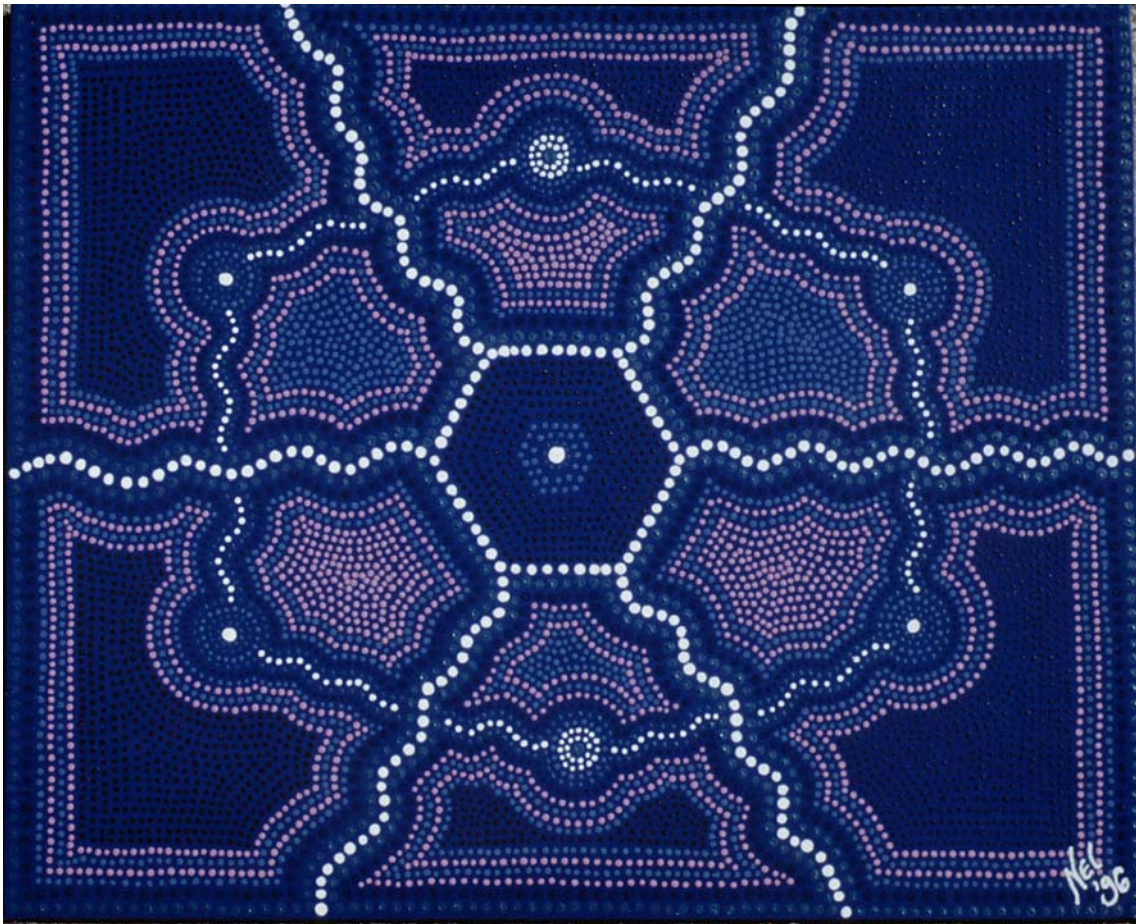


Chapter Five: Language and Communication



Chapter Five: Language and Communication

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Upon the recommendation of Western Australian Aboriginal advisers, the word "Aboriginal", rather than "Indigenous" is used in this Benchbook

Summary of Chapter Five

Language and Communication

5.1 ABORIGINAL LANGUAGES AND DIALECTS

5.1.1 Survival of Aboriginal Languages

- Approximately 90 Aboriginal languages are still being spoken in Australia
- In 2006 12% of Aboriginal people reported that they spoke an Aboriginal language at home

5.1.2 Features of Aboriginal Languages

- All Aboriginal languages contain a complex consonant system

5.1.3 Example of an Aboriginal Language: *Ngaanyatjarra*

- *Ngaanyatjarra* , which is spoken in the Western Desert region reflects the environment within which the people live
- Linguistically and conceptually *Ngaanyatjarra* is very different from English
- *Ngaanyatjarra* has no formal system of quantification
- *Other Ngaanyatjarra* language concepts relate to seasons and colours
- *Ngaanyatjarra* has adapted/borrowed certain English words

5.2 MODERN ABORIGINAL LANGUAGES AND DIALECTS

5.2.1 Kriol and Torres Strait Creole

- Kriol is a form of pidgin English spoken in northern Australia
- Torres Strait Creole, which is related to Kriol, is the most widely spoken indigenous language

5.2.2 Aboriginal English

- Aboriginal English dialects, which range from “light” to heavy”, are commonly spoken
- The use of Aboriginal English may create significant communication problems

