



## **NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER HOUSING ASSOCIATION (NATSIHA)**

### **2022 SUBMISSION – UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES – SENATE INQUIRY**

**24 JUNE 2022**

NATSIHA – United Nations Declaration on the Rights of Indigenous Peoples Senate Inquiry  
Submission – 24 June 2022

### **NATSIHA profile**

NATSIHA is the first and only national leadership body for Aboriginal and Torres Strait Islander Community-Controlled Housing in Australia. Its purpose is to facilitate access to quality, accessible, affordable and culturally appropriate housing to help empower Aboriginal and Torres Strait Islander individuals, families and communities to optimise their health and wellbeing and improve their employment opportunities, access to education, connection to the community and sense of home.

A not-for-profit company and registered charity, NATSIHA has been under development for over 5 years. Its membership is open to Aboriginal and Torres Strait Islander community-controlled organisations that deliver housing services, known as Aboriginal and Torres Strait Islander Community-Controlled Housing Organisations (ATSICCHOs).

NATSIHA's board is made up of Aboriginal representatives who have been involved in Aboriginal housing service delivery and policy development for many years. They include (but are not limited to) senior Aboriginal representatives of state and territory housing leadership bodies such as Aboriginal Housing Northern Territory (AHNT), Aboriginal and Torres Strait Islander Housing Queensland (ATSIHQ) and Aboriginal Community Housing Industry Association New South Wales (ACHIA).

NATSIHA is also a member of the Closing the Gap - Coalition of Aboriginal and Torres Strait Islander Community-Controlled Peak Organisations and is committed to achieving its objectives in genuine partnership with Australian Governments.

NATSIHA has also been seeking operational funding and support for over 5 years from the government and the private sector to provide a national voice for the Aboriginal and Torres Strait Islander community-controlled housing sector. In the absence of any grants, Aboriginal leaders have volunteered their time to establish NATSIHA. However, following the May Federal Election, the National Indigenous Australians Agency has offered funding to NATSIHA that is sourced from the Commonwealth's contribution to the Closing the Gap Virtual Funding Pool.

### **NATSIHA Key “Takeaway” Points:**

- NATSIHA is fully supportive of the UNDRIP and often quotes the document or Articles of the document in our correspondence (in particular Articles 21 – 24).
- UNDRIP should be legislated for adoption by the Commonwealth and state/territory governments.
- NATSIHA believes the UNDRIP should underpin the National Agreement on Closing the Gap which could be revisited and reframed to be consistent and comply with UNDRIP.

- NATSIHA believes that the Closing the Gap Virtual Funding Pool should be administered by the Coalition of Peaks to comply with the principle of self-determination animating the UNDRIP.
- The UNDRIP is more than an aspirational document and can be used as a great guide for non-Indigenous peoples including governments and bureaucracies as a blueprint for understanding and working with Indigenous people.
- While UNDRIP has not been implemented in Australia or any of its articles in a deliberate manner, some legislation such as the Aboriginal Land Rights (Northern Territory) Act 1976 implement the core principle of Free, Prior and Informed Consent but this is absent in the Native Title Act 1993 which is demoralising.
- NATSIHA strongly supports the call of the Aboriginal and Torres Strait Islander Social Justice Commissioner to incorporate UNDRIP into the structures of our Nation – its laws, policies and institutions.
- All Australian governments need to be made accountable for the development, planning and implementation of legislation regarding programs that are developed for Aboriginal and Torres Strait Islander peoples. This also includes the monitoring and compliance of such programs consistent with UNDRIP and the National Agreement on Closing the Gap
- States and territories should endorse the UNDRIP and enact it through their structures including legislation passed by their parliaments.
- The National Housing and Homelessness Agreement should include an Aboriginal and Torres Strait Islander housing component which is framed in terms of the relevant articles of UNDRIP, particularly Article 23.
- UNDRIP should be referenced in and underpin all Treaties as they are developed and also included in the charter for our Voice to Parliament whether at a national or jurisdictional parliamentary level
- An important part to applying UNDRIP is significantly improving Indigenous data sovereignty, particularly the ability of Aboriginal and Torres Strait Islander people including the community-controlled housing sector to collect data and use data about ourselves for our own development.

