THE CASE FOR CHANGE

Consequences and costs of failures in the translating and interpreting industry

APESMA
Making a positive difference to professionals at work
ABOUT APESMA

The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) is an organisation registered under the Fair Work Act 2009 representing over 25,000 professionals including professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, information technology professionals, managers and translating and interpreting professionals throughout Australia.

APESMA is the only industrial association to represent exclusively the industrial and professional interests of these professionals. This paper was prepared with the assistance of APESMA’s translator and interpreter members.

e: translatorsandinterpreters@apesma.com.au
t: 1300 APESMA I 1300 273 762

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Chris Walton, APESMA CEO

A note about our framework

Direct quantification of the value of translating and interpreting services and the cost of failure can be problematic. The reasons are threefold: the first is the sheer diversity of settings in which the work of translators and interpreters occurs making it difficult to capture and measure consequences; the second is that translating and interpreting services are “enablers” which makes it difficult to capture the cost and value of outcomes which arise as a consequence of the services provided; and the third is the economic paradigm through which value and failure are generally evaluated.

Some would suggest that consequences that are difficult to quantify should not be included in an analysis of risk and the cost of failure. APESMA would argue that to omit these consequences effectively values them at zero which is the only value we know they do not have. We do not see it as sufficient to focus exclusively on quantifiable economic consequences such as lost job opportunities, the cost to taxpayers of aborting or appealing court cases, waste resulting from inappropriate or inefficient procurement processes and/or unnecessary expenditure. We are of the view that the difficult to quantify but nonetheless real costs of failure in the form of, for example, diminished empowerment, stress on individuals and families and pain and anguish following a delayed or incorrect diagnosis, a suspension of payment based on inaccurate information, or a wrongful conviction and subsequent jail term are critical to understanding the real costs and real risks - financial and otherwise - of system failure.

Scope of this paper

Among the most critical settings in which translators and interpreters work are medical and health, court and legal, government service provision (such as Centrelink) and immigration. Translators and interpreters help maintain the integrity of our courts and justice system, ensure access to health care services and medical information, play a critical role in providing access and equity in relation to the delivery of human services and government programs, and have a fundamental role in the management and delivery of immigration services. Examples of failure and risk in these settings are the focus of this paper.

Acknowledgements

In looking at the court/legal setting, this report draws on the work of Sandra Hale and her report “Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals”1 and, in the medical/health context, on the work of Rachel Vanstone and the 2012 Foundation House report called “Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health”.2 We acknowledge their absolutely critical contributions to the understanding of problems and solutions in these settings. This paper reproduces some of the failures in the specialised medical/health and court/legal settings set out by Hale and Vanstone in their reports.

We also acknowledge the 2009 report of the Commonwealth Ombudsman’s office “Use of interpreters” in our analysis of problems evident in the important setting of the delivery of federal Government services.3

We would also like to acknowledge the contribution of translators and interpreters who provided many of the examples of system failure included in this report.
The consequences of translating and interpreting failure can be devastating.

In the medical/health setting, lives may be endangered, families and individuals may experience severe stress and trauma, quality of life may be significantly reduced and additional unnecessary burden may be imposed on the health care system.

In the legal context, the effects can be miscarriages of justice, aborted trials, wrongful arrests and convictions, inappropriate sentencing, misunderstood bail conditions, inappropriate jail terms, misinterpreted community orders and/or charges which can compromise the system’s integrity and result in additional workload for an already overloaded court and legal system.

In the context of the delivery of Australian government services and programs, the consequences of failure can range from wrongly suspended payments, to incorrect debts being raised against individuals, to failure to access government programs due to lack of understanding of the program itself or the documentation that underpins it.

In the immigration setting, protection visas and refugee applications may be wrongly granted, refused or cancelled and the integrity and fairness of the system compromised. The reasons for an irregular maritime arrival may be misunderstood, the information presented to Refugee Review Tribunal and Migration Review Tribunal hearings may be inaccurate or distorted and even foundation documents such as the rights and responsibilities agreement provided on arrival misinterpreted.

The failures in process, protocols and policy set out in this document show that the way provision of translating and interpreting services is currently handled can result in significant costs in human/social terms across the health, legal, government and immigration settings.

What becomes clear is that the quality of translating and interpreting services is not only an issue of access and equity - but one of risk. This paper reveals an extraordinary level of unmanaged risk and exposure to serious litigation across multiple settings when the system fails - the evidence confirms that there is a clear and urgent need for change.

Chris Walton
APESMA CEO
INTRODUCTION

We know that the work of translators and interpreters is widely misunderstood and often undervalued. They perform a vital service for the community and contribute their expert skills in a diverse range of settings. They are a means to providing access and equity for those who face language barriers to full participation in the community and they play a vital role in maximising the social and economic benefits of Australia’s cultural diversity.

But what happens when a translator or interpreter should be engaged and isn’t, or when the person providing the translating or interpreting service doesn’t have the experience or the level of training needed? What happens when those in institutional settings don’t understand the role of the translator or interpreter? How do we evaluate and quantify costs, gain a proper appreciation of the nature and extent of consequences, and manage the risk attached to system failures when they occur?

