

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91402

The Association of Professional Engineers, Scientists and Managers, Australia (APESMA). APESMA is a registered organisation under the Fair Work (Registered Organisations) Act 2009 (Commonwealth).

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

The Association of Professional Engineers, Scientists and Managers Australia (APESMA) is a not for profit, member based organisation which supports and enables members to achieve their aspirations in their working and professional lives. APESMA is an association of employees registered under the Fair Work

(Registered Organisations) Act 2009. APESMA's precursor, The Association of Professional Engineers Australia (APEA) was established in September 1946. Throughout the 1990s a number of smaller unions who represented professional employees amalgamated with APEA with the result that the current organisation APESMA represents professionals from a wide variety of disciplines including interpreters and translators, engineers, scientists, IT professionals, senior managers and executives employed by Telstra, Australia Post, Australian Broadcasting Corporation, architects, pharmacists, managers and professionals employed by the Victorian or Australian governments. APESMA's rules allow for independent contractors who work in any of the above professions to be eligible to be members of APESMA. APESMA and its precursor organisation has since 1946:

- i. Set up and maintained a series of awards for engineers, scientists and other professionals;
- ii. Provided representation for members at organisation level in enterprise bargaining;
- iii. Provided representation for members where necessary in industrial tribunals and courts in relation to the full range of workplace issues such as industrial disputes regarding both collective and individual subject matter, unlawful terminations and unfair dismissals, enforcement of award and collective agreement conditions and common law contract terms and conditions;
- iv. Provided a collective voice and representation for its members to industry and government inquiries, studies and forums;
- v. Provided advice to members on legally enforceable minimum wages and conditions of employment and basic workplace rights, conditions and entitlements.

- (c) Address in Australia for service of documents on the applicant:
Attention: Michelle Anthony
National Legal Officer
Association of Professional Engineers Scientists Managers Australia
163 Eastern Road
South Melbourne VIC 3205

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

APESMA seeks authorisation to:

- i. collectively negotiate the terms of engagement for translators and interpreters who operate as independent contractors and provide interpreting and translating services to the various principal contractors (typically referred to as 'agencies') with whom they contract. The authorisation is sought on behalf of the current members of APESMA's Translator and Interpreter Division as well as on behalf of members that may join APESMA's Translator and Interpreter Division in the future; and to
- ii. advise translators and interpreters in relation to what constitutes fair rates of pay and other terms of contracts for service.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

The proposed contracts will contain certain common terms. As yet the proposed contracts have not been reduced to writing. It is anticipated that the applicant will seek to advise members and collectively bargain on behalf of its members to ensure Translators and Interpreters are engaged upon terms and conditions, including rates of pay, that are no less favourable than those contained in a Federal or State award, enterprise agreement or industrial instrument covering employees with comparable qualifications and providing comparable services.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Interpreting and translating services for interpreting and translating agencies including TIS, Oncall, AllGrads and VITS.

Definitions

Interpreter¹

An Interpreter transfers a spoken or signed language into another spoken or signed language, usually within a limited time frame in the presence of the participants requiring the translation.

Translator²

A Translator transfers a source text from one language into another, usually within an extended time frame to allow for corrections and modifications and without the presence of the participants requiring the translation.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

5 years

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please see attached

¹ The occupational classification of Interpreter (Occupation code: 2724-12) is listed under Unit Group 2724 Social Professionals in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) First Edition, 2006, ABS Catalogue number 1220.0, available at [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/\\$File/12200_2006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/$File/12200_2006.pdf)

² The occupational classification of Translator (Occupation code: 2724-13) is listed under Unit Group 2724 Social Professionals in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) First Edition, 2006, ABS Catalogue number 1220.0, available at [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/\\$File/12200_2006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/$File/12200_2006.pdf)

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please see attached

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Please see attached.

- (b) Facts and evidence relied upon in support of these claims:

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

Please see attached

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

It is not envisaged that there will be any significant detriment to the public that is likely to result from the authorisation.

If the collective bargaining process results in improved conditions for independent contractor interpreters and translators, such that they are engaged upon terms and conditions no less favourable than those contained in a Federal or State award, enterprise agreement or industrial instrument covering employees with comparable qualifications and providing comparable services, it is envisaged that the end users of the services; (which are primarily either federal or state government departments or agencies), may experience an increase in their expenses and costs commensurate with any improvement in conditions.

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- (b) Facts and evidence relevant to these detriments:

Please see the information provided under our response to 5. above regarding the fact that the end users of the services of independent contractor interpreters and translators are primarily federal and state government departments and agencies.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes, if the authorisation is granted the Applicant intends to engage in collective bargaining negotiations with the parties set out in our response to 3. a) above. The parties set out in 3. a) above engage in significant numbers of contracts for service with the independent contractor interpreters and translators that the Applicant represents. It is envisaged that at some time within the duration of the authorisation the Applicant may also seek to collectively bargain with other organisations that contract with interpreters and translators and some of these organisations are listed in sub paragraph (b)(ii) below.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

It is envisaged that collective bargaining negotiations will primarily focus on ensuring independent contractor interpreters and translators are engaged upon terms and conditions no less favourable than those contained in a Federal or State award, enterprise agreement or industrial instrument covering employees with comparable qualifications and providing comparable services. It is envisaged however that there may be certain issues experienced by interpreters and translators specific to one organisation they contract with, such as Occupational Health and Safety or Training and Development, that may result in variations between intended agreements.

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- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Wesley Mission Brisbane

930 Gympie Road

Chermside QLD 4032

An organisation that provides a range of community programs, including food and shelter for the homeless, crisis relief for families, support for young parents and youth at risk, employment for people living with a disability and care for the elderly

Deaf Services Queensland

915 Ipswich Road Moorooka QLD 4105

A not for profit organisation that provides Auslan interpreting and translators, community services and education, independent living skills support and sign language classes and services to the Deaf Community throughout Queensland.

Deaf Society of New South Wales

Suite 401, Level 4

69 Phillip St

Paramatta NSW 2150

A provider of specialist services for Deaf and hard of hearing people and their families in New South Wales as well as deaf people with additional needs.

Vicdeaf (Victorian Deaf Society)

Level 4, 340 Albert Street

East Melbourne VIC 3002

Vicdeaf is a not for profit organisation and is the primary source of reference, referral, advice and support for deaf and hard of hearing adults in Victoria.

Tasdeaf (Tasmanian Deaf Society)

334 Elizabeth Street

North Hobart TAS 7000

advocacy, interpreting services, Auslan classes, Deaf cultural awareness training and education to workplaces and community support services

Deaf CanDo (Royal South Australian Deaf Society)

59-61 Grange Road

Welland SA 5007

Provider of a range of services to the South Australian adult Deaf and hard of hearing community including information, counselling, additional needs support, aged care support and assistance to clients to access a range of external community agencies and organisations for further services. Deaf CanDo also provides training courses for Australian Sign Language (Auslan) and have highly qualified professional staff who provide Auslan interpreting.

West Australian Deaf Society

Suite 46, number 5 Aberdeen Street,

East Perth WA

non-profit organisation established in 1921 to provides services to Deaf and hard of hearing people in Western Australia.

Auslan Services

PO Box 415

ELTHAM VIC 3095

Auslan Services is a provider of Auslan Interpreters across Australia.

The Migration Translators

Suite 215 / 377 Kent St

Sydney NSW 2000

The Migration Translators specialise in the NAATI-certified translation of personal documents for visa and passport applications.

Portugese Language Services

1 Parsley Street Harrison, ACT 2914

Portuguese Translations, Brazilian Translations, Interpreting Portuguese.

Associated Translators & Linguists Pty Ltd

Unit 1, Level 5

72 Pitt Street

Sydney NSW 2000

Provider of language services, including interpreting, translation, typesetting and media in over 90 languages and dialects. Clients include Local, State & Federal Governments, Immigration departments, Workers Compensation and Third Party Insurers, Private Industry and the legal profession.

Multilingual Services Pty Ltd

8 Fanning Street

Tempe NSW 2044

Interpreters Services

Corporate Language Communications

1st Floor

213 Canning Street

Carlton VIC 3053

Provision of teaching, translating, interpreting and legal work.

Professional Interpreting Centre

129 Church Street

Richmond VIC 3121

Translation and interpreting services.

Ethnic Interpreters and Translators

Suite 1, Level 4, 91 George St

Parramatta NSW 2150; and

Suite 106, Level 1,

370 St Kilda Rd

Melbourne VIC 3004

Interpreters, Translators and type setters.

International Interpreting Agency

P.O. Box 142

Surrey Hills 3127 Victoria Australia

Translators and Interpreters

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

A business or organisation that contracts with interpreters and / or translators for the interpreter and / or translator to provide their services to the business's or organisation's clients. Many government departments, agencies, hospitals and other large health care providers contract directly with interpreters and / or translators.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

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- (c) If so, by whom or on whose behalf are those other applications being made?

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9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Michelle Anthony

National Legal Officer

Association of Professional Engineers, Scientists Managers Australia

163 Eastern Road

South Melbourne VIC 3205

Dated..... 23 December 2013

Signed by/on behalf of the applicant

..... Michelle Anthony

(Signature)

..... MICHELLE MAREE ANTHONY

(Full Name)

..... NATIONAL LEGAL OFFICER

(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



**Australian
Competition &
Consumer
Commission**

Contact Officer: Anna Giannakos
Contact Phone: (03) 9290 6920

GPO Box 3131
Canberra ACT 2601
23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

24 September 2013

Michelle Anthony
National Legal Officer
Association of Professional Engineers, Scientists and Managers Australia

By email: manthony@apesma.com.au

Dear Ms Anthony

Fee waiver request

I refer to your correspondence dated 17 September 2013 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed application for authorisation. In your correspondence you have requested that the ACCC grant a fee waiver in respect of the proposed arrangement.

In particular, you have requested that the fee to be paid in relation to an application for authorisation, to be lodged by the Association of Professional Engineers, Scientists and Managers Australia (APESMA) seeking to collectively bargain on behalf of its member translators and interpreters, be waived.

In support of your request, among other things, you submitted that APESMA is a not-for-profit association and the lodgement fees would not be recovered from members as the majority are low income earners, where 87% pay a reduced annual fee because they are either unemployed, students, new graduates or because they are earning less than \$50,000.00 per annum. Further, you submit that the Australian Bureau of Statistics 2011 Census confirmed the median annualised reported income for translators and interpreters in Australia as being \$31,931 and \$25,544 respectively.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by APESMA has been waived in whole. No application fee will apply with respect to the application for authorisation to be lodged by APESMA.

This decision will remain in force for a period of three months. The three month period will expire on 24 December 2013.

A copy of this letter should accompany the application for authorisation to be lodged by APESMA. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by APESMA after 24 December 2013, a full application fee of \$7500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Anna Giannakos on (03) 9290 6920 or by email to anna.giannakos@accc.gov.au.

Yours sincerely

A handwritten signature in dark ink, consisting of a stylized 'R' followed by a long horizontal stroke.

Richard Chadwick
General Manager
Adjudication Branch

ATTACHMENT 1 TO Form B

3. Parties to the proposed arrangement

- (a)** Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract, arrangement or understanding:

(i) Translating and Interpreting Service (TIS) (ABN 33 380 054 835)

TIS National Centre,

GPO Box 241

MELBOURNE VIC 3001

The Translating and Interpreting Service (TIS National) is an interpreting service provided by the Department of Immigration and Citizenship to provide interpreting services for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients.

(According to TIS National's website) TIS National has:

- more than 30 years of experience in the interpreting industry.
- access to over 2400 contracted interpreters across Australia.
- access to interpreters speaking more than 160 languages and dialects.

TIS National provides:

- Immediate telephone interpreting.
- ATIS Voice automated voice-prompted immediate telephone interpreting.
- Pre-booked telephone interpreting.
- On-site interpreting.
- Irregular Maritime Arrival (IMA) interpreting.

The TIS National immediate telephone interpreting service is available 24 hours a day, every day of the year for the cost of a local call for any person or organisation in Australia who needs an interpreter.

(ii) Oncall Operations Pty Ltd (Oncall) (ABN: 58 511 205 908)

Level 3, 3 Bowen Crescent

Melbourne VIC 3004

Oncall is an Australian Proprietary Company limited by shares and owned by Directors Tekin and Mustafa Hulusi. (According to the Oncall website), Oncall accesses over 5,500 NAATI accredited interpreters/ translators in Australia to provide the following services:

- Onsite interpreting (face to face);
- Telephone interpreting;
- Video Conference interpreting;
- Translations & Multi-lingual desktop publishing;
- Training in cultural awareness, diversity and working with interpreters.

Oncall has offices in Melbourne (servicing Victoria and Tasmania), Sydney (servicing NSW and ACT), Brisbane, Adelaide (servicing SA and NT), and Perth. According to Oncall's website the company is accessible by phone 24 hours per day 7 days per week.

**(iii) All Graduates Interpreting & Translating Services (All Graduates)
(ABN:48 649 682 201)**

Level 8, Suite 802, 343 Little Collins Street Melbourne VIC 3000

(According to the All Graduates website), All Graduates was established in 1989 and provides onsite, video and phone interpreting services as well as translation services. All Graduates have a 'team' of 1,000 accredited interpreters providing services in over 100 languages and dialects. All Graduates have offices Melbourne and Sydney.

(iv) Victorian Interpreting and Translating Service

Level 7, 620 Bourke Street, Melbourne, VIC 3000 Australia

(According to the VITS website) VITS, the Victorian Interpreting & Translating Service, is a Victorian Government owned Government Business Enterprise, with over 30 years experience as a specialist language service provider. VITS evolved from the Victorian Ethnic Affairs Commission, established in 1978. VITS competes in an open market with other commercial language service providers for both clients and specialist language service practitioners. VITS has an established database of almost 1700 contract interpreters and translators across Australia (over 80% based in Victoria), covering over 140 languages.

VITS Language Link is an ASIC registered business which notes its Owner Type as “Unincorporated Structure”. Address for Place of Business is level 1, 371 Spencer St West Melbourne VIC 3003.

3.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

Please see attached list of names and address of current members of APESMA on whose behalf this application is made. **(Please note the attached list of current APESMA members on whose behalf the application is made is the subject of a request for exclusion from the public register pursuant to section 89(5) of the Competition and Consumer Act 2010 (Cth)).**

Please note that the authorisation is sought on behalf of the current members of APESMA’s Translator and Interpreter Division as well as on behalf of members that may join APESMA’s Translator and Interpreter Division in the future.

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

This application is made under s88 (1) and (1A) of the *Competition and Consumer Act* (2010). To grant authorisation the Commission must be satisfied that in all circumstances the proposed agreement will result or be likely to result in a benefit to the public. The Commission must also be satisfied that any benefit would outweigh the detriment to the public constituted by any lessening of the competition that may result from the arrangements.

APESMA submits that the proposed collective bargaining arrangements will result in the following public benefit:

- i. A lessening of the risk of exploitation of a susceptible group (translators and interpreters) **(Please see attached survey report “Lost In Translation: Barriers to building a sustainable Australian translating and interpreting industry” APESMA 2012) ;**
- ii. A reduction for both translators and interpreters and agencies of the transaction costs of undertaking a series of separate individual negotiations. The parties represented by APESMA in the bargaining group may be able to share the costs of obtaining professional advice. Overall this may result in

contract terms and conditions that better reflect the group's circumstances and therefore deliver improved incentives for innovation and efficiency.

- iii. A lessening of the risk associated with the current 'model' which involves federal and state government departments asking translating and interpreting agencies to tender for work, with an inevitable resultant trade off between quality and cost. **(Please see attached report "The Case For Change: Consequences and costs of failures in the translating and interpreting industry" APESMA 2013);**
- iv. A lessening of the risks associated with the erosion of the professionalism, quality standards and ethically driven practices of the language services workforce which follow from practitioners leaving the profession to seek more sustainable employment.
- v. An opportunity for the translator and interpreter industry to build the continuing training and development of independent contractor interpreters and translators into the collective bargaining process with an increased quality and professionalism within the industry being the result.
- vi. opportunity for interpreters and translators to work with more than one agency without incurring penalties such as future loss of work with that agency. The public will benefit by having diverse interpreters and translators readily available.
- vii. enhanced security of common terms and conditions for interpreters and translators which means interpreters and translators will be able to focus on delivering high quality translating and interpreting services without needing to focus on negotiating their terms and conditions.
- viii. fairness and equity in the way the interpreters and translators are treated by agencies in so far as job cancellations, remuneration, job security, and other conditions are concerned. This in turn will have a reciprocal benefit on the wider interpreting and translating community and the public which relies on their services.
- ix. introduction or stricter compliance with the Interpreters and Translators Code of Ethics aimed at improving the integrity and veracity of interpreters, translators and agencies with the end benefits flowing to public as they deal with them and rely on this industry. **(Please see attached AUSIT Code of Ethics and Code of Conduct)**
- x. introduction of some measures in the area of occupation health and safety, so that interpreters and translators are operating in safe environments with agencies required to accept a degree of responsibility for the safety of interpreters and translators.
- xi. improve quality of care and awareness in health and medical settings;

- xii. minimise unnecessary health expenditure;
- xiii. improve communication and awareness in legal settings;
- xiv. reduce unnecessary expenditure and workload in the legal/court system;
- xv. deliver improved value for money for taxpayers;
- xvi. ensure the social and economic benefits of Australia's culturally and linguistically diverse (CALD) community are enhanced;
- xvii. improve the quality of life of our members and the integrity of the Translating and Interpreting profession; and
- xviii. ensure the industry operates in the community's interest;
- xix. ensure the industry is sustainable.
- xx. The National Accreditation Authority for Translators and Interpreters Ltd (trading as NAATI) is incorporated in Australia under the *Corporations Act 2001*. The company is owned jointly by the Commonwealth, State and Territory governments and is governed by a board of directors, who are appointed by the owners. NAATI's main business activities are providing accreditation and other credentialing services for translators and interpreters and related activities. NAATI services are available through offices in every State and Territory of Australia and in New Zealand. The National Office is in Canberra. NAATI's system for recognising and accrediting translators and interpreters and providing Continuing Professional Development will be enhanced by a classification system which recognises and provides incentives for interpreters and translators to be accredited and to engage in further training and which is incorporated into the interpreters' and translators' contracts for services.

(b) Facts and evidence relied upon in support of these claims:

- i. Translating and interpreting practitioners perform a vital service for the community and contribute their expert skills in a diverse range of settings. They provide assistance for those who face language barriers to full participation in the community and play a vital role in maximising the social and economic benefits of Australia's cultural diversity.
- ii. In the medical/health setting, lives may be endangered, families and individuals may experience severe stress and trauma, quality of life may be significantly reduced and additional unnecessary burden may be imposed on the health care system.

- iii. In the legal context, miscarriages of justice in the form of aborted trials, wrongful convictions, inappropriate sentencing, misunderstood bail conditions, community orders and/or charges result in additional workload for an already overloaded court and legal system.
- iv. In the context of the delivery of Australian Government services and programs, the consequences of failure can range from wrongly suspended payments, to incorrect debts being raised against individuals to failure to access government programs due to lack of understanding of the program itself or the documentation that goes with it.
- v. In the immigration setting, protection visas and refugee applications may be wrongly granted, refused or cancelled.
- vi. Alongside the impact on people's lives sit costs ranging from compromised value for money and waste in procurement by government, unnecessary expenditure particularly in the already stretched health and legal settings and government and other organisations potentially exposed to serious and expensive litigation.
- vii. Amongst the most critical areas in which translators and interpreters work are the medical/health, court/legal settings, the provision of services by Federal Government agencies including Department of Human Services and the Department of Immigration and Citizenship (DIAC) and in commercial settings. Translators and Interpreters help maintain the integrity of our courts and justice system, ensure access to health care services and medical information, play a critical role in providing access and equity in relation to the delivery of human and immigration services, and in underpinning extensive commercial activity in a diverse range of business settings both domestically and internationally.
- viii. Currently the level of wages and conditions are so low (as the result of the current government tender / competition model), they work against the establishment of a sustainable industry which focusses on quality.
- ix. Overall a collective bargaining determination will result in the public benefits outlined in paragraphs 4 (a) and (b) as it is envisaged that improved working conditions for independent contractor interpreters and translators will result from:
 - a) an organised and systematic approach to the negotiation of terms and conditions; as well as
 - b) the increased bargaining power created for independent contractors as the result of being permitted to bargain collectively
- x. For further Public Benefit arguments, facts and evidence please refer to annexed publication:

‘The Case For Change: Consequences and Costs of failures in the translating and interpreting industry’ prepared by the Association of Professional Engineers Scientists and Managers (APESMA) 2013.

5. Market definition

Background

Over the last 25-30 years there has been a dramatic change in the way translating and interpreting services are delivered. The primary clients or end users of translators and interpreters, Federal and State Government departments and agencies, previously typically employed Translators and Interpreters as full or part time employees. Those departments and agencies now typically engage Translators and Interpreters as casual employees or contractors, with organisations known as ‘agencies’ performing a brokering role, entering into principal contracts with the government department or agency for the provision of the translation and interpreting services, often in response to tendering processes. The agencies in turn enter into agreements with individual translators and interpreters, with the translator or interpreter either becoming the casual employee of the agency or entering into an individual contractor agreement for the provision of services.

As the result of these changes, labour costs are lower for the clients or end users because of poorer conditions, including less investment in training and development and the shifting of many of the costs of employment, such as payment for travel time and expenses, to the translators and interpreters themselves.

The agencies are generally competing with each other to win tenders and contracts for work from government departments and agencies, with the ability to trim labour costs comprising a key competitive advantage in the tender process.

Typically translators and interpreters are not able to enter into a true negotiation or bargaining process regarding the terms and conditions under which their services are provided. Instead, translators and interpreters are provided with a standard set of rates and terms and conditions by an agency on a ‘take it or leave it’ basis.

