CHRISPOOLE TRANSLATION

Monday 25th July 2016

JCCD Secretariat

Email: secretariat@jccd.org.au

To whom it may concern

Congratulations on both the initiative and achievements to date in the development of the Australian National Standards for Working with Interpreters in Courts and Tribunals ("Standards"). Thank you also for the opportunity to provide feedback and comments. In general if I have not commented on a specific part of the Standards then I either support or am neutral on it.

> *1. What are the biggest challenges you perceive in the provision of adequate interpreting services in the courts? Do the Standards address your concerns?*

People who have an interest in successful translation[1] outcomes concern themselves disproportionately with the individual interpreter or translator performing the work, and their personal attributes ("attributes" in the broadest sense: qualifications, credentials, experience, ethnic/linguistic background, behaviour while they are working etc.).

To be sure it is common sense to refer to all of these things in the planning phase as, all other things remaining equal, they are certainly factors that indicate likelihood of success. But they are no guarantee, and there are so many other conditions that must be fulfilled to achieve success and which are generally overlooked.

This misdirected emphasis has been tacitly endorsed by parties such as NAATI, RTOs, agencies and practitioners themselves as they have a commercial interest in linking expectations of success and remuneration to particular categories of people who enjoy certain attributes.

The interests of these parties are relatively protected from poor translation outcomes, when compared to the NESB people for whom they might be interpreting.

Currently and historically the biggest challenge is and has been the failure of the stakeholders with the most risk (clients, end users etc. or in the case of court interpreting their advocates) to define and measure success – accurately and faithfully translated strings of words - and then work backwards to understand all the other conditions that must be met to achieve this, in much the same way that every other product and service of the modern world has been developed and improved.

These Standards go a long way to addressing this problem. See below for where I believe they fall short.

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[1] In this document I use the definitions of "translation", "interpreting", "accuracy" and "faithfulness" found in this glossary: http://pooletranslation.com.au/img/1524/418
and discussed in this article: http://pooletranslation.com.au/img/771/139

CHRIS POOLE TRANSLATION A DIVISION OF BREDICK GROUP PTY LTD ABN 68 589 937 301
24 GREENWOOD STREET, ABBOTSFORD VICTORIA AUSTRALIA 3067
TELEPHONE (613)9391 0899 FACSIMILE (613)9391 0099
EMAIL desk@pooletranslation.com.au WEBSITE www.chrispooletranslation.com.au

2. Are the minimum and optimal standards for courts, judicial officers, interpreters and legal practitioners comprehensive and appropriate?

As optimal and aspirational standards they are most appropriate, with some omissions and amendments yet necessary (see below).

Setting "minimum" standards is a somewhat forlorn act, as there will always be times, locations, languages, matters and the translation of specific utterances/texts where it will not be possible to meet even this minimum, and His or Her Honour will always have the discretion to drop below, and the duty to do so if on balance it is in the best interests of all concerned. The Standards however will serve very well in assisting them in making defensible decisions in those circumstances.

3. Are there any amendments or additions you would propose to the Standards?

4. What are your comments on the approach taken in the Model Rules and the Model Practice Note?

5. What are your thoughts concerning the tiered approach to interpreting standards outlined in section 6 of the Supplementary Materials?

6. Are there any other comments you wish to make about the framework?

See following comments which are grouped under the following headings:

- Positioning and the allocation of power
  - Settings
  - Plain English
  - Payment
  - The market
  - Responsibilities
- Linguistic issues
  - Precedent
    - Statements and reported speech
    - Prescribed texts
    - Multiple defendants
    - Team interpreting
  - Plain English
  - Bilingual checking
- Other

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Positioning and the allocation of power

These Standards are a very promising start to a long journey. The destination is hinted at here:

> *P. 14 "…and will assist in ensuring that the interpreting profession in Australia can develop and thrive to the benefit of the administration of justice generally."*

And

> *"By implementing these Standards, courts will be supporting a sustainable and highly skilled interpreting and translating profession in Australia and contribute to system-wide improvements in interpreting."*

The Standards acknowledge constraints on development and improvement such as "..funding and other circumstances" but do not mention "time".

Translation and Interpreting ("T&I") is a very young profession indeed and just as awareness of NAATI Accreditation took years to become common in Australian courtrooms, it will take years for these ideas to soak into the habits of all stakeholders (judicial officers, lawyers, interpreters etc.).

This document ought to map, clear and pave the way for the development that must take place during that time. In a number of ways it fails to do that.

Settings

> *'1. Application of code*
>
> *This code of conduct applies to any person (the "Interpreter") who whether or not for fee or any other reward is engaged, appointed, volunteers or otherwise becomes involved in proceedings or proposed proceedings to carry out the office of interpreter by interpreting or sight translating from any spoken or signed language (the "other language") into English and from English into the other language for any person.'*

Development in this context means the development of the T&I Profession. It also means the development of the awareness, understanding, systems and infrastructure of the courts. These two things need to be developed for T&I to benefit the judicial process.

