An audit of NSW legislation and policy on the government's public communications in languages other than English

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Synopsis: This article reports on a 2019-2021 audit of the framework of an Australian state-level government's decisions about their public communications in languages other than English (LOTEs). This audit involved a systematic search and analysis of current New South Wales (NSW) legislation and publicly available, formal, departmental policy. It found a dearth of either legislation or policy about the language of government communications, but we present a typology of ways in which NSW law seeks to regulate choice of language in other

communications. These are laws that target how government representatives should (not) communicate with individuals and how non-government entities should (not) communicate with individuals, other entities, or the government, in particular contexts. We discuss the shortfalls of this decision-making framework. This includes interrogating of the role of NSW's statutory Multicultural Principle about linguistic diversity and the haphazard ways that NSW legislation requires language of communication to be considered in relation to the likelihood that an intended audience will understand certain communications; our concerns about the lack of accountability for non-compliance; and a warning that leaving the majority of public NSW government communications reliant on informal/reactionary policy is unsuited to equitably fulfilling the needs of all NSW constituents. The article closes by arguing that consistent clear policy to guide the NSW government's public communications practices would enable the government to more readily fulfil the (communicative) needs of its constituents. We thus propose a path for law and policy reform as well as directions for further research, both aimed at improving government decision-making and communicative efficiency with regard to NSW's linguistically diverse public.

Introduction: Why Audit Official Communications Laws and Policies?

Public government communications are those directed at a mass audience rather than government communications to specific individuals. These are often therefore standardised written or audio-visual texts disseminated via official websites and printed publications, television, and radio. Interpreting and translation may be used to overcome linguistic barriers in government communications to either the public or individuals. For example, Auslan (Australian Sign Language) interpreting came to be used in daily televised press conferences disseminating public information from the NSW government about the 2019-2020 bushfires.[1]

This article reports on an audit of laws and policies in NSW which guide/control such official public communications, specifically in relation to choices to use languages other than English (LOTEs) for NSW government public communications. The audit was designed to investigate laws and policies about the languages that may, should, or may not be used in any communications, in order to contextualise the subset of laws and policies about the language of public government communications.

With 22.2 per cent of Australian households now reporting that they speak a LOTE at home,[2] how to reach a linguistically diverse public is a question worth considering in all Australian states and territories, yet the relevant policy processes, expertise, and co-ordination between government organisations and jurisdictions are still developing. The state of NSW is particularly linguistically diverse and therefore our initial focus.[3] In Greater Sydney, both NSW and Australia's most populous metropolitan area, 38.2 per cent of households now speak a LOTE at home – and in some suburbs this figure almost doubles. When major metropolitan areas are excluded, the proportion falls to just 7.4 per cent, well below the national average.[4]

[1] Tatham (2020).
[2] Australian Bureau of Statistics (ABS) (2020).
[3] The first author's broader research project extends to other Australia jurisdictions' laws and formal policies, and both authors have, moreover, extended the research to government communications practices. See Grey (2020a, 2020c).
[4] ABS (2020).

The top five LOTEs in major urban areas of NSW are Mandarin, Cantonese, Vietnamese, Arabic and Greek.[5] NSW is thus multilingual; however, this multilingualism is diverse and location-dependent.

Based on preliminary investigations of government practices and a 2019 pilot audit of NSW laws, we hypothesised that the NSW government's public communications are not made within a clear or informed decision-making framework as to choice of language, and do not consistently acknowledge, plan for, or manage the public's actual linguistic diversity.

The problems with overlooking multilingualism in government public communications have only become more pronounced in recent years. The 2019-2020 NSW bushfire season and the 2020-2021 COVID-19 pandemic have each revealed the necessity and urgency of the NSW government (like any government) reaching *all* members of the community with reliable and detailed warnings, safety advice, and rules. These two crises have made it apparent that there are both individual and collective risks to having community members who are not 'in the loop', but they have also revealed that inaccessibility for/exclusion of those whose dominant language is not English is exactly what often ensues.[6]

Even in non-crisis times, improving government public communications in LOTEs is important for three reasons. First, because non-crisis times are when key decisions need to be made for future crisis communications:

> Putting measures for adequate multilingual communication in place during the height of an emergency … is next to impossible. Therefore, one of the many lessons we need to learn from this [COVD-19] crisis is to include the reality of linguistic diversity into our normal procedures and processes, including disaster preparation.[7]

[5] ABS (2020).
[6] Similar problems became apparent across Australia, see eg federal and Victorian government public communications reported in Dalzell (2020a, 2020b).
[7] Piller (2020), p 15.

Second, problems with the language of public communications are not merely problems of reduced efficiency or misdirected government monies, but problems of social justice. Third, government communications policies are important to critique and potentially improve through research because 'the very core of the potential to act as a citizen … is formed by communicative resources'.[8]

Furthermore, while public policy about languages in education has become common in Australia and internationally,[9] the languages of public communications have not been widely recognised as a subject of public policy here or internationally.[10] Thus, Australia's official national reports describing and making policy recommendations in relation to linguistic diversity are primarily about languages in education.[11] These reports do not offer guiding principles or a framework for decision-making on LOTE public communications. Yet while there is no overarching Australian national law or policy specifically about language choice in government communications, nor an overarching one in NSW, 'there is always a default' policy about the language of government communications because governments 'cannot abstain from using at least one language'.[12] A policy choice as to language therefore underlies every official public communication.

It is therefore imperative that language(s) of government communications not only now receive an overdue scholarly examination but that this encompasses the potential for improving

[8] Maylaerts and González Núñez (2017), p4.
[9] Internationally, eg Hornberger (2006); Johnson and Ricento (2013); Spolsky (2004); Shohamy (2006). Domestically, eg, Lo Bianco (1987); Dawkins (1993); Department of Education, Science and Training (2002); House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2012).
[10] Maylaerts and González Núñez (2017), p1.

[11] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (1992) and (2012); Australian Institute of Aboriginal and Torres Strait Islander Studies & Federation for Aboriginal and Torres Strait Islander Languages (2005); Johnston (1991); Lo Bianco (1987).

[12] Maylaerts and González Núñez (2017), p3.

the public policy and legal framework within which decisions about government communications are made if shortfalls are found. This audit lays an essential foundation for such scholarship. It examines the extent to which decisions about the languages of government public communications are guided by law and formal official policy. A whole-of-Australia audit exceeded our resources and the available space for this article, so we here analyse legislation for NSW alone, it being Australia's most populous state and, as noted above, a linguistically diverse one.

Specifically, the article develops a typology of regulation by law and by formal policy over languages of communications and places the dearth of law and policy governing the language of the government's public communications, which it identifies, within that context. It then discusses the lack of a statutory decision-making framework and the ambiguity of the principles, guidelines, or other policies that may otherwise have supplemented that lack; this includes an interrogation of the role of NSW's statutory Multicultural Principle about linguistic diversity. The discussion then turns to our concerns about compliance with the various language standards that do exist in NSW laws in relation to other communications by the NSW government (and by others) and lack of accountability for non-compliance. The article closes by arguing that consistent clear law or policy to guide the NSW government's public communications practices would enable the government to more readily fulfil the (communicative) needs of its constituents. First, however, the article establishes its relationship with the existing literature and the method of the study.

