

Submission

**Joint Standing Committee on Aboriginal and Torres Strait Islander
Affairs**

**Inquiry into the Application of the United Nations Declaration on the
Rights of Indigenous Peoples**

October 2022



About the NHLF

The National Health Leadership Forum (NHLF) was established in 2011. The NHLF is a collective partnership of 12 national organisations who represent a united voice on Aboriginal and Torres Strait Islander health and wellbeing with expertise in health policy and program development, service delivery, professional practice, workforce, research, healing and mental health, and social and emotional wellbeing.

The NHLF was instrumental in the formation of the Close the Gap Campaign and continues to lead the Campaign as the senior collective of Aboriginal and Torres Strait Islander health leadership. Committed to achieving health equality, we draw strength from cultural integrity, the evidence base and community.

The NHLF provides advice and direction to governments on the development and implementation of informed policy and program objectives that contribute to improved and equitable health and life outcomes, and the cultural well-being of Aboriginal and Torres Strait Islander people. Health is a noted human right, it is an underpinning to everyday life, and key factor in economic (and environmental) sustainability. Our vision is for the Australian health system to be free of racism and inequality and all Aboriginal and Torres Strait Islander people have access to health services that are effective, high quality, appropriate and affordable.

The NHLF Membership

- Australian Indigenous Doctors' Association
- Australian Indigenous Psychologists' Association
- The Aboriginal and Torres Strait Islander Healing Foundation
- Congress of Aboriginal and Torres Strait Islander Nurses and Midwives
- Gayaa Dhuwi (Proud Spirit) Australia
- Indigenous Allied Health Australia
- Indigenous Dentists' Association of Australia
- The Lowitja Institute
- National Association Aboriginal and Torres Strait Islander Health Workers and Practitioners
- National Aboriginal and Torres Strait Islander Leadership in Mental Health
- National Association of Aboriginal and Torres Strait Islander Physiotherapists
- Torres Strait Regional Authority



Introduction

Inquiry's Terms of Reference

The application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia, with particular reference to:

- i. the international experience of implementing the UNDRIP
- ii. options to improve adherence to the principles of UNDRIP in Australia
- iii. how implementation of the Uluru Statement from the Heart can support the application of the UNDRIP
- iv. any other related matters

A covenant of the UN is a legally binding treaty that once ratified requires the parties to adjust their domestic laws to comply with international obligations. A declaration is not legally binding. A declaration is meant to be inspirational in its intent, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP or the Declaration) represents the minimum standard on human rights that apply to Indigenous peoples.

The Declaration is a statement of principles based on the fundamental rights of self-determination, participation in decision-making, respect for and protection of culture, and equality and non-discrimination. The Declaration was adopted by the General Assembly of the UN in 2007. Australia was one of the four countries that originally rejected the Declaration and then endorsed in 2009.

The NHLF welcomes the opportunity to provide a submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs on the Application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia. Our underlying position is that until Australia's politicians/governments and the community embraces the Uluru Statement from the Heart, the UNDRIP is currently the most comprehensive tool we have to advance and protect the rights of Aboriginal and Torres Strait Islander peoples, despite it not always or consistently adhered to.

[Enquiries about this submission should be directed to](#)

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Recommendations

1. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) be adopted and embedded through proper negotiations, into central structures that govern Aboriginal and Torres Strait Islander affairs in Australian law, regulations, policies, and administrative practices.
2. The Uluru Statement from the Heart (Uluru Statement) becomes the mechanism for Australia to meet its UNDRIP commitment, with specific regard to Aboriginal and Torres Strait Islander self-determination.
3. To achieve the above the NHLF calls for
 - constitutional recognition of Aboriginal and Torres Strait Islander peoples as a priority.
 - an Aboriginal and Torres Strait Islander representative Voice to Parliament enshrined in the Constitution as recommended in the Uluru Statement.
 - the Australian government include the UNDRIP in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) and review existing legislation, policies, and programs for conformity with the UNDRIP.
 - the government consult in good faith with Aboriginal and Torres Strait Islander peoples in relation to all matters that may affect, them or their rights, about the implementation of UNDRIP.
4. From a Health perspective, one practical application of the UNDRIP is to fully implement the 2020 National Agreement on Closing the Gap, the National Aboriginal and Torres Strait Islander Health Plan 2021–2031 and related Health Plan and Workforce Plan, with a commitment to long term (10+ years) needs-based and coordinated cross-sectional funding by federal, state, territory, and local governments.

i. The international experience of implementing the UNDRIP

Whilst many countries (over 140) signed onto the UNDRIP, its adherence and implementation at country level is generally not well done and this appears to be because economic priorities have overridden the social, economic, cultural life of Indigenous peoples.