This paper considers these questions and details some examples of consequences when failures occur in the medical/health setting, the court/legal setting, the government services setting and the immigration setting.
As set out by Vanstone in the Foundation House report, in the medical and health contexts, failure to engage qualified experienced interpreters can lead to:

- reduced quality of care;
- reduced client safety and compromised patient care;
- reduced/compromised access to health care;
- stress and trauma for patients and families;
- lack of patient comprehension of medical procedures and failure to obtain informed consent; and
- unnecessary health expenditure.4

There are also serious consequences when breaches of professional ethics occur and/or where health professionals are unaware of the requirements and parameters of the translator/interpreter’s role.

Translators and interpreters provide a vital means of communication between patients, their families and their medical practitioners.

Making sure you have the best possible services in place is vital in ensuring that what is being provided by way of treatment is what is needed in the patient’s circumstances. Lack of communication or miscommunication can have catastrophic consequences.
Reduced quality of care

Some examples of reduced quality of care include misdiagnosis, errors and misunderstandings about treatment plans, failure to provide oral interpretation or written translations of important documents, delayed or misunderstood reporting of symptoms – each of which have potentially dire consequences.

When I had a caesarean I did not have an interpreter. I was by myself in the room with the doctor and nurses. I would have liked one there, especially to explain all the anaesthetic things and what was going to happen, actually for many things.


Failure to engage a qualified interpreter was considered by HREOC to be a contributing factor to the involuntary commitment of a Bosnian refugee with an intellectual disability who was misdiagnosed as having PTSD (post-traumatic stress disorder)


A client of a refugee background was admitted to a Melbourne hospital via the Emergency Department with breathing difficulties and was isolated with suspected TB. Hospital staff and visitors wore full gown and mask. The hospital did not have an interpreter on staff that spoke Kirundi, Swahili or Congolese. Ward staff decided not to use an interpreter as the woman’s children (aged 13 and 15) spoke good English. A social worker visited the client two days later and arranged a phone interpreter where it was discovered that the client was frightened that she was dying of AIDS as she had seen a lot of this in Africa.

Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.23

I was asked to interpret over the phone when the doctor was getting consent for a procedure.

[Translator, 2012]

I was left alone to complete forms with patients and to sight-translate documents for them.

[Translator, 2012]

The Kimberley Interpreting Services (KIS) states that ‘Low levels of communication between health professionals and their patients lead to inadequate diagnosis and poor treatment.’

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.13

Reduced client safety and compromised patient care

Some of the specific consequences include medication errors such as when to take medicine and the correct dosage, and failure to understand instructions including those of GPs, medical specialists explaining procedures and hospital staff explaining discharge instructions.

A 35-year-old woman who was an Afghan refugee who spoke very little English presented with pain and swelling in her left leg. Her 15-year-old daughter spoke on behalf of her mother. The GP explained he thought the patient may have a deep vein thrombosis and needed to either go immediately to the local hospital for investigation or to the local radiology clinic for a test to determine if a clot was present, providing the daughter with a referral and letter. The patient and her daughter had gone home and waited for the arrival of other family members who were able to read English to explain the content of the GP’s letters to them. Unfortunately the patient died two days after the consultation after collapsing at home before those with English skills were able to explain the letters.


A client told of waiting in a GP clinic for 4 hours, as the clinic had a policy of not engaging interpreters. When another community member arrived for their own appointment and offered to help the participant with translation, the assistance was gladly accepted. Unfortunately, the community member incorrectly interpreted that the medication being prescribed is in order to help the client put on weight. The client refuses to take the medication as a result of this misinformation. A subsequent visit to her GP with the use of an interpreter revealed that the medical was actually to reduce cholesterol.


An interpreter I know turned up at a hospital and was asked to sight-translate a 22 page document for the patient in a clinical trial and then sign it with the patient.

[Translator, 2012]

Several health service providers 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”.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.15
Reduced/compromised access to health care

Specific consequences include failure to obtain necessary information from patient, to communicate instructions to ensure the accuracy of the test and to communicate the results of tests back to the patient.

I went to have some blood tests. The person doing the test was asking me questions but I couldn’t understand anything. There was no interpreter. I couldn’t ask for one because I don’t speak any English. Some days later they called me on the mobile. He was talking in English. I tried to get someone off the street to listen and translate but the doctor just kept talking, talking and then hung up the phone. I don’t know how to get the results of my tests


Stress and trauma for patients and families

The consequences of using minors and/or family members as interpreters are potentially dire with significant impacts on quality of care.

I was very embarrassed to be talking about my pregnancy with my son and I could see that he was not very happy or comfortable himself.


If I wanted to go to the doctor, my daughter has to cancel her day from school and then take me.


I went to the Monash Medical Centre and was told to go home by the doctor because the family is interpreting for the patient and he didn’t need me.

[Translator, 2012]

When telephone interpreting is offered to doctors in hospitals (particularly for late afternoon and emergency department appointments), many doctors refuse as they consider it sub-optimal care. Unfortunately, this then puts the patient in the position of having to use a bilingual relative instead, or reschedule the appointment. The latter rarely happens.

