

Still in the starting gates?

A thought or two about the first decade of the Aboriginal Interpreter Service

By Glenn Dooley, CLANT Treasurer

In May (and then September) 1995, the Average Territory Punter seriously questioned the fairness of the running of the Territory criminal justice system.

In May, in the now infamous case of *R v H* (where it was alleged a Christian Brother had sexually interfered with young Tiwi Islanders), the jury made it known to the trial judge that it felt the Aboriginal witnesses required the use of interpreters to allow them to properly give evidence. The prosecutor told the Court that in his view there was “no advantage in (the Tiwi witnesses who spoke Tiwi as their first language) giving evidence in Tiwi”. Interpreters were not used.

In September, in the case of *R v Murphy*, the jury delivered to the trial judge a series of questions that made it clear that it had reached the view that the entire build-up to the trial (inclusive of police dealings with Aboriginal witnesses) and the trial itself was plagued with the injustice wrought by the lack of the use of interpreters. The trial judge in *Murphy* was moved to comment:

“Let me say generally, ladies and gentlemen, that there is a lamentable lack of provision of interpreters in the Northern Territory for Aboriginal people. You’ve raised your concerns about it, and other people have raised there concerns about it. From time to time I’ve raised my concerns about it and nothing yet has been effectively done. The gap remains. It’s a gap that exists on the criminal justice system and one can well say it shouldn’t exist; but it does exist, so we try and go along with it as best we can.”

His Honour went on to express his frustration at the situation that had developed with the provision of interpreters in the following terms:

“The interpreters that have been brought before me in various cases have been lamentable. Totally lacking in quality. Yet in other cases I have done in another capacity in the desert and so forth, it is clear that there are at least a limited number of people, interpreters of very high quality. I suspect they are not very numerous upon the ground. It seems very difficult to get them. Now these matters lie within the province of the executive arm of Government”.

These two cases, building on the longstanding concerns of which His Honour spoke, sparked the formation of the Aboriginal Interpreter Service (AIS) here in the NT. The decision to create the AIS was greeted with relief and determination to make it viable, to the extent that Aboriginal people without English as their first language would get a bleated crack at justice. After a decade of the AIS the question must be asked, has that determination (of a string of Aboriginal interpreters, judges, magistrates, public servants, police, prosecutors and yes even defence lawyers) paid off?

My answer is “No”, at least in terms of the criminal justice system. The AIS has a target broader than the law. The increased use of Aboriginal interpreters in the medical world has been a great success.

The current NT “Intervention” has been criticised in part for the lack of use of Aboriginal interpreters,



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a situation that is, apparently, being rectified as the absurdity of miscommunication in that arena becomes more obvious.

However, in the criminal justice system, the progress made has been tragically slow. The observations of the judge in *Murphy* as to the rarity of a useful court interpreter have been borne out. The AIS has striven with great gusto to use very limited funds to train and supply Aboriginal interpreters for use in the criminal justice system, and has turned up some really quite heroic individuals who juggle their family ties and personal sense of worth to enter the court room and try and assist the system dispense justice.

The essence of the problem is the lack of funds. Not enough money to have a fair dinkum shot at properly training a good number of interpreters. The sort of training that would assist the interpreters to better weather the court room storms, and thus keep them avid. Not enough money to then pay those persons a decent full-time wage to ensure they are able to share their skills. In my view the chronic underfunding of the AIS has left the criminal justice system in the NT, given the preponderance

of Aboriginal cases it deals with, little better than in the conscience pricking days of the mid-1990's.

Recently the lack of suitable interpreters has threatened to de-rail important cases. The cases arising from the sexual interference with a youth at Maningrida were under threat due to the lack of the capacity within the AIS to "back translate" a series of records of interview (of victim, witnesses and accused). A high profile alleged murder in Katherine is yet to go to trial but it can be said fairly that the interpreter called upon by the police to assist in the accused's record of interview was very inexperienced. I can say that the existence of the AIS has meant that there are more interpreters about to thicken the

veneer of respectability of the criminal justice system. However, the continuing reality is that our criminal courts maintain the turnover of matters, with the significant bulk of Aboriginal participants, not well versed in English, truly understanding little or none of what is going on.

I nod my head when I'm asked by the bench to explain the order of the court, when I know I'm struggling to get across the full extent of what has been decided. I would dearly love to see the courts funded to employ relevant language speakers to enable Aboriginal people who do not have good English to understand what has gone on. But I try to "go along with it the best I can". It is not good enough.

The timing of this article is not random. The Federal Government (both recently departed and new) has decided to try and break the cycle of disadvantage here in the Northern Territory. Lots of money is being spent. It appears this effort is up for review at the moment. This is the time to for us all to make the pitch to the Federal and NT Governments that the "Intervention" and all that will flow from it (including, it seems, a mountain of additional criminal court cases involving Aboriginal people) will founder if people cannot communicate properly.

The time is now for a massive injection of funding into the AIS to enable the service to do its job properly.

Opening of NTLACs Palmerston Office

By Northern Territory Legal Aid Commission (NTLAC)

The NT Legal Aid Commission is excited to announce the opening of its new office premises in the Goyder Centre in Palmerston.

The Commission provides access to the law and legal assistance to people who cannot afford a private lawyer. Anyone in the community is entitled to seek legal information and advice from the Commission.

The Commission has always provided services to the Palmerston community through its head office in Darwin, and is pleased to now be able to provide this service through a presence in Palmerston, making it more convenient for members of Palmerston and surrounding rural communities.

Free weekly legal advice clinics are available for people in criminal law, family law and domestic violence matters. The Commission employs highly skilled legal practitioners who specialise in their particular area of law. All advice clinics are confidential. Indigenous and other non-English speaking clients can ask for an interpreter to assist them



The opening of Legal Aid's Palmerston office

if required.

The NT Legal Aid Commission is a registered Family Dispute Resolution provider. The new office includes purpose built family law conferencing facilities. Family law conferencing is a form of family dispute resolution which involves a meeting between the people in a family law dispute with the assistance of their lawyers. It aims to help people reach agreement without having to go to court.

The Commission also produces a range of brochures and publications on different topics, such as your

rights when dealing with the police, neighbourhood problems and the court process. Copies of these publications are available free of charge. The Commission can make staff available to give presentations and speak to community groups, schools, workplaces etc on Legal Aid or a specific legal topic.

A toll free legal information line is also available Territory-wide to enable people to obtain free legal information and referral. This service is accessible Monday to Friday, 9am to 4pm by telephoning 1800 019 343.