



# Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia

2 June 2022

**Voices of Influence Australia**

Senate Legal and Constitutional Affairs Committee

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## **Voices of Influence Australia makes the following submission on the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia.**

### **Voices of Influence Australia**

Voices of Influence Australia is a youth-led organisation that functions to move and encourage the masses who are passive, individual consciences into active, collective voices for human rights globally.

As an organisation, Voices of Influence Australia recognise and assert the need for the voices of young people to be heard across the complexity of human rights and racial justice – particularly with respect to the rights of Indigenous Peoples in Australia.

### **Introduction**

Voices of Influence Australia have responded to selected parts of the Terms of Reference in this submission and have otherwise not made submissions on the remaining Terms of Reference. Voices of Influence Australia have outlined considerations they recommend the Senate Legal and Constitutional Affairs Committee ('the Committee') take into account when reviewing the issues concerned. We hope that our recommendations provide helpful consult and greater insight to the Committee regarding the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia.

Voices of Influence Australia unequivocally supports the United Nations Declaration on the Rights of Indigenous Peoples and its application in Australia.

Throughout this submission, Voices of Influence Australia use the terms Indigenous, First Nations and Aboriginal and Torres Strait Islander to refer to the Traditional Custodians of Australia. These terms are used with respect to the diversity of Aboriginal and Torres Strait Islander communities throughout Australia and in acknowledgment that there is not one accepted term identified by community, but there are several ways of respectfully referring to Indigenous peoples within Australia.

### **Summary of Recommendations**

Voices of Influence Australia recommends the Australian Government commit to the following actions:

1. Enact legislation upholding Indigenous peoples' right to self-determination, land and resources.



2. The Australian Government should inquire into and note the self-governance and self-determination of Indigenous communities in Australian legislation that honours the nation-to-nation relations of Indigenous people.
3. The Australian Government should implement appropriate safeguards in order to mitigate the risk of abusing State powers under Articles 20 and 46 of the UNDRIP. These safeguards must be developed with the appropriate consultation of Indigenous leaders, communities and elders.
4. The Australian Government and the Committee should interpret the right to self-determination as inseparable from the obligation to eradicate violence against women in Article 22 in order to centralise violence against Indigenous women within the UNDRIP.
5. The Australia Government should negotiate an National Action Plan with First Nations communities to implement the UNDRIP.
6. The Australian Government should hold a referendum to recognise Aboriginal and Torres Strait Islander people under the Declaration of Recognition and Voice to Parliament for Indigenous Peoples to enact substantive change, rather than solely symbolic recognition, to disperse State control over Indigenous concerns.
7. The Australian Government should establish a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-seeking about Australia's history.
8. The Australian Government should action the findings and recommendations of the Australian Human Rights Commission Wiyi Yani U Thangani Report (Securing Our Rights, Securing Our Futures). This includes: (1) Implementing a National Action Plan advancing the wellbeing of Aboriginal and Torres Strait Islander women and girls; (2) Conducting a National Summit and establish a National Aboriginal and Torres Strait Islander women and girls Advisory Body, and; (3) Empowering women's leadership on the ground.
9. The Australian Government should create a Treaty with Indigenous Australians that: (1) recognises First Nations sovereignty and prior occupation of this land; (2) redefines and restructures the relationship between First Nations Peoples and Non-Indigenous people; (3) legislates a basis for regional self-governance; (4) provides guidelines for local and regional treaties, and (5) creates structures and systems for local and regional decision-making processes.
10. The Federal Government should conduct an audit of existing legislation for compliance and adherence to the principles of UNDRIP
11. The Federal Government should engage the Indigenous community to develop a national program to implement UNDRIP in domestic law. A national program developed by Indigenous peoples will support continued change and development to support the growth of Indigenous led-initiatives.
12. The Federal Government should conduct an audit of existing legislation for compliance and adherence to the principles of UNDRIP.
13. Support and resource pre-existing Indigenous youth networks.
14. Empower Indigenous organisations with funding training for young Indigenous people.
15. Provide funding for Indigenous-led research and social researchers.



16. The Australian Government should increase investment into culturally appropriate teacher training, truth telling education resources, and Indigenous pedagogy.
17. With the support and funding from the Australian Government, an expansion of Indigenous community corrections initiatives such as Lore enforcement.
18. The Australian Government should invest in transitional justice mechanisms and establish a National Truth Commission to aid the healing of Indigenous communities and reconciliation of our nation under Article 8 (2) Article 11 (2) of the UNDRIP.
19. The Federal Government must centralise reparations for the ongoing violations of cultural rights within the National Truth Commission.

## **b. The potential to enact the UNDRIP in Australia**

**Recommendation 1:** Enact legislation upholding Indigenous peoples' right to self-determination, land and resources.

1. Voices of Influence Australia submits that it is imperative that the Australian Parliament design and enact law to enshrine the principles of the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP') in federal legislation. Specifically, we recommend a federal UNDRIP Act such as that in Canada.<sup>1</sup> Voices of Influence Australia submits that like in Canada, a federal UNDRIP Act should provide a roadmap for the Australian Government and Indigenous peoples to work together to implement the UNDRIP based on lasting reconciliation, healing, and cooperative relations. Voices of Influence Australia emphasises that the federal UNDRIP Act must require the Australian Government to, in consultation and cooperation with Indigenous Australians, take all measures necessary to ensure that the laws of Australia are consistent with the UNDRIP. Further, it should require the federal Minister for Indigenous Australians to, in consultation and cooperation with Indigenous Australians and with other federal ministers, thoroughly prepare and implement an action plan to achieve the objectives of the UNDRIP. The UNDRIP Act should also include requirements to report annually to Australian Parliament on the measures taken to prepare and implement the action plan for the previous year.
2. Voices of Influence Australia submits that the Australian Government should include provisions in the federal UNDRIP Act to mandate all Australian states and territories to create law, in cooperation and consultation with Indigenous Australians, that promotes the inherent rights of Indigenous Australians to the land which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems.