The following is an extract from Law Institute of Victoria (2010) Interpreting Fund Scoping Project Final Report (<http://www.liv.asn.au/getattachment/80358a3c-d0d5-460c-bbae-af9dccccaa3f8/Final-Report---Interpreting-Fund-Scoping-Project.aspx>), p.75

According to NAATI, the Australian interpreting industry is fragmented due to the focus on part time or contractual work. There are a limited number of full time interpreting jobs and most interpreting work is done on a freelance, casual or seasonal basis. For this reason, a lot of qualified interpreters have other jobs and are often only available for limited interpreting outside their normal working hours.¹

These issues are highlighted by a recent Victorian survey of interpreters, which confirmed that the majority of Victorian interpreters are freelancers. In this survey,

95% of the respondents were freelancers, a small number also had full time or part time employment as interpreters and nearly 20% also directly serviced clients (i.e. not through an agency). Of those freelancing with agencies, only 8% worked for one agency alone; the majority (52%) worked for 2–4 agencies while 38% worked for 5 or more agencies.³²³ⁱⁱ

There is also a high turnover of practitioners within the interpreter industry. People come into the profession, work for a year or two, leave the profession for other employment, but may also re-enter the profession at a later date. This can mean that people have difficulty in maintaining their interpreting skills at the level of the time when they were first accredited, which in turn may affect service delivery.ⁱⁱⁱ

ⁱ NAATI, *Revalidation of Accreditation: Second Discussion Paper*, 31 October 2005, p. i. Accessed January 2010 at <http://www.naati.com.au/pdf/news/Revalidation%20Second%20Discussion%20Paper%20September%202005.pdf>.

ⁱⁱ Dr Uldis Ozolins, *A survey of interpreting practitioners in Melbourne, Australia, undertaken as part of the VITS Language Link Good Corporate Citizenship Program*, March 2004, p. 24. Accessed January 2010 at <http://www.vits.com.au/downloads/VITS%20Survey%20Report-Final.pdf>.

ⁱⁱⁱ NAATI, *op. cit.*, p. i.

The Translator and Interpreter Labor Market

It is difficult to estimate the number of people engaged as Translators and Interpreters in the Translation and Interpreting fields of practice in Australia due to the fragmented nature of the practice and the fact that the majority of practitioners operate as freelancers or independent contractors.

The Australian Bureau of Statistics', 2011 Census data indicated that 3,349 persons nominated interpreting as their 'main job' and 1,382 nominated translating as their main job. It should be noted that Census data significantly understates the total number of persons operating as translators and interpreters because rather than it being their primary source of income or "main job" which is how the Census question is framed, many individuals hold multiple jobs and supplement their income with translating and interpreting work.

Survey data suggests that around a third of all translating and interpreting practitioners undertake both translating and interpreting.ⁱⁱⁱ

The primary purchasers of interpreting services in Australia are government departments including but not limited to those involved in health and medical services, court/legal services, social security/welfare and immigration. Community interpreters generally register with the Translating and Interpreting Service (TIS) which is run by the Australian Government through the Department of Immigration and Citizenship (DIAC).

Extent of contracting in Australian translating and interpreting industry

Translating and interpreting industry researcher Helen Slatyer of Macquarie University considers that up to 80% of translators and 50% of interpreters are likely to operate at least part of the time as independent contractors but acknowledges the difficulties of obtaining definitive data in this area. Data set out in the recent Kaleidoscope reportⁱⁱⁱ is set out below in Table 1. Slatyer warns the estimate needs to be subjected to further research with the issue complicated by the fact that some translating and interpreting practitioners operate as employees sometimes and at other times as contractors, that there is widespread confusion about the terminology describing employment status, and that some translators and interpreters are not aware of their actual employment status which makes a self-reporting approach to establishing employment status problematic.

Table 1 – Full time and other work arrangements for translators and interpreters

Translators	
Full-time	11.5%
Part-time, casual, contractor or freelance	53.2%
Other	35.3%
Interpreters	
Full-time	9.0%
Part-time, casual, contractor or freelance	50.0%
Other	41.0%

Industry researcher Dr. Uldis Ozolins considers that up to 95% of interpreters are likely to operate at least part of the time as independent contractors but similarly acknowledges the difficulties of obtaining accurate and current data. In his 2004 study of the Victorian interpreting industry, Ozolins found that 95 per cent of interpreter respondents who were engaged by VITS LanguageLink were freelancers/independent contractorsⁱⁱⁱ. Ozolins warns that in extrapolating nationally, the estimate would need to be subjected to further research with the issue complicated by the fact that state governments and agencies operate using different models of engagement as well as the methodological and definitional issues highlighted by Slatyer.

What is clear from the Slatyer and Ozolins studies is that industry practice is skewed away from full-time employment to a range of self-managing work arrangements, and that the extent of independent contracting is very significant.

Conditions and Remuneration

The following is an extract from Law Institute of Victoria (2010) Interpreting Fund Scoping Project Final Report (<http://www.liv.asn.au/getattachment/80358a3c-d0d5-460c-bbae-af9dccc3f8/Final-Report---Interpreting-Fund-Scoping-Project.aspx>), p.76

The lack of remuneration for interpreters is a long-standing issue. Concerns were expressed about this in the *Access to Interpreters in the Australian Legal System Report* nearly twenty years ago.³²⁵ This has had a detrimental impact on the interpreter profession. In its *Language Services Report*, Peat Marwick Management Consultants reported that:

The remuneration structure available to [interpreters]....is a major inhibitor to the maintenance of levels of expertise and in attracting additional personnel to the profession. The lack of financial inducement is effectively 'deprofessionalising' the profession. There appears to be a destructive cycle in operation where the inability of professional personnel to earn a reasonable living in language services is making the profession less attractive to potential linguists, thus reducing enrolment in tertiary education courses with a type of language skills courses provided. The net effect of this is while demand seems to be increasing for professionally trained and skilled interpreters....the supply of professional trained personnel is reducing. This in turn is resulting in more unaccredited staff having to be used.³²⁶

Since that time, there has been little improvement in terms of interpreter remuneration. The LIV understands that the current rate for a professionally accredited interpreter is around \$63 for 90 minutes.³²⁷ This amount includes interpreter agency fees. The LIV notes that interpreter fees may vary between interpreter agencies, levels of accreditation and the type of work undertaken. Nevertheless, as the Australian Institute of Interpreters and Translators has noted, it can be generally said that while the fees available for commercial interpreter work are reasonably good, the pay for work in the government or community domain – which includes law and the courts – is “deplorably poor”.³²⁸ Based on the 2006 Census, a typical interpreting practitioner is said to work 25 hours per week for a gross annual income of \$25,000.³²⁹

In Victoria, these issues have a particular impact on the supply and demand of interpreters for new and emerging languages. Research shows that the current interpreter pay levels and employment modes mean that often trained interpreters move on to better paid, more reliable employment as soon as they can. There are also ongoing difficulties in attracting, training and then retaining appropriately competent interpreters. This is a particular problem for emerging African languages because of the disrupted education of many in the relevant communities and the lack of a critical mass of people with English and literacy capabilities.³³⁰

The End Users / Clients

TIS National

According to the TIS National website, TIS National originated as a service for new migrants but has

expanded its ‘client base’ to include:

- government agencies
- legal practitioners, courts and tribunals
- medical practitioners
- health authorities
- hospitals
- export companies
- local government authorities
- tourism authorities and tour operators
- emergency services organisations
- employment agencies
- schools and universities
- research and scientific institutions
- communications media
- voluntary organisations.

Oncall Operations Pty Ltd

According to the Oncall Interpreters and Translators website, the following are listed as 'major clients':

- **Victoria:** - Accident Compensation Conciliation Service; CRS Australia; AMES; Anglicare Victoria; Australian Hearing; Barwon Health; Childrens Court of Victoria; Centrelink; Department of Human Services; Dental Health Services Victoria; DPP; Eastern Health; Employment Plus (The Salvation Army); Fair Work Australia; Federal Magistrates Court of Australia; Goulburn Valley Health; health; interact; Transport Accident Commission; Social Security Appeals Tribunal; Victoria Legal Aid;
- **NSW:** - AW Workwise; Administrative Appeals Tribunal; Allianz; APM; Australian hearing; Cambell Page; Centrelink; CRS Australia; Medibank Private; Nova Employment; Department of Ageing, Disability and Home Care;
- **QLD:** - Centercare Employment Group; SWITC; 4Walls.org.au; Centrelink; Deaf Services Queensland; Medibank Private; Queensland Health; Queensland Transport;
- **SA:** - Government of South Australia (Department of Health, Department for Families and Communities, Office for Women, Department for Transport Energy and Infrastructure); APM;
- **WA:** - APM; Bentley Health Service; The Government of Western Australia (Department of Education); District Court of Western Australia; Legal Aid Western Australia; Sir Charles Gardiner Hospital; WA Police.

All Graduates

According to the All Graduates website, the following are listed as users of the services:

- **Aged Care:** - Benetas;
- **Community Health:** - Darebin Community Health Service; Darebin Community Rehabilitation Centre; Plenty Valley Community Health;
- **Corporations:** - Allianz Australia; i3 Pharmaceutical Services (Australia) Pty Ltd; Igenix; QBE;
- **Education:** - Department of Education and Early Childhood Development; Catholic Education Office; Carey Baptist Grammar School; Blackburn English Language School; Geelong English Language Centre;
- **Employment Agencies:** - BreakThru People Solutions; Campbell Page Job Services; CRS Australia; Job Connections; Matchworks; Max Employment; Ostara Australia; PVS Workfind; Salvation Army employment Plus; Sarina Russo Job Access; WCIG.
- **Government:** - Accident Compensation Conciliation Service; Australian Competition and Consumer Commission; Australian Crime Commission; Department of Education and Early Childhood Development; Federal Magistrates Court; Transport Accident Commission; Western Australian Government; Transport Accident Commission;
- **Health and Hospitals:** - Austin Health; Barbara Walker Centre for Pain; Breastscreen Victoria; Melbourne Health; Melbourne Sexual Health Centre; Peter MacCallum Cancer Centre; Royal District Nursing Services; Royal Melbourne Hospital; Royal Victorian Eye and Ear Hospital; St Vincent's Hospitals; Royal Womens Hospital; Western Health;

-
- **Legal:** - Burt and Davies; Hogg and Reid; Moores Legal; Norton Rose Australia.

Victorian Interpreting and Translating Service

The following is an excerpt from the VITS 2011-2012 Annual Report:

“The company saw significant growth in sales during the 2011/12 financial year. We achieved year on year an 18.5% increase in revenue from sales. Whilst some of this can be attributed to the decision to increase prices from January 2012 the majority of the increase has occurred largely as a result of an increase in demand for on-site interpreting services.

Revenue from onsite interpreting has increased by 34% when compared to last year. VITS has become the preferred supplier of interpreting to the Victorian health sector while continuing to deliver quality services across all areas of Government at the Federal, State and local levels.

Key initiatives such as the introduction of a Client Services Manager, the implementation of a new telephony infrastructure and proactive workforce recruitment has enabled us to grow the business and maintain customer relationships which has underpinned our strong growth performance.

The major changes to the industry during this financial year impacted on the way we delivered our services. There were also costs associated with reorganising our business model to meet this changed environment. We were still able to achieve the best profit outcome in four years despite changes and associated costs.

A reported net profit of \$344,718 was an increase of 29% on the previous financial year and is our best outcome since the 2007/08 financial year.

In 2011/12 we registered 138 new clients. These clients were a mix of State & Federal Government departments as well as not-for-profit and commercial/private clients. The greatest growth in new clients came from other State Government agencies particularly in the health sector and 18% of new clients came from the commercial sector.

Our activities included:

- > Extension of two major Victorian Government service contracts.
- > New Federal Government translation contract for irregular maritime arrivals.
- > A range of highly technical translation and audio projects.
- > Targeted promotions with national industry and professional associations.
- > Expansion within Victorian health sector.”

ATTACHMENT 2: SUBMISSION IN SUPPORT OF APPLICATION

Background

Over the last 25-30 years there has been a dramatic change in the way translating and interpreting services are delivered. The primary clients or end users of translators and interpreters, Federal and State Government departments and agencies, previously typically employed Translators and Interpreters as full or part time employees. Those departments and agencies now typically engage Translators and Interpreters as casual employees or contractors, with organisations known as 'agencies' performing a brokering role, entering into principal contracts with the government department or agency for the provision of the translation and interpreting services, often in response to tendering processes. The agencies in turn enter into agreements with individual translators and interpreters, with the translator or interpreter either becoming the casual employee of the agency or entering into an individual contractor agreement for the provision of services.

As the result of these changes, labour costs are lower for the clients or end users because of poorer working conditions for translators and interpreters, including less investment in training and development and the shifting of many of the costs of employment, such as payment for travel time and expenses, to the translators and interpreters themselves.

The agencies are generally competing with each other to win tenders and contracts for work from government departments and agencies, with the ability to trim labour costs comprising a key competitive advantage in the tender process.

Typically currently, translators and interpreters are not able to enter into a true negotiations or bargaining processes regarding the terms and conditions under which their services are provided. Instead, translators and interpreters are provided with a standard set of rates and terms and conditions by an agency on a 'take it or leave it' basis.

Are translators and interpreters independent contractors or employees?

In order to prepare this application APESMA conducted interviews with a number of its translator / interpreter members. All of the members interviewed reported being registered with a number of agencies at the same time as well as receiving jobs direct from 'end users' such as, for example, a large hospital or a government department.

According to the accounts given by the members interviewed, some agencies employ interpreters and translators on a casual basis and other agencies and/or end users engage interpreters and translators as independent contractors. Thus, it is common for one interpreter to perform several interpreting jobs over the course of a week having been engaged by a different agency on different days, and operating as an employee for one job in the morning, and then as an independent contractor while performing a different job in the afternoon on the same day.

Why has APESMA made this application to the ACCC? If it is about fair working conditions why haven't we made an application to the Fair Work Commission?

The Fair Work Commission is the national workplace relations tribunal with power to carry out a range of functions including:

- providing a safety net of minimum conditions, including minimum wages, in awards; and
- facilitating good faith bargaining and the making of enterprise agreements.

The Fair Work Commission (FWC) derives its modern award making powers from the Fair Work Act 2009 (Cth). The Fair Work Act provides that modern awards can only cover employees and outworkers (employees who perform work at residential premises in the Textile Clothing and Footwear industry) and therefore the FWC does not have the power to make an award that covers independent contractors.

Further, the FWC's role in facilitating collective bargaining and its powers to approve enterprise agreements are confined to agreements that cover the relationship between employers and their employees (not independent contractors).

APESMA is currently investigating the feasibility of making application to the FWC, as part of the FWC's 2014 Review of Modern Awards, for the coverage of an appropriate existing modern award to be extended to include APESMA's translator and interpreter members who are in employment relationships. If successful, we will represent our members by attempting to engage in collective bargaining negotiations with those agencies that employ them as casual employees.

It is necessary for APESMA to make this application to the ACCC in order that we may represent our interpreter and translator members in respect of the 'contracts for services' or independent contractor relationships they enter into with various agencies. Our representation will include:

- advising our members on all matters they should take into account in setting their contract fee, and
- conducting collective bargaining negotiations on their behalf.

Are the rates of pay earned by translators and interpreters low? If so, why?

The Australian Bureau of Statistics 2011 Census confirmed the median annualised reported income for translators and interpreters in Australia is:

Translators: \$31,931.

Interpreters: \$25,544.

The Department of Immigration and Border Protection (DIABP) currently pays the interpreters it engages for standard hours (8.00am to 6.00pm weekdays) on-site interpreting assignments \$73.20 for the first 1.5 hours, and \$7.60 for each additional 15 minutes or \$243.80 for a full day.

According to DIABP's Schedule of fees (1 July 2013), "Travel costs can only be claimed where a Service Provider is on a standard onsite interpreting assignment outside of the Metropolitan Area and the travel involves a round trip of at least 200 kilometres to and from a Service provider's usual place of residence. In those circumstances, the interpreter can claim 77c per kilometre for using her / his own vehicle and 7.60 per 15 minutes of travel time (8.00am to 6.00pm weekdays).

According to the accounts given by the interpreters we interviewed, a typical interpreting assignment will take in the vicinity of 90 minutes and will take place within the metropolitan area. While the average booked time per job is 1.5 hours, the average travel time per job is an additional 1 hour, making the average time allocation per job 2.5 hours.

Interpreter pay per 1.5 hour job	73.20
Less	
Self funded travel expenses (23.1km x 77c)	17.71
Self funded car parking	<u>2.00</u>
Typical interpreter 'profit' per job	53.41

Our interviews with interpreter members indicate that interpreters aim to complete 10 to 15 assignments per week, (or 624 assignments per year if we allow an average of 12 assignments per week), with that number being the maximum considered possible taking into account the time required to travel between assignments;

This means that the maximum income an interpreter can hope to earn working a typical urban client base would be (624 assignments per year x \$53.41 per job = \$33,327.84);

Further, interpreters working as contractors must pay various other costs/ expenses such as taxation, professional registration fees, self - funded training and professional development, insurance, mobile phone and home office expenses etc. Our interviews with interpreter members indicate these annual fixed costs would be in the vicinity of \$3,600.00;

Therefore we estimate that the maximum a typical interpreter working at full capacity can earn under current market structures is \$29,727.84 per annum.

Compare this annual income to the annualised Australian Bureau of Statistics 6302.0 seasonally adjusted average weekly earnings for a full time male (November 2012 ABS 6302.0) of \$77,780.00

The current structure of the Translator and Interpreter labour market operates such that individual translators and interpreters have no scope to bargain with their principal contractors in relation to terms and conditions. As an example, VITS Language Link have

recently won a government tender to provide language services to Victorian government departments working in the areas of health, human services and education, (in addition to the areas they already covered of police and Vic Roads). Shortly after the results of the tender were announced, VITS emailed to its contract interpreters its new schedule of fees. The schedule of fees was communicated to all interpreters on a 'take it or leave it basis'. It is estimated that VICS Language Link provides 80% of language services to Victorian Government departments and there is no scope for individual interpreters and translators to negotiate in relation to their terms and conditions.

What is the link between the low rates of pay and the effect on quality?

The following is an extract from Law Institute of Victoria (2010) Interpreting Fund Scoping Project Final Report (<http://www.liv.asn.au/getattachment/80358a3c-d0d5-460c-bbae-af9dccccaa3f8/Final-Report---Interpreting-Fund-Scoping-Project.aspx>), p.76

The lack of remuneration for interpreters is a long-standing issue. Concerns were expressed about this in the *Access to Interpreters in the Australian Legal System Report* nearly twenty years ago.³²⁵ This has had a detrimental impact on the interpreter profession. In its *Language Services Report*, Peat Marwick Management Consultants reported that:

*The remuneration structure available to [interpreters]....is a major inhibitor to the maintenance of levels of expertise and in attracting additional personnel to the profession. The lack of financial inducement is effectively 'deprofessionalising' the profession. There appears to be a destructive cycle in operation where the inability of professional personnel to earn a reasonable living in language services is making the profession less attractive to potential linguists, thus reducing enrolment in tertiary education courses with a type of language skills courses provided. The net effect of this is while demand seems to be increasing for professionally trained and skilled interpreters....the supply of professional trained personnel is reducing. This in turn is resulting in more unaccredited staff having to be used.*³²⁶

Since that time, there has been little improvement in terms of interpreter remuneration. The LIV understands that the current rate for a professionally accredited interpreter is around \$63 for 90 minutes.³²⁷ This amount includes interpreter agency fees. The LIV notes that interpreter fees may vary between interpreter agencies, levels of accreditation and the type of work undertaken. Nevertheless, as the Australian Institute of Interpreters and Translators has noted, it can be generally said that while the fees available for commercial interpreter work are reasonably good, the pay for work in the government or community domain – which includes law and the courts – is “deplorably poor”.³²⁸ Based on the 2006 Census, a typical interpreting practitioner is said to work 25 hours per week for a gross annual income of \$25,000.³²⁹

In Victoria, these issues have a particular impact on the supply and demand of interpreters for new and emerging languages. Research shows that the current interpreter pay levels and employment modes mean that often trained interpreters move on to better paid, more reliable employment as soon as they can. There are also ongoing difficulties in attracting, training and then retaining appropriately competent interpreters. This is a particular problem for emerging

African languages because of the disrupted education of many in the relevant communities and the lack of a critical mass of people with English and literacy capabilities.

At the heart of the problem is the fact that agencies do not engage their own pool of practitioners. There exists a single pool of practitioners out of which all agencies source their workers. In this sector if one company chooses to invest in its primary resource, practitioners, then the benefit of this investment also goes to that company's competitors. As such, the company that invests is at a disadvantage. It is also clear, because of low wage and engagement levels, that shift of training responsibilities onto the practitioners themselves would only result in an ad hoc training program.

What will the effect be if the authorisation is not granted? (The benefit to the community of the service will continue to be eroded).

If the authorisation is not granted the current high turnover of practitioners within the interpreter industry will continue and become exacerbated. The low earnings and conditions of interpreters has resulted in translating and interpreting no longer being seen as a viable profession or career, with the risk being that capable individuals will not invest the time and money in professional development to obtain initial qualifications or ongoing professional development.

