Communication Matters: new language varieties and new interactions in legal contexts

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1. Introduction

Australia is a linguistically diverse nation, with Indigenous and migrant languages. With respect to Indigenous languages the 2011 census reported some 60,550 Aboriginal and Torres Strait Islander Australians speak or know some of their heritage language. 170 languages are named reflecting a diverse and fragile language ecology (Biddle, 2012). Of the traditional languages still passed on and used as the first language of children, most are spoken in the Northern Territory (NT) of Australia (Marmion, Obata & Troy 2014, p. 8). In the NT, in addition to traditional languages, new language varieties are developing, products of language contact and the formation of new social identities (Meakins, 2008; Morrison & Disbray, 2008; O'Shanessy, 2011, To appear). This changing language ecology has implications for communication in legal contexts and the ways services respond to communication needs, the topic of this paper.

Existing research has drawn attention to issues of communication in legal contexts with respect to Aboriginal and Torres Strait Islander Australians. Diana Eades has pioneered this work focussing on Aboriginal ways of using English (Eades, 1992, 2010; 2013 for instance). Through her forensic linguistic work Eades has also investigated how the Australian and law and legal process exercises neo-colonial control over the Indigenous people (Eades, 2008a). This work is situated mainly on urban contexts in New South Wales and Queensland. Informed by this, other research has recognised and described means of addressing disadvantage posed by communication matters through for instance the Anunga guidelines (Douglas, 1998), Aboriginal sentencing courts and Bench books (Clare, 2009). In her study, Biber (2010) has considered epistemological differences with respect to knowledge and truth across cultures, and the differential impact the rules of evidence have as a result on many Indigenous people in court settings. The study poses implications for how Evidence is taught in tertiary education courses.

Research from the NT has stressed the importance of the interpreters in court room interactions involving first language speakers of traditional languages (Cooke, 1995; Goldflam, 1995, 2012), highlighting that the right to an interpreter for many Aboriginal people is crucial in allowing an accused a fair trial (Goldflam, 2012). Indeed in critical face-to-face court interactions interpreters are essential in facilitating communication between speakers who do not share the same language mastery or language repertoires. An
Aboriginal advocate recently described Aboriginal Interpreters as the ‘heavy lifters in courts’ and other communication contexts, and this is certainly true (ABC, 2013).

However, in a myriad of ways in addition to interpreter services, legal services and other organisations in the NT are seeking to improve communication, and with it legal process and access, in and out of courts. These include resources for lawyers and legal professionals, recordings of the police caution in traditional languages for suspects, community legal education programs, pod and vodcasts on legal matters and e-books in traditional languages to explain parole conditions. In doing so they spread the communicative load (details in the endnote below¹). This second matter is discussed in this paper. The following section focusses on new language varieties that are in many ways ‘invisible’. It begins with some terminology related to new languages, then discusses of the range and spread of these in the NT and draws implications for legal communication (section 2). Section 3 then examines innovative ways to improve communication in legal contexts, primarily for speakers of traditional language, but also for speakers of new language varieties. The goal is to consider evaluation and development of these programs and resources and to prioritise future research.

2. Contact languages & new varieties

2.1 Terminology

Contact languages or varieties

In sociolinguistics the term variety is useful for talking about languages, dialects, registers or styles. As language is often associated only with the standard language and a very clearly bounded entity, and dialect is often associated with regional and/or often less prestigious or "correct" than the standard, variety avoids these associations. The term contact language or variety categorises such a code by its history and development. As the name suggests, contact languages are the product of contact between speakers of different languages. These generally first emerge in contexts without widespread bi-/multilingualism among different groups and where there is little opportunity or will to learn the other’s language fully. This is often in contexts with power difference between language speaker groups (eg. plantations, colonies, and in the NT - on stations, in stock camps, dormitories). Contact languages may be short lived or enduring. Features from both ‘parent’ languages appear in the new variety, but one language is dominant, in terms of the words/lexicon, is this is called the lexifier language. The grammatical structure is simplified or streamlined.

