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Submission in response to the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia

Senate Standing Committee on Legal and Constitutional Affairs

Introduction

This submission is in response to the Australian Senate Standing Committee on Legal and Constitutional Affairs' inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia. This response relates to two items in the Term of Reference for this inquiry: the record of accomplishment of Australian Government efforts to improve adherence to the principles of UNDRIP; and community and stakeholder efforts to ensure the application of UNDRIP principles in Australia. In particular, this submission focuses on the need for federal and state governments to align their efforts with the Priority Reforms set out in the National Agreement on Closing the Gap in order to ensure human rights and achieve better outcomes for Aboriginal and Torres Strait Islander people in Australia. The author welcomes the opportunity to discuss the contents of this submission with the Committee.

About the author

Dr Adam Paul Heaton (PhD Anti-racism Studies, Aboriginal Affairs) has published over 80 peer-reviewed research articles and policy-related papers advocating for human rights for Aboriginal Australians.

Recommendations

That the UNDRIP in Australia emphasise the importance of:

1. genuine partnerships and shared decision-making between Aboriginal and Torres Strait Islander communities, organisations and people and Australian federal and state governments, and the organisations they fund to deliver services affecting Aboriginal and Torres Strait Islander people (Priority Reform 1 in the National Agreement on Closing the Gap);
2. investment from Australian federal and state governments in funding and building the capacity of the (Aboriginal and Torres Strait Islander) community-controlled sector (Priority Reform 2);
3. transforming Australian federal and state government organisations (Priority Reform 3);
4. Australian federal and state governments investing in sharing data and information at a regional level toward improving outcomes for Aboriginal and Torres Strait Islander people (Priority Reform 4);
5. the implementation of the National Agreement on Closing the Gap Outcomes and Targets; and
6. Australian federal and state governments not withholding investment in initiatives to implement the Priority Reforms toward contributing significantly to achieving the Closing the Gap Targets.

The need for Australian governments to invest in the Closing the Gap Priority Reforms

Aboriginal and Torres Strait Islander people in Australia, with oversight from the Coalition of Peaks, have developed the National Agreement on Closing the Gap (the National Agreement) around four Priority Reforms. The Australian federal and state governments have signed up to the National Agreement. The priority reforms are the essential building blocks for ensuring investment in policies and programs by Australian federal and state governments achieve optimal outcomes for Aboriginal and Torres Strait Islander communities and people and, essentially, achieve the 17 Closing the Gap Targets. By

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implementing the priority reforms, government will transform the way it does business and achieve stronger outcomes for and with Aboriginal and Torres Strait Islander people. A target and an outcome is attached to each priority reform, with the intention of measuring the change Australian federal and state government departments and agencies are making in the way they work with Aboriginal and Torres Strait Islander people. The four Priority Reforms and their outcomes and targets areⁱ:

1. Formal partnerships and shared decision-making

Outcome: There will be formal partnership arrangements to support Closing the Gap in place between Aboriginal and Torres Strait Islander people and governments in place in each state and territory enshrining agreed joint decision-making roles and responsibilities and where Aboriginal and Torres Strait Islander people have chosen their own representatives.

Target: Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.

2. Building the community-controlled sector

Outcome: Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations.

Target: Building the community-controlled sector: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.

3. Transforming government organisations

Outcome: Improving mainstream institutions: Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.

Target: Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.

4. Sharing access to data and information at a regional level

Outcome: Increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development.

Target: Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.

By Australian federal and state governments genuinely implementing these four priority reforms, they will achieve the 17 Closing the Gap outcomes and targets (listed below) as well as the UNDRIP Articles, commencing with enabling self-determinationⁱⁱ:

Article 3: Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

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Priority Reform 1—Formal partnerships and shared decision-making

Stronger partnership elements, under Clause 32, include ensuring partnerships are accountable and representative, formal agreements are in place and decision-making is shared between government and Aboriginal and Torres Strait Islander people. Priority Reform 1 is a commitment from Australian federal and state governments to acknowledging the shared decision-making structures Aboriginal and Torres Strait Islander people have already developed (with actions not intended to replace these arrangements but rather build on these successes) and committing to establishing policy and place-based partnerships to respond to local priorities. It also involves them reviewing existing partnership arrangements to assess how they meet the partnership elements by undertaking a stocktake of existing partnership arrangements, reviewing and strengthening existing partnerships and reporting on the number of partnerships, changes made to existing partnerships, and which strong partnership elements are met and unmet for all partnerships.

