

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

Lester-Irabinna Rigney

Introduction

The argument in this paper was played out on 2 June 1997, in my own Aboriginal community of Narungga, at Bookayana (Point Pearce Mission, Yorke Peninsula). A meeting was called to settle our grievances with the then South Australian Department of Education, Employment and Training (DEET). This occasion is known amongst our people as the Bookayana Education meeting. The meeting was held in the Jack Long Memorial Hall, which seemed fitting as Kauwawa (Uncle) Jack³ was an Elder who spoke of the testimony of several Narungga people demanding self-determination at the 1915 Royal Commission into Aboriginal Affairs. My people have a strong and proud tradition in calling for our right to be self-determining. In every generation Narungga peoples have asserted our rights to sovereignty and jurisdiction over our own affairs (see Wanganeen 1987; Mattingley and Hampton 1988). As a continuation of this legacy, the Bookayana education meeting called for greater Narungga control over education to improve the educational opportunities for our children. To address the crisis in education for the Narungga, there was an urgent need to resolve the following key issues:

- The recent decisions by DEET for staffing reduction and curriculum intervention in our mission school
- The lack of consultation with Narungga parents and community decision making authorities
- Lack of recognition of Narungga control and jurisdiction over the education of Narungga children
- The crisis of low retention rates of Narungga children at primary and secondary schools
- Local secondary schools curricula served the interests of farming families while educating Narungga out of a Narungga education
- The dwindling status of Narungga language and the urgent need for resources
- Addressing racism in schools

In a fiery encounter, many statements by Elders and parents centred on rejecting the total governance over our mission school by DEET. Broader criticism was levelled at the nation/state whose lack of recognition of Narungga jurisdiction and authority mechanisms was a continuing source of frustration. For many including Elder Ngarpadla Aunty Elaine Newchurch, such lack of recognition undermines the very

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

foundations of our cultural integrity and denies our desire for self-management. Ironically, in 1966, Point Pearce mission was one of the first groups in South Australia to be self-managed. However, state legal and meta-legal recognition of Narungga jurisdiction over education has been lacking (see Wanganeen 1987; Mattingley and Hampton 1988). Dr Alitja (Alice) Wallara Rigney⁴ commented that the lack of recognition of Narungga authority contributed to the lack of success at school by Narungga children. She declared that the 200 years of our children's failure at 'white' controlled schools should always be balanced by the 40,000 years of successful Narungga education prior to colonisation. In short, she stated that 'our educational successes far outweigh our failures'. Dr Rigney explained that Narungga educational practices emersed in our language had stood the test of time and was extremely rigorous when our people first encountered Europeans. Equally important to our children today is English literacy and numeracy. She declared strongly, 'our love for education has not wavered'. Dr Rigney concluded that the task that lay ahead rested in Indigenous peoples re-defining a new relationship with Australia's governments for more control over education and the future of all Narungga children.

Multiply this story of the Bookayana meeting many thousand times over and a picture across Australia of Indigenous calls for self-governance and autonomy in the past 20th century begins to emerge (see Reynolds, 1987a,b, McConnochie, Hollinsworth, Pettman 1988). Real life stories of real people in real struggle summarise the complex processes needed for re-defining new relationships. Treaty and the need for a formal agreement clearly emerged from this history of unfinished business between Indigenous peoples and other Australians. The difference today is renewed calls for Indigenous rights recognition through treaty is made by Indigenous and non-Indigenous peoples alike. These people come from all sectors of Australian society and politics.

Treaty and the re-definition of a new relationship attempts to move beyond past and present injustices. The goals of social and economic justice are built on the principles of rights recognition through relationship building and reconciliation via education. Both raise questions about the nature and meaning of treaty. However, the Bookayana type meetings in Indigenous communities all over Australia offer interesting challenges for treaty. The challenge we face today is how to look at old problems with refreshed eyes. Equally, how do we address the severe conditions faced by Indigenous peoples to bring about immediate relief and long term reform? How do we build up relationships between black and white at the high levels of leadership and grassroots levels of leadership who in some ways are not like-minded, like focused nor like-situated in Australian society? The challenge is to develop genuine understanding and dialogue across the lines of division in an attempt to bring a final resolution to the citizenry rights injustices faced by Indigenous peoples. Indigenous and non-Indigenous leadership in education must develop new ways of pursuing dialogue and negotiation to build new structures to prevent further human and community devastation. In this paper I attempt to offer a dialogue of ideas for treaty and Indigenous Education toward a re-definition of a new relationship with Australia. It is not my intention to explore in depth the multiple structures, multiple

Treaty: Let's get it right!

activities and the multiple levels needed for treaty negotiation and implementation. Rather my intentions are modest in exploring the citizenry rights injustices in Indigenous education. I will focus on three key issues of inherent jurisdiction, Indigenous education and the status of Indigenous languages as a rationale for treaty.

