

Aboriginal English in the Courts

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INTRODUCTION

This handbook is one part of the Aboriginal English in the Courts Project, which is being developed by the Queensland Government and is jointly funded by the Departments of Justice and Attorney-General, and Aboriginal and Torres Strait Islander Policy and Development.

The project is developing a system designed to help the court communicate with speakers of Aboriginal English. This dialect of English is the 'first language' of most Aboriginal people in Queensland. It is easy to mistake an Aboriginal-English speaker for a speaker of Australian Standard English. In legal proceedings, whether for civil or criminal matters, such a mistake can mean that evidence can be misinterpreted or lost. This can reduce access to justice.

It is in the interests of both sides of a dispute that their witnesses and defendants are clearly understood. It is also in the interests of the court, and therefore the community, that this occur because it makes a just outcome more likely.

There are two parts to the project:

- the identification and training of suitable people to become communication facilitators; and
- the publication of this handbook as a guide for communication.

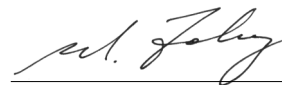
Though the project is being designed specifically for the courts, the information in the handbook and the training course will enable facilitators to provide a similar service wherever members of the Aboriginal community come into contact with any government agency.

It is hoped that the project will assist the community, not only in aiding communication and providing employment opportunities for facilitators, but also in formally recognising the existence and uniqueness of Aboriginal English.

This handbook is based on the work of Dr Diana Eades, a leading authority on Aboriginal English and the justice system. For further information, readers should refer to Dr Eades' *Aboriginal English and the Law* ((1992), Queensland Law Society Inc.: Brisbane) upon which this handbook is based.

Special thanks must go to Mark Lauchs of the Courts Division of JAG, who managed the project; the Deaths in Custody Monitoring Unit of the Queensland Aboriginal and Islander Legal Services Secretariat for development and assistance with the project; Janita Cunnington of Cunnington Publishing, who wrote the first draft of this handbook; Dr Rob Pensalfini of the University of Queensland for his enormous assistance in refining the earlier drafts; Linda Skopp and Toni Mason of JAG for designing and producing the handbook; and the innumerable people who have provided comments and advice on the drafts, including Dr Eades.

We would also like to thank the Aboriginal and Torres Strait Islander Studies Unit, Queensland University, Aboriginal Legal Service, Bar Association of Queensland, Cultural Advisory Unit, Queensland Police Service, Department of Aboriginal and Torres Strait Islander Policy and Development, Juvenile Justice Branch, Department of Families, Youth and Community Care, Legal Aid Queensland, Office of the Director of Public Prosecutions, Queensland Law Society, Southbank TAFE, the former Indigenous Advisory Council and Tropical North Queensland TAFE for their support and assistance.



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Access to justice

One of the greatest difficulties faced by lay people in the legal system is the inability to participate fully because they find it hard to understand the process and jargon.

This problem is exacerbated for the indigenous community by their relative unfamiliarity with the legal system, their lack of confidence in dealing with it, and the confusion that can occur between speakers of Aboriginal English and Australian Standard English. The problems are even greater for those whose first language is a traditional language such as Wik Mungkun. This lack of comprehension may amplify existing community distrust of the justice system.

The difficulties exist for a number of reasons, including:

- a lack of qualified interpreters in indigenous languages;
- a failure by the legal system to recognise the differences between Aboriginal English and Australian Standard English;
- in indigenous communities, a general lack of understanding of the legal process and subtle nuances of court discourse, especially in cross-examination.

According to the Australian Bureau of Statistics' *Prisoners in Australia*, as at 30 June 1998, indigenous people constituted 23 per cent of the Queensland prison population. This is approximately ten times their proportion of the general population. Though ethnicity data is not recorded by the courts, it is reasonable to assume that, given the rate of imprisonment, indigenous people are also over-represented as defendants in criminal matters.

At present, only ad hoc arrangements, if any, are made to deal with the language problems of indigenous people who come before the courts. Because there are so few accredited interpreters in traditional languages, a person who needs an interpreter is obliged to use the services of a friend or relative. In the case of Aboriginal English, there is the further complication that listeners may not realise the speaker is not using Australian Standard English.

Given that we have an effective interpreting system in place for migrants from non-English-speaking countries, who constitute 8 per cent of the population and do not have the same disproportionate representation before the criminal justice system, the same attention should be given to formalising a language-support system for speakers of traditional languages, Creole and Aboriginal English.

Indigenous languages

Before colonisation, over two hundred distinct languages were spoken in the Australian continent. Today it is estimated that only four of these traditional languages in Queensland still have over two hundred fluent speakers. Nine other traditional languages are still spoken as a first language in the regions around Cairns, Cape York Peninsula and the Gulf of Carpentaria, but each has fewer than two hundred speakers.

The two main language groups in the Torres Strait are comparatively strong. The Western Language, Kala Lagaw Ya, has at least three thousand speakers, and the Eastern Language, Meriam Mir, has about one hundred.

Since European settlement, a number of versions of pidgin languages developed out of the continued interaction between traditional and Western communities. With the congregation of indigenous peoples into missions and the policies of assimilation, many traditional languages were lost. As pidgin dialects developed they went in two different directions: in some remote communities they expanded to become the first language. Technically, such a language is classed as being a Creole, as it is no longer used only to facilitate communication between two language groups but becomes the primary language of a community. In many other communities, the pidgin dialects developed into varieties of English that still retained many distinctive Aboriginal features, and are thus known as Aboriginal English.

There are currently three widely spoken Creole languages in Australia: Torres Strait Creole in Northern Queensland, and two forms of Creole (spelt *Kriol* in this case) in Western Australia and the Northern Territory.

