

Agenda item 3 Discussion on the theme "Indigenous peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent"

The New South Wales Aboriginal Land Council of Australia pays our respects to the Ancestors, Traditional Owners and Elders of the lands from which Members are participating from. We also acknowledge all Indigenous peoples and their lands across the globe.

With regards to the special theme Indigenous Peoples, business, autonomy and the human rights principles of due diligence and free, prior and informed consent, and drawing from Article 4 of the Declaration on the Rights of Indigenous Peoples, the New South Wales Aboriginal Land Council makes the following recommendations to the Permanent Forum encouraging States to:

- Develop relationships with Indigenous Peoples based on self-determination and free, prior and informed consent by supporting initiatives for self-government in matters relating to our own internal and local affairs.
- Establish and embed principles of free, prior and informed consent through shared decision-making arrangements between State and Indigenous Nations on matters of the State having a significant impact on the lives of Indigenous Peoples.

In Australia, there is no legislative framework that both recognises and enables free prior and informed consent, and shared decision making between the State and Aboriginal and Torres Strait Islander peoples on matters that have a significant impact on our lives.

At a fundamental level, Aboriginal and Torres Strait Islander peoples continue to be legally excluded in the Australian Constitution—the nation’s founding legal document that came into effect in 1901— where our prior existence and survival on the lands for tens of thousands of years is not acknowledged.

Australia is an incomplete Nation without Constitutional recognition of its First Peoples and a Constitutionally protected structure that enables shared decision making between our own Nations and the government of Australia.

Madam Chair, in 2017 more than 250 Aboriginal and Torres Strait Islander leaders from across Australia met in Uluru, including the NSW Aboriginal Land Council. At this meeting the “Uluru Statement From The Heart” was endorsed which recommended:

- a. A ‘Voice’ to Parliament,
- b. Agreement making in the form of a Makarrata Commission, and
- c. Truth-telling.

The Uluru Statement from the Heart sought full recognition of Aboriginal and Torres Strait Islander peoples as First Peoples through a Constitutionally enshrined national Voice to the Commonwealth Parliament.

However, to date this call, from our hearts, has not been recognised.

There continues to be a significant imbalance of power between Aboriginal and Torres Strait Islander peoples and the State. The State continues to maintain full decision making over resources, and partnerships between Aboriginal and Torres Strait Islander people and the State are not protected by legislation or in our Constitution and can be easily abandoned.

The State is seeking to set up its own structures for our Peoples to engage with government, that would be accountable to the government, not to our own Nations and communities. The structures

from the State could undermine our self-determined governance arrangements and organisations and is not based on free, prior and informed consent.

We can no longer be bystanders in our own country. We must be part of the decision making of policies and programs that affect our everyday lives – this the central tenet of free, prior and informed consent.

Sarah Doyle