



## **Australian Government**

### **National Indigenous Australians Agency**

## **The Application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia**

The National Indigenous Australians Agency (NIAA) is pleased to contribute this submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, for consideration as part of its work assessing the current and potential future of the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia.

The NIAA's purpose is to build genuine partnerships that ensure all Aboriginal and Torres Strait Islander people are heard, recognised and empowered. We lead and influence change across government to ensure Aboriginal and Torres Strait Islander peoples have a say in the decisions that affect them, and assist the Australian Government deliver programs and policies to improve the lives of all Aboriginal and Torres Strait Islander people. Working in partnership with Aboriginal and Torres Strait Islander peoples is central to the NIAA's work and will be the key to the success of developing and implementing strategies that emulate the principles of UNDRIP and enable self-determination and the aspirations of Aboriginal and Torres Strait Islander communities.

UNDRIP is a resolution of the United Nations General Assembly, which sets out principles in relation to the fundamental human rights of Indigenous peoples for nations to continue to work towards. The key principles of UNDRIP include: self-determination, participation in decision-making, respect for and protection of culture, equality and non-discrimination.

In 2009, the Australian Government endorsed UNDRIP. While UNDRIP is not legally binding in and of itself, and Australia has not yet implemented it into domestic law, many of its principles reflect, or provide further content to, Australia's existing obligations under international human rights treaties. Australia is only legally bound by the obligations under international human rights treaties to which it is a party. Notwithstanding, the Australian Government supports the principles underlying the UNDRIP, which it recognises as an expression by the international community of respect for the dignity of Indigenous peoples.

Since endorsing UNDRIP in 2009, Australia has adopted the UNDRIP principles in its programs and policies and in its approach to engagement and collaboration. Australia has not, however taken steps to implement UNDRIP into law.

The NIAA recognises the important principles articulated through the UNDRIP and acknowledges the important work done by Aboriginal and Torres Strait Islander people and Indigenous peoples globally in the negotiation of the UNDRIP in the United Nations. The NIAA seeks to enhance the fundamental human rights of Indigenous peoples and supports their individual and collective rights, including rights to culture, identity, language, employment, health and education. To recognise these rights, we have introduced a considered network of programs and policies co-designed with Aboriginal and Torres Strait Islander peoples.

## How implementation of the Uluru Statement from the Heart can support the application of the UNDRIP

The Australian Government has committed to implementing the Uluru Statement from the Heart (the Statement) in full, and as a first priority has committed to holding a referendum to enshrine an Aboriginal and Torres Strait Islander Voice (the Voice) in the Australian Constitution. The Uluru Statement, delivered by Aboriginal and Torres Strait Islander leaders, is a generous offer and an opportunity for reconciliation between non-Indigenous Australians and Aboriginal and Torres Strait Islander people in Australia.

A referendum, followed by the constitutional enshrinement of a Voice and establishment of a Makarrata Commission for agreement-making and truth-telling, would provide a means for governments throughout Australia to work hand in hand with Aboriginal and Torres Strait Islander communities across Australia. This work supports self-determination consistent with the principles of UNDRIP.

The Voice will be an independent, representative advisory body for Aboriginal and Torres Strait Islander people, who would choose its members. It will provide a permanent means to advise the Australian Parliament and Government, and to ensure Aboriginal and Torres Strait Islander people have a say on federal laws and policies that affect them, including how to take Closing the Gap forward.

Enshrining a Voice would give strength and status to the principles of respect and partnership. All state and territory Ministers responsible for Indigenous Affairs have agreed to continue backing the Australian Government's work towards a Voice enshrined in the Constitution.

The NIAA supports two groups of First Nations people that have been established as part of the referendum preparations. A Referendum Working Group will advise the Australian Government on referendum matters such as timing, the proposed constitutional amendment question, and information on the Voice needed ahead of the referendum. A Referendum Engagement Group will engage with Aboriginal and Torres Strait Islander people and the broader community to build understanding, awareness and support for the referendum.

The Referendum Working Group held its first formal meeting on 29 September 2022. It discussed a set of key design principles for the Voice model, drawing on the extensive work already done to define the Voice. These principles identify the Voice as a body that:

- provides independent advice to the Parliament and Government;
- is chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities;
- is representative of Aboriginal and Torres Strait Islander communities;
- is empowering, community led, inclusive, respectful, culturally informed and gender balanced, and includes youth;
- is accountable and transparent; and
- works alongside existing organisations and traditional structures.