Aboriginal English takes various forms across the continent. In content, these dialects range from those close to Aboriginal Kriol to others that are very close to Australian Standard English. Though much is shared between varieties of Aboriginal English throughout Queensland, there are some significant regional differences. In fact, during the development of this book we became aware that there are noticeable differences in Aboriginal English throughout the State—even between communities separated by 100 kilometres.

Language services

It is easier to provide interpreters for most migrant communities than for Aborigines and Torres Strait Islanders because:

- there is usually a large pool from which potential interpreters for migrants can be drawn—the communities of origin have thousands or millions of speakers rather than hundreds or dozens;
- there is a high rate of bilingualism among migrants belonging to most of the other major language groups, as many other countries teach English as a second language in school;
- several of the migrant languages are studied at tertiary level in Australia, which means that significant numbers of the English-speaking community can speak them;
- migrant languages are noticeably different from English, which makes the need for formal interpreting more apparent.

Though traditional indigenous languages are also noticeably different from English, they may be spoken regularly by only a few hundred or even a dozen people who rarely use Australian Standard English.

In order to receive a qualification as an interpreter, a person must be accredited by the National Accreditation Authority for Translators and Interpreters (NAATI). This body provides five levels of accreditation, of which 'interpreter' level (the third level of accreditation) is preferred as the minimum standard for a practitioner working in a

legal setting. As a guide, a person who could be accredited at interpreter level would be expected to have studied the language to a level equivalent to a Masters degree.

Accreditation is not available for all languages. A training and testing regime has to be established for each language before accreditation can be given. Such systems are available for two indigenous languages from Queensland (Wik Mungkan and Dyrbal), as well as for Kala Lagaw Ya from the Western Torres Strait, and Torres Strait Creole. That leaves at least eleven other indigenous languages in Northern Queensland that are still in daily use but have no system for accrediting interpreters.

There is a different issue for Aboriginal English. The differences in grammar and meaning between this language and Australian Standard English are not immediately obvious to the average speaker of either language. Their apparent similarities mean that Aboriginal English, in any of its forms, does not lend itself to formal interpretation. For example, members of a jury unfamiliar with Aboriginal English may think they can understand what is being said by a witness speaking that language and would find it hard to believe conflicting evidence given by a person interpreting these statements. Also, because of the range of grammatical and cultural givens that have to be read in order to comprehend the speaker, an interpreter will have to interpret meanings by going beyond the mere language spoken. At a Regional Advisory Committee meeting on legal interpreting in Melbourne in November 1996, NAATI indicated that it would not set up accreditation for Aboriginal English, as most of the work of the interpreter would be dealing with cultural rather than purely linguistic issues.

In the legal system, the awareness of Aboriginal English, and the skills available for dealing with speakers of Aboriginal English, are still quite low. Most of the judiciary and magistracy in Queensland have received cross-cultural training, but this did not provide detailed information on the use of Aboriginal English in courts. Cross-cultural training in the legal profession is rare. Discussions held with stakeholders indicate that many people working within the legal system are

unaware of the problem, fail to grasp its full significance, or are unable to discern when problems are occurring. No detailed studies have been carried out into why this is the case; however, anecdotal evidence suggests that a major contributing factor relates to the way that speakers of Aboriginal English and Australian Standard English can engage in apparently mutually intelligible conversations, unaware that they are misunderstanding each other.

Some non-Aboriginal stakeholders felt that, given the existing education system and the fact that indigenous people must, of necessity, interact with the European-based society, there should not be any greater communication difficulties for indigenous people in court than for the average lay witness. In response, it should be noted that, not only is Aboriginal English a separate dialect of English, but it is also the first language of the majority of the Aboriginal population of Queensland. Though legal jargon may be confusing to most people who attend court, the average person is not giving evidence in a second language. When this is combined with:

- a lack of awareness on the part of the witness/defendant that there is any difference between the language they speak and that spoken by the other people in court, and
- a cultural propensity to avoid direct conflict, which reduces the likelihood of witnesses/defendants pointing out where they are having difficulties,

it is unlikely that the communication difficulties will be appreciated by the court.

Issues

Given that we will never have interpreters for Aboriginal English, a method has to be devised to assist speakers of Aboriginal English when they encounter the justice system. The solution is to provide 'communication facilitators'. These facilitators are people with fluency in a particular form of Aboriginal English and with a good knowledge of Aboriginal culture, as well as with an understanding of court procedure and terminology. There are two potential roles in the courtroom for these people:

1. To assist counsel by pointing out when there is a breakdown in communication with a witness during cross-examination so that counsel can take action to remedy the situation.
2. To sit with the defendant and explain proceedings in terms that he or she will more readily understand.

The facilitator's role is not that of an interpreter, as the facilitator does not attempt to discern what a witness means or otherwise give evidence to the court. Rather, the facilitator advises counsel of communication clues that the witness/defendant may have misinterpreted and suggests ways in which he/she may be able to comprehend the questions/discussions in the court.

ABOUT THIS HANDBOOK

This handbook is an essential part of the 'communication facilitator' service. It summarises the key communication difficulties that occur between speakers of Aboriginal English and Australian Standard English.

Because of variations in Aboriginal English throughout the State, it is recommended that the facilitator used in a case be from the same community of origin as the person being assisted, whether they be a witness or the defendant, or have significant experience in dealing with that community.

How the handbook is to be used

The handbook is intended for judges, magistrates, the legal profession and facilitators. It can be used by counsel as a common reference tool to point out to the court which communication difficulty is occurring.

The twenty key communication difficulties tend to fall into two broad categories, which are represented in this handbook by three parts:

- Pragmatics: the way language is used and interpreted
- Linguistic features: pronunciation, grammar and vocabulary
- Non-verbal features

One page is devoted to each key communication difficulty, with a description, examples, a brief explanation of why it causes problems, and suggestions for rephrasing to avoid the problems.