Inherent jurisdiction vs. citizenry rights injustices: a history

Indigenous citizenry rights injustices have their origins in history. By citizenry rights injustices I mean the historical legal absorption of Indigenous peoples into the non-Indigenous Commonwealth system of governance. Indigenous people do not benefit equally with other Australians in the social fabric. My meaning also refers to the structural deficiencies in government service delivery that maintain Indigenous civil inequality economically, legally and politically. A brief historical analysis is needed to explore this concept further.

Prior to European arrival, Indigenous Australian nations exercised authority and jurisdiction over the culture and education of their citizens. There are jurisdictional examples that existed prior to colonisation. Jenkins (1979) highlights the complex democratic system of governance by the Ngarrindjeri peoples in South Australia, known as the Tendi council. The Tendi stood in jurisdiction over the formal education of children. Moreover this council of Elders was the 'dispenser of justice as well as the parliament' (Jenkins 1979:13). Similar, examples can be found in other Indigenous cultures in history Australia (see Edwards 1993, Berndt and Berndt 1992). Therefore, it could be argued that the inherent rights of Indigenous Australians to self-determination existed well before settler governments. In other words Indigenous inherent jurisdiction is an original source of authority not derived from a constitutional authority. The British in Canada, New Zealand and United States recognised and preserved First Nations inherent jurisdiction over their own affairs in various legal treaties. Inherent jurisdiction is a legal concept recognised and practiced in most other commonwealth countries. However, Indigenous Australian sovereignty was not afforded the same recognition as their Maori, Indigenous Canadian and United States counterparts.

Indigenous concepts of nationhood and identities were based on the ability of Elders and leaders to care for all their citizens by upholding and protecting Indigenous cultures and values, enabling all children of their nations to become contributing members. Therefore, it is understandable that Indigenous sovereignty was never ceded at first contact between Indigenous and non-Indigenous peoples. Disregarding official instructions in 1778, Captain James Cook acquired Australia for the British Crown by declaring a legal doctrine of *terra nullius*. This doctrine not only gave rise to the myths that Australia was 'peacefully settled', but that the landscape was void of 'civilised inhabitants'. Civilised in this context meant that Aboriginal peoples were categorised as not 'civil' as they possessed no means of governance that matched the halls of Westminster.

In a strange twist of fate brought about by the legal fiction of *terra nullius*, Australian nationalism, constitutional governance and identity was established

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

without regard or inclusion of Indigenous systems of governance and inherent jurisdiction over education. The denial of Indigenous governance practices is the origins of future citizenry rights injustices for Indigenous peoples. To secure the British/Australian identity, the new colony saw a rapid growth of governmental systems controlled through extensive bureaucratic institutions. Like Canada and United States, settled Australia is an 'immigrant nation' whose colonising ethnicity was predominantly British (Hutchinson 1994:164). All those who identified with this ethnicity at this time wanted British identity and its values maintained and secured by the new Australian system of governance. Indigenous systems did not stand a chance of being legally or constitutionally protected.

Indigenous Australians up to the early 1920s have existed outside the settler colonial 'nation'. Indigenous peoples featured nowhere in the new structure of settler governance nor were they absorbed through equal citizenship rights at contact. It is simply an undisputable fact that the dispossession, colonisation and assimilation absorption occurred without Indigenous Australians consent (see Reynolds 1987a, b, Miller 1985). Strategies of including Indigenous peoples into Australian society gained strength from 1920 and gathered momentum after the Second World War. Governmental strategies of civil assimilation of Indigenous peoples were commonplace between 1930–1970 (see McConnochie, Hollinsworth, and Pettman 1988:103–130). In 1962, Indigenous Australians were allowed to vote in federal elections. The assimilation period saw the end of formal exclusion of Indigenous peoples from Australian society. A majority of 'non-Indigenous Australians voted successfully in the 1967 referendum to change section 127 and 51 (xxvi) of the constitution allowing the federal government to pass laws relating to Indigenous Australians' (Lippman 1994:30–31). The referendum was not a vote specifically on citizenship rights, but to enact laws to increase the number of Indigenous peoples in civil services. The 1967 referendum saw a shift from the colonial education by missionaries that was to 'Christianise and civilise', to substantial changes in content and policy ushered in by the federal government during the assimilation era from 1940s–1970s. Lippmann (1994) suggests that the referendum vote was unsuccessful in bringing relief to the appalling conditions of Indigenous Australians.

