

# TREATY

BETWEEN THE  
ABORIGINAL PEOPLES OF NEW SOUTH WALES  
AND  
THE GOVERNMENT OF NEW SOUTH WALES

EDUCATION SECTION - DISCUSSION PAPER

ALL EDUCATION: ALL STUDENTS, ALL STAFF, ALL PEOPLES



New South Wales  
Aboriginal Education  
Consultative Group Inc.

## Purpose

“Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from ‘time immemorial’, and according to science more than 60,000 years ago.

*“This sovereignty is a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.”<sup>i</sup>*

## The Treaty

“Australia stands apart. It is now the only Commonwealth nation that does not have a treaty with its Indigenous peoples. It has never entered into negotiations with Aboriginal and Torres Strait Islander peoples about the taking of their lands or their place in the new nation.”<sup>ii</sup>

Many times, we have called for a treaty between Aboriginal and Torres Strait Islander Peoples and the Government of Australia but our calls have fallen on deaf ears.

Since 2010, the New South Wales Constitution has recognised Aboriginal Peoples through the state constitution:

“(1) Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State’s first people (sic) and nations.

“(2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:

(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters; and

(b) have made and continue to make a unique and lasting contribution to the identity of the state.”

However, the Act further states:

“(3) Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.”<sup>iii</sup>

It is now time for the Government of New South Wales to formally recognise that before ever there was western government, there were sovereign Nations here, with Peoples whom you have chosen to call ‘Aboriginal’.

Therefore, the Aboriginal Peoples of New South Wales, who are the First Peoples of New South Wales, wish to make a Treaty with the Government of New South Wales, the first Western Government of Australia.

“A treaty forces you to see me as an equal, with a separate identity, history and culture that has existed for tens of thousands of years... The thing we want recognised is our sovereignty.”<sup>iv</sup> – Nayuka Gorrie

This is to be a Treaty for the 21<sup>st</sup> century and so include Rights for the 21<sup>st</sup> century:

- Rights for Decision-Making
- Rights to Life and Security
- Rights to Language, Culture and Spiritual Identity
- Rights to Education, Information and Employment
- Participation, Development and Economic Rights
- Rights to Country, Resources and our Knowledges
- Rights to Self-Governance.

We call for this Treaty in consideration of the United Nations Declaration of the Rights of Indigenous Peoples. “The Declaration was adopted by the General Assembly of the United Nations in September 2007. This was the culmination of more than 20 years of negotiation between the Indigenous peoples and governments of the world. The Australian Government announced its support for the Declaration in 2009.”<sup>v</sup>

Specifically, we note that Article 14 of the United Nations Declaration of the Rights of Indigenous Peoples states:

“1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

“2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

“3. States shall, in conjunction with indigenous peoples (sic), take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.”<sup>vi</sup>

The purpose of this discussion paper is to guide treaty-making in respect of:

- Rights to Language, Culture and Spiritual Identity;
- Rights to Education, Information and Employment; and within these fields
- Rights to Self-Governance and Self-Determination.

“We do not want chicken food...We are not chickens; we are eagles.”<sup>vii</sup> Mr Douglas Nicholls

## Introduction

“For too long there has been a gap in opportunity and in achievement between Aboriginal people and their fellow Australians.”<sup>viii</sup>

### The present

This gap applies to every level of education, despite the efforts of Aboriginal Peoples and the NSW Government. Looking at the outcomes reported in the *2017 Closing the Gap* report, for NSW:

- in 2015, 85 percent of non-Aboriginal children were enrolled in early childhood education in the year before school but, for Aboriginal children, this figure was 77 percent<sup>ix</sup>;
- attendance rates for Aboriginal students in the compulsory years of schooling declined between 2014 and 2016, from 87.5 percent to 86.8 percent;<sup>x</sup>
- between 2008 and 2014/15, the proportion of Aboriginal students with Year 12 or equivalent attainment increased from 43.1 percent to 62.7 per cent<sup>xi</sup>, but this still means that almost 40 percent of Aboriginal young people in New South Wales did not achieve Year 12 or equivalent attainment.