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<sup>1</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.



3. Voices of Influence Australia submit that all relevant legislation should emphasise a commitment to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous Australians, to achieve the objectives of the UNDRIP. Moreover, that any measures relating to accountability, oversight, recourse or remedy are designed and implemented in consultation and cooperation with First Nations communities and elders.
4. Voices of Influence Australia submits that it is paramount that all measures to enact the UNDRIP in Australia must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations people, including Aboriginal and Torres Strait Islander peoples, as well as their institutions and governance structures, their relationships to the land and Indigenous knowledge.

### **c. International experiences of enacting and enforcing the UNDRIP**

5. Canada's Royal Proclamation of 1763 and Canada's Constitution Act stipulate Indigenous rights.<sup>2</sup> Historically, Canada has addressed Indigenous rights through the 1998 First Nations Principles of OCAP®, which represents Ownership, Control, Access, and Possession which emphasises the ownership of Indigenous knowledge and culture.<sup>3</sup> However, despite such efforts, Indigenous knowledge and culture fail to be prioritised. Specifically, Indigenous knowledge of fire stewardship is still not being honoured, as the Canadian government ultimately decides fire stewardship strategy.<sup>4</sup> This reiterates the politics of power whereby non-Indigenous knowledge is prioritised over Indigenous ones.<sup>5</sup> Furthermore, Indigenous peoples have had their culture (manifested through various forms of art) copied without being credited, and a gap in Canada's copyright laws may fail to protect Indigenous rights as 'appropriation may not be seen as an unauthorized reproduction'.<sup>6</sup>

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<sup>2</sup> Callison et al., 'Engaging Respectfully with Indigenous Knowledges: Copyright, Customary Law, and Cultural Memory Institutions in Canada' (2021) 5(1) *KULA: Knowledge Creation, Dissemination, and Preservation Studies* 1, 3.

<sup>3</sup> Callison et al., 'Engaging Respectfully with Indigenous Knowledges: Copyright, Customary Law, and Cultural Memory Institutions in Canada' (2021) 5(1) *KULA: Knowledge Creation, Dissemination, and Preservation Studies* 1, 5.

<sup>4</sup> Hoffman et al., 'The right to burn: barriers and opportunities for Indigenous-led fire stewardship in Canada' (2022) 7 *Facets: A Multidisciplinary Open Access Science Journal* 464, 465, 470.

<sup>5</sup> Hoffman et al., 'The right to burn: barriers and opportunities for Indigenous-led fire stewardship in Canada' (2022) 7 *Facets: A Multidisciplinary Open Access Science Journal* 464, 470.

<sup>6</sup> Callison et al., 'Engaging Respectfully with Indigenous Knowledges: Copyright, Customary Law, and Cultural Memory Institutions in Canada' (2021) 5(1) *KULA: Knowledge Creation, Dissemination, and Preservation Studies* 1, 3.



6. The relevance and application of UNDRIP in Canadian society is starting to unfold, with case studies showing that an Indigenous group (Tsilhqot'in) is utilising UNDRIP in order to claim their rights to their land.<sup>7</sup> Canadian courts have also alluded to the UNDRIP.<sup>8</sup>
7. In Canada, the *United Nations Declaration on the Rights of Indigenous Peoples Act* came into effect in June 2021.<sup>9</sup> A few months later, in December 2021, the Canadian government started accepting submissions on the Act and has emphasised that it 'will work in partnership with Indigenous peoples to develop an action plan to achieve the objectives of the Declaration'.<sup>10</sup> As such, while Canada's efforts to implement UNDRIP principles show some gaps and challenges, these recent legal developments offer a new pathway to enable Indigenous participation.
8. Another policy encompassing Indigenous intellectual property rights exists in New Zealand, through the 1993 Mataatua Declaration on Cultural and Intellectual Property Rights of the Indigenous Peoples.<sup>11</sup> Historically, the Indigenous groups of New Zealand have fostered a collaborative partnership with the New Zealand government, which was established through the 1840 Treaty of Waitangi.<sup>12</sup> This partnership is exemplified through constant 'consultation and participation' by the Māori in their affairs.<sup>13</sup> However, it is imperative to recognise that there are gaps in New Zealand's approach, as this treaty has been criticised by the Māori as being ineffective and performative.<sup>14</sup> Nevertheless, such efforts to enlist the participation of Indigenous groups through various legislative instruments and encompassing several areas of Indigenous rights and culture, seen through the examples of Canada and New Zealand, presents an incredible opportunity for Australia to enact similar processes.

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<sup>7</sup> Fumiya Nagai, 'Protecting Aboriginal Rights and Title in Canada: A Growing Space for the United Nations Declaration on the Rights of Indigenous Peoples' (2021) 18 *Vibrant: Virtual Brazilian Anthropology* 1, 3.

<sup>8</sup> Fumiya Nagai, 'Protecting Aboriginal Rights and Title in Canada: A Growing Space for the United Nations Declaration on the Rights of Indigenous Peoples' (2021) 18 *Vibrant: Virtual Brazilian Anthropology* 1, 7.

