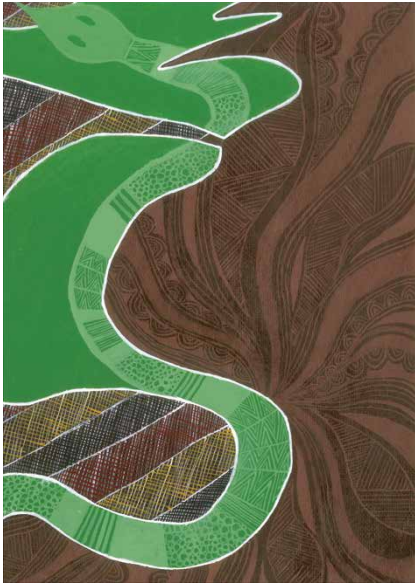


# Protocols for Lawyers with Aboriginal or Torres Strait Islander Clients in Western Australia

# Artist Message



## *Wagyl of the Derbarl Yerrigan*

*(Serpent of the Swan River)*

Marlia Miyalan Fatnowna  
Acrylic on museum quality paper

*The Derbarl Yerrigan (Swan River) is an extremely significant area in Perth. This painting depicts an aerial view of the river which embodies the presence of the Wagyl (the Dreaming serpent). It is known in Noongar creation stories that the Wagyl made the rivers, swamps, lakes and waterholes. The cross hatching patterns (raak) is a painting style from Arnhem Land which is representative of the artists identity within the work. Green in the Derbarl Yerrigan depicts new beginnings like that of new life in our flora and fauna during Djilba (spring time) as is this RAP for the Law Society of Western Australia.*

\*\*The artist acknowledges they are not of ancestry to Wadjuk Noongar country and people and has therefore respectfully used their own ancestral painting styles as to not appropriate Noongar culture. The Derbarl Yerrigan and Wagyl have been used to symbolise Wadjuk Noongar country in Western Australia and the significance they hold in being included in the Law Society of Western Australia's Reconciliation Action Plan.

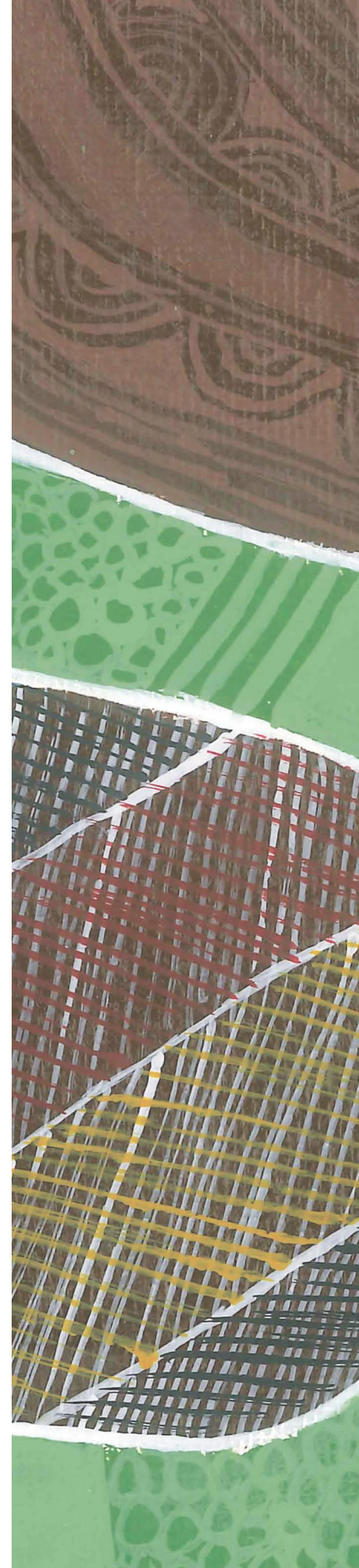
## About the Artist

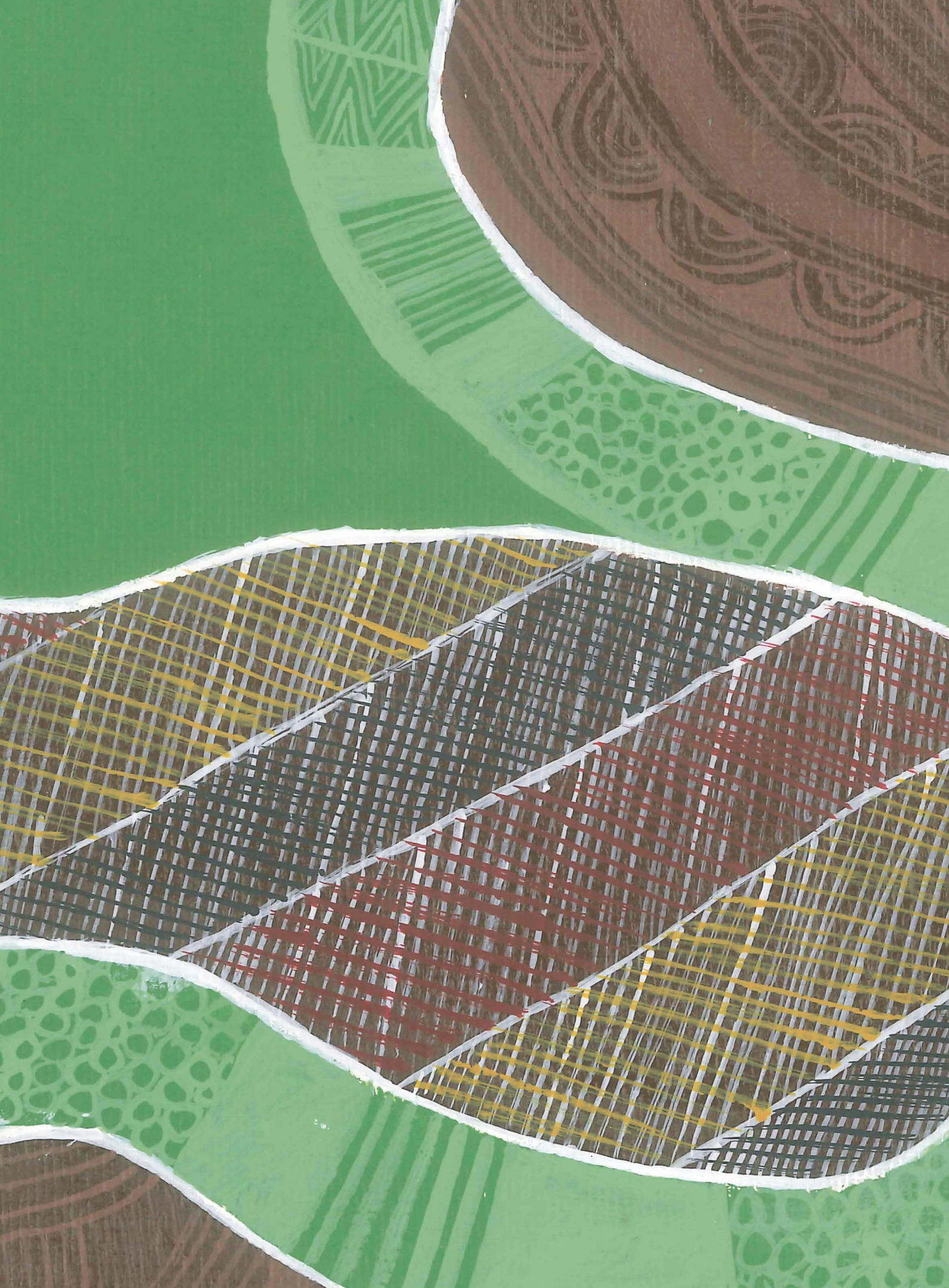
*"I have grown up all over Australia. My ancestral country is in Far North Queensland, Kooki-mini and Kooki-langi country between Laura and Cooktown and have family connections in North East Arnhem Land, Yolngu country. I am also of Scottish and Solomon Islander ancestry. Growing up I did my schooling and lived in Perth, Arnhem Land and on the mid north coast of New South Wales. Moving around was fantastic, it taught me a lot about myself and my identity. In Perth, I studied a bachelor of arts majoring in communications and media and literature, and then went on to teach in the Indigenous Ways of Knowing major at UWA. Art is in my blood, it is a way I can express how I feel about growing up in two completely different worlds as a young Aboriginal person of today. I also just love the aesthetics of painting. I like to bring together many different painting styles that I have learnt throughout my life, challenging notions of what it means to be an 'Aboriginal artist'."*

