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Glossary of Abbreviations

AE:	**Aboriginal English**
SAE:	**Standard Australian English**
VALS:	**Victorian Aboriginal Legal Service Co-operative Limited**
CSO:	**Client Service Officer**

THE ABORIGINAL ENGLISH IN THE COURTS PROJECT

SECTION 1

This section contains the following:
A) Overview of the use of Aboriginal English (AE) in the courts;
B) Introduction;
C) Objectives of this report.

A) OVERVIEW OF THE USE OF ABORIGINAL ENGLISH (AE) IN THE COURTS

The overall objective of this report is to collate information about Aboriginal English in order to inform future staff training and resources for people working in the courts, including solicitors and Magistrates.

Aboriginal English in Court

Aboriginal English (AE) has been recognised as a form of English which differs from Standard Australian English (SAE) in a number of significant ways. This exploratory research project developed a checklist of different characteristics of AE. This checklist was used to assess how commonly AE was used in the Magistrates' Courts and the Koori Courts of regional and metropolitan Victoria.

The results indicated that while there were many examples of AE being used, it was more common in the Koori Court than in the Magistrates' Court. This may indicate that one of the success factors in the operation of the Koori Court is the greater use of AE.

In the Koori Court, Elders used more examples of AE than clients did. This may be connected to the age or cultural status of the Elders and the clients. It may also reflect that the Elders may feel more comfortable in the court environment than clients.

Magistrates who were observed in the Magistrates' Court used less examples of AE than those observed in the Koori Court. This could be linked to one or more of the following: the different structure of the two courts, the different skills of the individual Magistrates, the level of interaction between the Elders and the Magistrates as well as the Magistrate's varying levels of knowledge of AE.

Solicitors in the Victorian Aboriginal Legal Service (VALS), who were observed during this study, used a similar level of AE in both courts and were familiar with most of the AE checklist items (see Appendices C-D).

An aspect of AE that is difficult to study or observe is the extent to which clients are saying 'yes' to questions when the answer may be 'no' or 'not sure' or something else (i.e. gratuitous concurrence). In attempting to deal with this, previous linguistic-based research has suggested that asking indirect questions (rather than direct) may be a better way to gain an understanding of what is happening and this questioning approach could have relevance for most AE-SAE interactions. In a legal context, police and solicitors,

when gathering evidence or taking instructions might reduce their risk of misunderstanding by learning to recognise and use AE.

This research supports the proposition that AE is prevalent in the court setting but the understanding of it and the utilisation of it varies across different groups and in different settings. This study highlights the importance of training people who work in the legal system about AE and the need for continuing research into how people use AE in this setting.

B) INTRODUCTION

There are many Indigenous Australian people in the west and north of Australia who speak no English or speak SAE as a second or third language. There have been calls for better interpreter services and more bilingual education. Bilingual education funding has been cut.[1] However, language problems are wider and more subtle than this. Language issues extend across Australia and include South East Australian Aboriginal people who speak English.

In South East Australia, most Aboriginal people are assumed to speak SAE. Some non-Indigenous Australian people mistakenly assume that this means Aboriginal culture and language forms are no longer relevant to these people. In varying degrees South East Australian Indigenous people speak a mix of AE and SAE. Linguists such as Eades (1997) tell us that the differences in grammar and meaning between this language and SAE are not immediately obvious to the average speaker of either language. Their apparent similarities mean that AE, in any of its forms, does not lend itself to formal interpretation.

There are attempts in some regions to record and rejuvenate Indigenous Australian languages which were previously commonly used.[2]

Speaking SAE and retaining cultural values and beliefs are not opposed to each other. There is considerable evidence that AE is different in many important respects to SAE as a result of the influence of culture and history.

Some understanding of AE would be useful for any non-Indigenous Australian person. The SAE speaker needs to have some knowledge of these differences if communication with AE speakers is going to be effective. There is a particular irony for lawyers in that an impersonal demeanour, direct questioning and requests for exact dates, times and distances are commonly used to 'get at the facts'. However, when dealing with AE speakers, these strategies may create obstacles to understanding the events which have occurred.

[1] The article included as Appendix A provides an eloquent explanation of the importance of bilingual education.

[2] The Victorian Aboriginal Languages Corporation is active in this endeavour. See http://www.vaclang.org.au/ for more information.

C) THE OBJECTIVES OF THIS REPORT

Objective 1

To summarise the key points in the *Human Rights and Equal Opportunity Commission Report* by the Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma (2007), *Queensland Aboriginal English Report*, Eades (2000), Sally McAdams Report (2002), *Aboriginal English: A Cultural Reader*, Jay Arthur (1996) and *Koori English*, Irruluma Guruluwini Enemburu (1989) in a form which will be useful for solicitors and paralegal staff in legal services.

Objective 2

To identify some of the key differences between AE and SAE and to discuss the impact that these differences can have on the communication that takes place between Indigenous Australians, court officials, solicitors and Magistrates.

Objective 3

To observe pre-court solicitor/client interviews involving Indigenous Australian clients at both the Koori Court and at the Magistrates' Court (at various locations including Melbourne, Broadmeadows and several regional locations including Swan Hill, Geelong, Ballarat and Shepparton) in order to compare and contrast the use of AE and SAE in each of these legal settings.

Objective 4

To observe court cases involving Indigenous Australian clients in both the Koori Court and at the Magistrates' Court (at various locations including Melbourne, Broadmeadows and several regional locations including Swan Hill, Geelong, Ballarat and Shepparton in order to compare and contrast the use of AE and SAE in each of these legal settings.

Objective 5

To ask solicitors, court workers, including Elders (at the Koori Court) and VALS' Client Service Officers (CSOs) about their thoughts on the use of AE and SAE with Indigenous Australians in a court setting, with a specific view to ascertain whether the court setting affects the language that is chosen in order to communicate with an Indigenous Australian person.

Objective 6

To identify some of the common language difficulties which occur between Indigenous Australian clients and solicitors when both AE and SAE are used to varying degrees.

Objective 7

To identify possible solutions to address the common language difficulties which occur between Indigenous Australian clients and solicitors when both AE and SAE are used to varying degrees.

SECTION 2: LITERATURE REVIEW

Interest in the Issue

The purpose of this section is to outline findings in relation to how the language used in court affects the experience of VALS' Indigenous Australian clients. The findings have been collated from various reports including Calma (2007), Eades (2007, 2000), McAdams (2002) Arthur (1996) and Irruluma Guruluwini Enemburu (1989).

The overall purpose of this kit is to provide a guide to allow for better communication between solicitors, Magistrates, Elders, court workers, such as Aboriginal Liaison Program Co-ordinators or CSOs, and Indigenous Australians.

A report by Aboriginal and Torres Strait Islander Social Justice Commissioner Calma (2007) investigates the common communication difficulties facing Indigenous Australians within the court setting. The Calma Report makes several pertinent points. Importantly, it recommends that interpreters should be available for Indigenous Australians to assist during the court process if required. The Report also illustrates some of the potential complexities faced by Indigenous Australians. For example, it noted that legal issues are often conveyed in an impersonal way, or even in the third person in some cases. In contrast, AE and other Aboriginal languages do not use this depersonalised approach; instead an individual's relationship with the speaker will affect the way in which ideas are communicated and understood.

The Australian Law Reform Commission (ALRC) found that:

> *'Difficulties of communication and comprehension are very real for many Aborigines… Many Aborigines speak non-standard English so that the way in which questions are asked, especially direct questions, may often lead to misunderstanding and incorrect answers being given.'*
> (ALRC as cited in Calma 2007:3)

The Calma Report identifies some of the common types of questions which create communication difficulties for Indigenous Australians in the court system. These include: 'either/or' questions; hypothetical questions; negative questions; and questions that include the use of double negatives, figurative speech or abstract concepts or references.

Furthermore, Calma posits that culturally, communication difficulties can arise in several ways. For example, the use of direct questioning is generally considered rude in Indigenous Australian culture and may lead to the defendant answering 'I don't know', regardless of the their actual knowledge, because they consider the method of questioning inappropriate. The consequent level of embarrassment felt by Indigenous Australians when faced with this form of questioning can make them appear visibly uncomfortable. This can have a detrimental effect as it may be misinterpreted as a sign of guilt or as avoidance of the question.

A further cultural issue which Calma highlights is that of 'gratuitous concurrence'. This occurs when an Indigenous Australian agrees with a question because they wish to keep the person asking the question happy. Eades puts this in the following way:

> *'…when Aboriginal people say "yes" in answer to a question it often does not mean "I agree with what you are asking me". Instead it often means "I think that if I say "yes" you will see that I am obliging, and socially amenable and you will think well of me, and things will work out between us.'*
>
> (Eades cited in Calma 2007:2)

A further point in relation to questions which require specific information pertaining to times, dates and quantities, is that Indigenous Australians are not as familiar with the concept of providing a specific response. As a result, at first they often provide responses that are non-specific or are framed in relation to something else. For example, in answer to the question "how many drinks did you have?" an Indigenous Australian could offer a vague reply such as "oh, must have been quite a few". Alternatively, they may be more specific but relate their situation to another, replying with a statement such as "must be more than Freddie" (Eades 2000). Another consequence of the unfamiliarity with giving specific responses faced by many Indigenous Australians is that they may unintentionally give inconsistent responses and could as a result be perceived as unreliable witness.

The Calma Report states that in Indigenous Australian culture it is inappropriate to mention the names of deceased persons as it is considered a form of disrespect to that person.[3] In many Indigenous Australian communities, the depiction or mention of a person who has passed away can cause great distress to people. Even using the same name as that of a deceased person, or a similar sound, can cause distress for a period of time. Some groups have a special term that is used instead of the deceased person's name. It is also said that people working with or working within Indigenous Australian communities will know the time has come to use the prohibited name again when they hear locals using that name. When in doubt about naming or visually depicting someone who has passed away, it is advised that one should ask people within that community for advice regarding that community's protocol on such a matter.

Eye contact is another area of consideration in relation to non-verbal communication. It is important to be aware that many Indigenous Australians may be reluctant to make direct eye contact as they wish to make a show of respect to the person asking the questions. In this instance, lack of eye contact is not intended as a display of rudeness.