Lack of patient comprehension of medical procedures and failure to obtain informed consent

Failure to use an interpreter can lead to significant anguish and trauma when a patient does not understand the procedure or surgery which is to be, or has been, performed. There are potential legal implications where patients experience the types of compromised health care set out in the examples below for the health practitioners, surgeons and hospitals who perform procedures and surgery without obtaining informed medical consent.

An interpreter was called to attend a pre-admission interview for tympanoplasty surgery. During the interview it emerged that a bilingual relative had been the interpreter for the consent, and it became clear that the patient had not understood the nature of the operation and was having a panic attack. The relative could not understand why the patient was worried about the operation since it would improve the patient’s hearing and quality of life. Asked what was the matter, the patient explained that for three months since the consent there had been moments of panic and sadness and sleeplessness, and even thoughts of self-harm, because of knowing the ear was going to be removed and a patch of skin put in its place. The interpreter and medical staff were able to reassure the patient that this was not the case, and that it was only the hole in the eardrum which was being fixed using a skin graft. Nevertheless it took a long time to calm the patient down. Who can compensate for three months of unnecessary anguish?

[Interpreter, 2013]

[A health worker] stated that a significant number of Aboriginal patients did not understand interactions 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.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.14

Multiple participants spoke of an incident in a local hospital where a refugee client was awaiting surgery to remove a pin from inside one of their limbs. The interpreter provided was of a different dialect, and incorrectly interpreted that the surgeon needed to remove the limb. The patient was prepped and about to be given anaesthetic. Faced with a sudden and unnecessary amputation, the patient became extremely distressed. It was not until another concerned passer-by investigated further that the dialect mismatch was discovered. An interpreter from the correct dialect was then engaged and the situation which had caused this patient such unnecessary distress was resolved.

A dental hospital had adopted a policy that interpreters must be used when working with patients who didn’t speak English, but when a problem with high interpreting budget costs in their student clinic arose, they “solved” the problem by issuing a directive that interpreters were only to stay for one hour and that it was the responsibility of the interpreter to leave when the hour was up. The student would generally perform a variety of tests to diagnose the problem and develop a treatment plan. Problems arose when the interpreter would be required to leave prior to the explanation of the proposed treatment plan following the tests and diagnosis. On one occasion, a patient who spoke and understood very little English was distressed about the interpreter having to leave prior to the student’s diagnosis and explanation of the treatment plan. In desperation he offered to pay the interpreter himself. In this case, because the interpreter pointed out how critical it was that they remain on site for the explanation of the treatment plan, the Clinic agreed to pay for the additional time but the incident clearly shows patients are being denied essential information about their dental health.

Interpreter, 2013

Reports of several cases of patients giving consent to surgery at doctors’ private practices without an interpreter, or even sent to the hospital without a correctly completed consent form with nurses, anaesthetists and interpreters on the day of the operation left to bear the brunt of the patients upset, or even rage, at not knowing exactly the nature of the operation. In one case, the patient refused to consent to the operation and asked to leave.

Interpreter, 2013

Unnecessary health expenditure

Unnecessary health expenditure as set out in the Foundation House report include:

- Higher attendance rates at clinics;
- Increased diagnostic investigations;
- Higher hospital admission rates;
- Increased length of stay in hospital and emergency departments;
- Decreased likelihood that clients will seek early treatment at the onset of cardiovascular disease;
- More frequent intravenous hydration;
- Higher emergency department return rates; and
- Higher rates of failure to attend appointment rates (client does not know about the appointment).

The Ethnic Communities’ Council of Victoria’s “An Investment Not an Expense” paper talks about health literacy defined as “the degree to which individuals have the capacity to obtain, process and understand basic health information and services needed to make appropriate health decisions”. They suggest that there are strong correlations between low health literacy and higher rates of hospitalisation, and that increasing health literacy is likely to reduce health costs through the prevention of illness and chronic disease. “Non-English speaking patients”, they suggest, “are found to spend more time in hospital, be more likely to suffer adverse clinical reactions and have higher readmission and diagnostic testing rates.” The paper goes on to cite an example where increased investment in language services resulted in larger cost savings elsewhere:

Northern Health found that, by increasing interpreter requests (from 17,000 in the 2007-8 financial year to almost 40,000 in the 2010-11 financial year), increasing in-house staff, providing transcultural training sessions and translated documents, they were able to reduce the length of stay (LOS) for CALD patients by almost three days. Northern Health is now able to see more patients every year than was previously possible, because patients spend less time in hospital; hence the unit cost per patient staying in hospital has dropped dramatically, while at the same time patient health has improved.

Ethnic Communities’ Council of Victoria (2012), pp.20-21

From Diversit-e issue 2, 2010, a diversity health e-magazine

The cost of providing interpreter services for patients who do not speak English well is often seen as prohibitive. In reality the costs of failing to address language barriers in health care settings is greater. Inability to communicate effectively with patients from non-English speaking communities can compromise patient care and influence the capacity to obtain informed consent, ensure medication compliance and provide appropriate emergency treatment.

Research indicates that providing health care interpreters to non-English speaking patients can actually reduce costs. Using professional interpreters in hospital settings can shorten the time patients from non-English speaking backgrounds spend in emergency departments. Employing interpreters can also reduce follow up visits and ensure compliance with out-patient visit schedules and drug regimes. Patients are generally more satisfied with their hospital experience when a professional interpreter is provided.

