



Australian Submission to the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

Self Determination under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

EXECUTIVE SUMMARY

Aboriginal and Torres Strait Islander peoples in Australia are one of the world's oldest continuous living civilisations, spanning over 65,000 years. Aboriginal and Torres Strait Islander peoples have strong connections to family, land, water, language, and culture, which forms the foundation for their social, economic, and individual wellbeing.

This submission to EMRIP identifies a range of key areas in which the Australian Government gives practical effect to the UNDRIP including through the co-design of domestic policy and programs in partnership with Aboriginal and Torres Strait Islander peoples.

The Australian Government welcomes the opportunity to contribute to the EMRIP study, and looks forward to discussing it at the next session of the *Expert Mechanism on the Rights of Indigenous Peoples* under the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

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Introduction

Australia supports the UNDRIP and shares the underlying commitment of the Declaration to deliver real and lasting improvements for Aboriginal and Torres Strait Islander peoples and their communities.

Australia gives practical effect to the Declaration through the development and implementation of our domestic policies and programs. Examples of this include:

- working in partnership with Aboriginal and Torres Strait Islander peoples to co-design and implement solutions tailored to reflect specific community priorities and needs
- the partnership and collaborative design, implementation and monitoring approach to Closing the Gap in social and economic disadvantage
- enhancing Aboriginal and Torres Strait Islander economic development through driving demand for Indigenous businesses and strengthening the capacity and capability of Aboriginal and Torres Strait Islander peoples, and
- supporting Indigenous language centres, interpreters and use of language in schools, and recognising and supporting a variety of forms of cultural expressions.

The Australian Government has committed to working in partnership with Aboriginal and Torres Strait Islander leaders and communities and to the co-design and delivery of policies and programs that affect Aboriginal and Torres Strait Islander peoples.

In all its work, the Australian Government takes a place-based approach working from the ground up in partnership with Aboriginal and Torres Strait Islander peoples, Elders, Aboriginal and Torres Strait Islander Community-Controlled Organisations, providers, state and territory governments, and across the Commonwealth, to develop more meaningful programs and outcomes. This approach supports the Australian Government to deliver activities, programs and services, including on Country, that meet the needs and aspirations of Indigenous Australians.

This new partnership model was implemented in March 2019, when the Council of Australian Government and the Coalition of Aboriginal and Torres Strait Islander Community-Controlled Peak Organisations (the Coalition of Peaks) entered into an historic Partnership Agreement on Closing the Gap. This agreement meant that for the first time Aboriginal and Torres Strait Islander peoples, through their community-controlled peak organisations and members, will share decisions with governments on Closing the Gap, under a formal arrangement. The Partnership Agreement sets out how all Australian Governments and the Coalition of Peaks work and share decisions together on the design, implementation and monitoring of Closing the Gap strategies and policies.

SECTION I: LEGAL INSTRUMENTS AND POLICY

Legal frameworks relating to self-determination in Australia

UNDRIP represents an important foundation document for the recognition and pursuit of the rights of Indigenous peoples internationally. Australia supports the UNDRIP as a key mechanism towards realising the rights of Indigenous peoples, as well as its role underpinning the important work of

EMRIP, supporting the work of the *UN Permanent Forum on Indigenous Issues* (UNPFII), and as a basis for engagement in other international fora.

Australia acknowledges the evolving international legal framework related to the right of self-determination of Indigenous peoples, in particular since the 2007 adoption of the UNDRIP. Noting that the implementation of the right of self-determination depends on the domestic context, Australia highlights the importance of this study and welcomes the opportunity to contribute.

The Australian Government believes that individuals and groups, particularly Aboriginal and Torres Strait Islander peoples, should be consulted about decisions likely to impact them. This includes ensuring that they have the opportunity to participate in the making of such decisions through the processes of democratic government, and the ability to exercise meaningful control over their affairs.

