



**Launch of
Aboriginal Interpreting Western Australia**

Address

by

**The Honourable Wayne Martin AC
Chief Justice of Western Australia**

Kununurra
10 July 2018

Introduction

The importance of this morning's launch is underlined by the presence of the Premier of Western Australia, the Honourable Mark McGowan MLA who I acknowledge, along with Ms Josie Farrer MLA, member for the Kimberley. I also wish to acknowledge the Board members and staff of Aboriginal Interpreting Western Australia (AIWA), and the Chairs of that service - Annette Kogolo and David Newry. I would also like to particularly acknowledge Dee Lightfoot, the CEO of AIWA and its predecessor, the Kimberley Interpreting Service.

Traditional Owners

It is more than usually important for me to acknowledge, as I always do, the traditional owners of the lands on which we meet - the Miriwoong Gajerrong people of the East Kimberley. I pay my respects to their Elders past, present and future, and acknowledge their continuing stewardship of these lands. I would also like to acknowledge and thank our hosts this morning - the Mirima Language and Culture Centre. It is a great pleasure to be in the Kimberley to celebrate NAIDOC week and to recognise the enormous contribution of Aboriginal women who are the focus of this year's celebrations. Last year, NAIDOC week was focused on language which is, of course, what we are here to discuss.

The importance of language

It is I think impossible to overstate the importance of language to human beings. Indeed, language is one of the key capacities which differentiates human beings from almost all other species on the planet.

Of course, many other species use sounds to communicate with each other - dogs bark, birds call and so on, but as far as we are aware, no other species has developed the capacity to communicate such a broad range of meanings, emotions and sentiments as humans.

The English language used by mainstream Australia is of relatively recent origin, if viewed in the time scale of human development. The language I am speaking today has evolved over the last 1000 years or so under the influence of a mixed basket of European languages. By contrast, the approximately 500 languages spoken by the differing tribal groups who comprised the Aboriginal peoples of this continent at the time of colonisation have a much longer history - perhaps up to 60,000 years, which is the period we know Aboriginal people to have been inhabiting this continent.

Happily, many of those Aboriginal languages have survived colonisation - assisted by language centres like Mirima. I describe that outcome as "happy" because of the inextricable connection between language and culture. Once language is lost, the disappearance of culture cannot be far behind.

Aboriginal languages have also survived because in those parts of Australia where colonisation has not had such a profound impact, Aboriginal people have been able to continue to use their language as the primary means of communication with each other. Obviously it is the more remote parts of Australia where this has occurred, including the Kimberley, the Pilbara, the Gascoyne, the desert country including the lands, much of the Northern Territory and west and far north Queensland. We gather this morning to celebrate and launch an

organisation which will provide interpreting services to the many Aboriginal people in the parts of Western Australia I have just mentioned who lack an adequate command of the English language.

One of the many anomalies created by the quaint constitutional arrangements in this country is that Aboriginal people on the other side of the Northern Territory border (which is less than an hour's drive from here), have had the benefit of a properly resourced Commonwealth funded interpreting service for many years now. Because some lines were drawn at a particular place on a map in the 19th century, Aboriginal people on this side of the border have not received the same benefit until now.

The resources available to the organisation we launch today are still significantly less than those available to the equivalent organisation in the Territory, but the government of Western Australia is to be commended for its support for this organisation and, in particular, for its support to enable this organisation to extend beyond the Kimberley and supply services in all areas of need throughout this vast State. I do not mean by these remarks to suggest that services have been limited to the Kimberley until now, but today's launch recognises the geographic expansion of services which has taken place over a number of years and formally acknowledges that the need for Aboriginal Interpreting services exists throughout the State and is not limited to one region.

The vital need for Aboriginal interpreters in the justice system of Western Australia

Everybody here this morning will be only too well aware of what I have described many times as the biggest single issue confronting the justice

system of Western Australia - which is the gross over-representation of Aboriginal people within that system. Tragically, the Aboriginal people of the Kimberley are among the most over-represented throughout our State.