... the use of professional interpreters can reduce communication and medical errors; increase patient comprehension; improve clinical outcomes; increase patient satisfaction and contribute to improved access to services.

Source: Diversit-e issue 2, 2010, a diversity health e-magazine
Breaches of professional ethics and/or health professionals being unaware of the parameters of the translator/interpreter’s role

There are also serious failures in the system when medical and allied health professionals are not aware of the relevant guidelines and code of ethics which apply and interpreters are asked to act in a manner inconsistent with them.

In a Victorian public hospital, the doctor explained to the patient the risks of laparoscopy. It was the first time the female patient had heard of the procedure and she asked the interpreter directly what she should do. The interpreter replied that she couldn’t give any advice and then told the doctor what their brief exchange was about (which is what interpreters are meant to do i.e. report all exchanges that may occur during an interpreting session). The doctor replied “What do you mean you can’t give her advice? Surely you have an opinion about it? There’s nothing wrong with telling her what you think.” Throughout the rest of the consultation the doctor tried to get the interpreter to convince the patient she should have a laparoscopy.

[Interpreter, 2013]

At the end of a medical appointment with an Italian patient (who was perfectly courteous and as helpful as he could be, but obviously had little or no English language skills), the doctor was writing up his notes and muttered to me that “you might as well be working with animals”. I was so stunned all I could say was “I beg your pardon?” but I told the agency employing me about the incident and said I would not work again with that doctor and that I thought he should be reported. He wasn’t of course, and for all I know he might still be treating patients with the same brutish ignorance, much as I hope not.

[Interpreter, 2013]

The doctor said to the client: “How long have you been living in Australia?” She said that she’d been here 15 years, to which the doctor replies: “I don’t think you need an interpreter. Your English seems perfect to me”. He nevertheless allows the interpreter to do her work.

[Interpreter, 2013]

Halfway through the appointment the patient is asked to go to another room and change. The interpreter is asked to go with her to “help her get undressed and stay there in case she needs any help”.

[Interpreter, 2013]

These examples of failures in process, protocols and policy show that the ways translating and interpreting is currently handled pose serious threats to life, health, safety and/or well-being.

Australians are rightly proud of their universal health care system. Everyone, regardless of who they are, should be able to access medical help, where and when they need it – and that includes those who require interpreters. The evidence outlined herein serves to underline the urgent need for intervention/action to ensure equitable health outcomes and mitigation of risk through high-quality, reliable and easily accessed translating and interpreting services.

I went to have some blood tests. The person doing the test was asking me questions but I couldn’t understand anything. There was no interpreter. I couldn’t ask for one because I don’t speak any English.
Our justice system relies on the accurate transmission of facts and their accurate recording. A fair system is one in which our legal system is transparent and understandable to all participants.

But what happens when parties to proceedings can’t understand – or are informed incorrectly about – the matters under consideration? The legal system is complex and governed by rules, proceedings and terminology which are specialised and difficult to understand, even for many with English as a first language. Justice can only be served when interpreting services of a high-standard are available when people require them.

As set out by Hale in her survey of Australian courts and tribunals, in the legal and court contexts, failure to engage qualified experienced and adequately trained interpreters can have wide-ranging implications.

Documented consequences include:

> flawed interpreting processes or failure to engage an accredited interpreter leading to aborted trials, criminal convictions being overturned and serious charges unable to be pursued;
> lack of access to impartial and informed advice with the inappropriate use of family and community members and other non-disinterested parties for translating and interpreters in specialised field;
> waste in the form of unnecessary expenditure on appeals and re-running aborted trials;
> compromised access to right to legal process, representation and documentation in own language leading to wrongful convictions, inappropriate or incorrect charges being laid, mitigating circumstances not being taken account of, lack of comprehension of bail conditions, sentencing, charges and court proceedings generally; and
> in the case of domestic violence and sexual assault, serious consequences including stress and trauma for victim and relatives including children asked to interpret for them, inappropriate intervention or advice, failure to provide access to legal rights including protection, conflicts of interest and breaches of confidentiality.
Flawed and unjust legal proceedings

Consequences of the failure to provide appropriate interpreting services include aborted trials in serious cases such as alleged murder, sex offences and drug dealing, as well as criminal convictions being overturned and serious charges unable to be pursued.

There was a case in the Northern Territory involving an Aboriginal who was deaf, and he was charged with murder - the Ebatarinja case. In that case they couldn’t find a suitable interpreter with the necessary qualifications, so the accused was unable to understand the charges. In spite of this, they had a preliminary hearing, and the legislation covering that preliminary hearing required it to be conducted in the presence or hearing of the defendant, and then the defendant, having heard that evidence, has a right of reply. The High Court said that preliminary hearing was a nullity, because the defendant was not present for all intents and purposes. They had to go back to stage one of the trial process and have another preliminary or committal hearing.


The effect of the decision was that the murder charge was permanently stayed.