Australia's statement of support for UNDRIP in 2009 recognised the importance of internal self-determination for Indigenous peoples, stating that 'the Declaration recognises the entitlement of Indigenous peoples to have control over their destiny and to be treated respectfully'. Australia recognises domestic policies, such as the new partnership agreement on Closing the Gap, as examples of internal self-determination in the Australian context.

The *Aboriginal and Torres Strait Islander Act 2005* relates to self-government and self-sufficiency of Aboriginal and Torres Strait Islander peoples and economic and cultural development of their lands. The Act established and sets the responsibilities of the Torres Strait Regional Authority, the Indigenous Land Corporation and Indigenous Business Australia which all work toward the self-determination of Aboriginal and Torres Strait Islander peoples. Section 3 of the *Aboriginal and Torres Strait Islander Act 2005* states that the objects of the Act include to ensure the maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them and to promote the development of self-management and self-sufficiency among Aboriginal and Torres Strait Islander peoples.

As a further measure to give effect to the UNDRIP, the Attorney-General's Department of the Australian Government has prepared a guidance sheet¹ on self-determination in practice, in order to inform the work of Australian Public Service agencies to ensure that the UNDRIP is front of mind in the development of policies and programs that impact Aboriginal and Torres Strait Islander peoples.

Partnership approach to Closing the Gap

Since 2007, Australia has used the Closing the Gap framework to guide and coordinate national efforts to improve the economic, health and education outcomes of Aboriginal and Torres Strait Islander peoples.

The Closing the Gap framework outlined seven targets to reduce inequality in Aboriginal and Torres Strait Islander peoples' life expectancy, children's mortality, education and employment. The commitment focused on delivering policies and programs across fundamental 'building blocks' as priority areas, which would underpin improvement. Building blocks included early childhood,

¹ Australian Government Attorney-General's Department, 'Right to self-determination: Public sector guidance sheet', accessed February 2021, <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-self-determination>.

schooling, health, economic participation, healthy homes, safe communities, and governance and leadership.

A historic Partnership Agreement was signed in March 2019, between Australian governments, Indigenous Australians as represented by the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks), and the Australian Local Government Association (ALGA) to refresh the Closing the Gap framework.

- A new Joint Council on Closing the Gap was formed through this ten-year partnership, comprising 12 Indigenous members nominated by the Coalition of Peaks, as well as ministerial representatives from every Australian government.

On 2 July 2020 the Joint Council finalised the new National Agreement on Closing the Gap (National Agreement) for agreement by First Ministers of all Australian governments, the Lead Convenor of the Coalition of Peaks and the President of the ALGA.

- The National Agreement came into effect on 27 July 2020 and is a historic achievement.
- It is the first time an agreement designed to improve life outcomes for Aboriginal and Torres Strait Islander peoples has been developed in full and equal partnership with Indigenous Australians.

This partnership approach embeds shared decision-making into the design, implementation and monitoring of the framework, making this a truly hand in hand effort that recognises the value and importance of shared solutions to systemic problems.

The expertise and experience of the Coalition of Peaks and its members and their extensive Indigenous-led engagement process in 2019 with Aboriginal and Torres Strait Islander peoples across Australia were central to the commitments in the new National Agreement.

Moving forward, all Australian governments will work with Aboriginal and Torres Strait Islander peoples, communities, organisations and businesses to implement the new National Agreement at the national, state, territory, and local levels.

This genuine partnership approach acknowledges that to close the gap, Aboriginal and Torres Strait Islander peoples must determine, drive and own the desired outcomes, alongside all governments. This new way of working requires governments to build on the strong foundations Indigenous Australians have, through their deep connection to family, community and culture.

The Voice and Constitutional Recognition

In 2019, the Australian Government allocated \$7.3 million for a co-design process to develop options for an Indigenous Voice that would enhance local and regional decision-making and provide a voice for Aboriginal and Torres Strait Islander peoples.

