settings, the issue of remoteness poses a further challenge. Whilst the AIS offers a combination of video and face-to-face interpreting, 'in cases of remote communities this can involve delay depending on access and technology availability'.<sup>42</sup> The majority of AIS interpreters in remote areas are casual employees, with permanent staff primarily located in major regional centres.<sup>43</sup> Retaining casual staff on a regular basis and even the losing/misplacing of mobile phones are key issues confronting the AIS in being able to arrange an interpreter to be available on site, especially in remote areas.<sup>44</sup> Furthermore, limited on-site interpreting in remote areas may further give rise to certain financial barriers to accessing an interpreter. The AIS may require the person procuring the services of an interpreter to be responsible for travel and accommodation fees if an interpreter needs to travel to be on-site.<sup>45</sup>

Video or phone interpreting may be posited as a solution. However, not only are technical difficulties a frequent problem,<sup>46</sup> but the very nature of video or phone interpreting faces its own limitations – especially certain communication deficiencies (eg limited body language, gestures,

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<sup>39</sup> Conversation with Aboriginal Interpreter Service Training Manager (Angus Mackie-Williams, Phone Call, 8 October 2021).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Commonwealth of Australia, *National Indigenous Languages Report* (Report, 2020) 75.

<sup>43</sup> Conversation with Training Manager (n 39).

<sup>44</sup> *Ibid.*

<sup>45</sup> 'Fees for Aboriginal Interpreter Service', *NT.GOV.AU*, 8 October 2020)

<<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/fees-for-aboriginal-interpreter-service>>.

<sup>46</sup> *National Indigenous Languages Report* (n 42) 75.

eye contact) – compared to in-person interpreting.<sup>47</sup> This may have an impact on reaching a level of clear and mutual understanding – itself constituting an inadequate ‘access’ to an interpreter.

## 5 *The Consequence: Limited Access to Available and Qualified Aboriginal Interpreters?*

The aforementioned problems snowball to the extent that accessing a qualified and well-experienced interpreter in legal settings can be difficult. Even accessing an interpreter full-stop is challenging; the AIS ‘frequently receives requests for interpreting ... services that they are unable to fill’.<sup>48</sup> This gap becomes ‘even more pronounced when talking about demand for NAATI-certified interpreters’.<sup>49</sup> The National Indigenous Languages Report notes that an ‘inadequate number of qualified professionals’ is a key reason for why family and community members are ‘often called on to provide translating and interpreting services’.<sup>50</sup> This in turn can give rise to a further problem that impedes *sufficient* access – conflicts of interest. Conflicts of interests may violate the necessity of impartiality for an interpreter – a fundamental requirement for *sufficient* interpreting services.

### B *On the Courts’ End*

#### 1 *The NT’s Interpreter Protocols*

The preamble to the NT’s Local Court protocols maintains that, due to ‘fundamental principles of fairness and equity’ and in order to ensure a fair trial, no person should be disadvantaged in proceedings before the Court, nor in understanding its procedures, ‘because of a language or other communication barrier’.<sup>51</sup> However, unless the matter relates to child protection and/or adult guardianship, the protocols do not establish any ultimate responsibility on the courts to engage an interpreter in civil law matters. Instead, the burden largely rests on the person/relevant party to acquire an interpreter themselves. Whilst bush court locations have established court interpreter

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<sup>47</sup> See eg Eli Feiring and Stine Westdahl, 'Factors influencing the use of video interpretation compared to in-person interpretation in hospitals: a qualitative study' (2020) 20(856) *BMC Health Services Research* 1, 1.

<sup>48</sup> Letter from CEO, National Accreditation Authority for Translators and Interpreters (NAATI), (n 20) 3.

<sup>49</sup> *Ibid* 2.

<sup>50</sup> *National Indigenous Languages Report* (n 42) 74.

<sup>51</sup> Local Court of the Northern Territory, *Interpreter Protocols*, 11 July 2019, 3.

rosters (where the Court will book interpreters) for Aboriginal languages in place, if an interpreter is not able to provide their services (eg due to a required language not being available) then ultimately the burden falls back to the relevant party to procure an interpreter.<sup>52</sup>

## 2 *The Shortcomings of the Existing Interpreter Protocols*

Placing the burden on the person coming before the court to procure an interpreter seems at odds with the protocols' commitment to ensuring that no one should be disadvantaged due to a language or communication barrier.<sup>53</sup> If the protocols are supposedly committed to the latter, why then leave the ultimate responsibility with the parties to procure an interpreter? It seems reasonable to suggest that a key message conveyed here is that the courts are passively encouraging people to speak English – as this will be the least burdensome on the system and the most efficient way to progress civil law matters through the courts. It further suggests that if a person or party coming before the court is unable to communicate within the practices and ways of communicating the court is embedded in then that is a problem for them, and one that they must seek to alleviate themselves, rather than something that the courts will take centre stage to address. This places immense pressure on an Aboriginal person seeking legal assistance.

