



Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100, Parliament House
Canberra ACT 2600

30 June 2023

RE: Inquiry into Australia's Human Rights Framework

Reconciliation Australia thanks the Committee for the opportunity to provide a submission to the Inquiry into Australia's Human Rights Framework. We acknowledge the importance of the work this Committee has been appointed to undertake in leading community and stakeholder consultations on the application of human rights mechanisms in Australia.

Reconciliation Australia supports the enactment of a national Human Rights Act, noting that Australia is the only liberal democracy without one. Further, we support the proposal in the Australian Human Rights Commission's (AHRC) Free and Equal position paper¹ that the United Nations Declaration on the Rights of Indigenous People (UNDRIP)² should be embedded both within, and alongside a national Human Rights Act in Australia.

As such, in response to the Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework, Reconciliation Australia recommends that:

Recommendation 1:

A national Human Rights Act should be established to resolve gaps and weaknesses in how the human rights of Aboriginal and Torres Strait Islander peoples are addressed at a federal level.

Recommendation 2:

The UNDRIP should be comprehensively embedded within a national Human Rights Act to protect the unique rights of Aboriginal and Torres Strait Islander peoples in Australia.

Recommendation 3:

Existing national frameworks that seek to protect and advance the human rights of First Nations people should be well-resourced and supported to complement and enhance First Nations rights within a national Human Rights Act.

Recommendation 4:

Any steps to fulfil First Nations rights within a national Human Rights Act should only occur with the genuine participation of and consultation with First Nations people from the outset. Embedded structural processes within a national Human Rights Act for ongoing First Nations participation are essential to support principles of self-determination.

¹ Australian Human Rights Commission, (2022) Free and Equal, Position Paper: A Human Rights Act for Australia

² United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
<https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

Embedding key principles of the UNDRIP both within a national Human Rights Act, and within complementary policy mechanisms would provide substantive protection of the human rights of Aboriginal and Torres Strait Islander peoples.

The ongoing failure to close the gap in areas of disadvantage between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians, underscores a clear need to lift our national effort in protecting the rights of First Peoples as outlined in the UNDRIP.

Progressing a national Human Rights Act in Australia will serve to advance and protect the human rights of Aboriginal and Torres Strait Islander peoples, leading to a more just, equitable and reconciled Australia.

About Reconciliation Australia

Reconciliation Australia is the national organisation promoting reconciliation between the broader Australian community and Aboriginal and Torres Strait Islander people.

We believe a reconciled Australia is one where Aboriginal and Torres Strait Islander people participate equally and equitably in all areas of life, and the distinctive individual and collective rights and cultures of Aboriginal and Torres Strait Islander peoples are universally recognised and respected. That is, we have closed the gaps in life outcomes, and Aboriginal and Torres Strait Islander peoples are self-determining. To do so, we are dedicated to building relationships, respect and trust between Aboriginal and Torres Strait Islander peoples and other Australians.

As part of our work, we engage across a range of issues. We have led engagement on national reform processes, including constitutional reform. We are a member of the Close the Gap Campaign Steering Committee for Indigenous Health Equality, the Change the Record Campaign Steering Committee focused on incarceration and family violence, the National Anti-Racism Partnership and Strategy, and a supporting organisation of the Family Matters Campaign.

A National Human Rights Act

We support the progression of a national Human Rights Act to resolve gaps and weaknesses in Australia's existing human rights mechanisms that disproportionately impact on vulnerable people and communities. In particular, First Nations people continue to live with the consequences of a lack of protection of their basic human rights and the enactment of racially targeted, discriminatory policies.

The Australian Government's suspension of the key federal instrument for the prevention of racial discrimination, *The Racial Discrimination Act 1975 (cth)*, to enable the enactment of the Northern Territory Intervention, exposed a distinct failure of compliance with international human rights standards³. This intervention exposed Aboriginal and Torres Strait Islander peoples in the Northern Territory to a host of race-based policies over 15 years, significantly undermining self-determination, community-control, and cultural safety in impacted areas.

Embedding UNDRIP within a Human Rights Act

Embedding the UNDRIP into a national Human Rights Act and complementary frameworks presents significant opportunities for Australia in building national unity and transforming the ways that all sectors of Australian society work with First Nations Australians to respect, value and promote First Nations rights and interests.