The Australian Government supports finalising the details of an Indigenous Voice through a co-design process, before considering its legal form.²

Co-design at a glance:

- The Co-design process has included the establishment of a Senior Advisory Group to oversee the approach.
- Separate Local and Regional, and National Co-Design Groups have also been established to develop options.
- The **Local and Regional Co-Design Group** has developed a framework and guiding principles for local and regional voices to ensure Aboriginal and Torres Strait Islander Australians are empowered to work in genuine partnership with governments and to improve shared decision-making. The Group is committed to building on what is already working well, as well as looking at new ideas to create the space and flexibility needed to respond to the unique circumstances, history and culture of each place.
- The **National Group** has developed models and options to ensure Aboriginal and Torres Strait Islander Australians are heard at a national level on decisions that affect their lives.
- Further detail on these options and proposals are available in the published 'Interim report' which was released in January for public consultation.

The co-design process consists of two stages: 1) the development of options with the co-design groups; 2) consultation and engagement to refine models with Aboriginal and Torres Strait Islander leaders, communities and other stakeholders across the country during the first half of 2021. This consultation will inform further refinement of the models ahead of final recommendations to Government in the first half of 2021.

The Australian Government remains committed to holding a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution, once there is consensus on the way forward and when it has the best chance of succeeding. The Australian Government recognises that the best outcomes are achieved when Indigenous Australians are at the centre of decision-making on issues that affect them.

State level negotiations towards treaty

Victoria

The Victorian Government has prioritised a treaty process with Aboriginal Victorians as a primary means to advance Aboriginal self-determination in Victoria.

The Victorian Parliament passed Australia's first ever treaty legislation, the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Treaty Act), in June 2018. The preamble of the Treaty

² The National Indigenous Australians Agency released the 'Interim Report to the Australian Government on the Indigenous Co-Design Process' in January 2021. It can be viewed in full at <https://voice.niaa.gov.au/sites/default/files/2021-02/indigenous-voice-codesign-process-interim-report-2020.pdf>.

Act notes that ‘the State recognises the importance of the treaty process proceeding in a manner that is consistent with the principles articulated in the *United Nations Declaration on the Rights of Indigenous Peoples*’.

In December 2019, the Victorian Government declared the First Peoples’ Assembly of Victoria (Assembly) to be the Aboriginal representative body under the Treaty Act. The Assembly is an independent, democratically elected representative body comprised of 32 seats for Victorian Traditional Owners. The Assembly and the State of Victoria are working in partnership to develop the framework for future treaty negotiations. Formal discussions between the Assembly and the State of Victoria commenced in August 2020.

Northern Territory

The treaty development process in the Northern Territory was initiated by the Barunga Agreement in 2018. On 16 July 2020, the Treaty Commissioner, Professor Mick Dodson, delivered a discussion paper for consultation over the next 18 months. The paper commits to a final report in 2022 and states that truth telling should be a priority.

Queensland

In July 2019, the Queensland Government committed to a reframed relationship with Aboriginal and Torres Strait Islander peoples, issuing a statement of commitment and appointing an Eminent Panel to report on the way forward to treaty. Following community consultations, in February 2020, the Eminent Panel provided their recommendations to the Queensland Government, and in May 2020 the Panel updated the advice to include COVID-19 considerations. In August 2020, the Queensland Government accepted, or accepted in principle, the recommendations, and released a statement of commitment and response. The response included a commitment to establish a Treaty Advancement Committee to partner with the Government on implementation of the recommendations.

Native Title Act

Australian law recognises the deep significance of traditional lands and waters to Aboriginal and Torres Strait Islander peoples. Since the High Court of Australia’s 1992 decision in *Mabo v Queensland (No. 2)*, the Australian common law recognises Aboriginal and Torres Strait Islander peoples’ rights and interests in their lands and waters, held under their traditional laws and customs.

The *Native Title Act 1993* establishes statutory processes through which native title rights to land and waters can be recognised and protected; native title claims can be determined; and future dealings affecting native title can proceed, including through voluntary agreements between Aboriginal and Torres Strait Islander peoples and third parties.

