



Australian Food Sovereignty Alliance

Submission to the Legal and  
Constitutional Affairs References  
Committee on the Application of the  
United Nations Declaration on the Rights  
of Indigenous Peoples in Australia

Australian Government

Senate Inquiry

Prepared by:  
Tammi Jonas and Jessica Power

2 June 2022

**We thank the Senate for initiating the opportunity to provide feedback and recommendations on the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia. AFSA welcomes further opportunities to participate in consultation. We hope the Senate will take into consideration the recommendations to support the rights of First Peoples, by prioritising their voices and perspectives in discussions and application of UNDRIP.**

## **Table of contents**

About the Australian Food Sovereignty Alliance	<b>3</b>
Background and context	<b>4</b>
The history of Australia’s support for and application of the UNDRIP	<b>4</b>
The potential to enact the UNDRIP in Australia	<b>5</b>
Towards a national framework to support application of the UNDRIP	<b>6</b>
First Peoples’ access to land and tenure	<b>6</b>
Legal recognition of First Peoples’ knowledge and protocols	<b>8</b>

## About the Australian Food Sovereignty Alliance

The Australian Food Sovereignty Alliance (AFSA) is a farmer-led civil society organisation of people working towards socially-just and ecologically-sound food and agriculture systems. The democratic participation of First Peoples, small-scale food producers and local communities in decision-making processes is integral to these efforts.

AFSA provides a balanced voice to represent small-scale food producers and local communities' interests at all levels of government. We connect small-scale food producers for farmer-to-farmer knowledge sharing, assist local, state and the federal government in instituting scale-appropriate and consistent regulations and standards, and advocate for fair access for small-scale food producers to local value chain infrastructure and markets.

We are part of a robust global network of civil society organisations involved in food sovereignty and food security policy development and advocacy. We are members of the International Planning Committee for Food Sovereignty (IPC), La Via Campesina (the global movement of peasant farmers), and Urgenci (the International Network for Community-Supported Agriculture). We also support the Australasian representative on the Civil Society and Indigenous Peoples' Mechanism (CSM), which relates to the UN Committee on World Food Security (CFS).

Our vision is to enable agroecological and regenerative farms to thrive. This has taken on an added salience in the face of the increasing impacts of the climate crisis and the ongoing COVID-19 pandemic. Australians care more than ever about the way their food is produced and how and where they can access it, with a growing awareness of its social, environmental, and economic impacts. Nutritious food produced locally in socially-just, ethical and ecologically-sound ways is increasingly in demand. Governments must facilitate and encourage the emergence and viability of agroecology and regenerative agriculture embedded in localised food systems with short and direct supply chains, thereby protecting the environment and human and animal health. Inextricable to this vision is the need to honestly and truthfully account for the land's needs. As such, AFSA works to increase understanding of and appreciation for Aboriginal and Torres Strait Islander Peoples' connection to and care for Country and the ongoing impacts of colonisation and development on Country. We aim to put First Peoples' knowledge first as best practice for healing Country and sustaining life, and as an organisation are committed to decolonising the food and agriculture sector.

The National Committee has consisted of farmers and allies from every state and territory in Australia, as well as academics from the University of Melbourne, RMIT, Deakin University, University of Tasmania, University of Sydney, QUT and UWA. We have also had representation on the National Committee by local advocates and campaigners such as Open Food Network, Food Connect, Friends of the Earth, the Youth Food Movement, Fair Food Brisbane, and the Permaculture Network.

## Background and context

The following submission is in response to the Senate's call for feedback on the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia. It aims to address the terms of reference stated by the Senate:

- a. the history of Australia's support for and application of the UNDRIP;
- b. the potential to enact the UNDRIP in Australia;
- c. international experiences of enacting and enforcing the UNDRIP;
- d. legal issues relevant to ensure compliance with the UNDRIP, with or without enacting it;
- e. key Australian legislation affected by adherence to the principles of the UNDRIP;
- f. Australian federal and state government's adherence to the principles of the UNDRIP;
- g. the track record of Australian Government efforts to improve adherence to the principles of UNDRIP;
- h. community and stakeholder efforts to ensure the application of UNDRIP principles in Australia;
- i. the current and historical systemic and other aspects to take into consideration regarding the rights of First Nations people in Australia; and
- j. any other related matters.