*Equal Opportunity Commission Western Australia (2010), Indigenous interpreting service: is there a need?, p. 16*

Stepan Kerkyasharian is chair of the New South Wales Community Relations Commission. One of the commission’s jobs is to run the interpreter services used by New South Wales courts. He takes the commission’s role very seriously, because he says there was a case some time ago where a convicted drug dealer was effectively let off the hook and his conviction overturned because of flaws in interpreting.


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.

*Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p. 17*

Lack of access to impartial and informed advice with the inappropriate use of family and community members

The consequences of the inappropriate use of family and community members is a fundamental lack of access to impartial and informed advice or representation as shown in the examples below.

The following appeared in a local newspaper in Ryde, NSW - Gladesville police are seeking volunteers who speak fluent English and another language to develop a register of local residents willing to assist in dealing with victims of crime. Police often deal with people who do not speak English and need to exchange information in a prompt manner. Once established, police may call upon a volunteer on the register by phone to help in translating information to victims of crime. All languages are sought after, however translators in immediate need include Korean, Mandarin and Cantonese speakers. Call the Gladesville Police on [number withheld] for further information.

**Children as young as 10 used as interpreters in Family Court counselling**

Family Court Chief Justice Alastair Nicholson said ... that the court faced a considerable shortage of qualified interpreters. A senior Family Court staff member said children as young as 10 had interpreted for parents in counselling sessions concerning issues such as child custody. Justice Nicholson said interpreters were usually available for court hearings but not always for counselling. So children and other family members filled in. "What in fact ends up happening is sometimes children are involved as interpreters, or other family members, and that’s not satisfactory," he said. Justice Nicholson said people were being forced to discuss intimate details in front of their children and other relatives. "What we find is unsatisfactory is there is insufficient government funding, particularly Federal Government money.” A spokeswoman for Commonwealth Attorney-General Daryl Williams said last night that providing interpreting services was a matter for the court.

Fergus Shiel, Law Reporter, date: 30/04/2003, Publication: The Age, p.3

I was talking to a Chinese lawyer the other day in [the Magistrates] court. He told me that he has always translated all his clients' Chinese documents although he is not an accredited translator. He would then ask his clients to sign a document stating they were accurate translations of the original. Bi-lingual lawyers who are not accredited interpreters interpret for their clients in courts and magistrates allow this to happen.

*Interpreter, 2012*

In the Supreme Court a judge tells the defence lawyer: “Your client doesn’t need a professional Interpreter - he can get a friend or a family member to help him next time”.

*Interpreter, 2012*
In this particular trial, the charge was sexual harassment. The court interpreter used the word rape for sexual harassment, believing that, culturally speaking, they were dealing now with rape - the cultural interpretation got in the way of the semantics. In this case, the defence was alerted to the situation by an instructing solicitor who spoke Arabic and who drew their attention to the fact that the interpreter chose the word ‘rape’ whereas the interpreter should have used the word ‘sexual harassment’ and the defence actually spoke to the judge and they had to abort the case because of the confusion between the words sexual harassment and rape.

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The interpreter refused saying essentially, ‘It’s my job to interpret everything taking place in this court, and I have to make this person linguistically present.’ In the Compensation Court the judge refused to take it any further, the case went on appeal, then the Court of Appeal said, ‘The interpreter was right. That was an essential requirement’ – that the defendant has to be present. A witness or a defendant is not only entitled to have their words accurately interpreted back to the court, they’re also entitled to know everything that is going on in the court, to be present.


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.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p. 4

I once did a job [in the Family Court] involving an Indonesian woman who was having a dispute with her ex-husband over visitation rights with their child. I had done several jobs previously involving this woman, with sympathetic agencies who took the time to see that everything was interpreted fully. However, when I did the job at the Family Court, the whole thing was so rushed that I had grave concerns, which I expressed to the judge, as to the client’s opportunity to have the proceedings fully interpreted and to understand what was happening. The judge rambled on and on and did not allow sufficient opportunity for her ramblings to be interpreted, although she did allow the husband to dominate the proceedings. I decided then that I would no longer be a party to such flawed and unjust proceedings. I no longer take jobs at the Family Court.

[Interpreter, 2012]

… 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’.

Equal Opportunity Commission Western Australia (2010) Indigenous Interpreting Service: is there a need?, p. 18

Mrs F, an elderly non-English speaking women, took out a mortgage on the home in which she lived in order to loan money to a family member. Failure of this family member to repay the loan meant that Mrs F, who had no income apart from her pension, could not repay the mortgage and entered into default in the mortgage on the home. A victim of financial elder abuse, Mrs F came to PILCH without the resources to afford a lawyer and in danger of losing her home. With the help of her son who did speak English, she obtained PILCH’s assistance and was referred to a barrister and a law firm that agreed to provide pro bono representation in a civil claim against the family member who incurred the loan. There was specific urgency to the situation as Mrs F was in ill health.

In order to bring a claim for repayment of the loan so that Mrs F would not default on her mortgage, Mrs F’s pro bono solicitors had to draft an Affidavit. Mrs F could not do this without the assistance of an interpreter. While PILCH as a CLC had access to a limited amount of funding for interpreting services, these were not sufficient to meet all of Mrs F’s requirements for an interpreter at this stage of proceedings. Due to the complexity of the matter and the need to obtain instructions and a detailed account of the matter from Mrs F, more than one session between Mrs F and her pro bono lawyers was necessary. An interpreter was required for each session.