The Australian Government is committed to supporting the timely resolution of native title claims including through negotiated consent determinations wherever possible. Native title now covers a significant proportion of Australia. As of January 2021, approximately 40.5 percent of Australia’s land mass is now covered by a determination that native title exists, with a further 20.6 percent subject to a native title claim. This is in addition to land held by Aboriginal and Torres Strait Islander peoples under Commonwealth, state and territory land rights legislation (15.2 percent, with an overlap with native title land of about 3.6 percent).

The National Agreement includes, for the first time, a land and waters target under which all Australian Governments commit to a 15 percent increase in the land and sea areas subject to Aboriginal and Torres Strait Islander peoples' legal rights or interests by 2030 (Target 15).

The Torres Strait Treaty

Through innovation and consultation, Australia develops policies and programs that drive opportunities for Aboriginal and Torres Strait Islander peoples to connect with land and sea, and with other Indigenous partners. The *Torres Strait Treaty* is another example of how Australia gives practical effect to the UNDRIP. By listening to the needs of the traditional inhabitants of the Torres Strait and coastal regions of Papua New Guinea, and respecting where traditional connections remain important to culture, Australia and Papua New Guinea have been able to keep vital practices alive, and secure these for the future.

The *Torres Strait Treaty* was signed in December 1978 and entered into force in February 1985. It defines the border between Australia and Papua New Guinea and provides a framework for the management of the common border area. As well as defining the maritime boundaries between Papua New Guinea and Australia, the Treaty protects the ways of life of Indigenous traditional inhabitants in the Torres Strait Protected Zone (TSPZ). The Protected Zone enables Torres Strait Islanders and the coastal people of Papua New Guinea to carry on their traditional way of life. For example, designated traditional inhabitants from both countries may move freely (without passports or visas) for traditional activities in the Protected Zone. The formation of the Protected Zone has also helped to preserve and protect the land, sea and air of the Torres Strait, including the native plant and animal life.

Engagement in International Fora

Australia's delegation to UN Permanent Forum on Indigenous Issues (UNPFII) and EMRIP in 2019

The Australian Government encourages the participation of Aboriginal and Torres Strait Islander representatives to attend international fora in order to enhance engagement with other Indigenous peoples internationally, as well as provide additional forums to advocate for their interests and on the issues that affect them.

The Australian Government provided financial support for Aboriginal and Torres Strait Islander representatives to attend the UNPFII and EMRIP Forums in person in 2019. The National Native Title Council sent three delegates to attend UNPFII in New York from 22 April – 3 May 2019. A delegation from the New South Wales Aboriginal Land Council's Youth Advisory Council was supported to attend EMRIP in Geneva between 15 – 19 July 2019.

Due to the COVID-19 pandemic, there are limited options for supporting in-person attendees to international fora. The Australian Government will consider the return to these processes once international forums return to normal.

UN Human Rights Council Universal Periodic Review (UPR) third cycle voluntary commitments

Australia is committed to utilising existing international legal frameworks to further give effect to the rights of Indigenous peoples. Further to achieving this goal, during Australia's recent UPR

appearance, Australia made a number of voluntary commitments related to Aboriginal and Torres Strait Islander peoples.

Voluntary Commitments relating to Aboriginal and Torres Strait Islander People:

- The Australian Government commits to working in partnership with Aboriginal and Torres Strait Islander people on decisions that affect them.
- The Government commits to embedding this partnership approach through the co design of options and models for an Indigenous voice and sharing decision making on Closing the Gap through a Partnership Agreement with the Coalition of Aboriginal and Torres Strait Islander community-controlled peak organisations.
- The Australian Government commits to continue to work towards a referendum to recognise Aboriginal and Torres Strait Islander Australians in the Australian Constitution.
- The Australian Government commits to a Referendum to recognise Aboriginal and Torres Strait Islander Peoples in the constitution and will support a Referendum when it has the best chance of succeeding.

