

## Indigenous languages policy

- 3.1 At the Commonwealth Government level, a National Indigenous Languages Policy has been in place since 2009, following the announcement of *Indigenous Languages – A National Approach*.<sup>1</sup> The Office for the Arts (OFTA) is the lead agency for the implementation of the policy, and funds language-related activities through its Indigenous Languages Support (ILS) program.
- 3.2 The states and territories have developed policies relating to Indigenous languages that are, in general, related mainly to their respective education policies.
- 3.3 While Indigenous languages policy is an integral issue in education, as Dr William Fogarty told the Committee, it is also fundamental ‘for Indigenous identity, cultural reproduction and the aspirations for Indigenous economic and social development’.<sup>2</sup>
- 3.4 This chapter begins by examining the historical policy context before discussing the national Indigenous languages policy and the role of the states and territories. It then examines the sources of funding that are available to support a range of activities that are being undertaken to maintain and revive Indigenous languages. The chapter also discusses the constitutional recognition of Indigenous languages, and the relationship between languages policy and international human rights instruments.

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1 Office for the Arts, ‘Indigenous Languages – A National Approach 2009’ <[www.arts.gov.au/indigenous/languages](http://www.arts.gov.au/indigenous/languages)>, accessed 3 July 2012.

2 W Fogarty, *Committee Hansard*, Canberra, 3 November 2011, p. 1.

## Australian Indigenous language policies

- 3.5 Estimates show that at the time of colonisation there was an estimated 250 Australian Indigenous languages being used and today there are about 18 languages, strong in the sense of being spoken by significant numbers of people across all age groups.<sup>3</sup>
- 3.6 Government policies of the past have been, in part, responsible for the decline of Indigenous languages. For example, the Committee heard evidence in Adelaide that the government actively repressed the use of Indigenous languages by Aboriginal people. Dr Alitya Rigney said that when she was ‘growing up on Point Pearce, it was forbidden to speak language by law.’<sup>4</sup>
- 3.7 Similarly, Mrs Verna Koolmatrie recalled not being able to be immersed in her traditional language when she was growing up. Mrs Koolmatrie said that:
- I did not have that privilege and neither did the Ngarrindjeri people in general. If you are on the community, which was called a mission at the time, it was supposed to not be spoken at all. So, yes, I am one of the people who missed out.<sup>5</sup>
- 3.8 Limited recognition of Indigenous languages occurred in the 1960s via the development of bilingual education programs in some Northern Territory community schools (where English was not the first language). The implementation of a bilingual education program in the Northern Territory has received varying levels of Northern Territory Government support through to the present day.
- 3.9 The first Commonwealth policy to significantly address Indigenous languages was the *National Policy on Languages* of 1987.<sup>6</sup> The main objective of the policy was to outline the nation’s ‘choices about language issues’ in the context of Australia’s emergent multiculturalism. The policy covered all language-related activities in Australia, including policy specific to Indigenous languages. It recommended the development of the National Aboriginal Languages Project (NALP) to fund Indigenous language education programs and projects. The main outcome of this policy was the provision of funding to community based Indigenous language programs.

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3 AIATSIS and FATSILC, *National Indigenous Languages Survey Report 2005*, p. 3.

4 A Rigney, Kurna Warra Pintyandi, *Committee Hansard*, Adelaide, 2 April 2012, p. 1.

5 V Koolmatrie, *Committee Hansard*, Adelaide, 2 April 2012, p. 21.

6 J Bianco, *National Policy on Languages*, Australian Government Publishing Service (AGPS), Canberra, 1987.

- 3.10 *Australia's Language: The Australian Language and Literacy Policy* was released as a White Paper in 1991.<sup>7</sup> The main objective of the policy was to outline a strategy to promote language and literacy in Australia. The policy emphasised the importance of competency in both English and Languages Other Than English (LOTE) to enhance educational outcomes and communication within Australia and in the international community. The policy provided funding for Regional Aboriginal Language Centres and other organisations and also led to the establishment of the Federation of Aboriginal and Torres Strait Islander Languages and Culture (FATSILC), which was auspiced as the national peak body for community based Indigenous language programs in Australia. The policy placed an emphasis on school-based educational programs; however the extent to which schools followed the national policy was dependent on the interest and resources of local school administrations.
- 3.11 In 1992 the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs tabled the report *Language and Culture – A Matter of Survival* as a result of its inquiry into the maintenance of Aboriginal and Torres Strait Islander Languages.<sup>8</sup>
- 3.12 The terms of reference of the inquiry were:
- The nature and extent of Aboriginal and Torres Strait Islander language loss
  - The means by which remaining Aboriginal languages can be maintained and recorded
  - The funding of Aboriginal language programs, and
  - What work is already under way in Australia in both recording and maintenance of language.
- 3.13 The main recommendations of the inquiry and government responses to those recommendations are summarised in Table One.

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7 J Dawkins, Minister for Employment Education and Training, *Australia's Language: The Australian Language and Literacy Policy*, 2 September 1991, AGPS, Canberra, 1993.

8 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Language and Culture: A Matter of Survival*, 1992.

**Table One Recommendations and government responses from 1992 Committee report**

| <b>Main recommendation</b>                                                                                                                                                         | <b>Government response</b>                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| To raise awareness of the status and importance of Indigenous languages.                                                                                                           | Campaigns planned by the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Department of Employment, Education and Training (DEET). |
| To train and encourage Indigenous media organisations to use local languages.                                                                                                      | ATSIC to review and implement.                                                                                                                     |
| The training, provision and use of Indigenous interpreters (particularly in the justice system), and the establishment of a national interpreter service for Indigenous languages. | Importance recognised, however the funding implications of encouraging the widespread use of interpreters need careful consideration.              |
| Improved teacher training for teachers working in Indigenous communities.                                                                                                          | Training programs in development, but states are primarily responsible.                                                                            |
| The provision of language teachers and linguistic training for Indigenous communities.                                                                                             | Importance recognised, however no substantive changes made to supplement existing programs.                                                        |
| The provision of bilingual or bicultural education to all Indigenous children whose first language is other than English.                                                          | States are primarily responsible.                                                                                                                  |

*Source House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Language and Culture: A Matter of Survival, 1992; Government Response to the Recommendations of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into Aboriginal and Torres Strait Islander Language Maintenance Report 'A Matter of Survival', June 1992.*

3.14 Following the Committee's 1992 inquiry, the National Indigenous Languages Survey (NILS) was commissioned in 2005.<sup>9</sup> This report, by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and FATSILC, provided the most comprehensive analysis of the status of Indigenous languages in Australia to date, and proposed a

9 Australian Institute for Aboriginal and Torres Strait Islander Affairs (AIATSIS) and the Federation for Aboriginal and Torres Strait Islander Languages and Culture (FATSILC), *National Indigenous Languages Survey Report 2005*.

range of strategic and programmatic solutions to redress the decline of Indigenous languages.

## National Indigenous Languages Policy 2009

- 3.15 In 2009 the Commonwealth Government announced a national Indigenous languages policy: *Indigenous Languages – A National Approach*.<sup>10</sup> The policy was a response to the NILS Report 2005, which found that the situation of Australia's Indigenous languages was grave and required urgent action.
- 3.16 In the policy announcement, the Government stated that it was committed to addressing the serious problem of language loss in Indigenous communities.