Translating and interpreting practitioners perform a vital service for the community and contribute their expert skills in a diverse range of settings. They provide assistance for those who face language barriers to full participation in the community and play a vital role in maximising the social and economic benefits of Australia's cultural diversity. The risks that flow from the further erosion of the quality of the service include the following:

- i. In the medical/health setting, lives may be endangered, families and individuals may experience severe stress and trauma, quality of life may be significantly reduced and additional unnecessary burden may be imposed on the health care system.
- ii. In the legal context, miscarriages of justice in the form of aborted trials, wrongful convictions, inappropriate sentencing, misunderstood bail conditions, community orders and/or charges result in additional workload for an already overloaded court and legal system.
- iii. In the context of the delivery of Australian Government services and programs, the consequences of failure can range from wrongly suspended payments, to incorrect debts being raised against individuals to failure to access government programs due to lack of understanding of the program itself or the documentation that goes with it.
- iv. In the immigration setting, protection visas and refugee applications may be wrongly granted, refused or cancelled.

- v. Alongside the impact on people's lives sit costs ranging from compromised value for money and waste in procurement by government, unnecessary expenditure particularly in the already stretched health and legal settings and government and other organisations potentially exposed to serious and expensive litigation.
- vi. Amongst the most critical areas in which translators and interpreters work are the medical/health, court/legal settings, the provision of services by Federal Government agencies including Centrelink and the Department of Immigration and Citizenship (DIAC) and in commercial settings. Translators and Interpreters help maintain the integrity of our courts and justice system, ensure access to health care services and medical information, play a critical role in providing access and equity in relation to the delivery of human and immigration services, and in underpinning extensive commercial activity in a diverse range of business settings both domestically and internationally. In the event the quality of the service is further eroded (by the effects of increasing turnover and exodus within the profession, the operation of all of these areas will potentially be compromised.

Will there be a potential lessening of competition (if the authorisation is granted)?

We do not expect that there will be a lessening of competition if our request for an authorisation is granted. We refer to our response to question 5 of this Application and note that approximately 5,000 interpreters and / or translators nominated interpreting and translating as their main occupation in the Australian Bureau of Statistics', 2011 Census data. We expect however that the Census data significantly understates the total number of persons operating as translators and interpreters because rather than it being their primary source of income or "main job" which is how the Census question is framed, many individuals hold multiple jobs and supplement their income with translating and interpreting work.

Taking into account that fact that census data underestimates the total number of translators and interpreters operating in Australia, we estimate that APESMA's membership represents in the vicinity of 0.02% of the total translator and interpreter population. In the event that APESMA enters into collective bargaining negotiations with principal contractors on behalf of our members, it will always be the case that the principal contractor will be able to enter into alternative negotiations with interpreters and translators who are not members of APESMA if they choose to do so.

Further, members of APESMA who wish to enter into their own agreement with a principal contractor on the basis that he / she will accept a lower rate of pay or lower conditions (say in respect of payment for travel expenses), will always be free to do so.

Is it a national or state based market? Are people working across state boundaries or is the industry state based?

Government contracts form the main 'financial pipeline' for the Translator and Interpreter sector.

TIS National is an agency that is owned by the (Commonwealth) Department of Immigration and Border Protection and operates nationally to provide translators and interpreters across key government departments including Centrelink. Telephone and Video interpreting and border protection work are national contracts however the labour force tends to be very much

state based, with interpreters and translators primarily providing services within their own state.

VITS Language Link is an agency that (while corporatized) is owned by the Victorian Government and is estimated to be the provider of approximately 80% of language services to Victorian Government departments and bodies within the state of Victoria. Similar agencies (owned and / or operated by state government departments) exist in each state.

How many interpreters and translators are represented by APESMA?

Please see Attachment 3 to APESMA's Form B Application which is a list of the names of the members of APESMA's Translator and Interpreter division on whose behalf this application is made (please note Attachment 3 is the subject of a request for exclusion from the public register).

APESMA membership

Membership of APESMA is voluntary for all our members not just for members of the Translators and Interpreters Division. The Fair Work Act 2009 (Cth) prohibits any person taking adverse action against another person because the other person is or is not a member of an industrial association. As a result, it is not possible because of the operation of the law, for translators and interpreters to have pressure applied to them either directly or indirectly to join APESMA. Therefore, membership of APESMA cannot operate as a bar to potential translators and interpreters entering into or remaining in the profession.

Further, APESMA has a fee structure that varies according to the income level of the individual applying to become a member. 87% of the members of our Translators and Interpreters Division pay a reduced annual membership fee because they are either unemployed, students, new graduates or because they are earning less than \$50,000.00 per annum. Students pay \$60.00 per annum to join APESMA, members earning less than \$20,000.00 per annum pay \$256.00 per annum in membership fees and members earning less than \$35,000.00 per annum pay \$405.00 per annum. As a result, APESMA's fee structure will not operate as a bar to translators and interpreters seeking representation for the purposes of collective bargaining should they choose to do so.

LOST IN TRANSLATION

Barriers to building a sustainable Australian
translating and interpreting industry



APESMA
Making a positive difference
to professionals at work



Lost in translation: barriers to building a sustainable Australian translating and interpreting industry.

A report by the Association of Professional Engineers, Scientists and Managers, Australia

2012

ABOUT APESMA

The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) is an organisation registered under the Fair Work Act 2009 representing over 25,000 Professional Engineers, Professional Scientists, Veterinarians, Professional Surveyors, Architects, Pharmacists, Information Technology Professionals, Managers, Transport Industry Professionals and Translating and Interpreting Professionals throughout Australia. APESMA is the only industrial association representing exclusively the industrial and professional interests of these groups.

Association of Professional Engineers,
Scientists and Managers, Australia (APESMA)

GPO Box 1272, Melbourne, Vic. 3001

e: translatorsandinterpreters@apesma.com.au

w: www.apesma.com.au/groups/translators-and-interpreters

t: **1300 APESMA | 1300 273 762**

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A pair of black and white headphones and a black smartphone are resting on a brown leather sofa. The headphones are in the foreground, and the smartphone is next to them. The background shows the back of the sofa and a person's legs in blue jeans.

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FOREWORD

Translators and Interpreters perform a vital service for the community and contribute their expert skills in a diverse range of settings.

They provide assistance for those who face language barriers to full participation in the community and play a vital role in maximising the social and economic benefits of Australia's cultural diversity.

Translators and Interpreters help maintain the integrity of our courts and justice system, ensure access to health care and information, support access to Government services and provide assistance in commercial settings.



Chris Walton
APESMA CEO

In a very direct sense, ensuring the values of equal treatment and protection from discrimination are upheld in all these settings relies on creating a Translating and Interpreting industry which can meet the needs of the community as well as the Translating and Interpreting professionals themselves.


The importance of protecting these fundamental rights was highlighted recently by the World Justice Project which suggested that access to Translators particularly for disadvantaged groups was limited. "In this area", the report says, "Australia scores lower than almost all high-income countries." "Another area of concern" the report notes, "is discrimination. While the country ranks among the best in the world in protecting most fundamental rights, it lags behind in guaranteeing equal treatment and non-discrimination, especially for immigrants and ethnic minorities. In this area, Australia ranks last among all high-income countries and ranks 40th globally."¹

Critical questions currently face the industry ... To what extent have quality and professionalism been lost through the process of outsourcing and can the loss be justified in terms of savings and efficiencies? Can we hope to sustain the profession when deprofessionalisation and lack of recognition of the status of Translators and Interpreters are impacting service provision? How do we ensure that professional development practices continue to support the Translating and Interpreting profession? What is the role of agencies in maintaining professional standards and do their current practices provide appropriate, adequate and fair operating structures to support Translators and Interpreters? What is the role of the professional bodies and how can they play a more effective role in the industry? How do we attract the next generation of Translating and Interpreting professionals to the industry and ensure that new graduates are supported and mentored? How have globalisation and developments in technology affected the industry? Fundamentally, what kind of support, structures and practices will be necessary to create a sustainable industry with the capacity to deliver the high-quality effective service levels all stakeholders agree are essential? These questions go to the heart of what it means to be a Translating and Interpreting professional in 2012 and beyond.

Since the late 1980s when many of the services were contracted out by public sector agencies, Translators and Interpreters have generally experienced a decline in their pay and conditions in real terms. A range of the expenses formerly covered by employers are now being borne by the Translators and Interpreters themselves. The profession is marked by low rates of pay that have not kept pace with the cost of living. Notice periods, minimum terms of engagement and cancellation fees provide no offset for the income insecurity which marks the industry.

The 2011 On Call decision² also created much uncertainty around contractor/employee status and many Translators and Interpreters are unsure about their personal rights and obligations as well as the obligations of those engaging them. Issues around qualifications, accreditation, professional recognition, deprofessionalisation and professional isolation also create uncertainty and have the potential to fundamentally compromise the sustainability of the profession.

APESMA has conducted this research to encourage a focus on, and debate around, the issues affecting Australia's Translating and Interpreting industry. We see it as critical that we play an active and considered role in identifying and responding to the challenges which face the profession and industry—challenges that can only be tackled with the cooperation and commitment of major stakeholder groups and Translators and Interpreters themselves.



1 Agrast, M., Botero, J., Ponce, A., WJP Rule of Law Index 2011. Washington, D.C.: The World Justice Project., Downloaded at: http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf December 2011

2 On Call Interpreters and Translators Agency Pty Ltd v Commissioner of Taxation (No 3) [2011] FCA 366 (13 April 2011)



The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) conducted this survey to explore the key concerns of Translators and Interpreters and identify some of the major barriers to creating a Translating and Interpreting industry which can meet the current and future needs of the community as well as the Translators and Interpreters themselves.

The comments of survey respondents were included wherever possible to allow the Translators and Interpreters to speak for themselves about the issues which most concern them.



KEY FINDINGS

Value of Translating and Interpreting services

Translating and Interpreting professionals want their contribution acknowledged and appropriately recognised. While 66 per cent thought their services were valued either highly or very highly by those to whom they provided services, there was a significant level of concern about the lack of value attached to Translating and Interpreting work by Government departments, labour hire and booking agencies and the general community with 51, 61 and 60 per cent of respondents respectively saying that their work was valued only moderately, somewhat, little or not at all.

Income

Income insecurity and incomes not keeping pace with inflation were key work issues for Translating and Interpreting professionals. 89 per cent of respondents indicated that lack of income security was a major problem while 87 per cent said incomes not keeping pace with inflation was a significant concern. The survey showed the potential for declining rates of pay and conditions to seriously impact service quality.

Contractor/employee status

28 per cent of respondents reported that they did not have a clear understanding of their status as an employee or contractor, and 40 per cent did not have an understanding of the different rights and obligations attached to each method of engagement.

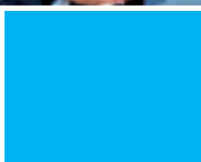
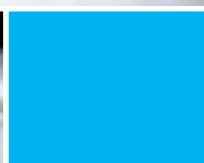
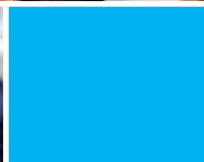
Deprofessionalisation

86 per cent of respondents were concerned or very concerned about deprofessionalisation of the industry.

Industry viability

Almost a third of respondents said they intended to leave the profession in the next five years. Of those, a massive 84 per cent said a review of their hourly rate would alter their intention.

Only 25 per cent said they were positive about the role and opportunities available in the Translating and Interpreting industry in the upcoming 12 months while 30 per cent reported that they were not positive and expected more of the same. 57 per cent said they thought the industry was becoming less attractive to new people.



The objective of exploring Translators and Interpreters' experience of changes to the profession since services were largely outsourced in the late 1980s was to help understand the complexities of the industry, to identify some of the barriers to creating a sustainable industry into the future, and in turn, to provide an evidence-base for working with the industry to bring about positive change.

To this end, one of the key questions the survey put to Translators and Interpreters was what, in their view, have they or the industry lost as a result of the trend to outsourcing since the late 1980s.

While reward and recognition were clearly key concerns, the issues respondents identified overwhelmingly went beyond pecuniary interest and personal rewards to the larger issues and problems which mark the profession and industry as a whole. On the following page is a selection of their responses.

WHAT'S BEEN LOST?

"Professionalism, staff development, recognition, respect and mentoring and peer support."

"Work opportunities, high standard of service and recognition of qualifications and experience."

"Pay rates have reduced or remained static whilst expenses have increased. Professional status was only in its infancy when outsourcing was introduced, resulting in the undermining and deprofessionalisation of the Translating and Interpreting industry."

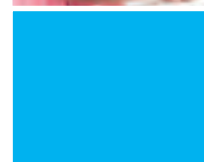
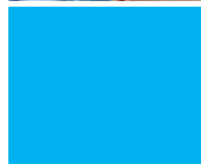
"Lots ... i.e. kilometres travelled to and from jobs not paid, booking fee not paid, cancellation fees reduced drastically, term of payment extended to almost two months instead of 14 days. Lack of recognition ... one-sided contracts favouring the language service provider. Having to pay indemnity and public liability insurance, no workcover or super entitlements."

"Since the late 1980s we have collectively experienced a continual reduction in our pay and conditions in real terms. Our status as Translators and Interpreters is not properly valued and respected by some ... this situation is deeply unsatisfactory ... because we know that we are getting exploited ... we continue to feel anxious and insecure about our long-term future."

"Everything. I've been working in the industry for 18 years and I have no superannuation, no security and no money. I've invested an enormous amount of time and energy in my education and in my work but have gained nothing. The money I earn merely covers my spendings and the most basic needs. I feel like I've volunteered for 18 years because I love to help my community but I haven't been properly rewarded."

"We have no work mates. No communications between us. We don't belong anywhere ... it's a sad job."

"The quality of the work plays a secondary role ... in the end, those who want to do a good and thorough job get priced out of the market."



EXECUTIVE SUMMARY



Being valued

One of the most fundamental findings of the survey was that Translating and Interpreting professionals want their contribution acknowledged and appropriately recognised. While 66 per cent thought their services were valued either highly or very highly by those individuals to whom they provided services, there was a significant level of concern about the value attached to Translating and Interpreting work by Government departments, labour hire and booking agencies and the general community with 51, 61 and 60 per cent of respondents respectively saying that their work was valued only moderately, somewhat, little or not at all. The lack of recognition for the value of the work of Translators and Interpreters has a direct impact on the viability of the industry and profession.

Work challenges

The survey found that income insecurity and incomes not keeping pace with inflation were key work issues for Translating and Interpreting professionals. This was followed by significant levels of concern about covering costs such as communications tools and vehicle/travel expenses, lack of payment for travel time, insufficient minimum terms of engagement, insufficient notice of cancellation and cancellation fees, and the lack of time allowed for briefing prior to engagement including access to background documents etc. Many respondents noted the low level of retirement earnings they had arising from their insecure employment and low rates of pay, and reported that professional isolation was a common experience. Each of these concerns has the potential to operate as a disincentive to retaining experienced, qualified Translators and Interpreters in the industry.

Agencies

With placements sourced via labour hire and booking agencies, the survey sought data on issues Translating and Interpreting professionals had with the agencies through which they operated. There was significant concern about hourly rates, the gap between the rates agencies charge clients and the fee received by the Translators and Interpreters, agencies sending non-qualified individuals to jobs and possible favouritism by agencies in the allocation of work. The lack of opportunity to negotiate terms fair to both parties was also an issue.

Contractor or employee

The survey indicated that there was some confusion amongst the Translating and Interpreting profession about their status as employees or contractors, and the rights and obligations attached to each method of engagement. 28 per cent reported that they did not have a clear understanding of their status as an employee or contractor, and 40 per cent did not have a clear understanding of the different rights and obligations attached to each method of engagement. Uncertainty about contractor/employee status and the potential for misclassification introduces a serious level of risk to the industry.

Deprofessionalisation

86 per cent of respondents were concerned or very concerned about deprofessionalisation of the industry including the use of non-accredited in-house staff and/or friends or relatives to do Interpreting and Translating work. The survey provided an insight into the broad range of factors contributing to deprofessionalisation.

Perceptions of the industry and employment intentions

The survey indicated that there are grounds for serious concern about the long-term viability of the Translating and Interpreting industry as it is currently structured. Almost a third of respondents said they were intending to leave the profession in the next five years. Only 25 per cent said they were positive about the role and opportunities available in the Translating and Interpreting Industry in the upcoming 12 months while 30 per cent reported that they were not positive and expected more of the same. 38 per cent said they were taking a wait-and-see approach about prospects in the industry and the opportunities available.

Another of the more critical findings overall was that 57 per cent said they thought the industry was becoming less attractive to new people. This, combined with the fact that 78 per cent of respondents said they were not aware of mentoring and peer support being made available to those entering the profession, suggests that attraction and retention of quality Translating and Interpreting professionals to the industry is potentially a major problem in the longer-term.

Lack of networking with peers and colleagues was found to be a significant issue with 31 per cent of respondents indicating that professional isolation and its consequences were a concern for them.



CONCLUSION

This report details a range of serious barriers to the ongoing development of a stable, skilled national Translating and Interpreting workforce with the capability and capacity to meet the needs of the community over the next decade.

The survey findings confirm that the Translating and Interpreting industry is at the crossroads with widespread concern about recognition of the value of Translating and Interpreting services, remuneration and conditions for Translators and Interpreters, the role labour hire and booking agencies play in the industry, and uncertainty around contractor/employee status, with deprofessionalisation, professional isolation and lack of peer support all creating disincentives to remaining in the industry.

Creating a vibrant local Translating and Interpreting industry—which will meet the needs of the community, provide protection from discrimination and value equal treatment and the rights of the individual—will require change and the constructive engagement of key stakeholders including Translators and Interpreters themselves.

Unless the barriers identified in this report are acknowledged and the threats to quality and professionalism in the industry addressed, we risk losing the opportunity to create a sustainable world-class Translating and Interpreting industry in Australia as we move toward 2020.

FINDINGS



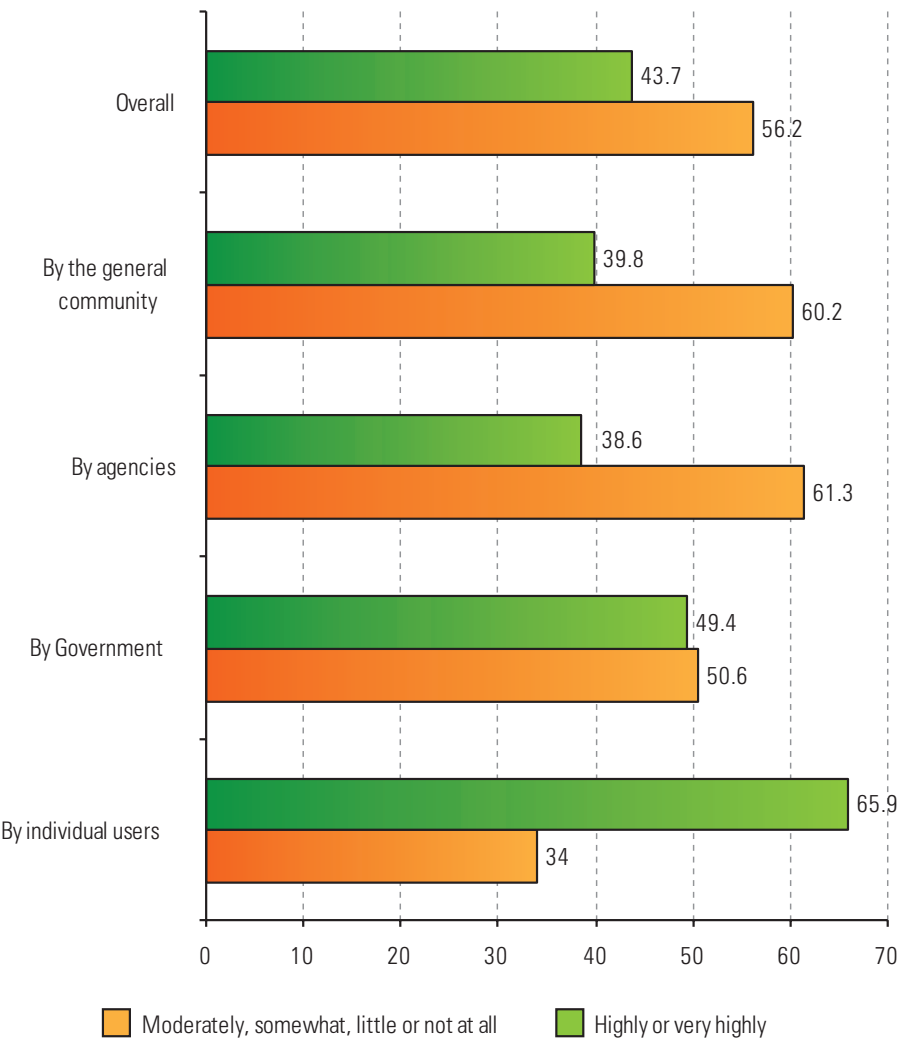
BEING VALUED

One of the most fundamental findings of the survey was that Translating and Interpreting professionals want their contribution acknowledged and appropriately recognised.

Of concern was the fact that overall 56.2 per cent of respondents reported that Translating and Interpreting work was valued only moderately, somewhat, little or not at all by key stakeholders.

More specifically, while 65.9 per cent thought their services were valued highly or very highly by those for whom they directly provided Translating and Interpreting services, there was a significant level of concern about the value attached to Translating and Interpreting work by Government departments, labour hire and booking agencies and the general community with 50.6, 61.3 and 60.2 per cent of respondents respectively saying that their work was not valued highly. Figure 1 sets out respondents' perceptions of the value of Translating and Interpreting services.

Figure 1—Value of services



Of concern was the fact that overall 56.2 per cent of respondents reported that Translating and Interpreting work was valued only moderately, somewhat, little or not at all by key stakeholders.