When the case went to mediation, Mrs F required the further use of an interpreter present with the pro bono barrister and solicitor. The amount of time required was for the entire duration of a court day on two separate occasions. PILCH did not have access to any interpreter fund to cover this amount and neither Mrs F nor her son could afford to pay the cost for this. The referred lawyers who were acting on Mrs F’s behalf were doing so for free and had already incurred costs on behalf of their client. Therefore, PILCH was forced to carry these expenses to ensure that Mrs F could understand and participate in the mediation. These expenses were significant and impossible to budget for as the amount of time required for an interpreter in each case cannot be predicted.

Mrs F’s matter was settled at mediation. Without the support of PILCH and her pro-bono lawyers, Mrs F would have had no recourse to participate in this process – indeed could not have brought her case and might have lost her home.

Law Institute of Victoria Interpreting Fund Scoping Project Final Report
Magistrates have stated that they have been required to postpone court cases due to a suitable interpreter not being available.

During a injury compensation claim interview it emerged that non-English speakers were interviewed almost a year after a traffic incident by the police during a home visit (without an interpreter) during which they were asked to present at the police station for an interview to clarify what occurred at the time of the incident. No interpreter was provided at the police station, so the clients attended with a bilingual relative as interpreter. The driver of the vehicle, an elderly person with limited English, was fined for dangerous driving (remember this was almost a year after the original incident). A few weeks later the client received a claim for injury compensation. A more recent interview with the interpreter (and without the relative present) revealed that the actions of the driver at the time were due to circumstances which were not made clear in the original police interview, which – had they been known – would have resulted in a lesser charge. Also, since no-one was injured or reported being injured (neither police nor ambulance were called to the scene) at the time, the client did not understand why it had taken a year to get a fine and, on top of that, get a claim for injury compensation.

[Interpreter, 2013]

### Serious consequences for victims of domestic violence and sexual assault

Consequences including stress and trauma for victims and relatives including children asked to interpret for them, inappropriate intervention or advice, failure to provide access to legal rights including protection, conflicts of interest, lack of cultural sensitivity, inappropriate culturally-based intervention and breaches of confidentiality.

The Centre receives complaints by migrant women that interpreters are ‘aggressive’, ‘distort their words’, and cause them distress by asking them to repeat embarrassing or personal details in police interviews

[Multicultural Centre Against Family Violence (2010). I lived in fear because I knew nothing: barriers to the justice system faced by CALD women experiencing family violence Melbourne: InTouch Inc., p.21].

An interpreter ‘told the woman’s husband the address of the women’s shelter - she thought the woman was lying and therefore her husband needed to know’


An interpreter ‘tried to convince the woman to reconcile with her husband’, or interpreters ‘criticised women for taking legal action’


There is an example of an interpreter in Queensland who would not use the words ‘penis’ or ‘vagina’ in a sexual assault proceeding.


There is evidence of a female interpreter who interrupted a therapeutic counselling session to advise a client that, according to the Koran, women must obey their husbands’ sexual demands.


There are instances of children having to interpret for their mothers and having to listen and interpret about violence and sexual assault encounters. Also, there is evidence of women not disclosing these events to protect their children form listening to them.

[Interpreter, 2013]

I have had direct experience of perpetrators interpreting for the victim/survivor, and interpreters interpreting for both victim/ survivor and perpetrator. I was booked for a “mediation meeting” where family violence was discussed. My non-English-speaking client was the male. When I got there I was told I would interpret for both parts (male and female) if necessary. The woman was distressed at first not knowing why her ex partner had an interpreter booked. She believed she was at a disadvantage (I had the impression she thought I would be “on his side”) and therefore feared of the possible outcome of this meeting.

[Interpreter, 2013]

Priding itself on being a civil society, Australia has over many years worked to ensure that even the most disadvantaged in society can have access to relevant services. We work to ensure that in a legal setting everyone is provided with representation should they need it. How can we ensure those levels of representation are adequate if there are inadequate translating and interpreting services? How do we ensure that members of the community are not treated unfairly simply because they couldn’t be understood, or they didn’t understand?

These examples of failures in process, protocols and policy show that the way translating and interpreting in the courts and other legal settings is currently handled poses serious threats to access to justice. It is resulting in extraordinary levels of stress and trauma, waste of taxpayer dollars and an additional burden placed on the system – they serve to underline the urgent need for intervention/action to guarantee the integrity of the legal and court system, to reduce the instances where the system fails, and to manage risk where failures occur.
Great amounts of time, effort and resources are expended each year to ensure that Australians are aware of – and are appropriately accessing – the resources provided by government to ensure our society retains its fairness and commitment to the principles of access and equity. However, the system can be complex and difficult to navigate - even more so for those facing the challenge of language barriers.