AFSA's advocacy work at a global scale, through the IPC for Food Sovereignty; UN FAO; and Civil Society and Indigenous Peoples' Mechanism (CSIPM) at the UN CFS, makes specific reference to UNDRIP as a core feature of food sovereignty. At a national level, AFSA has long acknowledged the systemic oppression of First Peoples under settler-colonialism. In 2021, it launched its First Peoples First Strategy<sup>1</sup> to address the organisation's role in ensuring that Indigenous sovereignty remains the core of the food sovereignty movement in Australia. However, AFSA also acknowledges that as a non-Indigenous led organisation, there must be an ongoing process of listening, learning, relationship-building and shared understanding to achieve this. As such, the recommendations outlined in this submission apply case study examples that prioritise the voice and perspectives of First Peoples. It is hoped that these recommendations will help inform the Senate's Inquiry on the Australian Government's application of the UNDRIP in Australia, and provide a pathway forward for implementing this framework, led by First Peoples.

### **The history of Australia's support for and application of the UNDRIP**

Australia's initial refusal to adopt the UNDRIP in 2007 is a direct reflection of the Federal Government's failure to address the nation's painful history of colonisation and systemic oppression of First Peoples. Although the UNDRIP was later endorsed by the Labor Government in 2009, Australia has experienced dysfunctional changes in Government leadership over the past decade. In

---

<sup>1</sup> <https://afsa.org.au/blog/2021/07/03/first-peoples-first/>

2021, the Australian Human Rights Commission published a review<sup>2</sup> of the Australian Government's actions towards adopting the commitments outlined in the UNDRIP and found that to date it has not:

1. Taken steps to implement the UNDRIP into law, policy and practice.
2. Negotiated with indigenous peoples a National Action Plan to implement the UNDRIP
3. Audited existing laws, policies and practice for compliance with the UNDRIP

Changes in Government leadership and conflicting ideologies between Australia's two major political parties should not hinder progress on upholding the rights of First Peoples to self-determination. Considering this history and failure from Government to create meaningful action towards application of the UNDRIP, this highlights the need for First Peoples' voices to lead all policy and governance processes at a federal, state and local level.

## **The potential to enact the UNDRIP in Australia**

Following the recent Federal Election, it is promising to see a number of First Nations politicians represented in Parliament. In addition, Prime Minister Anthony Albanese's opening speech reiterated the Labor Government's commitment to implementing the Uluru Statement from The Heart; to enshrine a First Nations Voice in the Australian Constitution and launch a Makarrata Commission to establish a process of Truth and Treaty.

AFSA supports the Government's commitment to the Uluru Statement from The Heart, and believes this a positive step towards First Peoples' right to self-determination as outlined in the UNDRIP.

Although AFSA supports the Statement's reforms on Voice, Truth and Treaty, we strongly recommend that the Government considers a transparent process of consultation with First Peoples before implementing these reforms. Conflicting feelings and opinions among First Peoples about the Statement and the UNDRIP highlight the need for further discussion about the ways in which well-meaning actions can sometimes perversely work to uphold systems of oppression endured by Indigenous peoples.

Irene Watson is a Tanganeald, Meintangk and Boandik scholar at the University of South Australia, who offers a valid critique that a) the UNDRIP positions Indigenous peoples within the boundaries of States, under which States continue to determine all aspects of Aboriginal life and b) the UNDRIP fails to centre Indigenous knowledges<sup>3</sup>.

---

<sup>2</sup>[https://humanrights.gov.au/sites/default/files/2020-10/implementing\\_undrip - australia's third upr 2021.pdf](https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf)

<sup>3</sup><https://law.adelaide.edu.au/ua/media/1758/Australia%27s%20Commitment%20to%20Advance%20the%20Human%20Rights%20of%20Indigenous%20Peoples%20around%20the%20Globe%20on%20the%20United%20Nations%20Human%20Rights%20Council.pdf>

In recognising the diversity of First Nations' sovereignties, knowledges and perspectives, AFSA recommends that:

**Recommendation:** Government should approach implementation of the Uluru Statement from The Heart and the UNDRIP, in a way that is determined by First Nations people, representing all Nations within Australia.

Without establishing the appropriate means of consultation with First Peoples to reach consensus on a process for establishing Voice, Truth and Treaty with First Peoples, AFSA believes the Government's track record of inaction to fully embrace the UNDRIP will remain intact.

## **Towards a national framework to support application of the UNDRIP**

In past submissions to federal, state and local government, AFSA has made specific reference to the UNDRIP as a recommended framework for prioritising First Peoples' voices and sovereignty in food systems and agricultural policy.

