

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

31 August 2011

Dear Committee,

Submission to the Inquiry into Language Learning in Indigenous Communities

I. Executive Summary

My submission relates to the benefits of giving attention and recognition to Indigenous languages. Specifically, I address how doing so would help Australia uphold its international human rights obligations. By way of contrary, I consider how the government's decision to dismantle bilingual education in the Northern Territory (NT) may not be in the best interests of the child, and potentially violates Australia's obligations under the *Convention on the Rights of the Child* and the *Declaration on the Rights of Indigenous Peoples* to provide indigenous children with rights to education and culture. I also propose that a move towards upholding these rights could include a recognition of minority linguistic rights in the *Constitution*, increased funding and resources for teaching indigenous languages, and collaboration between the government and indigenous communities to promote indigenous languages and culture in schools.

II. Decline of indigenous languages in Australia

The 2008 *National Aboriginal and Torres Strait Islander Social Survey* reported that 71.7% of indigenous children in the NT aged 4-14 years spoke an Aboriginal/Torres Strait Islander language, and that 44.1% of them spoke an indigenous language as the main language at home. In other words, 27% of those who can speak an indigenous language are not using it as the main language at home. This is an indication that indigenous languages will not be passed down to future generations as research suggests that 'children will only learn a language as their first language if it is the language mainly used at home by the adults and older children in the household'.¹ Furthermore, the percentage of indigenous persons aged 15 years and over who spoke an Aboriginal/Torres Strait Islander language at home decreased from 63.2% in 2002 to 52.7% in 2008.²

III. Australia's International Human Rights Obligations

Taking steps to prevent the decline of indigenous languages will help Australia uphold its obligations under the *Convention on the Rights of the Child* and the *Declaration on the Rights of Indigenous Peoples*. Specifically, the obligations I refer to are the rights concerning education and culture.

¹ Kral, Inge and Murphy, Frances, 'Language' in Centre for Aboriginal Economic Policy Research, *Assessing the evidence on Indigenous socioeconomic outcomes: a focus on the 2002 NATSISS* (2006) <http://epress.anu.edu.au/caepr_series/no_26/mobile_devices/ch21s02.html> at 16 May 2010.

² Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey 2008*, <http://abs.gov.au/AUSSTATS/subscriber.nsf/log?openagent&4714.0_nt_2008.xls&4714.0&Data%20Cubes&635DCF52A1C826FFCA25770B00170AE3&0&2008&21.04.2010&Latest> at 15 May 2010.

A. *Convention on the Rights of the Child*

The United Nations *Convention on the Rights of the Child* ('CRC') recognises 'the need to extend particular care to the child',³ as expressed in the League of Nations *Declaration of Geneva 1924* and the United Nations *Declaration on the Rights of the Child 1959*. The CRC draws together the rights of a child expressed in the *Universal Declaration on Human Rights 1948*, the *International Covenant on Economic, Social and Cultural Rights 1966*, and the *International Covenant on Civil and Political Rights 1966* and its two optional protocols.

Australia signed the CRC on 22 August 1990. It was ratified by the Commonwealth Executive on 17 December 1990 and came into effect on 16 January 1991. The Attorney-General has declared the CRC an international instrument relating to human rights and freedoms pursuant to section 47(1) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) and as such, the Human Rights Commission has the power to investigate complaints that the Commonwealth or its agencies have violated the rights contained in the CRC.

B. *Best interests of the child*

The CRC's fundamental tenet is to ensure that 'the best interests of the child' are a primary consideration in parties' actions concerning children. It has also been established in Australian law that the 'best interests of the child' is a primary consideration for decision-makers. In *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh*,⁴ Chief Justice Mason and Justices Deane and Toohey of the High Court held that the ratification of the CRC created the legitimate expectation that the best interests of the child would be a primary consideration of all actions concerning children.⁵ Although the government in 1997 and 1999 tried to pass legislation to state otherwise, the legislation lapsed on both occasions.⁶ The other member of the majority, Justice Gaudron, found it was not necessary to rely on the CRC. She reasoned that the principle was a 'fundamental human right'⁷ for children who are Australian citizens:

*...it is arguable that citizenship carries with it a **common law right** on the part of children and their parents to have a child's best interests taken into account, **at least as a primary consideration**, in all discretionary decisions by governments and government agencies which directly affect that child's individual welfare (emphasis added).⁸*

The position in Australia is that all decisions concerning children have to take into account the provisions of the CRC.⁹ Based on Justice Gaudron's reasoning that this principle is 'at least...a primary consideration',¹⁰ the standard in Australia is perhaps even higher.