The crucial research by Diana Eades, a leading authority on AE and the justice system, clearly states that Indigenous Australians can have their legal access restricted because of language difficulties which may arise or due to a communication breakdown in the courts (2000). A handbook called 'Aboriginal English in the Courts' was based on her work and formed part of a project by the Queensland Government to develop a system to help the court communicate more effectively with speakers of AE. The handbook

[3] A reference to this cultural practice is found on the website of 'All Media Guide to Fair and Cross Cultural Reporting'.

proposes that some acknowledgement and consideration of AE will bring about a more culturally effective way of communicating with Indigenous Australians in the court system. With this in mind, the report highlights a number of possible areas of differences between SAE and the various forms of AE that may be spoken by Indigenous Australians, including the methods of asking questions and the forms of non-verbal communication used to give a response.

The handbook refers to the use of AE in Queensland courts. AE takes various forms across the continent. In content, dialects range from those close to Aboriginal Kriol to others that are very close to SAE. Though much is shared between varieties of AE there are some significant regional differences.

The variation of the use of AE is also influenced by differences in geographical setting. For example, Melbourne, Victoria is far more urban than parts of Queensland. However, it remains the case that 'it is easy to mistake an Aboriginal English speaker for a speaker of Australian Standard English'(6). The effect of such a mistake is that during court proceedings, whether for civil or criminal matters, evidence may be misinterpreted or lost. This can reduce access to justice.

The handbook summarises and suggests solutions for key communication difficulties that may arise when working with Indigenous Australian people. It is intended for use by Judges, Magistrates, lawyers and 'communication facilitators', whose task it is to recognise and indicate instances in which communication may have failed.

The handbook also proposes that the knowledge and language gap which exists between lay people and the modern legal system can produce an experience of legal procedures and processes that is alienating and confusing. This experience is compounded for many Indigenous Australians by a substantial cultural gap.

The handbook states that there are a number of other factors that make communication in the courts between Indigenous Australians and non-Indigenous Australians more difficult. These factors include as a lack of interpreters, also known as communication facilitators, who are qualified in Indigenous Australian languages, as well as a failure by the legal system to recognise the differences between AE and SAE. Additional problems can arise in the wider arena of Indigenous Australian communities where there is a general lack of understanding of the legal process and of the subtle nuances of court discourse, especially in relation to cross-examination.

The specific language problems that can arise when Indigenous Australians take part in court proceedings as identified by the handbook can be considered in two broad areas:

1. <u>The substantial cultural gap</u> (such as the failure by the legal system to recognise the differences between AE and SAE).

This can translate to the use of inappropriate questioning techniques and misinterpretation of non-SAE answers (lingo or plurals) by the legal profession. It could also include non-verbal gestures by Indigenous Australians such as periods of silence or avoidance of eye contact which may be misunderstood by Judges and lawyers.

The major recommendations given for lawyers, Judges, and/or communication facilitators in regard to bridging the cultural language gap that exists are:

a) that they rephrase questions for witnesses/defendants; and

b) that they clarify any responses from Indigenous Australians for the sake of the jury, the Public Prosecutor, the Indigenous Australian and for themselves.

2. The pragmatics of language (the way in which people use language to communicate).

Eades (2000) makes similar points to Calma in relation to pragmatics. Firstly, Indigenous Australians require an approach to questioning which is more open-ended, conversational and narrative in style, utilising phrases such as, 'I'm wondering…'. Secondly, on the matter of specification, Indigenous Australians prefer to provide details of events or facts by relating information to something that is known, whether it is a real event in the past or an anticipated event in the future. Instead of asking "how long was the stick?"an appropriate approach would be to ask "show me how long the stick was…"

Eades states that the first problem of the substantial cultural gap can be quite simply addressed by looking at the following recommendations:

- putting more time and resources into correct translation (training 'communication facilitators');
- educating the legal profession;
- making jury members (and solicitors) aware of cultural differences; and
- allowing more time for cross-examination.

She goes on to state, however, that the difficulties presented by pragmatics reflect cultural differences that require much more energy to reconcile. These recommendations include:

- allowing cross-examination to take on a more conversational style; and
- permitting the submission of narrative accounts or qualitative (as opposed to quantitative) evidence.

There is an assumption that when SAE is used to communicate between two or more parties, all parties will come away with an equal understanding of what has taken place during that interaction. In other words, the use of SAE will create a 'shared meaning' amongst those involved in the communication. A resulting mismatch in understanding then occurs between those who are fluent as communicators in SAE and those who are more fluent as communicators in AE. Such a mismatch in understanding occurs because the different people involved in the communication bring to the communication situation all the rules and nuances of their own language as well as their idea of how the other language operates. This new communication situation is one where everyone is required to speak in the dominant paradigm of SAE. This can have detrimental consequences for AE speakers whose predominant language is not being spoken, and perhaps not even acknowledged or taken into consideration.

Recognition and understanding of the 'pragmatics' of using AE with Indigenous Australians in the courts is 'essential to effective cross-cultural communication' (Eades 2007:7). For example, as outlined earlier, an Indigenous Australian person in the court may not make eye contact with others during the court proceedings and may therefore appear 'guilty' or as though they are avoiding the truth. If, however, one takes into account that the lack of eye contact is a culturally acceptable practice for Indigenous Australians, this situation could be interpreted differently.[4]

Another non-verbal communication method employed by Indigenous Australians is the use of silence (see Calma (2007)). It is important to understand how silence is used by Indigenous Australians so that their non-verbal responses are not misinterpreted. When an Indigenous Australian is silent for an extended period of time in the court setting it should not be taken as a sign of non-compliance. An Indigenous Australian may use silence in a number of instances, including if they want time to think or adjust to a situation, if they feel that they have already answered the question or if they do not understand what is being asked and are too embarrassed to seek clarification.

> *'Silence is important to many Aboriginal interactions, and unlike the use of silence in many Western interactions, it is not seen as an indication that communication has broken down.'*
> (Eades 2007:7)

These differing approaches to both verbal and non-verbal communication show that when people from different language groups come together and communicate primarily in the dominant language of SAE, those involved will not necessarily come away with a 'shared meaning' and an equal understanding of what has taken place during that interaction. This communication breakdown may result in the development of difficulties between two such groups in a court setting. The privileging of SAE in the court setting can also disadvantage parties who are Indigenous Australians, as they are required to communicate in a language that is not necessarily their preferred means of communication.

[4] Indigenous Australian people may not look at the people they are addressing while they are talking, "and it is easy to think "Are they listening to me?" Lack of eye contact should not be understood as someone's inability to deal with 'truth'." See <http://www.gu.edu.au/school/art/AMMSite/home.html>.

VALS engaged linguistic researcher McAdams (2002) to analyse ways in which to write effective legal letters for Indigenous Australian clients. McAdams' research for VALS supports Eades' (2000) research findings on the importance of the pragmatics of communication and how this can shape meaning. The pragmatics of a language can occur on several different levels, including body language and the interpretation of body language, or the form that the language takes, both personal and impersonal.

An additional level of pragmatics which can differentiate cultural groups is the choice of words that are used to describe the same action or a situation. An example of this would be the different words chosen to describe a person who is drunk. In SAE, such a person may be referred to as 'intoxicated'. In contrast, if a more culturally acceptable AE phrase was used, the person would be described as 'charged up'.

McAdams' research involved the creation of a list of commonly used legal written terms and some alternative words that could serve as a substitute. She also drafted some versions of commonly used Victorian Aboriginal Legal Service letters in a more personal and plain English style.[5] Many Indigenous Australian people will have problems understanding legal letters not simply because of the use of legal terms but also because of the impersonal language style. This reiterates the point that the pragmatics of language is an essential consideration when developing effective communication in the courts between two groups who are trying to understand each other.

Arthur (1996) has stated that her interest in the subject of communication was sparked in part by her realisation that people did not know that the language of AE existed. As Eades says '…It is only since the 1960's that linguists and educators have recognised it as a valid, rule-governed language variety' (2007:2). This realisation reinforces the idea that the language and cultural gap created for speakers of AE is often not even acknowledged, let alone taken into account, when communicating with Indigenous Australians, especially in a court setting.

However, Arthur states that it is more appropriate to think of AE as a continuum, rather than a single language. At one end lies a form of English which differs from other Australian speech by only a few words; at the other is a language so different that it ceases to be AE and becomes another language altogether: 'Kriol'. Arthur also emphasises the amount of regional variation which exists.

[5] Refer to Appendix E.

Arthur goes on to state that the nature of Australian society can also prove a barrier to the recognition and acceptance of AE. She states:

> *'Anglo-Celtic Australia has really limited language skills, almost every other part of the world is much more multi-lingual. We need to acknowledge that Aboriginal English exists; that it is not sub-standard, just different.'*
> (1996)

The dictionary produced by Arthur is organised into chapters in which words are grouped around a specific topic or experience. There are sections entitled "kin" (words for family and relationships), "us mob" (social interaction and feelings) and "country" (words dealing with land). Eades (2000) also discusses how there are many SAE words that have slightly different meanings in AE.[6]

The research discussed in this section reinforces the pertinence of developing a mutual understanding of the way in which Indigenous Australians communicate. This idea is further emphasised when we consider that each person within the legal system, including Indigenous Australians, has the right to tell the court their story in such a way that allows them to be understood and to understand the proceedings which take place.

[6] See Appendix B in this report for a list of some of the significant words that have special meanings in Aboriginal English.

SECTION 3: PURPOSE AND METHODOLOGY OF THE PROJECT

Malcolm (1995:19) defines AE as:
'*A range of varieties of English spoken by many Aboriginal people and some others in close contact with them which differ in systematic ways from standard Australian English at all levels of linguistic structure (sounds; word forms; syntax; vocabulary; meanings) and which are used for distinctive speech events, acts and genres' (p. 19).*

Malcolm, et al. (1999:74) stated:
'*We have seen that the same English words and expressions can accommodate contrasting cultural schemas, so that speakers of standard English may think (on the basis of surface linguistic form) they are being understood by Aboriginal English speakers (and vice versa) but may be drawing on completely different inferences from the communication from those which were intended' (p. 74).*

The Purpose of the Project

A lack of awareness of the features of AE by court officials, solicitors and Magistrates can mean that Indigenous Australians are disadvantaged during the court process. This report incorporates some exploratory research whereby we observed court room language to identify examples of AE. We wanted to compare the extent to which different parties, such as Magistrates, Elders and solicitors, as well as Indigenous Australians, appeared to be using AE. We also wanted to investigate whether there were different patterns in the use of AE and SAE in the Magistrates' Court as compared to the Koori Court.

