



Australia's National Institute for Aboriginal
and Torres Strait Islander Health Research

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

Submission to the Senate Legal and Constitutional Affairs Reference Committee

The Lowitja Institute, June 2022



Inquiry into the Application of the United Nations Declaration on the Rights of
Indigenous Peoples in Australia
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senators,

**Re: The Lowitja Institute's submission to the Senate Legal and Constitutional Affairs
Committee Inquiry into the Application of the United Nations Declaration on the
Rights of Indigenous Peoples in Australia**

The Lowitja Institute is Australia's national institute for Aboriginal and Torres Strait Islander health research, named in honour of our Patron, Dr Lowitja O'Donoghue AC CBE DSG. We welcome the opportunity to provide a submission to the Senate Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia.

The Lowitja Institute has long advocated for national awareness and action on the social and cultural determinants of health and wellbeing. Significant to implementing cultural determinant driven health policy is the recognition that policy making must be anchored in Aboriginal and Torres Strait Islander ways of knowing, being and doing, and that self-determination is essential for a holistic approach to bettering the health and wellbeing of our communities.

Our vision aligns with and is supported by the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), which includes self-determination and respect for Indigenous knowledge, cultures and traditional practices as foundational principals.

Our communities have long known that self-determined, strengths-based, and community-driven models work best. There is mounting evidence to support this and emerging recognition that self-governed and self-determined approaches have significant impact, which are understood as political determinants of health and wellbeing.

Our peoples have a long and strong history of political engagement and self-governance. For millennia, we have remained focused on building our communities, preserving our cultures, protecting Country, and ensuring that our next generations have bright futures. We have done this work for our communities across generations, despite the destructive impacts of colonisation, which continue to this day. This is because we understand that political agency and empowerment guided by a

long-term collective vision has a direct link to our peoples and communities' health and wellbeing.

For example, our Aboriginal Community Controlled Health Organisations (ACCHOs) are transformative spaces in which our communities have taken back control of our destinies by creating self-determined culturally safe health spaces and services for our communities. We recommend sustained and increased investment in ACCHOs, which are great models of successful Indigenous nation building that have delivered incredible health outcomes.

The Lowitja Institute's upcoming discussion paper, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing* (Rigney, 2022) describes the UNDRIP as a "moral force" that can compel Australian governments to support and act towards the empowerment of our peoples. Australia's poor track record in implementing the UNDRIP has consequences for the health and wellbeing of our peoples; it compromises our joint efforts under the *National Agreement on Closing the Gap*; and, through inaction it perpetuates the ongoing legacy of colonisation.

As we welcome a new federal government, we encourage the Senate to consider this Inquiry an opportunity to fully commit to the implementation of the UNDRIP. We make a number of recommendations in the below submission, but I reiterate the most important and urgent of these here:

Full implementation of the Uluru Statement from the Heart, and particularly a Voice to Parliament as outlined in the Uluru Statement of the Heart, is foundational for change in Aboriginal and Torres Strait Islander health and wellbeing. It is integral to the implementation of the UNDRIP in this country. It is intrinsic to our people's sovereignty and self-determination, and therefore our health and wellbeing. We call on the new Australian government to act swiftly on its stated commitment to the full and expedient implementation of the Uluru Statement from the Heart.

Please find our submission attached. We would welcome the opportunity to further discuss any of the issues contained therein.

Warm regards



Dr Janine Mohamed
CEO, Lowitja Institute

1. About the Lowitja Institute

The Lowitja Institute is a national Aboriginal and Torres Strait Islander Community Controlled Organisation working for the health and wellbeing of Australia's First Peoples through high impact quality research, knowledge translation, and by supporting Aboriginal and Torres Strait Islander health researchers.

Established in January 2010, we operate on the key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing, and the need for the work to have a clear and positive impact.

