



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

www.naccho.org.au

Application of the United Nations Declaration of the Rights of Indigenous People in Australia

Submission to the
Senate Standing Committee
on Legal and Constitutional
Affairs

June 2022

ABOUT NACCHO

NACCHO is the national peak body representing 144 Aboriginal Community Controlled Health Organisations (ACCHOs). We also assist a number of other community-controlled organisations.

The first Aboriginal medical service was established at Redfern in 1971 as a response to the urgent need to provide decent, accessible health services for the largely medically uninsured Aboriginal population of Redfern. The mainstream was not working. So it was, that over fifty years ago, Aboriginal people took control and designed and delivered their own model of health care. Similar Aboriginal medical services quickly sprung up around the country. In 1974, a national representative body was formed to represent these Aboriginal medical services at the national level. This has grown into what NACCHO is today. All this predated Medibank in 1975, as well the 1978 WHO conference in Alma-Ata addressing global inequities in primary health care.

NACCHO liaises with its membership, and the eight state/territory affiliates, governments, and other organisations on Aboriginal and Torres Strait Islander health and wellbeing policy and planning issues and advocacy relating to health service delivery, health information, research, public health, health financing and health programs.

ACCHOs range from large multi-functional services employing several medical practitioners and providing a wide range of services, to small services which rely on Aboriginal health practitioners and/or nurses to provide the bulk of primary health care services. Our 144 members provide services from about 550 clinics. Our sector provides over 3.1 million episodes of care per year for over 410,000 people across Australia, which includes about one million episodes of care in very remote regions.

ACCHOs contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive primary health care, and by integrating and coordinating care and services. Many provide home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support. Our services build ongoing relationships to give continuity of care so that chronic conditions are managed, and preventative health care is targeted. Through local engagement and a proven service delivery model, Aboriginal and Torres Strait Islander people continue as our clients over time. Clearly, the cultural safety in which we provide our services is a key factor of our success.

ACCHOs are cost-effective. In 2016, a cost-benefit analysis of the services provided by Danila Dilba to Aboriginal and Torres Strait Islander people in the Greater Darwin region was undertaken by Deloitte Access Economics. The findings demonstrated that each dollar invested in the health service provides \$4.18 of benefits to society. ACCHOs are also closing the employment gap. Collectively, we employ about 7,000 staff – 54 per cent of whom are Aboriginal or Torres Strait Islanders – which makes us the third largest employer of Aboriginal or Torres Strait people in the country.

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NACCHO recommends

1. the Australian Government introduce legislative measures to enact the UNDRIP into Commonwealth law, in line with the UNDRIP Article 38.
2. there be acknowledgement of the key role ACCHOs have played in paving the way for Aboriginal and Torres Strait Islander self-determination.
3. the *National Agreement on Closing the Gap* be acknowledged as a critical precursor for full enactment of the UNDRIP.
4. that in enacting the UNDRIP into Commonwealth law, particular emphasis be placed on realising Article 37: *Governments shall respect treaties and agreements entered into with Indigenous peoples.*
5. measures undertaken to implement the *Uluru Statement from the Heart* should adopt that Statement's Guiding Principles.
6. the Commonwealth government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, should negotiate and agree the process steps for implementing an agreed model for a Voice to Parliament.
7. that there be an explicitly nominated timeframe for the codesign of a Voice to Parliament.
8. that any future Commonwealth Treaty Act, or National Agreement on Closing the Gap, consider all 43 UNDRIP Articles as a whole.
9. that progress be monitored on the application of the Canadian Model for enacting the UNDRIP as a possible example for the Australian context.

Introduction

NACCHO welcomes the opportunity to provide a submission to the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the application of the *United Nations Declaration of the Rights of Indigenous People* (UNDRIP) in Australia.

NACCHO supports the submission made by the Coalition of Peaks to the consultation.