It is expected that users referring to the handbook in court will already be familiar with its contents, and will recognise the name of the communication difficulty they are looking for in the contents list.

The goal of this project is to help the court clarify what a witness means when he/she speaks to the court. The solutions provided are designed to help barristers phrase questions in a manner that will be clearly understood by a person who speaks Aboriginal English, and to obtain the clearest answer from the witness.

Do not use this handbook as a dictionary or textbook to prove what a person 'meant to say'.

To communicate effectively with witnesses who speak Aboriginal English, many barristers may have to slow down and change their style of cross-examination. This will only be a minor inconvenience compared with the benefits to be gained by the court.

pragmatics

the way language is used and interpreted

Understanding a speaker's meaning is not just a matter of knowing the meanings of words and phrases and the way they are put together—that is, the vocabulary and the grammar. We also need some understanding of the speaker's customary way of interacting with other people, and this is determined largely by cultural background, or socio-cultural context.

There are many subtle ways in which the socio-cultural context can affect the way language is used. Ignorance of these can lead to misunderstanding and, in the court situation, to injustice. This section deals with four areas in which misunderstanding commonly occurs.

I. QUESTIONING STRATEGIES

Aboriginal and non-Aboriginal cultures have different assumptions about appropriate and effective ways of obtaining information. While direct questions are used in Aboriginal society to determine background information, such as where a person is from, detailed or personal information is sought as part of a two-way exchange of information, where the questioner contributes information and waits for a response from the other participant(s).

For non-Aboriginal cultures, on the other hand, **direct questions** are the usual way of seeking information.

Direct questions are questions that:

- predetermine the type of answer (yes/no; naming where, when or who; explaining why or how; describing)
- do not invite a narrative style of response.

Examples

- *Did you see him that night?* Answer: Yes/No
- *Who else was there?* Answer: [Naming person/people]
- *Why did you leave?* Answer: [Explaining]
- *How was he dressed?* Answer: [Describing]

In court, both the prosecution and the defence use direct questioning as a matter of course.

Why is this a problem?

Among speakers of Aboriginal English, the customary way of seeking much information is to use an indirect approach—establishing a two-way exchange, volunteering information of their own, and hinting at what they would like to find out.

Direct questions, especially in the courtroom situation, are likely to be interpreted as hostile. This causes additional distress and confusion for Aboriginal witnesses, with two undesirable results:

- Direct questions can be unsuccessful as a way of eliciting information, even when witnesses are examined by their own counsel.

- Under cross-examination, an Aboriginal witness is put at a considerable disadvantage compared with a non-Aboriginal witness.

In accommodating the Aboriginal information-exchange strategy, counsel must be wary of running afoul of the rules regarding leading questions. However, if you do not *offer* any information, chances are that your questions will prove fruitless as a means of extracting accurate information.

How can the problem be avoided?

Enable the witness to talk freely by:

- using hinting statements, followed by silence

Examples

I'm wondering about . . .

I need to know about . . .

- volunteering information for confirmation or denial, followed by silence

Examples

It seems as if . . .

People might say that . . .

I think maybe . . .

Maybe . . .

2. GRATUITOUS CONCURRENCE—THE TENDENCY TO AGREE WITH THE QUESTIONER

Gratuitous concurrence is the tendency to agree with the questioner, regardless of whether or not you actually agree with, or even understand the question.

It is a very common feature of Aboriginal conversations throughout Australia, and is customarily used to indicate a readiness for cooperative interaction, or resignation to the futility of the situation.

Why is this a problem?

The strategy is appropriate where the emphasis is on establishing a *relationship*, but is the source of considerable misunderstanding in the courtroom, where the emphasis is on establishing *the facts*. In Aboriginal societies, facts do not exist independently of the relationship (as is implied by a courtroom procedure), as the information that may be appropriately divulged in conversation depends on the relationship between the participants.

Gratuitous concurrence is particularly common:

- where the questioner, especially a non-Aboriginal questioner, is in a position of authority
- when the questioner asks a series of ‘yes/no’ questions.

Both of these are characteristics of the courtroom situation. The result is that many Aboriginal witnesses are drawn into giving illogical evidence:

Examples

- *I want you to understand that you don't have to tell me anything or you don't have to answer any questions at all. Do you understand that?*
Answer: Yes.
Now, do you have to tell me that story?
Answer: Yes.
Do you have to, though? Answer: Yes.
Do you, am I making you tell me the story?
Answer: Yes.
Or are you telling me because you want to?
Answer: Yes.
Now, I want you to understand that you don't have to tell me, right? Answer: Yes.
Now, do you have to tell me? Answer: Yes.

- A partly deaf Aboriginal man saw everyone in the court turn to look at him at the same time, and he uttered ‘Yes’, even though no question was being directed to him.

You cannot ‘check’ for gratuitous concurrence simply by putting more questions to the witness, such as ‘Do you understand the questions I have asked you?’, since these are likely to elicit the same type of response.

Whether it is elicited deliberately or inadvertently, gratuitous concurrence can seriously disadvantage Aboriginal witnesses.

How can the problem be avoided?

Because gratuitous concurrence is more a matter of relationship than language use, there are no easy remedies, but recognising it when it occurs can go some way towards reducing the disadvantage.

Make it easy for witnesses to give a truthful answer by:

- using a non-intimidating tone
- avoiding strings of ‘yes/no’ questions where possible
- inviting witnesses to give their story, to explain the situation in their own words

Example

I need to know what went on that night. Maybe you can tell us what happened . . .