The Lowitja Institute has a longstanding commitment to the National Agreement on Closing the Gap, as members of the Coalition of Peaks, National Health Leadership Forum and the Close the Gap Steering Committee, including authoring the Close the Gap Report over the past 4 years. Through this work, Lowitja has been involved in advocacy efforts and calls for the full implementation of the Uluru Statement from the Heart (Uluru Statement). The Uluru Statement is described as a "gift to all Australians" by one of its architects, Pat Anderson, the long-term chair of the Lowitja Institute.

Additionally, we are members of the Partnership for Justice in Health. The partnership is an alliance of self-determining Aboriginal and Torres Strait Islander academics, legal experts, and national peak health and justice organisations committed to working together to improve Aboriginal and Torres Strait Islander health and justice outcomes. As leaders operating at the interface of the health and justice systems, we are harnessing our leadership, influence, and networks towards realising our vision that 'Aboriginal and Torres Strait Islander people enjoy health and wellbeing that is free of racism in the health and justice systems'.

Based on this experience we offer the following general comments and responses to some of the questions put forward in the Issues Paper.

2. General preamble

Before responding to some of the specific Terms of Reference for this inquiry, we encourage the Senate Legislative and Constitutional Affairs Committee to consider the context within which this inquiry sits.

As Aboriginal and Torres Strait Islander peoples, we have maintained sophisticated and diverse cultures and knowledge systems for millennia. We also established and adhered to sophisticated systems of law and lore, which maintained our nations and the health and wellbeing of our peoples.



Over millennia we have cared for Country and for our communities in this place now called Australia. We have maintained our health and wellbeing with holistic approaches aimed simultaneously at community and individual health and wellbeing. Despite the traumatic and ongoing consequences of colonisation and institutional racism, we continue to maintain and develop our cultures and knowledge systems, strive towards improved health and wellbeing, and we continue to rebuild our nations.

From the early days of European settlement in Australia in 1788, racism against our peoples has taken many forms, including murder, exploitation and dispossession from our traditional lands and cultures. Our peoples were forced onto missions and reserves, breaking apart our communities and nations, and the systems that were in place to self-govern.

Government and governance for our peoples did not look like dominant cultural conceptions of government, which originate in British and European models. Our way of governing takes a long-term and holistic approach, understanding the intrinsic connection between participation in community, culture, caring for Country, and health and wellbeing. The UNDRIP is built on a foundation that understands this.

Aboriginal and Torres Strait Islander peoples continue to seek change and drive self-determination in health and community service policies and programs. We know that to improve outcomes for our peoples, large-scale systemic reform and a paradigm shift in policy design and delivery is necessary.

As noted by Lowitja Institute Chair Mr Selwyn Button, "The full implementation of the Uluru Statement, and its call for Voice, Treaty and Truth is not only foundational to address the health inequity between Aboriginal and Torres Strait Islander people and non-Indigenous Australians, but the blueprint for the political transformation this nation requires."¹

If Australian governments are serious in their commitment to the National Agreement on Closing the Gap, as well as full implementation of the Uluru Statement of the Heart, alignment with the UNDRIP and achievement of the many of the goals embedded within it must be a core objective.

¹ Lowitja Institute 2022, *Lowitja Institute welcomes new Federal Government and commitment to Uluru Statement from the Heart*, media release, Lowitja Institute, Melbourne, 23 May. Viewed on 22 June 2022 at [Lowitja Institute welcomes new Federal Government and commitment to Uluru Statement from the Heart | Lowitja Institute.](#)

3. Specific Terms of Reference

Australian federal and state governments' adherence to the principles of the UNDRIP; and the track record of Australian government efforts to improve adherence to the principles of the UNDRIP.

In our view and the view of some in our Member Community, the Australian federal and state governments have barely adhered to the UNDRIP principles. One of the major barriers so far has been a lack of political will to implement, which we can trace back to the Australian federal government's initial vote against the UNDRIP in 2007. This has real world health and wellbeing impacts for our peoples.