The *2018 Closing the Gap* report shows that the gaps continue. In Australia:

- in 2017, the school attendance rate for Indigenous students nationally was 83.2 per cent, compared with 93.0 per cent for non-Indigenous students;<sup>xii</sup>
- in 2016, Year 12 or equivalent attainment for Indigenous 20 to 24-year-olds was 65.3 per cent in comparison with 89.1 per cent for non-Indigenous students;<sup>xiii</sup>
- Indigenous students continue to be underrepresented in universities, with Indigenous people comprising only 1.7 per cent of the domestic student population (compared with 3.1 per cent of the Australian working age population);<sup>xiv</sup>
- Indigenous undergraduates continue to have much lower completion rates. Only 40.5 per cent of Indigenous students who commenced university studies in 2010 had completed a degree by 2015, compared with 66.4 per cent of non-Indigenous students<sup>xv</sup>.

These outcomes are not good enough. They demonstrate systemic inequity and must be addressed. In health, the outcomes are worse:

“In practice, the Closing the Gap Strategy persists in name only with the closing the gap targets being used to measure ‘national progress’ being pursued by fragmented jurisdictional efforts, with no national leadership. It is almost a full retreat.”<sup>xvi</sup>

Meanwhile, the employment rate for Indigenous people fell over the past decade, from 48.0 per cent in 2006 to 46.6 per cent in 2016, while non-Indigenous employment rate was broadly stable (at around 72 per cent.)<sup>xvii</sup>

Education participation and outcomes impact on people throughout their lives. We know that higher levels of education correlate with better employment outcomes, as the following table<sup>xviii</sup> from the *2017 Closing the Gap Report* makes clear:

**Figure 16: Employment rate for persons aged 20 to 64 years, by level of highest educational attainment and Indigenous status, 2011**



Source: ABS Census of Population and Housing 2011

While the employment rate for Aboriginal people is lower at every qualification level, the difference for those with a Bachelor degree or higher is less than one percentage point. The difference grows as the level of education decreases until we reach Year 10, where lower levels of education impact on both groups.

There is a direct relationship between the gaps in opportunity and attainment at all levels of education and training; and employment; and people’s standard of living. Poorer educational attainment means poorer employment outcomes, which in turn lead to greater poverty, poorer quality housing, greater likelihood of homelessness and poorer health.

“Education can influence health through a range of complex mechanisms like income and access to health care, and participation in the labour market (employment).”<sup>xix</sup>

These impacts are not just felt by individuals but by their families. Poor quality housing and homelessness impacts on children’s school attendance and their health. Poor health in children impacts on their school attendance which in turn impacts on their attainment.

“Higher levels of educational attainment are associated with improved health outcomes:

In 2008, 59% of Aboriginal and Torres Strait Islander people aged 15–34 years who had completed Year 12 reported excellent/very good health compared with 49% of those who had left school early (Year 9 or below). For people aged 35 years and over, the rates were 43% and 25% respectively.”<sup>xx</sup>

The Australian Bureau of Statistics (ABS) also found these health benefits are enhanced by employment and income.

“Overall, a little over half (53%) of Aboriginal and Torres Strait Islander people aged 15–34 years reported excellent or very good self-assessed health in 2008. This proportion was higher among those who had completed Year 12 (59%) and among those who were employed (58%). When employment was combined with completion of Year 12, the proportion of Aboriginal and Torres Strait Islander people aged 15–34 years who reported excellent/very good health increased to 62%

...

“Previous analysis has shown that when relatively high household income ... was combined with Year 12 completion and employment, the proportion of Indigenous people aged 15–34 years who reported excellent or very good health also increased...”<sup>xxi</sup>

Having a parent who is employed also provides a better start to life for young people: “Children who lived with at least one employed parent were less likely to be developmentally vulnerable ... compared with children who did not live with an employed parent.”<sup>xxii</sup>

## **The future**

We recognise our history and want to make a Treaty for our future. The Aboriginal Peoples of New South Wales want to build a future where we move from survival to resilience to strength.