The data collection instrument that we used drew on Eades' (1997, 2000, and 2007) research and listed several of the common features that she identified as characteristics of AE.

The Methodology of the Project

A variety of people were observed during this study in order to research the types of language used in the court system. Among those observed were male and female Indigenous Australian clients of VALS, male and female criminal solicitors, male and female Magistrates, male and female Elders, and male and female VALS Client Service Officers (CSOs). The observations were based around whether or not people from each of these groups demonstrated use of the language features of AE in the court setting.

The study was conducted over several months. Two different data collection sheets were used in the research, one prepared for the before-court interviews and one for during-court proceedings. The research was conducted in both the Magistrates' Court and the Koori Courts of metropolitan Melbourne and regional Victoria.

The data collection sheets (see Sections 4A and 4B or Appendices C-D) were designed to identify any evidence of the use of certain AE language features by solicitors, the Magistrates, VALS' Indigenous Australian clients and the Elders. The AE features

isolated on the data collection sheets were adapted from those identified by Eades in her extensive research around AE and the justice system.

Following the initial research, which identified the major language features of AE, the first data collection sheet which is found in the next two sections of this report was designed. This data collection sheet was for the observation of the use of AE in the pre-court solicitor/client interviews between solicitors and their Indigenous Australian clients.

The second set of data collection sheets additionally looked at the use of AE by the various Magistrates and in the case of the Koori Court observations, the Elders of the court on the day of sitting.[7]

The data for the Client/Solicitor Pre-court data sheet was collected during the preliminary interviews that the solicitor conducted with the clients on the day of the court hearing. The CSO was often present for this interview also although their level of involvement in this interview varied. There was no data formally gathered that recorded the involvement of the CSO in these interviews.

The data for the Koori Court and Children's Koori Court Checklist and 'Magistrates' and Children's Court Checklist' was gathered during the court hearing where the Indigenous Australian client, the solicitor, the Magistrate and, in the Koori Court, the Elders, were all present. This data looked specifically at the use of AE by the Magistrate, the solicitor and the Elders. It also looked at the use of AE by the client, mostly in relation to their use of non-verbal language.

The data was collected primarily by one part-time researcher of VALS, with some data collection gathered by students volunteering at VALS between June and August of the year of this study, 2007.

The data collected consisted in the main of 'Yes' and 'No' responses and this data was then collated into computer generated tables before being collated into a summarised representation of the collected data.

[7] See Appendix C and D

SECTION 4A: CLIENT AND SOLICITOR PRE-COURT INTERVIEWS

PRE-COURT OBSERVATIONS WITHIN THE COURT SETTINGS OF THE KOORI COURT AND THE MAGISTRATES' COURT

> *'It is only since the 1960's that linguists and educators have recognised it (Aboriginal English) as a valid, rule-governed language variety.'*
> (Eades 2007:2)

The solicitors were observed during the pre-court solicitor/client interviews to see if they used examples of AE with their Indigenous Australian clients. Meeting the language needs of Indigenous Australian clients can be assisted by communicating in AE, as identified by researchers such as Eades (2000) and Calma (2007).

There are a number of aspects of AE which can facilitate effective and culturally aware communication between solicitors and their Indigenous Australian clients. For example, it is important to build a relationship with the client and to acknowledge and become aware of the client's Indigenous Australian background. It is also important to allow the client to explain events by relating them to the context (the experiences and relationships involved) and to use clear and non-technical language, both when explaining the court process and when taking instructions from the client.

The following areas of AE were identified as important when observing communication between solicitors and their Indigenous Australian clients.

- **Pragmatics (the way language is used and interpreted)**
- **Linguistics (pronunciation, grammar and vocabulary)**
- **Non-Verbal (gestures, eye contact, silence)**

These three areas of AE were explored using the following questions as a guideline. Each of these questions identified at least one aspect of AE that may assist in better communication with Indigenous Australian people. One example of this, in the area of pragmatics, would be to allow Indigenous Australian clients to describe things by putting them in context rather than by using quantitative specification.[8]

[8] See Question 3 below in the questions relating to the use of AE by solicitors

This data provides an indication of the extent to which different aspects of AE were observed during the solicitor/client interviews (see 'Client/Solicitor Pre-court data sheet' below).

DATA SHEETS RELATING TO THE USE OF AE BY SOLICITORS/CLIENTS
Table 1 'Solicitor Responses'

Client/Solicitor Pre-court Interview Data Sheet Client: Date:	Yes/No	Supporting Evidence
Table 1 Solicitor Responses		
TYPE OF HEARING: MATTER: Name of solicitor: <u>Solicitor Responses</u>		
1. Did they use a personal (familiar) **way of communicating** with the client rather than an impersonal (distant) approach?		
2. Did they build a case that **represented the client's cultural history** (included related family details) **as well as their legal history**?		
3. Did they allow client to explain events using a **contextual framework** (events, experiences and relationships involved) rather than using **quantitative specification** (time, quantity or date) ?		
4. Was **their body language inclusive of their client**? (ie. Did they lean towards them, use hand/head gestures etc)?		
5. Did they explain what will happen in court and their role as the solicitor?		
6. Did they make use of **any culturally appropriate language** such as 'charged up' not intoxicated? **List** examples used on the day.		

Background and Client Responses Data Sheet Client: Date:			
Table 2 Background and Client Responses			
1. How many times had client/solicitor met?	First time	1 other time	3 or more times
2. Was Client Service Officer present for this meeting?	Yes	No	Sometimes
3. Did client ask questions relating to their matter?	Yes	No	
4. Did client volunteer information relating to their matter?	Yes	No	
5. What evidence did client give to demonstrate their understanding of the proceedings?	E.g. nodding, asking questions etc.		

QUESTIONS RELATING TO THE USE OF AE BY SOLICITORS/CLIENTS

Table 1 'Solicitor Responses'

1. Did the solicitors use a personal (familiar) way of communicating with the clients rather than an impersonal (distant) approach?
2. Did the solicitors build a case that represented the client's cultural history (included related family details) as well as their legal history?
3. Did the solicitors allow clients to explain events using a contextual framework (events, experiences and relationships involved) rather than using quantitative specification (time, quantity or date)?[9]
4. Was the solicitor's body language respectful of their clients (i.e. Did they lean towards them, include them in the interaction with the use of gestures and eye contact)?
5. Did the solicitors explain to the clients what would happen in court and did each of them explain their role as their solicitor?
6. Did the solicitors make use of any culturally appropriate language such as 'charged up' instead of 'intoxicated'?

[9] The focus of Question 3 is also referred to in this report as 'specification'. Where non-Aboriginal people use numbers, dates and names form a sequence (such as days and months), Aboriginal people tend to give a list, describe events or refer to the context Eades (2000).

Table 2 'Background and Client Responses'

a. The number of times the client and solicitors had met before:
b. If the Client Service Officer or an Indigenous Australian court worker was present during the client/solicitor meeting/giving of 'instructions';
c. Whether or not the client asked questions relating to their matter;
d. Whether or not the client voluntarily gave forward information relating to their matter;
e. The evidence presented by the client that showed that they understood proceedings on the day (before court) such as nodding, the asking of questions or paraphrasing of information given to them by their solicitor.

SECTION 4B: FINDINGS ABOUT CLIENT AND SOLICITOR PRE-COURT INTERVIEWS

'SOLICITOR RESPONSES'

1. Did the solicitors use a personal (familiar) way of communicating with the client rather than an impersonal (distant) approach?

Findings: Generally solicitors used a personal approach.

It was found that the majority of solicitors at VALS who were observed throughout this study demonstrated a reasonable awareness of the importance of communicating with their clients on a personal level. Several of the solicitors made reference to previous personal knowledge and/or experiences involving their client and tried to build up the context of the meeting taking place on that day. One solicitor made mention of the client being in much better health than during their last meeting, another asked a client about a tribal dance they had spoken about on the previous day.

It was also observed that the presence of the CSOs during these interviews appeared to make the client feel more comfortable. In addition, the questions the CSO asked the client often meant that more was revealed about the client's family background as well as their links to their community. It should be noted that CSOs employed by VALS only attended client/solicitor interviews in regional areas.

2. Did the solicitors build a case that represented the client's cultural history (included related family details) as well as their legal history?

Findings: Generally solicitors did include cultural and family details.

Generally, solicitors were effective at asking questions of their clients that enabled them to learn more about their client's family and cultural background. An example of this includes one solicitor who pursued their client's community connections through community services such as White Lion. When the male client of another solicitor was in custody at the local police station on the day of court, the solicitor endeavoured to speak with and engage with the client's family members, including his Aunties, Gran and Mum. Another instance of the use of background information occurred when a solicitor referred in an indirect way to difficult issues in their client's past by noting that he had seen a psychiatrist.

3. Did the solicitors allow the client to explain events using a contextual framework (events, experiences and relationships involved) rather than using quantitative specification (time, quantity or date)?

Findings: Generally solicitors did not facilitate the use of a contextual rather than quantitative framework by their client.

Questioning strategies belong to the language area of 'pragmatics'. It was found that VALS' solicitors tended to ask what is referred to in the literature as 'direct questions' (Eades 2000). Examples included the use of phrases such as 'How long…?', 'How much…?' and 'Where were you…?'. Such questions require answers of specific measurements of time, quantities or specific dates. This approach resulted in many clients struggling to understand and answer the question. The other common outcome was that they gave an answer that could be seen as vague or non-specific.

When one solicitor asked a client in his early twenties how long he had been in custody, the client found it hard to give the period of time using a specific quantity such as months and days. The client eventually agreed with the solicitor when coaxed that it was more than a month, after relating it to the time he had spent in the two remand centres.

Another example is seen in the following discussion between a VALS' solicitor and her client:

Solicitor: *"How much had you been drinking on the day [of the offence]?"*
Client: *"Fair bit"*
Solicitor: *"How much?"*

A similar situation occurred again during the same interview:

Solicitor: *"How long have you known him?"*
Client: *"A while."*

As Eades states:

'In the legal system, the awareness of Aboriginal English, and the skills available for dealing with speakers of Aboriginal English, are still quite low …'

Cross-cultural training in the legal profession is rare. Discussion held with stakeholders indicates that many people working within the legal system are unaware of the language problems that may exist, fail to grasp their full significance, or are unable to discern when these communication problems occur.