For the Standards to facilitate this development, and to be seen and respected by all for having done so, the activity to which they apply should take place in an environment that enables verification, correction and improvement of that activity. I would argue that a courtroom, in front of a sitting judicial officer, and on the court's payroll, is the only setting where this will be possible.

There are countless other settings peripheral to this central one to which application of the Standards is unlikely to be practical, such as outside the court, in conference, in chambers, in the holding cells, in detention centres, in the car, over the phone, in the boardrooms of parties to litigation before it all fell apart and so on.

CHRIS POOLE TRANSLATION A DIVISION OF BREDICK GROUP PTY LTD ABN 68 589 937 301
24 GREENWOOD STREET, ABBOTSFORD VICTORIA AUSTRALIA 3067
TELEPHONE (613) 9391 0899 FACSIMILE (613) 9391 0099
EMAIL desk@pooletranslation.com.au WEBSITE www.chrispooletranslation.com.au

(From a linguistic perspective it will be unwise and difficult to shear off these "other" interpreters in favour of the "court" interpreter, see below).

Plain English

By asking people in the court to modify their own speech the Standards fail to map, clear and pave the way for development.

The optimal standard for an interpreter is to remove the language barrier entirely and restore to all stakeholders, as far as possible, the experience of sharing a language. To knowingly accede to a client modifying their speech for the sole reason that the interpreter cannot translate it – a task for which they alone are ostensibly responsible - is an ethical failure of the professional interpreter that ought not be normalized by having it embedded into these Standards.

There will always be a shortfall from this optimum, but to transfer responsibility for that away from the T&I profession and to others is to leave the bar where you found it instead of setting it high enough to ensure the profession develops and thrives, or to 'contribute to system wide improvements in interpreting'.

We should let lawyers speak as they wish and work on getting all interpreters up to that standard. I know it will be painful, but while the pain may seem great, this will be an illusion. After the publication of these Standards awareness of these issues will doubtless be keener and more widespread, but due to the many other positive effects of the Standards the actual problem is likely to be much less.

And above all the Standards ought to prime everyone for these failures – the different types and the reasons for them - and provide guidance on how they can be rectified both in the particular instance and systemically. Having judicial officers and lawyers busy themselves with the new project of speaking Plain English would be papering over all these tasks.

Another problem with asking judicial officers and lawyers to speak Plain English is the resistance likely to be encountered.

To be worth the effort of developing them the Standards need to be embraced enthusiastically by the profession. To make such an imposition on people whose success in and enjoyment of their professional life depends in no small degree on their idiolect, turn of phrase and rhetorical skill will rather cause them to resist and resent implementation.

That the requirement that judicial officers and counsel implement the various Plain English strategies set out in Appendix 3 is both too large and impractical a demand is explained below in the section on linguistics.

Payment

> *"(2) An Interpreter's paramount duty is to the Court and not to any party to or witness in the proceedings (including the person retaining or paying the Interpreter)."*

If the client of an interpreter engaged privately leans over and says to the interpreter "I'm not paying you, go home" good luck getting them to stay, let alone fulfil the many duties imposed on them by the Standards. Interpreters have bills to pay too, and I've seen a Commissioner of a High Court nearly stay proceedings indefinitely because it looked like he wasn't going to get paid.

If the intent of this provision is to clarify for the interpreter that when a specific interpreting task seems to draw them into conflict with their paymaster then they need to bear in mind whether their choices are enabling or frustrating the purpose of the hearing and be prepared to defend them. That would be an improvement and this should be more clearly articulated. But it will remain a system that allows people who have engaged interpreters privately to drive the situation to the one I describe above. Which is why I would argue that it is only realistic to demand compliance with these Standards from interpreters booked and paid for by the court.

For civil matters where parties have arranged their own interpreters it would be more realistic to let matters take their course. There may be poor outcomes due to translated speech and text produced by privately arranged interpreters failing to be admitted as evidence. It would be better to let the buyer work out that their interpreter has let them down by failing to meet these Standards, and for this experience and these cases to become known to the market, informing future private selection and management of interpreters. All of whom will have access to the Standards and an industry of stakeholders willing to explain the importance of meeting them. This will do much more to promote awareness and acceptance of the Standards.

This document is a great tune but if you want the piper to play it they must be paid.

The market

7.2 'Courts should maintain a register of preferred competent interpreters'

And

P 44 4.6 'A register of interpreters assists courts to efficiently utilise interpreting services and provides a mechanism whereby interpreters can be called on short notice,..'

The idea of creating a category of "preferred" interpreters will lead to various unintended consequences. Rather than map, clear and pave the way for the whole profession to develop, it would constitute a side track to rent-seeking behaviour where getting one's name on the preferred list might not always be synonymous with highly competent, and with energy being wasted on the former when it should have been spent on becoming the latter.

