

Native Tongue Title: compensation for the loss of Aboriginal languages

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Abstract: *This paper proposes the enactment of an ex gratia compensation scheme for loss of Indigenous languages in Australia. Although some Australian states have enacted ex gratia compensation schemes for the victims of the Stolen Generation policies, the victims of 'linguicide' (language killing) are largely overlooked by the Australian Government. Existing grant schemes to support Aboriginal languages are inadequate, and they should be complemented with compensation schemes, which are based on a claim of right. The proposed compensation scheme for the loss of Aboriginal languages should support the effort to reclaim and revive the lost languages. We first outline the history of linguicide during colonisation in Australia. We then put a case for reviving lost Aboriginal languages by highlighting the benefits of language revival. After evaluating the limits of existing Australian law in supporting the language revival efforts, this paper proposes a statute-based ex gratia compensation scheme, which can be colloquially called 'Native Tongue Title'.*

Background

Language is an archaeological vehicle, full of the remnants of dead and living pasts, lost and buried civilizations and technologies. The language we speak is a whole palimpsest of human effort and history. (Russell Hoban, children's writer, 1925–2011, in Haffenden 1985:138)

Linguicide (language killing) and glottophagy (language eating; see Zuckermann and Monaghan

2012) have made Australia an unlucky place. These twin forces have been in operation in Australia since the early colonial period, when efforts were made to prevent Aboriginal people from continuing to speak their languages in order to 'civilize' them. Anthony Forster, a nineteenth-century financier and politician, gave voice to a colonial linguicide ideology, which was typical of much of the attitude towards Australian languages (report on a public meeting of the

South Australian Missionary Society in aid of the German Mission to the Aborigines, Southern Australian, 8 September 1843, p.2, in Scrimgeour 2007:116):

The natives would be sooner civilized if their language was extinct. The children taught would afterwards mix only with whites, where their own language would be of no use — the use of their language would preserve their prejudices and debasement, and their language was not sufficient to express the ideas of civilized life.

Even Governor of South Australia George Grey, who was relatively pro-Aboriginal, appeared to share this opinion and remarked in his journal that 'the ruder languages disappear successively, and the tongue of England alone is heard around' (Grey 1841:200–01). What was seen as a civilising process was actually the traumatic death of various fascinating and multifaceted Aboriginal languages.

It is not surprising, therefore, that of approximately 330 known Aboriginal languages, today only 13 (4 per cent) are spoken natively by children. Blatant statements of linguistic imperialism, such as the ones made by Forster and Grey, now seem to be less frequent, but the processes they describe are nonetheless still active.

Approximately 7000 languages are currently spoken worldwide. The majority of these are spoken by small populations. Approximately 96 per cent of the world's population speaks around 4 per cent of the world's languages, leaving the vast majority of tongues vulnerable to extinction and disempowering their speakers. Linguistic diversity reflects many things beyond accidental historical splits. Languages are essential building blocks of community identity and authority. However, with globalisation of dominant cultures, cultures at the periphery will be marginalised, and this will possibly lead to language loss. Language reclamation will become increasingly relevant as people seek to recover their cultural autonomy, empower their spiritual and intellectual sovereignty, and improve their wellbeing.

Revivalistics — including Revival Linguistics and Revivalomics — is a new trans-disciplinary

field of enquiry studying comparatively and systematically the *universal* constraints and global mechanisms on the one hand (see Zuckermann 2009), and *particularistic* peculiarities and cultural relativist idiosyncrasies on the other, apparent in linguistic revitalisation attempts across various sociological backgrounds, all over the globe (Zuckermann and Walsh 2011). Revivalistics combines scientific studies of *native* language acquisition and *foreign* language learning: language reclamation is the most extreme case of foreign language learning.

This paper explores the legal dimensions of Revivalistics in Australia. It reiterates the benefits of language revival for Australia and for the Aboriginal and Torres Strait Islander peoples, and proposes an enactment of new legislation to compensate for the lost Aboriginal languages. The proposed legislation can be colloquially called Native Tongue Title, modelled upon the established concept of Native Title.

We acknowledge that Native Title is not a compensatory mechanism. Native Title is the legal recognition by Australian law that some Indigenous people have existing and continuing rights to, and interests in, their land that come from their traditional laws and customs. After the recognition of Native Title, the government cannot extinguish their rights to land without compensation. Compensation in relation to Native Title generally arises when groups have successfully claimed Native Title and then negotiate positive economic terms with mining companies and others who want to take over these lands. We believe that we can draw a parallel with concepts explored in Native Title. We argue that the Australian Government ought to compensate Indigenous people not only for the loss of *tangible land*, but also for the loss of *intangible language* (language). The legislation to compensate for the linguisticide will recognise the Indigenous peoples' rights to revive or maintain their languages. The compensation money could be used to support reclamation and linguistic empowerment efforts. We hope that the enactment of new legislation would help reinstate Indigenous peoples' authority and ownership of their cultural heritage.

Why should we be reviving languages? Ethical reasons

Australia's history is marked by the displacement of their original inhabitants and the arrival of settlers of European descent. The Torres Strait Islander peoples, in this context, have maintained their language, in this quote Nels quote Nels language h If you talk his heart.' human rig gious or li use their c Internation Rights). Th themselves just in the has become

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Why should we invest time and money in reviving languages?

Ethical reasons

Australia's languages have not just been dying of their own accord; many were destroyed by settlers of this land. We owe it to the Aboriginal and Torres Strait Islander people to support the maintenance and revival of their cultural heritage, in this instance through language revival. To quote Nelson Mandela, 'if you talk to a man in a language he understands, that goes to his head. If you talk to him in *his* language, that goes to his heart.' According to the international law of human rights, persons belonging to ethnic, religious or linguistic minorities have the right to use their own language (Article (art.) 27 of the International Covenant on Civil and Political Rights). Thus every person has the right to express themselves in the language of their ancestors, not just in the language of convenience that English has become.

Through supporting language revival, we can appreciate the significance of Indigenous languages and recognise their importance to Indigenous people and to Australia. We can then right some small part of the wrong against the original inhabitants of this country and support the wishes of their ancestors with the help of linguistic knowledge.

Aesthetic reasons

The linguist Ken Hale, who worked with many endangered languages and saw the effect of loss of language, compared losing language to bombing the Louvre: 'When you lose a language, you lose a culture, intellectual wealth, a work of art. It's like dropping a bomb on a museum, the Louvre' (*Economist* 2001). A museum is a repository of human artistic culture. Languages are at least equally important since they store the cultural practices and beliefs of an entire people. Different languages have different ways of expressing ideas and this can indicate which concepts are important to a certain culture.

For example, in Australia information relating to food sources, surviving in nature and Dreaming/history is being lost along with the loss of Aboriginal languages. A study by Boroditsky and Gaby (2010) found that speakers of Kuuk

Thaayorre, a language spoken in Pormpuraaw on the west coast of Cape York, do not use 'left' or 'right', but always use cardinal directions (i.e. north, south, east, west). They claim that Kuuk Thaayorre speakers are constantly aware of where they are situated and that this use of directions also affects their awareness of time (Boroditsky and Gaby 2010). Language supports different ways of 'being in the world'.

