



Indigenous Evaluation Strategy  
Productivity Commission  
Locked Bag 2, Collins Street East  
Melbourne VIC 8003

22 August 2019

Dear Mr Mokak

**Indigenous Evaluation Strategy**

Congratulations on your appointment as a Commissioner to the Productivity Commission.

I wish to make a submission in relation to the inquiry into the Indigenous Evaluation Strategy.

Nunkuarrin Yunti welcomes the review given the attention given to the claim that annual expenditure on Indigenous peoples by the Federal, state and territory governments is estimated at \$33 billion. Of course, this figure is deceiving given that only \$6 billion is targeted expenditure and the remainder is mostly an apportionment of mainstream funding.

We particularly welcome the human rights context of this review, as overcoming Indigenous disadvantage requires more than the provision of grants that are tied to government priorities.

Nunkuarrin Yunti

Nunkuarrin Yunti is an Aboriginal community-controlled health service in metropolitan Adelaide.

It was initiated in the 1960s by the late Mrs Gladys Elphick, who founded the Council of Aboriginal Women of SA, one of the first Aboriginal organisations in South Australia. First incorporated in 1971 as the Aboriginal Cultural Centre, the organisation has undergone several incarnations, until settling as a comprehensive primary health care service for Aboriginal people.

Its first health program was established with the aid of donations, a small amount of government funding and the services of an empathetic and dedicated doctor.



It has also been an incubator for several other Aboriginal organisations including the Aboriginal Legal Rights Movement, Aboriginal Child Care Agency, Aboriginal Sobriety Group Inc., National Aboriginal Congress, Aboriginal Hostels Ltd, Trachoma and Eye Health Programme, WOMA, Aboriginal Housing Board, Aboriginal Home Care, and Kumangka Aboriginal Youth Service. It also assisted with the establishment of the Elders Village.

Nunkuwarrin Yunti is mainly Commonwealth funded. In 2017-18, it received around \$15 million in government grants, mostly from the Department of Health, but also around \$3.4 million from the Department of Prime Minister and Cabinet's *Indigenous Advancement Strategy* (IAS).

IAS funding has made our SEWB-funded services more precarious. Following the release of the *Bringing them home* Report, the Commonwealth created a separate *Bringing Them Home* (BTH) appropriation within the health portfolio. This funding was recurrent and placed within an agency with a health and wellbeing focus.

When the IAS was created, the BTH appropriation was transferred and bundled up with a number of other sources of funding from various Commonwealth agencies. SEWB services are now funded under the 'safety and wellbeing' plank of the IAS. The result is a much less defined approach, although DPMC has essentially continued to follow the Department of Health's BTH program guidelines. Notwithstanding, the broad guidelines of the IAS 'safety and wellbeing' plank and the experimental mind-set that it encourages or invokes remains paramount. Further guidance on the way government does business with Aboriginal communities and organisations such as Nunkuwarrin Yunti is required.

#### Declaration on the Rights of Indigenous Peoples

The Commission's decision to contextualise the inquiry in respect to the *Declaration on the Rights of Indigenous Peoples* is entirely appropriate, although it could be extended to a broader human rights framework.

The *Declaration* was adopted by the General Assembly on 17 September 2007 and supported by the Australian Government on 3 April 2009. However, the *Declaration* has not been and cannot be ratified by Australia, or any other nation state, as it has not yet attained the status of a human rights treaty.<sup>1</sup> Notwithstanding, the *Declaration* can inform the interpretation of human rights treaties, including some of those which have already been ratified by Australia, such as:

- *International Covenant on Civil and Political Rights* (ICCPR);
- *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- *International Convention on the Elimination of all forms of Racial Discrimination* (ICERD); and
- *Convention on the Rights of the Child* (CRC).

For example, both the ICCPR and ICESCR provide for the right of self-determination, viz:

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<sup>1</sup> And thereby subject to the *Vienna Convention on the Laws of Treaties*.



All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>2</sup>

The *Declaration* makes it explicit that this right applies to indigenous peoples.<sup>3</sup>

The Declaration has also informed the interpretation of the *International Labour Organization Convention No. 169 concerning the Rights of Indigenous and Tribal Peoples* (ILO 169). This human rights treaty is the only one which applies specifically to indigenous peoples and is currently available for ratification.

#### ILO Convention No. 169 concerning the Rights of Indigenous and Tribal Peoples

*ILO 169* was adopted by the ILO in 1989 and it entered into force in 1991; it revised the assimilationist-orientated *ILO Convention No. 107 concerning Indigenous and Tribal Populations of 1957*.

ILO 169 has specific relevance to the evaluation of government programs that are targeted towards them. Article 7.1 provides:

The peoples concerned ... shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

Furthermore, Article 33.2 requires governments to establish programs for indigenous peoples that shall include:

- (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
- (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

Australia considered ratifying *ILO 169* in 1993. At the time, there was opposition from a number of Indigenous people to it, largely because of the exclusion of Indigenous peoples in its formal development and the Convention's failure to affirm Indigenous peoples' right to self-determination.

The interpretation of *ILO 169* has subsequently been informed by the UN General Assembly's adoption of the *Declaration* and many Aboriginal and Torres Strait Islander people are now calling for Australia to ratify *ILO 169*. This aspect is discussed in the 2008 Social Justice Report, which recommended:

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<sup>2</sup> Article 1.1

<sup>3</sup> Per Article 3.

That the Joint Standing Committee on Treaties conduct consultations, including with Indigenous peoples, on the desirability of ratifying ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries.<sup>4</sup>

The United Nations, through its 2011 Periodic Review of Australia, also recommended that Australia ratify ILO 169 and in its formal response to this Periodic Review, Australia agreed to consider the ratification of ILO 169.

At the Australian, State, Territory and New Zealand Workplace Relations Minister's Council meeting that was held on 10 August 2011, Ministers noted the list of Conventions to be considered by the Commonwealth and the State and Territory governments for ratification in the near future, including *ILO 169*. However, it was never discussed.

The process has since been thwarted by the Department of Employment's assessment of Australia's level of compliance with the Convention. This should not be a sticking point. The 1996 COAG treaty-making principles do not require compliance with a treaty before its ratification and the principle of *progressive realization* offers protection for non-compliance in respect to the implementation of economic, social and cultural rights.

Furthermore, if Australia has concerns with some parts of ILO 169, it may make reservations at the time of ratification. Indeed, Australia has previously made declarations and reservations in respect to the *Convention on the Rights of the Child*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *International Convention on the Elimination of all Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights* upon each of their respective ratifications.<sup>5</sup>

### Recommendations

That Australia ratify *International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples*.

Yours sincerely

Vicki Holmes  
**Chief Executive Officer**

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<sup>4</sup> Recommendation 3.

<sup>5</sup> Reservations may also be withdrawn at any time and ratifications may also be denounced.