

Wrongful conviction of Indigenous man sparks calls for interpreter funding

Experts urge WA government to reinstate funding to Kimberley Interpreting Service after court rules Gene Gibson's jail sentence a miscarriage of justice



Initial police interviews of Pintupi-speaking man Gene Gibson were thrown out of court because WA police failed to provide an interpreter. Photograph: Tony McDonough/AAP

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Interpreters and the Aboriginal Legal Service have called on the Western Australian government to reinstate funding for the state's only Indigenous language interpreting service in the wake of the wrongful conviction of an Aboriginal man.

Gene Gibson, a Pintupi-speaking man from Kiwirrkurra on the edge of the Gibson Desert, spent five years in jail for the 2010 manslaughter of Josh Warneke in Broome before being released by the supreme court on Wednesday, after the court of appeal ruled his conviction had been a miscarriage of justice.

The court found that Gibson did not speak English sufficiently or have the cognitive ability to understand the legal process.

The conviction for manslaughter came after the initial police interviews had been thrown out of court because police had failed to provide an interpreter. The charge

was then downgraded from murder to manslaughter and Gibson pleaded guilty. He argued on appeal that he did not understand that plea.

Dee Lightfoot, chief executive of Kimberley Interpreting Service (KIS), the only Aboriginal-language interpreting service operating in WA, said she hoped the ruling would spark the McGowan government to renew state funding for the service, which was cut in 2014.

KIS currently relies solely on federal funding, which Lightfoot said was enough to provide a “basic service” but not enough to provide additional services, including training for police and court officers.

“KIS currently maintains a capacity to answer every request,” she told Guardian Australia. “All requests for interpreters are met, but at times there may be need to reschedule engagements to ensure interpreters are present to ensure all parties are understanding and being understood.

“There is concern because the demand is increasing and we are covering the state. The service requires sustainable expanded funding and KIS is committed to working with government to achieve this.”

KIS was jointly funded by the federal and WA governments until that agreement expired in 2014. The federal government continued to contribute about \$400,000 a year but state funding of \$200,000 a year was not renewed.

The WA treasurer and Aboriginal affairs minister, Ben Wyatt, spoke in support of the service while in opposition, telling the ABC: “Without that interpretive service, Aboriginal people not understanding what’s happening to them in the justice system, we see trials fall over, we see police investigations critiqued by judges.”

Guardian Australia understands KIS has begun discussions with the new government to renew its funding.

However Wyatt did not respond to questions about ongoing funding, instead answering other questions in a statement that said the McGowan government “recognised the importance of Aboriginal language interpreting services” and that “agencies should access interpreting and translating services available – as and when it is necessary to ensure that an accused understands the proceedings”.

Wyatt also said: “The state government continues to contract and pay for Aboriginal interpreter services, as the need arises.”

As of 2014, KIS had 100 interpreters on retainer, speaking more than 30 Indigenous languages. In 2016 it used the services of 40 interpreters, speaking 26 languages. It continues to operate a 24/7 state-wide phone, video-link, and onsite service and has offices in Perth and Broome.

Peter Collins, director of legal services at the Aboriginal Legal Service (ALS) WA, said increasing financial support for KIS was essential to ensure more people such as Gibson were not wrongfully convicted.

“There should be Aboriginal interpreters at all courts where there are any Aboriginal people who don’t speak English as their first language, not only to interpret in court but to assist when ALS and any other lawyers are taking instructions,” Collins said.

“This is a crucial step in trying to ensure that Aboriginal people have equal justice in WA. Because at the moment it doesn’t exist, it’s completely illusory.”

The ALS raised concerns in October that police were refusing to use KIS when interviewing clients in Broome, instead using interpreters based in the Northern Territory.

In a statement to Guardian Australia, a police spokesman said they did use KIS, but “on occasions where officers identify a real or perceived conflict of interest the NT interpreting service is engaged.”

Since the start of 2017, Lightfoot said, there had been a marked increase in the number of times police had engaged an interpreter from KIS.

The WA police commissioner, Karl O’Callaghan, told ABC radio on Thursday he accepted police had a “significant role to play” in Gibson’s wrongful conviction and had “failed” the 26-year-old. He also levied part of the blame at the ALS, saying Gibson should “never have been allowed to plead guilty” after the original interviews and statements were declared invalid.

“Absolutely, I think we have got a role to play and I absolutely accept the blame and I guess if we hadn’t charged him he wouldn’t be before the courts, but the justice system is made up of multiple points which are points where things can be stopped and changed and rectified, and all parts of the system failed Gene Gibson,” he said.

The ALS has rejected criticism of its representation of Gibson.

WA Police was ordered to review its policies and practices around providing interpreters and interviewing Aboriginal witnesses in 2015, after a Corruption and Crime Commission investigation into the Gibson case.

Five officers were stood aside and disciplined following the CCC investigation but have since contested the action taken against them by WA police. The matter will now go to a hearing.