When discussing the use of specification to explain events with VALS' solicitors, many of them acknowledged that this was an area where miscommunication could occur between them and their Indigenous Australian clients. However, most of the solicitors recognised that they had not previously been aware of this area of language difference. Several of the solicitors said that they were now much more aware of the different ways that their client might use specification and that they would be able to consider this more in their daily interactions with their clients, particularly when taking instructions.

The importance of learning methods to deal with the issue of specification is further highlighted in the following example. A solicitor at VALS cited a time when he was taking instructions from two young male Indigenous Australian clients. The interview related to offences involving the theft of several cars over a period of time. When he asked them *'Did you take a car from this place in July last year?'* they answered that they couldn't remember. When he persisted with; '*What about that green falcon*?' they immediately responded with *'Oh, yeah, I remember that one, that was a good one!'* Perhaps this anecdote demonstrates that it helps Indigenous Australian clients to have an event contextualised for them to be able to clearly remember and discuss the details of that event. In this instance it was not helpful for the clients to be given a 'quantitatively specific' time such as last July, in order for them able to clearly remember and discuss the details of that event. But it was important for them to have been given details about the context as it related to the events, experiences and relationships surrounding the offending behaviour of the client.

Using a more contextual and narrative approach that allows for use of AE specification will provide more information. It is likely to take a bit more time, but it is a worthwhile use of time.

4. **Was the solicitor's body language respectful of their client? (i.e. Did they lean towards them, include them in the interaction with use of gestures and also make respectful use of eye contact?))**

Findings: Generally the body language used by solicitors was respectful of their client.

VALS' solicitors were generally able to relate to their clients well in regard to the body language that they used during the client/solicitor interviews.

5. **Did the solicitors explain to the client what would happen in court and explain their role as their solicitor?**

Findings: Generally solicitors were able to effectively explain court processes and their role as an advocate.

Each solicitor who was observed during the interview with their Indigenous Australian clients gave a brief outline of their duty as a solicitor and made their clients very aware that they were there to act only on the basis of the instructions given by the client themselves.

It was also observed that generally Indigenous Australian clients will not ask any more questions than necessary about their case or perhaps do not ask any questions at all. This further emphasises the need for solicitors to explain their role and the process of court to their clients in a clear and simple way every time that they meet with a client for the first time.

6. Did the solicitors make use of culturally appropriate language. For example, were words such as 'charged up' used instead of 'intoxicated'?

Findings: Solicitors made some use of culturally appropriate language.

Whether or not solicitors used culturally appropriate language or slang when talking to their clients was closely linked with the solicitor's individual personality and also with how long the solicitor and client had known each other. As an Indigenous Australian staff member at VALS commented, solicitors need to choose their use of such words carefully otherwise they run the risk of being seen as 'try-hards' and might be seen as 'pretenders' by their clients. Observation suggested that the use language that the client can relate to is a positive tool.

'Perhaps one approach that could be tried by solicitors is to integrate the client's language choices into their conversation, such as if client says 'sis' and 'bro' all the time, solicitor may choose to include these words occasionally in their communication with the client.'

A client is more likely to accept this type of language from a solicitor if they have a long-standing relationship with them. Two female solicitors mentioned that it was equally important for them that they strike a balance between culturally appropriate language and 'legalese' to ensure that they gained their client's respect and were seen also to use the language expected from a solicitor.

This issue was raised in the Sally McAdams' research at VALS about the use of more informal language in legal letters. Some lawyers, and in one case an Indigenous Australian staff member, were concerned about the risk of appearing too informal and therefore not being seen by the client as a 'proper' lawyer.

BACKGROUND AND CLIENT RESPONSES

1. The number of times the client and solicitor had met prior to representation in court.

It was beneficial for the solicitor to have met the client at least once before representing them in court. This factor helped build a relationship of trust between client and solicitor. It should also be noted that pre-court meetings between a solicitor and their client are especially important in metropolitan areas as in contrast to regional courts, a CSO will not be present to help facilitate a trust relationship. Indigenous Australian clients were seen to have a good relationship with the solicitors who made an effort to make them feel comfortable.

> One of the ways that solicitors made their clients feel comfortable was by referring to information they had learnt about the client during a previous meeting, such as family information or recent events, such as attending a tribal dance performance.

2. Whether the CSO or an Aboriginal court worker was present during the client/solicitor meeting/giving of 'instructions'.

The CSO, particularly in regional areas of Victoria, is the 'keeper' of a great deal of important information about the client and their connection with the local Indigenous Australian community, including their family relationships. Throughout the study a number of the solicitors at VALS commented on the value of the CSO presence in client/solicitor interviews.

One VALS' solicitor spoke of the way that the CSO can vouch for you both as a solicitor and as a person. He viewed this as very helpful, as many solicitors only meet clients briefly before representing them in court. This means that there is very little time for the necessary client trust to be established, especially as relationships within Indigenous Australian culture are traditionally built over a long period of time. Thus, the support of a CSO who is a known community member can be invaluable in this respect.

Another solicitor felt that most of the time it was not necessary for the CSO to attend the interview. However, she identified there were some instances where the presence of a CSO is helpful, noting that they may be able to get the client to talk about details relating to their case that may not otherwise be brought up in front of a 'gubba' solicitor. These details could then be shared with the solicitor before they attended court to represent their client.

3. Whether or not the client asked questions relating to their matter.

It was found that it was more common for clients not to ask questions about their case than to do so.

4. Whether or not the client voluntarily gave forward information relating to their matter.

Whether or not the client gave information about their case voluntarily seemed to relate closely to the manner in which the solicitor asked for the information. If the solicitor sought the information by asking the client to explain events related to their case in a contextual way, they tended to get more detailed responses from the client than if they asked closed questions which required specific information relating to times, quantities or dates. A number of solicitors at VALS noted that use of this approach was time-consuming and ultimately counter-productive in light of tight court schedules with multiple cases to be heard and clients who were often meeting their solicitor for the first time. A problem that was identified by VALS' solicitors was that if this approach was used it took more time, time that simply wasn't available on an average court day with multiple cases to be heard and with clients often meeting their solicitor for the first time.

5. **The evidence presented by the client that showed that they understood proceedings on the day (before court) such as nodding, asking questions and paraphrasing of information given to them by the solicitor.**

There was a high incidence of nodding by the clients in response to their solicitors during these interviews. It was less common for the client to ask further questions relating to their matter but this did happen occasionally.

Summary of the Findings about the Client/Solicitor Pre-Court Interviews

This study found that the solicitors were using many of the identified examples of AE during communication with their Indigenous Australian clients. During the pre-court client/solicitor interviews, there was a relatively high number of examples of AE identified using the AE checklist (81%).

Each solicitor succeeded in using a personal approach with their Indigenous Australian clients. This was evidenced in the way they outlined their role as a solicitor and in the way they explained the legal matter to the client.

Of all the examples of AE on the checklist the one least commonly used was questioning which allowed for the use of specification rather than dates, distances and times.

Use of a direct questioning approach rather than a more indirect narrative approach, meant that little allowance was made for the client to tell their story by relating the relevant events to their context. Instead, when the solicitors sought instructions they emphasised the use of specific quantities relating to time, date and quantity to describe events.

For further evidence of the use of AE by solicitors, refer to Table 1 'Solicitor Responses'. For further information on the use of AE by clients in client/solicitor pre-court interviews, refer to Table 2 'Background and Client Responses'.

In slightly more than half of the matters observed the solicitors had met the client previously. In a third of the matters there was a CSO present during the interview. In over 80% of cases the client offered information about the matter. Almost half the clients asked questions about the matter.

The results shown in the following tables: Table 1 and Table 2 relate to the data collection sheet 'Client/Solicitor Pre-Court Interview Data Sheet'.

Table 1: Pre-court solicitor and client interviews - Solicitor Responses			
QUESTIONS	**YES**	**NO**	**N/A**
1	12	0	0
2	11	1	0
3	4	6	2
4	12	0	0
5	9	2	1
6	10	2	0
Total Responses	**58**	**11**	**3**
	81%	**15%**	**4%**

Note for Table 1: Solicitor Responses

*A **YES** response to each question indicates that the solicitor demonstrated some use of AE. A **NO** response indicates that a solicitor did not make use of AE. A **N/A** response indicates that the use of AE was not applicable to this part of the interview.*

Table 2 : Pre-court solicitor and client interviews - Background and Client Responses		
QUESTIONS	**YES** **(Qu 1 – *once)**	**NO** **(Qu 1 – *more than once)**
A	**5***	**7***
B	**4**	**8**
C	**5**	**7**
D	**10**	**2**
Subtotal for Qu a-d	**24**	**24**
% for Qu a-d	**50%**	**50%**
E **(Evidence of client understanding)**	**Nodded – 9** **Asked qu – 3** **Said 'yep' – 2**	**N/A**

Note for Table 2: Background and Client Responses

*A **YES** response to Questions a-d shows some background information and indicates some evidence that the client was engaged in the interview process. A **NO** response to Questions 1a-d shows some background information and indicates less evidence that the client was engaged in the interview process.*

SECTION 5A: KOORI COURT AND MAGISTRATES' COURT CHECKLISTS

COURT OBSERVATIONS OF THE KOORI COURT AND THE MAGISTRATES' COURT

> *(5) The Koori Court Division must take steps to ensure that, so far as practicable, any proceeding before it is conducted in a way which it considers will make it* ***comprehensible*** *to:*
>
> *(a) the defendant;*
>
> *(b) a family member of the defendant; and*
>
> *(c) any member of the Aboriginal community who is present in court.*[10]

WHAT WAS LOOKED FOR?

During the court hearings, Magistrates, solicitors and Elders were observed in relation to their use of AE. The court data checklist, based on the work of Eades, identified language features of AE which are common by Indigenous Australians. The same checklist was used for the Magistrates, solicitors and Elders. A different checklist within the same sheet, identifying the use of AE, was examined for Indigenous Australian people.[11]

The checklist data was collated for each group to establish how often these groups of people in the court have used AE. Each time a 'Yes' response was recorded for the Magistrate, the solicitor or the Elders, it demonstrated that their use of AE was consistent with one of the checklist items chosen to help identify the use of AE. The key objective of this process was to identify the extent to which the different participants utilised AE and whether there was a difference between the extent to which AE was used in the Magistrates' Court and the Koori Court.