³ Preamble of the *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1588 UNTS 530 (entered into force 16 January 1991).

⁴ 183 CLR 273.

⁵ Ibid 274.

⁶ Jennings, Mark, 'The Relationship Between Treaties and Domestic Law' (Presentation at a Department of Foreign Affairs and Trade Departmental Workshop, 6 November 2003)

<http://www.dfat.gov.au/treaties/workshops/treaties_global/jennings.html> at 15 May 2010.

⁷ 183 CLR 273, 305.

⁸ Ibid 304.

⁹ See also Committee on the Rights of the Child, *General Comment No 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 34th sess, UN Doc CRC/GC/2003/5 (27 November 2003), 'Article 3 (1): the best interests of the child as a primary consideration in all concerning children. The article refers to actions undertaken by "public or private social

1. Failure to consider the best interests of indigenous children

However, the best interests of the child may not have been a primary consideration in the government's decision to dismantle bilingual education. The announcement came 'without warning or consultation with the affected communities'¹¹ or the affected schools,¹² and was based on tenuous data relating to English literacy levels.¹³ There are also arguments that the government has 'framed [their language policies] around assimilation and specifically around how to impart effective English literacy',¹⁴ while ignoring the cries of linguists and communities who have 'tended to stress ideals and goals of bilingualism and biculturalism'.¹⁵

2. Suggestions of a monolingual mindset

The government's approach to indigenous languages may be explained by what leading linguist Michael Clyne identifies as Australia's 'persistent monolingual mindset [which]... does not understand that developing an individual's language skills in any language benefits their skills in any other language'.¹⁶ In the 1998 Parliamentary debates on bilingual education, it is possible that some members of Parliament had a monolingual mindset as questions of bilingual education were converted to issues of English literacy:¹⁷

*Mr Snowden - ...Is the Prime Minister aware of the decision by the Northern Territory government to phase out **bilingual education** in Aboriginal schools?*

*Dr Kemp—I find it incredible that a question about **literacy** amongst indigenous Australians should be raised by the Labor Party.*

...

*Dr Kemp—The government has also introduced, for the first time, intensive English as a second language courses for young indigenous students... This is...an exceptionally effective way of addressing the **literacy** needs of young people who are native speakers of a vernacular language (emphasis added).¹⁸*

welfare institutions, courts of law, administrative authorities or legislative bodies". The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.'

¹⁰ Ibid.

¹¹ Simpson, Jane, Caffery and McConvell, Patrick, 'Gaps in Australia's Indigenous Language Policy: Dismantling bilingual education in the Northern Territory (Discussion Paper No 24 AIATSIS, 2009), 15.

¹² Ibid 28.

¹³ Nicholls, Christine, 'Death by a Thousand Cuts: Indigenous Language Bilingual Education Programmes in the NT from 1972-1998' (2005) 8 *International Journal of Bilingual Education & Bilingualism* 160.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Clyne, Michael, *Australia's Language Potential* (2005), XI.

¹⁷ Lo Bianco, Joseph, 'What happened to language rights?' (Presentation at AIATSIS Research Symposium, "Bilingual Education in the Northern Territory: Principles, policy and practice", Visions Theatre, National Museum of Australia, Canberra, 26 June 2009). See also Lo Bianco, Joseph, 'Words of Power: Talking Bilingual Education and ESL into English Literacy' (1999), 14(2) *Prospect* 40.

¹⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 December 1998, 1872-1874.

Although other members pointed out that bilingual education was relevant also to cultural maintenance and human rights, they were ignored. Instead, the answers from Doctor David Kemp MP referred mainly to the issue of poor literacy levels, and only English literacy.

Similarly, when former NT Minister for Education and Training Marion Scrymgeour announced the dismantling of bilingual education, she said that this was not an issue of culture, but an issue of English literacy.¹⁹ As recently as May 2010, the Chief Executive Officer of the NT Education Department was quoted as saying, '[w]e want people to speak their home language for the first four hours but we want it predominantly done in English'.²⁰ This continuing emphasis on acquiring English literacy skills has consistently played a large role in shaping current education policy, at the expense of considering other factors that would help to determine a child's best interests.