# Acknowledgements

The Law Society of Western Australia (Law Society) has drawn on the work of the Law Society Northern Territory who produced the base edition of this publication and who have given their permission for it to be amended to suit the Western Australian context.

This document does not constitute legal advice and should not be relied upon in place of legal advice.





# Contents

Message from the President	<b>4</b>
Protocol 1	<b>6</b>
Protocol 2	<b>12</b>
Protocol 3	<b>13</b>
Protocol 4	<b>14</b>
Protocol 5	<b>15</b>
Protocol 6	<b>19</b>
Aboriginal languages in Western Australia	<b>20</b>
The lawyer's obligation	<b>21</b>
Obligations under Western Australian law	<b>22</b>
Two cultures meeting	<b>25</b>

# Message from the President

The Law Society of Western Australia is pleased to introduce *Protocols for Lawyers with Aboriginal or Torres Strait Islander Clients in Western Australia* for practitioners acting for, and providing advice to, Aboriginal or Torres Strait Islander clients in Western Australia.

The Protocols are designed to assist and support practitioners to communicate effectively with their Aboriginal and Torres Strait Islander clients thereby fulfilling the practitioners paramount duty to the court and the administration of justice and other fundamental ethical obligations that practitioners have with their clients.<sup>1</sup>

Aboriginal and Torres Strait Islander peoples are culturally, linguistically and geographically diverse, with English being a second language for many. As it is universally acknowledged that significant differences in language and cultural practice increase the risks associated with miscommunication, the utility of the Protocols to assist with mitigating these risks by improving communication and providing a better level of legal service is realised.

The Law Society thanks the Law Society Northern Territory for its consent to adapt its *Indigenous Protocols for Lawyers*<sup>2</sup> to guide lawyers practising in Western Australia.

I also wish to thank and acknowledge the Law Society's Indigenous Legal Issues Committee for its work on adapting the Law Society Northern Territory's Indigenous Protocols for Lawyers to ensure they are tailored to the needs of the Western Australian community.

The Law Society also wishes to thank Legal Aid WA for comments on the Protocols during the drafting and settling stages.



A handwritten signature in black ink that reads "Alain Musikanth". Below the signature is a horizontal line.

**Alain Musikanth**  
President of the Law Society  
of Western Australia

This document does not constitute legal advice and should not be relied upon in place of legal advice.

<sup>1</sup> *Legal Profession Conduct Rules 2010* (WA), rr 5 and 6.

<sup>2</sup> The Law Society of Western Australia has adapted the Law Society Northern Territory's second edition of its *Indigenous Protocols for Lawyers*.

# The six protocols

## Protocol 1

Assess whether an interpreter is needed before proceeding to take instructions.

## Protocol 2

If required, engage the services of a registered, accredited interpreter through the Aboriginal Interpreting WA.

## Protocol 3

Use 'plain English' to the greatest extent possible.

## Protocol 4

Explain your role to the client.

## Protocol 5

Explain the relevant legal or court process to the client prior to taking instructions.

## Protocol 6

Assess your client's ability to understand.

# Protocol 1

## Assess whether an interpreter is needed before proceeding to take instructions.

More than 100 Aboriginal languages and dialects are spoken in Western Australia. The 2011 Census states that 60% of Indigenous Western Australians speak an Aboriginal language as their primary language, meaning that for many people, English will be a second, third or fourth language.

If in doubt, Aboriginal Interpreting WA is a useful resource ([aiwaac.org.au](http://aiwaac.org.au))

*'Whenever an Aboriginal client speaks English as an additional language, a lawyer must properly assess whether an interpreter is needed before proceeding to take instructions.'*

## How to decide if you should work with an interpreter

There are some things you should consider when deciding to work with an interpreter.

People who are not trained interpreters tend to significantly underestimate the amount of miscommunication that occurs when communicating in English with a person who speaks another language as their first language. Miscommunication commonly occurs between people from different cultural, conceptual and linguistic backgrounds.

Deciding how well a person speaks English (usually called 'assessing English proficiency') is a complex task that is ideally done by an appropriately trained linguist. A good starting assumption is that if a person speaks English as a second language and has had limited education in English, it is likely that you should work with an interpreter. This is especially true when you are dealing with specialised legal language, such as bail, contracts, conditions, operational periods and unfamiliar situations, such as court and police interviews.

In some cases, it is obvious that an interpreter is needed for effective communication. In many cases, however, you will need to think carefully to identify people who can communicate in English about everyday, familiar situations but who may need the assistance of an interpreter to communicate in unfamiliar situations with technical language (e.g. court).

There are many things that will reduce the ability of a non-native speaker of English to communicate effectively in English:

- stress
- unfamiliarity with the situation or uncertainty about what is expected
- an imbalance in power/knowledge between the parties
- background noise

- a conversation involving more than two people, especially if there is overlapping speech
- an inability to see the speaker's face
- people speaking too quickly
- the use of technical terms, figurative language, abstract nouns and complicated sentences.

It is important to consider gender barriers that may exist and effect your ability to communicate with your client. Communication issues may stem from cultural rules preventing your client from discussing certain matters with you. For example for some Aboriginal people it may be inappropriate to speak to someone of the opposite gender about men's business or women's business, or sexual matters.

## The communication benchmark

Ask yourself, 'how close am I to the ideal benchmark—does my client *fully* understand me and can they *fully* express themselves in this situation?'

Another question to ask yourself is if you were facing charges in a non-English-speaking country and had to rely on your client to interpret into English for you, would you be happy to proceed? If you would hesitate to rely on your client to adequately communicate to you what was going on, you shouldn't ask them to go through the same process without the assistance of an interpreter.

If you decide that your client does not need the assistance of an interpreter, you must be satisfied that they can handle the full range of language (including speed, technical terms, implied accusations and nuance) they will encounter in the court or interview situation. Otherwise, you are putting your client at a disadvantage compared to a native speaker of English in the same situation.

You should always ensure you fully document the efforts made, steps taken during your assessment and reason for your decision.