Apart from that it would be inefficient for the courts to depart from their core business and busy themselves with the logistical problems of ensuring reliable supply of competent people. Demand for interpreting services fluctuates wildly and unpredictably. Supply must be coordinated from a pool of individual interpreters who are also trying to fill their working week with paid work, and in order to do so wisely limit the loyalty they show to any one source, requiring a very large pool to be assembled over many years.

Traditionally, agencies have been the market response to this problem and it takes years for them to develop a sustainable business model. Preferencing individuals will bring the courts into direct

conflict with this business model which relies heavily on the discretion of the agency to allocate work to the interpreter of their choice, not the client's.

Interfering with that will either disrupt their ability to supply or their pricing – which assumes that each interpreter is worth the same provided they meet a list of basic requirements. If interpreters are allow to add to that list "The court likes me the best" it will make things very difficult for stakeholders on whom you will largely be relying for interpreters.

Further:

> *P 48 '"roster on" interpreters who are booked to be available half or a full day in advance of immediate customer demand (for example this happens for Aboriginal language interpreters in the Northern Territory, and for Vietnamese interpreters in a Melbourne Magistrates Court);"'*

I think this is a fine idea but it will take a wholesale restructuring of interpreter expectations regarding the units of work for which they are remunerated.

There is a very strong expectation that they complete an "assignment" and then the meter starts again. The history to this is that at face value the rates paid to interpreters are low, or are at least perceived to be low, but in reality interpreters find that they are occasionally the beneficiaries of matters that are cancelled or adjourned, for which they are still paid, but they are able to use the freed up time profitably by taking other jobs, often from other agencies in other courts (this is noted on P. 49 at 4.11).

Try taking that away from them and rates across the board may have to rise to keep them interested. And the ones that will cost the most to keep interested are the "preferenced".

Just to be clear I personally support strong price signals such as these, and believe market mechanisms should reward merit, but I write simply to point out that the authors of this document seem not to be aware of how big a fight they might be picking.

These policies may lead to the unintended consequence of increased cost to the public – which might otherwise have been disbursed to the benefit of other members of the public in the legal system.

> *"Courts should give consideration to differential rates depending on the qualifications of the interpreter, with a discretion to allow a higher or lesser amount than the standard rates in any circumstances which appear to be just and reasonable."*

And

> *P 52 4.19 'At present, there is no coordinating body to which courts can report that they have been unable to secure the services of an interpreter. This impedes the ability of the sector to respond to shortfalls between supply and demand.'*

It isn't the lack of a "coordinating body" that "impedes the ability of the sector to shortfalls in supply". It is the lack of price signals informing supply and demand.

Price signals per language are ignored or avoided by the stakeholders mentioned above (NAATI, RTOs and agencies) who have interests vested in the production and trade in individual people with certain credentials, but which otherwise ignore all other differentiating factors (such as language).

If you have fifty candidates, each with a PhD, for a minor matter in a common language, you won't need to pay that much and you are obliged on behalf of the public to manage that finite budget appropriately by minimising that payment.

If you have a major crime and you need a team of Dinka interpreters then you will have to keep peeling off dollar bills until the best available turns up and "qualifications" be damned.

Responsibilities

> *'An Interpreter must comply with any direction of the Court.'*

These Standards have the potential to improve the quality of directions given by judicial officers to interpreters. But that improvement will take time, and during that time judicial officers may from time to time direct interpreters to do things that the interpreter knows to be impossible or meaningless.

This would place the interpreter in an invidious position and should not be supported by any association purporting to represent the interests of interpreters.

The consequences of such a situation are only two, that the interpreter refuses, at what cost to their reputation or perhaps even risking penalization for contempt. The judge presiding in an unhappy event like this would soon find it a lot more difficult sourcing interpreters than their brother and sister judges.

Or, the interpreter embarks on a charade to please His or Her honour, knowingly failing to perform the duties they are sworn to perform, another ethical failure. This is the more likely outcome and the factors causing it would include naiveté, lack of confidence and financial stress.

The Standards represent a prime opportunity to improve this situation. If the aims of the Standards include support and encouragement for interpreters as they become competent professionals then the interpreters need to be given space where they can take responsibility while being assured of respect from the court for their professional advice.

If their current capacity to provide this advice is undeveloped, (which is certainly the case for many of them) then it is this that needs to be highlighted and that gap filled in with development. That is what I mean by "map, clear and pave the way".

No progress will be made and in fact it may have a retarding effect to simply transfer responsibility to judicial officers or fail to identify those problem which cannot be solved by "direction". As in

> *'16.6 Judicial officers should inform the interpreter to alert the court, and if necessary to interrupt, if the interpreter:*

a. cannot interpret the question or answer for any reason;
b. did not accurately hear what was said;
c. needs to correct an error;
d. needs to consult a dictionary or other reference material;
e. needs a concept or term explained;
f. is unable to keep up with the evidence; or
g. needs a break.'

The Standards would serve everyone's interests better if they showed judicial officers how to deal practically with any gap between actual and aspiration. They should be framed in such a way that courts and interpreters work towards the interpreters themselves learning to raise these issues above when appropriate.