Previous Research into Multilingual Government Communications

Within diverse disciplines, there have been studies of governments' communications and their reception. These range across linguistics, public health, marketing, security studies, and even tourism management studies, analysing both governments' and corporations' public

communications, particularly during crises (environmental, financial, political, health, and even website crashes).[13] The literature shows that communication needs entail aspects other than language choice, eg needs as to vision, hearing, literacy, technology, and cultural differences. [14] These needs may intersect with linguistic diversity and therefore raise accessibility issues of which we remain cognizant, but our focus is on language needs in our linguistically diversity society.

Looking at the applied sociolinguistic research into public communications – not only crisis communications – much of the research 'seeks effective, considerate ways of engaging people in community solidarity and resilience, with consideration of medium, affect, identity and positionality, and sociocultural and interactional context', as a group of researchers and climate activists have recently put it.[15] Research on public communications about both Ebola and COVID-19 outbreaks illustrates the significance of carefully considering what will be evoked, differently, for whom, 'by the simple fact of [a message] being delivered by certain institutions or individuals, the use of certain channels and styles'.[16] Such examples illustrate an important idea from the applied sociolinguistic research: that a message has to be accepted, not merely understood, to prompt any change in behaviour that a government intends to achieve by its communications. It is evident in research on language and social exclusion that harnessing the features of language which index social identities and with which people have an affinity is part of communicating effectively;[17] the choice of a non-dominant language is a

[13] Eg, Fearn-Banks (2017); Neely and Collins (2018); Rascon (2019); Su, Stepchenkova and Kirilenko (2019); Uekusa (2019); Federici and O'Brien (2019). An excellent start is the *Multilingua* special issue, 'Linguistic diversity in a time of crisis: Language challenges of the COVID-19 pandemic' [2020, vol 39 (5)]; especially its editorial, Piller, Zhang and Li (2020).
[14] Thus, some researchers produce more accessible communications, eg, https://accesseasyenglish.com.au/
[15] Green Tongues (2019), citing: Schäfer and Schlichting (2014); Chapman, Lickel and Markowitz (2017); Jaspal, Nerlich and Cinnirella (2014); Love-Nichols (2020).
[16] Di Carlo (2020). See Briggs (2019) on rabies communications and Kemp (2020) on Ebola communications.
[17] Piller (2012) and the literature it canvasses, pp281-286.

key one of these features. Researchers query, however, whether government communications officers consider these significant aspects of public messaging.[18]

And by contrast, in public policy and philosophical research, the use of multiple languages in public communication is often treated as a purely instrumental policy choice: that is, using a particular language is relevant only in so far as it enables people to understand a government message that they would not understand in another language (usually, the dominant or official language).[19] Relevant to that function of language choice, a study by Women's Legal Services NSW of migrant and refugee women's access to legal services identified a number of language-related barriers which provide concrete illustrations of problems persisting in NSW government communications. The first is the lack of government communication materials (or services) in the languages used by people that the message should reach.[20] Second, 'even where translated information is available, […] participants often did not know how to access it'.[21] That is, official public communications in LOTEs become under-used resources because of a lack of shared knowledge between the government providers and the intended recipients. This is a pernicious problem, because the mere existence of LOTE materials can lead to complacency about their accessibility or uptake. Third, government communications tend to over-rely on written materials.[22]

In addition to these studies, there are government reports on language in public communications and in the provision of government services, particularly from governments which have an official language services policy. A Queensland government report summarises the situation in most other Australian states and territories: governments focus on interpreters

[18] Di Carlo (2020).
[19] Eg, Maylaerts and González Núñez (2017), p18.
[20] Women's Legal Services NSW (2007), p22. See related research by other NGOs: Federation of Ethnic Communities' Councils of Australia (2016); Human Rights and Equal Opportunity Commission (1997); Australian Human Rights Commission (2009).
[21] Women's Legal Services NSW (2007), p22.
[22] Women's Legal Services NSW (2007), p21.

to deliver accessible and equitable public services to a linguistically diverse public.[23] Echoing this government focus, we found that the report literature focused on interpreted individual communications rather than public communications. This further strengthened our resolve to investigate language policy in regard to public communications.

Together, the research by academics, governments, and NGOs suggests that effective public LOTE communication by governments requires more than translating documents: it requires sensitive and informed choices as to which languages and mediums to use, when, and for whom.

However, what is still largely absent from research is an analysis of the role of law, whether in currently regulating public communications or potentially doing so if reformed. International law has been examined in a small number of relevant studies.[24] International treaties and declarations include principles of equal and fair treatment and ensuring linguistic minorities can particulate fully in public life, eg the *International Covenant on Economic, Social and Cultural Rights* Article 2(1) prohibiting linguistic discrimination. The 2012 *Report of the UN Independent Expert on Minority Issues* holds that public health information, at least, 'should be available in minority languages'.[25] There is also international commentary on linguistic needs in public communications about elections: the United Nations Human Rights Committee's General Comment on Article 15 of the *International Covenant on Civil and Political Rights* ('ICCPR') notes that states should take:

> positive measures […] to overcome specific difficulties such as illiteracy, language barriers […] which prevent persons entitled to vote from exercising their rights

[23] QLD Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (2014). See also WA Department of Health (no date), p9, p12.
[24] Including a study underway by the first author and so far reported in Grey (2021).
[25] Izsák (2012), para 68; see further Mowbray (2017), p33.

effectively. Information and materials about voting should be available in minority languages.[26]

However, the international legal position on states' obligations to provide other government communications in multiple languages is less clear: for example, 'states are given a wide discretion to determine when the costs of providing translation outweigh the benefits'.[27] In Australia, little attention has been paid to international legal requirements in relation to the languages of our federal or state governments' public communications. Moreover, domestic law has not been studied in relation to this issue, as far as we are aware. Having identified, therefore, a need for research on linguistically diverse government public communications across topics and on the laws and policies which guide those communications, we designed the audit approach outlined below.

The Audit Approach

The audit encompassed investigations across three tiers: legislation, formal policy, and actual government practice (this last tier has been written up separately and is currently under submission). We focused on NSW and federal jurisdictions from the start, albeit collecting data on other states and planning to proceed to comprehensively audit them, but soon had to refine the method and limit our focus to a comprehensive NSW audit. The first two tiers of the NSW audit provided the data reported herein. For the first tier, we undertook a full-text keyword search through AustLII's consolidated Commonwealth and NSW legislation databases (ie the

[26] UN Human Rights Committee, General Comment 25 on the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public services (12 July 1996) UN Doc CCPR/C/21/rev.1/Add.7 : Clause 12.
[27] Mowbray (2017), p44.

databases of current legislation[28]) in December 2020-January 2021. Note that the federal parliament may make laws on certain constitutionally enumerated subjects which the states cannot make laws about[29] and on other enumerated topics which the states cannot make inconsistent laws about.[30] As a result, some topics such as border control/immigration, which might be expected to touch on language, are not going to appear as topics of NSW legislation. Through internet searches and reviews of published reference lists, we also collected formal polices of Australian federal and state governments which govern choice of language in public communications, focusing especially on systematically searching online for each NSW government department or agency's policy. This set remained incomplete because most such policies are not made public or there is no formal policy on the matter.

The search of AustLII's NSW Consolidated Acts database for 'English' generated 60 results, and 198 results for 'language' (excluding Amending Acts). These Acts are listed in Appendices A and B, where all the specific section numbers that came up as results are also listed. We excluded amending Acts because we counted and analysed the corresponding primary Acts (ie the Acts to which the amendments applied). We then excluded Acts which referred to 'English' or 'language' only in their Notes section.[31] Through this manual, result-by-result examination, we excluded Acts whose only reference to 'English' or 'language' was akin to the standard Notes section reference but placed in another section, typically a schedule.