## The dangers of biographical data

Just because a client can adequately answer simple questions about their life does not mean they have sufficient English proficiency to understand court proceedings, discuss legal concepts or listen to and give evidence in court.

Most Aboriginal Western Australians who speak English as a second language will have had repeated experience providing biographical data to service providers (*where do you live, what's your date of birth, are you employed, etc.*). Don't rely on your client's ability to provide biographical data as the basis for deciding whether to work with an interpreter. In order to get an accurate picture of a person's English proficiency, you must move the conversation into topics and styles that your client does not use on a regular basis.

## The dangers of overly modifying your speech

Relying on yes/no questions is not a good method of deciding whether you should work with an interpreter.

Often when we get the impression that a person does not fully understand us, we intuitively compensate by reframing unanswered open questions (e.g. *Why do you think the police arrested you?*) as either/or questions or even closed yes/no questions (e.g. *were you arguing with the police when they arrested you?*). When you do this, your client becomes heavily reliant on your prompts, suggestions, tone of voice and other cues to enable the conversation to proceed. In other words, your client's ability to communicate is limited to the questions you ask.

In these situations, even though your client appears to easily answer questions with a yes/no response, you have not provided them with the option of fully expressing their own story or opinion.

## Awareness of Aboriginal English

Assessing English proficiency for Western Australian Aboriginals can be complicated because of the use of Aboriginal English. Aboriginal clients or witnesses may use English words, but the meaning of those words can differ significantly from the Standard English meaning of the same words. The result is that you might hear a person using English words and mistakenly assume they can communicate proficiently in Standard English. You must also be cautious of 'gratuitous concurrence', which is the tendency for Aboriginal clients to agree with a questioner, regardless of whether or not they agree with, or understand, the question.

Examples of differences between Aboriginal English and Standard English meanings:

Aboriginal English	Meaning (in Standard English)
kill	to hurt physically (hit, kick, punch etc.)
don't have to	must not
cheeky	aggressive or dangerous
can't	will not (e.g. 'I can't help you = I won't help you)
force	tease or tempt
humbugging	harassing, oppressing or forcing (e.g. harassing a person to hand over her pension money)

## How to talk with your client about the need for an interpreter

It is important to be sensitive when raising the topic of working with an interpreter. There may be a number of reasons why your client might not want to work with an interpreter:

- your client might not know what an interpreter does
- your client might have had a negative experience with an interpreter in the past
- your client may feel shame or anger because you are indicating their English isn't 'good enough'
- your client might not want other people knowing about their business
- the interpreter might not be in the appropriate cultural relationship with the client, due to relationship avoidance customs or seniority issues.

*'It's probably hard for non-Aboriginal people to understand how much our own languages enrich our lives as Indigenous people.*

*To speak our language gives us a real connection with our land and our culture. We can never get that from English, no matter how well we speak it.'*

**Jeanie Bell,**

*'Australia's Indigenous languages' from Michele Grossman(ed) Blacklines: Contemporary Critical Writing by Indigenous Australians, (2003) Melbourne University Press, page 169*

*Remember that the interpreter is not there 'for' the client. The interpreter is there for both of you—to help you communicate with each other. It is important to note that an interpreter can still help you to provide a better service to all Aboriginal clients.*

*A suggested way to discuss the need for an interpreter is:*

*"Before we start talking about this business, I want to talk to you about what language we should use today. Maybe we can talk in English or maybe we can talk in your language. I don't speak your language, so if we think it's better to talk in your language, I will ask an interpreter to help me."*

*Before you directly ask your client what they think about having an interpreter present, you should explain the interpreter's role so that your client can make an informed decision.*

*"An interpreter is someone who speaks your language and speaks English and has had training to help them understand the legal words that you will hear today. The interpreter will put everything I say into your language and everything you say into English.*

*The interpreter must follow rules. They can't take sides. They must keep the message the same; they can't add anything or leave anything out. The interpreter will also keep everything we talk about secret".*

# A four-step process



**Step 1**

Ask your client

**Step 2**

Assess speaking ability

**Step 3**

Assess comprehension

**Step 4**

Assess communication

## Step 1

### Ask your client/witness about an interpreter

- Raise the issue of working with an interpreter and explain the interpreter's role (see page 6).
- Ask your client using an open question (avoid reframing as a yes/no question if you do not get a response):

*'What do you think about asking an interpreter to help us?' Or 'What do you want to do?'*

- If your client/witness indicates that they would like an interpreter, stop the interview and arrange for an interpreter to be present.
- If your client/witness has difficulty answering this question, stop the interview and arrange for an interpreter to be present.
- If your client/witness indicates that they do not want an interpreter, proceed to step 2.

## Step 2

### Assessing speaking ability – ask questions that require a narrative response

- Get your client to speak to you in narrative (story) form by asking open-ended background questions (e.g. *Tell me about any jobs or training that you have had*) or questions related to the topic (*Tell me everything that happened after the police arrived*).
- Avoid questions that can be answered with one or two words (e.g. *How long have you been staying in Karratha?*). Include at least one question that seeks the client's thoughts or opinions (e.g. *What do you think will happen to your children if you go to jail?*).
- If your client does not respond with anything more than a few words to the first few questions, then make several further attempts at eliciting a longer response.
- If your client does not respond then consider if there are non-linguistic barriers such as gender barriers, that may be causing a lack of response.
- If there does not appear to be any non-linguistic barriers to communication and your client does not respond then it is unlikely that your client can express him/herself adequately or confidently in English. Stop the interview and arrange for an interpreter to be present.
- If your client is able to give satisfactory or somewhat satisfactory responses, proceed to step 3.

- Be patient with your client. Remember that English may be your client's second or third language and they need time to translate what you are saying from English into their language, and their response from their language into English.

## Step 3

### Assessing comprehension and speaking relevant to the legal context

Write down two sets of two medium-length sentences using the style and some of the terms that your client will encounter in the interview or court process. Do not simplify your language or adapt it significantly from what your client will encounter in the interview or court process.

Read each set to your client and ask them to explain back to you what you just said. Avoid prompting your client or supplying answers. Write down your client's responses.

#### Example

Present the task to your client like this:

*'I am now going to tell you something important. I will then ask you to tell that story back to me. I want to make sure that we understand each other. Are you ready?'*

#### Example 1

*'Today we need to decide if you're going to plead guilty or not guilty when we go to court. First I will ask you questions about what happened the day the police arrested you. I will then give you my advice about pleading guilty or not guilty in court.'*

*'OK, can you now tell me what I just said to you?'*

#### Example 2

*'When we go into court, you will be sitting behind a glass wall and I will be sitting at a table with the prosecutor. If you need to talk to me, raise your hand.'*

*'Can you tell me what I just said to you?'*

#### Example 3

*'In court today, the police lawyer and I will both talk about you to the judge. The judge will listen to us, and then he will make a decision about your punishment.'*

*'Can you tell me what I just said to you?'*

## Step 4

### Assessing communication

Assess the client's response and any other communication you have already had with them by using the columns below. If two or more of the points in the 'likely to need an interpreter' column apply to your client, it is advisable to work with an interpreter.