Undoubtedly there was a false belief among Aborigines and their white supporters about the outcome of the referendum result: that the Australian government would speedily take over Aboriginal Affairs and improve conditions ... the results of the referendum victory were not as marked as Aboriginal groups had expected ... the States clung to their powers where they could and another level of bureaucracy to be battled was added in the form of the Federal government. Lippmann (1994:31)

Indigenous Australians were admitted to Australian society only to find our languages, cultures and systems of education were to be assimilated and absorbed through equal citizenship rights held in trust by the federal and state governments. Despite Indigenous assimilation into settler society, many citizenry rights injustices continued through discriminatory beliefs and practices. The contradictions of such absorption are many. Indigenous identities, cultures and systems of education were

Treaty: Let's get it right!

absorbed into a government system whose structures were designed to secure and protect the identities and cultures of the settler government. Moreover, Indigenous people were absorbed into a government who in the past used force and legislative power to exclude people who were not ethnically British. At this time, minority dissent was overridden. There was little questioning of the legitimacy of colonial control and power via the governance system that absorbed Indigenous Australians. Nor did it seem to matter that it was settler Australians via the referendum deciding settler governance of Indigenous affairs not Indigenous people themselves.

Several questions emerge here. How were Indigenous languages and cultural structures of education going to survive in a settler government system, whose basis for governance is its loyalty to its British origins and to colonial Australia itself? How would the settler government make room for Indigenous Australian jurisdiction over their cultures, languages and education, in the absence of a treaty? Although old these questions remain relevant today. Without treaty, Indigenous peoples are forced into government care and obligation with its associated paternalistic practices, as the governance over Indigenous affairs rests with others.

Citizenry obligations

Citizenry obligations were a key aspect of the 1967 referendum. In other words, government citizenry duty refers to the responsibilities and obligations of the government in providing a high standard of care for all Australian citizens, including Indigenous peoples. Put simply, the government is to act in the best interest of all citizens of Australia including Indigenous peoples. The constitutional amendments, while removing offensive provisions aimed at excluding Indigenous peoples, provided the federal government with greater constitutionally-based jurisdiction over Indigenous civil inclusion. Despite substantial progress in government outcomes for Indigenous peoples since colonisation, Australia's governments today via its constitution, still remain in control, and exercises jurisdiction over Indigenous affairs. Paternalism remains evident in Indigenous education via infra structure deficiencies and lack of coordination between federal and state governments (see MCEETYA 1995, Commonwealth 2000). Full transition of Indigenous jurisdiction, control and authority over resources, structures and administration in Indigenous education is yet to be realised. However, government obligation over the past forty years has had some success in allowing greater access to and opportunity in education for Indigenous children. The development of the National Aboriginal and Torres Strait Islander Education Policy in 1989 championed the cause for educational access and equity.

Indigenous Australians today have greater powers than before in some areas of policy making and service delivery through the development of the 1989 ATSI legislation. However, the existence of ATSI does not equate to inherent authority over Indigenous education. Nor does the existence of ATSI absolve government citizenry obligations. The ATSI mandate has an education component. However, the governance, administration and delivery of Indigenous education remain with governments. Constitutionally, the civil jurisdiction and responsibilities of Indigenous

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

education is divided between the federal government and the state and territories. Service deliveries of Indigenous education are administered through usual civil state and territory bureaucracies. While citizenship determines the rights and abilities of Indigenous Australians to access government services in education, Indigenous jurisdiction over our education and its resources continues to remain outside service delivery policy and practice. Indigenous jurisdiction over education must be synonymous with control rather than merely with Indigenous people being consumers. Poor statistics in almost every social indicator from education and health, to imprisonment and unemployment, reflect the state of a people who have been dispossessed and left powerless. Major inquiries like the 1991 Royal Commission into Aboriginal Deaths in Custody and the 1997 National inquiry into the Separation of Indigenous Australians children from their families, highlight in various ways the widespread nature of citizenry rights injustices and discrimination. If a new relationship between Indigenous peoples and the crown is to be re-defined through treaty, I argue that issues of Indigenous inherent jurisdiction over Indigenous affairs, including education, must be finally settled. Below I highlight governance issues that a treaty might resolve.

Treaty Principles

To address the issues of *governance* and *jurisdiction* we must find ways to

- Understand that the history of colonial disruption to Indigenous inherent jurisdiction and decision making authority over education has occurred without Indigenous consent. Indigenous inherent jurisdiction must be reinstated legally to revive, maintain and protect languages and culture by law.
- Re-orientate resources to strengthen Indigenous self-governance and political leadership systems for self-management of education.
- Investigate new mechanisms, structures and institutions to allow interfacing of Indigenous systems of governance in education with other Australian federal /state/territory systems. These new mechanisms should have legal status similar to government education departments through enactment of federal/state/territory /shire legislation and or constitution recognition.
- Increase mandatory representation by Indigenous peoples (locally elected by Indigenous peoples), to all governmental educational policy making decision bodies across all levels.

