For most clients it is essential to avoid legal jargon and to use only expressions they will understand.

In the case of a client who is not very familiar with the English language, practitioners need to be very careful in their choice of words and use the simplest language you can to enable them to understand you.

If the language prevents communication either arrange an interpreter, or refer the client to a practitioner who speaks the client’s language.

What we have seen at Law Claims are cases where there has been a failure to use an interpreter or, the use of an untrained interpreter such as a family member or friend, which has translated into a greater risk.

Where the client’s knowledge of English is poor the use of professional interpreters enhances communication. If family members are used then impartiality needs to be questioned as well as reliability. There is a risk if an independent interpreter is not used that personal opinions and judgments may be expressed that might colour the interpretation process.

Law Claims highly recommends the use of independent trained interpreters particularly, in circumstances such as when seeking instructions regarding a settlement proposal, (i.e. special care is required in explaining the terms of settlement to ensure that the client is not under a misapprehension as to the net amount to be received); lodgment of proceedings so the client fully understands the consequences and, indeed, any matter of significance. This will include obtaining the fullest possible instructions/information from your client. This can be difficult because some clients are afraid or suspicious of practitioners who they see as persons in authority and part of the “system”. Such suspicions are perhaps more common with non-English speaking clients. For example, in a criminal matter, the result can be the reluctance on the part of the client to tell the whole story for fear that you, the practitioner, will pass on everything you are told to the police. Accordingly it is essential to bridge the cultural and linguistic gap in a legal context and an interpreter can facilitate this process.
Other situations where use of an interpreter can have an additional advantage is where the client is elderly and there may be a question as to whether he or she has sufficient mental capacity. This could often be the situation where the practitioner is instructed to prepare a will or Enduring Power of Attorney.

Accordingly, we recommend communication with non-English speaking clients with the assistance of an interpreter where necessary.

When working with an interpreter we also ask you to consider the following strategies:

- brief the interpreter about relevant words and concepts before the interview whenever possible;
- while interpreters are used for their language expertise, you may also be able to use their cultural expertise by asking the interpreter before the interview for any cultural factors that might affect the interview;
- be aware of gender, class, disability and other issues (e.g. political, religious) that may impact on the interview. Seek the client’s permission if you need to obtain cultural information from the interpreter during the interview;
- introduce the interpreter to the client;
- sit facing the client;
- speak naturally but clearly so the interpreter can hear you;
- use plan English where possible;
- when complex issues are involved remember to summarise periodically;
- talk to your client, not to the interpreter. Always use the first person for example “Tell me what happened”? Do not say “Ask her/him to tell me what happened”;
- do not try to save time by asking the interpreter to summarise;
- pause often to allow the interpreter to speak;
- be aware that it may take more of your words than those you have spoken to convey the message in another language;
- try not to let the interpreter’s presence change your role in the interview with the client. It is not the interpreter’s role to conduct the interview;
- if the consultation takes a long time, give the interpreter a short break.

In summary, we have seen the under-use of interpreters lead to claims against legal practitioners. While not all meetings with clients who do not speak the same language as the legal practitioner will require an interpreter, we recommend you use one at significant points in the management of the file, as outlined above.

For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677.