### **A national challenge that Australia needs to urgently address is housing for Aboriginal and Torres Strait Islander people**

The latest snapshot on Indigenous housing produced by the Australian Institute for Health and Welfare (AIHW 2021, 1) states that a:

Safe, secure home with working facilities is a key support for the good health and wellbeing of Aboriginal and Torres Strait Islander people. Good environmental health – the physical, chemical and biological factors external to a person that potentially affect their health can influence life expectancy, young child mortality, disability, chronic disease, and family and community violence.

In an earlier report, the AIHW also noted the critical importance of safe, stable and culturally appropriate housing to education and employment participation of Aboriginal and Torres Strait Islander people (AIHW 2019, 7).

It is well documented that poverty, unemployment, discrimination and a lack of appropriate housing impact Aboriginal and Torres Strait Islander peoples' ability to access the housing that they need. There are also cultural and lifestyle factors that influence the housing needs of Aboriginal and Torres Strait Islander people such as high levels of mobility linked to cultural obligations to visit and accommodate kin, the need to maintain connection to Country, ceremonial commitments and succession of tenancy for family members. Inappropriately designed and located housing also continues to be a major issue, particularly for those with disability and complex needs where it is critical to be located either close to families and/or to support services. A recent ABC report on Aboriginal and Torres Strait Islander suicide deaths in Victoria indicated that a recurring theme among the deaths included lack of access to stable accommodation.

The Productivity Commission (2021, 28) summarises the current situation, based on the latest AIHW and ABS data.

**Box 1 – Housing outcomes for Aboriginal and Torres Strait Islander people**

1. Aboriginal and Torres Strait Islander households, compared with other households, are:
  - half as likely to own their own home (with or without a mortgage)
  - six (6) times more likely to live in social housing
  - three (3) times more likely to live in overcrowded dwellings.
2. Aboriginal and Torres Strait Islander people, compared with other people, are:
  - ten (10) times more likely to be classified as homeless
  - Sixteen (16) times more likely to live in severely overcrowded dwellings
  - Nine (9) times as likely to access specialist homelessness services compared with other Australians

However, this data and information does not convey anything like the full situation that has continued to escalate due to the lack of appropriate policy, resourcing and sustainability of 'government investment'. Data availability is nowhere near as comprehensive as what it was before the Australian Government stopped funding data collection such as the Community Housing and Infrastructure Needs Survey (CHINS) initiated by the former Aboriginal and Torres Strait Islander Commission (ATSIC). The CHINS survey also included direct input from the ATSICCHO sector.

All jurisdictions differ in terms of service delivery being required and legislation regarding Aboriginal and Torres Strait Islander people. For example, Queensland has the Deeds of Grant In Trust (DOGIT) communities, New South Wales has the Local Aboriginal Land Council system, Anangu Pitjantjatjara Yankunytjatjara (APY) Lands in the Northern Territory which demonstrates that it is NOT a case of 'one size fits all'.

## **Aligning solutions with UNDRIP and the National Agreement on Closing the Gap as the key platform to address the challenges**

Article 23 of UNDRIP states that:

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.

Article 23 has not been implemented in Australia with respect to Indigenous housing. Meanwhile, the National Agreement on Closing the Gap provides a vehicle that enables the Commonwealth to re-assert its national leadership role to solve the national problem of Indigenous housing using UNDRIP as its starting point. Importantly, it also enables policy and funding solutions to be devised jointly with the community-controlled sector for housing, which the National Indigenous Reform Agreement, signed in 2008 by Governments only, did not.