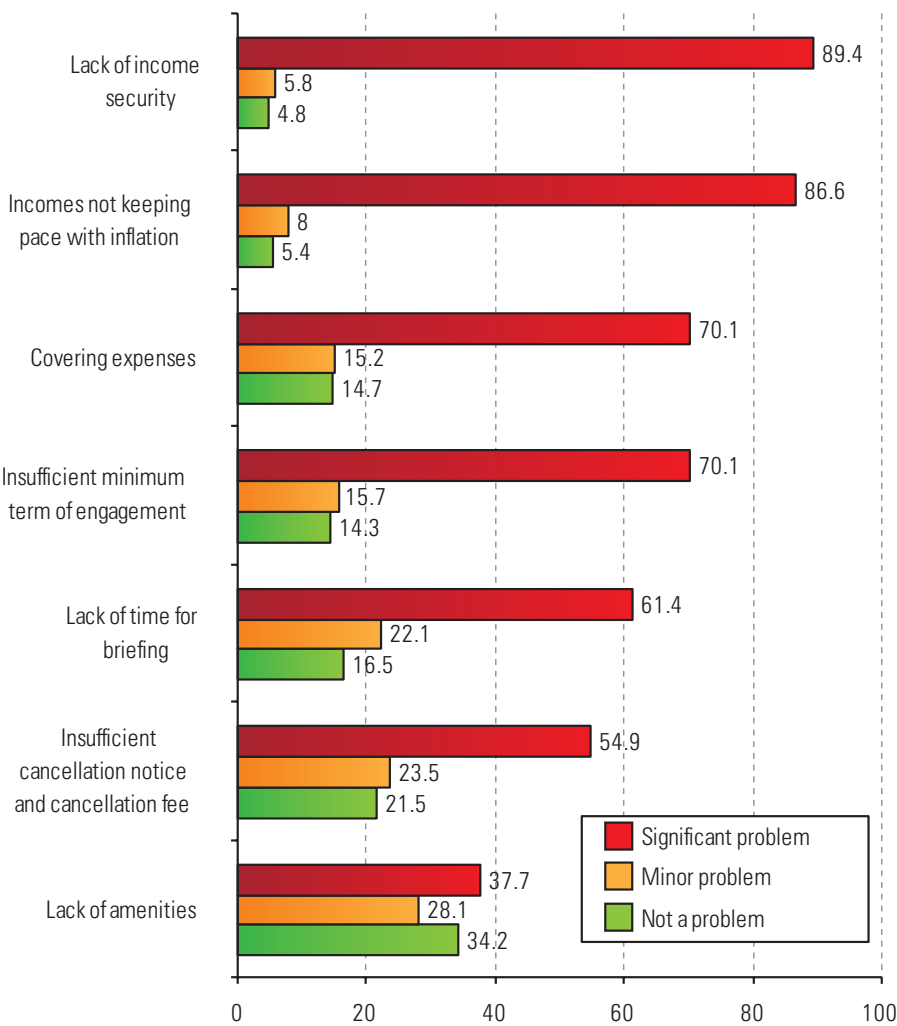
WORK CHALLENGES



The survey found a range of key work challenges for Translating and Interpreting professionals.

89.4 per cent of respondents indicated that lack of income security was a significant or moderate problem (see also page 16) while 86.6 per cent said incomes not keeping pace with inflation was a problem (see also page 13). 54.9 per cent of respondents reported that insufficient minimum terms of engagement and insufficient notice of cancellation and cancellation fees were a moderate or significant concern. 61.4 per cent indicated that lack of time allowed for briefing prior to engagement including access to background documents etc. was a concern while 37.7 per cent said lack of amenities (such as access to table and chair, breakout room, access to water, etc.) was a concern. Many respondents also noted the low level of retirement earnings they had arising from their insecure employment and low rates of pay. Figure 2 sets out the work challenges reported by Translators and Interpreters.

Figure 2—Work challenges for Translators and Interpreters



89.4 per cent of respondents indicated that lack of income security was a significant or moderate problem, while 86.6 per cent said incomes not keeping pace with inflation was a problem.

RATES OF PAY

86.6 per cent said incomes not keeping pace with inflation was a significant or moderate problem.

Comments on rates of pay were extensive and the responses generally highlighted four areas of concern:

- > the lack of appropriate reward for the skills and experience required to provide quality Translating and Interpreting services
- > how rates have failed to keep pace with the cost of living
- > perceptions of Translators and Interpreters' pay rates relative to other occupations
- > the link between declining pay rates and loss of service quality.

Many Translators noted the push for lower rates and faster turnaround times, meaning those who allow time to do a thorough job and uphold professional standards were priced out of the market (see also deprofessionalisation section on pages 20-22). Table 1 below sets out some of the typical comments.

Table 1—Comments on rates of pay

> Pay is growing increasingly worse
> Not an attractive job if you look at it from a financial point of view
> Challenging role for a small income
> My income is low and doesn't keep up with the increase in the cost of living
> Very low remuneration given the time, effort and dedication the profession requires
> Rates of pay are too low—some agencies have not reviewed rates of pay in 15 years
> This is the only industry where rates have been steadily declining for the past twenty years
> The income is not fair pay for such a responsible, valuable, specialised profession. We are paid less than a cleaner gets per hour and we carry professional indemnity and public liability. 20 years ago I was getting paid more \$ per hour than I am today. 20 years ago cleaners were being paid almost half of what they are paid today. Where is the logic?
> Abysmally low interpreting rates—hourly rates on par with fast-food employees
> Ridiculously low wages for incredibly difficult (if done professionally) work
> The income is just not appropriate, interpreters are not valued and the rates ... are decreasing instead of increasing
> Insufficient remuneration—the present rates ... are in fact quite insulting
> Rates have stagnated. Job security has disappeared entirely ... but rates [have] not risen to compensate
> Everyone is after the cheapest possible solution which by necessity can mean ... a lowering of standards and quality
> The quality of the work plays a secondary role. In this world of easy and quick telecommunications, quotes are easily obtained from many practitioners all over the world, and in the end, those who want to do a good and thorough job get priced out of the market.



This is the only industry where rates have been steadily declining for the past twenty years.

EXPENSES

Expenses emerged as a key concern. 70.1 per cent of respondents indicated that covering expenses was a moderate or significant concern.

"A casual labourer gets \$18 an hour, job security, superannuation, days off, etc. I had \$15 per hour and nothing more but three times the expenses. Who in his right mind would want to do interpreting?"

"... kilometres travelled to and from jobs not paid, booking fee not paid, cancellation fees reduced drastically, term of payment extended to almost two months instead of 14 days—these are the expenses I have to cover ..."

The survey asked Translators and Interpreters about the types of expenses they covered to get a feel for the costs being borne which were, prior to outsourcing, either covered by the employer or not required. The scope of expenses covered was broadranging and is summarised in Table 2.

Table 2—Costs borne by Translators and Interpreters

Travel	Petrol, travel time, parking fees (up to \$12 for 90 minute hospital booking), traffic navigator, road tolls, car maintenance, parking fines when engagement is longer than expected
Stationery	Paper, ink, dictionary, diary, street directory, standard envelopes and express post envelopes, travel log book, photocopying
Communications/ computer	Smartphone or Blackberry (to receive bookings), computer hardware and software including upgrades, broadband internet, home telephone rental and calls, mobile phone, printer, printer consumables, scanner, postage, surge protector, laptop, PAYPAL fees for those who do work for international clients, fax, website design and maintenance, electronic dictionary, electronic diary, translation software, advertising
Training and professional development	Courses, workshops in specialist areas, language development, fees for taking and re-sitting NAATI accreditation tests, reaccreditation costs
Insurances	Professional indemnity insurance, salary continuance in lieu of workers compensation for contractors
Clothing	Appropriate to various work environments for example very dark clothing required by AUSLAN interpreters, sun protection clothing in the case of outdoor work, satchel or backpack, professional clothing suitable for court appearances
Professional memberships	AUSIT, NAATI membership and listing in directory
Home office expenses	Utilities—electricity/gas etc.
Other	Accountant's fees, bank fees, courier costs, annual police checks, book-keeping.

70.1 per cent of respondents indicated that covering expenses was a moderate or significant concern.

ENTITLEMENTS

Many respondents highlighted the issue of the entitlements they no longer receive, in particular, sick leave, annual leave and superannuation.

A selection of responses is set out in Table 3.

Table 3—Comments on loss of entitlements

> No holiday/sick pay
> Employee entitlements such as holiday and sick leave, superannuation etc. have been lost
> Loss of income, superannuation contributions, sick leave, annual leave
> Sick days pay
> Sick leave, annual leave, some superannuation contribution, car... everything
> Professional indemnity insurance, public liability insurance, income holiday “pay” provision, income protection insurance, no workers compensation.. superannuation, provision for any stress or special circumstances where no pay is earned, private health insurance, parking, comprehensive automobile insurance
> No leave and superannuation entitlements
> Loss of the travel allowance ... loss of superannuation
> Superannuation payments have gone but rates not risen to compensate. Conditions (such as reimbursement of expenses) [have been] eroded.

Employee entitlements such as holiday and sick leave, superannuation etc. have been lost.

HOURS/INSECURE WORK



Basically, the earning is close to part-time work earning.

It is not easy to make a full-time earning for Translating and Interpreting work

The lack of paid working hours available, income insecurity and poor quality Translating and Interpreting jobs (defined as jobs which do not provide sufficient income to be the principal employment and/or compensation for income insecurity) were major concerns. 89.4 per cent of respondents indicated that lack of income security was a significant or moderate problem.

A selection of respondents’ comments relating to work insecurity are set out in Table 4 below.

Table 4—Comments on insecure work

> I’ve been working in the industry for 18 years and I have no superannuation, no security and no money. I’ve invested an enormous amount of time and energy in my education and in my work but I have gained nothing. The money I earn merely covers my spendings and the most basic needs. I feel like I’ve volunteered for 18 years because I love to help my community but I haven’t been properly rewarded.
> You can’t really make a living out of Interpreting and Translating
> You will be starved if you rely on this job as a breadwinner
> [You can’t gain] ... sufficient hours to generate a fair income
> Basically, the earning is close to part-time work earning. It is not easy to make a full-time earning for Translating and Interpreting work
> It’s not a career in most cases—more of a paid part-time hobby
> It is impossible to earn a living salary from it
> Not enough income to sustain yourself and a family
> Unstable income
> Because there is so little work around ... not many people can make a living out of this
> Income is not guaranteed
> Full-time positions are very rare ... hence [it’s] hard to get a mortgage or financially support children at school
> No steady income ... not dependable as a full-time job
> The work has become more ad hoc and there is no job certainty and no sense of community
> [There is a] lack of job security, especially for those who are the main earners for their families
> [There is] no predictability of work flow
> Job security has disappeared entirely ... but rates [have] not risen to compensate.

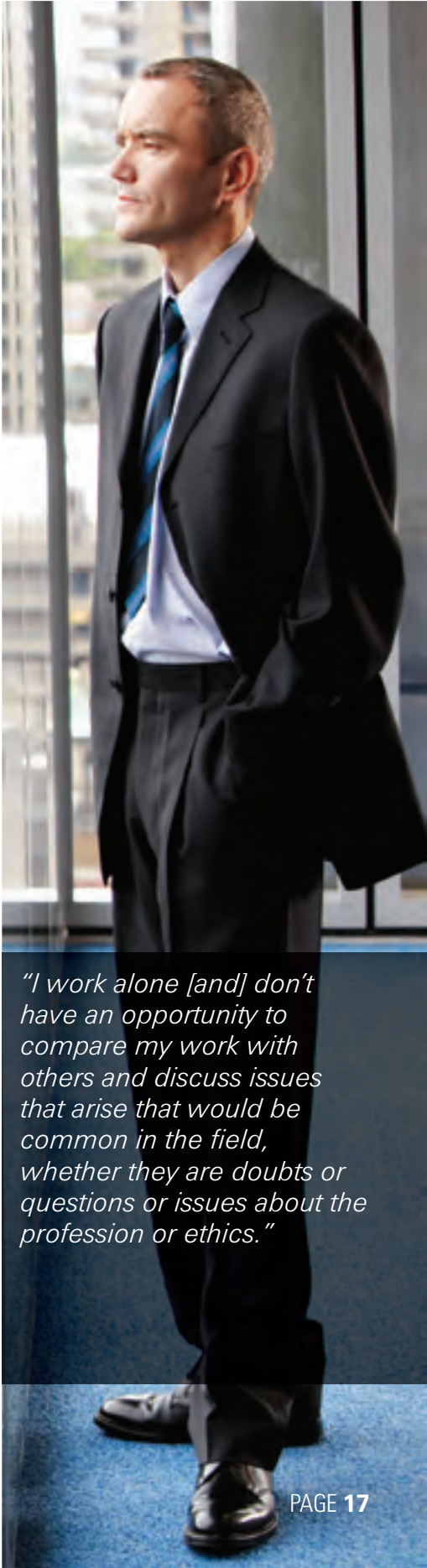
PROFESSIONAL ISOLATION

30.6 per cent of respondents reported professional isolation or lack of interaction with Translating and Interpreting colleagues as a problem.

Table 5 sets out a selection of respondents' comments on professional isolation and the lack of mentoring or peer support in the Translating and Interpreting industry.

Table 5—Comments on professional isolation and lack of peer support

> It is a very lonely job. You work by yourself and there is no debriefing, can't talk to your colleagues
> The biggest [problem with lack of interaction] is lack of unity
> It is not a big problem at this stage because I know and have contact with colleagues but this was different in the earlier years of working as a Translator/Interpreter, and I am forever grateful to a couple of senior colleagues for answering my questions and giving me some orientation. I sometimes miss the support of, and more direct interaction with, colleagues ... when problematic situations arise at work
> The interpreter can feel lost and very isolated, which causes stress and makes you feel depressed. As a result ... I have a lack of motivation and am losing interest in the job, even [though] it can be very interesting and enjoyable at times
> I have worked in isolation for nearly 20 years
> There is no sharing of knowledge/problems encountered and this does not allow [you] to grow as a professional
> I do not get to speak with other[s] ... and understand what problems they are having and to be able to speak about the ones I have. It would be great to be able to share experiences
> [It would be good to have the] ability to discuss the practice in general. It is a lonesome role [and it] would be nice to have an opportunity to have "colleagues"
> Generally get a bit lonely just working at home all the time. Would appreciate [the] opportunity to work with others ... and [have] more face to face with clients ... General lack of human interaction ... is a problem
> I never get a chance to debrief with colleagues, even after a very difficult or intense session
> I work alone [and] don't have an opportunity to compare my work with others and discuss issues that arise that would be common in the field, whether they are doubts or questions or issues about the profession or ethics
> Not able to share resources and knowledge [or] exchange valuable information
> [There is a] lack of sense of belonging
> I would like to have a feeling that I belong to a group of like-minded people. I would like to be able to discuss things that concern me with people that perhaps have gone through the same concerns in the past
> Big time. I feel that we are rivals rather than colleagues
> We have no work mates. No communications between us. We don't belong anywhere ... It's a sad job.



"I work alone [and] don't have an opportunity to compare my work with others and discuss issues that arise that would be common in the field, whether they are doubts or questions or issues about the profession or ethics."

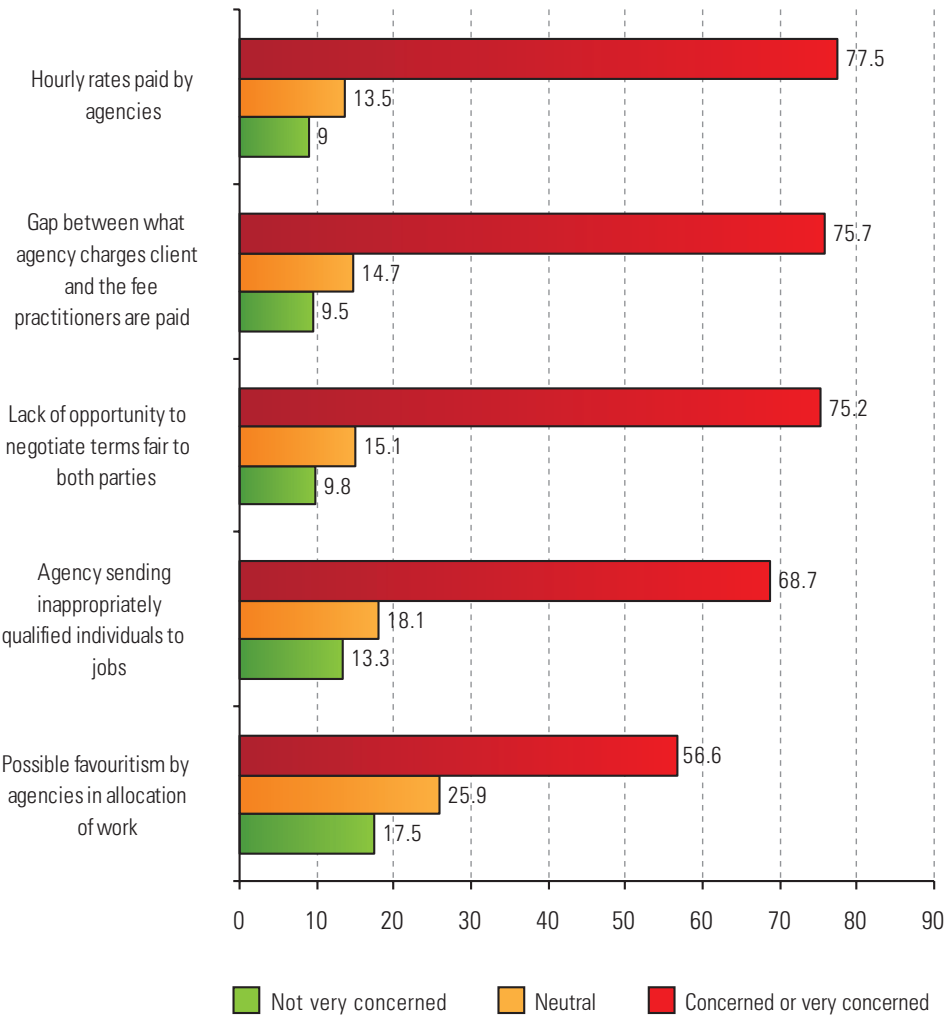


... there was significant concern about hourly rates, the gap between what the agency charged and the fee received by the Translators and Interpreters ...

With most Interpreting and some Translating work sourced via labour hire and booking agencies, the survey explored Translators and Interpreters’ perceptions of the agencies through which they operated.

As the data set out in Figure 3 shows, there was significant concern about hourly rates, the gap between what the agency charged and the fee received by the Translators and Interpreters, the lack of opportunity to negotiate terms fair to both parties, agencies sending non-qualified individuals to jobs and possible favouritism in work allocation.

Figure 3—Concerns about labour hire and booking agencies



These data highlight the need for labour hire and booking agencies to be part of an industry-wide solution to the issues highlighted.

CONTRACTOR OR EMPLOYEE

The survey indicated that there was some confusion amongst the Translating and Interpreting profession about their status as employees or contractors, and the rights and obligations attached to each method of engagement.

28.2 per cent reported that they did not have a clear understanding of their status as an employee or contractor, and 39.5 per cent did not have a clear understanding of the different rights and obligations attached to each method of operation.

In view of the different definitions of employee/contractor status in different states and under different legislation, the complexity of taxation laws in particular the Personal Services Income Rules, and the recent On-Call decision which established an entitlement to superannuation for those contractors engaged under a contract that is wholly or principally for the provision of labour, this level of uncertainty is not surprising. The extent of uncertainty is potentially understated in the survey because of the lack of understanding of the Translators and Interpreters themselves about how to define their status.

Because of liability for retrospective payments and significant penalties where misclassification occurs, uncertainty about contractor/employee status introduces a high level of risk to the industry and operates as a potential barrier to long-term stability.



28.2 per cent reported that they did not have a clear understanding of their status as an employee or contractor, and 39.5 per cent did not have a clear understanding of the different rights and obligations attached to each method of operation.

DEPROFESSIONALISATION



86.4 per cent of respondents were concerned or very concerned about deprofessionalisation of the industry.

Deprofessionalisation is a process which occurs in a workplace or industry when non-qualified or less qualified individuals are used to perform work which is more properly performed by appropriately qualified/accredited individuals.

It is a defining issue for the Translating and Interpreting profession.

A self-perpetuating Translating and Interpreting profession and industry requires:

- > training and accreditation systems which ensure the consistent supply of high-quality Translating and Interpreting practitioners
- > a relevant current code of ethics and systemic maintenance of ethical standards
- > appropriate rewards and incentives for upgrading training and updating skills
- > a stable employment market and sufficient work opportunities to sustain the local market
- > fair and agreed rates of pay and conditions to avoid aggressive minimising of labour costs or a "race to the bottom"
- > the market and general community to understand that bi or multilingual and non-accredited individuals have not had their language skills formally assessed and should not be engaged in the capacity of a qualified Interpreter or Translator
- > the market to be informed about tradeoffs in price, quality and turnaround time
- > market demand for skilled, experienced and appropriately trained and accredited practitioners.

Deprofessionalisation is clearly a complex issue and a detailed analysis is outside the scope of this report, but respondents' comments confirmed a range of factors that appear to be contributing to deprofessionalisation in the Translating and Interpreting industry.

These factors include the use or oversupply of non-accredited Translators and Interpreters, little differentiation between rates paid to accredited and non-accredited practitioners, perceptions of declining demand/work opportunities, the fact that those purchasing Translating and Interpreting services are often not informed about tradeoffs in quality, turnaround and price, offshoring and rates of pay in competition creating a "race to the bottom".

Table 6 sets out a selection of comments around deprofessionalisation.

Deprofessionalisation is a process which occurs in a workplace or industry when non-qualified or less qualified individuals are used to perform work which is more properly performed by appropriately qualified/accredited individuals.