[28] See http://www.austlii.edu.au/about.html. We did not search AustLII's case law database, having found no case results in a 2019 pilot audit. We did not search subordinate legislation as this was beyond the project's time and personnel resources.
[29] See *The Commonwealth of Australia Constitution Act* 1900 (Imp) s52.
[30] See *The Commonwealth of Australia Constitution Act* 1900 (Imp) ss51 and 109.
[31] The Notes of an Act do not impose rules, they are merely an official record of how that Act has been amended over time, and therefore not directly relevant to this study of legislative rules about language. Further, upon starting our examination we found that the first 10 Notes sections that appeared as NSW results in our list were all instances where ''language'' was used in a Table of Amendments note about replacing gender-specific language within the Act rather than about language or communication outside the Act. This text gets added to Notes sections in general rounds of amendment to the language of legislative drafting, across legislation. Assuming all other Notes sections in the search results contained the same type of reference to ''language'', we excluded Acts whose only search result hit was their Notes section. To verify this presumptive exclusion, we checked a handful of other Notes section results throughout the list: they needed to be excluded on the same basis, as we had assumed.

Finally, before coding, we excluded two Acts which used 'English' only as an adjective to describe nouns from England, rather than in reference to language. The exclusions left us with **91 NSW Acts containing 'English' and/or 'language' to code: they are listed and coded in Appendix C.**

We undertook the manual examination and coding of each of the search result sections of these 91 Acts. The codes emerged through recurrent thematic analysis.[32] In this method, the exact wording of each 'code' – ie category label – is a phrase that the researcher composes but the themes which those labels represent emerge through analysis of the data (which here included reading the 91 Acts). Such coding is subjective but systematic and transparent. The themes we looked for were themes of purpose and legal subject; what did these Acts seek to do in relation to 'English' or 'language' and to whom did they apply? We first developed the codes in our 2019 pilot audit and refined them during this audit. Any refined codes were then checked back against the full list to ensure each Act had been coded with all relevant codes. The Appendix shows our thematic codes as column headings and lists which Acts were assigned those codes. This large-scale analysis enabled us to reveal patterns, similarities, or types across the legislation.

First Tier Audit: Law on the language(s) of government communications

Overall, the 91 current NSW Acts comprise a small fraction of NSW legislation, backing up our hypothesis that language practices are not a frequent matter for Parliamentary intervention. Rather, the audit found that the NSW Parliament rarely acts to intervene in any aspect of language use by either public or private individuals or entities.

Moreover, when the NSW Parliament does legislate about language, we found that it is almost never the primary concern of an Act. Only one of the 91 Acts examined has 'English'

[32] See further Grey (2020d); Lincoln and & Guba (1985).

or ‘language’ in its title: namely, the *Aboriginal Languages Act 2017* (NSW). This title is one way of indicating that language is a primary subject of this Act, but it establishes mechanisms supporting Aboriginal language renewal rather than setting rules about language use. Thus, this Act has nothing to say about public communications in Aboriginal (or other) languages save that it provides that one function of the new Aboriginal Languages Trust which it creates is ‘to liaise with the Geographical Names Board on the use of Aboriginal languages in the naming of geographical places’.[33] The only other NSW Acts that we identified as having a primary purpose of regulating language practices were the *Graffiti Control Act 2008* (NSW) and *Oaths Act 1900* (NSW), because each regulates a specific genre of communication named in its title.

However, the wide-ranging titles and subjects across the 91 Acts do not mean that their approaches to regulating language are equally varied. Rather, there are recurrent topics or themes in how NSW Parliament regulates language practices, which we present as subheadings for the analysis below. Each Act may deal with multiple themes.

Protecting by Explaining Rights or Obligations or Information to Vulnerable People in Language They Understand

This was the most common purpose, including 40 of the 91 Acts. Legislation given this code facilitates the communicative needs of individuals, typically those within legislatively specified classes, in situations where government representatives or certain private entities communicate information that is specific and relevant to them. Usually, this is also high-stakes information in that an individual risks experiencing harm due to lack of access to the information (whether physical harm, lack of procedural fairness, or another legal rights violation such as clients unwittingly agreeing to payment obligations or workers not knowing their Enterprise Agreement) and/or risks harming themselves or others due to that lack (eg not

[33] *Aboriginal Languages Act 2017* (NSW) s 6(h).

knowing how court orders restrict their conduct[34]). Most of these Acts create a form of protection by setting a statutory standard that certain government representatives communicate in an understandable way, without stating exactly how they are to communicate. Exactly what these standards are is discussed below. Meanwhile some statutes instead create protection by creating undesirable consequences for incomprehensible communications – ie incentivising better communication without mandating it. The consequence is usually that an agreement based on problematic communication is vitiated, thereby potentially exposing the poor communicator to liability.[35]

Sometimes the classes of person whom the NSW Parliament tries to protect from poor communications are explicitly identified by reference to their language practices, for example 'people who are not literate in English',[36] 'an inmate […who] does not understand English',[37] and the explicit definition in various Acts of 'special needs', 'vulnerable persons' and 'disadvantaged groups' in relation to proficiency or background in English.[38] Children are not defined by reference to their language practices but a general risk of miscommunication between adults and children is anticipated in Acts that otherwise protect children, such as children participating in legal proceedings or entering state care whom legislation seeks to

[34] *Child Protection (Offenders Registration) Act 2000* (NSW) s 12G; *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 76; *Crimes (Sentencing Procedure) Act 1999* (NSW); *Drug Court Act 1998* (NSW) s 18H; *Fines Act 1996* (NSW) ss 80A(4) and 89B(4); *Graffiti Control Act 2008* (NSW) ss 9F and 13F;
[35] *Contracts Review Act 1980* (NSW) s 9. See also *Fair Trading Act 1987* (NSW) s 79U and *Motor Dealers and Repairers Act 2013* (NSW) s 146.
[36] *Children and Young Person (Care and Protection) Act 1998* (NSW) s257. See also *Child Protection (Offenders Prohibition Orders) Act 2004* (NSW); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s257; *Community Services (Complaints, Reviews And Monitoring) Act 1993* (NSW) s46. See also *Oaths Act 1900* (NSW); *Residential (Land Lease) Communities Act 2013* (NSW) s 46; *Retirement Villages Act 1999* (NSW) s 14A; *Strata Schemes Management Act 2015* (NSW) s 155.
[37] *Crimes (Administration of Sentences) Act 1999* (NSW) s 52(2)(e)(ii).
[38] ''Special needs'' under the *Child Protection (Offenders Registration) Act 2000* s 3(c) include ''if the person is illiterate, or is not literate in the English language''. The approach is very similar under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), which allows public safety orders to be made to safeguard ''vulnerable persons'', who are defined in that Act as ''fall[ing] into any one or more of the following categories […] persons who are of non-English speaking background'' (s s87ZC, our emphasis), where this last is defined as ''a person who is born in a country outside Australia and whose first language is not English (s 3). Similarly, the *Technical and Further Education Commission Act 1990* (NSW) s 6(e) defines ''educationally or vocationally disadvantaged groups'' to include ''persons of non-English speaking background''.

ensure are adequately informed and able to participate.[39] In other Acts, the classes are defined by an intersection between linguistic special needs and other vulnerabilities. Clear examples are the classes of people being treated under the *Mental Health Act 2007* (NSW); both patients receiving voluntary treatment and those receiving involuntary treatment have statutory rights to have certain information about their own treatment and their legal rights explained orally in 'a language with which the person is familiar'.[40] Where such people are 'unable to communicate adequately in English', there are additional statutory provisions about interpreter-assisted communication with them.[41] Similarly, 'people with a disability from culturally and linguistically diverse backgrounds' are identified as a particular group whose needs must be considered under the *Disability Inclusion Act 2014* (NSW).[42]