### **Application of UNDRIP in Australia from an Aboriginal and Torres Strait Islander Housing Perspective**

In regards to the application of UNDRIP from an Aboriginal and Torres Strait Islander housing perspective, NATSIHA considers Aboriginal and Torres Strait Islander peoples continue to suffer exclusion from policy and program development, severe discrimination and denial of their rights with respect to housing. Our experience conveyed through our broad membership base includes the following:

- True self-determination, the animating principle of UNDRIP, is still difficult to achieve or get traction on especially regarding genuine involvement into housing policies and programs that affect us.
- A case in point is the National Housing and Homelessness Agreement (NHHA). A significant amount of housing funding is supplied to each state and territory by the Commonwealth Government by way of this Agreement. At no stage, were our representatives involved in the negotiations or even consulted with respect to the framing of the National Agreement. While the Agreement includes improved Indigenous housing, it provides no strategy or specific resources to do this despite housing outcomes for Indigenous Australians being far worse than for others. The housing programs that have eventuated have not met the genuine needs of our communities or the targets we would have set from a jurisdictional, regional and local level which is contrary to UNDRIP (Articles 3, 4, 5, 18, 19, 21, 23, 24).
- All housing purchased and constructed through the NHHA is registered in the title of the relevant state and territory governments and goes into its asset base and not to our communities. These properties and houses should be purchased in the title of the local

Aboriginal and Torres Strait Islander community-controlled housing organisations or the local community, should a housing organisation not be in existence. If purchased in the title of the community who has limited capacity and resources, a management agreement could be signed for an agreed number of years similar to handbacks relating to national parks agreements across Australia. In the spirit of the UNDRIP (Article 21) this will lead to positive self-determination and economic benefits and flow-on benefits including better health outcomes and education etc – because if not overcrowded, children have increased opportunities for study and completing homework and many other associated support services can be delivered to the fixed address.

- At one stage the NSW government commenced, on a small scale, the transfer of the titles and management of properties owned and managed by its Aboriginal Housing Office to Aboriginal community housing providers. These properties were purchased through Aboriginal specific Commonwealth Government funding programs. However, NSW Treasury stopped the program because it stated that it would affect its credit rating. On a larger scale, it also commenced title transfers from its mainstream asset base to mainstream community housing organisations however to comply with the Moody's report regarding the credit rating impact and this combined with the transfers to Aboriginal community housing providers caused the NSW government to halt both asset transfer programs.
- Other examples of governments not adhering to its own declaration of self-determination is the allocating of Social Housing properties to Aboriginal and Torres Strait Islander community-controlled housing organisations with the promise of transferring title but then reneging and holding on to title. The Aboriginal and Torres Strait Islander community-controlled housing organisations had the responsibilities of housing Aboriginal people, paying for all housing costs including Local Government rates and fees, insurances, repairs and maintenance but then the government would not transfer title of the properties to the Aboriginal and Torres Strait Islander community-controlled housing organisations. Our sector hasn't been able to leverage on properties that they don't have title to add to new supply housing to its portfolio.
- State owned and managed Indigenous housing (SOMIH) is administered by state and territory governments. Currently SOMIH operates in New South Wales, Queensland, South Australia, Tasmania and the Northern Territory. These properties were purchased using targeted Aboriginal and Torres Strait Islander housing funding and are intended for Aboriginal and Torres Strait Islander people but the states/territories own the properties and control the policies. Under self-determination the titles of the properties should be given to Aboriginal and Torres Strait Islander Housing organisations.

When, as a Nation will we seriously tackle racial discrimination! Although it is heartening to see many prominent private sector companies taking steps to address racism in the workplace and elsewhere but much more needs to be done. This discrimination has a severe impact on Aboriginal and Torres Strait Islander people who are seeking private rental properties. There is an acute shortage of public, social, affordable housing available and the waiting lists are huge and in some locations, applicants can wait a life-time to access housing. The other option is to rent privately. However, there is also an acute shortage of

private rental properties and when this is coupled with racism and discrimination, it adds another layer of difficulty and despair for our people whether they have a family or as an individual.

Our people when in a suitably designed and located home and security of tenure can then concentrate on culture, education and strengthening the family unit. Due to the lack of access to appropriate housing and support programs many of our people are living in a constant and heightened state of survival which is impacting their ability to focus on how to navigate and improve their situation and this is exacerbated when children are involved. Living in this environment constantly will have severe mental health ramifications.

