



Commissioner for Children and Young People
Western Australia

Our reference: 22/3207

Senator the Hon Kim Carr
Chair of References Committee
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: legcon.sen@aph.gov.au

Dear Senator Carr

Submission – Inquiry into the application of the United Nations Declaration on the Rights of Indigenous People in Australia.

Thank you for the opportunity to provide a submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into the application of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) in Australia.

It is well established that Aboriginal children and young people are disproportionately represented in Australia's child protection and youth justice systems. There is also a recognised need to improve the overall health and wellbeing of Aboriginal children and young people (particularly in the early years of life), address mental health concerns that are more prevalent amongst young Aboriginal people, and to increase the overall literacy and numeracy amongst Aboriginal students. Universal adherence to and respect for the rights contained within the UNDRIP would represent a significant step towards addressing these inequities faced by Aboriginal children and young people.

Under the United Nations Convention on the Rights of the Child children and young people who are capable of forming their own views have the right to express those views freely in all matters affecting them, and to have those views given due weight in accordance with the child's age and maturity.¹ The matters raised in this submission therefore reflect the views and experiences that Aboriginal children and young people, their families and member of their communities have shared during consultations undertaken by this office.

¹ Article 12, United Nations Declaration on the Rights of the Child

The importance of culture

Relevant UNDRIP Articles

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned.

Article 12: Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies.

Article 13: Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures.

Article 14: Indigenous peoples have the right to establish and control their educational systems and institutions, providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Culture is fundamental to the lives of Aboriginal children and young people, and central to their wellbeing. There is significant evidence that highlights the positive associations between culture and wellbeing amongst Aboriginal people, including across areas such as health, education and employment.^{2,3} Aboriginal children and young people who have a strong sense of identity and can make positive statements about themselves are better equipped to learn life skills and are more likely to experience positive wellbeing.⁴ Culture can also act as a protective factor that can reduce exposure to, and the effects of, risks to personal wellbeing. Aboriginal people have commonly identified their culture as a factor that builds resilience, moderates the impact of stressful circumstances and supports recovery from adversity.⁵

Western Australian Aboriginal children and young people have consistently shared with this office how culture is one of the most important features of their lives, often talking of how their culture gives them a sense of pride and supports their wellbeing:

"To me [culture] means that I have something to live up to."

"Reconnecting with my Noongar culture let me find out who I was again and made me proud. It was the change in my life that I needed."

² Commonwealth Government 2013, *National Aboriginal and Torres Strait Islander Health Plan 2013-2023*, Commonwealth Government, p. 9.

³ Dockery AM 2011, *Traditional culture and the wellbeing of Indigenous Australians: an analysis of the 2008 NATSISS*, Curtin University.

⁴ Secretariat of National Aboriginal and Islander Child Care, *Child's Connection to Culture*, [website] viewed 19 May 2022, <<http://www.supportingcarers.snaicc.org.au/connecting-to-culture/connecting-and-understanding-culture>>

⁵ Zubrick SR et al, 'Social Determinants of Social and Emotional Wellbeing' in Dudgeon P et al 2014, *Working Together: Aboriginal and Torres Strait Islander Mental health and Wellbeing Principles and Practice – Second edition*, Commonwealth Government, p. 104.

"It tells me who I am and makes me feel good. It makes me feel like I belong somewhere."

The use of culture to support and improve the wellbeing of Aboriginal children and young people requires Aboriginal children and young people to be afforded the opportunity to learn, practice and share their culture. During consultations many Aboriginal children and young people have spoken about the importance of practicing their culture by being connected to their country, learning and speaking an Aboriginal language, and taking part in traditional activities and cultural events. Others spoke of the importance of being able to share their culture with Aboriginal and non-Aboriginal children, young people and adults:

"Make schools for black kids 'cause we learn different to Wadjellas [non-Aboriginal people]. We think different, a school where Wadjella kids could come too, so we can share our ways and teach them...I would bring language and culture back first. We need that to be strong to feel important and then we can learn the other stuff. The other stuff will be easier for us to learn once we know our own way. Because we [are] always walking around lost like we missing something. And that's what I think it is."

"We do a lot to practice our culture. We go fishing and hunting and we dance and make things. We teach others about our culture too and we speak our language. I think I would like to learn even more about it, like hear more Dreamtime stories and speak more of my language."

"My grandma likes to tell me stories about the past, long time ago and my culture. I love talking about those things and so do all the other young kids. I like knowing my family will keep teaching me things. I tell my little brothers and sister stories and show them things too. It's a different sort of learning to school."