However, few of these protection-oriented laws intervene to push regulated communications to occur in LOTEs, even if that is what is actually needed for the information to be conveyed in an understandable way. Indeed, even the standard of English that such Acts require is unclear, partly because the varied phrasing across Acts suggests many different language standards: 'plain language',[43] 'ordinary language',[44] 'simple language',[45] 'language readily capable of being understood by children'[46] or 'language likely to be understood' by

[39] Eg, *Children and Young Person (Care and Protection) Act 1998* (NSW) s 57(1), ''a child or young person must be informed […] in language and a manner that he or she can understand having regard to his or her development and the circumstances.'' See also *Adoption Act 2000 (NSW)*.
[40] *Mental Health Act 2007* (NSW): s 91(2)(j); s 74; s74A (1) and (5), which additionally requires a written statement be provided. Similarly, *Drug and Alcohol Treatment Act 2007* (NSW) in ss 11 and 16.
[41] The *Mental Health Act 2007* (NSW) s 70 requires a medical practitioner to arrange for an interpreter to be present for those people for medical procedures under the Act, and s158 allows such people to be assisted by an interpreter for matters before the relevant tribunal, without obliging the state to provide those interpreters. Similarly, *Drug and Alcohol Treatment Act 2007* (NSW) in s 37. For those detained under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) and involved in an investigative procedure, their custody manager (ie the state) must arrange an interpreter ''if the custody manager has reasonable grounds for believing that the person is unable […] because of inadequate knowledge of the English language, to communicate with reasonable fluency in English'', per s 128(1)(a).
[42] s 5.
[43] *Betting and Racing Act 1998* (NSW) s33JB; *Home Building Act 1989* (NSW) s 8A; *Conveyancers Licensing Act 2003* (NSW) s38; *Industrial Relations Act 1996* (NSW) s 181A(4); *Legal Profession Uniform Law* (NSW);
[44] *Civil Liability Act 2002* (NSW) s 26BA(3)(b).
[45] *Motor Accidents Compensation Act 1999* (NSW) s49.
[46] *Young Offenders Act 1997* (NSW) ss 24(3) and 30(2).

other specified types of audiences.[47] There is no indication in most of these phrases that more than one language (ie a LOTE) could be used because there is no reference to languages in the plural, except implicitly in the phrase '*a* language with which the person is familiar' (our emphasis) which implies the plural by treating 'language', grammatically, as a countable noun.[48]

Sometimes, however, one Act will set multiple standards for different communications, adding to the confusion but at the same time explicitly introducing the role of LOTEs. For instance, the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) requires 'ordinary language' for notices of injury but then provides that the State Insurance Regulatory Authority has functions including 'to provide advisory services to workers, employers, insurers and the general community (including information in languages other than English)'.[49]

Comparatively specific language standards exist in relation to police communications. Police cautions 'must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency, but need not be given in writing unless the person cannot hear'.[50] Further, police meet their statutory obligations to preventatively detained terrorism suspects when they inform 'the person in substance of the matters covered by [specific sections] (even if this is not done in language of a precise or technical nature)'.

[47] As in the provision quoted above in fn8. Bowen (2020, 2021) analyses a 'Plain English' standard for legal communications, noting that what is comprehensible differs depending on the level of shared knowledge between the state and the audience. See also Fisher's (2020: ii) recent doctoral research on Plain English in Australian legal communications, which argues 'there are costs [to] systematically misrepresenting an intention to communicate effectively as the solution to a complex set of social and legal issues'. For examples of Plain English communications that have been produced in Australia independently of government and without a legislative requirement in order to make government communications more accessible, see the *Access Easy English* website, above n 14.

[48] *Mental Health Act 2007* (NSW) s 91(2)(j).

[49] s 23(n). And compare the requirements for documentation under the *Marine Pollution Act 2012* (NSW) to be written in ''the working language of the master of, and the crew on board, the ship'' per ss 98 and 103, ''in the English language'' per s 139(1), and ''in the official language of the country whose flag the ship is entitled to fly, or in one of the official languages of that country'' per s 139(2).

[50] *Evidence Act 1995 (NSW)*, s 139(3).

Moreover, if an officer has 'reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language' then they must arrange an interpreter, unless they also reasonably believe that the 'difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable'.[51]

The most obvious criticism of these legislative attempts to protect certain classes of people from miscommunication and its consequences is that neither Parliament itself, nor the executive (through policy) nor the judiciary (through judgments) have clarified whether all these legislative expressions require the same or different standards of comprehensibility, including not clarifying the extent to which LOTEs should be used to aid communication when a statute not does explicitly refer to them. Does the state-wide Multicultural Principle that '*all individuals and institutions* should respect *and make provision* for the culture, *language* and religion of others within an Australian legal and institutional framework where English is the common language'[52] (discussed further below) mean that all of these variously-worded statutory requirements aiming at comprehensible communication include an obligation to make provisions in LOTEs? Arguably so, but this argument has never been made in a challenge to the (non-)application of NSW legislation, as far as we are aware.

Moreover, only a minority (7 of these 40 Acts) specify that an interpreter may or must be provided.[53] These Acts thereby deal with individuals' ability to effectively respond to information from the state, whereas the others deal only with individuals' ability to receive information from the state. Thus, there is virtually no statutory guidance on when communications – even communications between the state and people treated as vulnerable or

[51] *Terrorism (Police Powers) Act 2002* (NSW) s 26ZA is a rare provision specifically about what an obligation to inform entails.
[52] *Multicultural NSW Act 2000* (NSW) s 3(1)(d), our emphasis.
[53] Eg *Children and Young Person (Care and Protection) Act 1998* (NSW) s102(5): A support person at the Children's Court may, with leave, act as an interpreter for a participant if the participant does not sufficiently speak or understand English. This does not oblige the state to provide interpreting support people.

having special needs – must be in something other than English to be understood, how to check if simple English or a different language is what is required and, if another language is required, who must do what to make that happen. And there is no statutory mechanism found in these Acts to scrutinise or assure the quality of these regulated communications.

This lack of clarity or accountability about protective language standards is despite the high stakes of the communications to which these standards apply, stakes which have led the NSW Parliament to take the rare step of regulating them at all. These are not only high stakes communications for the individuals involved, but also for the legal system as they relate to upholding fundamental legal principles; we note that legislative intervention in the government's communication of high-stakes information is particularly found in laws about criminal proceedings and for people in both punitive and executive detention (ie custodial inmates as well as preventatively detained terrorism suspects and people detained for medical treatment). In both contexts, this is a linguistic dimension to upholding the rule of law. Parliamentary attention to communication barriers in criminal proceedings aligns with a general principle underpinning both Australian domestic and international law of equality before the law.[54] That is, lack of access to information which is relevant to the protection of an individual's equality before the law due to language barriers is an inequality that a state should overcome because it is a state's responsibility to uphold criminal procedural rights. Parliamentary attention to communications barriers in executive detention aligns with the highly constrained nature and keen judicial scrutiny of executive detention in Australia, in line with undergirding principles of liberty and the separation of powers.

[54] Similarly, the linguistic rights of those facing criminal prosecution are the most explicit and least controversial linguistic rights in international law: see Mowbray (2017).