Partnerships with the then NSW Department of Education and Training, made in 1999 and renewed in 2010 have promised much. We have seen improvements in educational outcomes for Aboriginal students in NSW Government Schools and TAFE. “It was through the implementation of the Aboriginal Education Policy that our culture is recognised and that we are valued as Aboriginal Peoples and have a voice in our education.”<sup>xxiii</sup> Councillor Anne Dennis, NSWALC Deputy Chair

We have seen the implementation of cultural training for school teachers and the development of language nests, where Aboriginal Languages are being taught. We have seen the implementation of culture and heritage training for school students. We have seen the growth of respect for our cultural heritage in government.

But – as the outcomes continue to show – these are not enough.

We call for a Treaty between our Nations and the NSW Government which acknowledges that “...we are, across the world, the oldest living culture.”<sup>xxiv</sup> Mrs Cindy Berwick, President NSW AECG

This Treaty is to cover all levels of education in NSW, from early childhood, through schooling, vocational education and training, and higher education. It is to include all providers, no matter their governance or source of funding. Its foundation principle is to be:

***All education: All students, All staff, All Peoples***

## A Brief History of Treaty-Making with Indigenous Peoples

Australia remains the last Commonwealth country without a treaty between its Indigenous Peoples and the government. There is a history of treaty-making in other Nations that can help us learn what may be the best way for the Aboriginal and non-Aboriginal Peoples of New South Wales to create positive outcomes through a Treaty with the Government of New South Wales.

In Australia, the movement for treaty has taken many forms over the last four decades. In 1979, the National Aboriginal Conference, a representative body directly elected by Aboriginal and Torres Strait Islander Peoples, called for a 'Treaty of Commitment' from the Commonwealth Government marking the modern beginning of this movement toward a treaty with Aboriginal and Torres Strait Islander Peoples.<sup>xxv</sup>

In June 1988, at the Barunga Festival in the midst of the yearlong Bicentennial celebrations, representatives of the Northern and Central Land Councils presented Prime Minister Bob Hawke with a statement of objectives of Aboriginal and Torres Strait Islander Peoples.<sup>xxvi</sup> The Barunga Statement called on the Commonwealth Government to negotiate a treaty that amongst other things recognised the pre-existing sovereignty of Aboriginal and Torres Strait Islander Peoples and their right to be educated in their own languages and cultures.<sup>xxvii</sup> The Barunga Statement drew a promise from the Prime Minister to commit to a treaty by 1990. This was not fulfilled.

The push for treaty was renewed again after Corroboree 2000, a national gathering organised in support of reconciliation. The Aboriginal and Torres Strait Islander Commission (ATSIC) started a campaign called, "Treaty, Let's get it right!" that produced stated aims for a modern treaty. ATSIC stated that some of the aims of a treaty should be to formalise the relationship between Aboriginal and non-Aboriginal Australians, recognise and redress past injustices, and to affirm and protect Indigenous rights.<sup>xxviii</sup>

The Uluru Statement from the Heart in 2017 is the latest in this series of calls from Aboriginal and Torres Strait Islander Peoples to have their sovereignty recognised, although it does not call for a treaty by name but rather "...a process of agreement making..."<sup>xxix</sup>. It is this call for recognition as sovereign peoples that is at the core of the renewed movement for treaty.

As with the Uluru statement, the continuing calls for treaty have been largely overlooked by the Commonwealth Government. With the Commonwealth abnegating its responsibility, the last ten years has seen the beginning of negotiations toward a treaty with individual State and Territory governments in Victoria, South Australia, and the Northern Territory. In 2016, the Victorian Government committed to treaty negotiations and produced a set of guiding aims for a treaty.

## The International Experience

Treaties between the British Crown and its successors and Indigenous Peoples overseas have taken many forms and have been enforced over time to varying degrees, but something that is clear in all of them is an acknowledgment that the land on which the British arrived belonged to Indigenous Peoples. This acknowledgment was not something that was part of the treatment of Aboriginal and Torres Strait Islander Peoples in Australia. The view that Australia was a *terra nullius*, and so able to be claimed by the British as their own without consideration of or consultation with Aboriginal Peoples, has pervaded interactions ever since. A Treaty is the only document that recognises the

sovereignty of the Aboriginal Peoples of New South Wales and their ownership of the land prior to 1788.

There is much that we can take from the experience of other Commonwealth countries in their use of treaties with Indigenous Peoples.

