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Commissioner June Oscar AO  
Aboriginal and Torres Strait Islander Social Justice Commissioner  
Australian Human Rights Commission

By email: [june.oscar@humanrights.gov.au](mailto:june.oscar@humanrights.gov.au)

Dear June

Thank you for inviting the Victorian Equal Opportunity and Human Rights Commission (the **Commission**) to provide a submission on the Wiyi Yani U Thangani Framework for Action (**Framework**) and First Nations Gender Justice Institute (**Institute**).

The Commission strongly supports the Framework and the findings of the Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report (**Report**), and particularly that the Report shines a light on the compounding effects of the intersectional and structural inequality experienced by First Nations women and girls. The Commission commends the Framework for applying a First Nations gender responsive approach to drive change and address the root causes of this inequality.

As an independent statutory authority, the Commission has functions under Victoria's human rights laws, including the *Charter of Human Rights and Responsibilities Act 2006* (the **Charter**).

The Charter specifically recognises the special importance of First Nations people and their distinct cultural rights. These cultural rights include the right to:

- enjoy their identity and culture
- maintain and use their languages
- maintain kinship ties
- maintain distinctive spiritual material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs.<sup>1</sup>

Importantly, the Charter requires public authorities, such as the Commission, to consider Aboriginal cultural rights when making decisions concerning First Nations Victorians.<sup>2</sup>

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<sup>1</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic), s 19. See also the United Nations Declaration on the Rights of Indigenous Peoples states that "Indigenous peoples have the right to practice and revitalize [sic] their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures." United Nations Declaration on the Rights of Indigenous Peoples, Art 11(1).

<sup>2</sup> Charter, s 19(2) and 38.

The Commission has developed an Aboriginal Community Engagement Strategy (**Engagement Strategy**)<sup>3</sup>, which draws on the Commission's duty to uphold cultural rights and commitment to advance First Nations rights more broadly. The Engagement Strategy sets the foundation for the Commission's future work improving on engagement and delivery of services to First Nations Victorians. It has also led to the Commission developing its:

- First Nations Data Strategy<sup>4</sup> (**Data Strategy**), which is a high-level framework to embed best practice for the Commission in the collection, use and sharing of the data of First Nations clients
- Aboriginal Community Partnership Principles<sup>5</sup> (**Partnership Principles**), which guide the Commission's engagement with First Nations communities and empowers First Nations voices in the Commission's work on First Peoples rights issues.

The Engagement Strategy, Data Strategy and Partnership Principles reflect the Commission's organisational values and are based on four key themes that arose in consultations with First Nations people:

- self-determination and data sovereignty
- embedding cultural rights
- promoting transparency and accountability
- ensuring privacy and consent.

Below, the Commission provides information and insights based on its work in developing the Engagement Strategy, Data Strategy and Partnership Principles relevant to guiding questions and themes raised in the request for submissions, including:

- strengthening data sovereignty
- effective practices and approaches for collecting data, measuring and evaluating change
- strategies to support the Framework and Institute to incorporate diverse lived experiences and ensure that no one misses out on opportunities to contribute to and hear this work
- accountability practices that could be included in the Framework and the Institute's work
- mechanisms to ensure that this living database is used and owned by First Nations women and girls.

### **Self-determination and data sovereignty**

The Commission considers that data sovereignty can be strengthened in the Framework and Institute's work through continued engagement to include broad lived experiences and reflecting, as much as possible, principles of self-determination and Aboriginal cultural rights.

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<sup>3</sup> Aboriginal Community Engagement Strategy, <https://www.humanrights.vic.gov.au/for-individuals/aboriginal-community-engagement-strategy/> The Commission's first Aboriginal Community Engagement Strategy was created in 2015; the Second Aboriginal Community Engagement Strategy was created in 2020.

<sup>4</sup> See <https://www.humanrights.vic.gov.au/about-us/policies/first-nations-data-strategy/>

<sup>5</sup> See <https://www.humanrights.vic.gov.au/for-individuals/aboriginal-community-partnership-principles/>

While there is not currently statutory recognition of a right to self-determination at the state or federal level, the right to self-determination is enshrined in several United Nations' instruments, including the United Nations Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**). Australia's endorsement of UNDRIP also provides a basis for enshrining First Nations cultural rights in the Framework and Institute (see below).

The Commission strives to reflect principles of self-determination in delivering its own statutory functions to ensure that, where possible, the Commission's work is guided by the lived experiences and expertise of First Nations stakeholders. Accordingly, the Commission aims to consult with First Nations organisations and community members in a way that recognises and respects their unique expertise.