The Voice would not have a program delivery function or a veto power.

A Makarrata Commission will also be established in partnership with Aboriginal and Torres Strait Islander communities and other levels of government to develop a national framework for agreement-making and support local models of truth-telling.

In addition to creating an official record of the stories from Aboriginal and Torres Strait Islander people including those of survival and culture, colonisation, massacres, discrimination and resistance, the Commission will also consult with Aboriginal and Torres Strait Islander communities to develop a national framework for agreement-making that takes into account existing state and territory processes.

### Options to improve adherence to the principles of UNDRIP in Australia

As NIAA works to implement the Statement, progress continues on existing, complementary policies and programs that are consistent with UNDRIP principles. Programs are designed to advance reconciliation in a tangible way, prioritising Aboriginal and Torres Strait Islander partnerships, self-determination, respect and working with state and local governments.

Australia has used successive Closing the Gap frameworks since 2008 to guide and coordinate national efforts to improve the economic, health and education outcomes of Aboriginal and Torres Strait Islander peoples. Since that time, the NIAA has made a conscious effort to improve adherence to the principles of UNDRIP through accountability measures such as implementation plans and the Partnership Agreement.

In March 2019, a formal Partnership Agreement on Closing the Gap was established between the Australian Government, state and territory Governments, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks), and the Australian Local Government Association (ALGA). For the first time, Aboriginal and Torres Strait Islander peoples, represented by community-controlled peak organisations and members, shared decision-making with national, state, territory, and local governments on Closing the Gap, under a formal arrangement. This included the development and implementation of the National Agreement on Closing the Gap, signed by all parties in July 2020.

The Partnership allows improved adherence to UNDRIP principles as community and stakeholder groups deliver outcomes that are strength-based and community-driven, draw on cultural knowledge, and informed by collaborating with Aboriginal and Torres Strait Islander peoples. Community-driven initiatives are contributing towards issues such as climate change, gender equity, domestic violence, aged care and COVID-19.

There are solid examples of new ways of working established to allow for shared decision-making and partnerships: for example, the Justice Policy Partnership led by the Commonwealth and the Coalition of the Peaks, which brings together all levels of government, peak organisations and First Nations representatives. The Partnership takes a joined up approach to First Nations justice policy and collective actions to accelerate progress towards achieving justice outcomes.

NIAA continues to work closely with the Coalition of Peaks, other Aboriginal and Torres Strait Islander partners and all levels of government to raise ambitions and ensure sustained progress over the life of the National Agreement on Closing the Gap (National Agreement).

The National Agreement centres around four Priority Reforms. These are:

- Partnership and shared decision-making between Aboriginal and Torres Strait Islander people and governments;
- Building the Aboriginal and Torres Strait Islander community controlled service sector in agreed outcome areas;
- Transforming mainstream government services to work better for Aboriginal and Torres Strait Islander people; and

- Building better data and sharing access to the right data to support Aboriginal and Torres Strait Islander communities to make informed decisions with us.

While putting in place ambitious targets for the Priority Reforms further supports the principles of UNDRIP, there is still much work required to achieve Closing the Gap targets.

In June 2022, the Productivity Commission provided new data on nine of the eighteen applicable Closing the Gap targets since the baseline year. Of these nine, five were not on track (children commencing school developmentally on track, out-of-home care, adult imprisonment, suicide deaths, and sea country subject to rights and interests). Four were on track (healthy birthweight of babies, the enrolment of children in the preschool, youth detention rates and land mass subject to rights and interests).

While these assessments were based on a small number of data points, and should be treated with caution, they indicate there is still considerable work to do. All Australian Governments (the Commonwealth, each state and territory and ALGA) and the Coalition of Peaks have released their respective Closing the Gap implementation plans. These plans outline the actions each party is taking, and intend to take, to achieve the commitments set out in the National Agreement providing a quantifiable method to track progress.

The Commonwealth has been working with Parties to the National Agreement on the development of the first Commonwealth Closing the Gap Annual Report. The Commonwealth Implementation Plan will be updated following the tabling of the Annual Report to focus on efforts moving forward to achieve the outcomes, targets and Priority Reforms under the National Agreement.

NIAA further demonstrates its commitment to shared decision-making models through the Empowered Communities (EC) program. EC focuses on equality, individual and collective rights for Aboriginal and Torres Strait Islander people to empower communities to make decisions in the development, delivery and evaluation of programs and services that affect them.