Progress against the targets under the National Agreement on Closing the Gap is a good starting point for considering the government's track record when it comes to adherence to the UNDRIP principles. In most cases, we are not on track and often the gap is widening.²

Another challenge to implementation is that the individualistic individual rights based UNDRIP framework trades off our peoples' collectivist perspectives and approaches. It is vital to consider the importance of every person, and at the same time hold in mind Aboriginal and Torres Strait Islander understandings of collective sovereign rights and a different notion of being in the world, understanding power, and understanding polity. In this way, the UNDRIP is a good base for achieving equity, including in the health sector, and reinforcing individual rights as long as we can simultaneously view it with the above collectivist approach. Implementation requires government to keep these different paradigms in mind.

“Not many people talk about power. Not many people talk about sharing power. Which means, if there is a power differential, someone has to give up some power. And they need to do so willingly and with good faith. And that's actors as well as institutions as well as ideas. Those components of the way that people would see polity; All of those are needing to be opened up, which is the basis of a lot of Aboriginal philosophy and way of life. It is much more about being with and going with the flow. And understanding that... when you've been human beings in the one spot for a hundred plus thousand years, the sense of the human being becomes small and the sense of the world becomes much larger.

² Mohamed, J. 2021, *How can the new Closing the Gap dashboard highlight what indicators and targets are on track?*, The Conversation, 29 July. Viewed on 22 June 2022 at [How can the new Closing the Gap dashboard highlight what indicators and targets are on track? \(theconversation.com\)](https://theconversation.com/how-can-the-new-closing-the-gap-dashboard-highlight-what-indicators-and-targets-are-on-track/)



And that's unfortunately what we've got in reverse, and so we're trying to balance that out so that we can have these sorts of conversations. The Articles are a way to try to get people to think about the issues, but they need help so that people can then think about balancing and then think about the sharing nature of what that rebalancing requires. And it's not just amongst human beings, it's all living things. And for Aboriginal people that actually means water as a living entity, the earth as a living entity, the air as a living entity, not just creatures. And I think that that's the bit, when push comes to shove, is often about power."

- Tamara Mackean, Waljan woman, Associate Professor, College of Medicine and Public Health, Flinders University

We expand on this below, noting three fundamental principles that need to be considered in UNDRIP's implementation:

1. RIGHT TO RESPECT AND PRACTICE CULTURE

For Aboriginal and Torres Strait Islander peoples, culture is central to understanding the relationship between self and Country, kin, community and spirituality— all of which are key factors of health and wellbeing. The right to practice culture, traditions and customs, is outlined across a number of Articles included in the UNDRIP and should be affirmed in developing and implementing health policy.

This can be achieved by understanding and privileging Aboriginal and Torres Strait Islander ways of knowing, being and doing that encompass a holistic understanding of health and wellbeing. The cultural determinants of health constitute a conceptual framework based on Indigenous knowledge; they are inter-related to social determinants of health and are rights-centred³.

It is widely acknowledged by Aboriginal and Torres Strait Islander experts and peak health organisations that there are several 'non-medical and behavioural influences on health'.⁴ The constellation of these 'social and cultural determinants' impact significantly on the health and wellbeing of our peoples and communities. These

³ Lowitja Institute 2020, Culture is Key: Towards cultural determinants-driven health policy – Final Report, Lowitja Institute, Melbourne. Viewed on 22 June 202 at [Lowitja_CultDetReport_210421_D14_WEB.pdf](#)

⁴ Anderson, I., Baum, F. & Bentley, M. (eds) 2004, Beyond Band-aids: Exploring the Underlying Social Determinants of Aboriginal Health. Papers from the Social Determinants of Aboriginal Health Workshop, Adelaide, July 2004, Cooperative Research Centre for Aboriginal Health, Darwin, p. x-xi

determinants can be influenced and any adverse impacts ameliorated through sound policy changes⁵ and system reform.