One example of a direction given to an interpreter with which the interpreter may find it impossible to comply without compromising one or other of the principle that would otherwise make them professional, is the production of a sight-translation within a certain timeframe.

'19.1 Interpreters are to use their best endeavours to interpret spoken and sight translate written communications in connection with a court proceeding ethically, as accurately and completely as possible, and with impartiality.
19.2 Interpreters must comply with any direction of the court.'

I will mention only in passing that the industry is made up largely of people who self-identify either as an interpreter or as a translator but not both. Asking an interpreter to translate a document will sometimes be problematic.

Leaving that aside, the range of texts that an interpreter might be asked to sight-translate varies widely. As a rough rule of thumb, the more work that has been put into composing a sentence, the more work required in translating it. It is possible that judicial officers will unwittingly pressure interpreters to sight-translate material more quickly than the interpreter judges it possible to achieve the possible degree of accuracy and completeness. Many interpreters will be reluctant to argue otherwise, asking for one hour, instead of the 30 minutes proposed by some other officer of the court, when they know in their hearts that it is a four hour job.

Common sense will illuminate this. The global translation industry is worth tens of billions of dollars. It consists largely of freelance or salaried people working at desks with full access to the internet and its richness of resources, translating texts of much LESS risk than that attached to tendered evidence and taking MUCH longer to do so than a court full of toe-tapping lawyers would find tolerable. (2000 words a day is a rough guide).

If it were actually possible to speed up the process of translation simply by having his honour direct that it be so then by golly that global industry would disappear overnight!

On P. 76 the following list appears:

'There are also some circumstances where an interpreter will feel compelled to withdraw from the engagement due to ethical conflicts. For example:

• the interpreter may be related to the witness or the accused;

• they may have a conflict of interest;

• there may be cultural issues that make it difficult for them to accept the assignment;

or

• they may not be able to adequately interpret into the relevant language because it is a different dialect from the one they know.

The right to withdraw should be respected by the court.'

I recommend that to this list be added

> *'directions may have been made by the court to the interpreter which are in the professional judgement of the interpreter oblige the interpreter to behave unethically, or which are practically impossible or with which they are otherwise unable to comply.'*

It is very important that interpreters know they can do this and that the court will back them up. Like roadside monuments to dead explorers the developmental road will go past many unfortunate incidents where judicial officers were unable to obtain satisfaction but those moments must be experienced for the profession, and the understanding of judicial officers, to develop.

Transferring to judicial officers responsibility for things that the interpreter should be doing, or failing to include this safety net on this list above would retard rather than promote development.

If anyone should offer this advice it should be the registry staff.

Other conspicuous examples of where this may occur are where the judicial officer determines what mode of interpreting be employed (more on this under "linguistics"), or where they instruct an interpreter to translate "word-for-word", "verbatim" or "literally".

I acknowledge that the Standards include a very admirable explanation of why these concepts are nonsense, but the time taken for all judicial officers to discard these notions, will be much longer than the time it takes to acclimatize themselves to this provision:

> *'An Interpreter must comply with any direction of the Court.'*

An alternative approach to the problems I have raised in this section would be to have the interpreter swear only to (recommended amendments underlined)

> *'...sight translate (or interpret) <u>as accurately as factors influencing accuracy permit</u>'*

And then add to that list on P 85 (additions underlined):

> *'8.2.2 Factors that influence accuracy in interpreting <u>and sight-translation</u>*
>
> *The accuracy of interpreting <u>and sight-translation</u> will depend on many factors, including:*
>
> *• understanding of the purpose of the interpretation;*
>
> *• the setting where the interpretation takes place;*
>
> *• the competence of the interpreter;*
>
> *• the mode of interpreting (i.e. consecutive or simultaneous);*

CHRIS POOLE TRANSLATION A DIVISION OF BREDICK GROUP PTY LTD ABN 68 589 937 301
24 GREENWOOD STREET, ABBOTSFORD VICTORIA AUSTRALIA 3067
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- *the working conditions provided to the interpreter;*
- *the preparation materials provided prior to the interpreting event;*
- *the briefing given to the interpreter;*
- *the manner and speed in which all speakers deliver their speech.*
- *in the case of a sight-translation, the ability and willingness of the court to answer all questions the interpreter may have about the text and*
- *the time allotted by the court'*

Then the interpreter is protected and the court can take responsibility for the accuracy.

Linguistic issues

The second biggest challenge to the provision of adequate interpreting services to the courts is the tendency in all people who speak one, or more, languages to overestimate their own understanding of language, or translation.

The Standards take some very impressive steps to remedy this. But they need to go further for some practical and pressing reasons.

