



THE AUSTRALIAN INSTITUTE OF INTERPRETERS AND TRANSLATORS INC.

INQUIRY INTO INDEPENDENT CONTRACTORS AND LABOUR HIRE ARRANGEMENTS –

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Submission to the Standing Committee on Employment, Workplace Relations and Workforce Participation

March 11, 2005

A member association of
 **Professions
AUSTRALIA**
A national organisation of professional associations


Member of the
Fédération Internationale des Traducteurs

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1. Executive Summary

As the national professional Association of Translators and Interpreters (T & I), AUSIT is often required by its members to help them in their efforts to improve their job prospects and their income.

This submission focuses on the realities underpinning contracting arrangements between public sector bodies (and the agencies, both public and private, which service them) and individuals, particularly community interpreters. It also seeks to draw attention to the resulting poor and declining state of pay and conditions in this field.

There are few permanent employment opportunities for T & I practitioners in Australia. Most of them operate instead on a contracting basis, as individuals, as small businesses or they are engaged either directly by end-user/clients or through a larger agency. Generally, interpreters practice through a combination of the above. However, they do not enjoy any of the benefits generally believed to be associated with the status of contractors.

Contracting is typically portrayed as a riskier, more demanding status than salaried employment, with the potential for and the attraction of higher returns, greater success, flexibility, independence, astute negotiations, business flair, freedom of choice and tax advantages. This is far from reality for community interpreters in particular, who do not typically have the choice between salaried employment and contracting.

They are trapped into accepting contracting conditions over which they have no influence. With most of their work coming from government bodies, they face large and powerful institutions which are well resourced and unlikely to respond to any negotiation attempts from individuals. The interpreters find themselves isolated, outweighed, and powerless in their efforts to obtain acceptable conditions. Faced with this reality, the choice is to either abandon the profession or accept standard contracts and standing offers for low-paid work and assignments in distant locations for remuneration which, according to AUSIT calculations, can bring in less than the federal minimum wage.

AUSIT has made a number of representations on behalf of its members and investigated numerous possibilities to reduce this gross market imbalance. We found that all avenues require considerable financial, legal and human resources, which are beyond the means of this small professional group.

The situation is thus perpetuated, as there is nowhere to turn. We hope that this inquiry will highlight some of the inequities, restoring some fairness and a real balance of market forces. Although the present situation may afford short-term cost savings to end-users, we believe that it is counterproductive and may have serious long-term negative effects.

Our submission concludes with recommendations designed to ensure more equity for individual contractors dealing with public sector entities.

"Translation is written, interpreting is spoken"¹

¹AUSIT brochure: Getting It Right (see appendix/enclosure)

2. Inquiry

This submission is in response to the **Inquiry into Independent contractors and labour hire arrangements**, being conducted by the Employment, Workplace Relations and Workforce Participation Standing Committee.

On 9 December 2004 the Minister for Employment and Workplace Relations, the Hon. Kevin Andrews MP, asked the Committee to inquire and report on independent contracting and labour hire arrangements across Australia.

The Committee invites interested persons and organisations to make submissions addressing the terms of reference by 11 March 2005. In order to facilitate electronic publishing of submissions, the committee would prefer them to be emailed to ewrwp.reps@aph.gov.au or sent on disk to the secretariat, if possible.

Terms of Reference

The Minister for Employment and Workplace Relations requests the Employment, Workplace Relations and Workforce Participation Committee to inquire into and report on:

- The status and range of independent contracting and labour hire arrangements;
- Ways independent contracting can be pursued consistently across state and federal jurisdictions;
- The role of labour hire arrangements in the modern Australian economy; and
- Strategies to ensure independent contract arrangements are legitimate.

2.1 Submission

We welcome the opportunity to contribute to this inquiry and would be happy to answer questions from the Committee.

- Our submission will address topics linked to the first, second and fourth points in the Terms of Reference.

- Parliamentary privilege

We understand that this submission is protected by parliamentary privilege as stated in the brochure "Preparing a Submission - Notes to assist those preparing a submission to a parliamentary committee inquiry":

"The presentation or submission of a document to a committee is privileged. Essentially this means that a person is immune from legal action in respect of lodging the submission or any statements contained in it. If a submission is authorised for publication, its distribution also is immune from legal action."

2.2 Contact

The author of this submission is Yveline Piller, Chair of the AUSIT National Pay and Conditions sub-committee, who can be contacted as follows:

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3. Who we are

"Translation is written, interpreting is spoken".

Founded in 1987, the Australian Institute of Interpreters and Translators Inc. (AUSIT) is the only national professional association of practising translators and interpreters in Australia. It is incorporated as an association under the Associations Incorporation Ordinance 1953.

AUSIT is managed by a National Council of 11 members, which include five National Executive members plus a delegate from each Branch. Each branch also has a local committee. All office-holders are volunteers.

AUSIT is a member of Professions Australia (formerly the Council of Professions). AUSIT is also a member of FIT, the International Federation of Translators, which, until recently, was chaired for several years by an AUSIT member. AUSIT members are also represented on FIT committees.

AUSIT aims to promote the highest standards in the profession and places great importance on professionalism. Members are required to abide by the AUSIT Code of Ethics², which is widely accepted as the industry standard.

Over the years, AUSIT has consistently been active in the field of pay and conditions. In 2003, discouraged by the lack of success of their attempts to improve their working conditions, the membership requested the establishment of a formal Pay and Conditions Sub-committee, chaired by the National President.