Self-determination through Aboriginal Community-Controlled Health Services (ACCHOs)

Community control has its roots in Aboriginal and Torres Strait Islander peoples' right to self-determination. An ACCHO has ongoing community input and ownership that is initiated by the community and is governed by an Aboriginal and Torres Strait Islander body elected by the community. ACCOs deliver holistic and culturally appropriate services to the Aboriginal and Torres Strait Islander community. ACCHOs provide culturally appropriate and holistic primary healthcare.

ACCHOs were designed and established by Aboriginal and Torres Strait Islander people as a result of the lack of culturally appropriate healthcare. The oldest is 51 years. ACCHOs initially had little or no specific funding and began as fledgling services with donations and loans of staff from other Aboriginal Medical Services, notably those in Redfern, Melbourne and Alice Springs. Some were helped by international aid agencies, and a few had Medibank income.

Today, ACCHOs are a pivotal member of the primary health care architecture within Australia and have a national footprint across urban, regional, rural and remote settings. Underpinning this is their well-established comprehensive model of primary health care that is consistent with, yet predates, the definition of primary health care outlined in the 1978 Declaration of Alma Ata.

ACCHOs are highly visible in Aboriginal and Torres Strait Islander communities with research showing ACCHOs are best placed to respond to the social and cultural determinants of health. There is also a clear preference for Aboriginal and Torres Strait Islander peoples to access community-controlled services. Indeed, many will bypass mainstream services to access one where they are confident their cultural safety is guaranteed.

ACCHOs have become a voice for Aboriginal and Torres Strait Islander people and communities, along with other national and state/territory community-controlled peak bodies. This community-controlled voice is based firmly on the principles of self-determination and community-control. Our leaders are Aboriginal or Torres Strait Islander persons who are either:

- members of Boards that are elected by community members or community-controlled member organisations of the peak body; or
- Chief Executive Officers or senior staff of the organisation who are appointed by and accountable to their elected Boards.

The community-controlled voice is unique in Australia and continues to be effective in advising and providing input to all Australian Governments, even if it is often severely under-resourced.

NACCHO recommends there be acknowledgement of the key role ACCHOs have played in paving the way for Aboriginal and Torres Strait Islander self-determination.

United Nations Declaration on the Rights of Indigenous People

The UNDRIP represents one of the most significant developments in advocacy for Indigenous people's rights globally. It's central concern is self-determination¹, as made clear in Article 3:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Adopting UNDRIP standards allows states to work towards recognising Indigenous peoples' rights to self-determination, participation in decision-making, respect for and promotion of culture, and equality and non-discrimination. *Substantive* support for UNDRIP necessitates recognising Article 38 of UNDRIP, which requires enacting UNDRIP standards into law:

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures to achieve the ends of this Declaration.

As stated above, NACCHO is firmly aligned with the UNDRIP focus on self-determination. Personal, community and organisational self-determination is fundamental to closing the gap in outcomes for Aboriginal and Torres Strait Islander peoples.

NACCHO recommends the Australian Government introduce legislative measures to enact the UNDRIP into Commonwealth law, in line with the UNDRIP Article 38.

National Agreement on Closing the Gap

In July 2020, the Australian Government, all state and territory governments, and the Coalition of Peaks signed the *National Agreement on Closing the Gap* (National Agreement). The reforms and targets outlined in the National Agreement seek to overcome the inequality experienced by Aboriginal and Torres Strait Islander people and achieve life outcomes equal to all Australians. All governments have committed to the implementation of the National Agreement's four Priority Reforms, which aim to change the way governments work to accelerate improvements in the lives of Aboriginal and Torres Strait Islander people. The four Priority Reforms are:

Priority Reform 1 – Formal partnerships and shared decision-making

Priority Reform 1 explicitly argues for self-determination. It commits to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap.

Priority Reform 2 – Building the community-controlled sector

Commits to building Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support Closing the Gap. In recognition that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.

Priority Reform 3 – Transformation of government organisations

Commits to systemic and structural transformation of mainstream government organisations to improve to identify and eliminate racism, embed and practice cultural safety, deliver services in partnership with Aboriginal and Torres Strait Islander people, support truth-telling about agencies'

¹ Synot, E, (2019) *The Universal Declaration of Human Rights at 70: Indigenous rights and the Uluru Statement from the Heart*, Australian Journal of International Affairs 73(4) p320-5

history with Aboriginal and Torres Strait Islander people, and engage fully and transparently with Aboriginal and Torres Strait Islander people when programs are being changed.