To show how a treaty could potentially address issues in education, I now elaborate further on Indigenous citizenry rights injustices, in particular, education and languages.

Citizenry rights injustices: education

The Bookayana meeting highlighted succinctly the history of colonial disruption to Indigenous control of education. Similarly, the meeting reaffirmed the low retention rates of Indigenous children which lead to further social disintegration and

Treaty: Let's get it right!

deprivation. The lack of success in education for Indigenous students is at crisis point. The National Indigenous English Literacy and Numeracy Strategy (2000:11), states that 'in 1997, 83% of Indigenous students remained in school to year 10, but only 32% to year 12, compared to 73% of non-Indigenous Students'. Indigenous students are less likely to get a preschool education; are well behind in literacy and numeracy skills development before they leave primary school; are less than half as likely to proceed through to year 12; experience more grave health problems and have higher mortality rates than other Australians (Commonwealth of Australia 2000:1-10). These factors clearly lead to economic injustices and poverty and require urgent attention. However, as recently as 1989, Australia developed its first major National Aboriginal and Torres Strait Islander Education Policy' (NATSIEP). While Indigenous education policy has only emerged in the last 40 years, there has been some positive progression. 'Year 12 retention rates have shifted from single digits to about 32% in 1998; Indigenous participation in university courses has increased from under 100 people 30 years ago to some 7,800 in 1998 (Australians Commonwealth of Australia 2000:1-10). However, despite this progression and goodwill by individuals and government institutions, Indigenous students do not presently achieve educational outcomes at similar levels to other Australian students.

Past and present government documents, senate inquiries and State and Territory's commissioned reports are testimony to the fact that citizenry rights injustices in Indigenous education remain. Nicholls (1998:149) writes of 'the continuing and consistent failure of the state to provide the secondary education needs of Indigenous youth in the Northern Territory, particularly for secondary-aged youth who live in rural areas'. 'In 1993 in some parts of the Northern Territory, less than 25% of Indigenous youth participated in secondary school education' (Nicholls 1998:149). In the Commonwealth Schools Commission Report in 1987, found that between 10,000 and 12,000 Indigenous youth between the ages of 12-15 did not have any access what so ever to recognised school facilities (see CSC, 1987). For other Australian youth, this provision is regarded as nothing more than basic (Nicholls1998). Similarly, a Northern Territory Department of Education report, found a 'large unserved group of Indigenous adolescence in the southern and Barkly region' (Toyne 1993: 2-3). It was found from a sample group 'of 922 school-aged teenagers in this region, that 41% of the total group existed outside of any schooling program' (Toyne 1993:2-3). Nicholls (1998:151), analysing statistics from the Northern Territory Education Department's *Indigenous Education Outcomes Report 1997-1999 Triennium*, claims in 1997, 97 Indigenous students in the Territory obtained a Junior Secondary School Certificate, compared with 1000 non-Indigenous students (a decrease of 31 Indigenous students from the previous year)'.

Several inquiries have emerged recently that offer conclusive evidence that the lack of Indigenous access to education is caused by poor health, poverty and isolation. Recommendation 4.4 of the National Inquiry into Rural and Remote Education conducted by the (HREOC) Human Rights and Equal Opportunity Commission (2000a), referred to the need to develop a national rural education policy. Specifically, recommendations 8.1 of the HREOC report seeks urgent address of Indigenous rural

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

and remote education (HREOC 2000b:72). The Human Rights and Equal Opportunity Commission (HREOC) report (2000a, b) strongly supported similar findings of the Katu Kalpa Senate Inquiry (2000). Katu Kalpa (2000;164) acknowledged the inadequate service provision of Indigenous communities in remote regions. As a result of the HEROC report, a National Framework for Rural and Remote Education has been developed by MCEETYA (Ministerial Council on Education, Employment, Training and Youth Affairs). Despite a progressive National Framework, Indigenous access to education in rural communities remains denied by remoteness. As declared at the Bookayana meeting, English, numeracy and literacy are important to Indigenous communities. These statistics are harrowing in what they mean for continuing Indigenous citizenry rights injustices. They also have direct implications for future Indigenous leadership in the Northern Territory. Moreover, the strong correlation between level of education, income and health, indicate that the citizenry rights injustices in Indigenous education will mean more government expenditure on social problems later. Indigenous remote communities in the Northern Territory still do not have secondary high schools built in regions to enable collective access by several remote communities due to high cost. Yet government expenditure on poverty related illness, substance abuses and incarceration rates are ever increasing in the Northern Territory. The fundamental duty and citizenry obligations of the government to provide education services to Aboriginal youth are vital to the solution of this unacceptable situation. In the absence of a treaty, urgent action is needed to bring immediate relief to what Indigenous communities have been voicing for some time. I raise some Indigenous education issues below that treaty would need to address to bring about a new relationship with Australia.