Membership

As of 28/02/2005, AUSIT has 762 members covering over 60 languages. All States and Territories are represented. According to our estimates, our membership represents 20 to 25% of the practitioners in Australia.

Different levels of membership are on offer to suit translators and interpreters with varying amounts of experience, from newcomers to the industry to experienced professionals.

As the peak professional body, AUSIT attracts mostly the serious practitioner. Our members typically display a keen interest in their field as well as a sense of responsibility for the evolution of their profession.

Membership fees are AUSIT's main source of income. Despite their low level (maximum \$110 p.a.), many practitioners find them high compared to the income they can make in this profession.

Services

The Institute offers a number of services to members and non-members:

- E-mail networks for instant and ongoing exchange of information and views amongst members
- A voice in the world for translators and interpreters, including representations with major employers
- A quarterly newsletter, including a regular feature on Pay and Conditions
- Many networking opportunities, including workshops, seminars, conferences
- A frequently updated website www.ausit.org

² See enclosure or www.ausit.org

- Continuing professional development
- An on-line directory of practitioners and Yellow Pages collective advertising
- An information service to the public
- A referral service
- Information on training
- Access to professional indemnity insurance at reduced rates.

Demographics

The following information provides an overview on T & I practitioners compared to the general population in Australia, based on the 2001 Census.

Education:

All Occupations (general population)

- 49.96% have a Year 12 qualification or higher
- 14.11% to Bachelor Degree Level

Interpreters

- 80.53% have a Year 12 qualification or higher
- 28.38% to Bachelor Degree Level

Translators

- 92.68% have a Year 12 qualification or higher
- 37.14% to Bachelor Degree Level

Age:

	T&Is	All occupations
Under 35	21.34%	58.20%
35-49	46.11%	20.72%
50 and over	32.56%	21.07%

Gender distribution:

All occupations

- Male 48.86%
- Female 51.14%

Interpreters

- Male 27.42%
- Female 72.58%

Translators

- Male 42.51%
- Female 57.49%

In summary, it could be said that the typical interpreter is a mature, educated woman.

4. Access to the Profession

There is no compulsory training or educational path to become a translator or an interpreter in Australia.

Some TAFE and Universities offer T & I courses in selected languages, at various levels from diploma to post-graduate.

However, NAATI³ accreditation is the dominant market standard and is often required by the end-user. NAATI is a national body owned and funded by the Commonwealth, State and Territory Governments of Australia.

NAATI accreditation is generally obtained by sitting and passing a short test. No prior specific training is required. There are four levels of accreditation, two of which are predominantly represented on the Australian market: para-professional and professional levels, also known as level 2 and level 3. The failure rate for NAATI tests is high.

Good interpreting and translating require an extensive range of skills, which go much beyond the knowledge of two languages. These internationally recognised professions call for well-developed intellectual, social, cultural and practical skills which are acquired via a combination of formal education, practice in the field and broad life experience.

Successful candidates for the NAATI test generally show a high degree of bilingualism and have typically undertaken intensive, generally self-directed practice in order to pass. However, such practice is directed exclusively at the test format, which, although exacting in its own way, is seldom encountered in the professional environment.

This one-shot admission system tends to encourage a view amongst some accredittees that little further training is necessary. This view is reinforced by the employment market itself, which has no means in place to reward either experience or further study.

As the peak professional body, AUSIT actively encourages its members to undertake continued professional development. Unfortunately, the only argument it can present to its member is that of professional ethics and responsibility since these efforts are not likely to result in more or better employment opportunities.

Yet, even the basic requirement of NAATI accreditation is not necessarily observed by government service users: when an accredited practitioner is not available, most government service users will accept an unaccredited person, sometimes termed a Level Zero. In some states, the number of unaccredited/unqualified practitioners far exceeds the number of accredited ones.

This practice effectively removes the only competitive differentiator available to contract interpreters in marketing their services.

³ NAATI: National Authority for the Accreditation of Translators and Interpreters (for more details, please see their web site www.naati.com.au).

5. The Reality on Market Forces

Translation and interpreting are key services to the economy and to society, particularly with a globalised economy and the growth of worldwide communications.

With the advent of the Internet, translators can find work opportunities across Australia as well as overseas, whereas interpreters are generally limited to work in places they can physically attend.⁴

This submission will focus on the experience of community interpreters, who face more restrictive conditions with fewer market opportunities.

Australia is recognised as a pioneer in the introduction of language services for new arrivals and is still one of the countries prominent in language services. Recently, a prominent Australian University won a bid to organise *Critical Link 2007*, a major international conference on Interpreting in the Community. For residents with limited English proficiency, community interpreters are often the indispensable link with Australian institutions. Much of the work available in Australia is therefore related to language services allowing the delivery of multicultural policies, servicing large government institutions⁵. Jobs are often channelled to interpreters through private or government T & I agencies.

5.1 Types of contracting arrangements

Very few practitioners hold full-time employment in the field. Some work on a casual employee basis, covered by an award. Almost all have to operate as contractors for a significant part of their work, servicing multiple agencies and users of their services.

In practical terms, interpreters register with T & I agencies or in some cases, directly with the government institution which required their services. As a condition of registration on the agency's or institution's panel of interpreters, they sign a form of agreement defining the terms (including fees) under which they may be offered assignments in future.

They do not actually contract for work in any competitive sense, they only signify their acceptance of general terms and conditions and then accept or decline work assignments as they are offered.

The provision of T & I services can be allocated on a tender basis to T & I agencies bidding for the business of a government institution. These tenders compete mostly on price and the pricing pressure is passed on to their contractors, who are not involved in the process.