EC framework is Aboriginal and Torres Strait Islander designed and led. The framework spans ten regions where Aboriginal and Torres Strait Islander people work in partnership with the Commonwealth to guide funding decisions and strategies that address critical issues impacting their lives. The future of almost 200 Indigenous Advancement Strategy (IAS) activities valued at over \$100 million have now been decided jointly by EC regions and the NIAA, empowering Indigenous people through shared decision making, increasing the productivity of government resources on-the-ground and improving outcomes. Empowered Communities and Commonwealth agencies are also collaborating on broader responses to shared regional and government priorities, including employment and the COVID-19 pandemic.

The partnership approach adopted through the IAS ensures programs and priorities are more flexible and better designed to meet the aspirations of individual communities. With focus areas closely aligned to UNDRIP principles of employment, land, children and schooling, family and wellbeing, culture and capability, and equitable access to services, Empowered Communities are using the IAS to progress fundamental human rights of Aboriginal and Torres Strait Islander peoples.

#### Examples of programs facilitated by the NIAA that support adherence to UNDRIP principles:

- The National Partnership on Northern Territory Remote Aboriginal Investment (NTRAI) is an agreement between the Commonwealth and Northern Territory (NT) Governments. The agreement provides \$173.2m over two years (2022-24) to the NT.

- The key objective of the NTRAI is to supplement NT Government services for Aboriginal people living in remote areas of the NT. The NTRAI funds programs and services relating to:
  - Community safety: women's safe houses, remote policing, reducing alcohol related harm;
  - Aboriginal interpreter services: to improve accessibility of programs and services in the NT where more than 100 Aboriginal languages and dialects are spoken; and
  - Children and schooling programs: such as Families as First Teachers, which engages parents to help their children participate in education.
- The United Nations Decade of Languages is being supported to ensure Aboriginal and Torres Strait Islander rights to preserve, revitalise and promote their languages. Programs aim to have a sustained increase in the number and strength of Aboriginal and Torres Strait Islander languages being spoken by 2031 and include:
  - Indigenous Interpreter Services in the Northern Territory (NT), Western Australia and South Australia;
  - Indigenous Language Interpreter Certification;
  - Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Indigenous Language Dictionaries Project;
  - The Australian Literacy and Numeracy Foundation;
  - Living First Languages - to develop the Living First Languages Platform to digitally preserve Indigenous languages and assist with literacy, school and employment outcomes; and
  - Partnership actions with Office for the Arts.
- The Aboriginal Benefits Account (ABA) is a Special Account, established under the Aboriginal Land Rights (Northern Territory) Act 1976, that benefits Aboriginal people living in the NT. The ABA receives monies from the Commonwealth based on the value of royalties generated from mining on Aboriginal land in the NT.
  - To deliver decision making to Aboriginal and Torres Strait Islander landowners, the current NIAA managed ABA grants process will cease by 13 December 2022, when the Northern Territory Aboriginal Investment Corporation (NTAIC) commences.
  - The NIAA is working with the interim Board of the NTAIC to stand-up the Corporation. The interim Board is focusing on making key appointments and working in partnership with the NIAA on corporate operations and designing the new payments and investments processes.
- NIAA recognises the positive impact of First Nations people living in appropriately sized housing. The National Partnership for Remote Housing NT (2018-2023) is an agreement between the Commonwealth and the NT Government that provides a total of \$1.1 billion to improve housing in remote NT communities.
- The Australian Government has committed to negotiate a new remote housing agreement for the NT, when the current agreement expires on 30 June 2023. Other commitments to improving housing in remote communities that will positively impact First Nations people include:
  - \$100 million to start work immediately on urgent housing and essential infrastructure on NT homelands; and
  - \$200 million from the Housing Australia Future Fund for improvements and upgrades to remote housing across Western Australia, South Australia, Queensland, and the NT.

### The international experience of implementing the UNDRIP

The successful implementation of the Uluru Statement from the Heart, including the referendum to enshrine an Aboriginal and Torres Strait Islander Voice, would impact positively on Australia's involvement in international forums related to Indigenous issues, such as the UN. The NIAA has prioritised working in partnership with the Department of Foreign Affairs and Trade (DFAT) as it creates an Office of First Nations Engagement and appoints an Ambassador for First Nations Peoples.

The Ambassador will lead the Government's efforts to embed Indigenous perspectives, experiences and interests into First Nation foreign policy and to progress First Nations' rights globally. In addition to other roles, the Ambassador will undertake consultation with First Nations communities, leaders and advocates, and establish international First Nations dialogues on Voice, Treaty and Truth with likeminded countries. Ongoing collaboration between NIAA and DFAT will ensure the alignment of domestic First Nations policy with First Nations foreign policy.

