



Australian Government

Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) study on efforts to achieve the ends of the Declaration on the Rights of Indigenous Peoples:

Recognition, reparations and reconciliation

Australia welcomes the opportunity to contribute to the Expert Mechanism on the Rights of Indigenous Peoples annual report. Australia is pleased to be able to provide advice that will help to identify, disseminate and promote good practices and lessons learned regarding the efforts to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration).

The Australian Government acknowledges the importance of this year's theme of **recognition, reparation and reconciliation**, and that genuine partnership with Indigenous peoples is essential to progress and achievement. While Australia still has more progress to make in some areas, such as continuing efforts towards Constitutional Recognition, we are changing our approaches in fundamental ways.

One key example of this is the commitment in December 2018 by Australian governments to establish a formal partnership with Aboriginal and Torres Strait Islander people through their representatives, the National Coalition of Aboriginal and Torres Strait Islander Peak Bodies, to finalise the refreshed Closing the Gap framework and targets. This is the first time Australian Governments have formally partnered with Aboriginal and Torres Strait Islander peoples and extended direct involvement in government decision-making processes as an equal partner at its highest forum.

This and other approaches are just some examples that demonstrate Australia's commitment to achieve the outcomes intrinsic to the themes of this year's report.

This submission builds on Australia's contribution to EMRIP's 2018 annual report on efforts to achieve the ends of the Declaration, which provided an overview of the Closing the Gap framework and 'refresh' process. Further detail and an update on this important process is provided below as a key example of Australia's recognition of the diversity of cultures and circumstances of Aboriginal and Torres Strait Islander peoples as we work together to achieve lasting improvements in outcomes. In addition, we also include two further examples of work where outcomes cut across the three themes of this year's report.

As background, it is helpful to note that Australia is a federation of six states which, together with two self-governing territories, all of which have their own parliaments, governments and laws. The Australian Constitution establishes the Commonwealth Government, referred to here as the Australian Government, defines its structure, powers and procedures, and defines the rights and obligations of the states in relation to the Commonwealth.

Australia has a long history of working towards achieving reconciliation, and countless people – Aboriginal, Torres Strait Islander and non-Indigenous Australians – have dedicated their life's work to the reconciliation process. As a result, many significant steps have been taken. The examples provided below highlight Australia's ongoing efforts towards recognising Aboriginal and Torres Strait Islander peoples continued connection to land and waters through native title legislation; and Australian Government efforts to support the Stolen Generations in parallel to state government reparation schemes.

The Stolen Generations are Aboriginal and Torres Strait Islander people who, when they were children, were taken away from their families and communities as the result of past government policies.

For further information outlining examples of Australian Government programs, policies, legislation and other initiatives that contribute to giving effect to the Declaration is at [Appendix I](#).

We trust this submission may be beneficial for other Member States.

Closing the Gap refresh

A key example of Australia's progress towards recognition, reparation and reconciliation is the commitment by all Australian governments to establish an historic formal partnership with Aboriginal and Torres Strait Islander peoples through their representatives. This is the first time Australian Governments have formally partnered with Aboriginal and Torres Strait Islander peoples and extended direct involvement in government decision making processes as an equal partner at its highest forum. The partnership is embedded in a ten year Partnership Agreement on Closing the Gap and will support and be considered as a model for other government forums. Closing the Gap is the joint approach agreed by all Australian governments to work together to deliver better health, education and employment outcomes for Aboriginal and Torres Strait Islander people, and to eliminate the gap between Indigenous and non-Indigenous Australians.

The partnership recognises that Aboriginal and Torres Strait Islander peoples must play an integral part in making the decisions that affect their lives, and will embed shared decision making into the design, implementation and monitoring of the Closing the Gap framework.

Since 2008 the Government has reported annually on progress against each Closing the Gap target to provide transparency and accountability on the outcomes of these efforts (the link to the 2019 report is provided below). There has been some steady progress made in most target areas over the past ten years, however improvements have not been enough to close the gap. While the 2008 targets were ambitious, they have been found to be too narrow and were not evidence-based. Critically, these targets were not developed in partnership with Aboriginal and Torres Strait Islander peoples.

Native Title

Aboriginal and Torres Strait Islander peoples' laws and customs and ways of knowing and being in the world are intimately connected to the land and waters. This connection is therefore essential to the continued cultural survival of Indigenous Australians as well as their economic and social development.