<sup>9</sup> Government of Canada, *Next Steps* (May 05 2022) <<https://www.justice.gc.ca/eng/declaration/engagement/index.html>> [1].

<sup>10</sup> Department of Justice (Government of Canada), *Government of Canada advances implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act* (Dec 10 2021) <<https://www.canada.ca/en/department-justice/news/2021/12/government-of-canada-advances-implementation-of-the-united-nations-declaration-on-the-rights-of-Indigenous-peoples-act.html>> [2].

<sup>11</sup> Callison et al., 'Engaging Respectfully with Indigenous Knowledges: Copyright, Customary Law, and Cultural Memory Institutions in Canada' (2021) 5(1) *KULA: Knowledge Creation, Dissemination, and Preservation Studies* 1, 5.

<sup>12</sup> Nicolas Pirsoul and Maria Armoudian, 'Deliberative Democracy and Water Management in New Zealand: a Critical Approach to Collaborative Governance and Co-Management Initiatives' (2019) 33 *Water Resources Management* 4821, 4826.

<sup>13</sup> Nicolas Pirsoul and Maria Armoudian, 'Deliberative Democracy and Water Management in New Zealand: a Critical Approach to Collaborative Governance and Co-Management Initiatives' (2019) 33 *Water Resources Management* 4821, 4826.

<sup>14</sup> Jessica Terruhn, 'Settler Colonialism and Biculturalism in Aotearoa/New Zealand' in Steven Ratuva (ed), *The Palgrave Handbook of Ethnicity* (Palgrave Macmillan, 2019) 1, 2.



9. Bolivia is a useful example to highlight the international experiences of enacting and enforcing UNDRIP. Bolivia, upon the entry in to force of UNDRIP, was the first country in the world to not only adopt the Declaration into its domestic law but to then, in 2009, incorporate the provision of UNDRIP into its constitution.<sup>15</sup>
10. The constitutional changes enacted some of the major demands of the Indigenous movement that had grown during the previous decades. These amendments included the affirmation of the status of Bolivia's Indigenous majority as well as the ratification which legitimised the cultural practices of the Indigenous people.<sup>16</sup> The amendments to Bolivia's constitution were another step in the Indigenous People's self-determination, also providing them with the ability to establish 'Indigenous autonomies'. The Indigenous autonomies work in coordination with departmental governments as permanent fixtures to protect the rights and autonomy of Indigenous People.<sup>17</sup>
11. Bolivia is a reasonable international example as to how UNDRIP has been enacted and enforced demonstrating the positive impact of enshrining the rights of Indigenous People into both legislation and the constitution.

## **f. Australian federal and state government's adherence to the principles of the UNDRIP**

### **Nation States and UNDRIP**

12. Voices of Influence Australia submits to the Committee the importance of recognising the unique differences between individual and collective human rights, civil rights, and their relation to Indigenous rights when navigating how the federal and state governments adhere to the principles of the UNDRIP. Whilst UNDRIP enshrines human, civil and collective rights, significant Indigenous and cultural rights specifically have not been emphasised in the UNDRIP. Instead, Indigenous rights are transported into the language of the law of human and civil rights within the management and governance of States. Voices of Influence Australia submits to the Committee that the obligations of States adopted in UNDRIP does not address the full complexities of nation-state and Indigenous nations relations. Rather, by avoiding a definition of indigeneity and not recognising political self-governance from Indigenous nations, UNDRIP has redefined Indigenous nations into citizens and ethnic

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<sup>15</sup> Tansi Nitôtentik, 'UNDRIP in Action: Bolivia' *University of Alberta Law* (Blog Post, 07 February 2018) <https://ualbertalaw.typepad.com/faculty/2018/02/undrip-in-action-bolivia.html>

<sup>16</sup> John L. Hammond, 'Indigenous Community Justice in the Bolivian Constitution of 2009' (2011) 33 *Humn Right Quarterly* 649

<sup>17</sup> Jason Tockman, John Cameron & Wilfredo Plata 'New Institutions of Indigenous Self-Governance in Bolivia: Between Autonomy and Self-Discipline' (2015) 10(1) *Latin America and Caribbean Ethnic Studies* 37.



groups despite widespread recognition that Indigenous people are not a racial group.<sup>18</sup> Arguably, this reclassification of Indigenous people does not satisfy claims to territory and self-governance that Aboriginal and Torres Strait Islander communities uphold.

13. Whilst UNDRIP presents some advantages, it does not satisfy full Indigenous claims to self-government, territory, and cultural autonomy. Ultimately, UNDRIP has been designed to accommodate the primary ways in which States manage relations with Indigenous peoples. Furthermore, Indigenous rights of pre-State political autonomy, territory, and holistic interdependent institutional orders are neither central to UNDRIP nor appropriately acknowledged. Thus, the principles and obligations presented in UNDRIP and its implementation can only satisfy partial solution at best to the protection, promotion and advancement of the Rights of Indigenous People in Australia.

**Recommendation 2:** The Australian Government should inquire into and note the self-governance and self-determination of Indigenous communities in Australian legislation that honours the nation-to-nation relations of Indigenous people.