Failure to engage qualified experienced interpreters in the context of the delivery of government and human services at the Federal level (including Centrelink) can lead to:

> financial hardship;
> failure to receive and provide accurate information;
> breaches of duty of care with use of non-credentialed interpreters; and
> compromised access to, or understanding of, government support programs.
Financial hardship

A woman and her husband had separated and, while they shared the care of their child, the husband received the Centrelink benefits for the child. The mother said that she signed some documents at Centrelink giving the father the right to receive the Centrelink payments instead of her but she said she didn’t know English and didn’t understand what she was signing. A later attempt by her to get this step reversed has not been successful as Centrelink asserted that she has signed a document authorising the payments to go to the father of the child. While it is not known whether an interpreter was requested or suggested by Centrelink, it is clear that had the woman had access to an interpreter in this situation, she would have been clearer about her rights and exactly what she was signing.

[Interpreter, 2012]

Failure to receive and provide accurate information

An Indigenous woman with limited English language skills from a remote community complained that Centrelink had raised a debt against her for reasons she did not understand. It was established that, at the start of the debt period, the woman had told Centrelink she was about to start work. Centrelink had confirmed this with her employer. The complainant started work and subsequently completed several forms (in English) in which she incorrectly reported to Centrelink that she had not worked. Her third form contained inconsistent information which caused Centrelink to contact her to clarify her earnings. A debt was then raised. A Centrelink officer discussed the debt with the woman and determined that she had not understood her obligations. An interpreter had not been used during any of Centrelink’s communication.


An Australian Government entity hosting a party of international VIPs had organised for them to meet representatives of an Aboriginal community during their visit in Australia. The Aboriginal spokesperson had prepared a two-page briefing which was translated by an overseas-based translator who was not familiar with the issues and not a native speaker of the target language. The translation was not reviewed by a local translator. The result was serious distortion of meaning throughout the document, depicting the Aboriginal spokesperson’s views as much more critical than intended in the source document. Unaware of the poor quality of the translation, the VIPs took it at face value and were incensed by the distorted views it contained, which led to extreme confusion and misunderstanding during the meeting with the Aboriginal community.

[Interpreter, 2012]

A language service provider had sponsored the provision of conference interpreting services during a major conference involving presentations by government ministers from overseas countries. Unable to secure the services of experienced conference interpreters, the language service provider relied on a para-professional interpreter who was clearly out of their depth. Eventually, the interpreter simply failed to attend, leaving the presenters and the language service provider without access to conference interpreting services. The credibility of the Language Service Provider and the Conference were seriously compromised.

[Interpreter, 2012]

Breaches of duty of care with the use of non-credentialed interpreters

A member of the public attended a local police station [operated by the Australian Federal Police (AFP] and requested the assistance of an interpreter. Instead of arranging for an interpreter to be provided, the police officer told the person to come back with someone who could interpret for them. When the Ombudsman identified this failure and raised it with the AFP , steps were taken to remind staff of their responsibility to provide fair access to an interpreter. The AFP did not apologise to the person concerned.


Compromised access to, or understanding of, government programs

A resident of a remote Indigenous community complained that NT departmental staff and building contractors had not used interpreters when they met with residents to discuss Strategic Indigenous Housing and Infrastructure Program (SIHIP) plans in that community. Consequently some residents did not understand the nature of the work that was planned, where they would move to while work was being done and whether they would be re-allocated the same house. [The Commonwealth Ombudsman] raised this with FaHCSIA because it administers the statutory lease over this community and jointly administers SIHIP. In response FaHCSIA organised a meeting attended by an Indigenous language interpreter, at which the SIHIP program and other housing-related matters were explained to the community. This was followed by a second meeting. The complainant subsequently confirmed that the community felt they now understood how SIHIP would operate in that community.

Commonwealth Ombudsman’s Report on Indigenous Language Interpreters and Government Communication, p.15
A member of a remote Indigenous community complained in 2009 that residents had been asked to sign tenancy agreements for their public houses, but the agreements had not been explained to them before they were signed and interpreters had not been used. The community did not understand the purpose and effect of the documents.

*Commonwealth Ombudsman’s Report on Indigenous Language Interpreters and Government Communication, p.3*

Our welfare system is there to help the most vulnerable in our society and to support those in need. Services are bound to be compromised if members of the community accessing the services can’t be understood or effectively delivered to every segment of society, especially those who face language barriers.

These examples of failures in process, protocols and policy show not only that there are significant opportunities to improve the way translating and interpreting is handled in the delivery of human services as the foundation of our safety net, but also the urgent need to meet duty of care obligations through the use of high-quality, reliable and easily accessed translating and interpreting services.
Great care must be taken to ensure that there is transparency in our immigration processes and that the system is functioning fairly and efficiently. Because decisions made in this setting can so profoundly impact an individual’s circumstances, the processes must be fair, equitable and understood by all.