Native title rights are rights to land and waters which have been continuously exercised by Indigenous groups since before British settlement. The Native Title Act 1993 (NTA) provides mechanisms for recognising traditional laws and customs as having effect in Australian law and bringing native title holders into mainstream dealings with land. Native title has made partnerships with Indigenous people the norm in certain sectors.

Today, about 40 % of Australia is subject to a recognised native title interest. A further 23% is subject to claims. Australia wide, about 200 'prescribed bodies corporate' (PBCs) manage native title on behalf of native title holders and are a point of contact for government and third parties in relation to dealings with native title land and waters. As such PBCs are recognised as important cultural authorities for Indigenous people.

The NTA also provides a mechanism for payment of compensation for impairment or extinguishment of native title. The first precedent regarding the quantum of compensation was set by the High Court in March 2019 in a matter brought by the Ngaliwurru and Nungali Traditional Owners in the town of Timber Creek in the Northern Territory. The Court awarded approximately \$2.5 million in compensation to the Traditional Owners for the impact of 53 land grants and public works on their native title rights, in relation to an area of approximately 1.26 square kilometres. In clarifying how compensation can be valued, this judgement represents a significant milestone in the native title system.

The Australian Government works closely with Aboriginal and Torres Strait Islander peoples and other key stakeholders, such as state and territory governments, to ensure that the native title system is working effectively to recognise and protect native title rights. For example, the Australian Government is currently developing a package of reforms to the NTA in consultation with stakeholders, in particular Aboriginal and Torres Strait Islander peoples, intended to improve these processes.

Healing Foundation

The Australian Government continues to recognise the trauma, grief, suffering and loss suffered by the Stolen Generations, their families and communities, which sadly continues today for many Aboriginal and Torres Strait Islander peoples.

The Stolen Generations are Aboriginal and Torres Strait Islander people who, when they were children, were taken away from their families and communities as the result of past government policies. Children were removed by government, churches and welfare bodies to be brought up in institutions, fostered out or adopted by white families. The removal of Aboriginal children took place from the early days of British colonization in Australia and continued until the 1970's.

The Australian Government has a vital role supporting Aboriginal and Torres Strait Islander people and organisations to drive action on these issues. In 2009, the Healing Foundation was established to address trauma and aid healing in Indigenous communities.

This followed earlier practical assistance packages at the Australian government level for those separated from their families, including making records more accessible, family support programs, Link-up services for family reunion, support for language and cultural maintenance, counselling, and social and emotional wellbeing.

The Government funded the Healing Foundation to undertake a comprehensive needs analysis of Stolen Generations and descendants with the Australian Institute of Health and Welfare (AIHW). Published in August 2018, the Healing Foundation's report shows that in 2018 there were 17,150 Stolen Generations survivors and between 133,406 and 158,005 descendants nationally. The report confirms that 66% of Stolen Generations were aged 50 and over in 2014 and all surviving Stolen Generations will be eligible for aged care in 2023, findings that are informing policy and programs in areas such as aged care and health.

The report shows that Stolen Generations and their descendants are found to be significantly poorer on a range of outcomes, including health, income and employment status, home ownership, experiences of discrimination, access to services, and contact with the criminal justice system when compared with the non-removed Indigenous Islander population (the gap widens when compared with the non-Indigenous Australian population).

The Government has committed to working with the Healing Foundation and other Stolen Generations organisations to prioritise areas for further action based on the findings from the AIHW report; and will use information provided from the Foundation to inform next steps.

Links to key websites for more information:

- [Closing the Gap](#) Refresh
- [Closing the Gap - 2019 report](#)
- [Healing Foundation](#)
- [Report of the comprehensive needs analysis of Stolen Generations and descendants with the Australian Institute of health and Welfare \(AIHW\)](#)