Far from enjoying the freedom of action, the flexibility, the potential for expansion that is generally associated with the status of contractor, many interpreters find there is no room to negotiate any aspect of the conditions under which they are required to operate.

Most cannot get by without a second source of income.

Failing to reflect a normal and healthy competitive environment, fees are simply set for a defined assignment duration. Little differentiation, if any, is made to recognise practitioners with higher NAATI accreditation levels and there is no difference in fees which acknowledges experience, education, special skills, additional services or even demand in the language.

An October 2003 report, *Interpreter Remuneration 1993-2003*, by AUSIT member John Gare, shows how interpreting fees in Victoria have been eroded over the last 10 years.

⁴ With the limited exception of telephone interpreting.

⁵ See examples in appendix 12.3

At the same time, other contractual conditions are becoming more complex and onerous and less advantageous. Examples include reduction in travel compensation, poor compensation for late cancellation of assignments, or lack of consultation prior to modification of standard conditions.

To counter the continuous decline of their working conditions, practitioners have little recourse. As contractors, they may put themselves in jeopardy under the Trade Practices Act by organising joint action or by trying to set minimum fees and conditions.

5.2 Status of contracting arrangements

We consider this position is not that of an independent contractor. Since interpreting services are performed primarily for state or federal government bodies, the market is more akin to the provision of an essential service, the demand for which is controlled by the public sector: essentially a supply monopoly.

An AUSIT member and long-time practitioner summarised his reasons for abandoning the interpreting profession as follows⁶:

Interpreting is not an open-market service

The reason why interpreters are exploitable and expendable is that interpreting is treated as a free-market service to be obtained according to the rules of supply and demand. However, community interpreting is an essential service that has been brought into being by the Government and demand is all one-way.

There are no jobs for community interpreters other than Government ones. It is misleading to compare them to other trades or services such as electricians, cleaners or IT specialists, all of which have options outside the government ambit and whose work may not be performed by unlicensed/unqualified persons. People are actively encouraged by the Government to gain [NAATI] accreditation, with the award of immigration points being a prime example.

With their monopoly on 'demand' (i.e. requirements for interpreting services), a deliberate interpreter oversupply and/or a willingness to ignore the very accreditation standards set up to serve them, Government departments are able to dictate interpreter rates in a fashion without parallel in other sectors. That is not free enterprise.

The use of legalistic contracts such as the "Service User" one is a further impost on the interpreters who have been accredited to serve "Service User" and other departments like it. While treated as completely independent contractors, with the attendant responsibilities of record-keeping, legal advice, insurance, travel, equipment (telephone, mobile, computer, internet), they can only ever work for "Service User" or other Federal (and some state) bodies like it.

[During recent negotiations], AUSIT's representations were ignored or dismissed. Pay rates were not up for review, and the terms and conditions of the contracts were non-

⁶ Italics added.

negotiable. The message was quite clear: sign the agreement as-is, or part company with "Service User".

However, the indiscriminate fashion in which "Service User" goes about solving its problems is beginning to make a mockery of the industry and the accreditation system in Australia. While they express a preference for NAATI L3 accreditation, they will happily engage L2s and also unaccredited people, whom they term "Level Zeros" (half the "Service User" panel of 2100 interpreters fits these latter two categories). There is almost negligible pay difference between L3 and paraprofessionals, and none at all between L3 and L4.

In strict business terms, you must applaud "Service User's" approach. They have a necessary resource by the throat and are not about to let go. They are not alone in this either - all the major institutional users are primarily concerned with providing language services on [an On Site/On Time/On Demand] basis. Encouraging continued L3 interpreter accreditations while allowing themselves to bypass that level ensures an oversupplied interpreter base and depressed rates.

However, in terms of resource management, we have a disaster. With no reward for professional development of any kind, these end-users rely on the ethics and good will of practitioners to maintain quality standards. After years of inattention, the good will is running thin.

6. A Recent Example

This section illustrates the one-sidedness of the market and the kind of pressure interpreters are operating under.

In January 2004, a very large Commonwealth Service User issued a new contractual document, comprising an application with a new set of Rules, inviting the hundreds of interpreters already on its database to apply for registration, giving almost no warning and no time to evaluate, causing uproar amongst practitioners.

Fees remained unchanged since 1999 and many conditions imposed on practitioners were even more onerous as before. There was no room for negotiation.

Senior AUSIT representatives met with the Service User whilst individual practitioners requested modifications of some standing conditions, but no concessions were made.

When weighing up the forces in presence, it should be noted that:

- \$58 is the fee paid to the interpreter⁷ for a 90-minute assignment, which in fact often represents virtually half-a-day of the interpreter's time, when adding the travel time for which no compensation is paid. Single standalone assignments are common.
- \$2,000 p.a.: This figure represents the average earnings of interpreters on this body's interpreting panel.

The issues that practitioners objected to were:

- TIME-FRAME

This brand new, 38-page document in legalese was received by many interpreters around January 19, 2004 with a request to return it by January 30, 2004, a maximum of 9 working days to read, analyse and seek advice.

This exercise took place during the holiday season.

- LACK OF CONSULTATION

The only advance notice of the new document was an informal verbal mention of the Service User's plans, an equally unspecific mention in a newsletter to interpreters and an obscure letter received by AUSIT only days before the distribution of the document, on December 29, 2003, with no opportunity for consultation.

- ONE-SIDED CONDITIONS

- The new conditions in the document were presented as an administrative simplification, ignoring the extra burdens imposed on the recipients.
- The contractual system was changed from close-ended to open-ended arrangements, thereby ensuring control of future renegotiation dates by the issuer of the document.

