



Royal Commission into Aboriginal Deaths in Custody Recommendation

99. Access to free interpreter services at court

That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person.

Background¹	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) emphasised the importance of making court processes less intimidating for Aboriginal people and providing interpreters whenever necessary. It highlighted a common misconception that conversational English proficiency is sufficient, noting that the formal and often complex language used in court can be confusing and alienating, especially under the stress of legal proceedings.
Intent	Provide Aboriginal defendants with an interpreter when needed to ensure they can fully comprehend court proceedings conducted in English.
Responsibility	The Commonwealth and all state and territory governments.
Key contacts	Court Services Victoria (CSV).
Key action taken	
2005 Review²	<p>The Department of Justice assessed Recommendation 99 as fully implemented as the <i>Magistrates' Court Act 1989</i> (Vic) and the <i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic) had legislative provisions which implemented this recommendation.</p> <p>Department of Justice</p> <p>Court Services noted Section 63 of the <i>Victorian Civil and Administrative Tribunal Act 1998</i>:</p> <p><i>Unless the tribunal directs otherwise, a party may be assisted in a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party.</i></p> <p>While the County Court and Supreme Court Acts did not contain legislative requirements to provide an interpreter, in practice interpreters were normally provided. Overall, Aboriginal interpreters were rarely used in Victoria as most Aboriginal people appearing before courts and tribunals spoke English as their first language. While many Aboriginal people did not require an interpreter, there was recognition that other aspects of the court system may pose difficulties for understanding proceedings:</p>

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 3 ('RCIADIC').

² Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 1, 483-5 ('2005 Review').

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... giving consideration to a defendant's ability to understand the proceedings and fully express him/herself [...] could be interpreted as wider than simply comprehending the English language but comprehending a different culturally based court system.

Koori Courts were established under the Aboriginal Justice Agreement. The *Magistrates' Court (Koori Court) Act 2002* (Vic) created a new division of the Magistrates' Court with jurisdiction to deal with Aboriginal defendants pleading guilty to minor criminal charges. According to the Act, the Koori Court was created with the objective of ensuring greater participation of the Aboriginal community in the court sentencing process.

In essence, the Koori court is an alternative way of administering sentences so that court processes are more culturally accessible, grounded in Aboriginal communities' efforts to promote rehabilitation and impose sanctions which are acceptable and comprehensible to the Aboriginal community. The key emphasis is on creating an informal and accessible atmosphere and allowing greater participation by the Aboriginal Community through the Koori elder or respected person, Aboriginal justice worker, Indigenous offenders and their extended families or wide group of connected kin, and if desired, victims, in the court and sentencing process. It aims to reduce perceptions of intimidation and cultural alienation experienced by Aboriginal offenders

(Attorney-General, Second Reading Speech, 2002).

The Act allowed for the Koori Court division to be informed by the Aboriginal Elder or Respected Person or a Koori Court Officer (Aboriginal Justice Worker) amongst other persons in its sentencing procedure.

2018 Review³

Commonwealth Government

Deloitte assessed Recommendation 99 as **partially implemented** by the Commonwealth, acknowledging the provision of national funding for a court interpreter program accessible at no cost to Aboriginal and Torres Strait Islander peoples. However, while the services were available, it was unclear whether any assessment had been conducted to determine if, where, and when these services were needed.

The Commonwealth Government funded free translation services in federal courts so individuals, including Aboriginal and Torres Strait Islander peoples, could fully participate in legal proceedings conducted in English. The Attorney-General's Department was funded to develop an interpreter program in consultation with community, courts, and Aboriginal and Torres Strait Islander Legal Services. In 2016–17, \$5 million was allocated to improve access to interpreting services and support the ongoing availability of trained interpreters.

Victorian Government

Deloitte concluded that Recommendation 99 was partially implemented in Victoria as interpreters were provided for defendants who do not speak English under the *Criminal Procedure Act 2009* (Vic). While services were available, it was not clear if testing of whether the services were needed was undertaken.

³ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 195-6 ('2018 Review').

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Since then

Magistrates' Court of Victoria⁴

The Magistrates' Court of Victoria provides information noting that interpreting services can assist people who don't speak or understand English well or have a hearing and/or speech impairment. The Magistrates' Court can arrange an interpreter for an accused person charged with an offence, an applicant or respondent in a family violence intervention order matter, or an applicant in a Victims of Crime Assistance Tribunal matter.