Keeping Records/Forms in English or with English Translations (or Other Specified Languages)

Keeping records or forms in English or with English Translations (or in other specified languages) is also a very common purpose, coded for 29 of the 91 Acts. In all 29 cases, these Acts addressed the communication of records/forms that must be kept and provided to authorities. Additionally, one Act required communication that is neither a required record nor a required form to be in English for both government and a non-government parties: under the *Criminal Procedure Act 1986* (NSW), witness statements not in English must come with an English translation. That is, this form of communication must be made available in English not only for the state authorities involved in criminal procedures (the judiciary, public prosecutors and defenders, police prosecutors) but for lawyers who are not government officials. Through these requirements, the state ensures its own linguistic limitations are overcome although, as this audit shows, it does not always reciprocally overcome others' linguistic limitations.

The exception in this group, in that it requires records not only in English but in other specified languages, is the *Marine Pollution Act 2012* (NSW). This is because the Parliament anticipates foreign workers and/or foreign work environments (ships) will enter its jurisdiction and wants to be able to deal with pollution problems that they may encounter within NSW in accordance with Australia's obligations under an international treaty about marine pollution that stipulates certain languages for certain records.[55]

[55] *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships*, 1973 (London, 17 February 1978, in force 2 October 1983) 1340 UNTS 6.

Culture and Language Preservation/Taking Account of Linguistic Diversity

Eighteen Acts are coded as dealing with Culture and Language Preservation/Taking Account of Linguistic Diversity, including the *Marine Pollution Act 2012* (NSW) explained above.[56] These do not specify that a LOTE must be used in certain circumstances; they simply acknowledge linguistic diversity or stipulate that others must acknowledge it. The most notable is the *Multicultural NSW Act 2000* (NSW), because it applies to the language practices of all NSW government departments and agencies (and other organisations and people in NSW). Specifically, this Act's Multicultural Principles include one about NSW institutions respecting and making provision for the languages of others, quoted above.[57] Other Acts, both pre- and post-dating these Multicultural Principles, explicitly state a version of this principle[58] or implicitly align with it by making provision for linguistic (and other) diversity. As noted above, however, it is unclear to what extent this principle should then read into other Acts' provisions about making certain communications between state representatives and members of the public comprehensible. More generally, these Acts which require or state in principle that linguistic diversity needs to be taken into account do not state what this requires of government representatives. This concern is very similar to the other we raised, above, about the vague and inconsistent standards about plain/ordinary/simple language requirements across NSW Acts. The *Multicultural NSW Act* also requires certain policies, called Multicultural Plans, to be made by government departments, as the second tier of the audit notes.

[56] *Industrial Relations Act 1996* (NSW).
[57] s 3(1)(d).
[58] Eg, *Carers Recognition Act 2010* (NSW): Sch 1 cl3 (a); *Children and Young Persons (Care and Protection) Act 1998* (NSW): under s 155, a review of out of home care should cover children's culture and language requirements, and under s 36, it is a principle of intervention to pay attention to culture and language in the child's background.

Authorities Facilitating Community Involvement

Five of the 91 Acts deal with language as part of (government) authorities facilitating community involvement. Some of these Acts were also coded for Culture and Language Preservation/Taking Account of Linguistic Diversity. An example of where the two purposes overlap is section 33 of the *Children (Protection and Parental Responsibility) Act 1997* (NSW), in which a local crime prevention plan is allowed to cover 'non-English speaking background community development'. Similarly, we coded the *Disability Inclusion Act 2014* (NSW) for both purposes because its principles about the needs of particular groups include:

> Supports and services provided to people with disability from culturally and linguistically diverse backgrounds are to be provided in a way that: (a) recognises that cultural, language and other differences may create barriers to providing the supports and services, and (b) addresses those barriers and the needs of those people with disability, and (c) is informed by consultation with their communities.[59]

An illustration of where legislation helps or directs authorities to facilitate community involvement *without* acknowledging languages other than English is found in the *Environmental Planning and Assessment Act 1979* (NSW). It stipulates that when preparing a Community Participation Plan, the Environmental Planning Authority should consider that 'Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning'.[60] This plain language requirement may be directed at English-speaking people, or non- or partial-English speakers, or both; the vagueness of such standards is critiqued above.

[59] s 5(3). See also *Residential Tenancies Act 2010* (NSW), s 222 and *Workplace Injury Management and Workers Compensation Act* 1998 (NSW), s 23(n).
[60] s 2.23.

Support for Language Transmission/Revival

Including LOTEs in NSW school curricula may result in LOTEs being used in some communications amongst students and teachers in some language classes and assessments and is also part of developing people who can communicate in a LOTE more generally. This is why we have coded the two Acts dealing with language education, along with the *Aboriginal Languages Act 2017* (NSW) and Acts which guide the preservation of cultural and linguistic heritage when children leave their parents' care, as providing Support for Language Transmission/Revival. One of those latter is the *Adoption Act 2000* (NSW). It supports language transmission in one specific way, by guiding adoptive parents to retain children's personal names to preserve any language and culture of origin that might be inscribed therein. This provision, and others, also led us to code the *Adoption Act* as one of the 17 discussed above that deal with language for Culture and Language Preservation/Taking Account of Linguistic Diversity.[61]

Penalising Offensive or Deceptive Language

Eight Acts set out penalties for offensive language, both language directed specifically to government representatives (marine inspectors and national park rangers)[62] and language directed to or voiced in public.[63] There are related provisions in other NSW Acts that clarify the legal impacts of the summary offence of using offensive language.[64] There are also specific

[61] See similar provisions in regarding language and cultural heritage in *Children (Protection and Parental Responsibility) Act 1997* (NSW).
[62] *Marine Safety Act 1998* (NSW) s 97A(2); *National Parks and Wildlife Act 1974* (NSW) s 169(2).
[63] The general offence is in *Summary Offences Act 1988* (NSW) s 4(1). In addition, a person must not ''use indecent, obscene or threatening language'' at a major event venue: *Major Events Act 2009* (NSW) s 44(a).
[64] Eg *Victims Rights and Support Act 2013* (NSW) does not apply to various offences, including using offensive language per s 105, and the *Crimes Act 1900* (NSW) s 8 ties the definition of public place to rules and offences about conduct and language in public places.

offences, with their own penalties, directed towards protecting the public from deceptive language.[65]

Note that with most of the other provisions analysed earlier in this article, an offence does not occur when the statute is not followed (eg when an interpreter is not provided or a plain language explanation of a court order is not given, contrary to statute), and so no statutory penalties arise. There may, however, be other legal consequences in those situations, such as the voiding of consent or contractual agreement, liability, or the inadmissibility of evidence; these consequences were discussed in relation to protecting linguistically and otherwise vulnerable classes of people, above.

Other Purposes

There are many purposes for regulating English/language which we classed simply as 'Other' because of their singularity: a sizable 40 of the 91 Acts received this as one of their codes and the Researchers' Annotation column in the Appendix notes what those purposes include. To mention a few, the *Associations Incorporation Act 2009* (NSW) disallows foreign characters (ie graphemes other than the 26 of the English alphabet) in associations' names, while under s 118 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW), an unregistered interpreter or translator of a claim working for a fee 'is guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units'. Many of these purposes relate only indirectly to communication: for example, naming an authorised version of a multilingual treaty, as five of the 91 Acts do, prioritises one of a treaty body's forms of communicating that treaty over others.[66]

[65] Offences include labelling on beef products which uses "Aus-Meat language" contrary to the *Food Act 2002* (NSW); using a medical professional title without being a registered medical professional: *Health Practitioner Regulation National Law* (NSW) s 115; using certain phrases in real estate advertisements: *Property and Stock Agents Act 2002* (NSW) s73.

