Australian Human Rights Commission

A Fair and Just Future for First Peoples

Social Justice Report 2025

ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER

Warning: Aboriginal and Torres Strait Islander peoples should be aware that this report may contain images, names and voices of people who may be deceased.

Please note that the locations for photos throughout this report have been intentionally removed so as not to identify people and place.

Acknowledgments

The A Fair and Just Future for First Peoples: Social Justice Report 2025 was drafted by Alison Vivian, Cecilia Anthony, Darren Dick, Daryle Rigney, Gemma Sentence, Katie Kiss, Kirsten Gray, Lenique Lawson, Libby Gunn, Nick Devereaux, Paul Gray, Samantha Nolan-Smith and Tara Apps (in alphabetical order).

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Dedication

The Aboriginal and Torres Strait Islander Social Justice Commissioner pays respect to the First Peoples mentioned throughout the report and acknowledges all those who participated in and provided their voices to inform the agenda for a fair and just future for First Peoples – this report is yours.

This report is dedicated to the life and legacy of our friend and colleague Tara Apps, a strong, proud Ngunnawal Wiradjuri woman. Tara's deep sense of personal and cultural integrity defined her. She championed the voices of Aboriginal and Torres Strait Islander peoples with unwavering commitment and insisted that truth-telling, respect and community leadership remain at the centre of all we do. We recognise the significant contribution Tara made to the work of the Australian Human Rights Commission and to the production of this report. We also acknowledge the important work she undertook previously at the Productivity Commission and the Coalition of the Peaks and the connections she developed across the sector. We honour her leadership, her generosity, and the fierce love and pride she held for her culture and her people. May Tara's legacy continue to shine through all who carry this work forward.

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Social Justice Report 2025

ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER

Notice of Errata

Acknowledgement of differences between the printed (and tabled) copy of *A Fair and Just Future for First Peoples: Social Justice Report 2025* (the Report) and this online version.

Page 140: Figure 1.11 in the printed version of the Report presents the wrong graph. The correct graph for Figure 1.11 is shown in the online version of the Report.

Page 253: The text in the printed version of the Report which reads 'As stated in Chapter 2: First Peoples' Voices – Informing the Agenda' has been replaced with 'As stated in Chapter 1: First Peoples' Voices – Informing the Agenda' in the online version of the Report.

Page 256: The text in the printed version of the Report which reads 'A breakdown is provided in Text box 4.6' has been replaced with 'A breakdown is provided in Text box 4.7' in the online version of the Report.

Page 269: Endnote 363 in the printed version of the Report shows details for what should be endnote 362 (which is missing). Endnote 363 should read:

United Nations Department of Economic and Social Affairs, The 17 Goals, Sustainable Development, United Nations Department of Economic and Social Affairs website, n.d. <https://sdgs.un.org/goals>.

This has been corrected in the online version of the Report.

Page 274: Endnote 461 in the printed version appears at the end of endnote 460 rather than as a separate endnote. This has been corrected in the online version of the Report.

Page 301: The text in the printed version of the Report which reads 'Text box 5.3 Principles intended as a guide for governments' has been replaced with 'Text box 5.3: Principles intended as a guide for governments' in the online version of the Report.

Page 308: The text in the printed version which reads 'Text box 5.3 Principles intended as a guide for governments' has been replaced with 'Text box 5.6: A roadmap for eliminating racism' in the online version of the Report.

Australian Human Rights Commission

Aboriginal and Torres Strait Islander Social Justice Commissioner
Katie Kiss

27 February 2026

The Hon Michelle Rowland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

In accordance with section 46C(1)(a) of the Australian Human Rights Commission Act 1986 (Cth), I am pleased to present **A Fair and Just Future for First Peoples: Social Justice Report 2025.**

This report is the first I have delivered in my term as Aboriginal and Torres Strait Islander Social Justice Commissioner. It considers the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples, including progress to date, barriers impeding enjoyment, and approaches required to uphold and protect our rights. The report reflects the voices and priorities of First Peoples from across the country which were shared with me during the Informing the Agenda Project conducted between August 2024 and May 2025.

The report focuses on how the rights of First Peoples, as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), can be better realised in Australian law, policy and practice. It highlights the resilience and strength of our communities, the challenges that remain and the urgent need for governments at all levels to work in genuine partnership with us to secure a fair and just future.

I commend this report to you and to the Parliament. It is my hope that it will support constructive dialogue, accountability and meaningful action towards advancing human rights, self-determination and equality for Aboriginal and Torres Strait Islander peoples.

I take this opportunity to seek a formal and timely response which articulates the Australian Government's position with respect to this report's recommendations and sets out proposed actions to implement those recommendations which are supported.

Yours sincerely

Katie Kiss

Aboriginal and Torres Strait Islander Social Justice Commissioner

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About the Aboriginal and Torres Strait Islander Social Justice Commissioner

Katie Kiss commenced her role as Aboriginal and Torres Strait Islander Social Justice Commissioner on 3 April 2024.

Commissioner Kiss is a proud Kaanju and Birri/Widi woman who was born and raised in Rockhampton, Central Queensland on the lands of the Darumbal People and now lives in Magun-dgen/Meanjin on the lands of the Yuggera, Turrubal and Quandamooka Peoples.

She was previously the Executive Director of the Interim Truth and Treaty Body supporting Queensland's Path to Treaty and held senior positions in the Queensland Government, including Chief of Staff to the Minister for Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and Senior Advisor to the Deputy Premier.

Commissioner Kiss also worked for eight years at the Australian Human Rights Commission, where she was the Director of the Aboriginal and Torres Strait Islander Social Justice Team.

Foreword by Commissioner Kiss

The 2025 Social Justice Report arrives at a time of both urgency and opportunity. Aboriginal and Torres Strait Islander peoples continue to face deep and persistent challenges: over-incarceration, the disproportionate removal of children, unequal access to housing, health, education, and infrastructure, ongoing racism, and environmental pressures intensified by climate change. These issues are not new, yet governments have too often failed to act on the recommendations that could bring meaningful change.

But alongside these challenges is hope and determination. This report calls on governments, institutions, and all Australians to listen, act, and walk with us in genuine partnership. It places self-determination and community priorities at its centre, highlighting promising practices, urgent reforms, and practical pathways underpinned by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the National Agreement on Closing the Gap.

Looking ahead, my work as Commissioner will continue to be guided by the voices of our communities, the lessons of past reports, and the enduring issues our peoples face. Accountability, equity, and meaningful progress must define success, not promises alone.

Across Australia, First Peoples are leading solutions grounded in culture, law, and community. Elders nurture knowledge for the next generation, young people show courage and vision, and communities are uniting in ways that reflect our values. This report amplifies those successes, the hope and possibility they represent and sets out a roadmap for change.

This report is not the final word. It is part of an ongoing conversation, a commitment to truth-telling, and a testament to the resilience, courage, and strength of our peoples. To the communities who shared your stories during my *Informing the Agenda* tour, I thank you. Your voices inspire hope for a just and equitable nation – one where our children can thrive, our culture is honoured, and our rights are fully respected.

Artwork Story: “Gathering for Truth, Treaty and Transformation”

At the centre of this artwork sits the Gathering Symbol, a meeting place of strength, voice and shared purpose. It represents a holistic, inclusive First Nations-centred approach that brings people together as a community — a village moving forward as one. From this central place, knowledge is shared, decisions are shaped and collective strength is formed. It is a reminder that progress comes when people sit together, listen deeply and walk forward side by side.

Surrounding this gathering space are five connected elements, reflecting the Commissioner’s five-year term agenda. These elements represent pathways of action and responsibility, grounded in a strengths-based vision for First Nations peoples and communities.

Together, they show the commitment to move forward with unity after the setback of the Voice Referendum, ensuring that hope and determination continue to guide the journey toward justice and recognition.

On the left side of the artwork are six connected symbols, representing the six term goals that guide the Commissioner’s overarching objective: the pursuit of Truth, Treaty and the transformation of government. Each symbol is joined by flowing lines, showing that these goals are not separate but interconnected — working together to support long-term change.

They symbolise ongoing action, persistence and accountability across the Commissioner's term.

The Shield speaks to the protection of rights — the right to self-determination, participation in decision-making and free, prior and informed consent. It stands for non-discrimination, equality and the respect and protection of culture. The shield holds and protects the strength of First Nations peoples, ensuring that culture and identity remain strong and respected across all systems and spaces.

The Boomerang symbolises the pursuit of Truth and Treaty. It represents the journey toward honest conversations about Australia's past and present, and the return to balance and recognition through treaty. Like the boomerang that returns after its path is travelled, truth always finds its way back, calling for acknowledgement, healing and forward movement.

The Hands and Feather represent the transformation of government and the establishment of new systems that affirm rights, provide genuine accountability and ensure positive access to justice. The hands reflect people working together to reshape systems, while the feather symbolises truth, voice and fairness guiding this transformation.

Flowing through the artwork are the river and waters, seen at both the top and bottom. Water represents life, continuity and connection. It reminds us that journeys are ongoing and that change flows across generations. These waterways connect all elements of the artwork, symbolising the movement of people, ideas and progress across time and place.

The vertical flowing lines along the sides represent a deep connection to land — Country holding memory, story and identity. They ground the work in the strength of place and remind us that all progress is anchored in connection to land and community.

The colours throughout the artwork reflect the origins of Ms Kiss — a proud Kaanju and Birri/Widi woman who grew up in Rockhampton on the lands of the Darumbal People in Central Queensland. Earthy ochres speak to land and ancestry, while blues and greens reflect water, growth and renewal. Together, these colours honour heritage, place and the ongoing journey forward.

This artwork tells a story of gathering, protection, truth and transformation. It honours the strength of First Nations peoples and communities while mapping a shared path toward justice, recognition and self-determination — a journey walked together, guided by culture, community and Country.

About the Artist - Lani Balzan

Lani Balzan is a proud First Nations artist whose work is grounded in culture, community and connection to Country. Drawing on her heritage and lived experience, Lani creates contemporary Aboriginal artworks that honour traditional storytelling while speaking powerfully to present-day journeys of truth, justice and self-determination.

Her practice is deeply informed by her connection to land and water, and by the strength of community — the village that gathers, listens and moves forward together. Through intricate dot work, flowing linework and symbolic design, Lani weaves layered narratives that reflect resilience, continuity and collective strength. Each element within her compositions carries meaning, carefully placed to reflect interconnected responsibilities, shared purpose and cultural protection.

In developing this artwork for the Commissioner's report, Lani worked thoughtfully with the themes of Truth, Treaty and the transformation of government systems. The central gathering symbol reflects her belief in a holistic, inclusive First Nations-centred approach — one that brings people together in strength and unity, even in the face of setbacks. Surrounding symbols such as the shield, boomerang, hands and feather represent rights, accountability, participation and justice, reinforcing the report's commitment to advancing First Nations peoples' rights in Australia.

The flowing river motifs and vertical land patterns speak to continuity — the understanding that progress moves like water, guided by Country and carried by generations. The colour palette honours cultural identity and place, reflecting deep ties to ancestral lands and the communities that shape and sustain her.

Lani's work is both cultural expression and contemporary advocacy. Through her art, she creates visual spaces where story, policy and purpose meet — ensuring that culture is not an addition to the conversation, but the foundation upon which it stands.

website: www.aboriginalartbylani.com.au

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Introduction

This is the first Social Justice Report by Aboriginal and Torres Strait Islander Social Justice Commissioner (the Social Justice Commissioner), Katie Kiss. Commissioner Kiss was appointed in April 2024 for a five-year term covering the period 2024 – 2029.

This report is informed by the critical issues and priorities identified by Aboriginal and Torres Strait Islander people through the *Informing the Agenda* Project (see Chapter 1: First People's Voices – Informing the Agenda). Drawing on the intergenerational experience of First Peoples through this Project, the report situates contemporary injustice within the ongoing impacts of colonisation and rejects deficit-based narratives that place responsibility for systemic inequality on First Peoples.

It fulfills the legislated mandate of the Commissioner to monitor the exercise and enjoyment of human rights by First Peoples, assess systemic barriers and provide practical guidance for reform, and promote awareness and understanding of human rights as they apply to First Peoples.

The vision set out in this report is for a future where Aboriginal and Torres Strait Islander people can fully and freely exercise and enjoy their human rights – cultural, social, political, civil and economic – and where they are supported by systems that uphold self-determination, dignity and equality.

It identifies five interconnected priority areas fundamental to realising this vision and guiding reform efforts:

Figure ES.1: Critical foundations for a Fair and Just Future for First Peoples

At its core, this report affirms a fundamental principle: that Aboriginal and Torres Strait Islander people are rights-holders; and that the individual and collective rights of First Peoples are not negotiable.

Underpinned by a Blueprint for achieving truth, justice and healing for First Peoples (Chapter 2: A fair and just future for First Peoples), the report highlights both the progress made and the persistent structural barriers that undermine justice, self-determination and equality for Aboriginal and Torres Strait Islander peoples. In doing so, it reflects on key political and structural drivers, and policy and legislative reform initiatives undertaken over recent years that impact the cultural, social, economic and political status of Aboriginal and Torres Strait Islander peoples.

The report highlights urgent concerns in areas such as health, justice, child protection, housing and land, and underscores the need for governments to respond with action that is evidence-based,

rights-driven, and grounded in community-identified solutions (Chapters 3 – 8).

It considers the extent to which First Peoples are able to exercise and enjoy the human rights that all Australian citizens are entitled to. It also explores the native title rights and interests specific to native title holders. It examines the status of outstanding recommendations and commitments relevant to advancing the rights of Australia's First Peoples, and the consequences of inaction.

The report emphasises the centrality of truth-telling, accountability and integrity to both promoting First Peoples healing and self-determination and reframing the relationship between First Peoples and the broader Australian community. It discusses the critical and ongoing work of 'mending and maintaining the social fabric' of Australian society, through 'a daily practice of care, recognition and reciprocity that creates the conditions for peace to flourish'.[1]

Above all, the report exemplifies the strength, courage, pride and determination that endures within the Aboriginal and Torres Strait Islander community despite almost 250 years of colonial incursion on our lives, our lands and our laws.

It demonstrates that the strength, resilience and leadership of Aboriginal and Torres Strait Islander peoples have always been here, but that imposed systems and values have impacted those qualities. It highlights the importance of reviving and nurturing our cultures and the need to 'keep the fires burning'.

It recognises that the 2023 Voice Referendum was not the beginning or the end of the fight for a Voice. Although, the result exposed how far this nation still has to go to listen to and share power with First Peoples.

It argues that symbols are important to changing hearts and minds, but that recognition and promoting self-determination require more than symbols. They require structural change that puts First Peoples in charge of decisions about their lives, Country, and futures.

Progress in Indigenous Affairs cannot be achieved through goodwill alone, nor through fragmented, piecemeal, or incremental reforms. The report stresses that meaningful reform requires governments to listen to, and act on, the voices of Aboriginal and Torres Strait Islander peoples. Reforms must be driven by First Peoples not imposed upon them.

Across the 30-year history of the Social Justice Commissioner role, governments have routinely ignored or selectively responded to recommendations. This report rejects that approach. It seeks a formal, timely and public response from the Australian Government to its recommendations consistent with the standards applied for parliamentary inquiries. The response should set out whether recommendations are accepted, how they will be implemented, and how progress will be measured.

In this regard, the recommendations provided within this report are designed to be implemented as a coherent package to deliver justice, accountability, and self-determination for First Peoples and to strengthen Australia's democratic institutions.

Chapter 1 – Firs t Peoples Voices – Informing the Agenda

This chapter presents the findings of the *Informing the Agenda* Project. *Informing the Agenda* was a national listening tour that engaged Aboriginal and Torres Strait Islander people across the country on priority issues impacting their families and communities and on the solutions they consider necessary to improve outcomes.

It lays the foundations for the report, bringing together the lived experiences of First Peoples from our most remote regions to major centers. It amplifies the voices of our Elders, young people, those working in our community organisations, those living with disabilities and those who identify as LGBTIQA+.

Commencing her term at a critical point in time for First Peoples after the failure of the 2023 Voice Referendum and the subsequent dismantling of truth and treaty processes in Queensland and the Northern Territory, the Social Justice Commissioner sought to hear directly from Aboriginal and Torres Strait Islander people about:

- how we move forward after the Voice Referendum
- how we progress and utilise mechanisms to realise our rights
- what issues are most urgently in need of attention
- the expectations First Peoples have of the Social Justice Commissioner.

More than 1,600 respondents shared their lived experience through a wide spectrum of stories, thoughts, feelings and perspectives.

Across the country, Aboriginal and Torres Strait Islander people expressed a sense of pride in and drew strength from their culture, identity and spirit.

They are absolute about their distinct status as the First Peoples of this land and are determined not to be erased, diminished nor assimilated.

Echoing generations of calls for basic human rights that most Australians take for granted, First Peoples across the country reinforced the need for:

- respect, including for Elders and youth
- representative structures that promote participation in decision-making
- a strong and protected cultural identity and recognition of land and water rights
- good healthcare and safe and secure homes
- quality education and meaningful work
- strong community organisations and control over data
- fair policing and justice
- an honest media that tells the truth
- long-term funding arrangements designed and controlled by communities.

Our people spoke clearly about what is required to uphold the rights, dignity and self-determination of First Peoples. They highlighted the minimum standards articulated in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the commitments under the *National Agreement on Closing the Gap* (the CTG National Agreement) and the importance of justice, good governance, accountability, cultural strength, community-led services, and safe and equitable systems.

They expressed concern about the lack of progress on both the implementation of the UNDRIP (adopted by the Australian Government in 2009) and the socio-economic targets and priority reforms committed to under the National Agreement (signed by all Australian governments in 2020).

Of critical concern to all communities engaged was:

- the clear and deliberate correlations between the assimilation and removal laws, policies and practices of the past and how they have transformed into contemporary laws, policies and practices that target and disproportionately impact Aboriginal and Torres Strait Islander families and communities
- the over-representation of Aboriginal and Torres Strait Islander people in custody, particularly among youth, emphasising that justice is not only about punishing for wrongdoing, but about righting wrongs
- the increasing numbers of Aboriginal and Torres Strait Islander people dying in custody and dying by suicide
- the overwhelming pervasiveness of structural and systemic discrimination and interpersonal racism directed towards and experienced by First Peoples.

First Peoples know what works for their communities and are doing their share of the heavy lifting when it comes to achieving improved outcomes for their communities. This is despite the volatility of the political and legislative operating environment and its impacts on:

- resourcing and regulation of service delivery
- opportunities to provide and sustain culturally responsive services
- the need to allocate resources to advocacy.

Aboriginal and Torres Strait Islander people have been telling governments what is required for generations. The problem is not a lack of awareness or evidence. It is a lack of political will.

Government compliance with Australia's international human rights commitments is fundamental. These commitments include obligations to First Peoples and their implementation should enjoy sustained bipartisan support.

While governments across jurisdictions are signing up to support improved outcomes, they are failing to deliver. Business-as-usual is not an option. Genuine partnership and power-sharing which centres culture, community and Country and enables structural transformation is critical if we are to achieve the outcomes we say we are all committed to.

National truth-telling, healing and establishing an environment where our young people – our next generations – are supported to grow into strong, proud leaders is key to breaking cycles of intergenerational harm. It is indispensable to reconciliation and to shifting to a space where we – First Peoples in partnership with Australian governments and the Australian people – are able to build intergenerational health and wellbeing.

Chapter 2 – A fair and just future for First Peoples

A fair and just future for First Peoples can only be achieved when:

- historical injustices are addressed in ways that ensure they are not repeated
- rights are accepted as inherent (not granted)
- transformation and systemic reform are grounded in strengths-based community-led approaches
- governments and institutions act with integrity, are accountable to the communities they serve and uphold their commitments.

This chapter sets out a conceptual and legal foundation for the report through a 'Blueprint' for realising a fair and just future for First Peoples (the Blueprint) which is aligned with Australia's international human rights obligations including UNDRIP and the CTG National Agreement.

The Blueprint presents a vision where First Peoples are strong, thriving and self-determining and one in which rights are protected, truth is told and difference is embraced and respected. This vision is reinforced by a logical approach to reform, articulated through a theory of change and distilled into a clear call to action.

The overarching goal of the Blueprint is to guide transformation of the relationship between First Peoples and the state – to take us beyond rhetoric towards the genuine shifts required to centre First Peoples and our rights in the development and implementation of policies that affect us.

Informed by First Peoples and grounded in established human rights principles, the Blueprint provides a coherent national framework and practical pathways for change aligned with the 5 interdependent priority areas outlined below:

1. ***Promoting the full enjoyment of rights by First Peoples*** – without enforceable protections, rights will continue to be denied. Australia must implement a National Human Rights Framework, including a Human Rights Act, the UNDRIP, and the National Anti-Racism Framework (NARF).
2. ***Fostering systemic integrity and accountability*** – systems and institutions must be re-designed to prevent harm, not merely react and respond to it. Independent oversight, Indigenous data sovereignty, fiscal accountability and compliance mechanisms are critical to ending systemic failure.
3. ***Increasing First Peoples participation*** – national representative structures and mechanisms that promote full participation in social, cultural, political and economic decisions, agreement-making and truth-telling are not optional – they are foundational to democratic legitimacy and rights realisation.
4. ***Assuring access to justice*** – the need for each of the CTG targets, including the goal of reducing over-representation of First Peoples in child protection, youth and criminal legal systems, is the predictable result of intergenerational discriminatory laws and practices. Governments must act to prevent harm, ensure culturally safe services, and take responsibility for violations of rights and those that die while in state care.
5. ***Rebuilding the village*** – building strong, self-determining communities requires sustained investment (by First Peoples and governments) in culture, good governance, just laws, respectful relationships, and healing.

A broader discussion on each of these priority areas is provided across the chapters of this report.

The Blueprint's theory of change demonstrates that failure in one of these areas undermines progress in all others

It reframes reform as a matter of structural transformation, rather than service delivery alone and emphasises that without embedding rights, accountability and integrity into mainstream law and institutions, progress will remain vulnerable to the whims of government and the political ideology of the day.

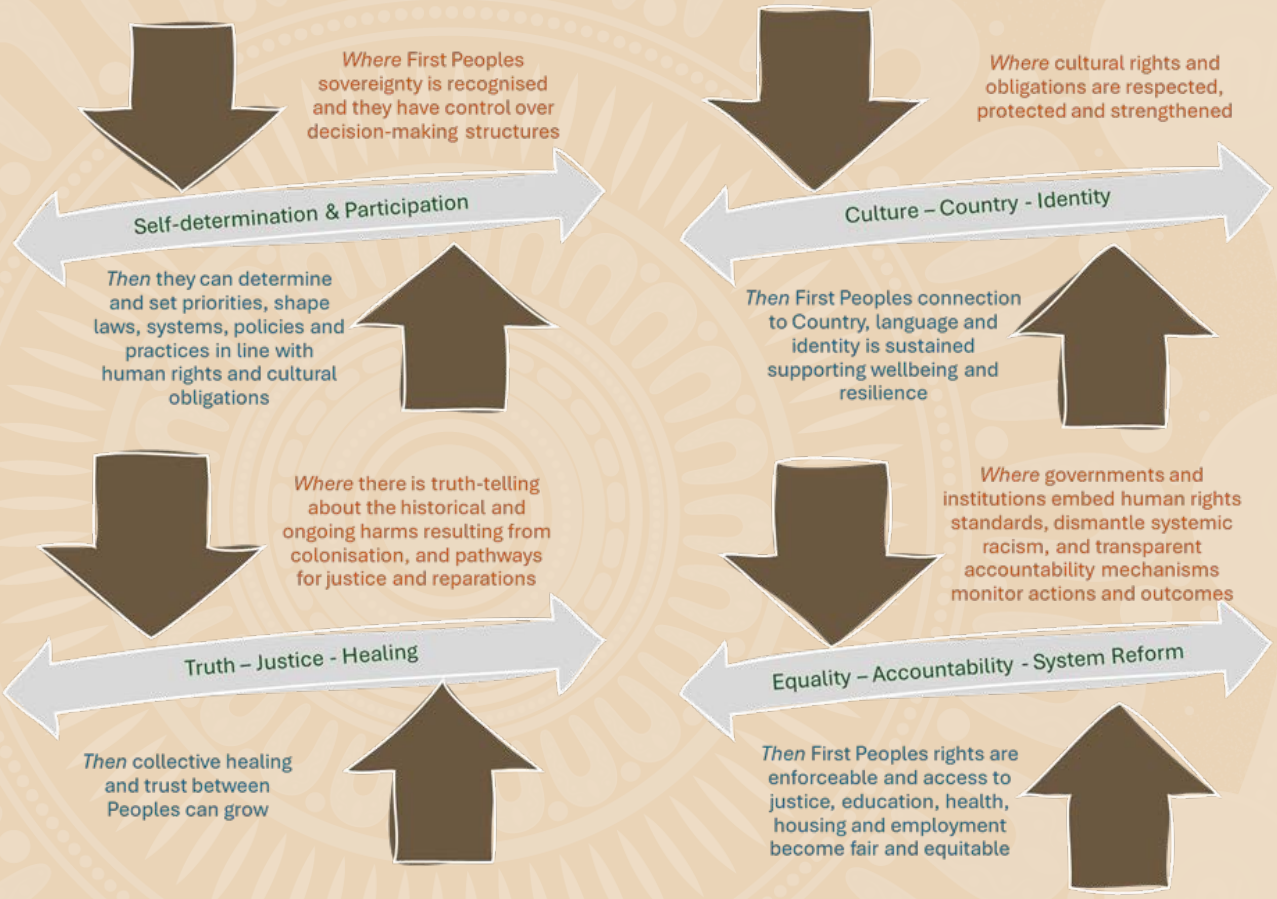


Figure ES.2: Theory of Change – A logical approach to reform

The CTG Priority Reforms are reinforced through interconnected domains of reform – structural, sectoral and enabling – that are underpinned by the foundational principles of truth, justice, self-determination and healing.

Structural reforms	Sectoral reforms	Enabling reforms
The foundational changes needed to embed systemic integrity and uphold human rights. They include establishing a federal Human Rights Framework, implementing UNDRIP, legislating a Participation Duty, creating a national representative mechanism and a Makarrata Commission, embedding fiscal self-government, and reforming native title and cultural heritage laws.	Urgent responses to injustices and inequities in law, policy, and service delivery. They include reforming youth justice, child protection, and the criminal legal system, strengthening land justice, supporting cultural revival and nation-building, shifting from punitive to preventative responses, and resourcing community-led solutions across health, housing, education, and employment.	The mechanisms that guarantee genuine participation, accountability, and self-determination. They include embedding free, prior and informed consent (FPIC), securing long-term and sustainable funding for Aboriginal community-controlled organisations, implementing Indigenous data sovereignty and independent oversight mechanisms, strengthening anti-racism frameworks, and supporting First Peoples' participation in international human rights and Indigenous fora.

Sustainable change that willfully delivers long-term solutions and transformative outcomes requires national leadership and enforceable accountability mechanisms that embed human rights standards and key existing frameworks such as the UNDRIP and the NARF in law, policy and practice.

The Blueprint issues a clear call to action – recognising that as Australians we all have a role to play in improving life outcomes for the most vulnerable in our communities and ensuring that no one is left behind:

- ***First Peoples*** – must drive the change we aspire to, asserting and exercising the rights we are entitled to, restoring cultural, social and collective foundations of First Peoples villages and actively participating in and informing decisions that affect us.
- ***Australian Governments*** - must move beyond rhetoric and genuinely commit to securing a concrete foundation for substantive rights-based reform. They must do this by dismantling systems that perpetuate harm, racism and exclusion, by genuinely promoting First Peoples empowerment, participation and self-determination and by enabling the creation of a shared future that embraces the ancient cultures of Australia's First Peoples as part of the national identity.
- ***Allies, Partners, Peak Bodies, Industry, Service Providers*** – must walk alongside and work in partnership with First Peoples – promoting dignity, cultural safety, equality and non-discrimination and acting with care, respect and integrity in our spaces.
- ***Non-Indigenous Australians*** – must be supported to engage in truth-telling and informed public dialogue that expands and deepens understanding of and respect for First Peoples, their cultures, histories and rights and builds support for collective commitment to justice, healing and respect for difference.

A fair and just future for First Peoples is not only necessary and possible – it is essential to the integrity of Australia's democracy. It affirms the standpoint that improving life outcomes for First Peoples will also improve outcomes for other vulnerable communities.

There is no question about the need for reform. The question is whether governments are prepared to meet their obligations. Acting now, with honesty, courage, and accountability offers a pathway to healing, trust and shared prosperity – for all Australians.

Chapter 3 – Increasing First Peoples participation

Participation is a prerequisite for democratic legitimacy and effective policy outcomes. This chapter examines the right of Aboriginal and Torres Strait Islander peoples to participate fully and freely in decisions affecting their lives, and highlights the ongoing absence of enduring, self-determined mechanisms to enable this.

The chapter reaffirms the importance of the three pillars of the Uluru Statement from the Heart – Voice, Treaty and Truth – and calls on the Australian Government to recommit to the intent of the statement. It calls for the establishment of a national framework for genuine participation through independent, adequately resourced representative structures and a Makarrata Commission to support truth-telling, agreement-making and education reform as mechanisms for restoring trust and legitimacy. It emphasises that political inclusion must be matched with economic empowerment if self-determination is to be realised.

The chapter considers the spectrum of participation – from parliamentary presence and advisory roles to partnership structures and representative bodies – and shows how these have too often been conditional, fragile, or government-controlled.

While an increase in political participation through representation in parliaments is evident, there is currently an absence of formal national structures that support collective engagement on the determination of priorities and solution-development to inform First Nations representation. Previous examples of structures fulfilling these functions include the Aboriginal and Torres Strait Islander Commission (ATSIC) and the National Congress of Australia's First Peoples.

The chapter identifies key barriers to effective participation. These include a lack of bipartisan political commitment to First Peoples engagement mechanisms, the absence of statutory authority or legal protections, political cycles overriding long-term objectives, and under-resourcing of First Peoples organisations and communities. The impact of these barriers is demonstrated in the lack of progress achieved towards the CTG targets.

For example, failure to address the disproportionate application of suspensions and exclusions of First Peoples students in the education system compromises the right to access education, has catastrophic impacts on the lives of those excluded individuals and their families, and undermines education targets to which Australian governments have made commitments.

The right to participate requires active, free, meaningful and accessible participation in decisions that impact on a person or group's human rights.

Participation enables the advancement of all human rights. It plays a crucial role in the promotion of democracy, the rule of law, social inclusion and economic development. It is essential for reducing inequalities and social conflict. It is also important for empowering individuals and groups and is one of the core elements of human rights-based approaches aimed at eliminating marginalisation and discrimination.[2]

The right to participate enables the right to self-determination. The collective right of Indigenous self-determination is protected in the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The UNDRIP also articulates this collective right. Its application must be free from any kind of discrimination and requires that States consult and cooperate in good faith with Indigenous Peoples.[3]

This chapter examines the existing arrangements in place to give effect to First Peoples' right to participate and proposes reform pathways to facilitate increased participation.

It finds that there is a lack of compliance with international standards and basic principles of participation afforded to other Australians.

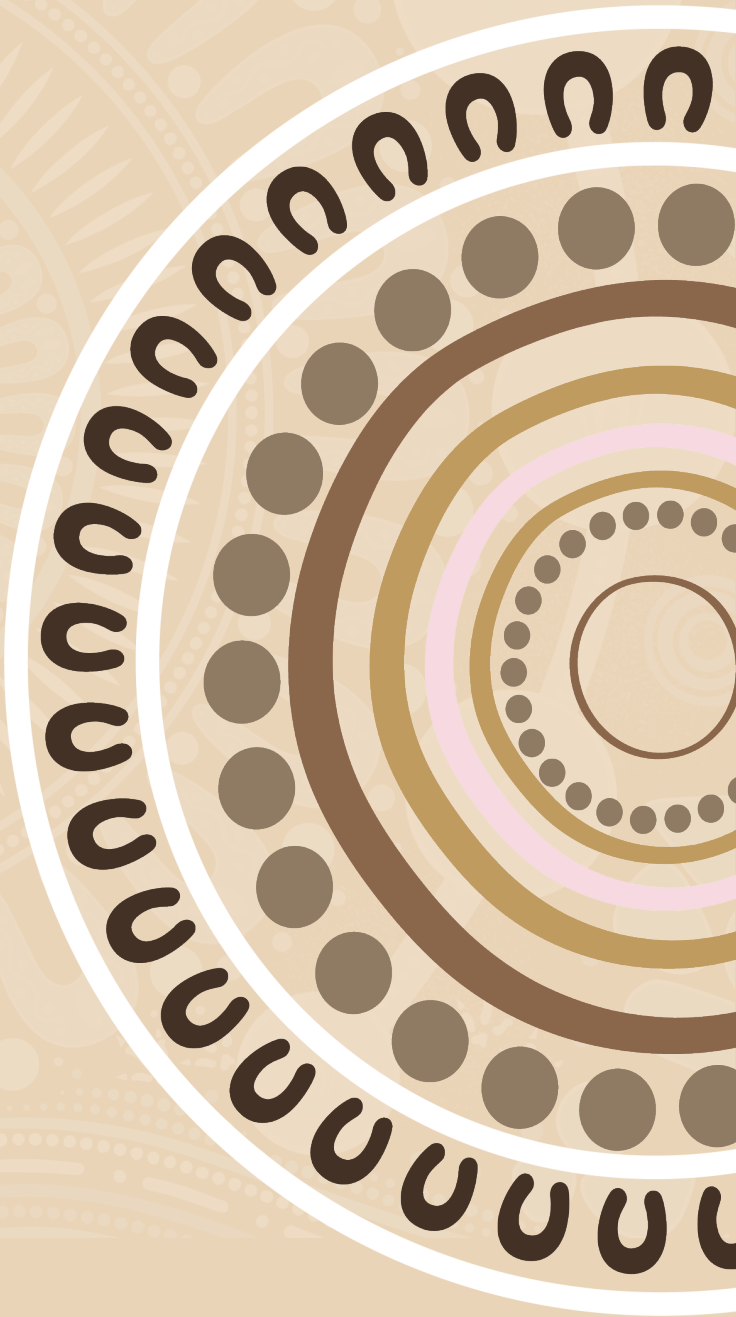
It identifies key enablers necessary to ensure the effective participation of First Peoples including:

- commitment to the international standard of free, prior and informed consent (FPIC)
- a legally mandated participation duty
- active promotion, sponsorship and facilitation of First Peoples engagement in key domestic and international fora relevant to Indigenous Peoples.

It demonstrates how political and media narratives promote mis- and disinformation creating division and disunity among Aboriginal and Torres Strait Islander people and further straining the relationship between First Peoples and the broader population.

Enabling and facilitating participation is not only beneficial to First Peoples and their communities locally. As demonstrated in key global debates concerning environmental protection and climate change, the ancient wisdom, traditional knowledge and connection to Country held by Indigenous peoples provides critical insights into how to mitigate impacts and establishing sustainable solutions.

This chapter also highlights the work of the Centre for Indigenous Peoples and Work and the Gari Yala survey. This work centers the perspectives and experiences of First Peoples in employment, examines the success of the Indigenous business sector and analyses barriers and risks to the success of key government policy initiatives – for example the impact of black cladding on the success of the Indigenous Procurement Policy. It also considers how the Murru waaruu approach can inform economic participation into the future.



Chapter 4 - Promoting the full enjoyment of rights by First Peoples

This chapter outlines the international human rights framework Australia has committed to and examines the limited progress that has been made in giving effect to these obligations. It situates Indigenous peoples' rights in the Australian context and considers the extent to which Aboriginal and Torres Strait Islander people are able to exercise and enjoy their rights.

> ***Human rights do not dispossess people. Human rights do not marginalise people. Human rights do not cause poverty. Human rights do not cause life expectancy gaps. It is the denial of rights that is the largest contributor to these things.[4]- Former Social Justice Commissioner, Professor Mick Dodson AM***

Australia prides itself on being a founding member of the United Nations and a human rights defender on the international stage. It has ratified core human rights treaties and adopted the UNDRIP in 2009. However, in the absence of a national human rights framework and legislation to give these commitments effect, Aboriginal and Torres Strait Islander peoples experience disproportional levels of harm, inconsistent recognition of rights across jurisdictions, and limited access to remedies when rights are breached.

The chapter demonstrates that where protections do exist, they are fragile and vulnerable to parliamentary override. It highlights how the legacy of colonisation, discriminatory laws and the failure to incorporate international standards into domestic law and policy has underpinned and compounded a pattern of ongoing breaches of First Peoples' rights.

The report discusses Australia's failure to reckon with its national identity – tracking through developments from the rise and fall of self-determination policy from the 1970s to 2000s through to the failed 2023 Voice to Parliament Referendum and increased racism experienced by First Peoples.

The report emphasises that although currently neglected, the international human rights framework provides a pathway to remedy First Peoples inequality. Obligations derived from core treaties Australia has ratified are reinforced by the UNDRIP supporting the recognition and realisation of First Peoples' rights to:

- Self-determination
- Participation in decision-making, underpinned by FPIC and good faith
- Respect for and protection of culture
- Equality and non-discrimination.

The ongoing absence of domestic laws and policies to codify and enforce Australia's international human rights obligations undermine:

- the representative and self-determining participation of First Peoples (covered in Chapter 3: Increasing First Peoples participation)
- First Peoples' access to justice through the full realisation of individual and collective rights (covered in Chapter 7: Justice for First Peoples and Chapter 8 – Land Justice)
- the integrity of Australia's human rights commitments and the ability for citizens to uphold their rights (covered in Chapter 5: Fostering systemic integrity and accountability)
- the capacity for First Peoples to heal and engage in the world on their own terms (covered in Chapter 6: Rebuilding the village).

As of January 2026, 234 of 1,122 recommendations provided by United Nations Member States through the 5-yearly Universal Periodic Review (UPR) process (which scrutinises Australia's human rights performance) specifically relate or refer to Aboriginal and Torres Strait Islander peoples. They focus on the need to:

- promote constitutional recognition of First Peoples
- address racism and discrimination
- improve protections for women and children exposed to violence
- protect the human rights of children more generally (including, for example, by raising the age of criminal responsibility).

Royal Commissions and national inquiries have been conducted to remedy significant human rights breaches. Governments have undertaken parliamentary inquiries that seek to provide advice on progressing the implementation of international obligations.

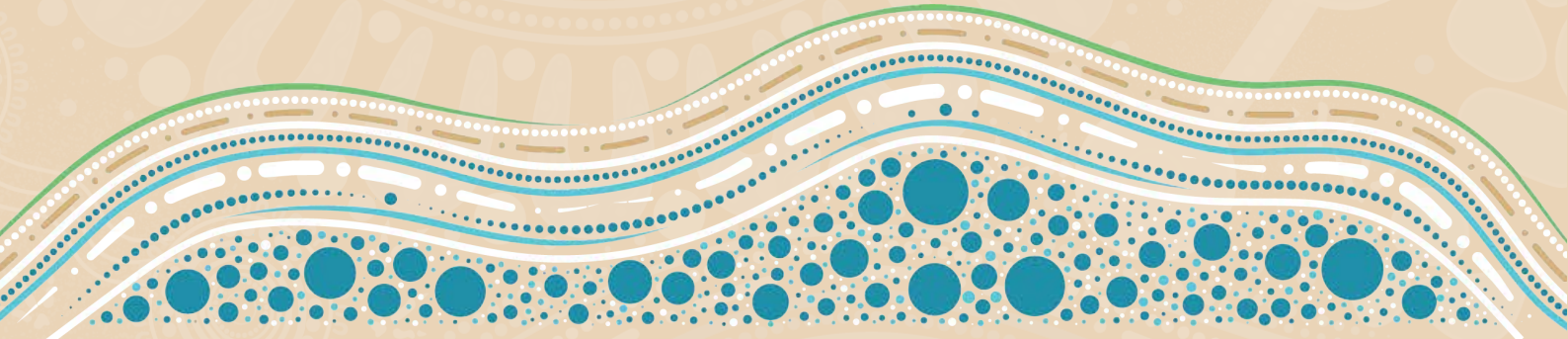
This includes the Parliamentary Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into application of UNDRIP in Australia which reported in November 2023, and the Joint Committee on Human Rights inquiry into Australia's Human Rights Framework which reported in May 2024. Both recommended reforms necessary to improve human rights protections.

Yet these recommendations have not been responded to nor actioned, and compliance with Australia's international human rights obligations remains critically unsatisfactory.

The challenge for the Australian Parliament is to determine how these rights should be enjoyed and made meaningful for Aboriginal and Torres Islander peoples within the political and legal systems of the Australian Nation State. Importantly, the participation of First Peoples is both necessary and integral to the way governments respond to the application of the rights articulated in UNDRIP.[5]

The Australian Human Rights Commission has been advocating for a number of reforms to improve respect for human rights in Australia for all Australians. This includes through the *Free and Equal* project encouraging the revitalisation of Australia's commitment to human rights.

Consistent with this advocacy, this chapter calls for a federal Human Rights Act, full implementation of the UNDRIP and greater support for Indigenous participation in the United Nations system, emphasising that without substantive reform, Australia cannot meet its human rights obligations nor close the gap in outcomes for First Peoples.



Chapter 5 – Fostering systemic integrity and accountability

This chapter considers the principle of systemic integrity – the alignment of words and actions across governments – as the standard by which accountability is measured, tested and enforced.

Systemic accountability manifests in the frameworks and practices through which governments are answerable for the exercise of their power and the consequences that follow when obligations are not met.

Fostering systemic integrity and accountability provides assurance to citizens that government and other public institutions act in accordance with agreed principles and create the conditions through which trust and legitimacy are built.

Both integrity and accountability are necessary to drive lasting change. They are conditions under which Aboriginal and Torres Strait Islander peoples' rights can be realised in practice.

However, genuine accountability requires more than oversight of government processes. It also depends on who controls the information upon which accountability is based. It requires community access to information and the capacity to be fully informed when making decisions. Calls for Indigenous data sovereignty highlight that when governments retain authority over the collection, interpretation and release of data, they determine not only what is measured but whose perspectives count.

This chapter finds that while governments frequently commit to change, they do so without creating the systems necessary to deliver it, which undermines trust, accountability and critical reform initiatives.

This chapter calls on the Australian Government to foster systemic integrity and accountability by ensuring that all Australian governments are compliant with Australia's international human rights obligations and by establishing:

- transparent needs-based fiscal arrangements that deliver on Closing the Gap commitments and community priorities
- binding data-sharing and governance agreements informed by First Peoples.

This chapter examines the long history of First Peoples' calls for recognition, partnership, and self-determination. It highlights the persistent lack of systemic integrity and accountability reflected in the failure of governments to translate commitments into structural reform and improved outcomes.

Australia has seen some important steps forward – constitutional change in 1967, the passage of the *Racial Discrimination Act 1975* (Cth) and the *Native Title Act 1993* (Cth), the National Apology to the Stolen Generations in 2008, the adoption of the UNDRIP in 2009 and the 2020 CTG National Agreement. However, in effect, they have delivered recognition without lasting reform, promises without delivery and commitments without mechanisms to guarantee compliance.

Further, communities most often bear the burden of compliance, with limited reciprocal accountability required or demonstrated by government against their obligations. This chapter demonstrates that while Aboriginal and Torres Strait Islander organisations are subject to extensive reporting, evaluation and oversight requirements, government performance is far less scrutinised.

For too long, governments have commissioned inquiries, received reports and made commitments without the follow-through required to build trust and deliver justice. Weak accountability mechanisms allow governments to defer, dilute or disregard obligations and evidence-based recommendations without consequence.

There is no more prominent an example of this than in the failure to fully implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) handed down 35 years ago.

Without governments holding themselves to the same standards of integrity and accountability that they impose on communities and organisations, commitments will continue to be undermined.

Systemic integrity in Indigenous Affairs cannot be understood without reference to governance. Enabling governance is not about relinquishing responsibility but about reframing the role of government: from one that directs and controls to one that actively supports, safeguards and strengthens First Peoples' authority.

This was captured in the *2012 Social Justice Report*, which highlighted the importance of good governance in creating an enabling environment that promotes systemic integrity and accountability. It identified three dimensions of governance that must all function well for systemic success.

Figure ES.3: Key elements to ensure good governance and systemic integrity

- ***Community governance*** – communities are supported to exercise cultural authority and self-determination.
- ***Organisational governance*** – ACCOs operate with legitimacy within their communities, are empowered to meet the needs of the community and have the capabilities needed to meet the requirements of the broader governance environment.
- ***Governance of government*** – governments act with consistency, coherence and transparency, create an enabling environment for communities and organisations to thrive and are accountable to Aboriginal and Torres Strait Islander peoples.

As highlighted in the reviews of the CTG National Agreement conducted by the Australian Productivity Commission and the Jumbunna Institute for Indigenous Education and Research, public sector accountability is severely lacking. The federated system of government – where responsibility for outcomes is handballed between the federal government and state, territory and local governments –creates conflict, avoidance and ultimately the denial of rights.

The chapter identifies key elements necessary to enable Aboriginal and Torres Strait Islander governance and foster broader systemic integrity and accountability. These include increased public sector accountability, embedding Indigenous data sovereignty into governance systems and addressing the ritualistic use of rights language.

The chapter calls for significant reform and concludes that enabling good governance through systemic integrity requires governments to hold themselves to the same standards of transparency and accountability demanded of communities.

Chapter 6 – Rebuilding the village

As evidenced in this chapter, peoples flourish when they live according to their own cultural worldviews.

In Australia, colonisation, systemic racism and settler-colonial governance has fractured community cohesion, undermined Elders, and displaced Indigenous Law and identity.

This chapter outlines an approach to 'rebuilding the village' that prioritises the renewal and ongoing maintenance of First Peoples cultural authority, kinship and collective responsibility as the foundation for strong, self-determining communities.

It articulates how the rights of Indigenous peoples – including self-determination, participation in decision-making, non-discrimination and respect for and protection of culture – are fundamental to progressing this goal.

Grounded in key principles embedded through First Peoples Law and legacy, it reinforces our status as Aboriginal and Torres Strait Islander peoples who have never ceded Country or sovereignty – as rights holders whose rights exist regardless of whether governments acknowledge or respect them.

It builds on our spirit of collectivism – our ways of knowing, being and doing – based on the presumption that every member of the family, clan and nation has a role to play in supporting both individual wellbeing and collective good.

The chapter sets out pathways for rebuilding, from cultural revival, language revitalisation, restorative justice, and Indigenous nation building to truth-telling, international advocacy and respectful allyship. It argues that rebuilding requires both internal healing and external accountability and concludes that restoring the village is an intergenerational responsibility: a legacy to honour ancestors and a foundation for future generations to flourish.

This chapter situates First Peoples in the context of modern Australia – a relatively new nation that, through the colonial process, has sought to assimilate and integrate those who have occupied and cared for these lands for over 65,000 years.

It considers the challenges this brings to individuals, to communities and to Aboriginal and Torres Strait Islander peoples collectively. It asks key questions necessary to build understanding of our historical and contemporary lived experience and of the immediate and future necessity that we effectively navigate two worlds without losing our culture and identity:

- What will it take for village rebuilding to succeed?
- How do we strengthen and recognise cultural authority in decision-making across our communities and clarify which groups have responsibility for particular issues?
- How do we balance the roles and responsibilities of different community members, including Traditional Owners and those who have long-standing connections through residence and relationships?
- What dispute mechanisms are needed to deal with these matters that largely arise because of external interference yet must be resolved to avoid conflict and encourage harmony?
- How can the harm caused by disconnection and contested identity be addressed?

- What processes are appropriate for bringing people home? What responsibilities come with reconnecting to community, both for those trying to reconnect and those supporting reconnection?
- How might individuals who have experienced disconnection learn about our relational systems and our Law?

This chapter argues that the collective work of truth-telling is vital in facilitating new forms of social relationship within First Peoples communities and between First Peoples and the broader Australian population. Truth is the antidote which can address the pervasive problems of racism and cultural ignorance that negatively impact our peoples and have such a destructive effect on the fabric of Australian life.

It also considers how First Peoples are actively engaging in the global Indigenous village and how connection to and participation in global movements has strengthened both advocacy and the capacity for healing.

The primary focus and responsibility for rebuilding the village lies with Aboriginal and Torres Strait Islander people. This chapter outlines the inter-related conditions, grounded in collective human rights, necessary to achieve this:

- self-determination in accordance with our cultural ways of being
- rebuilding connection to Country, to each other and to community
- managing conflict through Indigenous Law and conceptions of justice
- Indigenous nation building to reclaim self-governance (necessary for enacting self-determination).

This chapter also considers the role that governments and non-Indigenous people need to play to ensure an enabling environment that can support thriving villages.

It considers the role of allies in combatting racism and reframing the relationship, providing examples of innovative engagement that plays a vital role in setting social standards that model anti-racism, call out prejudice and set examples that influence the broader community to embrace respect and inclusion.

It calls on all Australian governments to prioritise and support community-led initiatives essential to rebuilding strong and thriving First Peoples villages.

Chapter 7 – Justice for First Peoples

This chapter conceptualises 'justice' in its full and positive sense as the moral and ethical compass across all policy areas. Access to justice requires an ability to:

...seek and obtain remedies for wrongs through institutions of justice, formal or informal, in conformity with human rights standards.[6]

The chapter is framed with an understanding of how the state has sanctioned the dismantling of Indigenous governance and cultural authority, legal systems, kinship structures and connections to Country, culture, language, family and community.[7] It discusses how denial and marginalisation from equal access to justice and enjoyment of human rights – including the right to self-determination – continues to impact First Peoples across all aspects of life.

Within this framing, the chapter highlights the success of Aboriginal and Torres Strait Islander-led initiatives, which demonstrates the efficacy of approaches which are designed and governed by our communities.[8] It argues that, given we know these approaches 'work', the right to equality and non-discrimination demands that they be the approaches that government invest in.

The chapter discusses a Human Rights Act as an effective way to embed human rights accountability across government. A Human Rights Act would prevent breaches of rights and foster a culture of respecting rights. It would establish a positive duty for governments to uphold rights, and provide all people in Australia – including First Peoples – with opportunities to seek remedies when their rights are breached, ensuring that rights are enforceable.

This chapter also explores the deep and ongoing injustices experienced by Aboriginal and Torres Strait Islander people in the criminal justice system, including over-policing, mass incarceration, child removal, and deaths in custody. It shows how these are rooted in colonisation, systemic racism, and the failure of governments to act on landmark inquiries such as the Royal Commission into Aboriginal Deaths in Custody and the *Bringing Them Home* report.

Focus is drawn to the crisis levels of exposure of Aboriginal and Torres Strait Islander people to the criminal justice system and its drivers. In 2023, researchers found 8 'social determinants of justice' that increase the risk of incarceration:

- having been in out-of-home (foster) care
- receiving a poor school education
- being Indigenous
- having early contact with police
- having unsupported mental health and cognitive disability
- engaging in problematic alcohol and other drug use
- experiencing homelessness or unstable housing
- coming from or living in a disadvantaged location.[9]

The chapter discusses how historical and contemporary child removal policies produce intergenerational, individual and collective trauma for families and communities.[10] It highlights the 'care-to-prison pipeline' that exists between state child removal and increased likelihood of exposure to the justice system and incarceration.[11]

Too often, welfare agencies interpret issues such as overcrowded housing, lack of access to nutritious food, inadequate clothing or missed medical appointments as neglect. In reality, these are the predictable consequences of systemic poverty and structural disadvantage. This type of surveillance and intervention into First Peoples families by child protection authorities increases the risk of child removal and of those children becoming incarcerated during their lifetimes.

Also discussed is the 'largely hidden national crisis'[12] that is the over-representation of Aboriginal and Torres Strait Islander people with cognitive disability in the criminal justice system. It also highlights the experience of Aboriginal and Torres Strait Islander LGBTIQA+ people in the justice system, who are over-represented in prison populations and experience disproportionately high levels of discrimination, violence and trauma.[13]

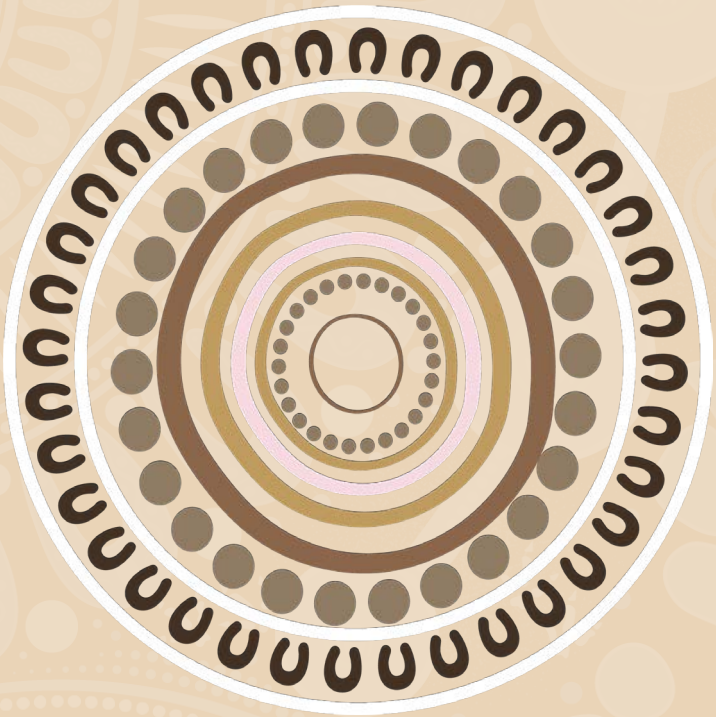
Significant human rights concerns are expressed in this chapter regarding 'youth justice' policies across Australia which have resulted in the hyper-incarceration of Aboriginal and Torres Strait Islander children and young people.

Detention is repeatedly found to damage children's mental health and increase the likelihood of further offending and disadvantage.[14] Despite this evidence, most jurisdictions have failed to raise the age of criminal responsibility above the age of 10. Some have introduced retrograde 'adult crime, adult time' measures in direct breach of Australia's human rights obligations.

Research highlights that once children enter the justice system, they may face further breaches of their rights and that existing conditions of detention increase their exposure to harm.[15] In several jurisdictions, these conditions include being held for extended periods in police watchhouses with adult offenders[16] and other adult facilities. In the NT they also include the re-introduction of spit hoods to restrain young people and children in prisons, overturning a recent ban on their use.

Despite Australia's ratification of the Optional Protocol to the Convention Against Torture (OPCAT), there are no effective independent oversight mechanisms for places of detention. The chapter calls for Australian jurisdictions to make good on its commitment to put national preventative mechanisms (NPMs) in place as a matter of urgency. It also highlights the need for a national independent monitoring mechanism to ensure transparency and accountability in relation to deaths in custody and the implementation of related reform commitments.

The chapter identifies the need for national leadership which promotes evidence-based reform and a shift in focus to investing in evidence-based alternatives to incarceration that foster safety, wellbeing, culture, belonging and opportunity (especially for our children and young people). This includes expanding existing approaches like Justice Reinvestment. It also includes incentivising state and territory governments to embed international human rights standards within justice systems.



Chapter 8 – Land justice

This chapter addresses land justice, highlighting how weaknesses in the current system continue to undermine rights to lands and waters, and discusses how fragmented cultural heritage regimes leave sacred sites vulnerable and erode First Peoples' ability to safeguard their cultural heritage. It also provides an overview of recent developments and outcomes in native title between 1 July 2024 and 30 June 2025.

This chapter describes how, for First Peoples, justice is inseparable from Country. Country is the foundation of identity, Law, governance, culture and spirituality. Connection to Country underpins social and emotional wellbeing and shapes kinship, responsibilities and collective identity. Connection to Country is not peripheral but central to health and collective flourishing.

International human rights standards affirm the relationality between Law and Country. The UNDRIP recognises First Peoples' rights to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, territories and waters. It also affirms First Peoples' right to uphold their responsibilities to future generations.

The chapter emphasises that failure to secure land justice represents a breach of fundamental human rights. Further, breaches of rights associated with land justice impact our access to justice more broadly. Without land justice, the enjoyment of other rights – including health, housing, education and the practice of culture – is undermined. Recognition and restoration of land rights provide a pathway to healing, cultural maintenance, sustainability and empowerment.

This chapter sets out how current legal frameworks fall short of meeting the international human rights obligations of Australia in relation to land justice.

Although native title has delivered some meaningful recognition of rights for some communities and some positive practical outcomes, many argue that native title does not amount to, nor deliver, 'land rights'[17] and that native title:

- is limited in scope
- is subject to extinguishment
- provides inadequate or no compensation, with the embedded access to compensation only activated recently through the Timber Creek High Court decision
- is undermined as a practical rights-delivery system for Aboriginal and Torres Strait Islander peoples
- has never been properly resourced and relies on systemic subsidisation by First Nations groups and individuals' unpaid labour.

This chapter considers legislative reforms across connected regimes such as native title, land rights and cultural heritage and highlights the ongoing challenges experienced by Aboriginal and Torres Strait Islander people in engaging with the native title system. It demonstrates the need to rethink the current implementation of laws and policies designed to 'rectify the consequences of past injustices' so Aboriginal and Torres Strait Islander peoples:

...receive the full recognition and status within the Australian nation to which history, their prior rights and interests and their rich and diverse culture fully entitle them to aspire.[18]

The chapter builds on three decades of Native Title Reports and recommendations from the office of the Aboriginal and Torres Strait Islander Social Justice Commissioner. It reiterates wide-ranging and long-term concerns in relation to:

- a lack of genuine free, prior and informed consent in the design and operation of the *Native Title Act 1993* (Cth)
- the onerous burden of proof and connection requirements
- the power imbalances built into the system which disadvantage native title holders
- the lack of meaningful, robust and enforceable procedural rights within the system
- the trauma and conflict that it has contributed to in our communities
- the lack of positive practical impact in reviving the most fulsome substantive rights possible.

This chapter also outlines determination and Indigenous Land Use Agreement (ILUA) statistics and details regarding Future Act Applications. It also includes mention of some key recent case law, including domestic case law on compensation and United Nations Human Rights Committee (UNHRC) case law on failings in procedural law and remedies within the Australian native title system.

Consideration is given to the Australian Law Reform Commission (ALRC) review into the future acts regime. The Commission supports proposals suggested by the ALRC, including to:

- bring the *Native Title Act 1993* (Cth) into line with its original intent and deliver actual land justice
- properly resource and support Prescribed Bodies Corporate (PBCs) with independent funding in perpetuity, including sufficient funding for the community healing and empowerment roles that PBCs are called on to fulfill
- introduce meaningful consequences for non-compliance or bad faith acting by third parties
- properly resource the National Native Title Tribunal (NNTT) to appropriately support Aboriginal and Torres Strait Islander peoples engaging in the native title system
- harmonise existing cultural heritage and native title legislative regimes to manage the impact of future acts and align those systems with environmental protection and biodiversity conservation regimes.

This chapter also discusses climate change as a further layer of complexity in relation to native title, cultural heritage and land management and human rights more generally. Indigenous peoples are disproportionately affected by climate change with heightened risks of dispossession, cultural loss and marginalisation.[19]

The chapter references the 2022 UNHRC decision which found that Australia violated its positive obligation to take appropriate action on climate change, to the detriment of Torres Strait Islanders.[20] It also notes the Australian Government's response, which was to not accept the recommendation to award compensation to the claimants; and the subsequent unsuccessful litigation attempting to establish a duty of care on the Commonwealth Government to protect its citizens from the impacts of climate change.[21]

Recommendations

The 25 recommendations set out below respond directly to the voices heard through the *Informing the Agenda* project and to the evidence gathered across each chapter. They are the practical expression of the comprehensive change agenda provided through the Blueprint for achieving a fair and just future for First Peoples set out in Chapter 2.

Where the Blueprint identifies the overarching goals, pillars and priority reform areas for a fair and just future, the recommendations provide the mechanisms, legislative reforms, and accountability structures needed to implement them. In this way, the recommendations translate vision into action, ensuring that the human rights-based framework outlined in the Blueprint is carried through into specific reforms across structural, sectoral, and enabling domains.

Collectively, these recommendations provide a roadmap for governments to move beyond rhetoric, to act with integrity and to ensure the strength, courage and determination of First Peoples is met with structural reform and genuine accountability.

Together, they address the protection and promotion of human rights, the creation of stronger systems of accountability, the need to embed First Peoples' participation in all decision-making, urgent reforms to justice and the rebuilding of cultural, social and economic foundations in community.

While some recommendations call for immediate action to remedy longstanding failures – such as establishing independent oversight of deaths in custody and raising the age of criminal responsibility – others lay the groundwork for long-term transformation.

These include legislative reform to embed UNDRIP in domestic law, needs-based funding arrangements and sustained investment in cultural revitalisation.

The full set of recommendations, organised by chapter, is outlined below.

Recommendations

Chapter 2 – A fair and just future for First Peoples

Recommendations
1. All Australian governments should ensure that their laws, policies and practices are consistent with the *Blueprint for a fair and just future for First Peoples*.

Chapter 3 - Increasing First Peoples' participation

Recommendations

2. The Australian Government should work in partnership with First Peoples to establish a national representative mechanism. The mechanism should be independent from government, based on the Paris Principles model[22] and have a sustainable source of funding based on domestic 'future fund' models.[23]
3. The Australian Government should work in partnership with First Peoples to establish a national Makarrata Commission with the mandate and powers to conduct a national truth-telling process and to design a national agreement-making process.
4. The Australian Government should fund public awareness and educational activities to run in parallel to the Makarrata Commission's national truth-telling process. These activities should build understanding of First Peoples' human rights and the ongoing consequences of colonisation in Australia.
5. All Australian governments should ensure Aboriginal and Torres Strait Islander children and young people can fully participate in education by embedding Indigenous designed, culturally safe, and personalised learning models into schooling systems. This includes resourcing Aboriginal and Torres Strait Islander community-controlled education organisations and Indigenous-led schools and ending disproportionate use of exclusionary practices such as suspension and expulsion.
6. State and territory governments which do not have reparation schemes for historic practices of stolen wages in place should take urgent action to establish them.

Chapter 4 - Promoting the full enjoyment of rights

Recommendations

7. The Australian Government should implement the recommendations of the following major reports within this term of Parliament:
   - 'Revitalising Australia's commitment to human rights: Final report of the Free and Equal project'
   - 'Inquiry into Australia's Human Rights Framework' by the Parliamentary Joint Committee on Human Rights
   - 'Report of the Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia' by the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs.

   Key actions recommended in these reports include the introduction of a national human rights framework that includes a national Human Rights Act, national human rights education plan, and a national implementation plan for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
8. The Australian Government should support the independent and self-determined participation of Aboriginal and Torres Strait Islander people in domestic and international human rights fora, including through an appropriate funding allocation to facilitate the Indigenous Human Rights Network. This should include investment in training and mentoring Aboriginal and Torres Strait Islander young people

to engage in international advocacy, ensuring intergenerational continuity of leadership and capacity

Chapter 5 - Fostering systemic integrity and accountability

Recommendations

9. The Australian Government should provide the Aboriginal and Torres Strait Islander Social Justice Commissioner with formal observer status within Closing the Gap Partnership structures.
10. The Australian Government should work in partnership with First Peoples to design and establish a national framework for expenditure on services for Indigenous communities. This should include replacing short-term funding with needs-based formulas that provide Aboriginal and Torres Strait Islander community-controlled organisations with direct, long-term, sustainable funding (including for monitoring and evaluation capacity).
11. The Australian Government should carry out transparent, independent financial and performance audits of Indigenous-specific and mainstream expenditure to ensure spending delivers on Closing the Gap commitments and community priorities.
12. The Australian Government should implement binding data-sharing and governance agreements across all levels of government that uphold Indigenous data sovereignty principles. The agreements should ensure accountability to Aboriginal and Torres Strait Islander communities through measures informed by, and agreed to by, communities themselves.
13. Australian governments should incorporate into their Cabinet and Parliamentary Handbooks a requirement that all legislative, policy and program proposals align with Australia's human rights obligations to First Peoples, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
14. The Australian Government should accept and implement the National Anti-Racism Framework (NARF).
15. The Australian Government should build rights-based performance requirements into funding agreements with states and territories. Performance indicators should align with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), implementation of the Closing the Gap priority reforms and progress against the Closing the Gap socio-economic targets. Jurisdictional performance reporting should be subject to rigorous independent monitoring and evaluation (in accordance with clause 67 of the National Agreement on Closing the Gap).

Chapter 6 - Rebuilding the village

Recommendations

16. All Australian governments should prioritise sustained and long-term funding to support community-led initiatives essential to rebuilding strong and thriving First Peoples communities. These initiatives include:
    - practices that restore cultural authority and promote nation-building, good governance and community-facing accountability
    - restorative justice approaches that promote dispute resolution and peacemaking
    - language revival programs
    - cultural camps and healing forums

- intergenerational learning on Country and knowledge transfer and mentoring.

Chapter 7 – Justice for First Peoples

Recommendations

17. The Australian Government should enable access to Medicare and Pharmaceutical Benefits Scheme-subsidised medicines for people in custody.
18. The Australian Government should provide national leadership on the establishment and implementation of appropriate standards and protections concerning child safety and youth justice interventions, through:
    a. expediting the full implementation of the Optional Protocol to the Convention Against Torture (OPCAT), including through legislative reform to establish and give effect to enforceable national standards for the treatment of people in detention
    b. implementing the recommendations of *Help Way Earlier!* including amending the *Crimes Act 1914* (Cth) to set the age of criminal responsibility at a minimum of 14 years, ban the use of solitary confinement for children and implement nationally consistent monitoring of child detention facilities
    c. sustained needs-based investment in community-led prevention and early intervention programs operated by Aboriginal and Torres Strait Islander community-controlled organisations to address the structural drivers of First Peoples' over-representation in the justice system
    d. establishing and resourcing an independent oversight function to monitor, report on and encourage compliance with Royal Commission into Aboriginal Deaths in Custody recommendations and Closing the Gap commitments.
19. The Australian Government should refer to the Australian Law Reform Commission (ALRC) an inquiry into the conduct of police and coronial investigations into Indigenous deaths and critical incidents in custody across Australia to identify a best practice approach. As part of the inquiry, the ALRC should consider:
    a. best practice international approaches to investigations into Indigenous deaths and critical incidents in custody
    b. whether the establishment of national minimum standards for investigations of Indigenous deaths and critical incidents in custody would be beneficial and the content of such standards, drawing on international guidance such as the International Committee of the Red Cross 'Guidelines for Investigating Deaths in Custody'
    c. whether and, if so, what, legislative, policy and practice reforms are necessary to ensure best practice police and coronial investigations that are compliant with any proposed national minimum standards and Australia's international human rights obligations
    d. the benefits and feasibility of establishing a national, harmonised approach, including the establishment of a national investigatory mechanism; and the options for federal authorities to be tasked with conducting independent investigations, particularly where a state or territory police or custodial officer has been involved in the death or critical incident

e. appropriate independent complaint processes for the families of victims of deaths in custody.

20. The Australian Minister for Communications should work in partnership with First Nations Media Australia, the Australian Communications and Media Authority, the Australian Press Council, the Media, Entertainment and Arts Alliance and the e-Safety Commissioner to develop and introduce measures to strengthen media accountability and promote accurate reporting of youth justice issues, including:

    a. a dedicated Youth Justice Media Code of Practice

    b. mandatory training on compliance with the Youth Justice Media Code of Practice for journalists covering youth justice stories.

Chapter 8 – Land justice

Recommendations

21. The Australian Government should amend the *Native Title Act 1993* to ensure consistency with Australia's international human rights obligations and address longstanding concerns about the Act, including by:

    a. establishing a presumption of continuity in the acknowledgment and observance of traditional Law and custom of the relevant native title claimant society

    b. shifting the burden of proof to the respondent once the native title applicant has met the relevant threshold requirements in the registration test

    c. extending the amendments allowing historical extinguishment of native title to be disregarded to marine parks and reserves

    d. accounting for the impacts that future acts may have on native title rights and interests in areas outside of the immediate footprint of a future act, including waterways and rights and interests associated with water

    e. strengthening procedural rights, including by:

        i. reviewing time limits under the right to negotiate

        ii. shifting the onus of proof onto the proponents of development.

22. The Australian Government should ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

23. The Australian Government should ensure that Prescribed Bodies Corporate (PBCs) are appropriately supported to meet their responsibilities by:

    a. allocating sufficient ongoing funding to an independent PBC Operating Fund to guarantee PBC funding in perpetuity

    b. providing resources to enable PBCs to fulfill the community healing and empowerment roles needed to address the harms caused by the native title system.

24. The Australian Government should establish a specifically resourced First Peoples advisory group to advise on reform and support reform implementation with respect to the *Native Title Act 1993* and intersecting legislative regimes.

25. The Australian Government should strengthen cultural heritage protections by:

    a. amending federal cultural heritage and environmental protection and biodiversity conservation legislation to set national minimum standards which are consistent with Australia's international human rights obligations, including through:

        i. enshrining the principle of self-determination and enabling Traditional Owners to determine

which areas and values are significant and worthy of protection

ii. enshrining the principle of free, prior and informed consent (FPIC) and enabling the appeal and overturning of decisions where this standard is not upheld

iii. prohibiting agreements that restrict Traditional Owners from publicly raising concerns about heritage protection or exercising their rights under heritage legislation

iv. establishing enforceable and meaningful penalties for breaches

b. commissioning, in collaboration with state and territory governments, a national mapping and truth-telling project in relation to cultural heritage that has been damaged or destroyed.

Endnotes

1 J Oscar AO, 'Wanjawurru: Reimagining Australia in 30 years', *Meanjiin,* Summer 2025, < https://meanjin.com.au/meanjin-paper/wanjawurru-reimagining-australia-in-30-years/#:~:text=It%20understands%20that%20the%20work,justice%20and%20peacebuilding%20are%20inseparable.>.

2 United Nations Office of the High Commissioner for Human Rights, *Guidelines for States on the effective implementation of the right to participate in public affairs* (2018): 4 <https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf>.

3 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007), [Arts 18–19]<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

4 M Dodson and Amnesty International, 'United Nations Declaration on the Rights of Indigenous Peoples', Amnesty International 2009, 3 <https://www.amnesty.org.au/wp-content/uploads/2017/01/Declaration-Indigenous-Peoples.pdf>.

5 Parliament of Australia (PA), *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, PA, Commonwealth of Australia, November 2023: ix. <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

6 United Nations Human Rights Council and Expert Mechanism on the Rights of Indigenous Peoples, *Access to justice in the promotion and protection of the rights of Indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children youth, and persons with disabilities,* UN Doc A/HRC/27/65 (7 August 2014): 3-4 <https://digitallibrary.un.org/record/778006?ln=en&v=pdf>.

7 Yoorrook Justice Commission, *Yoorrook For Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 4 September 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>; I Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law*, 1st edn, Routledge, London, 2014 <https://doi.org/10.4324/9781315858999>; K Menzies, 'Understanding the Australian Aboriginal experience of collective, historical and intergenerational trauma', *International Social Work*, 2019, 62(6): 1522–1534 <https://doi.org/10.1177/0020872819870585>; Human Rights and Equal Opportunity Commission, *Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Commonwealth of Australia, 1997 <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

8 ANTAR, *Alternative Approaches to Justice*, ANTAR website, 29 November 2024 <https://antar.org.au/issues/justice/alternative-approaches/>.

9 R McCausland and E Baldry, 'The social determinants of justice: 8 factors that increase your risk of imprisonment', *The Conversation* (2023) <https://theconversation.com/the-social-determinants-of-justice-8-factors-that-increase-your-risk-of-imprisonment-203661>.

10 The Healing Foundation, *Make Healing Happen, It's Time to Act*, Healing Foundation website, 2021 <https://healingfoundation.org.au/make-healing-happen/>; K Menzies, 'Understanding the Australian Aboriginal experience of collective, historical and intergenerational trauma', *International Social Work*, 2019, 62(6): 1522–1534 <https://doi.org/10.1177/0020872819870585>; N Tujague and K Ryan, 'Cultural Safety in Trauma-Informed Practice from a First Nations Perspective, Billabongs of Knowledge', 1st edn, Palgrave Macmillan, Switzerland, 2023 <https://doi.org/10.1007/978-3-031-13138-7>.

11 Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 2023: 317 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>; Megan Davis, *Family Is culture: independent review into Aboriginal children and young people in out-of-home-care in NSW*, DCJ, NSW Government, October 2019 <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>; SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 60-61 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

12 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Executive Summary, Our Vision for an inclusive Australia and Recommendations*, Commonwealth of Australia, 29 September 2023, 123 <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>.

13 R Walters, D Antojado, M Maycock and L Bartels, 'LGBT people in prison in Australia and human rights: a critical reflection', *Alternative Law Journal*, 2024, 49 (1): 40-46<https://acuresearchbank.acu.edu.au/item/9062w/LGBTQIA+-people-in-prison-in-australia-and-human-rights-a-critical-reflection>.