- eliciting a paraphrase of the question where possible
- presenting an open-ended proposition, and waiting for a response

Example

I think maybe someone else hit Ken that first time?

It is important to allow adequate time for a response. Generally speaking, longer periods of silence than are normally tolerated in examination are essential in order to obtain accurate information from Aboriginal witnesses.

3. **QUANTIFIABLE SPECIFICATION—USING FORMAL SYSTEMS, PARTICULARLY NUMBERS, TO GIVE SPECIFIC DETAILS**

Quantifiable specification is common in Standard English wherever there is a need to specify a time, place or measurement.

Examples

- *How many people were there?* Answer: *Five.*
- *When did you leave?* Answer: *About ten o'clock.*
- *What day was that?* Answer: *Saturday.*

Though non-Aboriginal people are often less than precise when queried, they are used to thinking in terms of formal divisions of time, distance, quantity etc., and readily give estimates if they are less than sure. The same cannot be said for most Aboriginal people.

Why is this a problem?

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 driven in there, bought half a carton and took off again.*
- *What time did it happen?* Answer: *Just about on dark.*
- *When did you last see him?* Answer: *That was the time we had the big meeting.*

Contextual specification of this kind can at times be inconclusive. When pressed to give a precise answer, however, Aboriginal witnesses may attempt to use quantifiable specification, and end up giving inaccurate or even contradictory evidence. This is far worse than uncertainty, because a precise answer that is false is likely to be construed as deliberately misleading.

How can the problem be avoided?

Wherever possible, seek specific information by:

- asking the witness to make a comparison:

Example

Show me how long the stick was.

or

As long as this? [pause] Longer? [pause] Shorter?

- asking the witness to relate the information to something that is already known:

Example

I need to know when this fight started. Was it after the sun went down?

- asking a series of questions that relate the information to another event or situation:

Example

I need to know when this fight started. [Pause]

After the sun went down? [Pause]

Before the moon came up? [Pause]

Before Ken arrived? [Pause]

A long time before he arrived? [Pause]

If the witness is encouraged to use narratives and allowed to narrate without being interrupted, a lot of these problems are mitigated.

4. **NEGATIVE QUESTIONS**

Negative questions, such as 'Didn't you see him?' or 'Were you or were you not present at the time?', are commonly used in courts; in Standard English an affirmative reply agrees with the positive force of the assertion, whereas a negative reply denies the positive force of the assertion.

Examples

- *Didn't you see him?/You didn't see him?*
Answer: *Yes* [meaning *I did see him*]
No [meaning *I did not see him*]
- *Were you or were you not present at the time?*
Answer: *Yes* [meaning *I was present at the time*]
No [meaning *I was not present at the time*]

Why is this a problem?

In some, but not all, varieties of Aboriginal English, an affirmative or negative response affirms or negates the polarity of the proposition as given in the question. This means that an affirmative response to a negative question actually denies the proposition.

Example

- *Didn't you see him?/You didn't see him?*
Answer: *Yes* [meaning *I did not see him*]
No [meaning *I did see him*]

In the case of a 'did you or did you not' question, as with 'either/or' questions (see section 14 of Linguistic Features), the answer is given with respect to the latter of the two options.

Example

- *Were you or were you not present at the time?*
Answer: *Yes* [meaning *I was not present at the time*]
No [meaning *I was present at the time*]

How can the problem be avoided?

Avoid the use of negative questions.

If such questions are used, try to ensure that the elicited response paraphrases the proposition, and is not just a simple 'yes' or 'no'.

Example

- *You didn't see him?*
Answer: *Yes, I didn't see him.*
Didn't you see him?
Answer: *Yes.*
[Judge] *So you did see him?*
Answer: *I didn't see him.*

linguistic features

pronunciation, grammar and vocabulary

This section deals with the actual utterances of Aboriginal speakers, and how they differ from those of Standard English.

Though different localities and situations have produced many varieties of Aboriginal English, their linguistic features are sufficiently similar to treat them as one for the purposes of this handbook.

In many cases, the context will clarify a speaker's meaning, even where linguistic differences are marked. However, ignorance of where differences lie can lead listeners to place too heavy a reliance on context, with the result that they make unwarranted assumptions and misconstrue what is being said.

The section is broken into three subsections: 'Pronunciation', 'Grammar' and 'Vocabulary'.

PRONUNCIATION

5. CONSONANTS AND VOWELS

Standard English makes use of certain consonant sounds that are not found in Aboriginal English and is unusual in that it distinguishes between *f*, *v* and *th* (and between these sounds and *p*, *b*, *t* and *d*).

Examples

- *fat/vat/that; pat/bat*
- *thin/tin/din*

Another feature of Standard English is the prevalence of words that end in more than one consonant sound, especially in creating past tense:

Example

- *They locked him up.*

Vowel sounds, too, have a characteristic pronunciation in Standard English.

Why is this a problem?

There is no *h* sound in traditional Aboriginal languages, and *f*, *v* and *th* sounds are rare. Many speakers of Aboriginal English omit, overcompensate for or give approximations of these sounds. So *h* sounds can be dropped from, or sometimes added to, the beginning of words, the *f* and *v* sounds can be pronounced as *p* or *b*, and the *th* sound can be pronounced as *t* or *d*. The resulting words can at times be mistaken for words that sound similar but are quite different in meaning.