Canada and New Zealand and their implementation of UNDRIP are examples that Australia can learn from.

Canada

After a long and difficult process, Canada passed its United Nations Declaration on the Rights of Indigenous Peoples Act on 21 June 2021. This Act provides a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations. The UNDRIP law does not create Indigenous rights. The Act stipulates that Canada's federal government "must, in consultation and cooperation with Indigenous peoples and with other federal ministers, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration" and "prepare and implement an action plan to achieve the objectives of the Declaration." This step, currently under implementation, involves engagement with Indigenous partners to identify priorities, actions and measures for aligning federal laws with the Declaration over time. The Act requires that the action plan be developed by 21 June 2023. The 2021 budget provided \$31.5 million over two years to do this work.

Aotearoa/ New Zealand

The Government of Aotearoa/ New Zealand in 2019 began the process to develop a national plan to implement the UN Declaration that should include time bound and measurable actions that show a concerted effort towards achieving the objectives of the UN Declaration. In June 2021, the NZ Government agreed to a two-step process for the development of a Declaration Plan which included targeted engagement and wider public consultation on a draft plan. The targeted engagement ran from September 2021 to February 2022. A report (referred to *He Puapua*) was provided which outlines what a pathway forward might look like. The process continues with the NZ Government working on an initial Declaration Plan beginning December 2022, with a cycle of review and updates up to 2040.

ii. options to improve adherence to the principles of UNDRIP in Australia

The Declaration bans discrimination against indigenous peoples, promotes their full and effective participation in all matters that concern them, as well as their right to remain distinct and to pursue their own visions of economic and social development. Yet, the Declaration is not legally binding on member states.



The Uluru Statement is a practical application of the Declaration. To date the application of the Australian Constitution in relation to the rights and needs of Aboriginal and Torres Strait Islander Australians has been inadequate when comparing to the treatment and opportunities with the non-Indigenous Australian population. The overwhelming evidence of this disadvantage is not in dispute; it continues to be reported, with far too little progress being made in many key areas of health and wellbeing.

The NHLF believes that lack of recognition in the Constitution for Aboriginal and Torres Strait Islander people as the First Peoples of this country, contributes to Australian laws and their application continuing to adversely discriminate based on 'race'. In practice, the Constitution and Australian laws have not enabled the equal enjoyment and participation of Aboriginal and Torres Strait Islander people in important social, political and economic aspects of life. Despite past efforts of governments over many decades Aboriginal and Torres Strait Islander people's participation in meaningful decision-making processes on policies and legislation that affect their lives has not been adequate to avert the health gaps.

The deficit in health and life expectancy of Aboriginal and Torres Strait Islander peoples clearly illustrates inequality in the application and impact of Australian laws and policy settings. These issues are not inherently intractable. For instance, much of the disease burden suffered by Aboriginal and Torres Strait Islander peoples could be avoided or reduced through education and appropriate opportunities to access preventive careⁱ. It should be a fundamental right for Aboriginal and Torres Strait Islander people to have access to culturally safe and responsive health services in their communities. These should be guided by safe and robust policies founded on strengths-based frameworks. This approach would not only contribute to the health and wellbeing of Aboriginal and Torres Strait Islander peoples but strengthen the positive participation rates and social and economic circumstances of the nation. Constitutional recognition would underpin these frameworks.

As the ANTaR has stated 'in 2022, we are 17 years since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) and four years since the defunding and subsequent closure of the National Congress of Australia's First Nations Peoples. These are just two examples of the many failures and missed opportunities of Australian governments to live up to UNDRIP – particularly in terms of self-determination'ⁱⁱ.



iii. how implementation of the Uluru Statement from the Heart can support the application of the UNDRIP

Aboriginal and Torres Strait Islander people have expressed time and time again, the need to eliminate the discriminatory obstacles to equal access to health, economic opportunities, education and all other resources associated with self-determination and healthy sustainable outcomes. Institutional racism and the multi-generational experiences of trauma and dislocation continue to have real impacts on the lives of many Aboriginal and Torres Strait Islander peopleⁱⁱⁱ. This inhibits widespread improvements in health and wellbeing.