14 E Baldry and C Cunneen, '*Locking up kids damages their mental health and leads to more disadvantage. Is this what we want?*', UNSW Newsroom, 21 June 2019; S M Finlay, E P Chang, J Collova and P Dudgeon, *Locking up kids has serious mental health impacts and contributes to further reoffending*, University of Wollongong, 18 November 2022.

15 Australian Human Rights Commission, *Submission to Senate inquiry into Australia's youth justice and incarceration system*, AHRC, 10 October 2024 <https://humanrights.gov.au/our-work/legal/submission/submission-inquiry-australias-youth-justice-and-incarceration-system>.

16 Australian Human Rights Commission, '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024): 75 <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>; B Smee, 'Sick and suicidal children held in Queensland police watch houses for weeks without healthcare, watchdog reveals', *The Guardian*, 11 September 2024 <https://www.theguardian.com/australia-news/article/2024/sep/11/queensland-children-police-watch-houses-watchdog-report>; A Messenger, 'Number of children under 14 in adult watch houses in Queensland rises 50% in 12 months', *The Guardian*, 8 January 2025 <https://www.theguardian.com/australia-news/2025/jan/08/queensland-adult-watch-houses-children-under-14-number-rises-ntwnfb#:~:text=The%20statistics%20%E2%80%93%20which%20were%20included,23%2C%E2%80%9D%20the%20report%20read>; Queensland Family and Child Commission (QFCC), '*Who's responsible: Understanding why young people are being held for longer in Queensland watch houses*', QFCC, Queensland Government November 2023 <https://www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf>.

17 NSW Aboriginal Land Council, *Native Title Fact Sheet 2: Interaction Between Native Title and Land Rights*, Fact Sheet, NSWALC website, March 2014 <https://alc.org.au/wp-content/uploads/2020/04/140306-native-title-fact-sheet-2-interaction-between-native-title-and-land-rights-updated.pdf>.

18 *Native Title Act 1993* (Cth), preamble <https://www.legislation.gov.au/C2004A04665/asmade/text>.

19 Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the IPCC,* Cambridge University Press: ch 18, 2612–2613, IPCC 2022 <https://www.ipcc.ch/report/ar6/wg2/>.

20 United Nations Office of the High Commissioner (OHCHR), *Billy and others v. Australia*, CCPR/C/135/D/3624/2019 <https://juris.ohchr.org/casedetails/3855/en-US>.

21 *Pabai v Commonwealth of Australia (No 2)* [2025] FCA 796.

22 Global Alliance of National Human Rights Institutions (GANHRI), *The Paris Principles*, 1993, <https://ganhri.org/paris-principles/>.

23 New South Wales Aboriginal Land Council*, The NSW Aboriginal Land Council Social Impact Report 2022-2023*, <https://alc.org.au/wp-content/uploads/2024/11/NSWALC_SocialImpactReport_2024.pdf>; National Indigenous Australians Agency (NIAA), *Aboriginals Benefit Account (ABA) Grant Funding*, <https://www.niaa.gov.au/our-work/grants-and-funding/aboriginals-benefit-account-aba-grant-funding>; Aboriginal Investment, *Future Fund, 2024*, <https://www.aboriginalinvestment.org.au/future-fund>; Indigenous Land and Sea Corporation (ILSC), Australian Government, *Annual Report 2024-25*, <https://www.ilsc.gov.au/wp-content/uploads/2025/10/2024-25-ILSC-Annual-Report.pdf>; Department of Finance, Aboriginal and Torres Strait Islander Land and Sea Future Fund, Australian Government, 2025, Web Page, <https://www.finance.gov.au/government/australian-government-investment-funds/aboriginal-and-torres-strait-islander-land-and-sea-future-fund>; Future Fund, About Us Web Page <https://www.futurefund.gov.au/about-us/our-funds#collapse_a68af3da-15de-4a53-bba2-dd6dd3545da3>.

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Introduction

In April 2025, António Guterres, Secretary-General of the United Nations (UN) addressed the 24th Session of United Nations Permanent Forum on Indigenous Issues (UNPFII). Guterres' speech emphasised that Indigenous Peoples are rights holders and 'the individual and collective rights of Indigenous Peoples are non-negotiable'. He urged governments to 'honour their obligations in the UN Declaration on the Rights of Indigenous Peoples [UNDRIP] without delay' and to facilitate the participation of Indigenous peoples in 'all forms of decision-making and support political participation'.[24]

It is upon this foundation – this absolute bottom line – that all discussions, laws, policies, practices and actions concerning the rights of Aboriginal and Torres Strait Islander peoples must be built.

The colonial process in Australia has had a devastating impact on the First Peoples of this land. Importantly, colonisation was not just a point in time or a single event, nor is colonisation over. Colonisation began at first contact, and its impacts continue today through the implementation of laws, policies, practices and social values. These are influenced and maintained by narratives which perpetuate negative stereotypes about First Peoples and promote the status quo.

There have been pockets of progress towards advancing First Peoples' human rights in Australia. These include:

- the emergence of social movements such as those promoting reconciliation
- formal campaigns including the 1967 Referendum to include Aboriginal and Torres Strait Islander people in the national census
- the Mabo High Court challenge resulting in the overturning of the doctrine of 'terra nullius' as a foundational justification for the occupation of this land
- the Close the Gap Campaign.

However, these achievements are often met with populist politics that have stoked racism, exacerbated divisions, and questioned the legitimacy of First Peoples' rights – resulting in broken promises about positive change. Several initiatives and inquiries have exposed systemic injustice and recommended reparative responses, such as:

- the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1991)
- the National Inquiry into Racist Violence in Australia (1991)
- the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing them Home) (1997)
- the National Apology to the Stolen Generations (2008)
- multiple prime ministers' committing to pursue treaty (1988 and 2022).

Governments have consistently ignored these recommendations and failed to deliver on these promises.

Since the failed Voice Referendum in 2023, multiple state and territory governments have adopted policies which blatantly disregard Australia's human rights obligations. This has undermined efforts to improve outcomes for Aboriginal and Torres Strait Islander peoples, including those arising from the National Agreement on Closing the Gap (CTG). These policies deliberately contradict agreed targets and commitments.

There is an urgent need to stabilise the fractured state of Indigenous affairs, to set national standards that reflect the Australian society we say we want for all, to respect human rights and to unify the Australian community.

Despite good intentions to achieve better outcomes for Aboriginal and Torres Strait Islander peoples, without a human rights compliance framework in place, rights are at risk. Without national leadership and strong constitutional and legal protections for the rights of First Peoples, respect for human rights will decline. We need to consider how Aboriginal and Torres Strait Islander peoples and the broader community can:

- move forward after the Voice Referendum
- work effectively with governments and civil society to eliminate harm, affect positive change and realise our rights.

About the Social Justice Commissioner

The Aboriginal and Torres Strait Islander Social Justice Commissioner (the Social Justice Commissioner) role was created in 1993 in response to the RCIADIC,[25] and the National Inquiry into Racist Violence (NIRV).[26]

The Social Justice Commissioner is one of 7 specialist Commissioners at the Australian Human Rights Commission (the Commission). The President leads the Commission. The 7 Commissioners are the:

- Aboriginal and Torres Strait Islander Social Justice Commissioner
- Human Rights Commissioner
- Race Discrimination Commissioner
- Disability Discrimination Commissioner
- Sex Discrimination Commissioner
- Age Discrimination Commissioner
- National Children's Commissioner.

The President and the Commissioners together form the Commission. Each of the Commissioners is responsible for overseeing Australia's response to international human rights standards to which all Australians are entitled, including Aboriginal and Torres Strait Islander peoples. Given the intersectionality experienced by Aboriginal and Torres Strait Islander people, this means that all Commissioners are responsible for supporting First Peoples' human rights as they pertain to their portfolios.

Thirty years since its establishment, the office of the Aboriginal and Torres Strait Islander Social Justice Commissioner continues to inform and influence positive change for First Peoples. The role includes:

- elevating First Peoples' voices and their lived experience
- holding governments accountable to their legal (and moral) obligations about the rights and wellbeing of Aboriginal and Torres Strait Islander peoples
- advocating and informing reforms that facilitate the needs and aspirations of First Peoples
- challenging colonial structures and systems that disadvantage, disempower and discriminate.

Functions of the Social Justice Commissioner

The mandated functions of the Social Justice Commissioner, outlined in section 46C(1) of the Australian Human Rights Commission Act 1986 (Cth), are:

- to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders;
- to undertake research and educational programs and other programs, for the purpose of promoting respect for the human rights of Aboriginal persons and Torres Strait Islanders and promoting the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders;

- to examine enactments and proposed enactments, for the purpose of ascertaining whether they recognise and protect the human rights of Aboriginal persons and Torres Strait Islanders and to report to the Minister the results of any such examination.[27]

Under section 209 of the *Native Title Act 1993* (Cth), the Social Justice Commissioner also has a responsibility to report to the Attorney-General about the operation and effect of the Native Title Act and its effect on the exercise and enjoyment of human rights of Aboriginal persons and Torres Strait Islanders.[28]

The Commission is accredited as an 'A status' national human rights institution. This means that the Commission operates in accordance with the principles relating to the Status of National Institutions (The Paris Principles).[29] The Paris Principles require the Commission to have a breadth of functions and capacities that are exercised independently from government. The Commission also plays an important role in supporting international efforts that promote and protect human rights.

Thirty years of service

Since the establishment of the Social Justice Commissioner role and its commencement in January 1993, 6 Commissioners have served in the office. All Commissioners focused on cultural and systemic reform that has supported transformative societal change in the interests of First Peoples.

The sixth Commissioner to be appointed to this role, and the second woman, Commissioner Katie Kiss draws upon her lived experience, as well as guidance from senior Elders, community leaders and Aboriginal and Torres Strait Islander people to inform her work.

Those who have previously served in this office include:

- **Professor Mick Dodson AM – 1993–1998:** a Yawuru man from the Kimberley region of Western Australia (WA) and the first Social Justice Commissioner appointed to the role
- **Dr William Jonas AM – 1994–2004:** a Worimi man from the Central–Mid North Coast of New South Wales (NSW)
- **Professor Tom Calma AO – 2004–2010:** a Kungarakan and Iwaidja man from the Darwin and Coburg Peninsula regions of the Northern Territory (NT)
- **Mick Gooda – 2010–2016:** a Ghungalu and Yiman man from Central Queensland
- **June Oscar AO – 2017–2024:** a Bunuba woman from the Kimberley region of WA.

In addition, the following people have acted in the role: Zita Antonios (1998–1999) and Professor Gillian Triggs (2016–2017). Robynne Quiggin served as a Deputy Commissioner (2016–2017).

Legislative amendments relevant to the Aboriginal and Torres Strait Islander Social Justice Commissioner

Over the 30 years since its commencement, the functions and qualifying criteria for the office of the Social Justice Commissioner have been revised twice. These changes include:

- *Human Rights Legislation Amendment Act 2017* (Cth): amended the statutory obligation for the Commissioner to provide an annual Social Justice and Native Title Report to the Minister (produced up until 2016). This change gave discretion to the Commissioner about the production of reports.
- *Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022* (Cth): established the total term of appointment of Commissioners, including any reappointments, to a maximum of 7 years. The amendment also required that Commissioners must not be appointed unless their selection is the result of a publicly advertised merit-based selection process.

In his first Social Justice Report in 1993,[30] Commissioner Dodson expressed a 'strong belief that the criterion for selection should be amended to require that any future Social Justice Commissioner be an Indigenous person'. This recommendation would be in accordance with special measures provisions, under Article 1, paragraph 4 of the Convention on the Elimination of All Forms of Racial Discrimination and section 8(1) of the *Racial Discrimination Act 1975* (Cth).[31]

The Australian Government considered Commissioner selection processes and criteria in the 2022 amendments to the *Australian Human Rights Commission Act 1986* (Cth). However, the qualification requirement for the Social Justice Commissioner remains only to have 'significant experience in the community life of First Nations people'.[32]

In the absence of an Indigenous-identified requirement in the *Australian Human Rights Commission Act 1986* (Cth), successive Commonwealth Attorneys-General and the Commission itself have made conscious decisions to ensure the role is held by an Aboriginal and/or Torres Strait Islander person. Participants in the Informing the Agenda (ITA) consultations noted that, to date, there has not been a Torres Strait Islander office holder. In this regard, the Australian Government should consider amending the legislation to require the office to be held by an Aboriginal person and to establish an additional position to be held by a person of Torres Strait Islander heritage.

The Aboriginal and Torres Strait Islander Social Justice Agenda: 2024–2029 (Commissioner Katie Kiss)

Upon commencement of my 5-year term, I reinforced what our people have been arguing for decades. That is, if we are to see improvement in the lives of First Peoples and if, as a nation, we are serious about reconciliation and healing, the voices of Aboriginal and Torres Strait Islander people must be front and centre.

I am committed to listening to what our communities think are the most pressing and urgent issues that require attention. My commitment is to hear our people's priorities and aspirations for both current and future generations.

I am committed to doing what I can during my 5-year term to advocate for, facilitate and inform, where possible, appropriate responses to issues and challenges.

I will work to advance our peoples' vision for a fair and just future where the lives of Aboriginal and Torres Strait Islander people are valued, respected and enriched.

In response to input provided by Aboriginal and Torres Strait Islander communities engaged through the Informing the Agenda National Listening tour, I will focus my term on addressing the following key priority areas:

- increasing First Peoples' participation
- promoting the full enjoyment of rights by First Peoples
- fostering systemic integrity and accountability
- rebuilding the Village
- assuring access to justice.

These priority areas are interconnected. They provide both a solid foundation for realising the rights of Indigenous Australians and provide guidance on achieving positive, practical and culturally responsive outcomes for First Peoples.

– Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss

Work to date

Since commencing in the Social Justice Commissioner role in April 2024, Commissioner Kiss has:

- conducted a national listening tour with Aboriginal and Torres Strait Islander people across the country to inform an agenda on priority issues
- met with a range of First Peoples organisations, advocates and community stakeholders
- written to the Commonwealth, State and Territory Ministers for Indigenous Affairs and Attorneys-General, as well as Shadow Ministers, to communicate the proposed agenda and to seek their input on expectations
- supported the work of various expert and advisory committees
- participated in a range of key forums on issues relevant to First Peoples
- contributed to Commission submissions to parliamentary Inquiries
- supported and collaborated on work undertaken by fellow commissioners at the Commission.

The Commissioner has also participated in various international fora to promote the rights of Indigenous Peoples and supported engagement activities.

The Prime Minister and the Treasurer have not yet accepted the Commissioner's meeting requests.

The Commissioner requested to attend meetings of the National Agreement on Closing the Gap's Partnership Working Group (PWG) as an observer. This request was denied, creating an obstacle to the Commissioner's fulfilment of her mandate to monitor the enjoyment of human rights by Aboriginal and Torres Strait Islander people and hold governments and other parties accountable to those rights.

Social Justice Commissioner parliamentary reporting

For 30 years, the Social Justice and Native Title Reports have provided a historical record of the circumstances of Aboriginal and Torres Strait Islander peoples. They have also documented the advice and input provided through the office of the Social Justice Commissioner to the Federal Parliament to inform Indigenous Affairs policy, programming and practice.

In accordance with the Commissioner's legislated responsibility to report on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples and the effectiveness of the native title system, this report examines and provides analysis on both social justice and native title outcomes.

During the Commissioner's 5-year term, she aims to provide 3 reports in accordance with the role's parliamentary reporting function:

- This first report considers progress towards, barriers to and approaches necessary to secure the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples.
- A mid-term report will provide analysis on activity and progress against the Blueprint for a fair and just future for First Peoples. (detailed in Chapter 2: A fair and just future for First Peoples).
- A final report will be provided in the final year of the Commissioner's term which:
  - examines the outcomes achieved across the term and key areas that require a sustained and ongoing focus and investment
  - provides advice on future focus areas necessary to give effect to the rights of Aboriginal and Torres Strait Islander peoples.

The Commissioner will complement this formal parliamentary reporting with inquiry submissions, discussions papers and project reports developed in response to Blueprint actions and activities. However, the capacity of the Commissioner to effectively examine and report is dependent on access to resources to undertake these responsibilities.

Formal response to recommendations

This report provides several recommendations to support the realisation of the rights of Aboriginal and Torres Strait Islander peoples.

Across the 30-year lifespan of the office of the Social Justice Commissioner, governments have officially responded to or actioned very few recommendations.

As such, the Commissioner has taken the opportunity to seek a formal response, as is routinely provided to parliamentary inquiry reports and a number of reports from other government agencies. She has requested that this response: outline whether the report's recommendations are accepted, include the Government's proposed actions and be delivered in a timely manner.

Endnotes

24 United Nations (UN), *'Individual, Collective Rights of Indigenous Peoples Are Non-negotiable', Says Secretary-General, Opening Permanent Forum*, UN website <https://press.un.org/en/2025/sgsm22628.doc.htm>.

25 Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *Final Report*, RCIADIC, 1991. <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

26 Human Rights and Equal Opportunity Commission, *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*, Human Rights and Equal Opportunity Commission, Commonwealth of Australia 1991. <https://humanrights.gov.au/sites/default/files/document/publication/NIRV.pdf>.

27 *Australian Human Rights Commission Act 1986* (Cth), Section 46C. <https://classic.austlii.edu.au/au/legis/cth/consol_act/ahrca1986373/s46c.html>.

28 *Native Title Act 1993* (Cth), Section 209. <https://classic.austlii.edu.au/au/legis/cth/consol_act/nta1993147/s209.html>.

29 United Nations (UN), *Universal Instrument: Principles relating to the Status of National Institutions (The Paris Principles)*, GA Res 48/134, adopted 20 December 1993.<https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

30 Human Rights and Equal Opportunity Commission (HREOC), *Social Justice Report 1993*, (Report, 1993) <https://webarchive.nla.gov.au/awa/20020202091942/http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/atsisjc_1993/>.

31 Australian Human Rights Commission (AHRC), *Social Justice and Native Title Report 2013*, AHRC, 2013. Pp. 9-10. <https://humanrights.gov.au/our-work/projects/foreword>.

32 Australian Human Rights Commission legislation amendment (selection and appointment) bill 2022 <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6884>.

Part 1

Our voices guiding the way forward

- **Chapter 1:** First Peoples Voices – Informing the Agenda
- **Chapter 2:** A fair and just future for First Peoples

CHAPTER 1:

FIRST PEOPLES VOICES – INFORMING THE AGENDA

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First Peoples' Voices – Informing the Agenda

The *Informing the Agenda* (ITA) Project ('the Project') was about hearing and amplifying the voices of Aboriginal and Torres Strait Islander people nationally; and supporting First Peoples to drive change.

The Project aimed to shift power. When we talk about 'shifting power' we mean making space for communities to decide what's important to them, lead the conversations, and shape a future built on rights, justice, and respect. The Project did this by creating culturally safe environments where people felt heard, valued, and empowered to take the lead, and by elevating their voices in this report.

The Project engaged with more than 1,600 participants nationally, including through:

- forty-one face-to-face-engagements and 7 online sessions attended by 850 people in total
- twenty-eight written submissions, many of which were provided by member-based organisations or national or state-based peak bodies representing many more organisations than submissions received
- a pre-consultation survey to which more than 750 people responded (noting that not all respondents completed all questions within the survey)
- a post-consultation survey to which 34 people responded.

With regard to face-to-face community engagements held in 41 locations, attendees travelled from other communities to participate in these engagements. This included for example those who travelled from:

- Katherine to the attend the Darwin engagement
- Fitzroy Crossing to attend the engagement in Broome
- Davenport to attend the Port Augusta engagement
- Mitchell to attend the Roma engagement
- Narrabri to attend the Moree engagement
- Urunga to attend the Coffs Harbour engagement
- Doomadgee to attend the Mount Isa engagement
- Hopevale, Wujal Wujal and Lion's Den to attend the Cooktown engagement
- Northern Peninsula Area (NPA) to attend the Thursday Island engagement
- Moa Island to attend the engagement held on Badu Island.

A number of people also came in from homelands or smaller local communities in remote regions to attend, including for the Port Hedland and the Yirrkala engagements.

The Project included a face-to-face engagement with Aboriginal and Torres Strait Islander delegates who attended the 2024 Climate Change Conference of the Parties (CoP) meeting in Baku, Azerbaijan.

Also included were numerous community organisations throughout Australia and incarcerated adults during visits to correctional facilities in the Northern Territory and Tasmania. These numbers have not been included in the engagement statistics.

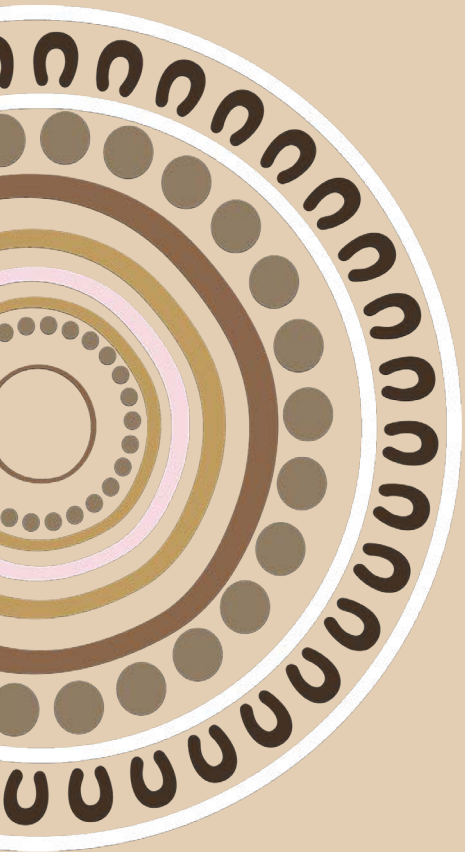
Throughout the Project, Aboriginal and Torres Strait Islander people shared a wide spectrum of stories, thoughts, feelings and perspectives shaped by their lived experiences.

The stories and priorities shared throughout the Project make one truth unmistakably clear: Aboriginal and Torres Strait Islander people know what works for our communities and can clearly articulate their aspirations and hopes for the future.

The 6 high-level priority goals set by the Aboriginal and Torres Strait Islander Social Justice Commissioner (the Commissioner) directly reflect what communities said must change. They are not abstract aspirations – they are the practical translation of voices heard across the country into a clear, shared vision and agenda for action.

Each goal is grounded in the lived realities, solutions and aspirations described in this chapter. Together, they set out a pathway for governments, institutions and all Australians to uphold the rights, dignity and self-determination of First Peoples – as promised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the National Agreement (the National Agreement) on Closing the Gap (CTG).

These goals recognise justice, good governance and accountability, cultural strength, community-led services, safe and equitable systems and structural change are not new demands. They are long-standing rights that must finally be delivered in full partnership with our people.



This chapter has brought together their voices, which speak clearly about what matters most:

- **Justice and legal systems**, including overrepresentation of Aboriginal and Torres Strait Islander people in custody (particularly among youth), the urgent need for systemic change and the harms caused by current policing, courts, legal processes and incarceration. That justice is not only about punishing for wrongdoing, but about righting wrongs.
- **Rights, governance and self-determination**, including the implementation of the UNDRIP, government accountability, life after the Referendum, shared decision-making, identity, native title and land reform.
- **Community**, culture and relationships, including the vital role of Elders, the leadership of youth, the work of community organisations and the impacts of racism and the media.
- **Services and infrastructure**, including challenges in service delivery, funding, housing, healthcare, education, disability and employment.
- **Access and equity**, including geographic barriers, remoteness and the need for community control of data.

These are not new issues – they are long-standing rights that have too often been denied or delivered in ways that fail to meet the needs, strengths and aspirations of First Peoples. Across all participation pathways, people spoke of feeling strong and determined. While they often feel fatigued and disappointed, they are still hopeful and stand ready to contribute to meaningful change.

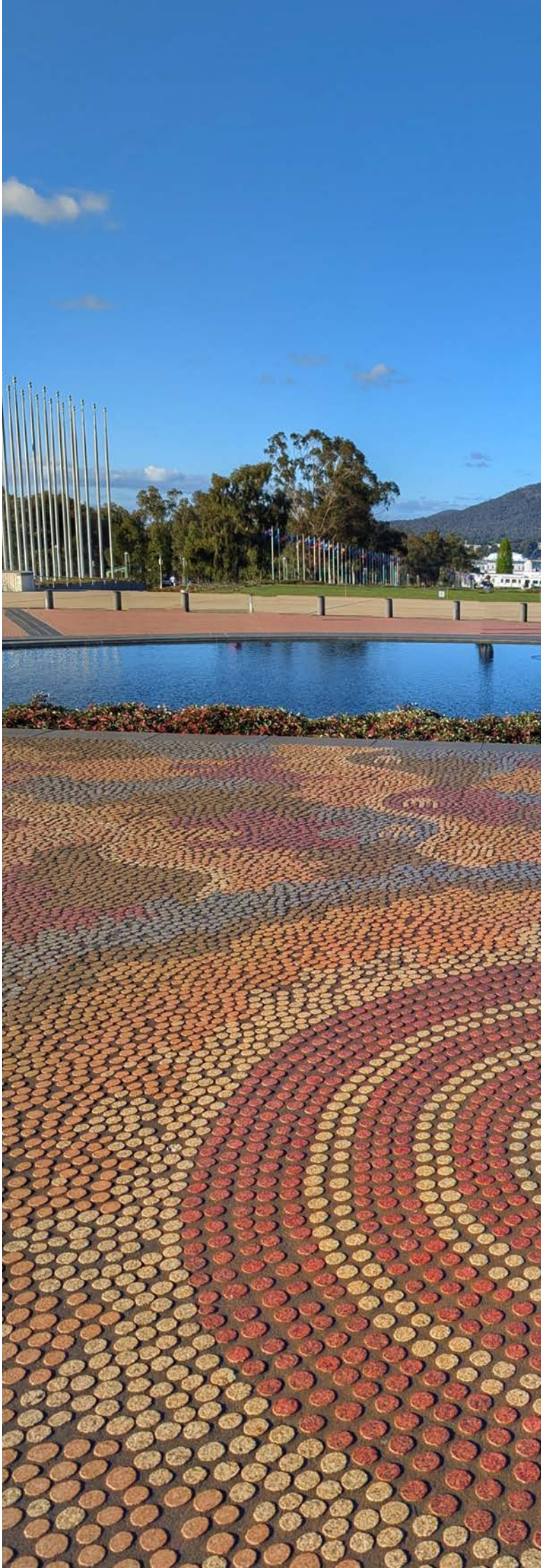
These are not new issues – they are long-standing rights that have too often been denied or delivered in ways that fail to meet the needs, strengths and aspirations of First Peoples. Across all participation pathways, people spoke of feeling strong and determined. While they often feel fatigued and disappointed, they are still hopeful and stand ready to contribute to meaningful change.

Submissions, survey responses and community consultations all make clear: the foundation of any system affecting Aboriginal and Torres Strait Islander lives must be self-determination. Yet, across every theme, people told us that services and systems too often remain unsafe, discriminatory and ineffective.

Throughout the Project, we heard directly what Aboriginal and Torres Strait Islander people need to live strong, healthy, connected lives on our own Country. Communities reminded us, again and again, that we have always known what works for us.

From cities to remote homelands, people spoke with clarity and courage about what must change: good healthcare, safe and secure homes, quality education, a strong and protected cultural identity, meaningful work, respect for Elders and youth, strong community organisations, control over our data, fair policing and justice, recognition of land and water rights, honest media that tells the truth and long-term funding designed and controlled by communities. These are not new demands – they are basic rights our people have called for over generations. They are not negotiable.

People told us self-determination must be the starting point for every law, policy and service that affects our lives. When communities design, govern and lead our own solutions, we thrive. When governments make decisions about us without us, harm and injustice continue.



People spoke of the ongoing impacts of colonisation – dispossession, the Stolen Generations, forced removals, intergenerational trauma – and how these shape daily life. Communities carry this truth and will keep telling it. Healing, truth-telling and genuine power-sharing are the only way forward. The UNDRIP clearly says we have the right to decide and shape our own futures. Australia must live up to this.

Communities called for strong governance and genuine decision-making power – not token advisory roles or tick-a-box consultation. Real partnerships must shift resources and authority back to where they belong: with our people. Genuine shared decision-making must deliver practical control and respect for First Peoples' knowledge and leadership.

People told us the Referendum was not the end of the fight for a Voice – our communities have always had a voice and will keep using it. The Referendum result showed how far this nation still has to go to listen and share power. Recognition must go beyond symbols – it must mean structural change that puts our people in charge of decisions about our lives, our lands and waters and our futures, as called for in the *Uluru Statement from the Heart* (the Uluru Statement).

One message was clear everywhere: racism still deeply affects our people every day – in hospitals, schools, workplaces, courts and on our streets. Racism causes real harm and even early deaths. Ending racism needs more than words – it requires stronger laws, honest education and culturally safe services that work with us, not on us, or against us.

Communities spoke about the media's role in shaping how Australia sees us. Too often, the media repeats stereotypes, fuels division and ignores our achievements. People want truthful stories that celebrate our cultures, languages and strength – told by us, on our terms.

We heard about the need for culturally safe, community-controlled healthcare built on trust. Too many people avoid healthcare because it does not feel safe. Education must grow children strong in both worlds – proud in culture and language, equipped for the future. Many spoke of the difficulty of accessing disability supports that work, especially in remote areas.

People spoke powerfully about cultural identity – about knowing who we are, where we belong and staying connected to Country, kin and culture. Too often, systems break these ties instead of protecting them. Supporting identity means keeping families strong, reviving languages, backing cultural knowledge holders and respecting our cultural laws.

Communities reminded us that Elders hold knowledge, wisdom and authority that must be respected and properly supported – in healthcare, aged care and housing – so they can guide future generations.

Young people want to contribute and take up leadership opportunities. They want safe spaces to learn, share their voices and build strong futures. Listening to youth voices is key to breaking cycles of harm and growing the next generation of leaders.

Jobs and economic opportunities bring dignity and choice. Communities want real local jobs that are secure and culturally safe – not short-term or tokenistic roles. Safe and affordable housing came up everywhere – it is a human right still too often denied. Overcrowded, unsafe housing impacts health, education and work, deepening poverty. Communities want housing that is community-led, properly funded and built to last.

People spoke about native title – how it must mean more than legal words. It must deliver real control, access to Country and economic prosperity. Too often, native title processes are complex, costly and unfair. Communities want reform so land and water rights truly return to our people, as Articles 25–28 of the UNDRIP make clear.

Further, they do not want to be forced to use their native title benefits (which is compensation for dispossession) to fund universal and secondary social services that all other Australians are provided through public systems.

We heard about over-policing, racial profiling and excessive force that still harm families. Communities want culturally trained, accountable police, but also want investment in local solutions that prevent harm and keep families safe. Many spoke about how too many of our people are locked up, including children as young as ten. Prisons do not heal; they deepen harm. Communities want prevention, diversion and community-led justice.

Families spoke about the overrepresentation of our children and young people in the justice system – from police to courts to prisons. They called for real youth diversion, culturally safe legal services and genuine investment in breaking cycles of harm before they begin.

Communities said our data must be owned and controlled by us – not just collected about us. Community-controlled organisations must be properly funded – they are closest to the solutions because they live this reality every day. Communities called for real accountability – governments must deliver on promises and show progress.

People told us that real change needs long-term, flexible funding that communities control. Programs must fit our ways of working, not force us to fit them. Funding must build local capacity, strengthen culture and create real jobs.

Remote and regional communities spoke about the extra barriers they face – distance, lack of local services and higher costs. Closing these gaps means local infrastructure, strong local workforces and digital access so no community is left behind.

The future will not change with business as usual. Closing the gap means shifting power, listening deeply and trusting us to lead. Communities have always had the answers – it is time for governments to walk alongside us with respect, justice and self-determination at the centre.

Change is possible if this country truly listens and acts together. It is time to move beyond promises and plans on paper. By putting truth, justice and self-determination at the heart of every action, we can build a future where every Aboriginal and Torres Strait Islander person lives with strength, pride and hope – for this generation and the next.

The strength, resilience and leadership of Aboriginal and Torres Strait Islander people have always been here. What is needed now is structural change that centres culture, community and Country. Governments must honour the commitments made under the UNDRIP and the National Agreement on Closing the Gap – and work with First Peoples to realise a future grounded in equity, truth and self-determination.

The issues raised throughout the consultations and reported here are further explored in the chapters that follow. This is in order to place these issues within a national reform agenda for First Peoples.

Introduction

The Project commenced on 1 August 2024. The Project was designed to inform the term priorities of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss (the Commissioner), who took office on 3 April 2024. It heard directly from Aboriginal and Torres Strait Islander people and their communities across Australia about the issues affecting their lives. The Project was grounded in deep respect for truth-telling, lived experience and the recognition that self-determination is essential to advancing the rights of First Peoples.

The consultations were funded by the National Indigenous Australians Agency (NIAA).

Community findings

This chapter reports on the views of Aboriginal and Torres Strait Islander community members across the country.

It shares the insights of Aboriginal and Torres Strait Islander peoples gathered through submissions, surveys and discussions. This chapter does not claim to represent the experiences of all First Peoples but reflects the voices and stories of those who participated in this Project.

It highlights the common themes raised including gaps in legal, policy and practice structures and systems; real life impacts; and proposed solutions requiring collective investment and action.

Case studies highlight the initiatives and achievements Aboriginal and Torres Strait Islander people are proud of in their communities. These examples, shared during the Project, showcase diverse responses, systems and services grounded in Aboriginal and Torres Strait Islander ways of knowing, being and doing.

They demonstrate 'whole of life' approaches, collaboration, co-design, safety and culturally safe, trauma-informed, healing-based practices.

The community findings articulated within this report also inform the broader agenda setting for the Commissioner.

Objectives

In the wake of the failed Voice Referendum, the underlying objective of this Project was to create space for First Peoples across Australia to discuss and provide input on the next steps with regard to:

- moving forward after the Referendum;
- identifying and responding to issues that are most urgently in need of attention; and
- building understanding of and effectively utilising mechanisms to realise our rights.

Listening to Aboriginal and Torres Strait Islander Peoples was central to the Project.

This Project also provided the opportunity for community to understand the role and mandate of the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and to articulate their expectations of the role.

Approach

Based on existing evidence of key issues impacting the lives and wellbeing of Aboriginal and Torres Strait Islander peoples, the following 6 high-level priority areas were identified at the beginning of the Project to inform the agenda of the Social Justice Commissioner and future priorities.

They reflect ongoing areas of concern for communities and align with national and international human rights standards. These included the following:

1. Increasing access to justice – improving the social, cultural, environmental, economic, political and legal systems to ensure they are fair, culturally safe and better meet the needs of Aboriginal and Torres Strait Islander Peoples.
2. Promoting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (the UNDRIP) – helping communities understand their rights and working with governments to apply them in practice.
3. Advocating and guiding implementation of the three pillars of the Uluru Statement from the Heart – recognising Voice, Treaty and Truth as essential to justice and reconciliation.
4. Supporting the realisation of First Peoples health equality – closing the gap in health outcomes, supporting First Peoples in their efforts to improve their life outcomes and creating the conditions for positive change.
5. Advocating for land justice reform – acknowledging the deep connection between land, culture and self-determination and calling for stronger recognition and protection of land rights.
6. Building the capacity of the First Peoples human rights network – strengthening connections among communities, advocates and organisations promoting First Peoples' human rights.

The identified priorities were presented at each engagement to test their relevance and seek feedback on their importance for local communities and to hear views about potential solutions.

While project engagement was open to any interested party, Aboriginal and Torres Strait Islander peoples were the priority stakeholder for this Project.

As such, project planning and management, decision-making and engagement techniques were community-centred and guided by the principles of the UNDRIP:

- self-determination
- participation in decisions that affect First Peoples, including through free, prior and informed consent (FPIC) and good faith
- protection and promotion of culture
- equality and non-discrimination.

Consistent with these principles, the following values were foundational to the delivery of the Project:

- Trust – including by creating a safe space for all to participate.
- Respect – for individuals, through open communication, enabling them to contribute their truth without judgement and respecting the difference in lived experience; and for culture, tradition, protocol, Elders, community and Aboriginal and Torres Strait Islander governance and organisational structures.
- Care – ensuring that individuals were supported in their truth, their feelings and their contributions.
- Every voice matters – ensuring that all who attended could contribute to the extent they were comfortable and on their terms.

Indigenous research methodologies also informed the approach to engagement. This included ensuring that the Commissioner (as the lead facilitator) and the Project Team:

- were attuned to the historical and contemporary community and family context in each community
- demonstrated an understanding of the issues and challenges relevant to each community
- provided relevant information to support engagement in the Project and enabled open and collective conversations

- secured the free, prior and informed consent of participants to support their engagement but also ensured appropriate quality control safeguards are in place to support the reporting of the Project's findings
- applied an active listening approach that was sensitive to non-verbal communication and story-telling
- managed disclosures and minimised distress caused by exposure to difficult or sensitive issues raised.

To ensure the Commissioner's work reflects the lived experience and aspirations of First Peoples, the Project was supported by multiple participation pathways and a flexible approach recognising that individuals and communities have different preferences in how they share their views. This provided a range of options for First Peoples to participate in ways that suited them, including:

- online Surveys (a pre-consultation survey; and a post-consultation survey)
- written Submissions
- face-to-face community engagements
- stakeholder meetings
- online focus groups.

The process aimed to be safe, inclusive and culturally respectful. Where non-Indigenous allies were in attendance, it was communicated that the space created would prioritise the voices of First Peoples.

National listening tour

A key part of the Project was the *Informing the Agenda* national listening tour. From October 2024 to May 2025, the Commissioner and her team travelled to major cities, regional towns and remote communities across all states and territories of Australia, including the Torres Strait Islands in the far north of Queensland.

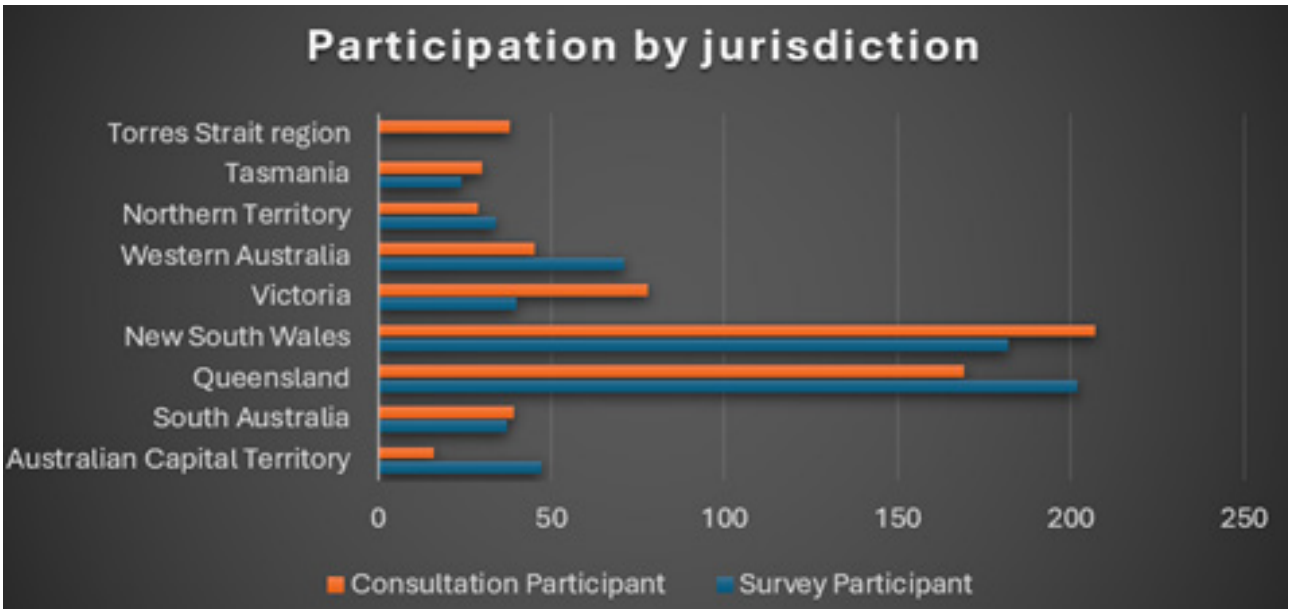


Figure 1.1: Number of face-to-face and online consultation participants and survey participants by jurisdiction.

The purpose of the tour was to sit in communities, listen deeply and build relationships with Aboriginal and Torres Strait Islander people.

Meetings took place in diverse settings including universities, community halls, cultural centres, Land Council offices and First Nations business hubs. The Commissioner engaged with Elders, Traditional Owners, young people, local leaders, service providers and community organisations, including participants from Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual (LGBTIQA) communities and First People with disability.

In most locations, the Commissioner and her team were welcomed to Country by generous Elders and Traditional Owners who shared ceremony, knowledge and culture, grounding the process in respect and cultural strength.

National tour discussions focused on what matters most: community pride, culture and leadership, as well as ongoing challenges such as racism, poor access to services, housing, justice and barriers to self-determination. These conversations provided valuable insight into the daily realities faced by Aboriginal and Torres Strait Islander people across the country.

Participation pathways

As outlined above, a range of options were provided through which to participate, including 2 surveys, a written submission process, community and online engagements. These options gave First Peoples flexibility and helped make the process more inclusive. A variety of mediums were deployed to promote engagement, including social media, community radio, email, distribution through existing networks and the Commission's website; ensuring as many communities as possible within the timeframe and budget could be reached and diverse voices heard.

All engagements - whether in person or online - followed a consistent three-part format:

- An explanation of the statutory role and mandate of the Social Justice Commissioner, the role of the Australian Human Rights Commission, its powers and the laws that guide its work.
- A presentation on the 6 identified high-level priorities which participants were invited to share their views and issues that mattered most to them, to help shape the Commissioner's priorities, offer ideas and propose solutions.
- An explanation of the UNDRIP, including its significance and how it can support communities to stand up for their rights, followed by an open dialogue about its application and domestic implementation.

Surveys

A pre-consultation survey was open from 1 August until 23 September to Aboriginal and Torres Strait Islander people aged 18 and over. This allowed participants to share views privately on key issues affecting their communities and their awareness of the Commissioner's role.

A post-consultation survey was offered to people who attended face-to-face or online engagements, giving them a further opportunity to provide input and feedback or to raise issues not shared during sessions.

Face-to-face community engagement

Face-to-face community engagements were held in 41 locations across the country, covering urban areas with large Aboriginal and Torres Strait Islander populations as well as regional, rural and very remote communities. Participants were each provided with easy-to-read, accessible information to support their engagement, including a one-page project summary, a printed version of the Commissioner's presentation and the Commissioner's 6 high-level priorities and a printed copy of the UNDRIP.

Community engagement sessions were approximately 3 hours per session, allowing time for information to be shared and a collective dialogue on issues and potential solutions.

Online engagements

Three online engagement sessions were held to increase access and inclusion, especially for people unable to travel to in-person events. Key documents provided to participants were emailed to online attendees prior to the session commencing.

In addition, online engagements were also provided for focus groups, including Elders, people with disability and the LGBTIQA community. This inclusive approach supported diverse voices and experiences.

In response to a specific request from the Kalgoorlie community who were unable to attend face-to-face engagements, an online engagement session was conducted.

Online sessions, scheduled for 2 hours, aimed to include up to 24 participants, with some sessions accommodating up to 30. They allowed time for information to be shared and a collective dialogue on issues and potential solutions.

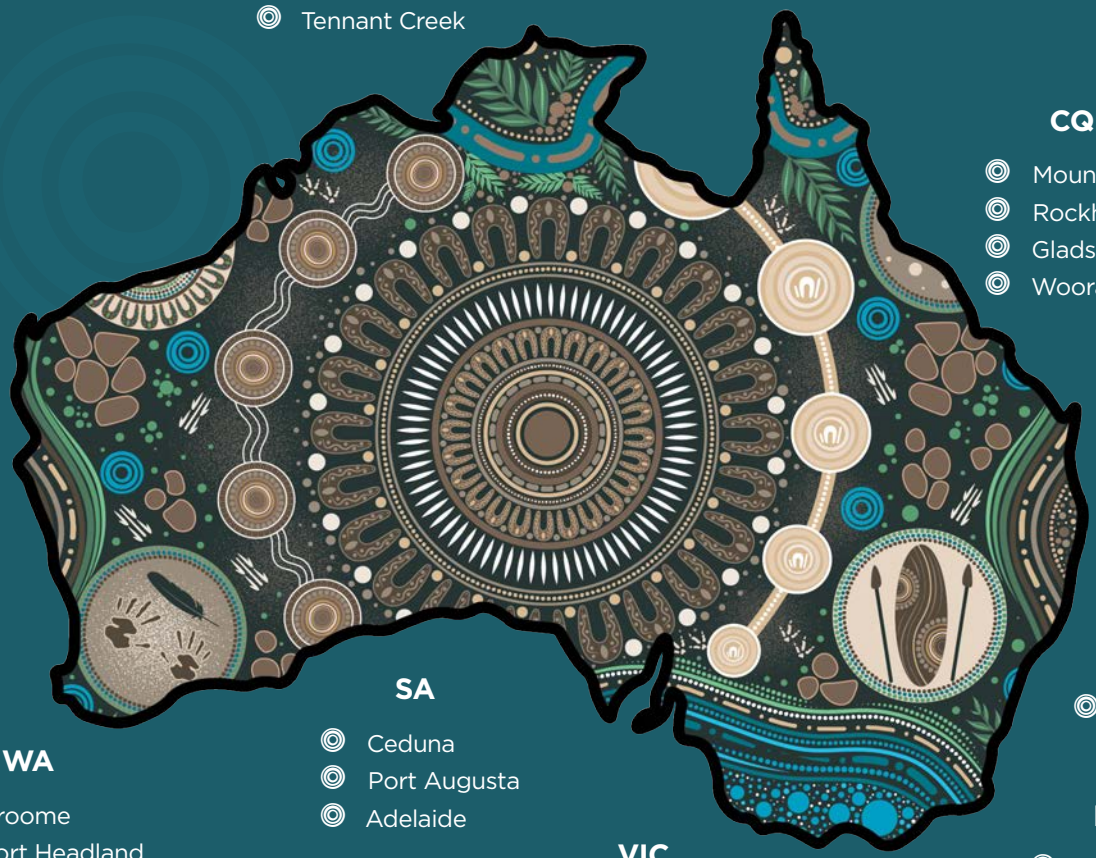
Written submissions

A call for written submissions process was open to everyone in Australia aged 18 and older. Individuals, community groups and organisations were encouraged to contribute through guided questions or free-form responses via the Commission's website or by email. This ensured everyone had an equal opportunity to share their views, regardless of location or background.

INT'L.
- Baku, Azerbaijan

NT
- Darwin
- Nhulunbuy
- Alice Springs
- Tennant Creek

TSI & NQLD
- Yarrabah
- Cairns
- Cooktown
- Thursday Island
- Badu Island



CQLD
- Mount Isa
- Rockhampton
- Gladstone
- Woorabinda

SEQLD
- Brisbane
- Roma
- Cherbourg

ACT
- Canberra

SA
- Ceduna
- Port Augusta
- Adelaide

WA
- Broome
- Port Headland
- Geraldton
- Perth

VIC
- Mildura
- Shepparton
- Melbourne
- Warrnambool

TAS
- Hobart
- Launceston

NSW
- Kiama
- Mount Druitt
- Redfern
- Wagga Wagga
- Dubbo
- Bourke
- Parkes
- Nyngan
- Moree
- Coffs Harbour

What we heard – priority issues identified

Aboriginal and Torres Strait Islander people have been advocating for their rights and articulating their aspirations across generations.

Across the country, we heard Aboriginal and Torres Strait Islander people talk about their sense of pride in their identity, in who they are and who and where they come from.

> ***Aboriginal people have survived over 65,000 years by designing highly effective, complex and sustainable systems. These systems use frameworks, tools and models that have managed change over a very long period, making us the oldest civilisations in the world. Governments need to work with and learn from community-controlled organisations*** - ITA Survey Respondent

They told us that culture is the foundation. Culture is everything to Aboriginal and Torres Strait Islander people and without it their identity, their physical, social and emotional wellbeing is denied, diminished, or worse erased.

> ***This island (Australia) is our home and we are the oldest living race on this planet and therefore should have every right to get our land back to practice and uphold our culture – ITA Survey Respondent***

Aboriginal and Torres Strait Islander people are also very clear about their status as the First Peoples of this land. They want to be recognised and respected as the oldest living culture on this earth.

They understand that as Aboriginal and Torres Strait Islander peoples they have the same human rights afforded to all Australians, and that these provide for the recognition and affirmation of their unique status, identities, cultures and ways of knowing, being and doing as First Peoples.

Consistent with that advocacy, Aboriginal and Torres Strait Islander people who engaged in the Project were very clear about the issues that are of serious concern to them.

Aboriginal and Torres Strait Islander people across the country gave clear and specific examples of widespread discrimination and rights violations. They talked about laws, policies and practices that target and disproportionately impact them and their families and communities. They identified clear and deliberate correlations between policies and practices of the past such as assimilation and removal laws, and the contemporary laws, policies and practices that continue to maintain and reinforce colonial legacies across all spheres of life. They spoke often about the imposition and dominance of mainstream ideology and how those values have had and continue to have devastating impacts on the lives and futures of our people, particularly our children and young people.

Having survived almost 250 years of colonial incursion and impact, the spirit of the oldest living culture in the world is still strong. There is an unwavering determination to not be erased, to not be diminished, to not be assimilated. To survive the ongoing onslaught of discrimination and abuse that is the lived experience of Aboriginal and Torres Strait Islander people in Australia. To adapt and respond to adversity in order to succeed and thrive.

Despite feeling completely disenfranchised and disempowered in their own country, Aboriginal and Torres Strait Islander people understand their responsibilities as custodians of this place and that this stands under their law, whether accepted by the mainstream or not.

They remain committed to the duty of care they have to those who now reside on their lands and territories. They are committed to healing, of themselves and their communities, but also of the Australian nation. And they continue to stand ready to engage in processes that acknowledge and reconcile our colonial history and enable all Australians to enjoy fair and just futures.

We have a history of injustice for First Nations communities. We need to be heard without 250 years of prejudice – ITA Survey Respondent

ITA participants across the country also stressed the need for all governments, including both elected representatives and bureaucracies, to be accountable for their responsibilities. They must ensure that: their laws and policies meet international standards and the needs of communities they are listening to and including those subject to laws and policies in all points of decision-making they are acknowledging and including lived experience as an indispensable element to informing evidence-based laws and policies. The findings of the Project reaffirm the concerns and aspirations that have been repeatedly identified by First Peoples but are rarely acted upon.

These goals have been around for many years and it is time that there is some real progress made in achieving them – ITA Survey Respondent

Many of the issues raised are long-term and ongoing, while others are responding to contemporary political, social and environmental change.

Now is the time ... we are wearing thin and exhausted from continuous reinventing the wheel. Every time a new government is voted in, we are brought back to the starting line each time with de-funded organisations, new systems without consultation, not listening to the people – ITA Survey Respondent

What is evident from the findings, is that the vision of Aboriginal and Torres Strait Islander Peoples and the path to achieve it is consistent and clear. First Peoples want to be strong, successful, healthy and respected. The challenge is getting governments and others to work effectively with us to achieve it.

The 6 high-level priority goals

The majority of ITA participants (across all participation pathways) were generally supportive of the 6 identified high-level priorities (outlined above). This is reflected in the graph below representing those who completed the pre-consultation survey.

When asked 'how relevant is the agenda [the 6 identified high-level priorities] to you and your community?', 84% (306) of the 363 survey respondents who answered this question confirmed that the Commissioner's proposed agenda was extremely or very relevant to them and their communities. 14% (52) responded that the Commissioner's agenda was moderately or somewhat relevant. Only 3 respondents said that the Commissioner's agenda was not relevant at all to them.

It needs to be for our people, led by our people to achieve the goals – ITA Survey Respondent

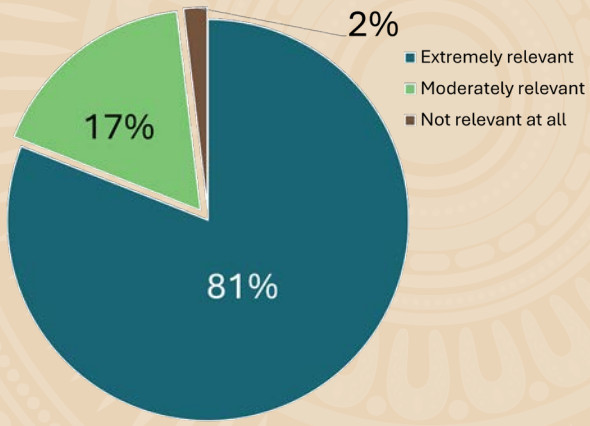


Figure 1.2: Survey responses testing the views of respondents on the 6 identified high-level priorities

When asked if ITA participants had any concerns about the 6 identified high-level priorities, the agenda was described as 'ambitious...[but] comprehensive and broad ranging'.

Pre-consultation survey respondents expressed concerns about the high number of priorities.

They worried that, compounded by a lack of processes or representative mechanisms through which to effectively engage First Peoples, a broader focus might limit potential to implement meaningful impact.

5 years down the track we will still be having the same conversations with no progress – ITA Survey Respondent

A number of comments reflected the need for a collective voice, while others expressed a lack of trust in leaders and systems to deliver. The lack of faith and trust in government was overwhelmingly apparent.

Some voiced concerns about 'enforcement', that 'no action will be taken', the need to 'localise the agenda' and to tangibly measure outcomes. A common sentiment was the 'need to see action not just words'. Many also felt the need to move beyond the deficit narratives created about First Peoples.

Need to focus more on positives and celebrate contributions of Indigenous Australia (historically and today), highlight the successes and move away from a deficit mindset which focuses too much on the negatives and portrays Indigenous Australians as a failing society – ITA Survey Respondent

Survey respondents also identified a number of additional focus areas, including racism, education, Aboriginal and Torres Strait Islander women and addressing gendered violence, focused engagement and leadership capacity building of young people, deaths in custody, police mistreatment and climate change.

A common view was expressed across all participation pathways that it is 'not just the responsibility of the Social Justice Commissioner' to achieve this agenda. It was agreed that all Aboriginal and Torres Strait Islander people have a role to play in realising our rights and advancing our aspirations. However, the need to create the conditions to enable this is critical and that governments doing their part and working in 'genuine' partnership with us is required. They also argued for the need to activate allies and those working in our spaces to enable a focused effort and collaborative approaches to achieving outcomes.

The Commissioner needs to seek those with responsibility and accountability to adopt the necessary reform actions – ITA Survey Respondent

Across all participation pathways, a number of consistent themes emerged. They include:

- The Voice Referendum outcome – irrespective of how people voted in the Referendum, Aboriginal and Torres Strait Islander people:
  - expressed a deep sense of disappointment, including a strong feeling of rejection and abandonment from governments and the Australian people and concern that the Referendum has had the consequence (a public perception) of eradicating and invalidating the rights of First Peoples
  - raised serious concerns about the subsequent silence and retreat from the Indigenous policy dialogue by governments across the country, including in jurisdictions where governments have used the referendum outcome as justification for regressive election campaigns, policy decisions and legislative reforms that have a negative impact, are discriminatory and cause further harm
  - acknowledged the 6.2 million people who voted 'Yes', which was considered essential for the healing of the nation in the aftermath of the Referendum and for continuing the advocacy for First Peoples recognition and rights
  - stressed the need for truth-telling and education and awareness on the impact of colonisation on First Peoples.
- Increased exposure to individual and institutional racism – while racism is a common experience of many who participated in the Project, obvious increases and extreme exposure was cited, particularly on the back of the Voice Referendum.

  People expressed concerns about increasing incidents of individual racism. This included racist behaviour in local communities and on social media. Concerns were also raised about systemic and structural racism. Media and government institutions were seen as contributing to this. Some elected representatives were identified as promoting racist views.

  Racism was found to be embedded in laws, policies and government practices. It was also evident in education and health systems. People also raised concerns about their 'safety' in their communities and online as a result of the racial hatred and vilification they are subjected to.

Addressing racism is a priority, with the National Anti-Racism Framework considered a 'great foundation' to address this.

- Children and youth – serious concerns were expressed about the criminalisation of Aboriginal and Torres Strait Islander children and young people and the mistreatment, harm and risk they are subjected to by police and in both the child protection and youth justice systems.

  ITA participants identified the need for investment in systemic reform, Elder engagement, mentorship, culture and identity affirming, prevention and diversion programs, increased school support, support for families and addressing intergenerational harm and trauma.

- Self-determination and participation – including the need to promote 'true self-determination' and to create safe spaces and provide funded opportunities for First Peoples to engage with each other on priorities.

  Participants raised concerns about the lack of opportunities to engage in the design, development, delivery and evaluation of laws, polices and programs affecting them. Embedding the principle of free, prior and informed consent in all decision-making processes and ensuring that representative structures are broad and inclusive of all parts of the community, were identified as essential to achieving effective participation.

  This includes through: 'local yarning circles and not one-off feedback loops'; and community endorsed representatives (not just those who have been selected by governments or industry). Participants also highlighted the need for: engagement with Elders, youth, women, people with disability and those who are incarcerated or in institutional settings such as mental health facilities; and for consultations to be conducted in accordance with community protocols.

Priority Goal 1 - Access to justice

To increase access to justice we first need to work on the Australian justice system…it is broken, not just for our mob but for everyone – ITA Survey Respondent

As outlined in the 6 high-level priorities, the concept of 'justice' in its traditional sense is supposed to be positive. It is foundational to all areas of life and social responses to facilitating survival, dignity and wellbeing for all.

Access to justice provides the moral and ethical compass for reforms in all areas (social, cultural, environmental, economic and political) and is critical to improved quality of life for Aboriginal and Torres Strait Islander peoples.

The Law Council of Australia, informed by the Indigenous Legal Issues Committee (ILIC), argued that:

Increasing access to justice does not only mean more or better representation within the current system but also promoting alternatives to mainstream frameworks that are better suited to the individual needs of First Nations peoples and communities.[33]

When asked about the importance of increasing access to justice, 323 out of 362 Aboriginal and Torres Strait Islander survey respondents overwhelmingly agreed – with 89% saying this issue is important to them and should be a key focus of the Commissioner's agenda.

Figure 1.3: Key words used by survey respondents to Question 3 on increasing access to justice for First Peoples

Feedback across all participation pathways indicates a consensus view that access to justice is much broader than the narrow focus on the criminal justice and legal (court) systems, which is most pronounced in public discourse related to access to justice. This leaves other critical elements of improving access to justice, including social justice, largely unattended.

I endorse this goal because the traditional concept of justice should be positive, yet for Aboriginal and Torres Strait Islander people, it often means facing criminal justice or youth justice systems that do more harm than good and aren't safe for our communities. We must shift from endless inquiries and reports to real accountability and evidence-based actions. This includes finally implementing the recommendations from the Royal Commission into Aboriginal Deaths in Custody, the Bringing them Home Report, Productivity Commission Reports and decades of Social Justice and Native Title Reports. Given the national focus on Youth Justice, it's critical to change the narrative and approach in this area – ITA Survey Respondent

The Aboriginal Legal Service of Western Australia (ALSWA) explained that legal problems are made worse by chronic underfunding of Aboriginal Legal Services, Community Legal Centres and social support services, particularly in remote and regional communities. As a result, these organisations are forced to prioritise some areas of law over others, leaving serious gaps in access to legal help. [34]

In a similar vein, the Lowitja Institute highlighted the co-responsibility and the need for increased accountability across interconnecting sectors. They argued, for example, that deaths in custody reflect a 'health crisis' that is 'concealed by the fact that these deaths happen within the justice system'. It stressed that 'the responsibility that the health system has to prevent these deaths in the justice system cannot be ignored'.[35]

The criminal justice and legal systems were a major focus across all ITA engagements. However, concerns were also raised about the broader impact of mainstream systems on wellbeing and lived experience. People spoke about 'the denial of access to, and respect for, culture and identity. Anti-Indigenous rights sentiment was also highlighted. Intersectional discrimination was a key issue, particularly for women, children, Elders, people with disability, and LGBTIQA community members. Many participants pointed to the role of media and political figures in shaping public attitudes. These attitudes were seen to limit or deny access to justice for First Peoples.

We need to use what resources, legislation and international agreements available to support our case for positive change. We must stop politicians from politicising and incarcerating our Youth, Women and Men for their own political agendas – ITA Survey Respondent

Across all generations, Aboriginal and Torres Strait Islander people raised barriers that stop them getting the legal help they need, such as:

- Difficulty accessing birth certificates, which affects children starting early education. This is made worse by the impacts of the Stolen Generations and child-rearing practices not recognised by mainstream processes.
- Limited legal help for Elders to make power of attorney arrangements or wills.
- Insufficient support for working-age people navigating complex blue card (or working with children check) policies, which affect jobs and kinship care.

- Lack of legal support for children to advocate for themselves in family courts, criminal matters, or when reporting abuse and mistreatment in custody.
- Limited support for women to understand their rights in child protection and legal processes. Women told us they are given orders to appear in court but are not told they should get legal advice. Many also need help with domestic violence orders and understanding how to assert their rights.

Systems change

When First Peoples speak about systems, we refer to the ecosystem of balanced relationships and deep knowledge that guide our ways of knowing, being and doing. Aboriginal and Torres Strait Islander people are the original architects of systems of care, solutions and sustainable community wellbeing.[36]

At present, systems are designed and maintained in ways that keep the focus on Indigenous disadvantage and developmental gaps.

> ***The justice and child protection systems are unsafe for our peoples; the discrimination, racism and lack of cultural safety in these environments and systems is clear and the health impacts just as clear.[37]***

Concerns were raised across all participation pathways about the repeated failure of Indigenous-related policy, with a consistent view that too many Australian politicians have become comfortable with the idea that Indigenous policy and policy failure are inseparable.

The machinery of government is broken and there are decades of failed policies and programs to unravel.[38]

During the Adelaide ITA engagement there was a big conversation about systems change and locally driven solutions. Adelaide community members agreed that many government policies and services are designed without properly listening to Aboriginal and Torres Strait Islander voices, which means they often fail to meet real needs. They stressed that solutions must be led by community, place-based and culturally grounded, with governments working in genuine partnership.

The theory of 'fracasomania', or a 'complex of failure', explains how governments often develop policies just to be seen to fix problems quickly. This creates constant swings between policy measures, relying heavily on external 'expertise' while ignoring the knowledge that communities already hold. As a result, policies are repeatedly restarted, with low expectations of those with responsibility to deliver built in. This maintains the appearance of action without achieving any real substantive or sustainable success.[39]

First Peoples have always held the solutions. What is needed now is for governments to build meaningful relationships, listen deeply and act.[40]

Disturbingly, an unsettling truth – echoed by ITA participants in every consultation – was that governments are not doing enough to discourage or resolve the criminalisation and dehumanisation of Aboriginal and Torres Strait Islander people. In some cases, they are contributing to the perpetuation of these outcomes.

The issues of youth incarceration and policing have been raised time and time again, including in major inquiries such as the Royal Commission into Aboriginal Deaths in Custody,[41] the Royal Commission into the Protection and Detention of Children in the Northern Territory (focused on Don Dale),[42] and repeated investigations into Banksia Hill Detention Centre in Western Australia.[43] Many First Peoples also said that the absence of meaningful government action is beginning to feel deliberate and it's impossible to ignore.

Throughout the consultations, there was a collective sense of frustration that government policy and systems are not underpinned by Indigenous data or knowledge. Yet, Aboriginal and Torres Strait Islander people are still too often blamed for outcomes that stem from policy failure. Despite clear evidence, there is little public discussion about evaluating or reforming bad public policy. Instead, governments (politicians and bureaucrats) and media continue to frame Indigenous people as the problem – justifying poor policy and practice without meaningful evaluation.[44] Across all participation pathways, people spoke clearly about what good policy looks like.

Fixing social determinants by looking at things holistically – Canberra ITA Participant

Aboriginal and Torres Strait Islander community members called for culturally informed, holistic and place-based approaches to policy development that are grounded in clear principles such as those outlined by former Commissioner Calma in his 2006 Social Justice Report:

- a commitment to human rights – rights affirming not diminishing
- holistic, culturally responsive, trauma-informed, healing aware
- genuine engagement and participation of First Peoples in decision-making – nothing about us without us
- a focus on capacity building and community development
- support for strong Indigenous governance
- recognition and nurturing of leadership – at all levels
- clear plans for learning and implementation
- needs-based funding and planning processes – long-term investment and sustainability/security as opposed to trials/pilots and short-term non-ongoing funding
- strong monitoring and evaluation
- a culture of implementation and government accountability and integrity
- honest reflection on the current policy framework for Indigenous affairs.[45]

They stressed the need for policies that reflect culture, morals and stories and that address social determinants through integrated and collaborative systems.

Formal adoption of cultural lens to policies – Melbourne ITA Participant

Community voices emphasised that policy frameworks must be led by First Peoples, trauma-informed and culturally grounded – seeing and supporting the whole person, family and community, rather than treating issues in isolation. Again and again, people called for systemic reform through deeper analysis and long-term, generational change.

Systems looking at the whole person, the whole family, the whole community and treating us as a whole rather than siloed **– Online Disability ITA Participant**

Prevention and diversion

Strong, supported and culturally grounded youth are key to strong communities.[46] This generation must be given every chance to succeed.

Communities are safer and healthier when people who experience the justice system can access appropriate healthcare and mental health support – as well as education and ongoing connection with their families. These supports assist with preventing harmful and negative outcomes such as child removal, detention and incarceration. They also help keep families together. For those caught in the criminal justice system, these supports improve rehabilitation and reduce the potential of returning to prison.

The Aboriginal Justice Caucus (AJC) submission emphasised the importance of effective and appropriate interventions to prevent entry into the justice system as the priority. The AJC argued that this would require, for example, raising the age of criminal responsibility, decriminalising public intoxication and drug possession and addressing these issues through healthcare instead of punitive responses.[47]

Strong concerns were raised about the ongoing removal of children from their families and Country (either through family policing or criminal justice intervention). When children are removed, it breaks families and causes long-term harm. People said that if a home is not currently safe, there should be proper supports to make it safe – not just permanent removal.[48]

Communities spoke about the harmful pathway from out-of-home care to prison and how government departments are failing in their duty of care. They raised serious concerns about young people being locked away in unsafe environments (including residential care, watch houses and youth detention facilities) rather than being supported with opportunities to grow and thrive. They stressed that the impacts of over-incarceration of Aboriginal and Torres Strait Islander people have been well-documented through countless inquiries – so we are fully aware of the consequences.[49] Understanding the direct links to family and community policing, they described how discriminatory and heavy-handed practices push young people into the justice system in the first place.[50] Together, these experiences point to an urgent need for reform that centres the individuals and their families, justice, cultural safety and accountability.

Across the country, we heard frustration at the lack of investment in prevention and support programs that keep people out of prisons and other institutions in the first place.

...the most urgent priorities should be addressing the mass incarceration of Aboriginal people, particularly women and girls and the ongoing crisis of disappeared and murdered Aboriginal women.[51]

People talked about limited or no access to effective drug and alcohol or rehabilitation and mental health services and safe and secure accommodation options for those at risk of incarceration and those exiting detention. They are concerned about ensuring that systems and programs keep children out of the youth detention system. They want education options available for those excluded from the public schooling system and targeted positive youth programs in place to prevent engagement in anti-social behaviour.

Communities called for departments to work closely with families and communities to create wraparound care that supports and reunites families and brings children home safely. Parents and carers need to be kept fully informed and their rights respected through a process of free, prior and informed consent. The absence of policies that reflect culture and kinship is continuing a cycle of disconnection and trauma.[52]

There's not enough support around our young people not only getting diagnosed but also setting up strategies and support. A lot of youth justice programs are about getting them back on country and supporting them with resetting stuff, but it doesn't work if they're not able to have executive functioning. I'm working with young people through our trainee Ranger programme.

We're finding that there's a significant gap around even understanding that and supporting our young people and giving them strategies because if they don't have the ability to have executive function then they can't make decisions. So, this expectation of these youth justice programmes that they're gonna turn up Monday to Friday 10:00 to 2:00 and do all these activities and participate. It's just not realistic when we're not giving them the right tools, so I guess that's some of the challenges that we've been having here" – Online Elders ITA Participant

There were serious concerns that funding is not being used to help families stay together, to reunite, or to meet the needs of children in care – particularly those with neurodiverse needs. Communities said it is critical that departments understand and respect kinship and cultural identity and that they take into consideration the rights of the child when making decisions.

Communities called for increased funding for community-led programs that work with young people who don't fit into mainstream systems. There was deep concern about children turning to drugs, alcohol and crime when they feel no sense of connection or belonging. People asked for therapeutic supports, tools to help with executive functioning and emotional regulation and flexible education options.

Communities are actively delivering programs to prevent youth incarceration. These programs address a key gap identified by communities: the lack of services provided outside of normal business hours (9am - 5pm). One such example is the Ngurra Buru Program described below.

Ngurra Buru - Immediate Response Night Space[53]

Ngurra Buru, which commenced in May 2024, is an Aboriginal-led night space based in Broome that provides a culturally safe and supportive place for young people at risk, especially after hours between 11pm and 4am. Developed in response to community concerns about youth safety, the service offers a calm space where young people can rest, get a meal and connect with trusted Aboriginal staff and Elders. The focus is on listening, responding quickly to needs and offering care grounded in culture and community.

Run by Nirrumbuk Aboriginal Corporation, Ngurra Buru partners with local services, the Western Australian Government and Aboriginal community leaders to ensure young people have immediate access to support, including transport home or to a safe place. The program recognises the importance of cultural identity and belonging in helping young people feel safe and respected. This approach helps to prevent harm and reduce contact with police or emergency services.

After two months of operation, Ngurra Buru has achieved notable results with:

- 424 interactions with young people aged 10 – 16 years
- 335 meals provided.

Ngurra Buru is a promising model that puts Aboriginal values and leadership at the centre of community safety. It shows how local responses can reduce risk, build trust and meet young people where they are. It reflects broader calls from Aboriginal and Torres Strait Islander communities for services that are strengths-based and culturally responsive.

Text box 1.1: Ngurra Buru: Night Space – Immediate response

Survey respondents also highlighted the need for a greater focus on access to targeted and appropriate service supports, including for drug and alcohol misuse, Fetal Alcohol Spectrum Disorder (FASD) and suicide prevention. They argued that more programs focused on diverting young people from detention and breaking the cycle of intergenerational trauma – such as youth forums and programs, youth parliaments, mentoring, education and employment programs including school-based traineeships, sport programs and on Country culture and healing programs – are required.

> ***One community in Victoria brought a governance structure in place with young people. This led to young people influencing projects on their Country and leading an arm of a community organisation, demonstrating leadership to their families and beginning to break the intergenerational trauma – ITA Survey Respondent***

While many programs were identified across the country (for adults and children), we regularly heard that programs are funded as trials or pilots through short-term funding contracts. Just as they start to achieve positive outcomes the funding is cut and the programs cease to operate, putting users back into circumstances of risk. We also heard that many Aboriginal and Torres Strait Islander community organisations had made submissions for funding support to run programs, but do not have the capacity or bandwidth to write good applications. As such, the big non-Indigenous, non-government organisations win the funding, but draw on those community organisations to deliver, without appropriately compensating or resourcing them for their contributions and expertise.

Equality before the law – courts, policing, redress

'Article 26 of the International Covenant on Civil and Political Rights states: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law'.[54] However, equality before the law demands that those requiring equal treatment have equal access. Feeling safe, heard and having one's rights upheld, are central to access to justice.[55] Unfortunately, for many First Peoples, these elements are often missing.

Across all participation pathways, clear examples were provided that demonstrate that First Peoples in Australia do not feel equal before the law, do not have equal access to effective, timely and culturally appropriate legal support, do not receive just outcomes and are not protected from discrimination and harm in accordance with human rights standards.

i) Courts and the judicial system

In line with Priority Reform Three of the National Agreement on Closing the Gap, courts should transform their processes to resolve disputes, ensure fairness and accountability and support restoration, healing and long-term sustainable change.[56] In this regard, a paradigm shift towards restorative justice is necessary.

The Western legal system is complex for the majority of the population, but it is made even more inaccessible where access to effective court support and competent legal representation is limited. For Aboriginal and Torres Strait Islander people there are a number of issues that prevent this.

For example, we heard that some people feel they have no choice but to plead guilty, simply to get the process over with because they can't get funding for a trial or would spend longer on remand than the sentence itself. When legal services are under-resourced, more people end up in prison unnecessarily.

Many of those involved in court processes do not fully appreciate or take into account the significant impacts this has on future outcomes for those individuals, for example in future job prospects or securing stable housing. Further, participants highlighted concerns about sentencing processes, including the lack of appropriate responses for people with disability and delays when individuals were found unfit to plead.

People are sitting on remand that are not able to plead, so they end up in systems longer than they should be, and longer than they need to be, and without the support they need – Darwin ITA Participant

While initiatives like Koori Courts were seen as positive and promising, particularly when Elders guide cultural responses, access remains limited, as eligibility often depends on the offence and a guilty plea, excluding many who might benefit most.