	Likely to need an interpreter	Less likely to need an interpreter
Articulating back	The person has difficulty articulating back what you said to them.	The person is able to meaningfully articulate most of what you said to them using their own words.
Short or long answers	The person only speaks in short sentences (four or five words or fewer) or mainly gives one-word answers.	The person speaks in full sentences of six to seven words or more and elaborates on answers to questions.
Agrees or disagrees	The person consistently agrees with your questions or propositions you put to them.	The person is easily able to disagree and articulate a different point of view.
Inappropriate responses	The person frequently responds inappropriately to your comments or questions (e.g. responding with 'yes' to 'what' or 'where' questions).	The person consistently responds meaningfully and appropriately to questions and comments.
Unsure of meaning	You are sometimes unsure about what your client is telling you, even when the words and grammar they are using are clear to you.	You can process the person's speech clearly and understand what they are telling you.
Contradicts themselves	The person appears to contradict themselves and is unaware of the apparent contradictions.	The person does not contradict themselves, or if they do, they are aware of it and can address the contradiction.
Uses new vocabulary	The person does not add significant amounts of new vocabulary to the conversation. They rely on using the words or phrases you have previously said to them.	The person frequently adds new vocabulary to the conversation.
Good grammar	The person does not use correct grammar. E.g. mixes up pronouns ('they' instead of 'she') or uses the past tense incorrectly ('he look at me').	The person's grammar is mostly correct.
Repeating and simplifying	You find yourself frequently needing to restate and simplify your messages.	You can talk easily in a normal manner.

Note: this is a guide only and should not be substituted for a formal language proficiency test. If you have any doubts, please contact the Aboriginal Interpreting WA (AIWA) on 1800 330 331.

In *Ebatarinja vs Deland* (1998) 194 CLR 44, the accused, an Indigenous person who was both deaf and dumb, was facing a committal hearing in relation to a charge of murder. When it was not possible to find a suitable interpreter, the High Court held that as the defendant was not capable of understanding the proceedings, the court had no power to continue with the committal proceedings. The effect of the decision was that the murder charge was permanently stayed. In paragraph 26 of the judgment, the High Court stated that:

*'In a trial for a criminal offence, it is well established that the defendant should not only be physically present but should also be able to understand the proceedings and the nature of the evidence against him or her.'*

# Protocol 2

## Engage the services of a registered, accredited interpreter through the Aboriginal Interpreting WA (where applicable).

Interpreting, particularly legal interpreting, is a highly skilled task that should only be undertaken by trained or accredited interpreters. The use of a family member or another inmate to interpret is not acceptable. You should engage the services of a registered accredited interpreter through the Aboriginal Interpreting WA (AIWA) or engage an interpreter with the National Authority for the Accreditation of Translators and Interpreters (NAATI).

Keep in mind when engaging an interpreter that your client is likely to speak more than one Aboriginal language (for more information on this see 'Aboriginal Languages in Western Australia' below). You should work with an interpretation service, such as AIWA when determining which language your client speaks and available interpreters for that language.

When engaging the services of an interpreter, you should consider whether any gender barriers exist. It may be culturally inappropriate for your client to speak to someone of the opposite gender about aspects of Aboriginal lore, or sexual matters, thus it may be necessary for the interpreter to be the same gender as your client.

Professional interpreters are bound by a code of ethics issued by the Australian Institute for Interpreters and Translators (AusIT). This code of ethics requires impartial, confidential and accurate interpreting. The code of ethics also requires interpreters to turn down jobs that they know they are not competent to perform.

Where a lawyer is unable to obtain the services of a registered or accredited interpreter, they must document steps taken to obtain a registered interpreter before engaging the services of an unregistered or unaccredited person to act as an interpreter.

Where a lawyer decides to proceed with a matter despite the unavailability of an interpreter (for example, proceeding with a bail application for a client in custody even though an interpreter is not present), the lawyer should fully document why they chose to proceed without an interpreter.

# Protocol 3

## Explain your role to the client.

It is important not to make assumptions about people's knowledge of the legal system or your role as a lawyer. You should explain your role as a lawyer to your client at the first opportunity. Sometimes clients may believe they understand certain aspects of the legal system, but their understanding may not be entirely accurate. If your client doesn't understand your role, they may withhold information from you or act in ways that will make it difficult for you to properly represent them. Do not check your client's level of understanding by asking closed questions such as 'do you understand what's happening today?' or 'I'm a prosecutor. Do you understand what my job is?'

### Tip

*It is likely that your client will feel uncomfortable in the courtroom. They may be suffering from culture shock and the surroundings may also stir up feelings of prior experiences with the non-Indigenous legal system.*

### Example:

A criminal lawyer might explain their role like this:

*'I will be your lawyer. I will explain each of the charges to you, and I will listen to your story about what happened that day/night. I will tell you what your choices are when you go to court. I will help you decide whether you should plead guilty or not guilty to the charges. When we go into court, I will talk for you in court. I work for you and will listen to you; I don't work for the government and I don't work for the police. My job is to follow what you say and try to get the best outcome for you.'*

# Protocol 4

## Explain the relevant legal or court process to the client prior to taking instructions.

Context plays a significant role in communication. Understanding both the process and purpose of activities provides people with the necessary context to know what information is important to communicate to their lawyer, what information they may wish to withhold and how certain decisions will impact their lives.

It is important for Indigenous clients to have a clear picture of the relevant legal processes in order to make informed decisions and engage meaningfully with their lawyers. An important part of explaining the process is explaining the purpose of activities. For example, in the case of a client or witness who will give evidence, not only should you explain the process of going to court, where the witness box is located, taking the oath or affirmation and answering questions in both examination in chief and cross examination, you should also explain the purpose of giving evidence and the purpose of cross examination.

### Example:

You might give an explanation along the lines of:

*‘When the judge decides about this case, she can only think about the things she has heard in court. That is why you have to come to court to tell your story to the judge.*

*When you tell your story, first I will ask you questions, and then the lawyer from the other side will ask you questions. The reason the lawyer from the other side will ask you questions is to test your story. The reason they test your story is to see if you have changed your story or to see if you can’t remember things properly.’*

## A few words on culture shock

‘Culture shock’ is a term that describes the anxiety and fear that a person experiences when he or she moves out of their cultural safety zone and into a new one.

‘Culture’ consists of the ideals, values and assumptions about life that are widely shared and that guide specific behaviour. When we move into another cultural sphere, those values and assumptions about human behaviour differ. Our expectations of others’ behaviour towards us may not be met. This causes us to have strong emotional responses, such as anger, confusion and fear. In order to cope in the unfamiliar culture, we are required to continually monitor and adjust our own behaviour so that it matches up with the accepted ‘norms’ in the culture we now find ourselves in. This can be a deeply stressful experience.

Remember that your client is susceptible to experiencing ‘culture shock’ when they meet with you or appear in court.

You may also experience culture shock when you visit a community or other place with which you are not familiar and where the people around you have world views different to your own.



# Protocol 5

## Use 'plain English' to the greatest extent possible.

As lawyers, we bear the responsibility of communicating clearly with our clients. We must adapt our speech to avoid saying things that will cause confusion, and we must make efforts to explain and unpack legal processes and concepts in ways that will best allow our clients to make informed choices about their legal matters. Speaking in plain English will assist you to communicate with your client regardless of whether your client's first language is English or not.

Aboriginal languages vary significantly from English in both the meaning of individual words (semantics) and the way that words are put together to form sentences (grammar or syntax). As with any cross-language communication situation, clear and accurate communication is most likely to occur when you use words, concepts and grammar that are familiar to both languages and avoid using words, concepts or grammatical structures that only exist in one language and not the other.