Treaty Principles

To address the issues of *Indigenous Education* we must find ways to

- Increase the mutual understanding that the lack of government obligation continues in many areas of Indigenous education service delivery, particularly access and equity. News ways of educational partnership need recognition to achieve educational parity.
- Investigate ways for Indigenous governance of education to be applied through local rural and remote communities' leadership systems and organisations for decision making. This governance system through designated Indigenous educational authorities must have legal status like other government educational bureaucracies.
- Annual summer forums to discuss the educational status of remote communities.
- Increase the local Indigenous community jurisdiction of education via new infrastructure that allows local Indigenous councils or their delegated educational authorities to have autonomy and control over curriculum, educational policies, resources, management and administration, employment of teachers, program quality, community and parent participation.

Treaty: Let's get it right!

- Increase local Indigenous community jurisdiction of education to represent Indigenous peoples on other educational national and state policy committees.

Major gaps exist in educational provision for rural and remote communities in schooling in the dominant skills of English, literacy and numeracy as well as Indigenous languages and culture. Significant gaps in Indigenous language education contribute to the demise of children being numerate and literate in their ancestral languages. I briefly explore these issues to understand how a treaty could bring solutions to these problems.

Citizenry rights injustices: Indigenous languages

Prior to colonisation there were approximately 250 Indigenous languages with 600–800 dialects (SSABSA 1996:7–8). Indigenous Australia was multi-lingual and multicultural, with most individuals capable of speaking five or more languages fluently. Indigenous knowledges transmitted through languages reinforce worldviews and identities, whilst reaffirming the unique relationship with lands, laws and cultures.

As mentioned at the Bookayana meeting, Indigenous communities have always recognised the importance of education and language to transmit culture. Education and language are instruments of empowerment for cultural and economic justice. However the effects of colonisation on Australian languages have been devastating (Walsh and Yallop 1993). There are approximately 50 Indigenous languages left with only a few elderly speakers remaining. This means that these languages are being lost at a rate of approximately one per year.

Indigenous peoples today are victims of past settler cultural and linguistic eradication strategies sanctioned and enacted by previous government systems. These factors have contributed to a disruption in intergenerational transmission of language and culture. Although these civil eradication strategies and their practices are now illegal, it is testimony to the courage and strength of Indigenous peoples that their languages have survived. Reversing language loss (also known as language shift) is a difficult task. Over the last decade or so there has been success by Indigenous peoples with the assistance of government services in arresting language shift, and in some cases reversing language loss. This success is attributed to Indigenous languages becoming a part of Australia's National Language policy in October 1984 via the Senate Committee's Report on National Languages policy, and later, the publication of Joseph Lo Bianco's the National Language Policy on Language in 1987 (SSABSA 1996). These reports established the National Aboriginal Languages program (NALP) that led to allocation of \$1million per year to community language programs. Low funding continues today that contributes to difficulties for the Indigenous community to restore and maintain their languages.

SSABSA (1996:8) attributes the success among other things, to the recent development of 'Aboriginal-run Language Centres and the teaching of Aboriginal Indigenous Languages in schools'. In 1984 the Kimberly Language Resource Centre was the first Centre in Halls Creek to be established. These centres currently receive

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

money from ATSIC (via federal resources) through the Aboriginal and Torres Strait Islander Languages Initiatives Program (ATSILIP). This program funds around 20 regional language centres and many more community-based language projects. These centres are represented by the Federation of Aboriginal and Torres Strait Islander Languages (FATSIL). FATSIL is a national body for community based language programs.

Schools and Indigenous languages also have an interesting history worthy of inclusion here. Indigenous languages are latecomers to language learning curriculum in schools. It was only in 'the early 1970s that some schools began to receive government funding to teach Indigenous languages. By 1990, bi-lingual education programs were running in 21 Northern Territory schools. Similarly, over the last twenty years, strong support for bilingual programs flourished in Western Australia and Queensland' (SSABSA 1996:9–10). Therefore, the growth in Indigenous languages and the slowing down of language shift is a recent phenomenon. It is important to note here that the Northern Territory Government, with very little consultation with the Indigenous communities affected, axed these programs on the 1st December 1998. The result of these cuts to bilingual language programs and what they mean for the disruption of intergenerational transmission of language and culture remains to be seen.