Housing purchased or built by funding provided by the Commonwealth government to the states and territories is still in the title and ownership of the states. There are examples where houses purchased in the name of the Aboriginal and Torres Strait Islander community-controlled housing provider may have an issue and needs to be sold with the aim of purchasing another better-quality house. In some cases, the jurisdictional government requests a percentage of the sale price although it didn't provide the funding in the first instance. This has an impact on the available funds to purchase another house. There are other examples where a jurisdictional government has swapped the title of a house in a coastal location with a house in a low socio-economic location and the price difference was several hundred thousand dollars.

In NSW, through the *NSW Aboriginal Land Rights Act (1983)* (ALRA), vacant crown land is granted to Local Aboriginal Land Councils (LALC) as compensation for historical dispossession of land. The land grants are for cultural, social and economic purposes. However, the ability to develop the land and establish commercial ventures are stymied by local governments. Some local governments have on numerous occasions re-zoned the land so that it cannot be developed, therefore, impeding the opportunity for economic development, sustainability and self-determination.

As mentioned, the ALRA was introduced to compensate Aboriginal people in NSW for dispossession of their land. The ALRA enables LALCs to claim Crown Land, that is, land in NSW that is owned and managed by the State Government. LALCs can have land transferred to them in freehold title if at the time of the claim the land is, among other requirements:

- Able to be lawfully sold or leased
- Not lawfully used or occupied
- Not needed nor likely to be needed as residential lands
- Not needed nor likely to be needed for an essential public purpose including nature conservation
- Not impacted by Native Title (registration application or determination).

LALCs are denied residential land where they could construct housing because of the restrictions of the NSW Aboriginal Land Rights Act 1983.

## **NATSIHA's response to the Committee's Terms of Reference**

### **a. History of Australia's Support for and Application of the UNDRIP;**

As mentioned in "Section d" below, Australia was one of only four countries who initially refused to sign the UNDRIP.

The UNDRIP could be a vital tool and guide for all governments to apply, particularly in areas such as housing. However, it is given scant regard due to the fear, ignorance, discrimination and jealousy prevalent in Australian politics, media, right-wing think tanks and some poisonous sections of the general population. Legal decisions or programs implemented to improve the situation of Aboriginal and Torres Strait Islander people, including in the housing space, are often misunderstood due to misinformation whether accidentally or deliberately, e.g., Native Title Act scare campaigns etc.

NATSIHA is advocating for true self determination and not a quasi-government led hybrid arrangement whereby it still maintains the power to unnecessarily interfere with or control our lives. UNDRIP Article 4 states "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."

### **b. the potential to enact the UNDRIP in Australia;**

The potential to adopt and enact the UNDRIP in Australia is unlimited and would have a massive positive effect on the Australian psyche and in particular Aboriginal and Torres Strait Islander people. However, symbolism without actions would be just another hollow act. There are many opportunities which could exist with a new incoming Australian government.

In the housing space we need financial support to collate existing research information and conduct surveys to determine the needs of Aboriginal and Torres Strait Islander organisations and communities regarding housing. This funding should include administration fees in the first instance so NATSIHA and the jurisdictional housing peaks can develop a robust and culturally suitable housing program for endorsement by its members. After the housing need is confirmed, the negotiations can be instigated with Commonwealth and state/territory governments to determine the level of funding and how NATSIHA and jurisdictional peaks will manage the program with support from governments when required. (Article 23)

UNDRIP should be legislated for adoption by the Commonwealth and state/territory governments. The flow on effects including benefits for Aboriginal and Torres Strait Islander people through many of the UNDRIP Articles will certainly complement and provide additional authority to the National Agreement on Closing the Gap.