## **New Zealand**

In New Zealand, the Treaty of Waitangi was a single treaty signed in 1840 between representatives of the British Crown and Maori chiefs from across the country.<sup>xxx</sup> The Treaty of Waitangi was translated into both English and Maori, and although interpretations of the two versions differ in emphasis, the spirit of the agreement is said to be based on the Maori people allowing the British Crown the right to govern the country and to make laws in exchange for the protection of the tribal authority of Maori chiefs.<sup>xxxi</sup> The English version of the document agrees to the “full exclusive and undisturbed possession of [Maori] lands and estates, forests, fisheries and other properties which they may collectively or individually possess,” while allowing for a method of selling these lands and resources to the British.<sup>xxxii</sup> The legal principles created by this agreement have developed over time, and remain enforceable under New Zealand law. Since 1975, these principles have been able to be tested in a statutory body known as the Waitangi Tribunal.<sup>xxxiii</sup> The Tribunal has the jurisdiction to resolve disputes between Maori people and the New Zealand Government on the basis that there has been a contravention of the principles of the Treaty of Waitangi. The Tribunal is also charged with determining the meaning and effect of the treaty as it is preserved by the two translations of the agreement.<sup>xxxiv</sup>

## **Canada**

In Canada, treaty-making occurred regularly from the time of the arrival of the British to the North American continent in the 17<sup>th</sup> century. Treaties continued to be an integral part of the relationship between the Canadian Government and the Indigenous Peoples after Canada declared independence in 1867. The Numbered Treaties, twelve separate treaties signed between 1870 and 1927, differ in their terms; but each broadly involves an agreement to share the traditional land of the Indigenous Peoples with the Canadian Government in exchange for compensation and access to services and agriculture methods.<sup>xxxv</sup> There was a sense in these treaty negotiations that the desire of Indigenous Peoples was to protect the future of their Peoples, their identity, and their ways of life through such an agreement.<sup>xxxvi</sup>

As part of this desire, the Numbered Treaties crucially sought to commit the Canadian Government to educate Indigenous children as a part of its treaty obligations.<sup>xxxvii</sup> During treaty negotiations, there was an understanding by some of the Indigenous signatories that the provision of educational services agreed to in the treaty would be of the same quality to those provided to non-Indigenous children.<sup>xxxviii</sup> Indigenous Peoples had a strong oral tradition of treaty-making and placed as much value on the oral negotiations as the written document. This, together with the lack of a common language made effective communication difficult. One of the resulting outcomes was that the written terms in the document of the treaty itself did not bind the Canadian Government to the same degree that some of the Indigenous Peoples may have foreseen.<sup>xxxix</sup> As a result, treaty rights with respect to education were largely ignored for a period following ratification.<sup>xl</sup>



In 1982, treaty rights were guaranteed in the new written Canadian Constitution.<sup>xli</sup> Section 35 of the Constitution Act 1982 states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognised and affirmed.”<sup>xlii</sup> The 1982 Constitution also requires the Canadian Government to justify any burden on Indigenous Peoples in its legislative capacity.<sup>xliii</sup> With a new commitment to treaty rights from the Canadian Government adopted with the 1982 Constitution, Indigenous Peoples campaigned for the recognition of education as a treaty right, while specifying that the protection of language and culture would be incidental to that right.<sup>xliv</sup> In 1996, the Royal Commission on Aboriginal Peoples recommended the recognition of education as a treaty right.<sup>xlv</sup>

## United States

The policy of the British in North America was one that initially treated Indigenous Peoples as belonging to equal sovereign nations. The United States Government continued this policy as an independent State, ratifying 367 separate treaties between 1778 and 1868.<sup>xlvi</sup> In 1871, the United States Congress passed the *Indian Appropriations Act* which prohibited both the negotiation of any new treaties and the recognition of any group within the territory of the United States as an independent nation.<sup>xlvii</sup> This law, did however provide protection for the treaties that had already been agreed, stating that the law did not invalidate or impair any previously ratified law or treaty.<sup>xlviii</sup>

The effects of the treaties signed in this period have had a lasting effect on the relationship between Indigenous Peoples and the Federal Government. Certain treaties still grant hunting, fishing, and land rights to Indigenous Peoples, but because of the number of treaties that are in force, the enforcement of these rights varies.<sup>xlix</sup> Modern United States law also recognises a general trust relationship between the United States Government and Indigenous Peoples directly borne out if its treaty obligations.<sup>i</sup> The content of this trust relationship and the duties that it imposes remain in dispute, as does its effect on modern day claims to sovereignty.<sup>ii</sup> The volume of treaties signed by the United States Government has meant that treaty rights in the United States are assessed against individual treaties and not as a whole. This has resulted in a broadly inconsistent approach.