COURT DATA QUESTIONS

1. Did the Magistrate/solicitor/Elders use a personal (familiar) way of communicating with the clients rather than an impersonal (distant) approach?
2. Did the Magistrate/solicitor/Elders build a case that represented the client's cultural history (included related family details) as well as their legal history?

[10] Magistrate's Court (Koori Court) Act 2002

[11] APPENDICES C and D show the 'Koori Court and Children's Koori Court Checklist' and 'Magistrates and Children's Court Checklist' data collection sheets.

3. Did the Magistrate/solicitor/Elders allow the Indigenous Australian person to explain events using a contextual framework (events, experiences and relationships involved) rather than using quantitative specification (time, quantity or date)?

4. Was the Magistrate's/solicitor's/Elders' body language respectful of the Indigenous Australian person (i.e. did they lean towards them, include them in the interaction with the use of gestures and eye contact)?

5. Did the Magistrate/solicitor/Elders explain to the Indigenous Australian person what would happen in court and did each of them explain their role?

6. Did the Magistrate/solicitor/Elders make use of any culturally appropriate language, such as 'charged up' rather than 'intoxicated'?

The AE language features examined in the Client/Solicitor Pre-court Interview Data Sheet included the use of non-verbal language such as silence, averting eye contact and gratuitous concurrence. While it was impossible to make a clear judgement about the frequency of gratuitous concurrence it is a feature of AE that must be considered.

The questions asked in relation to the court setting also examined whether the Indigenous Australian client had asked questions independently, whether family support was present on the day and whether the client reacted in any way to comments made by the Elders present in the court (Koori Court only).

The questions represent our first attempt to create a checklist to help identify examples of the use of AE. Indigenous Australian and non-Indigenous Australian people will vary in the extent to which they use AE depending on their knowledge, experience and the context in which they are communicating. To the extent that courts are seen as non-Indigenous Australian institutions one might expect Aboriginal people to use less AE in such a setting. However, as language use is often patterned and unconscious, the extent to which someone will be conscious of choosing a particular word, language form or syntax will vary between individuals.

Question 2 (see above) relates to the whether a client's background or story is told in court. The likelihood of this occurring will sometimes be affected by a solicitor's knowledge of whether the Magistrate is interested or disinterested in this sort of information. Some Magistrates insist on background information while others insist that the solicitor 'get to the point'.

The use of AE words such as 'charged up' or 'gubba' by solicitors also presents challenges. Several people noted that the extent to which solicitors used AE words was affected by how well they knew their client, as well as how comfortable they felt using this language.

SECTION 5B: FINDINGS ABOUT THE KOORI COURT AND MAGISTRATES' COURT CHECKLISTS

KOORI COURT TABLES

Table 1 of MAGISTRATES: Checklist Examples of use of AE in the Koori Court			
	Total Responses for Magistrate		
QUESTIONS	**YES**	**NO**	**N/A**
1	5	0	0
2	5	0	0
3	1	2	2
4	5	0	0
5	4	1	0
6	4	0	1
Total Responses	**24**	**3**	**3**
	80%	**10%**	**10%**

Table 2 of SOLICITORS: Checklist Examples of the use of AE in the Koori Court			
	Total Responses for Solicitor		
QUESTIONS	**YES**	**NO**	**N/A**
1	5	0	0
2	3	1	1
3	2	0	3
4	5	0	0
5	5	0	0
6	0	5	0
Total Responses	**20**	**6**	**4**
	67%	**20%**	**13%**

Table 3 CLIENTS: Checklist Examples of use of AE in the Koori Court			
	Total Responses for Client		
QUESTIONS	**YES**	**NO**	**N/A**
1a	4	1	0
2a	1	4	0
3a	5	0	0
4a	4	1	0
1b	5	0	0
2b	3	2	0

3b	1	4	0
4b	3	2	0
Total Responses	**26**	**14**	**0**
	65%	**35%**	**0%**

Table 4 of ELDERS: Checklist Examples of use of AE in the Koori Court			
	Total Responses for Elders		
QUESTIONS	**YES**	**NO**	**N/A**
1	5	0	0
2	5	0	0
3	3	0	2
4	5	0	0
5	4	1	0
6	2	3	0
Total Responses	**24**	**4**	**2**
	80%	**13%**	**7%**

Note for Tables 1- 4

*A **YES** response indicates that the relevant person used communication that was consistent with the examples of AE used in the checklist. A **NO** response indicates that the relevant person failed to demonstrate the language behaviours identified within that question. A **N/A** response indicates that the identified communication was not applicable to this court situation. For example, the interaction may have been brief, such as an adjournment.*

MAGISTRATES' COURT TABLES

Table 1a of MAGISTRATES: Checklist Examples of use of AE in the Magistrates' Court			
	Total Responses for Magistrate (24 in sample)		
QUESTIONS	**YES**	**NO**	**N/A**
1	1	3	0
2	0	3	1
3	0	4	0
4	0	2	2
5	2	2	0
6	1	3	0
Total Responses	**4**	**17**	**3**
	16.5%	**71%**	**12.5%**

Table 1b of SOLICITORS Checklist Examples of use of AE in the Magistrates' Court			
	Total Responses for Solicitor (24 in sample)		
QUESTIONS	**YES**	**NO**	**N/A**
1	4	0	0
2	2	2	0
3	0	1	3
4	4	0	0
5	4	0	0
6	3	1	0
Total Responses	**17**	**4**	**3**
	71%	**16.5%**	**12.5%**

Table 1c of CLIENTS Checklist Examples of use of AE in the Magistrates' Court			
	Total Responses for Client (16 in sample)		
QUESTIONS	**YES**	**NO**	**N/A**
1	1	1	2
2	3	1	0
3	2	2	0
4	2	2	0
Total Responses	**8**	**6**	**2**
	50%	**37%**	**13%**

Note for Tables 1a- 1c

*A **YES** response indicates that the relevant person demonstrated the language behaviours identified within that question. A **NO** response indicates that the relevant*

*person failed to demonstrate the language behaviours identified within that question. A **N/A** response indicates that the identified language behaviour was not applicable to this court situation*

Summary of the Koori Court and the Magistrates' Court Data Tables

The tables indicate that communication which is consistent with AE is quite common in Koori Courts but far less common in Magistrates' Courts.

In the Koori Court, Elders and Magistrates provided the most examples of the use of AE with groups scoring 80%. Solicitors in the Koori Court and their clients in the same court setting scored slightly lower at 67% and 65% respectively.

In the Magistrates' Court, the rate of solicitor use of examples of AE (68%) is virtually the same as for Koori Courts (67%). However, there is a dramatic difference in the extent to which Magistrates use AE in the Magistrates' Court (13%). By comparison, in the Koori Court setting, Magistrates demonstrated use of AE 80% of the time.

For VALS' clients the rate of exhibiting common behaviour traits whilst in the court setting, such as use of non-verbal language features like silence, averting eye contact or gratuitous concurrence and whether they asked questions independently, had family support present on the day or reacted in any way to comments by the Elders present in the Court (Koori court only), occurred at a lower rate in the Magistrates' Court. In the Magistrates' Court, the use of AE by the Indigenous Australian clients was slightly lower, 50% compared to 65% in the Koori Court.

What do these tables tell us?

As the number of cases observed was quite small, differences between individual solicitors and Magistrates may account for some of the patterns observed. The results are indicative rather than being statistically significant.

The most significant finding from this data about the Koori Court and the Magistrates' Court points to the contrasting use of AE demonstrated by the Magistrates in the Magistrates' Court as compared with the Koori Court. This data indicates that Magistrates are far less likely to utilise communication consistent with AE in the Magistrates' Court than in the Koori Court.

A key finding was that Magistrates in the Koori Court use language and communication methods which are more appropriate to clients when compared to that which is used in the Magistrates' Court. This is aided by the culturally appropriate approach of the Koori Court in facilitating a process which can be likened to a 'conversation around a table'.

As this study did not observe the same Magistrate in both the Koori Court and the Magistrates' Court we are unable to determine the extent, if any, a particular Magistrate may change their communication methods from one setting to another. There is also the possibility that Magistrates in the Koori Court have had more experience talking to Koori people prior to their involvement in the Koori Court and hence exhibit more AE in their communication. It is also possible that the presence of Elders and their use of AE helps the Magistrates more proficient in understanding and using AE.

The VALS solicitors observed during this study used AE at a similar level within both court settings. This interesting observation raises a number of questions. To what extent are VALS' solicitors consciously choosing to use AE? Alternatively, to what extent has it been learned or become the norm for these solicitors to use AE in all their work, irrespective of the court?

The data for the Indigenous Australian clients in the two court settings shows the rate at which Indigenous Australians clients did in fact demonstrate the use of AE in these two different court settings. The use of AE by Indigenous Australians clients may lead to a 'misreading' of their responses by court officials such as Magistrates and solicitors. The overall rate of AE usage by the Indigenous Australian client was higher in the Koori court (65% of the time) when compared with the rate of AE usage in the Magistrates court (50% of the time). The greater use of AE by the Magistrate and the presence of Elders and their use of AE may contribute to some clients feeling more able to use AE.

It also has to be considered that many Indigenous Australian clients may not use AE at all (35% of the time in the Koori court and 37% in the Magistrates' Court) because they are equally fluent in SAE and AE but have chosen to communicate in SAE. This would account for the recorded data that shows when clients have not demonstrated these common behaviour traits at all. Alternatively, the intimidating nature of the court process act to reduce the extent to which clients feel comfortable using AE

The data for the Elders in the Koori Court shows that they demonstrate examples of AE comparatively frequently, scoring 80% on the checklist.

Apart from language, there were other differences which affected the extent of participation by Elders in the court process. Magistrates utilised Elders in different ways. Some invited comment only at the end of the case while others invited comment throughout the case.

An observation of the Elders on their role in the Koori Court process was that it was more beneficial for the Indigenous Australian client when the Magistrate 'opened up' the court proceedings to allow ongoing contributions from the Elders, rather than giving them a prescribed time to contribute at the end. When the Magistrate allowed for continuous contributions, Elders were able to play a more significant role in catering for the language needs of the clients, such as allowing them to play the role of informal 'communication facilitators'. Calma (2007) has recommended that 'communication facilitators' should be utilised in courts.