5.3 COMMUNICATION STYLES

5.3.1 Characteristics of Communication within Aboriginal Society

- The avoidance of direct eye contact demonstrates politeness and respect
- Silence plays an important and valued role in communication
- Aboriginal people use sign language quite widely
- Aboriginal people prefer to communicate indirectly, rather than to ask direct questions

5.3.2 Cultural Barriers to Effective Communication

- In Aboriginal culture, family or kin relationships are accorded primacy
- An Aboriginal person may have difficulty in answering questions which are put directly
- Gratuitous concurrence (or the tendency to agree with a particular proposition or question, regardless of whether the speaker in fact does agree with it) may be a particular problem

5.3.3 Specific Language Difficulties

- Aboriginal people may experience problems in understanding English, both linguistically and conceptually (these are listed and explained)
- Aboriginal people may experience difficulty in specifying numbers, time or distances

5.4 COMMUNICATING EFFECTIVELY WITH SPEAKERS OF ABORIGINAL ENGLISH

5.4.1 Suggested “Do’s”

- Speak slowly and clearly
- Use an ordinary tone of voice
- Use the name by which the speaker wishes to be addressed
- Use an indirect approach to the asking of questions (three suggestions)
- Check with the speaker of Aboriginal English to establish if he or she understands the legal words being used
- Show respect and consideration at all times
- Simplify the use of words
- Be careful of “I don’t know” responses

5.4.2 Suggested “Dont’s”

- Don’t attempt to speak Aboriginal English
- Don’t use complex sentences or figurative speech
- Don’t ask negative questions
- Don’t use “either-or” questions
- Don’t use technical legal words unless it is essential
- Don’t use terminology and descriptors which may cause offence

Note: Interpreting and Interpreters are discussed in Chapter Six

CHAPTER FIVE

Language and Communication

5.1

TRADITIONAL ABORIGINAL LANGUAGES

There is evidence that prior to the British colonisation of the continent in 1788 several hundred Aboriginal languages and dialects were spoken in Australia.

5.1.1 Contemporary Aboriginal Language Use

- **Approximately 90 Aboriginal languages are still being spoken**

Research indicates that approximately only 90 (one third) of the hundreds of original Aboriginal languages have survived to modern times. Of those, only 20 languages can be classified as “healthy”, in that each such language is spoken by and transmitted to children¹.

- **In 2006 12% of Aboriginal people reported that they spoke an Aboriginal language at home**

In the 2006 Census 52,000 people (or 12% of Aboriginal Australians, aged 5 years and over) reported speaking an Aboriginal language at home. Fifty-six percent of Aboriginal people living in geographically remote areas reported that they spoke an Aboriginal language; only 4% of Aboriginal language speakers lived in major cities².

5.1.2 Features of Aboriginal Languages

- **All Aboriginal languages contain a complex consonant system**

All Aboriginal languages contain a complex consonant system, and fewer vowels than English. Where:

“English has only three places where the passage of air can be closed off – the lips (as in *b* and *p*), the tip of the tongue against the gum ridge (*d* and *t*), and the back of the tongue against the soft palate (*g* and *k*). Many Australian languages have six such places, as many as any language in the world. They also use back of the tongue against the teeth, blade of tongue against the hard palate, and tip of tongue turned back onto the roof of the mouth (a retroflex sound similar to languages in India). Australian languages often have six corresponding nasal sounds (where as English just has *m* and *n*). Another notable feature is that they have two rhotic or *r*-sounds, one like the Australian English *r* and also a trill as in Scottish English. Sometimes there can be as many as four *l*-sounds. The sibilants or fricatives *s* and *sh* are universally absent in Australian languages. There are two semi-vowels, *y* and *w*. Most of the languages have only three vowels – *i*, *a* and *u* – but a few have four or more.”³

¹ A Schmidt *The Loss of Australia's Aboriginal Language Heritage* Aboriginal Studies Press, Canberra, 1990, pp 1, 2. See also **Chapter Three**, at 3.2.2.

² Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006*, 4713.0 (www.abs.gov.au). (Accessed 11 July 2008) See also **Chapter Three**, at 3.2.2.

³ DJ Mulvaney & J Kamminga *Prehistory of Australia*. Allen & Unwin, NSW, 1999, pp 70-71

Further:

“Words show case, tense and mood by the addition of meaningful segments, which make for very long words. Nouns and verbs have markers on them that indicate who does what to whom, when it is done, and how. New words are derived by adding other meaningful segments.”⁴

The traditional Aboriginal hunter-gather-cultivator lifestyle resulted in languages possessing a “semantic homogeneity”. Many languages (including *Ngaanyatjarra*, which is described below) “distinguish classes of nouns, which have classifiers marking them as, for instance, edible flesh or vegetable, male or female”⁵.

5.1.3 Features of a Traditional Aboriginal Language - *Ngaanyatjarra*

- ***Ngaanyatjarra*, which is spoken in the Western Desert region, reflects the environment within which people live**

The *Ngaanyatjarra* language group is located in the Western Desert region of Western Australia. *Ngaanyatjarra* is one of the few remaining “healthy” or “strong” Aboriginal languages in Western Australia, in that its speakers are able to communicate entirely in the language.