Article 26 of UNDRIP states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." It directs states to give legal recognition to these territories. AFSA asserts that the NSW Government has not recognised these rights in several cases where First Peoples have been barred from accessing their traditional lands, marine and terrestrial waters for sustenance and livelihood. For example, in the case of the Yuin Peoples ongoing battles to dive for abalone on the south coast of NSW<sup>4</sup>. Not only does this example demonstrate how current legislation diminishes First Peoples' right to access traditional land and methods of sourcing food, the criminalisation of such practices adds to a long history of violence and oppression endured by First Peoples under colonial rule. In this case, AFSA recommends that:

**Recommendation:** Government establishes a rights-based national framework to support the application of the UNDRIP, determined by First Peoples representing all Nations within Australia.

Under a national framework, the Federal Government should seek to ensure that application of the UNDRIP is adopted across all state and territory policies, where it can be adapted to reflect the priorities of First Nations' peoples and communities across multiple sovereignties.

## **First Peoples' access to land and tenure**

Access to land and tenure remains a key barrier to establishing First Peoples' right to self-determination. This observation relates to the dispossession of First Peoples' land and

---

<sup>4</sup> <https://www.abc.net.au/news/2021-09-15/native-title-fishing-raises-issues-over-land-use/100452546>

connection to Country. Furthermore, these barriers present different challenges in public and private contexts.

In terms of public land, the Senate should consider the case of fire management practices carried out by the Dja Dja Wurrung peoples (Djaara) in Victoria. Here, Indigenous practices of land management are prioritised and the Djaara are the main or equal decision-makers in managing the land. The example of fire has gained attention in recent years, particularly since the Black Summer bushfires of 2019-2020. "Fire is a necessary practice for hunting, but the practice also protected certain plant and animal habitats and kept the country sweet. Flowering plants are seasonal reminders for First Peoples to know what needs to be done to manage the land; and this information is passed down to the next generation". While underway in many parts of the country, Djaara through the Dja Dja Wurrung Clans Aboriginal Corporation and their land management branch 'Djandak' are seeing the positive ecological and health benefits of practising *dhelkunya dja* / making Country healthy through cultural burns.<sup>5</sup> In the case of public land access and management, AFSA recommends that Government should consider application of the UNDRIP to support:

**Recommendation:** Self-determination for First Peoples to provide unfettered access and management of Country - starting with all public lands by:

- Embedding First Peoples' knowledge, laws and perspectives in all Indigenous Land Use Agreements and National Parks, above and beyond Native Title determinations
- Increasing funding and training opportunities for First Peoples rangers and custodians to care for Country
- Ensure that consultation is conducted on the terms set by First Nations communities, and with appropriate community representatives.

When considering this recommendation, the Senate should seek to ensure that consultation with First Peoples and communities should adhere to transparency and remain free from any external, coercive influences or incentives.

Addressing access to private land, the Government can support application of the UNDRIP by encouraging landholders to adopt a custodial ethic to care for Country through partnerships with First Peoples and communities.

As an example, Nguurru Farm is a diverse biodynamic farm of 220 acres on Ngunnawal land in the southern tablelands of NSW, with heritage breed Belted Galloway cattle, and rare breed Silver Grey Dorking chickens and eggs, fruits and vegetables. Murray and Michelle have fostered a relationship of respect and trust with local Ngambri, Wallabalooa and Wiradjuri man Paul Girrawah House, which has developed into an ongoing partnership conceived through the lens of *Yindyamarra*, a Wiradjuri term meaning respect for all things. Part of this partnership includes the giving (or returning) of a portion of the farm (approximately 30 of their 220 acres) to Paul and his family to

---

<sup>5</sup>See

<https://www.abc.net.au/news/2020-05-30/destined-for-failure-unless-indigenous-cultural-burns-done/12302412>.

care for and use however they want, under whatever time frame they deem appropriate, with any derived revenue remaining with Paul and his family. Paul plans to run a cultural tour business on the farm focusing on sharing cultural artefacts, such as tree scarring, and on country ceremony. He is also considering an agro-forestry experiment in the creation of original timbers for traditional implements. A commercial crop of myrnong (yam daisies) is also part of the plan.

In turn, Murray describes how the partnership has gifted him with a very different way of relating to the land; a new 'do-no-harm-lens' -through which to slow down and connect to what he calls the 'heartbeat of the place'. His focus now is much more oriented to what the land needs, which is ascertained by slowing right down and spending time just observing. 'Those things, if you make time, are pretty powerful. Without Paul we were rushing around like madmen doing things, and we were missing a lot,' Murray commented.

They are engaging in a relationalism intrinsic to First Nations' political ordering; a way of knowing and being where the very land is the Law, and one's relationship to it is based on a mutualism that creates an ethical impulse to care for Country and everything on it.