### **Limitations of UNDRIP (Article 46) and the practical avoidance of these limitations**

14. As the current Convention stands, any agency Indigenous peoples possess in the international community is tempered by the reality that the exercise of this agency is ultimately “permitted” — or not — by the States in which they reside. The original text of Article 46 of UNDRIP stated, “Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations”,<sup>19</sup> while the revised Article 46(1) added “any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”<sup>20</sup>. Voices of Influence Australia submits to the Committee that this key addition puts the State’s interests first and foremost. While 46(2) encourages limitations on this power, in practice, it has meant States have tremendous interpretive leeway of UNDRIP. For instance, upon endorsement of UNDRIP, former Prime Minister Kevin Rudd noted that the government’s concerns with the “free, prior and informed consent” elements of the declaration, primarily Article 20, would be “interpreted in accordance with Article 46”.<sup>21</sup> Arguably, this interpretation and Australia’s resistance to a fulsome implementation of UNDRIP is the result of the nature of international politics privileging the state, and the state defending its own interests against the “threat” of Indigenous self-determination.

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<sup>18</sup> Bain Attwood, ‘Unsettling Pasts: Reconciliation and History in Settler Australia’ (2005) 8 *Postcolonial Studies* 243, 250; see also Elizabeth A Povinelli, ‘The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship’ (1998) 24 *Critical Inquiry* 575, 588–9

<sup>19</sup> *United Nations Declaration on the Rights of Indigenous People* Article 46

<sup>20</sup> *United Nations Declaration on the Rights of Indigenous People* Article 46(1)

<sup>21</sup> Open Canada, *UNDRIP’s Fundamental Flaw* (Webpage) < <https://opencanada.org/undrips-fundamental-flaw/> >





**Recommendation 3:** The Australian Government should implement appropriate safeguards in order to mitigate the risk of abusing State powers under Articles 20 and 46 of the UNDRIP. These safeguards must be developed with the appropriate consultation of Indigenous leaders, communities and elders.

### **Indigenous women, self-determination and interpretation of UNDRIP**

15. There are three key provisions in UNDRIP concerning Indigenous women's rights, they are: Article 21, Article 22 and Article 44. Although UNDRIP is the first instrument to recognise Indigenous women as a minority within a minority, Voices of Influence Australia submits to the Committee that these Articles are rather insufficient in protecting Indigenous women from the unique human rights threats – particularly against gender-based violence. Whilst Articles 21(2), 22 and 44 function together to ensure equal application of UNDRIP on Indigenous women, the UNDRIP does not contain any form of statement on the positive rights of Indigenous women when considering their particular status within Indigenous communities and States.<sup>22</sup> The reference to the 'rights' of Indigenous women in Article 21(2) implies that Indigenous women possess additional rights unique to their status as Indigenous women. However, there is no elaboration on what these 'rights' are.<sup>23</sup> Moreover, in Article 22(1), the reference to 'rights' of Indigenous women is followed by a reference to their 'special needs'. In this sense, UNDRIP conveys that women's rights are intertwined with their pre-existing vulnerabilities. Concerningly, the UNDRIP lacks express statements on the positive rights of Indigenous women, such as the rights to gender equity, freedom from violence and non-discrimination based on gender.<sup>24</sup>
16. Voices of Influence Australia submits to the Committee that the positioning of Article 22(2) following Article 22(1), which concerns particular attention being paid to vulnerable groups in the implementation of UNDRIP, frames violence as a threat to UNDRIP's implementation. In this sense, it may be argued that UNDRIP presents violence against Indigenous women as connected to the realisation of the right to self-determination<sup>25</sup>, which is paramount to the implementation of UNDRIP. Additionally, Voices of Influence Australia submits to the Committee that the right to self-determination is often linked to the survival of Indigenous groups. For Australia to successfully implement the UNDRIP at a domestic level, we must

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<sup>22</sup> Camilo Prez-Bustillo and Jessie Hohmann, 'Indigenous Rights to Development, Socio-Economic Rights, and Rights for Groups with Vulnerabilities: Articles 20-22, 24 and 44' in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford University Press, 2018) 482.

<sup>23</sup> Rauna Kuokannen, 'Indigenous Women's Rights and International Law: Challenges of the UNDeclaration on the Rights of Indigenous Peoples' in Corinne Lennox and Damien Short (eds), *Handbook of Indigenous Peoples' Rights* (Routledge, 2016) 129, 129-30.

<sup>24</sup> Camilo Prez-Bustillo and Jessie Hohmann, 'Indigenous Rights to Development, Socio-Economic Rights, and Rights for Groups with Vulnerabilities: Articles 20-22, 24 and 44' in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford University Press, 2018) 526.

<sup>25</sup> Iris Marion Young, *Global Challenges: War Self-Determination, and Responsibility for Justice* (Wiley, 2006) 47



ask ourselves, can Indigenous communities realise their right to self-determination when their women suffer disproportionate rates of violence that threaten their individual survival? Voices of Influence Australia advise that self-determination exists in both an individual and collective sense, and that taking full account of an individual's experiences and subjugation to violence will allow for a collective approach to self-determination that seeks to eliminate violence against women.<sup>26</sup> Arguably, Article 44 of the UNDRIP further supports this interpretation – for the right to self-determination to apply equally to Indigenous women and men, violence against women must be eliminated.

**Recommendation 4:** The Australian Government and the Committee should interpret the right to self-determination as inseparable from the obligation to eradicate violence against women in Article 22 in order to centralise violence against Indigenous women within the UNDRIP.

### **Implementation and adherence to the principles of the UNDRIP**

17. In order to account for the current limitations of UNDRIP, Voices of Influence Australia put forward the following recommendations in addition to the above. It is important to emphasise that Voices of Influence Australia does not have the scope to put forward recommendations on our own authority – thus, should these recommendations be actioned, it is vital that the Committee invest in the appropriate consultation and Indigenous leadership to assure the holistic implementation of UNDRIP.