Plain English is used to describe a style of English that will be most easily understood by a particular audience, in this case Western Australian Aboriginal and Torres Strait Islander peoples. It is important to note that plain English is different to simple English; plain English is not about using simple words or 'dumbing down' the message; it is about understanding the linguistic features of the relevant languages that will impede and enhance communication and adapting your communication accordingly. A lawyer who is skilled at using plain English will be able to communicate the full range of meaning that exists in 'legalese' in a way that maximises their client's understanding.

*'I explained the charges against my client and the evidence to support them.*

*Then I explained the business about pleading guilty or not guilty.*

*I did not hurry my explanation and we went over the matters a few times.*

*Then I told him to go away and think about what he wanted to do.*

*He came back after a few hours and I asked him if he had decided how to plead.*

*He said he had.*

*He wanted to plead 'guilty-not-guilty'.*

*Anecdote cited by Helena Blundell (2000),*

*'A long fight for basic human rights' 25(5) Alternative Law Journal 219, page 220.*

The following document outlines some of the key features of plain English that lawyers should incorporate when acting for Indigenous clients.

A Guide to Plain English ([www.nt.gov.au/ais](http://www.nt.gov.au/ais))

## 1. Use active voice, avoid passives

Change a passive statement to an active statement by supplying an actor (the doer). If the actor is unclear, use 'they' or 'somebody'.

Instead of:	Try:
'He was arrested.'	'The police <i>arrested</i> him.'
'If you tease the dog, you <i>will</i> be bitten.'	'If you tease the dog, <i>he will bite you</i> .'
'You <i>will be paid</i> extra for overtime work.'	'If you work overtime, they <i>will pay you</i> more money.'
'He broke the law, so he <i>was jailed</i> .'	'He broke the law, so <i>they put him in jail</i> .'
'His money <i>was stolen</i> .'	' <i>Somebody stole</i> his money.'

## 2. Avoid abstract nouns

Replace abstract nouns with verbs (doing words) or adjectives (describing words). An abstract noun is something that is intangible, like an idea or feeling, and cannot be detected with the senses.

Instead of:	Try:
'It has no <i>strength</i> .'	'It is not <i>strong</i> .' (adjective used)
'That was due to his good <i>management</i> .'	'He <i>managed</i> things properly so that happened.' (verb used)
'His <i>patience</i> has run out.'	'He will not be <i>patient</i> any more.' (adjective used)
'His <i>anger</i> led him to violence.'	'He was <i>angry</i> . That made him violent.' (adjective used)
'He enjoys going for a <i>run</i> .'	'He likes <i>running</i> .' (verb used)

## 3. Avoid negative questions

Instead of:	Try:
' <i>Isn't</i> he the boss?'	'Is he the boss?'
'You <i>never did</i> that before, did you?'	'Have you ever done this before?'
'So you <i>didn't</i> report the trouble?'	'Have you reported the trouble?'

## 4. Define unfamiliar words

Use the word then attach a short descriptive statement.

Instead of:	Try:
'This is Crown land.'	'Crown land is land the government owns.'
'You have been given bail.'	'The police gave you bail, which means you promise to come back to court next time and not to get into any trouble before then.'

## 5. Put ideas in chronological order

Instead of:	Try:
'Prior to leaving the hotel, you had a drink?'	'You had a drink at the hotel. Sometime after that, you left the hotel. Is that true?'
'You're scheduled to move into the house next week, but you haven't signed the tenancy agreement.'	'First you have to sign the tenancy agreement. Then you can move into the house next week.'
'Today we need to decide whether you're going to have surgery, based on your test results from last week.'	'You came in last week and we checked [your blood]. Today I want to tell you about that blood test and then we can decide what to do next.'

## 6. Avoid multiple clauses in a sentence (one idea, one sentence)

Break paragraphs into several sentences.

Instead of:	Try:
'Early resolution of disputes, especially through mediation, which contributes to building safer community environments, is encouraged.'	'The government wants to make communities safer. That can happen if people solve arguments quickly. Mediation (talking about problems) is one way to solve arguments.'

## 7. Be careful when using words like 'if' and 'or' to talk about hypothetical events that have not happened yet.

Use 'maybe' to indicate multiple possibilities.

Instead of:	Try:
'We'll build new houses <i>if</i> the funding is approved.'	'Maybe they will give us money and we can build new houses. Maybe they won't give us money and then we can't build any new houses.'
' <i>If</i> the corrections officer approves, you can go to the football game.'	'You must ask the corrections officer about going to the football game. Maybe she will say that you can go. Maybe she will say you cannot go. You must do what she says.'

## 8. Place cause before effect

Be wary of the word 'because'.

Instead of:	Try:
'You're going to be imprisoned for three weeks because you didn't comply with your orders.'	'The judge gave you rules to follow. You didn't follow those rules. That is why the judge is putting you in jail for three weeks.'
'You were angry because he insulted your sister?'	'He insulted your sister and this made you angry. Is this true?'

## 9. Indicate when you change topic

For example, try:

*'I've finished asking about your job. Now I need to ask you about your family. Thanks for telling me about what happened last week. Now I want to talk to you about what we should do tomorrow.'*

## 10. Avoid relying heavily on prepositions to talk about time

Prepositions are words like 'to', 'from', 'on', 'at', 'under'.

Instead of:	Try:
'The program will operate <i>from</i> Wednesday <i>to</i> next Tuesday.'	'The program will start on Wednesday and then finish next Tuesday.'
Your contract is <i>under</i> review.'	'They are reviewing your contract.'
They will make a decision <i>over</i> the next three months.'	'They will think about this for three months and then they will decide what they will do.'

## 11. Avoid figurative language

Instead of:	Try:
' <i>Fight</i> for your family.'	'Work hard to keep your family together.'
'When I said that, he just <i>exploded</i> .'	'When I said that, he suddenly got angry and shouted at me.'
'I want to make sure that we're <i>on the same page</i> .'	'I want to make sure we understand each other.'
' <i>Keep your eye on</i> him.'	'Keep watching him closely.'

\* Some content adapted from 'Helpful hints for cross-cultural communications in the Top End', a joint publication by the Australian Society for Indigenous Languages (AuSIL) and the North Australian Aboriginal Justice Agency (NAAJA), 2011. Used with permission.

# Protocol 6

## Assess your client's ability to comprehend or understand.

Hearing loss is more common among Indigenous Western Australians than the general population. In 2012-13 one in eight Aboriginal and Torres Strait Islander people reported diseases of the ear or hearing problems and are three times more likely to suffer from diseases of the ear or hearing problems than non-Aboriginal and Torres Strait Islander Australians.<sup>1</sup>

Hearing loss among Indigenous Western Australians can often be undiagnosed because miscommunication is attributed to linguistic or cultural difference. Hearing loss compounds other communication barriers experienced by Indigenous people and often will affect a person's ability to learn English as a second language.

Lawyers must assess whether their client experiences hearing loss to ensure that their client is provided with adequate supports in both the courtroom and during instruction taking.

Apart from language and hearing impairments, there may be other impairments that could affect your client's ability to comprehend. Communication is essential to personal autonomy and decision-making.