Health and the rights of Indigenous peoples to self-determine in the health space, to enjoy equal health, to be free from discrimination in health systems, to enjoy and maintain traditional food sources, amongst others are all captured in the UNDRIP.

However, when we consider how the UNDRIP applies to the social and cultural determinants of health, there is a challenge. Like many policy instruments, the sharp divisions made between the subjects within the Articles risks an oversimplification or exclusion of some key issues, which are broader and more complex than on the face of it.

For example, Rio Tinto's destruction of the Juukan Gorge was widely discussed in the media as being a destruction of a significant cultural archaeological site. However, it also goes to issues around connection to Country, land and water rights, cultural and kinship ties, self-determination, and housing (housing as we conceive of it goes far beyond a physical place to shelter)⁶. All of these are social and cultural determinants of health and wellbeing, and they are all interconnected. They are also underpinned by the need to recognise and respect self-determination, which is a political determinant.

Rio Tinto's destruction of the Juukan Gorge was an irreversible destruction of *Puutu Kunti Kurrama* and *Pinikura* peoples' traditional home⁷, it violated their rights to land, forever interrupted cultural practices and destroyed Country, and it will have intergenerational impacts on health and wellbeing. This cannot be undone. Viewing issues as distinct is not just problematic because of the risk of oversimplification, it risks missing the true scale or meaning of a decision or action. So when we consider implementation of the UNDRIP in our context, we must begin to see the linkages between the articles and view it in this holistic way.

2. Right to Self-Determination

We are encouraged by the new Labor government's commitment to the full implementation of the Uluru Statement, which if implemented will strengthen adherence to the UNDRIP and improve the health and wellbeing of our peoples and communities.

⁵ Ibid, p. x.

⁶ Lowitja Institute 2022, *National Housing and Homelessness Agreement Review: Submission to the Productivity Commission*, The Lowitja Institute, March 2022. Viewed on 22 June 2022 at [Lowitja Institute Housing and Homelessness Review Submission FINAL.pdf](#), p. 5..

⁷ Ibid.



One component of implementing the Uluru Statement would entail a legislated Makarrata Commission to enable truth-telling and agreement-making between our peoples and government.⁸ This is vital for healing Australia as a whole and for ensuring that our peoples are able to “fully participate in all that Australia has to offer.” Truth-telling must occur at local, regional and national levels so that Australia can reckon with its past and grow beyond it.⁹

Treaty and the creation of a constitutionally protected Voice to Parliament would support our self-determination and leadership in a way it has not been supported since colonisation. It would enable our communities to continue indigenous nation building from a place of strength, equality and reciprocity with the Australian government. Full implementation of the Uluru Statement, and particularly a Voice to Parliament is therefore integral to the implementation of the UNDRIP in this country. It is intrinsic to our people's sovereignty and self-determination, and our health and wellbeing. We call on the new Australian Government to act swiftly on its stated commitment to the full and expedient implementation of the Uluru Statement.

Another consideration is that implementing the UNDRIP requires active reflection on power differentials and leadership. Non-Indigenous peoples, entities and governments need to shift their colonising perspective from one of deficit to one of strength. Instead of seeing this as an exercise in giving up power and control to our peoples; it is important to recognise that our peoples bring much value to the collective Australian community through our unique approaches and leadership. Empowerment is an ongoing process, not a tick box exercise. It is also an enriching process that promises long-term benefits for our peoples and Australians more broadly.

In the past, previous engagement with our peoples has been through consultation. This model of engagement is disempowering and has not led to improved outcomes for our peoples. Even co-design processes, whilst better, are not sufficient to enable our leadership on the issues that impact our peoples. Under Articles 18 and 19 of the UNDRIP, our rights to maintain our own governance processes and to be consulted by the state in good faith and with free, prior and informed consent are enshrined. Implementation of the Uluru Statement would transform the way that the federal, state and territory governments are required to engage with our communities and leaders, and this would ensure those rights are upheld.