## The Sami

The Indigenous Sami Peoples of Scandinavia live across Finland, Norway, Sweden, and on the Kola peninsula in Russia.<sup>iii</sup> The Sami Peoples have an interest in language and cultural protection and land rights and have sought recognition through other means than a formal treaty.

Aside from a 1751 treaty between Norway and Sweden that allowed the Sami rights to follow grazing reindeer across the two countries, Sami Peoples have not historically had legal recognition in any of these four countries in which their traditional lands fall.<sup>iiii</sup> Over the past four decades, the protections for the language and culture of the Sami have gradually become political issues for the governments of Norway, Finland, and Sweden respectively, culminating in constitutional recognition, protections for language, and a Sami parliament in each of three countries.<sup>lv</sup> The Sami parliament has a slightly different role in each country, but generally advises the national government on Sami issues and language protection. In 2005, land rights for the Sami Peoples in Norway were recognised and significant territory was returned in a region with a high Sami population.<sup>lv</sup>

## **Conclusion**

The history of the treaties and engagement with Indigenous Peoples across the world demonstrates the challenges that each of these Peoples continue to face but the lessons from their experiences are instructive. A Treaty is important to acknowledge traditional ownership of the land by the Aboriginal Peoples of New South Wales and their sovereignty. A Treaty between the Aboriginal Peoples of New South Wales and the New South Wales Government also presents an opportunity to enshrine Aboriginal rights to language and culture through education. The Canadian experience has shown that treaty documents, even those agreed in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, are considered useful to protect the future of Indigenous Peoples' identity in the 21<sup>st</sup> century and beyond.

A Treaty in New South Wales in the 21<sup>st</sup> century is not only about redressing past injustices. A Treaty with the Government of New South Wales that contains rights in areas such as education can be an enduring document that guarantees the rights of the Aboriginal Peoples of New South Wales.

## Articles of the Treaty

A treaty between the Aboriginal Peoples of New South Wales and the Government of New South Wales must include education: the Aboriginal Peoples of New South Wales know that education is critical to the future of our Peoples.

“Education gives us an enormously important start in life so it must be available, accessible and appropriate without discrimination for the youth of our country.”<sup>lvi</sup> Professor Tom Calma

For Aboriginal Peoples, there are two kinds of education.

The first is culture and heritage. This is our education and always has been.

“The white man’s school was only a part of our life, and not the most important part. We had the white feller school all day, then in the afternoon we’d have to learn all our Aboriginal training. Our teachers were our grandparents and our oldest aunty ... But the most special teachers were uncles – our Mum’s brothers.”<sup>lvii</sup> Dr Evelyn Crawford

The UN Declaration of the Rights of Indigenous Peoples states that it is a human right for us to have an education in our own culture and language to teach our children their heritage. Because our education is linked to the cultures and languages of our Nations, it must have its foundation in the lands of these original Nations and so be locally based.

“Culture, family and community are important protective factors that promote the resilience and wellbeing of our children and young people.

“We know that Aboriginal and Torres Strait Islander children are best served when they are supported to maintain their connection to family, community and culture. The experiences of the Stolen Generations demonstrate the devastation of severing these connections.”<sup>lviii</sup> Commissioner Mick Gooda

The second is Western education, which gives people economic independence:

“...education is the cornerstone of human development, of life opportunities and of full participation in a democratic society such as ours. It is well established that access to education has significant implications for the future health, well-being and socio-economic status of people the world over. It is no accident that education is a fundamental human right.”<sup>lix</sup> Professor Tom Calma

For our young people to thrive, both these elements of education must be delivered with equal commitment and equal resourcing to ensure equal quality.