A monolingual mindset may have prevented the government from recognising that proficiency in English can go hand in hand with protecting and preserving indigenous languages. Notably, being strong in one's mother tongue helps children learn and acquire a second language quickly, as concepts that are understood in the mother tongue are easily developed in the second language.²¹ Languages are interdependent and reinforce further learning since skills learned in one language can transfer to the mother tongue.²² For instance, a child who has learned how to tell the time needs only to learn the label for time in a different language. Transfers can also occur in academic and literacy skills, including 'knowing how to distinguish the main idea from the supporting details of a written passage or story, identifying cause and effect, distinguishing fact from opinion, and mapping out the sequence of events in a story or account',²³ and it follows that English literacy levels improve as a consequence of successful bilingual education programs that promote indigenous languages.

C. *Rights to education and culture*

In addition to the 'best interests' requirement, Articles 28, 29 and 30 provide rights that are relevant to bilingual education. The right to education is in Article 28 and is given further expression in Article 29. In particular, Article 29(1)(c) directs that education be directed towards 'the development of respect for the child's parents, his or her own cultural identity, language and values'. Article 30 also specifically provides rights for indigenous children to enjoy their culture and to use their own language:

...[a child] who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

According to the Committee on the Rights of the Child, '[i]n order to implement [Article 30], education in the child's own language is essential'.²⁴ The Committee also noted that '[b]ilingual

¹⁹ Scrymgeour, Marion, *Education Restructure Includes Greater Emphasis on English* (14 October 2008) <<http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=4599&d=5>> at 12 May 2010.

²⁰ Roussos, Eleni, *Schools boss seeks solution to bilingual anger* (12 May 2010) <<http://www.abc.net.au/news/stories/2010/05/12/2897553.htm>> at 14 May 2010.

²¹ Cummins, Jim, *Bilingual Children's Mother Tongue: Why is it important for education?* (2001) <<http://inet.dpb.dpu.dk/infodok/sprogforum/Espr19/CumminsENG.pdf>> at 31 March 2010.

²² Ibid.

²³ Ibid.

²⁴ Committee on the Rights of the Child, *General Comment No 11: Indigenous Children and their Rights under the Convention*, 50th sess, UN Doc CRC/C/GC/11 (12 January-30 January 2009).

and inter-cultural curricula are important criteria for the education of indigenous children²⁵ and that these special provisions for indigenous children were necessary in light of the unique challenges they faced in exercising their rights and the prevailing discrimination they experienced in accessing education.²⁶

In addition to Article 30, the government signed the United Nations *Declaration on the Rights of Indigenous Peoples* ('*Declaration*') in April 2009. The *Declaration* specifically contains the right to bilingual education in Article 14.3:

States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language (emphasis added).

The Australian Human Rights Commission has furthermore said that it is '[t]he few Bilingual schools that currently operate in Australia [and] comply with the laws and regulations of governments...[which ensure] that Indigenous students can exercise their rights to learn their languages and culture'.²⁷

1. Violation of the rights to education and culture

Failing to provide bilingual education to indigenous children may consequently violate Articles 29(c) and 30 of the *CRC*, and Article 14.3 of the *Declaration*. The impact of these violations is far-reaching as it may also prevent Australia from protecting rights contained in Articles 28 and 29. Articles 28 and 29 reveal the intertwining between rights to education and culture as the directives expressed in Article 29 have a considerable impact on the child's right to enjoy his or her own culture.

2. Article 29(1)(b) – the right to an education that develops respect for human rights

If government policy violates human rights obligations, it would also likely violate Article 29(1)(b), which directs education towards the development of respect for human rights. According to the Committee on the Rights of the Child, '[c]hildren should also learn about human rights by seeing human rights standards implemented in practice...in school',²⁸ but this would not be apparent in schools if the policy is in breach of Australia's human rights obligations. The right to education may be violated as a large proportion of indigenous children in the NT are likely to have had little or no interaction with the English language prior to attending school,²⁹ and would probably find it difficult to understand the teacher. Although the government provides an assistant teacher who can speak the child's language to be in the class, these assistants do not teach the child's language, but

²⁵ Ibid [62].

²⁶ Ibid [5].

²⁷ Australian Human Rights Commission, *Questions and answers on the UN Declaration on the Rights of Indigenous Peoples*, (April 2009)

<http://www.hreoc.gov.au/social_justice/declaration/declaration_QA_2009.html> at 30 May 2010.

