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Committee Secretary
House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs
Standing Committee of Attorneys General (SCAG)
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Dear the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs

Inquiry into Language Learning in Indigenous Communities

The North Australian Aboriginal Justice Agency (NAAJA) is the Aboriginal legal service in the Top End of the Northern Territory (NT). NAAJA travels to most remote communities north of Elliott, and provides advice and representation to Aboriginal clients in criminal, civil and family law matters. NAAJA also delivers legal education in remote communities, and prison support and throughcare services to Aboriginal people in custody.

NAAJA directs this submission to the benefit of giving recognition and attention to Indigenous languages in the context of the legal system, in particular, the criminal justice system. It is our experience that many Aboriginal people do not understand the legal system, or the specific legal orders they are subject to. This is because English is used as the primary language and interpreters are either unavailable, or under utilised. The consequences of this failure to include Aboriginal language considerations into the legal system are adverse and far reaching.

NAAJA strongly supports more funding for the Aboriginal Interpreter Service, and better use of Aboriginal language interpreters. We consider it essential that service providers receive cross-cultural training in how to best work with Aboriginal interpreters. We also support increased resourcing for Aboriginal Community Courts. We consider these initiatives to be central to enabling proper understanding of, and participation in, court processes. We also note that this would be in keeping with the National Indigenous Law and Justice Framework (NILJF).

We provide the following responses to the terms of reference.

1. The benefits of giving attention and recognition to Indigenous languages

Aboriginal people are better able to participate in, understand, and comply with, court processes and outcomes when they understand the proceedings. Aboriginal people in the NT are largely alienated by court processes when they occur in English, without any interpretation.

Good court systems should promote understanding of both process and outcome. It is our submission that this level of proficient understanding can only occur if courts are either conducted as Community Courts in local Aboriginal languages, or Aboriginal interpreters are appropriately used.

NAAJA submits that there is significant benefit to be gleaned from giving attention and recognition to Indigenous languages in the context of the criminal justice system. Those benefits include:

- Better compliance with court orders;
- Increased participation in court processes;
- Increased community and cultural empowerment; and
- Better understanding of, and respect for, court reasoning and outcomes.

NAAJA also submits that these benefits could lead to the realisation of broader objectives such as safer communities and a reduction in recidivism. For justice to be effective, it must engage rather than alienate Aboriginal people.

Including Aboriginal languages in court processes is consistent with the NILJF. In particular, we note Action 1.2.3a, which recommends governments' [i]dentify barriers that prevent Aboriginal and Torres Strait Islander peoples from accessing relevant justice services and develop and implement strategies to address these barriers', and Action 1.2.3f, which suggests governments '[i]mprove provision of law and justice related information to Aboriginal and Torres Strait Islander peoples'.

a. Current levels of understanding

Aboriginal people are the majority of court users in the NT. Aboriginal people represent over 80 per cent of the adult prison population,¹ and over 97 per cent of the juvenile prison population in the NT.²

The Aboriginal Resources and Development Services Inc (ARDS) report, 'An Absence of Mutual Respect',³ provides a useful analysis when considering actual levels of understanding. The report surveyed 200 North-East Arnhem Land Yolgnu people about their understanding of thirty commonly used legal terms, which included 'conditions', 'consent', 'undertake', 'charge' and 'bail'.

¹ NT Department of Justice, *Northern Territory Quarterly Crime and Justice Statistics* (September 2010), 10 <<http://www.nt.gov.au/justice/policycoord/researchstats/QR%20Issue%2033%20-%20Ebook.pdf>>.

² *Ibid.*

³ Aboriginal Resources and Development Services (Inc), *An Absence of Mutual Respect* (2008) <http://www.ards.com.au/print/Absence_of_Mutual_Respect-FINAL.pdf>

In analysing the results, ARDS noted that:

The extent of the problems facing Yolgnu people when they have to interact with the Balanda (Anglo) legal system show clearly in the overall results below, with over 95% of Yolgnu surveyed were unable to correctly identify the meaning of the 30 commonly used English legal terms which are commonly used in the legal context in the NT.⁴

These language difficulties also intersect with conceptual, or world view, barriers. Eighty one per cent of the NT Aboriginal population live in remote or very remote areas.⁵ Many Aboriginal people living remotely have very limited experiences of mainstream systems and procedures. Often their experience of the court system is typified by a general lack of comprehension.

Unless specific culturally relevant measures are taken to ensure Aboriginal people understand and are engaged in court processes, Aboriginal people will have an extremely limited ability to comply with court orders. Accordingly, the sentencing purposes of rehabilitation, and specific and general deterrence that underpin court orders, will not be achieved.