The AJC submitted that sentencing should focus on restorative and therapeutic approaches that embrace cultural, spiritual and physical healing, strengthening culture and community to enable long-term sustainable change. They argued that diversionary options, coupled with support and programs, should be available and prioritised at every stage of the criminal legal system.[57]

Walama List – NSW District Court[58]

'Walama' is a word from the Dharug language meaning 'come back' or return. The Walama List is a culturally appropriate court process in the NSW District Court designed for Aboriginal and Torres Strait Islander people. Launched in 2021, it aims to reduce the over-representation of Aboriginal people in prison by focusing on rehabilitation and healing. The process involves Elders, judges, legal professionals and support services working together to create individual support plans. It is available to people who have pleaded guilty and are willing to engage in change and community support.

The Walama List brings cultural knowledge into the courtroom and gives Elders a formal role in sentencing conversations. It supports participants to reconnect with culture, community and services such as housing, health and mental health care. The court's approach encourages accountability and healing rather than punishment alone.

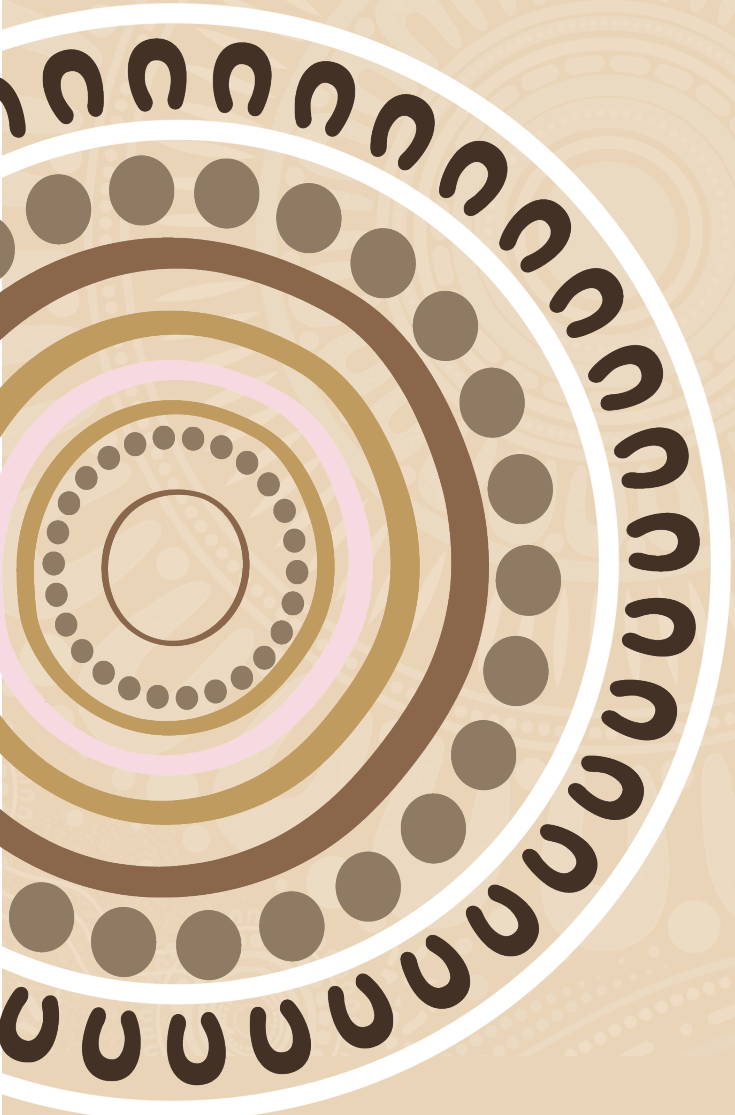
Early reports suggest the Walama List is helping to improve justice outcomes for Aboriginal and Torres Strait Islander people. It aligns with national recommendations, including the *Pathways to Justice* report, which calls for more community-led justice approaches. It is also more aligned with the UNDRIP than traditional Australian courts. The UNDRIP recognises the right of Indigenous peoples to maintain their legal systems and institutions.

Text box 1.2: Walama List – NSW District Court

Community engagements consistently highlighted the importance of Aboriginal Legal Services (and other legal support) working closely with judges and courts to ensure culturally informed assessments. They were especially concerned about families and those with cognitive impairment or intellectual disability.

Needs to be an Aboriginal worker at every courthouse working with the Aboriginal people and, as a fact, that is not happening – ITA Survey Respondent

With regard to the Family Court, concerns were raised about the capacity to engage effectively in decisions made without being fully informed of processes or implications.



Most Aboriginal families don't know what's happening. They don't know that when they sign a temporary care agreement, they're actually signing their parental rights for three months over to the state. They also have the parental responsibility contracts which the department says are not contracts but if you breach a term in the contract, then it goes automatically into the Children's Court. They have no idea about it and most of them think they're doing the right thing. They've got three months and then they may get an extension of another three months for the children in care, but by that time, the department's already got care plans lodged with the Children's Court. Lack of supports to change your life – education, job, housing – they don't have any money, there's no acknowledgement of the social economics of Aboriginal families and they don't get the time to talk to a lawyer – Online Elders Focus Group ITA Participant

Communities also critiqued the role non-Indigenous officials often play in making life-altering decisions for Aboriginal and Torres Strait Islander people without understanding their trauma or the context of their lives. They stressed the need for culturally safe decision-making processes that are informed and led by First Peoples.

They also suggested practical steps, such as sitting around a table instead of at a raised bench or wearing less formal clothing in the Family and Children's Courts. These steps would help vulnerable people feel more comfortable when interacting with the court system.

From barriers to bridges – Walking with First Nations families through the Family Courts[59]

The Federal Circuit and Family Court of Australia (the Court) play a critical role in ensuring safety and justice for families. For First Peoples, this role is especially important. Around 1 in 15 applications for parenting or property orders involves an Aboriginal and or Torres Strait Islander party or child, yet many families face systemic barriers such as lack of legal representation, digital exclusion, trauma and mistrust of government systems. To respond, the Court has created practical measures such as the Indigenous Family Liaison Officer (IFLO) program and the Specialist Indigenous Lists (SILs), designed to improve access and provide culturally safe support.

The IFLO program has grown significantly since 2021, expanding from 1 to 15 positions nationwide. IFLOs combine professional expertise with cultural knowledge, ensuring families are supported in ways that respect their culture and community connections. They now support nearly half of all identified First Peoples matters nationally, often assisting multiple parties in a single case. This has led to a major increase in engagement with the Court, with filings by First Peoples rising by almost 50%. In locations where both SILs and IFLOs operate, settlement rates reach as high as 80%.

The impact of these initiatives is clear in practice. In one case, a child at risk of removal due to a birth alert was placed safely with a grandparent through urgent SIL orders. This child became the first in 3 generations to avoid foster care outside of family, remaining connected to culture and Elders. In another case, a grandparent was supported by an IFLO to file an urgent application before a child was removed, resulting in the child living safely with family on Country, surrounded by cousins and culture. These outcomes show how family-led solutions, supported by culturally safe programs, can transform the futures of children and families.

The Court is committed to strengthening access to justice by expanding culturally appropriate services, improving community awareness and exploring new options such as on-Country hearings and digital hubs. Sustained funding for IFLOs and SILs is essential to continue building trust and ensuring First Nations families are supported to make decisions that prioritise children's safety, family connections and cultural identity.

Text box 1.3: From barriers to bridges – Walking with First Nations families through the Family Courts

Language was also identified as a significant barrier to participating in and understanding court and legal proceedings and judgements. For many Aboriginal and Torres Strait Islander people, particularly in remote regions, English can be a third or fourth language. Therefore, engaging in a foreign legal system, in a foreign language without appropriate support, has resulted in many Aboriginal people, in particular, being unclear about their charges, sentences and compliance requirements.

During the Yirrkala ITA engagement, participants raised this specifically, demonstrating the intersections with the education system. They argued that the lack of support for bilingual education in schools' results in fewer young people coming through with the skills to take up interpreter roles. These positions are critical to access justice – not just court and legal proceedings, but all aspects of justice.

The Law Council of Australia submitted that establishing a National Justice Interpreter Scheme with consistent funding would help Aboriginal and Torres Strait Islander people access appropriate language interpreters in judicial contexts. This would support culturally safe and informed decision-making, effective engagement with the justice system and procedural fairness in the civil justice system.[60]

Community members spoke of frustrations with the timeliness of court processes, especially in dealing with domestic violence orders, which can leave women and children in unsafe living conditions. They highlighted the need to move away from siloed departmental responses. They want legal and health systems to work together to address the root causes of offending. This would provide holistic programs and sentencing options that consider the whole person and what supports they need to improve their lives.

On civil matters, the Aboriginal Legal Service of Western Australia (ALSWA) submitted that their clients face many issues with access to justice, including:

- inaccessible, ineffective and culturally unsafe complaints mechanisms
- a lack of independent complaints bodies with sufficient enforcement powers
- inadequate legislative frameworks and avenues for seeking legal remedies
- inaccessible, ineffective and culturally unsafe court and tribunal systems
- inaccessible and unduly restrictive processes for making important applications that have an impact on the everyday lives of many people, such as Working with Children's Checks and drivers licences.

They highlighted the limited access to legal advice and support in relation to tenancy and housing issues: as well as free to low-cost support for people to draft their wills and get their estate in order. ALSWA submitted that while they do not currently assist with wills and estate matters, they receive a large volume of inquiries and requests for assistance with drafting wills, probate, letters of administration and contested estate issues. ALSWA noted that:

> ***There are relatively few services throughout Western Australia who are funded to provide free to low-cost advice and assistance…The main community legal centre who assists with these applications… currently charges $2,350 for preparation of a simple will and $1,950 for preparing letters of administration…Many of ALSWA's clients can simply not afford to pay such fees.***[61]

ii) Policing

Community members emphasised the critical importance of culturally responsive, community-embedded policing. Aboriginal and Torres Strait Islander police officers who maintain strong, respectful relationships with local communities are seen as vital to rebuilding trust and safety.

Disturbingly, many people described their interactions with police as harmful. They highlighted that police responses are often influenced by deep-seated racism, power imbalances and punishment rather than care or support.

> ***Change the way police interact with kids – shifting away from interactions founded in racism, power imbalances, punitive responses – Canberra ITA Participant***

In every community engagement, participants expressed deep frustration with systemic failures, especially affecting Aboriginal and Torres Strait Islander young people. People spoke about over-policing, inexperienced officers and unjustified charges – often later dropped – that contribute to the criminalisation of young people.

> ***More police doesn't necessarily mean safer communities, it actually exacerbates the issue, a lot of the time they are sending inexperienced police officers up here. We are finding that there are a lot of people, a lot of kids who are charged, who shouldn't have been charged from the outset and then on the day of trial the charges are dropped – Port Hedland ITA Participant***

Hedland Aboriginal Strong Leaders – Responding to racism[62]

The Hedland Aboriginal Strong Leaders (HASL) group is a respected community-led body made up of Elders and leaders from across Port Hedland. They provide cultural authority, guidance and advocacy on issues that affect Aboriginal people in the region. HASL works to strengthen families, mentor young people and build community connections through culture. Their initiatives include leadership programs, youth engagement activities and cultural mentoring, all aimed at supporting the community to stay strong in the face of ongoing challenges.

When we met with HASL during the Port Hedland ITA consultation, members spoke honestly about the resilience of their community and their efforts to keep people together. They described how their programs bring hope, especially for young people who may feel disconnected. HASL leaders said their role is not only to respond to immediate challenges, but also to pass down culture, knowledge and identity so that future generations remain strong and proud.

At the same time, HASL members spoke powerfully about the racism and discrimination Aboriginal people in Port Hedland continue to face. They described repeated harassment from police, including Elders being stopped and searched for no reason and alcohol being confiscated even when it was unopened.

> ***Police search us and take our 'gary' (alcohol) even when it's sealed. We haven't done anything wrong, but they treat us like criminals just for carrying it in a bag – HASL Elder***

Elders in the room said it's unfair treatment, it leaves many people in the community feeling judged, unsafe and mistrustful of services meant to protect them.

HASL emphasised that this lack of empathy and respect from police causes deep harm. Elders, who should be respected for their cultural role, are often humiliated and treated with suspicion. Leaders said this is not only an issue of individual behaviour but of systemic racism that urgently needs cultural change. Police, they argued, must shift towards genuine understanding and fair treatment if trust is ever to be rebuilt. Until then, HASL's work in mentoring, advocacy and cultural leadership remains critical in holding the community together and providing a vision of strength and dignity for the future.

Text box 1.4: Hedland Aboriginal Strong Leaders – responding to racism

In many consultations, people shared that police inaction or poor communication when reporting domestic and family violence further erodes community confidence.

Sisters Inside highlighted that police responses to domestic and family violence often result in the criminalisation of Aboriginal and Torres Strait Islander women, who are wrongly identified as perpetrators. Such experiences deepen mistrust in the police and discourage First Peoples from reporting violence. A central priority must be to advocate for and demand policy and legislative responses that meet the needs of Aboriginal and Torres Strait Islander people and communities, without relying solely on police intervention.[63]

Many communities highlighted the importance of Aboriginal Community Liaison Officers (ACLO's) or Police Liaison Officers (PLO's). Communities recognised the critical role ACLO's play in reducing exposure to harms caused by policing, including racial profiling, discrimination and stereotyping. Concerns were raised about underfunding of ACLO's.

Funding for Aboriginal Community Liaison Officers is important – Redfern ITA Participant

The Aboriginal Justice Caucus (AJC) submitted that communities need strong advocacy to replace criminal legal responses. This includes resourcing for Aboriginal communities and organisations to further investigate alternative models based on self-determined examples (e.g. Aboriginal Community Patrols, Yallum Yallum Elders Council, Te Pae Oranga, Lotjpadhan, Family Centred Approaches).[64]

Arrernte Community Patrol[65]

The Arrernte Community Patrol is a compelling example of how non-policing Indigenous-led initiatives can address complex social challenges through culturally grounded, community-driven approaches to public safety. Informed by the National Justice Project's, 'Alternative First Responders' guide, the Arrernte Community Patrol underscores the potential for such models to be replicated in other contexts, contributing to safer and more cohesive communities.

Like many communities, Mparntwe (Alice Springs) faces challenges related to youth crime and community safety. Traditional policing methods have often fallen short in addressing the underlying social determinants of these issues. Recognising this gap, the Lhere Artepe Aboriginal Corporation, representing the Arrernte people, launched the Community Patrol initiative. This program employs up to 40 casual patrollers, including respected Elders and community leaders, to engage directly with community members, particularly young people, in a culturally appropriate manner.

By empowering local leadership, the Arrernte Community Patrol is working to strengthen the community's cohesion. This aims to reduce crime through proactive community engagement and to minimise contact between Aboriginal and Torres Strait Islander people and the justice system and provide culturally safe and informed support to those at risk. Dressed in bright orange shirts, the patrols operate in collaboration with other local organisations to ensure a coordinated approach to community safety. The community has reported a decrease in incidents involving young people during patrol hours, improved community relationships and an enhanced sense of resident safety.

Text box 1.5: Arrernte Community Patrol

A number of areas were identified where people wanted increased police focus. These included stopping drugs being bought into communities (which was raised in Warrnambool, Gladstone and Port Augusta), responding to calls for help from Aboriginal and Torres Strait Islander people fearing for their safety and working with children and young people in a positive way that builds trust.

(iii) Incarceration and institutionalisation

Aboriginal and Torres Strait Islander people continue to be significantly overrepresented in prisons, including women, children and young people and people with intellectual or psychosocial disabilities.[66]

The increasing number of Aboriginal and Torres Strait Islander women in prison was raised as particularly alarming. Women are recognised as the backbone of strong families and communities, and their imprisonment undermines community strength and healing.

In every engagement, community members raised serious concerns about the treatment and rights of First Peoples in prisons (and institutions), with a sharpened focus on youth detention.

In Cairns, for example, youth justice was raised as a major concern. Community members shared their worries about the high numbers of Aboriginal and Torres Strait Islander young people coming into contact with the justice system. They spoke specifically about the lack of Aboriginal and Torres Strait Islander-led support services and more needing to be done to keep our young people connected to family, culture and community instead of them going into detention.

Community members also spoke of their concern for First Peoples with disability in the system and the intersection of justice, disability and mental health not being recognised.

They've been sentenced and then during their sentence, they're then placed under either the Mental Health Act or the Disability Act and then placed there for life. There's no way out. They're stuck. They're living in a cell for the rest of their life and not a single Aboriginal person is sitting there assessing the person – Online ITA participant

They described situations where individuals are held under mental health or disability-related legislation and then indefinitely detained without culturally informed assessments or meaningful pathways to release. This raises fears of lifelong institutionalisation without justice or appropriate care.

It may be for a minor crime that they've actually committed because they might be coming in psychosis or under mental health. Instead, they are assessed by a group of government officials that don't have a clue what's going on in their actual life, what trauma, everything else that is associated with what this person has gone through. And they decide under their Act that you sit there until they say you're right. The majority of the time once they're under that Act, they will never get out of that – Brisbane ITA participant

Community members stressed the need to empower individuals with the knowledge and tools to make positive changes in their lives, families and communities. This need is particularly important during incarceration and reintegration.

(iv) Raising the age of criminal responsibility

What other first world country in the world wants to jail 10-year-old children? – ITA Survey Respondent

A clear message from community more broadly, was the call to raise the age of criminal responsibility.

Concerns were raised that children under 14 should not be in jail, as they do not have the developmental ability to fully understand their actions or consequences. Locking them up only causes further damage, giving rise to disturbing practices such as children being kept in solitary confinement and adult watch houses without the basic care or support they need. Communities called for national standards of care for incarcerated youth, including independent regulation and complaints systems.

In the AJC's submission to the Yoorrook Justice Commission, it urged the Victorian Government to raise the age of criminal responsibility from 10 to at least 14 years of age, with a minimum age of incarceration of 16 years. The AJC stated that 'criminalising the behaviour of children creates a cycle of disadvantage and marginalisation that may lead to vulnerable children and young people to become entrenched in the criminal justice system'.[67]

Communities want healing, not harm. They want resources redirected into real support: housing, education, food and programs on Country. [68] They are dismayed at the public and political narratives promoting the idea that locking children up is in the best interests of communities when all the evidence confirms the opposite.

(v) The prison experience

Poor prison practices were widely reported to cause more harm than help. These included the use of solitary confinement, placing children in adult watchhouses, inadequate healthcare (including mental health care), limited education, lack of access to medicine and specialist supports, rolling lockdowns, overcrowding and barriers to legal help and complaints processes.

Many stressed how dire the situation is for young people with disability who are incarcerated without proper assessments or demonstrated capacity.

There's a lot of human rights that gets pushed aside in the prison systems – Online Disability Focus Group ITA Participant

Many described the prison system as a place where basic rights are routinely neglected. In this regard, communities called for a proper model of care that upholds the rights of incarcerated adults and young people in detention, ensures basic human rights for all and recognises all community members such as LGBTIQA, Elders and people with disability.

Alongside the ITA community engagements, we took the opportunity to visit prisons and detention facilities in the Northern Territory (NT) and Tasmania. In Darwin and Nhulunbuy (Datjala Work Camp), the devastating impact of the criminal justice system was demonstrated through the sheer numbers of Aboriginal people filling those prisons to the brim, from across the NT and nearby islands.

At the relatively new $500 million minimum-to-maximum security Darwin Correctional Centre at Holtze, concerns were raised about the capacity of the facility to cope under the pressure of increased load, the result of recent changes to the criminal laws in the NT.

With more than 2,500 prisoners in the NT, the Berrima Correctional Centre was re-opened to support the overload, with inmates transferred from Holtz to Berrima.

Despite both sites being dangerously overloaded and the ageing infrastructure at Berrima, administrators expressed a commitment to improve the conditions currently experienced by prisoners in the NT. For example, familial connections between inmates are facilitated where possible, to promote better mental health. This is particularly important for those serving time away from their communities, many from Central Australia, island and very remote communities a long way from Darwin. In the absence of access to family or community supports or visitations, these arrangements help to support inmates to be connected to family members or those from their regions – for example, who speak the same language, come from the same cultural group or community, are familiar with their families or friends.

In Tasmania, we met with a number of inmates in both the Remand Centre and the Men's Prison at Risdon Prison Complex in Hobart. They shared their personal aspirations to get out of jail, to reunite with their families, support their partners and children and get a job. During a sit-down conversation with five Aboriginal men, all on remand, identity and being recognised as an Aboriginal person by the community was raised as a major barrier for breaking the cycle and getting support outside of the walls. They talked about their previous attempts at reintegration and described being blocked and targeted at every point.

The men raised challenges in accessing accommodation, employment, rehabilitation and mental health and wellbeing support, and said these often resulted in their return to prison. They also emphasised the lack of an Elders' group to assist with connecting them back with community and culture.

In the absence of appropriate reintegration planning prior to release and support post release, all of those we spoke to have been in a constant cycle of incarceration over many years, some following the generations before them. In all facilities, many people in custody are being held on remand, which means they haven't been convicted yet and are waiting for their court case to be resolved. Some have been waiting for a very long time. In fact, for some of them, the time they've already spent in custody is longer than the sentence they would likely receive if they were found guilty. This is unjustly taking away months and even years of people's lives from them and their families, unnecessarily institutionalising people and significantly reducing the potential for them to rehabilitate or successfully reintegrate upon release.

Further, due to resourcing and staffing challenges, inmates are regularly subjected to rolling lockdowns and extended time in their cells, limiting access to visits from their families and reducing their ability to make phone calls.

This is reflective of the unacceptable over-representation of Aboriginal and Torres Strait Islander people in carceral settings nationally.

Our young ones in juvenile detention centres and their treatment as well as living arrangements is vile and this needs rectifying immediately - with accountability and sacking/ cleaning up of this disgusting situation – ITA Survey Respondent

The same goes for our mobs dying in custody - from their own hands, prison officers/police officers or from not receiving the medical help they deserve and have been failed to have provided – ITA Survey Respondent

There's so many blackfullas who are trans and in prison and they're not in safe spaces; they're not looked after – Online LGBTIQA+ Focus Group ITA Participant

How can we reconcile when our people are dying in prisons? Dying because they were denied healthcare? Dying because of generations of poverty that started with colonisation? – ITA Survey Respondent

Many participants also spoke about the trauma carried by Aboriginal and Torres Strait Islander people in prison, including men who have experienced sexual abuse or live with FASD – revealing how systems often fail people long before incarceration.

I noticed that especially when I went to the prison systems, a lot of the Aboriginal men I dealt with were victims of sexual abuse and they were victims of FASD, slipping through the systems and a lot of the kids as well – Online Disability Focus Group ITA Participant

Community members expressed deep concern about the lack of access to effective advocacy while in custody. Advocacy services were described as hard to reach and inconsistent, with inmates often forced to rely on generic helplines that provide limited support.

As articulated above, reintegration support was widely described as lacking and culturally inappropriate. Many people shared their experiences of transitioning back into the community after prison. This included Aboriginal and Torres Strait Islander people currently in prison and those who had been previously incarcerated.

They described significant challenges during this transition. These included a lack of transport and safe, stable accommodation.

First Peoples also reported long waiting times to access referred services. Some services did not meet their cultural or social needs. These barriers were seen to increase the risk of reoffending.

Elders and other participants called for holistic approaches across health, education, justice and housing to ensure families can support returning members effectively.

Struggling with transitioning into community post incarceration – need support, struggle to access support services (long waiting times) and needing access to transportation to get there, culturally appropriate – Kiama ITA Participant

Finally, during consultations many community members (including those who sit on Community Justice Groups), criticised incarceration supervision orders, calling them overly complex and punitive.

Community members called for systemic reform focused on culturally safe care, trauma-informed supports and restorative justice responses that prioritise healing over punishment. These supports should include safe and ongoing housing, employment opportunities, transport, food security, education, healthcare and culturally appropriate support to maintain connection with family and community.

I think that restorative justice is the way to go for our people because when they leave a prison they have nowhere to go and no help...our people need help and all these areas especially housing for individuals and their families – ITA Survey Respondent

(vi) Redress and access to complaints mechanisms

Across all engagement, we heard that current complaints systems are too complex and hard to navigate. They described how red tape, legal jargon and poor communication about processes and next steps discourage people from pursuing complaints. This included the Australian Human Rights Commission complaints process and state and territory-based discrimination processes.

For example, while we were in Dubbo, concerns were raised by participants who had engaged with the AHRC complaints system. Community members said the process often feels too complicated, slow and not culturally safe, which makes it hard for many Aboriginal and Torres Strait Islander people to use. Participants described the need for more accessible support, clearer information and better follow-up so that our people feel heard and respected when they make a complaint. Improving the complaints system was seen as an important step to ensure access, accountability and trust.

Some systems also expect Aboriginal and Torres Strait Islander people to exhaust every other option first – which can be unsafe and draw out any hope of access to justice for many years.

Community members told us they need well-funded, well-staffed local Aboriginal and Torres Strait Islander legal services, so cost does not stop people from getting effective, culturally responsive, trauma-informed help and redress. They want plain-language legal education to help understand their rights, especially around housing, police and complaints processes and clear and accessible information on where to turn when their rights are not respected.

Independent and impartial complaints mechanisms help people feel safer when accessing essential services like police.[69]

In its submission, the Aboriginal Legal Service of Western Australia (ALSWA) called for an independent and impartial police complaints mechanism to ensure that everyone – especially our most vulnerable women, children and Elders – is protected.

ALSWA also raised concerns about poor phone answering practices in police services, which often require complaints to be written. This is a barrier for people with low literacy, people for whom English is a second language and those in remote areas who struggle to access assistance. Finally, ALSWA noted that public sector agencies often ignore recommendations made by the Corruption and Crime Commission (CCC), which lacks adequate enforcement powers to act on them. [70]

Priority Goal 2 - Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Promoting the rights of Indigenous people in Australia is a critical step toward achieving equality, justice and reconciliation. It involves addressing historical and ongoing inequities while respecting and uplifting the culture, land and self-determination of First Nations people – ITA Survey Respondent

The UNDRIP is underpinned by 4 key principles: self-determination; participation in decision-making (grounded in free, prior and informed consent and good faith); respect for and protection of culture; and equality and non-discrimination. It sets out the minimum standards for the survival, dignity, security and well-being of Indigenous Peoples worldwide and affirms their right to maintain and strengthen their unique identities.[71]

The UNDRIP is also significant in that Aboriginal and Torres Strait Islander peoples were comprehensively involved in the drafting of the declaration and have consistently sought opportunities for its implementation in policy and legislation – ITA Survey Respondent

As part of the engagements, participants were provided an overview of the: process undertaken to draft the UNDRIP and to progress it through to adoption; the participation of both the Australian Government and Aboriginal and Torres Strait Islander people in those processes; and activities undertaken since adoption to promote its implementation.

When asked whether they agreed with the high-level goal of promoting the implementation of the UNDRIP, 371 ITA survey participants responded. Of those, 304 – a clear majority – agreed that this should be a priority for the Commissioner's agenda. Forty-six somewhat agreed, 12 neither agreed nor disagreed, 5 somewhat disagreed and only 4 disagreed.

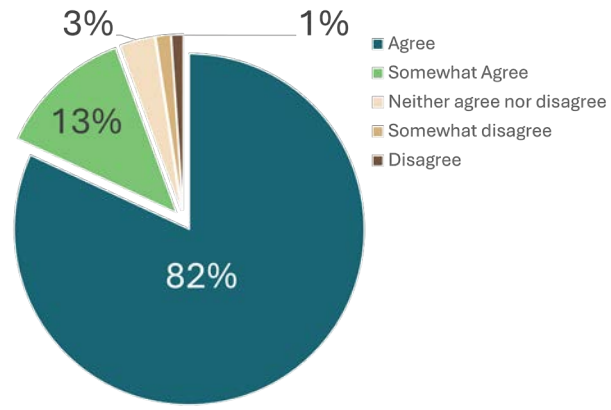


Figure 1.4: Survey Response to Question 1 regarding whether the implementation of the UNDRIP should be a priority for the Commissioner's agenda

While many ITA participants were familiar with the UNDRIP, many had not engaged with it deeply, or used it in their rights advocacy.

When asked how much they knew about the UNDRIP, 312 survey participants responded. Of these: 29% said they understood the UNDRIP, its purpose and its articles; 41% reported a general awareness and understanding; 24% said they were aware of it but did not know much about it; and 6% said they knew nothing about it.

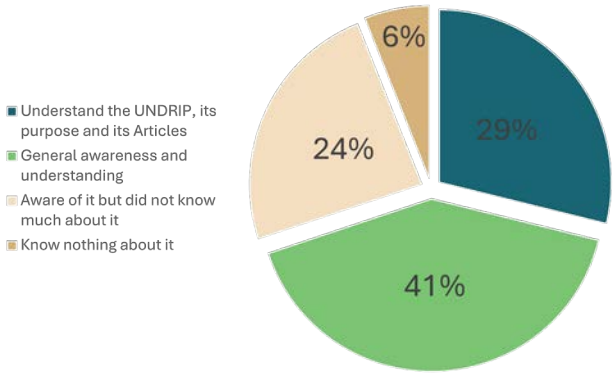


Figure 1.5: Survey response data responding to question: 'How much do you know about the Declaration (UNDRIP)?'

Participants largely agreed that the UNDRIP is a critical framework for holding governments accountable to their human rights obligations to First Peoples, promoting fulfilment of their rights to the same extent as the broader population.

ITA participants across all participation pathways consistently highlighted the need for greater awareness raising about the UNDRIP, its history and purpose; and education on how to effectively apply it. People were positive that change is possible through greater awareness of the UNDRIP in families, communities and leadership spaces and by encouraging senior decision-makers to actively apply its principles in their work.

I would like to know more about the United Nations Declaration on the Rights of Indigenous Peoples – more education around this for everyone is what I believe is needed – ITA Survey Respondent

I think a big problem is that the vast majority of Australians, First Nations people included, have never actually heard of the declaration and if they have, are not actually familiar with its content. That lack of familiarity means few people have internalised an understanding of the declaration and how it would apply to them personally in their day to day lives. I think there needs to be a significant dialogue raising awareness of the declaration first before running ahead and 'implementing and embedding it' on our behalf without first having an understanding of its content – ITA Survey Respondent

There was particular concern around narratives promoting the UNDRIP as 'not legally binding' rendering it, in some instances, irrelevant to those who had heard this. This narrative ignores the reflection of already existing international legal obligations on Australia arising from the ratification of human rights treaties which are reiterated within the UNDRIP. In this regard, the Lowitja Institute describe the UNDRIP as a:

...'moral force' that can compel Australian governments to support and act towards empowerment of Aboriginal and Torres Strait Islander peoples.[72]

Consultation discussions also acknowledged that there is still much work to do to give effect to human rights generally in Australia and the need for measures such as an Australian Human Rights Act to codify into our national law the human rights Australia has committed to internationally.

The importance of countering mis- and dis information, including the misconception that the UNDRIP grants extra rights to Aboriginal and Torres Strait Islander peoples was also highlighted.

Dispelling disinformation and misinformation that the Declaration gives extra rights to First Nations people – Broome ITA Participant

Accessibility

Participants noted the challenge of making the UNDRIP accessible, citing its legalistic language and its perceived distance from the everyday realities of communities. Suggestions to address this included developing apps and digital tools to explain rights under the UNDRIP in plain language and to provide simple pathways for making complaints.

The Declaration – great resource but difficult to go through all those different articles and break them down to the ones that are really relevant to us on the ground as opposed to what the bigger picture sort of thing – Online Disability Focus Group ITA Participant

The guiding principles

While some were unfamiliar with the UNDRIP, they confidently reflected their understanding of, and engagement with, the four guiding principles of the UNDRIP. Others identified the need to clarify what these principles and rights mean in reality. This was particularly the case for the first principle – self-determination.

Self-determination

Self-determination is fundamental to Aboriginal and Torres Strait Islander people overcoming the legacy of colonisation and the impacts of dispossession. Across all participation pathways, people described the lingering effects of colonisation and oppression, including their exposure to discrimination and mistreatment and their exclusion from mechanisms that support their participation in decisions that affect their rights. This renders them more likely to experience poverty, imprisonment, poor health and restrictions on self-determination.

The Lowitja Institute argued that:

> *As Australia is a signatory to all the major United Nations conventions on human rights, including UNDRIP, Australian governments are obliged to uphold the fundamental international legal principles of self-determination and to incorporate it into legislation and policy.*[73]

While governments often proclaim or voice their commitment to First Peoples self-determination, practice rarely reflects it. As submitted by the national voice for our children SNAICC:

> *Government systems must change in order to support self-determination and achieve better outcomes, but it is clear that governments are not understanding or adequately responding to the scale of change that is required.*[74]

Participation in decision-making; free, prior and informed consent; and good faith

The UNDRIP is not being implemented by governments in Queensland. Free, prior and informed consent is rarely sought from our community – ITA Survey Respondent

Priority Reform One of the National Agreement on Closing the Gap recognises the importance of Aboriginal and Torres Strait Islander people's participation and sharing decision-making with governments through genuine policy and place-based partnerships. Such partnerships are key to supporting community-led initiatives and driving outcomes that reflect the priorities of First Peoples.[75]

A lot of policies, strategies and priorities are made without the knowledge of Aboriginal people – Aboriginal people need to be at the table, see it especially in health – Launceston ITA Participant

Many Aboriginal and Torres Strait Islander people expressed frustration at government-controlled processes where decisions are made without genuine engagement or transparency.

Equal partnerships in decision making – at the moment, government are saying we'll set up the structures and we'll appoint who we think we'll work best with to advocate on behalf of the community, we're getting nowhere – Launceston ITA Participant

Community members frequently raised concerns about whether current engagement processes truly include people who face systemic barriers such as low literacy, poor health, limited transport or family violence.

How do we empower and include the voices of people who can't read or write, don't have access to transport to attend community meetings, have a chronic illness, or dealing with domestic violence? – Wagga Wagga ITA Participant

Ensuring the participation of those with lived experience was also a common theme of the discussions in all engagements. This includes the engagement of organisations 'led by people directly affected by the policies being enacted'.

We are the lived experience experts with the ability to provide an analysis of the oppressions that are being faced by our community and our voices are crucial in shaping policies that truly reflect the realities of many criminalised First Nations peoples.[76]

This was also reflected by Elders groups, disability advocates and the LGBTIQA+ community. The Walkern Katatdiin Governance Committee and research team submitted that:

All engagement should actively ensure that it includes LGBTIQA+ Aboriginal and Torres Strait Islander people, preferably reflecting the diversity within the Aboriginal and Torres Strait Islander LGBTIQA+ community groups (e.g. Kimberley Blak Pride, First Peoples Rainbow Mob WA, Black Rainbow, BlaQ, 2Spirits, Koorie Pride).[77]

Communities called for strong, region-based, community-led consultation processes that are meaningful, non-hierarchical and grounded in Indigenous ways of knowing, doing and being. Participants emphasised the need for local structures that enable genuine community participation, stressing that those directly impacted must be central to designing solutions. The absence of shared decision-making and the persistence of top-down approaches from government were identified as major barriers to progress. This includes, for example, that current funding models and appointed advocacy structures often fail to reflect or meet community needs.

We haven't seen shared decision making. Funding agreements don't meet the needs of communities – Broome ITA Participant

A clear need for more accessible platforms and local advocacy to ensure all voices are heard and respected was identified. The fly-in, fly-out (FIFO) consultation model was also criticised for its lack of continuity and community ownership. There is a collective push for equal partnerships where power is genuinely shared and communities have authority over decisions that affect their lives. At the heart of this is a desire to return to care-driven, locally accountable systems that reflect communities lived realities.

In its submission, the First Nations Digital Advisory Group strongly argued for the need for all levels of government to move away from one-size-fits-all approaches and adopt place-based solutions. This means recognising the cultural, geographical, economic and aspirational uniqueness of each Aboriginal and Torres Strait Islander community, working flexibly, empowering communities as informed decision-makers and partnering to achieve shared outcomes.[78]

Respect for and protection of culture

For Aboriginal and Torres Strait Islander peoples, community, culture and relationships are central to wellbeing, identity and belonging.[79] These connections are deeply grounded in kinship systems, shared responsibilities and ties to Country that have existed for tens of thousands of years.[80] Culture is not separate from daily life – it is lived and practiced through language, ceremony, art, story and relationships.[81]

Across all participation pathways, people expressed that any policies or services that overlook these foundations risk further harm and disconnection for First Peoples. This position aligns with research and evidence.[82]

Access to country is access to culture, access to culture is access to language and stories and the ability to pass it on – Canberra ITA Participant

Equality and non-discrimination

Structural and systemic discrimination and exposure to racism were key issues identified through all participation pathways and in every community engagement.

Racism

People shared examples of racism in many areas.

We can't escape it; racism is everywhere even in sport – Ceduna ITA Participant

Many people talked about how racism is part of systems that affect basic human rights – like getting healthcare, education, housing and fair treatment by police and the justice system. Many people also noted in schools, children are treated differently because they are Aboriginal or Torres Strait Islander.

People (including well respected Elders) reported that they are followed or watched closely in stores and shopping centres because of how they look or what their surname is. In interactions with police, communities reported being overpoliced, racially profiled and treated with suspicion. These stories were not just one-off events, they reflect societal values and attitudes that continue to cast First Peoples through a biased and discriminatory lens.

Racism was also raised in connection with workplaces, government departments, sports and media. In sport, people shared stories of being verbally abused or treated unfairly by referees and officials.

Racism and the Koonibba Football Club[83]

During the Ceduna ITA consultation, community members raised serious concerns about racism in the community and spoke about the proposed closure of the Koonibba Aboriginal Football Club. Established in 1906, Koonibba is the oldest surviving Aboriginal football club in Australia and a source of pride for generations of Aboriginal families in the region. Community members said the club is more than sport – it is about culture, identity and keeping people connected.

The news that it could be shut down due to 'capacity issues' in the league was deeply upsetting, especially because two teams were being targeted for removal to save money. People told us that the reasons given for the closure showed a lack of respect for Aboriginal history and community priorities.

This was further exacerbated by references in the District League's 2025 budget paper which was said to have outlined the financial shortfalls and proposed restructure but also included what many felt were insensitive and racially discriminatory statements. On the one hand, the paper celebrated Indigenous Round and featured the special jerseys and the club's history; while on the other, it added a so-called 'fun fact' suggesting that dot painting was only 'invented in 1971'. Community members felt this trivialised Aboriginal culture and ignored the thousands of years of cultural practice and meaning behind their art as a cultural expression.

In the same budget paper, an article was published about the importance of being 'informed', which community members said felt patronising in the context of the situation at play. They described the paper as racist and dismissive of Aboriginal voices, celebrating culture on one page while undermining it on the next. For many, this mirrored the broader experience of racism in Ceduna – where Aboriginal people are often expected to showcase their culture for others, but their real needs, voices and rights are overlooked when decisions are made.

Participants said the potential closure of Koonibba was about more than football. It symbolised how Aboriginal people in the region are pushed aside when money is tight, despite their long contributions to the community. They called for the club to be supported as not only a feature of the region's history; but also, in the spirit of fairness and respect, recognising the role it plays in building strong, connected and proud Aboriginal communities.

Text box 1.6: Racism and the Koonibba Football Club

Aboriginal and Torres Strait Islander people spoke clearly about the serious harm racism causes in their lives.

Racism doesn't just hurt people's opportunities – it also deeply affects their wellbeing and sense of self. People spoke about how racism makes them feel ashamed, angry and disconnected. It changes how they see themselves and how they relate to others. The emotional toll is heavy, especially when racism comes from multiple directions at once. Research shows that racism increases the risk of mental health problems and suicide among First Peoples.[84] Community members said it was important to not just name racism but also understand its impacts so that healing and justice can be possible.

These everyday experiences come from a long history of negative stereotypes about First Peoples that began during colonisation and continue today.

Concerns about elections stoking divisive language that position Aboriginal and Torres Strait Islander people in a deficit view – Warrnambool ITA Participant

These ideas paint Aboriginal and Torres Strait Islander people as 'less than' and are used to justify unfair treatment.

Some people pointed out how the 2023 Referendum led to an increase in openly expressed racism. Communities said politicians and media used harmful, divisive language that gave others 'permission' to be racist. The opposition to the Aboriginal and Torres Strait Islander flags and Welcome to Country ceremonies has caused deep distress for some. In small towns, this meant more people felt free to make racist comments without facing any consequences. Community members said this has created more fear, exclusion and isolation.

The National Network of Incarcerated & Formerly Incarcerated Women & Girls submitted that:

Many First Nations and racialised people experience pervasive racism within the criminal legal system. This manifests as racial profiling, unequal treatment and a lack of culturally appropriate support, exacerbating the disparities in their treatment and opportunities for rehabilitation.[85]

Others spoke about the unique forms of racism experienced by for example queer Aboriginal and Torres Strait Islander people, who face both racial and gender-based discrimination. These overlapping experiences make support and advocacy even more important.

We know that discrimination and particularly racism, exclusion of black queer mob and unequal opportunity still exists within our states and territories – Online LGBTIQA+ Focus Group ITA Participant

People also said there were too many barriers to speaking out about racism. For example, it was reported that in some places it costs hundreds of dollars to lodge a complaint about racism in sport. This means that many people cannot afford to take action even when they experience discrimination. There were calls for strong consequences when racism occurs, not just empty apologies. Communities want to see systems that respond fairly and take racism seriously, with real accountability and change – not just words.

To address racism, people shared clear ideas: more education and truth-telling, better media rules around how Aboriginal and Torres Strait Islander people are represented, culturally safe counselling and free legal support for those who experience racism. Many confirmed the need for the urgent adoption and implementation of the National Anti-Racism Framework by all governments and for organisations and businesses to embed anti-racism and cultural safety standards across their operations.

Community members want a country where they are respected and treated fairly. They know the harm racism causes. They also know the power of connection, dignity and justice. Listening to these stories is the first step toward real change.

Systemic and structural discrimination

Access and equity are critical for ensuring Aboriginal and Torres Strait Islander peoples can fully participate in all aspects of society, yet systemic and structural discrimination limits the potential for just and fair outcomes.

This is evident in historical and ongoing colonial practices that have created inequities in health, education, justice, housing and employment systems.[86]

Nationally, there were clear calls for:

- More inclusive and representative decision-making.
- Resource allocation based on need, not just remoteness.
- Greater support for regional, remote and urban communities alike.
- Practical solutions to systemic access barriers, particularly around justice and digital inclusion.

Community members consistently expressed concern about unequal access to services, lack of infrastructure and systemic barriers affecting Aboriginal and Torres Strait Islander peoples differently depending on whether they live in urban, regional, or remote areas. While the needs across communities may be similar, the resources available are often not, highlighting inequities between regions.

Where First Peoples live impact the price of their food, and whether they have access to clean drinking water and rubbish collection. It impacts the cost of their fuel and transport and the job and education opportunities and trades and legal services available to them.[87] For First Peoples, where they live also determines their access to technology and the internet, whether they have a postal service, or education and health services. The way which the media portrays an individual or a community is also often related to their location.[88]

Communities highlighted that the cost of living and access to health and justice services are more challenging in smaller and remote communities. Barriers like lack of internet access, cashless systems and strict ID requirements prevent access to basic rights such as applying for a driver's licence or a working with children's check. These are often critical for employment, cultural obligations and staying out of the justice system. Further, people in remote communities often rely on individual community members to navigate essential services like Centrelink and housing due to the absence of proper infrastructure and services.

We heard a strong sentiment that regional and rural voices are overlooked in national and state-level decision-making, with calls for better representation through peak bodies.

Communities aren't represented at high levels for negotiation at peak bodies – Woorabinda ITA Participant

Urban Aboriginal and Torres Strait Islander people also feel their voices are often excluded from national dialogues.

Aboriginal people in urban areas need to have their voices heard as well as regional and remote people – Redfern ITA Participant

A common concern raised was the way that funding distributions and decisions are made. There was regular criticism that current arrangements are too narrowly focused on remoteness rather than actual need, disadvantaging communities in some states. There's frustration that governments engage with communities only when it suits reporting timelines, rather than in ongoing and meaningful ways. Additionally, some communities fall through the cracks because they're not officially classified as remote and therefore miss out on critical investment in essential health, housing and justice services.

Commonwealth holds the majority of the funds and have discretion over how funds are allocated to states – funding for Aboriginal & Torres Strait Islander programs are allocated based on remoteness – Victoria doesn't have remote communities in the same way that the Northern Territory does – Victoria contributes a lot through GST and does not receive a representative portion of funds back to invest into programs – Melbourne ITA Participant

Addressing these gaps requires culturally safe, place-based solutions that centre Aboriginal and Torres Strait Islander voices, leadership and self-determination.[89] Efforts like the National Agreement on Closing the Gap acknowledge that achieving equity demands structural reform and shared decision-making.[90]

Practical implementation of the UNDRIP

Many community members voiced frustration that, despite Australia's formal support for the UNDRIP in 2009, there has been a lack of meaningful implementation since then.

Australia has been very slow in implementing the United Nations Declaration on the Rights of Indigenous Peoples – ITA Survey Respondent

I think this is long overdue and Australia has been recalcitrant in acknowledging...the declaration – ITA Survey Respondent

There were collective calls for the UNDRIP to be embedded in domestic legislation to ensure that policies and laws align with human rights standards and carry enforceable consequences.

A lot of the things we're talking about, if we can just get the implementation of the Declaration into some sort of legislative framework so that there's punitive consequences, will solve a bit of this for us – Online Elders Focus Group ITA Participant

Community members also agreed that the scrutiny of Bills for compliance with the UNDRIP is essential to government accountability.

Practical examples where communities are using the UNDRIP to advance their rights were also provided.

This is a priority for my Elders and community. We have developed collaboration protocols to guide our partnerships with others that are underpinned by the UNDRIP – ITA Survey Respondent

However, during the conversation at the Parkes ITA engagement, for example, members raised that some small communities don't know anything about the United Nations. They don't know enough about the UNDRIP and some don't even realise it is relevant to them.

Participants also emphasised the critical relevance of the UNDRIP to key organisations to realise Indigenous rights.

Reconciliation Australia can use UNDRIP in a practical way, there may be scope to be able to expand reconciliation action plans to include the Declaration in a practical way – Redfern ITA Participant

Many community organisations who provided submissions to the Project reported how they have embedded the UNDRIP within their governance and organisational strategies and also how they apply its rights and principles.

The Lowitja Institute reported that their:

...vision aligns with and is supported by the UNDRIP, which includes self-determination and respect for Indigenous knowledge, cultures and traditional practices as foundational principles.[91]

Indigenous Allied Health Australia (IAHA) submitted that health, education and employment are all fundamental human rights and that the UNDRIP is central to strengthening Indigenous health governance and achieving better outcomes centred in culture. IAHA emphasised the need for an intersectoral, systemic and transformational shift that enables Aboriginal and Torres Strait Islander-led policy development and accountability and moves away from deficit-based narratives towards structural change within government.[92]

Also from a health perspective, the Partnership for Justice in Health argued that:

...implementing the Declaration in a domestic context can provide foundational guidance for health professions and health systems engagement with Aboriginal and Torres Strait Islander peoples and communities. It can enhance the implementation of pre-existing legal frameworks designed to improve health outcomes for Aboriginal and/or Torres Strait Islander people...[93]

A number of organisations, including the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM), the Healing Foundation and the Partnership for Justice in Health, stressed that the implementation of the UNDRIP should not be considered in isolation from the National Agreement on Closing the Gap. They argued that there must be clear alignment between the National Agreement as the 'primary lever for improving socio-economic outcomes' for First Peoples and any national plan to progress the UNDRIP.[94]

In considering an implementation approach, the Healing Foundation, the National Network of Incarcerated & Formerly Incarcerated Women & Girls and the Partnership for Justice also stressed the need to take into account important recommendations such as those contained in the *Bringing Them Home Report and the Report of the Royal Commission into Aboriginal Deaths in Custody* (RCIADIC), to 'not reinvent the wheel', and to embed effective monitoring and accountability frameworks.[95]

While supporting the implementation of the UNDRIP, the First Peoples Disability Network (FPDN) also argued that for First Peoples with disability, 'just and equitable outcomes cannot be achieved by the UNDRIP alone'. They stipulated that realising the rights of First Peoples with disability requires the enactment of both the UNDRIP and the Convention of the Rights of Persons with Disabilities (CRPD). The CRPD addresses 'unnecessary obstacles and barriers to accessibility, including for buildings, transport, communication and other services.

Currently, Australia has no coherent system of implementing UNDRIP and CRPD, especially in so far as doing so at a legislative level is concerned...Statements of Compatibility...often disregard the existence of UNDRIP and CRPD entirely and even where a committee does identify problems, legislators can freely ignore those concerns. Furthermore, this system does nothing to encourage proactive implementation of UNDRIP or CRPD...FPDN feels that CRPD used in conjunction with UNDRIP would produce better and stronger outcomes for First Peoples with disability.[96]

A similar position was communicated by SNAICC with regard to the rights of Aboriginal and Torres Strait Islander children and young people. They highlighted the need to consider both the UNDRIP and the United Nations Convention on the Rights of the Child (UNCRC) when developing legislation and policies to protect the specific rights, wellbeing and aspirations of Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander children's rights include those owed to all children as well as their unique rights as Indigenous Peoples...The rights needs and aspirations of Aboriginal and Torres Strait Islander children are critical to not only their wellbeing, but also to building strong and connected culture and communities.[97]

Monitoring and accountability

There was consensus across all participation pathways about the need for a definitive mechanism to implement the UNDRIP, including through legislation, but also that it must be underpinned by a monitoring and evaluation framework.

ITA participants also called for an audit of all laws and policies against the UNDRIP and supported the recommendations of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSIA) to amend the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to include the UNDRIP in the definition of human rights.

Priority Goal 3 – Voice, Treaty, Truth

Figure 1.6: Key words used by survey respondents when asked about Voice, Treaty, Truth

Aboriginal and Torres Strait Islander Peoples across the country have been advocating for and working towards inclusion in the Australian Constitution for almost 90 of the 124 years of its existence. These efforts culminated in the *Uluru Statement from the Heart* in 2017 and the subsequent commitment by the Albanese Government to undertake the national Voice Referendum held on 14 October 2023.

The 2023 Voice Referendum asked Australians to vote 'Yes' or 'No' on a proposal to alter the Constitution to recognise the First Peoples of Australia in the preamble; and to establish an Aboriginal and Torres Strait Islander Voice to the Parliament. The result saw 39.94% of voters vote 'Yes' and 60.06% vote 'No'.[98]

With the Referendum result failing to secure support for a Voice to Parliament, or recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution, the question remains: Where to now?

An ITA Survey Respondent reflected as follows:

When we have a Voice & Treaty, only Truth with follow.

When we have a Voice & Truth, can a Treaty be forged?

When we have Treaty & Truth, we have a voice of our own.

The Uluru Statement from the Heart includes 3 key pillars – Voice, Treaty and Truth. While the Referendum dealt with one of the 3 pillars (Voice), the other 2 pillars (Treaty and Truth) were not addressed.

As highlighted above, throughout the consultations many expressed feelings of disappointment and a real sense of loss at the Referendum result.

Even those who did not agree with the proposed Voice, confirmed that the impact has been significant and voiced their concerns at the consequences of the result (i.e. increased racism and apathy from government to pursue progressive policy responses).

I do not support the Uluru [S]tatement but I support the pillars – ITA Survey Respondent

It would be great to see more momentum on this, after the Referendum Indigenous issues just vanished from the national conversation – ITA Survey Respondent

When asked to what extent they agreed with providing advocacy and guidance on the implementation of the three pillars of the Uluru Statement from the Heart – Voice, Treaty and Truth, the majority (72%) showed a high level of support. Of 368 survey respondents to this question, 264 respondents agreed that the Commissioner should prioritise advocacy and guidance on this goal during her term. Sixty people somewhat agreed, 18 neither agreed nor disagreed and only 26 people either somewhat disagreed or disagreed.

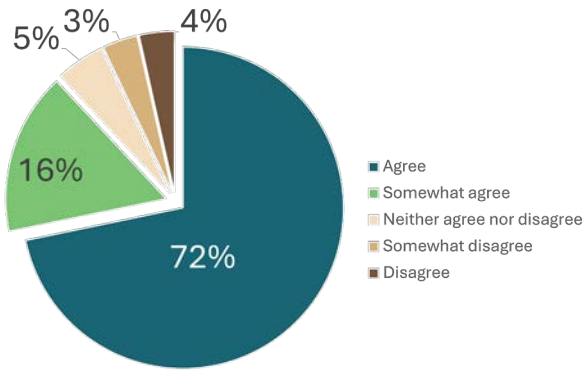


Figure 1.7: Survey responses to Question 2 regarding whether the Commissioner should prioritise advocacy and guidance on the 3 pillars of the Uluru Statement from the Heart - Voice, Treaty and Truth

Agree but I feel defeated already – ITA Survey Respondent

Those who did not agree argued that the Voice and Uluru Statement ultimately became 'divisive' and caused 'unrest'. One survey respondent described the Voice process as a 'National Disaster'.[99]

While some felt that the Uluru Statement is no longer 'viable', there was general consensus that the 3 pillars are correct and critical to advancing First Peoples' rights.

Progressing Voice, Treaty and Truth and the goals of the Uluru Statement of the Heart remain relevant and key to improve outcomes for our peoples – ITA Survey Respondent

I wholeheartedly support this goal because the three pillars...remain crucial for advancing the rights and recognition of our people – ITA Survey Respondent

Participants acknowledged work done to date, including through the Recognise Campaign, the Uluru Dialogues and the development of the Masig Statement (by Torres Strait Islander people).

However, they consistently stressed that significant work will be required to get these moving again and right.

Sequencing of implementation of these three pillars is critical. Truth first, Treaty underpinned by legislation second and Voice will be implemented as a consequence (or as part of the process) of the first two pillars being realised. The Commonwealth has a leadership role to play, especially as it is the jurisdiction responsible for upholding Australia's international human rights obligations – it cannot continue to point to what jurisdictions are doing with treaty without following through with [international] treaty implementation – ITA Survey Respondent

The National Voice for our Children, SNAICC, submitted that the three pillars intersect with the core of the National Agreement on Closing the Gap. They argue that 'recognition that inequality, trauma and marginalisation is deeply entrenched in Australia' and that 'a fundamental and national shift in relationships and policymaking is needed to make meaningful impact'.[100]

Learnings from the failed Referendum

Post Referendum – perpetuation of negative attitudes towards First Peoples – Mt Druitt ITA Participant

Post Referendum, research conducted by the Australian National University (ANU) in 2023 found that many Australians voted 'no' because they did not want further division and were concerned that Aboriginal and Torres Strait Islander people would gain extra rights.

The ANU data also showed that Australians recognise the ongoing disadvantage experienced by First Peoples, which they believe is caused by government policies and warrants additional government support. However, many did not see a constitutionally enshrined Voice to Parliament as the right solution to address that disadvantage.[101]

Across all participation pathways concerns were raised about the spread and effect of mis and dis information, both throughout the Voice campaign and how it has continued to fuel division since.

The failure of the Voice Referendum shows that Australians are easily swayed by misinformation, conscious and unconscious bias and covert and overt racist dialog – ITA Survey Respondent

The...Referendum highlighted the divisions and disunity caused by political and media narratives spreading misinformation – ITA Survey Respondent

Need to...make people accountable for spreading lies. Makes it hard to try and explain to people what is what when there are people in parliament doing fear enticing letter box drops. Where I live a local politician put a flyer about land rights and if the voice gets through then all the parks in the area will be taken over. We know how wrong that is but they get away with it – ITA Survey Respondent

People articulated their experiences pre and post Referendum. We heard that as a result of the Referendum, some people were more self-conscious. Some were more fearful than ever of leaving their homes, being on public transport, going to the shopping centres, or even to their schools and workplaces.

Racism at its best. Lack of communication. Children [incarceration] – ITA Survey Respondent

During the community engagements, people openly reported feelings of rejection by their friends and colleagues and resentment towards those who voted 'no'. Outside of those who openly voiced their opposition, they didn't know 'who voted against them'. Some people communicated that they are only just now finding the strength and confidence to re-engage fully in their communities.

In their submission, the National Indigenous Health Leadership Alliance (NIHLA) noted recent research that directly links opposition to 'the Voice reflecting underlying community-wide negative attitudes towards Aboriginal and Torres Strait Islander peoples' and 'the impact on Indigenous people's health and access to health care'. Disturbingly, the data presented in the research demonstrates a 'correlation between regions with higher reported experiences of racism while accessing health care and a deterrent for Aboriginal and Torres Strait Islander people from continuing to engage with mainstream health care'. They argue that this is further compounded by the lack of 'culturally safe healthcare options in these regions that had the highest opposition to the Voice'.[102]

In considering the path forward, we will need to interrogate the research and data collected pre and post Referendum and ensure that future engagement on these matters is not vulnerable to the same challenges experienced through the Voice process.

It's vital that all governments promote a relationship based on Truth, Justice and Healing to improve outcomes for our people. This need has become even more urgent due to the increase in racism following the referendum. Achieving this requires political will and a national approach to truth-telling and agreement-making, leading to tangible, practical outcomes that benefit us all – ITA Survey Respondent

While most agreed with all 3 pillars, a considerable proportion argued for the need to start with Truth and a national truth-telling process supported by state and territory jurisdictional processes.

There should be Truth Commissions in every state and territory – ITA Survey Respondent

Consistent with much of the feedback received throughout the Project, an ITA Survey Respondent outlined their view on the 3 pillars as:

Voice - *a constitutionally enshrined First Nations Voice to Parliament is central to giving Indigenous Australians a say in decisions that affect them. Advocacy efforts should focus on promoting the establishment of a formal mechanism that ensures Indigenous voices are heard in the development of policies and laws that impact their communities.*

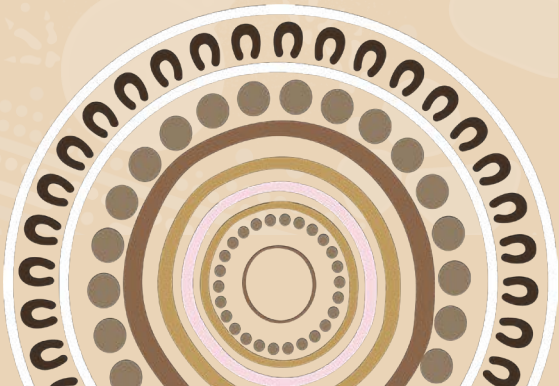
Treaty - *the pursuit of treaties or other formal agreements between First Peoples and the Australian Government is essential for addressing historical injustices, recognising sovereignty and fostering reconciliation. Advocacy and guidance should support the negotiation and implementation of treaties that respect the rights, culture and aspirations of Indigenous communities.*

Truth - *acknowledging and addressing the historical truths of colonisation, dispossession and ongoing systemic injustices is crucial for healing and reconciliation. Advocacy efforts should emphasise the importance of truth-telling processes, education and public awareness to promote understanding, empathy and solidarity with First Peoples.*

Collaboration and engagement - Collaboration with Indigenous communities, organisations, government bodies and civil society is essential for advancing the implementation of the Uluru Statement's pillars. By fostering partnerships and engaging in meaningful dialogue, advocacy efforts can amplify Indigenous voices, build consensus and drive positive change.

Education and awareness - *increasing public awareness and understanding of the significance of the Uluru Statement and its three pillars is key to garnering support and momentum for their implementation. Educational initiatives, advocacy campaigns and community engagement activities can help raise awareness and promote informed discussions on reconciliation and Indigenous rights.*

Policy and legal reform - *advocacy efforts should also focus on advocating for policy and legal reforms that align with the principles of the Uluru Statement, including constitutional recognition, treaty-making processes and truth-telling mechanisms. By influencing policy development and legislative changes, advocates can contribute to the realisation of the Statement's goals.*[103]



Progressing voice

Indigenous peoples, sovereign people of our respective countries, deserve a Voice and much more… The Voice could signify a collective will to honour the sovereignty and self-determination of Indigenous Peoples.[104]

With the abolition of national representative mechanisms such as Aboriginal and Torres Strait Islander Commission (ATSIC) and the National Congress of Australia's First Peoples, Aboriginal and Torres Strait Islander people are feeling even more marginalised and excluded from opportunities to participate in issues or decisions that affect them.

While acknowledging the issues with both mechanisms, people identified the need for a national representative body. Many referred to the Regional Council model that existed under ATSIC as an element necessary to reconsider moving forward.

Some survey respondents felt that they already have a voice, including through engagement in the ITA process. Others talked about the opportunities they have to speak with politicians and ministers and to engage with departments and agencies. Some felt that opportunities to engage with decision-makers, including bodies established to support the National Agreement on Closing the Gap, were limited to a selective few. They believed that the views expressed were not necessarily an accurate or fulsome representation of the needs and aspirations of First Peoples. Despite differing views on structure, there was clear agreement on the need for ongoing work to establish an appropriate mechanism to enable First Peoples' voices in decisions that affect us.

Prioritising truth-telling

Some thought that the 'VTT' is in the wrong order', arguing that it should be 'Truth-telling, Treaty then Voice'.[105]

Until truth-telling is implemented into compulsory education about the blak history of this country in all Primary and high school education then unfortunately I fear Treaty and Voice will never be successful. Through honest education we will change the ignorant and uneducated racist narrative that still lives in non-[A]boriginal and non-Torres Strait [I]slander people in this country – ITA Survey Respondent

Aboriginal and Torres Strait Islander people argued that truth-telling is:

- 'more important than ever after the disgraceful actions of many people during the Referendum debate'
- 'a fundamental pillar of reconciliation' and 'crucial to support healing for Aboriginal and Torres Strait Islander peoples and improving the relationship between Aboriginal and Torres Strait Islander peoples and non-Indigenous people'
- 'necessary to bring all Australians together to better understand our shared history and move forward as a reconciled nation, from a place of respect and understanding'
- 'a pathway to accountability'.[106]

Communities were overwhelmingly in support of truth-telling. It is encouraging that these views are supported by the Minister for Indigenous Australians, the Hon Malandirri McCarthy MP, who stated that 'now is the time…that we can look at what we can do at a federal level in regard to taking the steps that are required around truth-telling'.[107]

NIHLA have argued that any national truth-telling process in Australia must be:

- grounded in First Nations justice and self-determination
- accompanied by dramatic shifts in policy making and power-sharing with Aboriginal and Torres Strait Islander peoples and communities
- fostered within our public agencies to meet the undertakings of the priority reforms under the National Agreement.[108]

Communities emphasised the importance of local and national truth-telling initiatives progressed through a national truth-telling mechanism.

Communities were considering ways in which they could progress local truth-telling. For example, in Cherbourg the ITA engagement was held at the Ration Shed, an institution that embodies the essence of truth-telling for Queensland. During the consultation, senior Elders who lead tours of the Ration Shed expressed anxiety about the outcome of the Referendum derailing important truth and treaty processes underway in Queensland.

In light of the Queensland Government's repeal of the *Path to Treaty Act 2023* (Queensland), Cherbourg Elders were committed to progressing a scheduled truth-telling session with or without the formal inquiry in place. However, it was not without fear and during the ITA engagement, they raised concern and questioned whether the police could stop them – or even arrest them – if they proceeded. This question reflects the deep and lasting impact of the protection and control era that these Elders lived through. It's a story they deserve to tell, and a journey of healing and justice they are entitled to.

Working towards treaty

Treaty is the ultimate goal. Aboriginal and Torres Strait Islander Peoples acknowledged the generations of advocacy that has advanced the discussion around treaty. There were also widespread discussions about the potential outcomes that are possible through treaty arrangements, including with regard to shaping the relationship, as well as social, cultural, economic and political benefits.

However, there was also a high level of doubt expressed that this is something that could be achieved. People questioned whether they could trust government to engage in good faith and deliver on Treaty obligations with integrity. International experiences inform this anxiety and have demonstrated the ease with which governments breach treaty commitments and obligations.

Treaty is a dream - but something that can be achieved – ITA Survey Respondent

It was acknowledged that we are a long way from treaty. There is a lot of work that needs to be done in our communities to sort through the colonial impact of how people fit within treaty processes. 'Governments must first understand the need for treaty and establish appropriate mechanisms to support it. This includes the Makarrata Commission agreed to by the Prime Minister and building understanding and support for treaty across the broader Australian community'.[109]

Next steps – the path to Voice, Treaty and Truth

The majority of ITA participants stressed the need to stay focused on achieving the 3 pillars - Voice, Treaty and Truth.

By focusing on these areas and working collaboratively towards the implementation of the three pillars of the Uluru Statement from the Heart, advocates can contribute to advancing reconciliation, justice and empowerment for Indigenous Australians – ITA Survey Respondent

However, the diversity of views about how we get there highlighted the need for much more engagement on this. This includes ensuring that Aboriginal and Torres Strait Islander people across the country are able to participate. If there is engagement with restricted capacity, there must be community endorsed representatives.

Listen to community, talk to grass roots, realise Aboriginal people in high positions are not the Aboriginal voice – ITA Survey Respondent

A Human Rights based approach may assist with reconciliation and implementation of truth-telling, voice to parliament and treaty with Aboriginal and Torres Strait Islander peoples – ITA Survey Respondent

The need to value and respect diverse views was also identified:

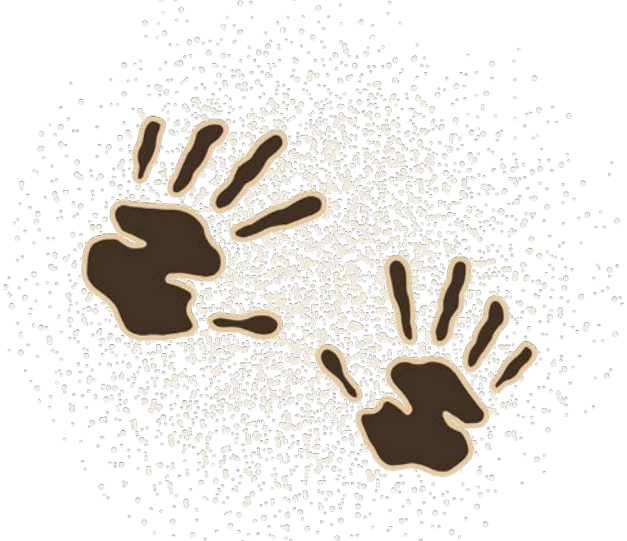
Uluru Statement, Masig Statement, other statements show very clear alignment to each other, uniting one voice but valuing diverse responses – ITA Survey Respondent

Some identified the need for education and capacity building of both Aboriginal and Torres Strait Islander people and the broader Australian community about 'what the Uluru statement means or what the three pillars are', and 'more information on each topic and the process of implementation and explanation'.[110]

I think education on these three pillars is more important as I have seen this lead to understanding and to agreement with the pillars – ITA Survey Respondent

Others considered the need for processes at both 'a state and territory level or a national framework' but felt that there was not much hope of this progressing in the 'current political climate'.[111] In this regard, CATSINAM (endorsed by NIHLA) identified the 'need for an ethic of care' that:

- Challenges any investment in racism against Indigenous peoples, especially in discussions that should be about our relationships and our shared future.
- Understands the harmful precedent of Indigenous peoples being weaponised as pawns for political gain, a contemporaneous and conventional part of Australian democracy.
- Truly acknowledges that we live here together on unceded Indigenous lands and that our future together...should not just be determined by non-Indigenous peoples.[112]



Priority Goal 4 – Health equality

The decline in health experienced by Aboriginal and Torres Strait Islander people is a direct result of the colonial practices that ignored their human rights – ITA Survey Respondent

ITA Survey Participants were asked to what extent they agreed with the high-level goal about realising First Peoples health equality. 'Less than 1% of the 363 Aboriginal and Torres Strait Islander respondents disagreed.

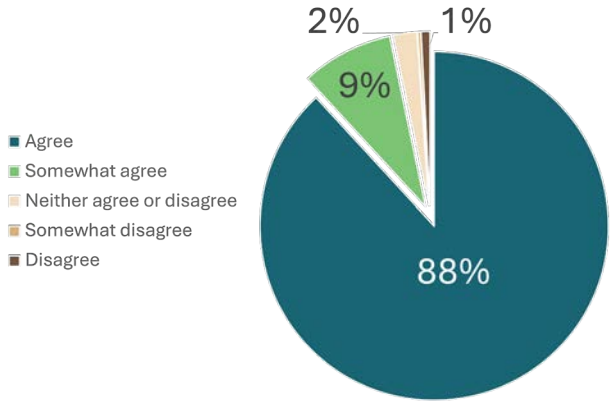


Figure 1.8: Survey response data to question about whether First Nations health equality should be included as a goal in the Commission's agenda.

Submissions received by Australia's national Aboriginal and Torres Strait Islander health peak body, the National Aboriginal Community-Controlled Health Organisation (NACCHO), NIHLA and the Victorian Health Service, have all indicated strong support for a focus on achieving health equality. However, they have advised that this should be extended to a focus on 'health equity' to ensure that there is an adequate focus on addressing the determinants of health, which in turn improve access to justice for First Peoples.

While this priority goal is focused on what is required to achieve better life outcomes for Aboriginal and Torres Strait Islander people, it also focuses on how we do that.

The National Agreement on Closing the Gap

The Close the Gap (CTG) Statement of Intent and the National Indigenous Reform Agreement, which outlined a joint commitment to work in partnership to achieve health equality for Aboriginal and Torres Strait Islander peoples, was initially signed in 2008. In July 2020, all Australian governments and the Coalition of the Peaks signed the *National Agreement on Closing the Gap* (the National Agreement).

In February 2023, First Ministers agreed to renew their commitment to Closing the Gap by re-signing the National Agreement. Five years into the second National Agreement, data indicates that only 4 of the 19 targets (all of which represent an unmet need or human right) are on track to be met, with some targets going backwards. Of those that are showing progress, community-control is a key factor.[113]

This is extremely frustrating and disappointing for Aboriginal and Torres Strait Islander people who keep showing up, keep doing the work required to turn the tide, but are consistently disappointed by governments and departments which are not holding up their end of the bargain.

The failure of Closing the Gap shows that making recommendations is inadequate in bringing about lasting change – ITA Survey Respondent

The anxiety felt around this is increasing. In the wake of the failed Voice Referendum, the federal (and most state and territory) government/s have elevated the National Agreement as the primary platform through which to deliver better outcomes for Aboriginal and Torres Strait Islander people. Many voiced concerns that the CTG targets are unlikely to be met in the absence of key elements, including community participation in decisions that affect them and truth-telling to understand the context of the situation and the need for the National Agreement in the first place.

The National Agreement is reinforced by 4 Priority Reforms that are focused on shared decision-making and partnerships, strengthening the community-controlled sector, transformation of government and data and information sharing. There are established bodies and organisations working to achieve all of these.

However, there has been little movement on the transformation of government, or the establishment of an independent monitoring mechanism as committed to under the National Agreement. As such, the Social Justice Commissioner (the Commissioner) has sought feedback from the community about whether Priority Reform 3 – the transformation of government - is a space that this role could positively contribute to, without 'reinventing the wheel'.

...work alongside the work being championed under the National Partnership Agreement...not to duplicate but to promote a rights-based lens – ITA Survey Respondent

I fully support the focus on Priority Reform 3...the ongoing crises in cost of living, housing, domestic violence, mental health, child safety and youth justice highlight the urgent need for systemic reform to ensure the rights of all communities... Transforming government is critical to closing the gap and achieving better outcomes for First Nations community – ITA Survey Respondent

Many agreed that this is a space that needs urgent and focused attention. Consistent feedback from the sector and community was that the agreement needs to be delivered in its entirety. All 4 priority reforms are critical to the effective implementation of the agreement and to achieve the objectives.

Adhere to the Closing the Gap Priority Reforms to ensure First Nations voices are heard and business is embedded – ITA Survey Respondent

Access to universal mainstream services and infrastructure

Access to essential services and infrastructure is a key determinant of wellbeing for Aboriginal and Torres Strait Islander peoples, yet many communities continue to face chronic underinvestment and inequity in areas such as housing, clean water, electricity, transport and digital connectivity.[114]

The level of need is particularly extreme in remote communities where health and service infrastructure is often outdated, broken down, or non-existent.

For example, our visit to Badu Island in the Torres Strait revealed serious neglect of existing infrastructure, including housing and service buildings.

Access to electricity was limited to unaffordable top-up cards (a common issue in many remote communities), with many residents resorting to expensive diesel-fuelled generators once their paid allocations were exhausted – if they could afford it. Additionally, water had to be shipped in from Thursday Island or the mainland. We were told about the lack of emergency response capacity on the island:

- if a fire happens it's up to the residents to work together to put it out
- if there is a domestic or family violence incident, there are no police or health clinic staff that work after hours or live on the island, so the community is left to manage the conflict and support the families involved, including establishing a strategy to manage and support the perpetrator as well as the victim/s
- in the case of a suicide, the community is left to deal with the incident site, the body of the deceased, who is likely to be family and to support the community until appropriate authorities and support arrive from Thursday Island or the mainland.