SECTION 6: STRATEGIES FOR SOLICITORS TO HELP THEM CATER FOR AE SPEAKERS IN THE COURT SYSTEM

'Throughout most of the educational, medical , community and legal organisations run and controlled by Koori people there is a strong notion that Koori English can be differentiated from what might be termed Standard Australian English (SAE).'
Irruluma Guruluwini Enemburu (1989:1)

The difference between SAE and AE is not necessarily readily apparent to speakers of either language. The extent to which AE is spoken by Indigenous Australians also varies and there are regional variations to AE.

If you consider the role of AE you are likely to be able to communicate more effectively with your Indigenous Australian clients.

Eades lists twenty different areas of difference in communication under these three headings of linguistic, pragmatic and non verbal communication.[12] Reading Eades article on AE and how to avoid the pitfalls is highly recommended. Below are a few issues that highlight why this information is so important.

Things to be aware of in the areas of linguistics include pragmatics and non-verbal communication.

PRAGMATICS

Unlike the linguistic features of vocabulary or grammar, both of which are relatively easy to learn, pragmatics is about how people interact and is connected to socio-cultural context. Eades (2000) identifies gratuitous concurrence, questioning strategies, negative questions and specification as critical issues in this regard. These pragmatic related differences are more fundamental than learning alternative words to describe things, such as 'Jungais' for police. Gratuitous concurrence refers to people agreeing because they want to establish a relationship rather than agreeing to the facts of a situation.

The use of gratuitous concurrence

This means a person answers 'yes' to a question because they 'want' to keep the questioner happy regardless of whether or not they actually agree with, or understand the question.

Agreement tendency has been recognised in social research for several decades as a problem in mainstream populations. Hence most questionnaires today use a mixture of questions to gather information. For example, some questions require a yes and some answer require a no to indicate the theme being researched.

[12] See APPENDIX B which lists the contents of her article entitled 'Aboriginal English in Courts'.

At a commonsense level we are aware of situations where people agree with another simply to avoid conflict or because the other person is overbearing or more powerful. Gratuitous concurrence is slightly different in that it may be occurring because of a cultural belief that the relationship is more important than the detail of the question. There is no easy way to research this but the use of indirect questions to explore a topic during conversation may reduce the extent to which gratuitous concurrence has the opportunity to arise.

Questioning

Indigenous Australians more often use indirect questions by establishing a two way exchange, volunteering information of their own, and hinting at what they would like to find out. Instead of asking direct questions of your Indigenous Australian client it is better to do the following:

Use hinting statements followed by silence, such as; *'I'm wondering about…..'*

Volunteer information for confirmation or denial, followed by silence; '*It seems as if…'* OR *'People might say….'*

Specification

The way AE describes time, number and distance may be quite different to the standard western system. This is different to the common western approach. Eades (2000) describes the difference succinctly below.

"Many court cases hinge on questions of precise times, amounts, numbers, distances and locations. Aboriginal witnesses are placed at a disadvantage when asked about details of this kind, because such formal systems of quantification are not part of their traditional languages.

There are radical differences between the Western and the Aboriginal ways of being specific. Aboriginal specification usually refers to non-countable events and situations, such as elements of climate, geography or social life. Where non-Aboriginal people use numbers, dates, and names from a sequence (such as days and months), Aboriginal people tend to give a list, describe events, or refer to the context."

Examples
How many people were there?
Answer: [*List of names*]

How long were you at the [hotel] for?
Answer: *Just drived in there, bought half a carton and took off again.*

The differences in pragmatics mean that unless lawyers and other court officials become familiar with AE there is a high risk that information will be lost. While there is no foolproof method for dealing with these problems, using open-ended questions,

avoiding negative questions and allowing time for the client to explain what has happened will minimise the risk of significant miscommunication.

Apart from reading Eades (2007, 2000, 1996) it may be necessary to design some scenarios or exercises to help adapt western thinking patterns to include AE.

LINGUISTICS

The linguistic features that may differ between AE and SAE include kinship terms, use of lingo, prepositions, plurals and question signifiers.

The use of kinship terms

The Indigenous Australian family is an extended family (kinship network). Indigenous Australians commonly refer to non-biologically related people as their sister (sis) or brother (bro) or cuz. The terms Aunty and Uncle are used far more widely in Indigenous Australian culture than they are in non-Indigenous Australian cultures and a person is referred to as an Aunty or Uncle as a term of respect.

The use of lingo

Recorded examples of AE lingo used by the Indigenous Australian clients observed during this study in court and during interactions with court officials included:

- *'full finished'*, referring to a client having fully completed his suspended sentence. *'needle in the hun'* meaning needle in the backside.
- *'going horrors'* meaning the period of time following a big bout of drinking which is, as explained by the Client Service Officer from that region, 'crazy business – losing your mind' for an indefinite time.
- The characteristic addition of *'too'* on the end of sentences, for example, when the solicitor spoke about not having seen the client for a while the client answered *'haven't seen you for a while too'*.

Recorded examples of AE lingo used by the solicitors who were observed during this study in court and during interactions with Indigenous Australian clients included:

- *'off his face'* meaning drunk;
- *'pinched'* meaning stealing;
- *'dog of a Magistrate'* meaning not the sort of Magistrate you want to have your case heard before;
- *'you were not in a good way*' meaning not in good physical and general health at that time;
- *'Baby snatchers'* was used to refer to the Department of Human Services, who had custody of a client's children; and

'Youse musta been', *'fella'* and *'whacked'* were other examples.

An example of misunderstanding in communication was observed when a VALS solicitor referred to the client as 'having [had] a spat with them', meaning that a fight had occurred with the police. The client misunderstood his solicitor and was angry because he thought that the solicitor had stated that he had 'spat at the coppers'.

The use of prepositions

In AE, the way a preposition (a word governing a noun or a pronoun) is used may not follow the pattern of SAE. Instead it will follow the grammatical pattern of local Indigenous Australian languages. This can lead to misunderstandings.

Example:

'I go back up to the policeman'

The intended meaning in SAE is *'I went back to the policeman'*

The use of plurals

In SAE, the plural form of a noun is usually indicated by the addition of 's' or 'es' to the end of a word, and, in agreement with this, the usual 's' is dropped from the present-tense form of the verb.

In AE, the plural is often signalled by context rather than being marked by the noun. Problems can arise when the context does not provide the necessary information.

Solicitors should check whether the sense is singular or plural. They could do this by asking further question of their client to clarify such as: *'Were all you kids with you?'*

The use of question signifiers

Question signifiers in AE are given using '…is that right?' at the end of the sentence or with a rising intonation after a statement, instead of at the start, which would be the grammatical pattern of SAE. Question signifiers for SAE include 'did..','when..' and 'why..?'

CONCLUSION

The examples above highlight the range of ways that miscommunication may occur between people who speak SAE and people who speak AE. The pilot research highlighted that VALS' solicitors have either learned or assumed a number of aspects of AE. Two aspects of AE were identified as needing further attention. Firstly, the use of open-ended questions, instead of direct questions, when attempting to elicit information could be improved. Secondly, it would be beneficial to allow and encourage the use of descriptions of events which are more narrative in nature and less abstract or focussed on specification.

AE involves the use of lingo. The extent to which this was adopted by solicitors varied and there were differing opinions about how far solicitors should go in adopting this vocabulary.

The exploratory research indicated that there is much greater use of AE in the Koori Court than in the Magistrates' Court. There will be obvious time pressures on Magistrates and solicitors in the Magistrates' Court system which will operate against fully taking account of AE. However once there is greater recognition of AE and its varieties there will be more chance that courts will move to adjust their practice and better reflect the needs of Indigenous Australians.

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APPENDIX A: 'Lingua Franca - Retaining bilingual education programs in Aboriginal schools' Radio National Transcript (20/2/99)

Retaining bilingual education programs in Aboriginal schools

Jill Kitson: Welcome to Lingua Franca. I'm Jill Kitson. This week: why the Northern Territory government should retain bilingual education programs in Aboriginal schools.

Peter Adamson: It was costing a heck of a lot more money to support this minority of schools over and above the staffing formula, and ultimately, when you looked at the results, while you can't just go by results alone, these students on average, are performing worse than students that are in non-bilingual schools.

Jill Kitson: The Northern Territory Education Minister, Peter Adamson, speaking on The 7.30 Report earlier this week about the decision, announced late last year, to abolish bilingual education programs in Aboriginal schools. Elders of the affected Aboriginal communities, such as the Warlpiri at Yuendumu, 250 kilometres northwest of Alice Springs, are threatening to boycott the schools in protest.

The Federally-funded bilingual programs were introduced in the early '70s as a result of the then Federal Minister of Education, Kim Beazley Senior's decision to allow Aboriginal parents to choose the language of their children's schools. In a letter to The Australian last December, Mr Beazley explained that bilingual programs were favoured as the best route to mastery of English as a second language.

It was universal experience, he said, that if literacy were established in the mother tongue, the language of the heart, it was easier to switch to another language, in the case of Aboriginal Australians, English.

Dr Christine Nicholls is a socio-linguist at Flinders University. Before that, she was Principal Education Officer responsible for the curriculum of Bilingual Education in the Northern Territory Department of Education. Prior to that, she worked for almost a decade as the Principal of Lajamanu School in the Tanami

Desert in the Territory, where Warlpiri is used alongside instruction in English.

She believes the Northern Territory should retain bilingual education in Aboriginal schools. Here she is to explain why.

Christine Nicholls: One very powerful argument for retaining these bilingual education programmes is the fact that the children in many instances enter the schooling process with no English whatsoever, so they don't actually understand what's going on when the instruction is exclusively in the English language - therefore a bilingual programme is very practical.

I'll tell a little story now, a story which goes against myself in a way. Not all that long after I'd arrived at Lajamanu, and before I had developed any real Warlpiri language ability, the Warlpiri preschool teacher reported in ill one morning. Of course, there were no relief teachers available because of Lajamanu's distance from metropolitan centres. As a result, I ended up teaching the preschoolers that morning. There were

thirty or forty preschoolers in the room, it was about 45degrees, and when I arrived in the classroom, a virtual riot of little "ankle-biters" was taking place. One very young Warlpiri mother, still in her teens, whose child was in the class, and who was holding her newborn baby, was trying valiantly to hold the fort.