Appendix I

Areas of the UNDRIP	Examples of Australian Government programs and policies, legislation, and other initiatives in Australia that contribute to giving effect to the Declaration
<p><i>Economic Rights</i></p> <p>Article 17 – Employment and working conditions</p> <p>Article 20 – Economic development</p> <p>Article 26 – Ownership and use of country</p> <p>Article 27 – Recognising our rights to country</p> <p>Article 28 – Setting this right – compensation</p> <p>Article 32 – Development of country</p> <p>Article 42 – Promotion of the declaration</p>	<ul style="list-style-type: none"> ○ Indigenous Procurement Policy ○ Indigenous Business Strategy ○ Indigenous Business Ambassador ○ Indigenous Business Australia ○ Indigenous Land Council ○ Northern Australia Whitepaper ○ Native Title ○ Land Rights ○ Indigenous Productivity Commissioner ○ Closing the Gap Framework/Refresh ○ Empowered Communities
<p><i>Social Rights</i></p> <p>Article 21 – Improved living conditions</p> <p>Article 22 – Special needs</p> <p>Article 23 – Development</p> <p>Article 24 – Health and traditional medicines</p> <p>Article 44 – Men and women are equal</p>	<ul style="list-style-type: none"> ○ Current Closing the Gap Framework ○ National Disability Insurance Scheme ○ National Plan to Reduce Violence against Women and Girls ○ Cultural and Social Determinants of Health ○ Indigenous Productivity Commissioner (proposed) ○ Closing the Gap Framework/Refresh ○ ABSTUDY ○ Wiyi Yani U Thangani (Women’s Voices) ○ Aboriginal and Torres Strait Islander Health Plan and Implementation Plan ○ Third Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-22

<p><i>Cultural Rights</i></p> <p>Article 11 – Culture and cultural property</p> <p>Article 12 – spirituality</p> <p>Article 13 – our ways of being and knowing</p> <p>Article 14 – Education</p> <p>Article 15 – Public Information</p> <p>Article 16 – Media and cultural diversity</p> <p>Article 25 – Connection to country</p> <p>Article 29 – Caring for country and the environment</p> <p>Article 31 – Cultural heritage and traditional knowledge</p>	<ul style="list-style-type: none"> ○ Australian Institute of Aboriginal and Torres Strait Islander Studies ○ Land Rights ○ Native Title ○ Indigenous Land Councils ○ Indigenous Rangers/Working on Country Programmes ○ Aboriginal and Torres Strait Islander Interpreters ○ Indigenous Electoral Participation Program ○ Empowered Communities ○ Indigenous Repatriation Program ○ National Curriculum - Framework for Aboriginal Languages and Torres Strait Islander Languages
<p><i>Political Rights</i></p> <p>Article 30 – Military activities</p> <p>Article 35 – Responsibilities</p> <p>Article 36 – Beyond borders</p> <p>Article 37 – Treaties and agreements</p> <p>Article 38 – National measures</p> <p>Article 39 – Access to funding and other assistance</p> <p>Article 40 – Dispute resolution and effective remedies</p> <p>Article 41 – International cooperation</p>	<ul style="list-style-type: none"> ○ National Congress of Australia’s First Peoples ○ Constitutional Recognition ○ Aboriginal and Torres Strait Islander Social Justice Commissioner ○ Indigenous Australian Youth Parliament ○ Redfern Statement Alliance ○ Prime Minister’s Indigenous Advisory Council ○ Aboriginal Legal Services ○ Indigenous Productivity Commissioner ○ Indigenous Land Councils ○ Empowered Communities
<p><i>Civil Rights</i></p> <p>Article 1 - Collective and individual human Rights</p> <p>Article 2 – Equality and freedom from discrimination</p>	<ul style="list-style-type: none"> ○ National Congress of Australia’s First Peoples ○ Constitutional Recognition ○ Aboriginal and Torres Strait Islander Social Justice Commissioner

<p>Article 3 – Self determination</p> <p>Article 4 – Self government</p> <p>Article 5 – Our own institutions</p> <p>Article 6 – Nationality</p> <p>Article 7 – Security and freedom from genocide</p> <p>Article 8 – Freedom from assimilation and destruction of culture</p> <p>Article 9 – Communities and nations</p> <p>Article 10 – Removal and relocation</p> <p>Article 18 – Decision making</p> <p>Article 19 – Consent and partnership</p> <p>Article 33 – Determining our identities</p> <p>Article 34 – Our laws, customs and traditions</p> <p>Article 43 – Survival, dignity and well-being</p> <p>Article 45 – Other rights are not diminished</p> <p>Article 46 – How to interpret the declaration</p>	<ul style="list-style-type: none"> ○ Indigenous Australian Youth Parliament ○ Redfern Statement Alliance ○ Prime Minister’s Indigenous Advisory Council ○ Aboriginal Legal Services ○ Indigenous Productivity Commissioner ○ Indigenous Electoral Participation Program ○ Empowered Communities ○ The National Apology, annual Closing the Gap Speech and Report
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