

Samuel Thompson, Inquiry Secretary

Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

Department of the House of Representatives

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09 October 2022

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

Dear Samuel

Please find attached KALACC's Submission to this inquiry.

The entirety of this submission can be regarded as being in the public realm and the Kimberley Aboriginal Law and Culture Centre hereby and herein provided approval for the publication online of this submission.

Kind regards



**KALACC**

## **Inquiry Terms of Reference**

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

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

## **KALACC Submission**

In the following Submission KALACC refers to the following UNDRIP Articles:

Article 5

Article 8

Article 9

Article 11

Article 12

Please see appendix:

*Selected Excerpts – Articles Relating to The Right to Practice and Maintain Culture*

## Foreword

*June Oscar's 2020s vision: Reaching our potential as a nation begins with truth-telling*, Guardian Newspaper, 2020

Truth-telling is hard work. But the power of truth-telling is in its process, where grief makes way for healing, and healing unites people who once were divided. It is my experience that behaviours and actions change when people come to know another reality.

Truth-telling will help us develop a national narrative of equality. It will free us from the shackles of denial, to uncover the common humanity that reaches across this nation and back into the depths of time.

We cannot let the hands of time tick endlessly toward a future that is defined by historical injustice and violently prejudicial conceptions of race. In 2020, let's embrace the potential of what we can become as a nation.....

As First Australians, Aboriginal and Torres Strait Islander peoples have a remarkable living history. For 60,000 years plus we have sustained a cohesive and resilient society. We have the most extensive kinship network in the world and through a system of law, ceremony and song we have transferred a huge body of knowledge, including important principles of collective and common humanity, from generation to generation. There is much to celebrate but it is not celebrated – it is not even recognised.

For too long there has been denial about Indigenous society, knowledge systems and our existence in Australia before European arrival. The continuation of this legacy of denial is why we continue to experience marginalisation, and structural and systemic discrimination at all levels across different sectors in our own country.

<https://www.theguardian.com/australia-news/2020/jan/31/june-oscars-2020s-vision-reaching-our-potential-as-a-nation-begins-with-truth-telling>

## **Executive Summary**

### **Indigenous peoples have the right to practise and revitalize their cultural traditions and customs**

Australia at present fails to meet its obligations under Articles 5, 8, 9, 11 and 12 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Article 11 of the UNDRIP reads as follows:

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 12 of the UNDRIP reads as follows:

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

In Australia, the following is true:

1. There is no Peak Body to Speak for First Nations Arts and Culture.
2. There is no First Nations Arts and Cultural Plan.
3. The Australia Council for the Arts Currently Does Not Have an Endorsed Cultural Vibrancy Policy
4. There Are Currently No Commissioning Pathways for Projects That Operate in the Social and Cultural Determinants of Health Domain.
5. Creative Australia Set Out to Link the National Cultural Policy and Closing the Gap
6. Priority Reform Area Within the Closing the Gap National Partnership Agreement is:  
Building the formal Aboriginal and Torres Strait Islander community-controlled services sector to deliver Closing the Gap services and programs in agreed focus areas.

There are currently no strategies, plans or mechanisms for building the formal Aboriginal and Torres Strait Islander community-controlled services sector to deliver cultural programs or services to First Nations peoples.

Australia at present fails to meet its obligations under Articles 5, 8, 9, 11 and 12 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In the following pages KALACC expands on these concepts. In particular, we provide the Committee with a case study in regards to item #four above ie:

4. There Are Currently No Commissioning Pathways for Projects That Operate in the Social and Cultural Determinants of Health Domain.

KALACC could provide detailed case studies for all six of these items. If the Committee wishes to hear further from KALACC in general, or in regards to any of these six items, we would be happy to provide further information to the Committee.

## **Current Context and Realities**

### **1. There is no Peak Body to Speak for First Nations Arts and Culture.**

The Coalition of Peaks is made up of over 70 Aboriginal and Torres Strait Islander community-controlled peak and member organisations across Australia. Just one of those organisations has a primary mission or remit around promoting First Nations Arts and Culture.

[KALACC acknowledges that First Languages Australia is a member of the Coalition of Peaks, and we commend them on their excellent work]

### **2. There is no First Nations Arts and Cultural Plan.**

In 2017 the then Dept of Prime Minister and Cabinet prepared a confidential Briefing Note on the development of a National Indigenous Cultural Policy, for consideration by the then Prime Minister's Indigenous Advisory Council. This work was not progressed by the then Government and none of this work was made public. At no time in its history has Australia had a *First Nations Arts and Cultural Plan*.