[66] We note that there are other implications to nominating the authorised language: see further Leung (2019) Ch 6, reviewed by Bruzon (2021).

There is thus a dearth of law that regulates the language(s) with which the NSW government communicates with the general public; instead, the limited legislation on language of communication which does exist primarily concerns government communications with individuals or public communications from private entities. We now therefore turn to formal NSW government policy to determine whether it fills this gap in the public communications decision-making framework.

Second Tier Audit: Formal NSW Policy on language of government communications

At the NSW State Government level at the time of our audit, there was no formal policy about public communications in LOTEs. Instead, there were (and are) supposed to be 'multicultural plans' within each department which may or may not cover language choice: most of these plans are not publicly available.[67] These plans are part of the policy scheme of the *Multicultural NSW Act*, co-ordinated by a NSW government entity called Multicultural NSW which runs a Multicultural Policies and Services Program through which government agencies must show how they are planning for culturally and linguistically diverse communities. The Program's overall objectives provide plenty of scope for planning, guiding, and quality-testing public government communications in LOTEs,[68] and are designed to make NSW a leader in CALD inclusion and engagement, but whether this potential is realised depends on each Multicultural Plan.

The only two multicultural plans that were made public and therefore available for us to analyse were the NSW Department of Education's *Multicultural Plan 2019-2022* and NSW

[67] '[U]nder the Multicultural Policies and Services Program of Multicultural NSW, government agencies are required to implement a multicultural plan': Note to *Multicultural NSW Act 2000* (NSW), s 13(g). This is the statute which establishes a government entity called Multicultural NSW.

[68] These include "Mainstream services deliver[y] for everyone; Targeted programs fill the gaps; People from culturally diverse backgrounds are aware of NSW Government services, programs and functions; Collaboration with diverse communities; Demonstrated leadership in culturally inclusive practices; Evidence driven planning; Understanding the needs of people from diverse backgrounds": NSW Health (2019) p 20.

Health's *NSW Plan for Healthy Culturally and Linguistically Diverse Communities 2019-2023*.[69] The Department of Education's *Multicultural Plan* deals with linguistic diversity explicitly but in general ambiguous terms that may or may not cover public communications from the Department:

> Our Multicultural Plan outlines our commitment to: […] support the specific needs of our students from language backgrounds other than English (LBOTE), in particular new arrivals, refugees, students learning English as an additional language or dialect (EAL/D), international students and temporary residents; [and] enable students and staff from all cultural and linguistic backgrounds to participate equitably in the learning and working environment (p 3).

This *Multicultural Plan* then proceeds to set two targets relating to linguistic diversity. The first is about English as an Additional Language education programs (p 7) and so not relevant here, but the second is about public communications. Specifically, the NSW Department of Education currently commits itself to '[d]eliver services which facilitate communication with families from culturally diverse backgrounds to ensure all parents and carers can access and share information about their children's learning and wellbeing'. It measures its attainment of this LOTE communications target by '[n]umber of interpreting assignments in schools and

[69] NSW Department of Education (2019) *Multicultural Plan 2019-22* https://education.nsw.gov.au/content/dam/main-education/about-us/strategies-and-reports/media/documents/Multicultural-Plan-2019-2022.pdf; NSW Health (2019) *NSW Plan for Healthy Culturally and Linguistically Diverse Communities: 2019-2023* [Policy Directive PD2019_018], https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2019_018. NB, this Plan (p3) defines CALD as "the non-Indigenous cultural and linguistic groups represented in the Australian population who identify as having cultural or linguistic connections with their place of birth, ancestry or ethnic origin, religion, preferred language or language spoken at home."

languages supported [and] Number and range of translated documents accessed by schools and families' (p 12).

The NSW Health's *Plan for Health CALD Communities* is itself available in 11 LOTEs and is not framed exclusively in terms of individual/private communications.[70] It sets four Outcomes, each with three Strategic Objectives. All four Outcomes explicitly relate to linguistic diversity, along with cultural diversity. Most of the Strategic Objectives relate to communications with consumers, and their carers and families, rather than the general public; however, Outcome 2 is broader: 'NSW Health supports people from culturally and linguistically diverse backgrounds to build their health literacy so they can be actively involved in decisions about their health'.[71] This corresponds to an Objective about 'routinely involv[ing] culturally and linguistically diverse consumers, their carers and their families when developing, implementing and evaluating programs, projects and resources', and another about 'communicat[ing] effectively with consumers of culturally and linguistically diverse backgrounds using a range of appropriate formats, media and communication channels'. According to the Implementation Plan, these Strategic Objectives are responsibilities of 'All organisations. In particular for health literacy and statewide communication: – Clinical Excellence Commission [and] – Multicultural Health Communication Service'.[72] That is, these Strategic Objectives have the potential to push NSW Health towards public communications about which careful decisions have been made as to mode/media, and which have been designed and quality-checked with the relevant communities. This sets up the basics of a more specific framework for decision-making and scrutiny than legislation or other available policies provide. And, indeed, our third-tier audit of NSW government communications practices (not otherwise reported in this article) found that NSW Health used many more LOTEs in its web-

[70] At https://www.health.nsw.gov.au/multicultural/Pages/policies-and-plans.aspx.
[71] NSW Health (2019), p5.
[72] NSW Health (2019), p12.

based public communications than all other NSW departments and agencies we audited, albeit with some potentially significant barriers to access (with Education ranking second). Nevertheless, without any explicit differentiation between *public/general* and *private/individual* communications in these Outcomes and Strategic Objectives, or this plan overall, there is also the risk of this plan to functioning mainly as a framework for improving individual/private communications in LOTEs between the Health Department and specific consumers (and their carers and families), eg replicating the focus we noted in the Introduction on access to interpreters.

Without being able to compare these two to the other NSW department and agencies' *Multicultural Plans*, we cannot say whether linguistic diversity is typically taken into account and built into specific public communications targets across the NSW Government. We will therefore not comment further on multicultural plans as a potential form of public communications policy, save to say that neither we nor the voting public can hold the NSW Government to any non-public internal standards or plans for linguistically diverse communications.

From the first author's additional, exploratory interviews with public servants and contractors involved in state government communications in this project,[73] we were alerted to the NSW Government's rules that communications campaigns which will cost over certain thresholds trigger obligations to produce multilingual communications. These thresholds and rules are set out, and made public, in the *NSW Government Advertising Guidelines*. These Guidelines are required under the *Government Advertising Act 2011* (NSW). The rules operate slightly differently for campaigns up to $250,000, between $250,000 and $1 million, and over $1 million, but for all, 'government advertising must be: accurate; presented in a fair and

[73] Commenced 2019.

accessible manner; […] sensitive to cultural needs and issues, and reflect the cultural and linguistic diversity of NSW; […]' and 'at least 7.5 per cent of an advertising campaign media budget is to be spent on direct communications to multicultural and Aboriginal audiences'.[74] Additionally, NSW government advertising campaigns over $50,000 must undergo peer review before commencing, and campaigns over $1 million must be preceded by a cost-benefit analysis.[75] However, when following these rules, the content and medium of LOTE communications are discretionary, as is the language chosen and whether or not to pre-test the communications on linguistically diverse groups. To illustrate how this works, obligatory communications for Aboriginal audiences are mostly in English with imagery or accent used to tailor the communications to the intended recipients, as interviewees reported.