I knew that I had to get the kids to sit down before we could do anything else, so I called out "Sit Down!" in a loud and authoritative voice. No response whatsoever! Several times I tried repeating this command but the children paid virtually no attention to me because they didn't actually understand what I was saying. In fact, I think a few of them thought that a white person yelling at them in a foreign language was very funny. I was extremely frustrated because normally I have no problems with discipline with children of any age, let alone 4 or 5 year olds! Eventually, in desperation, I asked the young woman with the baby how I should ask the children to "sit down" in Warlpiri and she whispered to me, "Nyinaya" - I loudly declaimed "Nyinaya!" to the kids and got an instant response - folded arms, straight backs, in short, I received their attention. After that, the young woman helped me and somehow we managed to get through the rest of what turned out to be a very long morning.

I think this story also illustrates how non-Indigenous people working in such situations need a certain level of humility - in this case, I had to defer to a young woman many years my junior, who was not a trained teacher, who had in fact received hardly any western education, only a few years of primary school, who could barely read or write herself, and acknowledge that she had something significant to offer those children which I really couldn't. It also shows that while governments may, with the stroke of a legislative pen, decide to abolish or cut formal large "B" Bilingual Programmes, that in fact this will not alter the situation - it will remain a small "b" bilingual situation, whether or not the school is officially proclaimed as such, and that this needs to be addressed.

I'd like to make another point by reading an excerpt from the Warlpiri children's book "Jarnpa-Kurlu" written by June Napanangka Granites, a former teacher at Yuendumu School, another Warlpiri school. This is one of the stories that the Warlpiri teachers and the Warlpiri mothers who worked as volunteers in the school would enjoy reading to the children in Lajamanu School's "lap reading" programme, a programme in which the mothers would come in to the school every morning and either read to the children or listen to the children read to them - and it is really significant that all successful early childhood education has to be some kind of partnership between the school and the parents or extended family.

As you're listening to me read this story, a simple story which can be understood by very young Warlpiri children, it might be worthwhile to think about the point at which you tune out, if it's in a language that you don't understand. This is pertinent to the entire debate about bilingual education, as when these Warlpiri children come to school, most of them speak only their own language, and either no English, or very little English. It can be an extremely alienating experience even for adults to have to listen for long periods of time to a language they don't understand. For young children entering school for the first time, it can be an experience from which they never recover.

Jarnpa-Kurlu is a cautionary tale which imparts knowledge about the natural world, about animal behaviour, about appropriate interactions between animals and humans, as

well as guidelines about what constitutes sensible and ethical human conduct, and as such I suppose it works in rather the same way that "Little Red Riding Hood" works for non-Indigenous children of European background. "Jarnpa-Kurlu" roughly translated means "Story about a Devil Man" and tells the story of a man and a woman who had several dogs. The group would sleep around a windbreak near a fire.

To cut a long story short, the dogs used to bark a lot at night which would really irritate the man in particular, because the barking would wake them up night after night. Little did they know that the dogs were actually barking at the evil Jarnpa, or Devil Man, who was sneaking up on them in the dark with the intention of killing them. The man looked for tracks in the morning but he couldn't see any, because the evil Jarnpa was like a Kurdaitcha who wore grass slippers made from woven spinifex, that didn't leave any tracks. So the man would say that the dogs were barking at nothing. One day the barking got to him so much that he decided to solve the problem for once and for all by cutting the dogs' ears off so they would no longer hear noises and would therefore never bark again. That same night, the Jarnpa crept up on the man and the woman and killed both of them. This is a rather scary, spooky story - there's a tension in it which builds because the reader knows that the dogs are barking on account of the Jarnpa creeping up.

Jarnpa-Kurlu

Yirrarnu June Napanangkarlu

Wati manu karntalpa-pala nyinaja maliki-patu-kurlu. Yunta-pala wiri yirrarnu manu warlu-pala yarrpurnu. Ngula-jangka jardalku kapala ngunami mata.

Mungalyurru-pala yakarra pardija. Yuntangka kapala nyinami. Maliki-patu kala parntarrimi yanjamirla.

Munga-patu-karirlalku-pala ngunaja. Ngula jarnpaju yardarni yanu ngurra yanka-kurraja. Jardalpa-pala ngunaja purda-nyanja-wangu.

Yarda-pala jarda-jarrija. Ngulalpa-palangu jarnpa jangkardu yura-kangu.

Maliki-paturlujulu jarnpaju purda-nyangu. Ngulalurla maliki-patuju jankardu warlkurr-manu.

Warnpa kapala ngunami purda-nyanja-wangu. Jarnpa kapalangu jangkardurnu yura-kanyi kutulku.

Maliki-paturlu kalu warlkurr-ngarrirni.

Mungalyurru-pala yakarra-pardinjarla yanu yitaki-maninjaku. Ngula watiji kuja wangkaja: "Nyiya-wiyi kalu nyampurluju malikirliji warlkurr-ngarrirni."

"Ngayi kalu warlka nyampuju maliki warrardampa warlkurr-mani."

Karntaju ka jarda-juku ngunami purdanyanja-wangu. Watingki-jana maliki-ji langa-juku muurlpa-pajurnu purdanyanja-kujaku. Purdanyanja-wangu-karda-jana langaju muku-pajurnu.

Malikijilpalu purda-nyanja wangulku ngunaja. Ngula-palangu jarnpaju jangkardurnu yanu yunta-wana. Jirrama-juku-palangu jarda-kurra pakarnu.

The Northern Territory Government says it will transfer the current funding for bilingual education programmes to English-as-a-Second-Language (ESL) instruction in remote Aboriginal schools. In fact, I've been arguing for years that all non-Indigenous teachers in Aboriginal schools should have formal ESL qualifications, but in fact very few teachers actually have these at this moment in time.

It is difficult to interpret the Territory Government's decision, which is endorsed by Federal Government, as anything but a direct attack on the relatively few remaining "strong" Aboriginal languages and the human rights of their ever-decreasing number of speakers. The decision will also mean job losses for many of the dedicated bilingual education workers in remote rural communities, the majority of whom are Aboriginal people. In turn this will translate into even higher levels of unemployment amongst rural Australians.

This question of employment is a significant one. To give a brief example from my experience at Lajamanu, so committed was the community to the bilingual education programme that in 1982 ten Warlpiri adults worked full time for the entire year with no remuneration to create Warlpiri books for Warlpiri children to read in classrooms. This need to be borne in mind in these days of governments encouraging people to work for the dole.

The success of the programme could be measured in both academic and social terms. In 1989 Lajamanu school topped all government Aboriginal schools in the Territory in the Education Department's own externally-administered moderated testing programmes in English. Internal tests conducted in the school also showed a steady improvement in academic achievement over the years.

It still needs to be admitted that even in the bilingual schools academic results are well below those of their non-Indigenous counterparts. This is the result of a complex mosaic of interacting factors - not least of which are Indigenous poverty and poor health. Bilingual education is not a universal panacea. Bilingual education won't work social magic, and neither will any other approach on its own, but it is the best current option available, if properly supported and resourced, and if Aboriginal communities want it.

In terms of my personal experience, the major argument for the continuation of the bilingual programmes isn't academic, at least not at this point in history - and here I'll return to some of my earlier comments. Aboriginal-controlled bilingual programmes give Aboriginal parents and extended families a real place in their children's education. Indigenous-controlled bilingual education programmes put Aboriginal teachers into Aboriginal classrooms as "real" teachers; assist the Aboriginalisation of schools, thereby acting as circuit-breakers to continuing welfare dependence; improve relations between community members and schools; increase school attendance; legitimate and strengthen the minority language and thereby raise the self-esteem of both adults and children.

In accordance with the most fundamental tenet of educational practice, learning in one's own first language first allows children to move from the known to the unknown in their schooling, enabling them to acquire a second language with greater ease. ESL and bilingual education are mutually supportive - a quality ESL programme is an essential part of any successful bilingual programme. As Mandawuy Yunupingu, lead singer of

Yothu Yindi, and formerly the principal of Yirrkala Bilingual School so eloquently puts it, "If you have control over both languages, you have double power".

Jill Kitson: Dr Christine Nicholls, of Flinders University of South Australia. And that's all for this edition of Lingua Franca.

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APPENDIX B: 'Aboriginal English in the Courts', Diane Eades

TABLE OF CONTENTS

The twenty areas of difference in communication that Eades places under three headings of linguistics, pragmatics and non-verbal communication are apparent in her table of contents.

- Pragmatics;
- Questioning strategies;
- Gratuitous concurrence—the tendency to agree with the questioner;
- Quantifiable specification—using formal systems, particularly numbers, to give specific details;
- Negative questions;
- Linguistic features;
- Pronunciation;
- Consonants and vowels;
- Grammar;
- The 'inverted sentence' form of question;
- Indicating plurals and possession;
- Plurals;
- Possessives;
- Prepositions;
- Tense;
- Pronouns and demonstratives;
- words that refer to something already mentioned;
- Gender;
- Superlatives;
- Negatives;
- Either/or questions;
- Word order;
- Vocabulary;
- Lingo;
- Words with special meanings in Aboriginal English;
- Non-verbal features;
- Gestures;
- Eye contact .
- Silence

WORDS WITH SPECIAL MEANINGS IN ABORIGINAL ENGLISH

Many Standard English words have slightly different meanings in Aboriginal English.

Examples

- country .....land/friend
- shame ..... [no exact equivalent] A complex mixture of embarrassment and shyness that can result from various situations, particularly when a person is being singled out for rebuke or for praise
- learn .....teach
- sing out .....call out
- mob .....group
- Lingo .....Aboriginal language
- debil debil .....evil spirit
- grow [a child] up .....raise [a child]/bring [a child] up
- by 'n' by .....soon
- growl .....scold
- choke down ..... pass out/go to sleep
- charging on ..... drinking
- drone ..... park people

Once again, these are only examples and it should not be assumed that every speaker of Aboriginal English will use these words or attach the same meanings to them.

Aboriginal society pays close attention to the finetuning of relationships between individuals, an attention that traditional Aboriginal languages reflect in their rich set of first- and second-person pronouns.

Examples

- I I
- we/me'n'him/me'n'her/me'n'you .....we (two people)
- we/usmob/me'n'them/me'n'youse/me'n'yousemob .....we (more than two)
- you .....you (one person)
- youtwo/youtwofella/youse .....you (two people)
- youmob/yousemob/youse .....you (more than two)

Standard English vocabulary is also inadequate when it comes to expressing kinship, so some English words have acquired different shades of meaning in Aboriginal English. Usually the meaning is extended to reflect the broader kinship network.