Priority Reform 4 – Sharing data and information to support decision making

Commits to shared access to location-specific data and information to inform local-decision making and support Aboriginal and Torres Strait Islander communities and organisations to support the achievement of the first three Priority Reforms.

Advocating for and securing the National Agreement was an historically significant act of Aboriginal and Torres Strait Islander self-determination. The National Agreement commits all Australian Governments to share decision making with Aboriginal and Torres Strait Islander representatives chosen by our peoples, on matters relating to improvements in life outcomes.

One would expect, therefore, that there is widespread alignment between the National Agreement and the UNDRIP. Table 1 sets out the complementarity between each agreement’s articles.

National Agreement	UNDRIP ²
<p>Priority Reform Area 1 Formal partnerships and shared decision-making.</p>	<p>Article 4 - As a form of self-determination, Indigenous peoples have the right to autonomy or self-government in relation to their own affairs.</p> <p>Article 18 – Indigenous peoples have the right to participate in decisions that affect them.</p> <p>Article 19 – governments shall consult with Indigenous peoples in order to obtain their free, prior and informed consent before adopting laws and policies that may affect them.</p>
<p>Priority Reform Area 2 Building the community-controlled sector.</p>	<p>Article 3 – Indigenous peoples have the right to self-determination. This means they can choose their political status and develop as they want.</p> <p>Article 5 – Indigenous peoples have the right to keep and develop their distinct institutions.</p> <p>Article 20 – Indigenous peoples have the right to their own political, economic and social systems.</p> <p>Article 23 – Indigenous peoples have the right to determine priorities and strategies for their development. They should be involved in determining health, housing and other economic and social programs and, as far as possible, administer these programs through their own organisations.</p>
<p>Priority Reform Area 3 Transformation of mainstream institutions.</p>	<p>Article 2 – Indigenous peoples are equal to all other peoples, and must be free from discrimination.</p> <p>Article 11 – Indigenous peoples have the right to their cultural traditions and customs.</p> <p>Article 13 – Indigenous peoples have the right to their histories, languages, oral traditions, stories, writings and their own names for places and people. Governments shall assist Indigenous</p>

² United Nations General Assembly (2007) *United Nations Declaration on the Rights of Indigenous Peoples*, UN, France. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

	<p>people, especially children who do not live in Indigenous communities, to learn their own culture and language.</p> <p>Article 21 – Governments shall adopt special measures to ensure the improvement of economic and social conditions.</p>
<p>Priority Reform Area 4</p> <p>Sharing data and information to support decision making.</p>	<p>Article 15 – Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and <u>public information</u>. [underline added]</p> <p>Article 39 – Indigenous peoples have the right to have access to financial and <u>technical assistance</u> from States and through international cooperation, for the enjoyment of the rights contained in this Declaration. [underline added]</p>

Table 1. Complementarity between UNDRIP and the National Agreement

The National Agreement’s four Priority Reforms clearly align with the standards of the UNDRIP. In many ways, therefore, the National Agreement can be considered a precursor for the UNDRIP.

NACCHO recommends the National Agreement on Closing the Gap be acknowledged as a successful precursor for full enactment of the UNDRIP. A prerequisite to enactment of the UNDRIP must be the ongoing implementation of the National Agreement.

[Progress on the National Agreement](#)

Now in its third year, the National Agreement is due for formal review. While early progress has been made in realising its four Priority Reforms, there is still much to be achieved. The case studies provided below illustrate opportunities for change, others will likely emerge during the course of the review process.

Because the National Agreement is not a legally binding agreement, there will inevitably be tension between the drive toward self-determination, and the ability of governments to enact change. In order to secure the longevity and success of the National Agreement, **NACCHO recommends** that in enacting the UNDRIP into Australian law, particular emphasis be placed on realising Article 37 of UNDRIP:

Governments shall respect treaties and agreements entered into with Indigenous peoples.