²⁸ Committee on the Rights of the Child, *General Comment No 1: The Aims of Education, Article 29(1)*, 26th sess, UN Doc CRC/GC/2001/1 (17 April 2001) at [15].

²⁹ Simpson, Caffery and McConvell, above n 11, 8.

are merely interpreters.³⁰ Attending school is potentially a very alienating process and impacts on the child's right to education and to enjoy their culture.

3. Article 28(1)(b), (c), (d) and 29(1)(a) – the rights to higher education and to develop one's abilities to their full potential

Children are consequently deprived of the opportunity to learn since they cannot understand what is being taught. The rights contained in Article 28(1b), (1c) and (1d) go towards the provision of higher education for children, whether in general or vocational education, and are based on ensuring equal opportunity for all. Yet, their benefits may never come to pass.

In the *Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, the Inquiry found that '[f]orcing Aboriginal children to merely learn English words without learning the actual concepts is intellectually limiting those children'.³¹ The effects on children's self-esteem and learning is devastating, as depicted by the experiences shared by two students aged 12 and 13 years old:

*We don't retain information – we hear teaching, especially in English and feel that we don't grasp what is being taught, and so it disappears.... We feel hopeless. Is there something wrong with our heads because this English just does not work for us? In the end, we smoke marijuana to make us feel better about ourselves. But then that has a bad effect on us. We want to learn English words but the teachers cannot communicate with us to teach us.*³²

Article 29(1)(a) states that '[t]he development of the child's personality, talents and mental and physical abilities to their fullest potential', but if the special needs of indigenous children are not recognised, the government may be limiting their ability to advance in the education system. Consequently, children can become disinterested and disengaged, resulting in absenteeism. After the policy was implemented in January 2010, the March 2010 attendance figures of eight schools whose bilingual programs have been affected revealed that attendance figures were poor overall. In particular, Lajamanu, Shepherdson College, and Yuendumu, which previously expressed a desire to retain bilingual programs,³³ experienced sharp drops in attendance as compared to previous years. Incidentally, the exception to these figures is Areyonga, which had a thriving Pitjantjatjara and English program, and whose indigenous residents have previously lodged a complaint with the Human Rights Commission about the policy in the NT.³⁴

³⁰ Australia Broadcasting Corporation, 'Going Back to Lajamanu', *Four Corners*, 14 September 2009, <http://abc.net.au/4corners/special_ed/20090914/language/> at 26 April 2010.

³¹ Northern Territory Government Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007), 1-316, 147.

³² *Ibid.*

³³ See, eg, Yuendumu Council, 'Yuendumu Statement' (Media Release, 27 October 2008) <<http://rollbacktheintervention.wordpress.com/statements>> at 16 May 2010; Australia Broadcasting Corporation, 'Going Back to Lajamanu', *Four Corners*, 14 September 2009, <http://abc.net.au/4corners/special_ed/20090914/language/> at 26 April 2010; Toohey, Paul, 'Voices of Dissent', *The Australian* (Sydney), 26 February 2009 <<http://www.theaustralian.com.au/news/voices-of-dissent/story-e6frg6po-111118964289>> at 17 May 2010.

³⁴ Roussos, above n 20.

	Enrolments			Attendance in March			Change
	2008	2009	2010	2008	2009	2010	
Areyonga	37	41	43	95.0%	89.0%	93.6%	+ 4.6%
Lajamanu	216	179	166	55.8%	62.9%	45.4%	- 17.5%
Maningrida	641	701	643	48.5%	39.5%	36.5%	- 3%
Millingimbi	353	313	380	56.3%	59.1%	62.2%	+ 3.1%
Numbulwar	200	246	196	61.0%	47.3%	47.8%	+ 0.5%
Shepherdson College	626	654	643	50.0%	58.9%	48.8%	-10.1%
Yirrkala	202	199	215	65.1%	57.8%	60.5%	+ 2.7%
Yuendumu	52	58	53	53.4%	58.4%	43.8%	- 14.6%

Source: Northern Territory Government, Department of Education and Training, *Student Enrolment and Attendance Collection for March 2008, 2009 and 2010*³⁵