- **Linguistically and conceptually *Ngaanyatjarra* is very different from English**

The *Ngaanyatjarra* language contains:

- No ‘f’, ‘h’, ‘s’, ‘v’, ‘x’, or ‘z’ sounds; so “we had a fight” translates to “we ‘ad a bight”;
- Three ‘t’ sounds (symbolised ‘t’, ‘tj’ and ‘rt’); eg “kutja”;
- Two ‘r’ sounds (symbolised ‘r’ and ‘rr’); rr is similar to the Scottish “r”;
- Four ‘n’ sounds (symbolised ‘n’, ‘rn’, ‘ny’ and ‘ng’) such as “Noongar”.

Ngaanyatjarra has a different word order from English. For example, a translation of the sentence “We went to that big water-hole over there” appears as follows:

<i>Majpitjangu-latju</i>	<i>kapi</i>	<i>nyarra</i>	<i>purlkanya-ku</i>
Went-we	water	that	big-to

Often, one *Ngaanyatjarra* word has a number of different meanings in English. A non-Aboriginal person may not know that those different meanings exist. Examples of *Ngaanyatjarra* words with multiple meanings in English include the following:

<i>Wanka</i>	means	“alive”, “awake” and also “uncooked”
<i>Pungku</i>	means	“will hit” and “will kill”
<i>Nyinaku</i>	means	“will sit”, “will stay” and “will live”
<i>Pina</i>	means	“ear” and “mind”
<i>Mirri</i>	means	“unconscious” and “dead”

On the other hand, sometimes one English term has a number of different meanings in *Ngaanyatjarra*. For example:

“will hit”	(1)	<i>pungku</i> (will hit from nearby, using stick or hand)
	(2)	<i>yatulku</i> (will hit with a missile)
“to choke”	(1)	<i>lirrintanka</i> (to choke another person)
	(2)	<i>ngakalku</i> (to choke on something stuck in the throat)

⁴ DJ Mulvaney and J Kamminga *Prehistory of Australia*. Allen & Unwin, NSW, 1999, p 71.

⁵ DJ Mulvaney and J. Kamminga *Prehistory of Australia*. Allen & Unwin, NSW, 1999, p 71.

The following examples show that linguistic and conceptual differences between *Ngaanyatjarra* and English can be very significant:

"[I]f one was cross-questioning a child...*nyuntulu-muntan pungu* ? 'Did you hit him? (from nearby)' the child might honestly answer 'no' because he had *yaturnu* 'hit him with a stone'....

[T]he [translated] statement 'a man has just died in the camp' may cause some consternation if what was meant was 'a man has just fainted in the camp'."⁶

- ***Ngaanyatjarra* has no formal system of quantification**

Ngaanyatjarra, like many traditional Aboriginal languages, has no formal system of quantification (numbers, time, distance, quantity etc). For example:

- **Numbers:** in the *Ngaanyatjarra* language, numerical concepts consist only of:

<i>Kutja</i>	one
<i>Kutjarra</i>	two
<i>Marnkurra</i>	three or 'a few'
<i>pimi</i>	'many'.

Larger numbers can be made by combining the smaller numbers e.g. *kutjarra-kutjarra* ('four') or *kutjarra-marnkurra* ('five').

- **Time:** *Ngaanyatjarra* words relating to time do not correspond to English words.

For example, the English word "now" often means "right at this moment". There are two *Ngaanyatjarra* words for "now": *kuwarri* and *walykunya*. According to the context in which those words

For example, the English word "now" often means "right at this moment". There are two *Ngaanyatjarra* words for "now": *kuwarri* and *walykunya*. According to the context in which those words are used, they may mean any one of the following: "within the hour"; "sometime today"; "this week"; or "current times" (as opposed to "former times").

- **Time spans:** time spans are referred to by natural phenomena. Thus, years are calculated by numbers of "hot seasons" (or more recently, by Christmases; months are counted by lunar months (*kirnara*). Weeks are counted by the number of Sundays (*wiiki*), and days by the number of sleeps (*ngurra*, camp)⁷.

Time spans are measured by the peak of the period. Thus, 15 months would be referred to as *kurli kutjarra* (two years) if it included two hot seasons.

Traditionally, *Ngaanyatjarra* people do not celebrate birthdays or count years for the purpose of calculating age.

⁶ A Glass *Into Another World: A Glimpse of the Culture of the Ngaanyatjarra People*, Institute for Aboriginal Development, Alice Springs, Northern Territory, 1990, p 17.

⁷ A Glass *Into Another World: A Glimpse of the Culture of the Ngaanyatjarra People*, Institute for Aboriginal Development, Alice Springs, Northern Territory, 1990, p 18.