Indeed, good examples of language recovery and revival are evident in the last 15 years. In South Australia and elsewhere, schools teach Indigenous languages as Languages other than English (LOTE) which provides programs with much needed resources and support. Without such infrastructure and support, Indigenous languages would not have achieved its small successes. A successful example is that of the Kurinal language. Similarly, I have been actively involved in the last ten years in the reclamation of my grandmother's language Kurna⁵. Kurna language has not been spoken fluently for well over a century. According to linguist Rob Amery (2000:1), 'Kurna language reclamation has taken place against insurmountable odds, yet with positive results, at least according to some criteria'. Amery's (2000) longitudinal study of our language movement witnessed its reclamation from the pages of history books, and its gradual return to the vocal chords of my people. Kurna still has a long way to go to recovering fully our language. However, as a result of hard work from several committed people, Kurna language is now taught at an institution at every level of education from primary school to university.

As mentioned above, success is evident in all language programs from language maintenance of fluently spoken languages to the languages like Kurna whose programs are centred on recovery and revival. In other words there are pockets of language safety areas where Indigenous languages are spoken, learned, written and heard. However, despite this success, language diversity and the number of Indigenous languages speakers continue to rapidly decline (see Amery, 2000, Schmidt 1990, Hale 1992). The peak government body in South Australia for Secondary School Assessment declared that 'despite the recognition of Indigenous languages in schools, there are Indigenous students enrolled in education that do not have the opportunity

Treaty: Let's get it right!

to study their language' (SSABSA 1996:11). There are many factors that contribute to this ongoing problem. Let me deal briefly with social factors.

Language hurdles

Unlike the past, it is no crime (as far as the law is concerned) to speak an Indigenous language in public. However, in some areas of Australia, there are racist attitudes that make it unsafe to speak Indigenous language in public places. Some unwelcoming and culturally insensitive government and non-government service delivery organisations (hospitals, counselling services, childcare centres, shopping malls, welfare, and prisons) create an atmosphere where people are ashamed to speak their language. These social practices marginalise the social usage of language. Equally, there are many structural and institutional obstacles in language maintenance and revival. The list is by no means exhaustive but includes the following.

- ATSIIP programs are restricted from operating directly in schools
- Indigenous language maintenance is extremely under-resourced financially
- A higher priority for languages in ATSI mandate needed
- More resources and government interconnection for FATSIL
- In Indigenous communities languages have a lower priority than Native Title
- Lack of training and careers for language workers
- Lack of employment for Indigenous peoples in language work
- Limited availability of teachers of Indigenous languages
- No scholarships for Indigenous peoples in Linguistics
- High death rate and poor health of few remaining elderly speakers of language
- Low level of documentation of Indigenous languages
- Limited availability of literature and materials in Indigenous languages
- Limited availability of teaching materials and associated technologies
- Limited availability of interpreters in courts and hospitals
- High burn out rate for those few committed Indigenous peoples working in Languages
- The dominance of English across all sectors and levels of education and society
- No Indigenous Languages Act in Australia
- The lack of Indigenous language delivery within the university and TAFE systems
- The absence of a national Indigenous language institute.

The social, structural and institutional factors listed above directly impact on Indigenous languages survival. These citizenry injustices add unnecessary hurdles to language maintenance and revival processes. While the critical state of Indigenous languages remain in the balance, a positive feature of the Indigenous language movement is the development of powerful partnerships and collaboration between

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

Elders, language speakers, schools, educators, government departments, administrators and linguists. In South Australia, the public education system has been instrumental in establishing these relationships in an attempt to reverse language loss.

Multiple collaborations, multiple strategies at multiple levels are needed to stop and reverse language shift. Reversing language loss will need to be addressed in combination with efforts for better health and services for elderly speakers. Increased language activity in the home and community is needed. A greater determination of land rights and native title is required as land, language and culture are linked. Further societal integration of Indigenous languages and culture into the wider Australian society must be fostered. Fundamental to the prevention of language and cultural loss is continued collective Indigenous and non-Indigenous partnerships with both individual and organisational determination. It will also require a greater commitment of financial and human resources. The value of treaty is the ability to address multiple factors of health, education, native title and language issues in one legal document. This moves beyond current government civil strategies of addressing Indigenous matters in isolation. Moreover, treaty moves beyond addressing symptoms as important as this may be, to targeting the root causes of injustice, which is the lack of legal and constitutional recognition. As I have argued elsewhere, language and cultural maintenance activities are constrained and marginalised without having a legal status that is supported by legislation (see Rigney 2001, 2002 a.b).