SECTION II: WIYI YANI U THANGANI

Wiyi Yani U Thangani (Women's Voices) Project

The Australian Government is continuing its support of Australia's Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO, to deliver the Wiyi Yani U Thangani³ (Women's Voices) project. Since the start of 2018 the Commissioner has led and completed a national consultation with Aboriginal and Torres Strait Islander women and girls to better understand their strengths, challenges and aspirations, and provide increased opportunities to improve their personal, cultural and socio-economic security.

The Commissioner provided her final report of the Wiyi Yani U Thangani project, detailing the findings of the national consultations in October 2020. The Wiyi Yani U Thangani report will be translated and disseminated into a number of Aboriginal and Torres Strait Islander languages, building the capacity of Aboriginal and Torres Strait Islander women and girls to use the report as a tool in their own communities as well as engagement with government.

³ Australian Human Rights Commission, 'Wiyi Yani U Thangani (Women's Voices)', accessed February 2021, <https://wiyiyaniuthangani.humanrights.gov.au/wiyi-yani-u-thangani-womens-voices/background-report#:~:text=Wiyi%20Yani%20U%20Thangani%20has,social%2C%20cultural%20and%20political%20futures.>

Stage Two of the Wiyi Yani U Thangani project aims to build on the success of the national consultations in order to further empower Aboriginal and Torres Strait Islander women and girls. This includes improving partnerships between communities, organisations and governments, and developing resources for Indigenous women and girls to start driving local change.

Wiyi Yani U Thangani has been guided by the UNDRIP and the following foundational principles:

- Self-determination, particularly the right for Aboriginal and Torres Strait Islander women and girls to shape their own lives, including their economic, social, cultural and political futures.
- Participation in decision-making: in matters that affect their rights and through representatives they choose.
- Respect for and protection of culture: to maintain, protect and practise their cultural traditions and cultural heritage. This includes protecting their integrity as distinct cultural peoples, their cultural values, intellectual property and Indigenous languages.
- Equality and non-discrimination: to enjoy their human rights without discrimination from individuals, governments and/or external stakeholders.

SECTION III: CULTURE AND COMMUNITY

The Australian Government invests in policies and programs to support cultural connections with land, improve access to education, training and economic opportunities. This recognises Aboriginal and Torres Strait Islander peoples' cultural connections to their land.

Support for living on country

The Australian Government is working with Northern Territory land councils and municipal and essential services providers to improve infrastructure in more than 180 Aboriginal homelands/outstations through the \$40 million Aboriginals Benefit Account (ABA) Homelands Project. Although the Project does not provide for housing, it is delivering new and upgraded infrastructure to improve living conditions in homelands. This will allow families to remain on homelands for longer periods without needing to return to the larger communities. The ABA receives Australian Government monies equivalent to royalties paid for mining on Aboriginal land in the Northern Territory.

Languages and ceremony as a form of self-determination

Language plays an integral role in how Aboriginal and Torres Strait Islander peoples participate in and maintain the strength of communities, and in maintaining and transmitting cultural heritage. All Aboriginal and Torres Strait Islander languages, traditional and new, provide significant social and economic benefits to their speakers. Speaking language has demonstrated benefits for individual health and wellbeing, is beneficial in learning contexts, and is an asset in terms of employment prospects and income-generating opportunities.

The National Indigenous Languages Report⁴ is a collaboration between the Australian Government and the Australian National University. The Report strengthens the evidence base regarding the use, importance, and state of Aboriginal and Torres Strait Islander languages. It identifies the strengths and speaker numbers of Australia's Indigenous languages, as well as the many economic and social benefits gained through the recognition, use and reawakening of those languages.