⁷ Paraprofessional level. Professional-level interpreters receive \$60.

- BUREAUCRATIC DUPLICATIONS:

Interpreters were required to provide documents already on file:

- Australian Federal Police background check, birth certificate, passport, visa, passport photos
- Proof of NAATI accreditations, references, forms and details.

- PAY RATES:

- No update in fees, unchanged since at least March 1999, despite a 16.6% increase in CPI over the same period
- No other adjustment or benefits
- A \$2 difference only between accreditation levels 2 and 3 and between levels 0 and 4
- No reward or recognition for additional training, qualifications or experience
- Worker's compensation, professional indemnity insurance: not provided

Given the average level of earnings per contractor for this organisation, it is hard to imagine how they could even be expected to cover these insurances.

- ONEROUS AND INVASIVE CLAUSES:

- The Service User may "make change the Rules (...) or make new Rules at any time." The contractor will be **advised** by EITHER a newspaper advertisement OR a personal notice OR a posting on the Service User's web page.
- The contractor must give access to his/her premises to any person authorised by the Service User for the purpose of reviewing any records or other information kept by the contractor in relation to the supply of interpreter services to the Service User.
- The Service User may decide at any time to discard the newly-created Register as a method of obtaining interpreter services
- Independently of the offer of an assignment, the contractor must notify the administration office immediately if he /she ceases to be able to pay his/her debts; if any step is taken by a mortgagee to take position of his/her assets, operations or business; if he/she changes address, contact details or bank account details.
- The contractor assigns to the Service User title to all intellectual property rights in any contract material created by the contractor.
- "An assignment might include interpreting for one or more customers", a severe demand on the interpreter who must concentrate intensively on the sometimes stressful situations of different individuals.
- Core hours, which determine the basic fees, are defined as "7 a.m. to 7 p.m.", an extreme definition of working hours.

7. Confusion – contractor or employee?

T & I are signed up as contractors whenever it suits the agency or service user, yet they are also expected to obey rules and regulations, as an employee would...

7.1 Contractors...?

Examples of contractual clauses from some agencies or government service users:

0-0-0

This Agreement shall not establish the relationship of employer and employee as between the respective parties thereto and the Interpreter shall, in providing services under this Agreement, be and be regarded as an independent contractor.

0-0-0

3.4 (b) Having your details on the Register does not create any employment rights, either as an employee or as a contractor.

0-0-0

8.1 The Contractor warrants and acknowledges that:

(a) the Commonwealth is agreeing to accept the services of the Contractor as an independent contractor for the purposes of providing the Interpreter/Translating Services;

(b) it is contracting to and shall provide the Services as an independent contractor;

(c) nothing in this Contract constitutes the relationship of employer and employee between the Commonwealth and the Contractor or its Specified Personnel;

in providing the Services, the Contractor is in no way intended to be an employee of the Commonwealth. The Contractor shall at all times be an independent contractor. Under no circumstances shall the Contractor be deemed to be an employee, servant or agent of the Commonwealth.

0-0-0

1. PROVISION OF SERVICES

You confirm that you are an independent contractor, you understand the terms of this agreement and that you supply services to the public generally via an agency or otherwise. This arrangement does not give rise to any employment, partnership or joint venture relationship. ...

0-0-0

22. Nothing contained in this Agreement shall, or is intended to, establish the relationship of employer and employee between the parties hereto and it is the express intention of the parties that any such relationship is expressly denied. Without limiting in any way the intended force and effect of this clause, the Contractor expressly agrees and acknowledges that the Contractor:

(a) is not entitled to annual, long service or sick leave or any other benefits or entitlements which ordinarily accrue in the context of an employment relationship; and

(b) in accepting and performing engagements, is merely contracting with [THE AGENCY] to achieve a result which [THE AGENCY] has contracted with its own clients to achieve, namely the provision to such clients on a fee for service basis of interpreting and/or translating services.

o-o-o

7.2 or employees?

- A major T & I agency sent a letter to its interpreters in July 2004, complaining about lateness, answering mobile phones, incorrect recording of assignment details, all annoying, of course, but not unusual in the practice of other contracting professions, (trades, medical, etc)
- Report from an AUSIT member (March 2005, abridged):
" I have been astounded by the behaviour of agencies. When I contracted a stomach virus, I called in to one agency & was asked to provide a medical certificate. Of course, I questioned this request. The reply was, "we need you to prove that you are really sick & not taking other assignments from other agencies"!

7.3 More discrepancies and confusion

- Superannuation: some agencies and service users pay superannuation contributions for interpreters, others don't.
- Payroll tax: a well-established T & I agency has been required to back-pay a large sum in payroll tax to the State government for the practitioners on its large database of contractors, as if they were employees.
- Yet, GST, a tax applicable to contractors, will be paid to the contractor by the agencies, if necessary.
- A member says: [We are] defined as a contractor but [the government service users/agencies] pay workcover/super, [they] require you to contribute to their prof. indemnity fund yet pay a low fee...
- An interpreter reports how the same government service user can call on her services, sometimes as an employee, sometimes as a contractor:
"An interpreter can at the same time be working some days in a "Service User's" office as a temporary employee through [a private T & I agency] and on other days, as required, be called in by [the same] "Service User's" own "Language Services" office in Sydney to complete an assignment as a contract interpreter, either at her usual place of work or at any other "Service User's" office around town."
- A member who tried to negotiate better translation fees received the following e-mail response from a staff member of the Service User:
"I have passed on your concerns regarding rates of pay to Management. Have you considered approaching AUSIT, the Australian professional association for translators, with your concerns about "Service User's" rates of pay? It could be more effective than complaining to my superiors."