⁸ Lowitja Institute 2018, The Lowitja Institute Submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples 2018, The Lowitja Institute, 29 June. Viewed on 22 June 2022 at: [Microsoft Word - Constitutional Recognition Submission Final 290618 \(lowitja.org.au\)](#), p. 4.

⁹ Ibid.



It has been more than a decade since our peoples came together to ask for transformative change through the Uluru Statement; we have seen successive governments talk about it but not act.¹⁰ Parliament has been consulting with our peoples and the public for a decade;¹¹ the Joint Select Committee held an Inquiry on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples in 2018, which Lowitja Institute made a submission to; and the former federal government proposed a model for a National Voice to Parliament last year. This is a disappointing delay – the Uluru Statement and its authors have given Australia a roadmap, the federal government simply needs to follow it.

We recommend immediate action to fully implement the Uluru Statement.

3. Right to Self-government

Many of the articles in the UNDRIP, including Articles 3, 4, 5, 20 and 34 promote and build upon concepts of self-determination, our rights to autonomy and self-governance, and to maintain our own systems, structures, customs, spirituality, traditions, and institutions while still participating fully in those of the state.

In understanding the application of self-governance in Australia, it is also important to understand and consider Aboriginal and Torres Strait Islander nation building activities. There is mounting evidence that Aboriginal and Torres Strait Islander nation building and self-determination results in improved outcomes for our peoples. Indigenous nation building and self-governance enable healthy futures by enacting self-determined, strengths-based, and community-driven models which are embedded with the social, cultural and political determinants of health and well-being.

The Lowitja Institute's upcoming discussion paper, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing* (Rigney, 2022) discusses how the UNDRIP can be a strong moral force to support Indigenous nation building in this country. The paper notes that the political determinants of health and Indigenous nation building should be recognised in essential policy instruments.

There are many ways in which the Australian government can support Indigenous nation building. The Lowitja Institute recommends sustained and increased investment in ACCHOs, which have been highly successful at providing health and wellbeing services for our peoples and communities. They are transformative spaces that assert Aboriginal and Torres Strait Islander ways of knowing, being and doing. Such spaces are vital.

¹⁰ Ibid, p. 5

¹¹ Ibid.

Community and stakeholder efforts to ensure the application of the principles of the UNDRIP

The Terms of Reference for this inquiry calls for examples of community and stakeholder efforts to ensure the application of the principals of the UNDRIP. It is our view that governments must look to examples from Aboriginal and Torres Strait Islander communities across Australia who are leading the way in transforming health and community services, policies and programs, by rebuilding them with culture and Country at the centre.

Despite the Australian government's lack of commitment to the UNDRIP, there are many examples of community-led and business led efforts to implement UNDRIP, which are making an impact.

Implementation of the UNDRIP in Australia to date has predominately been community-led, ground-up or business-led, with Aboriginal and Torres Strait Islander peoples continuing to work on behalf of their communities to face unprecedented health challenges and to progress health equality.

However, there are also examples that highlight where the Australian Government has worked in partnership with Aboriginal and Torres Strait Islander peoples to promote the rights of Indigenous people and form constructive agreements, in line with the UNDRIP principals. One is the development of the National Aboriginal and Torres Strait Islander Health Plan 2021-2031. This is a national policy framework to improve the health and wellbeing of Aboriginal and Torres Strait Islander peoples over the next 10 years.

Key to this partnership was the leadership and collaboration of the Commonwealth Implementation Plan Advisory Group, its sub-committee, the Aboriginal and Torres Strait Islander Health Plan Working Group, and the National Health Leadership Forum.