Examples

- *I give 'im hit* (intended meaning in Standard English: *I gave him it*)
- *We 'ad a bight*, heard as *We had a bite* (intended meaning in Standard English: *We had a fight*)

Many speakers of Aboriginal English tend to simplify the multiple-consonant endings of words. This can lead to misunderstanding, particularly where questions of tense are concerned, as the past tense can be rendered as present or present-continuous tense:

Example

- *They lock 'im up* (intended meaning in Standard English: *They locked him up*)

Speakers of Aboriginal English tend to give vowels a particular accent and many do not distinguish between long and short vowels. For instance, *were* may be pronounced so that it sounds the same as *where*, and the vowel sound in *home* may be the same as in *on*. Also, *why* and *where* can sound very similar. When these differences are combined with differences in the pronunciation of consonants, the potential for misunderstanding is multiplied:

Example

- *I went straight 'ome*, heard as *I went straight on* (intended meaning in Standard English: *I went straight home*)

Sometimes the misunderstanding is so complete that the court transcript is actually in error.

Examples

- Transcript: *That's why we leave after that horse fell down there.*
Actually said: *That's where we lived after that horse fell down there.*
- Transcript: *That's why we got that place down there.*
Actually said: *That's where we got that place down there.*
- Transcript: *. . . to open the cuts . . .*
Actually said: *. . . to open the guts . . .*
(Confusion arises because of the lack of distinction between *g* and *c/k*.)
- Transcript: *Probably his father.*
Actually said: *Properly his father.* [i.e. his real father]
(Confusion arises because of the lack of distinction between *b* and *p* and because of the simplification of the *bl* cluster to *l*.)

How can the problem be avoided?

Reduce the chance of misunderstanding by:

- being aware of where it is likely to occur
- where necessary, clarifying by rephrasing the answer:

Example

Witness: *They bin put 'im longa lokap.*

Counsel: *They put him in the lock-up that night, right?*

There are various ways in which Aboriginal English can differ from Standard English in its grammar, some of which are significant enough to disrupt communication. Ten are dealt with in this section:

- The 'inverted sentence' form of question
- Indicating plurals and possession
- Prepositions
- Tense
- Pronouns and demonstratives: words that refer to something already mentioned
- Gender
- Superlatives
- Negatives
- *Either/or* questions
- Word order

6. THE 'INVERTED SENTENCE' FORM OF QUESTION

In Standard English, a statement can be converted to a question by introducing the sentence with an auxiliary verb (*do, does, did; is, am, are, was, were; has, have, had*) or an interrogative term (*where, when, why, how, which, what, who*). This 'inverts' the standard word order.

Examples

- Statement: *I saw him.* Question: *Did you see him?*
- Statement: *He has been back.* Question: *Has he been back?*
- Statement: *They were sitting here.* Question: *Where were they sitting?*

Why is this a problem?

It can be a problem for speakers of Aboriginal English because:

- they tend not to use the inverted sentence structure to form a question
- they do not as a rule use auxiliary verbs.

Speakers of Aboriginal English commonly ask questions by using the standard statement form with rising intonation:

- *You saw/seen him?*
- *You saw/seen him where?*

They may also add the question marker *eh?* to questions that seek to verify a statement:

- *They (were) sitting outside the bank, eh?*
- *He/he's been back, eh?*

The use of the inverted sentence form and auxiliary verbs can be particularly confusing when the question is complex or when it is one of several rapid-fire questions, such as:

- *When you and the other police officers helped him down, did you ascertain whether you could get a pulse or feel a breath or anything like that? Did you see whether you could see any signs of life, first of all?*

How can the problem be avoided?

- Try not to start questions with *did, do, does; are, were; has, have, had; where, when, why, how, which, what*.
- Put the question in statement form with rising intonation.
- Possibly add a question phrase, such as *That's right?**.

Examples

You were a bit upset about this—right?

I'm talking about before you had the fight with Ken—she was swearing at you—right?

He said why he was there?

* Be cautious when using 'right'. Many speakers of Aboriginal English use it in the same manner as Australian Standard English, i.e. to elicit a positive response that the listener is listening and following the story. People with limited exposure to the mainstream community may see it as a question and respond with Gratuitous Concurrence.

7. INDICATING PLURALS AND POSSESSION

Plurals

In Standard English, 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.

Example

- Singular: *My friend comes with me.* Plural: *My friends come with me.*

Of course, many nouns have irregular plural endings, but they are usually in the form of a suffix (for example *child/children*). (Some words do not change their form at all.)

Why is this a problem?

In Aboriginal English, the plural is often signalled by context rather than being marked by the noun:

Examples

- *all the brother*
- *my three kid*

Problems can arise when the context does not provide the necessary information:

Example

- *my kid* (which could be singular or plural)

How can the problem be avoided?

Check whether the sense is singular or plural:

Example

- *You're talking about all your kids?* [Pause. If no response, continue.]
You've got three kids, right? [Pause for response.]
They all came with you?

Possessives

The usual way of indicating possession in Standard English is by adding an *s* sound:

Example

- *friends of Sally—Sally's friends.*

Why is this a problem?

In Aboriginal English, possession is often indicated by juxtaposing two nouns or by using the preposition *blonga*, *blong*, or *bla* rather than following the Standard English pattern of adding 's:

Examples

- *Jim foot* (*Jim's foot* or *Jim Foote*)
- *baby horse* (*baby's horse* or *the horse's baby*)
- *baby blong horse* (*the horse's baby*)

How can the problem be avoided?

Clarify the meaning of the phrase with a question:

Examples

- *This horse belonged to the baby?*
- *Who does that horse belong to?*
- *This fellow you're talking about—his name is Jim Foote?*

8. PREPOSITIONS

Prepositions (small connecting words like *of*, *from* and *to*) show how various parts of a sentence relate to other parts. There are times when the meaning of the sentence depends crucially on which preposition is used:

Examples

- *I came **to** the house/I came **from** the house.*
- *He jumped **on** the horse/He jumped **off** the horse.*

Why is this a problem?