7.4 And even employees...

Whilst most issues relate to the status of contractor, a small professional group such as ours encounters serious problems even in the more favourable position of employee under an award. Recent examples include:

- A major union agreed to process a grievance against several hospitals on behalf of interpreters, due to well-founded breaches of the applicable award. After a few weeks, the union abandoned the matter, leaving interpreters with nowhere to turn.
- Another union wrote to us: "Interpreters are not likely to get direct industrial representation from the XXU branches and the specific interests of interpreters and translators could be lost in such a large and diverse union as the XXU."
- In another state, the rates applied to interpreters (casual employees) have been in dispute for some time. The relevant rates are well defined, yet the correspondence keeps being shifted around between government departments.

Illustrating the dilemma that interpreters face in defining their status, an AUSIT member recently wrote the following paragraphs about a now defunct employer of interpreters (italics added):

The reality of the downward spiral is evidenced by the demise of the award-based employer, Central Health Interpreter Service (CHIS), on 27 February 2004. (...) *With no industrial organisation to channel any sort of advice or collective action in our own interests, we accepted more and more assignments from the el cheapo private agency [name deleted] and later from the hospitals direct for fees up to \$12 lower than CHIS were paying. The next we knew, CHIS, with effect from 1 April 2003, had cut their basic 90-minute fee by \$10 across the board. They were able to do this and still pay "award rates", according to [the then manager], because CHIS had for a long while incorporated an over-award payment of \$15 in their fee structure, probably going back to the "booking fee" of that amount introduced i.l.o. travel reimbursement in the early 90s. They still paid regular cost of living adjustments, (\$1.61 effective 1 July 2003 was probably the last). On 14 March 2003, the Corporate Manager wrote to Interpreters: " we have also been following very closely, and particularly during the last 15 years, the "shift" that has occurred in our industry that saw all our competitors move to a fee restructure that led to the contractual casualisation of Interpreters. Equally, happened in the we have observed that interpreters have accepted these changes and the industry has "moved on". This lack of uniformity and by not having minimum standards of remuneration and conditions across the industry for interpreters have increasingly jeopardised the existence of CHIS."*

Outwardly, what he says is true. We keep on signing the new "contracts", so we are accepting the sweeping away of the fruits of decades of industrial collectivism all right.

But how much of this is a deliberate acceptance of change and how much just being swept along by the deregulation tide, tidal wave, tsunami? Interpreters don't sign a contract because they think they will be better off without long service leave, superannuation and workers compensation. They sign because, if they don't, they don't get work!

8. Interpreters' earnings

8.1 Target Fees

In his March 2005 report titled "*Interpreter Fee Calculations*"⁸, AUSIT member John Gare performs a detailed analysis of interpreters' costs and constraints as contractors and calculates the fee levels required for a full-time interpreter to earn moderate annual salaries of \$35,000 (for beginners) or \$45,000 (for experienced practitioners) before tax.

Highlighting the considerable gap with today's reality, the analysis concludes that, in order to achieve these levels of income:

- The new or paraprofessional graduate should work for \$87 minimum for an on-site job and \$34 an hour for time worked beyond 90 minutes;
- The experienced/professional interpreter should demand \$105 minimum for an on-site job and \$42 an hour for time worked beyond 90 minutes.

8.2 Today's reality /Actual fees (March 2005)

- The long-established typical assignment fee of \$60 has been calculated to amount to a gross annual salary of \$22,108, quite a bit less than the federal minimum wage of \$467.40 per week (\$24,388 p.a.).
- Some agencies pay superannuation guarantee contributions, but many private agencies are still paying less than \$60 as a minimum fee and not contributing to superannuation. After factoring in the absence of superannuation contribution, this level of fee becomes equivalent to a gross annual salary of \$20,283, i.e. \$4,105 below the minimum wage.

Other research shows that:

- A New South Wales agency pays rates of \$90 for half a day and \$150 for a full day for longer (and highly specialised) assignments such as court appearances.
- The fee schedule of another New South Wales agency indicates:

Court Fees - City and Suburbs

Half Day Court Morning - from 10.00am to 1.00pm
Afternoon - from 1.00pm to 4.00pm
Full Day Court - from 10.00am to 4.00pm

Duration	NAATI 3	NAATI 2
Half day booking	\$135	\$125 [no travel allowance paid]
Full day booking	\$178	\$165

⁸ See a summary of the report in appendix 12.2. The full report will be provided on request.

- o To complete this picture, this table shows a range of actual fees paid by major agencies at the time of writing, compared to the target fees calculated by AUSIT.

Type of Agency	Date of last increase	*Min. assignment fee (90 minutes)	*Hourly rate thereafter	Superannuation paid by Agency?
Federal government	1999/2000	\$60.00	\$25.00	YES
Semi-gov't. – VIC	Aug. 2003	\$57.00	\$25.00	NO
Private – NSW	Jul. 2003	\$84.00	\$38.00	NO
	Jan. 2003	\$75.00	\$30.00	NO
	Jan. 2004	\$60.00	\$20.00	NO
Private – VIC	Apr. 2003	\$55.00	\$25.00	NO
TARGET FEE CALCULATION		\$105	\$34	Superannuation included

*All fees quoted are exclusive of GST.