Agreements, including the National Agreement, should be gazetted to relevant ‘treaty’ Acts, or to Acts enacting UNDRIP, and protected as current and ongoing agreements under state, territory and federal laws.

Case study 1 – Social and Emotional Wellbeing (SEWB) funding

In 2014-15, the Australian Government moved funding control for Aboriginal-specific SEWB programs from the Department of Health to the Indigenous Advancement Strategy competitive funding process. This led to an increase in mental health services for Aboriginal and Torres Strait Islander people being brokered by third parties, or delivered by mainstream organisations with little or no direct connection to local communities.

Smaller ACCHOs seem to have been particularly disadvantaged. While they apply for funding to deliver SEWB services direct to their community, they often miss out, only to be subcontracted to assist larger, mainstream organisations to deliver the same programs.

NACCHO advocates for returning SEWB-program funding to the Department of Health and quarantining it for ACCHOs within the Indigenous Australian Health Program. This would support the Priority Reforms of the National Agreement, specifically the principle of self-determination, and build the capacity of the community-control sector which has proven so effective. It would also align with the UNDRIP, which states:

Article 23 *‘Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.*

Case study 2 – Aboriginal and Torres Strait Islander health funding

The Equity Economics report [Measuring the Gap in Health Expenditure: Aboriginal and Torres Strait Islander Australians](#) commissioned by NACCHO, identifies a \$4.4 billion gap in Commonwealth, State and Territory Government and private health expenditure on Aboriginal and Torres Strait Islander health. The report’s findings highlight the obstacles to improving the health and life expectancy of Aboriginal and Torres Strait Islander people. There is a health-expenditure gap of \$5,042 per Aboriginal and Torres Strait Islander person which contributes directly to the gap in health outcomes.

The report’s calculations account for the burden of disease being more than twice the rate for the Aboriginal and Torres Strait Islander population than for the non-Aboriginal population, which translates to at least twice the cost-of-service provision. Structural reform and substantial funding investment is required. Investment in the ACCHO sector will not only deliver improved health outcomes in local communities, but will provide financial stimulus to the 550 local economies where ACCHO services are located.

Such investment aligns with the Priority Reforms of the National Agreement, and the UNDRIP which states:

Article 23/2 *‘Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.’*

The UNDRIP and the *Uluru Statement from the Heart*

NACCHO welcomes the Australian Government's recent commitment to implementation of the *Uluru Statement from the Heart* and the introduction of a Voice to the Australian Parliament, Truth Telling and Treaty.

The *Uluru Statement from the Heart* is a means by which Australia can fulfil its commitment to the UNDRIP. As Wiradjuri woman and academic lawyer Kishaya Delaney and her colleagues write:

*The Uluru Statement is a self-determining document that ... represents a significant opportunity for Australia to meet its UNDRIP commitment to self-determination – an opportunity that has to date, been missed.*³

The *Uluru Statement's* aim of *substantive, structural change* is, in its own terms, consistent with the UNDRIP. The *Uluru Statement* was written after the National Constitutional Convention adopted a set of ten Guiding Principles distilled from a series of national First Nations Regional Dialogues. Importantly, these Dialogues and the National Convention were Indigenous-led and authored, a genuine expression of Indigenous self-determination.

Principle Three explicitly referenced the UNDRIP, stating that a '*reform option*' should only proceed if it, '*advances ... the standards established under the United Nations Declaration on the Rights of Indigenous Peoples*'. Guiding Principle Three went on to directly quote Article 37 of the UNDRIP:

*Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements.*⁴

NACCHO recommends measures undertaken to implement the *Uluru Statement from the Heart* should adopt that Statement's Guiding Principles, which include the aim to '*advance [...] the standards established by the United Nations Declaration on the Rights of Indigenous Peoples*'.