In 2013 the Senate Legal and Constitutional Affairs References Committee (the Committee) reported the findings of its inquiry into justice reinvestment approaches to criminal justice.<sup>2</sup> The Committee drew attention to a wide range of studies and submissions indicating that people who interact with the criminal justice system often have:

- high levels of hearing impairment
- cognitive disabilities
- acquired brain injury
- mental illness
- language impairment.

In conducting its Australia-wide 'Profiles of disability' survey in 2009 and in a further report in 2014, the Australian Bureau of Statistics (ABS) reported substantial population differences in the incidence of disability.<sup>3</sup> The ABS found:

- After adjusting for differences in the age structure of the two populations, Aboriginal and Torres Strait Islander people were 2.7 times as likely as non-Indigenous people to be living with disability.
- Aboriginal and Torres Strait Islander children aged 0-14 years had much higher rates of disability than non-Indigenous children (14.2% compared with 6.6%). The differences were statistically significant for both boys (19.9% compared with 8.3%) and girls (8.9% compared with 4.8%).
- Aboriginal and Torres Strait Islander adults in the age range of 25-54 years had rates of disability that were 2.7 times (38%) greater than the corresponding rates for non-Indigenous adults.
- In the 35-44 years age group, the differences in disability rates for Aboriginal and Torres Strait Islander people and non-Indigenous people were significantly different for both men (35.1% compared with 12.3%) and women (29.0% compared with 12.5%).

The National Aboriginal and Torres Strait Islander Legal Services speak of how an undetected disability can affect a person's access to justice. In its submission,<sup>4</sup> it quoted from the evidence provided to the Senate Community Affairs References Committee in its Inquiry into Hearing Health in Australia:

*'One audiologist talked to me about dealing with a client who had recently been convicted of first-degree murder and had been through the whole criminal justice process. That had happened and then she was able to diagnose him as clinically deaf. He had been through the whole process saying, 'good' and 'yes'—those were his two words—and that process had not picked him up. Given the very high rates of hearing loss, you have to wonder about people's participation in the criminal justice system as being fair and just if in cases like that people simply are not hearing or understanding what is going on.'*<sup>5</sup>

1. Australian Bureau of Statistics (2013) '4727.0.55.001 – Australian Aboriginal and Torres Strait Islander Health Survey: First Results, Australia 2012-13. Available from: <http://www.abs.gov.au/ausstats/abs@.nsw/lookup/4727.0.55.001main+features802012-13>

2. Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, Inquiry into the value of a justice reinvestment approach to criminal justice in Australia (2013).

3. Australian Bureau of Statistics, Profiles of Disability, Australia, 2009, Comparison of Disability Prevalence between Aboriginal and Torres Strait Islander Peoples and Non-Indigenous Peoples (2013).

4. National Aboriginal and Torres Strait Islander Legal Services (NATSILS), Submission 61.

5. Evidence to the Senate Community Affairs References Committee, Alice Springs, 18 February 2010, p 1 (Tristan Ray).

# Aboriginal languages in Western Australia

There are many Aboriginal languages spoken in Western Australia. Even within relatively small geographic areas, a number of languages can be spoken. In the Northwest and Desert areas for example, there are at least 26 languages spoken. The same applies to Indigenous people living in the Kimberley and Southwest regions.

You can therefore expect your client to speak a number of languages, including languages that have evolved since colonisation. Some of those languages are described below.

## Aboriginal English

Aboriginal English is a term used by linguists to denote dialects of English used among Aboriginal people.

A leader in the field of Aboriginal English and the law is Dr Diana Eades. She argues that Aboriginal English is not a fixed dialect but a range of dialects. Some of those dialects are closer to Standard English, while others are closer to Kriol (see below).

## Kriol

'Kriol' or Creole languages are a particular type of language and are found throughout the world. Creoles emerge when there is sustained contact between people who speak a variety of languages. In basic terms, a creole will combine features of a number of languages, such as grammatical structures, idioms and semantic range (the multiple meanings of words) to create an entirely new language. Creoles begin as a pidgin (see below) and then become a fully developed language as people grow up speaking it as a first language.

The creole language that is spoken in Western Australia is called 'Kriol' and is now the main language of many Aboriginal communities and has thousands of speakers across the Kimberley region and Western Australia. There are many dialects of Kriol, depending on the traditional languages they draw from.

*Nyungar wangkiny or speaking and understanding our language is central to our identity. We need to commit to reinvigorating our cultural heritage and teach our kurlonggur (children) so that they know where they come from, once they learn the language they can start to make that connection to their cultural identity and heritage and go forward with pride into the future.*

*Sandra Harben, SWALSC, 2012<sup>6</sup>*

## Learner's English

Linguists describe Learner's English as an 'inter language'. These are the words people speak when they are learning a second language but consistently fail to speak the second language correctly.

For example, 'don't have to' is often used by speakers of Learner's English to mean 'must not'.

Speakers of Learner's English may also revert to using their own language for a word they do not know the English equivalent of.

## Pidgin

Pidgins are rarely used in Australia now. They are 'contact' languages and are actually not fully developed languages. Historically they have evolved from intercultural contact in places, such as cattle stations and missions.

6. <http://www.noongarculture.org.au/language/>

# The lawyer's obligation

As a lawyer, you have common law and legislative obligations towards your client and the court. These obligations originate from Commonwealth and Western Australian legislation and rules set out later in this document, together with extracts from relevant cases. The six protocols have their basis in these obligations.

## Your duty to the court

If you do not fulfill your fiduciary obligations to your client, it is possible that you are breaching your duty to the court because you are not upholding or ensuring the effective administration of justice.

## Your fiduciary duty to your client

You have an obligation to explain to your client what the processes of law are, what they involve, and the options they have and the risks associated with those options.

You have a duty to ensure that they understand what you have told them so that they can make informed decisions about the choices available to them and so that they may provide you with instructions.

You can only act on those instructions. For this reason, it is critical that you are certain that your client has made an informed choice when instructing you.

## Common law obligations

You have ethical and legal obligations to your client and to the court. You also owe a fiduciary duty to your client. As an officer of the court, you have an overriding duty to uphold and ensure the effective administration of justice.

Whether an interpreter is required under the common law is a matter of judicial discretion. The overriding requirement is that all parties must have a fair trial.

In a criminal law context, a fair trial involves the accused and the tribunal being able to hear and understand the evidence of each witness: Johnson (1986) 25 A Crim R 433 *De La Espriellavelasco v The Queen* [2006] WASCA 31.

### Tip

Draw a map of the courtroom layout and explain to your client the role of each person who will be there and where they will be sitting. Include the security staff and orderlies in your explanation.

### Tip

If you are in court and you don't have the assistance of an interpreter and your client needs one, ask to have the matter stood down:

'If counsel requires an adjournment for a given purpose, surely it is his responsibility to make a firm application in unambiguous terms. If the grounds have merit, such an application will seldom be refused. If counsel does not understand his client's instructions then he should not proceed until he does.'

Muirhead J, in *Putti v Simpson* (1975) 6 ALR 47, at 51.

*'Every counsel has a duty to his client to fearlessly raise every issue, advance every argument and ask every question, however distasteful, which he thinks will help his client's case. But as an officer of the court concerned with the administration of justice, he has an overriding duty to the court, to the standards of his profession and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests.'*

*Rondel v Worsley*

[1969] 1 AC 191, per Lord Reid at 227.