To support the application of UNDRIP Articles 9, 12, 13 and 14, Aboriginal children and young people should be encouraged and supported to connect with, learn and practice their traditional culture. Cultural education should also be recognised as an ongoing commitment to learning and understanding which must be reflective of local culture and developed in partnership with local Aboriginal businesses and Elders. This not only needs to occur by providing Aboriginal children and young people with access to a diverse range of cultural activities, but also by supporting communities to strengthen and celebrate their individual cultures, providing opportunities for Aboriginal children and young people to learn language, and integrating Aboriginal culture, knowledge and identity more widely into educational programs. These actions align with the views shared with my office by senior Aboriginal leaders who attended the Commissioner for Children and Young People's Aboriginal Forum in 2018, which is best captured by the following solution offered during the Forum:

"Aboriginal young people must have access to culture as a resource – we want our young people to grow up strong in language, in our song lines and dance and

in practicing our culture. Connection to culture supports the strength and resilience of our young people, who are our future.”⁶

Having said this, it must be acknowledged that there are inherent challenges in Australia when it comes to implementing the rights contained in Article 14. The structures and systems that are currently in place curtail the ability of Aboriginal people and communities to establish and control their own educational systems and institutions. Combined with a low number of fully qualified and registered Aboriginal and Torres Strait Islander teachers (only two per cent of the total teaching population as of the 2016 census), there are significant challenges to be overcome if Australia is to improve the ability of Aboriginal children and young people to access Aboriginal-controlled schools and/or educational programs that deliver lessons in local Aboriginal languages and use culturally appropriate teaching methods.

Addressing racism and discrimination

Relevant UNDRIP Articles

Article 2: Indigenous people and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Racism and discrimination are key determinants of health and wellbeing amongst Aboriginal children and young people. Evidence demonstrates that discrimination and racism have adverse effects on a child or young person's health, development, and social and emotional wellbeing.^{7,8} Racism and bullying can also influence children and young people's experience of school, leading to negative impacts on school attendance and educational outcomes.⁹

Aboriginal children and young people may experience multiple forms of racism and discrimination, including intentional and unintentional behaviours, biases, beliefs, assumptions and stereotypes. It can include a range of actions such as jokes or offensive comments, name-calling, verbal abuse, harassment, intimidation, physical abuse and violence. During consultations Aboriginal children and young people have spoken on a number of occasions about their own experiences of racism and discrimination:

⁶ Commissioner for Children and Young People WA, 2018, *Summary Report from Aboriginal Forum*

⁷ Australian Institute of Health and Welfare 2009, *Measuring the social and emotional wellbeing of Aboriginal and Torres Strait Islander peoples*, Australian Institute of Health and Welfare

⁸ Australian Institute of Health and Welfare 2014, *National outcome measures for early childhood development – phase 2: scoping paper*, Australian Institute of Health and Welfare

⁹ Biddle N 2014, *Developing a Behavioural Model of School Attendance: Policy implications for Indigenous children and young*, Centre for Aboriginal Economic Policy Research, Australian National University.

"I have had many racist comments towards me by people in the community and I don't like it. I think there should be stronger campaigns against racism."

"I think that it would be helpful to see more acceptance in people that are difference. I live in a predominantly white neighbourhood and I often feel pretty isolated and judged. I get followed when I go to the shops because people think I'm gonna shoplift. It's a bit upsetting being judged all the time when I just want to be accepted."

"I would make it so that everyone is treated the same and people don't judge us Aboriginals 'cause we have different coloured skin."

Young people also spoke about what they perceived as ignorance among the non-Aboriginal population about Aboriginal culture and government policies relating to Aboriginal people. They felt this unfairly skewed people's opinion of them. This view reflects research which demonstrates that negative stereotyping and negative media depictions of Aboriginal people can result in preconceived and ill-informed ideas about Aboriginal people and culture, contributing to racism.^{10,11}

"My life right now is pretty good apart from the fact that my people are still being put down by people who know nothing about us. This really affects my life as I hear it all the time."

"Many non-indigenous people struggle to understand why we receive so much help. As much as I try to explain to some people, they don't understand. I want there to be a way to show them or tell them why it is Aboriginals and Torres Strait Islanders receive help. I believe this is important [for] many people's lives so we don't have to feel bad or embarrassed for the help offered to us."

All forms of racism require carefully considered, evidence-based solutions.¹² In order to successfully apply the principals of anti-racism that underpin the UNDRIP and are explicitly conveyed by Article 2, anti-racism and anti-discrimination strategies need to be implemented at individual, institutional and cultural levels. While more research is required to build knowledge around the specific characteristics required for successful programs targeting children and young people, intervention strategies that have had success in adults have included elements such as:

- involving Aboriginal communities in their design, development and delivery.
- targeting specific negative and false beliefs.
- providing accurate information about Aboriginal culture and the impact of racism.
- focusing on specific areas of discrimination.
- invoking empathy and breaking down barriers.
- focusing on changing behaviours as much as attitudes.