4. Article 28(1)(a) and (e) – the rights to ensure compulsory education and regular attendance

The deprivation of education vis-à-vis failures of communication and absenteeism makes the outworking of 28(1)(a) and (e) problematic. Article 28 (1)(a) states that parties should ‘make primary education compulsory’ and 28(1)(e) states that parties should ‘take measures to encourage regular attendance at schools and the reduction of drop-out rates’. The mandate of compulsory education is contained in the NT *Education Act 2010* that a child at compulsory school age must be enrolled, and must attend school.³⁶ Parents are fined \$200 for breach of the former, and two penalty units for the latter.³⁷ However, if communication is the basis for education, and it is unlikely that children can understand what is being taught to them at school, then the justification for compulsory attendance is invalid.³⁸ Making it compulsory for children to attend is akin to forced imprisonment and deprives the child of his/her liberty.³⁹

Making education compulsory can lead to oppression of a child’s fundamental right to liberty, and could also affect the rest of the family unit. In a report in *The Australian*, former Minister for Families, Community Services and Indigenous Affairs Mal Brough called for the government to take harsh measures against offending parents – to the extent that welfare payments to parents should be suspended.⁴⁰ However, it is not reasonable for parents to send their children to school if schools are not effective institutions for learning. The suspension of welfare payments would also be a disproportionate penalty as it would affect the family’s livelihood.

³⁵Northern Territory Department of Education and Training, *Student Enrolment and Attendance Collection 2 March - 2008, 2009 & 2010* <http://www.det.nt.gov.au/data/assets/pdf_file/0015/3345/EnrolmentAttendanceGeolocation.pdf> at 14 May. See also Dickson, Greg, *Interesting attendance figures... former bilingual schools show downward trend* <http://groups.google.com.au/group/foblmail/browse_thread/thread/8803d7332c546b65?hl=en#> at 12 May 2010.

³⁶ *Education Act 2010* (NT) ss 20A, 21-22.

³⁷ *Education Act 2010* (NT) s 22A.

³⁸ Grubb, B. Erica, *Breaking the Language Barrier: The Right to Bilingual Education* (1974), 9 *Harvard Civil Rights-Civil Liberties Law Review*, 52, 87-88.

³⁹ *Ibid.*

⁴⁰ Robinson, Natasha, ‘Punish parents to save kids, says Brough’, *The Australian* (Sydney), 29 April 2010, 1.

5. Article 29(1)(c) and (d) – the right to an education that develops respect for one’s parents and other people

Losing the right to enjoy his or her own culture is intimately linked to the denial of education, as Article 29(1)(c) provides that education should aid the ‘development of respect for the child’s parents, his or her own cultural identity, [and] language and values’. The government tried to provide the children with cultural education during the last hour of class by having a member of the indigenous community come to class to teach the children about various indigenous traditions, but absenteeism and disengagement meant that many children did not attend this last hour of school.⁴¹

Conducting classes mainly in English may also suggest to parents and children that their culture is being rejected.⁴² Children may consequently be unwilling to attend school, and parents may not be willing to force them to attend. With decreasing support from parents, parents are less likely to volunteer in schools⁴³ and help out with programs that teach children about their culture.⁴⁴ This decrease in support thus exacerbates the loss of culture.

Whereas Article 29(1d) provides that the child’s education aid ‘preparation...for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples,’ left with neither mastery of English nor his or her own language, the child is caught between two worlds with access to none. By depriving the child of their mother tongue, the child is denied access to many of the customs and traditions of his or her community by virtue that they cannot sing or speak in the language.⁴⁵ To Lajamanu elder Jerry Patrick Jangala, the loss of the local Warlpiri language in the school means ‘we will lose...all the kids’.⁴⁶ His words echo another Lajamanu elder who 10 years earlier said, ‘[i]f we all die...no one speak language. No family can speak language after we all die [sic].’⁴⁷ These sentiments are shared by other communities in the NT⁴⁸ and indicate the link between culture and language.

Not being able to communicate using the traditional language is likely to make it difficult for ties to be built between the older and younger generations. With the passing away of older generations, children lose access to a community they perceive they belong to, and may struggle to enter into the mainstream because of their limited grasp of English. In contrast, Mandawuy Yunupingu, former Principal of Yirrkala Bilingual School speaks of how being bilingual in English and his Yolngu languages gives him ‘the power to operate in and negotiate between two cultures’,⁴⁹ in other words,

⁴¹ Australian Broadcasting Corporation, *Chronology: The Bilingual Education Policy in the Northern Territory* (2009) <http://www.abc.net.au/4corners/special_ed/20090914/language/chronology.htm> at 26 April 2010.

⁴² Cummins, Jim, *Bilingual Children’s Mother Tongue: Why is it important for education?* (2001) <<http://inet.dpb.dpu.dk/infodok/sprogforum/Espr19/CumminsENG.pdf>> at 31 March 2010.

