

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. 6

Senator Siewert asked the following question at the hearing on 18 October 2011:

Senator SIEWERT: ... I want to pick up on the Declaration on the Rights of Indigenous Peoples. I know Senator Pratt asked a couple of questions. I have some specific ones about education—specifically about proposals that we have now seen for expansion of the SEAM process that is operating in the Northern Territory and Logan in Queensland. The SEAM process has been going for a while. This is the school enrolment and attendance program. Is that program consistent with the articles of the Declaration on the Rights of Indigenous Peoples?

Mr Gooda: I would have to take that on notice. I have not really had a chance to look at that particular program.

Senator SIEWERT: So you have not looked at the SEAM program that has been operating in a number of trial places in the Northern Territory?

Mr Gooda: Is that about the welfare payment?

Senator SIEWERT: Yes. It is the program where, after a certain process, if your child does not attend school you get your welfare payment cut.

Mr Gooda: We have not specifically looked at it against the articles in the declaration.

Senator SIEWERT: Could you take on notice having a look at that program?

Mr Gooda: Yes.

Senator SIEWERT: It is hard to take on looking at the proposal for rolling it out given that we have not seen that yet, but certainly the trial has been operating now for a number of years in the Northern Territory. If you could have a look at that against the articles, that would be appreciated. Having said that, what are the articles of DRIP that specifically relate to education?

Mr Gooda: I cannot roll them off the top of my head, but—

Senator SIEWERT: Sorry, I meant the philosophy or principles behind it.

Mr Gooda: The principles we look at in the declaration—and I keep arguing these—are things around free, prior and informed consent; the right to self-determination; the right to participate in decisions that affect our rights; and one, which is in the preamble, about the right to be different. That is just part of the preamble to the declaration. I keep on saying to people they have to design systems, whether they are education, health or employment, that cope with differences. It is not up to the individuals who are different to negotiate or navigate their way through the messy system we have in front of us. In looking at any specific article—and there are articles that relate to education across a whole range of things, specifically education and the right to be educated in your own language, which goes to some of the issues around bilingual education—I will generally look at those through the principles that I just mentioned: self-determination; the right to participate in decisions that affect us; the right to give or not give our free, prior and informed consent and the right to be different.

Senator SIEWERT: Thank you. If you could take that question asked on notice, that would be appreciated.

The answer to the honourable senator's question is as follows:

The Australian Human Rights Commission has not to date done any analysis of the School Enrolment and Attendance Measure (SEAM) Program.

The Department of Education, Employment and Workplace Relations has informed the Commission that the program is currently being trialled in 14 schools across six trial sites in the Northern Territory. The Commission understands that the Department of Families, Housing, Communities Services and Indigenous Affairs is linking this program to welfare reform measures with the aim being to increase school enrolment and regular attendance of compulsory school aged children whose parents receive income support in several trial communities.

While the SEAM program is not an Indigenous specific measure, programs such as these which impact on Aboriginal and Torres Strait Islander peoples should be developed consistent with the Declaration on the Rights of Indigenous Peoples. In this instance this is particularly relevant given the high proportion of Aboriginal and Torres Strait Islander peoples on income management in the Northern Territory.^[1]

^[1] The Australian Government has reported that 94.2 per cent of people on income management in the Northern Territory are Indigenous. Commonwealth, *Official Committee Hansard: Reference: Estimates*, Senate Community Affairs Legislation Committee (25 February 2011), p CA22 (Ms Liz Hefren-Webb, Acting Branch Manager, Welfare Payments Reform, FaHCSIA).

Article 21 of the Declaration states that:

- (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including inter alia, in the areas of education, employment, vocational training and retraining, housing sanitation, health and social security.

However, in order to be consistent with the Declaration, article 18 provides that:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

And article 19 states that:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The Commission has not done any analysis as to whether this program has been developed and applied in accordance with these articles of the Declaration.