As highlighted in the Lowitja Institute's 2022 Closing the Gap Campaign Report:

The refreshed Plan embeds the priority reforms and outcomes from the National Agreement on Closing the Gap, recognises the critical role of the Aboriginal community controlled health sector and highlights the need for all health services to provide culturally safe care. It emphasises the importance of strengths-based and rights-based approaches to health and, for the first time, embeds the social and cultural determinants of health for Aboriginal and Torres Strait Islander peoples into a national health policy to ensure it is anchored in Aboriginal and Torres Strait Islander ways of knowing,

being and doing, and encompasses a holistic understanding of health and wellbeing.¹²

Below are examples of community and business-led initiatives that aim for application of the UNDRIP irrespective of government commitment:

RAPS and business interest in adhering to the UNDRIP

In the *Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples* (The Global Compact Network Australia, 2020) (Business Guide), it is recognized that the business sector's 'absence or limited recognition of Indigenous Australia's human rights' was comparable to that of the Government.¹³

While acting in line with the UNDRIP sets expectations for businesses over and above business compliance with national laws and regulations,¹⁴ there is increasing pressure from boards and consumers to ensure corporate social responsibility when it comes engagement with Aboriginal and Torres Strait Islander communities and businesses.

The Reconciliation Action Plan program supports businesses to address this in a way that is feasible for each individual business. Further support is available to businesses in the form of the UN Guiding Principles on Business and Human Rights, and the Business Guide.

The following two case studies were recommended by some in our Members Community:

Waminda Cultural Immersion Workshops – Unlearning to Relearn

Waminda is a culturally safe and holistic health service in Nowra, NSW for women and their Aboriginal families. It utilises strength-based approaches and focuses on ensuring a sense of belonging through a range of services, including health and wellbeing, maternity, case management, family and family violence supports. Waminda also provides their Push Back Program – two-day cultural immersion and decolonisation workshops – to non-Indigenous Australians.

¹² Lowitja Institute 2022, *Transforming Power: Voices for Generational Change – Close the Gap Campaign Report 2022*, The Close the Gap Campaign Steering Committee for Indigenous Health Equity, p.15.

¹³ The Global Compact Network Australia, KPMG, University of Technology Sydney 2020, *The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples Business Guide*, The Global Compact Network Australia, p.10.

¹⁴ *Ibid.*, p. 14.



Implementation of the UNDRIP requires vast transformation based on decolonising approaches and self-reflection; prompting such change at an individual level is part of this process. Waminda's course engages with non-Indigenous individuals to prompt this change within themselves and involve them actively in working towards a more equitable society in which individual rights enshrined in the UNDRIP are upheld and in which our sovereign collective rights are also respected and protected.

Justice Health NSW

Inspired by the Anangu Ngangkari Tjutaku Aboriginal Corporation Ngangkari services in South Australia, Justice Health NSW has developed a funding proposal to initiate a pilot program to introduce Traditional Healers into women's prisons in NSW. The goal is to increase access to culturally safe health services, which include both mainstream and traditional healing health practices.

It is well-known that prisons are dangerous spaces for our peoples; a constellation of factors intimately connected to colonization has led to a situation where our people are the most incarcerated peoples in the world, with high rates of deaths in custody. As the Uluru Statement expresses:

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.¹⁵

The Partnership for Justice in Health, which the Lowitja Institute is a member of, was established to raise awareness and advocate for systemic transformation through justice reinvestment to stop incarceration and deaths in custody. This systemic issue sits at the nexus of both justice and health sectors, which means that health solutions play a large role.

The proposed pilot program at Justice Health NSW centers Aboriginal and Torres Strait Islander health knowledge and practices and would go towards implementing greater cultural safety in the corrections context. It is hoped that it will contribute to reducing the rates of deaths in custody and improving the health and wellbeing of Aboriginal and Torres Strait Islander women, and their families and communities. It supports many of the UNDRIP Articles, but in particular Article 24, which asserts the rights of our peoples to access health services, our traditional medicines and to maintaining our health practices.

¹⁵ [View The Statement - Uluru Statement from the Heart](#)



Programs that align well with the UNDRIP, such as the above proposed pilot, should be supported. We recommend that government consider alignment with the UNDRIP as a priority factor in making funding decisions.