The Magistrates' Court does not make arrangements for an interpreter to attend or are responsible for the costs of any service if a person is involved in a civil matter, involved in a personal safety intervention order matter, or making any application or appearing at court for any application under the *Road Safety Act 1986*, such as licence eligibility or interlock removal applications. (These provisions do not apply for requests for Auslan interpreting services.)

The Children's Court of Victoria provides similar information and will arrange an interpreter at no cost for children accused of an offence. Court interpreters must be accredited and repeat the exact words spoken or signed by each person and cannot provide legal advice or give opinions.

Both the Magistrates' and Children's Court websites suggested contacting the Translating and Interpreting Service. A search of their website confirmed that Aboriginal languages were not provided through this service. This has recently changed, with court users now directed to the National Accreditation Authority for Translators and Interpreters (NAATI).

National Accreditation Authority for Translators and Interpreters⁵

Since 2012, NAATI has been working with Australian governments and Aboriginal organisations to develop the Aboriginal interpreting industry so it can meet the need that exists for highly skilled Aboriginal language interpreters. The objectives of the project are to:

- increase the number of certified Aboriginal interpreters and examiners
- increase the range of Aboriginal languages for which there are certified interpreters
- increase the accessibility of interpreting resources for Aboriginal interpreters and organisations.

Developing and maintaining a pool of NAATI-certified Aboriginal language interpreters improves the quality and accessibility of interpreting services when they are required. This results in improved communication and engagement, better service delivery and, ultimately, Aboriginal and Torres Strait Islander rights being upheld.

At the time of writing, there were 90 NAATI-certified interpreters and translators practising in 23 Aboriginal and Torres Strait Islander languages across Australia. Aboriginal Interpreting Services operated across South Australia, Western Australia, the Northern Territory and Queensland. People living in Victoria were encouraged to contact NAATI for support to connect to an interpreter.

⁴ Magistrates' Court of Victoria, 'Interpreters', *Magistrates' Court of Victoria* (Web page, June 2024) <<https://www.mcv.vic.gov.au/find-support/interpreters>> ('Interpreters').

⁵ National Accreditation Authority for Translators and Interpreters, 'Indigenous Interpreting Project', *National Accreditation Authority for Translators and Interpreters* (Web page, June 2024) <<https://www.naati.com.au/about-us/projects/indigenous-interpreting-project/>> ('Indigenous Interpreting Project').

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Evidence of impact

Authorising documents

Criminal Procedure Act 2009 (Vic)⁶

This Act governs the initiation, conduct and appear of criminal proceedings in Victoria, providing detailed procedures for courts and accused persons.

Section 335 provides that if:

- (a) a person is charged with an offence punishable by imprisonment; and
 - (b) the court is satisfied that the person does not have knowledge of the English language that is sufficient to enable to the person to understand, or participate in, the proceeding –
- the court must not hear and determine the proceeding without a competent interpreter interpreting it.

Child Protection Manual

The Department of Families, Fairness and Housing reiterates this requirement in the Child Protection Manual confirming that the Children’s Court must only hear or determine matters if it is satisfied that the child or any other party who cannot speak or understand English sufficiently well to comprehend the proceedings, is provided with an interpreter. This interpreter must be accredited to translate court proceedings.

Outputs

Court Services Victoria Annual Reports⁷

These reports detail CSV’s progress against their 2020-25 Strategic Plan and commitments to excellence in people, processes, places and infrastructure.

Amounts spent on interpreters and translation services are outlined but no further information is reported.

Supplies and Services	2025	2024	2023	2022
Interpreter and translation services	\$5,776,000	\$4,723,000	\$3,709,000	\$3,258,000

Outcomes

2021 Census of Population and Housing⁸

In the 2021 Census, 76,978 Aboriginal and Torres Strait Islander people across Australia reported speaking one of 150 different Aboriginal or Torres Strait languages at home. This was 9.5 percent of the Aboriginal and Torres Strait Islander population in Australia.

In Victoria 1,010 people reported speaking an Aboriginal or Torres Strait Islander language at home. This accounted for 1.5 percent of the Aboriginal and Torres Strait Islander population of Victoria (a slight increase from 1.0 percent in previous censuses).