Such cases are abundant around the world. Here are some more examples:

- *Mamihlapinatapai* is a word in the Yaghan language of Tierra del Fuego in Chile and Argentina. It refers to 'a look shared by two people, each wishing that the other will offer something that they both desire but have been unwilling to suggest or offer themselves'. This word can be broken down into smaller parts, or morphemes, thus *ma-* is a reflexive/passive prefix (realised as the allomorph *mam-* before a vowel); *ihlapi* 'to be at a loss as what to do next'; *-n*, stative suffix; *ata*, achievement suffix; and *-apai*, a dual suffix, which has a reciprocal sense with *ma-* (circumfix).
- Ancient Persian *nakhur* is a 'camel that will not give milk until her nostrils have been tickled'. Clearly, camels are very important in this society and survival may have historically depended on camel milk.
- *Tingo*, in Rapa Nui (Pasquan) of Easter Island (Eastern Polynesian language), is 'to take all the objects one desires from the house of a friend, one at a time, by asking to borrow them, until there is nothing left' (De Boinod 2005).

Such fascinating words should not be lost. They are important to the cultures they are from and make the outsiders reflexive of their own cultures. Through language maintenance and reclamation we can keep important cultural practices and concepts alive.

Utilitarian benefits

Language revival benefits the speakers involved through improvement of wellbeing, cognitive abilities and mental health (see Zuckermann and Walsh 2014). Hallett et al. (2007) report that in British Columbia, Canada, there is a clear correlation between youth suicide and lack of conversational knowledge in the native

language. Language revival reduces delinquency and increases cultural tourism. Language revival has a positive effect on the mental and physical wellbeing of people involved in such projects. Participants develop a better appreciation of and sense of connection with their cultural heritage. Learning the language of their ancestors can be an emotional experience and can provide people with a strong sense of pride and identity. As the Aboriginal politician Aden Ridgeway (2009) said, 'language is power; let us have ours!' Small changes can impact people in big ways. A participant at a Barngarla Aboriginal language reclamation workshop in May 2012 (the language of Eyre Peninsula, South Australia) wrote that she found learning the language 'liberating', that it gave her a 'sense of identity' and that 'it's almost like it gives you a purpose in life'. Another participant said, 'our ancestors are happy'.

There are also cognitive advantages to multilingualism. Several studies have found that bilingual children have better non-linguistic cognitive abilities compared with monolingual children (Kovács and Mehler 2009) and improved attention and auditory processing (Krizman et al.

2012: 7879): the bilingual's 'enhanced experience with sound results in an auditory system that is highly efficient, flexible and focused in its automatic sound processing, especially in challenging or novel listening conditions'.

As another cognitive advantage of language revival, a recent study found that decision-making biases are reduced when using a second language (Keysar et al. 2012:661):

Four experiments show that the 'framing effect' disappears when choices are presented in a foreign tongue. Whereas people were risk averse for gains and risk seeking for losses when choices were presented in their native tongue, they were not influenced by this framing manipulation in a foreign language. Two additional experiments show that using a foreign language reduces loss aversion, increasing the acceptance of both hypothetical and real bets with positive expected value. We propose that these effects arise because a foreign language provides greater cognitive and emotional distance than a native tongue does.

Therefore, language revival is not only empowering culturally, but also cognitively. Evidence also shows that being bilingual or multilingual can slow dementia, improving quality of life for many and reducing money spent on medical care. There are severe problems with mental health among Aboriginal and Torres Strait Islander peoples. According to the National Survey of Mental Wellbeing (see ABS 2010), 40 per cent of Australians (not necessarily Indigenous) suffer from a mental disorder at some stage of their life. Furthermore, 20 per cent of participants experienced some kind of mental disorder in the past 12 months. In comparison, 31 per cent of respondents aged 15-plus participating in the National Aboriginal and Torres Strait Islander Social Survey (ABS 2010) had experienced high or very high levels of psychological distress *in the four weeks leading up to the interview alone* (ABS 2010). This is 2.5 times the rate of non-Indigenous Australians.

Language reclamation increases feelings of wellbeing and pride among Indigenous people. Many of them are disempowered because they 'fall between the cracks', feeling that they are



Figure 1: Port Lincoln, South Australia, 18–20 April 2012: Ghil'ad Zuckermann (middle back row) with Aboriginal participants in one of the first Barngarla Aboriginal language reclamation workshops. Howard Richards, the man with the jacket, is a Stolen Generation Barngarla Elder. (The Barngarla people have given their permission to use this photograph.)

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neither whitefellas nor in command of their own Aboriginal heritage. As Fishman (2006:90) puts it:

The real question of modern life and for RLS [reversing language shift] is...how one... can build a home that one can still call one's own and, by cultivating it, find community, comfort, companionship and meaning in a world whose mainstreams are increasingly unable to provide these basic ingredients for their own members.

It has been shown that people involved in Indigenous language reclamation see an improvement in non-language subjects, linked to educational empowerment and improved self-confidence. Educational success directly translates to improved employability and decreased delinquency. Approximately \$50,000 per language per year was provided in 2010–11 by Indigenous Languages Support to 78 projects involving 200 languages (Office for the Arts 2013). The cost of incarceration is \$100,000 per person per year and the cost of adolescent mental health \$1395 per patient per day.

Finally, cultural tourism already represents an important part of Australia's economy, with many tourists wishing to learn about Indigenous cultures. A growth in cultural tourism has been recorded in some rural centres where language revival projects have been implemented (Clark and Kostanski 2005). Aboriginal and Torres Strait Islander cultures represent part of Australia's image overseas and greatly contribute to tourism. We need to help preserve and revive these languages and protect cultural knowledge in order to maintain this point of attraction. This tourism not only benefits the economy, but can also provide work and opportunities for Indigenous people.

Establishing Revivalistics in Australia has the potential of turning some Indigenous Australians into experts of language revival, making language revival part of their cultural identity. They will then be able to assist others in language revival. Language revival has the potential to become an important part of Indigenous initiatives, bringing many benefits to the wider community. Language revival can aid in 'closing the gap' and encourages cultural tourism while enriching Australia's multicultural society.

Case for compensation for the loss of language

We have so far outlined the benefits of language revival in Australia. In this paper we propose a legal mechanism to support the revival of lost Aboriginal languages.

'Hard law' involves the introduction of norms by which states have to abide. 'Soft law' puts forward goals and models from which states can draw inspiration. The rapidly evolving patterns of societies and of the international community make it difficult to design general and rigid tools of minority protection that may be applied in different contexts. Therefore, soft law is considered by some to be an efficacious means of dealing with certain areas of the law designed to recommend, and not oblige, states to behave in a certain way. One might argue that international law cannot establish the degree or instrument of protection that is more effective for a minority in a certain space and time, but can address specific issues and design general models of protection to be implemented by states according to their specific capabilities, necessities and goals.