Pidgin This technical term refers to a relatively early stage in language contact. Pidgins are systematic but not fully-expressive varieties used for a limited range of interactions and are no one’s first language. With continued contact and broadening contexts for use a pidgin may expand and begin to stabilise as speakers, particularly young speakers come to use it for a greater range of purposes. In Australia, English-lexified
pidgins influenced by varieties such as Melanesian Pidgin English were used from the time British colonist arrived. Varieties were used in stock camps, cattle stations, missions and the settlements across the country.

**Creole** A pidgin arises early in contact and when this earlier speech variety expands and stabilises as it becomes the first or main language of a generation of users (gradually or abruptly) develops into a ‘creole’. When a creole and one of its source or its ‘lexifier’ languages stay in close contact, and there is shift towards the source or lexifier, this is a process of decreolization, in in the ‘post-creole’ variety(s) there is often a good deal of variability in the ways that people speak (a ‘creole continuum’ from ‘light’ to ‘heavy’ styles) (Siegel 2000: 4). African American Vernacular English and NSW ‘Aboriginal English’ might be considered post-creoles.

Linguists use terms such as pidgin and creole as technical terms to refer to types of languages. Lay people, on the other hand use them to refer to particular languages or styles/varieties they know or hear: “Pijin” and “Station Pijin” (to refer to styles of English spoken by older people) and “Kriol” in the NT or “Kimberley Kriol”.

Two major English-based creoles are spoken in Australia, north Australian Kriol and Torres Strait Creole. Across north Australia from western Cape York (Queensland) to Broome (Western Australia), across the Top End of Australia and south to Tennant Creek (Northern Territory) contact varieties of English are spoken as a first language by up to 30,000 Aboriginal people. These can be described collectively as “Kriol”, although in the NT this term is generally used by Aboriginal people to only refer to the Roper River Kriol, and so local terms such as ‘Wumpurrarni English’ may be used (Morrison and Disbray, 2008). There are some local differences in pronunciation, structure and lexicon, and often words and other features from local traditional languages are inserted. However, they share many similarities and are mutually intelligible (Meakins, 2014, p. 375). Only areas of coastal Arnhem Land and the Daly River region are excluded from the reach of Kriol in the north.

**Mixed languages**

More recently linguists have found a number of NT languages to be mixed languages, new varieties that combine elements of two or more languages which are in close contact in a speech community. Examples include ‘Light Warlpiri’, spoken at Lajamanu, and the speech style of young adults at Kalkaringi, ‘Gurindji Kriol’ (Meakins, 2008; O’Shannessy, 2011, To appear). They differ from pidgin and creole languages in that they come about as a product of expressive rather than communicative needs, as is the case for pidgin and creole languages. They are created in situations where a common language already exists and communication is not at issue, but they serve rather as an expression of an altered identity (Meakins, 2011,
Speakers make use of the grammatical resources of both languages in innovative ways, and often in these mixed languages there is a fusion of the two systems, rather than the streamlining we see in pidgins and creoles.

**Naming & recognising contact languages**

The agency of young people is an important part of language change and innovation in the NT. Long term research on these new varieties shows that young people do not ‘grow out of’ these varieties, but that they can become the peer language of a generation, which is then passed to children, providing scope for re-innovation. Contact languages are important in thinking about spreading the communication load in domains such as law, as it is increasingly clear that when younger people shift from speaking traditional languages in traditional ways, they don’t shift to Standard Australian English. Good communication means keeping up with changing language repertoires. However, the low status and, relatedly, low visibility of these new varieties represents a challenge to this (Marmion, Obata, & Troy, 2014). Often there is no official name for individual contact languages, or the term that local and non-local linguists and language workers use doesn’t have wider currency in the community. New contact languages don’t have the formal recognition that establishes them as ‘languages’, things like texts and dictionaries. In some contexts they have low prestige and there are negative or ambiguous attitudes towards them within and outside of the speech community. Interpreters and language workers may see them as substandard varieties, be reluctant to acknowledge them, or may not wish to show their knowledge of these varieties. These matters may raise intergenerational shifts and tensions.