# Obligations under Western Australian law

There are two main sources of Western Australian legislation that place obligations upon legal practitioners who practice in Western Australia: the *Legal Profession Act 2008* (LPA) and *Legal Profession Conduct Rules 2010* (LPCR). These regulations and laws are regularly amended, so you must keep yourself up to date.

The LPA sets the standard that a practitioner needs to practice with competence and diligence.

Section 402 of the LPA sets out the definition of unsatisfactory professional conduct:

## Unsatisfactory professional conduct includes:

Conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Section 403 of the LPA sets out the definition of professional misconduct:

## Professional misconduct includes:

1. Unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and
2. Conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

### Tip

*Take special care to explain the court's orders and make sure your client understands his or her obligations that arise from those orders. Use an interpreter for this part of your job too!*

For the purpose of finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice, regard may be had to the suitability matters that would be considered if the legal practitioner were an applicant:

- (a) for admission to the legal profession under this Act or
- (b) for the grant or renewal of a local practising certificate.

In addition to the common law requirements of a practitioner, the LPCR set out a number of relevant requirements:

LPCR Rule 6:

- (1) A practitioner must —
  - (a) act in the best interests of a client in any matter where the practitioner acts for the client; and
  - (b) be honest and courteous in all dealings with clients, other practitioners and other persons involved in a matter where the practitioner acts for a client; and
  - (c) deliver legal services competently and diligently; and
  - (d) avoid any compromise to the practitioner's integrity and professional independence; and
  - (e) comply with these rules and the law.



## LPCR 7 – Relations with clients

Practitioners should serve their clients competently and diligently. They should be acutely aware of the fiduciary nature of their relationship with their clients and always deal with their clients fairly, free of the influence of any interest that may conflict with a client's best interests. Practitioners should maintain the confidentiality of their clients' affairs but give their clients the benefit of all information relevant to their clients' affairs of which they have knowledge.

Practitioners should not, in the service of their clients, engage in or assist conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

A practitioner must act honestly, fairly, and with competence and diligence in the service of client, and should accept instructions, and a retainer to act for a client, only when the practitioner can reasonably expect to serve the client in that manner and attend to the work required with reasonable promptness.

LPCR Rules 8 and 10 – A practitioner must keep the client informed at regular intervals, or upon request, of the progress or lack of progress toward resolution of the client's matter.

The District Court of Western Australia Circular to Practitioners GEN 2011/2 issued 27 September 2011 also provides some useful language service guidelines.

## Obligations under federal legislation

In Federal Court proceedings, section 30 of the *Evidence Act (Cth) 1995* applies. This states that

'A witness may give evidence about a fact through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand and to make an adequate reply to questions that may be put about the fact.'

The *Crimes Act 1914* (Cth) imposes obligations on investigative officials for infringements under that Act. An investigating official who believes on reasonable grounds that a person under arrest or a protected suspect is unable to communicate orally in English with reasonable fluency, must arrange for an interpreter to be present before questioning begins and cannot begin questioning or investigation until an interpreter is present. An investigating official has additional obligations when the suspect is of Aboriginal or Torres Strait Islander origin.

## The influence of international law

Australia has ratified the International Covenant for Civil and Political Rights (ICCPR). While the ICCPR has not been incorporated into Australian domestic law, the document is a powerful influence on Australian common law.

Article 14(3) of the ICCPR states that everyone who is charged with a criminal offence is entitled, as a minimum, to be informed of the nature and cause of the charge in a language in which they can understand; to have adequate time and facilities to prepare a defence and to be able to communicate with counsel of their own choosing; and to have the free assistance of an interpreter if they cannot understand or speak the language used in court.

On 25 September 1991, Australia acceded to the First Optional Protocol to the ICCPR. By this act, Australia has recognised the competence of the Human Rights Committee to receive communications from individuals claiming to be victims of violations of any of the rights set out in the ICCPR.

Individual communications must only be made once all available domestic remedies have been exhausted.

## International Covenant on Civil and Political Rights

### Article 14(3):

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.
- ...
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## Case law

His Honour Justice Muirhead stressed the importance of receiving adequate instructions before appearing for clients in *Putti v Simpson* (1975) 6 ALR 47, at 50-51:

*'...it is absolutely vital that counsel remember their function and obligations, not the least of which is to ensure they are adequately instructed before appearing for clients*

*- especially when the liberty of those clients may be in jeopardy - and that the clients are properly advised. These matters are basic. Half-baked instructions which may come from unreliable sources are, as a rule, just not good enough. The practice of appearing with only hurriedly gained instructions, especially where language or cultural differences jeopardise understanding, may result in substantial injustice to individuals....*

*If counsel requires an adjournment for a given purpose, surely it is his responsibility to make a firm application in unambiguous terms. If the grounds have merit, such an application will seldom be refused. If counsel does not understand his client's instructions then he should not proceed until he does....*

*I am not unaware of the difficulties faced by all involved in the administration of justice in remote areas, of poor communications, of the problems encountered in obtaining instructions, in arranging legal representation, of arranging for interpreters and for the attendance of witnesses. There are many problems such as distance and weather which jeopardise transport arrangements. Yet neither these matters, nor crowded lists to be coped with on hurried court itineraries, should be allowed to jeopardise an individual's right to the most careful presentation and consideration of his case.'*

Sir William Deane spelt out the terms of a domestic remedy in relation to the withholding of essential interpreter services in the case of *Dietrich* (*Dietrich v The Queen* (1992) 177 CLR 292, at 330-331):

*'Inevitably, compliance with the law's overriding requirement that a criminal trial be fair will involve some appropriation and expenditure of **public funds** ... On occasion, the appropriation and expenditure of such public funds will be directed towards the provision of information and assistance to the accused: for example, ...*

*the funds necessary to provide interpreter services for an accused and an accused's witnesses who cannot speak the language. **Putting to one side the special position of this court under the Constitution, the courts do not, however, assert authority to compel the provision of those funds or facilities. As Barton v The Queen [(1980) 147CLR, at 96, 103, 107, 109] establishes, the effect of the common law's insistence that a criminal trial be fair is that, if the funds and facilities necessary to enable a fair trial to take place are withheld, the courts are entitled and obliged to take steps to ensure that their processes are not abused to produce what our system of law regards as a grave miscarriage of justice, namely, the judgment and punishment of alleged criminal guilt otherwise than after a fair trial. If, for example, available interpreter facilities, which were essential to enable the fair trial of an unrepresented person who could neither speak nor understand English, were withheld by the government, a trial judge would be entitled and obliged to postpone or stay the trial and an appellate court would, in the absence of extraordinary circumstances, be entitled and obliged to quash any conviction entered after such an inherently unfair trial.'** (Emphases added).*

In addition, there is also a strong presumption at common law in favour of permitting the defendant to have the assistance of an interpreter to interpret all proceedings in court. President Kirby (as he then was) in *Gradidge* (*Gradidge v. Grace Bros Pty Ltd* (1988) 93 FLR 414 at 417) has described the rationale for the rule as follows:

*'Due process includes an entitlement to a fair trial which is normally conducted in the open. It also normally includes an entitlement to be informed, **in a language which the litigant understands**, of the nature of the case. Where the litigant cannot communicate orally in English it also normally includes, in my opinion, **the entitlement to the assistance of an interpreter.** ... The principle of an open trial in public, which is the hallmark of our system of justice, is not shibboleth. It exists for a purpose. That purpose is publicly to demonstrate to all who may be concerned the correctness and the justice of the court's determination according to law. That demonstration must extend to the parties themselves, for they are most affected by the outcome of the case. **Such demonstration, day by day in the courts, reinforces respect for the rule of law in our society.'** (Emphases added).*

# Two cultures meeting

Advising an Indigenous client often requires a special type of effort on your part.