That said, international law recognises the right to self-determination of indigenous peoples, intended as the right to maintain and develop their cultures and traditions. As part of self-determination, specifically redressing past discrimination and assimilation, international law also recognises the right to revitalise languages and customs that ceased to be practised due to cultural oppression. However, international legal instruments on indigenous peoples do not spell out specific legal instruments to be adopted, leaving states free to address the issues according to their capabilities and realities. Australia has already developed several instruments dealing with Indigenous rights, which can be adapted to the right to revitalise Indigenous languages.

We believe that this is best done through awarding compensation to Aboriginal groups who have lost their languages as a result of forcible removal of their children or as a result of punitive language measures at schools and elsewhere. An Aboriginal group can hold the compensation money on trust for the revival of Aboriginal languages. The Aboriginal community can then use the compensation for initiatives to revive its language. In this

respect, *Mabo v Queensland* [No. 2] (1992) 175 CLR 1 (the Mabo decision) limits the time scope for compensation after the *Racial Discrimination Act* 1975 (Cth) and recognises that Native Titles are subject to extinguishment. The Mabo decision, however, deals with property rights, which bear considerable concerns with respect to the use of land and resources, with significant economic implications. The Native Tongue Title, on the contrary, regards the compensation of past assimilationist and discriminatory policies that led to the death of Aboriginal languages. Although the connection to the land and Indigenous customs are central to the recognition of the native property title, the Native Tongue Title regards the recognition of a communal identity that, even though lost, may be revitalised without economic consequences on the country in terms of land and resources and in a pure compensatory perspective. In other words, while the native property title has consequences for the general citizenry of a country in that it may change individual and collective use of land and resources, whereby its recognition is limited in scope and time, the Native Tongue Title regards the Indigenous collective exclusively, in that it aims to revitalise identity practices (Indigenous languages) that have been engulfed by assimilation.

A case for demanding compensation for the loss of language is not a novel idea. In 1997 the Human Rights and Equal Opportunity Commission released the *Bringing them home* report, acknowledging that the 'children who were removed have typically lost the use of their languages' and that the 'loss of language is intimately connected with the loss of identity for those forcibly removed and their descendants' (HREOC 1997:Recommendations 11–12). The report emphasises the 'healing power' of apology and compensation, and makes a recommendation to compensate the affected victims of Stolen Generations who have suffered the loss of cultural rights. With regards to the loss of language, it recommends that the Commonwealth Government 'expands the funding of Indigenous language, culture and history' (Recommendation 12a). Then Prime Minister John Howard accepted the findings of the report, but refused to make an official apology. The subsequent change of government led to the new Prime Minister Kevin

Rudd's unreserved apology in 2008 (Australian Government 2008), but he nonetheless refused to pay compensation to the victims (Grattan and Wright 2008). An attempt to pass the Stolen Generation Compensation Bill 2008 (Cth), which proposed ex gratia compensation for the victims of the Stolen Generations policies, failed. Compensation for the Stolen Generations, and the associated loss of language, is thus long overdue.

We are aware of existing Commonwealth and state government grant schemes to revive, develop and promote Aboriginal languages. For example, the Australian Government launched its National Indigenous Language Policy in 2009 to show its commitment to 'addressing the serious problem of language loss' in Indigenous communities (Ministry for the Arts n.d.). The policy provides for the Maintenance of Indigenous Languages and Records program (MILR), originally administered by the Office for the Arts (OFTA). MILR (now ILS, i.e. Indigenous Languages Support) offers grants to support community-based language projects, including the operation of language centres, production of language materials and resources, and recording of languages (Australian Government 2010–11). In the 2010–11 funding round, \$7.9 million was allocated to support 63 projects. Similarly, at a state level, the New South Wales Minister for Aboriginal Affairs granted approximately \$1.2 million in 2011 to the New South Wales Aboriginal Education Consultative Group to develop the Centre for Aboriginal Languages Coordination and Development (CALCD). CALCD aims to facilitate the development of community-based Aboriginal language projects.

Grant schemes and compensation schemes may serve identical purposes in terms of the provision of money to Indigenous peoples to revive their languages. It is not our intention to denigrate the effectiveness of existing grant schemes. These Commonwealth and state grant schemes are proving to be effective. For example, the Ngarrindjeri language of South Australia was spoken only by a handful of Elders in 2004. According to the census, speakers of the language increased to 270 in 2011 (see Ministry for the Arts 2012) — perhaps in part due to Indigenous languages support funding from the Commonwealth Government.

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However, despite the perceived effectiveness of grant schemes, there are two reasons we still advocate the enactment of compensation schemes to replace or supplement the existing grant schemes.

First, government policies are not legally enforceable, are known to be capricious and can be abandoned at any time. A change of government would threaten continued support for the revival of Aboriginal languages. Even within the same government, policies can change with shifting priorities. The abandonment of bilingual education in the Northern Territory is a case in point (Simpson et al. 2009). The Northern Territory Minister for Employment, Education and Training, Marion Scrymgour, announced in October 2008 that there would be a greater focus on teaching English in remote Aboriginal communities. Indigenous languages were perceived to hinder the acquisition of English. Simpson et al. (2009:15) articulate the problem with government policies:

The difficulty in being dependent on government policy is that, while Australia is a pluricultural country, the majority group is by and large monolingual...This group dominates the design of education curricula. These curricula often disadvantage children who do not speak the dominant language, because of the curriculum-framers' lack of knowledge about bilingualism, language acquisition and the acquisition of literacy. This has the unfortunate result that Australia has yet to develop 'an *ethos* which balances and respects the use of different languages in daily life'...

A quick change in government policy can damage the revival of Indigenous languages that has taken years to develop. Given the limitation of government policies, compensation schemes backed up by legislation will better protect the linguistic rights of Indigenous people.

Second, while compensation is given as a matter of right, grants are competitive. Under a grants scheme, Indigenous groups need to submit themselves to the critical assessment of government evaluators and taxpayers in order to revive their languages. It also requires technical expertise in writing successful grant applications. Out of the 130 applications for the MILR funding in the 2010–11 funding round, only 63 were successful

(MILR 2010–11). Under a compensation scheme, all who have lost their languages have a right to revive them, subject to the monetary limit of the compensation scheme.

Ultimately, it is a question of control and power. Whom are we trying to empower by the language measures? Putting money in the hands of Aboriginal groups directly will empower them to make their own choices about how it is spent, whereas allocating money centrally brings with it the inevitable denial of autonomy and also often paternalistic treatment. Indigenous people have no direct control over government policies (Simpson et al. 2009:15). Explicit legal protection is needed to restore power to Indigenous people so that they can determine their own futures.