Centred around a human rights-based framework, the work of the NHLF is concerned with improving life expectancy and health outcomes of Aboriginal and Torres Strait Islander peoples. The 2021-2031 National Aboriginal and Torres Strait Islander Health Plan (Health Plan) and the National Aboriginal and Torres Strait Islander Health Workforce Strategic Framework and Implementation Plan (Workforce Plan) are key priorities for the NHLF. Both Plans are the first to name racism, be underpinned by a human-rights based approach and framed around health in a holistic context, which recognises not only physical health and wellbeing but also the social, emotional and cultural wellbeing of individuals, families and communities throughout the entire life course.

The Cultural Determinants of Health plays a significant part in the health and wellbeing of Aboriginal and Torres Strait Islander peoples and is a key aspect of the Health Plan. The Mayi Kuwayu Study^{iv} provides the evidence of the benefits and impact of the cultural determinants: connection to country; cultural beliefs and knowledge; language; family, kinship and community; cultural expression and continuity; and self-determination and leadership. By acknowledging and respecting these determinants health outcomes and social and emotional wellbeing improve for Australia's First Nations People.

Whilst Australia has signed up to the UNDRIP we have failed to meet many of the obligations under the Declaration and thus failed to respect and protect the cultural life of First Nations Peoples. For example, there are 17 out of 45 articles relating to Indigenous culture and how to protect them. Article 11 is highlighted here.

Article 11 states:

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.



Article 11 is one such area that illustrates Australia's noncompliance due to its adherence to economic development at the expense of Aboriginal and Torres Strait Islander cultural heritage. Governments at the Federal and State and Territory level have consistently ignored the cultural determinants when perceived economic developments benefits are proposed by industry. Government decisions to allow mining projects to proceed at the expense of the Aboriginal cultural heritage clearly illustrate the preferencing of one set of values over others and the lip service being applied to ending discrimination.

Aboriginal and Torres Strait Islander disadvantage is a systemic issue and to address it, requires a clear, coordinated and systemic response. The need for structural change for Aboriginal and Torres Strait Islander peoples to have a greater say in the legislation and policy that impact us is long overdue. The NHLF is of the view that this structural change can be effectively addressed through implementation of the UNDRIP and the implementation of the Uluru Statement.

Implementation of the Uluru Statement would also give legal weight to the implementation of the National Agreement on Closing the Gap 2020-2030 (National Agreement). The National Agreement is a mechanism for embedding self-determination (and therefore UNDRIP principles), yet its implementation currently relies on good will within bureaucracies that for too long have been at the forefront of implementing racially based discriminatory practices.

Conclusion

Thank you again for the opportunity to provide this submission to what is a foundational piece of work to secure a safe, self-determining life for First Nations People. We hope that the commitments for a referendum on the enshrinement of a First Nations Voice to Parliament in the Constitution is successful. However, without due recognition of Australia's First Nations People or full enactment of the Uluru Statement we will continue to see a failure of Governments to show leadership and apply the UNDRIP in real terms within Australia.

The NHLF would welcome the opportunity to meet with the Joint Standing Committee to discuss any points raised in our submission.

Sincerely

Fiona Cornforth
Chair, National Health Leadership Forum
CEO, The Healing Foundation



ⁱ <https://www.aihw.gov.au/reports/burden-of-disease/australian-bod-study-2011-indigenous-australians/formats>

ⁱⁱ ANTaR. 2021. Submission: The Application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia.

ⁱⁱⁱ NHLF, 2017, *Position Paper on Racism*: <https://www.catsinam.org.au/policy/position-statements>; and Joint Statement (NMBA, CATSINaM, ACM, CAN and ANMF), 2018, *Cultural safety: Nurses and midwives leading the way for safe health care*: <https://www.catsinam.org.au/communications/press-releases-and-joint-statements>

^{iv} Minette Salmon, Kate Doery, Phyll Dance, Jan Chapman, Ruth Gilbert, Rob Williams and Ray Lovett. 2019. *Links between Aboriginal and Torres Strait Islander Culture and Wellbeing: what the evidence says*. Health National Centre for Epidemiology and Population Health, Research School of Population Health, ANU College of Health and Medicine, Australian National University, Florey Building, 54 Mills Road, Acton, ACT 2600. <https://mkstudy.com.au/summary-reports/>