**Australia’s written submission to the Office of the High Commissioner for Human Rights**

**Expert Workshop on possible ways to enhance the participation of Indigenous peoples in the work of the Human Rights Council – 21 to 24 November 2022**

Australia is a strong supporter of Indigenous participation in UN meetings and forums.[[1]](#footnote-2) We welcome the planned four-day workshop to further discussions on how to enhance the full, effective and meaningful participation of Indigenous Peoples in the work of the Human Rights Council (HRC) and support further consultations, including across the seven regions of the Expert Mechanism on the Rights of Indigenous Peoples.

We recognise the call of Indigenous Peoples for ‘self-determination, self-identification and the ability to select their own representatives in accordance with their own procedures’.[[2]](#footnote-3) This is the premise of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Australian Government supports UNDRIP.

Aboriginal and Torres Strait Islander peoples are the First Nations people of Australia. First Nations Australians are not a homogenous group, but have over 250 languages and have their own distinct set of histories and cultural traditions, and within these groupings, deeper family and social ties. The diversity of First Nations Australians is overlaid with different experiences of colonisation and disruption to cultural governance.

Engaging with this diversity through a genuine partnership approach is a feature of the 2017 Uluru Statement from the Heart, which the Australian Government has committed to implementing in full.[[3]](#footnote-4) Australia supports a similarly inclusive approach to the issue of Indigenous participation in multilateral fora which reflects this diversity.

**1. Venues of participation**

The UNDRIP states in its preamble that the Declaration is to be pursued through partnership and mutual respect. Under Article 18, Indigenous Peoples have the right to participate in decision-making in matters affecting their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions. Article 41 calls on the UN to establish ways and means of ensuring the participation of Indigenous Peoples at the UN. Following the World Conference on Indigenous Peoples in 2014, Indigenous Peoples around the world have formally re­engaged with States to seek greater recognition, and the right to participate in global discussions on matters that affect them.[[4]](#footnote-5)

Beyond the Indigenous-specific forums, such as the UN Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), there is no dedicated mechanism that enables Indigenous representatives to systematically engage across the UN on issues affecting them. The 2020 report by the Secretary General (A/75/255) raises the importance of participation of Indigenous Peoples in UN agencies, funds and programmes, as well as meetings of the conference of the parties of UN treaties.[[5]](#footnote-6)

**2. Participation modalities**

In the absence of a dedicated mechanism, there is recent movement towards specific modalities that enable direct engagement by Indigenous Peoples in various UN meetings. For example, the current Local Communities and Indigenous Peoples Platform (LCIPP), established at the 2015 UN Climate Change Conference COP21, facilitates collaboration between Parties, Indigenous Peoples and local communities to strengthen climate action. The work of the LCIPP is supported by the Facilitative Working Group (FWG), a constituted body that was formed at COP24.

At COP26, through the FWG, there was direct engagement between Indigenous Peoples, local communities and governments. For the first time, twenty-eight Indigenous Peoples were nominated from each of the seven UN Indigenous socio-cultural regions, to engage directly as knowledge holders and share experiences with governments.[[6]](#footnote-7) The FWG is a productive peer-to-peer network between Indigenous Peoples and state parties and offers practical lessons for participation modalities.

Australia proposes that the HRC, working with Economic and Social Council (ECOSOC), undertake a stocktake on available formal and informal Indigenous participation modalities at the UN and associated bodies. A stocktake should (1) identify gaps and (2) good models that may be replicated. This approach would better inform our discussion on participation modalities by identifying mechanism for and barriers to participation (including financial, procedural, definitional and timing), making recommendations to resolve these barriers (including by formal or informal means), and indicating the likely timeframes for resolving these barriers.

Australia contributes to the UN Voluntary Fund for Indigenous Peoples and considers this a practical way to support Indigenous Peoples’ participation in the UN and encourages other States to consider contributing.

**3. Selection mechanism**

Where matters concerning Indigenous Peoples are raised outside EMRIP and the UNPFII, current procedures require that Indigenous Peoples register as NGOs and receive ECOSOC accreditation before they can contribute to discussions. Many Indigenous communities, groups and individuals are unable to meet these procedural requirements. A unique category for UN participation would enable Indigenous Peoples to participate based on their unique status as recognised by UNDRIP.[[7]](#footnote-8) Indigenous Peoples should not be seen or categorised as an NGO, nor as a State. It is important that any new accreditation or selection mechanism not erode existing means for Indigenous participation (such as the processes for participation in the UNPFII and the EMRIP).

**4. Selection criteria**

Australia has a diverse number of representative bodies that seek to represent the distinct and multiple views of Aboriginal and Torres Strait Islander peoples. These bodies work in partnership with the government to progress policies and initiatives. We support an inclusive approach to representation that recognises the diversity of representation in Australia, as well as the diversity that exists in other countries.

On the matter of eligibility, Australia has adopted a three-part working definition of Indigeneity, with its core components decided by Aboriginal and Torres Strait Islander peoples. The working criteria for Aboriginal and/or Torres Strait Islander heritage includes being of Aboriginal and/or Torres Strait Islander descent, identifying as an Aboriginal and/or Torres Strait Islander person and being accepted by the community in which that person lives, or formerly lived. The same principle of ensuring Indigenous Peoples are directly engaged in the development of eligibility criteria applies at the UN level.

1. Recommendations from intersessional round table held 16 July 2021 and drawing from A/HRC/RES/48/11. [↑](#footnote-ref-2)
2. A/75/255 [18]. [↑](#footnote-ref-3)
3. Achieved following 12 First Nations Regional Dialogues. The advocacy and work of Aboriginal and Torres Strait Islander peoples for formal constitutional recognition has been longstanding and the historical and political context of the Uluru Statement of the Heart has been documented in detail here: Commonwealth of Australia, 2017, [Final Report of the Referendum Council.](https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/Referendum_Council_Final_Report.pdf) [↑](#footnote-ref-4)
4. Notably from the 2014 conference some of the actions presented remain largely unresolved on reforms to EMRIP and Indigenous participation. Especially PP28 on EMRIP reforms and PP40 on Indigenous participation. See also outcome document of the 2014 high-level plenary meeting of the General Assembly, World Conference of Indigenous Peoples [A/RES/69/2](http://www.undocs.org/A/RES/69/2). [↑](#footnote-ref-5)
5. A/75/255, [26]. [↑](#footnote-ref-6)
6. During COP 26, Parties adopted the second three-year workplan of the LCIPP which mandates that these events under the LCIPP continue throughout the next three years. Following COP26, the platform will continue this work in facilitating increased engagement of Indigenous Peoples. [↑](#footnote-ref-7)
7. Australia National Statement to the intersessional roundtable on ways to enhance the participation of indigenous peoples’ representatives and institutions in meetings of the Human Rights Council on issues affecting them, 16 July 2021; Australian National Statement to the 15th UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 6 July 2022. [↑](#footnote-ref-8)