The Report identifies that speakers of Aboriginal and Torres Strait Islander languages both traditional and new:

- Are more likely to earn an income from arts, crafts and cultural activities with people speaking Indigenous languages as their main language being six to 11 percentage points more likely to earn income from arts practice, crafts and cultural activities than English-only speakers.
- Speaking an Indigenous language is associated with a 10 percentage point increase in the probability of people feeling like they have a say in their own community, and a 12 percentage point increase in the probability of frequent contact with family members and friends.
- People speaking Indigenous languages are 11 percentage points more likely to feel happy, full of life, calm and full of energy than those speaking only English.

The Australian Government is committed to supporting Aboriginal and Torres Strait Islander peoples to practise and promote their cultures and languages and ensure they are recognised, respected, celebrated and protected. The National Agreement on Closing the Gap includes a target that by 2031, there is a sustained increase in number and strength of Aboriginal and Torres Strait Islander languages being spoken.

The Indigenous Languages and Arts program currently invests around \$20 million per annum to support Aboriginal and Torres Strait Islander peoples to express, preserve and maintain their cultures through languages and arts activities around Australia. This funding includes support for the operation of more than 20 community-led Indigenous language centres around Australia and the delivery of language activities through these centres.

The Australian Government recognises Indigenous interpreter services are critical to ensuring many Aboriginal and Torres Strait Islander peoples are effectively engaged with, and have equal access to, government services and opportunities. The Australian Government provides free translating and interpreting service. This service aims to provide equitable access to key services such as health care settings and court services. The Australian Government also provides funding in some jurisdictions to support the delivery of interpreter services in Aboriginal languages, as well as credentialing and training activities.

- The Australian Government funds the NT Aboriginal Interpreter Service to provide interpreter services to remote communities through the Northern Territory Remote

⁴ Australian Government Department of Infrastructure, Transport, Regional Development and Communications, Office for the Arts, 'National Indigenous Languages Report', accessed February 2021, <https://www.arts.gov.au/what-we-do/indigenous-arts-and-languages/national-indigenous-languages-report>.

Aboriginal Investment (NTRAI) agreement. The NT Aboriginal Interpreter Service undertakes face to face, video and phone interpreting as well as recording and scripting projects.

- The Australian Government also provides funding for Indigenous interpreter services in South Australia and Western Australia.

SECTION IV: HEALTH

Aboriginal Controlled Community Health Organisations

The Australian Government funds a national network of approximately 140 Aboriginal Community Controlled Health Services (ACCHO) and around 40 other providers to deliver free at the point of access comprehensive, culturally appropriate primary health care for Aboriginal and Torres Strait Islander peoples. Ongoing investment in the ACCHO sector forms part of the Government's ongoing reforms to Indigenous primary health care, which includes improving the availability and clinical effectiveness of health services, and supporting sustainable, long term access to services that meet people's real health needs, while supporting local communities to set their own priorities and tailor services to their unique circumstances.

Indigenous involvement in COVID-19 decision making

On 5 March 2020, the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 (the Taskforce) was established to develop and deliver a Management Plan for Aboriginal and Torres Strait Islander Populations and implement the Australian Health Sector Emergency Response Plan for COVID-19 for Indigenous Australians.

The Taskforce is co-chaired by the Australian Government Department of Health and National Aboriginal Community Controlled Health Organisation and brings together Commonwealth and state and territory health and Indigenous policy agencies.

The Taskforce has been critical in bringing together Aboriginal and Torres Strait Islander peoples and all levels of Government to advise on the implementation of the COVID-19 response as it relates to Indigenous Australians. It is a key mechanism through which Aboriginal and Torres Strait Islander voices and advice are conveyed through the Australian Health Protection Principal Committee to National Cabinet.