Unfortunately, this problem is not restricted to the NT; it permeates Australia-wide across 6 out of the 7 states and territories and into the federal courts. For all other Australian states and territories except Tasmania,<sup>54</sup> the ultimate responsibility to acquire an interpreter similarly rests on the relevant parties, and thus gives rise to like problems.<sup>55</sup> For the Federal Court, this critical flaw is

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<sup>52</sup> Ibid 7 [3.2].

<sup>53</sup> Ibid 10 [6.1-6.2].

<sup>54</sup> 'Interpreters', *Courts and Tribunals Tasmania* (Web Page, 23 April 2014) <[https://www.courts.tas.gov.au/about\\_us/services/interpreters](https://www.courts.tas.gov.au/about_us/services/interpreters)>.

<sup>55</sup> 'Interpreters', *ACT Magistrates Court* (Web Page) <<https://courts.act.gov.au/magistrates/coming-to-court/get-support/interpreters>>; 'Interpreters and translators', *Supreme Court of New South Wales* (Web Page, 12 December 2019)

<[https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_facilitiesupport/sco2\\_interpretersandtranslators.aspx](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_facilitiesupport/sco2_interpretersandtranslators.aspx)>;

'Interpreters', *Magistrates' Court of Victoria* (Web Page, 2 July 2019) <<https://www.mcv.vic.gov.au/find-support/interpreters>>; 'Getting an interpreter', *Queensland Courts* (Web Page, 27 June 2019)

<<https://www.courts.qld.gov.au/services/getting-an-interpreter>>; 'Interpreters and Translators', *Supreme Court of Western Australia* (Web Page, 1 March 2019)

<[https://www.supremecourt.wa.gov.au/I/interpreters\\_and\\_translators.aspx](https://www.supremecourt.wa.gov.au/I/interpreters_and_translators.aspx)>. Local Court of the Northern Territory, *Interpreter Protocols* (n 51); South Australia, *Interpreter Protocols*, June 2021.

even more pronounced in an more overt attempt to preclude itself from dealing with matters relating to interpreters.<sup>56</sup>

#### IV WHERE DOES THE RESPONSIBILITY LIE?

The barriers that stem from the interpreter's end and the courts' end are connected to the political institutions of Australia and its legal system. Firstly, the TAFESA program – the sole formal training opportunity for Aboriginal interpreters Australia-wide – is funded by the South Australian Government. Secondly, the NAATI is jointly owned by the Commonwealth, state and territory governments.<sup>57</sup> Its funding for the Indigenous Interpreting Project comes from the Indigenous Advancement Strategy of the Commonwealth Government.<sup>58</sup> Finally, funding for the training of AIS interpreters in legal settings stems from the Commonwealth Attorney-General's Department.<sup>59</sup>

Given this, the buck ultimately stops with governments and government agencies when it comes to responsibility for the barriers that stem from the interpreter's end. Additionally, as the previous section sought to demonstrate, it is the legal institutions that are significantly responsible for barriers on the courts' end that hinder sufficient access to an interpreter. Thus, political and legal institutions should be held collectively responsible for the prevalence of these barriers. They are especially obliged, given how impeding sufficient access to an interpreter passively perpetuates this notion of whiteness, to put in place significant changes to remove them.

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<sup>56</sup> The protocols state that if a person in a civil law matter needs an interpreter 'to understand what is being said at a court hearing', it is that person's responsibility to arrange for any interpreter they might require. The Court will only arrange an interpreter if (a) the person cannot afford to pay for one (even then the Court only *may* be able to do this), and (b) the person 'contact[s] the registry at least one week before the hearing.' Again, the language here is couched in this idea of "if you do not know what's being said then that is simply your problem, and you must fix it yourself": 'Interpreters', *Federal Court of Australia* (Web Page) <<https://www.fedcourt.gov.au/services/interpreters>>.

<sup>57</sup> 'About Us', *NAATI* (Web Page, 2021) <<https://www.naati.com.au/about-us/>>.

<sup>58</sup> See Email from Project Manager, Indigenous Interpreting Project, NAATI (n 28); 'Funding under the IAS', *National Indigenous Australians Agency* (Web Page, 2021) <<https://www.niaa.gov.au/indigenous-affairs/grants-and-funding/funding-under-ias>>.

<sup>59</sup> Commonwealth Ombudsman, *Accessibility of Indigenous Language Interpreters* (Report No 6, December 2016) 41.

## V IMPROVING ACCESS TO ABORIGINAL INTERPRETERS IN THE NT

Whilst a number of changes need to be undertaken to address this issue, discussing them all is outside the scope of this paper. Key changes that legal and political institutions should put in place to improve access to Aboriginal interpreters in the NT will be focused on below.