Summary and Discussion of Findings

[This para and following para moved up from later in this section] In sum, this audit found that NSW legislation and policy do not specifically require public government communication in LOTEs. However, both a Multicultural Principle in statute, the two corresponding multicultural plans which are publicly available, and the *Government Advertising Guidelines* under another statute seek to have linguistic diversity taken into account in certain public NSW government communications (and others' communications, in the case of the Multicultural Principle). This Multicultural Principle encourages but does not compel the NSW government to make provision for the LOTEs within Australia's English-dominant legal and institutional framework. The Guidelines require government information campaigns be 'accessible', to reflect NSW's linguistic diversity and to allocate expenditure towards creating communication

[74] Further, this 'Spend may be on media or non-media communication activities (e.g. events, participation at cultural festivals, direct mail, competitions and websites) as deemed most effective for the campaign': https://www.nsw.gov.au/nsw-government-communications/government-advertising.
[75] *Government Advertising Act 2011* (NSW), s 7.

resources aimed at people from Aboriginal and non-English-speaking backgrounds. As such, 'the language question'[76] – ie how do language choices differentially affect different language groups? – should nowadays be asked when decisions about the NSW Government's public communications are being made. Whether the answer to this question is accurately known by government departments and agencies is unclear and, as the following summary elucidates, there is not a clear framework within which to foreground or answer it.

Furthermore, this audit affirms that there is little in the way of either specific guidance or binding rules for making choices regarding which LOTEs to use. When should LOTE content be in audio-visual form instead of written form? How much content needs to be provided in LOTEs; all of it or just a summary? Should all LOTE communications be tested for quality before being released? Should each department and agency fund its own LOTE communications or should these be centrally funded? The audit found that there is no clear standard or guide to draw on in answering such questions.

Communications from NSW government entities to the public are generally not controlled through NSW legislation or policy in terms of which languages to use, for whom, for which content or medium, or in terms of how decisions about language in public communications should be made, tested or reviewed, although we have noted that the NSW Health Department's multicultural plan – uniquely in this study – creates a framework considering such questions within the Department and in consultation with community members. When the NSW Parliament does regulate language matters in relation to government communications, its most common purpose, and the purpose most worthy of discussion, is to facilitate the communicative needs of individuals, typically from legislatively specified classes, in situations where government representatives are communicating information that is specific

[76] Feminist literature on public policy and law speaks of 'the woman question' ie how will this law/policy differentially affect men and women, and this is increasingly normal practice to consider in making law and policy.

and relevant to them (40 of 91 Acts) in situations involving vulnerability or risk. However, not all such laws explicitly contemplate public communications in LOTEs; many simply require that a specified kind of information be provided in plain language or in language (not 'a language') that the intended recipient is likely to understand, and so we query what these protections or standards entail, how appropriately or consistently these standards are met, and to what extent the *Multicultural NSW Act's* principle about 'making provision for the […] language [...] of others' is incorporated into these protections or standards.

Our audit found that the NSW Parliament's second-most common type of intervention in language choice is to facilitate the government's own communicative needs by providing that required information must be kept/communicated in English to government officials (in 29 of 91 Acts). What is also clear from this audit, however, is that there is not reciprocal legislative attention paid to the public's communication needs in terms of the languages that can be chosen for interacting with or used for receiving information from the government. Not being an English-speaker and/or literate in English is not a generally recognised vulnerability or special need; it is only recognised in the specific contexts in which communications are regulated by the 40 Acts noted above. Further, we found, overall, a lack of legislative intervention relating to the language of NSW government communications to the broader community. For instance, none of the legislation regulated the choice of language for government public communications such as flyers and factsheets, websites and broadcasts.[77] Yet NSW (and Australia's other governments) communicate prolifically through such public communications, and the general public to whom they communicate includes significant numbers of people with limited or no proficiency in English, as well as those who will likely be more responsive to messages in a LOTE with which they identify, as the literature review raised as a known aspect of effective government communication.

The NSW government is therefore making decisions about which languages to use in public communications as a matter of course without a NSW legislative framework providing either guidance or scrutiny. It is worth noting here that, while Local Governments/Councils in NSW have some delegated power from the state government, they do not have any formal responsibility to fill in the gaps within or between the pieces of legislation on language choice, and nor do they generally have the associated state funding to fill any gaps in the NSW government's multilingual communications practices. In the first author's study of COVID-19 communications, it became apparent that some Local Governments in NSW filled gaps in multilingual COVID-19 communications while others in equally linguistically diverse areas did not;[78] this is not surprising given that the framework examined herein does not specifically include, guide, or co-ordinate Local Governments either.

Moreover, while there are potentially relevant principles of non-discrimination that apply across Australia, including in NSW, it is not clear whether they extend to prohibiting linguistic discrimination by the NSW government (or by anyone else). Specifically, the *Racial Discrimination Act 1975* (Cth) ('RDA') and the *Australian Human Rights Commission Act 1986* (Cth) incorporate a number of international treaties and these in turn cover linguistic discrimination.[79] For example, in Schedule 2 of the latter (comprising the *ICCPR*), the *Australian Human Rights Commission Act* provides that 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, *language,* religion, political or other opinion, national or social origin,

[78] See further Grey (2020a, 2020c).
[79] See *Australian Human Rights Commission Act 1986* (Cth): Schedule 2, *International Covenant on Civil and Political Rights* Articles 2, 4, 14, 26, 27; Schedule 3, *Declaration of the Rights of the Child* Principle 1; and Schedule 5, *Declaration on the Rights of Disabled Persons* Article 2.

property, birth or other status' (our emphasis).[80] However, this only applies insofar as the *ICCPR* otherwise applies in Australia, ie this Act does not ratify the whole of the *ICCPR* into Australian domestic law.[81] Furthermore, language is *not* a nominated ground of prohibited discrimination within Australian domestic law, eg in sections 9-10 of the RDA.[82] It is therefore especially significant that NSW legislation fails to provide clarity or guidance about what constitutes equal (or discriminatory) treatment of the various speaker groups comprising the NSW community, both in terms of treatment in public communications and more generally.

We acknowledge that the NSW government may, however, be making its language choices for public communications (and related choices between written, audio, and visual modes of communication) by reference to a policy framework rather than to a legislative framework, or at least in an informed and consistent manner following institutional conventions. (Or, it may be making such decisions in an ad hoc manner with neither Parliamentary nor policy-based guidance and scrutiny). The second tier of the audit investigated these possibilities, finding that there is little formal policy that appears to guide or regulate the NSW government making its decisions about language and public communications. There is no NSW language services policy equivalent to other Australian states' languages services policies, although there is the state-wide Multicultural Principle about language and the associated multicultural plans of government departments, which may or may not deal with LOTE usage and/or with *public* communications. It remains unclear whether NSW government entities make decisions about their LOTE public communications

[80] (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976), Article 2, in Schedule 2 of the *Australian Human Rights Commission Act 1986* (Cth). See also Principle 1 of the *Declaration of the Rights of the Child* in Schedule 3 and Article 2 of the *Declaration on the Rights of Disabled Persons* in Schedule 5 of this Act. Grey (2021) is part of the first author's more detailed examination of the application of international law about linguistic discrimination in Australia, with further analysis forthcoming.

[81] Per s 3, *Australian Human Rights Commission Act 1986* (Cth).