¹⁰ Pedersen A et al 2006, 'Attitudes towards Indigenous Australians: The issue of 'special treatment'', *Australian Psychologist*, Vol. 41, No. 2, pp.85-94

¹¹ Coffin J 2007, 'Rising to the challenge in Aboriginal health by creating cultural security,' *Aboriginal & Islander Health Worker Journal*, Vol. 31, No. 3, pp.22-24

¹² Lowitja Institute 2014, *Racism and Child and Youth Health: Symposium Statement*, [website] viewed 19 May 2022 <<http://www.lowitja.org.au/racism-symposium-even>>

- highlighting shared community-wide values and directly involving participants (rather than a passive lecture-style approach).
- increasing personal and organisational accountability.^{13,14}

There must also be a concerted effort by Australian governments, public institutions, private organisations and community leaders to address structural racism and its impacts on Aboriginal children and young people. In Western Australia, Aboriginal children and young people are 18 times more likely to be under youth justice community-based supervision and 45 times more likely to be in detention on an average day compared to non-Aboriginal children and young people.¹⁵ Western Australian Aboriginal children and young people are also 18 times more likely to be in out-of-home care than non-Aboriginal children and young people,¹⁶ and are almost three times more likely to be assessed as developmentally vulnerable upon entering primary school than their non-Aboriginal peers.¹⁷ The structural inequalities that result in these outcomes must be remedied if meaningful change is to occur for Aboriginal children and young people. This can only be achieved if the particular needs of Aboriginal children and young people are recognised and acted upon by those who are in a position to implement necessary reforms and are willing to do so in full partnership with local Aboriginal communities.

Empowering Aboriginal-led solutions

Relevant UNDRIP Articles

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19: States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

A critical issue impacting Western Australian Aboriginal children and young people is a lack of sustainable Aboriginal-led solutions. The over-representation of Aboriginal children in all indicators of disadvantage continues to highlight the need for more

¹³ Pedersen A et al 2003, *Anti-Racism – What works? An evaluation of the effectiveness of anti-racism strategies*, Centre for Social Change and Social Equity, Murdoch University.

¹⁴ Paradies Y et al 2009, *Building on our strengths: a framework to reduce racial discrimination and promote diversity in Victoria*, Victorian Health Promotion Foundation.

¹⁵ Australian Institute of Health and Welfare (AIHW) 2020, *Youth Justice in Australia 2018– 19*, Cat. No. JUV132, Tables S47a: and S85a, AIHW, Canberra.

¹⁶ Commissioner for Children and Young People WA 2022, *Profile of Children and Young People in WA 2022*, Commissioner for Children and Young People WA

¹⁷ WA Department of Education 2019, *WA AEDC data – source Australian Early Development Census 2009–2018*, Custom report provided to the Commissioner for Children and Young people (unpublished).

effective ways of working to address the underpinning issues and improve the wellbeing of Aboriginal children and young people across the State.

Senior Aboriginal leaders who attended the Commissioner's Aboriginal Forum in 2018 made clear statements on what needs to change to improve outcomes for Aboriginal children and young people in Western Australia. The key messages from these leaders to government included:

- Transfer power and responsibility to Aboriginal people and communities to lead the solutions to improve the wellbeing of Aboriginal children, young people and their families.
- Resource Aboriginal community-controlled organisations to deliver services and build community capacity.
- Build policies to drive Aboriginal economic participation and development.
- Ensure programs and services operating in the Aboriginal community are Aboriginal-led, rights-based, client (child) centred, place-based, evaluated and properly resourced.
- Ensure mainstream services build their cultural competence, including trauma-informed practices, to ensure Aboriginal people always have access to culturally safe support.

These statements clearly call for new ways of working with Aboriginal communities that go beyond the minimum expectations articulated by UNDRIP Articles 18 and 19. Rather than Aboriginal communities being 'engaged' or 'consulted' as 'advisors' or 'co-designers' of services and policies, they must be authorised and empowered to own, direct and make strategic decisions about policies, funding and allocation of resources, program and service design, implementation and evaluation. In calling for these changes, forum attendees noted that reform will require an adjustment to the internal systems and processes within which the public and community sectors currently operate:

"Government and the sector need to be willing to unlearn the current ways of doing and re-learn better ways together with the community; we can't keep trying to adapt broken systems."

Governments must therefore begin a process of decentralising power and transferring responsibility to Aboriginal people and communities. This will enable Aboriginal children and young people, their families and their communities to lead the development and implementation of fit-for-purpose, culturally appropriate solutions and build the capacity of local communities to improve the wellbeing of Aboriginal children and young people. In the interim, governments will need to strengthen the consultation processes and practices they currently employ during the design and implementation phases of policies and programs, and genuinely include Aboriginal people in the decision-making processes that are associated with these solutions.

As Commissioner I fully endorse the implementation of the UNDRIP in full by Australia's federal, state and territory governments. To support this goal I strongly encourage governments to undertake an evaluation of the current extent to which UNDRIP articles have been implemented in their jurisdiction, develop actions plans to address identified shortcomings, and commit the necessary resources to fulfilling the requirements of the Declaration. Moreover, it is critical that the views, experiences and

expertise of Aboriginal children and young people, their families and their communities are central to each step of this process.

Thank you again for the opportunity to provide a contribution to this important inquiry. If the Committee wishes to discuss any matters raised in more detail, please contact

Yours sincerely,

Jacqueline McGowan-Jones

Commissioner

3 May 2022