### Objectives

- 3.17 The stated objectives of the National Indigenous Languages Policy are:
- National Attention: To bring national attention to Indigenous languages – the oldest surviving languages in the world; and the pressures they face
  - Critically Endangered Languages: Reinforce use of critically endangered Indigenous languages that are being only partly spoken to help prevent decline in use and to maintain or extend their common, everyday use as much as possible
  - Working with Languages to Close the Gap: In areas where Indigenous languages are being spoken fully and passed on, making sure that government recognises and works with these languages in its agenda to Close the Gap
  - Strengthening Pride in Identity and Culture: To restore the use of rarely spoken or unspoken Indigenous languages to the extent that the current language environment allows, and
  - Supporting Indigenous Language Programs in Schools: To support and maintain the teaching and learning of Indigenous languages in Australian schools.

### Actions

- 3.18 The stated actions of the National Indigenous Languages Policy are:
- National Attention
    - ⇒ Undertake a feasibility study for the National Indigenous Languages Centre recommended by the NILS Report

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10 Office for the Arts, 'Indigenous Languages – A National Approach 2009' <[www.arts.gov.au/indigenous/languages](http://www.arts.gov.au/indigenous/languages)> accessed 3 July 2012.

- ⇒ Increase public recognition and appreciation of Indigenous languages by expanding the use of these languages across public and government functions, and
- ⇒ Support greater coordination and assistance amongst Indigenous language centres to maximise their impact nationally and to reach languages not currently supported.
- Critically Endangered Languages
  - ⇒ The Indigenous Languages Support (formerly the Maintenance of Indigenous Languages and Records) program, administered by the Department of the Environment, Water, Heritage and the Arts, is investing \$9.6 million in 2011-12 on 67 activities around Australia supporting the revival and maintenance of Indigenous languages
  - ⇒ Increase use of new technology to broaden the impact of language maintenance and revival activities by local community Indigenous language centres
  - ⇒ Pilot Early Childhood Language Nests and Mobile Language Teams to supplement the work of language centres, especially in more remote areas that are not within easy reach, and
  - ⇒ Consider Tax deductible status to Indigenous languages organisations through the Register of Cultural Organisations for maintaining and reviving Indigenous languages.
- Working with Languages to Close the Gap
  - ⇒ Given the centrality of language to strong Indigenous culture, and the broader social benefits of functional and resilient families and communities, better targeting support for Indigenous languages as part of a broader national focus on Indigenous culture generally, will contribute to the overall well-being of Indigenous communities
  - ⇒ COAG has committed \$38.6 million towards interpreting and translating services as part of the new Remote Service Delivery sites. The Remote Service Delivery National Partnership (RSD NP) provides for the strengthening of interpreting and translating services in response to local needs in each of the priority locations. In addition to the employment of interpreters in each location, the Commonwealth is responsible for working with the States and Northern Territory to introduce a national framework for the effective supply and use of Indigenous language

interpreters and translators. It will include protocols for the use of interpreters and translators.

⇒ Components of the proposed national framework include:

- development and strengthening of Indigenous interpreting services through establishing mentor/coordinator positions, providing base salary funding for interpreters and administrative support of interpreters;
- training and accrediting Indigenous interpreters – development of nationally consistent curriculum material for training and provision of training leading to accreditation and expertise in particular subject areas;
- increasing supply of Indigenous interpreters through development and establishment of a national recruitment and retention strategy, with localised flexibility;
- increasing demand for interpreters through increased training for government and non-government employees working in relevant locations;
- translation of government information products.

⇒ Consideration could be given to forming a National Reference Group of Experts to advise on future directions of policy on Indigenous interpreters. Each of the components would involve contributions from the Commonwealth and from each of the jurisdictions.

■ **Strengthening Pride in Identity and Culture through Language Revival**

⇒ Support community-based Indigenous language centres by increasing links with major national, state and territory cultural institutions to ensure that Indigenous languages material is properly preserved and made accessible appropriately

⇒ Through the Indigenous Contemporary Music Action Plan, support music in Indigenous languages to increase the transmission of languages across generations to younger speakers, utilising festivals and multimedia to strengthen the focus on Indigenous languages and increasing broadcasting content in Indigenous languages.

⇒ Potential collaboration with the Songroom Project, Sing Australia, Australian community Business Network and Foundation for Young Australians to work with communities where languages have been lost to promote language revival.

- ⇒ Encouraging more grass-roots collaboration between language learning programs and Stolen Generation members and their organisations.
- Supporting Indigenous Language Programs in Schools
  - ⇒ The Government commissioned the Indigenous Language Programs in Australian Schools – A Way Forward report, which revealed that between 2006 and 2007 over 16,000 Indigenous students and 13,000 non Indigenous students located in 260 Australian schools were involved in Indigenous language programs, covering over 80 different Indigenous languages.
  - ⇒ Significant funding for languages education is being provided to the states and territories through the National Education Agreement for languages, allowing jurisdictions flexibility to determine how funding is allocated. Funding can be used to support and maintain Indigenous language programs operating in government schools.
  - ⇒ \$56.4 million is also being provided over 2009 to 2012 through the Schools Assistance Act 2008 to support the teaching of languages, including Australian Indigenous languages, in non-government schools.
  - ⇒ Several jurisdictions are currently establishing programs to strengthen the teaching and learning of Indigenous languages in schools, including a proposal by New South Wales to develop national senior secondary Indigenous languages courses.

### **Indigenous languages, literacy and numeracy and the National Curriculum**

3.19 The National Indigenous Languages Policy makes the following statements linking Indigenous languages to literacy, numeracy and the National Curriculum:

- The learning of English is also a fundamental skill that all Australians, including Indigenous Australians, must have in order to maximise their learning opportunities and life chances
- All Australian governments through the Council of Australian Governments (COAG) processes have committed to halving the gap in the reading, writing and numeracy achievements between Indigenous and non-Indigenous students within a decade, and
- The Government is providing \$56.4 million over four years to provide extra assistance to schools to enable them to expand intensive literacy and numeracy approaches that have been successful with Aboriginal and Torres Strait Islander students

and provide professional development support to assist teachers to prepare Individual Learning Plans for Indigenous students.

- The National Curriculum is being developed by the Australian Curriculum, Assessment and Reporting Authority, initially in English, mathematics, science and history. A second phase of subject areas will be developed in languages, geography and the arts.
- Indigenous perspectives will be written into the National Curriculum to ensure that all young Australians have the opportunity to learn about, acknowledge and respect the language and culture of Aboriginal people and Torres Strait Islanders.

## Discussion of policy

- 3.20 The Committee received substantial evidence about the National Indigenous Languages Policy. A common theme was that while stakeholders welcomed the announcement of the policy, there was little evidence that it was being fully implemented.
- 3.21 The only funding streams that were earmarked specifically to support the policy's 'actions' were directed towards improving interpreting and translating services at Remote Service Delivery National Partnership Agreement (RSD NP) sites, and existing/ongoing funding for the Indigenous Languages Support (ILS) program.
- 3.22 The policy stated that funding would be provided to support the teaching of languages in schools, although that was directed towards 'all languages' and it is unclear what component would be directed towards supporting Indigenous language learning. Funding that was allocated under Council of Australian Governments (COAG) agreements for school assistance was specifically targeted towards expanding intensive Standard Australian English literacy and numeracy approaches for Indigenous students.
- 3.23 The Australian Education Union (AEU) commended the announcement of the policy, but urged the Committee to advocate for:
- a greater focus on the language rights of communities whose first language is not English
  - greater acceptance of the evidence showing the educational benefits of bilingual education, and
  - meaningful funding and resource commitment to support the genuine implementation of the policy.<sup>11</sup>

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11 AEU, *Submission 88*, p. 7.