- **Other Ngaanyatjarra language concepts relate to seasons and colours**

- **Seasons:** the year is broken into four seasons:

<i>Kurli</i>	“hot season”
<i>Wiltjanyina</i>	“sitting in the shade time”
<i>Nyinninga</i>	“cold season”
<i>pirriya-pirriya</i>	“windy season”

- **Colours:** *Ngaanyatjarra* colour terms correspond to the natural environment. Thus:

<i>yukiri-yukiri</i>	green (‘like grass’)
<i>yilkari-yilkari</i>	blue (‘like sky’)
<i>mantaly-mantalpya</i>	brown (‘earthy’)
<i>yirnantji- yirnantji</i>	yellow (‘like acacia blossom’)

- ***Ngaanyatjarra* has adapted/borrowed certain English words**

Since the sound systems of *Ngaanyatjarra* and English are so different, *Ngaanyatjarra* adaptations of English words are difficult to understand. Since no *Ngaanyatjarra* words end in a consonant, extra vowels or the suffix *-pa* will be added to an English word. This, for example, “town” becomes *tawunpa*.

5.2

MODERN ABORIGINAL LANGUAGES AND DIALECTS

5.2.1 Modern Aboriginal Languages: Kriol and Torres Strait Creole

- **Kriol is a form of pidgin English spoken in northern Australia**

Kriol (or Roper River Creole) is a form of pidgin English which is spoken as a first language in northern areas of Western Australia, the Northern Territory and possibly in Queensland⁸. Kriol is recognised as being linguistically different from other creole languages (hence its distinct spelling). Although the majority of Kriol words are English, the structure, grammar, spelling and sound of Kriol are unique. Accordingly, Kriol is not readily understood by most English speakers. Kriol is the second most widely spoken indigenous language in Australia, with 3,900 speakers.

- **Torres Strait Creole is related to Kriol, and is the most widely spoken indigenous language in Australia**

Torres Strait Islander people have developed a related creole language. This language is usually known as "Torres Strait Creole" but may also be referred to in other terms, including "Broken" Creole. Torres Strait Creole is the most widely spoken indigenous language in Australia, with 5,769 speakers⁹.

5.2.2 Modern Aboriginal Dialects: Aboriginal English

- **Aboriginal English dialects, which range from "light" to heavy", are commonly spoken**

Many Aboriginal people speak dialects of English known as "Aboriginal English" or "non-standard English" (Aboriginal English). Usually such dialects are spoken in a domestic or familiar social environment. Aboriginal English dialects constitute a continuum, ranging from those close to English (the acrolect or "light" Aboriginal English) to those close to Aboriginal Kriol (the basilect or "heavy" Aboriginal English). The differences between standard and Aboriginal English are found in every area of language: sounds or accent, grammar, vocabulary, meaning, use and style¹⁰. Some Aboriginal people are "bi-culturally competent", adept at switching between Standard English and Aboriginal English¹¹. However, many people are not:

"The number of Aboriginal English speakers who are truly bi-culturally competent is very small. The extent of bi-cultural competence...depends to a significant extent on the individual's experience in mainstream domains, such as education and employment...[E]xperience with Aboriginal students in tertiary education indicates that even many of them lack significant bicultural competence."¹²

Problems associated with the grammatical structure, word usage and the meanings of words in Aboriginal English are likely to create a significant risk of misunderstandings and miscommunication in the legal system.

⁸ R Amery and C Bourke 'Australian Languages: Our Heritage' in C Bourke et al (eds) *Aboriginal Australia* Second Edition, University of Queensland Press, St Lucia, Queensland, 1998, p 138.

⁹ ABS, *2006 Census of Population and Housing: Media Releases and Fact Sheets*, 2006, 2914.0.55.002 (www.abs.gov.au). (Accessed 10 July 2008)

¹⁰ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 25.

¹¹ R Amery and C Bourke 'Australian Languages: Our Heritage' in C Bourke et al (eds) *Aboriginal Australia* Second Edition, University of Queensland Press, St Lucia, Queensland, 1998, p 138.

¹² D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 1.

5.3

COMMUNICATION STYLES

In Aboriginal society, as with all cultural groups, there are different attitudes and practices in relation to:

- forms of greeting and leave-taking;
- use of names and titles;
- deference to authority or seniority;
- eye contact;
- silence;
- sexual matters;
- modesty;
- shaming;
- swearing;
- physical touch;
- directness in speech and in asking questions;
- the right to seek and the obligation to impart knowledge.

5.3.1 Characteristics of Communication in Aboriginal Society

- **The avoidance of direct eye contact demonstrates politeness and respect**

An Aboriginal person may interpret direct eye contact with non-intimates as a sign of rudeness, lack of respect or even aggression. In Aboriginal society the avoidance of direct eye contact is intended to demonstrate politeness and respect¹³. In particular, a traditional Aboriginal person may avoid eye contact with persons of authority, such as police, court officers, magistrates or judges.

However, in Anglo-Australian society direct eye contact is usually perceived as a sign of confidence, honesty and politeness. The avoidance of eye contact may be interpreted as sign of dishonesty, insecurity, or lack of interest or respect¹⁴.

- **Silence plays an important and valued role in communication**

Silence is an important and valued part of communication between Aboriginal persons. Silence may indicate a desire to think about a matter, or a desire to become comfortable with a social situation. It may simply be a way of enjoying another's company in a non-verbal way.