NAAJA submits that one aspect of overcoming the vast linguistic and conceptual differences existing between Aboriginal and non-Aboriginal systems, is the inclusion of Indigenous languages in court proceedings through the appropriate use of Aboriginal language interpreters. For this to be achieved, more funding needs to be directed at the Aboriginal Interpreter Service. Other avenues which NAAJA endorses are providing more resourcing to Aboriginal Community Courts, and mandating cross cultural training.

b. Current Court practices

NT courts will almost always be conducted in English. It has generally been incumbent upon defence lawyers to arrange for an interpreter if they consider that their client requires one. This is an issue that NAAJA has raised with the Chief Magistrate, and she has recognised that, in principle, it is the court's responsibility to ensure interpreter availability.

When an interpreter is present, it is rare for the court to conduct proceedings in a fashion which allows for direct and immediate interpreting. It is often the case that the interpreter is asked to summarise and interpret the proceedings at the conclusion of the matter, outside the court room. It is our experience that most court proceedings do not allow the time or space for direct interpreting to occur.

A common occurrence in NT courts is to see Magistrates and Judges speaking at length in court room English to an Aboriginal defendant in the course of sentencing that defendant. In general terms, sentencing remarks are often aimed at bringing home the reality of the offence to the offender, publically condemning the actions of the offender and providing a deterrent for the offender to engage in similar behaviour. When these remarks are made in a foreign language without the use of an interpreter, it is our experience that Aboriginal defendants understand very little of what is being said, and simply nod as a form of gratuitous concurrence. In this sense, it is unlikely that an offender will feel the 'weight of the law' from such an interaction, engage in serious reflection about their behaviour and as a result change their future attitudes and actions.

⁴ Ibid.

⁵ Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians* (2006) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4705.0Main+Features12006?OpenDocument>>

This type of outcome from a sentencing process can only meaningfully occur if the court's condemnation and commentary of the offence is able to be fully understood by the offender.

NAAJA submits that this communication breakdown can be remedied by either including Elders in the court process and conducting the court as a Community Court in the local Aboriginal language, or by ensuring appropriately qualified Aboriginal interpreters are available and utilised adequately. Further, it is our experience that service providers require cross cultural training in how to best work with Aboriginal clients and Aboriginal interpreters.

c. Community Courts – an example of courts using Indigenous languages

Community Courts are the only time that elements of court proceedings are conducted in an Indigenous language. Community Courts in the NT are designed to function in a similar manner to Koori Courts in Victoria, Nunga Courts in South Australia and similar courts in other jurisdictions. The composition of the Court includes Elders, offenders, victims (in appropriate cases), the offender's and victim's families, the Magistrate, prosecutor, Community Court Coordinator and defence lawyer.

When implemented well, the court is characterised by its informality, its cultural relevance, its open dialogue, its use of Aboriginal language and its non-adversarial approach. Elders play an active role in engaging in discussion with the defendant, and assisting the magistrate to arrive at the appropriate sentence in a particular case. Local considerations, such as the ability of the defendant to comply with a particular court order, are taken into account through the input of the Elders. The use of local languages means that both the impact of the offending and the 'moral' guilt associated with criminal offences can be communicated directly to the offender in languages and concepts that meaningfully speak to the offender.

In the past, Community Courts have proven successful in North Eastern Arnhem Land. The Nhulunbuy Community Court was established following three senior Elders asking the then Chief Magistrate, Ms Jenny Blokland, to establish a Court that would assist their people. Ms Blokland agreed. Her Honour described the process in the following terms:

Community courts commenced in Nhulunbuy (North East Arnhem Land) in about 2003/2004 after the respected Yolngu educator, linguist and community worker Raymattja Marika visited the Nhulunbuy Court's Chambers stating that 'down South' there are Koori Courts, Nunga Courts, circle sentencing and that the Yolngu wanted a 'Yolngu Court'. Being a new Magistrate at the time, I wasn't sure if I could, with any authenticity, preside in a court called a 'Yolngu Court'. With other developments occurring in Darwin (our then Chief Magistrate Mr Hugh Bradley came to an agreement with Yilli Rreung Council to trial 'circle sentencing' in Darwin, Nhulunbuy and the Tiwi Islands and make some funds available for the process), we settled on 'Community Court' to describe an informal participatory process. Subsequently there were general public meetings and education sessions involving Dr Kate Auty (formerly a Victorian Magistrate and now in Western Australia) and a number of restorative justice practitioners and educators in allied professional groups. The Community Court possesses some principles referable to restorative justice but whether the goals of restorative justice are met, depends greatly on the level and extent of participation, the type of case and the level of engagement of all relevant parties.⁶

⁶ Blokland J, 'The Northern Territory Experience', (Paper presented at the Australian Institute of Judicial Administration Indigenous Courts Conference, Mildura, 4-7 September 2007) 7 <<http://www.ajia.org.au/Ind%20Courts%20Conf%2007/Papers/Blokland.pdf>>.