For legal practitioners and other non-speakers these varieties may appear as simply poor English or some impoverished ‘light’ or ‘new’ baby-talk variety of a traditional language, rather than an innovated system used by people of different ages as a language of everyday communication. For younger speakers, the variety they speak may be viewed as a variety of the traditional language (‘Light Warlpiri’, or as many young Lajamanu people say – Warlpiri ‘Lajamanu style’). This raises issues of authenticity, ‘real’ and ‘correct’ language, and such prescriptivism can be unhelpful in effective communication. In addition, with English-lexified varieties, English language speakers are more likely to overestimate the commonalities between the contact variety and speech practices of and their own Standard Australian English variety. These factors contribute or re-enforce what linguist Denise Angelo and her colleagues have called the ‘invisibility’ of contact languages, evidenced by low reporting, little recognition in languages policy and in education settings, and lack of attention to the learning needs of students as learners of English as an additional Language/Dialect (Angelo & Carter, 2015; Malcolm, 2011; Sellwood & Angelo, 2012).
Certainly the NT Aboriginal Interpreter Service has formal recognition of Katherine region Kriol (East side Kriol & West side Kriol) and Modern Tiwi, with resources and training in these languages. However, many varieties and styles are not recognised or resourced.

**Aboriginal English, Aboriginal Ways of Using English & the Aboriginalisation of English**

Unlike terms such as Gurindji Kriol or Wumpurrarni English, ‘Aboriginal English’ has wide currency. Indeed the work of Diana Eades has drawn attention to Aboriginal English and its use by speakers in Queensland and New South Wales generally and in in legal contexts (Eades, 2013). This work has shown that Aboriginal people speak varieties of English in urban areas that are not dramatically different from other ways of speaking English, superficially at least. However differences in cultural and speech pragmatics (ways and norms of using language) are brought into sharp relief in high stakes interactions, such as those in the criminal justice system. The features that come to the fore in this work include the semantics of Aboriginal English, the conventions and pragmatics of questioning, including ‘gratuitous concurrence’ (answering questions with the perceived preferred response to appease a questioner) and the use of silence. Important are also differences between story-telling in everyday life, in courts and cross-culturally, expressions of and attitudes to time, and broader cultural practices such as loyalty to family and perspectives on private versus public space (Eades, 2013). These matters are clearly important in the NT, though very little similar research has been carried out.

Eades’ work on characterising ‘Aboriginal English’ also recognises the very dynamic nature of the varieties and styles speakers use, which is at odds with the idea of a clearly bounded linguistic entity. The term ‘Aboriginal English’ implies a single language or style associated with a social group, in fact potentially all Aboriginal people, but this is not the intention and does not reflect the linguistic reality. By using terms like Aboriginal Ways of Using English (Eades, 2013) and the Aboriginalisation of English, Eades has allowed a characterisation of language practices that more accurately capture of the dynamic and variable nature of the ways that language is used, reflecting language styles. This is important to the NT context, the topic we turn to now.

**2.2 Languages and language varieties in the NT**

**Aboriginal Ways of Using English in the NT**

Aboriginal people in the NT don’t speak English in a unified style, and the styles used vary depending on a range of factors: the language spoken at home in their childhood home and in later life, the speaker’s age, education and employment experiences, other language spoken, a given context. The slipperiness of the term Aboriginal English is clear when we consider what ‘Aboriginal English’ might mean, by testing it against different speakers and their repertoires. The sort of ‘Aboriginal English’ or Ways of Using English
we could expect among the following speaker profiles would sound significantly different. If we changed the variable age, we could also expect a different style of ‘Aboriginal English’. Overall the term Aboriginal English is a useful in a general way, but not very precise. It also risks racialising speech styles.

**Figure 1. Speaker Profiles and Aboriginal Englishes**

### 2.2 Language repertoires – some recent research

From 2003-2007 the Aboriginal Child Language Acquisition project, a 3 year longitudinal study of child language development investigated children’s language in three sites, Tennant Creek and Kalkaringi in the NT, and Yakanarra in the Eastern Kimberly, plus a linked study at Lajamanu, NT. In 2008 a new project started, with a number of further sites in the NT\(^1\), including Murray Downs, near Alekarengen in Central Australia. The studies looked at a range of issues in child language development, but more importantly for this paper, they provided insight into new language varieties and developing speech repertoires amongst young Aboriginal people in remote NT communities (Simpson & Wigglesworth, 2009). Examples 1-4 give just a sense of these new varieties spoken in Lajamanu (Light Warlpiri), Kalkaringi (Gurindji Kriol), Tennant Creek (Wumpurrarni English) and Murray Downs (Alyawarre English). Lexical features from English/Kriol are italicised.