Precedent

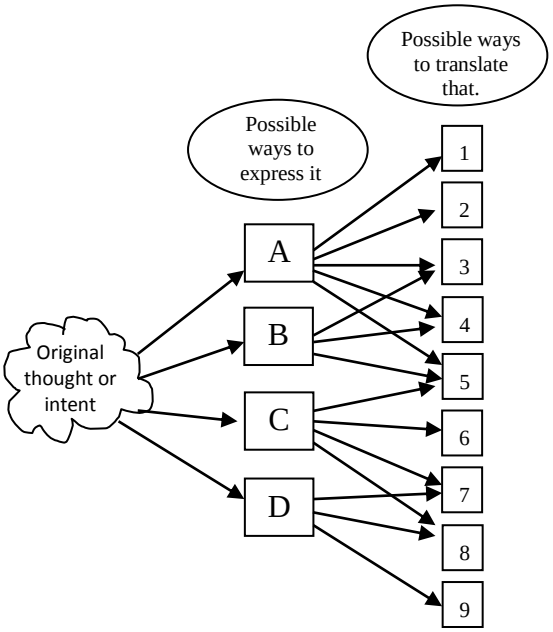
Language is very flexible. There is always more than one way to express and idea and more than one arrangement of words to achieve the same social outcomes.

When that idea or those social outcomes are new, and when they continue to be a topic, then the expression initially coined tends to become embedded in the discourse in which many people may be participating. It becomes the name of a thing known and maintained by everyone familiar with the topic. Failure to do so will cause confusion.

Court proceedings are a very concentrated example of this, where his or her honour will take care to name each piece of evidence tendered, as well as people, places and events that are material, and often remind or correct people if they fail to stick to that nomenclature.

The importance of these conventions endures for no longer than the matter itself, but they are a crucial part of the context to which interpreters need access, because the problem is greatly amplified when things are translated.

This diagram illustrates the problem though in an oversimplified manner.



Notwithstanding the very good work in these Standards under 'briefing' and the issues of context and intent, an interpreter called upon to translate any of these things for the first time will never have complete understanding of the background and intent of an utterance and so must necessarily be disproportionately reliant on the particular form of words with which they have been presented.

For each of these there will be many possible translations.

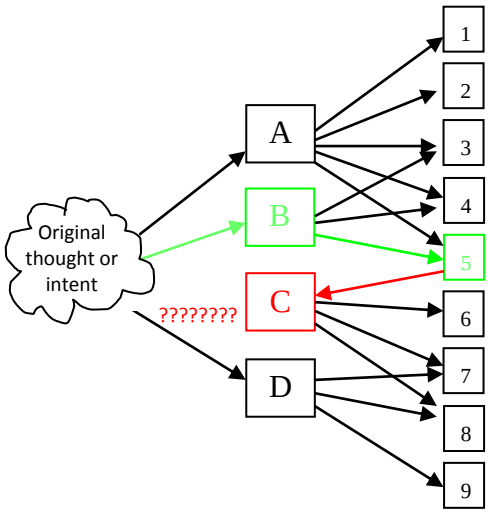
A percentage much larger than is generally appreciated of translation and interpreting is not about coming up with new translations for thing, it is about finding out what that thing is *already* called, in either the Target Language or the Source Language, and maintaining consistency with this. Otherwise we are making things worse rather than better.

Failure to make allowance for this variability has and will continue to lead to the following problems

Statements and reported speech

It is common for a person giving evidence to be sworn up and then led through a statement that they may have made months ago in another place and, pertinently, through a different interpreter. Questions will be put to them of the form 'in your statement you say "…" is that correct?'

The court interpreter, without knowing what the person originally said, must try to feel their way, blindfolded, backwards through that diagram to the Source Language. It is virtually impossible that they land on the exact words originally uttered by the witness.



"B" is what the respondent originally said in their own language.
"5" is how it was translated in their statement.
Court interpreter unwittingly translates is back to "C"
Witness quite rightly thinks 'I never said that!' causing confusion.

Many things can result from this:

The witness may think 'I said something like that, but not those words, what's wrong with this interpreter, lawyer, legal system, or have they changed my statement?'

The witness, under oath, may truthfully say 'No'.

The defence may wonder why the witness is changing their story, everyone may doubt the competence of the interpreter, including the witness, who may gradually lose faith in the process altogether.

This damages the standing of the interpreter, and can throw the proceedings into confusion and delay. All perfectly avoidable, at little cost.

In briefing interpreters it is critical that they be made aware of any translation or interpreting that has already taken place. (This is why it is not so easy to separate court and non-court appointed interpreters). If there was a TRIM tape then they should have access to that to hear first-hand exactly what was said by the witness in the original form words if they are to be cross-examined on them.

Provided there are no other constraints the next best measure would be for the interpreter to meet the witness and go through their written statement with them to confirm.

Obviously if there was a statement prepared in the LOTE then the interpreter must be allowed to study that.

CHRIS POOLE TRANSLATION A DIVISION OF BREDICK GROUP PTY LTD ABN 68 589 937 301
24 GREENWOOD STREET, ABBOTSFORD VICTORIA AUSTRALIA 3067
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Adding the caveat 'Or words to that effect' each and every time they were asked to back-translate some reported speech, would be a very clumsy last resort.