Table 6—Comments on factors contributing to deprofessionalisation of the Translating and Interpreting industry

Use or oversupply of non-accredited Translators and Interpreters	The [problem] ... with our industry is ... the use of non-accredited individuals. As a Professional, I feel like I've wasted two years studying to get the accreditation ... when I see any non-accredited relative, friend or an employee doing my job for the same money or less or even free
	A large number of unaccredited bilingual workers filling interpreting roles are flooding the market. After 12 years working as a professional Interpreter I am finding the industry less attractive
	The rates have been reduced and parasites have entered the industry—bottom-feeder agencies and non-accredited Translators and Interpreters
	The industry lost its better practitioners ... and gained a whole lot of “dodgy” and “bodgy” practitioners
	Putting unprofessional people in these positions looks bad for the industry as a whole and devalues the hard work and dedication people in this industry have for their profession
	The use of unaccredited interpreters posing as professionals is a concern
Declining demand/work opportunities	Because of the economic recession, there are fewer chances for the Interpreters to work
	Globalisation, the internet and advances in machine translation technology ... have contributed to the decline of career opportunities
Purchasers not informed	The real issue for me ... is that nobody advising or selling to the end-customer can sensibly advise the latter about the trade-offs in terms of quality, price and turnaround. Basically, nobody understands how to assess quality
	The rates ... in Australia are low because the services are ultimately being devalued by ignorance
	Government clients tend to get three quotes for smaller jobs and are often not qualified to tell if one Translator is better than another
	[There is no] understanding by those hiring as to what a properly qualified and experienced Interpreter is able to do versus shonky, unqualified and unprofessional speakers of languages
Offshoring	The trend seems to be to source Translating and Interpreting services cheaper and cheaper and pay the Translator or Interpreter less and/or expect more/faster service
	Outsourcing and the development of the Internet has opened the international marketplace to all Translators. It has provided more opportunities but, at the same time, created more competition in terms of fees and turnaround times
	When an organisation like [organisation name withheld] outsources translations to overseas Translators, the situation for local Translators looks bleak
	The number of agencies getting low-paid and very poor quality Translators in developing countries to do the initial translation [is increasing]
	Loss of economic activities to other countries causing local industry to die
	Translation jobs are being done by Translators living overseas who are not NAATI accredited and at a very cheap rate
	[Services are now outsourced to] India and China (globalisation) leading to reduced fees
	Outsourcing to cheaper countries ... can only be detrimental to the profession in Australia
	Lots of inexperienced Translators overseas are used by agencies to perform work previously done by experienced Translators in Australia resulting in the end-users being provided with poorly translated documents without knowing
	Translators outside Australia have been engaged by the agencies as they charge only a fraction of what should be charged in Australia ... so income is lost and therefore the quality of translations is lost
Race to the bottom	It is annoying to have to engage in a game of email ping pong with an agency who offers a piece of work saying they may be given the job and ask me how much (ie how little) would I do it for. They are so obviously sending the same piece of work to other Translators with the same offer. Obtaining work in these circumstances simply becomes a race to the bottom in terms of pay and is usually a waste of my time.

DEPROFESSIONALISATION (CONTINUED)



The consequences of deprofessionalisation are generally lack of public trust in the profession, ineffective use of taxpayer funds and problems with the quality of services provided.

The survey showed evidence of the link between deprofessionalisation and the loss of service quality.

The consequences of deprofessionalisation are generally lack of public trust in the profession, ineffective use of taxpayer funds and problems with the quality of services provided.

The survey showed evidence of the link between deprofessionalisation and the loss of service quality and a selection of indicative comments is set out in Table 7.

Table 7—Comments on the link between deprofessionalisation and loss of service quality

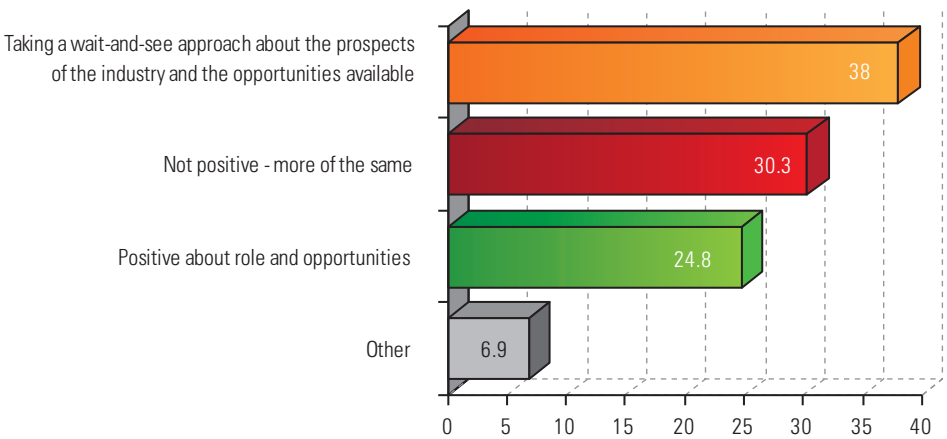
Lack of public trust in the profession	<ul style="list-style-type: none">> The industry lost most credibility and interpreters are nowadays not viewed as independent professionals but as “shady” at best
Ineffective use of taxpayer funds	<ul style="list-style-type: none">> Unqualified or poor quality practitioners often act in serious court cases covered by the employer’s assurance that they are qualified, with often serious consequences [when they are not]
Problems with quality of services	<ul style="list-style-type: none">> Practitioner providers [agencies] don’t really care about the quality of service by the practitioners they provide, their ability, ethics, etc. and client satisfaction> [There are] fewer big jobs and the risk that .. organisations are using unqualified persons and internet tools to obtain an ‘adequate’ translation rather than a professional and reliably accurate translation by a qualified Translator> Everyone is after the cheapest possible solution which by necessity can mean also a lowering of standards and quality> Quality has plummeted> There are a lot of companies who don’t understand the process of translation and either go for the cheapest quotes resulting in their documents being poorly translated, or ask their translation agency to turn around large documents within a very short space of time. The latter results in the agent having to employ many Translators and often nobody is coordinating terminology issues. This process produces a non-coherent document where important key words are translated in many different ways and the document will be very confusing to end-users.

The comments set out in Tables 6 and 7 show that deprofessionalisation has the potential to seriously compromise the credibility of the industry and operates as a considerable barrier to creating a sustainable local Translating and Interpreting industry.

PERCEPTIONS OF THE INDUSTRY AND EMPLOYMENT INTENTIONS

Almost a third of respondents said they were intending to leave the profession in the next five years. As set out in Figure 4, only 24.8 per cent said they were positive about the role and opportunities available in the Translating and Interpreting industry in the upcoming 12 months, while 30.4 per cent reported that they were not positive and expected more of the same. 38 per cent said they were taking a wait-and-see approach about prospects in the industry and the opportunities available.

Figure 4—Perceptions of industry over next 12 months



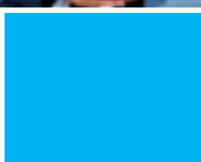
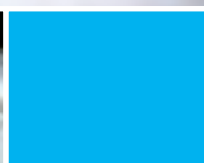
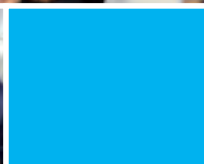
Of those who were intending to leave the profession, a massive 83.8 per cent said a review of their hourly rate would alter their intention while over half said having some or all of their expenses paid would positively affect their intentions. As set out in Table 8, other actions which would affect respondents’ intention to leave the industry included a review of workload to provide fewer or a greater number of hours, a review of the availability of training and professional development opportunities, more flexible work arrangements and more notice of cancellations.

Table 8—Factors which would affect intention to leave the profession

	Per cent
Review of hourly rate	83.8
Some or all of your expenses being covered	52.0
Review of workload to provide fewer or a greater number of hours	43.0
Review of the availability of training and professional development opportunities	30.7
More flexible work arrangements	20.2
More notice of cancellations	18.8

Another of the more critical findings overall was that 57 per cent of respondents said they thought the industry was becoming less attractive to new people. This combined with the fact that 77.8 per cent said they were not aware of mentoring and peer support being made available to those entering the profession suggests that attraction and retention of quality Translating and Interpreting professionals to the industry is potentially a major problem in the longer-term.

Only 24.8 per cent said they were positive about the role and opportunities available in the Translating and Interpreting industry in the upcoming 12 months, while 30.4 per cent reported that they were not positive and expected more of the same.



CONCLUSION

This report details a range of serious barriers to the ongoing development of a stable skilled national Translating and Interpreting workforce with the capability and capacity to meet the needs of the community over the next decade.

The survey findings confirm that the Translating and Interpreting Industry is at the crossroads with widespread concern about recognition of the value of Translating and Interpreting services, remuneration and conditions for Translators and Interpreters, the role agencies play in the industry, and lack of clarity and uncertainty around contractor/employee status, with deprofessionalisation of the industry, professional isolation and lack of peer support all acting as disincentives to remaining in the industry.

The survey highlighted the extent of the threats to the viability of the industry, the need for the reinforcement of professional identity for Translators and Interpreters, the importance of a considered and consultative industry-based approach to reform, and the fundamental links between recognition, reward and service quality.

Unless the barriers identified in this report are acknowledged and the threats to quality and professionalism in the industry addressed, we risk losing the opportunity to create a sustainable world-class Translating and Interpreting industry in Australia as we move toward 2020.



ABOUT THE SURVEY

The online survey was conducted by APESMA from late December 2011 through to early 2012 using Survey Monkey. The sample was drawn from the NAATI National Directory and comprised those who were engaged as contractors or employed or usually employed as Translators and Interpreters either through an agency or other means and was directed at both Translators and Interpreters although some respondents noted that some of the questions were more relevant to the community interpreting field. Respondents were from 72 language groups and worked across specialisations including courts/legal, health/medical, economics/political, conference, Centrelink/social security, education, tourism, technical, United Nations, theology, marketing/advertising and commercial/business. The sample also included Australian Sign Language (AUSLAN) Interpreters.

A total of 2680 surveys were circulated by email with 247 returned due to incorrect or out-of-date email address. A total of 840 Translators and Interpreters completed and returned the survey meaning the response rate was 34.5 per cent. Responses were split 36.1 per cent male and 63.9 per cent female broadly reflecting the gender breakdown of the Translating and Interpreting workforce reported by the 2006 Census which was 32 per cent male and 68 per cent female.

The survey utilised qualitative as well as quantitative methods to draw out detail and variation as well as patterns and convergences in responses.

ACKNOWLEDGEMENT

APESMA would like to thank the Translators and Interpreters who took time out of their busy schedules to help us understand their experiences, and provide considered comments on their profession and industry.

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**Association of Professional Engineers, Scientists
and Managers, Australia (APESMA)**

GPO Box 1272, Melbourne, Vic. 3001

e: translatorsandinterpreters@apesma.com.au
w: www.apesma.com.au/groups/translators-and-interpreters
t: **1300 APESMA | 1300 273 762**



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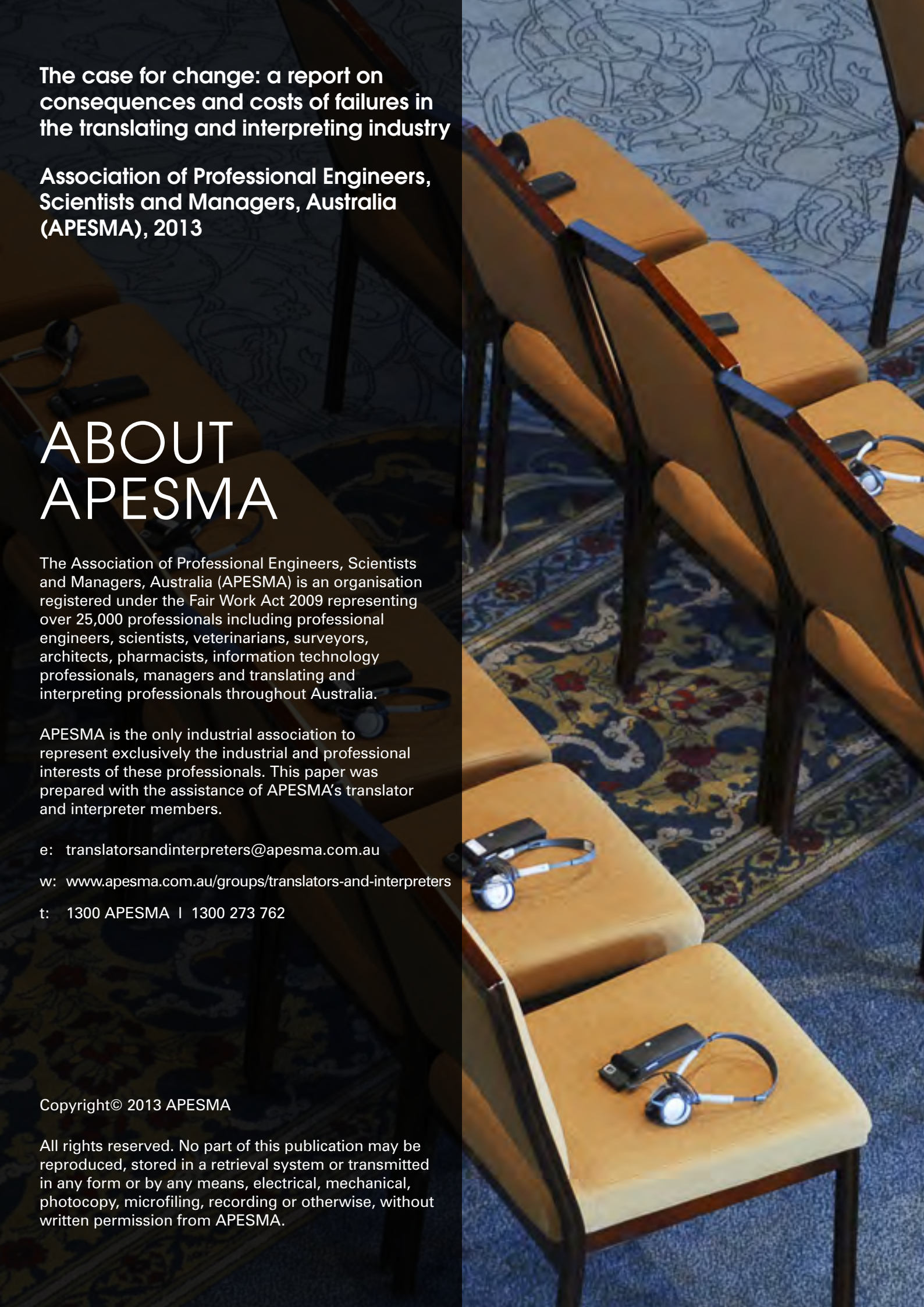
THE CASE FOR CHANGE

Consequences and costs of failures
in the translating and interpreting industry



APESMA
Making a positive difference
to professionals at work





The case for change: a report on consequences and costs of failures in the translating and interpreting industry

Association of Professional Engineers, Scientists and Managers, Australia (APESMA), 2013

ABOUT APESMA

The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) is an organisation registered under the Fair Work Act 2009 representing over 25,000 professionals including professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, information technology professionals, managers and translating and interpreting professionals throughout Australia.

APESMA is the only industrial association to represent exclusively the industrial and professional interests of these professionals. This paper was prepared with the assistance of APESMA's translator and interpreter members.

e: translatorsandinterpreters@apesma.com.au

w: www.apesma.com.au/groups/translators-and-interpreters

t: 1300 APESMA | 1300 273 762

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What becomes clear is that the quality of translating and interpreting services is not only an issue of access and equity - but one of risk. This paper reveals an extraordinary level of unmanaged risk and exposure to serious litigation across multiple settings when the system fails

Chris Walton, APESMA CEO

A note about our framework

Direct quantification of the value of translating and interpreting services and the cost of failure can be problematic. The reasons are threefold: the first is the sheer diversity of settings in which the work of translators and interpreters occurs making it difficult to capture and measure consequences; the second is that translating and interpreting services are “enablers” which makes it difficult to capture the cost and value of outcomes which arise as a consequence of the services provided; and the third is the economic paradigm through which value and failure are generally evaluated.

Some would suggest that consequences that are difficult to quantify should not be included in an analysis of risk and the cost of failure. APESMA would argue that to omit these consequences effectively values them at zero which is the only value we know they do not have. We do not see it as sufficient to focus exclusively on quantifiable economic consequences such as lost job opportunities, the cost to taxpayers of aborting or appealing court cases, waste resulting from inappropriate or inefficient procurement processes and/or unnecessary expenditure. We are of the view that the difficult to quantify but nonetheless real costs of failure in the form of, for example, diminished empowerment, stress on individuals and families and pain and anguish following a delayed or incorrect diagnosis, a suspension of payment based on inaccurate information, or a wrongful conviction and subsequent jail term are critical to understanding the real costs and real risks - financial and otherwise - of system failure.

Scope of this paper

Among the most critical settings in which translators and interpreters work are medical and health, court and legal, government service provision (such as Centrelink) and immigration. Translators and interpreters help maintain the integrity of our courts and justice system, ensure access to health care services and medical information, play a critical role in providing access and equity in relation to the delivery of human services and government programs, and have a fundamental role in the management and delivery of immigration services. Examples of failure and risk in these settings are the focus of this paper.

Acknowledgements

In looking at the court/legal setting, this report draws on the work of Sandra Hale and her report “Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals”¹ and, in the medical/health context, on the work of Rachel Vanstone and the 2012 Foundation House report called “Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health”.² We acknowledge their absolutely critical contributions to the understanding of problems and solutions in these settings. This paper reproduces some of the failures in the specialised medical/health and court/legal settings set out by Hale and Vanstone in their reports.

We also acknowledge the 2009 report of the Commonwealth Ombudsman’s office “Use of interpreters” in our analysis of problems evident in the important setting of the delivery of federal Government services.³

We would also like to acknowledge the contribution of translators and interpreters who provided many of the examples of system failure included in this report.



FOREWORD

The consequences of translating and interpreting failure can be devastating.

In the medical/health setting, lives may be endangered, families and individuals may experience severe stress and trauma, quality of life may be significantly reduced and additional unnecessary burden may be imposed on the health care system.

In the legal context, the effects can be miscarriages of justice, aborted trials, wrongful arrests and convictions, inappropriate sentencing, misunderstood bail conditions, inappropriate jail terms, misinterpreted community orders and/or charges which can compromise the system's integrity and result in additional workload for an already overloaded court and legal system.

In the context of the delivery of Australian government services and programs, the consequences of failure can range from wrongly suspended payments, to incorrect debts being raised against individuals, to failure to access government programs due to lack of understanding of the program itself or the documentation that underpins it.

In the immigration setting, protection visas and refugee applications may be wrongly granted, refused or cancelled and the integrity and fairness of the system compromised. The reasons for an irregular maritime arrival may be misunderstood, the information presented to Refugee Review Tribunal and Migration Review Tribunal hearings may be inaccurate or distorted and even foundation documents such as the rights and responsibilities agreement provided on arrival misinterpreted.

The failures in process, protocols and policy set out in this document show that the way provision of translating and interpreting services is currently handled can result in significant costs in human/social terms across the health, legal, government and immigration settings.

What becomes clear is that the quality of translating and interpreting services is not only an issue of access and equity - but one of risk. This paper reveals an extraordinary level of unmanaged risk and exposure to serious litigation across multiple settings when the system fails - the evidence confirms that there is a clear and urgent need for change.



Chris Walton
APESMA CEO

What happens when a translator or interpreter should be engaged and isn't, or when the person providing the translating or interpreting service doesn't have the experience or the level of training needed?

INTRODUCTION

We know that the work of translators and interpreters is widely misunderstood and often undervalued.

They perform a vital service for the community and contribute their expert skills in a diverse range of settings. They are a means to providing access and equity for those who face language barriers to full participation in the community and they play a vital role in maximising the social and economic benefits of Australia's cultural diversity.

But what happens when a translator or interpreter should be engaged and isn't, or when the person providing the translating or interpreting service doesn't have the experience or the level of training needed? What happens when those in institutional settings don't understand the role of the translator or interpreter? How do we evaluate and quantify costs, gain a proper appreciation of the nature and extent of consequences, and manage the risk attached to system failures when they occur?

This paper considers these questions and details some examples of consequences when failures occur in the medical/health setting, the court/legal setting, the government services setting and the immigration setting.



MEDICAL/HEALTH SETTING

Translators and interpreters provide a vital means of communication between patients, their families and their medical practitioners.

Making sure you have the best possible services in place is vital in ensuring that what is being provided by way of treatment is what is needed in the patient's circumstances. Lack of communication or miscommunication can have catastrophic consequences.

As set out by Vanstone in the Foundation House report, in the medical and health contexts, failure to engage qualified experienced interpreters can lead to:

- > reduced quality of care;
- > reduced client safety and compromised patient care;
- > reduced/compromised access to health care;
- > stress and trauma for patients and families;
- > lack of patient comprehension of medical procedures and failure to obtain informed consent; and
- > unnecessary health expenditure.⁴

There are also serious consequences when breaches of professional ethics occur and/or where health professionals are unaware of the requirements and parameters of the translator/interpreter's role.

Reduced quality of care

Some examples of reduced quality of care include misdiagnosis, errors and misunderstandings about treatment plans, failure to provide oral interpretation or written translations of important documents, delayed or misunderstood reporting of symptoms – each of which have potentially dire consequences.

When I had a caesarean I did not have an interpreter. I was by myself in the room with the doctor and nurses. I would have liked one there, especially to explain all the anaesthetic things and what was going to happen, actually for many things.

Nicolaou, M. (2011) The pregnancy and birth experience of women from refugee backgrounds living in the Outer East of Melbourne, EACH Social and Community Health, p.12 in Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.18

Failure to engage a qualified interpreter was considered by HREOC to be a contributing factor to the involuntary commitment of a Bosnian refugee with an intellectual disability who was misdiagnosed as having PTSD (post-traumatic stress disorder)

HREOC, (2005) Not for service: experiences of injustice and despair in mental health care in Australia, p.262 in Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.19

A client of a refugee background was admitted to [a] Melbourne hospital via the Emergency Department with breathing difficulties and was isolated with suspected TB. Hospital staff and visitors wore full gown and mask. The hospital did not have an interpreter on staff that spoke Kirundi, Swahili or Congolese. Ward staff decided not to use an interpreter as the woman's children (aged 13 and 15) spoke good English. A social worker visited the client two days later and arranged a phone interpreter where it was discovered that the client was frightened that she was dying of AIDS as she had seen a lot of this in Africa.

Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.23

I was asked to interpret over the phone when the doctor was getting consent for a procedure.

[Translator, 2012]

I was left alone to complete forms with patients and to sight-translate documents for them.

[Translator, 2012]

The Kimberley Interpreting Services (KIS) states that 'Low levels of communication between health professionals and their patients lead to inadequate diagnosis and poor treatment.'

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.13

Reduced client safety and compromised patient care

Some of the specific consequences include medication errors such as when to take medicine and the correct dosage, and failure to understand instructions including those of GPs, medical specialists explaining procedures and hospital staff explaining discharge instructions.

A 35-year-old woman who was an Afghan refugee who spoke very little English presented with pain and swelling in her left leg. Her 15-year-old daughter spoke on behalf of her mother. The GP explained he thought the patient may have a deep vein thrombosis and needed to either go immediately to the local hospital for investigation or to the local radiology clinic for a test to determine if a clot was present, providing the daughter with a referral and letter. The patient and her daughter had gone home and waited for the arrival of other family members who were able to read English to explain the content of the GP's letters to them. Unfortunately the patient died two days after the consultation after collapsing at home before those with English skills were able to explain the letters.

Bird, Sara.(2010) Failure to Use an Interpreter. Australian Family Physician, Vol. 39, No. 4, Apr 2010: 241-242.

A client told of waiting in a GP clinic for 4 hours, as the clinic had a policy of not engaging interpreters. When another community member arrived for their own appointment and offered to help the participant with translation, the assistance was gladly accepted. Unfortunately, the community member incorrectly interpreted that the medication being prescribed is in order to help the client put on weight. The client refuses to take the medication as a result of this misinformation. A subsequent visit to her GP with the use of an interpreter revealed that the medical was actually to reduce cholesterol.

EACH (2011) Refugee Health Nurse Program Evaluation Project 2011, p. 22

An interpreter I know turned up at a hospital and was asked to sight-translate a 22 page document for the patient in a clinical trial and then sign it with the patient.

[Translator, 2012]

Several health service providers stated that communication difficulties made it difficult to make Indigenous patients comprehend the importance of medication, the need for medication to be taken regularly and the correct dosage to be taken. [A health administrator] in Broome recounted overhearing a conversation between two nurses at the Broome hospital just prior to discharging an Indigenous patient who did not speak English. She said that having wondered what to do with the prescribed medication, the nurses decided to just put it in his bag because they felt "he wouldn't take it in any case".

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.15

Reduced/compromised access to health care

Specific consequences include failure to obtain necessary information from patient, to communicate instructions to ensure the accuracy of the test and to communicate the results of tests back to the patient.

I went to have some blood tests. The person doing the test was asking me questions but I couldn't understand anything. There was no interpreter. I couldn't ask for one because I don't speak any English. Some days later they called me on the mobile. He was talking in English. I tried to get someone off the street to listen and translate but the doctor just kept talking, talking and then hung up the phone. I don't know how to get the results of my tests

Brough, C. (2006) Language Services in Victoria's Health System: Perspectives of Culturally and Linguistically Diverse Consumers, CEH. p.14 cited in Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.18

Stress and trauma for patients and families

The consequences of using minors and/or family members as interpreters are potentially dire with significant impacts on quality of care.

I was very embarrassed to be talking about my pregnancy with my son and I could see that he was not very happy or comfortable himself.

Australian Human Rights Commission (2010), In our own words African Australians: A review of human rights and social inclusion issues, p. 18 cited in Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.23

If I wanted to go to the doctor, my daughter has to cancel her day from school and then take me.

Hunderson, S. and Kendall, E. (2011), Culturally and linguistically diverse peoples' knowledge of accessibility and utilisation of health services: exploring the need for improvement in health service delivery, Australian Journal of Primary Health, Vol. 17, p.197- cited in Foundation House, (2012) Exploring Barriers and Facilitators to the Use of Qualified Interpreters in Health, p.23

I went to the Monash Medical Centre and was told to go home by the doctor because the family is interpreting for the patient and he didn't need me.

[Translator, 2012]

When telephone interpreting is offered to doctors in hospitals (particularly for late afternoon and emergency department appointments), many doctors refuse as they consider it sub-optimal care. Unfortunately, this then puts the patient in the position of having to use a bilingual relative instead, or reschedule the appointment. The latter rarely happens.

[Interpreter, 2013]

Lack of patient comprehension of medical procedures and failure to obtain informed consent

Failure to use an interpreter can lead to significant anguish and trauma when a patient does not understand the procedure or surgery which is to be, or has been, performed. There are potential legal implications where patients experience the types of compromised health care set out in the examples below for the health practitioners, surgeons and hospitals who perform procedures and surgery without obtaining informed medical consent.

An interpreter was called to attend a pre-admission interview for tympanoplasty surgery. During the interview it emerged that a bilingual relative had been the interpreter for the consent, and it became clear that the patient had not understood the nature of the operation and was having a panic attack. The relative could not understand why the patient was worried about the operation since it would improve the patient's hearing and quality of life. Asked what was the matter, the patient explained that for three months since the consent there had been moments of panic and sadness and sleeplessness, and even thoughts of self-harm, because of knowing the ear was going to be removed and a patch of skin put in its place. The interpreter and medical staff were able to reassure the patient that this was not the case, and that it was only the hole in the eardrum which was being fixed using a skin graft. Nevertheless it took a long time to calm the patient down. Who can compensate for three months of unnecessary anguish?

[Interpreter, 2013]

[A health worker] stated that a significant number of Aboriginal patients did not understand interactions with health professionals, adding that she had come across cases of Indigenous post-surgery patients who were not aware of the nature of the surgical procedure they had undergone.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.14

Multiple participants spoke of an incident in a local hospital where a refugee client was awaiting surgery to remove a pin from inside one of their limbs. The interpreter provided was of a different dialect, and incorrectly interpreted that the surgeon needed to remove the limb. The patient was prepped and about to be given anaesthetic. Faced with a sudden and unnecessary amputation, the patient became extremely distressed. It was not until another concerned passer-by investigated further that the dialect mismatch was discovered. An interpreter from the correct dialect was then engaged and the situation which had caused this patient such unnecessary distress was resolved.

EACH (2011) Refugee Health Nurse Program Evaluation Project 2011, p. 23

A dental hospital had adopted a policy that interpreters must be used when working with patients who didn't speak English, but when a problem with high interpreting budget costs in their student clinic arose, they "solved" the problem by issuing a directive that interpreters were only to stay for one hour and that it was the responsibility of the interpreter to leave when the hour was up. The student would generally perform a variety of tests to diagnose the problem and develop a treatment plan. Problems arose when the interpreter would be required to leave prior to the explanation of the proposed treatment plan following the tests and diagnosis. On one occasion, a patient who spoke and understood very little English was distressed about the interpreter having to leave prior to the student's diagnosis and explanation of the treatment plan. In desperation he offered to pay the interpreter himself. In this case, because the interpreter pointed out how critical it was that they remain on site for the explanation of the treatment plan, the Clinic agreed to pay for the additional time but the incident clearly shows patients are being denied essential information about their dental health.

[Interpreter, 2013]

Reports of several cases of patients giving consent to surgery at doctors' private practices without an interpreter, or even sent to the hospital without a correctly completed consent form with nurses, anaesthetists and interpreters on the day of the operation left to bear the brunt of the patients upset, or even rage, at not knowing exactly the nature of the operation. In one case, the patient refused to consent to the operation and asked to leave.

[Interpreter, 2013]

Unnecessary health expenditure

Unnecessary health expenditure as set out in the Foundation House report include:

- > Higher attendance rates at clinics;
- > Increased diagnostic investigations;
- > Higher hospital admission rates;
- > Increased length of stay in hospital and emergency departments;
- > Decreased likelihood that clients will seek early treatment at the onset of cardiovascular disease;
- > More frequent intravenous hydration;
- > Higher emergency department return rates; and
- > Higher rates of failure to attend appointment rates (client does not know about the appointment).⁵

The Ethnic Communities' Council of Victoria's "An Investment Not an Expense"⁶ paper talks about health literacy defined as "the degree to which individuals have the capacity to obtain, process and understand basic health information and services needed to make appropriate health decisions"⁷. They suggest that there are strong correlations between low health literacy and higher rates of hospitalisation, and that increasing health literacy is likely to reduce health costs through the prevention of illness and chronic disease.⁸ "Non-English speaking patients", they suggest, "are found to spend more time in hospital, be more likely to suffer adverse clinical reactions and have higher readmission and diagnostic testing rates."⁹ The paper goes on to cite an example where increased investment in language services resulted in larger cost savings elsewhere:

Northern Health found that, by increasing interpreter requests (from 17,000 in the 2007-8 financial year to almost 40,000 in the 2010-11 financial year), increasing in-house staff, providing transcultural training sessions and translated documents, they were able to reduce the length of stay (LOS) for CALD patients by almost three days. Northern Health is now able to see more patients every year than was previously possible, because patients spend less time in hospital; hence the unit cost per patient staying in hospital has dropped dramatically, while at the same time patient health has improved.

Ethnic Communities' Council of Victoria (2012), pp.20-21

From Diversit-e issue 2, 2010, a diversity health e-magazine

The cost of providing interpreter services for patients who do not speak English well is often seen as prohibitive. In reality the costs of failing to address language barriers in health care settings is greater. Inability to communicate effectively with patients from non-English speaking communities can compromise patient care and influence the capacity to obtain informed consent, ensure medication compliance and provide appropriate emergency treatment.

Research indicates that providing health care interpreters to non-English speaking patients can actually reduce costs. Using professional interpreters in hospital settings can shorten the time patients from non-English speaking backgrounds spend in emergency departments. Employing interpreters can also reduce follow up visits and ensure compliance with out-patient visit schedules and drug regimes. Patients are generally more satisfied with their hospital experience when a professional interpreter is provided.

... the use of professional interpreters can reduce communication and medical errors; increase patient comprehension; improve clinical outcomes; increase patient satisfaction and contribute to improved access to services.

Source: Diversit-e issue 2, 2010, a diversity health e-magazine

Breaches of professional ethics and/or health professionals being unaware of the parameters of the translator/interpreter's role

There are also serious failures in the system when medical and allied health professionals are not aware of the relevant guidelines and code of ethics which apply and interpreters are asked to act in a manner inconsistent with them.

.....

In a Victorian public hospital, the doctor explained to the patient the risks of laparoscopy. It was the first time the female patient had heard of the procedure and she asked the interpreter directly what she should do. The interpreter replied that she couldn't give any advice and then told the doctor what their brief exchange was about (which is what interpreters are meant to do i.e. report all exchanges that may occur during an interpreting session). The doctor replied "What do you mean you can't give her advice? Surely you have an opinion about it? There's nothing wrong with telling her what you think." Throughout the rest of the consultation the doctor tried to get the interpreter to convince the patient she should have a laparoscopy.

[Interpreter, 2013]

.....

At the end of a medical appointment with an Italian patient (who was perfectly courteous and as helpful as he could be, but obviously had little or no English language skills), the doctor was writing up his notes and muttered to me that "you might as well be working with animals". I was so stunned all I could say was "I beg your pardon?" but I told the agency employing me about the incident and said I would not work again with that doctor and that I thought he should be reported. He wasn't of course, and for all I know he might still be treating patients with the same brutish ignorance, much as I hope not.

[Interpreter, 2013]

.....

The doctor said to the client: "How long have you been living in Australia?" She said that she'd been here 15 years, to which the doctor replies: "I don't think you need an interpreter. Your English seems perfect to me". He nevertheless allows the interpreter to do her work.

[Interpreter, 2013]

.....

Halfway through the appointment the patient is asked to go to another room and change. The interpreter is asked to go with her to "help her get undressed and stay there in case she needs any help".

[Interpreter, 2013]

These examples of failures in process, protocols and policy show that the ways translating and interpreting is currently handled pose serious threats to life, health, safety and/or well-being.

Australians are rightly proud of their universal health care system. Everyone, regardless of who they are, should be able to access medical help, where and when they need it – and that includes those who require interpreters. The evidence outlined herein serves to underline the urgent need for intervention/action to ensure equitable health outcomes and mitigation of risk through high-quality, reliable and easily accessed translating and interpreting services.

I went to have some blood tests. The person doing the test was asking me questions but I couldn't understand anything. There was no interpreter. I couldn't ask for one because I don't speak any English.



LEGAL/COURT SETTING

Our justice system relies on the accurate transmission of facts and their accurate recording. A fair system is one in which our legal system is transparent and understandable to all participants.

But what happens when parties to proceedings can't understand – or are informed incorrectly about – the matters under consideration? The legal system is complex and governed by rules, proceedings and terminology which are specialised and difficult to understand, even for many with English as a first language. Justice can only be served when interpreting services of a high-standard are available when people require them.

As set out by Hale¹⁰ in her survey of Australian courts and tribunals, in the legal and court contexts, failure to engage qualified experienced and adequately trained interpreters can have wide-ranging implications.

Documented consequences include:

- > flawed interpreting processes or failure to engage an accredited interpreter leading to aborted trials, criminal convictions being overturned and serious charges unable to be pursued;
- > lack of access to impartial and informed advice with the inappropriate use of family and community members and other non-disinterested parties for translating and interpreters in specialised field;
- > waste in the form of unnecessary expenditure on appeals and re-running aborted trials;
- > compromised access to right to legal process, representation and documentation in own language leading to wrongful convictions, inappropriate or incorrect charges being laid, mitigating circumstances not being taken account of, lack of comprehension of bail conditions, sentencing, charges and court proceedings generally; and
- > in the case of domestic violence and sexual assault, serious consequences including stress and trauma for victim and relatives including children asked to interpret for them, inappropriate intervention or advice, failure to provide access to legal rights including protection, conflicts of interest and breaches of confidentiality.

Flawed and unjust legal proceedings

Consequences of the failure to provide appropriate interpreting services include aborted trials in serious cases such as alleged murder, sex offences and drug dealing, as well as criminal convictions being overturned and serious charges unable to be pursued.

There was a case in the Northern Territory involving an Aboriginal who was deaf, and he was charged with murder - the Ebatarinja case. In that case they couldn't find a suitable interpreter with the necessary qualifications, so the accused was unable to understand the charges. In spite of this, they had a preliminary hearing, and the legislation covering that preliminary hearing required it to be conducted in the presence or hearing of the defendant, and then the defendant, having heard that evidence, has a right of reply. The High Court said that preliminary hearing was a nullity, because the defendant was not present for all intents and purposes. They had to go back to stage one of the trial process and have another preliminary or committal hearing.

Reported in the ABC Law Report - 22.5.2007 - <http://www.abc.net.au/radionational/programs/lawreport/interpreters-in-the-courtroom/3250562> (Ebatarinja vs. Deland (1998) 194 CLR 44)

The effect of the decision was that the murder charge was permanently stayed.

Equal Opportunity Commission Western Australia (2010), Indigenous interpreting service: is there a need?, p.16

Stepan Kerkyasharian is chair of the New South Wales Community Relations Commission. One of the commission's jobs is to run the interpreter services used by New South Wales courts. He takes the commission's role very seriously, because he says there was a case some time ago where a convicted drug dealer was effectively let off the hook and his conviction overturned because of flaws in interpreting.

Reported in the ABC Law Report - 22.5.2007 - <http://www.abc.net.au/radionational/programs/lawreport/interpreters-in-the-courtroom/3250562>

In Kalgoorlie recently the District Court was forced to abort a case because of the unavailability of an adequate interpreter for the accused. The accused was charged with serious sexual offences.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p.17

Lack of access to impartial and informed advice with the inappropriate use of family and community members

The consequences of the inappropriate use of family and community members is a fundamental lack of access to impartial and informed advice or representation as shown in the examples below.

The following appeared in a local newspaper in Ryde, NSW - Gladesville police are seeking volunteers who speak fluent English and another language to develop a register of local residents willing to assist in dealing with victims of crime. Police often deal with people who do not speak English and need to exchange information in a prompt manner. Once established, police may call upon a volunteer on the register by phone to help in translating information to victims of crime. All languages are sought after, however translators in immediate need include Korean, Mandarin and Cantonese speakers. Call the Gladesville Police on [number withheld] for further information.

Children as young as 10 used as interpreters in Family Court counselling

Family Court Chief Justice Alastair Nicholson said ... that the court faced a considerable shortage of qualified interpreters. A senior Family Court staff member said children as young as 10 had interpreted for parents in counselling sessions concerning issues such as child custody. Justice Nicholson said interpreters were usually available for court hearings but not always for counselling. So children and other family members filled in. "What in fact ends up happening is sometimes children are involved as interpreters, or other family members, and that's not satisfactory," he said. Justice Nicholson said people were being forced to discuss intimate details in front of their children and other relatives. "What we find is unsatisfactory is there is insufficient government funding, particularly Federal Government money." A spokeswoman for Commonwealth Attorney-General Daryl Williams said last night that providing interpreting services was a matter for the court.

Fergus Shiel, Law Reporter, date: 30/04/2003, Publication: The Age, p.3

I was talking to a Chinese lawyer the other day in [the Magistrates] court. He told me that he has always translated all his clients' Chinese documents although he is not an accredited translator. He would then ask his clients to sign a document stating they were accurate translations of the original. Bi-lingual lawyers who are not accredited interpreters interpret for their clients in courts and magistrates allow this to happen.

[Interpreter, 2012]

In the Supreme Court a judge tells the defence lawyer: 'Your client doesn't need a professional Interpreter - he can get a friend or a family member to help him next time'.

[Interpreter, 2012]

Waste in the form of unnecessary expenditure on appeals and re-running aborted trials

Translation disparity leads to aborted trial

A dispute about the alleged mistranslation of the Indonesian word for push has cost taxpayers tens of thousands of dollars after it caused a criminal trial to be aborted. The suspected mistake occurred as an accused Indonesian people smuggler gave evidence in the New South Wales District Court last month.

The matter was raised by an Indonesian speaking juror in a note to the judge alerting him to some discrepancies in the translation of the questions put to the accused. The problem, which retired District Court judge David Freeman said he had not encountered in 31 years on the bench, led to the discharge of the jury on the 10th day of the trial, which will have to be held again next year.

In a second note, the juror gave two examples: in one the words 'did you stop anyone moving' were allegedly translated as 'did you push anyone' and in the other the interpreter allegedly translated the word 'deny' as 'push'.

The head of the school of language and linguistics at the University of NSW, associate Professor Ludmila Stern, said some interpreters were not very good and their work should be assessed by independent experts or other interpreters.

In this case, lawyers debated for several hours if the trial should be aborted, or the accused be asked to give his evidence again with the help of another interpreter. Ironically, the interpreter criticised by the juror was used only after the accused's lawyer had criticised an earlier interpreter.

The problem was exacerbated because the juror had told the other jurors about the observations.

Judge Freeman said he could not question the juror to determine what the impact on the jury might have been because 'I must not intrude into the jury room. I can't ask you questions about what you are thinking or why you are thinking it because that would be entirely improper. Eventually, he agreed that the trial had to be aborted.'

Geesche Jacobsen, date: 8/11/2011, Publication: The Age

Also reported in ABC Law Report - 6.12.2011 - <http://www.abc.net.au/radionational/programs/lawreport/courtroom-interpreters/3713316>

In this particular trial, the charge was sexual harassment. The court interpreter used the word rape for sexual harassment, believing that, culturally speaking, they were dealing now with rape - the cultural interpretation got in the way of the semantics. In this case, the defence was alerted to the situation by an instructing solicitor who spoke Arabic and who drew their attention to the fact that the interpreter chose the word 'rape' whereas the interpreter should have used the word 'sexual harassment' and the defence actually spoke to the judge and they had to abort the case because of the confusion between the words sexual harassment and rape.

Reported in ABC Law Report - 6.12.2011 - <http://www.abc.net.au/radionational/programs/lawreport/courtroom-interpreters/3713316>

A 2010 research project found a total of 119 appellate cases in which the standard of interpreting was cited as one of the grounds for appeal. This figure did not include cases where no interpreter was booked for the hearing, trial or interrogation when the person involved needed one, where an interpreter in the wrong language or dialect was booked or where the record of interview was conducted through bilingual police officers, family members or other ad hoc interpreters. The data was largely made up of criminal appeals and appeals against Refugee Review Tribunal decisions.

Hayes, A. & Hale, S. (2010). Appeals on incompetent interpreting. Journal of Judicial Administration 20, pp. 119-130

... the availability and utilisation of interpreters in the provision of services to Indigenous people will lead to efficiency in service provision by minimising duplication and wastage. For example, magistrates have stated that they have been required to postpone court cases due to a suitable interpreter not being available.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p. 4

Compromised access to right to legal process, representation and documentation in own language

The consequences include wrongful convictions, inappropriate or incorrect charges being laid, mitigating circumstances not being taken account of, and a lack of comprehension of bail conditions, sentencing, charges and court proceedings generally.

There was a case in 1998 - Gradige and Grace Brothers. The case which began in the Compensation Court and then went to the New South Wales Court of Appeal involved a deaf worker who was using an Auslan or sign interpreter. She was in the witness box giving her evidence, and then legal argument began about some question that was asked or some answer that she gave. So the legal argument commenced, but the interpreter kept signing, and the employer's counsel essentially told him to stop, the worker's counsel said 'Yes, that's fair enough, he should stop,' and indeed the judge then directed the interpreter to stop.