- 3.24 The Eastern States Aboriginal Languages Group (ESALG) welcomed the policy announcement, and called for a whole of government approach to implementation:

The National Policy appears to have prompted increased interest in Indigenous languages around the country. This is particularly highlighted by the increase in action by Education departments (in Queensland and Victoria) moving towards offering inclusion of Indigenous languages studies in schools state wide.

A whole of government approach to support the National Indigenous Languages Policy now needs to be adopted. This approach will help overcome current problems with inter-departmental policy coordination; improve needs assessments for allocating existing funding and identify priorities for future funding opportunities.<sup>12</sup>

- 3.25 Similarly, the Indigenous Remote Communications Authority (IRCA) encouraged the implementation of the policy across multiple government departments:

Whilst IRCA welcomes the development of a National Indigenous Languages policy we believe that this policy needs greater muscle behind it to be truly effective. The announcement made in 2009 is a good start that must be built on. This policy needs to be attached to actions across departments including Education, Health, FAHCSIA, Media, NBN, Regional Affairs. The policy should enable increased flow of resources to drive projects which simultaneously create employment opportunities and support indigenous languages such as language curriculum development, cultural tourism projects and language music programs.<sup>13</sup>

- 3.26 Other responses highlighted that few concrete or newly funded activities have resulted from the policy. For example, the AEU asserted that 'there appears to be a significant disjuncture between policy statements and actual practice'.<sup>14</sup>

- 3.27 The National Congress of Australia's First Peoples were concerned that an action plan for the national policy had not been established across government portfolios. On examining the submissions received during this inquiry from government departments, the Congress commented that:

None of the departmental submissions provided a coherent explanation of which agency was pursuing which aspect of the

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12 ESALG, *Submission 25*, p. 6.

13 IRCA, *Submission 68*, p. 9.

14 AEU, *Submission 88*, p. 18.

Action Plan for the implementation of the 2009 Policy.

Furthermore, the Action Plan itself does not appear to be publicly available, making it difficult for stakeholders like Congress to monitor and evaluate progress.<sup>15</sup>

- 3.28 Ms Fabienne Balsalmo from the Australian Human Rights Commission pointed out that the current implementation of language policy is impeded by the divide across jurisdictions. Ms Balsalmo said that:

while the national approach to Indigenous languages policy is a good step to preserve languages in principle, there are too many barriers for it to have achieved its stated aim to improve coordination between those who are already working to support Indigenous languages – and that was the ministerial statement when it was launched. The divide between Commonwealth, state and territory policy is a large obstacle in the implementation of coherent direction in language preservation in Australia.<sup>16</sup>

- 3.29 Similarly, Faith Baisden from the ESALG said that:

written into the national policy there is an opening to involve all of the departments – make it a whole-of-government approach. I think we need to do that, so that we can get some strength into this sector. If we realise that language education is not just in this one little field; it is in health, in justice, in environment – that is what language impacts on.<sup>17</sup>

- 3.30 The Committee notes that the Commonwealth is developing a National Cultural Policy in which Indigenous languages will be considered as a significant aspect. It is anticipated the final Policy will be released in 2012. The National Cultural Policy will:

reflect the diversity of modern Australia; protect and support Indigenous languages and culture; make the most of emerging technologies and new ideas; strengthen the capacity of the arts to contribute to society and the economy; support excellence and strengthen the role arts and creativity play in telling Australian stories.<sup>18</sup>

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15 National Congress of Australia's First Peoples, *Submission 139a*, p. 5.

16 F Balsalmo, Australian Human Rights Commission, *Committee Hansard*, Sydney, 18 November 2011, p. 2.

17 F Baisden, *Committee Hansard*, Brisbane, 6 October 2011, p. 13.

18 Department of Regional Australia, Local Government, Arts and Sport, 'National Cultural Policy' <[www.culture.arts.gov.au/discussion-paper/developing-a-vision](http://www.culture.arts.gov.au/discussion-paper/developing-a-vision)> accessed 28 August 2012.

## State and Territory languages policies

- 3.31 State and Territory governments fund a range of Indigenous language initiatives that are intended to maintain, promote and revive Aboriginal and Torres Strait Islander languages. However, at the state and territory level, Indigenous language policies are generally embedded within education policies.
- 3.32 For example, the Queensland Department of Education and Training (Queensland DET) is committed to improving the education of Indigenous students by way of the department's *Closing the Gap Aboriginal and Torres Strait Islander Education Strategy*. The Strategy includes the '3 way strong language approach to support teachers to understand and respond to the complex Aboriginal and Torres Strait Islander language situation in Queensland'.<sup>19</sup>
- 3.33 Similarly, Indigenous languages form a part of the Western Australia Department of Education and Training's *Languages Other Than English (LOTE) Strategy*. The dual goals of this strategy for Indigenous languages are to:
- increase the levels of student achievement and participation rates in Aboriginal Languages Education, and
  - maintain a critical pool of highly skilled Aboriginal language teachers providing quality sustainable language programs in Department of Education schools.<sup>20</sup>
- 3.34 The Northern Territory's Indigenous languages policy is embedded within its education policy. Where previously the territory operated a widely criticised policy of Compulsory Teaching in English for the First Four Hours of Each School Day, it has shifted recently to a Framework for Learning English as an Additional Language policy.<sup>21</sup>
- 3.35 New South Wales is the only jurisdiction that has developed a stand-alone Indigenous languages policy that has influence over a range of portfolio areas. The New South Wales Aboriginal Languages Policy, which was first established in 2004, is administered through the Department of Aboriginal Affairs.<sup>22</sup>

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19 Queensland DET, *Submission 109*, p. 7.

20 Western Australian Department of Education Kimberley, *Submission 117*, p. 1.

21 Northern Territory Department of Education and Training, 'Framework for Learning English as an Additional Language' <[www.det.nt.gov.au/about-us/policies/documents/schools/framework-for-learning-english-as-an-additional-language](http://www.det.nt.gov.au/about-us/policies/documents/schools/framework-for-learning-english-as-an-additional-language)>, accessed 22 August 2012.

22 Aboriginal Affairs New South Wales, 'New South Wales Aboriginal Languages Policy' <[www.daa.nsw.gov.au/data/files/languagespolicyFINAL.pdf](http://www.daa.nsw.gov.au/data/files/languagespolicyFINAL.pdf)>, accessed 22 August 2012.

- 3.36 In consultation with Aboriginal communities, the New South Wales government developed a five year Aboriginal Languages Strategic Plan 2006-10, which 'recognised the critical role of the educational sector to the reclamation of Aboriginal languages'.<sup>23</sup> The Strategic Plan outlined the following four key result areas:
- Aboriginal languages in Aboriginal communities
  - Aboriginal languages in the educational sector
  - Aboriginal language Programs in Goals and Detention Centres, and
  - Aboriginal languages in the wider community.<sup>24</sup>
- 3.37 As part of the Strategic Plan, the New South Wales Government has contributed more than \$1.4 million since 2005 to 78 community based language centres through the Aboriginal Languages Research and Resource Centre (ALRRC).
- 3.38 The ALRRC was established in 2003 and, following a review in 2010, the coordination of language revival efforts and resources in New South Wales was transferred to a newly-established Centre for Aboriginal Languages Coordination and Development (CALCD) in 2011. The change was brought about by the review's recommendation that Aboriginal communities need to have greater ownership of language maintenance and reclamation work. The CALCD is the peak Aboriginal education advocacy body supporting language revitalisation work in New South Wales through linkages with the education system.<sup>25</sup>
- 3.39 State and Territory approaches to teaching and learning Indigenous languages will be discussed in chapters 4 and 5 of this report.