A number of initiatives under the Management Plan have since been implemented, in consultation with Aboriginal and Torres Strait Islander leaders and state and territory governments, including:

- restrictions on travel into discrete and remote Indigenous communities;
- grants to support remote and very remote communities to evacuate early cases and respond if an outbreak occurs;
- \$123 million (AUD) for targeted measures to support Aboriginal and Torres Strait Islander peoples, communities and business to respond to COVID-19;
- \$9.8 million to establish a rapid COVID-19 Remote Point of Care Testing Program across 86 testing sites for remote and rural Aboriginal and Torres Strait Islander communities. A further 67 services are acting as spoke sites, increasing the reach of the program to over 150 remote communities;

- General Practice-led respiratory clinics, of which 23 of the 150 (15 percent) are Aboriginal Community-Controlled Health Services. This program included direct funding to the National Aboriginal Community Controlled Health Organisation to promote and facilitate cultural safety of the clinics; and
- targeted communications.

At 2 February 2021, there have been 151 cases of COVID-19 reported in Aboriginal and Torres Strait Islander persons. This represents approximately 0.5% of all confirmed cases in Australia. The rate of case numbers among Aboriginal and Torres Strait Islander peoples is six times lower than that of the wider Australian population. These statistics show the successful management of the risk of COVID-19 for Aboriginal and Torres Strait Islander peoples and communities. There have been no reported cases of COVID-19 in Indigenous Australians acquired in remote or very remote Indigenous communities.

Effectiveness of Self-determination in the COVID-19 Response

The Australian COVID-19 response has achieved the unimaginable, where cases in Aboriginal and Torres Strait Islander peoples account for only 0.5% nationally - six times lower than if the population was affected at the same rate as the rest of Australia. This has been achieved through co-design of the four key functions of pandemic governance: preparedness, surveillance, response and communication. Australia demonstrates that an effective response can be achieved with genuine partnership and when the voices of Indigenous Australians and health experts are prioritised, in this case led by the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 (in-community) up.

All elements of the Australian Government's Aboriginal and Torres Strait Islander health response to COVID-19 were developed in accordance with the Principles of the National Agreement on Closing the Gap.

- shared decision-making;
- co-design;
- elevating the community-controlled sector; and
- prioritising Aboriginal and Torres Strait Islander peoples

SECTION V: JUSTICE

Aboriginal and Torres Strait Islander justice measures

The Australian Government funds Aboriginal and Torres Strait Islander Legal Services which are community controlled organisations that provide culturally appropriate legal assistance services to Indigenous Australians.

Aboriginal and Torres Strait Islander Legal Services and its peak body, the National Aboriginal and Torres Strait Islander Legal Service, received \$392.5 million in funding over 2015-2020.

From 1 July 2020 and over five years, funding for Aboriginal and Torres Strait Islander Legal Services will increase to \$440.9 million under the National Legal Assistance Partnership 2020-2025 (NLAP). Under this national arrangement, Aboriginal and Torres Strait Islander peoples are a priority client group.

In an acknowledgement that Aboriginal and Torres Strait Islander Legal Services are best placed to deliver culturally safe services within their own communities, the Partnership includes a formal commitment to self-determination—the first time that these principles have been included within Australian Government legal assistance funding arrangements.

Aboriginal and Torres Strait Islander peoples are working closely with government to lead and improve justice mechanisms for their people; examples of this include:

Victoria's Children's Koori Court

The Children's Koori Court (CKC) was established in 2005 to address the over-representation of young Aboriginal people in the justice system. The CKC enables self-determination by involvement of community Elders in alternative justice processes. There are currently 12 CKC locations in Victoria. CKC views youth detention as a last resort sentencing option.

Specialist courts – Queensland Murri Courts

Several jurisdictions have specialist initiatives in place to provide culturally appropriate justice services for Aboriginal and Torres Strait Islander communities.

For example, the Queensland Government has invested in culturally appropriate sentencing and diversionary options, such as Murri Courts. Murri Courts operate in 15 locations across Queensland.

- Murri Courts are a Magistrates Court bail-based program which provides an opportunity for members of the Aboriginal and Torres Strait Islander community (including Elders and victims) to participate in a court process which requires defendants to take responsibility for their offending behaviour while respecting and acknowledging Aboriginal and Torres Strait Islander culture.
- Participants are linked with support from Elders and support services to address the underlying causes of offending and encourage positive behaviour change.