For all our Peoples to come together, for the people of New South Wales to “...celebrate First Australians and the extraordinary wonderful unique history we have in this country”<sup>lx</sup> (Hon Linda Burney MP), we also offer to provide this education to all students in New South Wales, in appropriate ways which are designed and approved by our elders and appropriate knowledge holders.

Two elements will form the education articles of the Treaty:

1. **Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales, through Languages, Curriculum, and the Cultural competence of the workforce;**
2. **Self-determination.**

“One of the foundational principles of a treaty in Australia would need to be self-determination. Without communities in the driving seat of their futures, the gap will continue to widen between Indigenous and non-Indigenous Australians. Without the right and means to self-determine, there is no chance to redress the wrongs that have occurred for the past 230 years.”<sup>lxi</sup> Natalie Cromb

In acknowledgement of the fact that there are many Aboriginal Peoples in New South Wales, each with their own language, history and cultural heritage, self-determination must also include working with Aboriginal people at the local level.

In addition, we call for the implementation of ‘Jordan’s principle’<sup>lxii</sup>, adapted to the New South Wales context. Jordan’s Principle ensures the provision of services and is an overarching principle for the implementation of the entire Treaty. It puts the needs of people first.

The Treaty must have its foundations in our enduring heritage and cultures. It must acknowledge the truths of our history and our present. And it must include elements to enable us to build a better future.

“At the heart of the identity of Indigenous peoples is our distinct culture, deeply rooted in our traditions, our knowledges and the lands of which we are a part. Our being is steeped in the wisdom we have inherited from our ancestors.”<sup>lxiii</sup> Professor Michael Dodson AM

## **Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales.**

Our Treaty is focused on the future of our Peoples. Education is central to that future.

“All countries, regardless of their national wealth, stand to gain from more and better education. ...providing every child with access to education and the skills needed to participate fully in society would boost GDP by an average 28% per year in lower-income countries and 16% per year in high-income countries for the next 80 years.”<sup>lxiv</sup>

For our Peoples, better education must be both better western education and better cultural education: better western education, to promote economic health and well-being through greater prosperity and better employment; better Aboriginal education, with greater access to and support for our languages, cultures and heritage. Aboriginal education must also be connected to country, because it is on country that our language, culture and heritage are based.

We therefore call for a range of measures to build cultural knowledge for the Aboriginal Peoples of New South Wales, to reverse “...the decades of social, economic and cultural privation.” It is more than a matter of survival for Aboriginal Peoples: it is a means of “...achieving healthy cultural being which achieves healthy citizenship.”<sup>lxv</sup>

“For contemporary Aboriginal cultural identity in NSW to healthily thrive it must be re-embedded as closely as possible within foundation knowledge systems. This is a matter of psycho-social and psycho-cultural health and wellbeing for each Aboriginal citizen and community within NSW.”<sup>lxvi</sup> Dr Shayne T. Williams

We believe that there are benefits to every Australian in understanding their own country, its history, heritage and culture, more deeply. Further, we assert that Aboriginal Peoples and Communities have much to teach Australians about the countries on which they live, by which we also mean the traditional Aboriginal lands.

We are therefore offering, under this Treaty, to extend those benefits to all the Peoples of New South Wales, both Aboriginal and non-Aboriginal.

“Learning about Aboriginal and Torres Strait Islander histories and cultures allows students to develop respect for diversity and understanding of cultural difference. It provides all students with a rich and well-rounded knowledge of Australia’s history. Furthermore, it promotes the closing of the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities. The inclusion of Indigenous content in classroom teaching has been shown to improve educational outcomes of Indigenous students.”<sup>lxvii</sup> Jessica Rogers, National NAIDOC Youth of the Year winner.

Therefore, the first article of this Treaty for education that we call for is ***Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales.***

There are three aspects to this article:

- Languages;
- Curriculum; and
- Cultural competence.

To ensure its success, the implementation of this article must be undertaken through the second article, ensuring a process of ***Self-determination.***

## **Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales:**

### **Languages**

Language, culture and heritage are inextricably linked. It is through language that we teach our children about their culture and heritage.