Speakers of Aboriginal English often follow a grammatical pattern of local Aboriginal languages in their use of prepositions, rather than the conventions of Standard English:

Examples

- *They frighten from doctor.* (Intended meaning in Standard English: *They're frightened of the doctor.*)
- *I go back up the policeman.* (Intended meaning in Standard English: *I went back to the policeman.*)

Some speakers of Aboriginal English use *la* or *longa* (from Kriol) as a preposition meaning *on*, *in*, *at* or *to*.

Examples

- *We never bin **la** court.*
- *He wait **longa** river.*

While this might not seem particularly problematic, it has to be seen in the context of many other differences, both 'pragmatic' and linguistic, all of which tend to interfere with comprehension. The difficulty lies in the danger not only that legal personnel will misinterpret the answers that witnesses give, but also that juries will find it difficult to follow what is being said.

How can the problems be avoided?

Use Standard English to repeat the answer that the witness gives:

Examples

- *They're frightened of the doctor?*
- *You went back to the policeman?*
- *You were where? [Pause] At court? [Pause] Somewhere else? Where?*

9. TENSE

Standard English conveys tense by modifying its verbs. For past tense this can be done by:

- adding *ed* to the end of the infinitive form (e.g. *convict* → *convicted*)
- putting the auxiliary verb *was/were* before the present participle (e.g. **was** *convicting*)
- putting the auxiliary verb *has/had* before the past participle (e.g. **has** *convicted*)
- putting *did* before the infinitive form (e.g. **did** *convict*)
- using special past-tense forms of the verb (e.g. *was, sank, hung, drove, sat*).

Examples

- *The court **convicted** him.*
- *They **were carrying** the child.*
- *He **has admitted** his guilt.*
- *The judge **did allow** the evidence.*
- *He **was** under the Act.*

Future tense is shown by using the auxiliary verb *will* or *shall* with the main verb, or occasionally by using *is, are, am* with the phrase *going to* plus an infinitive.

Examples

- *He **will be** under the Act; I **shall be** under the Act.*
- *He **is going to be**/I **am going to be**/They **are going to be** under the Act.*
- *He **will go** back home.*
- *He **is going to go** back home.*

Why is this a problem?

For many speakers of Aboriginal English, these devices do not come easily. As discussed earlier (see page 14), many Aborigines have problems with multiple-consonant endings of words, so the *ed* commonly used to indicate past tense is inherently difficult (e.g. *locked*). Instead of using *ed* endings, Aborigines may signal the past tense

with particular expressions, such as *before, that time* or, among speakers of heavier varieties of Aboriginal English, *bin*, followed by the verb.

Examples

- *I **lock** the door *that time*.*
- *He **live** here *before*.*
- *He **bin** wait *all day*.*

The difficulties are compounded by the fact that speakers of Aboriginal English tend to omit auxiliary verbs. However, they may also use *never* as a negative auxiliary verb (i.e. as the equivalent of *did not*), rather than as an adverb. Unless the context makes it clear which tense is intended, confusion can result.

Examples

- *He **still** under the Act.* (Unless a special tense signifier is added, this could mean: *He **is** still under the Act; He **was** still under the Act; or He **will still be** under the Act.*)
- *I **never** put them on.* (This could mean: *I **did not** put them on; I **don't ever** put them on or I **haven't ever** put them on.*)

How can the problem be avoided?

- Use special tense signifiers when putting a question to the witness:

Examples

*He **was** still under the Act at that time?
He **lived** there before?
He **is** living there right now?*

- Check which tense the witness means by referring to a particular event in the past, present or future:

Examples

*He **will still be** living there when all this trouble is finished?
He **is** living there right now, while we're here in this court?
He **lived** there when the big flood came?*

10. PRONOUNS AND DEMONSTRATIVES: WORDS THAT REFER TO SOMETHING ALREADY MENTIONED

In Standard English, continuity of focus is maintained by using words that refer to something already mentioned (anaphorism). Certain pronouns (*he/him/his, she/her/hers, they/them/their, it/its, this, that*) are typically anaphoric, but the article *the* can also function in the same way.

Examples

- *Mike went home when **he** felt hungry. No-one saw **him** go, and **his** absence was never noticed.*
- *Sean and Kim found a wallet on the footpath. **They** picked **it** up and split **the** money between **them**, without realising that **this** could get **them** into trouble. When they found **the** wallet, **they** should have taken **it** to the police station. **That** is what **they** should have done.*

Why is this a problem?

Aboriginal English uses fewer distinct anaphoric expressions. Pronouns and demonstratives, like *he, him* and *this*, may be used in Aboriginal English in ways that seem ambiguous to speakers of Standard English, so shifts in focus are not always apparent.

Example

- *Um one bloke . . . he jus' jokin' or something and um, he threw some water at him, had a bit of tealeaf in it, hit him on the face. That other fella he jumped up and come over to him . . .*

This example is typical in that the speaker, a North Queensland man, does not 'introduce' the characters in his account of a fight, but refers to two (or more) people as *he/him*. It is not clear from the passage whether 'that other fella' was the victim of the thrown water or a third person.

How can the problem be avoided?

Check frequently that you know exactly who the witness is referring to:

Examples

- *That's Billy now?*
- *Who's that?*

II. GENDER

Unlike many other languages, Standard English is not characterised by a pervasive use of gender. However, gender does remain in certain sex-related nouns (such as *woman/man, girl/boy, mother/father, sister/brother, daughter/son*, and their variants and animal equivalents), and in the pronouns that accompany them (*he/him/his, she/her/hers*).

Examples

- *The cow called her calf.*
- *My grandfather lived here all his life.*
- *This bloke knows what he's doing.*

Why is this a problem?

In the heavy varieties of Aboriginal English, *he* (or 'e) is used to mean either *he* or *she*. This difference on its own does not cause problems when the context is clear.