Even telecommunications on the islands are extremely unreliable, with 000 regularly inaccessible.

The Torres Strait Island Regional Council had been actively working with the local government authority and the Queensland government to address the funding gaps and address these infrastructure issues. The Council advised that despite these efforts, they were at risk of not receiving the necessary funding and of going into administration. This situation is not isolated to Badu Island. Those who travelled from other outer islands to attend the ITA session held at Badu said that the state of degradation and neglect across the outer islands of the Torres Strait was common, with funding prioritised for the main business island (Thursday Island) and the outer islands left struggling to survive. This is also not the first time this has been raised.

The Torres Strait Island Regional Council (TSIRC) has been actively lobbying all levels of government to address their dire circumstances. This was also noted in the context of the need to respond to the challenge of climate change, which is exacerbating these issues for island communities.

While these challenges are extreme for the outer islands of the Torres Strait, many remote Aboriginal and Torres Strait Islander communities are grappling with similar issues.

These gaps are often the result of historical neglect and ongoing systemic barriers that prevent communities from exercising control over how services are designed and delivered.[115]

Further, consistent with views expressed during consultations, the Lowitja Institute submitted that mainstream services consistently fail in their duty of care towards Aboriginal and Torres Strait Islander peoples.[116] This can be seen in the ongoing exposure to racism within the Australian health system, the poor standard of care many Aboriginal and Torres Strait Islander people experience, preventable deaths and deaths in custody.[117]

Many community members shared that these services can feel culturally unsafe, difficult to access, or irrelevant to their lives. This makes it harder to get support and enjoy the same rights as other Australians.[118] When people feel invisible in the very systems meant to help them, trust breaks down - and so do outcomes.[119] Services that are not culturally safe or responsive to local needs further entrench disadvantage and undermine trust in government systems.[120] Closing these gaps requires a rights-based approach, aligned with the UNDRIP, that supports community-led solutions and long-term infrastructure investment.

What we heard across communities was clear: effective services must be grounded in local voices, experiences and leadership. When people are truly listened to and involved in shaping services, those services become more meaningful and useful.

Without local knowledge, systems fail to understand community realities and miss the mark.

We also heard about the importance of accessibility. Services must be flexible, inclusive and designed for the full diversity within our communities.

Policy treats Aboriginal and Torres Strait Islander people as one homogenous group but fails to consider that needs vary – such different social environments, such different access to services – important nuances for policy – Melbourne ITA Participant

People told us they need services that use plain language, don't require internet access or complex paperwork and are safe for LGBTIQA+ people, people with disabilities and those facing poverty.

For example, the Walkern Katatdjin National Survey found that:

...substantial health inequality exists for LGBTIQA+ young people compared to other Aboriginal and Torres Strait Islander young people. 45.4 percent of the Aboriginal and Torres Strait Islander LGBTIQA+ young people who took part in the survey had attempted suicide in their lifetime and 92 percent reported high levels of psychological distress.[121]

Further, research confirms that 'there is a significant difference between the mental health outcomes of Aboriginal and non-Indigenous LGBTIQA+ young people and that this is associated with experiences of homophobic/transphobic harassment, assault and exclusion...overlapping stress of racism and queerphobia'.[122]

For those with disability, NIHLA argued that the health system is not set up to consider the needs of people with disability, let alone First Nations people with disability. NIHLA asserted that how the current health system operates is not to support wellbeing and good health, but one that treats illness. Accordingly, the health system framework is based on categorising disability a health issue. However, this medical model sees the person as having a problem to be fixed and managed and assigns responsibility to that person for their disability.[123]

We heard strong concerns about how the National Disability Insurance Scheme (NDIS) is failing Aboriginal and Torres Strait Islander people. People told us that the NDIS is too complex and not built around individuals.

NDIS as a system is complex to navigate more so for people who are challenged with literacy, translating NDIS terminologies is a barrier to access – Perth ITA Participant

It can feel like a one-size-fits-all system that doesn't take into account cultural needs, personal circumstances, or community life. Participants shared how Aboriginal and Torres Strait Islander people need NDIS planners who know their communities, the geography, what services exist nearby and how local families live and care for one another. This local and cultural knowledge is critical to building trust and getting real outcomes for people.[124]

There was a clear call for flexibility in the way NDIS plans are managed. Many families feel forced into 'agency-managed' plans rather than having the freedom to choose 'plan-managed' or self-managed options. This leaves people feeling frustrated and powerless. Families want to be able to choose how and when services are used so they can fit care into their lives in a way that works for them – not the system.[125]

Many children in out-of-home care and youth detention have a disability or cognitive impairment, yet they are not allowed to use their NDIS funding while they are incarcerated. This means young people with disability are missing out on essential support during a critical time in their lives, which makes it harder for them to rehabilitate, reintegrate and thrive when they return to community.[126]

Community-control

Community organisations are the backbone of support for many Aboriginal and Torres Strait Islander people. Many were established by Aboriginal and Torres Strait Islander communities to serve their needs. This occurred before existing structures and funding were in place. They continue to provide essential services that support our people to live safe, healthy and dignified lives.

COOEE Indigenous Family and Community Education Centre[127]

COOEE Indigenous Family and Community Education (COOEE) is a community-led organisation in Queensland that supports Aboriginal and Torres Strait Islander families through culturally strong programs. It focuses on early childhood, parenting, healing and education, with all activities grounded in culture and led by local people. COOEE was created to provide safe, supportive spaces for families to grow stronger together, stay connected to culture and access the help they need in a way that respects community knowledge and leadership.

The programs are co-designed with community members to ensure they meet local needs. Services include support for school transitions, family wellbeing and learning on Country. COOEE uses a strengths-based and trauma-informed approach guided by Elders and cultural knowledge holders. Its model supports education, healing and child development through culture and connection to Country.

COOEE shows the value of Aboriginal-led, place-based organisations that centre culture in all aspects of their work. Its approach supports the goals of the National Agreement on Closing the Gap, especially around helping children thrive and stay engaged in learning. It also reflects the rights set out in the UNDRIP, including access to culturally appropriate education and support.

Critical services such as COOEE are essential and fill a substantial gap in service access and provision. However, funding support from governments has been inadequate, placing the ongoing viability of this service at risk.

Text box 1.7: COOEE Indigenous Family and Community Education Centre

These organisations often step in where mainstream systems fall short, especially for those who face racism, poverty, or isolation. Without them, many people – both Indigenous and non-Indigenous – would fall through the cracks, also demonstrating that community-controlled organisations are vital for ensuring basic human rights are respected and upheld in daily life.[128]

NACCHO affirmed that Aboriginal Community Controlled Health Organisations (ACCHOs) contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive primary health care and by integrating and coordinating care and services. NACCHO also said that ACCHO services build ongoing relationships to give continuity of care so that chronic conditions are managed, preventative health care is targeted and that the cultural safety in which they provide services is a key factor of our success.[129]

Derbarl Yerrigan Health Service[130]

Derbarl Yerrigan Health Service (DYHS) is an Aboriginal Community Controlled Health Organisation based in Perth, Western Australia. It provides culturally safe and holistic health care to Aboriginal and Torres Strait Islander people. Community members regard DYHS as a trusted place where they feel respected and understood. Services include general health care, dental, mental health, chronic disease support and outreach programs.

DYHS is more than just a clinic – it's a safe space for healing. Many Aboriginal and Torres Strait Islander people avoid mainstream services because they feel judged or ignored, whereas at DYHS, they feel listened to and supported. Elders, families and young people all spoke about the difference it makes to have care that recognises the impacts of trauma, poverty and discrimination. The service also helps with health education and prevention, through programs about healthy lifestyles and managing chronic illness.

DYHS constantly calls for more long-term funding to keep up with community needs. DYHS is proud to operate as a strong example of self-determination in action showing how Aboriginal-led services can improve health and wellbeing.

Text box 1.8: Derbarl Yerrigan Health Service

Communities expressed concern that the way governments work with community organisations is often unfair. Policies and funding decisions are made without proper understanding of the real needs and pressures on the ground. Groups spoke of being buried in paperwork and reporting requirements while still being expected to deliver high-quality services on shrinking budgets.

Key Performance Indicators (KPIs) often don't reflect the needs of the communities they serve, or real community outcomes and instead force organisations to fit into systems that were not built for them.[131] This means organisations are always trying to catch up instead of being properly resourced to grow and plan for the long term. Further, many communities told us about critical services supports that had closed due to lack of ongoing funding or because of governance or capacity issues. Participants told us that ACCHOs' relationships, with their communities and with one another, are important. These relationships help with delivering better services, making strong advocacy possible and building safe spaces for everyone.

However, the way funding is allocated can break these relationships. It can lead to silos and competition, with groups focused on surviving rather than working together. We also heard that nepotism and fear of being labelled as 'troublemakers' stops some community members from speaking up or accessing services. This shows how important it is to build strong, respectful relationships in community work.[132]

The Murri Binda Consortium was highlighted as an example of effective collaboration across organisations and service sectors:

...the Murri Binda Consortium is best local decision governance model to co-design the voices of First Nations people...The Murri Binda consortium help[ed] to reshape the delivery of services to the most vulnerable - youth, the homeless, families impacted by violence and people with chronic diseases – ITA Survey Respondent

Murri Binda Consortium[133]

The Murri Binda Consortium is a group of seven Aboriginal community-controlled organisations in Rockhampton, Queensland. These organisations work together to support Aboriginal and Torres Strait Islander people with services like health care, youth and family support, justice programs, drug and alcohol rehabilitation and cultural healing. By joining forces, the Consortium can better meet the needs of people in their region, especially those facing tough challenges such as homelessness, violence, or contact with the justice system.

To make their work stronger, the Consortium partnered with Yulang Indigenous Evaluation to co-design a governance model based on cultural leadership. This means Elders and local community members help guide decisions, making sure the model respects cultural ways of working. They also created a monitoring and evaluation framework that helps each organisation – and the group as a whole – track progress and improve services in ways that reflect community goals and values.

The Consortium is a strong example of how Aboriginal-led governance works best when it is built from the ground up. People told us they want governance and coordination that is local, culturally safe and led by community – not imposed by government.

The Consortium shows how self-determination can be put into practice, aligning with the UNDRIP which says First Peoples have the right to make decisions through their own systems. It also supports the goals of the National Agreement on Closing the Gap.

Text box 1.9: Murri Binda Consortium

People want community organisations to be places where they are safe, heard and supported. Shared decision-making, trust and ongoing conversations with community are key to making sure these organisations continue to offer life-changing services. ACCHOs not only play a vital role in addressing immediate healthcare needs but frequently support their clients in tackling various social factors, such as racism, housing, income insecurity and employment.[134] Positive stories were also shared:

My experience in accessing ACCHOs as a gay Aboriginal man has been really positive. Going around to ACCHOs, I feel like there is the desire, especially from our women and our aunties, we see them playing a really active role in the way that they want to support rainbow mob – Online LGBTIQA+ Focus Group ITA Participant

We also heard that ACCHOs support many non-Indigenous people too, showing that these services benefit everyone, not just Aboriginal and Torres Strait Islander people.

ACCHOs service a large number of non-Aboriginal people – changing the narrative that we just look after ourselves – Melbourne ITA Participant

Key areas of service need identified

Throughout the community engagements, ITA participants identified a number of areas of critical need including housing and homelessness, a holistic understanding of health, education and employment.

(i) Housing and homelessness

Reliable and appropriate housing provides stability, improves wellbeing and is essential to accessing education, healthcare and justice.[135] A safe and secure place to live, along with a fixed address, is important to life outcomes of Aboriginal and Torres Strait Islander people and supports peace of mind and connection to essential services.[136]

Feedback during the consultations highlighted community concerns about the lack of housing in regional and remote areas, where some First Peoples are forced to live in tents or unsafe conditions due to housing shortages.

Lack of accessible and affordable housing and hostels – Mt Isa ITA Participant

Specific housing needs were identified, including accommodation for people exiting prison to reduce recidivism, accessible homes for Elders and people with disability, houses suitable for large and multi-generational families, and emergency housing for those escaping violence.

Many communities said they are desperate for homes that are structurally sound, clean and free from health hazards. This includes mould which is common in many Aboriginal and Torres Strait Islander communities due to weather and design.

Houses are deteriorating, there's mould and they're letting them run down and people are getting sick, letting the housing run down to the point where people are de-housed and this is exacerbated by multiple health issues – Redfern ITA Participant

In many regions we heard that homes are deteriorating due to underfunding, poor maintenance and lack of access to building services, causing a crisis that has left people living in unsafe or boarded-up housing out of fear of eviction and homelessness.

The Australian Council of Social Service (ACOSS), a national voice in support of people affected by poverty, disadvantage and inequality submitted that the Australian Government should fund the upgrade of social housing in a transition to a net-zero economy, prioritising housing for First Peoples.

They argued that improved access to affordable, energy-efficient and climate resilient housing, especially regional and remote areas, is important for improving the health and wellbeing outcomes of Aboriginal and Torres Strait Islander people.[137]

Communities reported that legal, housing and tenancy advocacy services are often inaccessible. This has resulted in desperate situations, particularly where domestic violence, unfair evictions, or incarceration were present.

In remote areas like the Kimberley, Arnhem Land and Far North Queensland, we heard that housing is often not climate appropriate. Poor design and a lack of air conditioning were compounding factors.

If you don't have a stable house, it affects all other areas of Closing the Gap – housing priority needed. Housing on the reserves are falling apart. Lack of funding, lack of access to building materials and trade services in regional and remote areas. [Housing is a] key determinant of health, contributes to stability, physical well-being, [and reduces] domestic and family violence. Federal budgeting processes [should] prioritise housing as an issue. Long waiting lists – Parkes ITA Participant

Marra Worra Worra – The Night Place[138]

Walama Marra Worra Worra Aboriginal Corporation in Fitzroy Crossing, WA, operates The Night Place - a culturally safe, community-led overnight shelter for vulnerable people experiencing homelessness. The service was created in response to local concerns about safety for people sleeping rough, particularly during the wet season and cold nights. Many people accessing the service are impacted by family violence, overcrowding, or alcohol misuse and have nowhere else to go. The Night Place provides basic support like food, bedding and showers in a safe, non-judgmental environment. Community members told us that it fills a critical gap and is often the only option for people who would otherwise be exposed to harm.

The Night Place is successful because it is locally led, flexible and deeply connected to culture. Run by a trusted Aboriginal organisation, the service embraces a trauma-informed approach and does not exclude people based on intoxication or complex behaviours, which are common barriers in mainstream services. We heard from community members that this approach meets people where they're at and reflects the understanding that healing must be culturally grounded and take time. Staff are mostly local and maintain strong cultural connections, helping to build trust and provide support that is meaningful and respectful.

Beyond providing immediate safety, The Night Place acts as a soft entry point to other services such as health care, housing support and family reunification. It often supports people to reconnect with community and culture and begin steps toward longer-term stability. The model shows what is possible when Aboriginal communities are trusted and resourced to design solutions on their own terms. It reinforces what we heard consistently across consultations – that Aboriginal-led, place-based services are more effective and more respectful because they centre cultural knowledge, community voice and holistic care.

Text box 1.10: Marra Worra Worra – The Night Place

The lack of stable housing contributes to increased living costs, food insecurity and disconnection from essential services. Communities argued they are not asking for ownership, but for dignity and liveable homes. Yet current federal funding does not prioritise Indigenous housing and many report a lack of transparency and accountability in how resources are allocated. Without urgent reform, the housing crisis in Aboriginal and Torres Strait Islander communities will continue to worsen.[139]

> ***We don't have access to decent housing, water, food. Food insecurity. These are the things that people are most worried about day to day. We're not worried about owning a home. I'll never own a home – Broome ITA Participant***

ii) A holistic understanding of health

Access to culturally safe healthcare was considered essential but was also one of the biggest concerns shared in every community. Good health is more than just treating illness. For Aboriginal and Torres Strait Islander people, it's also about staying connected to Country, culture and kin. Communities said they often feel like their needs are invisible in the current healthcare system and that poor health outcomes are accepted instead of addressed.[140] People told us that when their health isn't looked after, it becomes harder to manage every other part of life such as work, education, parenting and connection to community.

When services (mainstream or community) are unsafe, people avoid them. Even when they need urgent help. We heard that staff at both ACCHOs and mainstream health services must be properly trained in cultural safety. This includes understanding the history of colonisation, systemic racism and how to support people in a respectful, non-judgemental and context-appropriate way.

We heard, for example, that Aboriginal people are sometimes believed to have higher pain thresholds which results in them receiving poorer care. Assumptions like this are grounded in racist ideology. They create fear and lead people to avoid seeking help.[141]

We also heard that without safe services, certain groups like LGBTIQA+ mob are even more likely to be excluded. For healthcare to truly serve everyone, services must listen to the voices of all community members and take active steps to make spaces welcoming. This includes addressing homophobia and transphobia in service delivery and investing in staff training. Part of ensuring safety is funding and supporting Aboriginal (Health) Liaison Officers who play a vital role helping people feel understood and supported while navigating the healthcare system.[142]

> ***Organisations won't be able to collect information through health services if they're not safe for queer mob – Online LGBTIQA+ Focus Group ITA Participant***

Many communities raised the urgent need for more mental health support. There were calls for more therapeutic services for people with cognitive disabilities, neurodivergence, grief, suicide and trauma. Parents trying to reunify with children, people struggling with addiction and those needing culturally safe counselling often have no one to turn to. Services like drug and alcohol treatment and counselling, rehabilitation on Country, parenting programs and Aboriginal psychologists were all named as critical but missing. The importance of social and emotional wellbeing frameworks, grounded in culture, was highlighted as key to healing.[143]

Chronic disease was another major concern, particularly in remote and regional communities. Limited or no access to a permanent health workforce, infrastructure, treatments and a quality water supply were identified as key issues exacerbating these conditions. Some communities described kidney failure as an epidemic. They told us of Elders relying on a single bus for dialysis, long waits for appointments and no transport or accommodation when people need to travel for care – including for example from remote communities into major centres (Hopevale to Cairns).

There were rising concerns about cancer and melanoma. In Nyngan this was believed to be linked to environmental factors and limited options and poor housing conditions; while in Moree it was estimated that more than 100 people in their community alone had died from Cancers in a twelve-month period. We heard heartbreaking stories of people having chemotherapy without support and driving themselves home alone. In Nyngan, there are no locally based doctors or specialists, so the ability to even get diagnosed depends on long waitlists or travelling at significant expense to major centres; and treatment is the same due to limited infrastructure and pharmaceutical services.

No transport to get to doctors, no specialists, no maternal care, no midwives, no counsellor to support people through chemotherapy, no accommodation to stay overnight. People have chemo and drive themselves home. No holistic approach to healthcare [which is] considerate of the effects of poor healthcare on people suffering but also their families [and] carers and others around them. No full-time doctor here for face-to-face consultations, inadequate ambulance cover. Increasing cancer rates thought to be from the chemicals in the water. Also, melanoma [which is proportionate to the number of people working outside on Country] – Nyngan ITA Participant

Community members from Doomadgee in the Gulf of Carpentaria who attended the session at Mount Isa and those in Port Augusta raised grave concerns about the unacceptable prevalence of Rheumatic Heart Disease caused by unsuitable housing and overcrowded living conditions. Despite having been eradicated years ago in mainstream communities this continues to affect Aboriginal and Torres Strait Islander children'.[144]

Across all areas, people said healthcare must be holistic. This means caring not just for the individual but recognising the impacts on families and carers too. Many communities have no full-time doctor, no maternal care, no mental health workers, no midwives and no local specialists. Ambulance coverage is often patchy or non-existent. Access to clean drinking water, culturally appropriate mental health assessments and safe places to stay during treatment are all missing pieces in the system. When healthcare is broken, it breaks trust – and that trust must be rebuilt with community, not imposed from above.[145]

iii) Education

During our community consultations, we heard that good quality, culturally responsive education is key to strong health outcomes and future opportunities for Aboriginal and Torres Strait Islander peoples.

People told us that education is not just about learning in a classroom – it's deeply connected to identity, wellbeing and belonging. When young people feel proud of who they are, supported by their families and connected to culture and Country, their health and education outcomes improve. Education systems that ignore these factors often leave children behind, especially when they face challenges at home like poor housing, food insecurity or the impacts of intergenerational trauma.[146]

Communities talked about the power of learning that is built around Country, language and truth-telling. Youth-driven approaches, like those supported by the National Indigenous Youth Education Coalition (NIYEC), show that learning should include Elders in schools, trauma-informed support, family involvement, food programs, visible culture and safe spaces for play and growth.[147] These approaches help create culturally safe environments that support the whole child – not just their academic success but their mental, physical and spiritual wellbeing too.

Educating our children about their culture and history and Country – Ceduna ITA Participant

We heard that when youth are not engaging in school, it is often because their basic needs are not being met. Children might not have a bed to sleep in, enough food to eat, or clean clothes to wear. Some are caring for siblings, working to help their families, or living in homes affected by violence or overcrowding. These young people are not failing school – the system is failing them.

Wraparound support, including therapeutic workers in schools and strong adult relationships, can help identify the real reasons behind disengagement and respond with care, not punishment.[148]

Worried about the future of our children – we are going to have a lot of kids who are not going to grow up learning to read or write. Missing out on foundational things like housing, food – Broome ITA Participant

Communities want to see a reframe in how we view and deliver education. They called for two-way learning, hands-on experiences, less focus on standardised testing like National Assessment Program – Literacy and Numeracy (NAPLAN) and more use of outdoor classrooms. People want school environments with strong academic learning, which also reflect their identities, with truth telling, strong cultural content and Aboriginal and Torres Strait Islander educators leading the way.

Education should help all children feel seen, valued and capable, while helping non-Indigenous Australians learn the truth about this country's history in a way that builds empathy and shared responsibility.[149]

Young Indigenous Women's STEM Academy[150]

The Young Indigenous Women's STEM Academy is a national initiative that supports Aboriginal and Torres Strait Islander girls and young women from Year 8 through to university and into their careers in science, technology, engineering and mathematics (STEM). The Academy is delivered by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) in partnership with CareerTrackers and supported by the NIAA. It offers mentoring, academic support, camps, internships and pathways into higher education and employment, with a strong focus on culture and identity.

The Academy is delivered by over 85 percent Indigenous staff, with the support of exemplary and Child Safe screened STEM professional mentors and industry leaders. This program helps participants build confidence, leadership skills and a strong sense of belonging in spaces where Indigenous women are often underrepresented. Young women involved in the Academy have described how the program has empowered them to aim high and helped them feel proud of their culture while succeeding in STEM.

The Academy is an example of what works when culturally safe, long-term support is provided for Aboriginal and Torres Strait Islander students. It highlights the importance of Indigenous-led and culturally responsive education strategies that open doors and challenge structural barriers. Programs like this can help build a more diverse and inclusive future in science and technology.

Text box 1.11: Young Indigenous Women's STEM Academy

Several communities spoke about how education and health are linked. Poor education outcomes can limit access to good jobs, stable housing and proper healthcare. When children grow up seeing unemployment and poverty in their communities, they question the value of schooling. Supporting families through food programs, transport services and community partnerships with schools can help change this story. Provided lunches and school buses, for example, have already led to better attendance and behaviour in some areas.

We know that education is important but if kids are looking back at their communities and not seeing anything, they are going to be saying, why is education important because I didn't see my mother and father go to work or my grandparents go to work? – Broome ITA Participant

Community voices also called for education about human rights and the law. People want to understand how they can advocate for themselves and their communities and they want this knowledge to be shared from early childhood. Learning about Aboriginal and Torres Strait Islander peoples' histories, cultures and rights builds confidence and community pride and also helps others understand the value of equity, fairness and respect. Schools can be places where human rights are lived and taught, starting with how children are treated and what stories are centred in the curriculum.[151]

South Australian Aboriginal Secondary Training Academy[152]

The South Australian Aboriginal Secondary Training Academy (SAASTA) is an education and leadership program that supports Aboriginal and Torres Strait Islander students in Years 10 to 12 across South Australia. Delivered through the Department for Education, SAASTA offers culturally responsive learning that combines academic achievement with Aboriginal identity, cultural pride and personal development. Students are supported to stay engaged in school while also building confidence, leadership and career pathways.

SAASTA runs programs like the SAASTA Shield, SAASTA Power Cup and Stage 1/2 curriculum subjects that provide students with opportunities to gain South Australian Certificate of Education (SACE) credits, participate in sport and cultural events and explore university and employment options. The programs are co-designed with Aboriginal communities and delivered in partnership with schools, universities, industry and government. This helps create culturally safe learning environments where students feel valued and empowered.

The Academy has shown strong outcomes in student retention, SACE completion and transitions to tertiary education or employment. SAASTA is often seen as a successful model of culturally responsive education and youth development, and its approach continues to inspire similar initiatives across Australia.

Text box 1.12: South Australian Aboriginal Secondary Training Academy

Truth-telling was seen as a vital part of education – not to blame, but to heal. Communities asked for a national curriculum that includes what happened to First Peoples, the impacts of colonisation and how we can walk forward together. They want more cultural excursions, more time with Elders and more local knowledge in classrooms. Education done properly can be a powerful health intervention. It builds identity, confidence and hope – all of which are protective factors for health.[153]

Truth telling is important to learn about what happened, as part of a historical timeline, the impacts and the consequences in order to have some cathartic effect that then leads to resolution or reconciliation – Redfern ITA Participant

How can kids see themselves in the curriculum – Online Elders Focus Group ITA Participant

Finally, communities reminded us that education is not one-size-fits-all. Some children are not suited to mainstream schools and need other ways to learn life skills, culture and community roles. Aboriginal and Torres Strait Islander children are being suspended and terminated from public schools at unprecedented and disproportionate rates. Exclusion from education exposes them to risk of community policing and denies the right to access education. This was a significant concern to many communities.

Education should reflect our diversity, strengths and ways of knowing. It's time to listen, redesign and invest in learning systems that grow strong, healthy and proud young people who can lead us into the future. The education system must be able to cater to the needs of all children.

iv) Employment

Employment was raised as a major priority in our community consultations. People shared that having access to meaningful work is especially important for our Elders, our young people and those living with disability. When work is culturally safe and stable, it brings purpose and pride and can keep people connected to community and away from harmful coping strategies like drugs and alcohol. Research shows that secure, meaningful employment is linked to better mental health and social outcomes for First Peoples.[154]

> ***Opportunities for meaningful work are important because it gives people purpose, increases their self-esteem, contributes to communities and provides an outlet [or] pathway away from reliance on alcohol and drugs – Ceduna ITA Participant***

Another key issue raised was the lack of stable employment. Many people are only offered short-term contracts – often 12 or 18 months – because this is how government programs are funded. This job insecurity makes it harder for people to plan, get stable housing, or support their children's education. Short contracts also reduce access to superannuation, training and career development. Research highlights that job insecurity is a significant barrier to achieving economic equality for First Peoples, especially when coupled with systemic racism in employment systems.[155]

> ***Employed in 12, 18 months or 3-year contracts because that's what government programs run so that affects their access to housing, education – Online Elders Focus Group ITA Participant***

We heard strong support for investing in Aboriginal and Torres Strait Islander led employment and training services. Community-controlled job services, vocational training and employment readiness programs were seen as the best way to ensure people are supported into meaningful and culturally safe work. These services not only understand the barriers people face, but also support healing, skill development and long-term pathways. ACOSS and the First Nations Employment Alliance have called for increased investment in culturally appropriate employment services to reduce unemployment and improve self-determination in the workforce.[156]

In their submission, NACCHO discussed how ACCHOs are contributing to closing the employment gap. Collectively, ACCHOs employ about 7,000 staff – 54% of whom are Aboriginal or Torres Strait Islander people – making them third largest employer of Aboriginal or Torres Strait Islander people in the country.[157]

Community members also raised concerns about discrimination in the workplace. People shared that racism, ageism and a lack of cultural safety made it hard to get or keep a job. Others said that when workplaces are culturally safe and free from discrimination, people feel welcome and supported to stay long term. The Gari Yala report found that culturally safe workplaces improve retention and satisfaction for Aboriginal and Torres Strait Islander staff and that many employees experience racism and exclusion at work.[158] Accessible, fair complaints mechanisms were also seen as necessary to respond to experiences of discrimination and support safe work environments.[159]

Finally, people spoke about the unpaid work that goes unseen in our communities. In many places, community life is only made possible through the unpaid labour of Aboriginal and Torres Strait Islander women, especially grandmothers. These women are caregivers, leaders and cultural educators, but their contributions are often not recognised or supported.

Others spoke about the emotional and cultural load Aboriginal women carry and the opportunity for men to step up and share in this responsibility. This invisible labour reflects deep systemic inequality and is often excluded from policy and economic measures.[160] Participants also called for greater recognition of the role that community caregiving plays in supporting young people and preventing harm. Much of what we heard about employment is supported by the *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report (2020)*.[161]

There's no mention of the caring that is happening in our communities. I might work but I share my money with all of my grandkids. The unpaid caregiving that goes on every day of the week in communities by grandmothers and mothers and trying to make sure kids are safe and kids have something to eat. Poverty is a big one. We're supposed to live in one of the richest countries in the world, yet our mob live in third world conditions and that has to be addressed – Broome ITA Participant

v) Domestic and Family Violence

While a sensitive issue for many, addressing domestic and family violence was raised in many communities. During the Redfern ITA engagement, community members raised domestic and family violence as a serious issue impacting many families in the area. Community members spoke about the ongoing harm it causes, particularly for women and children and the barriers First Peoples face when trying to seek help. The lack of culturally safe services was highlighted, as well as the need for more community-led responses. Addressing family domestic violence was seen as urgent for keeping families safe and strong in that community.

Government accountability to the National Agreement on Closing the Gap

With the Productivity Commission's Review of the National Agreement highlighting some significant concerns with implementation, NACCHO has advised that:

- governments are beginning to work more collaboratively with Aboriginal and Torres Strait Islander people to ensure their voices are central in policymaking
- efforts are being made to make government institutions more effective and responsive to the needs of Aboriginal and Torres Strait Islander people
- there is a higher level of awareness of the need to ensure Aboriginal and Torres Strait Islander people are engaged in determining and implementing solutions.

Accountability, transparency and clarity are considered essential to building equitable relationships, enabling shared decision-making and ensuring meaningful evaluation.[162]

As signatories to the National Agreement on Closing the Gap, there needs to be more significant accountability and consequences for not implementing the Priority Reforms – ITA Survey Respondent

Everywhere we went, people told us that accountability matters deeply.

Communities shared concerns that governments and institutions are not held responsible when they fail to act on the findings and recommendations of inquiries, royal commissions and other formal processes.

Many said this causes ongoing pain and sadness, especially when people have shared their stories in the hope of change, only to be ignored.

Communities spoke of the exhaustion and trauma of having to keep telling their stories without seeing real change or responsibility taken.

How do we hold Australian institutions accountable? – Port Hedland ITA Participant

The Partnership for Justice in Health submitted an example of how prison health care systems are kept separate from public health systems, remain largely immune from scrutiny and accountability and continue to have devastating impacts for Aboriginal and Torres Strait Islander people.[163]

People also shared frustration that governments often make big promises – through policies, programs or funding announcements – but communities rarely see what happens next. There is little information about whether those promises have been kept or whether the work is making a difference. This lack of visibility leaves people feeling disconnected and distrustful.

Who is monitoring the Closing the Gap targets? Where is the accountability? – Broome ITA Participant

Many said they no longer trust government systems because they either don't receive updates or accessible reports, or progress report don't clearly demonstrate what has actually been achieved.

There must be consequences for non-compliance by agencies and persons, or it will be as ineffective as Closing the Gap – ITA Survey Respondent

A strong theme throughout the consultations was the need for greater transparency and practical tools for communities to track government action.

People called for tools like dashboards or community scorecards so everyone can see what has been promised, what is underway and what still needs attention. Many felt that current government reporting is focused on meeting internal requirements rather than demonstrating real progress to communities. People said accountability means showing that genuine change is happening – change that aligns with what community members have asked for and prioritised.

People also raised concerns about accountability in local decision-making and leadership. Community members questioned how decision-makers are chosen, how resources are used and whether local leaders genuinely listen and act for the people they represent. Concerns were raised about nepotism, poor communication and limited community involvement. Communities said responsibility should not rest with governments alone but must extend to community-controlled organisations and local leadership structures.

Who's listening, what are they doing with this? There's no accountability around senior directors or general managers [and] the way they're addressing and delivering those core services around the needs of a cultural, holistic lens – Online Disability Focus Group ITA Participant

A key message from across the consultations was that true accountability must include independent oversight. Communities asked: Who defines what governments must do? Who checks whether they are doing it? How do we ensure reforms actually improve people's lives?

They said government self-reporting is not enough. Instead, monitoring and evaluation must be transparent, culturally informed and centre First Peoples' voices and their right to define what success looks like.

The Victorian Aboriginal Health Service (VAHS) submitted that when it comes to cultural safety, accountability must be addressed through mechanisms that monitor and report on change.[164]

Independent mechanism – government oversight – how is the government performing – what reforms are being put in place and how are they actually changing anything – Melbourne ITA Participant

Finally, communities described accountability not as punishment, but as something restorative. They asked: How do we deliver what we said we would? In a respectful relationship, if something cannot be delivered, governments and service providers should be honest, explain why and work with communities to find a new way forward.[165] Accountability should be a shared responsibility, focused on learning and improving and centred on agreed outcomes that reflect what communities want and need.[166]

Funding arrangements

Government say that they are giving us funding but the people on the ground aren't seeing it – Dubbo ITA Participant

Aboriginal and Torres Strait Islander community members raised widespread concerns about the current funding frameworks.

We do support ACCHOs, but they tender for their funding from the same place as mainstream, they follow the same guidelines other than the fact that you may have an Aboriginal person delivering that service, what's the difference between an ACCHO and an NGO? – Adelaide ITA Participant

A consistent theme was that funding is often short-term, lacks transparency and is disproportionately awarded to larger, mainstream organisations that may not be embedded in, or accountable to, local communities.

Funding is short term in nature and given to bigger companies who community perceives as not utilising correctly – Port Augusta ITA Participant

This results in community organisations, (including ACCHOs) struggling to compete due to limited resources despite their critical role in delivering culturally safe services.

Funding policy maintains structural inequity within Indigenous community-based organisations by reducing local discretion and centralising decision-making and accountability.[167] Manufactured dependence on political cycles and interests influence how public sector agencies fund Indigenous organisations, which in turn influences staffing, resourcing, knowledge sharing and governance.[168]

During consultations, we heard a strong sentiment that the way funding is distributed contributes to lateral violence, division and a lack of cohesion among local organisations. Many communities said they weren't seeing the benefits of funding that governments claimed to be providing, particularly funding linked to Closing the Gap.

The current system, which prioritises compliance and tendering expertise over community knowledge and needs, often leaves local organisations under-resourced and excluded.

Lack of equitable distribution of grant funding to our ACCHOs and that comes down to the grant funding process, the tender process. Our local organisations can't compete with bigger organisations because they don't have the spare money to hire someone to write a specialised grant application – Online Elders Focus Group ITA Participant

The process was described as overly bureaucratic, competitive and at times exploitative, with some communities stating they felt forced to share trauma to receive funding.

Peak bodies, such as SNAICC, submitted that they have long advocated for dedicated and appropriate funding models to deliver services to Aboriginal and Torres Strait Islander children and their families, as well as joined up, collaborative approaches to address gaps and overcome systemic barriers.[169]

Communities also proposed clear solutions, including for example that funding decisions should be grounded in data and community-identified need, not just geographic remoteness. We heard persistent calls for greater transparency, accountability and a shift toward self-determination in how funds are allocated. This includes resourcing community-led organisations adequately and equitably and ensuring funding supports long-term outcomes, not just short-term political cycles.

Balancing funding to address the need and resource appropriately, not just based on remoteness – Melbourne ITA Participant

Priority Goal 5 – Land justice

Consistent with all research and evidence, connection to land is at the heart of Aboriginal and Torres Strait Islander identity, health and wellbeing. Across all participation pathways it was clearly communicated that:

- When people are connected to land, they are connected to culture, language and story.
- This connection supports strong mental health and strengthens identity, particularly for young people and Elders.
- Caring for Country is a way of healing, of teaching and of ensuring the future.
- When this connection is broken, the impacts are deep – emotionally, spiritually and physically.

When asked to what extent survey respondents agree with the high-level goal priority - advocating for land justice reform – acknowledging the deep connection between land, culture and self-determination and calling for stronger recognition and protection of land rights, 361 survey participants responded to the question which asked whether the Commissioner should include advocating for Land Justice amongst her high-level priorities, 290 of those respondents agreed. Only 9 respondents disagreed.

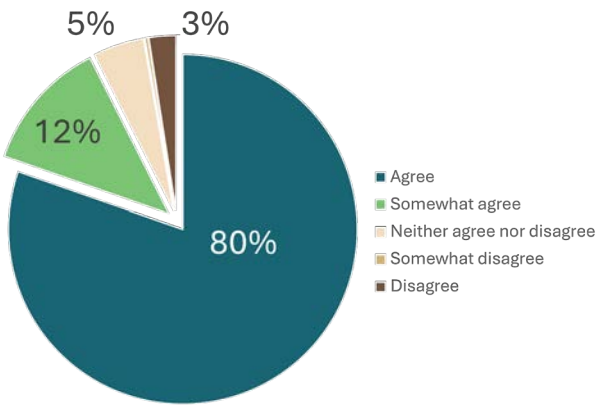


Figure 1.9: Survey Response to Question 5 asking whether land justice should be included as a priority for the Commissioner

Lands, territories and resources

Caring for Country isn't just important for people; it also helps the environment.

Aboriginal and Torres Strait Islander people have been looking after Country for tens of thousands of years, using practices like seasonal mapping, fire management and knowledge of water systems and seascapes. Communities told us that when they are supported to care for Country, the land thrives and so do the people. Caring for Country is a key part of maintaining cultural connection and identity, passing on knowledge to younger generations, strengthening communities and building resilience.[170]

Teaching young mob on Country about Country, climate change, weather situations, seasonal mapping, seasonal growth of animals – empowering them through education –transferring the knowledge, systems and the lore of Country – Roma ITA Participant

There was an array of issues consistently raised across the country concerning the lack of recognition given to Aboriginal and Torres Strait Islander peoples' ownership of Country, their lack of access to Country and the impact of extraction and development on Country. They included:

- the importance of land and connection to Country to individual and collective identity and culture, our physical, mental and spiritual health and wellbeing, and our social and economic participation
- the historical and intergenerational impact of dispossession. This includes the impact of disconnection on those permanently removed from their territories and forcibly relocated to missions and reserves and on members of the Stolen Generations. Both groups have lost some or all of their knowledge (and language) as a result

- the destructive impact of mining and pastoral activities on our lands, territories and resources including water (sea country and freshwater country) and to sacred sites and cultural heritage
- our access to and engagement in water management
- the capacity to leverage our lands, territories and resources to achieve our own cultural, social and environmental responsibilities and aspirations.
- the impact of climate change on our current and ongoing connection and our inclusion in the climate response.

Communities expressed deep concerns about the destruction of land and sacred sites by mining companies and industry. They feel that governments listen more to companies than to First Peoples when it comes to protecting Country. People told us they want governments to work in partnership with Traditional Owners, not just consult them and to take action to protect land and water from destruction, overuse and pollution.

Communities stressed that water is critical to everyone and everything's survival. Access to water must provide for cultural flows to enable caring for Country. Aboriginal and Torres Strait Islander people are concerned that their responsibility to ensure that water Country is healthy is not being met. The priority for water Country must be about maintenance and replenishment, not just extraction.

Key concerns were consistently raised about the legal and political dimensions of land regimes that are currently in place to provide for land recognition and rights. This included the divisive nature of mechanisms such as native title and how it intersects with other regimes such as state and territory land rights and cultural heritage regimes; and associated inter-jurisdictional governance and regulatory mechanisms.

It's a political agenda and native title isn't helping me, my people. It's actually dividing our people; it's actually killing our Country. We need to make recommendations under native title to save our country because as Aboriginal people, we are connected to our land – Online Disability Focus Group ITA Participant

Further, people told us that interconnected systems like the NDIS do not always understand or value the importance of Country to health. One carer shared that while access to Country would make a huge difference to a family member's mental and physical health, it was denied because the system did not see it as 'reasonable or necessary'. Consistent with research, like that done by Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS),[171] communities reinforced that being on Country can be deeply healing. For many Aboriginal and Torres Strait Islander people, access to Country is not optional – it is essential.

Concerning existing land rights regimes, particularly in NSW, communities advised that state governments are not granting claims (some of which have been active for many years) and communities lack the resources and staff to effectively navigate the system. They described having to spend large amounts of money going to court to try to claim land that should be returned to them.

Access to Country is access to culture, access to culture is access to language and stories and the ability to pass it on – Canberra ITA Participant

In NSW, some said that the Land Rights Act is being used to delay or avoid returning land, instead of delivering justice. There is strong interest in reforming land rights laws, so they work in the interests of First Peoples, not against them.

Native title

Native title was one of the most widely discussed and criticised topics in our community consultations.

Across the country, Aboriginal and Torres Strait Islander people raised deep concerns that the native title system does not reflect their cultures, values or ways of caring for Country. Many people felt that the system had developed without genuine input from Aboriginal and Torres Strait Islander voices and that native title in its current form does not reflect the spiritual, cultural or communal connection to land and waters. Instead, people said native title feels like a Western legal idea of ownership that doesn't match our beliefs.

> *Native title – drafted from a white man's perspective of what it is to own or care for land – Adelaide ITA Participant*

People also shared how, in its current form, the native title system often causes division within communities. They spoke of how the process has ripped families and communities to pieces, creating internal conflict over identity, rights and representation.

Many also spoke of being denied their connection, firstly by the system that created the disconnection and then by the imposition of Western governance structures within native title representative bodies (NTRBs) and prescribed bodies corporate (PBCs). These must comply with the Native Title Act and the Corporations Aboriginal and Torres Strait Islander Act (CATSI Act), not with traditional law and custom.

> ***Corporations are benefitting economically but not the Native Title holders – no plan, no agreed priorities, no capacity or governance arrangements to take plans forward, we have to start from a basic understanding of what we are trying to achieve – Broome ITA Participant***

Some said that native title has become a tool that separates tribes or clans and causes lateral violence. In some places, the system has created two different governance structures – native title representative bodies (and PBCs) and Aboriginal Land Councils – that conflict with each other. These were described as being put in place by government to collide, divide and conquer. This has resulted in confusion, frustration and a weakening of collective strength.

> ***Two entirely different agendas – segregating our communities, two different structures have been put in place by the government to collide, divide, conquer – nepotism, lateral violence – Coffs Harbour ITA Participant***

There is a strong feeling that native title does not lead to genuine empowerment.

> ***Native title – felt like we were being dispossessed again – Cherbourg ITA Participant***

People told us that, as it currently stands, native title does not give them full rights over their land or water, nor any real power to veto harmful developments that destroy Country and culture. One person explained that even though there is native title over rivers, they still need to ask the council for water.

These views highlight the failure of the native title system to align with cultural responsibilities, especially where water rights and protection of sacred places are concerned.[172]

i) The burden of proof

The burden of proof under the Native Title Act was described as deeply unfair. People told us that Aboriginal and Torres Strait Islander claimants are required to prove continuous connection to land in a way that is not only complex, time-consuming and expensive, but doesn't appropriately acknowledge the impact of colonisation. This puts a heavy burden on families and communities impacted significantly by colonial incursion and that already have limited money, time and legal resources. The cost of litigation and the long legal battles required were seen as a barrier to justice.

(ii) Capacity of Native Title Representative Bodies (NTRBs)

Access to good legal support was another major concern. Many people told us that native title claimants do not have equal access to legal services and expert advice. Without proper support, it is hard for communities to engage in negotiations with free, prior and informed consent. We heard support for legal reforms and stronger funding for NTRBs and service providers. The Independent Review of the National Legal Assistance Partnership also recommends better resourcing to ensure quality legal services are available to all claimants.[173]

The capacity for NTRBs to progress claims, with limited funding to meet need, left some native title groups feeling that they were not being appropriately represented. Others sought independent legal support to progress their claims.

There was strong support for moving towards negotiated outcomes instead of litigation which may increase the risk of an unsuccessful claim. Negotiated agreements are seen as better for everyone – they save money, strengthen relationships and lead to long-term economic and social outcomes.[174]

With recent court determinations, access to native title compensation has now been enlivened. In an effort to support First Peoples with negotiated compensation over litigated outcomes, the National Native Title Council (NNTC) submitted that they are working on a 'national compensation framework - a coordinated approach to enabling the negotiation of native title compensation settlements by resolving a number of outstanding issues.'[175]

iii) Recognition of rights

People want native title to include proper recognition of economic and commercial rights. Right now, they said, corporations often benefit economically from native title land, but native title holders do not. Communities lack a shared plan, governance structures and funding to make decisions about how benefits should be used. In some regions like the Pilbara, people said that native title settlements have created divisions driven by money, status and different motives, often influenced by the mining industry. Meanwhile, other regions like the Kimberley have used native title as a tool to protect Country and support tourism; showing that different regions need different approaches.[176]

Understanding the complexity of native title. Impact of native title settlements have been detrimental to subsections of the community and the people. If we look at the Pilbara regions in particular with the resource sector and the impacts of that, it changes from a matter of not only status but the monetary compensation influences people's [motives/agendas] and needs around that process. What we've seen over the years is that it has been a very divisive process that has fractured families and kinship systems that have existed for a very long time and have been broken within one generation. Kimberley regions are competing with tourism; they have been able to leverage that tool and protect a lot of their Country for that exact same purpose. Whereas in the Pilbara it's about digging up Country and getting the resources out – Port Hedland ITA Participant

We also heard that native title must not come at the cost of culture. There was a strong call for better cultural heritage protections. Traditional Owners said they want early and respectful engagement from developers and governments – not just at the end of the process. Cultural sites are often damaged or destroyed when proper consultation doesn't occur. Communities expressed support for reforms like the Dhawura Ngilan framework, which call for greater respect for cultural values and heritage laws that truly centre Traditional Owner authority.[177]

Dhawura Ngilan framework[178]

Dhawura Ngilan, meaning remembering Country in the Ngunnawal language, is a national vision to better protect Aboriginal and Torres Strait Islander cultural heritage. Developed in 2020 by the First Nations Heritage Protection Alliance and the Australian Heritage Council, it sets out a plan for strong, consistent laws that recognise the rights of First Peoples to care for their Country, culture and sacred sites.

The Dhawura Ngilan framework promotes self-determination and the authority of Traditional Owners to make decisions about their cultural heritage. It calls for laws that respect Indigenous knowledge systems, cultural values and responsibilities. The framework is based on human rights principles, including those in the UNDRIP, such as the rights to protect culture, heritage and spiritual connections to land.

The framework also highlights the need for national standards and stronger protections to stop damage to cultural sites. It shows how Aboriginal and Torres Strait Islander heritage laws, native title and land and water management should work together, not separately, to support the rights and responsibilities of First Peoples.

Dhawura Ngilan provides a clear pathway for governments, industry and institutions to improve heritage protection through respectful partnerships and structural reform. It supports long-term change based on truth-telling, cultural authority and care for Country.

Text box 1.13: Dhawura Ngilan framework

iv) Fix the system

Finally, people told us that native title often feels like a system still controlled by non-Indigenous laws, institutions and priorities. It does not provide a veto power, requires only 'good faith' negotiation from companies which creates loopholes and lacks any serious consequences for non-compliance by proponents. For many, native title has led to feelings of being dispossessed all over again

> *Native title is still part of their system – it still prioritises colonial rights over traditional – Warrnambool ITA Participant*

We were told that change is urgently needed – not just to fix technical parts of the law, but to bring native title back in line with First Peoples' values, community priorities and our right to care for and protect Country.

Climate change

Climate change is creating serious problems for both people and Country. We heard about increasing heat, floods, storms and droughts and how these are damaging land, food sources and sacred sites. These weather events also make it harder for people to stay healthy. Extreme heat can stop people from safely storing medications or accessing medical care.

> *Climate change particularly rising sea levels for the Torres Strait Islands and coastal mainland Aboriginal communities. Loss of land, culture, significant cultural and community landmarks/sites e.g. Cemetery and burial sites. Envisaged upheaval and removal. Contributing to identity loss, connection to country, loss of culture/lore – ITA Survey Respondent*

The impact of climate change is even greater in communities already facing housing and health inequality.[179] Loss of land from rising sea levels and environmental damage causes trauma, especially when it means losing access to sacred places (including burial grounds as is the case in the Torres Strait) and story places – (that are crucial) to maintaining cultural connection, identity and law. Those in the Torres Strait are particularly concerned with being forcibly relocated to other islands or the mainland, losing their physical connection to culture, identity and land forever.

> *Climate change is not just about the weather – it is slowly taking our islands, our sacred sites and our connection to our culture. Every rise in the sea feels like we are losing a piece of who we are and soon we will have to leave our island home – Badu Island ITA Participant*

The Masig Statement – Malungu Yangu Wakay[180]

In 2022, Torres Strait Islander leaders from Masig Island released the Masig Statement – Malungu Yangu Wakay, meaning "my voice is who I am."

The statement is a strong call for action on climate change, which is already damaging their islands and threatening their way of life. It asks the Australian Government to recognise Torres Strait Islanders as the traditional custodians of Zenadth Kes and to respect their deep connection to land, sea and culture.

The Masig Statement calls for real partnerships with government based on Indigenous leadership and self-determination. It urges action on climate change, protection of Country and support for Torres Strait Islander communities to make decisions about their future. It also calls for the full implementation of the UNDRIP.

The Masig Statement was identified by ITA participants as a clear and powerful voice from community. It shows how Torres Strait Islanders are leading the way on climate justice and want their rights, knowledge and leadership respected. The statement reminds us that First Peoples must be at the centre of decisions about their lands and futures.

Text box 1.14: The Masig Statement – Malungu Yangu Wakay

Priority Goal 6 – Building the capacity of the Indigenous Human Rights Network – rebuilding the village

In considering the focus of this priority, the Commissioner highlighted two key areas of need:

1. The need to create spaces that support Aboriginal and Torres Strait Islander peoples to come together, to determine their priorities on their terms and to establish agreed ways of working and pathways to achieve their aspirations. In this regard, there is a need to undo the harm and division caused by colonisation in our families and communities and to rebuild our villages to better reflect our values: culture, law, identity, belonging, rights and responsibilities.
2. The need to build the capacity of Aboriginal and Torres Strait Islander Peoples to assert, exercise and enjoy their rights.

Figure 1.10: Key words used by survey respondents when asked about 'rebuilding the village' and an Indigenous Human Rights Network

Rebuilding the village

Rebuilding our communities (our villages) is our business. It's 'blackfella business'.

Communities largely agreed that there is a need to focus on and give space for: returning to our values and law pushing for a future that is grounded in truth, justice and respect and which sees our people thriving and successful in all their aspirations.

> ***We need to stop fighting with each other and come together in a genuine way to realise improvements and equity for everyone. Mob politics needs to be set aside for truly Closing the Gap – ITA Survey Respondent***

The impact of colonisation (historical and ongoing) on our ways of knowing, being and doing underpinned all discussions throughout the community engagements. Aboriginal and Torres Strait Islander people stressed the need to return to a state where:

- As a collective (and in our respective communities) we take responsibility for the care and wellbeing of our children, our families, our communities and our people.
- Elders are respected as cultural authorities, caregivers, law and knowledge holders and as older people who should be cared for, loved and treated respectfully.
- Young people are (where appropriate) proactively included in discussions that will impact their lives and futures, particularly where there will be an expectation that they step into leadership roles to take forward plans to secure the success and wellbeing of the future generations.
- It is understood 'that everyone has a role to play' and is appropriately supported to fulfil those roles.

Elders

Our Old People, our Elders, are the foundation of our communities; their wisdom, knowledge, care, resilience, steadfastness and protection of culture are integral to the continuation of our people, our identity and community connection[181]. Communities spoke of how Elders are central to cultural continuation, wellbeing and strength. Across consultations, it was clear that while Elders are deeply respected and cherished, they are often disrespected, disregarded and under-supported.

Communities told us clearly: Elders need the same things as everyone else – income, meaningful work and good support. But they also need their cultural role to be recognised. Learning from Elders is vital for growing strong communities. Their contributions should not be invisible in policies and programs.

Honouring Elders means ensuring they are cared for, listened to and supported – not just because they are older, but because they have lived, guided and continue to hold together generations of people and knowledge.

A strong concern raised in every consultation was the lack of Elder voices in decision-making. Communities feel that governments often lead without listening to those who hold cultural authority. As more people age, Elder perspectives become even more important. Their testimony, shaped by lifetimes of experience, could greatly improve decisions about health, housing, education and land if they were properly heard and respected.

> ***We're following such a government-led approach on everything, we need to listen to our Elders in communities – Online Elders Focus Group ITA Participant***

Further, Elders are seriously concerned about the future of their people. Many Elders who participated in the Project are actively engaged in their communities (often in voluntary or unpaid roles): sitting on Community Justice Groups or Koori/Murri Courts, visiting those incarcerated, advising Local Government Councils, performing Welcomes to Country and providing childcare support for the children of working families, or taking on the care responsibility for grandchildren of struggling parents.

They regularly raised concerns about: the breakdown of families; the numbers of our people (particularly young people) in jail; treatment by police and other authorities; racism in the community; and the number of our people misusing drugs and alcohol and not getting the support they need. These factors all contribute to family dysfunction and mental ill health. Elders, families, children and kin all have a part to play in keeping our communities and families together and healthy. People spoke of returning to traditional ways of raising children and reconnecting with cultural ways of supporting one another. Restoring internal community strength through shared decision-making and cultural practice was a clear priority.

The whole community is responsible for bringing up children – Ceduna ITA Participant

Many community members also spoke about the serious health issues facing Elders. These included physical frailty, emotional exhaustion from political pressures and the lasting impacts of COVID-19. We also heard how many Elders are taking care of their grandchildren and supporting adult children who are struggling with mental health issues. This double responsibility is heavy.

Despite their crucial roles, supports for Elders are not identified and they are left out of key national policies, such as Closing the Gap. This omission means that vital aspects of Elder wellbeing – such as cultural connection, social and emotional health and the pressures of care work – are not addressed.

Elders are missing from Closing the Gap – targets/measures are only looking at life expectancy, critical insights are missed with regards to quality of life, social and emotional wellbeing, impacts of cultural connection – Shepparton ITA Participant

Some Elders, especially those who were raised in institutions, shared fears about ageing. Those who were forcibly removed from their families to missions, reserves and institutions are afraid of being institutionalised again as they grow old. Community members recommended safer and more culturally supportive aged care services, reducing the shame, fear or stigma around aged care and reconnecting young people with Elders to strengthen intergenerational bonds.

Supporting Elders to age with dignity and respect, in ways that honour their lived experiences, was seen as key to healthy communities.

Young people

Our young people are our future.

During the consultations, every community shared deep concern for the wellbeing of Aboriginal and Torres Strait Islander young people. People spoke about the urgent need for care, protection and real support for young people to grow up strong in culture, community and identity. Safe and stable housing, support for families, culturally grounded education and healthcare and help for kids who think and learn differently were all raised as major priorities.

Communities said their young people are not being given what they need to thrive and this is causing serious harm.

Similarly to what we heard during consultations and through submissions, 196 survey respondents strongly agreed that young people must be involved in decision-making about matters impacting their communities. When asked about the importance of young people having access to engagement with, and mentoring from, Elders, 239 respondents – or 89% – said it was very important.

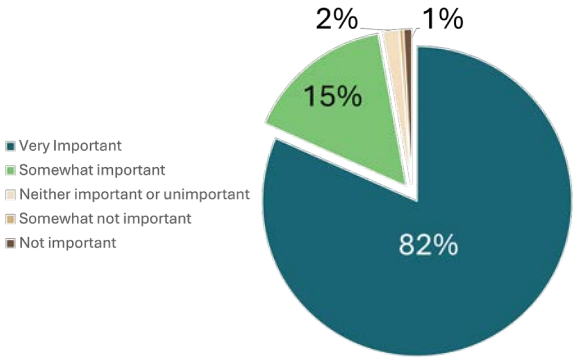


Figure 1.11: Survey response data to question asking if young people should be involved in decisions about matters that impact communities

Identity

Identity was a consistent theme raised during community consultations.

Cultural identity provides connection, protection and belonging – physically and spiritually – to people and place. A strong cultural identity underpins community wellbeing.[182]

When one belongs and has identity in community, they have place and a meaning for being – ITA Survey Respondent

Aboriginal and Torres Strait Islander people shared that cultural identity is far more than a label – it carries deep meaning. It gives people a sense of belonging to each other and to Country and it supports spiritual, physical and emotional wellbeing. When people know who they are and where they come from, the whole community is stronger.

Many raised concerns about individuals falsely claiming an Aboriginal or Torres Strait Islander identity. This was seen as deeply harmful because it undermines the lived experiences, rights and voices of First Peoples.

Census results of the Aboriginal population keep going up – which is problematic because our voices get lost in the fray and people get distracted by the argument of who is Aboriginal and governments use it as an excuse not to act – Brisbane ITA Participant

Others spoke about people claiming to represent or belong to First Nations communities without practising culture or being connected to community. Participants highlighted that this not only misrepresents community perspectives but also causes damage to cultural integrity and trust.

Our voices aren't being heard, we're not getting the services that we need, we're not influencing policy the way that we should be able to because legitimacy is being given to people just on the basis that they say they are Aboriginal and when a legitimate Aboriginal person identifies, they question – Launceston ITA Participant

Another issue was inconsistency in how identity is defined and recognised. Without clear processes, it becomes easier for people to misuse identity for personal gain. This creates problems for data, funding and services. Communities said that when there is no shared understanding of who is counted, or how identity is verified, confusion and unfairness follow. Some people miss out on support they genuinely need, while others benefit without the same cultural ties.

Over-representation of people identifying as First Peoples to access funds/opportunities – Hobart ITA Participant

The problem of 'black cladding' poses a direct threat to the goals of the Indigenous Procurement Policy (IPP). This practice occurs when non-Indigenous individuals or organisations claim Indigenous identity or include token Indigenous involvement to access government contracts, grants, or funding – without delivering real benefits to communities.[183] Participants reported this happening at every level, from small projects to major contracts. By diverting opportunities and resources away from genuine Indigenous businesses, 'black cladding' undermines the IPP's purpose: to ensure economic participation, community benefit and authentic representation for First Peoples.[184] The result is that communities are left without services or proper representation and the funding doesn't reach the people it was intended to support.

Black cladding of businesses needs to be recognised for what it is e.g. used locally as bullying tactic and to get rid of black workers and white organisations standing over traditional people – ITA Survey Respondent

There was also concern about the identity experiences of Stolen Generations survivors and their descendants. Community members said that these people may have lost records or knowledge of their family, language or Country, but that doesn't make them less Indigenous. Instead, identity processes need to be flexible enough to recognise this history and the harm caused by past government policies. At the same time, many stressed the need for strong, culturally grounded identity checks that are led by community, not just government systems.

Finally, people said that service providers and government agencies need better training and tools to respectfully ask people about their identity. Communities called for strict and consistent rules around Aboriginal and Torres Strait Islander identity – not to exclude those with genuine ties, but to ensure cultural integrity and to ensure that culture is not diluted or exploited. They emphasised that without clear and fair identity processes, the voices of First Peoples are at risk of being drowned out, ignored, or replaced.

Relationships

Strong and respectful relationships are the heart of thriving Aboriginal and Torres Strait Islander communities. There was a strong message about the need to heal relationships within our own communities first and foremost.

During community consultations, we heard that intentional, positive relationships are not just about service delivery – they are about building trust, strengthening systems and creating spaces where communities can lead.

People talked about the importance of collaboration, cooperation and working together without hierarchy. These kinds of relationships take time and care. They must be based on real listening, shared understandings and respect for each other and our different backgrounds, points of reference and lived experiences.[185]

Several submissions, including from SNAICC and NIHLA, argued that there need to be genuine relationships between governments and First Peoples. Working together will improve Aboriginal and Torres Strait Islander health and justice outcomes by addressing racism at individual, institutional and systemic levels.[186]

Communities also told us that healing the broader relationship with the Australian public is necessary. This healing should come through truth-telling – honest conversations that build understanding and accountability, not blame. By speaking openly about the past and present, in ways that are gentle and inclusive, there is an opportunity to bring people together and to shift narratives that have harmed First Peoples.[187]

There is enormous value in public conversation that is common, rational and pitched in a positive way, which is clearly set out, slowly built-up with delivery of key information – Online ITA Participant

People also highlighted the importance of being able to disagree in healthy ways. Many people across communities argued that strong relationships are not always about agreement – sometimes (healthy) tension can be a good thing. They can also be about being able to have hard conversations with respect and care and working hard to resolve issues.

Need to have healthy conflict and disagreement, uncomfortable conversations but we need to create the space to identify the common goal for all mob – Broome ITA Participant

Communities said it's important to make space for discomfort, to accept difference rather than division and to keep returning to shared goals.

Across all feedback, relationships were seen not as a single act, but as a long-term commitment to walking together. Across all feedback, relationships were seen not as a single act but as a long-term commitment to walking together.

Representation

Enabling community representation and community-endorsed processes is critical. ITA participants highlighted the need to engage with the full spectrum of community membership, with many arguing that 'all voices need to be heard … not just a select few', from 'those with lived experience…youth voices … along with blak academics and others who are the usual spokespersons'.[188]

Critical to positive relationships is how First Peoples are represented to the Australian public and globally, including through the media, on social media platforms and through the public narratives of politicians and key public figures. Concerns were raised about how Aboriginal and Torres Strait Islander people are politicised during election cycles and how mainstream media continues to villainise Aboriginal people, including public figures and sportspeople. This was particularly prolific post-Referendum, with Aboriginal and Torres Strait Islander people experiencing an increase in racism on social media, in public and in print media.[189]

Media plays a role in the way Aboriginal people are villainised – sportsmen – we're always rubbished – Dubbo ITA Participant

Participants also raised negativity, harm and hate speech on social media. Research indicates that Aboriginal and Torres Strait Islander people are overwhelmingly exposed to negative content at least weekly on social media.[190]

Negative stereotypes, deficit-based narratives and the links between racism and the media are not new for Aboriginal and Torres Strait Islander people. It was the focus of 1991 report on the National Inquiry into Racist Violence in Australia by the Human Rights and Equal Opportunity Commission (now the AHRC). This report found that 'racism in media reporting can damage community relations and create a social climate which is tolerant of racist violence'.[191]

> *Profiling positive accounts of Indigenous affairs and challenging the deficit views of Indigenous – greater regulation for the media organisations – Brisbane ITA Participant*

Community members emphasised the need to challenge negative stereotypes and deficit-based narratives in the media by promoting more positive representations of Aboriginal and Torres Strait Islander people. They emphasised the importance of media engaging in respectful, accurate discussions on First Peoples issues, but also highlighted the risks of engaging in social media in ways that cause harm to our communities, i.e. posting material on public sites that inform and reinforce negative views.

We heard that greater regulations for media organisations are important to reduce the amount of racism that is experienced and to advance First Peoples causes and perspectives.

Building the capacity of a human rights network

The survey asked respondents if they agree with the high-level goal of building the Indigenous Human Rights Network and promoting First Peoples human rights being a priority of the Commissioners agenda, 362 Aboriginal and Torres Strait Islander people responded with only 3 percent of those somewhat disagreeing or disagreeing while the remainder either agreed, somewhat agreed or neither agreed nor disagree.

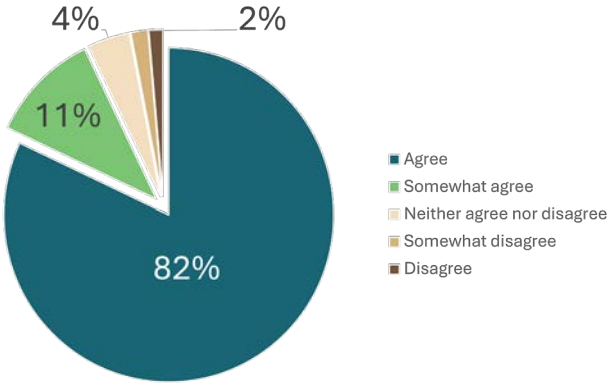


Figure 1.12: Survey response data to question asking if the Commissioner should prioritise building the Indigenous Human Rights Network

Across all participation pathways, people argued that there must be a commitment to human rights and that there must be urgent attention given to fully implementing the UNDRIP.

However, there was also a level of mistrust and uncertainty around the usefulness of the human rights system when governments take up commitments but don't comply with them. They also expressed concern when the system that is in place to actually hold them accountable to those commitments – is not strong enough to enforce action. While some saw the international human rights space as a 'toothless tiger', others talked about how Aboriginal and Torres Strait Islander people are effectively using the international human rights framework to elevate our issues and put pressure on governments to comply with their obligations.

Participants identified a need for community education about human rights and the law. People want to understand how they can advocate for themselves and their communities and they want this knowledge to be shared from early childhood. Learning about Aboriginal and Torres Strait Islander peoples' histories, cultures and rights builds confidence and community pride and also helps others to understand the value of equity, fairness and respect. Schools can be places where human rights are lived and taught, starting with how children are treated and what stories are centred in the curriculum.[192]

Finally, communities across the country want to connect and engage as a collective to talk about key priorities, aspirations and strategies to achieve them. However, in the absence of a national representative body or mechanism to support and facilitate a national network, there is currently no coordination or capacity to enact this. This discussion started in Canberra at the ITA community engagement where participants committed to keeping in contact with each other. Participants nationally indicated a desire to also stay connected. A strategy will need to be developed to support this.

i) Engagement with government

Community members told us that meaningful and ongoing engagement with governments is vital. This means regular consultations that are led by communities, where people can speak freely and honestly. It means governments sharing data openly and helping to build mechanisms that allow local voices to shape laws and policies. Real change will only come when those directly affected by policies are helping to design them.[193] Relationships must be based on equity, truth and mutual respect.

ii) International engagement

People spoke to the importance of building and strengthening relationships with Indigenous communities across the globe, especially our Pacific neighbours.

It was agreed that when Indigenous people come together to share stories, knowledge and solutions, their voices become stronger. These international relationships help grow collective action and mutual support.

Expectations of the Role of the Social Justice Commissioner

Many would like the Commissioner to have the capacity to enforce human rights compliance and force change within government and society more broadly. Others mistakenly believe that the Commissioner role already has these powers.

The Social Justice Commissioner's work belongs to a landscape of essential reforms and initiatives currently working in Australia to realise and safeguard the rights of Aboriginal and Torres Strait Islander people.[194]

The Commissioner needs real powers to compel government and non-government agencies and persons to implement and uphold human rights – ITA Survey Respondent

The Social Justice Commissioner needs to actually get justice. No more talking, no more meetings, no more promises. First Nation's people need action and they need it fast. Policy makers need to have spent a month or more in a remote community to understand the plight of remote [I]ndigenous people – ITA Survey Respondent

Others acknowledged the limitations of the Commissioner's role to enforce change and address the depth and breadth of the Indigenous Affairs landscape.

Creating space to contribute

...I am loving having a say and giving feedback. It's always vitally important we are all represented and the collective lived experience included and centred. There must be voices from on the ground and all across the nation. And not just the big wigs who get to have a say in everything – ITA Survey Respondent

With regard to children and young people, there is a national network of Children's Commissioners (or similar) across all jurisdictions, including the National Children's Commissioner and a newly appointed National Commissioner for Aboriginal and Torres Strait Islander Children and Young People, SNAICC stressed the need for collaboration and for Aboriginal and Torres Strait Islander children to:

...remain visible in the Social Justice Commissioner's agenda, that complements existing work across government and the community-controlled sector...Accountability and oversight mechanisms are most effective when their agendas and priorities align, creating opportunities for collective advocacy.[195]

Endnotes

33 Law Council of *Australia, Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 21].

34 Aboriginal Legal Service of Western Australia (ALSWA), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 14].

35 Lowitja Institute, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 1]

36 R Glynn-McDonald, First Nations Systems Thinking, Common Ground website, 2022. <https://www.commonground.org.au/article/first-nations-systems-thinking>.

37 Lowitja Institute, Submission to the A*ustralian Human Rights Commission, Informing the Agenda Project* (2024) [submission 1].

38 Community First Development, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 6].

39 T Kukutai and J Taylor (eds), *Indigenous Data Sovereignty: Toward an Agenda* (Australian National University Press, 2016) <https://press-files.anu.edu.au/downloads/press/n2140/pdf/book.pdf>.

40 *Australian Council of Social Service (ACOSS), Statement of Solidarity with First Nations Communities,* (Web Page) <https://www.acoss.org.au/statement-of-solidarity-with-first-nations-communities/>.

41 *Royal Commission into Aboriginal Deaths in Custody,* (National Report Volume 1, 15 April 1991) <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/>.

42 *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Final Report, 17 November 2017) <https://www.royalcommission.gov.au/child-detention/final-report>.

43 Office of the Inspector of Custodial Services, *2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison: Part One,* Government of Western Australia (Report No 148, May 2023) <https://www.oics.wa.gov.au/wp-content/uploads/2023/05/00.2-Clean-Copy-Inspection-Report-148-Banksia-Hill-Detention-Centre-and-Unit-18-at-Casuarina-Prison.pdf>.

44 E Cox, *What Works and Why the Budget Measures Don't* (2014) 16, Journal of Indigenous Policy <https://www.uts.edu.au/globalassets/sites/default/files/article/downloads/JIP_16_2014.pdf>.

45 Human Rights and Equal Opportunity Commission, *Social Justice Report 2006: Chapter 1 – Introduction* (2006), 1-19. <https://humanrights.gov.au/our-work/projects/social-justice-report-2006-chapter-1-introduction#1>.

46 P Dudgeon, S Blustein, A Bray, T Calma, R McPhee and I Ring, *Connection between family, kinship and social and emotional wellbeing*, Australian Institute of Health and Welfare, 2021. <https://www.aihw.gov.au/reports/indigenous-mental-health-suicide-prevention/connection-between-family-kinship-and-social-and-e/abstract>.

47 Aboriginal Justice Caucus, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 11].

48 SNAICC – National Voice for our Children, *Family Matters Report 2024*, SNAICC, 2024. <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

49 Australian Law Reform Commission (ALRC), *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC, 2017. <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133>.

50 Human Rights Law Centre, *Ensuring a Just Future: The Over-Incarceration of Aboriginal and Torres Strait Islander Children and Young People*, Human Rights Law Centre, 2020. <https://www.hrlc.org.au/app/uploads/2025/04/Human-Rights-Law-Centre-and-Change-the-Record-Submission-on-Youth-Justice-and-Incarceration-System-1.pdf>.

51 National Network of Incarcerated & Formerly Incarcerated Women & Girls, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 8].

52 P Dudgeon, S Blustein, A Bray, T Calma, R McPhee and I Ring, *Connection between family, kinship and social and emotional wellbeing*, Australian Institute of Health and Welfare, 2021. <https://www.aihw.gov.au/reports/indigenous-mental-health-suicide-prevention/connection-between-family-kinship-and-social-and-e/abstract>.

53 West Kimberley Futures Empowered Communities, *Ngurra Buru (Night Space) Program*, West Kimberley Futures Empowered Communities website, n.d. <https://wkfec.org/safe-space-1>; Nirrumbuk Aboriginal Corporation, *Who We Are*, Nirrumbuk Aboriginal Corporation website, n.d. <https://nirrumbuk.org.au>.

54 *International Covenant on Civil and Political Rights (ICCPR),* GA Res 2200A (XXI), adopted 16 December 1966, art 26. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

55 Law Council of Australia, *Access to Justice: The Justice Project*, Law Council of Australia website, 22 August 2018. <https://lawcouncil.au/justice-project/access-to-justice>.

56 National Indigenous Australians Agency (NIAA), *Closing the Gap Report 2020*, NIAA, 2020. <https://www.niaa.gov.au/sites/default/files/reports/closing-the-gap-2020/>.

57 Aboriginal Justice Caucus, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 11].

58 NSW Government, District Court NSW, 'Walama List Factsheet', *Indigenous Justice Clearinghouse* (PDF, 2021) <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/walama-list-fact-sheet.pdf>; NSW Government, *Walama List to Tackle Over-Representation of Aboriginal People in the Criminal Justice System* (media release), NSW Government, n.d. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/walama-list-to-tackle-over-representation-of-aboriginal-people-in-the-criminal-justice-system.html>; Australian Law Reform Commission (ALRC), *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC, 2017. <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133>.

59 Federal Circuit and Family Court of Australia (FCFCOA), *Annual Reports 2022-23,* Commonwealth of Australia, 2023. <https://www.fcfcoa.gov.au/sites/default/

files/2023-11/FCFCOA%20Annual%20Report%202022-23.pdf>

60 Law Council of Australia, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 21].

61 Aboriginal Legal Service of Western Australia Limited, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 14].

62 Julyardi Aboriginal Corporation, *Hedland Aboriginal Strong Leaders*, <https://www.julyardi.org.au/blog>.

63 Sisters Inside, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 22].

64 Aboriginal Justice Caucus (AJC), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 11].

65 National Justice Project, *Alternative First Responders Position Paper* (2025) <https://www.justice.org.au/wp-content/uploads/NJP_AFR_PositionPaper2025-1.pdf>; Indigenous.gov.au, *Arrernte Community Patrol: Leaders for Change*, Indigenous.gov.au website, 6 June 2023. <https://www.indigenous.gov.au/stories/arrernte-community-patrol-leaders-change>.