Prescribed texts

To say that many of the requests made of interpreters are not requests to translate anew but rather to recite the facts of existing translation is especially true of prescribed texts such as the various oaths taken in courts and the various cautions given by police and so on.

I have personally witnessed more than a day in the county court in legal argument over whether the differences in how the caution was translated for six co-defendants was a problem. This involved a total of twelve senior and junior barrister and their instructors etc.

Those costs alone would have paid for all these documents, probably in every jurisdiction in Australia, to be translated into the top fifty languages, published and disseminated to all courts for the use of interpreters.

Team interpreting

The many mentions of team interpreting also omit any consideration of consistency between interpreters. It is critical that each member of such a team works on and shares a glossary that is specific to that matter. All sort of time can be wasted where two interpreters fail to coordinate their choice of words in the target language for some simple lexical sets as "docket", "slip", "receipt", each of which may refer to specific pieces of evidence previously tendered that are highly material in that matter, but outside the court would be perfectly interchangeable translations for the same thing.

It can leave a defendant in the dark for hours before they work out that today's interpreter has swapped around all the terms that yesterday's interpreter settled on for various pieces of evidence, leaving them unable to instruct their counsel effectively, all because the interpreters didn't talk to each other.

Multiple defendants

The flexibility in language can also be illustrated by pointing out the same the same text given to a number of different translators will almost certainly be translated that many different ways and yet each translation may still satisfy the requirements of accuracy and faithfulness.

In a number of places the Standards talk about simultaneous interpreting equipment but omits the most important rationale for the provision of this equipment. That is when there are more defendants in the dock than can comfortably hear one whispering interpreter.

I hope I can leave it to the JCCD to see how it would be a disaster for there to be multiple versions of the proceedings provided to the defendants, who may then compare notes in the evening, raising more, completely avoidable, yet distracting issues with their counsel the following morning.

Plain English etc.

The resistance likely to be encountered by asking lawyers and judicial officers to modify their speech has been described above but there remains a much larger problem and that is that it is generally something impossible for an individual to do.

It is a highly unnatural thing for anyone to consciously modify their manner of speech, and even more so when they are concentrating on communicating accurately or are emotionally engaged in a particular pragmatic outcome.

It is also simply a case of not being equipped with the training or understanding to even make the judgments necessary to produce Plain English sentences. Even highly educated people are notoriously oblivious to which parts of their own speech actually constitute 'jargon' or 'abstract nouns' for example.

In lieu of this understanding the focus in the Standards has remained on the most comfortable and familiar: the subject matter expertise of the authors. Rather than address the primary sources of difficulty for interpreter which, notwithstanding the splendid efforts made in these Standards, remain generally invisible to non-interpreters.

These include ellipsis; abbreviations and acronyms; complex grammatical structures such as long embedded clauses; lists with each item qualified; poor enunciation and errors in the original (these last two are commonly accommodated without a second thought but the mere presence of an interpreter will make everyone forget this and suddenly consider them all problems of comprehension or mistranslation to do with the translation of legal jargon). None of these things are necessarily related to law or the judicial process but are features of language per se.

Legal jargon is a minor and generally overinflated issue. A court room is a place where by definition everything and anything may be uttered on any topic and in every possible register. A good portion of these sentences will be produced by people with no legal training, no exposure to this document and no obligation to care about anything other than telling the truth the whole truth and nothing but the truth, that in itself a stretch for some of them. All of this must all be translated without favour by the interpreter.

So the emphasis given to "legal jargon" is an unfortunate carryover of the very problems these Standards seek to address.

On one level it is reasonable to argue that trained orators such as barrister and judicial officers are capable of making informed word choices on the fly, but even they do so in pursuit of specifically forensic goals and though their choices might be wider than lay people they nevertheless choose from a library of words and phrases that are uniquely their own and for reasons that show benefit in terms of legal outcomes, not linguistic.

Asking people to speak Plain English is asking them to dismantle their own idiolect and as I am sure many in the legal profession are aware this would be akin to erasing your own fingerprints,

as both these things are used to establish the identity of people in criminal investigations and they serve in this way precisely because they are so hard to conceal.

Even if they were able to do this, resources are finite, and that includes cognitive resources. Asking judicial officers and counsel to abandon the relatively free flowing manner of speech that they have developed over years of court appearances and instead painstakingly pick their way through the many paraphrases and circumlocutions that the Plain English strategies include would be to impose a considerable mental load on people already doing a lot of very hard and complicated work with their heads. It would be a very poor use of human resources, when what the court actually requires that a judicial officers devotes 100% of his or her cognitive resources to the tasks that define a judicial officers, and likewise counsel.

Another reason the Plain English idea would be forlorn is that the overall percentage of words uttered in court to which this would apply or over which speakers have any discretion may be relatively small.

Much of what counsel puts to a witness in examination is dictated by documentary evidence and statements. No witness will be obliged to modify their responses. Any reference to case law and authorities that arise in legal argument between the judicial officers and the bar will similarly have to be faithful to the source text rather than modified for present company.

