

Ms Anita Coles
Secretary
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA. ACT

By email: humanrights@aph.gov.au

16 October 2023

Dear Ms Coles,

Inquiry into Australia's Human Rights Framework: hearing on 27 September 2023 – responses to questions from Senator Thorpe

Thank you for your email of 5 October 2023 which included two questions on notice put by Senator Thorpe to the Australian Human Rights Institute at UNSW. Please find our responses to those questions below. I acknowledge the contributions to these responses of Ms Moon (who appeared before the Committee and prepared our response to Question 1) and Professor Lucas Lixinski, who prepared our response to Question 2.

Question from Senator Thorpe

- 1. How could the rights to a healthy environment and principles of UNDRIP intersect to foreground Indigenous land practices of caring for Country to address the climate crisis enabled by the current previous governments?**

Please note that the Institute is not a First Nations organisation, has not consulted with any First Nations Peoples in relation to this response and cannot speak on behalf of First Nations Peoples. We draw, instead, on recommendations made by others who have consulted and on our knowledge as international human rights law experts.

In the climate science context, the most recent reports of the Intergovernmental Panel on Climate Change (IPCC) emphasise the role of Indigenous knowledge in addressing climate change. In its contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2022), IPCC Working Group II ([AR6 WGII](https://www.ipcc.ch/working-group/wg2/))¹ described Indigenous knowledge as 'an important source of guidance for biodiversity conservation, impact assessment, governance, disaster preparedness and resilience' (526) and 'a unique source for techniques

¹ IPCC Working Group II (WGII) 'assesses the vulnerability of socio-economic and natural systems to climate change, negative and positive consequences of climate change and options for adapting to it': <https://www.ipcc.ch/working-group/wg2/>.

for adaptation [which] may be favoured over externally generated knowledge' (469). In its contribution to the Sixth Assessment Report of the IPCC (2022), IPCC Working Group III ([ARC WGIII](#))² noted that 'Indigenous knowledge contains unique information sources about past changes and potential solutions to present issues' and that '80% of the world's remaining biodiversity is on Indigenous homelands' (47). WGIII concluded with very high confidence that 'supporting Indigenous self-determination, recognising Indigenous Peoples' rights and supporting Indigenous knowledge-based adaptation are critical to reducing climate change risks and [to] effective adaptation' to unavoidable climate impacts (53). At 109, WGIII concluded that '[i]nclusion of interdisciplinary scientific information, Indigenous knowledge and practical expertise is essential to effective ecosystem-based adaptation and there is a large risk of maladaptation where this does not happen.' The WGIII report also noted that Indigenous peoples 'have been faced with adaptation challenges for centuries and have developed strategies for resilience in changing environments that can enrich and strengthen current and future adaptation efforts' (124).

In the human rights law context, recognition of the right to a healthy environment in the face of climate change in Australia must include recognition of the rights of Indigenous peoples, and the right must be implemented in a manner which promotes Indigenous cultural connection to land and supports Indigenous authority over land management and land use decisions and practices.

For this reason, inclusion by the Australian Government of the right to a healthy environment in an Act or Charter should be accompanied by a commitment to implementing the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The rights of First Nations Peoples are recognised under UNDRIP, in addition to their recognition under other human rights treaties. UNDRIP expresses the right to free, prior and informed consent, and recognises the role of Indigenous knowledge in decision making related to the protection of the environment, including the role of Indigenous land use practices in addressing and averting the impacts of climate change. We refer the Committee in this regard to Canada's very recent amendments to the *Canadian Environmental Protection Act* (CEPA).

The United Nations Human Rights Council's Special Rapporteur on human rights and the environment has identified 16 Framework Principles on Human Rights and the Environment as being the basic obligations of States under international human rights law relating to the enjoyment of a clean, healthy and sustainable environment. The Principles derive from obligations that States already carry under international human rights treaties and other international law sources. Principle 15 is of particular significance for Australia's obligations towards its First Nations Peoples in the context of addressing climate change, including '(c) [r]especting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources'.

² IPCC Working Group III (WGIII) 'focuses on climate change mitigation, assessing methods for reducing greenhouse gas emissions, and removing greenhouse gases from the atmosphere': <https://www.ipcc.ch/working-group/wg3/>.

Question from Senator Thorpe

- 2. Can you expand on how the AHRC's suggested model for the right to culture is insufficient, and specifically you mention how the AHRC model does not adequately protect the right of First People to own and seek the restitution of cultural objects taken from them during colonialism. Do any models currently exist in any jurisdictions that touch on this?**

The AHRC suggested model, as written, focuses only on the right to culture of minorities. As such, it implies that minorities have 'culture', and the rest of the population does not (and, therefore, does not need to worry about it, or care to safeguard it). In this sense, the provision creates an unnecessary division in society, and makes Indigenous and other minority concerns 'severable' (and therefore easy to push to a secondary plane, or discard altogether). Therefore, we suggest a broader provision on the right to culture that invites all parts of the Australian population to engage with the centrality of culture to social life and the enjoyment of human rights.

In terms of restitution of First Nations artefacts, the foremost model in the common law world is the 1990 Native American Grave Protection and Repatriation Act (NAGPRA) in the United States. It is an exemplary piece of legislation. Its implementation has been somewhat fraught because it gives too much authority to museums, and requires a very high burden of proof on the part of claiming communities, but these are issues that any eventual Australian legislation can address, engaging in co-design with Indigenous leaders and experts on the subject matter.

We hope that these responses are of assistance to the Committee in its deliberations.

Yours sincerely

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