In a court room situation silence may be an indication that:

- the witness lacks authority to speak on the subject, in the presence of a particular person(s) (e.g. as determined by kinship rules);
- the same question(s) may have been answered before;
- the person is uncomfortable with the discussion because they: (a) do not support the proposition; or (b) do not understand the question, but are too embarrassed to ask for clarification¹⁵.

However, in non-Aboriginal society silence tends to be negatively valued. Among non-intimates, silence may cause embarrassment and/or indicate that communication

¹³ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 47.

¹⁴ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

¹⁵ See also Supreme Court of Queensland *Equal Treatment Benchbook*, 2005

(www.courts.qld.gov.au/The_Equal_Treatment_Bench_Book/S-ETBB.pdf) p 112. (Accessed 5 July 2008)

has broken down. In a legal context, silence may be viewed as being consistent with evasion, insolence, confusion, ignorance and/or guilt¹⁶.

- **Aboriginal people use sign language quite widely**

Sign language and gestures remain significant aspects of communication with traditional Aboriginal culture groups¹⁷. Sign language may be especially important in hunting and mourning practices.

More broadly, signs and gestures are common to Aboriginal people throughout Australia, particularly those which are intended to identify relatives or other people. For example:

- touching a nipple means “mother”;
- two arms, crossed over and held in front of the body(as if in handcuffs) means “policeman”¹⁸.

Other, more subtle gestures are also common. In particular, movements of the eye, head and lips may be used to indicate direction of motion, or the location of a person or of an event being discussed. Such gestures, which may be common even among urban Aboriginal people, may not be noticed by non-Aboriginal people¹⁹.

Touch is commonplace between Aboriginal people, either to initiate conversation or in place of conversation. However, uninvited touch by a non-Aboriginal person may be interpreted as a sign of aggression.

- **Aboriginal people prefer to communicate indirectly, rather than to ask direct questions**

In Aboriginal culture, the privacy of another person’s thoughts and feelings are respected. Indirectness is the preferred method of interaction amongst Aboriginal groups. In traditional Aboriginal society personal or significant information is sought as part of a two-way exchange. It is characterised by the volunteering of information and then hinting for a response, which response might disclose the information sought.

Thus, important information is not usually sought by the asking of direct questions²⁰. However, direct questions in relation to “background” matters, such as that of a visitor’s relationship to another person, are acceptable.

5.3.2 Cultural Barriers to Effective Communication

“Politeness and deference is signalled extensively in Aboriginal communities by softness of speech, silence or averting the gaze – in the courtroom, this has been taken as sullenness or stupidity.”²¹

Certain powerful cultural principles may operate to hamper effective communication between Aboriginal and non-Aboriginal people, even when the Aboriginal person

¹⁶ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 55.

¹⁷ J de Hoog and J Sherwood *Working With Aborigines in Remote Areas* Mount Lawley College, Mount Lawley, 1979, p 78.

¹⁸ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

¹⁹ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 71.

²⁰ Thoughts and feelings may comprise the only real area of personal privacy for Aboriginal people, many of whom live in close physical proximity with one another, and spend significant time maintaining family and social relationships: D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, 1992, pp 10-11.

²¹ D Nash “Aborigines in Court: Foreigners in Their Own Land” (1979) 4 *Legal Services Bulletin*, 105-7, p 106, quoted in J Kearins “Factors Affecting Aboriginal Testimony (1991) 16(1) *Legal Services Bulletin* February 1991: 3-6, p 4.

appears to speak English reasonably well²². Dr Diana Eades, an anthropological linguist, has identified a number of barriers to effective communication between Aboriginal and non-Aboriginal people. These are outlined below.

- **In Aboriginal culture, family or kin relationships are accorded primacy**

Family and kin relationships are usually accorded priority in an Aboriginal person's life. That primacy may affect the capacity of an Aboriginal person to give evidence in court, particularly against relatives. It may distort notions of individual responsibility for actions, or create inappropriate feelings of responsibility or guilt²³.

- **An Aboriginal person may have difficulty in answering questions which are put directly**

As indicated above, indirectness is the preferred method of interaction in Aboriginal culture. In particular, Aboriginal people may have difficulty with direct questions which:

- predetermine the answer (e.g. "yes/no" questions);
- require a person, place, date or time to be identified; or
- require a detailed description; or
- discourage a narrative-style answer.

These difficulties may be exacerbated in adversary-style court proceedings, in which questions tend to be direct and one-sided (that is, the questioner contributes nothing to the exchange). An Aboriginal person may experience difficulty in answering direct questions even in evidence in chief²⁴.

The application of the rules of evidence are likely to further impede effective communication with an Aboriginal person. Proceedings can be impeded further by a witness' reluctance to ask for clarification, this is often signified by a period of silence as the witness waits for clarification. To ask for clarification of a question may be seen as humiliating²⁵.

- **Gratuitous concurrence (or the tendency to agree with a particular proposition or question, regardless of whether the speaker in fact does agree with it) may be a particular problem**

The term "gratuitous concurrence" refers to the tendency of a speaker to agree with a proposition or question which is put to him or her, regardless of whether the speaker truly agrees with that proposition or question. The speaker may not even have understood the proposition or question which has been put. An Aboriginal person is likely to "gratuitously concur" with a proposition put to him or her by a non-Aboriginal person, especially when the questioner is (or appears to be) in a position of authority. Gratuitous concurrence is to be characterised properly as a relationship issue, rather than a language issue²⁶.