### Committee comment

- 3.40 The Committee agrees with the National Congress of Australia's First Peoples' observation that there is no evidence of an effective action plan for the implementation of the objectives of the National Indigenous Languages Policy. The Committee is of the view that without concrete actions, clear goals and accountability, the National Indigenous Languages Policy will not achieve its intended goals. If the National Policy is to be taken seriously, then it must contain more than aspirational words.

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23 Aboriginal Affairs New South Wales, *Submission 98*, p. 16.

24 Aboriginal Affairs New South Wales, *Submission 98*, p. 16.

25 Aboriginal Affairs New South Wales, *Submission 98*, p. 17.

## **Recommendation 4 - Languages policy action plan**

- 3.41 **The Committee recommends that the Commonwealth Government review and make publically available by March 2013 an updated action plan with clear goals, accountability and reporting requirements to implement its National Indigenous Languages Policy. The Committee further recommends that relevant Commonwealth Government agencies are required to report annually on outcomes of the action plan.**
- 3.42 The Committee commends the New South Wales government's ongoing commitment to supporting Indigenous languages. The Committee encourages the states and territories to work with the Commonwealth to improve language learning in Indigenous communities across all portfolio areas.

## **Program funding and support**

- 3.43 The Committee heard evidence that much of the work being undertaken to maintain, revitalise or reclaim Indigenous languages is driven by local communities, and the desire of those communities to preserve their cultural heritage. The evidence indicated that, aside from some potential for developing interpreting and translating services,<sup>26</sup> there is little opportunity for language centres to generate enough of their own revenue to be self-sustaining.
- 3.44 Currently these community-run language programs and projects are reliant on a limited pool of government funding, primarily through the Indigenous Languages Support (ILS) competitive grants scheme.
- 3.45 The Committee heard evidence that philanthropy and other sources of private sector funding could offer another avenue of support for Indigenous language organisations, which would require changes to be made to the Deductible Gift Recipient (DGR) eligibility of those organisations. This is discussed later in this chapter.
- 3.46 This section will begin by discussing a range of activities that are being carried out by organisations and communities to maintain, revitalise or revive their Indigenous languages. It will then examine the financial support that is available for these activities, either through government assistance, or through tax deductible donations.

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26 Office for the Arts, *Submission 127*, p. 6. The development of interpreting and translating services will be discussed in detail in Chapter 6.

## Examples of Indigenous languages maintenance and revival activities

- 3.47 Throughout the inquiry, the Committee received evidence about a broad range of activities, which can be categorised loosely as Indigenous language maintenance and revival. This spectrum of activities included, but were not limited to:
- the production of electronic databases of language material
  - the production of children's books
  - the use of languages in media broadcasting
  - the learning of languages through language nests and master-apprentice programs, and
  - language programs in schools.
- 3.48 The Committee was appreciative of the great passion and energy that many individuals and communities devoted to their work with Indigenous languages in urban, regional and remote areas of the country.
- 3.49 In Newcastle, the Committee visited the Miromaa Aboriginal Language and Technology Centre, which has been at the forefront in developing support for language preservation and reclamation through technology. Mr Daryn McKenny, the Centre's General Manager, developed the award-winning Miromaa software, which is an easy to use database that enables people working with languages to gather, organise, analyse and produce materials to aid in language education and training. The software was initially developed to support local languages, including the Awabakal language, but it is now supporting a large number of language projects around Australia, while licenses are being distributed internationally to support language projects overseas.<sup>27</sup>
- 3.50 In Alice Springs, the Committee met with representatives of the Papulu Appar-kari Language Corporation, which is based in Tenant Creek. The Centre supports 16 language groups in the Barkley Region through a range of activities including:
- working with speakers to create dictionaries and wordlists
  - producing books, readers and short stories
  - producing stories in audio books and in animated computer stories, and
  - working with Australian Literary and Numeracy Foundation on the First Language Learning and Literacy Program, to establish The Centre for Indigenous Literacy.

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27 D McKenny, *Committee Hansard*, Newcastle, 9 September 2011, pp. 9-15.

- 3.51 The Papulu Appar-kari Language centre produces excellent children's books, which also have wider applications beyond teaching local languages to children:

These books are written in simple language and are illustrated and designed to engage young children, but have wider applications as well – a recent book about body parts was created for children and will prove a valuable resource for health professionals as well. To date we have published over 30 books, in multiple languages, as many as we can manage (eight, for recent titles).<sup>28</sup>

- 3.52 In Alice Springs, the Committee heard evidence from the Indigenous Remote Communications Association (IRCA), the peak body for remote media organisations, which includes eight remote Indigenous media organisations.<sup>29</sup> IRCA works closely with Indigenous Community Television to deliver 'video content in 23 different languages from around Australia'.<sup>30</sup>

- 3.53 Similarly, the Committee heard evidence from the National Indigenous Radio Service (NIRS) which draws on local media organisations to produce national radio content across a large range of Indigenous languages. According to NIRS, 'over 160 Aboriginal and Torres Strait Islander broadcasters take and contribute to the national scheduled program through satellite for the national service'.<sup>31</sup>

- 3.54 The Committee heard about the value of language nest programs in New Zealand and Hawaii, as a method of averting the loss of indigenous languages.<sup>32</sup> Language nests are a method of language learning in which children are exposed to Indigenous language, stories and culture from early childhood.

- 3.55 Dr Margaret Florey told the Committee that:

The language nest models that have been very successful are those in New Zealand and Hawaii. In the Hawaii model, for a child to be accepted into a language nest the parents have to commit to start learning the language themselves so that the child can continue to use the language outside of the school. It can thrive in the home alongside the school context.<sup>33</sup>

28 Papulu Appar-kari Language Corporation, *Submission 49*, p. 1.

29 Indigenous Remote Communications Association, *Submission 68*, p. 3.

30 L Cavanagh, *Committee Hansard*, Alice Springs, 4 April 2012, p. 18

31 National Indigenous Radio Service, *Submission 56*, p. 1.

32 See, for example, Aboriginal Affairs NSW, *Submission 98*, p. 9; M Martin, *Committee Hansard*, Halls Creek, 1 May 2012, p. 17; J Hobson, *Committee Hansard*, Canberra, 13 October 2012, p. 4; Resource Network for Linguistic Diversity (RNLD), *Submission 130*, p. 7.

33 M Florey, *Committee Hansard*, Canberra, 16 February 2012, p. 8.

- 3.56 The language nest model is being drawn upon by the people of the Crocodile Islands to preserve the Yan-nhangu language and ‘provide opportunities for appropriate cultural transfer’.<sup>34</sup> Similarly, the people of the Fitzroy Valley used language nests as a method of transferring the language and cultural knowledge of senior people to young children in the community. Ms Michelle Martin helped to facilitate the language nest and described it as a relaxed and effective learning environment.<sup>35</sup>
- 3.57 Other witnesses gave evidence about the value of the master-apprentice model for language learning in a variety of contexts.<sup>36</sup> The master-apprentice model was developed by the University of California and is currently run as a training program by the Advocates for Indigenous California Language Survival.<sup>37</sup>
- 3.58 Dr Knut Olawsky from the Mirima Dawang Woorlab-gerring Language and Culture Centre described the benefits of the master-apprentice model for the learning of Mirrawoong in the Kununurra region. The master-apprentice program consisted:
- usually teams of just two including a fluent speaker who is called the master and a partial speaker of the traditional language who is called the apprentice. These people spend time together and have to spend this time completely using the traditional language, which may seem difficult at first if you are only a partial speaker or only have a passive knowledge of the language, but the team is supported through a variety of activities and weekly meetings to facilitate that. It is probably one of the most successful strategies that we have used so far.<sup>38</sup>
- 3.59 The Resource Network for Linguistic Diversity (RNLD) said that a lack of resources and expert knowledge of running the program in Australia was holding back the implementation of the program. RNLD said that they were having discussions with the Office for the Arts ‘to try to build a pool of trained Australians who can train and support Master-Apprentice teams locally’.<sup>39</sup>
- 3.60 The Committee heard evidence about several individuals and organisations who were working with schools to deliver a variety of

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34 Yan-nhangu Dictionary Team, *Submission 30*, p. 2.