³ Australian Human Rights Commission, Social Justice Report 2008, pg 14

Self-determination

The Australian Human Rights Commission model for a national Human Rights Act, proposes that the right to self-determination be fully articulated in the preamble as an overarching principle of the Act⁴. Self-determination must be at the heart of addressing issues of inequality, systemic racism, and instances where the rights of Aboriginal and Torres Strait Islander peoples are ignored, denied, or reduced. It is a necessary pre-requisite to closing the social and economic gaps in outcomes. An expanding body of evidence, both nationally and internationally, clearly shows that First Nations communities, people and organisations are best placed to provide solutions to meet their own needs^{5, 6}.

Community-controlled organisations and initiatives have proven to be powerful instruments for self-determination, giving Aboriginal and Torres Strait Islander peoples meaningful control over their own lives and cultural wellbeing. The strong outcomes of self-determination in action are evident through some of Reconciliation Australia's Indigenous Governance Awards winners:

1. **The South Australian West Coast ACCHO Network (SAWCAN)** is a community-led partnership representing five Aboriginal Community Controlled Health Organisations across rural and remote South Australia. Together, the five member ACCHOs provide comprehensive primary health care to over 5,500 Aboriginal peoples, working collaboratively to tackle issues and promote positive health outcomes for Aboriginal communities. In-depth knowledge of community needs has enabled the network to address shared challenges and gaps in services by working in partnership to deliver key projects to improve regional outcomes in the disability, aged care, child and maternal health and community services space.
2. **Wungening Aboriginal Corporation** is an Aboriginal Community Controlled Organisation based in Perth. The organisation developed as an Aboriginal community-led response to concerns about how mainstream services were not effectively responding to community needs, particularly around alcohol and substance abuse. Wungening is now a leading community controlled not-for-profit with ten locations and managing over 200 staff to further its vision of a healthy, safe, strong First Nations community.

⁴ Australian Human Rights Commission, 2022, Free and Equal, Position Paper: A Human Rights Act for Australia, Pg 171

⁵ Indigenous Community Governance Research Project 2006, Centre for Aboriginal Economic and Policy Research (2007) p 5. At https://www.anu.edu.au/caepr/Projects/Key_Insights_ICGP_2006.pdf

⁶ O Pearson, K.Schwartzkopff, A.Dawson C. Hagger, A.Karagi C.Davy1, A.Brown, A. Braunack-Mayer, (2020) 'Aboriginal community-controlled health organisations address health equity through action on the social determinants of health of Aboriginal and Torres Strait Islander peoples in Australia', BMC Public Health

Consultation and Participation

The Human Rights Commission model proposes inclusion of a 'participation duty' within a national Human Rights Act, that requires public authorities to facilitate the participation of First Nations peoples in relation to all decisions that directly or disproportionately affect their rights.

This represents a practical measure to prevent the future implementation of discriminatory policies and practices, and supports key principles of self-determination, in alignment with the UNDRIP Articles 18 and 19. This action would send a clear message that the self-determination of Aboriginal and Torres Strait Islander peoples and their participation in all areas of decision making that affect them are a national priority.

We draw again on the example of the Northern Territory Intervention to illustrate how the human rights of Aboriginal and Torres Strait Islander peoples have been breached, and discriminatory policies enacted, to stress the critical importance of genuine participation of First Nations people in the development of all laws and policies that impact them.

Cultural Rights

Much of the UNDRIP determines the cultural heritage rights of First Nations people (Articles 11, 12, 13, 14, 31, 32, 40).

In 2020, the lack of adequate protection of First Nations cultural heritage rights in Australia was starkly exposed when Rio Tinto destroyed two ancient rock shelters of profound cultural significance to the Puutu Kunti Kurrama and Pinikura people, in the Pilbara in Western Australia. This occurred despite warnings from Traditional Owners yet was legal under the laws that existed at the time, attracting international condemnation^{7, 8}.

While there has been progress to improve legislation to protect Indigenous heritage sites there exists a vital role for a national Human Rights Act to ensure that the distinctive individual and collective rights and cultures of Aboriginal and Torres Strait Islander peoples are recognised and protected in alignment with the UNDRIP.

Complementary mechanisms to support a Human Rights Act

In combination with a Human Rights Act, several other complementary avenues should be progressed and supported to fulfil the UNDRIP and protect First Nations rights.