²² See also R. Trudgen *Why Warriors Lie Down and Die*, Aboriginal Resource and Development Service, Darwin, 2000.

²³ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 92.

²⁴ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

²⁵ Supreme Court of Queensland, *Equal Treatment Benchbook*, 2005, p 114 (<http://www.courts.qld.gov.au/practice/etbb.htm>).

²⁶ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

An Aboriginal person may gratuitously agree with a questioner as a means of conveying readiness for cooperative interaction:

“Aboriginal English speakers often agree to a question even if they do not understand it. That is, when Aboriginal people say “yes” 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 well between us.”²⁷

However, gratuitous concurrence may also signal feelings of hopelessness or resignation to the futility of a particular situation²⁸.

In *The Recognition of Aboriginal Customary Law* the Australian Law Reform Commission (ALRC) discussed the difficulties experienced by many Aboriginal people in cross-examination. The ALRC considered that Aboriginal deference to authority “can lead to a propensity to give answers thought to be expected rather than to state what actually occurred”:

“This is a result both of Aboriginal courtesy and custom, but also of the long history of Aborigines working in subservient situations.”²⁹

Recently, in *Cotchilli v State of Western Australia*³⁰ McKechnie J stated:

“I am conscious of the difficulties that face Indigenous persons giving evidence and also that some Indigenous persons may tend to defer to authority, offering answers they think are expected, rather than the truth. This applies of course in court and in interviews with the police.”³¹

5.3.3 Specific Language Difficulties

- **Many Aboriginal people experience considerable linguistic and conceptual problems in communicating in English**

As shown in the discussion of the *Ngaanyatjarra* language (see 5.1.3, above) traditional Aboriginal languages do not contain formal systems of quantification. In traditional Aboriginal society, matters are specified or described in terms of geographical, climatic or social events or situations³².

It is not uncommon for Aboriginal people from remote or regional areas to experience difficulty in specifying numbers, time or distances. Such people may use quantitative estimates vaguely, inaccurately or inconsistently; or may avoid using them altogether³³.

Ms Dagmar Dixon (formerly Coordinator of Interpreter Programs at Central Metropolitan TAFE in Perth) has made the following observations³⁴:

²⁷ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 26.

²⁸ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 p 14 (www.justice.qld.gov.au/printversion/663.htm) (Accessed 10 July 2008)
Equal Benchbook, 2005 (www.courts.qld.gov.au/The_Equal_Treatment_Bench_Book/S-ETBB.pdf) (Accessed 5 July 2008)

²⁹ ALRC, *The Recognition of Aboriginal Customary Law*, Report No 31, 1986 (www.austlii.edu.au/au/other/alrc/publications/reports/31/) para 546. (Accessed 5 July 2008)

³⁰ [2008] WASC 103.

³¹ *Cotchilli v State of Western Australia* [2008] WASC 103 at [13].

³² Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 p 15 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

³³ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000 p 15 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

³⁴ Ms Dixon developed and taught Aboriginal interpreter Diploma programs in the Kimberley, Pilbara and Goldfields, as well as in Perth, until 2002. Ms Dixon points out that although her observations are particularly applicable to speakers of Aboriginal languages, they apply also to speakers of Kriol and to some speakers of Aboriginal English.

- An Aboriginal person's capacity to speak English should not be confused with his or her capacity to fully comprehend what is being said. Aboriginal people (like non-Aboriginal people) may experience considerable difficulty in understanding professional or bureaucratic "jargon". Aboriginal people may also experience difficulty in comprehending unfamiliar concepts or language terms.
- Often the lives of Aboriginal people are principally concerned with everyday, practical matters. This is borne out by the fact that Aboriginal languages usually deal with concrete, rather than abstract, matters.

"Examples: the abstract question of 'How do you plead, guilty or not guilty?' is generally expressed in concrete terms such as 'Did you do it or did you not do it?', or 'Tell everything' is expressed as 'Tell no lies'."

- Aboriginal languages do not contain the concept of "understanding" (as in "comprehension"): the nearest is that of "knowing" (as in "being aware of");
- Aboriginal languages usually do not contain collective nouns. Thus, rather than use the word "animal" -

"The speaker must use the specific word for a particular animal, such as "*marlu*" (Wangatha for kangaroo) or "*nhimi*" (Wangatha for dog)."

- Many English words have no Aboriginal equivalent, e.g. -

"The Aboriginal word "*paarlpa*" (Wangatha language) is used for "blood vessel". "tendon", "sinew" and any other "stringy bit" in the body.

The Wangatha word "*pika*" covers everything from pain to any type of injury and illness with the differentiation made by the context in which the word is used. E.g. "She had bruises on her back" is expressed by "She was [*pika* + punching] on her back" and "He was wounded on the leg" by "He had [*pika* + spear] on the leg".