### **3. The Australia Council for the Arts Currently Does Not Have an Endorsed Cultural Vibrancy Policy**

In July 2013 the Australia Council published the *DRAFT Standing Our Ground, Cultural vibrancy: a discussion paper for the Aboriginal and Torres Strait Islander Arts sector*. This body of work was not progressed past the drafting stage. Alongside of this, in May 2015 the Commonwealth Department of Arts terminated the Indigenous Cultural Support Program. Since that time no Commonwealth Government agency has had any plan, strategy or funding to address Article 11 of the UNDRIP. KALACC would contend that the same is true of Article 12 of the UNDRIP, though we acknowledge that Government may hold a different view in regards to Article 12.

### **4. There Are Currently No Commissioning Pathways for Projects That Operate in the Social and Cultural Determinants of Health Domain.**

In December 2017 the Commonwealth Health Department published *My Life My Lead, Opportunities for Strengthening Approaches to the Social and Cultural Determinants of Health*. In October 2022 there remain no commissioning pathways for projects that operate in the Social and Cultural Determinants of Health Domain.

## 5. Creative Australia Set Out to Link the National Cultural Policy and Closing the Gap

*Creative Australia*, the National Cultural Policy of 2013, reads in part as follows:

“Submissions also noted the need for a whole-of-government agenda which would harness the power of arts and culture in achieving other objectives across government, including in education, innovation, digital communication, closing the gap in Indigenous disadvantage, social inclusion, diplomacy and health. In particular, submissions noted the need to recognise the multicultural makeup of Australia in the ways and means by which the government supports the arts into the future.” P. 129, *Creative Australia*

*Creative Australia* was published and released on 13th March 2013. The Australian Labor Party lost office in September 2013. In the six months that they were in office, the ALP did little to implement *Creative Australia*. In the more than nine years that they were in office, the Coalition Government did not develop any *National Cultural Policy* at that time. As a result, Indigenous culture, especially as articulated in Articles 11 and 12 of the UNDRIP, has consistently and continually been invisible and non-existent in regards to Australia’s Indigenous Affairs Planning and Policy.

## 6. The Closing the Gap National Partnership Agreement has not developed any mechanisms for building the formal Aboriginal and Torres Strait Islander community-controlled services in the Arts and Culture sector

Priority Reform Area #2 within the Closing the Gap National Partnership Agreement, is:

Building the formal Aboriginal and Torres Strait Islander community-controlled services sector to deliver Closing the Gap services and programs in agreed focus areas.

The agreed focus areas are – health, justice, early childhood, disability services. These focus areas are identified in the Coalition of Peaks Communiques - <https://coalitionofpeaks.org.au/download/communiques/>

There are currently no strategies, plans or mechanisms for building the formal Aboriginal and Torres Strait Islander community-controlled services sector to deliver cultural programs or services to First Nations peoples.

## Case Study, KALACC Item # Four:

### 4. There Are Currently No Commissioning Pathways for Projects That Operate in the Social and Cultural Determinants of Health Domain.

KALACC could provide detailed case studies for all six of the items raised by us in this submission. If the Committee wishes to hear further from KALACC in general, or in regards to any of these six items, we would be happy to provide further information to the Committee. For now, we provide the Committee with a Case Study in regards to item #4.

On 30<sup>th</sup> September 2022 KALACC wrote to the Hon Mark Butler, Minister for Health and Aged Care, in the following terms:

#### When will there be Commissioning Pathways for Programs That Operate in the Social and Cultural Determinants of Health Domain?

30 September 2022

Attachments:

1. 20 September 2012, the Hon Mark Butler, Minister for Mental Health and Aging: **Letter to KALACC**
2. 13 June 2017, Mr Leonard Hill, Assistant Secretary, Culture Branch, PMC [now NIAA]: **Letter to KALACC**
3. September 2022, Australia Council for the Arts: **Connected Lives: Creative solutions to the mental health crisis**

The Hon Mark Butler MP  
Minister for Health and Aged Care

CC:

The Hon Tony Burke MP, Minister for the Arts  
The Hon Ged Kearney MP, Assistant Minister for Health and Aged Care  
The Hon Emma McBride MP, Assistant Minister for Mental Health; Assistant Minister for Rural and Regional Health  
Senator the Hon Malarndirri McCarthy, Assistant Minister for Indigenous Australians; Assistant Minister for Indigenous Health

Dear Minister Butler,

Thank you for your correspondence of 20 September 2012. We note in particular your advice:

Strong cultural links and community engagement are recognised by the Australian Government as being very important in developing initiatives that specifically target Aboriginal and Torres Strait Islander mental health and social and emotional wellbeing.