Linguistic human rights

Now, what are potential legal sources for the proposed compensatory scheme? Linguistic human rights are traditionally considered part of minority rights, which are human rights collectively enjoyable by a specific group and are aimed at preserving its cultural and linguistic diversity. Indeed, preservation and management of diversity is a distinctive feature of liberal democracies, which do not rule out differential claims by fostering social processes of inclusion. On the contrary, liberal democracies have progressively adopted policies and instruments that favourably look upon diversity as a positive feature of inclusive societies by implementing mechanism of diverse cultural preservation according to what Kymlicka (2007:587) defines as 'citizenization'. With respect to indigenous peoples, the positive approach of states towards diversity management should not just aim at preserving diversity, but also at compensating past discrimination stemming from assimilationist and discriminatory policies, which brought about linguistic and traditional loss.

In this respect, international law on indigenous rights has also developed from a preservation principle towards a revitalisation principle: indigenous rights law first mainly focused on land rights and rights to access ancestral territories, but it has now adopted an approach focusing much more on culture, customs and traditions.

The 1989 International Labour Organization Convention No. 169 (Indigenous and Tribal

Peoples Convention) recognises the right of indigenous and tribal peoples to live according to their customs. In particular, articles 28 and 30 deal with linguistic rights, including the right to preserve, communicate and use the indigenous language in public domains. However, the United Nations Declaration on the Rights of Indigenous Peoples (adopted on 20 September 2007) specifically deals with the duty to redress for past discriminatory policies that led to assimilation (art. 8.2.d). In this frame, the declaration first recognises the right to 'practise and revitalize their cultural traditions and customs' (art. 11.1) and also calls upon states to 'provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs' (art. 11.2). Although Australia did not initially support this declaration, the objections mainly referred to land rights and the autonomy of indigenous communities. Together with Canada, New Zealand and the United States, Australia objected to the approach of the declaration in that it is likely to develop potentially unlimited property rights on ancestral lands. Furthermore, Australia objected to the construction of self-determination entailed in the declaration, in that it would lead to the recognition of the right of indigenous communities to be consulted on any law regarding indigenous communal matters: Australia proposed that indigenous people should be involved in the common democratic process in order to pursue their interests. No objection was raised regarding linguistic rights, which are not likely to impact on national integrity but rather focus on internal interests of indigenous communities.

Therefore, the right to revitalise a language that ceased to be practised because of past discrimination is an inherent indigenous right, and represents the future step in redress policies towards indigenous peoples for past discrimination. In this respect, indigenous rights differ from minority rights in terms of political and historical goals, while they share significant aspects in terms of legal approach. Indeed, linguistic rights as defined by international law can be applicable to indigenous peoples as well.

With respect to linguistic rights, the International Covenant on Civil and Political Rights (ICCPR) recognises both the right not to be discriminated against for one's linguistic identity (art. 26) and the right to use one's language as a distinctive feature of collective identity of a minority group (art. 27). Furthermore, art. 27 of the ICCPR specifically states that minority rights have collective dimensions, since minority members 'shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. Therefore, in order to protect indigenous rights and particularly linguistic rights, there needs to be a positive approach by states to actively design and implement tools of cultural preservation and revitalisation and not a mere guarantee of non-discrimination.

In this respect, the Human Rights Committee, the ICCPR monitoring body, in its General Recommendation No. 23 (adopted on 26 April 1994), has clearly stated that indigenous peoples fall within the ICCPR regime (par. 3.2), and that states need to positively adopt measures that ensure collective enjoyment of rights (pars. 6.1 and 7), whereas they are 'necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language' (par. 6.2).

The 'positive approach' stressed by ICCPR is also confirmed by General Recommendation No. 23 on 'Indigenous peoples' adopted by the Committee on the Elimination of Racial Discrimination on 18 August 1997. This recommendation not only stresses the importance of states adopting measures to ensure collective rights, but also calls upon states to 'ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages' (par. 4.e).

Significantly, the right to 'revitalize' a language is further specified in the Declaration on the Rights of Indigenous Peoples, as articulated by art. 13(1), which reads, 'Indigenous peoples have the right to *revitalize*, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their

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own names for communities, places and persons' (emphasis added).

As argued before, indigenous rights have evolved from 'preservation' of customs to 'restoration' of languages and traditions that have ceased to exist. Indeed, the term 'revitalise' encompasses the need not only to preserve the language, but also to recover one. In other words, language revival is the first step towards truly respecting the linguistic rights of indigenous peoples. This restorative approach is further confirmed by the call upon states to redress past discriminatory and assimilationist policies, as spelled out in art. 8.1 and 8.2.d of the Declaration on the Rights of Indigenous Peoples. However, international law instruments do not list mechanisms to be adopted, but leave states free to choose the tools deemed most effective.

With respect to Australia, both the federal government and federated states have developed instruments for preserving Indigenous culture, but no step has yet been taken towards the restoration of ceased cultural practices and languages. In this respect, we argue that language revitalisation does not operate in a legal vacuum: the Australian legal system recognises Native Title, which focuses on Indigenous rights on the land by virtue of traditional laws. Building upon this legal institution, we argue in favour of the recognition of Native Tongue Title, which not only furthers the positive approach towards Indigenous culture preservation, but also introduces the restoration of Indigenous culture in line with international law that calls upon states to redress past discriminatory policies. Arguably, Native Tongue Title is a concrete redress measure to ensure that language can be revitalised. Therefore, compensation for forced linguistic assimilation in Australia is well supported by the international human rights law. By recognising the Native Tongue Title, Australia will adopt a restorative approach, which is enshrined in recent development of indigenous international law. Furthermore, the Native Tongue Title is an effective tool, first, for redressing past discrimination and, second, for recognising the right to revitalise languages that ceased to be practices in virtue of forced assimilation.

That said, international minority rights and indigenous law is soft law, which means that there is no enforcing body, but only monitoring systems

or recommending bodies. Furthermore, Australia ratified the ICCPR in 1980, but has not incorporated the provisions into domestic law. The ICCPR is attached to a piece of domestic legislation, the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), which empowers the Australian Human Rights Commission to investigate violations of rights covered by the ICCPR. It is a 'toothless tiger', nonetheless, as the Commission's findings are not binding.

There has been no precedent in common law that considered the claim of compensation for the loss of aboriginal languages. Neither has there been an equivalent claim to legal compensation for loss of cultural rights. However, soft law is increasingly developing in areas such as minority rights and indigenous rights, since it provides general goals, recognises certain rights, and defines approaches and trends, while leaving states free to spell out policies, tools and mechanisms that suit specific situations and effectively accommodate collective claims.

Regarding Australia, the loss of linguistic and cultural heritage can be dealt with within private and constitutional law. With respect to private law, Australian courts have considered awarding compensation for the victims of Stolen Generations. *Trevorrow v State of South Australia* (No. 5) [2007] SASC 285 provides a precedent on the issue of compensation for the Stolen Generations. The case concerns Bruce Trevorrow, who was removed from his parents by the Aborigines Protection Board without their consent after being admitted to hospital in 1957. He was 13 months old. In his adulthood, he sued the South Australian Government for compensation. Justice Gray of the Supreme Court of South Australia held that it was reasonably foreseeable that separating a child from its parents would give rise to a risk of harm to the child, and consequently the State had breached its duty of care to Mr Trevorrow by removing him from the care of his parents. Justice Gray awarded compensation of \$777,000 to Mr Trevorrow.