- It may be impossible for an Aboriginal person to answer questions with sufficient precision:

"For example, whether something happened, say

- at 5:30 or 5:45 p.m. ("*on sundown*")
- 500 or 800 km ("*far*") or 10 or 20 km ("*not far*") away
- with 15 or 25 people ("*big mob*") present."

- A number of English words used by Aboriginal people have a different meaning from the English meaning.

"For example, "*cheeky*" means "hot" (as in food); "*camp*" means "to live"; "*kill*" may simply mean "to hurt."

- Each Aboriginal community has its own taboo words which must not be spoken under any circumstances. Taboo words are often everyday words e.g. the word "skin" is taboo in a certain Western Australian community.
- Aboriginal English is spoken more widely throughout the State than is commonly realised by non-Aboriginal people.

5.4

COMMUNICATING EFFECTIVELY WITH ABORIGINAL ENGLISH SPEAKERS

“Even among urban and country town people whose only language is English, interesting differences (from standard English) occur: this means that standard English must be learned more or less as a second language....

In courts of law in Western Australia it is thus unlikely that even urban Aborigines will understand all that is said, or that their speech will be properly understood.”³⁵

Many Aboriginal people, whether they live in urban, regional or remote locations speak a dialect of English known as “Aboriginal English” (Aboriginal English), particularly in a domestic or familiar social environment. Such dialects range from “light” English (closest to standard English) to “heavy” Aboriginal English. As noted earlier, Standard and Aboriginal forms of English differ in sounds or accent, grammar, vocabulary, meaning, use and style³⁶.

In its Report No 96, *Sentencing: Aboriginal Offenders*, the Law Reform Commission of New South Wales (LRCNSW) reported that communication difficulties, both in language and style, occur in the courts of New South Wales between speakers of Aboriginal English and those speaking Standard English. The NSWLRC expressed concern that miscommunication between such speakers may give rise to miscarriages of justice. The LRCNSW called for persons to be trained as courtroom facilitators to prevent such communication problems arising³⁷. Other commentators have called for interpreters for Aboriginal English speakers in court proceedings³⁸.

In the following pages, a number of strategies are suggested to promote effective communication with Aboriginal people who are Aboriginal English (rather than Standard English) speakers.

5.4.1 Suggested “Do’s”

A number of strategies for communicating effectively with speakers of Aboriginal English are suggested below.

- **Speak slowly and clearly**

When communicating with a speaker of Aboriginal English who is not fluent in Anglo-Australian English, it is important to speak slowly and clearly. The use of simple words, simple sentence structure, and slow (but not patronising) speech, is best.

- **Use an ordinary tone of voice**

An ordinary tone of voice, and everyday manner of speech, should always be used. Loud voices and/or harsh tones of voice suggest rudeness, aggression, or lack of respect. Especially in the courtroom context, a loud voice and/or a harsh tone may intimidate a speaker of Aboriginal English to the point that he or she is unable to respond.

- **Use the name by which the speaker wishes to be addressed**

³⁵ J Kearins “Factors Affecting Aboriginal Testimony (1991) 16(1) *Legal Services Bulletin* February 1991: 3-6, p 5.

³⁶ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 25.

³⁷ New South Wales Law Reform Commission, *Sentencing: Aboriginal Offenders*, Report 96, (2000) Ch. 7, 7.32-7.33.

³⁸ See for example D Nash “Aborigines in Court: Foreigners in Their Own Land” (1979) 4 *Legal Services Bulletin*, 105-7, p 106, quoted in J Kearins “Factors Affecting Aboriginal Testimony (1991) 16(1) *Legal Services Bulletin* February 1991: 3-6, p 5.

At the earliest opportunity, find out the name by which the speaker of Aboriginal English wishes to be addressed and use that name. (As discussed in **Chapter Three**, an Aboriginal person may be known by several names.). It might be useful to note down the phonetic spelling of the name.

- **Use an indirect approach to asking questions: for example –**

1. **Hint and wait:** this involves a two-part process:

- (i) hint at the information which you are seeking: for example:

“I’m wondering whether you were at that house”; or
“I need to know whether you were at that house”;

- (ii) allow the Aboriginal person sufficient time to consider the hint given, and to respond. It is important not to become impatient or to push for a quick response³⁹.

2. **Make a statement and await confirmation or denial:** this method is similar to the first. It requires the questioner to:

- (i) volunteer appropriate information, for example:

“It seems as if you were at that house”; or
“I think that maybe you were at that house”; or
“Maybe you were at that house”; then -

- (ii) remain silent, and wait for confirmation or denial of the statement.

Note: this approach must be used carefully. If this approach merely disguises a direct question, it is likely to trigger “gratuitous concurrence”⁴⁰.

3. **Frame a question as a statement:** this may be the most effective method. It requires the question to be framed as a simple utterance, with a rising intonation. For example:

“You were outside that house?”; or
“You were outside that house, eh ?”,

A variation on this approach is to make a statement, then follow it with a short question, such as:

“You were outside that house. Is that right ?”⁴¹

Then allow sufficient time for the answer to be given.