The Commission upholds the principle of data sovereignty as a part of self-determination. Data sovereignty refers to the right of First Nations communities to exercise ownership over data concerning First Nations people.<sup>6</sup> It recognises that ownership of and control over data is a key enabler for First Nations communities to set their political, economic and social agenda and can be one way to practically fulfill some aspects of self-determination. Data sovereignty is critical for the development and operation of governance mechanisms that support First Nations decision making.

Data sovereignty is also a priority across the Victorian Public Sector. The Victorian Aboriginal Affairs Framework, which provides guidance to the Victorian Public Sector on engaging with Victorian First Nations communities, supports data sovereignty, providing that "Aboriginal ownership and control of data can be an enabler of self-determination. When community is adequately resourced to undertake this work, data can strengthen Aboriginal advocacy, sector planning and decision making."<sup>7</sup>

To support self-determination and strengthen data sovereignty, the Commission delivers First Nations data in two ways:

- incorporating de-identified 'First Nations client data' as a specific section of analysis in the Commission's annual report for the general public
- providing an annual First Nations Data Report (**Data Report**).

The Data Report includes data from the Commission's enquiries and complaints services to support us and First Nations organisations, and organisations supporting First Nations people to identify emerging issues and shape effective policies and services. The data included in the report is informed by consultation with First Nations stakeholders.

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<sup>6</sup> Maiam Nayri Wingara and the Australian Indigenous Governance Institute, 'Indigenous Data Sovereignty' (Communique, Indigenous Data Sovereignty Summit, 20 June 2018); Kukutai, T. and Taylor, J. eds. 2016. Indigenous Data Sovereignty: Towards an Agenda (Vol. 38) ANU Press.

<sup>7</sup> Department of Premier and Cabinet, 'Victorian Aboriginal Affairs Framework 2018 – 2023', (Policy Framework, 2018) 59.

In 2023, First Nations stakeholders provided feedback on the Commission's inaugural Data Report<sup>8</sup>, which the Commission will action for future iterations of the Data Report. This feedback may be valuable to the Australian Human Rights Commission (**AHRC**) when considering ways to strengthen data sovereignty and governance, and ensure that no one misses out on opportunities to contribute to and benefit from the database. Stakeholder feedback included that:

- there should be regular engagement with First Nations stakeholders to ensure the best standards of data sovereignty are being worked towards and that First Nations communities approve of the way data is being collected and published.
- any engagement with First Nations stakeholders regarding data should allow for adequate time for feedback, noting that many First Nations organisations have limited time and resources that can present barriers to participation. Supporting materials should also be provided to ease the resource burden of participation. A mixture of opportunities for consultation and formats for participation should be provided (e.g. written submissions, roundtable, smaller meetings) so organisations can participate in the way that suits their capacity.
- data reports should be accompanied by a briefing to provide First Nations communities and organisations with the context and intention of the data report.
- data reports should be accompanied by commentary to contextualise issues and limitations in the data, such as underreporting of issues by First People due to mistrust of government or a history of poor complaint handling across public services.
- data should not be so high level as to hide stories and context, and to be capable of demonstrating intersectional discrimination and experiences (where possible).
- where datasets are small, care should be taken to ensure the data is not disaggregated to the extent that a person may be identifiable.
- datasets should be accessible to First Nations organisations so they can use the data and make bespoke datasets for their own purposes (noting that this should only be done in a way that does not identify individuals and for small data sets this may not be possible).

The Commission commends the AHRC for engaging with First Nations people and organisations through the call for submissions to determine practices and approaches that are most effective to collect data, measure and evaluate change, and use data to inform national priorities. The Commission encourages the Institute to continue to regularly engage with stakeholders on these issues throughout the life of the database to ensure that it continues to reflect the principles of self-determination and meet the needs of First Nations women and girls.

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<sup>8</sup> 2022-2023 Data Report: Understanding the discrimination experienced by First Nations people (November 2023) available at <<https://www.humanrightscommission.vic.gov.au/home/news-and-events/commission-news/item/1793-toward-self-determination>>.

## **Embedding Aboriginal cultural rights**

The Victorian Charter specifically recognises that ‘human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters’. As mentioned, the Charter also includes specific protection of Aboriginal cultural rights. Specifically, First Nations peoples have the right to enjoy their identity and culture, to maintain and use their language, and maintain their kinship ties to members of their community.

Cultural rights in the Charter also recognise the special relationship First Nations peoples have with the land, water and resources in Victoria. This relationship could be spiritual, material or economic and may be connected to traditional laws and customs. This right also protects access to cultural institutions, ancestral lands, natural resources and traditional knowledge.