National frameworks that seek to address equality and equity, such as the *National Partnership Agreement on Closing the Gap*, and the developing *National Anti-Racism Framework* should be supported and well-resourced to work in collaboration with a national Human Rights Act⁹. These two

⁷ ABC News Online 24 November 2022. Government to legislate new protections after Juukan Gorge destruction

[Government to legislate new protections after Juukan Gorge destruction - ABC News](#)

⁸ Anirudha NAGAR (2021), The Juukan Gorge Incident: Key Lessons on Free, Prior and Informed Consent, Cambridge University Press
[The Juukan Gorge Incident: Key Lessons on Free, Prior and Informed Consent | Business and Human Rights Journal | Cambridge Core](#)

⁹ Australian Human Rights Commission, 2022, Free and Equal, Position Paper: A Human Rights Act for Australia Pg 170

frameworks represent policy mechanisms that seek to give effect to the UNDRIP through actualisation of principles of self-determination, free, prior, and informed consent (FPIC) and the right to be free from discrimination.¹⁰

Anti-racism and anti-discrimination mechanisms

Investment in measures to achieve equality and freedom from racism should be prioritised as key human rights issues. This should include continued resourcing to advance a National Anti-Racism Framework and other programs aimed at the elimination of all forms of racism and discrimination.

Aboriginal and Torres Strait Islander peoples' experiences of racism continues to remain consistently and unacceptably high. The 2022 Australian Reconciliation Barometer (ARB) shows that 60% of Aboriginal and Torres Strait Islander people had experienced racial prejudice in the six months before the survey¹¹.

This ARB data also demonstrates that 1 in 5 Aboriginal and Torres Strait Islander people had experienced racial discrimination with the following groups, in the 12 months before the survey:

- 20% in interactions with police
- 20% in interactions with doctors, nurses and/or medical staff
- 19% in interactions with public transport staff
- 18% in interactions with local shop owners/staff, and
- 18% in interactions with real estate agents¹²

To close the gaps in health, education, employment, and justice, overcoming racism must be a national priority backed by effective institutional and legislative measures, and supported by public education. Strengthening protections against racial discrimination in both state and federal jurisdictions and resourcing a National Anti-Racism Framework will provide critical mechanisms to address and prevent racism.

Uluru Statement from the Heart

The full realisation of the Uluru Statement from the Heart; Voice, Treaty, Truth, commencing with a constitutional Voice to Parliament should be implemented in combination with a national Human Rights Act. The Australian Human Rights Commission states that it's proposed participation duty within a national Human Rights Act is "designed to complement a Voice mechanism and the broader implementation of the Uluru Statement"¹³.

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples (2007) Articles 3, 4 and 19,

¹¹ Reconciliation Australia (2022) Australian Reconciliation Barometer 2022

<https://www.reconciliation.org.au/publication/2022-australian-reconciliation-barometer>

¹² *ibid*

¹³ Australian Human Rights Commission, 2022, Free and Equal, Position Paper: A Human Rights Act for Australia, Pg. 241

At present there is no systemic process for promoting self-determination, self-representation and engaging the advice and expertise of Aboriginal and Torres Strait Islander peoples in the decisions, law and policy-making processes that affect them.

A constitutional Voice to Parliament is required to give substantive effect to the rights of Aboriginal and Torres Strait Islander people to participate in these processes in a manner that is consistent with the UNDRIP. Australian governments should also support Treaty and Truth-telling processes at local, state and national levels.

Reconciliation Australia supports the full implementation of the Uluru Statement from the Heart and encourages the Australian Government to continue to progress its full implementation.

National Partnership Agreement on Closing the Gap

Australian Governments have identified Closing the Gap as a key mechanism for giving effect to UNDRIP. In July 2020, the Coalition of Peaks (COAP) and the Council of Australian Governments (COAG) signed the National Agreement on Closing the Gap. The National Agreement was the first of its kind and was informed by a comprehensive engagement process conducted by the Coalition of Peaks with Aboriginal and Torres Strait Islander people across the country.

The Agreement sets out a strategy to close the gap that is based on Aboriginal and Torres Strait Islander priorities and four priority reforms¹⁴ that are designed to empower First Nations communities and service providers and transform the way that governments work with Aboriginal and Torres Strait Islander communities to improve outcomes.

These priority reforms give practical effect to the rights of First Nations peoples to equality and equity, self-determination, self-governance, participate in decision making processes, access to information and funding as outlined in UNDRIP. This is important progress in the ways that Australian Governments are working with Aboriginal and Torres Strait peoples to invest in community led solutions to close the gaps in health, education, employment, and justice outcomes.

¹⁴ Closing the Gap Priority Reforms
<https://www.closingthegap.gov.au/national-agreement/priority-reforms>