There are many complex reasons for that over-representation. They include what I have described as systemic disadvantage - that is, the disadvantage which Aboriginal people suffer because the system is structured in such a way as to produce adverse outcomes for Aboriginal people more commonly than for non-Aboriginal people.

I do not mean to suggest that the system has been structured deliberately so as to disadvantage Aboriginal people. But unintended disadvantage can be just as real. The *Bail Act* does not make any reference to race as a criterion relevant to the grant of bail, but the factors which it does require courts to take into account, like prior criminal record, employment, stability of accommodation and so on, all produce the consequence that Aboriginal people are over-represented amongst those who are refused bail.

If we are serious about reducing the gross over-representation of Aboriginal people in our courts and prisons, we must also be serious about reducing the disadvantage they suffer in a system which takes little or no account of their particular circumstances.

Language and effective communication, is, of course, vital to the fair and effective operation of the justice system. If an Aboriginal person with a limited command of English is not provided with an effective interpreting service, that person suffers one of the most severe forms of

disadvantage one could imagine. I ask those of you who, like me, only speak English to imagine yourselves in a foreign country, let's say Greece, engaged in a court process in a foreign language, in a foreign culture and in a foreign legal environment. That experience would be profoundly threatening and profoundly intimidating. Without an effective interpreter, our prospect of receiving a fair outcome would be minimal.

So it is with Aboriginal people who lack an adequate command of English to effectively negotiate the Western Australian court system. The English required to negotiate that system is quite different to the English required for ordinary day-to-day activities like buying food and clothes. Far too often, an Aboriginal person's limited capacity with English is mistaken as capacity which is adequate for the courtroom, when in fact it is totally inadequate. The cultural phenomenon which linguists call "gratuitous concurrence", and which leads to Aboriginal people agreeing with virtually every proposition that is put to them for social reasons, often masks a real difficulty with language. The use of Kimberley Kriol, which utilises words which can have an origin in English, but a different meaning in Kriol, can also have the effect of masking the problem.

Effective communication is not critical only in the courtroom - it is critical at all points in the justice system, including at the point of police investigation and apprehension, during interviews by police, and in relation to obtaining and receiving legal advice. The Gibson case provides a very cogent illustration of this point. In all of these areas, effective interpretation is absolutely vital if the system is to produce a

fair outcome for the original inhabitants of this continent. This is why an effective, professional, properly resourced interpreting service for the speakers of the many Aboriginal languages in Western Australia is absolutely vital if we are to have a justice system worthy of that description. That is why this morning's launch is a very significant development - a significant component of the many steps which must be taken if Aboriginal people are to receive a fair go in the police stations and courts of this State.

The National Standards

Last year in my role as Chair of the national Judicial Council on Cultural Diversity, I had the honour of launching a set of National Standards for interpreters in Australia's courts. Time does not permit me to address the various components of those Standards this morning. However, the National Standards reflect and reinforce the vital importance of interpreters in a country which has been multilingual since colonisation, and which is becoming increasingly multilingual, as we source migrants from non-English speaking countries. Significant components of the Standards include the recognition of the need for interpreters to be recognised as professional service providers and, perhaps most significantly of all, as officers of the court, providing services to and for the court impartially and independently of the parties. Recognition of the interpreter's role as an officer of the court imposes corresponding obligations upon the court to ensure that its officers are properly treated and provided with adequate notice of their requirement, a proper briefing in relation to the topic of the case and the areas in which interpretation is likely to be required, a proper place to sit in court,

adequate access to the resources that might be needed, regular breaks, proper remuneration and so on. The implementation of those standards will assist in recognition of the vitally important role which interpreters play in the courts, and in relation to Aboriginal people, in mitigating the multi-faceted aspects of disadvantage which they continue to experience.

For these various reasons, I am very pleased to be here this morning to join in the celebration of the launch of Aboriginal Interpreting Western Australia.