Thank you to Mr Leonard Hill of PMC [now NIAA] for his advice of 13 June 2017:

The Government is also working on the Social and Cultural Determinants of Indigenous Health. The Department of Health has invited submissions from organisations and individuals

on the social and cultural determinants of Aboriginal and Torres Strait Islander health and these submissions will feed in to future iterations of the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan, 2018 – 2023.

Minister, I draw your attention to the 23 September 2022 email from the Australia Council for the Arts, as below, entitled *Connected Lives: Creative solutions to the mental health crisis - **FINAL REPORT from the Arts and Wellbeing Program***. That report is attached to this email. In that report I draw your attention to the following:

Recommendation 2:

Develop commissioning pathways for First Nations programs in cultural healing, for example, by including these programs in the implementation of the National Aboriginal and Torres Strait Islander Health Plan 2021–31.

First Nations communities are also leaders in health policy and advocacy, having committed years of research and advocacy towards the successful inclusion of social determinants within Indigenous health policy. For example, the National Aboriginal and Torres Strait Islander Health Plan 2021–2031 incorporates the cultural and social determinants of health in its design.

Despite this, there are still no commissioning pathways for programs that operate in the social and cultural determinants of health domain. \$60.8 million will soon be made available under the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Program, but cultural healing organisations are ineligible to apply.

Key stakeholders in the policy program urged that the first implementation plan of the National Aboriginal and Torres Strait Islander Health Plan address this gap, ensuring that public policy acknowledge cultural healing organisations in its programs of commissioning and support. Such a move would enable this relatively mature policy space to move from design to implementation.

Minister, on 15th of September 2022 KALACC participated in the most recent meeting of the Steering Committee to the Kimberley Aboriginal Suicide Prevention Trial. It was the 50th such meeting that KALACC had participated in over the last five years. On the 15th of September 2022 KALACC asked the same question that we have asked on some 50 occasions over the last five years ie when will there be actual commissioning pathways for programs that operate in the social and cultural determinants of health domain for Aboriginal people? On the 15th of September 2022 we received from the Department of Health the same advice that you provided to us on 20 September 2012, which Leonard Hill provided to us on 13 June 2017, and which we had been told by the Department of Health consistently over five years:

This is an important matter. It is under consideration, but we are currently unable to provide you with a timeline for any actual Implementation Plan.

That concludes the KALACC letter of 30<sup>th</sup> September 2012 to the Hon Mark Butler, Minister for Health. Minister Butler's 20 September 2012 letter to KALACC went on to include the following words:

I was fortunate enough to hear Professor Michael Chandler speak about the impact of culture and identity development on social and emotional wellbeing of Indigenous youth during his recent visit to Australia.



In other words, the Government was aware as far back as September 2012 about the important role that culture plays in contributing towards social and emotional wellbeing. The advocacy around the connection between culture and wellbeing has an exceedingly long history. Following on from Chandler's speaking tour in 2012, we would then note the following junctures in this long history of advocacy:

- 2016: *Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project Report*
- 2018: *My Life My Lead – Report on the national consultations*
- 2020: *'... Country Can't Hear English...' – A guide to implementing cultural determinants*
- 2021: *Culture is Key: Towards cultural determinants-driven health policy.*

And to this day, there are no commissioning pathways for programs that operate in the social and cultural determinants of health domain. Over 10 years of advocacy, dating back to Professor Chandler's speaking tour of 2012, has failed to result in any tangible outcome in regards to commissioning pathways for programs that operate in the social and cultural determinants of health.

We opened this *KALACC Submission* with some words from June Oscar, including the following:

We have the most extensive kinship network in the world and through a system of law, ceremony and song we have transferred a huge body of knowledge, including important principles of collective and common humanity, from generation to generation. There is much to celebrate but it is not celebrated – it is not even recognised.

We conclude this *KALACC Submission* by noting some words written by Professor Chandler in 2018:

if suicide prevention is our serious goal, then the evidence in hand recommends investing new moneys, not in the hiring of still more counsellors, but in organized efforts to preserve Indigenous languages, to promote the resurgence of ritual and cultural practices, and to facilitate communities in recouping some measure of community control over their own lives.

*Cultural wounds require cultural medicines*, Michael J. Chandler, within *Determinants of Indigenous peoples' health in Canada*. Toronto, Canada: Canada Scholars' Press, April 2018

Australia at present fails to meet its obligations under Articles 5, 8, 9, 11 and 12 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

## **Appendix**

### **United Nations Declaration on the Rights of Indigenous Peoples**

#### **Selected Excerpts – Articles Relating to The Right to Practice and Maintain Culture**

##### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

##### **Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

##### **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. No discrimination of any kind may arise from the exercise of such a right.

##### **Article 11**

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.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

##### **Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

### **Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.