The Importance of Engaging Experienced of Cross-Cultural Interpreters for all Negotiations with Indigenous Communities

THIS article by Murray Garde flags lessons for all parties, including the NLC, which are involved in consultations with Aboriginal communities where English is far from being the predominant language.

Murray Garde is highly qualified for this assignment, and the NLC has total confidence in his expertise as an interpreter.

Linguists have taught us for a long time about the problems that arise from cross-purposes communication.

Murray Garde's article demonstrates the value – indeed, in some instances, the necessity – of engaging an experienced cross-cultural interpreter for complex negotiations such as those that arise from profoundly important public policies that will have impact on the lives of current and future generations of Aboriginal people.

He has revealed the complexity of these negotiations and demonstrated that there are big holes in the understanding of Traditional Owners at Gunbalanya about the substance of negotiations so far towards the Commonwealth's goal of securing a 99-year-lease over their community.

-JOE MORRISON
CEO, Northern Land Council

FOR more than 20 years, Dr Murray Garde has been working as an interpreter in the Kunwinjku language of Western Arnhem Land.

The Northern Land Council [NLC] engaged Mr Garde to act as an interpreter with Traditional Owners of Gunbalanya after they signed an Agreement In Principle in August for a 99-year township lease to the Commonwealth.

Mr Garde's account of that assignment is a cautionary tale for governments, agencies and businesses which want to do serious business with remote Aboriginal communities where English is often a far-from-first language.
Importantly, this account should ring loud alarm bells in the office of the Executive Director of Township Leasing.

KUNWINJKU is the main variety of a language sometimes called Bininj Gunwok by linguists, which is a chain of dialects that stretches from Kakadu National Park in the west to Maningrida in the east.

In the 1980s and 1990s, I lived for many years on outstations south of Maningrida, working as an outstation school teacher, and learnt the language from daily interaction with Bininj (Aboriginal people). As I became more fluent in the language, I was often asked to interpret at important community meetings and sometimes in the courts or hospitals. Later I started working as an interpreter for cultural institutions, Aboriginal associations and government agencies.

I obtained accreditation as a Kunwinjku-English interpreter/translator in the early 1990s from the National Accrediting Authority of Translators and Interpreters (NAATI).

Interpreters who work with Australian languages also have to be keenly sensitive not only to linguistic differences but also to cultural practices that give rise to culturally-specific and different ways of speaking. Working as an interpreter between English and an Australian language like Kunwinjku is much more complicated in some ways, compared with working across languages that have common cultural backgrounds, such as English and another European language like French.

Many monolingual speakers of English assume that words and concepts in English have exact analogue equivalents in all other languages of the world, including Australian languages. This is definitely not necessarily the case and ignorance of this simple linguistic fact can leads to a lot of cross-linguistic miscommunication. Interpreting between English and Kunwinjku can involve a lot of paraphrasing in order to explain concepts or terms that are in one of the two languages but not in the other.

Another problem I encounter frequently as an interpreter is the assumption of monolingual English-only speakers that, without any specialist training, it is possible to assess correctly the level of English comprehension of people whose first language is a language like Kunwinjku. I have on a few occasions been asked by some non-Indigenous participants at meetings, “Why do we need you as an interpreter? Person X speaks to me in English all the time.” But frequently these are not everyday meetings, because they involve incredibly weighty technical issues relating to topics such as mining, land tenure, community governance, complicated legal issues, climate change science, complex medical procedures and so on.

Non-Indigenous people can also forget that many people in remote Indigenous communities, for whatever reason, did not have any access to a high school education. The comment, “Why do we need an interpreter?” suggests that many non-Indigenous residents or professional visitors to remote communities are claiming to have expertise in assessing second language competency when clearly this is not their area of professional training expertise.

Using an interpreter can also interfere with and complicate the rubber-stamp approach to the consent-seeking process that characterises so much government policy implementation work in Aboriginal communities. Basically this entails government representatives telling Bininj what the changes to community governance will be and why they need to consent to such changes. This is then followed by some kind of document-signing ‘ceremony’ which purports to provide evidence of consent. Bininj may go through the motions to keep others who pressure them happy, but they do not necessarily share such foreign cultural protocols for establishing community consent and consensus.

One current example of this cross-cultural misadventure relates to the issue of township leasing proposed for Gunbalanya in western Arnhem Land.

An information campaign to convince the traditional owners of the Gunbalanya to enter into a 99-year township lease (under section 19A of the Land Rights Act), and to inform them of benefits that would accrue from the lease, is in full swing. A number of meetings between Australian Government representatives and traditional owners have already taken place at Gunbalanya.

On 18 August this year, the Minister for Indigenous Affairs, Mr Nigel Scullion, attended a meeting about township leasing at Gunbalanya and traditional owners were asked to sign a document entitled “Agreement in Principle”. It sets out the ‘key terms’ of a Section 19A lease between traditional owners (represented by a law firm funded by the Australian Government), and the Australian Government. The document was signed by the traditional owners of Gunbalanya in the presence of Minister Scullion.

After the meeting and signing, one of the Gunbalanya traditional owners, Ms Julie Narndal, obtained independent advice from another lawyer in order to better understand the meaning of the document she had just signed. Two days later she then sent a letter through her lawyer to the Northern Land Council stating that she did not understand what she had signed on 18 August. This immediately raised questions about whether or not the process of obtaining “free, prior and informed consent” had been observed in relation to the other traditional owners as well. To date, no qualified Kunwinjku-English interpreters have been employed during these complex negotiations.