1. **Light Warlpiri (Lajamanu) (O’Shannessy)**

   Kurdu-pawu-ng *i-m* pud-*um* leda *na* watiya-wana

   The child is putting (the) ladder against (a/the) tree.

2. **Gurindji Kriol (Kalkaringi) (Meakins)**

   *Man(-tu) (i) bin* jarrawj *(im)* det guana *karnti-yawung*

   The man speared a/the goanna.

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3. Wumpurrarni English (Tennant Creek) (Disbray, 2009)

Pikka-pikka *i bin pudum leda na tree*-kana
(A/The) child put (a/the) ladder against (a/the) tree.

4. Alyawarre English (Murray Downs) (Dixon, 2013, p. 310)

*Themab hebin* mwetek. *Ola gel-rinem hebin loli*
They all have (a/the) car. All the girls have (a/the) lolly(s).

The research also provided information on the sorts of speech repertoires Aboriginal children develop. These were found to be varied and dynamic, with children acquiring a complex array of skills in different languages. In some contexts some children do have the opportunity over time to learn the traditional language as it is spoken by the generations above them, but in many the language of new generations is significantly different. The speech report as depicted for one Tennant Creek child, as mapped in figure 2.

![Figure 2: Language repertoire of one child in the ACLA study](image)

The points in the bottom right cell (in italics) raise implications for decision making about what language and what medium are best used to establish good communication in legal settings or to develop resources. For instance, speakers may be able to understand traditional languages (passive knowledge) and so access some information, but not the same level of active productive knowledge. For some traditional languages there are established literacy practices with many literate people, however this is not the case for all traditional languages and not the case for most contact languages. Similarly oral English competency does not guarantee literate competence.
Cooke (1996) has drawn attention in a court setting to the ways that speakers might use their various linguistic resources. This switching can appear confusing or selective to speakers with less dynamic speech repertoires. However, speakers have different code choices and preference for specific purposes. Even in strong bilinguals, processing information that is unfamiliar in one language can pose strong cognitive demands that impact on communication. On the other hand, interacting in a language that is aligned to one’s primary identity in a stressful context might enhance comprehension and communication.

2.3 Language/Dialect matters in legal contexts
Diana Eades’ research has investigated legal interactions mainly in Aboriginal English–speaking contexts in New South Wales and Queensland. In the NT Michael Cooke has investigated legal interactions with speakers of Traditional Aboriginal languages (Cooke, 1995, 1996, 2002) however there is little research overall, and none on new NT contact varieties. The investigation of interaction was outside of the current project, however a number of discussions with experienced interpreters in one region informs the following section and identifies areas for further research. The interpreters consulted raised the difficulties particularly for young people in legal interactions in accessing ‘hard English’, but for whom information in ‘hard Warumungu’ is also unhelpful. They also raised resistance by law enforcement and legal officers to access to interpreters where the Aboriginal person could ‘speak English’ and a lack of interpreters available. They recounted instances of miscommunications at a semantic or lexical and more broadly at cultural level and these are described here.

Lexical/Word Matters
One account involving a word or phrase level miscommunication involved three men accused of assaulting another man. One of the accused denied having been at the house at the time of the assault, having left just before the event: he’d claimed “a bin go leader” (‘I went leader’, ‘I went ahead’, ‘I left first’). In his statement, one of the other accused young men had agreed that the man in question had been the “ring leader”. The source of the misunderstanding was worked out before the case went to trial. The interpreter reflected some further examples. When another young man said of walking independently and a time later than his partner “a bin followim behind” (‘I came after’), this was understood by police as an admission of threatening behavior. In another case a young man was to be charged with dangerous driving, a witness was accused of lying as she said the driver “bin go limit”, which means to go very fast.

Cultural pragmatics
One discussion with interpreters centred on the question of when conflicts involving family members constitutes ‘a crime’. The view that regulation of proper behavior involves violence and this not relevant to law enforcement is held by some, and raises cross-cultural differences in understandings of the terms
such as ‘domestic violence’ as a crime. It is an important matter given high rates of offending and incarceration. Such matter have been discussed in terms of ‘customary law’ (Cooke, 2004).

