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Mr Shayne Neumann
House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Email: atsia.reps@aph.gov.au

Re: Inquiry into language learning in Indigenous communities

Dear Mr Neumann

1. This submission is made in our capacities as legal academics. It is based on study and experience with human rights and education law issues.

Summary

2. **This submission addresses** the following term of reference:

- Measures to improve education outcomes in those Indigenous communities where English is a second language

3. With regard to this term of reference, **we recommend**

- that the Australian Government take the necessary steps to provide statutory arrangements for the protection for the rights of Indigenous children whose first language is not English; and
- that the Australian Government take the necessary steps to amend the Schools Assistance Acts and Regulations to make specific provision for mother tongue and bilingual instruction and to make funding of State schools conditional upon the provision of appropriate language instruction for Indigenous children for whom English is a second language; and
- that the above recommendations are implemented in consultation with Indigenous peoples through relevant Indigenous organisations and Indigenous representative bodies at local, regional and national levels.

4. **This submission also addresses two further** terms of reference:

- The benefits of giving attention and recognition to Indigenous languages [paragraphs 5, 6, 12, 13, 14, 15]
- The effectiveness of the Commonwealth Government Indigenous languages policy in delivering its objectives and relevant policies of other Australian governments [paragraphs 7, 8, 9, 10, 11, 13, 14, 15]

Background

5. Indigenous children who arrive in primary school speaking a language other than Standard Australian English are in a precarious educational situation. If they cannot understand their teachers, they cannot access the curriculum. They are likely to fall behind in literacy and numeracy, and will simultaneously lose self-confidence and a positive sense of their cultural identity. If they are provided with an English immersion program, they may be successful in gaining literacy and numeracy skills in English, but their overall achievement is likely to be lower than their counterparts' who did not have to struggle to learn new concepts while simultaneously struggling to understand the language of instruction. Moreover, their new language skills may come at the cost of the subtraction of their ability to speak their mother tongue. This loss of language undermines Indigenous communities and depletes cultural diversity. For Indigenous children whose mother tongue is a traditional Australian language or a creole, a curriculum that is not adapted to their language needs denies them equal access to the fundamental right to education.

6. Adapting the curriculum to meet the language needs of non-English speaking Indigenous children requires mother tongue instruction. Evidence from around the world is clear that the most effective way to attain literacy is to introduce reading and writing in the mother tongue of the student. Students who are literate in their mother tongue learn English literacy skills more readily and are more likely to reach desired educational outcomes. However, in spite of overwhelming evidence of the effectiveness of bilingual education for children whose mother tongue is not the dominant language of the school, bilingual education can be a political hot potato.

7. Perhaps because language plays a central role in the perpetuation of minority culture and in the creation of identity, ethnic-minority language education is subject to political pressures in many places around the globe. Conflicts on language education policy are frequently emotional and highly pitched, reflecting the identity politics of the majority rather than the educational evidence. Disputes over the use of Corsican in France, Basque in Spain, Spanish in the U.S., the Uyghur language in China, and Kurdish in Turkey, for example, have been at the centre of recent political controversy and even civil unrest. Policies on bilingual education in Australia have similarly been subject to pressures from ill-informed or politically motivated actors. Bilingual education programs have suffered from inadequate resourcing, inconsistent support and threats of abolition. The poorly thought-out abandonment of bilingual education programs in the Northern Territory in October 2008, for example, illustrates the need for specific statutory protection of Indigenous children's educational rights.

8. States have a greater responsibility to guarantee the linguistic rights of Indigenous peoples than those of minorities who may rely on a country of origin for some support in language maintenance. This argument for a special duty of States in relation to Indigenous languages is bolstered by the fact that Indigenous peoples in Australia were subject to decades of discriminatory laws implementing a policy of assimilation through, *inter alia*, language suppression.

Legal Context

A right – not an option

9. In numerous international legal instruments, Australia has already recognised the fundamental rights of children to an education on equal terms, the rights of Indigenous children to maintain their heritage and culture, and the right of Indigenous children to instruction in their mother tongue.

- *Universal Declaration of Human Rights*, GA Res 217 (III), UN GAOR, 3rd Sess, Supp No. 13, UN Doc A/810 (10 December 1948), Articles 2, 26, 27
- *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171(entered into force 23 March 1976), Articles 24, 25, 27
- *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) Articles 13, 14, 15
- *International Convention on the Elimination of all Forms of Racial Discrimination,* opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969), Article 5
- *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Articles 3; 12; 27; 28(b),(c); 29(c),(d); and **especially** Article 30
- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, UN Doc A/Res/47/135 of 18 December 1992, Article 4(3)
- *United Nations Declaration on the Rights of Indigenous People*, GA Res 61/295, UN GAOR, 61st Sess, 107th plen mtg, Supp No 49, UN Doc A/Res/61/295 (13 September 2007), Articles 1-3; 8.1; **especially 13, 14;** 17.2; 23.