### A *Legal Institutions*

#### 1 *Court-Run Interpreter Training in Legal Settings*

As previously explored, interpreter training in legal settings offered by the AIS may be insufficient to develop experienced interpreters in these complex environments. One potential solution may come from courts being the providers of training in legal and/or courtroom settings.<sup>60</sup> Doing this would limit the burden placed on agencies such as the AIS to conduct their own training. Additionally, courts are intimately familiar with their own practices, (hopefully) entailing that training is tailor-made to this specific legal environment.<sup>61</sup> For example, the judicial branch of Pennsylvania runs training sessions (that must be undertaken) which have successfully prepared interpreters to become qualified to work in a courtroom setting.<sup>62</sup> The NT courts could and should adopt a similar program.

### B *Political Institutions*

#### 1 *Legislative Change*

The Commonwealth should consider implementing legislation which establishes the right to an interpreter Australia-wide for all legal matters. Section 14 of the Canadian Charter of Rights and Freedoms entrenches the right to the assistance of an interpreter in *any* proceedings where there is

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<sup>60</sup> See Stern and Liu, 'Ensuring interpreting quality in legal and courtroom settings: Australian Language Service Providers' perspectives on their role' (n 22) 97.

<sup>61</sup> See Liu and Hale (n 33) 301.

<sup>62</sup> 'Interpreter Program Registration', *The Unified Judicial System of Pennsylvania* (Web Page, 2021) <<https://www.pacourts.us/judicial-administration/court-programs/interpreter-program/interpreter-program-registration>>.

a language or communication barrier.<sup>63</sup> Whilst a constitutional provision, it may nevertheless be a useful model for an Australian legislative scheme. Establishing the right in statute is a way in which the law can evolve to help break down how the legal system contributes to perpetuating ‘whiteness’ in the ways it passively impedes access to an interpreter.

## 2 *‘Specific and Targeted Investment’<sup>64</sup> and Further Support for Interpreting in Indigenous Languages*

Government funding needs to address the demand for highly skilled and qualified Indigenous language interpreters as it ‘currently outstrips supply.’<sup>65</sup> Firstly, there needs to be broader investment in tertiary institutions to offer training in interpreting in Indigenous languages as one institute Australia-wide, TAFESA, is insufficient. The Diploma of Interpreting at the Batchelor Institute in the NT should be restarted,<sup>66</sup> and it should be a wholly government-subsidised initiative.

Secondly, the Commonwealth and NT governments should provide greater support to strengthen and increase the numbers of language centres and similar organisations.<sup>67</sup> Language centres are community organisations that ‘support the preservation and maintenance of Indigenous languages’,<sup>68</sup> and receive funding from the Australian Government.<sup>69</sup> The Papulu Apparr-kiri Aboriginal Corporation is one such language centre based in Tennant Creek. It seeks to ‘promote employment and economic opportunities’ relevant to its focus on restoring and reviving the

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<sup>63</sup> ‘A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter’: *Canada Act 1982* (UK) c 11, sch B pt I s 14 (‘*Canadian Charter of Rights and Freedoms*’).

<sup>64</sup> Letter from CEO, National Accreditation Authority for Translators and Interpreters (NAATI), (n 20) 1.

<sup>65</sup> *Ibid.*

<sup>66</sup> Historically, the AIS and the Batchelor Institute had a memorandum of understanding that ‘dovetailed’ workplace professional development at the AIS with training and assessments at the Institute. As previously mentioned, however, the Batchelor Institute has ceased offering the Diploma: ‘Derek Hunt – Interpreting Success’, *Batchelor Institute* (Web Page, 1 February 2013) <<https://www.batchelor.edu.au/portfolio/derek-hart-interpreting-success/>>.

<sup>67</sup> See Letter from CEO, National Accreditation Authority for Translators and Interpreters (NAATI), (n 20) 6.

<sup>68</sup> ‘Minister Scullion: New Language Centre opens in Tennant Creek’, *National Indigenous Australians Agency* (Media Release, 23 January 2018) <<https://www.indigenous.gov.au/news-and-media/announcements/minister-scullion-new-language-centre-opens-tennant-creek>>.

<sup>69</sup> ‘About Us’, *Papulu Apparr-kiri Aboriginal Corporation* (Web Page, 2021) <<https://www.papak.com.au/about-us>>.

languages of the Barkly region.<sup>70</sup> The important work of language centres would be crucial in incentivising people to become Aboriginal interpreters. This may in the long-term help reduce, for example, the problem of remoteness that interpreting services face.

Finally, funding should target increasing the number of NAATI-certified interpreters in the Northern Territory – especially establishing certification at NAATI professional level (a level which would help ensure higher quality legal interpreting). This would likely become more feasible for the NAATI as people are increasingly incentivised to become Aboriginal interpreters.

## VI CONCLUSION

Australia’s political and legal institutions have the ultimate responsibility when it comes to barriers that prevent *sufficient* access to Aboriginal interpreters in civil law matters in the NT. They are especially obliged to put in place legislative and funding reforms to address this issue; failing to do so tarnishes Australia’s legal system. Insufficient access to interpreters reinforce and centralises whiteness within the courts – contributing to continuing the practices of oppression and marginalisation of Aboriginal and Torres Strait Islander peoples.

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<sup>70</sup> Ibid.

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