66 Australian Institute of Health and Welfare (AIHW), *Youth Justice in Australia 2023-24,* AIHW website, 28 March 2025. <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2023-24/contents/summary>.

67 Aboriginal Justice Caucus (AJC), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 11].

68 *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (Qld) <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2021-018>.

69 Police Accountability Project, *Independent Investigation of Complaints against the Police* (Policy Briefing Paper, 2015) <https://www.policeaccountability.org.au/wp-content/uploads/2015/11/CLCpaper_proof.pdf>.

70 Aboriginal Legal Service of Western Australia Limited, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 14].

71 Australian Human Rights Commission (AHRC), *United Nations Declaration on the Rights of Indigenous Peoples*, AHRC website, 2010. <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/united-nations-declaration-rights>.

72 Lowitja Institute, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 1].

73 Lowitja Institute, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 1].

74 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12].

75 Closing the Gap, *Priority Reform One – Formal Partnerships and Shared Decision-Making*, Closing the Gap website, n.d. <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>.

76 National Network of Incarcerated & Formerly Incarcerated Women & Girls, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 8].

77 Walkern Katatdjin Governance Committee and research team, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 10].

78 First Nations Digital Inclusion Advisory Group, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 15].

79 P Dudgeon, H Milroy and R Walker (eds), W*orking Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Commonwealth of Australia, 2014. <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>.

80 AIATSIS, *National Indigenous Australians Agency and AIATSIS: Indigenous Data Sovereignty and Governance*, AIATSIS, 2020. <https://aiatsis.gov.au/publication/116757>.

81 SNAICC – National Voice for Our Children, *Family Matters Report 2023*, SNAICC, 2023. <https://www.snaicc.org.au/wp-content/uploads/2024/07/20240731-Family-Matters-Report-2023.pdf>.

82 Coalition of Peaks and Australian Government, *National Agreement on Closing the Gap*, 2020. <https://www.coalitionofpeaks.org.au/national-agreement-on-closing-the-gap>.

83 OM Talbot, *Koonibba Football Club,* State Library South Australia, (Photo, 1925) <https://digital.collections.slsa.sa.gov.au/nodes/view/2718>

84 M Truong and H Miller, 'Resources to Support Culturally Safe Service Delivery to Aboriginal and Torres Strait Islander Peoples', Resource Sheet, Australian Institute of Family Studies, 2024. <https://aifs.gov.au/resources/resource-sheets/resources-support-culturally-safe-service-delivery-aboriginal-and-torres>.

85 National Network of Incarcerated & Formerly Incarcerated Women & Girls, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 8]

86 Y Paradies, 'Colonisation, Racism and Indigenous Health', *Journal of Population Research*, 2016 33(1):83-96. <https://arts-icrp.unimelb.edu.au/bibliography/RXLJEWWZ/>.

87 M Moskos, L Isherwood, M Dockery, D Habibis, L Grealy, R Benedict, M Harris, R Singh and T Lea, *Indigenous Mobility and Its Impact on Remote Infrastructural Needs: An Exploratory Study*, Australian Housing and Urban Research Institute Limited, 2024. <https://www.ahuri.edu.au/research/final-reports/423>.

88 First Nations Digital Inclusion Advisory Group, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024), [submission 15].

89 National Indigenous Australians Agency (NIAA), *Indigenous Advancement Strategy*, NIAA website, n.d. <https://www.niaa.gov.au/our-work/grants-and-funding/indigenous-advancement-strategy>.

90 Coalition of Peaks and Australian Government, *National Agreement on Closing the Gap*, 2020. <https://www.coalitionofpeaks.org.au/national-agreement-on-closing-the-gap>.

91 Lowitja Institute, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 1].

92 Indigenous Allied Health Australia (IAHA), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 16].

93 Partnership for Justice in Health, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 9].

94 The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM), *Submission to the Informing the Agenda Project* [submission 4].

95 The Healing Foundation, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 7].

96 First Peoples Disability Network, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 5].

97 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12].

98 Australian Electoral Commission (AEC), *National Results – Referendum*, AEC website, 2 November 2023. <https://results.aec.gov.au/29581/Website/ReferendumNationalResults-29581.htm>.

99 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

100 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12].

101 N Biddle, M Gray, I McAllister and M Qvortrup, *Detailed Analysis of the 2023 Voice to Parliament Referendum and Related Social and Political Attitudes*, Centre for Social Research and Methods, Australian National University, 2023. <https://polis.cass.anu.edu.au/research/publications/detailed-analysis-2023-voice-parliament-referendum-and-related-social-and>.

102 J Mohamed, K Stacey, C Chamberlain and N Priest, *Cultural Safety in Australia* (Discussion Paper, Lowitja Institute, 2024) <https://www.lowitja.org.au/resource/cultural-safety-in-australia/>; National Indigenous Health Leadership Alliance, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 13].

103 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

104 The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM), *Submission to the Informing the Agenda Project* [submission 4].

105 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

106 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

107 C Gooley, '"Now is the time" to look at federal truth-telling, says Indigenous Australians Minister', *NITV*, 9 July 2025. <https://www.sbs.com.au/nitv/article/now-is-the-time-to-look-at-federal-truth-telling-process-says-indigenous-australians-minister/x0xqwqg8o>.

108 National Indigenous Health Leadership Alliance, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 13].

109 S Morris and H Hobbs, 'Imagining a Makarrata Commission' (2022) 48(3) *Monash University Law Review* 19 <https://doi.org/10.26180/22081931.v3>.

110 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

111 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

112 The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 4].

113 Productivity Commission (PC), *Closing the Gap: Annual Data Compilation*, PC, July 2025. <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>.

114 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC website, 2020. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation>.

115 Australian Institute of Health and Welfare (AIHW), *Australia's Welfare 2023: Data Insights*, AIHW, Australian Government, 2023. <https://www.aihw.gov.au/reports/australias-welfare/australias-welfare-2023-data-insights/contents/summary>.

116 Lowitja Institute, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 1].

117 C Watego, D Singh and A Macoun, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System*, Discussion Paper, Lowitja Institute, 2021. <https://www.lowitja.org.au/wp-content/uploads/2023/05/Lowitja_PJH_170521_D10-1.pdf>.

118 M Truong and H Miller, *Resources to Support Culturally Safe Service Delivery to Aboriginal and Torres Strait Islander Peoples*, Australian Institute of Family Studies, July 2024. <https://aifs.gov.au/resources/resource-sheets/resources-support-culturally-safe-service-delivery-aboriginal-and-torres>.

119 Australian Institute of Health and Welfare (AIHW), *Tier 2 – Determinants of Health: 2.10 Community Safety*, AIHW website, 2020. <https://www.indigenoushpf.gov.au/measures/2-10-community-safety>.

120 Department of the Prime Minister and Cabinet, *PM Transcripts: Closing the Gap*, Transcript, 12 February 2020. <https://pmtranscripts.pmc.gov.au/release/transcript-42891>.

121 Walkern Katatdjin Governance Committee and research team, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 10].

122 Walkern Katatdjin Governance Committee and research team, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 10]; Youth Pride Network (YPN), *State of Play II: LGBTIQA+ Young People's Experiences of High School* (Report, September 2023) <https://youthpridenetwork.net/wp-content/uploads/state-of-art-report-2.pdf>.

123 National Indigenous Health Leadership Alliance (NIHLA), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 13].

124 J Gilroy, A Dew, M Lincoln and M Hines, 'Need for an Australian Indigenous Disability Workforce Strategy: Review of the literature', *Disability and Rehabilitation*, 2017, 39(16):1664-1673. <https://doi.org/10.1080/09638288.2016.1201151>.

125 Productivity Commission (PC), *National Disability Insurance Scheme (NDIS) Costs*, PC, Commonwealth of Australia, October 2017 <https://www.pc.gov.au/inquiries/completed/ndis-costs/report>.

126 K Soldatic, A Kennedy and A McRae, 'Aboriginal Disability and the Carceral State: A Call for Justice', (2022) 37(1) Disability & Society 1 <https://www.tandfonline.com/doi/abs/10.1080/09687599.2021.1952951>.

127 COOEE Indigenous Family and Community Education Centre, *Cultural Leadership*, COOEE Indigenous Family and Community Education Centre website, n.d. <https://www.cooeeindigenouselders.com/>; SNAICC – National Voice for our Children, *The Family Matters Report 2020* <https://www.snaicc.org.au/resources/family-matters-report-2020/>.,

128 Lowitja Institute, *Close the Gap 2020 – Executive Summary*, Lowitja Institute, 2020, 4<https://www.lowitja.org.au/wp-content/uploads/2023/05/CtG2020_FINAL4_WEB-1.pdf>.

129 National Aboriginal Community Controlled Health Organisation (NACCHO), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 17].

130 Derbarl Yerrigan Health Service, *Derbarl Yerrigan – Aboriginal Medical Health Service*, Derbarl Yerrigan Health Service website, n.d. <https://www.dyhs.org.au/>.

131 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC website, 2020. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation>.

132 Australian Institute of Health and Welfare (AIHW), *Aboriginal and Torres Strait Islander Health Performance Framework Summary report*, AIHW, Australian Government, 2025. <https://www.indigenoushpf.gov.au/report-overview/overview/summary-report>.

133 Australian Government: Transparency Portal, *Murri Binda Consortium*, Case Study, 2023. <https://www.transparency.gov.au/publications/prime-minister-and-cabinet/national-indigenous-australians-agency/national-indigenous-australians-agency-annual-report-2022-23/murri-binda-case-study->; Yulang Indigenous Evaluation, *Murri Binda Governance and Evaluation* (Web Page, 2025) <https://yulang.com.au/indigenous-evaluation-projects/murri-binda-governance-and-evaluation/>..

134 O Pearson, K Schwartzkopff, A Dawson, C Hagger, A Karagi, C Davy, A Brown and A Braunack-Mayer, 'Aboriginal Community Controlled Health Organisations Address Health Equity Through Action on the Social Determinants of Health of Aboriginal and Torres Strait Islander Peoples in Australia', *BMC Public Health*, 2020, 20(1):1859. <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-020-09943-4>.

135 Australian Institute of Health and Welfare (AIHW), *Australia's Welfare 2007: Housing for Health and Welfare*, AIHW, 2007, p. 209. <https://www.aihw.gov.au/getmedia/fd721f62-91f7-47b8-b5ae-e64a0f828d47/aw07-c05.pdf.aspx>.

136 Australian Institute of Health and Welfare (AIHW), *Determinants of Health for First Nations People*, AIHW website, 2024. <https://www.aihw.gov.au/reports/australias-health/social-determinants-and-indigenous-health>.

137 Australian Council of Social Service (ACOSS), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 24].

138 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC, 2020. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>; Department of the Prime Minister and Cabinet, *Partnerships with Indigenous Communities: Closing the Gap Annual Report 2023* (Report, 2023) <https://www.pmc.gov.au/sites/default/files/resource/download/secretaries-board-communique-6-december-2023.pdf>.

139 Department of Housing, Local Government, Planning and Public Works and Aboriginal and Torres Strait Islander Housing Queensland, *Our Place: A First Nations Housing and Homelessness Action Plan 2024–2027*, Queensland Government, 2024. <https://www.housing.qld.gov.au/__data/assets/pdf_file/0020/51662/our-place-a-first-nations-housing-and-homelessness-action-plan-2024-2027.pdf.pdf>.

140 Australian Institute of Health and Welfare (AIHW), *Australia's Health 2022: In brief*, AIHW, 2022. <https://www.aihw.gov.au/reports/australias-health/australias-health-2022-in-brief/summary>.

141 A Durey and SC Thompson, 'Reducing the Health Disparities of Indigenous Australians: Time to change focus', *BMC Health Services Research*, 2012, 12(1):151 <https://bmchealthservres.biomedcentral.com/articles/10.1186/1472-6963-12-151>.

142 LGBTIQ+ Health Australia, *LGBTIQ+ Inclusive Practice in Health and Human Services: Guidelines for Practitioners and Services* (2021) <https://www.lgbtiqhealth.org.au/2021_policy_priorities>.

143 G Gee, P Dudgeon, C Schultz, A Hart and K Kelly, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (2nd ed, Commonwealth Government of Australia, 2014) 55 <https://www.telethonkids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/wt-part-1-chapt-4-final.pdf>.

144 R Wyber, K Noonan, C Halkon, S Enkel, A Ralph, A Bowen, J Cannon, E Haynes, A Mitchell, D Bessarab, J Katzenellenbogen, R Seth, D Bond-Smith, B Currie, D McAullay, H D'Antoine, A Steer, N de Klerk, V Krause, T Snelling, S Trust, R Slade, S Colquhoun, C Reid, A Brown, J Carapetis, *The RHD Endgame Strategy: The Blueprint to Eliminate Rheumatic Heart Disease in Australia by 2031*. Perth: The END RHD Centre of Research Excellence, Telethon Kids Institute (2020) <https://endrhd.thekids.org.au/siteassets/media-docs---end-rhd/end-rhd-cre---endgame-report.pdf>.

145 R Griew, E Tilton and N Cox, *The Link Between Primary Health Care and Health Outcomes for Aboriginal and Torres Strait Islander Australians* (2008) <https://www.naccho.org.au/app/uploads/2022/02/The-Link-Between-Primary-Health-Care-and-Health-Outcomes.pdf>.

146 Australian Institute of Health and Welfare, *Australia's Children* (Cat No CWS 69, 2020) <https://www.aihw.gov.au/getmedia/6af928d6-692e-4449-b915-cf2ca946982f/aihw-cws-69-print-report.pdf>.

147 National Indigenous Youth Education Coalition (NIYEC). *National Indigenous Youth Education Coalition* <https://www.niyec.com/>.

148 P Dudgeon, H Milroy and R Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* 2nd ed, Telethon Institute for Child Health Research (2014) <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>.

149 Lowitja Institute, *Culture is Key: Towards Cultural Determinants-Driven Health Policy* (2020) <https://www.lowitja.org.au/resource/culture-is-key-towards-cultural-determinants-driven-health-policy/>.

150 CSIRO, *Young Indigenous Womens STEM Academy Program* <https://www.csiro.au/en/education/programs/yiwsa-program>.

151 UNESCO, *Right to Education* (2025) <https://www.unesco.org/en/right-education>.

152 South Australian Department for Education, *About the South Australian Aboriginal Secondary Training Academy (SAASTA)* (2024) <https://www.education.sa.gov.au/students/curriculum-and-learning/aboriginal-education/saasta/about-saasta>.

153 R Griew, E Tilton, N Cox and D Thomas, *The Link Between Primary Health Care and Health Outcomes for Aboriginal and Torres Strait Islander Australians* (2008) <https://limenetwork.net.au/resources-hub/resource-database/the-link-between-primary-health-care-health-outcomes-for-aboriginal-torres-strait-islander-australians/>.

154 P Dudgeon, H Milroy and R Walker (eds), '*Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*' 2nd ed, Telethon Institute for Child Health Research (2014) <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>.

155 M Gray, B Hunter and S Lohoar, '*Increasing Indigenous Employment Rates*' Issues Paper No 3, Closing the Gap Clearinghouse, Australian Institute of Health and Welfare (2012) <https://www.aihw.gov.au/getmedia/71bb346a-1b83-4038-a2f7-647e65a21445/ctg-ip03.pdf.aspx?inline=true>.

156 Australian Council of Social Service, *Mutual Obligations and Employment* (2024) <https://www.acoss.org.au/mutual-obligations-and-employment/>.

157 National Aboriginal Community Controlled Health Organisation (NACCHO), *Submission to the Informing the Agenda Project* [submission 17].

158 Diversity Council Australia and Jumbunna Institute, *Gari Yala: Report into the Experiences of Aboriginal and/or Torres Strait Islander Workers* (2020) <https://www.dca.org.au/wp-content/uploads/2023/06/dca_synopsisreport_web_0.pdf>.

159 J Charles, P Dudgeon and V Lee, *Aboriginal and Torres Strait Islander Employment Strategy Evaluation*, Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention (2018) <https://cbpatsisp.com.au>.

160 M Walter, *The Voice of Indigenous Women in the Struggle for Recognition*, in Michelle Evans et al (eds), Indigenous Women and Work, ANU Press (2018) <https://press.anu.edu.au/publications/series/caepr/neoliberal-state-recognition-and-indigenous-rights>.

161 Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020) <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

162 NSW Health, *Governance and Accountability Framework for Aboriginal Health* (2020) <https://www.health.nsw.gov.au/aboriginal/framework/Publications/governance-and-accountability-framework.pdf>.

163 Partnership for Justice Health, *Submission to the Informing the Agenda Project* [submission 9].

164 Victorian Aboriginal Health Service (VAHS), *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 20].

165 Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 2017) 14 <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

166 Closing the Gap Coalition, *Transforming Government Accountability to First Nations Peoples* (Discussion Paper, 2021) 5–6 <https://www.closingthegap.gov.au>.

167 M Moran, D Porter and J Curth-Bibb, '*Funding Indigenous Organisations: Improving Governance Performance through Innovations in Public Finance Management in Remote Australia*' Australian Institute of Health and Welfare (2014) <https://www.aihw.gov.au/reports/indigenous-australians/funding-indigenous-organisations/summary>.

168 AR Deutsch, L Frerichs, Z Hasgul, F Murphey, A K Coleman, A Y Bachand, A Bettelyoun, P Forney, G Tyon and MS Jalali, '*How Funding Policy Maintains Structural Inequity Within Indigenous Community-Based Organizations*' (2023) 42(10) Health Affairs 1411 <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.00483>.

169 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12].

170 Lowitja Institute, *Caring for Country and Health: Exploring the Relationship* (2023) <https://www.lowitja.org.au/resource/health-benefits-of-going-on-country/>.

171 Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *The Benefits Associated with Caring for Country* (2020).<https://aiatsis.gov.au/sites/default/files/research_pub/benefits-cfc_0_3.pdf>.

172 Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (2020) <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

173 W Mundy, *Final Report of the Independent Review of the National Legal Assistance Partnership 2020–25* (Attorney-General's Department, 2024) <https://www.ag.gov.au/legal-system/legal-assistance-services/national-legal-assistance-partnership-2020-25>.

174 National Native Title Council (NNTC), *Submission to the Australian Law Reform Commission, Review of the Native Title Act* (2024) <https://www.alrc.gov.au/inquiry/review-of-the-future-acts-regime/>.

175 National Native Title Council (NNTC), *Submission to the Informing the Agenda Project* [submission 18].

176 Central Desert Native Title Services, *The Impact of Native Title Settlements on Communities* (2021) <https://www.centraldesert.org.au>.

177 Australian Heritage Council, *Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia* (Department of Agriculture, Water and the Environment, 2020) <https://www.awe.gov.au/parks-heritage/heritage/publications/dhawura-ngilan>.

178 Australian Heritage Council, *Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia* (Department of Agriculture, Water and the Environment, 2020) <https://www.awe.gov.au/parks-heritage/heritage/publications/dhawura-ngilan>; Parliament of the Commonwealth of Australia, *A Way Forward: Final Report into the Destruction of Indigenous Heritage Sites at Juukan Gorge,* Joint Standing Committee on Northern Australia (2021) <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc_pdf/AWayForward.pdf>; First Nations Heritage Protection Alliance, *Joint Position Paper on Heritage Reform* (2020) <https://aiatsis.gov.au/news-and-events/news/joint-position-paper-aboriginal-and-torres-strait-islander-heritage-protection>; Australian Human Rights Commission, *United Nations Declaration on the Rights of Indigenous Peoples* (2010) <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/united-nations-declaration-rights>.

179 Lowitja Institute, *Caring for Country and Health: Exploring the Relationship* (2023) <https://www.lowitja.org.au/resource/health-benefits-of-going-on-country/>.

180 Torres Strait Island Regional Council, *Malungu Yangu Wakay, The voice from the deep: The Masig Statement* (23 August 2022) <https://tsirc.qld.gov.au/about-us/masig-statement/>.

181 C Gibson, P Dudgeon and J Crockett, 'Listen, Look & Learn: Exploring Cultural Obligations of Elders and Older Aboriginal People' (2020) 27(2) *Journal of Occupational Science* 193 <https://doi.org/10.1080/14427591.2020.1732228>.

182 Australian Institute of Health and Welfare, *Indigenous Mental Health and Suicide Prevention Clearinghouse, Culture, Country & Spirituality* (Web Page, 20 June 2025) <https://www.indigenousmhspc.gov.au/topics/culture-country-spirituality>.

183 Corrs Chambers Westgarth, '*Exploitation of Indigenous Businesses: A New Form of Greenwashing?*' (Web Page, 26 July 2024) <https://www.corrs.com.au/insights/exploitation-of-indigenous-businesses-a-new-form-of-greenwashing>.

184 Supply Nation, *Black Cladding* (2025) <https://supplynation.org.au/about-us/black-cladding/>.

185 P Ruska and J Nielsen, 'Decolonising the Common Law: Beyond Colonial Thinking' in N Watson and H Douglas (eds), *Legal Education Through an Indigenous Lens: Decolonising the Law School* (Routledge, 2024) <https://doi.org/10.4324/9781003473404-12> 151.

186 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12]; National Indigenous Health Leadership Alliance (NIHLA), *Submission to the Informing the Agenda Project* [submission 13].

187 T Barta, 'Sorry and Not Sorry, in Australia: How the apology to the stolen generations buried a history of genocide' (2008) 10(2*) Journal of Genocide Research 201* <https://www.tandfonline.com/doi/abs/10.1080/14623520802065438>.

188 Pre-Consultation Survey Respondent, *Submission to the Australian Human Rights Commission*, *Informing the Agenda Project* (2024).

189 F Allison, C Cunneen, L Coombes and A Selcuk, *The Call It Out Racism Register 2023–2024: If you don't think racism exists come take a walk with us* (Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, 2025) <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>.

190 T Kennedy, *Indigenous Peoples' Experiences of Harmful Content on Social Media* (Macquarie University, November 2020) <https://research-management.mq.edu.au/ws/portalfiles/portal/135775224/MQU_HarmfulContentonSocialMedia_report_201202.pdf>.

191 Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia* (Australian Government Publishing Service, 1991)<https://humanrights.gov.au/sites/default/files/document/publication/NIRV.pdf>.

192 UNESCO, *Right to Education* (Web Page, 2025) <https://www.unesco.org/en/right-education>.

193 M Davis, Self-determination and the right to be heard', in S Morris (ed.), *A rightful place: A road map to recognition* <https://cat2.lib.unimelb.edu.au/record=b8712022~S30>.

194 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12].

195 SNAICC, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 12].

CHAPTER 2:

A FAIR AND JUST FUTURE FOR FIRST PEOPLES

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A Fair and Just Future for First Peoples

A key aim of the Aboriginal and Torres Strait Islander Social Justice Commissioner's (the Commissioner) early engagement with Aboriginal and Torres Strait Islander people across the nation has been to understand their priorities and aspirations, and how these can be advanced by a rights-informed agenda.

Informed by First Peoples, this chapter presents a 'Blueprint' for realising a fair and just future for First Peoples as part of a fair and just nation. It sets out:

- the need for policy and practice transformation that fundamentally reforms systems, policy goals and processes to achieve significant long-term change. This requires more than tinkering at the edges through iterative or incremental adjustments or patchwork pilot programs that do not substantially change the outcomes
- a roadmap to move beyond the inertia of contested political debate, towards a shared framework built on agreed human rights standards
- the collective responsibility required, including the need for non-partisan action – with key focus areas for change moving beyond rhetoric and recommendations to reform, implementation and accountability
- required national commitment, leadership and action to reform the foundations of institutions that must promote and protect the rights of Aboriginal and Torres Strait Islander peoples.

This work is firmly grounded in established human rights principles, building on decades of community advocacy and evidence. It draws together key issues, solutions, principles and standards set by First Peoples and reinforced through the myriad of inquiries, royal commissions and evidence-based research recommendations provided across generations and jurisdictions.

The Blueprint sets out key actions to improve accountability, strengthen representation and participation, expand access to justice, and uphold recognition and mutual respect.

A fair and just future for First Peoples can only be achieved:

- when historical injustices are addressed in ways that ensure they are not repeated
- where rights are accepted as inherent (not granted)
- where transformation and systemic reform is grounded in strengths-based community-led approaches
- where governments and institutions act with integrity, are accountable to the communities they serve and uphold their commitments.

The Blueprint for reform set out in this chapter, and then explained throughout this report, will guide the Commissioner's term as Aboriginal and Torres Strait Islander Social Justice Commissioner.

Realising the vision

The vision set out in this report is for a future where Aboriginal and Torres Strait Islander people can fully and freely exercise and enjoy their human rights – cultural, social, political and economic – and where they are supported by systems that uphold self-determination, dignity and equality.

Considerable efforts are already being made by Aboriginal and Torres Strait Islander communities – on their own initiative and in partnership with all levels of government.

The full realisation of their efforts can only be improved through greater connections and opportunities for collaboration across communities and a shared basis for collective negotiation. Our ways of working must prioritise and preserve the diversity of Aboriginal and Torres Strait Islander peoples.

This report sets out the following key foundations necessary to realise this vision.

The report highlights and reinforces the following connections between the key foundations:

- Self-determination and representation are essential foundations for strong and thriving communities and rights enjoyment.
- Prevention of racism and structural and systemic discrimination is advanced through systemic anti-racism.
- Institutional transformation is driven through Voice, Treaty and Truth-telling, the recognition of plural legal systems, strong data governance and evidence- and rights-based policymaking.
- The recognition of rights is underpinned by accountability – and accountability enables and supports participation.
- Participation contributes to ensuring that systems are transformed towards positive rights-affirming outcomes.
- When systems operate with integrity and accountability, trust can be rebuilt, relationships can be reconciled and communities are empowered and transformed.

This is summarised in Figure 2.2.

Figure 2.1: Critical foundations for a Fair and Just Future for First Peoples

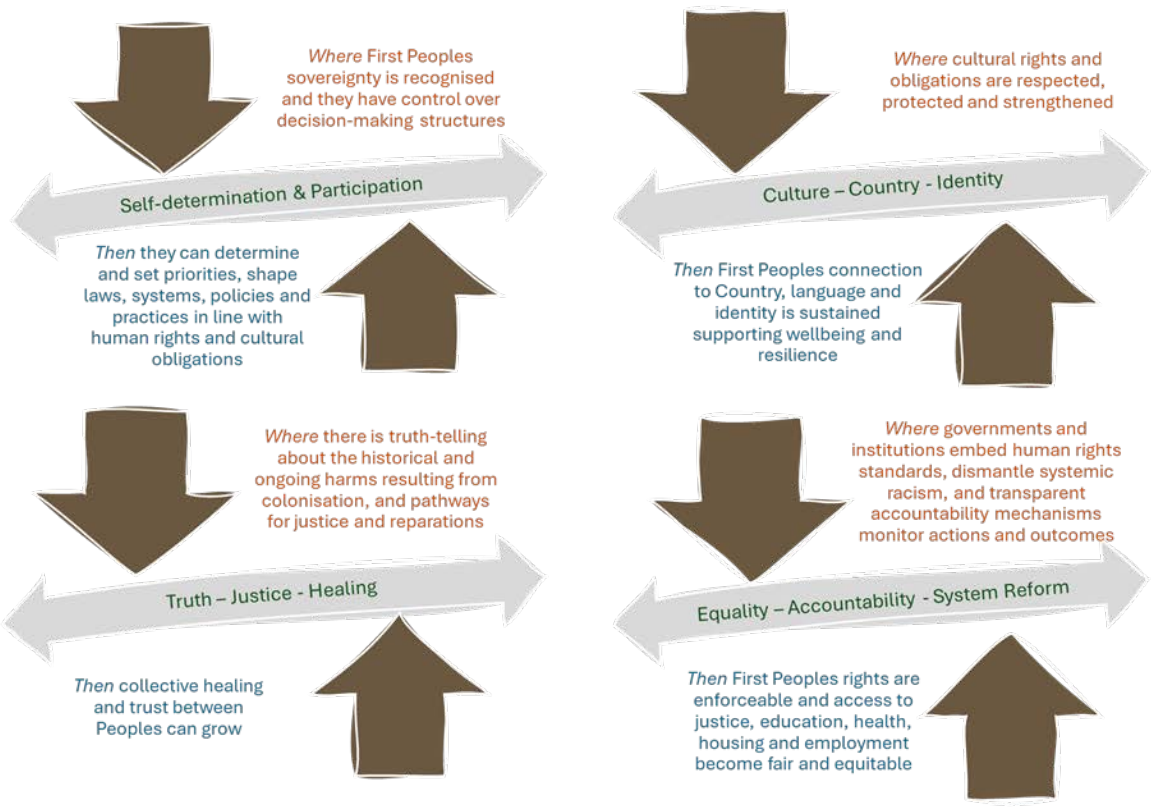


Figure 2.2: Theory of Change – A logical approach to reform

As demonstrated by the theory of change above, the critical foundations are both reinforcing and interdependent – failure to secure and achieve any one of these will impact on the success of the others.

If we are to break away from the pattern of 'business-as-usual' which has perpetuated decades of policy failure, outcomes are to change. A holistic, coherent and consistent national approach must be put in place which:

- reframes the relationship between First Peoples, Australian governments and the broader Australian community
- recognises and respects First Peoples' sovereignty and self-determination
- establishes laws, policies and practices that respect and uphold rights and contribute to thriving communities grounded in culture, Country and kinship
- ensures equitable participation in decision-making at all levels
- provides structural justice, healing and accountability for past failure and harm caused and supports positive future outcomes.

A fair and just future for First Peoples demands national commitment and leadership from governments – preferably with intergenerational bipartisan support. It requires a fundamental and deliberate shift from populist policymaking that erodes public trust and confidence, delivering for the most part only short-term reactive responses; to an approach that willfully delivers long-term sustainable solutions and transformative outcomes. A comprehensive framework to guide actions and outcomes must be grounded in the genuine participation and inclusion of Aboriginal and Torres Strait Islander peoples.

The Blueprint for a fair and just future for First Peoples

As a central tenet of a successful democracy, the people determine the law of the land. Governments are a key stakeholder in that they have primary responsibility for maintaining the rule of law, ensuring access to justice, good governance and accountability, providing essential services to support their communities, and fostering the full and effective participation of 'the people' in decision-making processes.

The Blueprint for a fair and just future for First Peoples (the Blueprint) set out in the table below, is aligned with and reinforces – not separate to or in place of – the Priority Reforms under the National Agreement on Closing the Gap (CTG). It builds on Priority Reform 3 – Transforming government organisations.

It offers solutions grounded in shared values and a fundamentally different relationship between Aboriginal and Torres Strait Islander peoples and the state. Most importantly, it is informed by the voices and contributions of Aboriginal and Torres Strait Islander people and organisations who participated in the Informing the Agenda (ITA) listening tour.

It is through this lens of cultural transformation that the Blueprint is framed. Through this lens Aboriginal and Torres Strait Islander peoples – not governments – are central to facilitating a fair and just future for First Peoples.

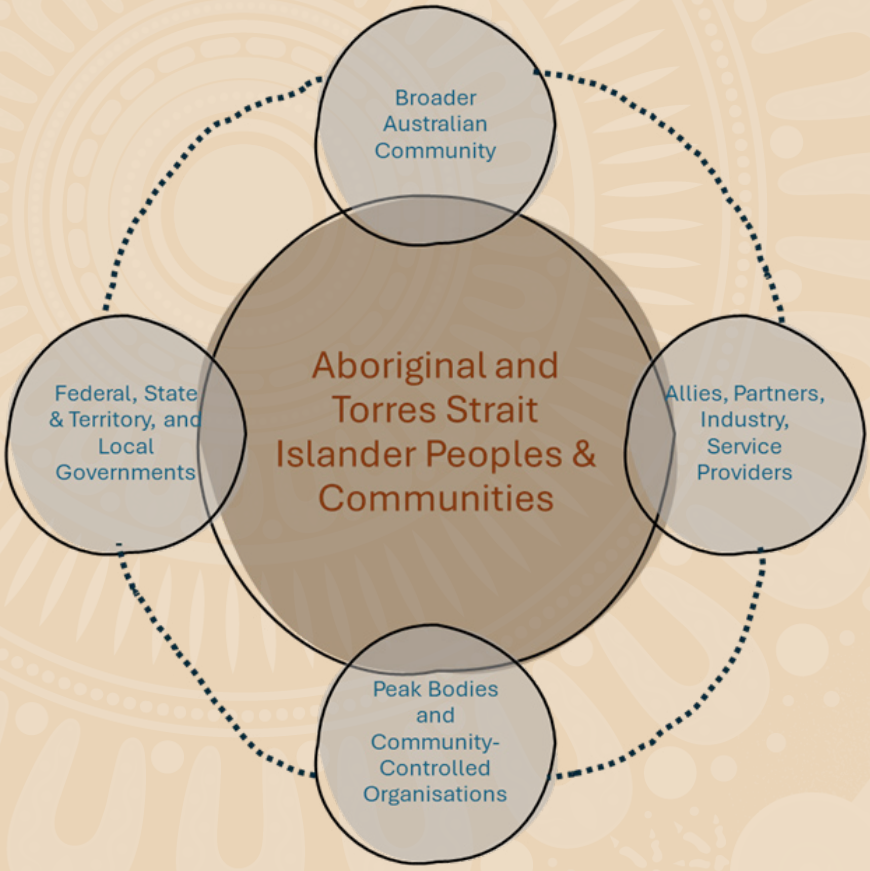


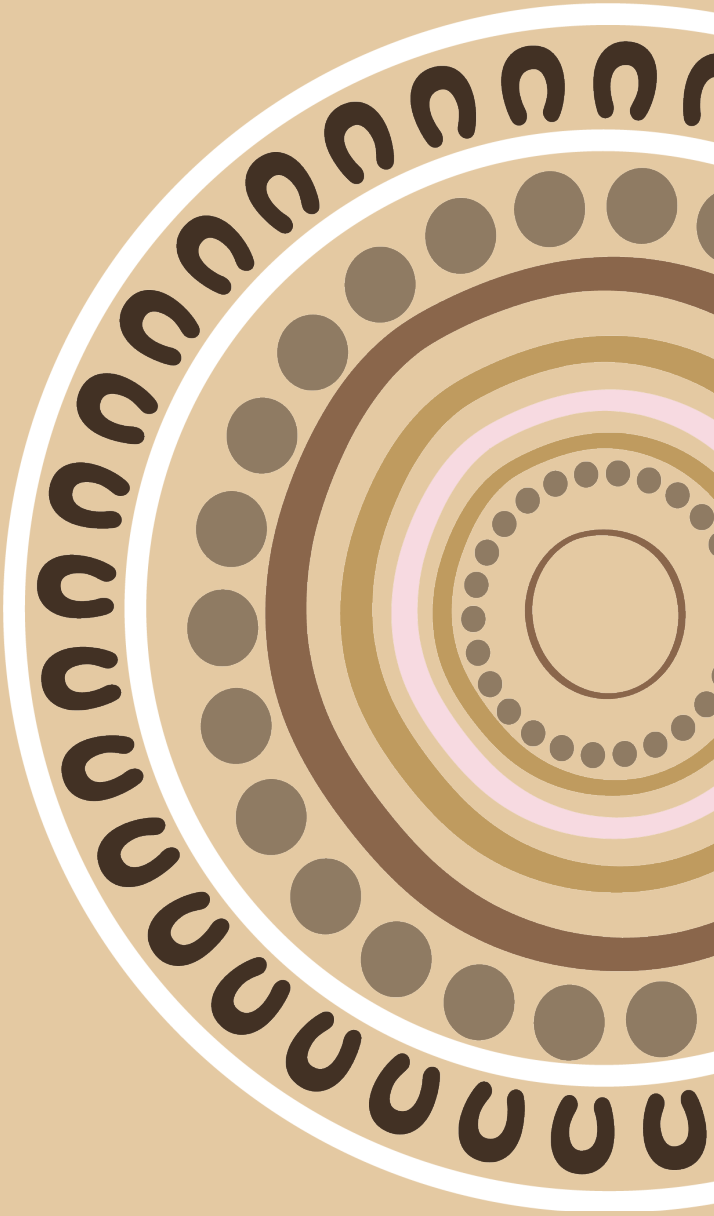
Figure 2.3: The stakeholders that impact Aboriginal and Torres Strait Islander Peoples and Communities

As outlined in the stakeholder map above, governments are key stakeholders and enablers in the creation of this future state, but their role is one of facilitator, guided by the aspirations and objectives of Aboriginal and Torres Strait Islander peoples.

Governments must share power, invest in communities, and follow through on their promises.[196]

The Blueprint provides a pathway for change which involves systemic reform within all levels of government and community structures and First Peoples-led action facilitated by our governing bodies and organisations.

The transformation will require a genuine and demonstrated commitment to the foundational principles and pathways articulated in the Blueprint. These principles and pathways must be comprehensively incorporated into the resourcing and operation of all policies and programs relevant to First Peoples.



A Blueprint for a fair and just future for First Peoples

Aboriginal and Torres Strait Islander cultures are strong, respected and celebrated; Communities are thriving and self-determining; and First Peoples live in dignity – free from systemic and structural discrimination, violence, and abuse – and fully enjoy the rights they are entitled to. Truth is told, justice and equity is embedded and Australia, as a shared nation, is grounded in respect for difference, healing and human rights.

Domains of reform

Structural reforms	Sectoral reforms	Enabling reforms
Foundational changes needed to embed systemic integrity, uphold human rights and dismantle structural racism in laws, systems, policies and services	*Responses necessary to address injustices and inequities in law, policy and service delivery*	*Mechanisms that guarantee genuine participation, accountability and self-determination*

Foundational principles

Truth	Justice	Self-determination	Healing
Full and honest truth-telling about the historical and contemporary impacts of colonisation on First Peoples' lives in the shaping of the Australian nation	*Recognition and respect of First Peoples' sovereignty and rights, grounded in structural justice and non-discrimination; systemic integrity; and accountability for past and ongoing harms*	*Autonomy, self-governance and genuine participation in determining, developing and administering priorities and strategies for exercising the right to development in all areas of life*	*Recognition and healing of intergenerational trauma supported by culturally grounded approaches*

Priorities and pathways for change

1. Promoting the full enjoyment of rights by First Peoples

Human rights, including the rights of First Peoples, are embedded across law, policy, practice and service delivery – including through:

- a National Human Rights Framework and a National Action Plan to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- the implementation of the National Anti-Racism Framework (NARF)
- redesigning systems and programs to reflect First Peoples' lived experiences and worldviews to support the National Agreement on Closing the Gap (CTG).
- Supporting First Peoples to understand their rights and working with governments to apply them in practice.

2. Fostering systemic integrity and accountability

National structures are strengthened to promote integrity and accountability and uphold rights in line with international obligations This would enable:

- community-led solutions to drive change in achieving cultural and social determinants
- transformed relationships and government systems through recognition of plural legal systems (linked to CTG Priority Reforms)
- the establishment and application of robust compliance and accountability mechanisms at all stages of decision-making
- compliance with Indigenous data sovereignty
- independent oversight and review.

3. Increasing First Peoples' participation

First Peoples govern their own affairs, set priorities and fully participate in all decisions that affect them – including at every level of government so that:

- First Peoples' authority is enshrined in representative structures, agreements or treaties between First Peoples and the state
- free, prior and informed consent (FPIC) is the standard applied for any law reform, policy or project affecting First Peoples
- independent and self-determined participation of First Peoples in domestic and international fora is supported.

4. Assuring access to justice

Systems are fair, culturally safe, accountable and rights based. They:

- ensure equality before the law and address systemic and structural racism
- prevent harm and end discriminatory laws and practices
- invest in culturally safe, community-controlled prevention and early intervention programs and restorative justice approaches
- provide appropriate remedy when rights are violated including national processes for reparations, restitution and justice for historical and ongoing harms.

5. Rebuilding the village

The impacts of colonisation are addressed by restoring the cultural, social and collective foundations of First Peoples' villages through:

- strengthening cultural authority, kinship and community governance
- respecting First Peoples legal systems and dispute resolution practices – First Peoples Law is respected alongside Australian law
- supporting and promoting healing of intergenerational trauma and ensuring safety and dignity
- fostering respectful public dialogue and stronger relationships between Indigenous and non-Indigenous Australians.

Monitoring, evaluation and learning framework (MEL Framework)

The Commissioner will use this Blueprint to guide work undertaken during her term. In doing so, she will consider:

- progress against the National Agreement on Closing the Gap, including progress on Priority Reform 3 and the establishment and operation of independent monitoring mechanisms (IMs)
- content of the proposed National Action Plan on the UNDRIP and the NARF
- progress under multiple national frameworks: for example, Safe and Supported, Our Ways-Strong Ways – Our Voices - National Aboriginal and Torres Strait Islander Family Safety Plan
- outcomes and reforms to native title and other land justice legislative arrangements.

Assessment will be provided through the Social Justice Report.

The call to action

Central to this Blueprint is the call to action. If we are to improve outcomes for First People:

- rebuilding the village is critical and communities must be supported to lead and drive the change they aspire to
- First Peoples must be treated as rights holders and equal partners in the recognition and realisation of their rights
- governments must act urgently on dismantling structures and systems that delay or deny justice and perpetrate discrimination and harm
- non-Indigenous Australians must be provided with support in understanding and respecting First Peoples' histories, cultures and rights
- a reframed relationship must be forged. This must facilitate the shared sense of future that embraces the ancient cultures of Australia's First Peoples as part of the national identity. It must be built on a foundation of honesty, justice, healing and mutual respect
- governments must also engage seriously with the extensive body of evidence and recommendations that already exists – from Social Justice Reports to other formal inquiries and community-based processes – many of which were commissioned by governments themselves.

Key areas for future work

The actions outlined in the Blueprint can be understood as reflecting two critical domains.

- First, broad rights-based protections must be strengthened. This means developing a coherent implementation plan with mechanisms for greater representation, and adopting a rights-based, evidence-informed approach to policy and practice.
- Second, action plans and oversight must target areas where rights are routinely breached, including the criminal legal system, child protection and land justice.

Both broad areas of work are presented within the context of a fundamentally different relationship between Australian governments, and Aboriginal and Torres Strait Islander peoples, consistent with the insights offered by both the Productivity Commission and the Jumbunna Institute for Indigenous Education and Research in their independent, but complimentary, reviews of the National Agreement on Closing the Gap.[197]

The call to action outlined above focuses on realising a human rights-based approach, which delivers positive public policy outcomes for Aboriginal and Torres Strait Islander people and the Australian public. It emphasises the centrality of the relationship between Aboriginal and Torres Strait Islander peoples and the state, and the structures needed to protect rights and embed evidence-informed policymaking.

A lack of commitment to substantive change in Indigenous Affairs will ensure that the lives of Aboriginal and Torres Strait Islander peoples remain on the same trajectory towards poorer outcomes and diminished rights.

Embracing accountability and centering human rights are essential for fundamentally shifting this trajectory. This path ensures that governments uphold their responsibilities to us as First Peoples and support Aboriginal and Torres Strait Islander peoples to flourish as self-determining nations.

Chapter 2 Recommendations

1. All Australian governments should ensure that their laws, policies and practices are consistent with the Blueprint for a fair and just future for First Peoples.

Endnotes

196 Coalition of Peaks, *Independent Aboriginal and Torres Strait Islander-led Review of Closing the Gap*, Coalition of Peaks website, 2023. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

197 Productivity Commission, Review of the National Agreement on Closing the Gap, Productivity Commission, Commonwealth of Australia (2024). <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>; L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Independent Review of the National Agreement on Closing the Gap*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

Part 2

Giving effect to our rights

- Chapter 3: Increasing First Peoples participation
- Chapter 4: Promoting the full enjoyment of rights by First Peoples
- Chapter 5: Fostering systemic integrity and accountability
- Chapter 6: Rebuilding the village

CHAPTER 3:

INCREASING FIRST PEOPLES' PARTICIPATION

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Increasing First Peoples' Participation

Put simply... we should have a say in the laws, policies and programs that have a significant effect on our lives and communities. It is a straightforward idea. If Aboriginal and Torres Strait Islander peoples have direct input into the decisions on policies and programs that impact on us, the outcomes will be vastly better than when those decisions are made without us.[198] – Pat Turner AM (on the Voice)

This chapter considers how to increase First Peoples' social, cultural, political, educational and economic participation. It demonstrates 2 points:

- Firstly, that governments in Australia continue to fail in upholding and protecting the rights of First Peoples to participate in decisions that affect us. Our participation in the cultural, social, economic and political institutions of the state are limited. We still lack mechanisms that ensure our peoples are fully informed, able to participate freely and empowered to give or withhold consent. As a result, our civil participation remains conditional and incomplete.
- Secondly, the chapter illustrates that, despite the 2023 Voice Referendum outcome, the 3 pillars of the Uluru Statement from the Heart – Voice, Treaty and Truth – continue to offer a clear framework for building genuine and sustainable participation for Aboriginal and Torres Strait Islander peoples. These pillars would enable us to fully exercise our human rights, as well as provide a pathway to reframe our relationship with non-Indigenous Australians.

This chapter explores the importance of various modes of domestic and international representation to pursue Aboriginal and Torres Strait Islander rights and interests. Further, it demonstrates the need to create sustainable mechanisms and processes which support our participation and improved outcomes for First Peoples. As it currently stands:

- there is no existing national representative structure in place to support collective and collaborative priority-setting and decision-making
- there are very few stable participation mechanisms established by governments to progress First Peoples' priorities in a genuine way
- recent events such as the national Referendum on the Voice to Parliament have resulted in the deliberate marginalisation of First Peoples from Australian life
- unchallenged public objections to First Peoples' social, political and economic inclusion encourage division, racial hatred and discrimination.

The nature of representation discussed here is not exhaustive. Nor is it limited to proposals put forward in the Uluru Statement from the Heart. Rather, this chapter expresses the critical need for mechanisms to carry forward the rights and aspirations of Aboriginal and Torres Strait Islander peoples. This includes a renewed focus on opportunities to improve the full participation of our people and communities. Such opportunities would strengthen the necessary foundations for long-term self-determination, including through structural arrangements supporting the National Agreement (the National Agreement) on Closing the Gap (CTG).

None of this can be achieved via enhanced political and statutory positions alone. These are not the same as supporting our collective rights to self-determination.

Likewise, while the Prime Minister's announcement at Garma 2025 of funding for the new Economic Partnership to provide a First Peoples economic blueprint is welcome,[199] this does not negate the need for action against all dimensions of the right to participate.

This includes the right to participate in culturally safe educational and occupational environments, to be fairly compensated for our labour and to receive compensation for any work undertaken that was not remunerated in accordance with Australia's international human rights obligations.

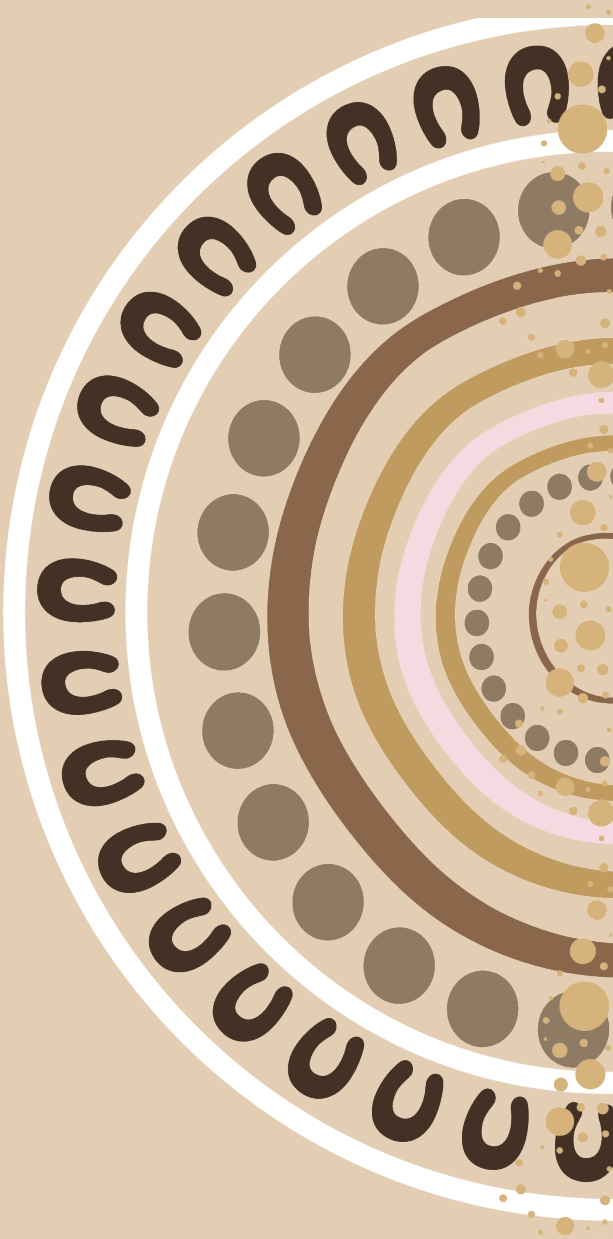
As with other chapters of this report, in consideration of the right to participate, we find a lack of compliance with nationally adopted international human rights standards and basic principles of participation afforded to other Australians.

Further, political and media narratives promoting mis- and disinformation have created division and disunity among Aboriginal and Torres Strait Islander people. This has compounded the already strained relationship between our peoples and the broader population and limited the potential for positive reform and reconciliation.

While truth and treaty work continues in some states and territories, without national political leadership, the harm created by the weaponisation of First Peoples' lives throughout the Referendum campaign will continue. The injustices our people have endured need to be heard and understood. If we do not try to understand, things will not change and we will not be able to move forward as a nation.

The Commission strongly supports the establishment of national makarrata mechanism(s) to oversee a process of agreement-making (treaty) and truth-telling.

Unless we address the absence of effective participation mechanisms for Aboriginal and Torres Strait Islander peoples in this country, our right to self-determination will remain unrealised.



Chapter 3 Recommendations

2 The Australian Government should work in partnership with First Peoples to establish a national representative mechanism. The mechanism should be independent from government, based on the Paris Principles model,xxii[200] and have a sustainable source of funding based on domestic 'future fund' models[201].

3 The Australian Government should work in partnership with First Peoples to establish a national Makarrata Commission with the mandate and powers to conduct a national truth-telling process and to design a national agreement-making process.

4 The Australian Government should fund public awareness and educational activities to run in parallel to the Makarrata Commission's national truth-telling process. These activities should build understanding of First Peoples' human rights and the ongoing consequences of colonisation in Australia.

5 All Australian governments should ensure Aboriginal and Torres Strait Islander children and young people can fully participate in education by embedding Indigenous designed, culturally safe, and personalised learning models into schooling systems. This includes resourcing Aboriginal and Torres Strait Islander community-controlled education organisations and Indigenous-led schools, and ending disproportionate use of exclusionary practices such as suspension and expulsion.

6 State and territory governments which do not have reparation schemes for historic practices of stolen wages in place should take urgent action to establish them.

The right to participate

The right to participate requires active, free, meaningful and accessible participation in decisions that impact on a person or group's human rights.

Within key treaty instruments, human rights law recognises specific rights of participation in relation to certain groups. The collective right of Indigenous self-determination is protected in the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The UNDRIP also articulates this collective right. It includes a requirement that States must consult and cooperate in good faith with Indigenous Peoples.[202]

The Office of the High Commissioner for Human Rights (OHCHR) explains:

> ***Participation enables the advancement of all human rights. It plays a crucial role in the promotion of democracy, the rule of law, social inclusion and economic development. It is essential for reducing inequalities and social conflict. It is also important for empowering individuals and groups and is one of the core elements of human rights-based approaches aimed at eliminating marginalisation and discrimination.[203]***

As a critical element of enabling the right of self-determination, the right to participate must be free from any kind of discrimination. It includes the right to autonomy and self-government in internal and local affairs.

The right to participate recognises the right of Indigenous Peoples to:

> ***... maintain and strengthen their distinct political, legal economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.[204]***

Realisation of these rights by First Peoples is dependent on fundamental elements including:

- enabling, hearing and respecting First Peoples' voices through representatives and institutions that they determine
- facilitating engagement in the design, development and administration of policies, strategies and programs that progress the right to development
- that engagement and inclusion strategies are underpinned by integrity, good faith and the principle of free, prior and informed consent
- that all Australians have an awareness of the continent's full history. This includes:
  - evidence-based and First Peoples-led information on Aboriginal and Torres Strait Islander civilisations prior to colonisation
  - a factual and truthful historical and contemporary account of the establishment of the Australian nation
  - the circumstances and lived experience – social, cultural, economic and political – of Aboriginal and Torres Strait Islander peoples and the continuing impact of colonisation on their lives

- the expression of Aboriginal and Torres Strait Islander peoples' cultures, societies and worldviews through treaties, agreements and other mechanisms. These instruments must articulate co-existence arrangements and support peaceful and respectful relationships between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians
- that governments support and promote the active and genuine participation and inclusion of First Peoples in decision-making processes that affect them.

Importantly, participation is classified as a process right and requires ongoing implementation through open and honest interaction between public authorities and all members of society. This includes those most at risk of being marginalised or facing discrimination.[205] Participation processes are also a necessary means of realising a range of substantive rights,[206] especially for Aboriginal and Torres Strait Islander peoples.

A 'core element of participation is that it has influence on subsequent decisions'.[207] It must therefore be embedded systemically and systematically into government decision-making.[208]

Free, prior and informed consent

In supporting the right to participate, the international standard of free, prior and informed consent (FPIC) provides clear guidance and criteria for achieving effective participation. For First Peoples, exercising the right to participation cannot be separated from FPIC.

The FPIC principle can be broken down into the following four elements:

- 'Free' means no force, coercion, intimidation, bullying and/or time pressure
- 'Prior' means that Indigenous peoples have been genuinely consulted and actively engaged before the activity begins
- 'Informed' means that Indigenous peoples are provided with all available information and are informed when either that information changes or when there is new information
- 'Consent' requires that the people seeking permission allow Indigenous peoples to say 'yes' or 'no' to decisions affecting them. They must follow the decision-making process of Indigenous peoples' choice. To do this means Indigenous peoples must be consulted and participate in an honest and open process of negotiation that ensures:
  - all parties are equal, neither having more power or strength
  - Indigenous peoples can specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities.

It is the duty of those seeking consent to ensure that the people giving consent are fully informed. To satisfy this requirement, consultations may need an interpreter to provide information in the relevant Indigenous languages. This would ensure that First Peoples are able to fully understand the issue and the possible impact of the proposed measure. Consultations should also provide access to legal or professional advice to ensure the availability of all relevant information on key decisions. To satisfy this requirement of the principle, information should be provided that covers at least the following aspects in respect of any proposed project or activity:

- nature, size, pace, reversibility and scope
- reason(s) or purpose
- duration
- locality of affected areas

- a preliminary economic, social, cultural and environmental assessment of likely impacts, including potential risks to fair and equitable benefit sharing in a context that respects the Precautionary Principle[209]
- personnel likely to be involved in execution (including Indigenous peoples, private sector staff, research institutions, government employees and others)
- procedures that the project may entail.

Under the UNDRIP, states are required to respect the principle of FPIC when making decisions that affect Indigenous peoples. Their participation in civil society is conditional and incomplete unless there are mechanisms that ensure First Peoples are fully informed, can participate freely and are empowered to give or withhold consent. Embedding FPIC in Australia's political and institutional arrangements is therefore essential to transform participation from discretionary consultation to the guaranteed exercise of internationally protected rights.

Participation duty

A participation duty is a legally or statutorily mandated obligation on public authorities to actively engage those affected in the design, implementation, monitoring and evaluation of policies, laws and decisions that impact their rights. Participation duties especially apply to First Peoples, Elders, women, children, people with disability and other groups whose rights are disproportionately affected. This duty requires that such participation be meaningful, free, prior, informed, culturally appropriate and conducted in good faith. The duty extends to matters like access to information, avenues for input, transparency about how input shapes outcomes and review and evaluation processes.

This duty is reflected in:

- Article 25 of the ICCPR, which affirms the rights of all citizens to participate in the 'conduct of public affairs, directly or through freely chosen representatives'.[210]
- Articles 19 and 32 of the UNDRIP, which require States to 'consult and cooperate in good faith... with Indigenous peoples... through their own institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them' and 'prior to the approval of any project affecting their lands or territories and other resources...'[211]

Australia has a relatively robust democracy that provides formal opportunities for participation in public policy, law-making and administrative processes. Still, these mechanisms do not always ensure that all voices are equally heard. Processes such as referenda, consultation with interest groups and parliamentary committees are important in shaping laws and policies.[212] However, despite their availability, some groups – particularly Aboriginal and Torres Strait Islander peoples – continue to find that processes and outcomes do not adequately reflect their perspectives.

This reflects a core principle of pluralism in democracy: that governments must still hear groups who may not represent a majority of voters or hold political power. As the Australian Human Rights Commission (the Commission) has emphasised in our work on *Free and Equal*:

It is particularly important in a democracy for groups that do not represent a majority of voters; do not have a powerful voice in the political system; and are not at the forefront of the minds of administrators; to be heard. In addition to protecting and realising the rights of those groups and individuals, this also leads to better, more effective administrative decisions.[213]

First Peoples experience this most acutely when policy routinely fails to address the many issues we face. Such failures result largely from approaches that do not adequately involve the groups most affected.[214] This failure is a common human rights breach evidenced in a range of policy approaches imposed on First Peoples. These include:

- the 2007–2012 Northern Territory Emergency Response (the NT Intervention). The NT Intervention involved the suspension of the *Racial Discrimination Act 1975* (Cth) and did not adequately consult with Aboriginal peoples
- the Community Development Program (CDP) legislation in 2015 which applied punitive and discriminatory approaches in place of the previous community-controlled employment scheme
- the Cashless Debit Card process in parts of Australia from 2018–2023 that had a disproportionate impact on First Peoples and lacked due consultation.

The Commission maintains that a participation duty within a national Human Rights Act would require the Australian Government to establish processes to give effect to individual, collective and representative participation. This would be in line with our international human rights obligations as well as those at common law.

For First Peoples, such a duty must be grounded in articles 18 and 19 of the UNDRIP. The duty must affirm the right to participate in decision making and the requirement for states to obtain free, prior and informed consent.

Participation in international mechanisms

First Peoples from around the globe have sought to advance their rights through international mechanisms. As discussed in Chapter 4: Promoting the full enjoyment of rights by First Peoples, since the establishment of the UN Working Group on Indigenous Populations in 1982, international opportunities have expanded. These include the United Nations Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the Special Rapporteur on the Rights of Indigenous Peoples and UN Human Rights Council's annual half-day panel discussion on the rights of Indigenous Peoples.[215] These processes recognise Indigenous Peoples as actors in their own right and create avenues to raise concerns directly with the international community.

Access to international mechanisms widens the stage for Aboriginal and Torres Strait Islander voices. Australia supports participation in these fora through financial contributions to the UN Voluntary Fund for Indigenous Peoples and, more recently, through the Department of Foreign Affairs and Trade's (DFAT) First Nations International Fellowships and Partnerships Grants.[216] These initiatives have enabled more Aboriginal and Torres Strait Islander representatives to participate in UN meetings and to build partnerships across the Indo-Pacific. Yet, barriers remain.

Access to international fora largely depend on government-controlled funding streams, consultative status and the political priorities of the government of the day. This compromises FPIC. Participation is available but it is contingent, inconsistent and never guaranteed. Communities have called for an independent funding pool governed by Aboriginal and Torres Strait Islander people themselves to ensure sustained and self-determined engagement.

The historical context

For generations, First Peoples have called for a genuine relationship with non-Indigenous Australians that recognises our rightful place based on truth, treaty, equality, non-discrimination, unity and respect. Formal calls for participatory mechanisms have included:

- the 1934 petition to King George V by Yorta Yorta Elder William Cooper, founder of the Australian Aborigines League
- the 1963 Yirrkala Bark Petitions
- the 1967 Referendum
- the 1988 Barunga Statement
- the 2017 Uluru Statement from the Heart
- the 2020 National Partnership Agreement on Closing the Gap.

Some might say that, in the 237 years since 1788, Aboriginal and Torres Strait Islander peoples have come a long way. Others would argue that our survival has been largely secured through sheer determination and the dedication of our older people and our Ancestors. They have consistently fought to ensure better life outcomes for future generations.

The Social Justice Commissioner has long advocated for governments to support First Peoples' capacity-building. We have also called for support to establish governance arrangements that enable effective engagement with all levels of government while reflecting our cultural governance responsibilities. While we have had some progress, governments have consistently obstructed or disbanded those efforts. Governments often facilitate efforts to achieve self-determination to a point of success, and then they withdraw support.

This cycle leaves First Peoples without the capacity to fulfil objectives already agreed to by governments.

The abolition of various representative mechanisms, including the Aboriginal and Torres Strait Islander Commission (ATSIC) and the lack of support for the National Congress of Australia's First Peoples (the National Congress), are examples of governments actively undermining First Peoples' self-determination.

Respective governments replaced these representative mechanisms with the non-representative, government appointed National Indigenous Council (NIC) from 2004–2008 and the Prime Minister's Advisory Council from 2013–2019. These decisions have contributed to the overwhelming and longstanding failure to establish enduring representative governance structures and mechanisms for First Peoples' participation.

Without such mechanisms it is very hard to effectively engage in policy development and decision-making in a systematic and cohesive way.

Building on this history of calls for recognition and participation, the last 50 years have seen important shifts in Aboriginal and Torres Strait Islander political participation. Increased advocacy for self-determination has intersected with processes such as the *Bringing Them Home* inquiry, royal commissions, parliamentary inquiries and *Social Justice Reports*. These have created fragmented opportunities for truth-telling – valuable in raising awareness, but ad hoc and insufficient as inclusive and participatory systemic mechanisms.

This has all sat alongside a consistent period of acceptance of, and exposure to, racism in community life. This period has also witnessed racism imposed through political, social and media structures and systems. While this has been bubbling away under the surface, every now and then we experience social ruptures. In the wake of the 2023 Voice to Parliament Referendum, this historical legacy of colonisation has seen a marked rise in Aboriginal and Torres Strait Islander people's experiences of racism.[217] This is manifesting in growing social unrest focused on securing the legitimacy of mainstream (white) Australia to the exclusion of all other cultural groups, including Australia's First Peoples.

National rallies promoting racial exclusion attempt to reestablish myths that justify the colonisation of Australia. A key priority must be to work with communities and organisations to consider next steps and identify the most effective ways to support First Peoples' inclusion and participation. Governments must demonstrate the necessary leadership to support a reframed relationship between governments, First Peoples and non-Indigenous Australians which is grounded in truth, justice and healing.

The political landscape

Over the last decade significant changes have occurred in the architecture of government. There have been new statutory roles, intergovernmental working groups and a rise in the number of Aboriginal and Torres Strait Islander parliamentarians and government appointments. These developments are historically significant, both for First Peoples and for Australia's democratic evolution. Yet, they remain uneven. Some roles create space for influence, others are symbolic. However, all fall short of ensuring participation based on free, prior and informed consent.

A shift in the way governments relate to us will require the political will of governments and elected representatives to engage in national truth-telling and agreement making. This process must create the tangible, practical outcomes that we are all aspiring to. As expressed by former Prime Minister Paul Keating in 1992:

> ***The message should be that there is nothing to fear or to lose in the recognition of historical truth, or the extension of social justice, or the deepening of Australian social democracy to include [I]ndigenous Australians. There is everything to gain. Even the unhappy past speaks for this.[218]***

One important arena where these tensions are most visible is parliamentary representation.

Parliamentary representation

Unlike Aotearoa New Zealand where Māori have dedicated seats in Parliament, Australia has no guaranteed mechanism for Aboriginal and Torres Strait Islander parliamentary representation. Aboriginal and Torres Strait Islander people elected to Parliament are nominated by their political parties, chosen by their constituencies from the general population and once elected, must represent all issues relevant to their electorates. They do not only represent Indigenous interests. This means both their broad mandate and their limited numbers constrain their ability to influence systemic change.

Since the election of Liberal Senator Neville Bonner in 1971, 53 Aboriginal and Torres Strait Islander people have successfully run for office across Australia's 10 legislatures. Most were elected in the last decade.

After the May 2025 election, First Nations representation is at almost 4% of the Federal Parliament (9 of 226 members). This federal representation is now close to reflecting population parity.

Within the Commonwealth Parliament, and even as a collective Indigenous caucus, Aboriginal and Torres Strait Islander parliamentarians do not hold sufficient numbers to determine outcomes in parliamentary votes, party caucuses, Cabinet or budget processes.

This representation is historically significant. It has reshaped the face of Parliament and contributed to cultural and political change. Yet, this representation cannot secure the systemic participation required to meet Australia's human rights obligations. Parliamentary presence alone is necessary, but not sufficient.

Alongside these developments, governments have pursued other avenues to involve First Peoples in decision-making through new structural and intergovernmental arrangements.

Governmental architecture

Over the past decade, governments have established new structures within Australia's federal relations framework. These are designed to improve cooperation and decision-making on matters of national significance. National Cabinet, supported by the First Secretaries Group and Ministerial Councils, brings together the Prime Minister, Premiers and Chief Ministers to progress shared priorities.[219]

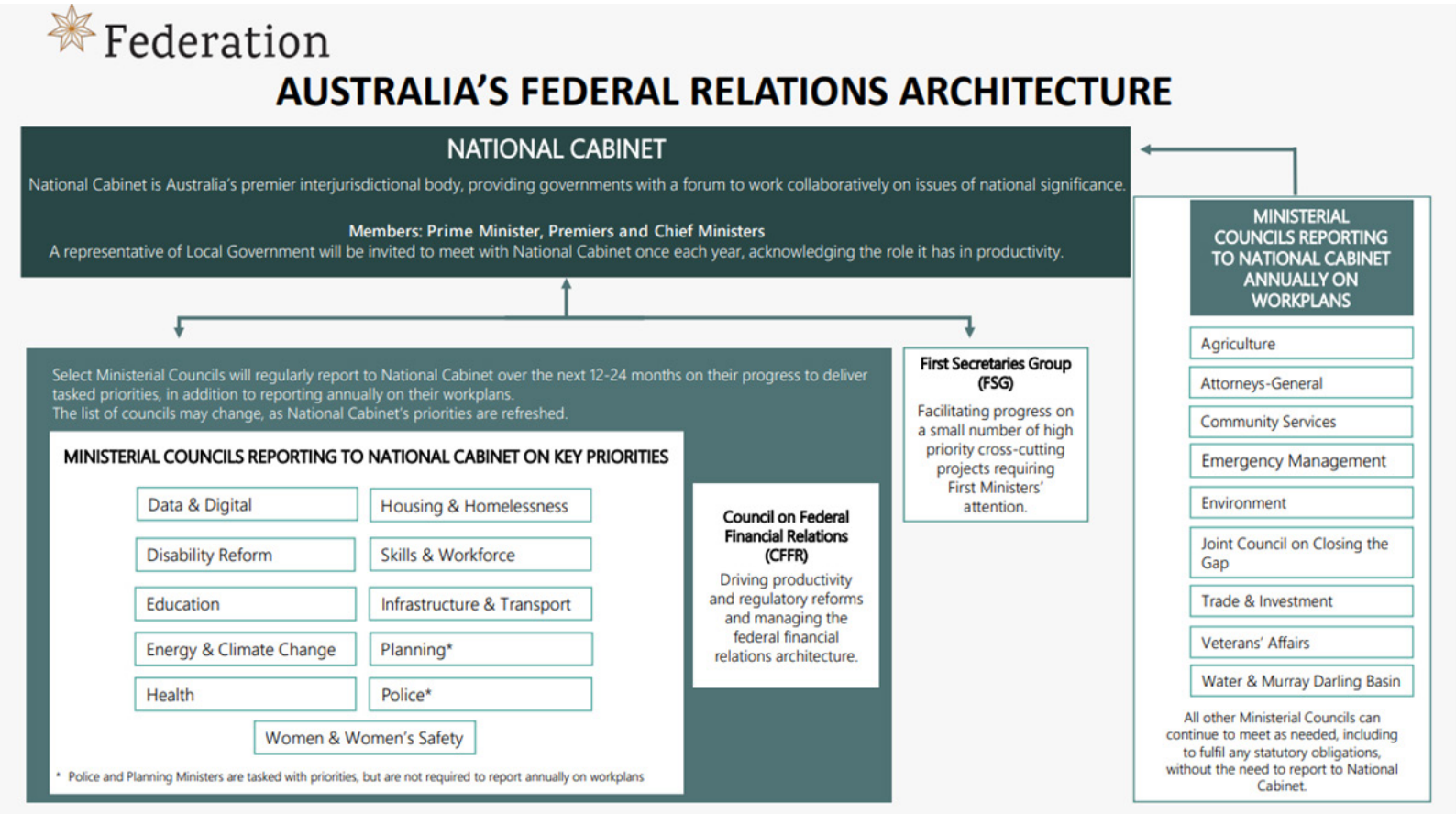


Figure 3.1: Australia's Federal Relations Architecture – as at 30 September 2022[220]

For First Peoples, the most significant development has been the Joint Council on Closing the Gap (Joint Council). This group brings together representatives from all levels of government and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. Supported by a Partnership Working Group, the Joint Council is responsible for monitoring progress on the National Agreement on CTG. In recent years, additional policy partnerships have been established in areas such as justice, social and emotional wellbeing, housing, early childhood and languages. In 2025 there was an announcement about an economic partnership.[221]

These structures demonstrate an increased willingness to embed Aboriginal and Torres Strait Islander voices in national decision-making. They represent a shift from ad hoc consultation to more formalised partnership arrangements.

Yet, they remain government-initiated and government-controlled. Government processes, not First Peoples, set agendas, timelines and priorities. Participation is conditional, not guaranteed, and does not meet the standard of FPIC. The absence of a permanent mechanism to ensure parliamentary accountability on matters affecting First Peoples continues to undermine their effectiveness.

Alongside these structural forums, governments have also created individual roles and appointments intended to elevate Aboriginal and Torres Strait Islander perspectives.

Government-appointed roles

Structural forums intended to amplify Aboriginal and Torres Strait Islander perspectives fall into 2 categories: politically appointed envoys and ambassadors, and statutory or oversight commissioners.

Political envoys and ambassadors

Political envoys and ambassadors include the:

- Special Envoy for Indigenous Affairs (2018–2019)
- Special Envoy for Reconciliation and the Uluru Statement (2022)
- Ambassador for First Nations People (established 2023)
- Special Envoy for Remote Communities (2025).[222]

These roles signal acknowledgement of First Peoples' voices in specific policy areas. While these roles can elevate visibility, they are temporary, politically dependent and government-appointed rather than community-nominated or endorsed. Their authority and longevity therefore rest on the goodwill of the government of the day.

Statutory and oversight commissioners

Statutory and oversight commissioners provide a more enduring form of participation. Aboriginal and Torres Strait Islander Social Justice Commissioners have been appointed since 1993. In recent years there have been expanded appointments. These include:

- National Commissioner for First Nations Children and Young People (2025)[223]
- Interim (national) First Nations Aged Care Commissioner (2023)
- Children and Young People Commissioners across the Australian Capital Territory (ACT),[224] Victoria,[225] Queensland (QLD)[226] and South Australia
- Deputy Ombudsman for Aboriginal Programs in NSW[227]
- Aboriginal Healthy Country Assistant Commissioner in NSW[228]
- Queensland-based Torres Strait Islander Child Rearing Practices Commissioner (2021).[229]

These roles demonstrate progress in embedding Aboriginal and Torres Strait Islander leadership in government oversight and accountability structures.

However, even independent statutory commissioners remain formally accountable to governments, not to communities. They strengthen participation by embedding Aboriginal and Torres Strait Islander leadership inside government institutions. However, they do not constitute self-determined or community-nominated representation. They represent an important step along the spectrum of participation, but not its culmination.

These positions hold mandates that are integral to monitoring, assessing and reporting on the rights and interests of First Peoples. Mechanisms such as Senate Budget Estimates require accountability from these positions about the expenditure of public funds. However, there is no mechanism through which these mandated roles can hold the Government or Parliament accountable to the community on the expenditure of funding or the effectiveness of initiatives. For example, as highlighted earlier in this report, the Australian Government did not formally respond to the annual Social Justice and Native Title Reports tabled between 1993 and 2016 to indicate whether or not their recommendations were supported. This contrasts to how governments respond to recommendations of Parliamentary Inquiry or Royal Commission Reports. In this regard, the effectiveness of these roles is limited.

Further, there is no legislated requirement for an Aboriginal or Torres Strait Islander person to hold the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. *The Australian Human Rights Commission Act 1986* (Cth) instead requires that a person has significant experience in the community life of First Nations communities. This opens the prospect of a non-Indigenous person being appointed to the role.