Example

- Question: *Your mother lives where?*
Answer: *Before up in Cairns, now he down Brisbane.*

However, in cases where a speaker uses pronouns without a particular noun as a referent, people who are unfamiliar with Aboriginal English can become confused about the meaning. For example, *fella* can refer to females as well as males.

Example

- *Um one bloke . . . he jus' jokin' or something and um, he threw some water at him . . .*

Assuming that the speaker is using a heavy variety of Aboriginal English, there is nothing in the language to indicate whether the person at whom the water was thrown is male or female.

- *That fella in the post office.* (The post office in question was run by a woman.)

And in fact, *fella* doesn't even have to refer to humans:

- *We decide to cook some of this fella goanna.*

How can the problem be avoided?

Ask clarifying questions:

Examples

- *This person who threw the water, this was Tony?*
- *You're talking about Alice now?*

12. SUPERLATIVES

Standard English distinguishes three degrees of adjectives and adverbs—positive, comparative and superlative. These are usually indicated by the base form of the word for positive, and the addition of suffixes for comparative and superlative (*er* for comparative, and *est* for superlative), or the addition of *more* (comparative) or *most* (superlative). Some words change their form entirely.

Examples

- Positive: *tall*. Comparative: *taller*.
Superlative: *tallest*
- Positive: *beautiful*. Comparative: *more beautiful*. Superlative: *most beautiful*
- Positive: *good*. Comparative: *better*.
Superlative: *best*

Why is this a problem?

Speakers of Aboriginal English frequently use the superlative form of an adjective in an exclamatory way—that is, simply for emphasis—not strictly with its Standard English superlative meaning.

Example

- *That was **the biggest** fight.* Intended meaning in Standard English: *That was a **very big** fight.*

In the courtroom situation, where it is often necessary to remove any ambiguity by distinguishing one situation from another, Aboriginal witnesses may seem to be giving conflicting information when in fact they are simply observing a different language convention.

How can the problem be avoided?

When trying to compare two or more events, make the comparison explicit:

Example

- *You've seen many big fights—now thinking about these two fights here [i.e. that you're telling me about], I'm wondering which was the biggest?*

13. NEGATIVES

Standard English requires only one negative word within a sentence to make the entire sentence negative.

Examples

- *I did **not** see her.*
- *I saw **nothing**.*
- *I had **no** money.*

A second negative word 'cancels' out the first, and the sense becomes positive:

Examples

- *I did **not** see **nothing**.* [*I did see something.*]
- *I **didn't** have **no** money.* [*I did have some money.*]

Why is this a problem?

In many languages, including Aboriginal English, a second negative word within a sentence reinforces the first, rather than cancelling it. This feature is common in many non-standard varieties of English throughout the world.

In ordinary conversations, this use of multiple negatives usually causes no confusion. However, with the often complex questioning used in cross-examination of witnesses, it is extremely confusing, unfair and misleading to use Standard English double negatives (to indicate a positive meaning) with speakers of Aboriginal English.

Example

- *'You didn't see nothing by the river.' That is, you saw something!*

Many varieties of Aboriginal English use *numu* as a general marker of negation (*not*). Speakers of Standard English might be likely to confuse this with *no more*.

How can the problem be avoided?

- Do not use the double-negative form to imply a positive meaning. Use a simple positive or a simple negative:

Example

You saw something by the river?

You didn't see anything by the river?

- Do not interpret a double-negative answer as a positive; check the meaning of the answer by rephrasing it in Standard English:

Example

Question: *You saw something by the river?*

Answer: *I didn't see nothing.*

Question: *So you saw nothing at all?*

14. EITHER/OR QUESTIONS

When presenting alternatives, speakers of Standard English commonly use the word *or*, sometimes in combination with *either*.

Examples

- *Did you go there, either alone or with someone else?*
- *Did they leave then or wait until it got dark?*
- *Were you at the camp then, or were you already at the pub?*

The negative form is *neither/nor*.

Example

- *You were neither at the camp nor at the pub?*

Why is this a problem?

Speakers of Aboriginal English are likely to be confused by this type of sentence construction and in their answers will often, but not always, refer to the last alternative mentioned.

Example

- Question: *Were you either at the camp or already at the pub?*
Answer: *Yes.*

How can the problem be avoided?

Do not use *either/or* questions—i.e. questions that ask the respondent to choose one of two alternatives. Instead:

- present the two alternatives in separate sentences, and then ask an open question:

Example

Maybe you were at the camp. Maybe you were already at the pub. Tell me where you were then.

- simply ask an open question:

Example

Where were you then?

15. WORD ORDER

In Standard English, the order of the major elements of a regular declarative sentence are fairly fixed: the subject precedes the verb and the object follows.

Example

- *The drovers moved the cattle.*
- *The cattle moved.* (Not: *Moved the cattle.*)

Why is this a problem?

Heavy varieties of Aboriginal English, like the majority of Aboriginal languages, does not restrict the order of these constituents as much as English does. For instance, a noun or noun phrase that belong with the subject often follows the verb:

Examples

- *That's why they bin moving old people.*
Meaning: *That's why the old people moved.*
Misunderstood as: *That's why they moved the old people.*
- *We paint up all the Jakamarra and Jupurrula.*
Meaning: *All of us Jakamarras and Jupurrulas get painted up.*
Misunderstood as: *We paint up all the Jakamarras and Jupurrulas.*

This can result in legal personnel and juries so badly misinterpreting an Aboriginal witness that they confuse the agent (usually the subject) with the person acted upon (usually the object).

How can the problem be avoided?