The partnership between Australian federal and state government and Aboriginal and Torres Strait Islander people will establish a joined up approach between governments and Aboriginal and Torres Strait Islander representatives in five policy priority areas. The five policy areas: 1. justice (adult and youth incarceration); 2. social and emotional wellbeing (mental health); 3. Housing; 4. early childhood care and development; and 5. Aboriginal and Torres Strait Islander languages) should focus on identifying opportunities to work more effectively across governments, reduce gaps and duplication, and improve outcomes.

Priority Reform 2—Building the capacity of Aboriginal community-controlled organisations (ACCOs)

The elements for building a strong community-controlled sector, under Clause 45 of the National Agreement, include sustained capacity building and investment and a dedicated and identified Aboriginal and Torres Strait Islander. It is also important for ACCOs to be supported by a peak body with strong governance and policy development influencing capacity and community-controlled organisations with a dedicated, reliable and consistent funding model designed to suit the types of services required and requested by Aboriginal and Torres Strait Islander communities. To achieve this, the National Agreement sets out that Australian federal and state governments will commit to building strong Aboriginal and Torres Strait Islander community-controlled sectors and organisations in line with the strong sector elements, include in annual reports information on action taken to strengthen the community-controlled sector and implement measures to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations.

Partnerships need to recognise that building strong community-controlled sectors to deliver Closing the Gap services and programs requires national effort and joined up delivery against all sector elements in agreed priority areas. Sectors for joint national strengthening effort every three years through sector strengthening plans need to be identified. The initial sector strengthening plans are to focus on early childhood care and development, housing, health and disability outcomes and targets. Partnerships will also develop sector-strengthening plans in line with the strong community-controlled sector elements, with a focus on four streams: workforce; capital infrastructure; service provision; and governance.

Priority Reform 3—Transforming government organisations

As outlined under Clause 59 of the National Agreement, transforming government organisations is a commitment from Australian federal and state government organisations to identify and eliminate racism, embed and practice meaningful cultural safety and deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people. It is also a commitment to increasing accountability through transparent funding allocations, supporting Aboriginal and Torres Strait Islander cultures and improving engagement with Aboriginal and Torres Strait Islander people.

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These transformation elements will be achieved as governments challenge biases that result in decisions based on stereotypes, share and publish their approaches to engagement and engage with Aboriginal and Torres Strait Islander people before, during and after emergencies. Government also need to include in their annual reports information of implementing the transformation elements and identify, develop and strengthen an independent mechanism/s to support, monitor and report on the transformation of mainstream agencies and institutions. The mechanism/s need to support and monitor the progress of these agencies and institutions (including through reporting outcomes and progress publicly), be recognisable to and to engage with Aboriginal and Torres Strait Islander people and be culturally safe and respond to their concerns about mainstream institutions and agencies.

Priority Reform 4—Sharing data and information at a regional level

Data and information sharing elements in the National Agreement includes ensuring partnerships are in place to guide the improved collection, access, management and use of data to inform shared decision-making and federal and state governments provide communities and organisations with access to the same data and information they use to make decisions. Priority Reform 4 also involves governments engaging in timely collection, handling and reporting on data at sufficient levels of disaggregation and in an accessible and timely way. It will be ensured Aboriginal and Torres Strait Islander communities and organisations are supported by governments to build capability and expertise in collecting, using and interpreting data in a meaningful way.

Priority Reform 4 is a commitment from governments to share available, disaggregated regional data and information with Aboriginal and Torres Strait Islander organisations and communities on Closing the Gap, subject to meeting privacy requirements. It involves the establishment of partnerships between Aboriginal and Torres Strait Islander people and government agencies to improve collection, access, management and use of data, including identifying improvements to existing data collection and management. Data will be made more transparent by telling Aboriginal and Torres Strait Islander people what data they have and how it can be accessed. The capacity of Aboriginal and Torres Strait Islander organisations and communities to collect and use data will also be built.