35 M Martin, *Committee Hansard*, Halls Creek, 1 May 2012, p. 17

36 L Jones, *Committee Hansard*, Broome, 30 April 2012, p. 11; M Florey, *Committee Hansard*, Canberra, 16 February 2012, p. 8; Kurna Warra Pintyandi group, *Submission 92*, p. 3; R Amery, *Committee Hansard*, Adelaide, 2 April 2012, p. 3.

37 RNLD, *Submission 130*, p. 8.

38 K Olowsky, *Committee Hansard*, Broome, 30 April 2012, p. 23.

39 RNLD, *Submission 130*, p. 8.

Indigenous language learning programs. For example, Mrs Nyoka (Nicky) Hatfield told the Committee about her work in teaching Darambal language and culture to children in schools across central Queensland. Mrs Hatfield reported that the teachers at the schools 'said that the Indigenous kids feel really special because it is their culture and their language that are being taught'.<sup>40</sup>

- 3.61 Similarly, the Committee heard about how the Mabu Yawaru Ngan-ga language centre was supporting the teaching of the Yawaru language in schools in the Broome area.<sup>41</sup> Ms Carmel Leahy from the centre reflected on the important benefits these activities held for local children:

I feel that children having knowledge of their language and their culture makes them strong and resilient to face whatever life throws at them and that we really must support people when they want to give their children their language and culture.<sup>42</sup>

- 3.62 The above sample is a small selection of the outstanding work that is being undertaken across the country to maintain and revive Indigenous languages. It is clear that many individuals and organisations are devoting considerable time, effort, passion and expertise to keeping their languages and culture vibrant and strong. Some of these important activities are being financially supported by the ILS program.

## Indigenous Languages Support

- 3.63 The Office for the Arts forms part of the Department of Regional Australia, Local Government, Arts and Sport and is the lead agency responsible for implementing the Commonwealth Government's National Indigenous Languages Policy. It administers the Indigenous Languages Support (ILS) program, which 'assists the maintenance, transmission and revival of Indigenous languages'.<sup>43</sup>
- 3.64 The ILS program is the only Commonwealth program that funds Indigenous languages programs and underpins the national Indigenous languages policy.
- 3.65 The ILS program aims to:
- address the erosion and loss of Australia's estimated 250 Indigenous languages by providing funding to support

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40 N Hatfield, *Committee Hansard*, Brisbane, 6 October 2011, p. 10.

41 Mabu Yawuru Ngan-ga, *Submission 147*, pp. 1-5; *Committee Hansard*, Broome, 30 April 2012, pp. 1-9.

42 C Leahy, *Committee Hansard*, Broome, 30 April 2012, p. 4.

43 Office for the Arts, *Submission 127*, p. 2.

community based projects by language groups, language research and coordination of language resources.<sup>44</sup>

3.66 The objectives of the program are:

- support the maintenance, revival, and development of Indigenous languages
- increase the use of Indigenous languages in a range of fields and media
- support Aboriginal and Torres Strait Islander peoples' engagement with their languages
- promote Aboriginal and Torres Strait Islander wellbeing by strengthening pride in identity and culture through languages, and
- promote public appreciation of Indigenous languages.<sup>45</sup>

3.67 Striking a balance between funding small, community-based language projects, and larger language or research institutions is a significant challenge for the ILS program. Ms Stacey Campton from the Office for the Arts commented that:

Applications come from all over. We get them from the small community through to your large research centres like AIATSIS. We have, as you know, a small amount of money to run it nationally but we try and spread that money as best we can.<sup>46</sup>

3.68 ILS funding is directed towards supporting activities 'along the whole continuum of language use', rather than priorities being given to language revival or maintenance projects.<sup>47</sup> ILS funding is not distributed on a State/Territory basis, with the amount of funding allocated fluctuating 'from year to year as regional priorities change'.<sup>48</sup>

3.69 In practice, the success or failure of an ILS application is measured by the strength of an individual application against the published assessment criteria. The general assessment criteria for ILS applications for the 2012-13 funding round included separate criteria for applicants seeking annual and triennial funding.

3.70 Applicants seeking annual funding were assessed against the following criteria:

- The likely benefits of the proposed activity in the Indigenous culture, languages and visual arts areas.

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44 Office for the Arts, *Submission 127*, p. 2.

45 Office for the Arts, *Submission 127a*, p. 2.

46 S Campton, Office for the Arts, *Committee Hansard*, Canberra, 22 March 2012, p. 3.

47 Office for the Arts, *Submission 127a*, p. 3.

48 Office for the Arts, *Submission 127a*, p. 3.

- Ability to carry out the proposed activity, including the applicant's track record in relation to planning, governance and financial management.
- Demonstrated need for funding, including provision of a realistic and sound budget for the year of proposed funding.<sup>49</sup>

3.71 Applicants seeking triennial funding were assessed against the following criteria:

- Quality and relevance of the applicant's three-year strategic plan to the funding objectives of the relevant funding category. This includes the proposed activity's likely contribution to strengthening Indigenous culture, languages or visual arts.
- Capacity of the applicant to fulfil the three-year strategic plan.
- The applicant's ability to carry out the proposed activity to a high standard, including the applicant's track record in relation to planning, governance and financial management.
- Demonstrated need for funding, including provision of a realistic and sound budget for the three years of proposed funding.<sup>50</sup>

3.72 In addition to the general assessment criteria, ILS applicants were assessed against 'demonstrated performance and commitment in the area of Indigenous languages and capacity to contribute to ILS objectives', including one or more of the following elements:

- capacity to achieve outcomes for the maintenance, revival and/or development of Indigenous languages
- capacity to support the innovative use of Indigenous languages in a new field or medium
- ability to facilitate Aboriginal and/or Torres Strait Islander peoples' engagement with their languages
- potential to increase public appreciation of Indigenous languages, and
- engagement with other language organisations.<sup>51</sup>

3.73 There are substantial demands on the ILS program. The Office for the Arts reported that:

Each year, funding requests far exceed the total amount of funding available. In 2011-12, the program received 90 applications seeking approximately \$14.5 million against the 2011-12 budget of \$9.6 million. A total of 67 language activities, including 10 multi-year activities approved in previous funding rounds, are being supported in 2011-12. This includes activities such as community-

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49 Office for the Arts, *Submission 127a*, p. 1.