Official and legal status

Indigenous languages are a fundamental part of Australian heritage. However, Indigenous languages do not enjoy legal protection or support in a manner deserving of the fact that they are First Australian languages. Currently, every other language taught in South Australian schools, excluding Indigenous languages, is an official language of other global countries. This citizenry rights injustice has been appallingly sidelined. At present there is no official or legal status recognition for Indigenous languages as national Australian languages. In the 2001, Paulo Freire Memorial Lecture, Christine Nicholls (2001:6) spoke to the current critical situation of Indigenous languages and the issue of their legal status.

... Whilst Indigenous language rights are assumed to exist in this country by many speakers and their supporters, in fact this position has no legal force ... the assumption that Indigenous languages will automatically be respected in this country is naïve, in light of past and present practices and in the present political climate. The recent axing of the bilingual education programs in the Territory, despite the stated wishes of affected communities is one case in point. (Nicholls 2001:6)

I have argued that there is no legislative protection or support at present by federal or state and territory governments (see Rigney 2002 a.b). Nor is there by-law recognition and protection at the local shire/council level. Australia's Indigenous languages remain outside the official language status of the country and therefore receive few financial resources compared with international economic languages such

Treaty: Let's get it right!

as French, Japanese and German. Lack of an official language status recognition result in government naming policies and practices in relation to newly formed parks and public spaces that disregard and ignore Indigenous naming practices. This civil rights injustice continues the colonial settler government practices of the past, by renaming the landscape that already has names given by First Nations Indigenous Australians. This practice has serious consequences for Native claimants who are required to prove continuous links to the land by being able to name country in language.

Indigenous languages are sites of heritage maintenance for practicing traditions that nurture cultural integrity and diversity. Indigenous languages are used for communicative and symbolic functions. Communicative functions of language are used to speak to other members of a particular community. Symbolic languages are languages whose communicative function has been eroded due to influences of colonisation. Symbolic functions like my language of Kurna, are used to reinforce and reaffirm my Kurna identity and culture by reviving those traditions that have been silenced due to colonisation. Few Indigenous peoples oppose the maintenance and revival of their language. Therefore, if language maintenance activity is to succeed, there is an urgent need for legal protection accompanied by further resources that derive from such legal recognition.

There are numerous examples of specific international language Acts that give Indigenous languages legal status (see Rigney 2002b). Gaelic (traditional Irish language) was recognised as an official language in the Republic of Ireland since its independence from Britain in 1919. In the United States the Native American Languages Act in 1990 recognises and supports the teaching of Native American languages in school. In 1987 the Maori Language Bill announced Maori as an official language of New Zealand. The Bill enacted the Maori language Commission that advises the government on policies and program. It would seem that Australia is slow to incorporate the necessary legal mechanisms to maintain its own linguistic heritage. A new relationship with Australia through treaty must involve the legal recognition of Indigenous languages. I offer some factors below that treaty will need to consider in addressing the critical state of Indigenous languages.

Treaty Principles

To address the issues of *Indigenous language extinction* we must find ways to:

- Understand that the history of colonial disruption of Indigenous languages continues to cause dramatic interruption to intergenerational transmission.
- Increase the development of structures that enable the stabilisation of communicative Indigenous languages and the revival of all symbolic Indigenous languages.
- Educationally invest in the urgent need to establish local language and family cultural education enclaves in schools, with a mandate purely for cultural and linguistic language maintenance and reclamation. Attendance could possibly be in school hours to allow students from reception to secondary school to access its

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

services cross-institutionally. Such a language and cultural school enclave would not compete but compliment existing government schools. Language and cultural enclaves in schools could also operate out of school hours to incorporate the building of Indigenous learning communities. Sessions could be facilitated by Indigenous knowledge authority holders, qualified teachers and linguists to maintain, develop, and teach Indigenous spiritual beliefs, traditions, customs, languages, and ceremonies. Such enclaves are open to all ages to promote family learning and can be located in regions that several communities can access.

- Understand that through enactment of federal/state/territory /local legislation, governments of Australia can formally recognise the legal status of Indigenous Languages by introducing a language Act to preserve and develop Australia's linguistic heritage for Indigenous peoples and all Australians.
- Increase the development of language employment with associated career paths to become language teachers.

Indigenous language is an important element of our Australian national identity. In this sense Indigenous languages are uniquely and irreplaceably Australian. Therefore treaty is fundamental for their survival. It is in the context of the need for negotiation of a final settlement through agreement making that I briefly address the concept of treaty.