Examples (traditionally oriented communities)

- mother ..... biological mother and her sisters
- father ..... biological father and his brothers
- cousin-brother .... father's brother's son
- cousin-sister ..... mother's sister's daughter

Examples (less traditionally oriented communities)

- auntie ..... female relative of an older generation
- uncle ..... male relative of an older generation
- cuz (cousin) ..... any relative of the same generation
- sister .....any female Aborigine (often used by urban Aborigines to express solidarity)
- brother .....any male Aborigine (often used by urban Aborigines to express solidarity)

Why is this a problem?

While many of these differences in usage are unlikely to cause difficulties in the courtroom, the danger is that in some cases questioners and witnesses will be at cross purposes, and that juries will be seriously misled. This danger is most real with kinship terms, because a witness could seem to be giving contradictory evidence about one person while in fact referring at different times to two (or more) people.

How can the problem be avoided?

Try to use a communication facilitator from the same community as the witness or someone with significant experience dealing with that community, e.g. someone with relatives from there.

Check that you've understood the answer:

Example
He came home by 'n' by—that's soon, right?

Whenever there is reference to a kinship term, check who is being referred to, if possible by using names:

Examples
You went to stay with your mother—that's Margaret, right?
Your cousin-sister—what's her name, then?

If necessary, clarify the biological relationships between people:

Example
Your auntie—that's your mother's sister?

APPENDIX C: 'Koori Court and Children's Koori Court Checklist' - Data Collection Sheet

For the Magistrate (Name of Magistrate -)	**Y/N**
1. Did they use a personal (familiar) **way of communicating** with the client rather than an impersonal (distant) approach?	
2. Did they consider factors that related to **the client's cultural history** (included related family details) **as well as their legal history**?	
3. Did they allow client to explain events using a **contextual framework** (events, experiences and relationships involved) rather than using **quantitative specification** (time, quantity or date)?	
4. Was **their body language respectful of their client** (Did they lean towards them, use hand/head gestures etc)?	
5. Did they explain what will happen in court and their role as the Magistrate?	
6. Did they make use of **any culturally appropriate language** such as 'charged up' not intoxicated? **List** examples used on the day in space given below.	
For the Solicitor (Name of Solicitor -)	**Y/N**
1. Did they use a personal (familiar) **way of communicating** with the client rather than an impersonal (distant) approach?	
2. Did they build a case that **represented the client's cultural history** (included related family details) **as well as their legal history**?	
3. Did they allow client to explain events using a **contextual framework** (events, experiences and relationships involved) rather than using **quantitative specification** (time, quantity or date)?	
4. Was **their body language respectful of their client**? (ie. Did they lean towards them, use hand/head gestures etc)?	
5. Did they explain what will happen in court and their role as the solicitor?	
6. Did they make use of **any culturally appropriate language** such as 'charged up' not intoxicated? **List** examples used on the day.	
For our Indigenous Australian client	**Y/N**
Is there any evidence of the following behaviour traits by this client?	
Note: The following behaviour traits are recognised as commonly used by many Indigenous Australians and may lead to a 'misreading' of their responses by court officials such as Magistrates and solicitors.	
1. Use of **extended periods of silence** when asked to give a response.	
2. Avoidance of direct eye contact.	
3. Use of gratuitous concurrence (in simple terms this means saying yes' to keep the person asking the question happy rather than giving a truthful response).	
4. Use of other **non-verbal responses such as eyes downward looking towards their feet during court proceedings.**	

Is there any evidence of these additional behaviour traits by this client in the Koori court setting?	
1. Client tried to tell their story or gave evidence in their own words.	
2. Client reacted to the presence or comments of the Elders or family members in some way (ie: shame, showed emotion)	
3. Client asked for further clarification of what was happening to them during the court proceedings	
4. Client had family support at the table on the day of the court proceeding.	
For the Elders	**Y/N**
1. Did they use a personal (familiar) **way of communicating** with the client rather than an impersonal (distant) approach?	
2. Did they consider factors that related to **the client's cultural history** (including related family details) **as well as their legal history**?	
3. Did they allow client to explain events using a **contextual framework** (events, experiences and relationships involved) rather than using **quantitative specification** (time, quantity or date) ?	
4. Was **their body language respectful of the client** (ie. Did they lean towards them, use hand/head gestures etc)?	
5. Did they (or someone else on their behalf) explain what will happen in court and their role as Elder?	
6. Did they make use of **any culturally appropriate language** such as 'charged up' not intoxicated? **List** examples used on the day.	
FOOTNOTE: The following information is relevant to Qu. 3 of the court data collection sheet which asks of the Magistrate, the solicitor and the Elders; *'Did they allow client to explain events using a contextual framework (events, experiences and relationships involved) rather than using specific quantification.* A specific question: *'How many drinks did you have?' might* be answered either vaguely, as in *'Oh, must have been quite a few'* or through being specific in relation to another situation or context, such as: *'Must be more than Freddie'*.	

APPENDIX D: 'Magistrates' and Children's Court Checklist'
Data Collection Sheet

Magistrates Court and Children's Court Checklist - Date: Location:	
Type of Hearing: Matter:	
For the Magistrate (Name of Magistrate -)	**Y/N**
1. Did they use a personal (familiar) **way of communicating** with the client rather than an impersonal (distant) approach?	
2. Did they consider factors that **represented the client's cultural history** (included related family details) **as well as their legal history**?	
3. Did they allow client to explain events using a **contextual framework** (events, experiences and relationships involved) rather than using **quantitative specification** (time, quantity or date)?	
4. Was **their body language respectful of their client**? (ie. Did they lean towards them, use hand/head gestures etc)?	
5. Did they explain what will happen in court and their role as the Magistrate?	
6. Did they make use of **any culturally appropriate language** such as 'charged up' not intoxicated? **List** examples used on the day in space given below.	
For the Solicitor (Name of Solicitor -)	**Y/N**
1. Did they use a personal (familiar) **way of communicating** with the client rather than an impersonal (distant) approach?	
2. Did they build a case that **represented the client's cultural history** (included related family details) **as well as their legal history**?	
3. Did they allow client to explain events using a **contextual framework** (events, experiences and relationships involved) rather than using **quantitative specification** (time, quantity or date)?	
4. Was **their body language respectful of their client** (ie: Did they lean towards them, use hand/head gestures etc)?	
5. Did they explain what will happen in court and their role as the solicitor?	
6. Did they make use of **any culturally appropriate language** such as 'charged up' not intoxicated? **List** examples used on the day.	
For our Indigenous Australian client	**Y/N**
Is there any evidence of the following behaviour traits by this client?	
Note: The following behaviour traits are recognised as commonly used by many Indigenous Australians and may lead to a 'misreading' of their responses by court officials such as magistrates and solicitors.	
1. Use of **extended periods of silence** when asked to give a response.	
2. Avoidance of direct eye contact.	
3. Use of gratuitous concurrence (in simple terms this means saying yes' to keep the person asking the question happy rather than giving a truthful response.)	
4. Use of other **non-verbal responses such as eyes downward looking towards their feet during court proceedings.**	

FOOTNOTE: The following information is relevant to Qu. 3 of the court data collection sheet which asks of the Magistrate, the solicitor and the Elders; *'Did they allow client to explain events using a contextual framework (events, experiences and relationships involved) rather than using specific quantification.* A specific question: *'How many drinks did you have?' might* be answered either vaguely, as in *'Oh, must have been quite a few'* or through being specific in relation to another situation or context, such as: *'Must be more than Freddie'.*	

APPENDIX E: Sample Plain English legal letters by Sally McAdams

Letter Ai: Original Version

0. Dear *******

1. **Law Matter**

2. We refer to the above named matter and enclose herewith Affidavit prepared on your behalf.

3. Please can you peruse the said Affidavit ensuring the contents therein are true and correct. If there are any amendments to be made to the said document, please can you contact this Service to provide your further instructions in this matter.

4. If there are no amendments to be made to the said Affidavit, please can you swear the said document in the presence of a Court Registrar, Solicitor, Justice of the Peace or Sergeant-In-Charge of a Police Station. We note that the witness and Yourself are required to sign the said Affidavit on each page, where indicated, before returning to this Service in the enclosed stamped, self-addressed envelope.

5. If you have any further queries please contact this Service on *** or toll free on 1800 ***.

6. Yours faithfully

VICTORIAN ABORIGINAL LEGAL SERVICE CO-OPERATIVE LIMITED

[name of solicitor]
Solicitor.

Letter Ai: Alternative 1

0. Dear ********

1. ***** Law Matter**

2. This letter is about [case details]. I have enclosed with this letter an Affidavit I have prepared for you.

3. Please can you read this Affidavit carefully and make sure it is correct. If there are any changes that need to be made, please can you contact me to tell me what they are.

4. If there are no changes that need to be made to the Affidavit, please can you swear the said document in the presence of a Court Registrar, Solicitor, Justice of the Peace or Sergeant-In-Charge of a Police Station. Both you and the witness need to sign the Affidavit on each page, where indicated, before you return it to this Service in the enclosed stamped, self-addressed envelope.

5. If you have any questions, please contact this Service on *** or toll free on 1800 ***.

6. Yours faithfully

VICTORIAN ABORIGINAL LEGAL SERVICE CO-OPERATIVE LIMITED

[name of solicitor]
Solicitor.

Letter Ai: Alternative 2

0. Dear ******

1. …

2. This is [name], your solicitor. The last time you and I spoke, we talked about *** [case details]. I'm writing this letter to ask you to have a look at this Affidavit which I have enclosed with this letter.

3. I need you to read this Affidavit carefully and make sure it is right. If you think there is anything we should change, can you please call me and tell me about it.

4. If you think the Affidavit is right as it is, you will need to sign it in front of a witness. The people who can be a witness are: a Court Registrar, a solicitor, or a Justice of the Peace or Sergeant-In-Charge of a Police Station. Both you and the witness will need to sign the Affidavit on each page, where it says. Then you will need to send it back to me. I have included a stamped, self-addressed envelope so you can do this easily.

5. If you want to ask any questions, please call me on ****

6. Yours faithfully

VICTORIAN ABORIGINAL LEGAL SERVICE CO-OPERATIVE LIMITED

[name of solicitor]
Solicitor.