50 Office for the Arts, *Submission 127a*, p. 1.

51 Office for the Arts, *Submission 127a*, p. 2.

run language centres and programs, research projects and resource development projects.<sup>52</sup>

3.74 According to Stacey Campton from the Office for the Arts, funding for language programs has remained at around \$9 million for 15 years.<sup>53</sup> However, demand for funding has outpaced budget allocations since responsibility for administering the program was passed from the Aboriginal and Torres Strait Islander Commission (ATSIC) to the Office for the Arts when ATSIC was abolished in 2005. In 2005-06, the budget for the MILR program was \$8.5 million, with applications exceeding \$17 million. In 2012-13, the budget for the ILS program is \$9.9 million, with applications exceeding \$21 million.<sup>54</sup>

3.75 Several witnesses expressed their concern about the level of funding available to support language activities through the ILS program. For example, the Mobile Language Team commented that:

This has been the same figure for quite some years now, and it is a highly competitive grant application process, fought out between communities, all wanting to win a drop from a limited bucket of money, either on an annual or triennial basis. There is far more demand (and need) than there is money available. An increase in the total amount available from the federal government is well overdue.<sup>55</sup>

3.76 Similarly, the Aboriginal and Torres Strait Islander Social Justice Commissioner was critical of the lack of new funding attached to the announcement of the National Indigenous languages policy. Describing the ILS program as 'the centrepiece of Indigenous language funding in Australia', the Commissioner pointed out that:

This program has been in operation for a number of years and is now the sole source of funding for the Commonwealth's new National Approach. No new money has been added to the MILR (ILS) to meet the new obligations of the National Approach.<sup>56</sup>

3.77 Australians for Native Title and Reconciliation (ANTaR) was concerned that a grant-based approach to the distribution of ILS funding 'favours better resourced applicants, and does not necessarily reflect a strategic or regional analysis of language requirements'.<sup>57</sup>

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52 Office for the Arts, *Submission 127*, p. 6.

53 S Campton, Office for the Arts, *Committee Hansard*, Canberra, 25 August 2011, p. 6.

54 Data supplied by the Office for the Arts, 11 September 2012.

55 Mobile Languages Team, *Submission 90*, p. 6.

56 Australian Human Rights Commission, *Social Justice Report 2009*, p. 68.

57 ANTaR, *Submission 23*, p. 8.

- 3.78 Other concerns were raised that successful applicants for ILS program funding were being subjected to increasingly onerous reporting requirements. For example, the Tasmanian Aboriginal Centre (TAC) said that ‘reporting periods have changed from year to year without obvious reason or explanation and with very short notice’.<sup>58</sup> The TAC noted that they were currently required to report every three months.
- 3.79 Similarly, the National Congress of Australia’s First Peoples said that ‘for the small amount of funding received, the reporting is onerous on community programs and requires streamlining’.<sup>59</sup>
- 3.80 The Office for the Arts informed the Committee that ILS reporting requirements for funding recipients are consistent with the Department of Finance and Deregulation’s *Commonwealth Grant Guidelines*, which establish the reporting framework for all departments and agencies. However, the ILS program reporting is designed to elicit information on how it contributes to whole-of-government objectives, including Closing the Gap.
- 3.81 The Office for the Arts stated:
- With regard to periodic reporting required of funding recipients, requirements are kept to the minimum. Funded organisations are provided with a simple template for performance reporting based on the agreed objectives and key outputs which are stated in the funding agreement and Project Officers are always available to discuss and/or assist with any difficulty a client may encounter with the reporting requirements or in completing the performance report template. Financial reporting is not onerous for an organisation with sound book-keeping and accounting procedures.<sup>60</sup>
- 3.82 In terms of the frequency of reporting, the Office for the Arts said that projects were assessed based on risk mitigation:
- Frequency of reporting is either quarterly or half-yearly, depending on the level of funding, degree of complexity of the funded project, the risk rating of the funded organisation and the ability of the Project Officer to visit the organisation in person and see how the activity is progressing.<sup>61</sup>

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58 TAC, *Submission 144*, p. 8.

59 National Congress of Australia’s First Peoples, *Submission 139*, p. 139.

60 Office for the Arts, *Submission 127a*, p. 3.

61 Office for the Arts, *Submission 127a*, p. 4.

## Committee comment

- 3.83 The Committee commends the great work that is being undertaken by individuals and communities across the nation to preserve and revive their Indigenous languages, often on a voluntary basis. The Committee acknowledges that much of these activities have limited resources and that there are few funding opportunities available.
- 3.84 The Committee is impressed particularly with work that is being done at the grassroots, community level. The Committee believes that community ownership of Indigenous language programs is essential for the successful maintenance and revival of Australia's Indigenous languages. Only communities can keep a language alive and strong. However, governments have a critical role in facilitating communities to achieve this.
- 3.85 It is clear to the Committee that, given the precarious position of many languages, long-term support is required to maintain record or retrieve Aboriginal and Torres Strait Islander languages for the benefit of the speakers of those languages, their descendants, and for the nation's heritage.
- 3.86 As the lead agency responsible for administering the National Indigenous Languages Policy and the ILS program, the Office for the Arts is oversubscribed and inadequately funded and levels of funding have been static since 2005-06. The Committee recognises that this equates to a decline in funding, in real terms, during a period in which demand for Indigenous languages support has increased substantially. This equates to a slow death by neglect for many Indigenous languages.
- 3.87 The Committee cannot reconcile the statement made by the national policy under its 'actions' that greater attention and support is being provided for Indigenous languages, when funding for language projects has declined effectively in real terms. The Committee calls the Commonwealth Government to account and urges it to include a substantially greater allocation of funding for the ILS program.
- 3.88 The Committee is of the view that a greater allocation of funding for the ILS program will have substantial positive impacts on Closing the Gap targets, through promoting intergenerational connection to culture and community wellbeing, the preservation of heritage, and education and employment outcomes. A well supported ILS program will have positive benefits in Indigenous community capacity building and developing a greater sense of community responsibility for the wellbeing of future generations.

- 3.89 The Committee considers that stringent reporting requirements for ILS funding recipients are appropriate and are consistent with finance regulations.

### **Recommendation 5 - Increased funding for Indigenous Languages Support**

- 3.90 **The Committee recommends that the Commonwealth Government substantially increase ongoing funding for the Indigenous Languages Support program in the 2013-14 Budget.**

### **Support for Torres Strait Islander languages**

- 3.91 Another issue that was raised in relation to the ILS program was that people and organisations who are working with languages in the Torres Strait are ineligible to apply for ILS funding. Ms Campton said that the Office for the Arts funds Torres Strait language programs that are based on the mainland, but are unable to extend that funding to those based on the islands in the Torres Strait.<sup>62</sup>
- 3.92 According to the Office for the Arts, the ineligibility of Torres Strait language programs is a legacy of when support for Indigenous languages was administered by the Aboriginal and Torres Strait Islander Commission (ATSIC). Stacey Campton stated that 'when ATSIC was shut down, the money for the Torres Strait went directly to the Torres Strait Regional Authority for language, culture and broadcasting'.<sup>63</sup>
- 3.93 Sally Basser from the Office for the Arts described this as an 'administrative arrangement' in which 'the Torres Strait Regional Authority was retained so the Australian government funding for the Torres Strait still goes through the Torres Strait Regional Authority'.<sup>64</sup>
- 3.94 Ned David, the Chair of the Torres Strait Islander Regional Education Council, described this method of apportioning funds for language programs in the Torres Strait as 'extremely ineffective'.<sup>65</sup>
- 3.95 The Torres Strait Regional Authority (TSRA) responded by saying that:
- Through its modest budget appropriation, the TSRA (has) supported and encouraged traditional language use and learning

62 S Campton, Office for the Arts, *Committee Hansard*, Canberra, 25 August 2011, p. 6.

63 S Campton, Office for the Arts, *Committee Hansard*, Canberra, 25 August 2011, p. 7.

64 S Basser, Office for the Arts, *Committee Hansard*, Canberra, 22 March 2012, p. 6.

65 N David, *Committee Hansard*, Canberra, 25 August 2011, p. 7.

across the Torres Strait region through open and transparent grant application and selection processes.<sup>66</sup>

- 3.96 The TSRA clarified that its grants are not directed solely towards language projects:

The range of cultural activities supported by TSRA not only focuses on languages, but includes a range of projects that focus on traditional song, storytelling, visual arts and traditional dance.<sup>67</sup>

### Committee comment

- 3.97 The Committee recognises that the present mechanism for the allocation of funding for language-related activities in the Torres Strait is not ideal and is a legacy of the dismantlement of ATSIC. However, the Committee understands that the TSRA has limited funding available to support these activities.
- 3.98 The Committee considers that Torres Strait Islander language programs should be considered in ILS funding allocations.