The South Australian Government appealed the decision. In 2010 the Full Court of the Supreme Court of South Australia upheld Justice Gray's decision on the point of negligence that the Aborigines Protection Board owed Mr Trevorrow a duty of care to avoid causing injury by removing

him from the care of his parents. The precedent of *Trevorrow v State of South Australia* may help to clarify the issue of compensation for loss of language based on the tort of negligence. The Aborigines Protection Board could also have reasonably foreseen that the removal of children would damage them by taking away their opportunities for cultural fulfilment.

However, this avenue to claim compensation for language loss under tort law is likely to be unsustainable. While the main finding of the Full Court in *State of South Australia v Lampard-Trevorrow* [2010] SASC 56 was that the Aborigines Protection Board lacked the power to remove the child from his mother, the decision also considered the failure of the Aborigines Protection Board to balance the risk of harm through leaving Mr Trevorrow with his mother against the risk of psychiatric harm to Mr Trevorrow as a result of removing him from his mother. Compared to the threat of psychiatric harm that was being balanced in the case, the threat of language loss would arguably be given less weight. Similarly, in *Cubillo and Gunner v The Commonwealth* (includes summary) [2001] FCA 1213, involving two Indigenous plaintiffs seeking compensation for forced assimilation and loss of culture, the court dismissed the case because the plaintiffs failed to demonstrate that they were forcibly removed from their families and that there was a general policy consenting to the removal of Aboriginal children in order to assimilate them. These two cases pose several questions about the judiciability of assimilation. Indeed, even if it was successfully proved in court that a clear state policy of assimilation was the direct cause for the systematic forced removal of Aboriginal children from their families, it is still unclear how the damages could be defined.

Most importantly, the duty of care assumed by government in relation to removals arose from the government assuming responsibility for children after having removed them from their primary care givers. The claims for compensation for removal were based on the effect of specific government policy on individual Indigenous victims. In contrast, the case for compensation for language loss is a much broader claim related to the loss of culture, as a result of the general impact of colonialism. If compensation for loss of language is linked to Stolen Generations policy,

this will exclude many who lost their languages through other means. A claim of the latter nature has no legal precedent. Therefore, if the claim for the compensation for the language loss was made under the tort law, it is unlikely to be successful.

Moreover, the general approach to minority protection and protection of indigenous peoples is more likely to be formulated at a policy level rather than at a judicial level. First of all, minority protection and protection of indigenous peoples involve needs assessment, policy formulation and negotiation between the state and the group claiming protection, an approach highly unlikely to resort to court. Second, the legal basis of minority protection and indigenous peoples' rights encompasses soft law, not hard law, whereby it is not directly enforceable by any authority. Soft law in itself includes a series of legal instruments that states can use and adapt in the formulation of certain policies, taking into account their specific legal systems, political issues and communal interests of the groups to be protected. Finally, even if the resort to court was successful in demonstrating that an assimilation policy was implemented, the positive result of this eventual judicial recognition would be upon single individuals suing the state, without any other consequence concerning eventual compensations of communal cultural losses. Therefore, a policy approach envisaging the adaptation of soft law instruments to the specific legal, political and social conditions of Indigenous groups in Australia is deemed to be more successful in terms of preservation of cultural heritage and revitalisation of indigenous languages.

Nevertheless, it is important to note recent developments in the constitutional law of Australia. Currently, the Australian Constitution does not recognise the linguistic rights of Indigenous peoples in Australia. However, there is a move for a referendum to recognise Aboriginal and Torres Strait Islanders in the Constitution. An Expert Panel on constitutional recognition of Indigenous Australians recommended that the proposed referendum should include acknowledgment of the need to 'secure the advancement' of Indigenous people, and that Aboriginal and Torres Strait Islander languages should be recognised as the country's first official languages, along with English as the national language (for detailed discussion of this proposal, see Reilly 2013).

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Similarly, the South Australian Constitution recognised Indigenous languages in March 2013. The South Australian Constitution was amended to read, 'the Parliament, on behalf of the people of South Australia...recognises Aboriginal peoples as traditional owners and occupants of land and waters in South Australia and that...they maintain their cultural and heritage beliefs, *languages* and laws which are of ongoing importance' (s. 2(2)(b)(ii), emphasis added). Victoria, New South Wales and Queensland also recognise Indigenous peoples in their respective constitutions.

The likely outcome of a federal constitutional referendum, if put to the vote, is uncertain. Constitutional change requires the majority support of people in a majority of states, and thus very few referendums have been successful in Australian history. Nevertheless, in February 2013 the Commonwealth Government passed the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth). Section 3(3) reads, 'The Parliament, on behalf of the people of Australia, acknowledges and respects the continuing cultures, *languages* and heritage of Aboriginal and Torres Strait Islander peoples' (emphasis added). The purposes of the Act, as spelled out in its preamble, are to (1) place before the Australian people at a referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples, (2) to acknowledge the importance of the Expert Panel's recommendations, (3) to refine a proposal for a referendum in consultation with Aboriginal and Torres Strait Islander peoples and other Australians, and (4) to build the support and national consensus necessary for successful constitutional change. In other words, the Act is an important step towards achieving constitutional amendment.

If this Act is successful in achieving its purpose, and if the constitutional amendment is indeed passed, Indigenous languages may well be recognised as the first languages of Australia. There is yet little debate on what this recognition entails, legally speaking, and we do not intend to enter into this debate here. Recognition of Indigenous peoples and languages in the Constitution may not strictly form a legal basis for claiming compensation for the loss of language; however, it provides a justification for the statutory scheme that we propose.

To fill the legal gap between Australia's signing of the ICCPR and domestic legislation to implement the international standards, we recommend the passing of a legislative enactment that allows for the payment of compensation. We suggest that this ex gratia scheme be called Native Tongue Title. The constitutional amendment and the passing of the Aboriginal and Torres Strait Islander Peoples Recognition Act are evidence of emerging acknowledgment of Indigenous languages in the national legal framework. An enactment of a compensation scheme for lost Indigenous languages falls within this emerging trend, and thus should attract widespread support.

Ex gratia schemes: Native Tongue Title

Ex gratia compensation is a payment made at the discretion of the government. The Commonwealth Government can pass legislation to enable payment of compensation for language loss. Commonwealth power to pass this legislation is likely to fall under its race power (Australian Constitution, s. 51(xxvi)), and/or external affairs power (Australian Constitution, s. 51(xxix)). In this respect, the Native Tongue Title should function as a specific development of the ex gratia scheme to be applied to Indigenous groups deprived of their languages because of assimilationist policies.