When an Aboriginal witness uses a pronoun (such as *they*) before the verb—i.e. as the subject—and a noun (such as *people*) after the verb, clarify the meaning by rephrasing the sentence:

Example

- *That's why they bin moving old people.*
Clarify as: *That's why the old people moved?*

VOCABULARY

Though most of the actual words used by speakers of Aboriginal English are part of the lexicon of Standard English, the heaviest varieties of Aboriginal English include some words from traditional Aboriginal languages (known as Lingo), some expressions borrowed from Kriol, and some Standard English words that have a special meaning in Aboriginal English. Particularly important is the special use of kin terms.

16. LINGO

Aboriginal English in Queensland is enriched by words and phrases from traditional Aboriginal languages, both local and from other parts of Australia. These traditional languages are referred to in Aboriginal English as 'Lingo'.

Examples

- *murri* Aboriginal person
- *bunji* mate
- *migloo, koliman* non-Aboriginal person
- *withoo* (NW Qld) non-Aboriginal person
- *goongadji* policeman
- *gamoo* grog
- *goom* methylated spirits
- *goomi* alcoholic
- *yaandi, nyaandi, ngaandi* drugs
- *goona* faeces
- *boori, durri* cigarette, match

These are examples only and do not have universal use or uniform meaning across the State. Like English before the introduction of mechanisms such as the Oxford English Dictionary that tended to fix the meanings of words, Aboriginal English is subject to enormous variation in use throughout Queensland. Consequently, the usage of words and the meanings given to them are different in each community.

Most speakers of Aboriginal English are reluctant to use English terms for genitals, and there is considerable variation throughout Queensland in the terms that are considered acceptable. To check the terminology acceptable locally, contact the Aboriginal Legal Service, a local Aboriginal health worker or a local Aboriginal organisation.

Why is this a problem?

Lingo is not going to be understood by the court.

Example

- *Numu Warimpana live here this time.*

Numu, which is a general marker of negation, sounds like *no more*. So this statement could be understood as:

- *Warimpana no longer live here.*

In fact it means simply that the Warimpana were not living in the area at the particular time.

How can the problem be avoided?

Check to make sure you've understood the answer.

Example

- *You gave him a durri—that's a cigarette, right?*

Also ensure that you have a communication facilitator from the same community as the witness.

17. 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 fine-tuning 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)
- *youbob/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?

non-verbal features

gestures, eye contact, silence

Aboriginal English makes considerable use of non-verbal signs, especially when discussing direction.

These are an integral part of the communication process and should not be ignored.

Differences between indigenous non-verbal features and those of other cultures provides additional scope for misinterpretations. This is especially so for people of Anglo-Irish decent who usually downplay non-verbal features.

18. GESTURES

Hand gestures and movements of the eyes or head are features of any language, but in Aboriginal English they are systematised and integrated in a way that makes them an essential part of the vocabulary of the language. They have their roots in the rich sign languages that are used in traditional languages, particularly when hunting or during mourning.

Many of these signs are common to Aboriginal people throughout Australia, particularly hand movements indicating relatives or other people.

Examples

- touching the nipple *mother*
- two arms held out with wrists
crossed (as if in handcuffs) *policeman*

Other movements of eye, head and lips, such as those that indicate direction or location, are more subtle.

Why is this a problem?

Aboriginal people normally use the relevant word (with or without the sign) when talking with non-Aboriginal people. However, the more subtle movements, which are often very slight and quick, could well pass unnoticed in the courtroom situation, with the result that the full meaning of a witness's response was not conveyed.

How can the problem be avoided?

Be alert to any movements of hands, eyes, head or lips and, if necessary, clarify the answer with further questions:

Examples

- *When Jim arrived he came from town? Or maybe he came from the river?*
- *They were a long way off when they started singing out?*

19. EYE CONTACT

In mainstream Australian culture, making direct eye contact with a conversation partner and speaking clearly and loudly are interpreted as signs of confidence, moral uprightness and politeness. Avoiding eye contact, particularly with someone who is asking questions, and mumbling or speaking in a low, soft voice can be seen as signs of dishonesty and insecurity, or at the least lack of interest or respect.

In Aboriginal societies, on the other hand, the converse is true. Direct eye contact with anyone other than one's most intimate peers or relations is seen as a sign of rudeness, disrespect, or even aggression, and the appropriate strategy to convey polite respect is to avert or lower one's eyes in conversation. Similarly, a loud, clear tone of voice can be associated with aggressive, rude and disrespectful behaviour, and the appropriate demeanour in some contexts is to speak in a low voice and to slur one's consonants (resulting in somewhat muffled or mumbled diction).

Why is this a problem?

Even if lawyers, judges and magistrates are aware of these differences, there is a danger that this behaviour will be misinterpreted by (non-Aboriginal) jurors in criminal proceedings.

How can the problem be avoided?

The only way to address this problem is to draw the jury's attention to these cultural differences, and to direct them not to interpret the behaviour as a sign of dishonesty or disrespect, as they might naturally tend to do.

20. SILENCE

Another major difference is in the use and interpretation of silence. Long periods of silence are generally avoided in mainstream Australian discourse except among intimate friends or relatives. Particularly in formal proceedings, there is a felt need to 'fill in' silent periods. In Aboriginal societies, on the other hand, lengthy periods of silence are the norm, and are expected during conversation, particularly during information-sharing or information-seeking.

Why is this a problem?

A person's silence or lack of overt acknowledgment during questioning will often be interpreted as unwillingness to participate or answer.

How can this problem be avoided?

People seeking information of Aboriginal witnesses would do well to allow longer periods for them to answer questions, and not rush to fill in the silence. The court should be made explicitly aware that such periods of silence are normal and do not indicate that the witness is unwilling to respond or that the witness is 'concocting' an answer to the question.