### Recommendation 6 - Torres Strait Islander funding eligibility

- 3.99 **The Committee recommends that the Minister for the Arts amend the guidelines for the Indigenous Languages Support program to allow Torres Strait Islander applications to be considered for funding.**

### Deductible Gift Recipient eligibility

- 3.100 Opportunities exist for organisations that are working with Indigenous languages to obtain funding through charitable donations. However, at present these opportunities are limited because these organisations are unable to offer potential donors the incentive of a tax deduction for their donations through being categorised as Deductible Gift Recipients (DGR's).
- 3.101 Several people gave evidence that language centres are unable to access philanthropic support through DGR eligibility. Mr Daryn McKenny from the Miromaa Aboriginal Language and Technology Centre said that due to current DGR arrangements, his organisation:
- have had to turn away the corporate social responsibility managers—I think that is the term—for Telstra and for Westpac. It

<sup>66</sup> TSRA, *Submission 146*, p. 1.

<sup>67</sup> TSRA, *Submission 146*, p. 2.

is absolutely crazy that we have had to turn them away because the answer to whether we have deductible gift recipient status is no. We cannot achieve that because of the Australian taxation and the antiquated legislation which exists there does not acknowledge language. It has separated us out.<sup>68</sup>

3.102 Similarly, Australian National University linguist Greg Dickson said that:

This is unfortunate and seemingly unfair as comparable non-profit organisations such as Aboriginal Art Centres easily meet the criteria of the Register of Cultural Organisations. Language Centres potentially miss out on significant private donations and grant opportunities due to being unable to obtain DGR status.<sup>69</sup>

3.103 John Hobson from the University of Sydney's Koori Centre agreed, and added that:

Tax-deductible status for Indigenous languages organisations should not just be considered; it should be granted as soon as possible to allow for a philanthropic funding stream to supplement the need for government funds.<sup>70</sup>

3.104 The Register of Cultural Organisations (ROCO) was established to allow qualifying cultural organisations to be categorised as DGR's. In order to be eligible to be entered onto the ROCO, an applicant must show that they are a 'cultural organisation' as provided by the meaning set out in under Subdivision 30-F of the *Income Tax Assessment Act 1997* (the Act).

3.105 The ROCO is currently by the Office for the Arts and is one of only four DGR categories that are not administered by the ATO. The ATO already has responsibility for 43 other general DGR categories.

3.106 According to correspondence the Committee received from the Office for the Arts, there have been discussions at various times about expanding the 'principal purpose' provision [s30-300(2)] of the meaning of 'cultural organisation' in the legislation to reflect a broader understanding of 'culture'. Activities that do not meet the current provision but are generally understood to be cultural include:

- recording of Indigenous languages
- Indigenous culture
- teaching or study of languages more generally, and
- promoting historic and other cultural heritage.

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68 D McKenny, *Committee Hansard*, Newcastle, 9 September 2011, p. 13.

69 G Dickson, *Submission 125*, p. 13.

70 Koori Centre, University of Sydney, *Submission 7*, p. 8.

- 3.107 These issues were examined in the 2011 Review of Private Sector Support for the Arts, which was undertaken by Mr Harold Mitchell AC and commissioned by the Minister for the Arts.
- 3.108 The review recommended that the:
- guidelines for the ROCO be amended to ‘improve the definition of ‘cultural’ to encompass Aboriginal and Torres Strait Islander cultural practices, such as Aboriginal and Torres Strait Islander languages’, and
  - responsibility for administering the ROCO be transferred ‘to the Australian Taxation Office, with administration to be streamlined in line with other deductible gift recipient categories. The Office for the Arts will retain an advisory role’.<sup>71</sup>
- 3.109 The Commonwealth Government is formulating its response to the Harold Mitchell review.<sup>72</sup>
- 3.110 Another avenue for recognition as a DGR for Indigenous language organisations is via classification as a Public Benevolent Institution (PBI) by the Australian Taxation Office (ATO). According to the ATO, characteristics of a PBI are that
- it is set up for needs that require benevolent relief
  - it relieves those needs by directly providing services to people suffering from them
  - it is carried on for the public benefit
  - it is non-profit
  - it is an institution, and
  - its dominant purpose is providing benevolent relief.<sup>73</sup>
- 3.111 The Victorian Aboriginal Centre for Languages (VACL) reported to the Committee the benefits of recognition as a PBI:
- Most recently, VACL was recognised by the Australian Tax Office as a Public Benevolent Institution which not only allows additional benefits to staff and makes VACL a more attractive employer, but also allows VACL to access a wide range of philanthropic funds and trusts to expand its programs and activities.<sup>74</sup>

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71 Harold Mitchell AC, *Building Support: Report of the Review of Private Sector Support for the Arts in Australia*, 2011, p. 8.

72 M Gordon, Cultural Property and Gifts, Department of Regional Australia, Local Government, Arts and Sport, *Committee Correspondence*, 8 June 2012.

73 Australian Taxation Office, ‘Is your organisation a public benevolent institution?’ <[www.ato.gov.au/nonprofit/content.aspx?menuid=1445&doc=/content/26553.htm&page=2#P7\\_396](http://www.ato.gov.au/nonprofit/content.aspx?menuid=1445&doc=/content/26553.htm&page=2#P7_396)> accessed 13 June 2012.

74 VACL, *Submission 152*, p. 1.

- 3.112 However, other language centres have been unable to obtain DGR status as a PBI. Mr Daryn McKenny, General Manager of the Miromaa Aboriginal Language and Technology Centre in Newcastle, told the Committee that his centre had been refused DGR status both through the ROCO and as a PBI. Mr McKenny said that:

The Australian Tax Office with today's legislation will not allow us as a language centre to receive public benevolent institution status or let us register under the register of cultural organisations because language is not recognised within that legislation.<sup>75</sup>

- 3.113 Mr Paul Paton from VACL said that he had shared the lessons learnt from VACL's successful application with Mr McKenny. However this knowledge-sharing did not aid Mr McKenny's PBI application:

Our success is based on public benevolence and instilling a sense of pride in individuals and communities. I shared all that information. We could only put that unsuccessful application down to perhaps the individual who was assessing it, because mine was assessed in Melbourne, and Newcastle's was assessed in Perth. It may be an individual interpretation of the act as to whether languages are a contributor towards self-esteem and individual pride.<sup>76</sup>

### **Committee comment**

- 3.114 The Committee is of the view that inherently Indigenous language related activities are cultural activities and that organisations carrying out Indigenous language-related work should be considered to be cultural organisations.
- 3.115 As such, the Committee strongly supports the changes to the ROCO as recommended by the Mitchell review. These changes will enable Indigenous language organisations to access philanthropic and other revenue streams by being classified as cultural organisations under the ROCO. The Committee views this to be a more appropriate pathway to DGR status than making changes to ATO guidelines relating to the categorisation of PBI's.
- 3.116 In doing this, the Commonwealth Government will relieve some funding pressure and enable funding flows to language centres from the philanthropic sector. This will provide greater recognition of the heritage and living value of Indigenous languages to all Australians.

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75 D McKenny, *Committee Hansard*, Newcastle, 9 September 2011, p. 12.