- **Check with the speaker of Aboriginal English to establish if he or she understands the legal words used**

It is important to seek feedback from the speaker of Aboriginal English that he or she understands the legal words which have been used in court proceedings. A recent report highlighted the lack of awareness that common legal terms are not necessarily understood by speakers of Aboriginal English. (One example involved a young man who failed to attend court after being granted bail: his understanding was that he had been “bailed out’ of trouble and that was the end of the matter”⁴².)

³⁹ Departments of Justice et al *Aboriginal English in the Courts* Queensland Government 2000, p 13 (www.justice.qld.gov.au/printversion/663.htm). (Accessed 10 July 2008)

⁴⁰ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 51.

⁴¹ D Eades *Aboriginal English and the Law* The Queensland Law Society Inc, 1992, p 43.

⁴² Aboriginal Resource and Development Services Inc. (ARDS), *An Absence of Mutual Respect*, ARDS, Winnellie NT, 2008, p 25.

5.4.2 Suggested “Do’s”

- **Show respect and consideration at all times**

The demonstration of respect and consideration for persons who are not fluent in standard Australian English is of paramount importance. A raised voice and/or obvious exasperation may make the speaker of Aboriginal English feel frightened, confused and angry.

- **Simplify the use of words**

Use simple words wherever possible: for example say “about” rather than “regarding” or “concerning”; say “start” rather than “commence”; say “go” rather than “proceed”; say “to” rather than “towards”.

Use simple verb tenses such: “you say” not “you are saying”; and “she had” not “she had had”.

- **Be careful of “I don’t know” responses**

The response “I don’t know” may simply mean that it is inappropriate for the Aboriginal person to provide information in that way, or there may be issues of shame or modesty involved. Issues of modesty and shame often arise when a man asks a woman questions of a sexual nature. If “I don’t know” responses become common place, try a different approach e.g. consider whether it is necessary to ask the witness to repeat their understanding of the question, direction etc; check any written statement taken from the witness against his or her educational background and awareness of Anglo-Australian culture.

- **Don’t attempt to speak or to correct Aboriginal English**

Don’t attempt to speak Aboriginal English. Attempts by non-Aboriginal English speakers to speak Aboriginal English may be interpreted as mocking or patronising⁴³.

Similarly, don’t “correct” the speech of a speaker of Aboriginal English.

- **Don’t use complex sentences or figurative speech**

Don’t use long and/or complex sentence constructions (including “I put it to you that...”) Similarly, don’t use figurative speech. An expression such as “as clear as mud”, or “raining cats and dogs” may confuse a speaker of Aboriginal English.

- **Don’t use negative questions**

Don’t ask negative questions, such as “You didn’t do that, did you ?” or “Is that not true?” Such questions may easily confuse a speaker of Aboriginal English.

- **Don’t use “either-or” questions**

“Either-or” type questions (that is, questions which ask the respondent to choose between one of two alternatives) may be confusing. Often, the answer given by an Aboriginal person will refer to the second alternative which has been suggested. Thus, rather than asking “Were you at the house or at the pub?” it may be better to say:

“Maybe you were at the house. Maybe you were at the pub. Tell me where you were then?”. Alternatively, simply ask “Where were you then?”

⁴³ J de Hoog and J Sherwood *Working With Aborigines in Remote Areas* Mount Lawley College, Mount Lawley, 1979, p 74.

- **Don't use technical legal words or "jargon" unless it is essential**

Avoid the use of technical legal words or "jargon" unless it is absolutely essential. Substitute the word "law" for "statute" or "legislation". Say "X would like to ask you some questions" rather than "X will now cross examine you".

- **Don't use terminology and descriptors that may cause offence**

It is important to use terminology and descriptors that do not cause offence and/or sound discriminatory to Aboriginal people⁴⁴. Do not use ethnic identifiers such as "Aboriginal" or "Indigenous" unless it is necessary e.g., when ethnicity is relevant to the matter in question. If this is the case, be as specific as possible, use the term "Aboriginal person" rather than "Aborigine".

Only use terms such as *Noongar* or *Martu* when they are used by that community and you have checked that it is appropriate for you to do so in the particular context.

Aboriginal people commonly use the word 'mob' to describe "my people", "my social group". Similarly the terms "whitefella" or "blackfella" are frequently used by Aboriginal people. However, it may be offensive for other people to use these terms without permission.

As provided for by s 26 *Evidence Act 1906* (WA)⁴⁵ intervention may be appropriate if others in court (for example, those conducting cross-examination) say anything that is, or could be understood as, discriminatory, stereotyping or culturally offensive.

⁴⁴ The points provided here are taken from Judicial Commission of NSW *Equality Before the Law: Bench Book*, Sydney, 2006 (www.jc.nsw.gov.au/benchbks/equality) Sec 2.3.3.4. (Accessed 5 July 2008)

⁴⁵ Section 26 *Evidence Act 1906* (WA) empowers the court to disallow a question put to a witness in cross-examination, or inform the witness that the question need not be answered, if the question is misleading, unduly annoying, harassing, intimidating, offensive, oppressive or repetitive.

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