Advisory committees and the Coalition of Peaks

Governments have frequently relied on advisory committees and working groups to provide Aboriginal and Torres Strait Islander perspectives on policy and program design. These bodies are usually ministerially appointed, time-limited and tied to specific terms of reference.

Advisory structures can elevate expertise, but they do not guarantee continuity, independence, authority or outcomes. As their scope, structure and membership is not designed, chosen, nor validated by the Aboriginal and Torres Strait Islander community, they lack the moral and representative legitimacy they would otherwise carry.

Advisory committees' reliance on political goodwill means they are fragile, lack transparency and rarely embed enduring authority. For example, the Prime Minister's Indigenous Advisory Council (2013–2019) illustrates this. It was announced as a major reform but quietly ceased, with no public record of its disestablishment.

Unlike these ministerially appointed committees, the Coalition of Peaks represents a collective of around 80 Aboriginal and Torres Strait Islander community-controlled organisations. Since 2018, the Coalition of Peaks have shared responsibility for implementing CTG with the federal, state and territory governments and the Australian Local Government Association.

The inclusion of the Coalition of Peaks in the National Agreement represents a stronger model of partnership than ad hoc committees and is representative of our organisations and the sectors in which they operate.

National Agreement on Closing the Gap

When Prime Minister Kevin Rudd delivered the National Apology to the Stolen Generations in 2008, he committed to:

A new partnership between Indigenous and non-Indigenous Australians…The core of this partnership for the future is closing the gap … on life expectancy, educational achievement and employment opportunities. This new partnership on closing the gap will set concrete targets for the future.[230]

Although the Rudd Government signed the CTG Statement of Intent in 2008, they did not initially adopt a partnership model. As Pat Turner said in 2025, reflecting on the 2008–2018 period:

Instead, over the next decade we saw governments attempting to take action to Close the Gap that was underpinned by a framework focused on our disadvantage rather than our strengths and where others were making decisions about us and the policies and programs we needed.[231]

Through the National Partnership Agreement of 2019, the Coalition of Peaks was formally recognised as a partner in the design and implementation of the National Agreement. This was historic. For the first time, Aboriginal and Torres Strait Islander community-controlled organisations were embedded as national policy partners.

Yet, even this important development has limits. First Peoples peak bodies and Aboriginal Community Controlled Organisations (ACCOs) have particular interests concerning policy areas and service delivery and do not necessarily represent the perspectives of First Peoples more broadly. In addition, on account of its members' funding and service agreements with governments, there are conflicts of interest which would further restrict the Coalition of Peaks' ability to act, and be perceived as, an independent representative voice.

Despite the highly significant role it plays in bringing together community-controlled organisations, the Coalition of Peaks does not constitute a representative structure chosen by First Peoples,[232] nor does it pretend to be one – with its leaders advocating strongly for the Voice in the lead up to the Referendum.

At the heart of building a form of genuine and sustainable participation in decision-making are 3 foundational elements that mechanisms must provide. These are to:

- enable those people nominated and supported by First Peoples to participate on their behalf in formal decision-making processes
- introduce mechanisms to enable input from those wanting to contribute (i.e. the broader Aboriginal and Torres Strait Islander community) and ensuring that First Peoples set and inform priorities and responses
- guarantee that governments, industry and other stakeholders respond to this input with accountability, integrity and respect.

The ongoing absence of a national representative structure for First Peoples – which would complement the role of the Coalition of Peaks by creating a space for shared decision making at the political level – has been a key factor undermining the implementation of the National Agreement.

The inaugural independent review of the National Agreement conducted by the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney aligns with this assessment.

It found limited evidence of systemic change by governments. The review concluded that opportunities for First Peoples to shape policies and programs remain 'limited, ad hoc and overburdensome'.[233] The review also found that governments have not substantively adapted or reformed their ways of working.

Governments continue to hold disproportionate power over resources and decision-making and too often approach the National Agreement with a lack of trust.[234]

CTG therefore demonstrates both progress and limitation. The Coalition of Peaks is more than an ad hoc advisory committee – it is embedded within a formalised structure of partnership at the national level.

However, participation still falls short of genuine representation and genuine shared decision-making is undermined by conflicts of interest and an entrenched power imbalance.

While not addressing the need for a national representative structure, a recent and highly informative example of governments sharing power is the approach taken by the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 and the highly positive outcomes from its work.

Aboriginal and Torres Strait Islander COVID-19 Advisory Group

Relationships between First Peoples organisations and governments during the COVID-19 pandemic provides one of the clearest examples of what shared decision-making can achieve.

From the outset in early 2020, governments worked in partnership with Aboriginal and Torres Strait Islander community-controlled organisations through the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 (the Advisory Group). This group was co-chaired by the National Aboriginal Community Controlled Health Organisation (NACCHO) and the Department of Health. The Advisory Group developed the National Management Plan, clinical guidelines and initiatives tailored to remote communities. These ensured communities were prepared before the virus reached them.

The outcomes were striking. While recognised as one of the most vulnerable population groups to the COVID-19 virus, Aboriginal and Torres Strait Islander people accounted for just 0.8% of national COVID-19 cases in the early stages of the pandemic, with no deaths.[235] This stood in stark contrast to countries where Indigenous people were excluded from decision-making, such as Brazil and the United States. There, infection and mortality rates were dramatically higher.[236]

A key factor in the COVID-19 First Peoples response was the extent of agency exercised by community-controlled organisations.[237] Research undertaken to advise the Australian Government on a 'roadmap to recovery' found that:

The COVID-19 response has involved an unprecedented level of cooperation and collaboration between governments and the Indigenous community health sector, which augurs well for future partnerships and deserves both recognition and funding.[238]

The success of the Aboriginal and Torres Strait Islander Advisory Group demonstrates what is possible when community-controlled organisations are engaged more equally as partners. The COVID-19 response showed that embedding Aboriginal and Torres Strait Islander leadership from the start delivers better outcomes for everyone. Elements of this approach are now embedded in the Australian Health Protection Principal Committee, though the partnership was not equally strong in all jurisdictions.

Text box 3.1: Aboriginal and Torres Strait Islander COVID-19 Advisory Group

Taken together, these examples show a spectrum of political participation by Aboriginal and Torres Strait Islander peoples. Representation in Parliament has been symbolically and historically important but limited in influence. Governmental architecture and appointed roles have created more structured points of engagement yet remain government-initiated and controlled. Advisory committees have provided governments with access to expertise, while the Coalition of Peaks has introduced a stronger model of community-controlled partnership. Each has opened space for our voices, but always on the Australian Government's terms.

Participation across these mechanisms remains conditional, often overburdensome and still falls short of self-determined representation.

That is why it matters to look closely at the few attempts to create representative bodies chosen by our people themselves – such as ATSIC and the National Congress of Australia's First Peoples. These experiences offer important lessons for what a genuine, enduring model of participation could look like.

Lessons learned from the history of participatory mechanisms

As long as Australia maintains institutional structures designed to exclude the voices of Indigenous communities, we remain ill-equipped to support communities to solve the complex problems they face.[239]

Elected representative bodies are the next step along the participation path, after advisory, appointed and partnership arrangements.

These are bodies chosen by First Peoples to provide an independent and enduring channel for our voices in national decision-making.

Unlike advisory arrangements, they hold the potential to set agendas based on community priorities, exercise a measure of political authority and create accountability between governments and First Peoples.

The history of former First Peoples representative bodies in Australia offers important lessons for how to best promote our sustainable participation in decision-making. This history helps us understand the role that governments play in the ultimate success and failure of such participatory mechanisms.

The most significant example of this was ATSIC. As an Indigenous elected body within the federal government, its structure was innovative for its time. Its regional representative model – with agenda-setting based on local and regional priorities – was a key strength.[240] Despite this, its legislative foundations left it vulnerable to constant amendment. Altered more than 90 times, the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) was one of the most amended pieces of legislation, only surpassed by the *Native Title Act 1993* (Cth).[241]

The establishment of the National Congress of Australia's First Peoples in 2010 sought to avoid some of the pitfalls of the ATSIC model of representation. The National Congress adopted a non-government model with charitable status rather than a government model with a legislated function. It had multilayered members' chambers and an ethics committee, all promoting gender equity and representative participation. Still, it was reliant on federal government funding and – having been defunded in 2014 – went into voluntary administration 5 years later in 2019.[242]

Another key example is the abolition of local councils under the NT Intervention. Beyond the obvious human rights issues with the suspension of the Racial Discrimination Act and associated actions, the Intervention also dismantled the existing 58 Aboriginal elected councils that served an important representative function. The local councils were amalgamated into 8 so-called 'super shires', with 4 regional centres in Alice Springs, Tennant Creek, Katherine and Darwin.[243] Initially, Government Business Managers (GBMs) were installed and undercut many of the existing local governance structures.[244]

During the ITA national listening tour, some community members emphasised the deliberately disempowering nature of the Intervention:

> ***Communities have been purposefully disempowered, not by accident, but by design. – Darwin ITA Participant***

These examples demonstrate both the promise and fragility of representative structures. When chosen by our people, they create genuine accountability and the potential for agenda-setting based on our priorities and on our terms. But when their authority, design or funding rests with government, they remain vulnerable to amendment, defunding or abolition. As dispossessed peoples without the generational wealth to fund our own structures, this presents a conundrum.

It is against this backdrop that we must consider the unfinished business of Voice, Treaty and Truth – and the lessons these histories hold for building enduring structures that cannot so easily be dismantled.

Voice, Treaty, Truth

The Uluru Statement from the Heart is a generous and genuine invitation from First Peoples to the broader Australian community to join in unity to heal the colonial wounds of this country's collective past. The Uluru Statement also represents a major interruption to the existing policy debate on Indigenous Affairs in Australia. It asserts the rights of First Peoples to genuine participation. In conjunction with the UNDRIP, it provides a framework for governments on how to build genuine and sustainable participation and how to reframe this critical relationship.

The courage and leadership demonstrated by Prime Minister Anthony Albanese and his government to progress the Voice Referendum cannot be underestimated. This was a genuine attempt to correct the constitutional foundations of this country that has denied the rightful place of First Peoples for more than a century. However, when the Prime Minister was unable to secure bipartisan support for the Referendum, the public debate about the Voice descended quickly into a partisan battle fought along culture war lines. Bad faith actors were able to deploy a steady flow of mis- and disinformation against the Voice proposal. The limited understanding of First Peoples' history and of how our democracy operates contributed to the defeat.

There was deafening silence and a political hiatus following the Referendum (influenced in part by global tensions). This has also enabled public narratives which continue to fuel division and unchallenged racism which targets Aboriginal and Torres Strait Islander peoples, as well as migrant communities.

The Referendum did not undermine the rationale for a voice, it further demonstrated why one is needed and brought clarity to what foundational elements will be required. A national voice must be co-designed, independent, properly resourced and built for the long term. In this context, the 3 pillars of the Uluru Statement from the Heart – Voice, Treaty and Truth – are just as relevant after the Referendum. All are necessary to advance the rights and recognition of First Peoples. To understand our experiences and needs, people must hear and accept truth.

The Prime Minister committed to deliver on the Uluru Statement from the Heart in full. We are yet to see a plan for this post-Referendum. It is important to clarify that the Referendum sought a constitutionally enshrined voice. While the Australian people did not support this, post-Referendum research demonstrates that Australians broadly agree that First Peoples should have the capacity to participate in decisions that affect them.[245]

The Prime Minister committed to the establishment of a Makarrata Commission to progress agreement-making and truth-telling. This has not progressed in the wake of the Referendum, but it remains a key aspiration for First Peoples.[246]

Truth-telling and agreement-making are inseparable. Having the opportunity to be involved in agreement-making requires an understanding of the truth of what has happened in the country to know the justification for agreement-making. Without a mechanism for collective dialogue – a voice – progress is limited.

The current whirlwind of political cycles sees Indigenous Affairs progress forward and then take 10 steps back. Escaping this pattern is imperative.

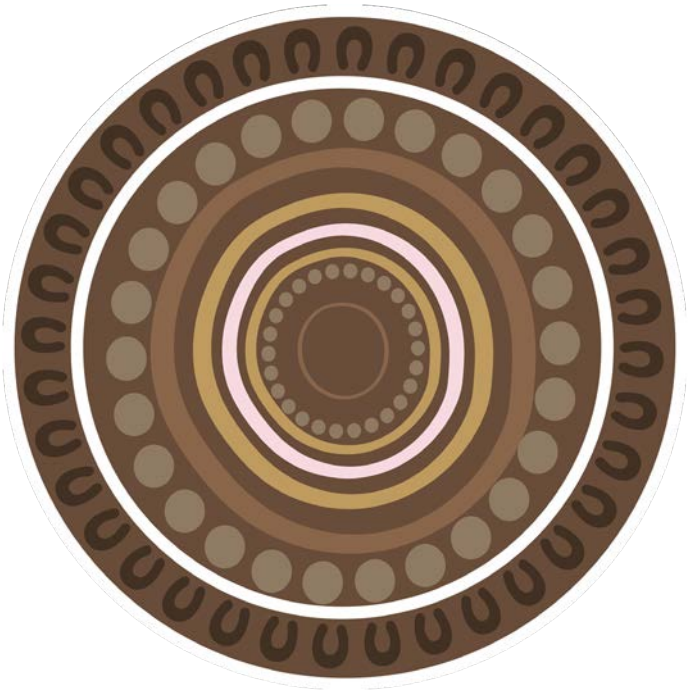
Establishing a stable national framework to implement the Uluru Statement in full will require political courage and leadership sufficient to lift the national conversation and make the possibility of securing bipartisanship on Indigenous Affairs more likely.

Recommendation 2

The Australian Government should work in partnership with First Peoples to establish a national representative mechanism. The mechanism should be independent from government, based on the Paris Principles model,[247] and have a sustainable source of funding based on domestic 'future fund' models.[248]

Recommendation 3

The Australian Government should work in partnership with First Peoples to establish a national Makarrata Commission with the mandate and powers to conduct a national truth-telling process and to design a national agreement-making process.



Voice

The call for a national First Peoples voice mechanism is not new. A 1983 Senate committee reported on the feasibility of a compact or Makarrata. It recommended shifting the then-National Aboriginal Conference into an independent statutory body which would be suitable for treaty negotiations.[249] In 2009, Tom Calma's *Our Future in Our Hands* report proposed the establishment of the National Congress to address the absence of representation created by ATSIC's abolition in 2005.

Article 3 of the UNDRIP (which Australia endorsed in 2009) confirms our right to self-determination and to freely determine our political status. Articles 4 and 5 reinforce self-determination by including the right to autonomy and self-government and the right to maintain and strengthen our distinct political, legal, economic, social and cultural institutions. We retain the right to participate fully, if we so choose, in the political, economic, social and cultural life of the State.[250]

Nonetheless – following the defunding and disestablishment of the National Congress in 2019 and the failed 2023 Voice Referendum – we are now left, yet again, without a national participatory mechanism. In its absence, Indigenous Affairs policies will continue to fail, and our peoples will continue to suffer. The Government knows this; they campaigned on exactly this point during the Referendum. The question going forward must be how to design a voice that is durable, effective and safe from the swings of politics.

To this end, the Commissioner has previously called on the Australian Government to issue a formal and unambiguous recommitment to commence work with Aboriginal and Torres Strait Islander peoples on all 3 pillars of the Uluru Statement from the Heart – including the establishment of a national representative structure – within the current term of Parliament.

Why a national voice is still needed

There remains an outstanding need for enhanced participation of First Peoples in political structures. In addition to treaty or agreement-making work and truth-telling processes, an elected representative body is critical to channelling and articulating the views of Aboriginal and Torres Strait Islander peoples and keeping governments accountable for their actions.

Other colonial-settler nations have such participation mechanisms. These include representative bodies chosen by Indigenous communities such as:

- the Sámi Parliaments in Norway, Sweden and Finland
- the Inuit Circumpolar Conference
- the Assembly of First Nations Canada
- the New Caledonia Customary Senate
- the New Zealand Māori Council
- in the United States, the National Congress of American Indians has been in place since 1944, while Maine's State Legislature has long reserved non-voting seats for Native American members.[251]

Foreign legislatures also use other mechanisms to secure Indigenous or minority representation. These mechanisms include reserved seats (Taiwan, Aotearoa New Zealand, India, Slovenia), ethnic candidate quotas (Singapore), the Mauritian 'best loser' system and geographically based minority representation in some parts of Canada.[252]

Lessons from Australia's history

As noted above, Australia has its own long history of creating and dismantling, national representative bodies. These include the:

- National Aboriginal Consultative Committee (1973–77)
- National Aboriginal Conference (1977–85)
- Aboriginal and Torres Strait Islander Commission (ATSIC) (1989–2005)
- National Congress of Australia's First Peoples (2009–19).[253]

Across these examples, the lessons are consistent. A national mechanism must:

- be independent of government
- be grounded in the principle of self-determination
- represent the communities it is established to speak on behalf of
- be supported by a sustainable funding model and diversified income streams
- ensure equitable representation and avoid reproducing colonial power structures
- operate with transparency and accountability.

Constitutional entrenchment remains the strongest safeguard. Not to assimilate First Peoples into the colonial governance framework, but to ensure that the unique status of First Peoples is recognised by the colonial governance framework and guaranteeing mechanisms for First Peoples participation in the governance of the nation. In its absence, durability depends on insulating a voice from political cycles. Perpetuity funding models offer one way forward, as demonstrated by the NSW Aboriginal Land Council and the Indigenous Land and Sea Corporation.

The Victorian First Nations Assembly and Treaty Authority both have funding requirements embedded in their enabling legislation. However, the experience of the Queensland Path to Treaty process reinforces that this is only feasible while political will is on our side. Legislation is always vulnerable to repeal.

State and Territory examples

The Torres Strait has the only First Peoples self-governing regional body in Australia.

The ACT is the only jurisdiction that has had a representative advisory mechanism in operation for any length of time.

Torres Strait Regional Authority (TSRA)

The Torres Strait Regional Authority (TSRA) was established in 1994 as a self-governing body of 20 representatives elected by the community to administer the Torres Strait Islands. It had previously been the Torres Strait ATSIC regional body and was separated from ATSIC between 1994 and 1997. The TSRA survived the abolition of ATSIC in 2005 and continues to operate today as an Australian Government Statutory Authority.[254]

The primary functions of the TSRA are outlined in Section 142A of the *Aboriginal and Torres Strait Islander Act 2005* (Cth). The TSRA recognises and maintains the unique Ailan Kastom of the region and aims to strengthen the region's economic, cultural and social development. The TSRA provides local and governmental services, as well as a political representative structure.[255]

However, Torres Strait Islander communities have identified further progress towards greater autonomy and the establishment of a self-governing territory as key priorities.[256]

Text box 3.2: Torres Strait Regional Authority (TSRA)

ACT Aboriginal and Torres Strait Islander Elected Body (the Elected Body)

Created by the ACT Legislative Assembly under the *Aboriginal and Torres Strait Islander Act 2008* (ACT), the Elected Body was the first elected Aboriginal and Torres Strait Islander advisory body to any state or territory parliament.

The Elected Body has 7 members, each elected by Canberra's First Peoples community for a 3-year term, working on a part-time basis. The mechanism is committed to ensuring community voices direct their advocacy and advice to government.

Two public hearings are held each term. Selected arms of the bureaucracy take part in processes similar to that of parliamentary estimates. Reporting and response processes are publicly available to ensure a level of transparency and accountability.[257]

Text box 3.3: ACT Aboriginal and Torres Strait Islander Elected Body (the Elected Body)

The South Australian Voice

The South Australian Government and Aboriginal and Torres Strait Islander people in the state have moved ahead on First Peoples' participation. After several rounds of consultations, in March 2023 the South Australian Parliament passed the *First Nations Voice Act 2023* (SA).[258] The Act created a representative advisory body which does not have veto or decision-making powers in the Parliament.[259]

The Voice is made up of 2 levels involving 6 Local First Nations Voices and a State First Nations Voice.[260] Each local body has 7 elected members, with the exception of Adelaide, which has 11 on account of its population.[261] The state-level body has 12 elected members made up of 2 Presiding Members from each local level body.[262]

Text box 3.4: The South Australian Voice

While these mechanisms differ in scope and authority, they demonstrate a willingness by some jurisdictions to legislate for First Peoples' voices in decision-making. Together, they provide valuable lessons for the design of future national and local mechanisms and provide valuable insight for emerging representative models that continue to evolve across the country.

Emerging approach

A new national-level body has also emerged in the wake of the Referendum. The Council of First Nations (the Council), a registered charity previously known as Australians for Indigenous Constitutional Recognition, aims to assume a national representative role. The Council has a membership model tied to native title representative bodies and other organisations with cultural authority. A National Gathering took place in September 2025 to chart its development.

The emergence of the Council shows the continued determination of First Peoples to create structures for representation, even in the absence of constitutional reform.[263]

The emergence of the Council is an important development considering the Referendum outcome, as well as the broader issues raised here about the need for enhanced Aboriginal and Torres Strait Islander participation.

We will continue to monitor the progress of the Council closely as it develops and look forward to hearing about an inclusive mechanism that can serve the broad views and interests of Aboriginal and Torres Strait Islander people.

Treaty

Alongside a Voice, the Uluru Statement called for agreement-making. Treaty processes recognise our sovereignty and create a framework for resetting the relationship between First Peoples and governments. While states and territories have taken some steps which demonstrate both the potential and fragility of treaty work, progress has been uneven. This has highlighted the need for a national approach.

Treaties must be seen as the framework for setting the right conditions and establishing the sustainable structures for a reset relationship between First Peoples and the broader Australian community. This relationship must be based in truth, acknowledgement, understanding and justice that leads to positive outcomes for our people.

Victoria

Australia's most advanced example of a treaty framework – The Victorian Statewide Treaty Act 2025 (the Treaty Act) – passed in the state parliament on 30 October 2025 and a treaty was formally signed by both parties on 13 November 2025. These developments represent a commitment to practical change and shared progress grounded in First Peoples' dignity, self-determination and access to opportunities. The Victorian Path to Treaty, culminating in the passage of the Treaty Act, demonstrates how positive participatory processes can be built into statewide policy approaches to address historical injustice, rights and recognition.

Victorian Statewide Treaty model

After 13 years of work, the Statewide Treaty negotiated between the First Peoples' Assembly of Victoria (the First Peoples' Assembly) and the State of Victoria was tabled in their parliament on 9 September 2025. Passed on 30 October 2025, the Treaty Act reset the relationship between First Peoples and government in Victoria.[264] The agreement was formally signed by the co-chairs of the First Peoples' Assembly and the Victorian Premier and Minister for Treaty on 13 November 2025.

In a press release announcing the Bill's introduction, the First Peoples' Assembly described Treaty as a path:

> ***... to be led by democratically elected representatives of First Peoples in a self-determining and deliberative way to enable First Peoples to freely determine their political status, pursue their economic, social and cultural developments and make decisions about their own futures.***[265]

The Statewide Treaty encompasses all 3 pillars of the Uluru Statement. It makes the Assembly a permanent new authority called Gellung Warl, future-proofed via a special appropriation to provide allocated funding.[266]

As explained by Assembly Co-chair Reuben Berg, Gellung Warl will be 'the top part of the work'.[267] It will be multi-functional and will consist of:

- **the First Peoples' Assembly**, which:
  - is the central decision-making arm representing and answerable to First Peoples
  - provides an advocacy function providing advice to the Victorian Government, its ministers and the bureaucracy to increase the effectiveness of policies, programs and outcomes for First Peoples via mutual obligations and co-designed departmental guidelines for efficiency and effectiveness
  - holds a representative role for First Peoples to engage in statewide treaty negotiations
  - provides a support role promoting human rights, advice, education and information to First Peoples, undertaking research, managing and allocating funds provided to or generated by Gellung Warl for the benefit of First Peoples (among other functions).
- **Nginma Ngainga Wara**, which:
  - acts as an independent accountability mechanism as required by the state's obligation under CTG.
- **Nyerna Yoorrook Telkuna**, which:
  - provides an ongoing mechanism to continue the truth-telling work of the Yoorrook Justice Commission, including developing new primary and secondary school curricula using the Yoorook Justice Commission's findings.[268]

The Treaty preamble affirms its alignment with the UNDRIP:

The State recognises the importance of this Statewide Treaty and future Treaties proceeding in a manner that is consistent with the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent. By continuing to consult and cooperate in good faith, the State will endeavour to take each step forward in the Treaty era together with Traditional Owners of Country in Victoria and First Peoples.[269]

Text box 3.5: Victorian Statewide Treaty model

Queensland

Queensland's Path to Treaty process demonstrated similar promise, progressing to phase 4 of its 5-phase model. However, in late 2024 the newly elected Liberal National Party (LNP) government repealed the enabling legislation – the *Path to Treaty Act 2023* (Qld) – as one of its first acts of parliament and then proceeded to dismantle a range of mechanisms supporting the participation of Aboriginal and Torres Strait Islander Queenslanders.

This experience underlines a hard truth: political will remains decisive. Without strong legal safeguards and broad-based commitments, governments can dismantle agreements as quickly as they create them.

Despite this, the Queensland Path to Treaty provides a model for resolving unfinished business between Aboriginal and Torres Strait Islander and non-Indigenous peoples by reframing relationships. The foundations have been set. While progress is currently stalled, there will be opportunities in the future to revisit this important work.

Queensland Path to Treaty model

The model was designed in 5 phases as follows:

1. **Phase 1– Consultations and recommendations:** The Eminent Panel and Treaty Working Group led a public conversation on the question of whether the state should embark on a treaty process. This public conversation also ascertained the high-level aspirations of First Peoples and the wider community for a treaty process. This phase resulted in key recommendations to progress towards treaty negotiations. Leaders ensured the treaty negotiations had gravitas through legislation, community decision-making and structural reinforcement and sufficient resourcing to adequately support the process.
2. **Phase 2 – Targeted consultation and implementation advice:**

The Government established the Treaty Advancement Committee to develop a model. This model included 3 mechanisms:

   1. a First Nations Treaty Institute to support First Nations communities' participation in treaty-making
   2. a Truth-telling and Healing Inquiry to progress a formal Inquiry into the impacts of colonisation on First Peoples
   3. a Path to Treaty fund and a commitment to progressing legislation.

3. **Phase 3 – Co-design and legislation:** The Queensland Government established an Interim Truth and Treaty Body (ITTB) with majority Aboriginal and Torres Strait Islander members and a Secretariat. The ITTB was tasked with co-designing the First Nations Treaty Institute and the Truth Telling and Healing Inquiry. These were the institutional arrangements and legal architecture to progress truth and treaty. The ITTB also had a key role in community engagements, research and local truth-telling.
4. **Phase 4 – Establishment and operation:** The institute was established and the Inquiry commenced following the passage of legislation giving this effect.
5. **Phase 5 – Treaty negotiation framework and commencement:** The final stage – which was not reached – would have involved the Institute and Government developing the treaty negotiation framework. This phase also would have established supporting structures such as a Treaty Authority and a Treaty Tribunal or similar mechanism to deal with disputes. Treaty negotiations would have begun under this phase.[270]

Text box 3.6: Queensland Path to Treaty model

Northern Territory

The NT established a Treaty Commission in 2019 to lead consultations with First Peoples about a framework for treaty. In its Final Report (delivered June 2020),[271] the Treaty Commission recommended a territory-wide representative body as the key mechanism to progress treaty with the NT Government. This representative body would also enable local Aboriginal groups to negotiate agreements specific to their own circumstances.[272] This dual approach aimed to balance collective representation with respect for the diversity of Aboriginal nations across the Northern Territory.

The Treaty Commission's proposed framework included:

- A territory-wide Aboriginal representative body: a central structure to negotiate overarching treaty principles and frameworks with the NT Government.
- Local agreements: provision for individual Aboriginal nations and groups to negotiate their own treaties with the Government. These would reflect local priorities, governance systems and cultural protocols.
- Truth-telling processes: recognition that treaty negotiations must be accompanied by a formal process of truth-telling about the history and ongoing impacts of colonisation in the NT.
- Phased implementation: a staged approach which would begin with the establishment of the representative body, followed by development of negotiation frameworks and supporting institutions.

Despite these recommendations, the NT Government announced in 2023 that the Treaty Commission's work would not be taken forward.[273] In 2025 the model was abandoned in its entirety, highlighting the fragility of treaty processes without bipartisan political commitment and sustained institutional investment.

New South Wales

Due to the outcome of the national Voice Referendum in 2023, NSW has been slow in their developments of a treaty framework.[274] However, in August 2025, NSW initiated an independent consultation process to understand whether Aboriginal peoples and communities believe a treaty or similar agreements would support reconciliation. Treaty Commissioners were appointed to lead the process. The first phase of the process involves a 12-month engagement process with Aboriginal people and communities across NSW. Following these consultations, the Commissioners, in partnership with Aboriginal Affairs NSW, are to prepare a report for the NSW Government. This report will include recommendations on how to design a treaty process to reflect Aboriginal perspectives. The NSW Government has committed to reviewing these recommendations and determining its next steps.[275]

South Australia

In 2016, SA began discussions with local Aboriginal people and communities to discuss a treaty process.[276] In 2017, the SA Government set aside $4.4 million for a treaty framework in South Australia. The Government appointed Dr Roger Thomas as Treaty Commissioner to engage with Aboriginal people across the state to get their perspectives on treaty. This included in-person consultations with over 600 members of communities and over 280 submissions.[277]

Out of these consultations, Commissioner Thomas developed the Talking Treaty report and identified the following key themes:

- a need for genuine engagement that allows for everyone to participate in the Treaty process
- recognition in the Constitution and recognition of the Letters Patent, which acknowledge Aboriginal peoples' land rights in South Australia[278]
- a truth-telling process that highlights the past injustices in the state and the ongoing effects
- Government partnership with Aboriginal peoples to improve health, education, employment and cultural wellbeing
- Community self-determination, self-governance and decision making.[279]

The report proposed a Treaty Framework that included principles to follow for a respectful process with communities.[280]

In February 2018, the then-Labor government and First Peoples of the Yorke Peninsula, the Narungga Nation, reached an agreement to a 3-year negotiation process to create a legislated Treaty. However, the new Liberal government discontinued this in June 2018. It assumed that Treaty would be costly and claimed that there was no responsibility for states to engage in the realm of Treaty with Aboriginal and Torres Strait Islander peoples.[281]

There has been no progress on Treaty in the state since.[282] The SA Aboriginal Affairs Minister has committed to restarting treaty negotiations, but no timeframe has been put forward.[283]

The Treaty processes undertaken across the country to date provide key lessons about the enablers and risks to participation.

Key enablers of participation include:

- democratically elected or community-chosen representative bodies (e.g. Victoria's First Peoples' Assembly)
- legal safeguards and statutory embedding that secure permanence and funding (e.g. Victoria's special appropriation Act)
- independent institutions with majority Aboriginal and Torres Strait Islander membership (e.g. Queensland's Interim Truth and Treaty Body).
- truth-telling processes that provide space to hear voices and acknowledge histories
- adequate resources for communities to engage meaningfully
- phased, layered approaches that allow time for consultation, co-design and institution-building before Treaty negotiations are progressed.

Key risks to participation include:

- lack of bipartisan political commitment (e.g. repeal of Queensland's Path to Treaty Act 2023 (Qld), abandonment of NT Treaty Commission)
- absence of statutory authority or legal protections
- political cycles overriding long-term treaty processes
- under-resourcing of Aboriginal and Torres Strait Islander organisations and communities.

Text box 3.7: Key enablers and risks of participation

While governments come and go, First Peoples have been here since time immemorial. We have survived almost 250 years of incursion on our being and our rights. We will still be here long after the governments who have undermined our work are done. We will continue to work on a relationship grounded in understanding and one that supports unity and respect.

Treaty as an economic lever

International experience demonstrates that treaty processes are powerful economic levers, delivering benefits both to First Peoples and to the wider national economy.

For First Peoples, treaties create the conditions for economic independence. They provide the capital, revenue streams and authority needed to build sustainable First Peoples-led economies. In Aotearoa New Zealand, for example, the Māori asset base has grown to approximately NZ$126 billion. Māori enterprises service areas such as justice, tourism and health.[284] Treaty settlements have played a significant role in this growth. They have provided the capital foundations for iwi authorities (tribal governing bodies) and Māori organisations that now form an important part of the Māori and national economies.

In British Columbia, modern treaties embed capital transfers, resource royalties and program funding. This income supports First Peoples to generate their own wealth and to invest in community development. These financial arrangements have supported First Peoples such as the Nisga'a, Tsawwassen and Maa-nulth to establish their own-source revenue streams. They have leveraged settlement assets into housing, education and infrastructure projects and developed thriving commercial enterprises.[285] Fiscal Financing Agreements also provide predictable, long-term funding for services, strengthening governance capacity and financial stability.

Collectively, these mechanisms not only build intergenerational wealth and economic independence for First Peoples, but also create regional prosperity through jobs, investment and shared infrastructure.

At the same time, these arrangements strengthen the economy more broadly. When First Peoples have control over their economic futures, they reduce reliance on welfare and crisis-driven government expenditure. First Peoples then shift into roles as employers, investors and business partners.

In the United States, the self-determination model has generated substantial spill-over benefits. In Oklahoma alone, tribal nations contributed US$23.4 billion in total output in 2023, supporting nearly 140,000 jobs and generating more than US$800 million in state and local revenue.[286] Broadly, tribal self-governance has enabled Indigenous economies to become regional anchors – generating tens of billions of dollars in wages, benefits and multiplier effects across Indian Country.

Prior to the Victorian treaty, Australia had only one agreement that closely resembles a modern treaty: the South West Native Title Settlement (the Settlement) with the Noongar people of Western Australia. The Settlement is the largest native title agreement in the nation's history. It resolves all native title claims across the south west in exchange for a comprehensive package of benefits. These include land, funding and governance structures designed to support self-determination.

A central feature of the Settlement is its focus on building a sustainable Noongar economy. This is given practical effect through the Noongar Economic Participation Framework (NEPF).

Noongar Economic Participation Framework (NEPF)

The NEPF is a negotiated commitment within the broader South West Native Title Settlement. It aims to strengthen Noongar economic development and participation in the WA economy.

The NEPF objectives are:

- growing Noongar-owned businesses, Noongar/non-Noongar joint ventures and increasing Noongar employment in Noongar businesses
- increasing the knowledge and skills of the Noongar community in government procurement, tendering and contracting
- increasing Noongar participation and representation in employment and the broader economy
- building on the existing strengths of the Noongar community to foster Noongar entrepreneurial culture.[287]

The NEPF complements other economic assets being delivered through the Settlement Agreement. These include:

- development of the Noongar Boodja Trust, supported by annual allocations of $50 million to the Noongar Future Fund and $10 million for operational funding for the Noongar Corporations for 12 years.
- creation of the Noongar Land Estate for both cultural and development purposes
- the Noongar Housing Program
- a Capital Works Program which links land and funding to the creation of a cultural centre and office accommodation funds for the Noongar Corporations.[288]

There is a Steering Group comprising one representative from each of the 6 Noongar Regional Corporations, the Central Services Corporation, senior WA government agency and authority representatives. This Steering Group is responsible for overseeing the NEPF's implementation to ensure Noongar people are recognised as a valuable part of the regional economy.[289]

Text box 3.8: Noongar Economic Participation Framework (NEPF)

All the examples provided in this discussion have challenges and need ongoing maintenance. However, the shifts created through treaty and treaty-like processes work to undo colonial impacts and legacies. They disrupt the systemic pattern of First Peoples' marginalisation and disadvantage – where systems that are reliant on the need to manage poverty, ill-health and unemployment repeatedly absorb resources – and replace it with a prosperous model of mutual benefit.

Under self-determination, First Peoples build independent wealth and economic security, while the national economy gains new streams of growth, employment and investment. First Peoples communities reduce their reliance on social welfare and improve in overall health and wellbeing. Treaty therefore represents not only an act of justice and recognition, but also a pathway to shared prosperity.

National implications

Taken together, state and territory processes show that treaty and agreement-making are not only possible, but already underway. These processes have given renewed energy to the importance of participation through representative mechanisms. The First Peoples' Assembly of Victoria provides an important example of a democratically elected and independent body representing Traditional Owners and Aboriginal and Torres Strait Islander people.

As First Peoples, we are also very aware of how fragile progress can be without legislative protection, resourcing and enduring political commitment. At present, there is no national framework to guide treaty-making, set minimum standards, or ensure consistency across jurisdictions.

If Australia is to meet its obligations under the UNDRIP and move beyond piecemeal progress, a national treaty framework is needed. Such a framework should:

- recognise the sovereignty of First Peoples
- establish principles and minimum standards for agreement-making
- embed protections to ensure durability across political cycles
- guarantee resources to support both governments and communities in the work of treaty readiness, negotiation and implementation.

Treaty is about agreement and recognition. But agreements cannot endure without a shared understanding of the truths they are built upon. That is why truth-telling, the third pillar of the Uluru Statement, is essential.

Truth and treaty readiness

If treaties are to be durable, they must be grounded in truth and understanding of the historical and contemporary context. Communities must be ready to negotiate and implement treaties, and governments must be ready as the treaty partners.

Treaty readiness is not a single milestone but a process of building the conditions for meaningful participation. The necessary steps include strengthening governance, supporting local representative mechanisms and enabling communities to articulate their priorities. Across various settings, multiple themes emerge:

- **Community-led participation:** Aboriginal and Torres Strait Islander peoples must design and drive truth and treaty processes. Local truth-telling and participation in agreement-making can take many forms – from elected assemblies and advisory bodies to community yarns, cultural mapping or local truth-telling initiatives.
- **Strengthened governance:** First Peoples treaty parties need opportunities and resources to develop and strengthen their own governance structures to enable engagement on equal footing in negotiations. This includes support for representative mechanisms that are accountable to communities, not government.
- **Truth-telling as preparation:** Local truth-telling provides both context and capacity for treaty. By naming histories of colonisation and resilience, communities articulate the issues that agreements must address and build shared understanding with the wider public.
- **Resourcing and capability building:** Readiness requires sustained investment in community and memory institutions and participatory processes. Capability building includes training, infrastructure and access to records and archives. Without this foundation, participation risks becoming symbolic and tokenistic rather than substantive.
- **Partnership and coordination:** Treaty readiness also relies on governments, institutions and civil society actors committing to support community-led initiatives to coordinate resources and to remove barriers to participation.

Taken together, these principles remind us that treaty readiness is about much more than technical capacity to negotiate. It is also about creating participatory environments where Aboriginal and Torres Strait Islander peoples are resourced, empowered and supported to define their priorities and determine the terms of new relationships. A critical part of this involves sharing truth. Neither communities nor governments can be treaty ready without first confronting the truths of the past and present. Truth-telling lays the groundwork for respectful negotiation, ensuring agreements are built on a shared understanding of history and its ongoing impacts.

Truth

I have an unshakeable belief in Australia's potential to transcend its past.[290] – Mick Dodson AM, former Aboriginal and Torres Strait Islander Social Justice Commissioner

Recent discussions about representative voices and truth-telling have taken place in parallel with those regarding treaty and agreement-making. The constitutional reform process sharpened national attention on a central truth identified by First Peoples: enduring treaties require truth as their foundation, and they require our full and equal presence at the treaty table. Truth-telling also provides the impetus for the broader community to recognise the connections between past and present and to see that the status quo cannot persist.

Truth-telling will unveil buried ancient histories of this amazing land and its people. It will also reveal uncomfortable truths long denied or withheld from public consciousness about the origins of the nation. Facing these truths will challenge our sense of who we are and how we treat each other. That is the point: truth-telling is an ethics of relationship.

Truth-telling and historical acceptance is key to reconciliation in Australia. Historical acceptance means that all Australians recognise, understand and accept the wrongs of the past and the impact of these wrongs on Aboriginal and Torres Strait Islander peoples, still felt today.[291]

Australia has seen many official truth-telling moments, including: the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), Bringing Them Home, the Disability Royal Commission and the Yoorrook Justice Commission. These inquiries have lifted parts of the veil, but they have too often lacked an accompanying measure of justice to secure a better future for First Peoples. As Professor Megan Davis has argued:

...the idea that truth automatically leads to justice is fraught – it is not borne out by the evidence.[292]

Truth must be connected to reform, redress and durable participatory structures.

After the Referendum: racism and safety

The Referendum provided a unique opportunity for all Australians to participate in framing what the future relationship would look like. We overestimated the level of knowledge and understanding held by Australians on the origins and development of the Australian nation.

The experiences of Aboriginal and Torres Strait Islander peoples in the lead up to, and following, the Referendum were characterised by a pronounced increase in racism. Reports by the e-Safety Commissioner identified an over 10% rise in online abuse complaints from Aboriginal and Torres Strait Islander people.

These complaints included threats, harassment and vilification, with the e-Safety Commissioner warning this would intensify as the vote approached.[293]

The 2024 Reconciliation Barometer confirmed the scale of the problem: 54% of Aboriginal and Torres Strait Islander people reported experiencing racism in the previous 6 months, up from 39% in 2014, with young people disproportionately affected. Experiences ranged from verbal and physical abuse to being refused entry, denied services and targeted online.[294] Nearly 1 in 5 reports to the 'Call it Out' racism register over 2023–24 specifically linked the Referendum or Voice to the abuse. The register's online promotion even shut down due to the scale of harassment.[295]

This racism is not a side-effect of debate. The uncomfortable truth is that racism is deeply embedded in the Australian story and psyche.

Post-Referendum truths

The Referendum result revealed uncomfortable truths that Aboriginal and Torres Strait Islander people have long known: racism, in all its forms, is a powerful and hurtful phenomenon that continues to play a regular role in our lives. For all the pain and disappointment of this national moment, it also held up a mirror to the more painful truth that many other Australians were celebrating the outcome.

At the same time, evidence points to enduring public support for reconciliation and truth-telling. An Australian National University survey conducted immediately after the vote found that 8 in 10 Australians supported reconciliation, felt pride in First Peoples' cultures, endorsed truth-telling and agreed that Australia should formally acknowledge the reality of our shared history.[296] The 2024 Reconciliation Barometer similarly found strong national support for truth-telling.

Seventy-one per cent of non-Indigenous Australians and 81% of Aboriginal and Torres Strait Islander people were in favour of truth-telling, alongside growing youth participation in local processes.[297] A UNSW/Reconciliation Australia poll reinforced this picture, finding that 94% of non-Indigenous Australians were motivated to learn about the ongoing impacts of colonisation.[298]

Despite this support, the period since the Referendum has been marked by a vacuum of national leadership on Voice, Treaty and Truth alongside a measurable rise in racism. Some politicians and local governments have promoted anti-Welcome to Country agendas and questioned the value of Indigenous programs, while negative campaigning intensified in jurisdictions heading to elections. Some state governments have repealed truth and treaty mechanisms, and extremist groups have felt emboldened to bring violent behaviour into public spaces. This has created civil unrest, as seen dramatically in the 2025 attack on Camp Sovereignty in Melbourne. Racism in this context does not just cause harm. It restricts the ability of First Peoples to participate safely and equally in civic life free from discrimination; it silences voices and undermines the conditions required for genuine engagement and FPIC.

Our national journey

As we approach 250 years of colonisation, Australia – like many colonial states – is beginning to question the myths that have underpinned its democratic, progressive and egalitarian identity. This is a journey to acknowledge a tempered past, heal its wounds and build a future grounded in respect and unity. It is a journey that recognises the coexistence of 2 peoples: First Peoples, as communities 'differentiated from and different to other citizens of the state', and the newer, non-Indigenous population, which continues to exercise power over unceded territories without consent. We must walk this journey together, without demanding that either group discard identity, values or humanity.

Historical acceptance means all Australians recognise, understand and accept the wrongs of the past and their ongoing impacts. The Referendum period showed the need to educate the mainstream about 65,000+ years of custodianship, the circumstances surrounding the creation of the Australian state, the continuing impacts of colonisation and First Peoples' contributions to the nation. Truth-telling connects past to present, unmasking the agency and legacy of the post-colonial state and its ongoing complicity in suppressing knowledge.[299]

Truth-telling is not about blame or guilt; it is about acknowledgement and acceptance – admitting that what happened to First Peoples during colonisation was wrong. Even within the institutions that underwrote empire, there are signs of movement.

Dismantling justifications for the colonial project – the Crown and the Vatican

King Charles III has discussed the monarchy's role in the colonial process throughout what is now known as the Commonwealth of Nations. In the lead-up to his 2023 coronation, Indigenous leaders from around the world wrote to King Charles, asking the new monarch to 'acknowledge the horrific impacts on and legacy of genocide and colonisation of the Indigenous and enslaved peoples' and to commence a process towards a formal apology and reparatory justice.[300] Signatories outlined 5 'practical steps' to atone for the hurt and harm inflicted on Indigenous populations:

1. an apology
2. recognition of genocide
3. reparations for stolen wealth
4. repatriation of sacred artefacts and bodily remains still held in British museums
5. renunciation of the 'Doctrine of Discovery', a disputed feature of international law traced to decrees issued by the Vatican in the 1400s to European kings which authorised their possession of new lands.[301]

In April 2023, the Vatican issued a statement stating that this doctrine 'is not part of the teaching of the Catholic Church' and that papal bulls issued at that time 'did not adequately reflect the equal dignity and rights of Indigenous peoples'.[302]

At the Commonwealth Heads of Government Meeting in June 2022, Charles (who was at the time still the Prince of Wales) acknowledged that a discussion about the wrongs of the past was a 'conversation whose time has come'.[303]

Since becoming King, he has since met with Indigenous peoples and leaders in current and former British colonies across the world. He acknowledged the impacts of colonisation on their peoples and the importance of Indigenous cultural practices and knowledges to global sustainability.

King Charles has invited Indigenous leaders and knowledge holders to join him in efforts to address climate change and promote environmental and economic sustainable development.

In Kenya in November 2023, King Charles said:

> ***It is the intimacy of our shared history that has brought our people together. However, we must also acknowledge that the most painful times of our long and complex relationship, the wrongdoings of the past, are a cause of the greatest sorrow and the deepest regret.***
>
> ***There were abhorrent and unjustifiable acts of violence committed against Kenyans as they waged…a painful struggle for independence and sovereignty and for that there can be no excuse.***
>
> ***…it matters great to me that I should deepen my own understanding of these wrongs and that I meet some of those whose lives and communities were so grievously affected. None of this can change the past, but by addressing our history with honesty and openness, we can perhaps demonstrate the strength of our friendship today and in doing so we can I hope, continue to build an even closer bond for the years ahead.***[304]

Text box 3.9: Dismantling justifications for the colonial project – the Crown and the Vatican

State and territory truth-telling

In the absence of a national framework for truth-telling, several jurisdictions have taken independent steps, although progress has been uneven and vulnerable to reversal.

- **Victoria –** Established in 2021, co-designed and First-Peoples-led, the Yoorrook Justice Commission held the legal powers of a royal commission. Final reports were tabled in July 2025 containing 146 recommendations across treaty, redress and access to records, criminal justice and child protection, land, education, housing, health and economic and political life.[305] Yoorrook shows that when faced with hard truths, the sky does not fall; truth-telling can heal hurts and create a path to understanding and redress.
- **Tasmania –** Since 2021 Tasmania has mapped a pathway and opted to fund Truth and Healing Commissioners.[306]
- **ACT –** Plans for an Eminent Panel for Community Engagement and Healing were announced in 2023, with a focus on healing and truth-telling.[307]
- **NT –** Established in 2018, the NT's Treaty Commission recommended expanding its role to become a Truth and Treaty Commission and the NT Government awarded grants to support local truth-telling activities in 2024. In 2025 the new Northern Territory's Country Liberal Party government confirmed that it was discontinuing the Treaty Commission.[308]
- **WA –** The WA Government continues its 2020 commitment to a truth-telling project with Whadjuk Noongar Traditional Owners. This project aims to acknowledge the incarceration of more than 4,000 Aboriginal men and boys at Wadjemup/Rottnest Island (1838–1931) – the largest Aboriginal deaths in custody site in Australia, with over 400 deaths.[309] The project centres truth, ceremony and commemoration, including memorialisation at the Quod and the burial ground. Although not a statewide process, this is a practical, place-based truth-telling effort.
- **Queensland –** The repeal of the *Path to Treaty Act 2023* also abolished the Truth-telling and Healing Inquiry, demonstrating how fragile formal/legislated truth processes are without durable safeguards.
- **NSW –** The NSW government has not yet adopted a state-wide truth-telling framework. In September 2024, the NSW Treaty Commissioners were appointed and commenced work consulting across the state. Separately, the NSW Department of Education had already taken steps to establish its own truth-telling approach, including community consultations in the first half of 2024.[310] This process began as part of the Department's second Reconciliation Action Plan, which included a commitment to truth-telling.[311]
- **SA –** The state's Voice to Parliament has stated its ambitions for a truth-telling process. Deputy Premier Kyam Maher has also expressed support for a truth-telling initiative. However, there are currently no active measures or plans in place to implement a formal truth-telling process.[312]

In 2024, the Australian Greens, through First Nations Senator Dorinda Cox, introduced a National Truth and Justice Commission Bill into the Commonwealth Parliament. This Bill was referred to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSIA). The inquiry received 242 submissions but lapsed with the dissolution of the House of Representatives on 28 March 2025.

The Australian Government has an opportunity to re-introduce this Bill as a Government Bill to support a national framework for truth and treaty.

Non-government truth-telling

Truth-telling is also moving outside government:

- **University of Newcastle Massacre Map –** The late Professor Lyndall Ryan's interactive map has documented 438 massacre sites (as at February 2025), making hidden histories visible.[313]
- **Commemorations of the Myall Creek and Appin Massacres (NSW) –** Annual ceremonies bring together descendants of victims and perpetrators, embodying shared truth and mourning.
- **Towards Truth (Justice Equity Centre and UNSW Indigenous Law Centre)** This is a free, public resource which maps laws and policies impacting First Peoples since 1788.

Aboriginal and Torres Strait Islander truth-telling has a particular place in Australian legal history. The Myall Creek Massacre of a group of Wirrayaraay people of the Gamilaraay Nation in May 1838 led to the first non-Indigenous people charged in Australia for the murder of First Peoples. An initial Supreme Court trial of 11 accused Myall Creek perpetrators found them not guilty.[314] Ultimately, they were found guilty at appeal.

Figure 3.2: Friends of Myall Creek. Credit: Catholic Schools NSW

Towards Truth – Justice Equity Centre

The Justice Equity Centre and the Indigenous Law Centre at UNSW launched Towards Truth in 2023 in direct response to the Truth pillar of the Uluru Statement from the Heart.

The aim is, for the first time, to map governmental laws and policies that have impacted on the lives of Aboriginal and Torres Strait Islander people since colonisation. This initial focus is on NSW, with research addressing:

- laws and policies that have impacted First Peoples since 1788
- parliamentary debates that show what the Parliament intended when it passed those laws
- articles and reports that discuss and analyse how these laws and policies operated in practice
- case studies that show the laws and policies' practical effects.[315]

As a free and accessible resource, the Towards Truth website has catalogued thousands of records, laws and policies that enable communities and individuals to engage in grassroots truth-telling. Towards Truth can also serve as a tool for educators and policy and law makers to understand the truth of laws and policies in Australia and their impact on First Nations people. While currently focusing on NSW, the project is looking to expand to other jurisdictions.

Text box 3.10: Towards Truth – Justice Equity Centre

The role of non-Indigenous Australians

Truth-telling is not just an Indigenous project. It is a process of healing for the Australian nation. Non-Indigenous people have been providing important input into this process – some through formal processes like the Yoorrook Commission, others through individual stories and accounts of engagement with First Peoples as part of the colonial process.

David Marr's *Killing for Country* is one example: a book confronting a family history intertwined with the Native Police and written as an act of atonement, not blame. We have all inherited this history; the responsibility is shared. This is not about guilt – it is about accepting what is ours to own and choosing honesty over avoidance.

***Killing for Country* –David Marr: A non-Indigenous contribution to truth-telling in Australia**

Prompted by a request from a relative a few years ago, author and journalist David Marr went looking into his family tree. He discovered that several of his relatives were some of the worst killers and leaders in the notoriously brutal Queensland Native Police. This was a violent unit which patrolled the colonial frontier, conducting raids and punitive attacks on Aboriginal people.

Marr has spoken widely about what the process of reckoning with this history was like for him and says in the book that he wrote it as an act of atonement.

It is a powerful example of the work that can be done by non-Indigenous Australians to own their part in this history – good or bad – and without feeling as though they are to blame for the sins of their ancestors.

Speaking to Richard Fidler on ABC's Conversations, Marr said:

I'm not a hero for doing this, I'm a journalist who came across a story. It involves my family and I decided that the only way to deal with it was to dig as deeply as I possibly could to understand how all of this happened.[316]

Text box 3.11: Killing for Country – David Marr: A non-Indigenous contribution to Truth-telling in Australia

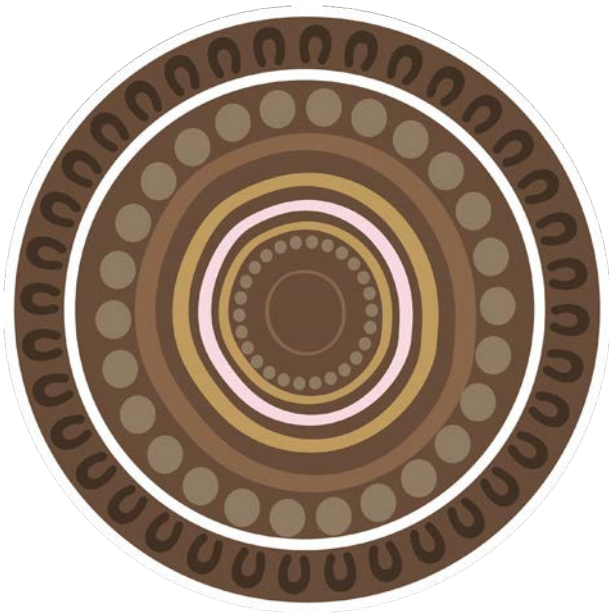
It is crucial that non-Indigenous Australians learn about the true history of this country through the experiences of First Peoples. Non-Indigenous Australians should also acknowledge Aboriginal and Torres Strait Islander people as credible witnesses to our own histories and centre our voices and experiences. Amy McQuire explains this concept in the context of the justice system in her book *Black Witness*.

A national approach

As outlined earlier, when Labor won the 2022 election, Prime Minister Albanese committed to the full implementation of the Uluru Statement from the Heart. This included the establishment of a Makarrata Commission to support truth-telling and agreement-making.

Initial signals from federal leadership – including interest in steps toward a national process following Victoria's Yoorrook Justice Commission – were encouraging. But commitments have since slipped.

Despite promises to enact the Uluru Statement in full and budget funding for a Makarrata Commission, the Australian Government has not delivered. Meanwhile, as outlined above, some states have pressed ahead, others have stalled and some have rolled back their truth and treaty processes.



Black Witness **by Amy McQuire**[317]

Amy McQuire's book *Black Witness* (2024) explains how Aboriginal and Torres Strait Islander people are often ignored or silenced when they speak out about injustice – especially when someone dies in custody. The book shows how Aboriginal and Torres Strait Islander families are forced to do the work of collecting evidence, telling the story and fighting for justice. Meanwhile, authorities rarely hold police and governments accountable. McQuire explains that Aboriginal and Torres Strait people are not seen as 'credible witnesses' in their own stories, even when they know the truth. This reflects what we heard from many communities as part of ITA consultations: the justice system often leaves out or dismisses Aboriginal and Torres Strait Islander voices.

McQuire introduces the idea of 'Black witnessing': the right of Aboriginal and Torres Strait Islander people to speak for themselves and be believed. She shares powerful stories of families who have never stopped fighting for answers. This connects strongly with what Aboriginal and Torres Strait Islander people told us through ITA: that truth-telling must come from their own voices and experiences. People want a justice system that listens to them, respects their knowledge and takes action when things go wrong – not just more empty inquiries or broken promises.

Black Witness reminds us that real justice starts with listening to Aboriginal and Torres Strait Islander people. McQuire's message is clear: Aboriginal and Torres Strait Islander voices must be at the centre of any change.

Text box 3.12: Black Witness by Amy McQuire

A national truth-telling process must be:

- legislated and independent, with clear authority and scope
- First Peoples-led, trauma-informed and culturally safe, with appropriate supports for participants
- coupled to justice – creating pathways to reform and redress, not only gathering testimony
- linked to public education, so truths heard locally become part of our national story and all Australians learn and understand them
- underpinned by data sovereignty, with respectful access to records
- supported by therapeutic and culturally grounded dispute resolution focused on healing.

During the Referendum there was no dedicated funding to support First Peoples to heal from the violence directed at us and the harm inflicted between us. The racism we endured and the deep intergenerational wounds it reopened remain unaddressed. Truth-telling alone cannot ease this burden. Parallel investment in healing and repair is essential if a national process is to succeed.

The Referendum defeated a proposal to enshrine a Voice, but it did not diminish our human rights. Nor did the Referendum end the need for genuine representation, truth-telling and agreement-making. If we do not try to understand the injustices our people have endured, things will not change and we cannot move forward as a nation.

There is a critical need for a national representative mechanism (consistent with Victoria's approach to a statewide treaty body) that can carry forward the Uluru Statement's 3 pillars and meet the outstanding need for independent accountability called for in CTG. While some states and territories continue truth and treaty work, without national leadership, the mistruths weaponised during the Referendum campaign will persist.

The 3 pillars of the Uluru Statement – Voice, Treaty and Truth – rise or fall together.

Without Truth, racism will keep silencing our people and blocking participation. Without Treaty, the relationship and agreements remain fragmented and fragile. Without a Voice, there is no national mechanism to hold governments to account. These are not optional extras – they are the unfinished business of this nation and the path to justice, safety and equality for First Peoples and a stronger democracy for all Australians.

Recommendation 4

The Australian Government should fund public awareness and educational activities to run in parallel to the Makarrata Commission's national truth-telling process. These activities should build understanding of First Peoples' human rights and the ongoing consequences of colonisation in Australia.

Economic participation as a mechanism for self-determination

Government policy and programming on First Peoples' economic opportunities have grown rapidly in recent years. Our economic participation is now widely accepted as a vehicle for our self-determination.

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic and social and cultural development.[318]

Truth and treaty processes provide a strong foundation for justice. Economic participation is a critical aspect of how First Peoples live self-determination day-to-day – in schools fit to educate our children, in workplaces free from racism, in businesses we own and with capital we control. Without strong foundations in education, employment and enterprise, our people remain trapped in cycles of disadvantage rather than building intergenerational wealth.

Education

Education is an economic right recognised under international law. Every child has a right to education.[319] This right intersects with other human rights such as cultural rights which, if fulfilled, should ensure the suitability of education for all learners.

On the one hand, education can be a pathway to social mobility and can offer great economic returns and education can be the key to alleviating social disadvantage. In this way education can be empowering. However, education that does not allow for learning in our own language and that is not inclusive of your social, cultural or economic values is not empowering, it is disempowering.[320]

Over the past 50 years, more of our children have completed Year 12, entered university, gained trade qualifications and gone on to careers in medicine, law, government and the courts. Between 2001 and 2021, the proportion of our people completing Year 12 doubled, and those holding post-school qualifications more than doubled.

Most recent available data (2021) show consistent increases across a range of indicators for the 20-year period 2001-2021:

- The proportion of Aboriginal and Torres Strait Islander children aged 3–5 years attending preschool has increased – from 31.4% in 2001 to 48.9% in 2021.
- More than half – 61.4% – of Aboriginal and Torres Strait Islander children aged 4–14 years attended primary school (covering Kindergarten through to Year 6). This is a slight increase from 60.2% in 2001.
- More than half – 60.3% – of Aboriginal and Torres Strait Islander children and young people aged 11–18 years attended secondary school. This is up from 45.4% in 2001.

- Of those Aboriginal and Torres Strait Islander people aged 20 years and over in 2021:
  - 39% completed Year 12. This is an increase from 19.4% in 2001.
  - 17% completed up to Year 9 or below. This is a decrease from 35% in 2001.
  - More women completed Year 12 than men (41.1% compared with 36.4%).
  - The ACT had the highest proportion of First People who completed Year 12 (60.2%), followed by Queensland (45%) and Victoria (44.4%).
  - Nearly half (46%) completed a non-school qualification (from a university, tertiary institution, vocational education or other higher education provider). This was an increase from 19.7% in 2001.
    - the number of people who completed a Certificate III and/or IV increased from 9.4% in 2001 to 24% in 2021
    - the number of people who completed an advanced diploma and diploma increased from 3.4% in 2001 to 8% in 2021
    - the number of people with postgraduate degrees increased from 0.4% in 2001 to 1.5% in 2021.[321]

It is encouraging that of the 6 socio-economic targets under CTG which are focused on education and development, Target 3 is 'showing good improvement and is on track to be met'.[322] That target aims to ensure that Aboriginal and Torres Strait Islander children are engaged in early childhood education. However, while performance against other relevant education targets show signs of improvement, they are not on track to be met. These targets include that students are able to achieve their full learning potential and have access to further education pathways.

Exclusionary practices make matters worse. Aboriginal and Torres Strait Islander children are disproportionately suspended or expelled, often for behaviours linked to trauma or disability. Expulsions have knock-on effects into child protection and youth justice systems.

School suspensions and expulsions – Use of exclusionary practices in Australian government schools[323]

The School Exclusion Study, conducted by the University of South Australia, examined exclusionary practices in 4 jurisdictions: Queensland, SA, Victoria and WA.

States and territories have responsibility for delivering education. All jurisdictions are required to record instances where schools apply exclusionary practices.

In terms of data collection and comparative capability, at the time of the study in 2020 (and relying on data from 2019), only Queensland and Victoria were recording data by 'Indigenous status'. Data captured in Queensland reported the number of fixed-term suspensions/exclusions by Indigenous status, and both Queensland and Victoria recorded the number of permanent exclusions by Indigenous status.

The study found that while data is piecemeal, it indicates that 'exclusionary practices are being disproportionately applied to groups, including males, Indigenous students and students with disability'.[324]

Aboriginal and Torres Strait Islander students in Queensland were 'greatly over-represented' across 4 categories of exclusionary measures: short suspension, long suspension, exclusion and cancellation. Despite making up just over 10% of all Queensland's full-time state school enrolments, Aboriginal and Torres Strait Islander students received more than a quarter of all fixed-term and permanent exclusions in 2019.[325]

While Victoria does not report on fixed-term exclusions, it does report on expulsion. Although Aboriginal and Torres Strait Islander students are only 2.3% of Victorian school enrolments, they constitute 6.5% of all expulsions.[326]

Text box 3.13: School suspensions and expulsions – Use of exclusionary practices in Australian government schools

There is also a clear correlation between Aboriginal and Torres Strait Islander children and young people who are captured within the out-of-home-care (OOHC) child safety system and school suspension or expulsion.[327] This raises concerns for Aboriginal and Torres Strait Islander communities because exclusion and expulsion of our children from mainstream public schools often results in increased exposure to the youth justice system.

There has been growing debate about the role of schools in building thriving communities. Many advocates see schools as community hubs offering integrated support.[328] This vision relies on personalised learning tailored to each child's needs – whether related to disability, location, culture, language or socio-economic background.[329]

By contrast, mainstream public education too often enforces conformity through one-size-fits-all approaches. When children do not fit the mould or need additional supports, the schools do not meet their needs and exclusion becomes the default.

Our communities have been clear about this: First Peoples children require education that is Indigenous-designed, culturally safe, trauma-informed and grounded in personalised learning that meets their needs. This is critical to break the cycle of exclusion and to support thriving futures.[330]

Participation at school is not only about academic achievement; it is the foundation for broader civic participation. When Aboriginal and Torres Strait Islander children are included, respected and supported in their learning, they are more likely to grow into adults who can exercise their voices confidently in public life.

Conversely, exclusion from school sets in motion a pattern of marginalisation.

This undermines our communities' abilities to participate fully in civic and political life.

For this reason, ensuring Indigenous-designed, culturally safe, trauma-informed and personalised education is not just a matter of equity in schooling. Without early experiences of genuine participation, the realisation of FPIC remains under threat.

Recommendation 5

All Australian governments should ensure Aboriginal and Torres Strait Islander children and young people can fully participate in education by embedding Indigenous designed, culturally safe, and personalised learning models into schooling systems. This includes resourcing Aboriginal and Torres Strait Islander community-controlled education organisations and Indigenous-led schools, and ending disproportionate use of exclusionary practices such as suspension and expulsion.

Employment

Our people have always worked, contributed and sustained the Australian economy. Yet, our unemployment rates remain stubbornly higher than those of the general population and Target 7 of CTG – increasing youth engagement in work, education or training – is not on track.

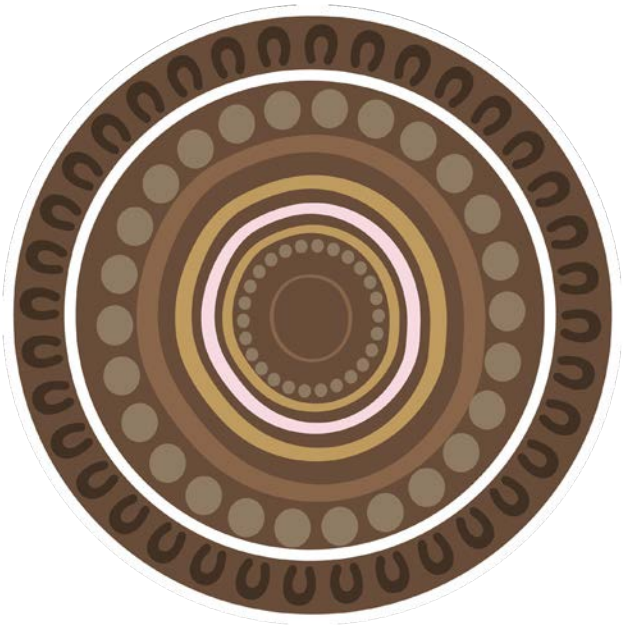
For those in the 'working age' group (15–64 years) in 2022-23:

- the employment rate for Aboriginal and Torres Strait Islander people was 57%, an increase from 2016 data
- the unemployment rate for Aboriginal and Torres Strait Islander people was 9.5%
- Aboriginal and Torres Strait Islander men and women shared the same employment rate at 57%
- the proportion of Aboriginal and Torres Strait Islander men unemployed was 13%, compared to 6.3% for women.[331]

Participation in employment declines with remoteness: the employment rates were 58% in cities compared to 30% in very remote areas.[332] Health, education, public administration and construction are our largest industries. Indigenous-owned businesses employ First Peoples workers at higher rates than non-Indigenous firms.[333]

Government programs have swung from Community Development Employment Projects (CDEP), to the Community Development Program (CDP), to the new Remote Jobs and Economic Development Program. Some changes are positive, such as higher payments and a focus on housing. However, past failures remind us that punitive approaches and one-size-fits-all models further entrench poverty, rather than creating opportunity for development.

The newly launched Centre for Indigenous People and Work (CIPW), alongside the Gari Yala survey, shows the reality of our workforce participation and workplace experiences: racism, exclusion, excessive colonial and cultural loads and barriers to progression. This evidence must drive reform so that workplaces become places where our people can flourish.



Centre for Indigenous People and Work and the Gari Yala Survey[334]

> ***Through this Centre we have the opportunity to influence the goodwill and decency of all Australians to create workplaces where our people can flourish.[335]***

The first of its kind in the world, the mission of the CIPW is to uncover the real employment perspectives and experiences of First Peoples. The CIPW aims to promote a positive paradigm shift that focuses on policy collaboration and economic self-determination for Aboriginal and Torres Strait Islander people.

Grounded in self-determination and a focus on reclaiming the Indigenous employment narrative, the CIPW is Indigenous-led and supported by an external Indigenous Advisory Committee.

The Gari Yala Indigenous-led survey on First Peoples experiences at work will inform the work of the CIPW. This groundbreaking study has been instrumental in uncovering and speaking the truth in relation to the diverse and often exclusionary experiences that Aboriginal and Torres Strait Islander people face in the workplace. Gari Yala has set a national benchmark for highlighting the reality behind the statistics.

Gari Yala revealed that a significant proportion of First Peoples employees experience workplace racism and exclusion, as well as excessive cultural load and additional workplace demands.

The CIPW is a joint initiative of the Jumbunna Institute for Indigenous Education and Research and the Business School at the University of Technology Sydney.

Text box 3.14: Centre for Indigenous People and Work and the Gari Yala Survey

Employment is one of our most visible expressions of participation. To participate fully in society means not only having a voice in decision-making, but also having equitable access to decent work, safe workplaces and opportunities for progression. Exclusion, racism, or structural barriers prevent our people from flourishing at work, further disabling our participation and curtailing self-determination. Conversely, when employment is Indigenous-led, culturally safe and supportive of our strengths, work becomes a site to enable participation and to recognise and value our peoples' contributions.

Understanding the role of employment in participation also requires reckoning with its history and acknowledging the extensive periods of time over which legislative arrangements facilitated the indentured labour of First Peoples.

Stolen wages

Despite our people's significant economic contributions, the wage entitlements of countless First Peoples from roughly the 1880s to the 1960s were either not paid, paid in the form of rations, underpaid or put into inaccessible trust funds. State-based Aboriginal Protection Acts governed the regulation of First Peoples' employment and wages until the 1970s. This historical employment landscape underpinned the indentured labour of First Peoples, which continues to influence ongoing pay gaps for First Peoples.[336]

The stolen wages, as they are known, symbolise the systemic exploitation of our peoples' labour and the reinforcement of poverty and wealth disparities that we continue to experience. The stolen wages are also a salient example of systemic failures to address injustices done to our people.

The period of the stolen wages did not just include the withholding and under- or non-payment of wages. It also included the exploitation of children, government misuse of monies held in the trust funds and the non-payment and misapplication of social security benefits. The benefits our people did not receive included aged pensions, sickness benefits, unemployment benefits, child endowment, maternity allowance, widows' pension and war and service pensions.[337]

Advocacy has led to state and territory government reparation schemes in:

- Queensland (2002–2009)
- NSW (2005–2011)
- WA (March–November 2012).

The histories undertaken to support these processes were in themselves truth-telling exercises underpinned by Aboriginal and Torres Strait Islander people documenting their own experiences.

To date, none of the schemes have addressed the UN Basic Principles that includes the right of victims of international human rights abuses to adequate reparation.[338] This continuing systemic failure is now resulting in the shift to strategic litigation, which has come to fruition in 2 jurisdictions so far:

- The initial $21 million Queensland scheme received wide criticism. Ultimately, a $190 million class action in 2019 superseded the scheme. The Queensland settlement represents a small proportion of the estimated $500 million owed to First Peoples in that state alone.[339]
- A class action in the NT was settled in 2024. The Australian Government agreed to pay up to $180 million, to be distributed to eligible claimants.[340]

There is hope in Victoria that under the new Treaty legislation, a stolen wages reparation scheme, flagged by the Yoorrook Justice Commission, will be part of the new representative body's work.

Text box 3.15: Stolen wages: Slavery not employment

Recommendation 6

State and territory governments which do not have reparation schemes for historic practices of stolen wages in place should take urgent action to establish them.

Economic participation

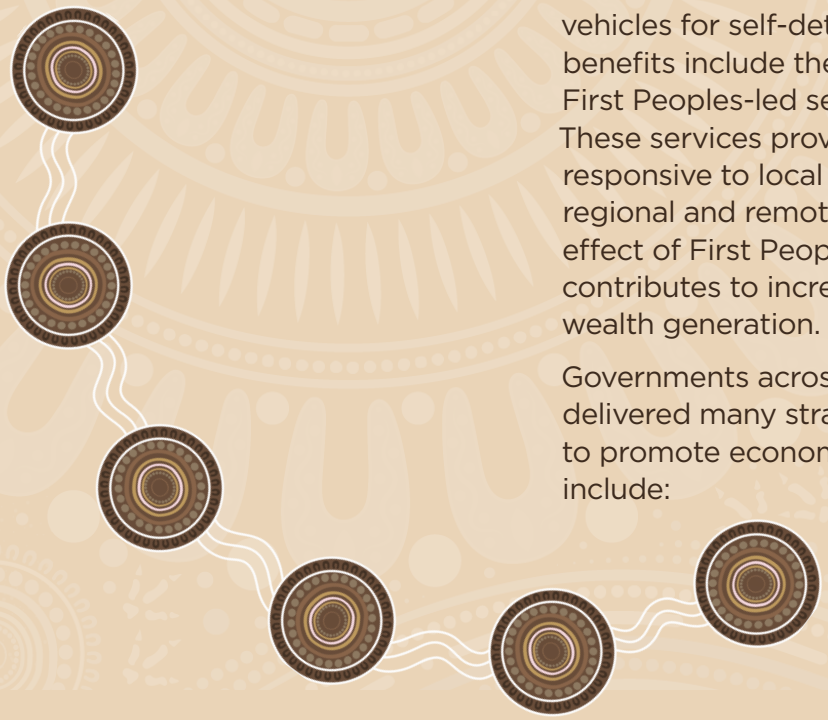
Aboriginal and Torres Strait Islander communities have been engaging in domestic and international trade and commerce for thousands of years. Colonisation and the impacts of dispossession and intergenerational cycles of poverty and trauma devastated those systems and, in turn, devastated our economic well-being. Imposed arrangements control and regulate our Country, our resources and our ability to conduct trade and engage in the economy. The imposed conditions also limit and determine who has access to resources, how and when.