**Language matters at other levels**

There are many differences between Standard English and contact languages spoken in Aboriginal communities at the interface between semantics and grammar, though there is little research on impacts these differences might have in interactions, with the exception of Eades work in South East Queensland and New South Australia. A number of areas might provide important. One is the verbal system, which is a complex system in Standard English. Different forms and expressions are used for similar but subtly different purposes (consider the future proposition: ‘we meet at 3 on Tuesday’, ‘we’ll meet at three on Tuesday’, ‘we are meeting at 3 on Tuesday’, ‘we are going to meet at 3 on Tuesday’, ‘we might meet at 3 on Tuesday). Further English verbs encode not only tense (past, present and future) but also duration, regularity, certainly with respect to future events, and in some cases the speaker’s sense of relevance of past events to the present situations – consider ‘the children spilled milk’ (event happened) vs ‘the children have spilled milk’ (impact of the event still evident).

Another area of potential miscommunication is in the use of articles to specify a referent, a very important part of information marking in Standard English. For instance, English relies on ‘a’ to mark non-specific and or new referents: ‘he picked up a stick’; in contrast to ‘he picked up the stick’, where the speaker can express ‘the stick I mentioned before’, ‘the one we both know’, ‘the one he had earlier’ etc. Speakers of Australian contact languages use articles differently and variably, and the specificity that articles in English establish in English does not carry over (Disbray, 2009). Lee (cited in Eades, 2010, p. 72-72) examines miscommunication in a case involving a Korean complainant and interpreter in an Australian court, due to this grammatical difference between English and Korean.

Finally, both Eades (2008a, 2008b, 2010) and Cooke (1996) have analysed specific uses of stories or narratives in legal contexts, including witness statements and cross-examination, and have explored their strategic use by legal practitioners and also cross-linguistic and cross-cultural dimensions. While this has not been researched in legal contexts in the NT, research has shown recount and storytelling in English-lexified contact languages have distinct pragmatics. In Wumpurrarni English for instance, elements are often introduced in what appears to a Standard English speaker vague ways, in part due to the differences in information marking discussed above. Elements are then repeated and built on with additional information as the story telling proceeds, creating what for English speakers can seem redundant stretches (Disbray, 2008). Research on information exchanges involving narration and recount, along with the other areas mentioned in this section may reveal further cross-cultural differences and miscommunication.
or misrepresentation. These everyday language features can cause communication difficulties, before taking specialist legal terms into account (Aboriginal Resource and Development Services Inc, 2008)

3. Spread the communication load

This final section considers some of the recently developed innovative ways to improve communication in legal contexts, through resources and programs designed to spread the communication load between speakers with different language masteries in interactions in the legal domain. These are grouped into four categories of users and contexts:

i. Legal officers and professionals and their professional learning
ii. Speakers of languages other than English in specific contexts
iii. Speakers of languages other than English and access to public education material
iv. Face-to-face outreach services to Speakers of languages other than English

Legal officers and professionals and their professional learning

Raising awareness and improving practice is taking place through professional learning opportunities for legal officers and professionals (e.g. police, lawyers, parole officers). Such opportunities include in-service training, the Language and the Law event, dissemination of research and publication of materials such as the Indigenous Protocols for lawyers. The expertise these actions foster spread the communication load.

In addition to the Protocols, ‘The Interactive Plain English Legal Dictionary’, developed by the Aboriginal Resource Development Service (ARDS), was launched this year. Both benefited from the committed and expert work of lawyer and linguist Ben Grimes. The dictionary provides plain English explanations of legal terms, for use by judges, lawyers, interpreters and others. The dictionary is an electronic volume and so can be adapted and updated easily. It is also printable. It also provides a basis for developing bilingual dictionaries of legal terms in English and any other language. The link to the dictionary is available in footnote 1 above. It is one of the excellent resources from the Aboriginal Resource Development Service (ARDS, link also under endnote i).

Speakers of languages other than English in specific contexts

A further set of materials have been developed for use in particular legal contexts. For instance, the police caution has been developed in a number of Aboriginal languages, including Kriol, with texts loaded onto i-pads for immediate use. Similarly, NT Department of Corrections has developed e-books and other visual resources inform prisoners and their families on parole conditions. The materials are in six traditional languages and plain English and are available from the website (see endnote i).