.....

The interpreter refused saying essentially, 'It's my job to interpret everything taking place in this court, and I have to make this person linguistically present.' In the Compensation Court the judge refused to take it any further, the case went on appeal, then the Court of Appeal said, 'The interpreter was right. That was an essential requirement' - that the defendant has to be present. A witness or a defendant is not only entitled to have their words accurately interpreted back to the court, they're also entitled to know everything that is going on in the court, to be present.

Reported in the ABC Law Report - 22.5.2007 - <http://www.abc.net.au/radionational/programs/lawreport/interpreters-in-the-courtroom/3250562>

.....

Magistrates in the Pilbara and the Goldfields stated that in their view there are injustices happening everyday because Aboriginal people do not understand court proceedings including sentences and the consequences of breaching sentences/court orders such as community orders, bail undertakings and suspended prison sentences.

Equal Opportunity Commission Western Australia (2010), Indigenous Interpreting Service: is there a need?, p. 4

.....

I once did a job [in the Family Court] involving an Indonesian woman who was having a dispute with her ex-husband over visitation rights with their child. I had done several jobs previously involving this woman, with sympathetic agencies who took the time to see that everything was interpreted fully. However, when I did the job at the Family Court, the whole thing was so rushed that I had grave concerns, which I expressed to the judge, as to the client's opportunity to have the proceedings fully interpreted and to understand what was happening. The judge rambled on and on and did not allow sufficient opportunity for her ramblings to be interpreted, although she did allow the husband to dominate the proceedings. I decided then that I would no longer be a party to such flawed and unjust proceedings. I no longer take jobs at the Family Court.

[Interpreter, 2012]

.....

... language difficulties usually denied Aboriginal defendants the benefits of pre-sentence reports which are powerful tools and in some instances can mean the difference between a term of imprisonment or not. The magistrate stated that 'Given the importance of this document and its power as a sentencing tool it is an injustice that negative judgements are formed by the court officers and sometimes by the judicial officer when an accused cannot fully participate in the process or is being misunderstood due to language barriers'.

Equal Opportunity Commission Western Australia (2010) Indigenous Interpreting Service: is there a need?, p.18

.....

Mrs F, an elderly non-English speaking women, took out a mortgage on the home in which she lived in order to loan money to a family member. Failure of this family member to repay the loan meant that Mrs F, who had no income apart from her pension, could not repay the mortgage and entered into default in the mortgage on the home. A victim of financial elder abuse, Mrs F came to PILCH without the resources to afford a lawyer and in danger of losing her home. With the help of her son who did speak English, she obtained PILCH's assistance and was referred to a barrister and a law firm that agreed to provide pro bono representation in a civil claim against the family member who incurred the loan. There was specific urgency to the situation as Mrs F was in ill health.

In order to bring a claim for repayment of the loan so that Mrs F would not default on her mortgage, Mrs F's pro bono solicitors had to draft an Affidavit. Mrs F could not do this without the assistance of an interpreter. While PILCH as a CLC had access to a limited amount of funding for interpreting services, these were not sufficient to meet all of Mrs F's requirements for an interpreter at this stage of proceedings. Due to the complexity of the matter and the need to obtain instructions and a detailed account of the matter from Mrs F, more than one session between Mrs F and her pro bono lawyers was necessary. An interpreter was required for each session.

When the case went to mediation, Mrs F required the further use of an interpreter present with the pro bono barrister and solicitor. The amount of time required was for the entire duration of a court day on two separate occasions. PILCH did not have access to any interpreter fund to cover this amount and neither Mrs F nor her son could afford to pay the cost for this. The referred lawyers who were acting on Mrs F's behalf were doing so for free and had already incurred costs on behalf of their client. Therefore, PILCH was forced to carry these expenses to ensure that Mrs F could understand and participate in the mediation. These expenses were significant and impossible to budget for as the amount of time required for an interpreter in each case cannot be predicted.

Mrs F's matter was settled at mediation. Without the support of PILCH and her pro-bono lawyers, Mrs F would have had no recourse to participate in this process – indeed could not have brought her case and might have lost her home.

Law Institute of Victoria Interpreting Fund Scoping Project Final Report¹¹

Magistrates have stated that they have been required to postpone court cases due to a suitable interpreter not being available

During a injury compensation claim interview it emerged that non-English speakers were interviewed almost a year after a traffic incident by the police during a home visit (without an interpreter) during which they were asked to present at the police station for an interview to clarify what occurred at the time of the incident. No interpreter was provided at the police station, so the clients attended with a bilingual relative as interpreter. The driver of the vehicle, an elderly person with limited English, was fined for dangerous driving (remember this was almost a year after the original incident). A few weeks later the client received a claim for injury compensation. A more recent interview with the interpreter (and without the relative present) revealed that the actions of the driver at the time were due to circumstances which were not made clear in the original police interview, which – had they been known - would have resulted in a lesser charge. Also, since no-one was injured or reported being injured (neither police nor ambulance were called to the scene) at the time, the client did not understand why it had taken a year to get a fine and, on top of that, get a claim for injury compensation.

[Interpreter, 2013]

Serious consequences for victims of domestic violence and sexual assault

Consequences including stress and trauma for victims and relatives including children asked to interpret for them, inappropriate intervention or advice, failure to provide access to legal rights including protection, conflicts of interest, lack of cultural sensitivity, inappropriate culturally-based intervention and breaches of confidentiality.

The Centre receives complaints by migrant women that interpreters are 'aggressive', 'distort their words', and cause them distress by asking them to repeat embarrassing or personal details in police interviews

[Multicultural Centre Against Family Violence (2010). *I lived in fear because I knew nothing: barriers to the justice system faced by CALD women experiencing family violence* Melbourne: InTouch Inc., p.21].

An interpreter 'told the woman's husband the address of the women's shelter - she thought the woman was lying and therefore her husband needed to know'

[Community Health Action Group (2004). *Lost in translation: A discussion paper on interpreting issues in health care settings in Queensland*. Queensland, p. 25].

An interpreter 'tried to convince the woman to reconcile with her husband', or interpreters 'criticised women for taking legal action'

[Hunter, R. (2006). *Narratives of domestic violence*, Sydney Law Review, Vol. 28. p.747].

There is an example of an interpreter in Queensland who would not use the words 'penis' or 'vagina' in a sexual assault proceeding.

[Ozolins, Uldis. "Social Workers, the Law and Interpreters." In the Shadow of the Law: The Legal Context of Social Work Practice. Eds. Philip Swain and Simon Rice. 3rd ed. Sydney: The Federation Press, 2009, pp.20-35].

There is evidence of a female interpreter who interrupted a therapeutic counselling session to advise a client that, according to the Koran, women must obey their husbands' sexual demands.

[Allimant, A., Martinez, B., Wong, E. (2006). *Changes and challenges in the therapeutic relationship when using an interpreter*, Lighting the Path: Reflections on Counselling, Young Women and Sexual Assault, Brisbane: Zig Zag Young Women's Resource centre, pp.151-65].

There are instances of children having to interpret for their mothers and having to listen and interpret about violence and sexual assault encounters. Also, there is evidence of women not disclosing these events to protect their children from listening to them.

[Interpreter, 2013]

I have had direct experience of perpetrators interpreting for the victim/survivor, and interpreters interpreting for both victim/survivor and perpetrator. I was booked for a "mediation meeting" where family violence was discussed. My non-English-speaking client was the male. When I got there I was told I would interpret for both parts (male and female) if necessary. The woman was distressed at first not knowing why her ex partner had an interpreter booked. She believed she was at a disadvantage (I had the impression she thought I would be "on his side") and therefore feared of the possible outcome of this meeting.

[Interpreter, 2013]

Priding itself on being a civil society, Australia has over many years worked to ensure that even the most disadvantaged in society can have access to relevant services. We work to ensure that in a legal setting everyone is provided with representation should they need it. How can we ensure those levels of representation are adequate if there are inadequate translating and interpreting services? How do we ensure that members of the community are not treated unfairly simply because they couldn't be understood, or they didn't understand?

These examples of failures in process, protocols and policy show that the way translating and interpreting in the courts and other legal settings is currently handled poses serious threats to access to justice. It is resulting in extraordinary levels of stress and trauma, waste of taxpayer dollars and an additional burden placed on the system – they serve to underline the urgent need for intervention/action to guarantee the integrity of the legal and court system, to reduce the instances where the system fails, and to manage risk where failures occur.



GOVERNMENT SERVICES SETTING (INCLUDING HUMAN SERVICES)

Great amounts of time, effort and resources are expended each year to ensure that Australians are aware of – and are appropriately accessing – the resources provided by government to ensure our society retains its fairness and commitment to the principles of access and equity. However, the system can be complex and difficult to navigate - even more so for those facing the challenge of language barriers.

Failure to engage qualified experienced interpreters in the context of the delivery of government and human services at the Federal level (including Centrelink) can lead to:

- > financial hardship;
- > failure to receive and provide accurate information;
- > breaches of duty of care with use of non-credentialed interpreters; and
- > compromised access to, or understanding of, government support programs.

Financial hardship

A woman and her husband had separated and, while they shared the care of their child, the husband received the Centrelink benefits for the child. The mother said that she signed some documents at Centrelink giving the father the right to receive the Centrelink payments instead of her but she said she didn't know English and didn't understand what she was signing. A later attempt by her to get this step reversed has not been successful as Centrelink asserted that she has signed a document authorising the payments to go to the father of the child. While it is not known whether an interpreter was requested or suggested by Centrelink, it is clear that had the woman had access to an interpreter in this situation, she would have been clearer about her rights and exactly what she was signing.

[Interpreter, 2012]

Failure to receive and provide accurate information

An Indigenous woman with limited English language skills from a remote community complained that Centrelink had raised a debt against her for reasons she did not understand. It was established that, at the start of the debt period, the woman had told Centrelink she was about to start work. Centrelink had confirmed this with her employer. The complainant started work and subsequently completed several forms (in English) in which she incorrectly reported to Centrelink that she had not worked. Her third form contained inconsistent information which caused Centrelink to contact her to clarify her earnings. A debt was then raised. A Centrelink officer discussed the debt with the woman and determined that she had not understood her obligations. An interpreter had not been used during any of Centrelink's communication.

Commonwealth Ombudsman's Report on Indigenous Language Interpreters and Government Communication, p.11

An Australian Government entity hosting a party of international VIPs had organised for them to meet representatives of an Aboriginal community during their visit in Australia. The Aboriginal spokesperson had prepared a two-page briefing which was translated by an overseas-based translator who was not familiar with the issues and not a native speaker of the target language. The translation was not reviewed by a local translator. The result was serious distortion of meaning throughout the document, depicting the Aboriginal spokesperson's views as much more critical than intended in the source document. Unaware of the poor quality of the translation, the VIPs took it at face value and were incensed by the distorted views it contained, which led to extreme confusion and misunderstanding during the meeting with the Aboriginal community.

[Interpreter, 2012]

A language service provider had sponsored the provision of conference interpreting services during a major conference involving presentations by government ministers from overseas countries. Unable to secure the services of experienced conference interpreters, the language service provider relied on a para-professional interpreter who was clearly out of their depth. Eventually, the interpreter simply failed to attend, leaving the presenters and the language service provider without access to conference interpreting services. The credibility of the Language Service Provider and the Conference were seriously compromised.

[Interpreter, 2012]

Breaches of duty of care with the use of non-credentialed interpreters

A member of the public attended a local police station [operated by the Australian Federal Police (AFP)] and requested the assistance of an interpreter. Instead of arranging for an interpreter to be provided, the police officer told the person to come back with someone who could interpret for them. When the Ombudsman identified this failure and raised it with the AFP, steps were taken to remind staff of their responsibility to provide fair access to an interpreter. The AFP did not apologise to the person concerned.

Commonwealth Ombudsman's Report on the Use of interpreters, Report No. 3, 2009, p.12

Compromised access to, or understanding of, government programs

A resident of a remote Indigenous community complained that NT departmental staff and building contractors had not used interpreters when they met with residents to discuss Strategic Indigenous Housing and Infrastructure Program (SIHIP) plans in that community. Consequently some residents did not understand the nature of the work that was planned, where they would move to while work was being done and whether they would be re-allocated the same house. [The Commonwealth Ombudsman] raised this with FaHCSIA because it administers the statutory lease over this community and jointly administers SIHIP. In response FaHCSIA organised a meeting attended by an Indigenous language interpreter, at which the SIHIP program and other housing-related matters were explained to the community. This was followed by a second meeting. The complainant subsequently confirmed that the community felt they now understood how SIHIP would operate in that community.

Commonwealth Ombudsman's Report on Indigenous Language Interpreters and Government Communication, p.15

.....

A member of a remote Indigenous community complained in 2009 that residents had been asked to sign tenancy agreements for their public houses, but the agreements had not been explained to them before they were signed and interpreters had not been used. The community did not understand the purpose and effect of the documents.

Commonwealth Ombudsman's Report on Indigenous Language Interpreters and Government Communication, p.3

Our welfare system is there to help the most vulnerable in our society and to support those in need. Services are bound to be compromised if members of the community accessing the services can't be understood or effectively delivered to every segment of society, especially those who face language barriers.

These examples of failures in process, protocols and policy show not only that there are significant opportunities to improve the way translating and interpreting is handled in the delivery of human services as the foundation of our safety net, but also the urgent need to meet duty of care obligations through the use of high-quality, reliable and easily accessed translating and interpreting services.

A member of a remote Indigenous community complained that residents had been asked to sign tenancy agreements, but the agreements had not been explained to them before they were signed and interpreters had not been used.



IMMIGRATION SETTING

Great care must be taken to ensure that there is transparency in our immigration processes and that the system is functioning fairly and efficiently. Because decisions made in this setting can so profoundly impact an individual's circumstances, the processes must be fair, equitable and understood by all.

Failure to engage qualified experienced interpreters in the context of the delivery of immigration services can lead to:

- > legitimate refugees being wrongly refused protection visas;
- > irregular maritime arrivals being wrongly granted protection visas;
- > serious breaches of the professional code of ethics;
- > compromised access to other appropriate visas;
- > failure to receive a fair hearing before a tribunal;
- > visas wrongly cancelled;
- > administrative inefficiency and double-handling;
- > lack of access to procedural fairness and compliance with duty of care obligations;
- > stress on family members and others when asked to interpret;
- > waste arising from errors in allocating credentialed interpreters;
- > use of non-credentialed individuals to undertake interpreting function; and
- > compromised access to, or understanding of, rights on arrival.

Legitimate refugees may be wrongly refused protection visas

There are examples in the hundreds of bilingual individuals rather than NAATI-accredited interpreters being used at the initial processing, entry interview, migration agreement Immigration Advice and Application Assistance Scheme (IAAAS) interview and protection visa interview stages. This creates major questions about professional standards and quality of interpreting and about the fairness and legitimacy of the processes used when dealing with irregular maritime arrivals.

[Interpreter, 2013]

Irregular maritime arrivals may be wrongly granted protection visas

There are examples of non-NAATI-accredited interpreters inaccurately recording responses at the initial processing and entry interview stages which may support the granting of protection visas in inappropriate circumstances. These individuals effectively cross the line and become advocates for the individuals concerned.

[Interpreter, 2013]

Serious breaches of the professional code of ethics

The use of non-credentialed interpreters who fail to understand the need to abide by the requirements of the code of ethics has potentially serious consequences. A non-credentialed interpreter is reported to have said: "Interpreting is a very easy job – you can say anything and get away with it as the ... white man does not know what our person is saying and similarly our person would not know what the white man said."

[Interpreter, 2013]

Compromised access to appropriate visas

An individual's application to the Refugee Review Tribunal for a protection visa was refused. On appeal, a report on major omissions and interpreting errors of the previous hearing was submitted as expert evidence in the Federal Magistrates Court; as a result the magistrate ordered that the case be sent back to the RRT for review due to severe misinterpretations which led to the original decision. The individual received compensation and the case was reheard before a senior member with a different interpreter.

Failure to receive a fair hearing before a tribunal

A few years ago, a senior interpreter was asked to review the tapes of a case that came before the Refugee Review Tribunal. The application had been denied and it was thought that the standard of interpreting had been the cause of misunderstandings between the applicant and the tribunal member hearing the case. After listening to the tapes, the senior interpreter confirmed numerous errors in the interpreting which was due, in their opinion, to using an interpreter with insufficient professional skills and general knowledge. The applicant was provided with another chance to present his case.

[Interpreter, 2013]

Visas wrongly cancelled

A complaint [to the Commonwealth Ombudsman] was made on behalf of a Ms A whose visa had been cancelled by the Department of Immigration and Citizenship (DIAC) on arrival in Australia. Although Ms A was provided with an interpreter, DIAC did not use the interpreter to explain the notice of intent to cancel Ms A's visa when asking her to sign this form.

Commonwealth Ombudsman's Report on the Use of interpreters, Report No. 3, 2009, p.13

Mr D was applying for a visa from outside Australia, and complained that he had been interviewed using an interpreter who was not qualified. Mr D claimed incorrect information had been provided on his behalf, resulting in DIAC refusing Mr D's visa application. As a result of [the Ombudsman's] investigation, DIAC agreed to conduct the interview again with an independent interpreter and to make a new decision on Mr D's visa application.

Commonwealth Ombudsman's Report on the Use of interpreters, Report No. 3, 2009, p.123

Administrative inefficiency and double-handling

An immigration detainee required an appointment with an optometrist. An interpreter was needed to facilitate communication between the optometrist and the client. The detention provider contracted by DIAC did not book an on-site interpreter in advance. The client was escorted to the appointment only to discover that an interpreter was not available at short notice. As a result, the consultation had to be rescheduled to a later date when an interpreter could be arranged.

Commonwealth Ombudsman's Report on the Use of interpreters, Report No. 3, 2009, p.13

A non-credentialed interpreter is reported to have said: “Interpreting is a very easy job – you can say anything and get away with it”

There are numerous examples where processing, entry interviews, migration agreement Immigration Advice and Application Assistance Scheme (IAAAS) interviews and protection visa interviews have had to be repeated when a protection visa is refused but it becomes evident that a NAATI-accredited interpreter was not used at one or all of these stages.

Lack of access to procedural fairness and compliance with duty of care obligations

Mr. B approached Ombudsman staff during a complaint clinic held at an immigration detention centre. Mr B, a detainee, was unable to explain his complaint or understand questions in English and readily accepted the offer of an interpreter. Unfortunately, a telephone interpreter was not available in the required language on the spot. The Ombudsman officer made arrangements to telephone Mr B some days later with an interpreter on the line. The GSL officer who answered the call advised that Mr B did not require an interpreter and that GSL and DIAC staff were able to communicate with him in English satisfactorily. The Ombudsman officer advised GSL that Mr B appeared not to understand English adequately and had accepted the offer of an interpreter. The Ombudsman officer then proceeded to talk with the detainee using the interpreter.

Commonwealth Ombudsman's Report on the Use of interpreters, Report No. 3, 2009, p.14

Waste arising from errors in allocating appropriate interpreters

There are numerous examples of interpreters being engaged throughout the irregular maritime arrivals process who speak the wrong language, for example Dari instead of Hazaragi, or dialect requiring postponement of interview until an appropriate interpreter is booked.

[Interpreter, 2012]

Use of age-inappropriate persons to undertake interpreting function

There are reports of a bilingual child (a 17-year old) being used in a detention centre.

[Interpreter, 2013]

Compromised access to, or understanding of, rights on arrival

The translation of material provided to those embarking on the irregular maritime arrivals process at times lack clarity and has led to misunderstandings about the rights and obligations of these individuals, and the programs to which they have access.

These examples of failures in process, protocols and policy all show that there are significant opportunities to improve the way translating and interpreting is handled in the delivery of immigration services and programs.

Changes in policy – and disagreement about policy – are a source of longstanding debate, however, every effort must be made to ensure that current policy and processes are understood and implemented fairly in an effort to maintain the integrity of the immigration system and mitigate the risks associated with delivery of poor quality services in this critical area.

CONCLUSION

The examples of failures in process, protocols and policy set out in this document show that the way translating and interpreting in a range of settings is currently handled results in not only extraordinary costs in human/social terms but also significant risk and exposure for government and organisations across the health, legal, government services and immigration settings.

This evidence-base shows that there is a clear and urgent need for change.

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Association of Professional Engineers,
Scientists and Managers, Australia
(APESMA)

GPO Box 1272, Melbourne, Vic. 3001



e: translatorsandinterpreters@apesma.com.au

w: www.apesma.com.au/groups/translators-and-interpreters

t: 1300 APESMA | 1300 273 762

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AUSIT Code of Ethics and Code of Conduct

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Introduction

The AUSIT Code of Ethics was first drafted as a by-law in the early 1990s. It was then endorsed in expanded form at the National Annual General Meeting in 1995, and for the next 15 years served AUSIT and the wider profession well. A number of overseas educational institutions and professional bodies used it as a reference or as a model for their own codes.

But changes in the translation and interpreting industry mean the requirements of a code of ethics have also changed. In late 2010 AUSIT accepted a proposal from Monash University to set up a joint AUSIT/Monash working group to review the Code of Ethics, with funding for Dr Uldis Ozolins as its leader. After twelve months, when the funding was exhausted, Christian Schmidt took over the reins to bring the project to completion.. At some point during the review process feedback was sought from all AUSIT members and from representatives of all areas of the T&I industry.

The members of the working group, in alphabetical order, are::

Dr Meredith Bartlett, educator and deaf sign interpreter, former Chair of ASLIA Vic, currently Chair of AUSIT's VicTas Branch

Vesna Boglev, AUSIT member, Manager of Sessional Interpreters, Research and Training at the Health Language Services, South Western Sydney Local Health District

Adolfo Gentile, practitioner and founder member of AUSIT, who was Australia's first home-grown full professor in T&I (Deakin University); former President of FIT and former Chair of the Board of NAATI

Eva Hussain, former AUSIT Vice President and former Chair of AUSIT VicTas Branch; an interpreter and translator who runs her own language services company

Dr Uldis Ozolins, a researcher who has written widely on T&I in Australia and internationally and taught in several Australian universities.