NAAJA's experience is that Community Courts have largely been successful where the 'correct' Elders have been participating, and where the proceedings have been conducted in the first language of the participants, with interpreters used for the non-Aboriginal participants. This is imperative to ensuring engagement and open dialogue between the Elders, other community members, the judiciary, the victim and the defendant.

NAAJA recommends that more resources be directed into the establishment of best practice Community Courts in the NT as a means of properly engaging Aboriginal people in justice processes which they can participate in, and understand.

2. The contribution of Indigenous languages to Closing the Gap and strengthening Indigenous identity and culture

a. Closing the Gap

Although reducing Aboriginal incarceration rates and contact with the criminal justice system was not an explicit Closing the Gap initiative, NAAJA considers these two factors to be central to Government's ambition of curtailing Indigenous disadvantage.

NAAJA considers that better utilizing Indigenous language interpreters will not only allow for increased participation in and understanding of court processes, but also better compliance with sentencing outcomes, increased participation in rehabilitation and treatment programs, and increased utilization of social support services. Accordingly, the benefits of increased use of Community Courts and Indigenous language interpreters will have broad positive social impacts, including potentially reducing rates of Aboriginal incarceration, and contact with the criminal justice system.

b. Strengthening Indigenous Identity and Culture

Incorporating Indigenous languages into court processes enhances Indigenous identity and strengthens Indigenous culture. This is because holding court proceedings in an Indigenous language demonstrates a respect for Indigenous culture and allows for Elders participation in both court process, and in ensuring court order compliance.

It is NAAJA's experience that many communities and Elders would like to participate in court processes as a means of demonstrating leadership and denouncing criminal behaviour. It is also our experience that in most instances they are excluded due to proceedings being in English without adequate interpretation. Allowing for community and Elder participation also facilitates Eldership renewal, and demonstrates the authority of, and respect for Elders to the community.

3. Measures to improve Indigenous language interpreting and translating services

a. Better resourcing of Aboriginal Interpreter Services

NAAJA supports increased funding for Aboriginal Interpreter Services. This would ensure that more Indigenous language interpreters are trained and available for use in court proceedings.

There is a current paucity of qualified Aboriginal interpreters. Largely, this can be attributed to the insufficient funding received by the Aboriginal Interpreter Services and related problems of inadequate resources available for training, recruitment and retention of staff.

In a recent case, NAAJA argued for a stay of proceedings in the Supreme Court due to lack of interpreter availability unrelated to the defendant. NAAJA lawyers representing in-custody Aboriginal clients are often faced with the conundrum of adjourning a client's matter for the availability of an interpreter and the client remaining in custody, or proceeding without an interpreter and making submissions for the person's release from custody in the form of a non-custodial sentence or bail.

NAAJA submits that better funding the Aboriginal Interpreter Service will facilitate many benefits for the criminal justice system. Most importantly, Aboriginal people will have the opportunity to fully understand and participate in their court case.

b. Mandatory cross cultural training

NAAJA strongly endorses mandatory cross cultural training for both government and non-government services who have contact with Aboriginal people, and who utilize the Aboriginal Interpreter Service. This training should focus on linguistic construction differences, world-view diversity and challenges, cross-cultural awareness and communication, and proper use of interpreters.

There would be multiple benefits to this, including:

- More qualified and available interpreters;
- Better understanding of Aboriginal cultural, linguistic and world-view differences;
- Better ways of communicating with Aboriginal people and Aboriginal interpreters; and
- More awareness of the importance of utilizing interpreters so as to enable understanding.

4. Conclusion

NAAJA submits that the dominant language used in court proceedings should be accessible and understandable to the people it serves. It is our experience that most Aboriginal people do not fully understand either the court process or the outcomes of those processes. This lack of understanding impacts on their ability to comply with court orders and to develop a better understanding of mainstream laws.

To remedy this, there should be more funding for the Aboriginal Interpreter Services, better resourcing of Community Courts, and mandatory cross cultural communication training for all government and non-government services working with Aboriginal people and communities.

NAAJA considers participation in, and understanding of, court processes and outcomes to be crucial factors in reducing recidivism, making communities safer and achieving the Government's Closing the Gap goals of reducing Indigenous disadvantage.

NAAJA is grateful for the opportunity to provide these comments to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. We would be pleased to discuss our comments in further detail.

Yours faithfully



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