*“In the broadest sense any initiative aimed at continuing our Indigenous languages and cultures should be directed towards an ultimate vision centred on a future where **Indigenous mother tongue and mother culture stand as sovereign within Indigenous home and community.**”*<sup>lxviii</sup> Dr Shayne T. Williams

We know that language learning builds neural pathways. We express our cultures through language and so language and culture are inextricably intertwined. The well-documented suppression of Aboriginal languages meant that elders were unable to teach the young people of their societies about their own culture and pass on their cultural knowledge.

*“Oral languages are also only passed through the generations by contact with elders. Language held the key to spirituality, land and kinship. ‘Oh, it’s our lifeblood. This is what we tell the young people. You have to know your language because you’ll never be able to learn your Dreaming and if you don’t know your Dreaming you can’t identify where you belong. If you don’t identify where you belong you may as well say you’re dead. As an Aboriginal person you have to know your language to be able to learn your Dreamings.”*<sup>lxix</sup>

In respect of Article 14 of the United Nations Declaration of the Rights of Indigenous Peoples, we call for the Government of New South Wales, “...in conjunction with indigenous peoples (sic), (to) take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.”

The Treaty should reflect this right.

### **Questions**

How might the recovery, revoicing and re practising of the Aboriginal Languages of New South Wales best be expressed in the Treaty?

What Aboriginal cultural issues will need to be considered?

How might the recovery, revoicing and re practising of the Aboriginal Languages of New South Wales best be described in and implemented through the Strategic Plan?

What are we doing well now that we can build on?

What changes in legislation, policy and procedures would need to occur for this to be implemented?

How might this operate best at the different levels of early childhood, primary and secondary school, vocational education and training, and higher education?

## **Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales:**

### **Curriculum**

We call for the embedding of Aboriginal culture, heritage and languages throughout educational curricula at all levels of education, noting the role of respected knowledge holders and elders in holding and teaching culture and language.

“There is no denying that all peoples must be guaranteed fundamental rights such as the right to adequate food and health and just treatment. But what has been missing from the human rights framework is an appreciation of the importance of culture and identity. The dimension of the rights of peoples.”<sup>lxx</sup> Professor Michael Dodson AM

Originally, the school curriculum was silent on Aboriginal history, a manifestation of the false doctrine of *terra nullius*. More recently, Aboriginal studies has been presented as a subject within the curriculum. This is not sufficient.

The study of Aboriginal languages, culture and heritage should be embedded throughout the curricula of every level of education, placing the elements at the heart of students’ educational experiences. Young Aboriginal people require this to succeed both in the western world and in their own traditional cultures. Young non-Aboriginal people require this to recognise the country in which they live.

Under this Treaty, we call for the provision of education in Aboriginal culture and language for Aboriginal students. Under this Treaty, we are also offering to share our knowledge appropriately with the non-Aboriginal Peoples of New South Wales. This process must of course involve Aboriginal Elders and appropriate holders of knowledge, in recognition of the fact that some cultural knowledge is gender-specific and that some sacred knowledge may not be shared.

Together we can provide an opportunity for all students in New South Wales, to help them understand the country they live in, its rich heritage and its many languages and cultures.

### **Questions**

How might embedding culture, heritage and languages into curriculum best be expressed in the Treaty?

What Aboriginal cultural issues will need to be considered?

How might embedding culture, heritage and languages into curriculum best be described in and implemented through the Strategic Plan?

What are we doing well now that we can build on?

What changes in legislation, policy and procedures would need to occur for this to be implemented?

How might this operate best at the different levels of early childhood, primary and secondary school, vocational education and training, and higher education?

## **Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales:**

### **Cultural competence of the workforce**

Cultural competence of the education workforce will be achieved through embedding the principles of cultural respect and cultural safety:

“It’s vital that teachers feel comfortable broaching this area of working with Indigenous people to capitalize on children’s early cultural learning. We want to give teachers the skills to find alternative teaching styles that encourage children to explore and branch out from their prior learning in the home environment to school.”<sup>lxxi</sup> Aunty Pat Doolan

To enable all staff in educational institutions to implement the strategic plan which will underpin the Treaty, they will need to be culturally competent: “...the Aboriginal cultures of NSW...are founded on spiritual systems of knowledge that define identity and the day-to-day dynamics of family and community.”<sup>lxxii</sup>