The Commission has embedded cultural rights into its operations and functions through the Engagement Strategy, Data Strategy and Partnership Principles in the following ways:

- engaging with First Nations stakeholders in recognition and respect of their cultural rights, and ensuring the Commission’s initiatives and actions promote cultural rights
- considering and respecting the cultural rights and requirements of the Commission’s First Nations staff to ensure they are supported to work in a culturally safe environment. This will include balancing any consultation with First Nations staff with consideration of potential cultural load
- equipping Commission staff with the ability to sensitively identify First Nations clients and the capability to provide tailored and culturally appropriate services and referrals in line with their cultural rights<sup>9</sup>
- supporting Commission staff to collect information and data from First Nations clients in a culturally appropriate and tailored way by providing in-depth cultural competency training to staff and ongoing guidance on providing culturally safe services<sup>10</sup>
- analysing data and trends about the experiences of First Nations clients to ensure the Commission’s services are culturally appropriate and to reduce barriers to access.

Again, while Aboriginal cultural rights have not been expressly incorporated into law yet at a Commonwealth level, Australia has committed to the implementation of UNDRIP providing an authoritative basis for enshrining First Nations cultural rights in the Framework and Institute. The Commission recommends that the Institute embed systems to support employee cultural rights as well as methods for engaging with First Nations stakeholders to ensure that policies and programs are culturally safe and diverse lived experience is incorporated in the Framework and principles underpinning the Institute.

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<sup>9</sup> See <https://www.humanrights.vic.gov.au/for-individuals/tailored-services/>

<sup>10</sup> Victorian Equal Opportunity and Human Rights Commission, Action Table – Aboriginal Community Engagement Strategy 2020-22 (Strategy, 2020) Objective 3 – 2(c)(i)-(ii).

## **Transparency and accountability**

The Commission's Data Strategy underscores the importance of accountability to the public as a key value for the Commission. In order to be accountable, the Commission must have transparent processes. The Commission is accountable through its Engagement Strategy by publishing and reporting on progress. Similarly, as part of the First Nations Data Strategy, the Commission is committed to acting transparently by clearly informing First Nations clients how and why the Commission is collecting data. This transparency is a key part of the Commission's accountability to First Nations clients and communities.

The Commission has also improved the transparency of data collected from its enquiries and complaints services by sharing the annual Data Report with First Nations organisations, as well as sharing data publicly through its annual reports, which are tabled in parliament and available on the Commission's website. One of the challenges the Commission continues to face is ensuring it does not share data in a way that could identify an individual complainants to ensure privacy of those accessing the Commission's services and that the Commission meets its secrecy obligations (see below).

The Commissions also endeavours to act with transparency when working with First Nations communities by proactively seeking and responding to feedback, including on the data that we collect and report on. This involves regularly reflecting on work and feedback to ensure that the Commission continually evolves and responds to the needs of the community.

The Commissions encourages the AHRC to adopt similar transparency and accountability measures into the Institute and its practices around data collection and use, as well as its stakeholder engagement practices for developing policies and initiatives to advance First Nations women and girls human rights.

## **Privacy and consent**

While the Commission advocates for the sharing of data with First Nations organisations to further data sovereignty and self-determination, it notes the importance of balancing this against the need to maintain privacy and confidentiality in accordance with legal requirements and to ensure clients' privacy is protected. The Commission's secrecy provision provides that any employee, including board members and the Commissioner, cannot disclose, communicate or make a record of any information that concerns the affairs of any person, where the information was provided to the Commission for a purpose under its laws. It is an offence to do so. While the Commission provides de-identified information wherever possible, it must also ensure that it meets organisational secrecy obligations.

The Commission's privacy policy<sup>11</sup> explains how information will be collected, used and disclosed and how the Commission collects and manages personal and health information in

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<sup>11</sup> Victorian Equal Opportunity and Human Rights Commission, Privacy Policy (November 2019), available at < <https://www.humanrights.vic.gov.au/about->

accordance with the law. For example, as information about an individual's race or ethnic origin is considered sensitive information under law<sup>12</sup>, it is necessary to obtain an individual's consent before collecting this information.

Thank you again for providing the Commission an opportunity to input into the development of the Wiyi Yani U Thangani Framework for Action and First Nations Gender Justice Institute. If you would like to discuss any of these points further, please contact Head of Policy, Emily Yates at [emily.yates@veohrc.vic.gov.au](mailto:emily.yates@veohrc.vic.gov.au)

Yours sincerely



**Ro Allen**

Victorian Equal Opportunity and Human Rights Commissioner

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us/policies/privacy/#:~:text=We%20handle%20your%20information%20with,Victorian%20Protective%20Data%20Security%20Standards.>

<sup>12</sup> *Privacy and Data Protection Act 2014 (Vic)*