To begin with, it is important that you are aware that you and your client will have a different world view. It is also important that you show respect for your client's world view and their customs.

*'Our world view embodies the position from which we evaluate and understand the world. It encompasses all the taken-for-granted meanings, assumptions, and ways of evaluating and dealing with things that unconsciously shape the way we experience, conceptualise and interact with the world.'*

*P Dudgeon, D Garvey, H Pickett (2000) Working with Indigenous Australians: A Handbook for Psychologists, Gunada Press, Perth, page 10.*

Appreciate the diversity of circumstances of Indigenous peoples and, most importantly, don't be judgmental about them.

Establishing rapport with your client is important to forming a successful working relationship and will help your client feel comfortable communicating with you.

As a lawyer you should, wherever possible, make an effort to become acquainted with some of the protocols that your client finds familiar or that may apply in the community that you are visiting.

While protocols vary from community to community and individual to individual, there are many that the communities have in common. Some examples of protocols to respect are listed below.

## Kinship

Within all cultures there are kinship systems. Indigenous kinship systems are ubiquitous across Western Australia, and they are specific to the group that claims ownership of them.

For many Indigenous people, kinship systems not only imply who is related to whom but also how they must act towards each other in particular circumstances. For example, do not pressure your client to talk about someone if they seem unable to offer you any information about that person. If you do, you may be forcing them to speak about somebody of whom they must not speak.

Rather than viewing kinship as a barrier to communication, be willing to learn about these different systems. If you take the time to learn a little about your client's culture, communication will become easier between you.

### Tip

*One example of a common avoidance relationship is between post-pubertal siblings of the opposite gender, who will not talk directly to each other or say the other's name, but may use a nickname for the person when referring to them.*

## Avoidance relationships

Within Indigenous kinship systems there are avoidance relationships, sometimes referred to as 'poison cousins'. The term 'poison cousin' is not only incorrect but also very misleading. The relationship is often not a 'cousin' relationship in a standard English sense. Additionally, the term 'poison' can imply to non-Indigenous people that this is a negative relationship, however in Indigenous kinship systems avoidance relationships are a positive relationship that is often accompanied by a sense of deep respect. For example a mother-in-law/son-in-law avoidance relationship, which obliges them to avoid speaking directly to one another is common.

You may find that when a person enters a room, another Aboriginal person may leave the room, or rearrange seating positions. This may be because of avoidance relationships. Be aware that when you organise a family conference, some discussion about who can attend, or seating arrangements, may be necessary in order to allow people to fulfill avoidance obligations. In some groups, for example, Warmun Community in the East Kimberley, it is also customary for a sibling to avoid use of the name of another sibling of the opposite gender.

## Eye contact

For many Indigenous people, sustained eye contact is considered rude and even disrespectful. This may particularly be the case if you are talking to someone of the opposite gender.

## Funerals

When an Indigenous person has passed away, there are certain obligations that family members need to fulfil. These vary from region to region and between communities. It is usually important that people participate in ceremonies. It is often extremely insensitive to mention the name of someone who has passed away, view any photograph or film of that person and sometimes use anything of that person for a reasonable period of time.

### Tip

*Make special categories in your client information forms to include categories such as language spoken, skin or clan group, community council details or relatives' contact details.*

## Making decisions

Sometimes your client may not have a right to make decisions about a particular subject. It may be up to other people in the community to make that decision.

## Visiting a community

While each community is different, often the cultural protocols will be similar. You should gather as much information as you can about the community before you go there.

## Practicalities

Find out how many people live in the community, how it is governed, where the nearest town is and what languages are spoken. Obtain any necessary permits well in advance and check to see if it is a 'dry' (alcohol-free) community.

## Dress

If you are a woman, this generally means wearing a skirt or a dress so that most of your body is covered. If you are a man, trousers and a shirt and boots are adequate. Dress conservatively and maintain a professional appearance. Your clothing should be comfortable and practical. You may find that when you get to the community it is appropriate to dress in a slightly different manner. Take a cue from what others of your age and gender are wearing.

### Tip

*Have at least three points of contact for your client where you can leave messages for them. This may include an aunty or uncle or community centre.*

## Roles in the community

If you are meeting with particular people in a community, find out exactly what their roles are in the community. You may find that the answers you want need to come from a range of people in the community who have the authority to speak about those things.

## In the office

Remember that your client may feel uncomfortable talking to you. This might be because they have uncomfortable feelings from negative contact history or they misunderstand the nature of the Western legal system. Above all, you should remember that many spaces do not feel neutral for Indigenous people.

Your client may feel awkward coming to your office. Imagine your first court appearance or your first client interview or even visiting the dentist and this may give you some idea of what it must be like for some Indigenous clients.

A more appropriate place to see your client may be somewhere where there are lots of Indigenous faces or even outside at a picnic table in the park near your office. You may even like to see your client at their home or at an Indigenous legal or health service.

Your client may also bring a support person with them when they see you. This is something that you may want to encourage your clients to do.

## Keeping contact with your client

Indigenous communities and homelands pose their own peculiar pressures and difficulties for the people who live there. Many people who live there do not have access to a telephone or a computer in their home or enjoy the luxury of home-delivered mail.

### Tip

*Consider getting an 1800 toll-free number for your workplace so that your Indigenous clients may easily contact you.*

## Communicating

Mail is often not a reliable method of keeping in contact with your client because the chances of your client receiving his or her mail may be low. Your client may have to collect their mail from a post office many kilometres away or from their community centre.

The telephone may be the only one to be shared by the whole community. It may only work between certain hours when the generator is switched on. If the generator has broken down, there may be no telephone service at all.

## Coming to town

Your client may only be able to come to your town once a year because of the cost of flying or other difficulty. If they travel by car, they may have to wait until the end of the wet season to travel. They may not own a car, so they may depend on family members or others for transportation.

## Your expectations

You may feel frustrated because your client has not contacted you within a reasonable time after you sent a letter or left a message for them to contact you or give you instructions.

However, there are a number of factors that may determine the timing of your client contacting you. For example, they may not have received your message or correspondence, they may not be used to reading important – looking letters or they may not have someone to help them read it.

They may also have more important matters to attend to, such as fulfilling their obligations to members of their community, attending a funeral or looking after family members.

### Tip

*Make the extra effort to finalise the paperwork that you need if a client makes an unscheduled visit.*

## Unscheduled visits

If your client makes an unscheduled visit to see you in your office, resist the temptation to send them away and ask them to come back another day. If they have come in, it usually means that their legal matter is their top priority at that moment.

You may not get another chance to obtain that statement, sign those authorities or finalise that affidavit for weeks. Your client may also become offended if they are sent away and may lose any further interest in helping you do your job.