In 2021 NACCHO recommended that:

*'The Commonwealth government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, should negotiate and agree the process steps for implementing the agreed Voice model(s), including its legislative basis and whether it should be protected through Constitutional enshrinement before it is implemented, and legislation enacted.'*⁵

NACCHO reiterates this recommendation, highlighting the implications for the UNDRIP: the Commonwealth Government and Aboriginal and Torres Strait Islander representatives that have been chosen by Aboriginal and Torres Strait Islander peoples, should share decision-making in the design of models for the implementation of the *Uluru Statement from the Heart*, including its legislative basis, and this requirement should equally apply to any legislation encompassing the UNDRIP.

NACCHO further recommends there be an explicitly nominated timeframe for the codesign of a Voice to Parliament.

³ K Delaney, A Maguire, F McGaughey (2020) *Australia's Commitment to 'Advance the Human Rights of Indigenous Peoples Around the Globe' on the United Nations Human Rights Council*, *Adelaide Law Review* 41(2)

⁴ Referendum Council (2017) *Final Report of the Referendum Council* pp22-8

⁵ NACCHO (2021) *Initial Response to the Indigenous Voice Co-Design Process Interim Report 2020*

Existing Australian models for action on UNDRIP

In 2018, the Victorian Government dedicated funding to ‘*support self-determination*’. The Victorian Parliament subsequently passed the *Advancing the Treaty Process with Aboriginal Victorians Bill 2018* (Treaty Act), which recognises:

... the importance of treaty process proceeding in a manner that is consistent with the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent.⁶

However, the principles in the Treaty Act, while exhibiting some overlap, are not strictly drawn from the UNDRIP.

In 2019, the ACT Government amended its *Human Rights Act 2004* to include specific recognition of two of the UNDRIP’s 43 articles – Articles 25 and 31. These Articles are concerned with guaranteeing Aboriginal and Torres Strait Islander control over cultural issues and establishing Aboriginal and Torres Strait Islander people’s rights to a ‘*relationship*’ with their land. Promulgating the UNDRIP, however, requires full rather than partial enactment.

NACCHO recommends that any future Commonwealth Treaty Act, or future National Agreement on Closing the Gap, consider all 43 UNDRIP Articles as a whole.

International models for action on UNDRIP

NACCHO notes the adoption of the 2021 Canadian *United Nations Declaration on the Rights of Indigenous Peoples Act*. This Act seeks to design a *roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration* (the Act). However, rather than enshrining UNDRIP into law, the Act establishes a framework for UNDRIP implementation over time. It requires the Canadian federal government to enact processes to ensure proposed laws are consistent with the UN Declaration, and to review existing laws. The Act also requires the Canadian government to establish, in consultation and cooperation with Indigenous people, ‘*an action plan to achieve the objectives of the Declaration.*’ The Act requires the action plan to be completed by June 2023.⁷

NACCHO recommends that progress on the application of the Canadian Model for enacting the UNDRIP be monitored as a possible example for the Australian context.

Addendum: Current private member Bill before the Senate

NACCHO notes the private member Bill (*United Nations Declaration on the Rights of Indigenous Peoples Bill, 2022*) currently before the Senate seeking to establish a framework for the implementation of the UNDRIP by the Commonwealth Government, and making a consequential amendment to the *Productivity Commission Act 1998*.

⁶ Government of Victoria (2018) *Advancing the Treaty Process with Aboriginal Victorians Act 2018*. Victorian Legislation Act Number 28/2018

⁷ Canadian Government (2022) *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act* [UNDRIP](#)

NACCHO does not recommend enactment of this Bill, chiefly because it speaks to implementation of an Action Plan *with the leadership of, and in cooperation and consultation with Indigenous peoples*.⁸ As stated above, implementation of the UNDRIP must be done on the basis of shared decision-making and in equal partnership with Aboriginal and Torres Strait Islander people that have been chosen by Aboriginal and Torres Strait Islander people as representatives. NACCHO does not support the definitions of *codesign* contained in the Bill because they do not align with those of the National Agreement.

⁸ Thorp, L, (2022) *United Nations Declaration on the Rights of Indigenous Peoples Bill 2022*. Parliament of Australia. Part 2/8(2)(b)