Treaty

Despite the achievement of formal legal equality for Indigenous peoples in Australia, Indigenous education statistics highlight that current citizenship rights are not being shared equally by all. To prevent the continuation of citizenry rights inequality, treaty serves as a pro-active way for Indigenous and non-Indigenous peoples to redefine and rebuild a stronger relationship. New ways of Indigenous education delivery must be sought in order to address the re-establishment of Indigenous communities, economies and laws. No matter how one defines agreements, whether as compacts or treaties, such models are a way of addressing past histories whilst negotiating new futures. However, only addressing one level of social injustice (in this instance education) will not achieve systemic empowerment for Indigenous peoples. No one activity and no one level will be able to deliver and sustain the necessary reforms for Indigenous cultural, economic and social development. Therefore, building stronger communities through education and treaty offers the Australian government and Indigenous peoples a framework through agreement and partnership. This partnership could address a variety of interrelated issues that impact on each other such as addressing past injustices, improved service delivery, legal recognition of rights, native title, health, self-determination and inherent jurisdiction. It is my view that addressing these issues in isolation of each other increases the risk of further harm to Indigenous communities.

Great investment has been expended in the past to reduce and eliminate Indigenous jurisdiction and control over our own affairs. Therefore high expectations for social

Treaty: Let's get it right!

and economic, cultural change in Indigenous statistics is problematic without reform and transformation of the governance structures that reinforce civil injustice.

Treaty must promote the opportunity to negotiate changes in power relations within society. Treaty should not be judged by its threat to Australian harmony, but for its potential to transform the structures that continue to cause disharmony. Moreover, treaty making should not be used by non-Indigenous governments as a means of evading their citizenry obligations. The exercise of the Indigenous inherent right to self-government may alter the nature of the current fiduciary relationship but is unlikely to eliminate it. Treaty is a mechanism by which legal recognition cannot be dismissed or discounted outright. The benefits of such legal recognition would enable Indigenous Peoples to continue our relationship with our cultures and languages whilst providing the government the opportunity for final redress.

In relation to education, treaty would benefit all Australians in that all children, including Indigenous youth would have access to education at all points of entry in the system. Similarly, once within the education system all children including Indigenous youth have privileged access to English, numeracy and literacy as well as Indigenous language and culture values that support and extend Indigenous identity. As argued in the Bookayana meeting, a new relationship with Australia's governments is desired to reform and protect Indigenous education. Treaty offers a way of addressing the depressing failures and realities of Indigenous education, through the legal recognition of Indigenous rights and much needed transformation of service delivery.

Conclusion

The Australian governments (Federal, State and Territories) have assumed jurisdiction over education, over the last century or so, yet the crisis in Indigenous education still remains. It is my belief that whilst the status quo of government jurisdiction of Indigenous education with its structures of resource distribution and governance system remains, so to will the reality of crisis. Documented in statistics are the lives of Indigenous peoples who live in real struggle. Colonial interruption in language and education from older to younger generations continues to effect greatly the identities and cultures of First Nations Australians. It was for our children's sake that the Narungga called for negotiation of an agreement in education. The calls for treaty are no different. When our children engage in the journey of education that does not do violence to their culture, it teaches them to dream of possibilities and not to be a prisoner of certainty. It teaches our children to be the best they can be. Education that welcomes Indigenous governance and identities reinforces Indigenous cultural views of the world. As in the past, what was made clear at the historic Bookayana meeting was that western domination was widespread and that we as Narungga people can recognise and name this phenomenon. More importantly, we are not overwhelmed by its complexity or the task ahead to de-construct and disempower its legacy. I therefore position my writing here to follow the strong Narungga tradition of my people's struggle against domination by the Nation/state in the educational, political and

Indigenous Education, Languages and Treaty: The Redefinition of a New Relationship with Australia

economical domains. I welcome treaty toward negotiating new futures. It is the alternatives to treaty that I fear.

Acknowledgments

I cannot write without the source that gives me strength. Therefore, as is my cultural custom, I give recognition here to those who make it possible for me to speak. Thanks to my colleagues Daryle Rigney, Simone Ulalka Tur, Marilyn Wilson and Mandy Price for reading previous drafts, and for all your support. Thanks to Jo (Kurraki), Tikari and Tarniwarra whose love helps me to recover myself from my intellect. The spirit I have is your spirit. The pen I have is for our protection. To my Narungga families, Elders and people, I hope these words bring some relief from the torturous rhythm of injustice.

Lester Irabinna Rigney is a Narungga man who is a Senior Lecturer at Yungorendi First Nations Centre, Flinders University. His areas of interest include Indigenous Education, Indigenous Knowledges, Indigenous Research Methodologies/ Epistemologies.