10. Article 14(3) of the *Declaration on the Rights of Indigenous People* provides that Indigenous children have a right to access, when possible, 'to an education in their own culture and *provided in their own language*' (emphasis added). In a recently published guide for States on how to implement their obligations under the Convention on the Rights of the Child, the UN Committee on the Rights of the Child emphasised that, in order to implement the rights guaranteed under Article 30 of the *Convention on the Rights of the Child*, 'education in the child's own language is *essential*.'[1]

Lack of domestic legislation

11. In spite of vigorous endorsement of the educational and linguistic rights of Indigenous children, the Commonwealth has not yet guaranteed the reliable protection of those rights through specific domestic legislation. Neither the Schools Assistance Act 2008 (Cth) nor the Schools Assistance Regulations 2009 (Cth) make specific provision for bilingual education or mother tongue instruction. Similarly, existing discrimination law does not specifically protect the language education needs of Indigenous children who arrive at school speaking a language other than English.

An Incentive

12. Statutory protection provides not only important protection for individual students, but also a strong incentive to States to develop appropriate language instructional programs. In a recent decision under the Disability Discrimination Act 1992 (Cth), the court ordered the school to

[1] Committee on the Rights of the Child, General Comment No. 11 (2009), paragraph 62.

provide instruction in AUSLAN, an Australian sign language, for a deaf child who was disadvantaged by being unable to understand the standard language of instruction.[2] This decision may have prompted Queensland to move forward with the recommendations of its *Working Party to Map Services for Deaf/Hearing impaired Children and Students in Queensland.* In the wake of the decision, bilingual instruction for deaf students has flourished in Queensland, sparking teacher training and curriculum development.[3]

13. Specific domestic statutory protection of Indigenous children's instructional rights would similarly jump-start teacher training and curriculum development efforts in the States. It would provide a practical guarantee of equal access to education to Indigenous language speaking children.

A model

14. Around the world, it is becoming clear that the linguistic and educational rights of Indigenous children cannot reliably be left to be implemented through policy alone. A number of nations have recently enacted statutes that protect Indigenous children's right to be educated in their mother tongue. An international best practice model is the legal architecture for the protection and practice of Sami languages in Norway. Sami are the Indigenous people of Sapmi territory which is situated across the State borders of Norway, Sweden, Finland and Russia. The Sami Language Act of 1990 officially classifies 6 municipalities as bilingual thereby requiring all services from municipal offices (including schools) to be offered in both Norwegian and Sami.[4] The 1999 Education Act also establishes the right to bilingual education wherever there are at least ten children in a municipality who want to receive instruction in a minority language.[5] The right continues as long as there are at least six students at the school who want to continue. This model predicates bilingual education on the desires of the child and the child's family and establishes the minimum size for a bilingual educational group. These two Acts are strengthened by provisions in s110a and s110c of the Norwegian Constitution, which together enforce a positive duty on the State to domestically implement its international human rights obligations with regard to preserving Sami educational, cultural and linguistic rights.[6] Most importantly, formalised and regular consultation between government authorities and Sami institutions (such as the Sami Parliament) ensures local and national Indigenous involvement in decision-making processes affecting Sami interests.

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[2] Hurst v State of Queensland [2006] FCAFC 100

[3] See http://education.qld.gov.au/studentservices/staff/workshops/auslan.html

[4] Sami has in fact been permitted as the language of instruction in primary schools since 1959 in Norway.

[5] Act of 17 July 1998 no. 61 relating to Primary and Secondary Education and Training (the Education Act), Section 2-5 Norway. Available at http://www.ub.uio.no/ujur/ulovdata/lov-19980717-061-eng.pdf

[6] A 1988 amendment to the Norwegian Constitution via s110a states: "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life." See also Sami Rights Committee Report 1984, Act No. 56 of 12 June 1987 and parliamentary debate on the Bill.

Conclusion

15. Australia's national policy on education has supported Indigenous language instruction for many years. Nevertheless, progress in providing appropriate language instruction to the children who most desperately need it has been slow and has sometimes been subject to substantial backsliding. The failure to provide appropriate language instruction to the small minority of Indigenous children for whom English is a second language is discriminatory and fails to live up to Australia's important ideals. Statutory protection would go a long way toward putting Indigenous language speaking children on an equal footing as they enter school and toward closing the achievement gap. It would also ensure that educational rights are recognised and achieved reliably, equally and predictably. Perhaps most importantly, it would also support the preservation of endangered Indigenous languages and protect Australia's diverse cultural heritage.

16. Thank you for the opportunity to make this submission on language learning in Indigenous communities. We would be happy to elaborate or answer any questions that you may have.

Yours sincerely,

By email

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