The race power of the Constitution (s. 51) reads, 'The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: ...the people of any race...for whom it is deemed necessary to make special laws'. This power enables the Australian Parliament to pass laws for the protection of Aboriginal peoples. It was under this power that the *Native Title Act 1993* (Cth) was enacted. Likewise, the proposed ex gratia Native Tongue Title legislation would likely fall under the race power of the Australian Parliament.

In addition to the race power, Native Tongue Title legislation can be founded in pursuance with the external affairs power. To illustrate this point, an analogy with the foundation of Native Title is useful. In *Mabo v Queensland* [No.2], Queensland legislation that sought to extinguish Native Title without compensation was struck down under the *Racial Discrimination Act*

1975 (Cth). In turn, the Racial Discrimination Act was enacted pursuant to the external affairs power under the Constitution to give effect to the International Convention on the Elimination of all Forms of Racial Discrimination (Bartlett 2000). Similarly, ex gratia Native Tongue Title legislation can be enacted under the external affairs power to give effect to the ICCPR.

The ex gratia compensation schemes for Aboriginal language loss can be modelled after existing compensation schemes for Stolen Generations children. Some Australian state governments have already passed legislation and enacted schemes allowing for ex gratia compensation for the victims of the Stolen Generations. For instance, Tasmania passed the *Stolen Generations of Aboriginal Children Act 2006*, which provides for ex gratia payments to be made to the victims of Stolen Generations. Queensland has the Redress Scheme, which provides ex gratia payments ranging from \$7000 to \$40,000 to people who experienced abuse and neglect as children in Queensland institutions (Government of Queensland 2012). Western Australia also has a similar scheme. The latter two redress schemes are not exclusive for Indigenous peoples, but are for all children who experienced sexual abuse while in state care. We suggest that the proposed ex gratia Native Tongue Title legislation scheme be modelled after the states' Stolen Generations compensations schemes, especially that of Tasmania.

The Stolen Generations of Aboriginal Children Act in Tasmania established a Stolen Generations Fund, from which compensation was made to the victims of the Stolen Generation (s. 10). An amount of \$5 million was paid from the Consolidated Fund into the Stolen Generations Fund (s. 10). Applications for compensation were assessed by the Stolen Generations Assessor (s. 9). Out of 151 claims received, 106 claims were found to be eligible under the Act. Of the personal claimants, 84 successful personal claimants received about \$58,333 each. Twenty-two eligible children of deceased members of Stolen Generations received either \$4,000 or \$5,000 each, depending on how many people were within the particular family group (Tasmania Department of Premier and Cabinet 2008). The Stolen Generations Assessor then authorised the Secretary of the Department to make the ex gratia payment (s. 9).

Similarly, a statutory Native Tongue Title compensation scheme should establish a Native Tongue Title Fund to which a fixed amount is paid from the state's Consolidated Fund. Aboriginal language groups who have lost their languages could then apply for compensation from the fund.

Hence, the first challenge — the definition of 'Aboriginal language group'. The practical aspects of determining members of a group can be based on existing legal processes for Native Title claims and land trust legislation. For instance, under s. 61 of the Native Title Act, a person or persons authorised by the 'Native Title claim group' can make an application for Native Title to the Federal Court. 'A Native Title claim group' is 'all the persons...who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular Native Title claimed' (s. 61(1)). Similarly, application for compensation for lost language could be made by a person or persons authorised by a Native Tongue Title claim group. A Native Tongue Title claim group could include all the persons who, according to their traditional laws and customs, belong to a particular Aboriginal kin group that shared a common language which is no longer spoken.

After applications are made by Aboriginal language groups, applications could be assessed by an independent body of assessors, which should include Indigenous people. If the body of assessors authorises the payment of compensation, payment could be made to the language group that has made the application. The language group would then hold the compensation money on trust for the revival of Aboriginal languages. Again, management of the trust can be based on existing legal processes applying to Native Title and land trust legislation. The group could decide to use the compensation to support, for instance, community language projects, language curricular development, language teacher training, and radio and television production in its own language. These activities help create the environment where one can immerse oneself in the language. Only immersion can create fluent speakers, and only fluent speakers can revive a language (Cultural Survival 2012). Within the parameters of language revival, the use of compensation money should remain flexible. Different Indigenous communities should

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take into account their communities' particular goals and resources to develop unique paths to revive their languages.

The proposed Native Tongue Title compensation scheme may receive cautious responses from the government on the basis that it is difficult to quantify the loss of Aboriginal languages. For instance, the Commonwealth has submitted to the inquiry for the *Bringing them home* report that ex gratia payments should not be awarded to the victims of the Stolen Generations policies because of the difficulties in estimating the amount of 'loss' in monetary terms (HREOC 1997). However, it is possible to mathematically calculate the compensation amount for language-related issues (see, for example, Van Parjis 2007). Australian judges have always awarded damages for losses that are difficult to quantify. For instance, Justice Gray in *Trevorrow v State of South Australia* (at 1235–6) stated:

[W]here it is clear that a plaintiff has suffered loss the court should do its best to place a dollar value on that loss notwithstanding the paucity or absence of evidence. The court is not permitted to abandon the task through want of evidence, but a discretionary judgment should be formed...There is always an inherent difficulty in equating personal injury with a dollar sum. The best that one can do is to adopt an holistic approach.

Justice Gray then went on to award compensation to Mr Trevorrow. Other Australian judges have quantified damages for the 'loss of traditional advancement in Aboriginal societies' (Collert 1982). For instance, in the South Australian Supreme Court decision of *Napaluma v Baker* (1982) 29 SASR 192, Justice Zelling considered the case of an Aboriginal plaintiff who suffered brain damage as a result of a road accident. The judge recognised that after the accident, the plaintiff was 'left out of some ceremonies, and he play[ed] a merely minor passive role in others and he [was] therefore less than a full member of the Aboriginal community' (at 194). Justice Zelling awarded \$10,000 to the plaintiff for the 'loss of position in the Aboriginal community' (at 194). The decision was followed by the Northern Territory Supreme Court decision in *Dixon v Davies* (1982) 17 NTR 31, which concerned a

young Aboriginal boy who suffered permanent physical deformity after a car accident. Justice O'Leary acknowledged that the plaintiff's physical disability would prevent him from performing initiation rites, and he would forever be denied full status within his Aboriginal community. Accordingly, Justice O'Leary awarded him \$20,000 for 'loss of cultural fulfilment' (at 34).

As the precedents from the state Supreme Courts show, it is possible to quantify damages for the 'loss of traditional advancement in Aboriginal societies'. Those who are deprived of the opportunity to be fluent in their Aboriginal language are also denied opportunities to participate fully in the rites and ceremonies that are conducted in Aboriginal languages. They also suffer from loss of position in the Aboriginal community. Their losses can, and should, be quantified and compensated by the Australian Government. Of course, ex gratia schemes are not designed to compensate for entire loss, but to provide partial compensation for the loss. This is evident by contrasting the large sum of compensation awarded to Mr Trevorrow (\$777,000) with the mere \$58,333 each claimant received in Tasmania under the Stolen Generations of Aboriginal Children Act. Nevertheless, an ex gratia scheme for the loss of languages is an important and solid step towards language revival.