8.3 Equal opportunity?

It is also interesting to compare the fees received by LOTE⁹ interpreters with the much more generous fees paid by the National AUSLAN interpreter Booking and Payment Service (NABS)¹⁰ as at March 2005, to interpreters for the deaf community:

Level	Total fee for a 1 1/2 hour assignment within 100 km	Total fee for a 2-hr assignment within 200 km
Level 3 (professional)	\$124	\$162
Level 2 (paraprofessional)	\$109	\$134

In addition, NABS contractors are covered for professional indemnity and public liability insurance, parking fees will be compensated and nine hours of training will be provided with an incentive payment of \$500 on completion.

⁹ LOTE: Language other than English

¹⁰ Recently established as a result of a tender, since the publication in January 2004 of an Orima Research report into the supply and demand for AUSLAN services (interpreting for the deaf community) across Australia, commissioned by the Department of Family and Community Services. We understand that the Department required bidders to declare practitioners' fee levels in the bids.

9. What We Have Attempted

In addition to the individual efforts of many practitioners, AUSIT has made many attempts over the years to bring some balance into the market. Some of our most recent ones include:

- Small business training, encouraging members to promote their services more widely and to diversify their skills and their client base
- Preparation and distribution of two reports on remuneration in the profession, raising awareness amongst stakeholders and newcomers to the profession
- Formal representations on behalf of members to two major service users in 2004, with no tangible results
- Radio and print media interviews
- Consultations with lawyers
- Approaches to major unions for advice and assistance: demarcation and lack of interest in our small sector are recurrent issues
- Investigations into the process of creating a registered organisation (union). Advice from a major union and from another professional association in a similar position shows that:
 - The process requires, as a starting point, a minimum of 50 practitioners working as employees, a difficult condition since so many are required to work as contractors
 - The services of an industrial relations specialist for around five years, an expense for which we have no funding
 - Substantial legal advice and assistance, at a cost that cannot be afforded.
- Investigations into the possibility of applying for an ACCC authorisation
 - Under certain conditions, protection from action for potential breaches of the Trade Practices Act may be granted. This immunity can give a competitive advantage to the party to the authorisation. Authorisation is intended to be granted only where benefits to the public result from the conduct and the detriments resulting from the conduct, including the lessening of competition, are outweighed by those benefits.¹¹
 - Again, this costly and complex process requires legal and financial resources beyond our means.

¹¹ ACCC website

10. Conclusions

On March 7, 2005, Mr. Adams (Lyons) said¹²:

"[...] Interpreting is a very high skill in itself as you have to process the information and spit it out again in an accurate stream of words. There are many functions that I have been to that would benefit from having had more interpreters on the ground that knew both countries well enough to ensure that you got the thinking behind the words.

.... Yet we seem to give scant attention to language when we talk on issues of welfare and wellbeing."

On the same day, Ms Vamvakinou (Calwell) presented a motion which read in part:

"I move that this House:

(...)

(4) recognises that despite successive government policies on the matter of language learning we have not really succeeded in reaping the maximum benefits of the multilingual resources of the Australian people;

(...)

(6) recognises that Australia needs to elevate the recognition of the importance of language as a skill and resource, both for individuals and as a nation in domestic and international domains. "

As translators and interpreters, we are well aware of the importance of paying proper attention to the multilingual resources available in Australia.

Beyond their initial language skills, translators and interpreters have to develop and maintain a significant range of other capabilities, which make them professionals in their field. As such, they make significant contributions to Australia's economy as enablers of essential communication within our borders, under Access and Equity policies, and with the rest of the world, in export markets, international conferences or in diplomatic circles.

Yet, T & I professionals are being discouraged from pursuing a career through a range of impediments which have pushed their income and working conditions down to unacceptably low levels.

This inquiry calls for strategies to ensure independent contract arrangements are legitimate. We suggest that, when many small isolated suppliers face a few large government clients and market forces are reversed to such an extent that these suppliers are unable to exercise any of the negotiation power which is properly implicit in contracting arrangements, the legitimacy of those contract arrangements and the independence of the contractors may need to be examined.

We are also concerned that the current pricing race to the bottom is already affecting the quality of community language services provided in the community. Anecdotal evidence shows that experienced interpreters with other marketable skills have begun to leave interpreting for greener pastures in translating or decide to leave the industry altogether, to the detriment of the interpreting profession and its clients in the community.

¹² Excerpts from Hansard

AUSIT is endeavouring to raise awareness and obtain improved conditions; however, our reach is limited and our resources are very small. We are concerned that the quality of the pool of practitioners on the market is decreasing.

We believe that this trend will continue, as experienced and dedicated practitioners, unable to make a reasonable living, are discouraged from remaining in the field or from investing in maintaining their skills.

In sensitive or significant fields, such as in medical or legal matters, this could lead to potential severe consequences (e.g. miscarriages of justice, medical misdiagnoses) for all parties concerned, not to mention opportunity or actual losses in other areas (business, diplomatic).

11. Recommendations

In response to point 2 in the Terms of Reference, practitioners have made a range of recommendations:

11.1 Enquiry

We ask:

THAT a full inquiry of the dimensions of the January 2004 Orima Research report be carried out on community interpreting for languages other than English.

The objectives of such a study might be to develop an understanding of:

- The context in which people require and/or use T & I services;
- The extent to which the current services meet the needs of the people/organisations with whom they need to communicate;
- Training, accreditation and supply versus demand of translators and interpreters;
- Funding sources and costs of T & I services across Australia.

Such an enquiry would be warranted just on the size of the populations served by LOTE interpreters, compared to that served by AUSLAN interpreters.

11.2 Minimum standards

The March 2005 AUSIT report "Interpreter Fee Calculations" could be used as a reference and a target in this process.