Social and economic participation is critical to achieving economic justice, security and parity for Aboriginal and Torres Strait Islander people. Social and economic participation are also vital to achieve better health, education and employment outcomes. Prime Minister Albanese reinforced this at his address to the 2024 Garma Festival:

> ***... building true and lasting self-determination, requires economic security. Security that exists outside of government decisions – and endures beyond them ...The principle that Aboriginal and Torres Strait Islander peoples deserve a real say in the economic development of the land you call home. And you deserve your fair share of the benefits that flow from it. You are more than curators or custodians, you are the Traditional Owners, who have cared for land and waters for 60,000 years and more. And we want you to have ownership of your future – built on a foundation of economic empowerment.***[341]

The benefits of Aboriginal and Torres Strait Islander businesses to the nation go beyond economic outcomes. Their social, cultural and environmental contributions to the nation must be understood and valued as vehicles for self-determination. National benefits include the delivery of appropriate, First Peoples-led services to communities. These services provide infrastructure responsive to local needs, particularly in regional and remote areas. The onflow effect of First Peoples' employment contributes to increased income levels and wealth generation.

Governments across all jurisdictions have delivered many strategies and programs to promote economic participation. These include:



- the establishment of the Indigenous Land and Sea Corporation (ILSC) and Indigenous Business Australia (IBA)
- promotion of Indigenous businesses through the Indigenous Business Sector Strategy[342]
- Indigenous procurement policies at the federal and state and territory levels
- the recent announcement of the establishment of the First Nations Economic Partnership. This is an historic agreement between the Australian Government, the Coalition of Peaks and the First Nations Economic Empowerment Alliance.

Aboriginal and Torres Strait Islander businesses

A robust and sustainable Indigenous economy is essential for self-determination, independent communities and closing the gap. More Indigenous people than ever are seeking to achieve economic independence by contributing to the economy through the establishment of Indigenous businesses.[343]

There are more than 2 million businesses in Australia. Australian Bureau of Statistics (ABS) data show that in 2021: 17,907 Aboriginal and Torres Strait Islander people managed their own business, with the majority in NSW (7,153) and Queensland (5,057).[344]

First Peoples businesses make a substantial contribution to the Australian economy. They generate approximately $16 billion per year in revenue,[345] employ more than 116,000 Australians – including First Peoples – and contribute $4.2 billion in annual wages.[346]

In addition to mainstream industries, opportunities for economic development are also possible through native title, land rights and cultural heritage systems, fee for service/service delivery and treaty arrangements. However, more work is required to unlock this potential and to ensure that the legislative and regulatory mechanisms support outcomes.

The Indigenous Procurement Policy

Recognising the potential of the Aboriginal and Torres Strait Islander business sector to closing the disadvantage gap, in 2015 the Australian Government introduced the Indigenous Procurement Policy (IPP). The aim of the IPP is to stimulate First Peoples business and provide Aboriginal and Torres Strait Islander people with more opportunities to participate in the economy.[347] This is achieved by maximising opportunities within government contracts to increase training, employment and business opportunities. The IPP places obligations on suppliers and increases the number of First Peoples businesses awarded government contracts.

The IPP has a mandatory minimum target of 3% of contracts to be awarded to Indigenous businesses. This target increases annually to 4% by 2029–2030.[348] All non-corporate government agencies are required to comply with it and report against the targets.

The 2021 Parliamentary Inquiry on Indigenous Participation in Employment and Business found that the policy was worth more than $5 billion in contract value. Some federal government departments delivered well above the identified target in contracts issued and value delivered.[349]

However, an audit on Indigenous procurement and employment targets under the IPP has found that, as at June 2024, 28% of contracts were not compliant with minimum mandatory requirements (MMR). Furthermore, due diligence had not been undertaken to ensure reporting was accurate and complete. The audit report has further found that:

- while outcomes under the IPP are 'trending upwards, between July 2016 and September 2024, 1,475 contracts valued at $69.3b were "exempted" by entities...often for reasons that are unclear'[350]
- the lack of performance information and evaluation data limits the capacity for the IPP to be assessed. Public reporting on the IPP by the National Indigenous Australians Agency (NIAA) is compromised as a result.[351]

The audit provided 8 recommendations. One was for NIAA to improve guidelines and processes for Australian government entities and contractors to meet the MMR under the IPP and to support compliance. The audit also recommended that:

... all audited entities meet their responsibility under the [IPP] to establish or strengthen processes to ensure contract managers undertake appropriate activities to ensure contractors' compliance with [MMR] targets and verify that reported MMR performance information is accurate.'[352]

The identified agencies have all agreed to this recommendation.

The Federal Government is also now working with the First Nations Economic Partnership under the CTG and the First Nations Economic Empowerment Alliance to develop a comprehensive macro-economic policy for Indigenous peoples.[353] As Professor Peter Yu, Chair of the First Nations Economic Employment Alliance, stated when launching their 2024 *Inquiry into economic self-determination and opportunity for First Nations Australians:*

We cannot, as an implication of the Referendum outcome, let the economic wellbeing of Indigenous communities fall by the wayside. The work to co-design national economic empowerment policies for First Peoples must start now.[354]

Challenges and opportunities for First Peoples businesses

Significant challenges for First Peoples businesses have been identified by Indigenous consultancy group, First Nations Capital. These include low rates of intergenerational wealth transfer, systemic bias in the investment industry (limiting investment opportunities) and unconscious bias or racism (creating barriers to access capital). There is also a trust deficit based on assumptions that exclude First Peoples from the credentials required to build their businesses. These assumptions limit First Peoples' ability to attract finance, build a customer base and establish reliable supplier links.[355]

Black cladding

One issue identified by a 2024 Joint Standing Committee inquiry into Aboriginal and Torres Strait Islander economic self-determination was that non-Indigenous businesses can take unfair advantage of dedicated First Peoples programs and policies such as the IPP. This practice is called 'black cladding'. Many of the submissions to the inquiry raised black cladding as a significant concern.

The inquiry report recommends the Australian Government consider the definition of an Indigenous business in its review of the IPP. The inquiry report also recommended that the government investigate the practice of black cladding, introduce policies to combat it and bring in more stringent monitoring and penalties for breaching First Peoples programs like the IPP.[356]

Building the enabling environment

The Australian National University First Nations Portfolio undertook 2 years of an extensive, deliberative series of seminars on the economic empowerment of First Peoples. It culminated in the *Murru waaruu Outcomes Report*, which called for a paradigm shift in First Peoples economic policy 'away from social policies directed at welfare and simple mainstream industry participation, to a strategic commitment to policy underpinning sustainable First Nations wealth creation'.[357] The policy reform ideas generated by the seminar series provide us with an informed way forward to genuine engagement. They provide opportunities to co-design a national economic self-determination policy framework. The ideas include:

- a legislative framework for optimal reform underpinned by UNDRIP to inform and guide policy designed to empower First Peoples
- land rights reform to support First Peoples to unlock economic opportunities without compromising underlying recognition of other rights, interests and already provided protections, including communal title regimes
- freshwater reform to increase First Peoples' access to water allocations licensed for economic purposes. This is a vital component to activate the opportunities associated with land rights and interests
- sea country reform that supports increased First Peoples' participation in the Blue Economy (sustainable use of ocean resources for economic growth)
- cultural and intellectual property rights reform to protect the significant economic value of First Peoples' cultures and knowledges
- reform to rights in financial assets to enable access to equity in beneficial interests in trusts, statutory and other structures held by First Peoples
- a framework for treaties and other constructive agreements to underpin or enable the negotiation of enabling structures and other measures that realise First Peoples' goals and aspirations for economic self-determination.[358]

Political participation alone will not deliver self-determination. Without economic power, rights remain fragile. True self-determination requires both: political voice to shape decisions, and economic strength to sustain them. When we control capital, institutions and work, we move from managing disadvantage to building intergenerational wealth – for our peoples and for the nation.

Endnotes

198 P Turner and M Sweet, 'Pat Turner, on "The most important vote of our collective lives"', *Croakey Health Media*, 11 August 2023 <https://www.croakey.org/pat-turner-on-the-most-important-vote-of-our-collective-lifetimes/>.

199 Australian Government, 'Economic Empowerment Announcements at Garma 2025', Indigenous.gov.au, 11 August 2025 <https://www.indigenous.gov.au/news/economic-empowerment-announcements-garma-2025>.

200 Global Alliance of National Human Rights Institutions (GANHRI), *The Paris Principles*, 1993, <https://ganhri.org/paris-principles/>.

201 New South Wales Aboriginal Land Council, *The NSW Aboriginal Land Council Social Impact Report 2022-2023*, <https://alc.org.au/wp-content/uploads/2024/11/NSWALC_SocialImpactReport_2024.pdf>; National Indigenous Australians Agency (NIAA), *Aboriginals Benefit Account (ABA) Grant Funding*, <https://www.niaa.gov.au/our-work/grants-and-funding/aboriginals-benefit-account-aba-grant-funding>; Aboriginal Investment, *Future Fund, 2024*, <https://www.aboriginalinvestment.org.au/future-fund>; Indigenous Land and Sea Corporation (ILSC), Australian Government, *Annual Report 2024-25*, <https://www.ilsc.gov.au/wp-content/uploads/2025/10/2024-25-ILSC-Annual-Report.pdf>; Department of Finance, Aboriginal and Torres Strait Islander Land and Sea Future Fund, Australian Government, 2025, Web Page, <https://www.finance.gov.au/government/australian-government-investment-funds/aboriginal-and-torres-strait-islander-land-and-sea-future-fund>; Future Fund, About Us Web Page <https://www.futurefund.gov.au/about-us/our-funds#collapse_a68af3da-15de-4a53-bba2-dd6dd3545da3>.

202 United Nations, *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI) (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007), [Arts 18–19]<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

203 United Nations Office of the High Commissioner for Human Rights, *Guidelines for States on the effective implementation of the right to participate in public affairs* (2018): 4 <https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf>.

204 United Nations, *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI) (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007), [Arts 18–19] <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

205 United Nations Office of the High Commissioner for Human Rights, *Summary* of Guidelines for States on the effective implementation of the Right to Participate in Public Affairs* (2018) <https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/Summary_Guidelines_on_Participation_EN.pdf>.

206 United Nations General Assembly, *World Social Situation: Popular participation in its various forms as an important factor in development and in the realization of human rights: Report of the Secretary-General*, UN Doc. A/38/338/Add. 1 (14 September 1983), [50] <https://documents.un.org/doc/undoc/gen/n83/232/52/pdf/n8323252.pdf>.

207 N McMurry, *Deepening Democracy: Participation under International Human Rights Law* (PhD Thesis), National University of Ireland, Galway, 2017: 28 <https://doi.org/10.13025/16624>.

208 United Nations Committee on the Rights of Persons with Disabilities, *General comment No. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention,* UN doc CRPD/C/GC/7 (9 November 2018) [28] <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiy1_i854GQAxUqd2wGHRhlNRQQFnoECBsQAQ&url=https%3A%2F%2Fdigitallibrary.un.org%2Frecord%2F3899396%2Ffiles%2FCRPD_C_GC_7-EN.pdf&usg=AOvVaw1elZQEBvHE2RKM-gSL3rZd&opi=89978449>.

209 World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), *The Precautionary Principle*, COMEST, 2005. <https://unesdoc.unesco.org/ark:/48223/pf0000139578>.

210 United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), (16 December 1966), [Arts 25] <https://www.ohchr.org/en/instruments-mechanisms/instruments/>

international-covenant-economic-social-and-cultural-rights>.

211 United Nations, *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI) (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007), [Arts 19 & 32] <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

212 Australian Human Rights Commission (AHRC), *Free and Equal: Position Paper: A Human Rights Act for Australia*, AHRC, 2023: 162. <https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf>.

213 AHRC, *Free and Equal: Position Paper: A Human Rights Act for Australia*: 162.

214 AHRC, submission to the Senate Inquiry into the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, 22 October 2019. <https://humanrights.gov.au/our-work/legal/submission/senate-inquiry-social-security-administration-amendment-income-management>.

215 United Nations Economic and Social Council, *Establishment of a Permanent Forum on Indigenous Issues*, GA Res 2000/22, UN Doc E/2000/22 (28 July 2000) <https://www.un.org/esa/socdev/unpfii/documents/about-us/E-RES-2000-22.pdf>; United Nations, Report of the Human Rights Council, 57th-59th sess, UN Doc A/79/53/Add.1 (9 September–11 October 2024) <https://docs.un.org/en/A/79/53/Add.1>; United Nations Office of the High Commissioner for Human Rights, *Stocktaking report compiling existing procedures on the participation of Indigenous Peoples at the United Nations, highlighting existing gaps and good practices*, 57th sess, Agenda items 2 and 3, UN Doc A/HRC/57/35 (31 July 2024): 4, 8-9 <https://digitallibrary.un.org/record/4060039?v=pdf&ln=en>.

216 Australian Government Department of Foreign Affairs and Trade, *First Nations International Fellowships and Partnerships Grants Programs – round opening*, Australian Government Department of Foreign Affairs and Trade website, 8 October 2024 <https://www.dfat.gov.au/news/news/first-nations-international-fellowships-and-partnerships-grants-program-round-opening#:~:text=The%20First%20Nations%20International%20Fellowships%20and%20Partnerships%20Grants%20Program%20comprises,Nations%20Australians%20to%20build%20sustainable>.

217 F Allison, C Cunneen, L Coombes and A Selcuk, *'If you don't think racism exists come take a walk with us': The Call It Out Racism Register 2023-2024*, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, 2025 <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>; K Jenkins and K Wong, 'First Nations people face racism surge after Voice vote', *The New Daily*, 16 May 2024 <https://www.thenewdaily.com.au/news/indigenous-news/2024/05/16/first-nations-racism-surge>.

218 The Hon P Keating, *Australian Launch of the International Year for the World's Indigenous People,* Speech, Redfern, 10 December 1992 <https://pmtranscripts.pmc.gov.au/sites/default/files/original/00008765.pdf>.

219 Department of the Prime Minister and Cabinet, 'Australia's Federal Relations Architecture', Department of the Prime Minister and Cabinet, 2023 <https://federation.gov.au/sites/default/files/2023-06/federal-relations-architecture_0.pdf>.

220 Department of the Prime Minister and Cabinet, 'Australia's Federal Relations Architecture'.

221 National Indigenous Australians Agency (NIAA), *Closing the Gap,* NIAA website, n.d. <https://www.niaa.gov.au/our-work/closing-gap>; Joint Council on Closing the Gap, 'Joint Council on Closing the Gap Terms of Reference', Joint Council on Closing the Gap, n.d. <https://www.closingthegap.gov.au/sites/default/files/2021-04/ctg-joint-council-terms-of-reference-16-april-2021.pdf>; Coalition of Peaks (CP), *First Nations Economic Partnership*, CP website, August 2025 <https://www.coalitionofpeaks.org.au/economic-development-partnership>.

222 Prime Minister of Australia, *Press Conference -Canberra Media: Transcript*, 12 May 2025 <https://www.pm.gov.au/media/press-conference-canberra-12may25>.

223 Ombudsman NSW, *Our Structure and Executive*, Ombudsman NSW website, 2025 <https://www.ombo.nsw.gov.au/about-us/what-we-do/our-executive>.

224 Commission for Children and Young People, *Our Commissioners*, CCYP website, n.d. <https://ccyp.vic.gov.au/about-us/our-commissioners/>.

225 Queensland Family & Child Commission (QFCC), *Establishing a Queensland Commissioner for Aboriginal and Torres Strait Islander Children*, QFCC website, 1 May 2024 <https://www.qfcc.qld.gov.au/news-and-media/establishing-queensland-commissioner-aboriginal-and-torres-strait-islander-children>.

226 Government of South Australia, *New Commissioner for Aboriginal Children and Young People appointed*, n.d. <https://www.premier.sa.gov.au/media-releases/news-archive/new-commissioner-for-aboriginal-children-and-young-people-appointed>.

227 J Cross, 'Aboriginal Assistant Commissioner for Healthy Country appointed in NSW', *National Indigenous Times*, 27 August 2025 <https://nit.com.au/27-08-2025/19874/aboriginal-assistant-commissioner-for-healthy-country-appointed-in-new-south-wales>.

228 ACT Office for Aboriginal and Torres Strait Islander Children and Young People, *About Us*, ACT Office for Aboriginal and Torres Strait Islander Children and Young People website, n.d. <https://www.atsichildrenyoungpeople.act.gov.au/about-us>.

229 Office of the Commissioner (Meriba Omasker Kaziw Kazipa), *The Commissioner*, Office of the Commissioner website, 2025 <https://www.ocmokk.qld.gov.au/commissioner>.

230 Commonwealth Parliamentary Debates. House of Representatives, *Apology to Australia's Indigenous peoples,* 13 February 2008 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F2008-02-13%2F0003;query=Id%3A%22chamber%2Fhansardr%2F2008-02-13%2F0000%22>.

231 P Turner, 'Address to the Coalition of Peaks Assembly Forum' (Speech, Coalition of Peaks, April 2025): 3 (unpublished).

232 M Davis, *Overview of UNDRIP and critical analysis of Voice and UNDRIP Bill*, Indigenous Constitutional Law website, 5 May 2025 <https://www.indigconlaw.org/home/overview-of-undrip-critical-voice>.

233 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025: 5 <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

234 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*: 5-7.

235 National Aboriginal Community Controlled Health Organisation (NACCHO), *COVID-19 Response Inquiry: Submission to the Department of Prime Minister and Cabinet*, submission, December 2023: 4 <https://www.naccho.org.au/wp-content/uploads/2025/05/COVID-19-Response-inquiry_NACCHO-submission.pdf>.

236 K Pickering, EK Galappaththi, JD Ford, C Singh, C Zavaleta-Cortijo, K Hyams, JJ Miranda, I Arotoma-Rojas, C Togarepi, H Kaur, J Arvind, H Scanlon, DB Namanya, C Anza-Ramirez and COVID- Observatories Team, 'Indigenous peoples and the COVID-19 pandemic: a systematic scoping review', *Environmental Research* Letters, 1 March 2023, 18(3): 033001 <https://pmc.ncbi.nlm.nih.gov/articles/PMC9923364/#erlacb804bib56>.

237 N Moodie, J Ward, P Dudgeon, K Adams, J Altman, D Casey, K Cripps, M Davis, K Derry, S Eades, S Faulkner, J Hunt, E Klein, S McDonnell, I Ring, S Sutherland and M Yap, 'Roadmap to recovery: Reporting on a research taskforce supporting Indigenous responses to COVID-19 in Australia', *Australian Journal of Social Issues*, 2021, 56(1): 4-16, 7 <https://pmc.ncbi.nlm.nih.gov/articles/PMC7537170/>.

238 N Moodie, J Ward, P Dudgeon, K Adams, J Altman, D Casey, K Cripps, M Davis, K Derry, S Eades, S Faulkner, J Hunt, E Klein, S McDonnell, I Ring, S Sutherland and M Yap, 'Roadmap to recovery: Reporting on a research taskforce supporting Indigenous responses to COVID-19 in Australia': 8.

239 K Larkin and D Galloway in N Bedford, 'The aftermath: what if the Voice Referendum does not succeed', *Public Law Review*, 2023, 34(2): 156–164, 163 <https://research.bond.edu.au/en/publications/the-aftermath-what-if-the-voice-referendum-does-not-succeed>.

240 Commonwealth of Australia, National Indigenous Australians Agency, *Indigenous Voice Co-design Process Final Report to the Australian Government*, Australian Government National Indigenous Australians Agency, Commonwealth of Australia, July 2021: 73. <https://ncq.org.au/resources/indigenous-voice-co-design-process-final-report-to-australian-government/>.

241 Parliament of Australia Senate Select Committee on the Administration of Indigenous Affairs, *After ATSIC – Life in the mainstream?,* Commonwealth of Australia, March 2005: ch 2 <https://www.aph.gov.au/~/media/wopapub/senate/committee/indigenousaffairs_ctte/report/final/report_pdf.ashx>.

242 Commonwealth of Australia, National Indigenous Australians Agency, *Indigenous Voice Co-design Process Interim Report to the Australian Government,* Commonwealth of Australia, National Indigenous Australians Agency, October 2020: 125-127. <https://nla.gov.au/nla.obj-2903871390/view>.

243 Jumbunna Institute for Indigenous Education and Research, *Alternatives to the Northern Territory Intervention: Restore Community Governance*, Jumbunna Institute for Indigenous Education and Research website, n.d. <https://www.uts.edu.au/research/centres/jumbunna-institute-indigenous-education-and-research/our-research-hubs/legal-strategies-hub/justice/alternatives-2-intervention/restore-community-governance>.

244 Jumbunna Institute for Indigenous Education and Research, *Alternatives to the Northern Territory Intervention: Restore Community Governance*, Jumbunna Institute website, n.d. <https://www.uts.edu.au/research/centres/jumbunna-institute-indigenous-education-and-research/our-research-hubs/legal-strategies-hub/justice/alternatives-2-intervention/restore-community-governance#:~:text=Overview,undertaken%20by%20the%20NT%20government>.

245 N Biddle, M Gray, I McAllister, & M Qvortrup, Australian National University, *Detailed analysis of the 2023 Voice to Parliament Referendum and related social and political attitudes*, 2023 <https://polis.cass.anu.edu.au/research/publications/detailed-analysis-2023-voice-parliament-referendum-and-related-social-and>; Australian National University, *Vast majority of voters still think First Nations Australians should have a voice*, [media release], 28 November 2023, <https://www.anu.edu.au/news/all-news/vast-majority-of-voters-still-think-first-nations-australians-should-have-a-voice#:~:text=The%20survey%20also%20found%20that:%20*%2087%25,of%20constitutional%20recognition%20for%20First%20Nations%20Australians>.

246 Prime Minister and Cabinet, Senator the Hon Malarndirri McCarthy, Minister for Indigenous Australians, *Delivering a better future for Aboriginal and Torres Strait Islander Australians*, [media release], PM&C 25 October 2025 <https://ministers.pmc.gov.au/mccarthy/2022/delivering-better-future-aboriginal-and-torres-strait-islander-australians>.

247 Global Alliance of National Human Rights Institutions (GANHRI), *The Paris Principles*, 1993, <https://ganhri.org/paris-principles/>.

248 New South Wales Aboriginal Land Council, *The NSW Aboriginal Land Council Social Impact Report 2022-2023*, <https://alc.org.au/wp-content/uploads/2024/11/NSWALC_SocialImpactReport_2024.pdf>; National Indigenous Australians Agency (NIAA), *Aboriginals Benefit Account (ABA) Grant Funding*, <https://www.niaa.gov.au/our-work/grants-and-funding/aboriginals-benefit-account-aba-grant-funding>; Aboriginal Investment, *Future Fund, 2024*, <https://www.aboriginalinvestment.org.au/future-fund>; Indigenous Land and Sea Corporation (ILSC), Australian Government, *Annual Report 2024-25*, <https://www.ilsc.gov.au/wp-content/uploads/2025/10/2024-25-ILSC-Annual-Report.pdf>; Department of Finance, Aboriginal and Torres Strait Islander Land and Sea Future Fund, Australian Government, 2025, Web Page, <https://www.finance.gov.au/government/australian-government-investment-funds/aboriginal-and-torres-strait-islander-land-and-sea-future-fund>; Future Fund, About Us Web Page <https://www.futurefund.gov.au/about-us/our-funds#collapse_a68af3da-15de-4a53-bba2-dd6dd3545da3>.

249 Senate Standing Committee on Constitutional and Legal Affairs, *Two hundred years later: a report on the feasibility of a compact or 'Makarrata' between the Commonwealth and Aboriginal people*, Senate Standing Committee on Constitutional and Legal Affairs, Commonwealth of Australia, 1983 <https://catalogue.nla.gov.au/catalog/7832149>.

250 United Nations, *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI) (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), (16 December 1966), [Arts 1] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007), [Arts 3,4 and 5] <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

251 J Haughton, L Richards and C Madden, *Indigenous and minority representation worldwide: Research Paper Services*, 2023-24, Parliament of Australia Department of Parliamentary Services (Parliamentary Library), 24 October 2023: Appendix A <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/9435334/upload_binary/9435334.pdf>.

252 J Haughton, L Richards and C Madden, *Indigenous and minority representation worldwide: Research Paper Services*, 2023-24: Appendix A.

253 J Haughton, L Richards and C Madden, *Indigenous and minority representation worldwide: Research Paper Services*, 2023-24: Appendix A.

254 Australian Human Rights Commission (AHRC) and Indigenous X, *The history of Aboriginal and Torres Strait Islander peoples advocating for the right to be heard*, AHRC and Indigenous X, n.d. <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/history-aboriginal-and-torres-strait>.

255 Australian Government Torres Strait Regional Authority (TSRA), *About the TSRA*, Australian Government and TSRA website, n.d. <https://www.tsra.gov.au/the-tsra/>.

256 Australian Human Rights Commission (AHRC), *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, AHRC, 2020: 86 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

257 ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB), *About us: About the Elected Body*, ACT ATSIEB website, n.d. <https://atsieb.com.au/about-us/>.

258 Government of South Australia, Attorney General's Department, *South Australia's First Nations Voice to Parliament*, Government of South Australia, Attorney General's Department website, n.d. <https://www.agd.sa.gov.au/aboriginal-affairs-and-reconciliation/first-nations-voice>.

259 South Australian First Nations Voice to Parliament, *How does the Voice work?*, South Australian First Nations Voice to Parliament website, n.d. <https://www.firstnationsvoice.sa.gov.au/about/how-does-the-voice-work>.

260 South Australian First Nations Voice to Parliament, *How does the Voice work?*, South Australian First Nations Voice to Parliament website, n.d. <https://www.firstnationsvoice.sa.gov.au/about/how-does-the-voice-work>.

261 South Australian First Nations Voice to Parliament, *How does the Voice work?*, South Australian First Nations Voice to Parliament website, n.d. <https://www.firstnationsvoice.sa.gov.au/about/member-responsibilities>.

262 South Australian First Nations Voice to Parliament, *How does the Voice work?*, South Australian First Nations Voice to Parliament website, n.d. <https://www.firstnationsvoice.sa.gov.au/state-voice>.

263 D Brennan, 'First Nations gathering to shape future of new national Indigenous body', *National Indigenous Times*, 6 June 2025 <https://nit.com.au/06-06-2025/18388/first-nations-gathering-to-shape-future-of-new-national-indigenous-body>.

264 R. Willingham, 'Victoria becomes first Australian state to formally table treaty legislation in parliament', *ABC News*, 9 September 2025 <https://www.abc.net.au/news/2025-09-09/victoria-treaty-legislation-parliment-first-peoples/105749692>; K Ashton, B Fitzgerald, T Jash, 'Australia's first treaty with Aboriginal people signed in Victoria', *ABC News*, 13 November 2025. <https://www.abc.net.au/news/2025-11-13/australia-first-treaty-agreement-signed-law-victoria/106002730>.

265 First Peoples' Assembly of Victoria Ltd and The State of Victoria, *Statewide Treaty (Negotiated – Pending Assent)*, First Peoples' Assembly of Victoria Ltd and The State of Victoria, 9 September 2025, S7.2 (c) (II): 10 <https://firstpeoplesvic.org/reports-resources/statewide-treaty-pending-assent/>.

266 *Statewide Treaty Act 2025* (Vic), Part 12. <https://classic.austlii.edu.au/au/legis/vic/consol_act/sta2025201/>.

267 R Berg, 'First Peoples' Assembly explains how Victoria's treaty will work', on *ABC Listen*, 9 September 2025 <https://www.abc.net.au/listen/programs/melbourne-drive/first-peoples-assembly-reuben-berg-on-treaty/105755080>.

268 First Peoples' Assembly of Victoria Ltd and The State of Victoria, *Statewide Treaty (Negotiated – Pending Assent)*, First Peoples' Assembly of Victoria Ltd and The State of Victoria, 9 September 2025 S10, 28 <https://firstpeoplesvic.org/reports-resources/statewide-treaty-pending-assent/>.

269 First Peoples' Assembly of Victoria Ltd and The State of Victoria, *Statewide Treaty (Negotiated – Pending Assent)*: 3-4.

270 Queensland Government Queensland Legislation, Path to Treaty Bill 2023 Explanatory Notes, February 2023, 1-2 <https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2022-016/lh>.

au/10070/874740/0/62>.

271 Northern Territory Treaty Commission (NTTC), *Northern Territory Treaty Commission Final Report June 29 2022 with Appendices*, NTTC, 29 June 2022 <https://territorystories.nt.gov.au/10070/874740/0/62>.

272 Northern Territory Treaty Commission (NTTC), *Discussion Paper*, NTTC, 30 June 2020 <https://www.gtcentre.unsw.edu.au/sites/default/files/documents/NT%20-%20Treaty%20Discussion%20Paper%202020.pdf>.

273 M Garrick, 'NT CLP government 'dismantles' treaty plans, ending seven-year process', *ABC News*, 11 February 2025 <https://www.abc.net.au/news/2025-02-11/nt-clp-government-scraps-treaty-process/104918700>.

274 T Rose, 'NSW treaty will not progress beyond consultation until after election, Chris Minns says', *The Guardian*, 23 October 2023 <https://www.theguardian.com/australia-news/2023/oct/23/nsw-treaty-indigenous-will-not-progress-until-after-state-election-chris-minns>.

275 NSW Government, Consulting Aboriginal people on desire for a treaty process, NSW Government website, n.d. <https://www.nsw.gov.au/nsw-government/treaty-consultation>.

276 C Winter, 'Treaty: South Australian Government enters historic discussions with Aboriginal nations', *ABC News*, 14 December 2016 <https://www.abc.net.au/news/2016-12-14/south-australia-enters-historic-treaty-discussions/8120162>.

277 T Roger, *Talking Treaty: Summary of Engagements and Next Steps*, Government of South Australia, 21 July 2017 <https://apo.org.au/sites/default/files/resource-files/2017-07/apo-nid186286.pdf>.

278 Australians for Native Title and Reconciliation (ANTaR), Treaty in South Australia, ANTaR website, 30 April 2024 <https://antar.org.au/issues/treaty/states-territories/south-australia/>; T Roger, *Talking Treaty: Summary of Engagements and Next Steps*.

279 T Roger, *Talking Treaty: Summary of Engagements and Next Steps.*

280 T Roger, *Talking Treaty: Summary of Engagements and Next Steps.*

281 Australians for Native Title and Reconciliation (ANTaR), Treaty in South Australia, ANTaR website, 30 April 2024 <https://antar.org.au/issues/treaty/states-territories/south-australia/>.

282 S Richards, 'SA First Nations communities 'waiting, prepared' to restart treaty process', *ABC News*, 2 June 2025 <https://www.abc.net.au/news/2025-06-02/sa-treaty-process-update/105352570>.

283 Stephanie Richards, 'SA First Nations communities 'waiting, prepared' to restart treaty process', *ABC News,* 2 June 2025 <https://www.abc.net.au/news/2025-06-02/sa-treaty-process-update/105352570>.284 H Schulze, A Reid, H Dixon, C McIndoe and S Wiradika, *Te*

Ōhanga Māori 2023 – The Māori Economy 2023, Business and Economic Research Limited for Ministry of Business, Innovation & Employment Hīkina Whakatutuki, 2024 <https://www.mbie.govt.nz/assets/te-ohanga-maori-2023-report.pdf>.

285 Government of Canada, *Modern Treaties*, Government of Canada website, 26 September 2025 <https://www.rcaanc-cirnac.gc.ca/eng/1677073191939/1677073214344>.

286 Kyle D Dean, *Fiscal Year 2023 Tribal Nations in Oklahoma: Economic Impact Report*, United for Oklahoma and Oklahoma Indian Gaming Association, June 2025 <https://www.unitedforoklahoma.com/wp-content/uploads/2025/06/fiscal-year-2023-tribal-nations-economic-impact.pdf>.

287 Government of Western Australia, Department of the Premier and Cabinet, *Noongar Economic Participation Framework Fact Sheet*, n.d.: 2.

288 Government of Western Australia, Department of the Premier and Cabinet, *Noongar Economic Participation Framework Fact Sheet*, n.d.: 3.

289 Government of Western Australia, Department of the Premier and Cabinet, *Noongar Economic Participation Framework Fact Sheet*, n.d.: 3.

290 M Dodson, Australian Human Rights Commission, *Forward,* AHRC website, n.d. <https://humanrights.gov.au/our-work/projects/foreword>.

291 Office for Arts, *Voices of Country: Australia's Action Plan for the International Decade of Indigenous Languages 2022-2032*: 29 <https://www.arts.gov.au/sites/default/files/documents/voices-of-country%E2%80%94australias-action-plan-for-the-international--decade-of-indigenous-languages-2022%E2%80%932032.pdf>.

292 M Davis 2021, 'The truth about truth-telling', *The Monthly*, December 2021 – January 2022 <https://www.themonthly.com.au/issue/2021/december/megan-davis/truth-about-truth-telling>.

293 Anderson, Y Paradies, M Langton, R Lovett and T Calma, 'Racism and the 2023 Australian constitutional Referendum', *The Lancet*, (2023), Vol 402: 1400-1403 <https://pubmed.ncbi.nlm.nih.gov/37778359/>.

294 Reconciliation Australia, *2024 2024 Australian Reconciliation Barometer: Truth-telling and Historical Acceptance*, Reconciliation Australia website,12 August 2025 <https://www.reconciliation.org.au/publication/2024-australian-reconciliation-barometer-truth-telling-and-historical-acceptance/>.

295 F Allison, C Cunneen, L Coombes and A Selcuk, 'If you don't think racism exists come take a walk with us', The Call It Out Racism Register 2023-2024, *Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney* (2025) <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>.

296 N Biddle, M Gray, I McAllister and M Qvortrup, 'Detailed analysis of the 2023 Voice to Parliament Referendum and related social and political attitudes', *ANU Centre for Social Research and Methods*, 28 November 2023: viii <https://polis.cass.anu.edu.au/files/docs/2025/6/Detailed_analysis_of_the_2023_Voice_to_Parliament_Referendum_and_related_social_and_political_attitudes.pdf>.

297 Reconciliation Australia, *2024 Australian Reconciliation Barometer: Truth-telling and Historical Acceptance*, Reconciliation Australia website,12 August 2025 <https://www.reconciliation.org.au/publication/2024-australian-reconciliation-barometer-truth-telling-and-historical-acceptance/>.

298 AM Payne and H Norman, *Coming to terms with the past? Identifying barriers and enablers to truth-telling and strategies to promote historical acceptance*, UNSW and Reconciliation Australia, (2024): 21 <https://www.reconciliation.org.au/wp-content/uploads/2024/04/Barriers-and-enablers-to-truth-telling-report.pdf>.

299 M McMillan and S Rigney, Race, Reconciliation, and Justice in Australia: From Denial to Acknowledgment. *Ethnic and Racial Studies,* 2018, 41(1): 759-777, in H Boer, 'Engaging in Reconciliation in Australia, and the Challenge of Institutional Reform', *Journal of Intercultural Studies* (2024), 45(4): 650 <https://doi.org/10.1080/07256868.2024.2311118>.

300 J Butler, 'Commonwealth Indigenous leaders demand apology from the king for effects of colonisation', *The Guardian*, 4 May 2023 <https://www.theguardian.com/uk-news/2023/may/04/commonwealth-indigenous-leaders-demand-apology-from-the-king-for-effects-of-colonisation?CMP=share_btn_url>.

301 D Butler, 'Indigenous people around the world have sent King Charles a letter. They want an apology, and reparations', *NITV/SBS*, 4 May 2023 <https://www.sbs.com.au/nitv/article/indigenous-people-around-the-world-have-sent-kin/rbfzwoyav>.

302 J Butler, Commonwealth Indigenous leaders demand apology from the king for effects of colonisation, *The Guardian*, 4 May 2023 <https://www.theguardian.com/uk-news/2023/may/04/commonwealth-indigenous-leaders-demand-apology-from-the-king-for-effects-of-colonisation?CMP=share_btn_url>.

303 'HRH The Prince of Wales' Opening Speech for CHOGM 2022', 24 June 2022. <https://thecommonwealth.org/news/chogm-2022-opening-ceremony-speech-prince-wales>

304 King Charles III, 'There's no excuse for wrongdoings on Kenyan people – King Charles III', Full Speech, *NTV Kenya* <https://www.youtube.com/watch?v=8ewDpLO7-8Q>.

305 Victoria State Government, Premier of Victoria Hon Jacinta Allan MP, *Historic Yoorrook Justice*

Commission Reports Tabled, [media release], 1 July 2025 <https://www.premier.vic.gov.au/historic-yoorrook-justice-commission-reports-tabled>.

306 J Gibson and A Barraclough, 'Tasmanian government to fund truth-telling commissioners but drop treaty process', *ABC News,* 28 May 2025 <https://www.abc.net.au/news/2025-05-28/tasmanian-government-abandons-aboriginal-treaty-process/105344482>.

307 ANTaR, *Truth-telling in the states and territories*, ANTaR website, 2024 <https://antar.org.au/issues/truth-telling/truth-telling-states-territories/>.

308 Northern Territory Treaty Commission *Final Report 29 June 2022 with Appendices*, Legislative Assembly of the Northern Territory, Darwin (NT) website, 26 July 2022: 53 <https://hdl.handle.net/10070/874740>.

309 Aboriginal Productions Promotions and Government of Western Australia, Department of the Premier and Cabinet, *Wadjemup Project Progress Report*, June 2022: 7.

310 NSW Department of Education, 'Truth-telling research: Truth-telling is crucial to the ongoing process of healing', NSW Department of Education, NSW Government, n.d. <https://education.nsw.gov.au/content/dam/main-education/about-us/strategies-and-reports/reconciliation/Truth-telling_FAQ.pdf>.

311 NSW Department of Education, Reconciliation Action Plan, NSW Department of Education website, 19 June 2025 <https://education.nsw.gov.au/about-us/strategies-and-reports/our-reconciliation-action-plan/reconciliation-action-plan>.

312 C McLoughlin and E Boisvert, 'Consultation to start on SA Indigenous Voice to Parliament ahead of 2023 launch', *ABC News*, 13 June 2022 <https://www.abc.net.au/news/2022-06-13/consultation-to-start-on-sa-voice-to-parliament/101147480>; S Richards, 'SA First Nations communities 'waiting, prepared' to restart treaty process', *ABC News*, 2 June 2025 <https://www.abc.net.au/news/2025-06-02/sa-treaty-process-update/105352570>.

313 University of Newcastle, The Centre for 21st Century Humanities, Colonial Frontier Massacres in Australia, 1788-1930 <https://c21ch.newcastle.edu.au/colonialmassacres/changes.php>.

314 Friends of Myall Creek, The Massacre Story, 2025 <https://myallcreek.org/the-massacre-story/>.

315 Towards Truth website <https://www.towardstruth.org.au/about>.

316 ABC Conversations with Richard Fidler and Sarah Kanowski, 'In conversation with David Marr', *ABC Radio*, 9 October 2023 <https://www.abc.net.au/listen/programs/conversations/david-marr-native-police-frontier-wars-colonial-australia/102882172>.

317 A McQuire, *Black Witness: The Power of Indigenous Media* (1st ed.), 2024, University of Queensland Press.

318 ICESCR art 1; ICCPR art 1; United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) Art 3.

319 Australian Human Rights Commission, '*Right to education',* AHRC website, n.d. <https://humanrights.gov.au/our-work/rights-and-freedoms/right-education>.

320 Dr W Fogarty, Senior Research Fellow, National Centre for Indigenous Studies, Australian National University, *Committee Hansard,* Canberra, 16 March 2016: 2; as cited by the Standing Committee on Indigenous Affairs, *Final Report - The power of education: From surviving to thriving, Educational opportunities for Aboriginal and Torres Strait Islander students,*15 December 2017: 44 <https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Indigenous/EducationalOpportunities/Chapter_3.pdf>.

321 Australian Bureau of Statistics, *Education Statistics for Aboriginal and Torres Strait Islander Peoples*, latest release dated 11 July 2024 <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/education-statistics-aboriginal-and-torres-strait-islander-peoples/latest-release>.

322 Australian Institute of Health and Welfare, *Closing the Gap targets: key findings and implications*, 4, AIHW Canberra, 2025 <https://www.aihw.gov.au/getmedia/f88a5ccb-0e3c-448c-b014-ca53773d5337/aihw-ihw-294.pdf?v=20250305115500&inline=true>.

323 N Tippett, A Sullivan, J Manolev, & B Johnson, 'Use of Exclusionary Practices in Australian Government Schools', *School Exclusions Study Key Issues Paper No. 3,* 2020, University of South Australia, doi: 10.25954/5f7bcaba9f7ca <https://schoolexclusionsstudy.com.au/download_file/12/237>.

324 N Tippett, A Sullivan, J Manolev & B Johnson, Use of Exclusionary Practices in Australian Government Schools, *School Exclusions Study Key Issues Paper No. 3,* 2020, University of South Australia, doi: 10.25954/5f7bcaba9f7ca: 7 <https://schoolexclusionsstudy.com.au/download_file/12/237>.

325 N Tippett, A Sullivan, J Manolev, & B Johnson, 'Use of Exclusionary Practices in Australian Government Schools', *School Exclusions Study Key Issues Paper No. 3.*, 2020, University of South Australia, doi: 10.25954/5f7bcaba9f7ca: 3 <https://schoolexclusionsstudy.com.au/download_file/12/237>.

326 N Tippett, A Sullivan, J Manolev, & B Johnson, 'Use of Exclusionary Practices in Australian Government Schools', *School Exclusions Study Key Issues Paper No. 3*, 2020, University of South Australia, doi: 10.25954/5f7bcaba9f7ca:

5 <https://schoolexclusionsstudy.com.au/download_file/12/237>.

327 J Cashmore, *The link between child maltreatment and adolescent offending – Systems of neglect of adolescents,* Family Matters, 2011, No. 89, Australian Institute of Family Studies <https://aifs.gov.au/sites/default/files/fm89d_0.pdf>.

328 B Cleveland, S Backhouse, P Chandler, I McShane, J Clinton, C Newton (editors), *Schools as Community Hubs, Building 'More than a School' for Community Benefit,* 2023: 4-9.

329 B Cleveland, S Backhouse, P Chandler, I McShane, J Clinton, C Newton (editors), *Schools as Community Hubs, Building 'More than a School' for Community Benefit,* 2023: 4-9.

330 ANTaR, 'First Nations Education', last edited 18 March 2025 <https://antar.org.au/issues/closing-the-gap/first-nations-education/>. See also, MK Turner & Children's Ground, Apmerengentyele, *The MK Turner Report: A Plan for First Nations-led and designed Education Reform in Australia,* 2023 <https://childrensground.org.au/wp-content/uploads/2023/07/The-MK-Turner-Report-Childrens-Ground.pdf>.

331 Australian Institute of Health and Welfare, *Employment of First Nations people*, 7 September 2023 <https://www.aihw.gov.au/reports/australias-welfare/indigenous-employment>.

332 Australian Institute of Health and Welfare, *Employment of First Nations people*, 7 September 2023 <https://www.aihw.gov.au/reports/australias-welfare/indigenous-employment>.

333 Australian Institute of Health and Welfare, *Employment of First Nations people*, 7 September 2023 <https://www.aihw.gov.au/reports/australias-welfare/indigenous-employment>.

334 Centre for Indigenous People and Work (CIPW), *Reclaiming the narrative of the First Nations workforce,* CIPW website, University of Technology Sydney, 7 May 2025 <https://www.uts.edu.au/news/2025/05/uts-launches-centre-for-indigenous-people-and-work>.

335 N Young, Centre Director, Centre for Indigenous People and Work, as quoted by the Aboriginal and Torres Strait Islander Social Justice Commissioner, *UTS Centre for Indigenous People and Work Launch,* 7 May 2025, Sydney <https://humanrights.gov.au/about/news/speeches/uts-centre-indigenous-people-and-work-launch>.

336 N Young et al, Jumbunna Institute for Indigenous Education and Research and UTS Business School, UTS, *A Hidden History of Aboriginal Women's Work in the Community Controlled Health Sector*, 2024, Fair Work Commission <https://www.fwc.gov.au/documents/sites/am2024-19/am202422-lit-review-191124.pdf>.

337 J Marchant and L Griffin, Paying It Back: On Litigating First Peoples' Stolen Wages in Victoria, *UNSW Law Journal*, 2025, 48(1): 202-224, 214 <https://www.austlii.edu.au/au/journals/UNSWLawJl/2025/6.pdf>.

338 United Nations General Assembly, A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005.

339 J. Marchant and L. Griffin, Paying It Back: On Litigating First Peoples' Stolen Wages in Victoria, *UNSW Law Journal*, 2025, 48(1): 202-224, 205-206.

340 Australian Government, National Indigenous Australians Agency, *Settlement reached in NT historical wages class action*, 6 September 2024 <https://www.niaa.gov.au/news-and-media/settlement-reached-nt-historical-wages-class-action>.

341 Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Report of the Inquiry into Economic Self-determination and Opportunities for First Nations Australians,* Chapter 2 – An economic pathway forward, November 2024 <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Report/Chapter_2_-_An_economic_pathway_forward>.

342 Department of Prime Minister and Cabinet, *The Indigenous Business Sector Strategy: Supercharging Indigenous Business Start-up and Growth 2018-2028*, 12 February 2018 <https://www.niaa.gov.au/resource-centre/indigenous-business-sector-strategy>.

343 J Sizer, PWC Indigenous Consulting, as cited by Department of Prime Minister and Cabinet, *Closing the Gap Report 2019,* Chapter Five – Economic Development, 2019 <https://www.niaa.gov.au/sites/default/files/reports/closing-the-gap-2019/index.html>.

344 Australian Bureau of Statistics (ABS), *Aboriginal and Torres Strait Islander people who managed their own business in 2021*, ABS website, 3 March 2025. <https://www.abs.gov.au/articles/aboriginal-and-torres-strait-islander-people-who-managed-their-own-business-2021>.

345 M Evans and C Polidano, Indigenous businesses are worth billions but we don't know enough about them, *The Conversation,* 17 April 2025 <https://theconversation.com/indigenous-businesses-are-worth-billions-but-we-dont-know-enough-about-them-227677>.

346 M Evans, 'Indigenous businesses are thriving across a wide range of industries – here's how to make sure that continues', *The Conversation,* 12 July 2024 <https://theconversation.com/indigenous-businesses-are-thriving-across-a-wide-range-of-industries-heres-how-to-make-sure-that-continues-234170>.

347 Australian Government, National Indigenous Australians Agency, *Indigenous Procurement Policy*, NIAA website, July 2025: 7 <https://www.niaa.gov.au/our-work/employment-and-economic-development/indigenous-procurement-policy-ipp>.

348 House of Representatives Standing Committee on Indigenous Affairs, *Report on Indigenous Participation in Employment and Business,* August 2021: ix-x <https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Indigenous/Pathways_and_Participation/Front.pdf>.

349 House of Representatives Standing Committee on Indigenous Affairs, *Report on Indigenous Participation in Employment and Business,* August 2021: ix-x <https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Indigenous/Pathways_and_Participation/Front.pdf>.

350 Australian Government, National Indigenous Australians Agency, *Indigenous Procurement Policy*, NIAA website, July 2025: 12 <https://www.niaa.gov.au/our-work/employment-and-economic-development/indigenous-procurement-policy-ipp>.

351 Australian Government, National Indigenous Australians Agency, *Indigenous Procurement Policy*, NIAA website, July 2025: 12 <https://www.niaa.gov.au/our-work/employment-and-economic-development/indigenous-procurement-policy-ipp>.

352 House of Representatives Standing Committee on Indigenous Affairs, *Report on Indigenous Participation in Employment and Business,* August 2021: ix-x <https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Indigenous/Pathways_and_Participation/Front.pdf>.

353 JJoint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Report of the Inquiry into Economic Self-determination and Opportunities for First Nations Australians,* Chapter 2 – An economic pathway forward <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Report/Chapter_2_-_An_economic_pathway_forward>.

354 Australian National University, *New Alliance to drive Indigenous economic empowerment*, [media release], ANU, 15 July 2024 <https://www.anu.edu.au/news/all-news/new-alliance-to-drive-indigenous-economic-empowerment>.

355 First Nations Capital, *Brave action for a more just, impact-led economy*, 2021 <https://firstaustralianscapital.org/position-paper-brave-action-for-a-more-just-impact-led-economy/>.

356 Parliament of Australia, Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into economic self-determination and opportunities for First Nations Australians*, Parliament of Australia, Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, November 2024: xvii and 24. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Report>.

357 ANU First Nations Portfolio, *Murru waaruu (On Track) Economic Development Seminar Series*, Outcomes Report, May 2024: 6 <https://www.anu.edu.au/first-nations/first-nations-portfolio-events>.

358 ANU First Nations Portfolio, *Murru waaruu (On Track) Economic Development Seminar Series*, Outcomes Report, May 2024: 18-32 <https://www.anu.edu.au/first-nations/first-nations-portfolio-events>.

CHAPTER 4:

PROMOTING THE FULL ENJOYMENT OF RIGHTS BY FIRST PEOPLES

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Promoting the full enjoyment of rights by First Peoples

Human rights do not dispossess people. Human rights do not marginalise people. Human rights do not cause poverty. Human rights do not cause life expectancy gaps. It is the denial of rights that is the largest contributor to these things.[359] - Former Social Justice Commissioner, Professor Mick Dodson AM

This chapter outlines the international human rights framework Australia has agreed to uphold. It provides an account of Australia's limited progress in giving effect to First People's rights under this framework. It also highlights the tools and mechanisms which governments, First Peoples and their allies must harness if we are to advance First Peoples' enjoyment of rights in this country.

Australia's relationship with the international human rights framework is characterised by a high level of engagement on the one hand, and failings in key aspects on the other.

Aboriginal and Torres Strait Islander people face significant challenges to having their human rights realised in Australia. The vast differences that exist between the enjoyment of human rights by Indigenous and non-Indigenous people in this country have their origins in the process of colonisation and the intergenerational impacts that have followed since.

The international human rights framework provides a pathway to remedy this inequality. Standing in the way are:

- the ongoing absence of domestic laws and policies to codify and enforce Australia's international commitments
- the presence of laws and policies that contradict these commitments.

This inequality extends to an increasing number of situations where governments are knowingly and explicitly breaching Australia's human rights obligations.

This undermines:

- the representative and self-determining participation of Aboriginal and Torres Strait Islander peoples in the international system and within our own country (discussed in detail in Chapter 3: Increasing First Peoples' participation)
- the integrity of Australia's commitments and the ability for citizens to hold their governments to account on upholding those commitments (discussed in detail in Chapter 5: Fostering systemic integrity and accountability)
- First Peoples' access to justice through the full realisation of our individual and collective rights (discussed in detail in Chapter 7: Justice for First Peoples and Chapter 8: Land justice)
- The development of an enabling environment for First Peoples to heal and engage with non-Indigenous Australians and the world on our own terms (discussed in detail in Chapter 6: Rebuilding the village).

Chapter 4 Recommendations

7. The Australian Government should implement the recommendations of the following major reports within this term of Parliament:

- ‘Revitalising Australia’s commitment to human rights: Final report of the Free and Equal project’
- ‘Inquiry into Australia’s Human Rights Framework’ by the Parliamentary Joint Committee on Human Rights
- ‘Report of the Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia’ by the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs.

Key actions recommended in these reports include the introduction of a national human rights framework that includes a national Human Rights Act, national human rights education plan, and a national implementation plan for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

8. The Australian Government should support the independent and self-determined participation of Aboriginal and Torres Strait Islander people in domestic and international human rights fora, including through an appropriate funding allocation to facilitate the Indigenous Human Rights Network. This should include investment in training and mentoring Aboriginal and Torres Strait Islander young people to engage in international advocacy, ensuring intergenerational continuity of leadership and capacity.

Human rights belong to everyone

Human rights are universal, inalienable, indivisible, interdependent and interrelated. They are rights everyone is born with and entitled to regardless of where they reside, their age, gender, sexuality, race or cultural or ethnic background. Each human right relies upon the rest to give full effect, and they cannot be taken away at a whim by governments without due process.

Human rights belong to all of us and our collective human heritage. They are not confined to the Western tradition. Rather, they are present in various ways and forms in all cultures and societies. It has even been argued that Native Americans' published observations – concerning the apparent lack of freedom enjoyed by the Europeans they encountered during the contact era – influenced the development of liberal thought in the West.[360]

For non-Western peoples across the globe, it is critical that we never lose sight of our foundational ways of knowing, being and doing. They are indispensable to the realisation of our rights and – as is increasingly understood through environmental sustainability and climate change discussions – to the survival of humanity.

As First Peoples subjected to colonisation, we are forever codeswitching between 2 worlds. In our assertion and exercise of rights to Country, language and culture, we too often shoulder the burden of negotiating structures and systems which do not reflect our worldviews, and which are not designed to meet our needs.

To address this disparity, we must re-centre ourselves, draw upon the wisdom of our ancient knowledges and reassert our foundational values. It is from this core strength that we can engage with the wider world on our terms without compromising who we are.

Through our Laws, songlines, ceremonies and the intricate sophistication of our kinship systems, our peoples have always been skilled in governance and diplomacy. They have also mastered nuanced protocols and multiple languages to promote generally peaceful co-existence and prosperity.

The international human rights framework presents an opportunity for us to harness the values and skills we have developed over millennia and to apply them today in pursuit of the justice denied to our Elders past.

Our Elders have passed their fight for justice on to us, so our future generations need no longer suffer indignity, deprivation and discrimination in their own country.

> ***When we think about human rights, it's about kindness, so how do we use that well, how can we say here are the rights and this is what it looks like in practice – Online Informing the Agenda (ITA) Participant***

Sadly, the international human rights framework itself is under threat in the current global environment. While we are seeing some United Nations (UN) Member States reduce their support and limit their engagement, we must do the opposite.

Now, more than ever, is the time for grassroots human rights activity. The more that people from around the world utilise the framework, and the deeper we incorporate it into our language and ways of working, the stronger it will stand in these testing times. It is we – the peoples of the world – who have the power to breathe life into it. It is we who can reignite human rights as a driving force in the world, inspiring and holding all nations to account on becoming the best versions of themselves.

The human rights framework

Australia's human rights commitments

Australia is a founding and active member of the UN. In addition to commitments under the UN Charter and the Universal Declaration of Human Rights (UNDHR), Australia has signed and agreed to be bound by a number of major international human rights treaties and instruments. These are the:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- International Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Political Rights of Women (CPRW)
- Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention)
- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons
- Convention relating to the Status of Refugees
- Slavery Convention of 1926
- Supplementary Convention on Slavery of 1956
- Geneva Conventions (1949) and Protocols:
  - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
  - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
  - Convention (III) relative to the Treatment of Prisoners of War
  - Convention (IV) relative to the Protection of Civilian Persons in Time of War
  - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977
  - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 1977
  - Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) of 2005.

Australia has also signed a number of other UN agreements including, but not limited to, the:

- Beijing Declaration and Platform for Action, adopted by the General Assembly in 1995[361]
- United Nations Declaration on the Right of Indigenous Peoples, adopted by the General Assembly in 2007 (UNDRIP)[362]

- Sustainable Development Goals (also known as the SDGs or 2030 Agenda), adopted by the General Assembly in 2015[363]
- United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the General Assembly in 2015 (also known as the Mandela Rules).[364]

The United Nations Declaration on the Rights of Indigenous Peoples

> ***The United Nations Declaration on the … Rights of Indigenous Peoples is the [m]ost [i]mportant [m]anifesto [d]ocument ever [p]roduced to ensure absolute full representation of all Indigenous Peoples on Planet Earth – ITA Survey Respondent***

After almost 30 years of negotiations between Member States and First Peoples from around the world, the UN General Assembly (the General Assembly) adopted the UNDRIP on 13 September 2007.

The UN Secretary General, Ban Ki Moon, marked the adoption of the UNDRIP as:

> ***… a triumph for [I]ndigenous peoples around the world … a historic moment when UN Member States and [I]ndigenous peoples reconciled with their painful histories and resolved to move forward together on the path of human rights, justice and development for all.[365]***

Further, he emphasised the need for governments and civil society to urgently advance the work of integrating the rights of Indigenous peoples into national policy, program and development agendas at all levels.[366]

The UNDRIP does not give rise to any new or 'additional' rights for Indigenous Peoples. Rather, it provides:

- 'a universal framework of minimum standards for the survival, dignity and wellbeing of Indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms [contained within the binding treaties listed above] as they apply to the specific situation of Indigenous peoples'[367]
- guidance to governments, businesses and the public to understand how the right of Indigenous Peoples to self-determination is intrinsically linked to rights to cultural maintenance and revitalisation and other universal rights like health, education and housing.

The UNDRIP was adopted by the General Assembly 'with the approval of an overwhelming majority of Member States'. It therefore represents a commitment on the part of Member States to its provisions 'within the framework of the obligations established by the Charter of the United Nations'.[368]

Australia was one of 4 countries (alongside Canada, Aotearoa New Zealand and the United States of America) to vote against the General Assembly resolution to adopt the UNDRIP in 2007.[369] However, on 3 April 2009, following a change in government and after focused lobbying by Aboriginal and Torres Strait Islander leaders, Australia revised its position and provided formal endorsement.

While state implementation is indispensable to giving the UNDRIP full effect, it is not only states which can take action on implementation. Communities, civil society organisations and businesses can all participate independently of government direction. For businesses, this includes the incorporation of the UNDRIP into strategic and operational planning processes.

yamagigu – the UNDRIP Capability Maturity Framework

Businesses operating in Australia have a critical role to play in advancing Indigenous rights. As major employers, landholders, and economic actors with significant influence over Indigenous peoples' lives and lands, the corporate sector's commitment to implementing the UNDRIP requires systematic processes that go beyond goodwill. Understanding where an organisation currently sits in its journey to implement Indigenous rights is the essential first step toward meaningful progress.

Indigenous consulting organisation *yamagigu* has developed an UNDRIP Capability Maturity Framework that enables businesses to assess their alignment with the UNDRIP across 8 key pillars – from foundational principles of self-determination and non-discrimination, to specific capabilities around cultural integrity, land and resources, employment and education, and participatory development. The framework guides organisations through progressive levels of maturity, from basic awareness and limited Indigenous engagement practices, to systematic embedding of Indigenous rights across operations.

Respecting Indigenous rights demands ongoing due diligence measures embedded throughout their operations – enabling them to identify impacts on Indigenous peoples, prevent and mitigate harm, and remedy issues when they occur. This means:

- recognising Indigenous peoples as rights holders with unique collective rights to self-determination, culture, lands and resources
- moving beyond consultation models toward engagement approaches based on Free, Prior and Informed Consent (FPIC) that respect Indigenous governance structures and connections to Country
- protecting cultural heritage
- supporting economic participation and employment on equitable terms
- ensuring business activities do not undermine Indigenous peoples' connections to Country or their sustainable development priorities.

The framework enables businesses to identify where their activities may impact on Indigenous peoples, prevent and mitigate those impacts, and remedy harms when they occur. This involves meaningful engagement with Indigenous peoples and regular assessment of policies and practices against the UNDRIP and UN Guiding Principles on Business and Human Rights standards.

This assessment process enables businesses to identify priority areas for improvement, establish clear roadmaps for advancing Indigenous rights, strengthen cultural safety within the workplace and build sustainable approaches to Indigenous engagement grounded in rights-based principles.

Text box 4.1: *yamagigu* – the UNDRIP Capability Maturity Framework

Treaty bodies

UN Member States are required to report periodically to the relevant treaty bodies on implementation of the binding treaties to which they are party. Australia currently reports against the 7 core treaties (the ICCPR, ICESCR, ICERD, CEDAW, CRC, CAT and CRPD). Treaty bodies provide concluding observations and recommendations to support party compliance with treaty obligations. The recommendations and observations relevant to each country are recorded on a Universal Human Rights Index, maintained by the Office of the United Nations High Commissioner for Human Rights (OHCHR).[370]

Complaints against UN Member States can be made through UN treaty committees. Successfully lodging a complaint generally requires that all domestic channels for remedy have first been exhausted. Member States are not compelled to accept or implement the recommendations or advice provided through international complaints mechanisms. However, these mechanisms can help expose rights violations and place pressure on governments to respond in accordance with international obligations and standards.

Universal Periodic Review

In addition to States' obligations to report to treaty bodies on the implementation of each treaty, each UN Member State is also assessed on their overall human rights record every 5 years through a peer review process, led by Member States, known as the Universal Periodic Review (UPR).

Australia has participated in 4 UPR cycles in 2011, 2015, 2021 and 2026 and is currently participating in its fourth cycle. Australia is scheduled to appear in Geneva in January 2026.

The UPR is an important mechanism in the global human rights ecosystem to ensure ongoing commitment, compliance and vigilance by UN Member States. It has also been an important mechanism for the rights of Indigenous Peoples Many countries have used this opportunity to highlight critical human rights gaps experienced by Aboriginal and Torres Strait Islander peoples.

The UPR assesses the extent to which States respect their human rights obligations set out in the UN Charter, the Universal Declaration of Human Rights, human rights instruments (ratified treaties) to which the State is party, voluntary pledges and commitments (e.g. national human rights policies) and applicable international humanitarian law.

It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights.[371]

The UPR considers a range of information, including:

- a national report – information provided by the State under review
- information contained in the reports of independent human rights experts and groups – including special procedures, human rights treaty bodies and other UN entities
- stakeholder information – including from National Human Rights Institutions (NHRIs), non-government organisations and civil society.

First Peoples are active participants in the UPR review. They contribute to stakeholder submissions, provide independent submissions and attend Australia's UPR appearances.

The State under review can make preliminary comments on recommendations made, including whether they accept or note them.

Once the report is adopted by the State under review, it is progressed to the Human Rights Council (HRC) for adoption, where the State has an opportunity to reply to questions and respond to recommendations. Member and Observer States, NHRIs, NGOs and other stakeholders also have an opportunity to provide comments.

In addition to receiving peer feedback and recommendations on improving human rights outcomes, States are also able to make voluntary pledges or commitments to improving outcomes.

The Human Rights Council and special procedures

Established by the General Assembly in 2006 and replacing the United Nations Commission on Human Rights, the Human Rights Council (the Council) serves as the key intergovernmental human rights body within the UN.

The Council is comprised of 47 Member States equitably distributed across the 5 UN regional groups. Each is elected in the General Assembly for a 3-year term and is limited to a maximum of 2 consecutive terms.

Australia made a successful bid for Council membership in 2017 and served its term between 2018 and 2020.

The Council is chaired by a President who is elected annually from and by Council Members. They are supported by 4 Vice Presidents who represent each of the UN regional groups apart from the group where the President is a representative.

Supported by the OHCHR and an Advisory Committee consisting of human rights experts, the Council provides a multilateral forum to address ongoing human rights issues and emerging human rights emergencies. Its activities include:

- holding regular sessions to provide a platform for dialogue and the adoption of resolutions on human rights issues (since 2011 this has included an annual half-day panel discussion on the rights of Indigenous Peoples)
- holding special sessions to respond to urgent human rights situations
- conducting human rights reviews in all Member States through the UPR process
- appointing the special procedures (special rapporteurs and working groups) which monitor situations in specific countries or by looking at specific themes
- authorising commissions of inquiry and fact-finding missions to gather evidence on war crimes and crimes against humanity
- receiving and processing complaints against any of the UN's 193 Member States.

Special Rapporteurs

Special rapporteurs are appointed as special procedures of the Council. They are independent experts with mandates to report and advise on human rights around a particular theme or with respect to a specific country or region. Special rapporteurs are not remunerated, and their terms are limited to a maximum of 6 years.

With the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), special procedures:

- undertake country visits
- act on individual cases of reported violations and concerns of a broader nature by sending communications to States and others
- contribute to the development of international human rights standards

- engage in advocacy, raise public awareness and provide advice for technical cooperation.[372]

Special procedures, including special rapporteurs and working groups, can also accept complaints about Member States. This is separate to the complaints processes handled under treaty bodies.

There are currently 60 special procedures in effect. Special rapporteurs cover a range of themes relevant to the human rights issues facing Aboriginal and Torres Strait Islander peoples. These include, but are not limited to, the following:

- the Special Rapporteur on the rights of Indigenous Peoples
- the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
- the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence
- the Special Rapporteur on violence against women and girls, its causes and consequences
- the Special Rapporteur on contemporary forms of slavery, including its causes and consequences
- the Special Rapporteur on the independence of judges and lawyers.

Indigenous participation at the UN

Enhancing the participation of Indigenous Peoples in the international system has been on the agenda for some time. In 1923, Deskaheh – a Chief of the Haudenasaunee Confederacy – addressed the UN's predecessor, the League of Nations, seeking international recognition.

Since the establishment of the UN in 1948, Indigenous Peoples have been actively lobbying. Since the 1980s they have participated in various UN bodies and mechanisms. This advocacy has resulted in increased participation and ongoing consideration of ways to further increase engagement:

- In 1985, the General Assembly established the UN Voluntary Fund for Indigenous Peoples. Originally established to support participation in the Working Group on Indigenous Populations (WGIP), this fund has now been extended to support participation in relevant UN bodies.[373]
- In 2000, the UN Permanent Forum on Indigenous Issues (UNPFII) was established under the UN Economic and Social Council (ECOSOC).[374] Its mandate is to advise ECOSOC and UN agencies on Indigenous issues. It aims to raise awareness of concerns relevant to Indigenous Peoples and to address six mandated thematic areas: economic and social development, culture, the environment, education, health and human rights.
- In 2001, the Commission on Human Rights appointed a Special Rapporteur on the rights of Indigenous Peoples (SRRIP), as part of the system of thematic special procedures.[375]
- In 2007, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established as a subsidiary body of the Council.[376] Its mandate is to provide the Council with expertise and advice on the rights of Indigenous Peoples, to assist Member States in achieving the goals of the UNDRIP and to advance Indigenous Peoples rights. EMRIP provides clarity on key human rights principles, examines good practice and challenges and proposes measures that States and others can adopt to improve the realisation of rights through laws, policies and programs.

- In 2011, the Council resolved to convene an annual half-day panel discussion on the rights of Indigenous Peoples.[377]
- In 2014, the UN convened the high-level plenary meeting of the General Assembly, known as the World Conference on Indigenous Peoples (WCIP). The WCIP provided a platform to share perspectives, strategies and best practices on the realisation of the rights of Indigenous Peoples. The WCIP Outcome Document committed all Member States to promote and protect the rights of Indigenous Peoples around the world. It was adopted by consensus.
- In 2014, as a commitment under the WCIP Outcome Document, the General Assembly committed to considering ways to enable the participation of Indigenous Peoples' representatives and their institutions in meetings of relevant UN bodies on issues affecting them.[378]
- In July and October 2024, the Council convened 2 intersessional meetings considering concrete ways to enhance the participation of Indigenous Peoples in its work. The first intersessional meeting was co-facilitated by Australia and an Indigenous representative, Binota Dhamai, with the second intersessional meeting co-facilitated by Canada.[379]

As listed above, in response to the advocacy of Indigenous People the UN established 2 mandated UN bodies (UNPFII and EMRIP) and one special rapporteur role (SRRIP). All these roles focus specifically on issues relevant to Indigenous Peoples and aim to increase the participation of Indigenous Peoples in the UN human rights system. These are discussed further below.

Individual Member States have an important role to play in enhancing the quality of First Peoples' engagement with the international system. Quality engagement relies on the ability to form representative delegations and to caucus at national, regional and global levels with other First Peoples from around the world.

A higher level of quality engagement is supported where:

- States have national representative Indigenous structures in place
- resources are made available for First Peoples to select their own delegates through well-governed and self-determining processes
- there is regular, clear and respectful communication between First Peoples' and government delegations.

These structural supports are currently not in place in Australia.

United Nations Permanent Forum on Indigenous Issues

The UNPFII, which meets annually in New York, is comprised of 16 independent experts who each serve a 3-year term on the mechanism. Eight of the experts are appointed by governments and elected by ECOSOC (based on regional groupings), and 8 are nominated by Indigenous Peoples organisations and appointed by the ECOSOC President.

Australia is an active participant in the UNPFII, both in terms of government participation and the participation by First Peoples. A number of Aboriginal and Torres Strait Islander experts have also participated as appointed members on the UNPFII, including:

- Professor Mick Dodson AM, who served from 1 January 2005 to 31 December 2007 and again from 1 January 2008 to 31 December 2010, including serving as UNPFII Special Rapporteur
- Professor Megan Davis, who was nominated by the Australian Government and served from 1 January 2011 to 31 December 2013 and again from 1 January 2014 to 31 December 2016, including serving as UNPFII Special Rapporteur

- Mr Les Malezer, who was nominated by Indigenous NGOs and served from 1 January 2017 to 31 December 2019
- Dr Hannah McGlade, who was nominated by Indigenous NGOs and served from 1 January 2020 to 31 December 2022 and again from 1 January 2023 to 31 December 2025, including serving as Acting Chair.

During this time, Indigenous experts and Indigenous Peoples Organisations (IPOs) from around the world have made significant contributions to the international jurisprudence concerning the rights of Indigenous Peoples. This has included:

- raising issues of concern, highlighting positive developments and encouraging human rights-based reforms and compliance
- finalisation of the UNDRIP and progressing it through to adoption by the General Assembly and subsequently Australia
- maintaining pressure on Australia to give domestic effect to the UNDRIP and the rights of Aboriginal and Torres Strait Islander peoples.

Expert Mechanism on the Rights of Indigenous Peoples

The EMRIP, which meets in Geneva annually, is constituted by 7 independent experts who have demonstrated experience in the rights of Indigenous Peoples.

Australia is an active participant in the EMRIP, both in terms of government participation and the participation by First Peoples. A number of Aboriginal experts have also participated as appointed mandate holders on the EMRIP, including:

- Professor Megan Davis, who was appointed for 2 terms between 2017 and 2022, representing the Pacific
- Dr Hannah McGlade, who was appointed in 2016 as a Senior Indigenous Fellow (representing the Pacific) at the OHCHR, which assists the EMRIP.

As part of its mandate – which includes supporting Member States and/or Indigenous Peoples in the development of policies and implementing recommendations about the domestic application of Indigenous rights – the EMRIP may conduct country engagements.

As discussed further below, the EMRIP conducted a recent country engagement in Australia, with a particular focus on Western Australia (WA).

The Special Rapporteur on the rights of Indigenous Peoples

Established in 2001, the Special Rapporteur on the rights of Indigenous Peoples (SRRIP) has a mandate to:

- promote good practices, including new laws, government programs and constructive agreements between Indigenous peoples and states, to implement international standards concerning the rights of Indigenous Peoples
- make recommendations and proposals on appropriate measures to prevent and remedy violations of the rights of Indigenous Peoples
- report on the human rights situations of Indigenous Peoples around the world
- address specific cases of alleged violations of Indigenous Peoples' rights.[380]

SRRIPs conducted country visits to Australia in 2009 and 2017. Both produced a Country Report, the links for which are provided in the citations below:

- 7 to 28 August 2009 (Professor James Anaya)[381]
- 20 March to 3 April 2017 (Victoria Tauli-Corpuz).[382]

In the 8 years that have passed since the former SRRIP's visit, there have been increasing concerns regarding the enjoyment of human rights of Aboriginal and Torres Strait Islander Peoples nationally.

The current SRRIP, Dr Albert K Barume, made an unofficial visit sponsored by the Foundation of Aboriginal and Islander Research Action (FAIRA) in March 2025. He will undertake a formal country visit in 2026 to review progress against previous recommendations and to consider current concerns and opportunities for improvement and reform.

Other mechanisms

Many UN fora which are not specific to Indigenous Peoples and issues are, nonetheless, highly relevant to the rights of Aboriginal and Torres Strait Islander communities. For example, former Social Justice Commissioner, June Oscar AO, attended the Commission on the Status of Women (CSW) to bring attention to the gendered racism faced by Aboriginal and Torres Strait Islander women and girls.

Although not a treaty body, The United Nations Framework Convention on Climate Change (UNFCCC) also holds annual Conference of the Parties (CoP) sessions. Commissioner Katie Kiss participated in the CoP29 session, which was held in Baku, Azerbaijan in November 2024. First Peoples delegates regularly attend these fora to raise concerns about the impact of climate change on their lands, waters and way of life and to influence international negotiations on addressing the global climate crisis.