Further steps towards language revival

Native Tongue Title is by no means an exhaustive legal option for Indigenous people who wish to revive their languages. Drawing on experiences of other nations that have successfully revived and preserved their minority languages, we now outline linguistic measures that can be enacted simultaneously with Native Tongue Title. Among these, New Zealand, South Africa, Norway and Peru are significant examples of language preservation and restoration.

Language revival would be greatly enhanced by creating linguistic landscapes around Australia. For instance, Aboriginal and Torres Strait Islander vernaculars may be defined as official languages of their region, territory or land. Some countries with minority indigenous populations have adapted an Indigenous language as one of their official languages. New Zealand presents te reo Māori as its official language, along with

English and New Zealand Sign Language (*Māori Language Act 1987*). People can speak Māori in legal proceedings with interpreters, and Māori is taught in most schools (Human Rights Commission 2008–14). There are two particularly important claims by Māori relating to te reo Māori. These are the Wai 11 and Wai 262 claims to the Waitangi Tribunal (set up in 1975 to hear claims relating to Crown violations of the Treaty of Waitangi). It is worth reproducing these defining extracts here.

Wai 11 claim to the Waitangi Tribunal (1985)

Claimants: Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo.

Claim: that the Crown had failed to protect the language (a taonga/treasure) as required by article 2 of the Treaty of Waitangi. (Article 2 guarantees to Māori the right to keep their lands, forests, fisheries and all their treasures (taonga). It was noted that: Ka ngaro te reo, ka ngaro tāua, pērā i te ngaro o te moa (If the language be lost, man will be lost, as dead as the moa.)

The tribunal found in favour of the claimants: When the question for decision is whether te reo Māori is a 'taonga' which the Crown is obliged to recognise we conclude that there can be only one answer. It is plain that the language is an essential part of the culture and must be regarded as 'a valued possession'.

Recommendations in summary: legislation enabling use of te reo Māori in the courts by anyone who wishes to do so; establishment of a body to supervise and foster the use of te reo Māori; ensure all children who wish to learn Māori can do so with financial support from the State; develop broadcasting policy that acts on the Crown's obligation to recognize and protect the language; bilingualism as a prerequisite for any positions of employment with the State services Commission (Waitangi Tribunal 1993).

Wai 262 claim to the Waitangi Tribunal (1991)

Claimants: Haana Murray (Ngāti Kuri), Hema Nui a Tawhaki Witana (Te Rarawa), Te Witi McMath (Ngāti Wai), Tama Poata (Ngāti Porou), Kataraina Rimene (Ngāti Kahungunu), and John Hippolite (Ngāti Koata) — on behalf of themselves and their iwi

Claim: relates to the place of Māori culture, identity and traditional knowledge in New

Zealand's laws, and in government policies and practices.

Tribunal findings include: establishment of new partnership bodies in education, conservation, and culture and heritage; a new commission to protect Māori cultural works against derogatory or offensive uses and unauthorised commercial uses; a new funding agent for mātauranga Māori in science; expanded roles for some existing bodies including Te Taura Whiri (the Māori Language Commission), the newly established national rongoā body Te Paepae Matua mō te Rongoā and Māori advisory bodies relating to patents and environmental protection.

Findings relating to the language: the Crown's support for revival of the language should include (1) effective policies, appropriate resourcing, and steps towards the provision of public services in te reo as well as English; (2) the provision of programmes — including Māori-medium education — that are highly focused and effective, and appropriately resourced; (3) an expanded role and powers for Te Taura Whiri (Māori Language Commission), including powers to require public sector agencies to produce Māori language plans (in consultation with iwi), and to approve those plans, and powers to set targets for training of te reo teachers, approve education curricula for te reo, and otherwise hold public sector agencies accountable for their responsibilities towards the language (Waitangi Tribunal 2011a, 2011b).

In South Africa the post-apartheid Constitution dedicates section 6 of chapter 1 to language preservation and language rights. After the linguistic losses caused by apartheid policies during the decades of the white supremacist regime, South Africa recognises nine indigenous languages as official languages of the state, alongside English and Afrikaans, calling upon the state to adopt 'practical and positive measures' to promote indigenous languages, the status of which was 'historically diminished'. Specifically, s. 6 calls upon local authorities to promote the use of indigenous languages even in public bodies. Finally, the South Africa Constitution mandates the establishment of a Pan South African Language Board, which has recently started a project of revitalisation of the N/uu language of the San people.

In Norway the protection and promotion of the indigenous language, Sami, are extensively safe-

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guarded by the Sami Language Act 1990. Like the Australian Indigenous population and Māoris, the Sami people were in a colonial relationship with the Norwegian state (Magga 1994:220). The Sami were forced to assimilate into the dominant Norwegian culture and were not allowed to buy land unless they spoke Norwegian in their homes (Magga 1994:221). However, attitudes towards the Sami have changed gradually since the Second World War. Civil rights activism by Sami organisations influenced the government to recognise the official status of Sami and their language. The Sami Language Act, which was passed by the Norwegian Parliament in 1990, guarantees Sami rights to communicate in Sami. The obligation to respond in Sami extends to public bodies, courts, police, hospitals and churches. Furthermore, in the Sami administrative area, children have the right to receive education through the medium of Sami.

Finally, Peru provides a powerful example of a nation's gradual recognition of indigenous language. Peru enacted Decree No. 21 recognising Quechua as an official language, along with Spanish, in 1975 (de Varennes 2012:16). Decree No. 21 also declares the teaching of Quechua to be compulsory at all levels of education in the republic (de Varennes 2012:16). More recently, in July 2011, Decree No. 21 was repealed by the passing of Law 29735 for the Preservation, Development, Revitalization and Use of Indigenous Languages. The new law makes more than 80 Indigenous languages official languages of Peru. This means that public administration will now need to communicate in the 80 Indigenous languages spoken in Peru (Cultural Survival 2011). The effects of this law in practice are yet to be seen.

Conclusion

This paper outlines the ethical, aesthetic and utilitarian benefits of reviving hibernating Indigenous languages in Australia and elsewhere, and proposes the enactment of an ex gratia compensation scheme for the loss of languages. Such a statute-based compensation scheme accords with international human rights law, and fills gaps between Australia's commitment to the international human rights instrument and domestic mechanisms to ensure the fulfilment of its commitment. The proposed Native Tongue Title

compensation scheme will recognise the rights of Indigenous people to own, use and revive their languages.

The purpose of this paper is to highlight the important social issues surrounding language rights in Australia, and to put forward a suggestion to restore justice and to enhance linguistic diversity. The paper does not intend to be restrictive. For instance, we suggest that the proposed compensatory scheme be based on the existing Stolen Generations compensation scheme. But it need not be. If the interests of the Indigenous language groups are best served by drawing legislation in alternative ways, we welcome such suggestions. There are many other issues that need to be continually debated if we are to seriously revive Aboriginal languages in Australia. It is the authors' wish to promote and facilitate discussions around these important issues.