[82] The *RDA* does not stretch to protecting an individual's right to choice of language in public communications and/or communications with the government: *Hamzy v Commissioner of Corrective Services* [2020] NSWSC 414. See the first author's case analysis in Grey (2020b).

by reference to a policy framework because, for most entities, no such policy framework is made public. Because of the statutory obligation to have Multicultural Plans, we can presume that NSW government entities have internal policies that deal with LOTE communications, but there is no direct obligation for Multicultural Plans to cover LOTE *public* communications. In fact, the two that we accessed and analysed – from Education and Health – did *not* deal with those departments' public communications in LOTEs. They dealt primarily with individual/private communications when they dealt with LOTEs. Moreover, Multicultural Plans are not binding rules. Further, analysis of the *NSW Government Advertising Guidelines* indicates that LOTE public communication decisions are made without much strategic/policy guidance and without quality assurance processes; the requirements to include LOTE communications in campaigns over certain spending thresholds are specific as to the proportion of the budget to be allocated, but not specific about any other aspects of those communications. This is even though the requirements are in Guidelines, typically a more detailed and specific genre of policy document than their parent legislation. The first author's related exploratory interviews, which are admittedly still underway, have illuminated the same. Thus, the findings in the policy tier of the audit mirror the finding in this audit's first tier as to the lack of a relevant decision-making framework in legislation, and thus again trigger the concerns we raised above and which echo other Australian states' language services policy reviews noted in the Introduction.

While the audit identified the rare contexts in which there is a NSW statutory obligation on government representatives to modify the language of certain communications with classes of people, it also found that this is never an obligation for communications towards the general public. Sometimes the obligation is to facilitate communication in LOTEs with a person from a specified class, and sometimes it is to adapt English or just to use language likely to be understood with them; similar obligations are phrased inconsistently across legislation. Neither

the NSW Parliament, Executive, nor Judiciary have clarified whether these similar statutory provisions require the same or different standards of comprehensibility to be met or to what extent LOTEs should be used to aid communication when a statute not does explicitly refer to LOTEs. We query whether the NSW Multicultural Principle for respect and provision for LOTEs within the Australian legal and institutional framework[83] has the effect of implying into all these variously-worded statutory requirements about comprehensible communications an obligation to make provisions in LOTEs. Arguably so, but this argument has not been tested in court, as far as we are aware.

Moreover and as a final concerning point of discussion, the compliance procedures for ensuring these communication obligations are met are not transparent. For example, the *Disability Inclusion Act 2014* (NSW) stipulates that 'Supports and services provided to people with disability from culturally and linguistically diverse backgrounds are to be provided in a way that […] addresses [language and other] barriers'. Much government support in the form of public information, and many services, are provided to people with a disability as part of providing the same to the general public. This standard from *the Disability Inclusion Act* should therefore, in our assessment, be met widely in government communications rather than only in the narrower suite of communications that form part of supports and services provided only to people with a disability; such narrowly scoped accommodation would undercut the overall principle of inclusion of people with a disability. But other than through individual civil suits, how is the NSW Government held to account for either compliance with this stipulation or for assuring the quality of provisions made consequent on this stipulation that are intended to surmount language barriers?

[83] *Multicultural NSW Act 2000* (NSW) s 3(1)(d).

Conclusion: Relating the Audit Findings and Discussion to Public Policy Reform

Our concerns arising from this audit are that the NSW Government's multilingual public communications are likely to be inconsistent, non-strategic, poorly scrutinised, provide minimum benefit for the LOTE-using public, and even exclusionary, because of the absence of a decision-making framework. However, we acknowledge that the current absence of detailed law or policy about LOTE communications creates the potential for the government to react to community needs or demands without much constraint. Could an ability to react be preserved within a more principled and predictable framework for deciding which LOTEs to use, and how, for which government communications? Of course.

This article is not a public policy proposal to fund all government communications in all LOTEs; it is a starting point for identifying problems and for discussions with the various stakeholders involved, each bringing their interests to the table. We believe discussion of policy-based solutions needs to be pursued because of the evident lack of cross-cutting strategies or rules, allowing for inconsistency and error in practice. These are problems which law or formal policy could resolve by mandating co-ordination, planning, and an allocation of responsibility for language choices in government entities' public communications, as well as providing guidelines and standards. Moreover, a policy response allows for scalable knowledge: each departmental communications team (or NSW agency or local council) need not duplicate research and guidelines about public communications best practices if a policy already provides them. Legislation could bolster a public policy response, for example mandating that LOTE public communications policy be developed and re-assessed periodically, entrenching accountability and liability measures, and mandating which principles or factors need to be considered by decision-makers. Public health literacy researchers already advocate that principles of equitable access and engagement, and participation in decision-making, should

guide government (and non-government) public health communications.[84] These principles resonate with the more general NSW Multicultural Principle regarding languages and would, in our view, serve well as additional, legislatively enshrined guides for public communications beyond health contexts, in all sorts of quotidian and crisis communications. [Next sentence moved here from a few lines down] Legislation would also facilitate the allocation of funds to such endeavours.[85] Further, formal policy could encourage, or laws could even oblige, federal, state, and/or local governments to collect and analyse data about who reads/hears/watches which communications and use that to develop cohesive LOTE public communications protocols.

This audit also indicates worthy routes of further research to guide reforms to communications laws, policies, and practices. To begin, an empirical study of the public communications practices of the NSW government would 'triangulate' the findings of this audit, ie test and strengthen the insights of this research. Because NSW Health stood out as having more of a framework for decision-making regarding LOTE public communications than exists in other departments or overall for the NSW government, further research on whether and how NSW Health's internal policy framework works, and whether it impacts positively on public communications in LOTEs, is important. An audit of NSW regulations/delegated legislation, which are voluminous, may provide further examples of the types of language laws identified in this article, and new types. It would also be useful to compare audits of NSW legislation on other topics to see whether NSW legislation about language choice is especially vague. Other such audits have not yet been undertaken, to our knowledge, although the general difficulty of the legal register is well attested and widely known. This audit did, however, collect some data on other Australian jurisdictions' legislation about language use which we

[84] McCaffery, Muscat and Donovan (2020).
[85] Grey (2020a, 2020c) has noted the role of NSW's local governments in public communications in LOTE is significant, but performed and funded variously; clear laws would assist in clarifying the responsibility of local governments.

are yet to fully analyse and write up, and the first author has looked further at federal and international law on the matter.[86] From that research we can say that, so far, our understanding is that NSW laws about language are no worse than other jurisdictions', and perhaps better in that not all jurisdictions have an equivalent of NSW's Multicultural Principle about language.

We therefore suggest further academic and government-led research,[87] including research with access to internal departmental policies such as multicultural plans and empirical research on the actual multilingualism of Australian governments' public communications, along with multi-stakeholder collaborations to determine how best to extend the regulatory framework towards best practice for both crisis and everyday public government communications in LOTEs.

[86] Grey (2021).

[87] In January 2021, the federal Department of Health established a Culturally and Linguistically Diverse Communities COVID-19 Health Advisory Group, engaged a multicultural communication specialist firm and cooperated with the Federation of Ethnic Communities' Councils of Australia (FECCA) to begin recruiting for interviews to inform this campaign. (FECCA group email, Subject 'Request for Nominations - CaLD Vaccine Research', 29 January 2021.)

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Appendix A: Results from searching AustLII's NSW Consolidated Acts database for 'English' (n=60).

[insert PDF 'Appendix A']

Appendix A: Results from searching AustLII's NSW Consolidated Acts database for 'Language' (n=198).

[insert PDF 'Appendix B']

Appendix C: 91 NSW Acts containing ‘English’ and/or ‘language’, after exclusions, with coding.

[insert Excel File ‘Appendix C’ in whatever format works well for reading in an online publication of this article]