SECTION VI: BUSINESS AND ECONOMIC EMPOWERMENT

Australian Business Guide to Implementing the UNDRIP

The Australian Department of Foreign Affairs and Trade (DFAT) has a partnership with the Global Compact Network Australia (GCNA) and provides financial contributions to support GCNA's work program. GCNA, in collaboration with KPMG Australia and the University of Technology Sydney, has developed "The Australian Business Guide to Implementing the UN Declaration on the Rights of

Indigenous Peoples”.⁵ The Guide outlined ways in which Australian businesses can best engage in ways that respect, protect and promote the rights of Aboriginal and Torres Strait Islander peoples. It is a framework for Australian businesses to actively give effect to the rights outlined in the UNDRIP.

Support for Indigenous businesses

Australian governments and the private sector are working to increase Aboriginal and Torres Strait Islander peoples participation and drive Indigenous business performance; including through public sector employment policies; government procurement and business sector support policies; and government-funded infrastructure projects.

Australia is implementing policies to ensure Aboriginal and Torres Strait Islander peoples have the same opportunities for business and employment as other Australians. It is doing this through targeted funding support and supply strategies that leverage the Australian Government’s procurement spending to kick start the sector, create jobs and drive demand for Indigenous goods and services.

To strengthen supply, the Australian Government has a 10 year plan – the Indigenous Business Sector Strategy (IBSS) – to improve access to business and financial support for Australia’s growing Indigenous business sector. Through the development of the IBSS, the Australian Government has worked with Indigenous businesses and relevant stakeholders to identify key gaps and barriers to accessing capital and supporting growth of the sector, and design products and services to meet the needs of emerging and growing businesses. The Australian Government has worked with Indigenous Business Australia to refocus its services and supports to ensure it meets the needs of Indigenous businesses, rapidly diversifying its business loan products to meet the changing needs of the sector.

The Australian Government is also leveraging its multi-billion dollar annual procurement spend to provide opportunities for Indigenous businesses through the Indigenous Procurement Policy (IPP). The primary purpose of the IPP is to stimulate Aboriginal and Torres Strait Islander peoples entrepreneurship, business and economic development, providing Indigenous Australians with more opportunities to participate in the economy through mandated targets. Since the implementation of IPP in July 2015, over \$3.5 billion in contracting opportunities have been provided to Indigenous businesses. This has involved over 24,470 contracts awarded to more than 2,140 Indigenous businesses, across a wide variety of industry and business sectors. From an employment perspective, Indigenous businesses registered with Supply Nation who have won IPP contracts have an average Indigenous employment rate of 37%.

The Australian Government is also embedding Indigenous economic objectives within land transport infrastructure projects, requiring that Indigenous employment and supplier-use targets be met. Indigenous participation targets are to be set to reflect the local Indigenous working age population, and number of local Indigenous businesses. The Australian Government has identified land transport

⁵ Global Compact Network, KPMG Australia, University of Technology Sydney and Australian Government Department of Foreign Affairs and Trade, ‘The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples’, accessed February 2021, https://unglobalcompact.org.au/wp-content/uploads/2020/11/Australian-Business-Guide-to-Implementing-the-UN-Declaration-on-the-Rights-of-Indigenous-People_FINAL.pdf.

infrastructure as an area that can help with Indigenous economic participation, due to the scale of opportunities to enhance employment and business capability in both urban and regional Australia.

CONCLUSION

The Australian Government is committed to enhancing the lives of Aboriginal and Torres Strait Islander peoples by empowering individuals and communities to be involved in decision making that affects them. This submission to EMRIP has outlined the various ways in which domestic policies and programs have been co-designed with Aboriginal and Torres Strait Islander peoples and communities to enable self-determination and thus facilitate the pursuit of the rights outlined in UNDRIP. This process is continually developing and being improved upon, as the Government learns from and listens to Indigenous Australians.