Christian Schmidt, a graduate of the University of Heidelberg who now runs a translating and editing business in Adelaide.

Consultants: Dr Jim Hlavac and Prof. Rita Wilson of Monash University
Barbara McGilvray, freelance translator and educator.

The AUSIT National Council wishes to express its heartfelt thanks to Christian and Uldis for their leadership of the review group, and to all the group members for their valuable contribution.

Barbara McGilvray
AUSIT National Vice President

Preamble

The AUSIT Code of Ethics and Code of Conduct is intended to regulate the professional conduct of members of AUSIT, the Australian Institute of Interpreters and Translators.

AUSIT was founded in 1987, when the National Accreditation Authority for Translators and Interpreters (NAATI) called practitioners, educators and government language service provider representatives from around Australia to a meeting in Canberra to establish a national professional association.. AUSIT's establishment was part of the historical development of the architecture of interpreting and translating in Australia and New Zealand, which has also included national accreditation and qualifications standards, widespread language services, specialised education and a respected code of ethics.

AUSIT's original Code of Ethics was completed in 1995, when it was endorsed by NAATI and adopted by AUSIT at its National Annual General Meeting. In 1996 it was presented to the International Federation of Translators at the World Congress hosted by AUSIT in Melbourne. NAATI endorses the AUSIT Code of Ethics as the basis of professional conduct for those with a NAATI credential, that is to say anyone holding NAATI accreditation or recognition.

This updated version of the AUSIT Code of Ethics and Code of Conduct was written in 2012 in recognition of the significant development and diversification of the field in Australia, and the growing attention to ethical issues in interpreting and translation around the world. International recognition of the status of interpreters and translators becomes even more important as they achieve greater prominence through media, international affairs and local political issues, attracting increased scrutiny of their standards.

The revised Code was adopted by NZSTI, the national association of interpreting and translating professionals in New Zealand (est. 1985), at its Annual General Meeting in 2012.

The interpreting and translation profession in Australia is part of a global profession increasingly concerned to address ethical issues that transcend national boundaries, such as protection of translators and translations (the Nairobi Declaration of UNESCO and the Translator's Charter of the International Federation of Translators), protection of interpreters in conflict areas or the right of individuals in criminal court proceedings to have access to interpreting and translating services.

Within Australia, a large number of agencies, institutions, language service providers and purchasers of interpreting and translating services now require practitioners who work with them – whether AUSIT members or not – to adhere to this Code of Ethics. It is recognised as setting a general standard for interpreting and translating.

In summary, the Code obliges members to:

- maintain professional detachment, impartiality, objectivity and confidentiality
- strive for excellence through continuous regular professional development
- decline work beyond their competence
- promote working conditions, relationships and an understanding of roles that facilitate collaboration and quality service delivery
- adhere to dispute resolution procedures

Clients or other parties who work with interpreting and translating practitioners should bring any breach of this Code to AUSIT's attention. AUSIT has processes for investigating such complaints, as do many of the agencies or institutions that purchase interpreting and translating services and require their practitioners to adhere to the AUSIT Code

AUSIT also encourages, and will assist, organisations with specific institutional or operational requirements of interpreters and translators to develop their own organisation-specific Good Practice Guides or protocols, which may usefully supplement this Code.

The AUSIT **Code of Ethics** defines the values and principles guiding the decisions interpreting and translating professionals make in practice. The related **Code of Conduct and Conduct issues specific to translators and interpreters** provide a framework for interpreting and translating professionals to use when exercising judgment in their practice. They are not intended to be exhaustive lists of the situations and circumstances that may comprise compliance and non-compliance with the **Code of Ethics**. Ethical interpreting and translating practice requires judgment and balanced decision-making in context. Interpreters and translators who commit to practise in accordance with the **Code of Ethics** accept that they will be accountable for their conduct under AUSIT's processes for non-compliance.

The following values and principles will inform our interpreting and translating practice.

CODE OF ETHICS

GENERAL PRINCIPLES

1. PROFESSIONAL CONDUCT

Interpreters and translators act at all times in accordance with the standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreting and translation practitioners.

Explanation: Interpreters and translators take responsibility for their work and conduct; they are committed to providing quality service in a respectful and culturally sensitive manner, dealing honestly and fairly with other parties and colleagues, and dealing honestly in all business practices. They disclose any conflict of interest or any matter that may compromise their impartiality. They observe common professional ethics of diligence and responsiveness to the needs of other participants in their work.

2. CONFIDENTIALITY

Interpreters and translators maintain confidentiality and do not disclose information acquired in the course of their work.

Explanation: Interpreters and translators are bound by strict rules of confidentiality, as are the persons they work with in professional or business fields.

3. COMPETENCE

Interpreters and translators only undertake work they are competent to perform in the languages for which they are professionally qualified through training and credentials.

Explanation: In order to practise, interpreters and translators need to have particular levels of expertise for particular types of work. Those who work with interpreters and translators are entitled to expect that they are working with appropriately qualified practitioners. Practitioners always represent their credentials honestly. Where formal training or accreditation is not available (e.g. in less frequently used language combinations and new and emerging languages), practitioners have an obligation to increase and maintain skills through their own professional development (see Principle 8 below) or request employers, agencies or institutions to provide it.

4. IMPARTIALITY

Interpreters and translators observe impartiality in all professional contacts. Interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.

Explanation: Interpreters and translators play an important role in facilitating parties who do not share a common language to communicate effectively with each other. They aim to ensure that the full intent of the communication is conveyed. Interpreters and translators are not responsible for what the parties communicate, only for complete and accurate transfer of the message. They do not allow bias to influence their performance; likewise they do not soften, strengthen or alter the messages being conveyed.

5. ACCURACY

Interpreters and translators use their best professional judgement in remaining faithful at all times to the meaning of texts and messages.

Explanation: Accuracy for the purpose of this Code means optimal and complete message transfer into the target language preserving the content and intent of the source message or text without omission or distortion.

6. CLARITY OF ROLE BOUNDARIES

Interpreters and translators maintain clear boundaries between their task as facilitators of communication through message transfer and any tasks that may be undertaken by other parties involved in the assignment.

Explanation: The focus of interpreters and translators is on message transfer.

Practitioners do not, in the course of their interpreting or translation duties, engage in other tasks such as advocacy, guidance or advice. Even where such other tasks are mandated by particular employment arrangements, practitioners insist that a clear demarcation is agreed on between interpreting and translating and other tasks. For this purpose, interpreters and translators will, where the situation requires it, provide an explanation of their role in line with the principles of this Code.

7. MAINTAINING PROFESSIONAL RELATIONSHIPS

Interpreters and translators are responsible for the quality of their work, whether as employees, freelance practitioners or contractors with interpreting and translation agencies. They always endeavour to secure satisfactory working conditions for the performance of their duties, including physical facilities, appropriate briefing, a clear commission, and clear conduct protocols where needed in specific institutional settings. They ensure that they have allocated adequate time to complete their work; they foster a mutually respectful business relationship with the people with whom they work and encourage them to become familiar with the interpreter or translator role.

Explanation: Interpreters and translators work in a variety of settings with specific institutional demands and a wide range of professional and business contexts. Some settings involve strict protocols where the interpreter or translator is a totally independent party, while others are marked by cooperation and shared responsibilities. Interpreters and translators must be familiar with these contexts, and endeavour to have the people they work with understand their role. For practitioners who work through agencies, the agency providing them with the work is one of their clients, and practitioners maintain the same professional standards when working with them as when working with individual clients. At the same time agencies must have appropriate and fair procedures in place that recognise and foster the professionalism of interpreting and translating practitioners.

8. PROFESSIONAL DEVELOPMENT

Interpreters and translators continue to develop their professional knowledge and skills.

Explanation: Practitioners commit themselves to lifelong learning, recognising that individuals, services and practices evolve and change over time. They continually upgrade their language and transfer skills and their contextual and cultural understanding. They keep up to date with the technological advances pertinent to their practice in order to continue to provide quality service. Practitioners working in languages where there is no standard training or credential may need to assess, maintain and update their standards independently

9. PROFESSIONAL SOLIDARITY

Interpreters and translators respect and support their fellow professionals, and they uphold the reputation and trustworthiness of the profession of interpreting and translating.

Explanation: Practitioners have a loyalty to the profession that extends beyond their individual interest. They support and further the interests of the profession and their colleagues and offer each other assistance.

CODE OF CONDUCT

Obligations towards recipients of services

1. Professional conduct	
<p>1.1 Interpreters and translators maintain their integrity and independence at all times.</p> <p>1.2 Interpreters and translators undertake appropriate preparations for all assignments.</p> <p>1.3 Interpreters and translators complete assignments they have accepted, unless they are unable to do so for ethical reasons (see 3.4 and 4.2 below).</p> <p>1.4 Interpreters and translators adhere to appointment times and deadlines, or advise clients promptly of any hindrance.</p> <p>1.5 Interpreters and translators do not exercise power or influence over their clients.</p> <p>1.6 Interpreters and translators do not solicit or accept gratuities or other benefits. They may, however, accept typical small gifts in specific cultural contexts.</p>	<p>Ethical principle: Interpreters and translators act at all times in accordance with the standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreting and translation practitioners.</p>

2. Confidentiality	
<p>2.1 Interpreters and translators are bound by strict rules of confidentiality, as are the parties they work with in professional or business fields.</p> <p>2.2 Where teamwork is required, the ethical obligation for confidentiality extends to all members of the team and/or agency.</p> <p>2.3 Practitioners do not seek to take advantage of information acquired during or as a result of their work.</p> <p>2.4 Disclosure of information may be permissible with clients' agreement or when disclosure is mandated by law (see Int15).</p>	<p>Ethical principle: Interpreters and translators maintain confidentiality and do not disclose information acquired in the course of their work.</p>

3. Competence	
<p>3.1 The acceptance of an interpreting or translation assignment</p>	<p>Ethical principle: Interpreters and</p>

<p>is an implicit declaration of an interpreter's or translator's competence to carry out that assignment.</p> <p>3.2 Interpreters and translators are familiar with the varied contexts, institutional structures, terminology and genres of the areas in which they accept work.</p> <p>3.3 Interpreters and translators clearly state their qualifications in particular languages or language directions if requested by the client.</p> <p>3.4 If it becomes apparent in the course of an assignment that expertise beyond their competence is required, interpreters and translators inform the client(s) immediately and work to resolve the situation, either withdrawing from the assignment or following another acceptable strategy.</p> <p>3.5 If a client wishes to change the language of the interpretation or translation to a different language, this can only be done if the interpreter or translator has relevant competence in the other language.</p>	<p>translators only undertake work they are competent to perform, in the languages for which they are professionally qualified through training and credentials.</p>
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4. Impartiality	
<p>4.1 Professional detachment is required for interpreting and translation assignments in all situations.</p> <p>4.2 Where impartiality may be difficult to maintain because of personal beliefs or other circumstances, interpreters and translators do not accept assignments, or they offer to withdraw from the assignment.</p> <p>4.3 Interpreters and translators are not responsible for what clients say or write.</p> <p>4.4. Interpreters and translators do not voice or write an opinion, solicited or unsolicited, on any matter or person during an assignment.</p> <p>4.5 Interpreters and translators frankly disclose all conflicts of interest, e.g. in assignments for relatives or friends and those affecting their employers.</p> <p>4.6 Interpreters and translators do not recommend to clients any business, agency, process, substance or material matters in which they have a personal or financial interest, without fully disclosing this interest to the clients.</p>	<p>Ethical principle: Interpreters and translators observe impartiality in all professional contacts. Interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.</p>

5. Accuracy	
<p>5.1 Interpreters and translators provide accurate renditions of the source utterance or text in the target language. Accurate is defined for this purpose as optimal and complete, without distortion or omission and preserving the content and intent of the source message or text. Interpreters and translators are able to provide an accurate and complete rendition of the source message using the skills and understanding they have acquired through their training and education.</p> <p>5.2 Interpreters and translators do not alter, add to, or omit anything from the content and intent of the source message.</p> <p>5.3 Interpreters and translators acknowledge and promptly rectify any interpreting or translation mistakes.</p> <p>5.4 Where circumstances permit, interpreters and translators ask for repetition, rephrasing or explanation if anything is unclear.</p>	<p>Ethical principle: Interpreters and translators use their best professional judgement in remaining faithful at all times to the meaning of texts and messages.</p>

6. Clarity of role boundaries	
<p>6.1 Interpreters and translators do not, in the course of their interpreting or translation duties, assume other roles such as offering advocacy, guidance or advice. Even where such other tasks are mandated (e.g. by specific institutional requirements for employees), practitioners insist that a clear demarcation is agreed on by all parties between interpreting and translating and other tasks.</p> <p>6.2 Interpreters and translators respect the professional boundaries of other participants involved in an assignment.</p> <p>6.3 Interpreters and translators draw attention to any situation where other parties misunderstand the interpreter or translator role or have inappropriate expectations.</p> <p>6.4 Interpreters and translators understand, and help their clients understand, the difference between professional and personal interactions. They assume responsibility for establishing and maintaining appropriate boundaries between themselves and the other participants in the communicative interaction.</p>	<p>Ethical principle: Interpreters and translators maintain clear boundaries between their task as facilitators of communication through message transfer and any tasks that may be undertaken by other parties involved in the assignment.</p>

7. Maintaining professional relationships	
7.1 Practitioners follow this Code whenever they are interpreting or translating – as employees, as freelancers, as	<p>Ethical principle: Interpreters and</p>

<p>agency contractors or as supervisors or employers of other interpreters and translators.</p> <p>7.2 When working as freelancers, interpreters and translators deal with clients and agencies honestly and transparently.</p> <p>7.3 When working through agencies, interpreters and translators maintain the same professional standards as when working with individual clients.</p> <p>7.4 Interpreters and translators request briefing and access to reference material and background information before their work commences.</p> <p>7.5 In interpreting assignments, interpreters endeavour to secure a physical environment that enables optimal message transfer in the given context. This includes the use of any devices and aids which participants typically require for hearing and speaking, such as appropriate standard booths for conference interpreting or appropriate physical arrangements for confidentiality, or security measures in cases of physical risk. It also includes provision of seating and reasonable breaks to avoid interpreter fatigue.</p> <p>7.6 In acknowledging the shared responsibility to provide effective language services, interpreters and translators can expect that agencies, employers or clients who stipulate this Code as mandatory for interpreter or translator behaviour have appropriate procedures in place that recognise the professional obligations of the practitioners, and that they support interpreters and translators in securing the conditions outlined in 7.4 and 7.5 above.</p>	<p>translators are responsible for the quality of their work, whether as employees, freelance practitioners or contractors with interpreting and translation agencies. They always endeavour to secure satisfactory working conditions for the performance of their duties, including physical facilities, appropriate briefing, a clear commission and clear conduct protocols where needed in specific institutional settings. They ensure that they have allocated adequate time to complete their work, they foster a mutually respectful business relationship with the people with whom they work and encourage them to become familiar with the interpreter or translator role</p>
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8. Professional development

<p>8.1 Interpreters and translators enhance their skills and knowledge through continuing education and professional development throughout their professional career.</p> <p>8.2 Interpreters and translators maintain proficiency in the languages and familiarity with the cultures for which they offer professional interpreting and translation services.</p> <p>8.3 Interpreters and translators support and encourage professional development within the profession and among their colleagues.</p> <p>8.4 Interpreters and translators endeavour to keep themselves informed about new trends and developments and the results of research in the field to improve their competence and practice.</p>	<p>Ethical principle: Interpreters and translators continue to develop their professional knowledge and skills.</p>
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9. Professional solidarity	
<p>9.1 Interpreters and translators support and further the interests of the profession and their colleagues and offer each other assistance.</p> <p>9.2 Interpreters and translators resolve any disputes with their interpreting and translating colleagues in a cooperative, constructive and professional manner.</p> <p>9.3 AUSIT members refer any unresolved disputes with other AUSIT members to the National Council. The conclusive direction of the Council is binding on members, with the provision of appeal or review in the interests of natural justice.</p>	<p>Ethical principle: Interpreters and translators respect and support their fellow professionals and they uphold the reputation and trustworthiness of the profession of interpreting and translating.</p>

Conduct issues specific to translators

T1 Before commencing work, translators ascertain the intended purpose of the translation and the form of delivery required.

T2 Translators obtain from the client as much information, terminology or reference material as possible and necessary for the proper and timely execution of the translation commission, and treat such material confidentially or as expressly agreed. If the client possesses but fails to provide reference texts crucial to the desired outcome, the translator is not responsible for inadequacies in the translation that are demonstrably due to such aids being withheld.

T3 Translators deliver a translation that completely and impartially renders the meaning and intention of the source text within the parameters and requirements of the target language and culture and is in keeping with the purpose specified in the commission received from the client/initiator.

T4 Translators work only from source languages and into target languages in which they are qualified.

T5 Translators only perform work which they believe is within their translation competence and relevant specialist competence and for which they have the necessary resources, transfer abilities, level of understanding and fluency, or which will be revised by a person with the relevant knowledge or competence.

T6 If the source text contains particular elements that need to be taken into account in carrying out the translation, translators use their best endeavours and apply professional judgement to bring this to the attention of the client (except where the translated document is expected or required to be an exact reproduction of all source text content, meaning, style and language and needs to be thus certified). Such elements may include ambiguities, factual inaccuracies, linguistic errors, imprecise terminology, language that in the judgement of the translator is discriminatory, or wording or references that would jeopardise achieving the purpose of the text in the target language culture.

T7 If a translator is contracted by an agency, he or she does not contact the client of the agency directly, except as provided for under the terms of the relevant agreement entered into with the agency. If contacted by the client of the agency directly, the translator follows the procedures agreed with the agency.

T8 Translators may sub-contract work only to other practitioners who they have good reason to believe possess the necessary competence and resources and who adhere to this Code of Ethics and Code of Conduct, and always in compliance with any agreement entered into with the client. The responsibility for the translated text in any case rests with the translator who sub-contracted the work to the other practitioner, unless otherwise expressly agreed.

T9 If a translation is subject to revision or checking by another translator, the revision is returned to the original translator for approval and finalisation. If changes are made to the translated text after delivery to the client without the translator's

agreement and knowledge, the translator is no longer responsible for the translated text.

T10 Professional translators working in areas involving copyright matters endeavour to follow the principles laid out in the Nairobi Recommendation of UNESCO on the Legal Protection of Translators and Translations, and the FIT Translator's Charter (see [FIT website](#)).

Conduct issues specific to interpreters

Int1 Interpreters prepare themselves by obtaining from the initiator/client as much information and briefing as is necessary for the proper execution of their interpreting, and treat such material confidentially or as expressly agreed.

Completeness in interpreting

Int2 In order to ensure the same access to all that is said or signed by all parties involved in a meeting, interpreters relay accurately and completely everything that is communicated.

Int3 Interpreters interpret in the first person.

Int4 Interpreters maintain the emotions of the speakers in their interpreting and do not soften or enhance the force of messages conveyed or language used. In specific contexts such as in court or psychometric assessments, incoherence, hesitations and unclear statements are maintained in the interpretation.

Int5 If obvious untruths are uttered, interpreters convey these accurately in the same manner as presented.

Relations with other parties and the interpreting role in dialogue situations

Int6 In dialogue situations where some participants may be unaccustomed to working with interpreters, the interpreter encourages such participants to address each other directly.

Int7 In situations with a number of participants and where the interpreter is not interpreting aloud to all, the interpreter enables each participant to remain linguistically present where appropriate by whispered simultaneous interpreting or other suitable means, when other participants are communicating in the language not understood by the party or parties in question.

Int8 If anything is unclear, the interpreter asks for repetition, rephrasing or explanation, informing all participants of what is happening.

Int9 In emergency situations where interpreters may not have had the opportunity to be adequately briefed or given enough time to prepare, or if there are safety/security issues, they communicate this to the responsible person or initiator who is participating in the session.

Int10 Interpreters keep the participants informed of any side comments made by any of the parties or of their attempts to engage the interpreter in a private or any other conversation. In business or intergovernmental contexts where one or more parties bring their own interpreter, it is appropriate for the interpreter to relay side comments of the other party to his or her own party.

Int11 Various participants may place competing expectations on interpreters. These expectations may contravene the interpreters' ethics, therefore the onus is on interpreters to clarify the boundaries of their role and assist their clients in understanding how to achieve the best outcomes in an interpreted session. Interpreters take care that conversations that may arise during periods of waiting remain courteous but do not become personal, and that information divulged in the course of such conversations also remains confidential.

Int12 Interpreters testify to their qualifications and the accuracy of their interpreting and, when requested, explain their linguistic choices, but do not testify to participants' understanding of messages; this remains an issue for participants.

Remote interpreting

Int13 Interpreters familiarise themselves with the increasing use of technology for interpreting, including telephone, video and internet interpreting, and diverse recording/transmitting devices. Interpreters who engage in interpreting using these technologies prepare themselves by understanding the purposes of their use and the way in which communication is shaped by these technologies. Institutions, agencies and clients who use these technologies are encouraged to develop protocols and brief interpreters on their use and on any particular requirements they may have.

Specific institutional settings of interpreting work

Int14 Where interpreters have roles in addition to that of interpreting due to specific employment arrangements, they clearly indicate when they are acting as interpreters and do not switch roles without notice.

Int15 In specific institutional settings where duty of care or security rules regulate the behaviour of all participants, such as in health care or high security settings, interpreters follow the relevant policies and procedures combining them with their interpreting code of ethics.