In order to discharge its statutory obligations and to better assess the level of understanding by the rest of the traditional owner group, the Northern Land Council undertook further discussions at Gunbalanya on 31 August. I was contracted to act as an interpreter during these consultations. I enquired in Kunwinjku about how well the traditional owners had understood the details set out in the "Agreement in Principle" document which they had signed. They told me in Kunwinjku that in signing the document they were expressing a willingness to have further discussions with the Australian Government about township leasing. They told me that in signing the document they were not expressing any intention to agree or disagree with township leasing but that they were open to further discussions -- and that was all.

There seemed to be a clash between their understanding of what it was they had signed, and the actual contents of the document.

We then examined a letter, sent on 31 July 2014 by lawyers funded by the Australian Government on behalf of the traditional owners, to the Australian Government Township Leasing Taskforce

One of the later paragraphs of that letter claimed that "our clients wish to speed up progress" in relation to the leasing negotiations.

The letter also claimed that the traditional owners were "frustrated" with the slow progress on township leasing since the initial proposal was made by the Australian Government in 2013.

I interpreted the contents of the letter and asked if this indeed reflected their position. They were shocked. "We never said that," they told me in Kunwinjku. They then told me that their position in fact was the opposite and that they wanted the whole issue to proceed very slowly and carefully, so that they could have enough time to get the right information and achieve consensus as a group in order to come to a decision.

They also told me that they had made no such decision in relation to township leasing and that they were not "delighted" to sign a "Memorandum of Understanding regarding the commercial terms agreed" as the letter claimed. A number of times I was told this in Kunwinjku: "Yeledj ngarri-djare ngarri-wokbekkarren rowk, yeledj, ba ngarri-wokmarnburren", which in English is: "We want things to proceed slowly so that we can consider everything slowly and come to a decision".

The group made it clear that they were confused about the implications of township leasing in relation to their rights as traditional owners. They were aware that there were financial incentives on offer but they did not know that these upfront payments would effectively be an advance to be repaid, in that after a certain period the costs of the Executive Director of Township Leasing would be recovered from sub-lease payments. Further, these costs appear not to be capped. It is theoretically possible that under these terms traditional owners could get very little or no payments should the EDTL expenses be substantial.

It was also explained to the traditional owners during these consultations that under a Section 19A township lease, the Executive Director of Township Leasing would need only to consult with the traditional owners about sub-leases.

Any rights they would have enjoyed under the Land Rights Act to “free, prior and informed consent” about sub-leases would no longer apply. “Bolkkime ngarri-bekkan manekke kun-wok!”-“That’s the first time we have heard/understood this information,” they replied.

It was also explained to the traditional owners by NLC representatives that there were several choices available to them. Firstly, they could agree to a long-term township lease under Section 19A of the Land Rights Act. Secondly, the same outcome with different terms and benefits to traditional owners is also possible under Section 19 of the same Act. A third option is that the traditional owners are free to choose neither arrangement.

Again, traditional owners replied that these options were new information that had not been discussed with them previously. It is difficult to reconcile how traditional owners could have signed the “Agreement in Principle” with ‘key terms’ on August 18, with the required principle of “free, prior and informed consent” based on what they told me in Kunwinjku.

Communication across the cultural divide is hard enough at the best of times.

The current negotiations involve technical and legal complexities with serious implications for Bininj who live in Gunbalanya today, as well as for future generations of land owners and residents. Understanding these complex issues also means sharing a vast amount of non-Indigenous cultural and legal knowledge that can be taken for granted by one side of the cultural divide but not the other.

I listened to comments from traditional owners during my role as interpreter about a range of matters that suggest that all parties still have a long way to go in order to secure the principle of free, prior and informed consent.

What is “an act” in the legal sense? What is a “section” of a statute? Who is this ABA that everyone keeps talking about?

Quantification and numbers are not easy concepts for languages which do not specialise in them. Numbers in phrases that keep appearing in English, such as “99-year lease” and “Section 19” or “Section 19A”, are confusing and currently impenetrable terms for Bininj because no one has really taken the time to explain what they mean. It has just been assumed that this is shared cultural and legal knowledge when clearly it is not.

In order to engage traditional owners in a process such as this, Bininj need time to explore the large amounts of complicated information over a timeframe with which they feel comfortable.

They’ve made it clear that they don’t want to be rushed and they clearly feel uncomfortable with the many requests for them to attend meetings and constantly engage.

To date, the negotiations have caused stress and irritation for traditional owners.

The perception of how the process has proceeded was described to me by other Bininj in the community as “Kabindi-kebdjirrkkan kurebeh kondabeh”, which literally means: “They are having their faces pushed this way and that way”.

Traditional owners will need further assistance to make sense of the vast amounts of unfamiliar legal information which will need to be provided in Kunwinjku as well as English. It’s not always easy to have an accredited interpreter present at every meeting but it can be argued that no free, prior and informed consent can be obtained without consultation and deliberation being conducted in Kunwinjku, which is the first language of all traditional owners at Gunbalanya.

(Printed in *Land Rights News:Northern Edition*, October 2014.Edition 4,pp 5-6)

http://www.nlc.org.au/land-rights-news/