⁴³ Baarda, Wendy, *English will be the death of Aboriginal languages* (20 November 2008) <<http://www.languageseducation.com/baarda081120.pdf>> at 18 May 2010.

⁴⁴ Australia Broadcasting Corporation, ‘If We All Die...No one Speak Language’, *Four Corners*, 1986, <http://www.abc.net.au/reslib/200909/r435344_2091213.asx> at 26 April 2010.

⁴⁵ *Ibid.*

⁴⁶ Australia Broadcasting Corporation, ‘Going Back to Lajamanu’, *Four Corners*, 14 September 2009, <http://abc.net.au/4corners/special_ed/20090914/language/> at 26 April 2010.

⁴⁷ Australia Broadcasting Corporation, above n 44.

⁴⁸ See eg, Toohey, above n 34.

⁴⁹ Yunupingu, Mandawuy, ‘Double Power’, in Peter Wignell (ed), *Double Power: English Literacy and Indigenous Education*, Language Australia, 1999, 1, 1.

‘double power’.⁵⁰ In addition, even if the child were to become proficient in English, it is not guaranteed the child can identify with other English speakers.

6. Article 29(1)(e) – the right to an education that develops respect for the natural environment

Finally, Article 29(1e) states that education shall be directed to the ‘development of respect for the natural environment’. This is especially pertinent in light of the contributions indigenous knowledge has made to the study of biodiversity. Professor Skutnabb-Kangas, a renowned linguist in this field, has found that Traditional Ecological Knowledge is encoded in indigenous languages,⁵¹ and notes that many articles in the *Convention on Biological Diversity* recognise indigenous practices as valuable to conservation and sustainable use of biodiversity.⁵² The rejection of language is akin to rejection of culture, and with it, knowledge of different species and ways of stewardship in a changing environment is lost.

IV. RECOMMENDATIONS

A. Recognise linguistic rights in the Australian Constitution

On the other hand, recognition of linguistic rights and setting up a body to oversee language policy is likely to be a symbolic and practical first step that will help Australians become aware of the need to protect, preserve and maintain Indigenous languages, and also help to renew the prevailing monolingual mindset.

The right to indigenous languages is already found in the Constitutions of countries with indigenous populations such as New Zealand and South Africa and was proposed by former Prime Minister John Howard during his 2007 Election Campaign.⁵³ In South Africa, Article 6(2) of the *Constitution of the Republic of South Africa* provides that the country recognises the ‘historically diminished use and status of the indigenous languages...[and] must take practical and positive measures to elevate [their] status and advance [their] use’; Article 6(5) goes further to state that a National Board be established by legislation to uphold these aims.

In New Zealand, the right to languages is enshrined in section 20 of their Bill of Rights, as a right for linguistic minorities, and essentially adopts the wording of section 30 of the *CRC*. This wording

⁵⁰ Ibid.

⁵¹ Skutnabb-Kangas, Tove and Dunbar, Robert, *Indigenous Children’s Education as Linguistic Genocide and a Crime Against Humanity? A Global View* (2010), 12.

⁵² See eg, Article 8(j) states that ‘Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.’

⁵³ Howard, John, ‘A new indigenous settlement’ *The Australian* (Sydney) 12 October 2007 <<http://www.theaustralian.com.au/news/a-new-indigenous-settlement/story-e6frg73o-1111114621927>> at 21 May 2010. John Howard proposed to insert a Statement of Reconciliation incorporated into the preamble of the *Australian Constitution*, ‘If re-elected, I will put to the Australian people within 18 months a referendum to formally recognise indigenous Australians in our Constitution: their history as the first inhabitants of our country, their unique heritage of culture and languages, and their special (though not separate) place within a reconciled, indivisible nation.’

is preferred, as it would mean that Australia recognises the voice of the indigenous peoples as well as the voices of the immigrants who have arrived in Australia over the generations.

B. Partner with the community to establish bilingual education programs

Affirmation of the right to indigenous languages could also be followed by a joint effort between the government and the community to revitalise indigenous languages. With regards to the right of education, the Committee on the Rights of the Child emphasised that "Education" in this context goes far beyond formal schooling,⁵⁴ and should also involve –and be reinforced by– the family and community.⁵⁵ Community consultation is also required under Article 14.3 of the *Declaration* and according to the principles of 'best interests' of the child in Article 3.1 of the *CRC*. Article 12(1) of the *CRC* even mandates that the child's views should be taken into account in accordance with his or her age and maturity.