**Recommendation 5:** The Australia Government should negotiate an National Action Plan with First Nations communities to implement the UNDRIP.

**Recommendation 6:** The Australian Government should hold a referendum to recognise Aboriginal and Torres Strait Islander people under the Declaration of Recognition and Voice to Parliament for Indigenous Peoples to enact substantive change, rather than solely symbolic recognition, to disperse State control over Indigenous concerns.

**Recommendation 7:** The Australian Government should establish a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-seeking about Australia's history.

**Recommendation 8:** The Australian Government should action the findings and recommendations of the Australian Human Rights Commission Wiyi Yani U Thangani (Women's Voices) Report: Securing Our Rights, Securing Our Futures. This includes: (1) Implementing a National Action Plan advancing the wellbeing of Aboriginal and Torres Strait Islander women and girls; (2) Conducting a National Summit and establish a National Aboriginal and Torres Strait Islander women and girls Advisory Body, and; (3) Empowering women's leadership on the ground.

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<sup>26</sup> Val Napoleon, 'Aboriginal Self-Determination: Individual Self and Collective Selves' (2005) 29(2) *Atlantis* 31, 31.



**Recommendation 9:** The Australian Government should create a Treaty with Indigenous Australians that: (1) recognises First Nations sovereignty and prior occupation of this land; (2) redefines and restructures the relationship between First Nations Peoples and Non-Indigenous people; (3) legislates a basis for regional self-governance; (4) provides guidelines for local and regional treaties, and (5) creates structures and systems for local and regional decision-making processes.

### **g. The track record of Australian Government efforts to improve adherence to the principles of UNDRIP**

18. The track record of the Australian Government's adherence to the principles of UNDRIP has fallen short of their promises to uphold the rights of Indigenous peoples. At the international level, Australia made a pledge to advance the human rights of all Indigenous peoples in their 2018 pledge as a Member State of the United Nations Human Rights Council ('UNHRC').<sup>27</sup> One of the most prominent pledges made by the Australian Government was to uphold the principles of UNDRIP, which seek to truly recognise the rights to self-determination, participation in decision-making, to establish the fundamental framework on the minimum standards for survival, respect for and promotion of Indigenous culture, and to strive for true equality and non-discrimination.<sup>28</sup>
19. Unfortunately, to date the Australian Government has failed to take the necessary steps to implement UNDRIP in Australian law, policy and practice. Additionally, the Australian Government has failed to negotiate or engage with the Indigenous community to create an 'action plan' to implement UNDRIP nor has the Australian Government taken steps to audit existing legislation for adherence to UNDRIP.<sup>29</sup>
20. We can no longer remain silent and observant of the challenges and inequality experienced by Indigenous peoples, the Australian Government needs to implement and fulfill their promises through meaningful change. The practical and meaningful groundwork of how to implement UNDRIP has already been provided to the Australian Government in the Uluru Statement from the Heart ('Uluru Statement').<sup>30</sup>

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<sup>27</sup> Permanent Mission of Australia to the United Nations, *Note Verbale Dated 14 July 2017 From the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly*, UN GAOR, 72nd sess, Provisional Agenda item 115(d), UN Doc A/72/212 (24 July 2017) [18] ('*Australian UNHRC Pledge*').

<sup>28</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 19, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) ('*UNDRIP*'); Mick Gooda and Katie Kiss, 'Ensuring the Ongoing Survival of the Oldest Living Culture in the World' (Declaration Dialogue Series Paper No 4, Australian Human Rights Commission, July 2013) 4.

<sup>29</sup> Australian Human Rights Commission, 'Implementing UNDRIP', *Australia's third UPR* (infographic 2021) <[https://humanrights.gov.au/sites/default/files/2020-10/implementing\\_undrip\\_-\\_australias\\_third\\_upr\\_2021.pdf](https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf)>.

<sup>30</sup> Uluru Statement from the Heart (National Constitutional Convention, 26 May 2017).



21. The Uluru Statement aligns with the self-determination commitment in UNDRIP,<sup>31</sup> by calling for a Voice to Parliament enshrined in the Constitution to address inequality faced by Indigenous peoples and to challenge discriminatory legislation prior to its enactment.<sup>32</sup> This elevation of Indigenous voices would provide Parliament with advice on how domestic legislation could align with the commitments of UNDRIP. Another initiative of the Uluru Statement is the formation of a Makarrata Commission, to correct the record through truth-telling and reconciliation. Makarrata is a Yolngu word meaning 'coming together after a struggle'<sup>33</sup> a Makarrata commission would provide supervision to the processes of agreement-making between the Australian Government and Indigenous peoples through the truth-telling of history at a national level.<sup>34</sup> The importance of truth-telling is multifaceted not only would it provide supervision at the agreement-making level, but also provides opportunities for inquiries into the impact and ramifications of policies to Indigenous peoples which has consequently caused harm and prolonged intergenerational trauma.<sup>35</sup>

22. The endorsement of the Uluru Statement will allow for meaningful engagement and collaboration with Indigenous peoples, Australia will be provided the tools to enact legislation in line with their promises and commitments to both UNHRC and UNDRIP. Voices of influence make the following recommendation to improve Australia's adherence to the principles of UNDRIP.

**Recommendation 10:** The Federal Government should implement the recommendations from the Uluru Statement in full and specifically, by enshrining a Voice to Parliament within the Constitution of Australia and establishing a Makarrata Commission for meaningful truth-telling.