There is an opportunity for Government to encourage scaling up partnerships between landholders and First Peoples, however a key consideration in doing so relates to the protection of Indigenous knowledge and protocols. The Australian Government has already done important work through CSIRO and First Peoples to establish the Our Knowledge, Our Way (OKOW) in caring for Country guidelines<sup>6</sup>. Under these guidelines, it is stipulated that First Peoples must determine what is best practice under traditional knowledge systems. The UNDRIP also underscores that free, prior and informed consent (FPIC) is critical to the sharing of traditional knowledge. The OKOW guidelines suggest that both FPIC and Indigenous Cultural Intellectual Property (IPIC) should be applied in principle to partnerships between Indigenous and non-Indigenous people to ensure the protection of traditional knowledge and protocols. As such, AFSA recommends that Government should enable:

**Recommendation:** Self-determination for First Peoples to provide unfettered access to Country - increase access to private lands by:

- Supporting partnerships between First Peoples and private landholders to give access to Country for social, cultural and economic purposes, in adherence to the OKOW guidelines
- Enacting legislation to commit a proportion of landholders' local rates payments to 'Pay the Rent'<sup>7</sup> directly to Indigenous-led organisations in their local Country.

## Legal recognition of First Peoples' knowledge and protocols

With recent developments such as the Labor Government's commitment to the implementation of the Uluru Statement from The Heart, supporting the right of First Peoples to self-determination should also consider legal recognition of traditional knowledge systems and protocols.

<sup>6</sup> [https://www.csiro.au/-/media/LWF/Files/OKOW/OKOW-Guidelines\\_FULLL.pdf](https://www.csiro.au/-/media/LWF/Files/OKOW/OKOW-Guidelines_FULLL.pdf)

<sup>7</sup> <https://paytherent.net.au/>



The First Nations Bushfood and Botanical Alliance Australia (FNBBA) issued a Statement in 2019 asserting sovereignty over native foods and the right to participate in decision making. The Statement outlines six key objectives to be taken by First Peoples to achieve this:

1. Our ongoing responsibility: We need to start a national conversation amongst ourselves about identifying our own species, our ceremonies and cultural practices that relate to us. This is a sensitive conversation that will be led by us in accordance with our Aboriginal laws.
2. Protocols to set national standards: We adopt the True Tracks principles as the foundation for cultural protocols that promote our Indigenous values and protect cultural integrity. The protocols should be across all land and species management; business development, production, marketing and distribution.
3. Provenance and authenticity: We call for development of a certification mark and/or geographical indication to benefit of Indigenous producers, respect Indigenous protocols and recognise Indigenous custodianship.
4. Industry body: We need a national Indigenous controlled industry body. We call on our states and territories to support this.
5. Changes to the law: Indigenous Knowledge in bushfoods and bush products should be protected by the laws of this land and business practice. This includes intellectual property; penalties for misappropriation and implementation of the Nagoya Protocol on Access and Benefit Sharing.
6. Education and Awareness: promote respect for our Indigenous Knowledge values and protocols.

In adherence to First Nations-led participation in decision-making, AFSA recommends that Government should seek to:

<b>Recommendation:</b> Support the First Nations Bushfood and Botanical Alliance Australia Statement <sup>8</sup> and ensure First Peoples are the leaders of policy and decision-making across all levels of government.
<b>Recommendation:</b> Enact legislation to ensure First Peoples' knowledge is protected under Indigenous Cultural and Intellectual Property (ICIP) legislation and compensated in the Bush Food industry in line with the Nagoya Protocol.
<b>Recommendation:</b> Learn from other jurisdictions e.g. Victorian Traditional Owner Native Foods and Botanical Strategy <sup>9</sup> to develop an aligned strategy across all states and territories in Australia
<b>Recommendation:</b> Invest in increasing understanding of First Peoples' knowledges and land management by:

<sup>8</sup> <https://www.fnbbaa.com.au/bushfood-symposium-statement-firstn>

<sup>9</sup> <https://www.fvtoc.com.au/native-foods-and-botanicals>

- Providing funding for horizontal knowledge exchanges between First Peoples and farmers with adherence to ICIP and First Nations' protocols, using the OKOW guidelines as a policy framework.
- Provide funding for all Australians to undertake First Peoples cultural education
- First Nations' Country names to be identified on all Land Taxes across Australia.

AFSA would like to thank the Senate for the opportunity to submit its feedback on the Government's application of the UNDRIP in Australia and welcomes any further opportunity to discuss the Senate's findings throughout the Inquiry.