The NIAA regularly engages our key partners, Canada and New Zealand, to discuss progress and learn from their experiences and planning for the implementation of UNDRIP domestically. Similar to Australia, both countries are in the process of developing comprehensive engagement and action plans. New Zealand is currently undergoing initial consultations with stakeholders and, despite Canada's implementation of UNDRIP into its domestic law, substantial work is still required. Both partners are yet to fully implement domestic policies and programs to underpin UNDRIP principles.

### Canada

On 21 June 2021, Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act (the Act), received Royal Assent and became law in Canada. Bill C-15 is very similar to the proposed United Nations Declaration on the Rights of Indigenous Peoples Bill 2022 in the Australian Parliament, providing that the Government of Canada must take all measures necessary to ensure the laws of Canada are consistent with the UNDRIP.

The Act requires the Government of Canada to fulfil three inter-related obligations in consultation, cooperation and engagement with Indigenous peoples:

- identifying measures to ensure consistency of federal laws with the Declaration;
- developing an action plan by June 2023 to achieve the objectives of the Declaration; and
- developing annual reports on progress and submitting them to Parliament.

An engagement process was launched in December 2021 for the federal government of Canada to work in partnership with First Nations peoples to develop the action plan. The plan will provide an opportunity to identify and put in place concrete measures to address injustices, combat prejudice and eliminate all forms of violence, including systemic racism and discrimination. It will also include measures to ensure ongoing oversight, monitoring and review of measures contained within a future action plan.

As part of this work, \$23.6 million was made available to support participation of Indigenous partners in the consultation and engagement process, including Indigenous-led engagement with its citizens and members to develop a shared vision for the action plan. The Canadian government is currently using an online submission tool to request views from Indigenous peoples in Canada to better understand priorities.

Implementing the Act is a whole of government responsibility and although the Minister of Justice is the lead minister responsible for implementation of the Act, the Ministers of Crown-Indigenous Relations and Natural Resources Canada have also been tasked with supporting this work.

### New Zealand

New Zealand announced its support for the Declaration in 2010. At that time, it reaffirmed the importance of the Te Tiriti o Waitangi (Treaty of Waitangi) as a unique feature of indigenous rights in New Zealand. New Zealand sees the Declaration as consistent with the duties and principles inherent in Te Tiriti o Waitangi and confirms the special cultural and historical position of Māori as tangata

whenua (people of the land) of New Zealand. It was noted that existing frameworks would continue to evolve in accordance with New Zealand's domestic circumstances.

In March 2019, the Minister for Māori Development (now Foreign Minister Mahuta) gained Cabinet agreement to develop a plan to create a timeline and measurable actions to demonstrate New Zealand's commitment to the UNDRIP.

A technical advisory group, the Declaration Working Group (DWG), comprising non-government and government officials, was initially appointed. The DWG considered academic sources, the Waitangi Tribunal, research from non-Government bodies, independent panels, international precedents, and constitutional considerations, to provide independent advice on the development of a Declaration Plan and propose a roadmap to 2040 to align national action with UNDRIP.

Te Puni Kōkiri (TPK, Department of Māori Affairs) leads the development of the Declaration Plan in partnership with Pou Tikanga (Māori Cultural Practice and Advice) and the Human Rights Commission. The tripartite collaboration has mapped stakeholders and targeted engagement with iwi, hapū, whānau (clans, extended families and kinship groups) and Māori organisations to determine aspirations to be included in a plan to implement the UNDRIP. Key issues emerging over the six-month engagement period, included self-determination, participation in government and equity and fairness.

In April 2022, Cabinet was provided an update on progress and agreement sought to the next steps for drafting the Declaration Plan. It is anticipated that the Declaration Plan will be subject to review and update, keeping Government accountable to its commitment to the UNDRIP, up to 2040, the bicentennial celebration of the signing of the Te Tiriti o Waitangi.

### Summary

The NIAA is committed to progressing meaningful programs and policies to empower and give a voice and recognition to all Aboriginal and Torres Strait Islander people through strengthening partnerships and ensuring their input informs all domestic programs. We will work closely with all levels of the Australian government, and learn from International partners, to ensure First Nations foreign policy and Indigenous participation at international forums is supported. The NIAA will continue to consider the principles underlying the UNDRIP to inform meaningful engagement with, and protection, of the rights of Indigenous peoples.