UNDRIP delineates and defines the individual and collective rights of Indigenous peoples, including our ownership rights to cultural and ceremonial expression, identity, language, employment, health, education, and other issues. Our ownership should also extend to the protection of our intellectual and cultural property. The Declaration "emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against indigenous peoples," and it "promotes our full and effective participation in all matters that concern us and our right to remain distinct and to pursue our own visions of economic and social development". The goal of the Declaration is to encourage countries to work alongside Indigenous peoples to solve global issues, such as development, multicultural democracy, and decentralisation.

c. international experiences of enacting and enforcing the UNDRIP;

Today UNDRIP is the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

It is frustrating for NATSIHA that unlike other English settler states, particularly Canada and New Zealand, Australia has not done anything substantive to implement UNDRIP. Canada's new law that seeks to apply UNDRIP across all of the nation's structures in partnership with First Nations peoples is an excellent model for Australia to consider.

d. legal issues relevant to ensure compliance with the UNDRIP, with or without enacting it;

It was disappointing from a NATSIHA perspective that Australia was one of only four countries who refused to sign the UNDRIP in the original vote on 13 September 2007. The general fear from an Australian perspective was that it would open the door for a separate place for Aboriginal and Torres Strait Islander peoples in Australia that would be divisive. However, two years later, after the Rudd government was voted into power, Australia finally adopted UNDRIP in April 2009. However, that Government and its successors have not taken any substantive steps to implement the commitments of governments in UNDRIP in a deliberate and systematic manner.

Australia, New Zealand, Canada and the United States who initially refused to sign the UNDRIP share very similar colonial histories and, as a result, have common concerns. Each nation initially argued against the level of autonomy recognised for Indigenous peoples in the Declaration because it would undermine their sovereignty particularly in the context of land disputes and natural resource extraction.

NATSIHA considers that housing outcomes for Aboriginal and Torres Strait Islander peoples have been poorer because of the lack of application of UNDRIP and particularly its commitment to self-determination. The Aboriginal and Torres Strait Islander community-controlled housing sector is an expression of self-determination. However, Australian Governments continue to invest in government and mainstream agencies to deliver housing to our people with poor results.

An independent legal mechanism should also accompany the implementation of UNDRIP to ensure compliance with its articles. The Productivity Commission suggested by Senator Thorpe is a good option in that regard. However, it is vital that UNDRIP is implemented in partnership with our representatives such as NATSIHA and in agreements such as the National Agreement on Closing the Gap. This will significantly enhance compliance.

- e. key Australian legislation affected by adherence to the principles of the UNDRIP; Australia has enacted legislation regarding Aboriginal and Torres Strait Islander people. However, the safeguards to protect this legislation are limited and are subject to the government of the day via legislative amendments or abolishment which can be passed in parliament.

Many of these Acts are well intentioned. However, on the whole they are weak in the powers they can exert in specific areas. For example, the *Native Title Act 1993* does not provide Aboriginal Traditional Owners the necessary power to negotiate a suitable compensation package and generally only receive minimal amounts of funding from mining royalties. These mining companies are profiting billions of dollars with over 90% of the profits going to overseas companies. However, it is not all about compensation because sacred sites and significant sites have been destroyed over many years with one of the latest and significant acts of criminal vandalism and destruction being the Juukan Gorge in the Pilbara in Western Australia.

Australian and State/Territory legislated Acts of Parliament can be complemented and strengthened by UNDRIP. UNDRIP could be formally adopted and embraced across Commonwealth and state/territory governments and used as the blueprint to underpin, support and strengthen these legislated Acts. This would be a great leap forward for our Nation and will demonstrate to the world a progressive, fair and just Australian society.

In the meantime, other legislation affected by UNDRIP is state and territory housing laws and these urgently need to be updated to implement UNDRIP articles with respect to Aboriginal and Torres Strait Islander community-controlled housing.

f. Australian federal and state government’s adherence to the principles of the UNDRIP;

Canada, the United States, Australia and New Zealand have all pointed to their track records in upholding human rights, including the recognition of Indigenous rights within their own national governance systems, as a justification for their reluctance to endorse the UNDRIP. They have noted that many nations that have signed on to the UNDRIP do not appear to uphold these minimum standards. While many agree that much work remains to be done internationally, critics have questioned the four nations’ claims to their fulfillment of international standards. Ojibwe political scientist Sheryl Lightfoot, for example, observes that such compliance is often concentrated in “soft rights,” such as rights to language and culture, while systematically denying “hard rights,” such as rights to land.