23. The consequences of inaction or procrastination in fulfilling the promises made in 2018 will only perpetuate the already existing structural issues and continue to degrade the quality of life of Indigenous peoples; through the lack of representation within the nation's most powerful institutions and the continuance of intergenerational trauma. Voices of influence make the additional recommendations to improve Australia's adherence to the principles of UNDRIP beyond the Uluru Statement.

**Recommendation 11:** The Federal Government should engage the Indigenous community to develop a national program to implement UNDRIP in domestic law. A national program developed by Indigenous peoples will support continued change and development to support the growth of Indigenous led-initiatives.

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<sup>31</sup> Eddie Synot, 'The Universal Declaration of Human Rights at 70: Indigenous Rights and the Uluru Statement from the Heart' (2019) 73(4) *Australia Journal of International Affairs* 320,324.

<sup>32</sup> Uluru Statement from the Heart (n 4).

<sup>33</sup> Uluru Statement from the Heart, 'Education- FAQ's', *The Uluru Statement* <<https://ulurustatement.org/education/faqs/>>.

<sup>34</sup> Uluru Statement from the Heart (National Constitutional Convention, 26 May 2017).

<sup>35</sup> Paul Wright, 'The biggest step in Truth Telling about Australia's Colonisation history', *ANTAR* (Blog Post, 11 March 2021) <<https://antar.org.au/news/biggest-step-truth-telling-about-australia%E2%80%99s-colonisation-history>>.



24. Another crucial step that needs to be embraced to support the commitment that the Australian Government has made would be to enact the *United Nations Declaration on the Rights of Indigenous Persons Bill 2022*<sup>36</sup> ('*UNDRIP Bill*') introduced on the 29th March 2022 by Senator Thorpe. This Bill establishes a framework for the implementation of the UNDRIP by the Commonwealth Government and outlines an action plan that focuses on the commitments made internationally as the core objectives. One of the action steps is to conduct an audit of existing legislation for compliance with UNDRIP. The Voices of Influence recommends that if the UNDRIP Bill is unsuccessful then at a minimum an audit of existing legislation should be undertaken.

**Recommendation 12:** The Federal Government should conduct an audit of existing legislation for compliance and adherence to the principles of UNDRIP.

25. June Oscar, the Aboriginal and Torres Strait Islander Social Justice Commissioner recognised the precipice at which we stand as a global community saying:

"We are in a moment of global reckoning on multiple fronts, all underscored by the failure of current systems to address entrenched inequalities. Australia risks falling behind if it does not address them".<sup>37</sup>

26. Voices of Influence encourage the Federal Government to consider and carry out our recommendations as these are merely the starting point for the commitment made in support of UNDRIP and for the reconciliation and recovery of Indigenous Australians.

## **h. Community and stakeholder efforts to ensure the application of UNDRIP principles in Australia**

27. To ensure the application of the principles of the UNDRIP in Australia, responses from community and stakeholder contributors are greatly effective. In particular, Indigenous-led community and stakeholder contributors are essential to increasing participation and elevating Indigenous voices when ensuring principles of the UNDRIP.
28. It should be taken into consideration that in the 2016 census, it was identified that more than half of Indigenous Australian's (53%) were under the age of 25.<sup>38</sup> There is a clear need to

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<sup>36</sup> United Nations Declaration on the Rights of Indigenous Peoples Bill 2022 (Cth).

<sup>37</sup> June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner (Monday 13th September, 2021) <<https://humanrights.gov.au/about/news/opinions/incorporating-undrip-australian-law-would-kickstart-important-progress>>

<sup>38</sup> Marnee Shay and Grace Sarra, 'Locating the Voices of Indigenous Young People on Identity in Australia: An Indigenist Analysis' (2021) 15(3) *Diaspora, Indigenous and minority education* 166, 169.



identify how Indigenous young people are talking about their identities and their views in connection to health, education, employment and overall wellbeing.<sup>39</sup>

29. Australia's attempts to incorporate Indigenous voices in decision-making for matters that affect them are limited, and have disproportionately left out voices of young Indigenous people. Previous discussions surrounding Australia's relationship with Indigenous people at the Australia 2020 Summit, indicated that voices of young Indigenous Australians are struggling to be heard.<sup>40</sup> It is imperative that young Indigenous people are engaged in discussions about Indigenous affairs, however the problem that exists is the ability to make that happen.<sup>41</sup>

30. Voices of Influence Australia puts forward the following recommendations, with specific focus on the necessity to invest both financially and with resources in young First Nation voices. We acknowledge that Aboriginal and Torres Strait Islander young people should have their voices elevated when designing and implementing the delivery of policies and services that directly affect them.<sup>42</sup>

**Recommendation 13:** Support and resource pre-existing Indigenous youth networks.

31. Few Indigenous youth networks and programs that currently exist focus on strengthening Indigenous youth participation. Voices of Influence Australia recommends that extra funding and resources should be given to these organisations, so they may be able to expand their reach in creating impact on the lives of Aboriginal young people.

32. The National Aboriginal Sporting Chance Academy (NASCA), is an existing Indigenous-led program that utilises the impact of structured sporting and cultural programs to harness the aspirations of young Aboriginal and Torres Strait Islander people.<sup>43</sup> The program has reported its success in recent years, indicating that their program has resulted in thousands of young Aboriginal and Torres Strait Islander people seeking and taking opportunities that are meaningful to them and their broader community.<sup>44</sup>

33. Voices of Influence Australia recognises that advocate networks encourage Indigenous youth participation, and empower them to engage with issues that directly affect them. These

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<sup>39</sup> Marnee Shay and Grace Sarra, 'Locating the Voices of Indigenous Young People on Identity in Australia: An Indigenist Analysis' (2021) 15(3) *Diaspora, Indigenous and minority education* 166.