They will need to understand:

- the multi-generational consequences of colonisation, paternalism and the welfare system in the lives of Aboriginal peoples of NSW and their impact on family
- the cultural issues that Aboriginal families and communities face, and how this impacts day-to-day community life and identity
- cultural communication, including the verbal and non-verbal intricacies of Aboriginal English and the integral role Aboriginal English has as the language of community.<sup>lxxiii</sup>

They will need to learn how to build places of cultural safety, environments where “...there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning, living and working together with dignity and truly listening.”<sup>lxxiv</sup>

### **Questions**

How might building the cultural competence of the education workforce best be expressed in the Treaty?

What Aboriginal cultural issues will need to be considered?

How might the cultural competence of the workforce best be described in and implemented through the Strategic Plan?

What are we doing well now that we can build on?

What changes in legislation, policy and procedures would need to occur for this to be implemented?

How might this best operate for different kinds of staff and different levels of education and training?



## Self-determination

Self-determination should operate at the community level and at the individual level. At the community level, this involves working together.

“All the decisions concerning we in the Aboriginal community have been made for use by non-Aboriginal people, looking at the problems through their own eyes and coming up with solutions that fit into their particular priorities and values. And then saying you need or must do this or must do that...instead of sitting down with us and discussing the whole problem with us and asking us to come up with solutions to our own problems. And then working together so as we can bring about a change by the ideas that come from us as Aboriginal people.”<sup>lxxv</sup> Senator Neville Bonner

At the individual level, self-determination gives people the power to determine their own life path.

“When you educate a person, you liberate them from being a victim in life because you create the capacity for them to acquire knowledge to make informed consent decisions within the context of their life. Education develops within a person the wisdom to control their life but equally the capacity to question the way in which a government leads a nation.”<sup>lxxvi</sup> The Hon Ken Wyatt MP

It is destructive for non-Aboriginal people to make decisions on behalf of Aboriginal Peoples. Nor is it sufficient to consult with single representatives of Aboriginal Peoples without developing relationships. It is essential that communities are involved at the local level in decision-making that affects them. Effective negotiation and consultation, using a distributed network, result in decisions that can be implemented successfully.

As Article 14 of the United Nations Declaration of the Rights of Indigenous Peoples states, “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.” This should be represented through the Treaty.

## Questions

How might self-determination for Aboriginal Peoples in education best be expressed in the Treaty?

What Aboriginal cultural issues will need to be considered?

How might self-determination in education best be described in and implemented through the Strategic Plan?

What are we doing well now that we can build on?

What changes in legislation, policy and procedures would need to occur for this to be implemented?

How might this operate best at the different levels of early childhood, primary and secondary school, vocational education and training, and higher education?

## **Makarrata – Making Peace**

“The history of Australian politics is littered with broken promises, vain hope and thwarted ambition. ... Gallarwuy Yunupingu...says it’s time for a final settlement. It is the essence of Makarrata: making peace. ...the First Peoples extending a hand to those who have come after.”<sup>lxxvii</sup>

In this spirit, we offer a Treaty.

Our Treaty should include two articles for education:

- Instilling a profound knowledge of Aboriginal culture and heritage in the people of New South Wales, through languages, curriculum and cultural competence; and
- Self-determination.

To achieve this, education in New South Wales must change.

Aboriginal Peoples need better western education and better Aboriginal education. We need better western education, to increase our economic health and well-being. We need better Aboriginal education, to increase our knowledge and understanding of our languages, cultures and heritage. We need these two elements to be delivered in congruence, with each supporting the development of the other.

But Makarrata requires more: to make peace, non-Aboriginal people need an understanding of our history, cultures and languages. To support this, our elders and appropriate knowledge holders offer to assist the all the Peoples of New South Wales to understand and appreciate the history, languages and cultures of our Nations.

If New South Wales is to have a bright future, all our Peoples need to be involved in creating it, both Aboriginal and non-Aboriginal.

This is how we in New South Wales can achieve Makarrata: “the coming together after a struggle.”<sup>lxxviii</sup>

***All education: All students, All staff, All Peoples***

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