Although Australia, New Zealand, Canada and the United States reversed their positions, and now support the UNDRIP some critics believe that despite this each nation’s commitment remains lukewarm at best. Lightfoot points to the frequency of terms like “aspirational” and “non-binding” in these governments’ official announcements, and cautions that by using these terms the governments in question seek to exempt themselves from any legal responsibility to the UNDRIP.

In Australia’s April 2009 official statement, for example, Minister Jenny Macklin called the Declaration “historic and aspirational”. Minister Macklin’s speech was delivered thirteen years ago and although the Coalition of Peaks has been established and the National Agreement on Closing the Gap has been signed, in the short term very little has changed and she also said, “this will take time” but we have lost thirteen years already.

g. the track record of Australian Government efforts to improve adherence to the principles of UNDRIP;

NATSIHA considers that UNDRIP seems to be finally having a positive effect on governments. However, this is not in an official capacity at this stage although it has been referenced in at least one Coalition of Peaks document and the Closing the Gap Housing Sector Strengthening Plan. The National Congress of Australia’s First Peoples, when it was still active, also constantly referenced UNDRIP in the majority of its correspondence. With regular referencing and increased embracing of UNDRIP’s principles it could, by convention become wide spread and have an increasing influence.

NATSIHA continues to be concerned regarding the multiple levels of government in Australia that have differing interpretations and applications regarding the content of UNDRIP and the National Agreement on Closing the Gap.

One of the strong underlying principles of the National Agreement on Closing the Gap is self-determination which also underpins and animates UNDRIP. Self-determination has been a targeted principle with Aboriginal and Torres Strait Islander people for well over

thirty years and several prominent Aboriginal and Torres Strait Islander people were involved in the framing of UNDRIP.

On Page 4 of UNDRIP under the “Recognizing” heading it reinforces the Indigenous perspective that our knowledge, cultures and traditional practices will lead to sustainable and equitable development and proper management of the environment. The devastating floods and bushfires that have caused havoc in recent years has prompted governments and mainstream communities to start connecting with Indigenous communities for answers regarding the proper care, management and sustainability of our environment.

The bushfires of 2019 were horrific and many questions were asked regarding managing the fuel build-up and backburning in a sustainable and less intrusive practices in relation to the forest and native wildlife. This has prompted consultation and engagement of local Indigenous fire practitioners to carry out backburning which is proving far more effective and also reinforces our argument that we have to be involved culturally and our expertise valued.

h. community and stakeholder efforts to ensure the application of UNDRIP principles in Australia;

NATSIHA feels that the UNDRIP is not well known or publicly understood in Australia. However, some states and territories are starting to recognise the urgent need to respect and promote self-determination and the rights of Indigenous peoples in regards to treaties or other agreements whether on a national or jurisdictional level, i.e., National Agreement on Closing the Gap etc.

There are positive steps being taken in some jurisdictions regarding treaties although it is inconsistent across our Nation. While it states the urgent need for treaties, many Aboriginal and Torres Strait Islander peoples want to ensure that the process, consultation and content of treaties includes all relevant requests and is fit for purpose.

If UNDRIP was promoted and included as a foundation for all other Aboriginal and Torres Strait Islander agreements, treaties and voices to parliament this would also add a level of consistency as an underpinning value.

i. the current and historical systemic and other aspects to take into consideration regarding the rights of First Nations people in Australia; and

Unfortunately, the major systemic continuum in our Nation is racism which is a blight on Australian society especially regarding the treatment of Aboriginal and Torres Strait Islander people. This has been highlighted in the National Agreement on Closing the Gap and Australian Governments have all agreed that much more action needs to be taken to combat racism. It is also targeted in UNDRIP which asserts the fact that Indigenous peoples are equal to all other peoples.

j. any other related matters.

- Closing the Gap funding should be administered by the Coalition of Peaks to enact true self-determination and not kept under water-tight control by governments. The distribution of the Virtual Funding Pool has been almost non-existent which is impeding the programs and services that Coalition of Peaks members provide for the wellbeing of our communities.
- Refrain from using such terms as “aspirational” and using instead self-determination and supporting true economic development rather than controlling all financial distributions including land by government or quasi-government agencies is essential.

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