<sup>40</sup> Eugenia Flynn, Adele Cox and Tim Goodwin, 'Options for the Future of Indigenous Australia': Young Indigenous People at the Australia 2020 Summit' (2008) 7(5) *Indigenous law bulletin* 6 ('Options for the Future of Indigenous Australia').

<sup>41</sup> *Options for the Future of Indigenous Australia* (no 3) 8.

<sup>42</sup> S Hall et al., 'National Aboriginal and Torres Strait Islander Youth Report: Youth Survey 2019' (Mission Australia, 2020) 10.

<sup>43</sup> 'National Aboriginal Sporting Chance Academy', *About Us* (Web Page, 2022) <<https://nasca.org.au/about/>>.

<sup>44</sup> 'National Aboriginal Sporting Chance Academy', *The Future is First Nations: annual report 2020* (Web Page, 2020) <<https://report2020.nasca.org.au/>>.



networks, such as NASCAR, offer the opportunity for these young first nation voices to be heard, which cannot be taken for granted and should be further encouraged by the Committee.

**Recommendation 14:** Empower Indigenous organisations with funding training for young Indigenous people.

34. Voices of Influence Australia recommends funding to be allocated to Indigenous organisations for specific training for young Indigenous people, which seek to elevate and empower their voices.
35. An example of this type of training is the Yanalangami: Strong Women, Strong Communities Program offered by Tranby Aboriginal Cooperative, it exemplifies the ability for specific training for Indigenous female change makers, to make an impact on their communities.<sup>45</sup> The program offers the support to elevate the voices of these young Indigenous females, and work together to create the change for their community members.
36. We recommend that further support be given to such organisations, as well as for the funding for more training that may be able to be provided by other organisations that are working toward the same goals.

**Recommendation 15:** Provide funding for Indigenous-led research and social researchers.

37. In this recommendation, Voices of Influence Australia suggests that funding is required to support Indigenous-led research, and the employment of Indigenous social researchers to improve the evidence base in Indigenous affairs, and to inform future policy.
38. In following the success of Indigenous-led research produced by AIATSIS, more funding should be given for further research. AIATSIS is leading the way in developing evidence base in Indigenous affairs, as well as incorporating Indigenous voices in discussions on Indigenous matters, and sharing Indigenous stories.<sup>46</sup>
39. More funding should also be allocated to the Lowitja Institute, which is the National Institute for Aboriginal & Torres Strait Islander Health Research.<sup>47</sup> Importantly, the Lowitja Institute conducts research from a community-led and community-controlled approach. Further, the Lowitja Institute supports other Indigenous organisations to conduct research within their specific organisations thus enhancing the capacity of Indigenous community organisations.

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<sup>45</sup> *The Yanalangami Program* (Web Page, 2022) <<https://www.yanalangami.com.au/program-2022/>>.

<sup>46</sup> 'AIATSIS', *What We Do* (Web Page, 2020) <<https://aiatsis.gov.au/about/what-we-do>>.

<sup>47</sup> See <https://www.lowitja.org.au/>.



40. The Committee should seek to further its support for AIATSIS, the Lowitja Institute and other social research databases, so that Indigenous policy reflects upon the research delivered and acquired by Indigenous social researchers.

**Recommendation 16:** The Australian Government should increase investment into culturally appropriate teacher training, truth telling education resources, and Indigenous pedagogy.

41. Voices of Influence Australia acknowledges that to reduce discrimination within schools and to improve the physical, emotional and cultural safety of Indigenous young people within education systems, the Australian Government must increase investment into culturally appropriate teacher training, truth telling education resources, and Indigenous pedagogy to reduce tokenistic inclusion that perpetuates inequality of Indigenous learners.
42. These resources must focus on truth-telling and should prioritise local engagement with Indigenous communities, including using Indigenous languages to foster a sense of place, learning and recognize Indigenous cultural strength. These measures make schools safer for Indigenous youth by ensuring their cultural identity is recognised, supported and celebrated.<sup>48</sup>

**Recommendation 17:** With the support and funding from the Australian Government, an expansion of Indigenous community corrections initiatives such as Lore enforcement.

43. Voices of Influence Australia note that kinship and complex codes of conduct underpin Aboriginal culture. 'Lore' refers to the customs and stories which helped to govern all aspects of Aboriginal life and were passed down from one generation to another.<sup>49</sup> Voices of Influence Australia recommends that the Australian Government support and fund reinvented justice programs and First Nations community-led initiatives. The Australian Law Reform Commission's 2018 *Pathways to Justice Report* provides recommendations on how to interrupt the continuing cycle of Aboriginal people's disproportionate susceptibility to arrest, police custody, and incarceration.<sup>50</sup> Many of its recommendations seek to address the structural problems of Aboriginal peoples' relationship with the criminal justice system. The recommendations highlight programs of 'justice reinvestment', which emphasise the need to redirect existing resources to community driven initiatives for preventing and mitigating offending and its prosecution on the front end.

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<sup>48</sup> Greg Vass, 'The Racialised Educational Landscape in Australia: listening to the whispering elephant' (2014) 17 *Race Ethnicity and Education* 2, 176-201.