One way to facilitate cooperation with the community is to provide opportunities for indigenous adults to be trained as teachers. According to the Committee on the Rights of the Child, teachers should as far as possible be recruited from the indigenous community to shore up the effectiveness of bilingual education to the children.⁵⁶ Furthermore, this option provides jobs for the community and in turn helps to alleviate the current shortage of teachers.⁵⁷ Training indigenous teachers empowers the indigenous community and is a more sustainable option to pursue given the current shortage of teachers and anecdotal evidence that '[t]he average teacher in a remote NT school stays only eight months [and] a great many last only a term'.⁵⁸ Giving responsibility for classes to indigenous teachers enables them to contribute to the educative environment of the child and could raise the self-esteem of both the teachers and children. Children are likely to benefit from having indigenous role models in class and this in turn may help them develop career aspirations. The following is anecdotal evidence from a school which had a bilingual education program:

[Bilingual education had] a link with the self-esteem of the children and the community. The children had their identity affirmed, and it brought the adults from the community into the school; many of the Warlpiri people went on to do teacher training in order to teach in the schools...the attendance rate went up from 65% to 90%.⁵⁹

The government could also consider injecting funding and resources into schools to help manage the language barriers between the teacher and students in the classroom. The Australian Human Rights Commission found that despite English being a second language for a significant majority of children in the NT, students were 'not recognised by the Commonwealth as requiring [English as a Second Language] funding and support'.⁶⁰ Christine Nicholls, former principle of Lajamanu in the NT, argues that the lack of appropriately trained and qualified teachers who can teach English as a second language should rank first on the government's agenda to redress the situation of poor literacy levels.⁶¹

⁵⁴ Committee on the Rights of the Child, above n 29, [2].

⁵⁵ Ibid [13].

⁵⁶ Committee on the Rights of the Child, above n 25, [62].

⁵⁷ Northern Territory Government Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, above n 31, 150.

⁵⁸ Australian Broadcasting Corporation, above n 30.

⁵⁹ Ibid.

⁶⁰ Australian Human Rights Commission, *International Review of Indigenous issues in 2000: Australia* (7 October 2003) <http://www.humanrights.gov.au/social_justice/native_title/nt_issues/failure.html#1115> at 14 May 2010.

⁶¹ Nicholls, above n 13, 170.

C. Promote indigenous culture in schools

Similarly, schools could also work closely with the community in developing programs that teach the child about their culture. According to Nicholls, it was the old ladies at Lajamanu who would ‘come along and tell sand stories...and demonstrate making of wooden artifacts’,⁶² who enabled Lajamanu to be ‘not just a bilingual school but a bicultural school’.⁶³ When a school engages with the children about their culture, it sends a message that they value the child’s culture and heritage. This in turn promotes the student’s self-esteem and fosters an environment that is conducive to a child’s learning, and will most likely result in better outcomes overall for children.⁶⁴

V. CONCLUSION

*Speak up for those who cannot speak for themselves,
for the rights of all who are destitute.*

*Speak up and judge fairly;
defend the rights of the poor and needy.*⁶⁵

Who will speak up for the children? Denying bilingual education may quicken the death of indigenous languages and silence generations who will never have a chance to learn their own language. The benefits of a government policy which focuses on English literacy may be limited in light of statistics which show that most children enter school with little or no knowledge of English. Consequently, the inability to understand what is being taught denies children their rights to an appropriate and adequate education as contained in Articles 28 and 29 of the *CRC*. The denial of bilingual education also violates Article 30 of the *CRC* and Article 14.3 of the *Declaration*, which commits the government to giving indigenous children the rights to enjoy their own culture and language, and specifically in the area of education.

I hope the Review will take steps towards Australia making an unprecedented commitment towards upholding linguistic rights and implementing programs that promote indigenous languages and culture.

Thank you for your time and consideration.

Yours sincerely,

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⁶² Australia Broadcasting Corporation, above n 30.

⁶³ Ibid.

⁶⁴ See generally The Secretariat of National Aboriginal and Islander Child Care, *Protecting Culture and Protecting the Future for Our Children* <<http://www.snaicc.asn.au/uploads/rsfil/00109.pdf>> at 21 May 2010.

⁶⁵ The Holy Bible (New International Version), Proverbs 31:8-9.