Failure to engage qualified experienced interpreters in the context of the delivery of immigration services can lead to:

- legitimate refugees being wrongly refused protection visas;
- irregular maritime arrivals being wrongly granted protection visas;
- serious breaches of the professional code of ethics;
- compromised access to other appropriate visas;
- failure to receive a fair hearing before a tribunal;
- visas wrongly cancelled;
- administrative inefficiency and double-handling;
- lack of access to procedural fairness and compliance with duty of care obligations;
- stress on family members and others when asked to interpret;
- waste arising from errors in allocating credentialed interpreters;
- use of non-credentialed individuals to undertake interpreting function; and
- compromised access to, or understanding of, rights on arrival.
Legitimate refugees may be wrongly refused protection visas

There are examples in the hundreds of bilingual individuals rather than NAATI-accredited interpreters being used at the initial processing, entry interview, migration agreement Immigration Advice and Application Assistance Scheme (IAAAS) interview and protection visa interview stages. This creates major questions about professional standards and quality of interpreting and about the fairness and legitimacy of the processes used when dealing with irregular maritime arrivals.

[Interpreter, 2013]

Irregular maritime arrivals may be wrongly granted protection visas

There are examples of non-NAATI-accredited interpreters inaccurately recording responses at the initial processing and entry interview stages which may support the granting of protection visas in inappropriate circumstances. These individuals effectively cross the line and become advocates for the individuals concerned.

[Interpreter, 2013]

Serious breaches of the professional code of ethics

The use of non-credentialed interpreters who fail to understand the need to abide by the requirements of the code of ethics has potentially serious consequences. A non-credentialed interpreter is reported to have said: “Interpreting is a very easy job – you can say anything and get away with it as the ... white man does not know what our person is saying and similarly our person would not know what the white man said.”

[Interpreter, 2013]

Compromised access to appropriate visas

An individual’s application to the Refugee Review Tribunal for a protection visa was refused. On appeal, a report on major omissions and interpreting errors of the previous hearing was submitted as expert evidence in the Federal Magistrates Court; as a result the magistrate ordered that the case be sent back to the RRT for review due to severe misinterpretations which led to the original decision. The individual received compensation and the case was reheard before a senior member with a different interpreter.

[Interpreter, 2013]

Failure to receive a fair hearing before a tribunal

A few years ago, a senior interpreter was asked to review the tapes of a case that came before the Refugee Review Tribunal. The application had been denied and it was thought that the standard of interpreting had been the cause of misunderstandings between the applicant and the tribunal member hearing the case. After listening to the tapes, the senior interpreter confirmed numerous errors in the interpreting which was due, in their opinion, to using an interpreter with insufficient professional skills and general knowledge. The applicant was provided with another chance to present his case.

[Interpreter, 2013]

Visas wrongly cancelled

A complaint [to the Commonwealth Ombudsman] was made on behalf of a Ms A whose visa had been cancelled by the Department of Immigration and Citizenship (DIAC) on arrival in Australia. Although Ms A was provided with an interpreter, DIAC did not use the interpreter to explain the notice of intent to cancel Ms A’s visa when asking her to sign this form.


Mr D was applying for a visa from outside Australia, and complained that he had been interviewed using an interpreter who was not qualified. Mr D claimed incorrect information had been provided on his behalf, resulting in DIAC refusing Mr D’s visa application. As a result of [the Ombudsman’s] investigation, DIAC agreed to conduct the interview again with an independent interpreter and to make a new decision on Mr D’s visa application.


Administrative inefficiency and double-handling

An immigration detainee required an appointment with an optometrist. An interpreter was needed to facilitate communication between the optometrist and the client. The detention provider contracted by DIAC did not book an on-site interpreter in advance. The client was escorted to the appointment only to discover that an interpreter was not available at short notice. As a result, the consultation had to be rescheduled to a later date when an interpreter could be arranged.

Compromised access to, or understanding of, rights on arrival

The translation of material provided to those embarking on the irregular maritime arrivals process at times lack clarity and has led to misunderstandings about the rights and obligations of these individuals, and the programs to which they have access.

These examples of failures in process, protocols and policy all show that there are significant opportunities to improve the way translating and interpreting is handled in the delivery of immigration services and programs.

Changes in policy – and disagreement about policy – are a source of longstanding debate, however, every effort must be made to ensure that current policy and processes are understood and implemented fairly in an effort to maintain the integrity of the immigration system and mitigate the risks associated with delivery of poor quality services in this critical area.

CONCLUSION

The examples of failures in process, protocols and policy set out in this document show that the way translating and interpreting in a range of settings is currently handled results in not only extraordinary costs in human/social terms but also significant risk and exposure for government and organisations across the health, legal, government services and immigration settings.

This evidence-base shows that there is a clear and urgent need for change.
REFERENCES


3 Commonwealth Ombudsman, Use of interpreters (Report No. 03/2009), March 2009

4 This analysis and data draws largely on the Foundation House report Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, 2012, pp.21-24

5 Foundation House (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, pp.21-24

6 Ethnic Communities’ Council of Victoria (2012) An Investment Not an Expense: Enhancing health literacy in culturally and linguistically diverse communities

7 Ethnic Communities Council of Victoria (2012), p.7

8 Ethnic Communities Council of Victoria (2012), p.7

9 Ethnic Communities Council of Victoria (2012), p.18


11 Law Institute of Victoria (2010), Interpreting Fund Scoping Project, p.55


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Association of Professional Engineers, Scientists and Managers, Australia (APESMA)

GPO Box 1272, Melbourne, Vic. 3001

e: translatorsandinterpreters@apesma.com.au
t: 1300 APESMA | 1300 273 762