<sup>49</sup> Working with Indigenous Australians, 'Two laws, one land', *The Law and the Lore* (Web Page) <[http://www.workingwithIndigenoustralians.info/content/Culture\\_4\\_The\\_Law\\_and\\_the\\_Lore.html#:~:text=The%20term%20'lore'%20refers%20to,'lore'%20being%20used%20interchangeably.>](http://www.workingwithIndigenoustralians.info/content/Culture_4_The_Law_and_the_Lore.html#:~:text=The%20term%20'lore'%20refers%20to,'lore'%20being%20used%20interchangeably.>).

<sup>50</sup> Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, March 2018).





44. Voices of Influence Australia recommend the Australian Government fund and support Lore enforcement in urban and regional Australia. In 2021, NSW established Australia's first independent tribal Lore Enforcement in towns of Bourke and Enngonia.<sup>51</sup> Muruwarri and Budjiti man Bruce Shillingsworth Senior and his son Bruce Shillingsworth Junior are at the helm of the program and operate as Lore Enforcement Officers. This practically hands over law enforcement powers and decision-making to local elders rather than state police. Moreover, it provides an opportunity for Indigenous communities and police services to work collaboratively in a way that supports shared knowledge and cultural practices. The Australian Government should embrace and support future plans for Lore enforcement in Bourke and Enngonia to include community ambulance services and further advance Indigenous governance in community safety and justice.
45. Overseas examples of Lore enforcement include the establishment of the Indigenous Policing Program in Canada, the employment of Iwi Liaison Officers in New Zealand as part of their policing reform strategy 'Turning the Tide', and the Tribal Police system in the United States.<sup>52</sup> Although the structures of these schemes vary, they all share objectives to decrease the risks of harm in Indigenous communities, to invest in Indigenous youth, to build a cultural bridge between Indigenous people and law enforcement needs, and to promote the goals of self-governance.
46. Voices of Influence Australia note that it is imperative that the expansion of such initiatives are led and governed by Indigenous peoples' councils and local elders.

## **i. The current and historical systemic and other aspects to take into consideration regarding the rights of First Nations people in Australia**

47. Voices of Influence Australia submits that the Australian Government must invest in the appropriate reparations for the current and historical systemic aspects regarding the rights of First Nations people through transitional justice instruments and mechanisms. Transitional justice involves "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of largescale abuses, in order to ensure accountability, serve justice and achieve reconciliation".<sup>53</sup> Voices of Influence Australia submits that transitional justice can be understood more simply as a process of deepening

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<sup>51</sup> ABC, 'First Indigenous, independent tribal Lore Enforcement program begins in Western NSW', *ABC Western Plains* (Web Page, 7 November 2021) <<https://www.abc.net.au/news/2021-11-07/first-Indigenous-independent-lore-enforcement-program-begins-in-/100597674>>.

<sup>52</sup> Government of Canada, 'Indigenous Policing', *Public Safety Canada* (Web Page) <<https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/brgnl-plcng/index-en.aspx>>; New Zealand Police, 'Iwi liaison officers', *Maori and Police* (Web Page) <<https://www.police.govt.nz/about-us/maori-police/iwi-liaison-officers>>; U.S. Department of the Interior, 'Tribal Justice Systems', *Office of Congressional and Legislative Affairs* (Web Page, 2 December 2015) <<https://www.doi.gov/ocl/tribal-justice-systems>>.

<sup>53</sup> Kofi Annan, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General*, UN Doc S/2004/616 (23 August 2004) 4 [8], 9 [25] ('Report of the Secretary General').



substantive democracy or of transforming unjust relations into just relations.<sup>54</sup> Furthermore, its logic has relevance in Australia, as Australian democracy has been founded on legacies of historic injustices to our First Nations people.

48. Voices of Influence Australia note, however, that the internationally endorsed set of practices and principles designed to address mass violence and largescale human rights abuses, has largely neglected cultural rights violations in both its discourse and praxis.<sup>55</sup> Adhering to conventional approaches rooted in Western liberalism, transitional justice has traditionally prioritised the legal redress of a narrow set of civil and political rights violations, while overlooking many of the underlying harms embedded in transitional societies, including largescale and ongoing violations of cultural rights.<sup>56</sup> Voices of Influence Australia submits to the Committee that reparation of cultural rights of First Nations communities should be central to any investment in truth seeking and transitional justice within Australia.

49. Voices of Influence Australia put forward the following recommendations. It is important to emphasise that Voices of Influence Australia does not have the scope to put forward recommendations on our own authority – thus, should the recommendations be actioned, it is vital that the Committee invest in the appropriate consultation with Indigenous leadership to assure the holistic implementation of the UNDRIP.

**Recommendation 18:** The Australian Government should invest in transitional justice mechanisms and establish a National Truth Commission to aid the healing of Indigenous communities and reconciliation of our nation under Article 8 (2) Article 11 (2) of the UNDRIP.

**Recommendation 19:** The Federal Government must centralise reparations for the ongoing violations of cultural rights within the National Truth Commission.

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<sup>54</sup> Megan Davis, 'Adding a New Dimension: Native Title and the UN Declaration on the Rights of Indigenous Peoples' (2009) 93 Australian Law Reform Commission Reform Journal 17, 17.

<sup>55</sup> Ruti Teitel, 'Transitional Jurisprudence: The Role of Law in Political Transformation' (1997) 106 Yale Law Journal 2009, 2018.

<sup>56</sup> Ruti Teitel, 'Transitional Jurisprudence: The Role of Law in Political Transformation' (1997) 106 Yale Law Journal 2009, 2018.



## **Concluding Comments**

Voices of Influence Australia thank you for the opportunity to make this submission. Should you have any queries or require further submissions, please contact the undersigned at your convenience.

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