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Substantive articles are peer-reviewed and should be no longer than 10,000 words; papers of 5000–6000 words are preferred. Research reports can be up to 3000 words. Shorter contributions, comments and book reviews should be no longer than 1500 words. To facilitate easy reading by a wide audience, and given the interdisciplinary nature of the work, contributors are encouraged to use a plain English style. Download 'Guidelines for Authors' from: <www.aiatsis.gov.au/asj/docs/AASguidelines.pdf>. For detailed instructions on writing and presenting your paper: <www.aiatsis.gov.au/asj/contributors.html>

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Front cover image: Jaharnah Dare-Ryan and Jarome Dare at a Barngarla Aboriginal language reclamation workshop conducted by Professor Ghil'ad Zuckermann, 15–16 April 2013, Port Augusta, South Australia. (See Zuckermann et al., pp. 55–71.)

Back cover image: Ruth Fink Latukefu, July 1954, Lightning Ridge, NSW, undertaking fieldwork while based at Brewarrina Government Aboriginal Station, NSW (see Latukefu, pp. 72–87).

EDITOR

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This year, 2014, marks AIATSIS' fiftieth anniversary. The Australian Institute of Aboriginal Studies was established in June 1964, and its functions included the sponsoring and fostering of research, as well as the publication of results. The Institute was renamed the Australian Institute of Aboriginal and Torres Strait Islander Studies in March 1990.

A unique ceremony was performed for the launch of our fiftieth anniversary celebrations on 25 March at Reconciliation Place, Canberra. This was a one-off performance of the Lorrkkon ceremony, a traditional funerary rite reserved for men of high degree, never before seen in public or outside of Arnhem Land.

The ceremony honoured 'Big' Bill Neidjie, the Aboriginal Elder credited with the creation of the Kakadu National Park. Neidjie dedicated his life to the preservation and communication of Indigenous cultural practices; before his death, in 2002, Neidjie broke from tradition and asked for his funeral rite to be filmed. The vision of the ceremony was shown as part of the event in Canberra for the first time, and Yolŋu ceremonial Elder, dancer and composer Djakapurra Munyarryun and Elder Lami Lami led 30 traditional dancers in a re-enactment of the funeral rite and bone ceremony of Bill Neidjie as part of the ceremony.

As part of the launch in Canberra, the film footage, which symbolised the old man's bones in the ceremony, was formally handed to his granddaughter Natasha Nadji, who then handed it over to AIATSIS for safekeeping to become part of the AIATSIS Collections.

This ceremony also marked the start of the 2014 National Indigenous Studies Conference. Themed 'Breaking barriers in Indigenous research and thinking', the conference was widely described by participants as an event that brought together top academic thinkers in Indigenous research and also as a showcase for very applied community-initiated and -driven research. We anticipate receiving contributions from conference present-

ers for publication in the journal or as part of our AIATSIS Research Publications imprint.

The conference keynote speakers provided thought-provoking discussions on the positioning of Indigenous studies in academia. Aileen Moreton-Robinson started with a provocative look at Indigenous research thinking, examining the analytic and discursive relations between race and culture as contested territory in knowledge production. Linda Tuhiwai Smith then provided an international perspective, and discussed her own experiences of being an Indigenous researcher in the university system in New Zealand. Martin Nakata continued the engagement, focusing particularly on supporting scholarship and how we are bringing students into our discussions, educating both Indigenous and non-Indigenous students. James Lance Taylor, our final keynote speaker, cast an even bigger international perspective on the thinking from across the three days and considered how Indigenous studies and Black Studies, particularly the dialogue in America, could be expanded by the thinking here in Australia.

Reflecting on our fiftieth anniversary, it is apparent that the Australian Institute of Aboriginal Studies had a very important role when it was established in 1964. It is also clear that our role has continued and will continue to grow, but in many directions, some not envisaged at its inception. Today the governance of AIATSIS is strongly Indigenous. The increase in Indigenous scholarship at AIATSIS is evident and reflects a worldwide trend for greater participation by Indigenous peoples in all aspects of the very broad field of Indigenous studies. Our fiftieth anniversary is an appropriate time to consider our future in the research sector and, indeed, the place of research at AIATSIS into the next 50 years is a topic of much discussion for this year.

In some ways this discussion about the evolution of AIATSIS over the past 50 years is mirrored in the content of this edition of *Australian*

Aboriginal Studies. A reflective piece by Ruth Fink Latukefu discusses the environment in which she undertook fieldwork at around the time that the Institute was being crafted. Latukefu was one of very few women engaged in Indigenous studies at that time; now there are not only more women, but more Aboriginal women and Torres Strait Islander women engaged in research. The back cover photograph of this edition of the journal depicts Latukefu in the field: a woman going into the field in difficult conditions with marginalised people. Many of the people conducting research in the early stages of the Institute's existence were considered as mavericks — dedicated researchers who cared deeply about the people they were working with and were acutely aware of the agendas that Aboriginal people were raising as important agendas (in those days research focused on Aboriginal people and, in the main, did not include Torres Strait Islander peoples). These researchers asked the difficult questions, and in looking back over the history of the Institute's research we can see that its agenda has always been driven by community questions.

The cover image of this edition of the journal points to our future, where communities are very directly engaged in — and drive the agendas for — our research. The image was taken at a Barngarla language revitalisation workshop. This community is at the beginning of revitalising its language. The paper on Native Tongue Title, by Ghil'ad Zuckermann, Shiori Shakuto-Neoh and Giovanni Matteo Quer, demonstrates the role that this work plays, not only in cultural revival and maintenance, but also in establishing and confirming peoples' rights.

The other papers, including a discussion of the song tradition in south-west Australia, the interrogation of history through the lens of academia, an artist and a community, and two takes on social problems in the Northern Territory, indicate the growing diversity of research topics that are being submitted to *Australian Aboriginal Studies*. This edition continues the broad multidisciplinary theming that we now expect to see as the editors of this journal.

In other happenings at AIATSIS, this year's annual National Native Title Conference, themed 'Living with native title, from the bush to the sea', will be held from 2–4 June at Coffs Harbour in New South Wales. No seminar series was convened during semester 1, due to the National Indigenous Studies Conference being held mid-semester. The AIATSIS fiftieth anniversary website was launched in April this year, and information on AIATSIS news and event updates is available by subscribing to the AIATSIS quarterly online newsletter (via the 'Contact us' page of the fiftieth anniversary website at <<http://50years.aiatsis.gov.au/webform/contact-us>>).

As always, the editorial team for *Australian Aboriginal Studies* acknowledges the many people involved with the compilation of this journal. It is, indeed, a co-operative effort involving contributors, staff and anonymous field experts who provide rigorous peer-review advice. Many thanks, and may there be many more years to come.

Dr Jakelin Troy and Sally McNicol

Introduction

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