⁶ S 335, *Criminal Procedure Act 2009 (Vic)* ('*Criminal Procedure Act*').

⁷ Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration - Annual Report 2024-25* (Annual Report, October 2025) ('*Delivering Excellence in Court and Tribunal Administration - Annual Report 2024-25*'); Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration Annual Report 2023-24* (Annual Report, October 2024) ('*Delivering Excellence in Court and Tribunal Administration Annual Report 2023-24*').

⁸ Australian Bureau of Statistics, 'Victoria 2021 Census Aboriginal and/or Torres Strait Islander People QuickStats', *Census* (Web page, June 2024) <<https://www.abs.gov.au/census/find-census-data/quickstats/2021/IQS2>> ('*Victoria 2021 Census Aboriginal and/or Torres Strait Islander People QuickStats*').

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Court Services Victoria

We could not find any information published by Court Services Victoria on the number of people needing or accessing interpreter services in court for Aboriginal or Torres Strait Islander languages.

Community views

The Victorian Aboriginal Legal Service noted occasions where they needed to access interpreter services for their clients included guardianship matters, and where clients had travelled to Victoria for treatment of health issues. Often the interpreters used were not accredited as numbers of accredited interpreters vary depending on the Aboriginal language required.

Related recommendations

2018 Australian Law Reform Commission⁹

Recommendation 10-1

State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system where needed and monitor and evaluate their use.

2005 Review¹⁰

Recommendation 116

That the Department of Justice (Court Services) develop appropriate initiatives to assist Aboriginal participants to fully understand court processes, and report on these to the Aboriginal Justice Forum.

That the Victorian Government continue to implement and monitor Recommendation 99 through any monitoring process established as a consequence of this Review.

Assessment summary¹¹

The intent of Recommendation 99 was to provide Aboriginal defendants with an interpreter when needed to ensure they can fully comprehend court proceedings conducted in the English language.

Under the *Criminal Procedure Act 2009* (Vic), if the court is satisfied that the person does not have knowledge of the English language sufficient to enable their participation in the proceedings, the court must not hear or determine the matter. Victorian courts will arrange an interpreter at no cost for defendants who require one.

While legislative provisions implement this recommendation in relation to criminal proceedings there are not equivalent provisions for civil and other matters, suggesting court users or their legal representatives must arrange their own interpreters in such cases. We could not find information on whether there is adequate testing of whether interpreter services are needed, whether interpreters are provided to cover various Aboriginal languages, or whether service delivery is adequate.

⁹ Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) ('Pathways to Justice').

¹⁰ 2005 Review, vol 1, p. 64.

¹¹ Meeting with Aboriginal Justice Caucus Working Group (Project Team, In Person, 7 June 2023) ('Working Group Meeting (7 June 2023)'); Meeting with Aboriginal Justice Caucus (Project Team, In Person, 19 July 2023) ('Aboriginal Justice Caucus Meeting (19 July 2023)').

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Recommendation 99 remains relevant but may only apply in a small number of cases given a relatively small proportion of the Aboriginal population in Victoria report speaking an Aboriginal or Torres Strait Islander language at home. Better reporting on the number of Aboriginal court users accessing interpreting services, and their satisfaction with these services would improve implementation of this recommendation.

Assessment of Recommendation 99

Is the intent of the recommendation accurately described?

Yes No

Does the action taken align with the intent of the recommendation?

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

2

(Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

1

(Score out of 3)

How relevant is the recommendation in the current context?

0 – No relevance – refers to practices, agencies or laws that no longer exist

1 – Low – some relevance, but most aspects of the recommendation no longer apply

2 – Moderate – remains relevant, but some aspects of recommendation no longer apply

3 – High – entirely relevant to current context

2

(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

0 – No potential to improve Aboriginal justice outcomes

1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified

2 – Moderate – potential to progress one or two of the outcomes identified

3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

2

(Score out of 3)

Potential actions for further work

Better reporting on Aboriginal court users accessing interpreting services

Better reporting on the number of Aboriginal court users accessing interpreting services, and their satisfaction with these services would improve implementation of this recommendation.

Moderate priority for further work

Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
Extent of action taken and evidence of outcomes	High (5-6)			
	Moderate (3-4)		Rec 99	
	Low (0-2)			

Bibliography

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