We recommend:

- (A) THAT T & I practitioners' fees and working conditions, under the rigid contracting arrangements in place, be thoroughly reviewed;
- (B) THAT acceptable negotiated working conditions and fees, fully reflective of skills and experience, be implemented across all State and Federal government bodies, similar to an award, for any job performed for a government department, whether obtained directly or through an agency;
- (C) THAT insurances (workers' compensation, public liability, professional indemnity) be provided and funded by the government agencies or service users for small individual contractors.

11.3 Tenders

We propose the following measures:

- (A) THAT government service users demonstrate an active interest in practitioner remuneration levels and require bidders for services under their control to declare fee levels in tenders;
- (B) THAT agencies tendering for the government business be required to follow a Code of Best Practice (in the same manner as individual practitioners are required to follow the AUSIT Code of Ethics). This Code could emulate and adapt the provisions of the draft European standard, published in September 2004, for the providers of translation services;
- (C) THAT government service users be encouraged to use budgeting processes for their language services requirements which reflect realistic practitioners' remunerations;
- (D) THAT agencies and service users be encouraged and, if required, assisted in increasing their efficiency and reducing their overheads and service delivery costs, by means other than downward pressure on fees.

Many Federal and State government bodies tender out their requirements for interpreting services. In a profession where the ultimate service provider is in fact a contracted individual, minimum standards should be in place to protect the service provider and the end-user of the service.

11.4 Contracts and Standing Offers

We recommend:

- (A) That the process of empowering a representative body (such as a professional association) to conduct fee and contract negotiations and to make recommendations for action in the interests of a group of individuals (e.g. ACCC authorisations) be considerably simplified, particularly for the smaller professions;
- (B) That contractual documents (standing offers, contracts, rules of application) be required to include provisions for contractors to nominate a representative body to negotiate the documents' revisions, renewals or replacements on their behalf;
- (C) That simple, short and plain-English contractual documents be used for contractors who, on average, provide services below a given dollar threshold
- (D) That a reasonable minimum period of time (at least 30 working days) be compulsory for the return of the contractual document, to avoid undue and unreasonable pressure;
- (E) That contractors and their nominated representatives be given advance notice (at least 30 working days) in case of modifications of the contractual documents, as well as an opportunity for discussions prior to the release of the new or modified contractual document.

Where contractors' arrangements are unavoidable, the final suppliers of services (T & I practitioners) should retain a measure of the flexibility and negotiation power implicit in contracting arrangements other than "take it or leave it". A co-operative attitude should be demonstrated. There should be room and time for negotiations, commonsense and fairness should prevail.

12. Appendices

12.1 Mailed attachments

The following documents will be mailed separately:

- AUSIT Code of Ethics
- AUSIT brochure
- AUSIT Getting it Right
- Draft European standard

12.2 Key points from "Interpreter Fee Calculations"

12.2.1 Background

The fees paid to casual employee / contract interpreters serving on the panels of service provider agencies and companies supplying major users of interpreter services have suffered serious erosion over a period of more than twelve years and it is contended that this is the result of misapplied market forces bearing heavily down on a body of workers perceived to be in a weak bargaining position.

This analysis develops a generalised method of calculating interpreter fees based on the gross salaries which are commanded by professionals of comparable status in the full-time work force.

12.2.2 Principles

It is advocated that interpreter's fees should be calculated to compensate interpreters over time:

1. At their normal hourly rate for time spent travelling to, from and between jobs;
2. For reasonable expenses entailed in the use of a personal vehicle or public transport to attend jobs;
3. At their normal hourly rate for an agreed component of "unbookable" time in an average working day; and
4. For reasonable overhead expenses including provision for:
 - Business telephone/mobile costs
 - Computer with internet access and associated software
 - (Home) office costs
 - Professional development, including continued exposure to their LOTE¹³
 - Professional library
 - Postage and stationery
 - Professional indemnity and income insurance/workers compensation
 - Long service leave
 - A superannuation component

12.2.3 Calculation components

- Indirect Costs:

To operate as a contractor, an interpreter needs to develop his/her **own infrastructure** and spends around at least **\$5,400** p.a. in acquiring essential services and equipment (mainly accounting, insurances, telephones, IT, research requirements, stationery).

Today, many of these are covered through another job or a supporting partner.

- Available chargeable time:

After the usual leave types and allowing some time for continued professional development¹⁴, **chargeable working days** are calculated at **219** p.a.

¹³ LOTE: Language Other than English

¹⁴ A potential compulsory requirement for the profession. This would increase the indirect costs listed above.

After allowing for the unpaid travel time involved in many interpreting jobs plus the time necessary to perform the business functions that a contractor has to undertake, we estimate that the maximum number of jobs an interpreter could perform is **598 jobs** in a year.

On the basis of these costs and constraints, the reports calculates the assignment fees practitioners should target in order to derive a gross annual full-time salary of \$35,000 (beginners) or \$45,000 (experienced practitioners) from their interpreting activities:

Comparable full time employee gross annual salary	Beginner \$35,000	Experienced practitioner \$45,000
Minimum assignment fee (up to 90 minutes on site)	\$86.83	\$105.05
Hourly rate for time on site in excess of 90 minutes	\$33.14	\$41.44

12.3 Sample list of government bodies users of T & I services

The following lists, whilst extensive, are by no means comprehensive. Some explanation is given for agencies/portfolios where a range of scenarios requiring interpreters might occur and may not immediately be obvious.