Speakers of languages other than English and access to public education material

The e-resources developed by the NT Department of Corrections are openly available for general use, and
so are part of a suite of electronic resources produced in recent years to provide public education on legal matters in Aboriginal languages. These digital objects allow easy incorporation of audio and audio-visual material in conjunction with or instead of text. This is important as literacy in Aboriginal language is not widespread. It is also an efficient way to reproduce materials or adapt the same template for different languages. Services such as ARDS have outstanding public education material on their web site, a range of pod and vod casts covering topics including legal matters. The i-talk library has interesting animations on health, legal and other matters in a range of NT traditional languages, and also in Kriol. On its website the Central Australian Women’s Legal Service has audio files in six Central Australian Traditional languages. They provide key information on a range of topics from child protection to renting and tenancy (links to all of these sites are in endnote i). The material housed on these sites represents an important collection of materials, for use in legal services, by individuals and potentially education settings (schools, community learning centres, adult education providers). By spreading understanding of legal matters in first language, the communication load is potentially shared.

**Face-to-face outreach services to Speakers of languages other than English**

Community outreach projects, such as the Northern Territory Legal Aid Commission program, provide further means to share the communication load. They not only provide learning to speakers of languages other than English, but also in foster skills in staff to develop and deliver practices and resources for cross-cultural and cross-linguistic settings.

**Secondary Education Programs**

Finally, David Moore, working with the NT Department of Education Alice Springs Language Centre are currently developing courses for secondary students in language awareness and language analysis, with pathways to translation and interpreting. This is to align with the currently Draft ‘Framework for Aboriginal and Torres Strait Islander Languages’, part of the Australian Curriculum. A pilot program is set to start in 2017 at Centralian Middle School, and a handbook, ‘Moving into Translation’ is set for release early in 2017. This move could provide more interpreters in the future, but perhaps more significantly, equip cohorts of young people with some of the bilingual skills, including knowledge of specialist vocabulary skills needed to better understand legal matters.

### 4. Future directions & Research

This paper has focussed on new languages in this dynamic language context and innovative ways to share the communicative load in cross-linguistic interactions. It has also looked at ways resource production projects aimed at spreading the communication load. With respect to the first matter, it is posited that new language varieties are little recognised and as a result the needs of speakers may not be met. Given
the levels of language innovation among younger people and their involvement in legal interactions, it is recommended that

- new research be undertaken on interactions in legal contexts involving contact languages, and in particular young people.

With respect to the projects and resources designed to improve communication and access to legal information and process for speakers of languages other than English, there is no publically available evaluation or report on the uptake and use of these resources, by staff in a particular setting (e.g. Corrections staff) or by service users (e.g. users of the CAWLS website or an outreach program). Evaluation of the access, uptake and use of these resources and programs could guide resource creation, and also distribution of materials. The following question are should be investigated

- What is the uptake of digital resources?
- What is the role of face-to face interactions?
- How accessible are digital resources?
- Would collating copies of materials into centralized or networked collections promote access and use? And could this guide decisions about transportability and sustainability of digital formats when materials are being developed?

Such research should also bring together the two themes in this paper and ask

- What materials are available in contemporary language varieties and is there demand for such resources?
- And, finally are the additional challenges involved with developing resources in new and dynamic speech styles?

Including contact languages in the broader discussion of communication matters in legal contexts will spread the load.

References

ABC (Writer). (2013). Panel discussion with Tony Jones, Andrea Mason, Mark Butler, Jamie Briggs, Sarah Hanson-Young, Nick Cater, Q&A ABC.


### Resources


This is one of the excellent resources from the Aboriginal Resource Development Service, where a range of pod and vod casts can be found at [http://www.ards.com.au/pages/Law%2C-Governance-and-Economics.html](http://www.ards.com.au/pages/Law%2C-Governance-and-Economics.html)


E-books with parole conditions in a number of NT languages were created in 2015 and can be found at [http://www.correctionalservices.nt.gov.au/CommunityCorrections/Pages/Indigenous-Language-Resources.aspx](http://www.correctionalservices.nt.gov.au/CommunityCorrections/Pages/Indigenous-Language-Resources.aspx)

The i-talk library also includes a number of public education resources [http://www.italklibrary.com/italk/law/](http://www.italklibrary.com/italk/law/)