In any event except where the interpreter stands before them it is unrealistic to expect the people in a court room to take into consideration and remember to implement all of these strategies for the sake of an interpreter whispering in the dock for days on end.

The most proper strategy and the only things that I would recommend are again – placing full responsibility on the members of the profession that needs most development – to make it the interpreter's call to ask for a repetition.

When they do ask for a repetition, the duty of the English speaker should be to take care that *exactly the same words* are repeated. Do not say the same thing a different way or paraphrase. Take care to leave an audible space between each word. This will clear a much greater proportion of these problems than you would expect.

If this does not work the interpreter would then ask for an explanation of a particular word or phrase, and I guarantee this will reveal many problem not contemplated by the Plain English strategies, and save a lot of time otherwise wasted with lawyers and judicial officers trying to second guess what makes a sentence more or less intelligible to an interpreter based on Plain English formulae.

Many of the strategies listed on p 98 may be interesting from the point of view of making English easier to understand, but not necessarily easier to translate. For example worrying about chronological order, passive voice or the arrangement of cause and effect are English concerns and often evaporate when translated into various languages which may display logical structures and other conventions most suited to the English as it is presented.

No Plain English methodology will be able to anticipate the countless ambiguities apparent in English to speakers of languages which have no plurals; where no reference is made to any uncle or sibling without specifying relative age; where all numbers must specify the shape and nature of the thing being counted; or where the divisions between the named parts of the human body bear absolutely no resemblance to the conventions of English anatomy. It will be far more efficient, and further the development of the profession, to leave it to the professional, and wait for the interpreter to indicate where an English expression requires expansion or clarification to be effectively translated.

To be fair there are one or two strategies that are very important and which I do support: 6. One idea one sentence, and 9 indicate a change in topic.

It is also certainly true that hypotheticals put to a witness can slow things down in the case of Indigenous and many Asian languages, but slowing down, careful repetition, having the interpreter repeat in their own words the logical argument that is being put will show a much greater return on investment.

Again, it is the skills of all interpreters in directing these issues that must be developed and the Standards need to leave space for that to happen. There are far more complicated hypotheticals likely to be put to witnesses than the example given in the strategies and it is hardly realistic, nor would it serve the cause of justice, to advise the bar that these strategies are no longer available to them during cross-examination.

Lastly, great care should be taken whenever jokes or humorous asides are attempted as these can be the most difficult thing of all to translate, and no mention was made of them in the strategies.

Bilingual checkers

The last major problem linguistically is the proposal that “bilingual” people working in teams and checking each other’s work will be a meaningful countermeasure in the absence of an accredited or even recognised interpreter. It won’t, and attempts to implement this would be counterproductive.

Firstly, definition of the word ‘bilingual’ is highly subjective and the word will not survive any sort of academic interrogation. Pragmatically and in the context of this document it is taken to mean someone with proficiency in a language other than their first language, sufficient that his or her honour will entrust them with certain duties. But it is important that people have a realistic understanding of what proficiency in more than one language means.

Firstly, it is physically impossible for anyone to have completely equivalent proficiency in more than one language. Every syllable in a person’s active vocabulary, the library of phrasal templates that they may house, and the sentences that they build spontaneously in their day to day lives by reference to this library, were placed there by their lives. By verbal interaction with the people in their environment from birth to young adulthood, and sadly, on this planet we only get to do that once.

A person may appear to be perfectly and equally fluent in two languages, and they may say with their hand on their heart that they can say whatever they want in those two languages, but there's the rub. What anyone "wants" to say is strictly delimited by the fear of appearing ridiculous, which, after the many stinging experiences from birth to young adulthood learning to speak and make their way in verbal society, no one wants to do. Of course they are not going to put on public display exactly where their second language proficiency runs out and they start to sound uneducated or inarticulate.

A bilingual person is therefore a person capable of generating many sentences in two languages. They can say what *they want*, *when they want* and *how they want*. Or not.

This is not interpreting. An interpreter is presented with sentences produced by an entirely different head, with different background and objectives, and with only that to go by are expected to produce a functionally equivalent sentence in the target language, with barely a pause to think about it, repeating this for sometimes hours on end, and where none of the sentences involved are remotely like anything that interpreter is personally in the habit of producing or processing, and no option to decline.

That is interpreting, a skill completely separate and distinct from "speaking two languages", and by definition bilingual people have not the slightest idea how to do it.

This is relevant to why they would be completely incapable of carrying out any sort of checking process. I will only make this case for an interpreter checking another interpreter working in consecutive mode. If my argument is successful, the idea of bilingual checkers and people working in simultaneous mode will tumble accordingly.