76 P Paton, VACL, *Committee Hansard*, Canberra, 24 May 2012, p. 8.

## **Recommendation 7 - Deductible Gift Recipient eligibility**

- 3.117 **The Committee recommends that the Commonwealth Government immediately amend the criteria for an organisation to be entered on the Register of Cultural Organisations to include a provision for Indigenous language-related projects to be endorsed as a Deductible Gift Recipient by the Australian Taxation Office.**

## **Constitutional recognition of Indigenous languages**

- 3.118 A significant number of submissions to this inquiry supported the formal recognition of Australia's Indigenous languages in the Constitution. This recognition was a recommendation of the Aboriginal and Torres Strait Islander Social Justice Commissioner in his 2009 *Social Justice Report*.<sup>77</sup>
- 3.119 The Commissioner recommended that the Government:
- Commence a process to recognise Indigenous languages in the preamble of Australia's Constitution with a view to recognising Indigenous languages in the body of the Constitution in future.<sup>78</sup>
- 3.120 In December 2010, the Expert Panel on Constitutional Recognition of Indigenous Australians (the Panel) was tasked to report to the Government on possible options for constitutional change to recognise Aboriginal and Torres Strait Islander peoples, and their continuing cultures, languages and heritage. The Panel sought advice as to the level of support from Indigenous people and the wider community for these options.
- 3.121 The Panel conducted a broad national consultation between May and October 2011. Upon presenting its final report in January 2012, the Panel recommended the following change to the Constitution:
- That a new 'section 127A' be inserted, along the following lines:
- Section 127A Recognition of languages
- (1) The national language of the Commonwealth of Australia is English.
- (2) The Aboriginal and Torres Strait Islander languages are the original Australian languages, a part of our national heritage.<sup>79</sup>

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77 S Loong, *Submission 85*, p. 1; ANTaR, *Submission 23*, p. 10; Australian Linguistic Society, *Submission 104*, p. 1; S Disbray, *Submission 126*, p. 2; New South Wales Department of Education and Communities, *Submission 59*, p. 25; RNLD, *Submission 130*, p. 11.

78 Australian Human Rights Commission, *Social Justice Report 2009*, p. 105

- 3.122 While the weight of evidence supported constitutional recognition of Indigenous languages, the Tasmanian Aboriginal Centre (TAC) urged for legislative changes and increased funding instead. They did not support constitutional recognition, and said that it:

would not provide any effective mechanism for strengthening languages and would be purely tokenistic. Such a recognition would not impose any duty or obligation on the Commonwealth or any other government in Australia. It would not impose a duty to legislate to protect languages. Nor would it create a right of funding for those attempting to preserve languages.<sup>80</sup>

### Committee comment

- 3.123 The Committee supports the recommendation of the Expert Panel on Constitutional Recognition of Indigenous Australians that Aboriginal and Torres Strait Islander languages be recognised in the Constitution as Australia's first languages.
- 3.124 The Committee is of the view that constitutional recognition of Indigenous Australians, and their unique cultures, languages and heritage is an important step forward for the nation as a whole.

### Recommendation 8 - Constitutional recognition of Indigenous languages

- 3.125 **The Committee recommends that the Commonwealth Government support Constitutional changes to include the recognition of Aboriginal and Torres Strait Islander languages, as recommended by the Expert Panel on Constitutional Recognition for Indigenous Australians.**

### United Nations Declaration on the Rights of Indigenous Peoples

- 3.126 The importance of Indigenous languages is recognised in a range of international human rights instruments. These instruments acknowledge the importance of individuals and their rights as part of the international legal framework.
- 3.127 The most notable instrument is Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples, which provides that:
- Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral

79 Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, 2012, p. xvii.

80 TAC, *Submission 144*, p. 5.

traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that Indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.<sup>81</sup>

3.128 Article 14(1) of the Declaration provides for educational autonomy of Indigenous peoples. It affords Indigenous peoples the right to:

establish and control their education systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.<sup>82</sup>

3.129 Further, Article 31 of the Declaration recognises the right of Indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.<sup>83</sup>

3.130 The Commonwealth Government formally endorsed the Declaration in April 2009, although as ANTaR highlighted, it has not developed a national implementation strategy.<sup>84</sup>

## Convention for Safeguarding of the Intangible Cultural Heritage

3.131 The principles set out in Article 31 of the Declaration are paralleled to some extent in the Convention for Safeguarding of the Intangible Cultural Heritage. The Convention is the key instrument within the United Nations Educational, Scientific and Cultural Organization's (UNESCO's) cultural heritage program, and was introduced in response to perceived inadequacies in the World Heritage Convention and other related instruments, which focus on immovable property (such as monuments or natural sites) or movable tangible property (such as tools, weapons and ceremonial objects).

3.132 According to the Convention, Indigenous languages are a 'vehicle of the intangible cultural heritage', which include:

the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces

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81 United Nations Declaration on the Rights of Indigenous Peoples, Article 13.

82 United Nations Declaration on the Rights of Indigenous Peoples, Article 14(1).

83 United Nations Declaration on the Rights of Indigenous Peoples, Article 31.

84 ANTaR, *Submission 23*, p. 5.

associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.<sup>85</sup>

- 3.133 As such, the Convention recognises that the preservation of Indigenous languages is fundamental to safeguarding intangible cultural heritage.
- 3.134 A significant number of submissions supported Australia's ratification of the Convention.<sup>86</sup>
- 3.135 ANTaR noted that Australia has not ratified the Convention and supports the Commonwealth Government taking appropriate steps to become a party to the agreement. However ANTaR also said that:

Given the broad definition of intangible cultural heritage within the Convention, we do recognise that Australia's ratification of the Convention has implications (and we would posit, potential benefits) which extend beyond the strict terms of reference of the Inquiry. Accordingly, a separate consultation process to consider Australia's ratification of the Convention may be prudent, and perhaps timely, in light of the significant work being undertaken in relation to language revitalisation, and the release of the proposed new National Cultural Policy in 2012.<sup>87</sup>

### Committee comment

- 3.136 The Committee notes that Indigenous languages are recognised in a range of international human rights instruments. Further, the Committee recognises the importance of these instruments as part of the international legal framework.
- 3.137 The Committee observes that the Commonwealth Government formally endorsed the Declaration of the Rights of Indigenous Peoples in 2009. The Committee encourages the Commonwealth Government to develop an implementation plan to give effect to its endorsement of the Declaration.

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85 *United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of the Intangible Cultural Heritage*, done at Paris, 17 October 2003, Article 2.

86 ANTaR, *Submission 23a*, p. 5; TAC, *Submission 144*, p. 1; RNLD, *Submission 130*, p. 8; Aboriginal Resource and Development Services (ARDS), *Submission 74*, p. 14; New South Wales Department of Education and Communities, *Submission 59*, p. 25.

87 ANTaR, *Submission 23a*, p. 5.

**Recommendation 9 - United Nations declaration implementation plan**

- 3.138 **The Committee recommends that by March 2013 the Commonwealth Government develop and announce an implementation plan given its endorsement of the United Nations Declaration of the Rights of Indigenous Peoples in 2009.**
- 3.139 The Committee notes that the Commonwealth Government's ratification of the Convention for Safeguarding of the Intangible Cultural Heritage extends beyond the terms of reference for the present inquiry. However, the Committee sees merit in a review being conducted.

**Recommendation 10 - Convention ratification review**

- 3.140 **The Committee recommends that, given Australia has not yet ratified the Convention for Safeguarding of the Intangible Cultural Heritage, the Commonwealth Government conduct a review of the potential benefits and implications of its ratification.**