SOME KEY COMMONWEALTH USER AGENCIES

The agencies under the following Commonwealth Portfolios usually engage the services of interpreters:

Department of Family and Community Services (FaCS)- Community support services (excluding the Home and Community Care programme); Family relationship services; Welfare housing and rent assistance; Womens' policies and programmes.

Department of Health and Ageing - Services for the aged, including carers: e.g Carelink; residential care facilities; Primary health care of Aboriginal and Torres Strait Islander people; Specific health services, e.g BreastScreen

Immigration and Multicultural and Indigenous Affairs

Australian Hearing (AH)

Australian Federal Police (AFP)

Australian Customs Service (ACS)

Administrative Appeals Tribunal (AAT)

Centrelink (CENTRELINK)

Comcare (COMCARE)

CRS Australia - CRS Australia delivers vocational rehabilitation services

Department of Employment and Workplace Relations (DEWR)

Australian Jobsearch agencies

Department of Human Services

Director of Public Prosecutions (DPP)

Federal courts

- High Court of Australia
- Federal Court of Australia
- Australian Industrial Relations Commission
- Family Court of Australia
- Federal Magistrates Court of Australia

Tribunals

Administrative Appeal Tribunal (AAT)

Migration Review Tribunal (MRT)

Refugee Review Tribunal (RRT)

Social Security Appeals Tribunal (SSAT)

Victoria, Western Australia, Queensland and New South Wales have developed explicit policies on language services. In this overview, only the agencies/services in Victoria are given with some indicative explanation and their NSW counterparts are also listed. It is acknowledged that other states require interpreter services in similar areas and where required, interpreters are engaged by the services under the equivalent portfolios in each state.

VICTORIA

Department of Education and Training (Victoria)

Schools

Industrial Relations Victoria

Victorian Workcover Authority

Accident Compensation and Conciliation
Commission

Insurance Agents

Rehabilitation Providers

Medico – Legal Assessment

Department of Human Services (Victoria)

Hospitals

Aged Care

Mental Health Services

Mental Health Review Board

Community Services

Family Services

Child Protection

Community Rehabilitation

Department of Justice

State DPP

Magistrates' Courts

Children's Court

County Court

Supreme Court

Victims' Compensation

Corrective Services

Victoria Legal Aid

Victoria Police

Transport Accident Commission

Medico-legal assessments

VicRoads

Tribunals

Equal Opportunity

Victorian Civil and Administrative Tribunal

Other:

Community support agencies, legal centres, MRCs

NSW

NSW agencies are listed by name / portfolio

Administrative Decisions Tribunal

Attorney General

Anti-Discrimination Board

Attorney General

Attorney Generals Department

Attorney General

Community Visitors to Departmental and Funded Accommodation Facilities

Community Services

Consumer, Trader and Tenancy Tribunal

Commerce

Department of Aboriginal Affairs

Aboriginal Affairs

Department of Ageing Disability and Home Care

Disability Services and Ageing

Department of Community Services

Community Services

Department of Corrective Services

Justice

Department of Education and Training

Education and Training

Greater Southern Area Health Service

Health

Greater Western Area Health Service

Health

Guardianship Tribunal

Disability Services and Ageing

Health Care Complaints Commission

Health

Home Care Service of NSW

Disability Services and Ageing

Justice Health Service

Health

Legal Aid Commission of NSW

Attorney General

Legal Services Tribunal

Attorney General

Mental Health Review Tribunal

Health

Ministry for Police

Police

Motor Accidents Authority

Commerce

NSW Health Department

Health

NSW Office of the Children's Guardian

Community Services

NSW Housing

Housing

Office of the Director of Public Prosecutions

Attorney General

Roads and Traffic Authority of NSW

Roads

South Eastern Sydney Illawarra Area Health Service

Health

South Western Sydney Area Health Service

Health

Victims Advisory Board

Attorney General

Western Sydney Area Health Service

Health

Westmead Children's Hospital

Health

WorkCover Authority

Commerce

13. References And Credits

Contributors:

Many AUSIT members have given input or otherwise participated in this submission. The National Pay and Conditions sub-committee is grateful in particular to the following members who made extensive contributions:

- John Gare
- Vivian Stevenson
- Niki Baras
- Stephen Houston
- Moreno Giovannoni
- Terry Chesher.

Source materials:

- AUSIT newsletter, Vol 12, Number 1, March 2004
- AUSIT publications: Code of Ethics, Getting it Right
- AUSIT eBulletin
- *Interpreter Fee Calculations, A study paper*, John Gare, 5 March 2005
- *Interpreter Remuneration 1993-2003* report, John Gare, October 2003
- *Guide to authorisations and notifications— a guide on provisions for exemptions from anti-competitive conduct under the Trade Practices Act* (November 1995), ACCC website
- <http://www.aph.gov.au/house/committee/ewrwp/independentcontracting/index.htm>
- Preparing a Submission - Notes to assist those preparing a submission to a parliamentary committee inquiry
- <http://www.gold.gov.au/>
- Hansards for 7 March 2005.
<http://www.aph.gov.au/hansard/reps/dailys/dr070305.pdf>
- *Supply and Demand for Auslan Interpreters across Australia*, Orima Research (Department of Family and Community Services), January 2004
- NAATI Website www.naati.com.au

- http://www.airc.gov.au/documents/full_bench/full_bench_decisions.html
- Australian Industrial Relations Commission Safety Net Wages Review of 2004, dated 5 May 2004
- Excerpts or data from contractual documents and fee schedules from agencies and service users as well as correspondence from unions and other parties

Identifying details have been omitted, as suggested by the House Employment Committee Secretary.