On top of this, the partnership between Australian federal and state governments will establish data projects in up to six locations across Australia to enable Aboriginal and Torres Strait Islander communities and organisations to access and use location-specific data on the closing the gap outcome areas. Data projects will support Aboriginal and Torres Strait Islander communities to analyse and use regional specific data to help drive their own development and discussions with governments on Closing the Gap and enable Aboriginal and Torres Strait Islander communities and organisations to collect and access other data they consider important. The partnership will be covered by localised agreements, consistent with priority reform one, between the governments and participating Aboriginal and Torres Strait Islander organisations in the region.

The dire need for greater investment in initiatives to achieve Closing the Gap Targets

As well as addressing these concepts in the application of the UNDRIP in Australia, it should encapsulate the aspects of the 17 Closing the Gap Outcomes and Targets in the National Agreementⁱⁱⁱ:

1. Outcome: Aboriginal and Torres Strait Islander people enjoy long and healthy lives.
Target: Close the Gap in life expectancy within a generation, by 2031.
2. Outcome: Aboriginal and Torres Strait Islander children are born healthy and strong.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander babies with a healthy birthweight to 91 per cent.

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3. Outcome: Aboriginal and Torres Strait Islander children are engaged in high quality, culturally appropriate early childhood education in their early years.
Target: By 2025, increase the proportion of Aboriginal and Torres Strait Islander children enrolled in Year Before Fulltime Schooling (YBFS) early childhood education to 95 per cent.
4. Outcome: Aboriginal and Torres Strait Islander children thrive in their early years.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander children assessed as developmentally on track in all five domains of the Australian Early Development Census (AEDC) to 55 per cent.
5. Outcome: Aboriginal and Torres Strait Islander students achieve their full learning potential.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 per cent.
6. Outcome: Aboriginal and Torres Strait Islander students reach their full potential through further education pathways.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70 per cent.
7. Outcome: Aboriginal and Torres Strait Islander youth are engaged in employment or education.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander youth (15-24 years) who are in employment, education or training to 67 per cent.
8. Outcome: Strong economic participation and development of Aboriginal and Torres Strait Islander people and communities.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-64 who are employed to 62 per cent.
9. Outcome: Aboriginal and Torres Strait Islander people secure appropriate, affordable housing that is aligned with their priorities and need.
Target: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88 per cent.
10. Outcome: Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system.
Target: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.
11. Outcome: Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.
Target: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent.
12. Outcome: Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system.
Target: By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.
13. Outcome: Aboriginal and Torres Strait Islander families and households are safe.
Target: By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.
14. Outcome: Aboriginal and Torres Strait Islander people enjoy high levels of social and emotional wellbeing.

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Target: Significant and sustained reduction in suicide of Aboriginal and Torres Strait Islander people towards zero.

15. Outcome: Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

Target: By 2030, a 15 per cent increase in Australia's landmass subject to Aboriginal and Torres Strait Islander people's legal rights or interests.

Target: By 2030, a 15 per cent increase in areas covered by Aboriginal and Torres Strait Islander people's legal rights or interests in the sea.

16. Outcome: Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing.

Target: By 2031, there is a sustained increase in number and strength of Aboriginal and Torres Strait Islander languages being spoken.

17. Outcome: Aboriginal and Torres Strait Islander people have access to information and services enabling participation in informed decision-making regarding their own lives.

Target 17: By 2026, Aboriginal and Torres Strait Islander people have equal levels of digital inclusion.

Conclusion

The UNDRIP in Australia needs to capture the aspects of the four (4) priority reforms and seventeen (17) outcomes and targets in the National Agreement on Closing the Gap. Australian federal and state governments, with Aboriginal and Torres Strait Islander people, genuinely implementing the priority reforms, will go a long way to achieving the Closing the Gap outcomes and targets. More so, their implementation will contribute substantially to self-determination and other human rights outlined in the UNDRIP.

ⁱ Coalition of Peaks, 2020, *The National Agreement on Closing the Gap*. Retrieved on 5 May 2022 [here](#)

ⁱⁱ Australian Human Rights Commission, 2022, *UN Declaration of the Rights of Indigenous People*. Retrieved 5 May 2022 [here](#)

ⁱⁱⁱ Australian Government 2020, *Closing the Gap targets and outcomes*. Retrieved 5 May 2022 [here](#)