It is virtually impossible for a trained and experienced interpreter to check the quality of another interpreter in real time. Explaining this requires an incursion into the mind of an interpreter who is listening to another at work. These events are taking place in fractions of a second:

- They listen to the interlocutor, and while they are doing they are perhaps putting together a translation as though they were the working interpreter. Or perhaps they are simply noting issues to look out for in the translation to come.
- Then they listen to the other interpreter's translation. If it happens to closely resemble what the checker had come up with, they may move on.
- (The possibility remains that they have both misinterpreted the original.)
- If there is a problem though, the next thing they must do is think about that.
- At this point they are no longer listening to the working interpreter or their interlocutor, and whatever happens over the next minute or so will be lost to the checking process.
- It could take several minutes. Problems in translation come in 101 flavours and it is rarely as simple as 'put the wrong word for X'.

CHRIS POOLE TRANSLATION A DIVISION OF BREDICK GROUP PTY LTD ABN 68 589 937 301
24 GREENWOOD STREET, ABBOTSFORD VICTORIA AUSTRALIA 3067
TELEPHONE (613) 9391 0899 FACSIMILE (613) 9391 0099
EMAIL desk@pooletranslation.com.au WEBSITE www.chrispooletranslation.com.au

- Alternatively they will be unable to resist listening, and so will lose track of the issue they found.
- Trying to take detailed notes would impose an even greater mental burden, distracting them further from checking.
- They must then decide whether the issue is grave enough to interrupt the proceedings. They will face a number of parties who will demand a well-articulated and cogent reason for the interruption.
- The checker must be able to produce an explanation of what has allegedly gone wrong that will persuade people with perhaps no proficiency in one or other of the languages, as well as people on the lookout for reasons to diminish the standing of the checker.

To emphasise, these are the sort of problems that would confront and perhaps confound a professional who by (my) definition is someone at least capable of explaining every professional decision they make.

This isn't to say that a bilingual person won't spot anything. Some of those 101 flavours include the wrong date or wrong name. But again there is the danger of self-selection. People may assume that everything the bilingual checker found equals everything there was to be found.

If this were allowed to remain in the Standards then people might think a problem had been solved or at least ameliorated, thereby diminishing the thirst in all parties for a comprehensive solution and closing the door on the very development this document ostensibly seeks to support.

Much of this could be improved by the development of a written methodology for interpreters to follow, but the only one I have found that wasn't an unproductive waste of money or a disruption to the proceedings was to have two checkers (both interpreters) who would take turns to note the details of anything that caught their attention (so that at least one was always listening) and to note the time.

They would then examine the transcripts and after consulting with one another and seeking input as required from other parties would then prepare written comments on any issue, which would then be available to counsel for use in re-examination.

Time-consuming and costly. But to measure a thing you need another thing longer than the first thing. Similarly to measure the quality of a translation requires that greater resources be marshalled than were required to produce the translation in the first place.

Other

> *"NAATI has agreed to serve as a centralised repository of information about the unavailability of interpreters in the legal system."*

This information should be made public.

> *P 14 'Implementing these Standards will have cost implications. It is essential that governments, in order to ensure equality and access to justice for all, provide courts with adequate funding to give effect to these Standards.'*

It is interesting that the Standards omit any case studies that might illustrate the enormous costs that can be incurred due to *failure* to manage language properly. We want these Standards to be welcomed, and money talks.

> *'8.9 In order to respond to shortfalls in interpreter availability, Courts should report to NAATI when they have been unable to secure the services of an interpreter.'*

This is ambiguous. I think the intention is for when they have been "unable to secure the services of any interpreter."

> *'4.12 Dedicated interpreters room'*

A minor addition – this is a very good idea – but the text should note that the main benefit is that when interpreters need to rest they should be out of sight of everyone, because generally people think that if you can see someone you can talk to them and that is the very activity from which they are trying to rest.

Although generally refraining from commenting on matters with which I agree, I applaud this

> *'All proceedings should be recorded in the event of an appeal.'*

The reasons that this is a significant advance are more than simply the ability to appeal. In fact it does not go far enough. There should be serious thought given to the automatic sharing of the recordings with the interpreter. It enables review and rapid correction of mistranslation. And the very knowledge that they are being recorded and that there is some systematic third party review possible has the potential to do more to improve quality than most of the ideas in this document. The detailed mechanism of that would require a much longer treatment than this submission allows.

Finally, and though it may not be appropriate for this document, I would say that it will be extremely important to carry out a benchmark survey of all the metrics that the Standards seek to improve so that data can be collected regularly and progress monitored. I think that a great deal more than the 'snapshot surveys' mentioned p. 48 4.9.

Thank you very much for this opportunity. For the sake of brevity I have presented many of these comments with minimal supporting arguments, but I would be pleased to expand on any of them if required.

Sincerely

Chris Poole

CHRIS POOLE TRANSLATION A DIVISION OF BREDICK GROUP PTY LTD ABN 68 589 937 301
24 GREENWOOD STREET, ABBOTSFORD VICTORIA AUSTRALIA 3067
TELEPHONE (613)9391 0899 FACSIMILE (613)9391 0099
EMAIL desk@pooletranslation.com.au WEBSITE www.chrispooletranslation.com.au