Indigenous Peoples' Rights in the Australian context

Reckoning with our national identity

As an early and, in many respects, progressive democracy, a nation among the victors in the war against fascism and a founding Member of the UN, Australia has formed an identity as a human rights champion. Australia has also sought to utilise the 'soft power' drawn from its espoused morality to punch above its weight in international affairs. As stated by the Australian Mission to the United Nations in 2015:

Australia has a long tradition of robust commitment to human rights and supporting and promoting human rights internationally... We believe that the protection and promotion of human rights is an essential component of a rules-based global order upon which lasting peace, security, freedom and dignity for all depend.[383]

Sitting uncomfortably alongside this identity is the reality of the inhumane treatment that has taken place in this country. Other Commonwealth colonies engaged in treaty processes with Indigenous Peoples in the pursuit of their colonial conquests. In contrast, the Australian state, its jurisdictions, its institutions and its laws were established and developed on the foundations of terra nullius and without even the most tenuous forms of consent from the original inhabitants.

The truth is that the measures taken to date to give effect to First Peoples' human rights have mainly been those recognising us as citizens and providing formal equality before the law. These measures have not addressed our rights to recognition, self-determination, redress for the dispossession of our Country and restitution for the harms wrought upon us.

The injustices inflicted on our peoples – the invasion of our Country, the taking of our lives, the theft of our children, the denial of our sovereignty and the denigration of our culture – are not just historic. They live on within us manifesting as intergenerational trauma. They live on within the structures and systems that govern our lives today – structures and systems which have failed to align with binding international human rights treaties to which Australia is a party.

Particularly in the earlier decades of the post-Second World War period, maintaining Australia's identity as 'one of the good guys' has relied heavily on justification for colonialisation and denial of its worst excesses. Apologists have also lent on the notion that measures already taken to address any injustices that may have occurred – such as the 1967 Referendum – have been sufficient.

More recently, we have seen efforts (some of which will be discussed further in the section below) to live up to this identity – to do better, face the truth about the past, make amends and work towards the ideals we espouse. Nonetheless, implementing sustained and genuine action to meet such goals has proven very challenging.

The rise and fall of self-determination policy

Coinciding with the era in which most of Australia's national discrimination legislation was passed, between 1972 and 1996 Australia adopted a policy of self-determination for Aboriginal and Torres Strait Islander peoples, formally renouncing the policy of assimilation.

This was an exciting period of progress and one in which the potential for further realisation of our human rights was put in place. It is during this period that we saw:

- the rise of the Homelands Movement
- the Koowarta v Bjelke-Peterson, Mabo No. 2 and Wik High Court decisions
- the passing of state and territory based Aboriginal Land Rights legislations and the federal *Native Title Act 1993* (Cth)
- the Redfern Park Speech
- the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Torres Strait Regional Authority (TSRA).

It was also the era in which landmark inquiries on key human rights breaches impacting our peoples were carried out, such as the:

- 1991 *Royal Commission into Aboriginal Deaths in Custody*
- 1991 *National Inquiry into Racist Violence in Australia*
- 1997 *Bringing them Home – National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.*

The abandonment of self-determination policy under the Howard Government in 1996 and its implementation of retrograde measures – such as the 10-Point Plan, the abolition of ATSIC and the Northern Territory Intervention – ushered in the era of 'practical reconciliation'. Neither practical nor reconciliatory, what this really promoted was a repudiation of First Peoples' rights, assimilation by default and the insidious retrenchment of structural racism.

Despite the rhetoric and isolated gestures of goodwill by Australian governments since then, this underlying dynamic has remained stubbornly in place. This dynamic acknowledges only a superficial aspect of our cultural identities, it frames us in the deficit and it punishes us for the outcomes it repeatedly and predictably generates.

Indeed, despite the Howard Government's assertion in 1996 that self-determination had failed, the truth is that it has never been implemented. This sits at the heart of why attempts by governments to address state-constructed disadvantage have continued to fail.

As stated by Professor Mick Dodson, the first Aboriginal and Torres Strait Islander Social Justice Commissioner and former member of the UNPFII:

> ***An approach that has never been tested cannot be deemed a failure...***
>
> ***There is a lot of misinformation perpetuated about what self-determination means. At its core, it involves people making decisions about policies and programs that directly affect their lives and having those decisions respected and supported...***
>
> ***Decades of research involving [I]ndigenous peoples in the United States and Canada makes it plain that communities facing serious, long-term disadvantage can and will take responsibility for sorting out problems if they are in a position to make decisions that will be respected and supported.***[384]

The pressure to conform to the dominant Australian culture, as if the culture was simply normative human behaviour, is echoed in the experience of other non-Westerners who have made Australia their home. In delivering the UNESCO Oration in 2024, Race Discrimination Commissioner Giridharan Sivaraman considered former Prime Minister Malcolm Turnbull's 'Australia's Multicultural Statement' that:

> ***... we come from every culture, every race, every faith, every nation. We are defined not by race, religion or culture, but by shared values of freedom, democracy, the rule of law and equality of opportunity – a fair go.***[385]

Commissioner Sivaraman argued that 'many of us are not allowed to be defined by our race, religion or culture due to the racism of benign assimilation' and that 'racism is actively hidden behind values-based assertions of fairness and freedom that make it nearly impossible to name, challenge and address ... without risk of harm.'[386]

First Peoples' rights in the wake of the Voice Referendum

The 2017 Uluru Statement from the Heart (the Uluru Statement) sought to create an off-ramp from this road to nowhere: a set of interdependent reforms to address our powerlessness and provide a platform for the realisation of our rights. The Uluru Statement reflected a near universal acknowledgement within our communities about the need for national truth telling, representation and agreement-making arrangements which recognise us not merely as lobbyists or protesters, but as self-determining peoples and rights-holders.

Holding an Indigenous Voice Referendum was an election pledge, and Prime Minister Anthony Albanese and his Government are to be commended for following through on their promise in October 2023.

Should it have succeeded, the new Voice might well have shone a path ahead – a way out of the business-as-usual model that has undermined First Peoples' rights for more than a century.

However, the failure to plan for either Referendum outcome, and to safeguard against a backlash directed at First Peoples and their enjoyment of human rights was a major oversight. What should have been universally understood as a result strictly contained to the question of constitutional enshrinement of the Voice has been conflated by bad faith actors to signal a general lack of support for Indigenous rights. This is a major factor in the well-evidenced spike in reports of racism against our people.[387]

Perhaps the most harmful impact of this has been the unnecessary loss of hard-fought ground. The outcome of the Referendum prompted a retreat by the Government away from its human rights commitments to the First Peoples of this country. Despite having firmly pledged to implement the Uluru Statement in full in 2022 and characterising the 'no' vote as a vote for 'a status quo that we all know isn't working' in 2023,[388] the Government is now taking what is tantamount to a 'practical reconciliation-lite' approach. Active pursuit of the Uluru Statement has ground to a halt. The message is loud and clear that, with respect to Indigenous Affairs, Closing the Gap is now the Government's almost singular focus.

The Closing the Gap Partnership is an important and historic achievement, and the objectives of the Agreement are sound. However, as discussed in Chapter 5: Fostering systemic integrity and accountability, without mechanisms in place to give its commitments any hard backing, the Closing the Gap Agreement is failing to deliver. It is also facing new threats. Over the past 14 months, a number of Australian state and territory governments have shown flagrant disregard and wilful opposition to human rights standards in the youth justice space.

In doing so, they have knowingly undermined their capacities to deliver on Closing the Gap targets.

> *Legislation is not being passed with human rights considerations – Hobart ITA Participant*

Codification of international law

One challenge First Peoples – and indeed all Australians – face in having their rights fulfilled is that in Australia – and other countries colonised by the British – international law and domestic law remain separate systems. This is different to many civil law countries such as France, the Netherlands, Germany and Switzerland. The effect of this is that international treaties and their articles do not take effect on domestic legal systems unless these are incorporated into national legislation passed through Parliament.

Australia's record of following through on codification of the treaties it has ratified is patchy at best. It is incomplete and spread across and applied inconsistently in legislation, policy, the common law and the Constitution. To an extent, this situation derives from a bias towards civil and political rights within Australia's dominant political culture inherited from Britain. There is a reluctance to pursue the implementation of economic, social and cultural rights to their full extent.

This has impacted on the enjoyment of rights by all Australians. It has also had particular consequences for Aboriginal and Torres Strait Islander peoples. Collective rights have not been adequately acknowledged or protected. An unbalanced emphasis on individual rights has diverted 'attention away from centuries of colonialism, dispossession, oppression ... [denial] of self-determination and cultural genocide'.[389]

Another factor inhibiting the codification of international human rights commitments is Australia's federal system. The Australian Government is the State party to international treaties signed and ratified on behalf of Australia. As outlined by the OHCHR:

> ***... when a State ratifies an international human rights treaty, it assumes a legal obligation to implement the rights recognised in that treaty. Through ratification, States undertake to put in place domestic measures and legislation compatible with their treaty obligations.***[390]

This is underpinned by consultative arrangements that ensure agreement across federal, state and territory jurisdictions prior to signature and ratification. However, in practice, these arrangements have diffused responsibility from the Commonwealth (which is the jurisdiction responsible for ensuring human rights compliance) and promoted a lack of action. This has been particularly pronounced in areas where state and territory governments have primary responsibility for setting policy. This is further exacerbated by a lack of political will at the federal level to intervene when jurisdictions are in breach of their obligations.

The result is that, when faced with poor outcomes relating to policy areas covered by international treaties, the federal government shifts responsibility for human rights compliance to state and territory governments, noting their responsibility for service delivery. In turn, states and territories act as if they are exempt from the obligations arising from Australia's ratification of international human rights instruments. There is no existing mechanism at the federal level to correct this or to require compliance.

Australia now stands alone amongst Western democracies in its lack of comprehensive human rights protections through a national human rights act or charter. The Australian Capital Territory, Victoria and Queensland have each passed Human Rights Acts or Charters of Rights, although the protection of human rights is vulnerable to parliamentary override. The Victorian Parliament has relied on its override provisions 3 times.[391] Since its commencement in 2020, *the Queensland Human Rights Act 2019* (Qld HRA) has been overridden twice.[392] On both occasions (in 2023 and again in 2024), this was to give effect to legislation incompatible with the rights of children.

In short, Australia has developed an exceptional accountability problem within its political culture and institutions. This not only conflicts with our country's commitments under international law, but with the broader picture we convey of ourselves as a nation that prides itself on being free, fair and egalitarian.

When the former UN High Commissioner for Human Rights, Michelle Bachelet, visited Australia in 2019, she commented on Australia's relationship with the international human rights framework. She said:

Sometimes I hear Australian commentators bemoan all this attention, suggesting the UN human rights machinery should focus its attention elsewhere, but this scrutiny is not the function of some international policing system enforcing rules from outside. It is based on international standards that Australia has helped to create; which successive Australian governments have voluntarily adopted; and which Australians themselves have sought to engage and leverage in an effort to make Australia a better, more inclusive and humane place.[393]

To date, the Australian Parliament has only partly implemented its international law obligations to protect people's human rights in Australian domestic law. This has primarily been done through federal anti-discrimination laws. Only 5 of the 14 ratified treaties have been explicitly incorporated into Australia's federal legislation. They are the:

- ICERD through the *Racial Discrimination Act 1975* (Cth)[394]
- CEDAW through the *Sex Discrimination Act 1984* (Cth)[395]
- CRPD through the *Disability Discrimination Act 1992* (Cth)[396]
- *Genocide Convention and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment through the International Criminal Court (Consequential Amendments) Act 2002* (Cth), which amended the *Criminal Code Act 1995* (Cth).[397]

A key limitation of Australia's current federal anti-discrimination laws is that while they prohibit discrimination, they do not proactively prevent it. The burden to challenge injustice is left to the people who experience discrimination. Only the *Sex Discrimination Act 1984* (Cth) imposes a proactive positive duty to eliminate sexual harassment, sex discrimination and other unlawful conduct in workplaces.

The *Racial Discrimination Act 1975* (Cth)

A powerful moment in Australian history and a turning point for race relations in this country, the *Racial Discrimination Act 1975* (Cth) (RDA) was Australia's first major piece of federal anti-discrimination law. Established in the wake of the abolition of the White Australia Policy and the success of the 1967 Referendum, the RDA explicitly prohibited racial discrimination and racial hatred and was extended in 1995 to make racial vilification unlawful.

However, in addition to the limitations it shares with Australia's other pieces of federal anti-discrimination law, the RDA has also suffered from the Australian Parliament overriding or suspending it. This has happened when governments passed legislation which implemented policies that the RDA would otherwise prohibit. This has limited the RDA's effectiveness.

To date, the only times the RDA has been suspended have been to support laws that would knowingly have a detrimental and discriminatory effect on Aboriginal and Torres Strait Islander people and communities. These are:

- the *Hindmarsh Island Bridge Act 1997* (Cth), which removed rights to protect Aboriginal cultural heritage[398]
- the *Native Title Amendment Act 1998* (Cth), also known as the 10-Point Plan, which limited the scope of the RDA and diminished the native title rights of First Peoples[399]
- the Northern Territory Emergency Response (the 'Intervention') in 2007, which overrode a number of human rights protections for Indigenous peoples living in prescribed communities in the NT.[400]

The *Genocide Convention* and the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*

The *Genocide Convention Act 1949* (Cth) approved the ratification of the *Convention on the Prevention and Punishment of the Crime of Genocide* and its extension to external territories. It did not, however, incorporate the Convention's provisions into domestic Australian law.

Likewise, Australia ratified the CAT in 1989 but, again, failed to codify its international obligations into domestic law.[401]

It was not until 2002 that these conventions were enacted into domestic legislation with amendments made to the *Criminal Code Act 1995* (Cth).

These amendments made genocide and crimes against humanity crimes under Australian law. These amendments require that proceedings are subject to the consent of the federal Attorney-General.[402] This consent provision has been the subject of some criticism. There was a failed attempt to legislate further amendments in 2024.[403]

The effect of the 2002 legislation is not retrospective. Thus, under Australian law, these conventions cannot be applied to actions impacting on Aboriginal and Torres Strait Islander peoples taken by Australian governments before the passage of the Act. This includes those past acts associated with the findings of genocide articulated in the 1997 *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*,[404] and more recently Victoria's Yoorrook Justice Commission.[405]

Applying the Genocide Convention

According to the Genocide Convention, genocide is constituted by acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group. It includes:

- causing serious bodily or mental harm to members of a group
- deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part
- forcibly transferring children of a group to another group
- the deliberate separation of families … the destruction of the cultural and social life of the oppressed group and the imposition of the national pattern of the oppressor.[406]

Importantly, genocide is committed even when the destruction has not been carried out.[407]

In order to substantiate genocide, intent must be demonstrated. While this has been a significant challenge under international law, it has not been impossible. For example, the Indian Residential School System in Canada was recognised as a mechanism of genocide against Indigenous Peoples by the unanimous resolution of Canada's House of Commons on 27 October 2022.[408]

Text box 4.2: Applying the Genocide Convention

The implementation of the UNDRIP in Australia

When formally adopting the UNDRIP in 2009, Australia's Indigenous Affairs Minister of the day, the Hon Jenny Macklin MP, affirmed that the Australian Government '[does] this in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australian's and building trust'.[409]

While she referred to the UNDRIP as 'non-binding' and claimed it 'does not affect Australian law', the Minister acknowledged that 'Australia's existing obligations under international human rights treaties are mirrored in the Declaration's fundamental principles' and that there is a need for 'the Declaration to be considered in its totality'.[410]

The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians[411] - Hon Jenny Macklin MP, former Minister for Indigenous Affairs

The UNDRIP specifically requires that '[S]tates, in consultation and cooperation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration'.[412]

Sixteen years on from its endorsement, Australia is yet to progress national implementation of the UNDRIP and its internationally accepted standards in a comprehensive or effective way.

Australia has, however, continued to formally support the UNDRIP on the international stage and to make commitments it has failed to follow through on.[413] This has prompted accusations of 'rights ritualism': gestures designed

to augment a State's image without the intention to take substantive measures.[414]

For example:

- In 2014, the Abbott Government participated at the WCIP. The WCIP Outcome Document, to which Australia agreed, commits Member States to develop, in consultation and cooperation with Indigenous peoples, national measures to achieve the ends of the UNDRIP.

> ***We commit ourselves to taking, in consultation and cooperation with Indigenous peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples and to promote awareness of it among all sectors of society, including members of legislatures, the judiciary and the civil service.***

> ***We commit ourselves to cooperating with [I]ndigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.[415]***

- In 2017, Australia successfully sought to be elected to a seat on the Human Rights Council for a 3-year term. In its statement, the Australian Government voluntarily pledged to:

> ***Support the Declaration on the Rights of Indigenous Peoples in both word and deed, including the promotion of the Declaration's principles through national engagement… [which would] draw connections between national activity and the principles of the Declaration'[416]***

As laid out below, there are a number of approaches that States can employ to give effect to the UNDRIP.

Approaches to giving effect to the UNDRIP

The 'principled' approach – This involves applying underpinning principles of the UNDRIP to each of the 46 articles and reflecting them in new and existing domestic laws, policies and practices. These principles are:

- self-determination
- participation in decision-making
- the protection and promotion of culture
- equality and non-discrimination.

Duties of States – Ensuring governments take the action required of them set out in the UNDRIP. There are at least 19 articles which impose duties on States or governments to undertake particular actions.

Referencing the Declaration – Promoting the referencing of the UNDRIP at every available opportunity. In Australia, this could include using the UNDRIP as a point of reference in the Government's Human Rights Framework and the Parliamentary Joint Committee on Human Rights.

Auditing compliance – Conducting an audit of existing legislation, policies and programs to ensure compliance with the identified underpinning principles of the UNDRIP, particularly the principle relating to non-discrimination and equality.

Text box 4.3: Approaches to giving effect to the UNDRIP

While the Australian Government has referenced the UNDRIP in a number of their policies and has cited principles and even articles in some instances, by and large, this has been inconsistent and superficial. In the vast majority of cases, such references are included only as guiding principles or in unevidenced assertions that policies are aligned with the UNDRIP. What is almost always missing is any detail as to how the UNDRIP will guide policies, how they are aligned and how this will be evaluated.

The main way that state and territory governments acknowledge the UNDRIP is by referencing the Declaration – again, mostly at a very high level. Nonetheless, the UNDRIP has also been referenced in legislation in 3 jurisdictions:

- The ACT cites the UNDRIP in its human rights legislation.[417]
- Queensland's *Path to Treaty Act 2023* was the first legislation in Australia which required implementation in accordance with the UNDRIP. The Queensland Government has since repealed this act.
- The preamble of Victoria's *Statewide Treaty Act 2025* affirms that the Victorian Government and First Peoples have agreed to a Treaty under principles of the UNDRIP and through free, prior and informed consent. Furthermore, Section 18(2), states that the First Peoples' Assembly of Victoria will cooperate with Traditional Owner groups to realise self-determination in accordance with the UNDRIP.[418]

Although it does not reference the UNDRIP directly, within a specific and targeted area Queensland's *Meriba Omasker Kaziw Kazipa Act 2020* gives the UNDRIP effect by providing legal recognition of Torres Strait Islander families' continued use of traditional child rearing practices.[419]

The Act addresses long-standing issues faced by those Torres Strait Islander people whose legal identity has not reflected their cultural identity. It has made accessible basic administrative tasks that most Australians take for granted – such as school enrolment, obtaining a birth certificate, making a will and accessing financial support. Importantly, it recognises the cultural rights, laws and customs alongside Western law, without significantly compromising either.

Informed by or referencing the UNDRIP, these laws all provide clear examples of how to give practical effect to First Peoples' rights. Looking to the future, there are opportunities to establish further domestic arrangements like these – including legislation targeting specific issues like the *Meriba Omasker Kaziw Kazipa Act 2020*. Such opportunities can give effect to our rights across a range of areas where we experience discrimination stemming from a lack of recognition of our cultures in Australian law.

International comparisons

Australia's lack of effort to implement the UNDRIP at the national level stands in stark contrast to developments in other nations. At least 10 countries have taken steps to incorporate the UNDRIP into their own constitutions, while others have taken steps to enhance legislative, policy and existing systems.[420] Approaches to implementation that have taken place abroad offer several insights to consider when undertaking a similar process in the Australian context.

An exploration of work done on this issue in Canada and Aotearoa New Zealand – both of which, like Australia, initially opposed the UN General Assembly's resolution to adopt the UNDRIP in 2007 – follows.

Canada

The implementation of the UNDRIP in Canada and the province of British Columbia (BC) pose interesting examples for consideration in the Australian context. Like Australia, Canada evolved from a federated British colony and BC from a jurisdiction within that broader federation.[421]

Unlike Australia's Constitution, Section 35 of the Canadian Constitution (which was amended in 1982) recognises and affirms the existing Indigenous and treaty-related rights of Indian, Inuit and Métis peoples. Section 35 explicitly includes rights acquired through land claims agreements and recognises that treaty rights can evolve over time.

It is noteworthy that Canadian developments have only taken place following calls by its Truth and Reconciliation Commission in 2015 to implement the UNDRIP via a national action plan. This resonates with the Uluru Statement from the Heart's inclusion of truth telling as an indispensable pillar to reconciliation in Australia.

In June 2021, Canada took steps to implement the UNDRIP by passing the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which has the dual purpose of:

- affirming the role the UNDRIP as a universal international human rights instrument with application in Canadian law
- providing a framework for the Canadian Government's implementation of the UNDRIP.[422]

In accordance with the Act, the Canadian government must take all necessary steps to ensure consistency between the UNDRIP and the laws of Canada and to develop a strategy to implement the UNDRIP.[423]

Turning to the provincial level, BC passed the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) into law in November 2019. DRIPA sets out 4 key areas, requiring and empowering the province to:

- align provincial laws to the UNDRIP
- develop and implement an action plan, created with Indigenous Peoples
- provide regular reporting via the tabling of annual reports to the legislature by 30 June of each year
- enter agreements with Indigenous governments which allow for the exercise of shared statutory decision-making.[424]

BC now has a 5-year cross-government action plan to implement the UNDRIP which spans 2022–2027. The document sets out key goals and actions to be achieved within this timeframe in partnership with Indigenous Peoples.[425]

Aotearoa New Zealand

In affirming support for the UNDRIP in 2010, the New Zealand Government drew direct parallels with the Treaty of Waitangi and the opportunity to acknowledge the original custodianship of the Māori as the 'original inhabitants of New Zealand' and to affirm their 'longstanding rights'.[426]

Following engagement by the New Zealand Human Rights Commission and Iwi Chairs, an intercountry meeting took place with the EMRIP in 2019. This provided technical advice on the implementation of an action plan. Public consultation did not commence until late 2021; around 70 workshops were held with the community until February 2022.[427]

A draft action plan was due to be developed but was put on hold by Cabinet in December 2022. The incoming conservative government announced that it would not progress a Declaration plan in mid-2024.[428]

As will be discussed later in this chapter, these international examples provide inspirations and warnings about how Australia might best proceed with implementation, should the Australian Government resolve to take genuine and effective steps forward.

The Australian Human Rights Commission

Australia has taken action to incorporate its human rights obligations at the domestic level is through legislation establishing the Australian Human Rights Commission (the Commission) as its NHRI. It legislated this through the *Human Rights Commission Act 1981* (Cth) and the *Australian Human Rights Commission Act 1986* (Cth).

The Commission has maintained A-status accreditation for a NHRI. This depends on full compliance with a set of principles known as the Paris Principles. The Global Alliance of National Human Rights Institutions (GANHRI) conducts this assessment.

The Commission provides guidance and advocacy on the implementation of Australia's human rights obligations and carries out regulatory, complaints-handling and quasi-judicial functions under Australia's federal anti-discrimination laws which are the:[429]

- Racial Discrimination Act (RDA)
- Disability Discrimination Act (DDA)
- Sex Discrimination Act (SDA)
- Age Discrimination Act (ADA).

Human Rights and Discrimination Complaints

The period 2017 to 2024 saw an upward trend in complaints received by the Commission from Aboriginal and Torres Strait Islander people.

It is noteworthy that the greatest number of complaints received from Aboriginal and Torres Strait Islander people each year concerned racial discrimination. These comprised between 56.6–70.5% of all complaints made by Aboriginal and Torres Strait Islander people during the period.

The second and third most common complaints were disability discrimination and sex discrimination respectively.

	RDA	ADA	DDA	SDA	ILO	HR	Total RDA complaints	%
2017	56	3	27	10	3	0	300	19
2018	98	2	20	11	6	2	408	24
2019	54	0	24	9	4	0	339	16
2020	90	6	35	13	4	6	489	18
2021	114	10	35	23	5	3	542	21
2022	112	9	33	21	3	2	456	25
2023	119	7	26	18	2	3	462	26
2024	103	1	26	17	1	2	400	14

Text box 4.4: Complaints received by the Commission from Aboriginal and Torres Strait Islander People under each discrimination regime by year – between 2017-2024.

Representative complaints under the RDA

Between 2017 and 2024, 33 representative complaints under the RDA were lodged by legal representatives on behalf of Aboriginal and Torres Strait Islander complainants.

The majority of the representative complaints received by the Commission raise systemic issues about the administration of State or Commonwealth laws, practices and/or policies which in many cases are not amenable to being resolved through the Commission's conciliation processes.

Year	No. of complaints received	S9 – Racial Discrimination[430]	Goods, services, facilities	Access to places/ facilities	Land, housing, accommodation	Employment	Racial hatred
2017	Nil						
2018	4	4	3				
2019	4	4	4	2			2
2020	7	5	1				2
2021	2	1	1				1
2022	7	7	3		2		1
2023	2	2	1				
2024	7	7	1			1	1
Total	**33**	**30**	**14**	**2**	**2**	**1**	**7**

Text Box 4.5: Representative complaints received by Aboriginal and Torres Strait Islander People under the RDA by year and area – between 2017–2024

Thirty of the complaints allege racial discrimination under section 9 of the RDA. Section 9 makes it:

...unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.[431]

Issues raised in the representative complaints received by the Commission since 2017 include the following:

- use of force by police officers and alleged failure to provide medical care in relation to injuries sustained or while in police custody
- conditions and treatment of Aboriginal and Torres Strait Islander children in juvenile justice centres and facilities
- claims that police have not provided sufficient services to protect members of a clan from the actions of another Indigenous group
- decisions and actions by state child protection agencies to investigate, remove and not reunify Aboriginal and Torres Strait Islander children from their families
- claims that residents of a remote community were provided with an inadequate range of health services when compared with other communities with similar populations
- the ability of native title holders to participate in ballots about the selection of sites for nuclear waste management facilities and claims that technical testing damaged cultural heritage
- claims wages of Aboriginal people were withheld over a period of 40 years and individuals were ineligible for ex gratia payments under a reparations scheme set up by a state government
- allegations income support payments for remote areas, which are predominately comprised of Aboriginal and Torres Strait Islander peoples, are discriminatory, as the obligations imposed are more onerous than those imposed in non-remote areas
- provision of housing by state governments, including using without grounds termination of fixed term tenancies and alleged failures to provide and maintain habitable housing for tenants in remote communities
- alleged restrictions and interference with the practice of Aboriginal cultural fishing by state government agencies
- alleged refusal of service by hotels to a group of people of Aboriginal descent and actions by police, including use of force, when called to the hotels
- allegations of racial hatred in relation to the publication of online content by media outlets about the allocation and spending of damages paid to a group of Indigenous people
- claims the Aboriginal Community Police Officer Program is discriminatory in terms of receiving less favourable pay and conditions of employment and being targeted by racist conduct.

Conciliated race discrimination claims brought by Aboriginal and Torres Strait Islander people

The Commission provides a conciliation function where required and where both parties are amenable. In the 2024-25 financial year, the Commission finalised 17 conciliated complaints brought by Aboriginal and Torres Strait Islander people. Eight of these were claims of racial discrimination in the provision of goods and services, 7 concerned racial discrimination in employment. The others concerned racial discrimination in education, access to places and racial hatred.

Aboriginal and Torres Strait Islander people have expressed frustration about the inaccessibility and complexity of complaints mechanisms at all levels. As stated in Chapter 1: First Peoples' Voices – Informing the Agenda, participants described how red tape, legal jargon and poor communication about processes and next steps discourage people from pursuing complaints. This included the Commission's complaints process.

There is a need to raise greater public awareness and provide increased and culturally responsive supports to inform and assist Aboriginal and Torres Strait Islander people to make complaints. These mechanisms need to be accessible and effectively harnessed to protect their rights.

Role of the Social Justice Commissioner

The Social Justice Commissioner role – 1 of 7 Commissioner roles at the Commission – was established in 1992 in response to the *Royal Commission into Aboriginal Deaths in Custody* and the *National Inquiry into Racist Violence*. The role has 3 key functions under the *Australian Human Rights Commission Act 1986* (Cth). These are:

- to monitor the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander people
- to promote discussion, awareness and respect for the rights of Aboriginal and Torres Strait Islander people
- to examine policy and legislation to see whether they recognise and protect the rights of Aboriginal and Torres Strait Islander people.

The office also carries a responsibility under the *Native Title Act 1993* (Cth) to report to the federal Attorney-General about the operation of the Native Title Act and its effect on the exercise and enjoyment of human rights of Aboriginal and Torres Strait Islander peoples.

Both Special Rapporteurs on the rights of Indigenous Peoples who carried out official country visits to Australia held the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner in very high regard. Comments included that the role is an 'exceptional model for advancing the recognition and protection of rights of Indigenous Peoples' and that there was a need 'to collaborate closely with and pay due attention to implementation of the recommendations of the Commissioner'.[432]

Tracking Australia's human rights performance

Human rights issues facing Aboriginal and Torres Strait Islander peoples feature prominently in Australia's interactions with UN mechanisms. As of July 2025, a search of the OHCHR's Universal Human Rights Index resulted in 2,041 recommendations and observations relevant to Australia across 18 mechanisms. Of those recommendations and observations, 733 – over 35% – were relevant to Aboriginal and Torres Strait Islander peoples, with these spanning 16 out of 18 (over 88% of) mechanisms.[433]

Mechanisms	Documents and Recommendations
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material	1 document 24 recommendations
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes	1 document 24 recommendations
Committee against Torture	3 documents 139 recommendations
Universal Periodic Review	3 documents 779 recommendations
Committee on the Rights of the Child	2 documents 139 recommendations
Committee on the Rights of Persons with Disabilities	2 documents 122 recommendations
Special Rapporteur on the situation of human rights defenders	1 document 14 recommendations
Committee on the Elimination of Discrimination against Women	2 documents 104 recommendations
Special Rapporteur on violence against women, its causes and consequences	1 document 46 recommendations
Committee on the Elimination of Racial Discrimination	2 documents 94 recommendations
Human Rights Committee	2 documents 102 recommendations
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	3 documents 155 recommendations
Committee on Economic, Social and Cultural Rights	2 documents 120 recommendations
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	1 document 66 recommendations
Special Rapporteur on the human rights of migrants	1 document 34 recommendations
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	1 document 34 recommendations
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	1 document 30 recommendations
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living	1 document 15 recommendations

Text box 4.6: Office of the High Commissioner for Human Rights Universal Human Rights Index - Recommendations and observations relevant to Australia

UPR Cycle	No. of States making statements	No. of States raising the rights of First Peoples	No. of recommendations received	No. of recommendations specifically relevant to or referencing First Peoples
1st UPR October 2010	53	36	145	37
2nd UPR November 2015	104	52	290	59
3rd UPR January 2021	122	17	344	65
4th UPR January 2026	120	66	343	73
Totals	**399**	**171**	**1122**	**234**

Text box 4.7: Australia's Universal Periodic Review Cycles – Recommendations pertaining to Aboriginal and Torres Strait Islander peoples

Universal Periodic Review recommendations

As mentioned earlier in this chapter, Australia has now participated in 4 Universal Periodic Review (UPR) cycles. This has resulted in a total of 1,122 recommendations of which 234 specifically relate or refer to Aboriginal and Torres Strait Islander peoples. A breakdown is provided in Text box 4.7.

Of the total 1,122 recommendations, a significant number identify the need to:

- address racism and discrimination
- improve protections for women and children exposed to violence
- protect the human rights of children more generally (including, for example, by raising the age of criminal responsibility).

While the majority of these did not specifically refer to 'Indigenous' or 'Aboriginal and Torres Strait Islander' people, the issues they cover impact on Aboriginal and Torres Strait Islander people disproportionately. It is of note that many of these recommendations, particularly those relating to the rights of children, have either not been addressed or are assessed as 'partly implemented'.[434]

It is also noteworthy that many of the recommendations made relate to the ratification of human rights mechanisms including, for example, the Optional Protocol to the ICESCR, the Optional Protocol to the CAT (OPCAT) and the Optional Protocol to the CRC on a communication procedure. Of these recommended mechanisms, the OPCAT has since been ratified, but the others have not.[435]

Of the recommendations specifically relevant to, or referencing, Aboriginal and Torres Strait Islander peoples, a recurrent theme was constitutional recognition. This was also the focus of voluntary commitments made by Australia which were actioned through holding the 2023 Indigenous Voice Referendum.

Recommendations were also made about the protection of Indigenous culture and heritage, including languages. Many of the recommendations relating to Indigenous language preservation have been addressed or addressed in part. However, those relating to protection of cultural heritage –

an ongoing concern nationally and across all jurisdictions – have not.

Many countries also recommended that Australia ratify the *Indigenous and Tribal Peoples Convention 1989* of the International Labour Organization (also known as ILO 169). This has been a point of advocacy from Aboriginal and Torres Strait Islander human rights defenders for more than 3 decades. Again, this recommendation has not been actioned.

Treaty body engagement

Australia is increasingly coming under the spotlight of international human rights committees responsible for monitoring Australia's compliance under the international treaties and agreements to which Australia is party. Many have raised concerns about Aboriginal and Torres Strait Islander human rights as part of Australia's treaty reporting and review processes.

In recent years, Aboriginal and Torres Strait Islander people have also been more regularly utilising complaints mechanisms in an effort to affirm and safeguard their human rights.

Given the gaps that exist with respect to codification of Australia's human rights obligations in legislation (as discussed earlier in this chapter), domestic avenues for remedy are often lacking or very limited. Where these are absent or have been exhausted, UN bodies can accept complaints regarding alleged breaches of human rights by Australian governments.

While Australia is not bound to implement UN committee rulings – and has demonstrated a trend of rejecting their findings – committee decisions carry significant moral weight and impact, both independently and cumulatively. Complaints help to bring stark realities to the fore, disrupt the heavily curated narrative Australia presents on the international stage and build leverage to negotiate the better protection of our rights.

Outlined below is a non-exhaustive account of treaty body activity pertaining to Australia.

The Human Rights Committee (CCPR)

Australia appeared before the CCPR in October 2017 in relation to Australia's 6th report under the International Covenant on Civil and Political Rights.[436] Australia's next report is due in August 2026.

At least 2 complaints from Aboriginal and Torres Strait Islander groups have been accepted by the CCPR in recent times. These are:

- *Daniel Billy and others v Australia* (Torres Strait Islanders Petition), a complaint submitted to the CCPR in 2019 concerning failures to adapt to climate change, upgrade seawalls or reduce greenhouse gas emissions, thereby violating the rights to culture and to be free from arbitrary interference with private life, family and home.[437]
- *Ailsa Roy & Wunna Nyiyaparli Indigenous People v. Australia*, a complaint submitted to the CCPR concerning the effective participation of Indigenous Peoples in mechanisms for the determination of their rights to traditional territory.[438]

These complaints and the CCPR's responses are covered in more detail in Chapter 8: Land justice.

The Committee on Economic, Social and Cultural Rights (CESCR)

Australia submitted its 6th report under the International Covenant on Economic, Social and Cultural Rights on 13 October 2023.[439]

The Australian Human Rights Commission raised numerous matters concerning Aboriginal and Torres Strait Islander peoples to the CESCR in its submission of January 2022. This included lack of action on:

- the implementation of the UNDRIP
- ongoing social disadvantage
- constitutional recognition and entrenchment of racial discrimination in Australia's Constitution

- human rights training for public officials overseeing the Statement of Compatibility process
- deficiencies in Australia's cultural heritage legislation as evidenced by the destruction of Juukan Gorge.[440]

Australia was due to appear before the Committee before the end of 2025, but this has been postponed to 2026.

The Committee on the Rights of the Child (CRC)

Australia submitted its combined 5th and 6th report under the *Convention on the Rights of the Child* (CRC), 2nd report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) and 2nd report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) in 2018. A date has not yet been set for Australia's next report.[441]

As is discussed in Chapter 7: Justice for First Peoples, the Chair of the CRC, Ann Skelton, has also been an active public commentator on the *Making Queensland Safer* law passed in Queensland and changes made to the Criminal Code in the Northern Territory.

Both Acts took effect in 2024. She expressed the view that in passing these laws, these governments were in breach of their human rights obligations to children under the CRC.[442]

The Committee on the Elimination of Racial Discrimination

Australia appeared before the Committee on the Elimination of Racial Discrimination (CERD) in November 2017 in relation to Australia's combined 18th–20th reports under the *International Convention on the Elimination of All Forms of Racial Discrimination*.[443] Australia's next report is delayed. It was due in 2022. Australia is now due to appear before the Committee in 2027.

At least 2 complaints from Aboriginal and Torres Strait Islander groups have been accepted by the CERD in recent times. These were:

- a complaint made in 2021 under the CERD's Early Warning and Urgent Action procedure requesting a review of the Western Australian draft Aboriginal Cultural Heritage Bill 2020.[444] The complaint concerned WA cultural heritage legislation following the destruction of 46,000-year-old Juukan Gorge rock shelters[445]
- a complaint made in 2025 under the CERD's Early Warning and Urgent Action procedure requesting a review of the state of youth justice laws, policy and state agency conduct. The complaint concerned discrimination in Australia's youth justice systems and the violation of the rights of Aboriginal and Torres Strait Islander children.[446]

These complaints and the CERD's responses are covered in more detail in Chapter 8: Land justice and Chapter 7: Justice for First Peoples.

The Committee on the Elimination of Discrimination against Women (CEDAW)

Australia submitted its 9th periodic report for CEDAW in March 2025.[447] Australia is due to appear before the Committee in 2026.

The Committee on Rights of People with Disability (CRPD)

Australia submitted its combined 2nd and 3rd report under the Convention on the Rights of Persons with Disabilities on 7 September 2018 and appeared before the Committee in relation to its report in September 2019.[448] Australia is not due to appear before the Committee again until 2039.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Australia appeared before the Committee against Torture in November 2022 in relation to Australia's 6th report under the Convention against Torture.[449] Australia is next due to report in 2026.

Special Procedures engagement

Expert Mechanism on the Rights of Indigenous Peoples – Country Engagement Missions

In response to a request from Dr Hannah McGlade and the Noongar Family Safety and Wellbeing Council, and in consultation with the Australian and WA Governments, the EMRIP conducted a country engagement in Australia from 1– 10 October 2023.[450]

The request was made under EMRIP's mandate to provide technical advice regarding the implementation of laws and policies relating to the rights of Indigenous peoples.[451] The request was:

> ***... based on the understanding that certain legislative frameworks do not align with the key articles of the Declaration, including rights to: self-determination (Articles 3, 4), non-discrimination (Articles 2, 22), the prohibition against forced assimilation (Article 8) and the removal of people from traditional lands and territories (Articles 7, 10).[452]***

The country engagement included visits to Perth, Albany and Geraldton, where meetings were conducted with Aboriginal and non-Aboriginal organisations, members of the legal field, academia and judiciary, as well as out-of-home care facilities.[453]

In its advisory note, the EMRIP acknowledged positive developments including:

- the work of Aboriginal Community-Controlled Organisations (ACCOs) and the participation of the Coalition of the Peaks on the Joint Council on Closing the Gap – but expressed the view that this is only 'one voice' at the table and cannot be considered meaningful participation consistent with Article 18 of the UNDRIP
- the Southwest Native Title Settlement framework as a potential mechanism to advance self-determination for Noongar peoples over time
- law reforms (and practices in WA) that include recognition of the principle of self-determination, the Aboriginal Family-led Decision-Making process, the Dandjoo-Bidi-ak Pilot Court and Aboriginal Representative Organisations (AROs) and their role in decision-making concerning child protection.

The EMRIP emphasised, however, that in other respects little had changed in WA despite the findings of numerous human rights bodies and experts, such as:

- the CERD regarding the disproportionate number of Aboriginal children imprisoned, who are at higher risk of removal to culturally inappropriate or abusive placements[454]
- the SRRIP, who identified the impact of trauma, entrenched poverty, mental health and substance abuse on child removals, as well as the lack of adherence to the Aboriginal and Torres Strait Islander Child Placement Principle[455]
- the UN Committee on the Rights of the Child which, in 2019, noted the impact of 'different criteria being used across jurisdictions in making decisions on child removal and placement.'[456]

The EMRIP also noted concerns relating to:

- limitations on the independence of ACCOs and peak bodies impacted by the reliance of on discretionary government funding
- the alarming increase in out-of-home care statistics for Indigenous children, the resulting disconnection to family, culture and community, and the lack of consistent application of the Aboriginal and Torres Strait Islander Child Placement Principle

- law reforms and practice that limits engagement to post child removal, lack of focus on prevention, early intervention and cultural competency and that promote and perpetuate forced assimilation, trauma and discrimination including systemic and structural racism and averts access to justice
- inadequate resourcing of ACCOs and community-led programs – such as the Aboriginal Legal Services, including the Women's Legal Services and Aboriginal Family Legal Services – to continue their work and extend their reach.

While the country engagement received direct input from those communities visited in WA, it considered evidence and provided advice and recommendations relevant to the situation of Aboriginal and Torres Strait Islander peoples nationally.

The report of the country engagement, which included 12 recommendations, was presented at the 17th Session of the EMRIP, in July 2024.

The Commission, through the participation of the Aboriginal and Torres Strait Islander Social Justice Commissioner at the EMRIP, supported the recommendations outlined within the country report. The Commissioner encouraged the EMRIP to continue to work with Australian governments to ensure the recommendations are implemented without delay.[457]

Special Rapporteur on the rights of Indigenous Peoples – Country Visit Reports

United Nations Special Rapporteurs on the rights of Indigenous Peoples have made a total of 82 recommendations across 2 official country visits to Australia in 2009 (34 recommendations) and 2017 (48 recommendations).[458]

Key recommendations put forward by Special Rapporteur, Professor James Anaya, in his 2010 report included that:

- the Government should pursue constitutional or other effective legal recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples in a manner providing long-term security for these rights
- the Commonwealth Government should ensure that state, territory and local governments are aware of their obligations to promote and protect the human rights of Indigenous Peoples. The Government should promote a consistent approach to these rights across all levels of government authority
- the Commonwealth, state and territory governments should review all legislation, policies and programmes that affect Aboriginal and Torres Strait Islander peoples in light of the UNDRIP.[459]

In 2017, 2 years prior to the negotiation of the National Partnership Agreement on Closing the Gap, the Prime Minister's Closing the Gap Report showed 6 of 7 targets not on track.[460] The SRRIP, Victoria Tauli-Corpuz, noted in her report of that year that while policies had been adopted to address the socio-economic disadvantage experienced by Aboriginal and Torres Strait Islander people:

> ***... the policies of the Government do not duly respect the rights to self-determination and effective participation; contribute to the failure to deliver on the targets in the areas of health, education and employment; and fuel the escalating and critical incarceration and child removal rates of Aboriginal and Torres Strait Islanders.[461]***

She also raised concerns about the 'limited progress' made by the Government to implement the recommendations provided during the first visit.

Making human rights a reality in Australia

The Commission has been advocating for a number of reforms to improve respect for human rights in Australia for all Australians. This includes:

- an Australian Human Rights Act
- progressing the implementation of the UNDRIP
- supporting Aboriginal and Torres Strait Islander participation in the international human rights system.

As the most marginalised and vulnerable population to human rights breaches, Aboriginal and Torres Strait Islander peoples would enjoy significantly improved access to human rights if these mechanisms were given effect.

Recommendation 7

The Australian Government should implement the recommendations of the following major reports within this term of Parliament:

- 'Revitalising Australia's commitment to human rights: Final report of the Free and Equal project'
- 'Inquiry into Australia's Human Rights Framework' by the Parliamentary Joint Committee on Human Rights
- 'Report of the Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia' by the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs.

Key actions recommended in these reports include the introduction of a national human rights framework that includes a national Human Rights Act, national human rights education plan, and a national implementation plan for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

An Australian Human Rights Act

As discussed earlier in this chapter, Australia's international human rights obligations are often absent, partial or captured inconsistently across various pieces of legislation, the common law and the Constitution.[462] Where protections do exist, they are fragile and vulnerable to parliamentary override.

The lack of nationally agreed standards, variances between existing state and territory human rights acts and unique service delivery arrangements at the jurisdictional level create significant ambiguity about human rights and obligations. This gives rise to a situation where the extent to which a person has access to rights protections 'is wholly contingent on where they live.'[463]

As the Commission has argued, a national human rights framework, with a Human Rights Act as its centrepiece, would help to address many of these inadequacies and ensure a constant means of protection for all people in Australia, all the time.

On 15 March 2023, the federal Attorney-General referred to the Parliamentary Joint Committee on Human Rights (Human Rights Committee) an inquiry that considered the scope and effectiveness of Australia's 2010 Human Rights Framework and National Human Rights Action Plan.[464]

The Human Rights Committee recommended that the Australian Government enact a national Human Rights Act, broadly reflecting the Commission's model proposed in its 'Free and Equal' report.[465]

An Australian Human Rights Act would help to prevent human rights breaches from occurring by requiring government bodies to properly consider and act compatibly with human rights. It would also promote national coordination and set a standard for state and territory jurisdictions to aspire, particularly in those jurisdictions that are yet to introduce human rights legislation. Where breaches of rights do occur, a Human Rights Act would give people the power to take action to address the breaches.

Advocacy should also turn to a discussion on the need for Australia to adopt and embed a National Human Rights Act which should embed within Australia rights that underpin UNDRIP and are essential to Australia's First Nations Peoples
- ITA Survey Respondent

How an Australian Human Rights Act would protect the rights of Aboriginal and Torres Strait Islander peoples

1. A national Human Rights Act would provide recognition of the cultural rights of Aboriginal and Torres Strait Islander peoples.
2. The voices of Aboriginal and Torres Strait Islander peoples would matter in decision making about them. The positive duties under the Human Rights Act will hold government to account for this.
3. The Human Rights Act's access to justice duty would improve the fairness and operation of decision-making processes that involve Aboriginal and Torres Strait Islander peoples.
4. The impact of laws, policies and programs on Aboriginal and Torres Strait Islander peoples would be better considered, with reference to the right to self-determination and the rights as set out in the UNDRIP.
5. There would be remedies for Aboriginal and Torres Strait Islander peoples if their rights are breached by the Australian Government.
6. There would be pathways for direct dialogue between Aboriginal and Torres Strait Islander peoples and the Parliamentary Joint Committee on Human Rights at the stage that draft legislation is scrutinised for its human rights compliance.
7. There would be improved community awareness and understanding of human rights, including Aboriginal and Torres Strait Islander people's rights.
8. There would be better understanding of human rights among law enforcement, media, government, service providers and others who interact with Aboriginal and Torres Strait Islander peoples. This would contribute to greater respect and dignity of treatment.[466]

Text box 4.8: How an Australian Human Rights Act would protect the rights of Aboriginal and Torres Strait Islander peoples

Progressing the implementation of the UNDRIP in Australia

> *I have no issue with promoting this United Nations Declaration, the primary issue is accountability for Australia especially in relation to committing to upholding the recognised rights in the UNDRIP. With respect, this is a toothless tiger in the absence of a clearly identified accountability framework – ITA Survey Respondent*

As progress in other countries has shown, a strategy to implement the UNDRIP is not an anathema.[467] Rather, it is an important blueprint for governments to uphold their obligations concerning Indigenous Peoples. The literature on UNDRIP implementation across the globe also demonstrates that an effective strategy for implementation in Australia must be comprehensive and multilayered.

The Canadian experience has highlighted the risks of reliance upon laws alone. As Indigenous scholars in Canada have noted, the legislative approach can enable states to:

- 'dictate how the instrument actually unfolds'[468]
- limit the participation of Indigenous peoples in the process[469]
- enact a selective and performative interpretation of their UNDRIP obligations.[470]

Closer to home, developments in Aotearoa New Zealand have demonstrated that a comprehensive Indigenous engagement process is essential to identify First Peoples' aspirations to implement the UNDRIP. However, timing, effective public education and engagement with the non-Indigenous population are also essential considerations.

On 29 March 2022 Senator Lydia Thorpe sponsored a private senator's bill, the United Nations Declaration on the Rights of Indigenous Peoples Bill 2022, to establish a framework for the implementation of the UNDRIP by the Commonwealth Government.

On 2 August 2022, the Senate in the 47th Parliament referred an inquiry into the UNDRIP to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSIA, or the Committee) for inquiry and report.[471]

The Terms of Reference for the inquiry conducted by the JSCATSIA were to inquire and report on the application of the UNDRIP in Australia, with reference to:

- the international experience of implementing the Declaration
- options to improve adherence to the principles of the Declaration in Australia
- how implementation of the Uluru Statement from the Heart can support the application of the Declaration
- any other related matters.[472]

The JSCATSIA delivered its report on the Inquiry into the United Nations Declaration on the Rights of Indigenous Peoples to the Australian Parliament in November 2023. Reiterating the High Court's confirmation of the historical untruth of terra nullius, the Committee Chair, Senator Patrick Dodson, said:

At the heart of this Report is a call for Australian governments and civil society to meaningfully engage with the rights of Indigenous peoples through UNDRIP. The challenge for the Australian Parliament is to determine how these rights should be enjoyed and made meaningful for Aboriginal and Torres Islander peoples within the political and legal systems of the Australian Nation State. Importantly, the participation of First Peoples is both necessary and integral to the way governments respond to the application of the rights articulated in UNDRIP.[473]

The Committee made 6 recommendations, being:

1. the Commonwealth Government ensure its approach to developing legislation and policy on matters relating to Aboriginal and Torres Strait Islander people (including, but not limited to, Closing the Gap initiatives) be consistent with the Articles outlined in the United Nations Declaration on the Rights of Indigenous Peoples.
2. a National Action Plan [be developed] in consultation with Aboriginal and Torres Strait Islander peoples, that outlines the approach to implementing the United Nations Declaration on the Rights of Indigenous Peoples in Australia.
3. any National Action Plan should consider the legislative, policy and other approaches to implement and assess compliance with, the United Nations Declaration on the Rights of Indigenous Peoples across all jurisdictions and should seek to include coordination agreements with all levels of government to maximise success.
4. the Commonwealth Government establish an independent process of truth-telling and agreement making, as requested by Aboriginal and Torres Strait Islander peoples, as a mechanism to support healing and assist implementation of the United Nations Declaration on the Rights of Indigenous Peoples (particularly Articles 3, 8, 11, 28, 32 and 37).
5. the Commonwealth Government work with State and Territory Governments and non-government education institutions to develop and adopt content for all levels of education, including for new citizens, in order to enhance awareness of:
   - Australia's human rights framework, including the relationship between the United Nations Declaration on the Rights of Indigenous Peoples and human rights covenants
   - Australian history in respect to the relevance of the legal fiction of 'terra nullius' in facilitating the colonisation and settlement of Australia and its impact on Aboriginal and Torres Strait Islander peoples
   - General civics awareness, including the functions and operations of Australian political and legal institutions.
6. the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) be amended to include the United Nations Declaration on the Rights of Indigenous Peoples in the definition of 'human rights', so that it be formally considered by the Parliamentary Joint Committee on Human Rights when scrutinising legislation.[474]

The Committee report included a dissenting report from Coalition members which provided support for Recommendation 5 only.[475]

Additional comments were also provided by First Nations Senators Dorinda Cox and Lydia Thorpe.

They acknowledged that First Peoples sovereignty was never ceded. They highlighted the need to audit compliance of existing laws, policies and practices and for the implementation of the UNDRIP to be underpinned by a comprehensive Australian Human Rights Act.[476]

The 6 recommendations provided by JSCATSIA are consistent with the position of the Commission, which made a submission to the inquiry.[477] The Commission also put forward a number of measures not included in the Committee's report, including:

- removal of the race power from the Constitution
- the establishment of a federal Human Rights Act (as per the Commission's proposed model)[478]
- the development of subject-specific indicators to monitor the implementation of UPR recommendations relating to Aboriginal and Torres Strait Islander peoples
- that any National Strategy to implement the UNDRIP
  - employ a principled approach (see below)
  - account for intersectional implications
  - be subject to joint reporting by First Nations representatives and other parties using agreed indicators
  - be subject to review amendments by agreement between First Nations representatives and other parties every 3 years
- that Closing the Gap centre the UNDRIP in the National Agreement and in reporting by parties against Agreement commitments
- that the Attorney-General exercise their power under section 47 of the *Australian Human Rights Commission Act 1986* (Cth) to include the UNDRIP within the human rights functions of the Australian Human Rights Commission.

Almost 2 years on from the publication of the JSCATSIA Inquiry Report, we have seen the original Bill introduced by Senator Thorpe voted down on 6 December 2023. The Government has yet to provide a response or public position in respect of the Inquiry Report's recommendations.

On 13 September 2025 – the 18th anniversary of the General Assembly's adoption of the UNDRIP – Commissioner Katie Kiss issued a joint statement alongside former Social Justice Commissioners Mick Dodson, Tom Calma, Mick Gooda and June Oscar and former federal politicians Ken Wyatt, Linda Burney and Patrick Dodson.

The statement urged the Australian Government to fully endorse the 6 JSCATSIA recommendations and to provide its response within 2 years since its findings were delivered.

This report reinforces the joint recommendation issued in that statement.

The principled approach to giving effect to the UNDRIP

The UNDRIP covers all areas of human rights as they relate to Indigenous peoples. This includes 4 fundamental foundational human rights:

- self-determination
- participation in decision-making, underpinned by free, prior and informed consent and good faith
- respect for and protection of culture
- equality and non-discrimination.

These 4 principles provide guidance on how to apply the UNDRIP within a national strategy. They can:

- be used to guide how UNDRIP implementation measures are designed and executed, and also as the criteria against which laws are audited for consistency with the UNDRIP
- be utilised as overarching benchmarks to assess the effectiveness of the actions taken at a later date. For example, to determine the measurable ways self-determination, participation, respect for culture and equality have been enhanced (or not) by the reforms
- serve as thematic criteria, linking UNDRIP rights to common foundations and guiding the design of specific actions.

The design process could involve First Peoples articulating how these principles may apply to particular action areas, to give them practical application in specific legal, policy and administrative contexts. Once the principles have been fleshed out in this manner, specific actions could be developed to realise them.

The auditing process adopted to ensure consistency of laws with the UNDRIP could similarly be principles-led.

Text box 4.9: The principled approach to giving effect to the UNDRIP

Supporting Aboriginal and Torres Strait Islander Participation in the International Human Rights System

As discussed at length in Chapter 3: Increasing First Peoples' participation, it is critical that First Peoples are able to participate at all levels of governance and advocacy, including at the international level.

Aboriginal and Torres Strait Islander people are increasingly using international fora such as the UNFPII, the EMRIP and treaty bodies to bring attention to their human rights concerns. While it is disappointing that we are forced to rely on international mechanisms to affirm and protect our rights, it is critical that we utilise them.

Australia has regularly stated its support for Aboriginal and Torres Strait Islander participation. For example, in July 2024 Australia co-facilitated the HRC first intersessional meeting where Australia's Permanent Representative to the United Nations, Ambassador Amanda Gorely, affirmed Australia's commitment to supporting collective global efforts to enhance the rights and interests of Indigenous Peoples. In her opening comments to the session, she stated that:

> ***Australia fully supports the efforts to enhance the participation of Indigenous Peoples in the United Nations … Australia's longstanding position is that meaningful Indigenous participation is essential to the integrity and equity of human rights and other United Nations processes. Indigenous Peoples have the right to participate and be heard. Deliberations at United Nations meetings have become richer, more informative and more diverse, when Indigenous Peoples have been able to participate … Including Indigenous Peoples on issues that affect Indigenous Peoples is not just the right thing to do, it leads to better outcomes for us all…***[479]

It is critically important that the Australian Government supports those Aboriginal and Torres Strait Islander people elected to UN mechanism roles with the resources to carry them out effectively. This includes roles such as members and chairs of EMRIP and UNPFII and special rapporteurs. For example, where the Australian Government is engaging in international forums relevant to Indigenous Peoples, they should proactively ensure Indigenous community participation and representation. Further, there should be no distinction between the travel and accommodation assistance provided to these roles and that which is provided to government officials.

It is also critical that participation in these mechanisms is a realistic goal for those among our peoples who show an interest in being involved. Supports must be available to assist them to build knowledge about the system and get the most out of opportunities to participate. These opportunities include caucusing and coordinating as members of a delegation in pursuit of shared outcomes.

The Commission has undertaken a variety of measures to support awareness and participation. For example:

- One of the objectives of the ITA Project undertaken in 2024 was to raise awareness and knowledge and promote use of the human rights framework. Seventy-four per cent of respondents to the online ITA pre-consultation survey (which provided contextual information regarding human rights and the UNDRIP) responded that participating in the survey increased their knowledge and appreciation for human rights frameworks and principles.
- In partnership with the National Congress of Australia's First Peoples, the Commission undertook extensive education and awareness raising on the UNDRIP across the country in 2013. This included creating a number of community facing resources that continue to be accessible on the Commission's website.[480] These efforts remain important in improving awareness and understanding the foundational rights of Aboriginal and Torres Strait Islander people. It has also gone some way to improving the UNDRIP literacy of government and other actors. This enhanced understanding is vital for our people to advocate for their rights at national and international levels.
- From 2009 to 2013 the Commission provided the secretariat function for the Indigenous Human Rights Network (IHRN), which involved:
  - providing secretariat support for the IHRN (domestically), including hosting meetings throughout the year in preparation for and follow up meetings
  - administering the grant funding for travel, accommodation and travel allowances
  - supporting the coordination of input into submission processes and treaty body reporting.

In 2016 the Indigenous Peoples Organisation took on responsibility for the above functions. However, soon after her appointment as Social Justice Commissioner in April 2024, Commissioner Katie Kiss and other Aboriginal and Torres Strait Islander leaders with extensive international experience identified an acute need for the IHRN's re-establishment.

Upon request, the Commissioner agreed to take a convening role. The group has been meeting on a regular basis, is growing in number and is coordinating ahead of key engagements such as UNPFII and EMRIP. The Commission's Social Justice Team is currently providing a basic secretariat function despite the lack of dedicated resources to do so.

Were it to be adequately resourced, the potential for the Commission to add value in this space is significant.

Recommendation 8

The Australian Government should support the independent and self-determined participation of Aboriginal and Torres Strait Islander people in domestic and international human rights fora, including through an appropriate funding allocation to facilitate the Indigenous Human Rights Network. This should include investment in training and mentoring Aboriginal and Torres Strait Islander young people to engage in international advocacy, ensuring intergenerational continuity of leadership and capacity.

Endnotes

359 Mick Dodson and Amnesty International, 'United Nations Declaration on the Rights of Indigenous Peoples', Amnesty International 2009. P. 3. <https://www.amnesty.org.au/wp-content/uploads/2017/01/Declaration-Indigenous-Peoples.pdf>.

360 David Graeber & David Wengrow, *The dawn of everything, a new history* of *humanity*, First Paperback Edition, Picador, 2023.

361 United Nations Women, *Explainer: The Beijing Declaration and Platform for Action at 30, and why that matters for gender equality*, United Nations Women website, 10 February 2025 <https://unwomen.org.au/explainer-the-beijing-declaration-and-platform-for-action-at-30-and-why-that-matters-for-gender-equality/>.

362 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

363 United Nations Department of Economic and Social Affairs, The 17 Goals, Sustainable Development, United Nations Department of Economic and Social Affairs website, n.d. <https://sdgs.un.org/goals>.

364 United Nations Office on Drugs and Crime, 'The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Report, 2015) <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiDydX32-OPAxVuwTgGHZYJLccQFnoECAoQAQ&url=https%3A%2F%2Fwww.unodc.org%2Fdocuments%2Fjustice-and-prison-reform%2FNelson_Mandela_Rules-E-ebook.pdf&usg=AOvVaw39nEe4AKARlSlCLuK1BMu3&opi=89978449>.

365 B Moon, United Nations Secretary General, 'Statement attributable to the Spokesperson for the Secretary-General on the adoption of the Declaration on the Rights of Indigenous Peoples', (13 September 2007) <https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Statement-SG-IDWIP-2007.pdf>.

366 B Moon, United Nations Secretary General, 'Statement attributable to the Spokesperson for the Secretary-General on the adoption of the Declaration on the Rights of Indigenous Peoples', (13 September 2007) <https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Statement-SG-IDWIP-2007.pdf>.

367 United Nations Department of Economic and Social Affairs, Indigenous Peoples, *United Nations Declaration on the Rights of Indigenous Peoples*, United Nations website, n.d. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-%20the-rights-of-indigenous-peoples.html>.

368 James Anaya, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Report to the Human Rights Council, 9th session 2008, UN Doc A/HRC/9/9, [41] <https://docs.un.org/en/A/HRC/9/9>.

369 United Nations, Department of Economic and Social Affairs, Indigenous Peoples, *United Nations Declaration on the Rights of Indigenous Peoples*, United Nations website, n.d. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-%20the-rights-of-indigenous-peoples.html>.

370 United Nations Human Rights Office of the High Commissioner, *Universal Human Rights Index*, United Nations Human Rights Office of the High Commissioner website, n.d. <https://uhri.ohchr.org/en/search-human-rights-recommendations?countries=8bfeaba4-7a4c-45e9-951f-35635e07bf08>.

371 United Nations Human Rights Council, *Basic facts about the UPR*, United Nations Human Rights Council website, n.d. <https://www.ohchr.org/en/hr-bodies/upr/basic-facts>.

372 United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Special Procedures of the Human Rights Council*, UN OHCHR website, n.d. <https://www.ohchr.org/en/special-procedures-human-rights-council>.

373 United Nations Office of the United Nations High Commissioner for Human Rights, *Stocktaking report compiling existing procedures on the participation of Indigenous Peoples at the United Nations, highlighting existing gaps and good practices: report of the Office of the United Nations High Commissioner for Human Rights*, 57th session, Agenda items 2 and 3, UN Doc, A/HRC/57/35 (31 July 2024): 7-8 < https://digitallibrary.un.org/record/4060039?v=pdf&ln=en>.

374 United Nations Department of Economic and Social Affairs, *United Nations Permanent Forum on Indigenous Issues (UNPFII)*, United Nations Department of Economic and Social Affairs website, n.d. <https://social.desa.un.org/issues/indigenous-peoples/unpfii>.

375 United Nations Human Rights Office of the High Commissioner (UN OHCHR), *Special Rapporteur on the rights of Indigenous Peoples*, UN OHCHR website, n.d. <https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples>.

376 United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Expert Mechanism on the Rights of Indigenous Peoples*, UN OHCHR website, n.d. <https://www.ohchr.org/en/hrc-subsidiaries/expert-mechanism-on-indigenous-peoples>.

377 United Nations General Assembly, *Human rights and indigenous peoples: resolution / adopted by the Human Rights Council*, 18th session, Agenda item 3, UN Doc A/HRC/RES/18/8 (13 October 2011) <https://digitallibrary.un.org/record/713604?ln=en&v=pdf>.

378 United Nations General Assembly, *Outcome Document of the High-Level Plenary Meeting*

456 UN EMRIP, *Country Engagement Mission Australia*: 3.

457 K Kiss, 'A Statement by Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss on Item 6', 17th Session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)' (Speech, Australian Human Rights Commission, 9 July 2024) <https://humanrights.gov.au/about/news/speeches/emrip-systemic-failure-support-wellbeing-first-nations-children>.

458 United Nations General Assembly, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum, situation of indigenous peoples in Australia,* 15th sess, UN Doc A/HRC/15/37/Add.4 (1 June 2010) <https://unsr.jamesanaya.org/docs/special/2010_special_australia_en.pdf>; United Nations General Assembly, *Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Australia,* 36th sess, Agenda item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017) <https://docs.un.org/en/A/HRC/36/46/Add.2>.

459 United Nations General Assembly and United Nations Human Rights Council, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya, Addendum – Situation of Indigenous Peoples in Australia,* 15th sess, Agenda Item 3, UN Doc A/HRC/15/37/Add.4, (1 June 2010) <https://uhri.ohchr.org/en/document/11bf063b-c919-43a1-a17c-c90b1ae60ce3>.

460 United Nations Human Rights Council Special Rapporteur on rights of Indigenous Peoples and United Nations Human Rights Council Secretariat, *Report of the Special Rapporteur on the rights of Indigenous Peoples in her visit to Australia,* 36th sess, Agenda Item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017): 46 <https://digitallibrary.un.org/record/1303201?ln=en&v=pdf>.

461 United Nations Human Rights Council Special Rapporteur on rights of Indigenous Peoples and United Nations Human Rights Council Secretariat, *Report of the Special Rapporteur on the rights of Indigenous Peoples in her visit to Australia,* 36th sess, Agenda Item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017): 46 <https://digitallibrary.un.org/record/1303201?ln=en&v=pdf>.

462 Australian Human Rights Commission (AHRC), *FREE AND EQUAL A Human Rights Act for Australia,* AHRC, December 2022: 11 <https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf>.

463 AHRC, *FREE AND EQUAL A Human Rights Act for Australia*: 11–12

464 Parliament of Australia (PA), *Inquiry into Australia's Human Rights Framework*, PA website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework>.

465 AHRC, *FREE AND EQUAL A Human Rights Act for Australia*, AHRC, December 2022, Chapters 4–12: 101–293. <https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf>; Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, Parliamentary Joint Committee on Human Rights, Commonwealth of Australia, May 2024) rec 1: 301 [9.11] and see commentary, 301–310 [9.12]-[9.41] <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf>.

466 AHRC, *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report 2023*, AHRC, 2023 <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf>.

467 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 38 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

468 G Christie, Implementation of UNDRIP within Canadian Law: Assessing Challenges, in Braiding Legal Orders, (2023): 274.

469 United Nations Human Rights Council and United Nations Expert Mechanism on the Rights of Indigenous Peoples, *Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration: study / by the Expert Mechanism on the Rights of Indigenous Peoples*, 57th sess, Agenda Items 3 and 5, UN Doc A/HRC/57/62 (2 August 2024): 15 [72] <https://digitallibrary.un.org/record/4060090?ln=en&v=pdf>.

470 J Patzer, cited in N Olivier Wilson, 'A new era for Indigenous rights in Canada', *Vancouver Island Human Rights Coalition* 13 April 2021 <https://vihrc.com/blog/2021/4/13/a-new-era-for-indigenous-rights-in-canada>.

471 Parliament of Australia (PA), *Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, PA website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/UNDRIP>.

472 Parliament of Australia, *Terms of Reference*, PA website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Terms_of_Reference>.

473 Parliament of Australia (PA), *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, PA, Commonwealth of Australia, November 2023: ix. <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/>

chapter-3-northern-territory-emergency-response>.

401 *Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*, opened for signature (10 December 1985), [1989] ATS 21, (entered into force 7 September 1989). <https://www.austlii.edu.au/cgi-bin/viewdoc/au/other/dfat/treaties/ATS/1989/21.html#:~:text=CANBERRA,c)%20Commonwealth%20of%20Australia%201995>.

402 *Criminal Code Act 1995*, (Cth), Schedule 8. <https://www.legislation.gov.au/C2004A04868/2018-12-29/text/2>.

403 Amnesty International, *Submission: Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024.* <https://www.amnesty.org.au/criminal-code-amendment-genocide-crimes-against-humanity-and-war-crimes-bill-2024/>.

404 Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, HEROC, 1997. <https://bth.humanrights.gov.au/sites/default/files/documents/bringing_them_home_report.pdf>.

405 Yoorrook Justice Commission, *Yoorrook for Transformation: Third Interim Report*, Yoorrook Justice Commission (June 2025). <https://cdn.craft.cloud/06ad3276-b3d9-4912-bcbb-37795aade9a8/assets/documents/Yoorrook-For-Transformation_SummaryReport_Accessible.pdf>.

406 United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, GA Res 260 A (III), (9 December 1948 entry into force 12 January 1951) <https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf>.

407 Human Rights and Equal Opportunity Commission Report (HEROC), *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, HEROC, 1997. Part 4 Reparation. <https://humanrights.gov.au/our-work/projects/bringing-them-home-chapter-13>.

408 T Olarewaju, 'Residential school system recognized as genocide in Canada's House of Commons: A harbinger of change', *The Conversation*, (January 12, 2023). <https://theconversation.com/residential-school-system-recognized-as-genocide-in-canadas-house-of-commons-a-harbinger-of-change-196774>.

409 Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples, Parliament House, Canberra, 3 April 2009 <https://www.un.org/esa/socdev/unpfii/documents/Australia_official_statement_endorsement_UNDRIP.pdf>.

410 Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples, Parliament House, Canberra, (3 April 2009) <https://www.un.org/esa/socdev/unpfii/documents/Australia_official_statement_endorsement_UNDRIP.pdf>.

411 Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples'.

412 United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 38 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

413 National Indigenous Australians Agency, 'Submission No 9 to Parliamentary Joint Council on Human Rights', *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) in Australia,* 1. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Submissions>.

414 J Ananya and United Nations Department of Economic and Social Affairs, *Expert Group Meeting on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc PFII/2015/EGM (27-29 January 2015) <https://www.un.org/esa/socdev/unpfii/documents/EGM/2015/Experts-papers/James-Anaya.pdf>.

415 United Nations General Assembly; President, *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples,* session 69, Agenda Item 66, UN DOC A/RES/69/2, (15 September 2014) annex A/69/L.1 [7-8] <https://digitallibrary.un.org/record/780897?ln=en&v=pdf>.

416 General Assembly, Note verbale dated 14 July 2017 from the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly, 72nd session, (24 July 2017).

417 *Human Rights Act 2004*, (Act) section 27 (2). <https://www.legislation.act.gov.au/DownloadFile/a/2004-5/current/PDF/2004-5.PDF>.

418 Statewide Treaty Bill 2025, (Vic) <https://content.legislation.vic.gov.au/sites/default/files/bills/601210bi1.pdf>.

419 *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, (Qld) <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2020-033>.

420 Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Report, November 2023): 47 <https://parlinfo.

aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

421 Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, Parliament of Australia, Commonwealth of Australia, (November 2023): 53–64. <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

422 Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in* Australia: 55–59.

423 Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*: 55–59.

424 Government of British Columbia, *Declaration on the Rights of Indigenous Peoples Act*, Government of British Columbia website, (24 July 2025) <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>.

425 Government of British Columbia, *Declaration Act Action Plan*, Government of British Columbia website, 24 July 2025 <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples/implementation>.

426 Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, Parliament of Australia, Commonwealth of Australia, (November 2023): 49 <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

427 Office of Te Minita Whanaketanga [Minister for Māori Development], Government of New Zealand; *Update on the development of the Declaration Plan* (Cabinet Paper, 22 April 2022): 5 <https://www.tpk.govt.nz/documents/download/documents-2306-A/tpk-undrip-cabinetpaper-2022%20(3).pdf>; Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, Parliament of Australia, Commonwealth of Australia, (November 2023): 49–50. <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

428 Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Debates*, (31 March 2023): 24 <https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/26650/toc_pdf/Aboriginal%20and%20Torres%20Strait%20Islander%20Affairs%20Joint%20Committee_2023_03_31_Official.pdf;fileType=application%2Fpdf>; Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, Parliament of Australia, Commonwealth of Australia, (November 2023): 49–51. <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>; Te Puni Kōkiri, *UN Declaration on the Rights of Indigenous Peoples*, Te Puni Kōkiri website, (17 July 2025) <https://www.tpk.govt.nz/en/a-matou-whakaarotau/te-ao-maori/un-declaration-on-the-rights-of-indigenous-peoples>.

429 *Australian Human Rights Commission Act 1986*, (Cth) <https://www.legislation.gov.au/C2004A03366/latest/text>; *Human Rights Commission Act 1981* (Cth) <https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/num_act/hrca1981267/>.

430 Australian Human Rights Commission (AHRC), *Complaints under the Racial Discrimination Act*, AHRC website, n.d. <https://humanrights.gov.au/our-work/complaint-information-service/complaints-under-racial-discrimination-act>.

431 *Racial Discrimination Act 1975* (Cth) <https://classic.austlii.edu.au/au/legis/cth/consol_act/rda1975202/s9.html>.

432 United Nations Human Rights Council, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya*, UN Doc A/HRC/15/37/Add.4 (1 June 2010) <http://unsr.jamesanaya.org/docs/special/2010_special_australia_en.pdf>; United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) <https://docs.un.org/en/A/HRC/36/46/Add.2>.

433 United Nations Office of the High Commissioner for Human Rights, *Universal Human Rights Index* (Web Page) <https://uhri.ohchr.org/en/search-human-rights-recommendations?countries=8bfeaba4-7a4c-45e9-951f-35635e07bf08>; United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Universal Human Rights Index*, UN OHCHR website, n.d. <https://uhri.ohchr.org/en/search-human-rights-recommendations?countries=8bfeaba4-7a4c-45e9-951f-35635e07bf08&affectedPersons=8bd5f0f3-0e1d-499a-9eb9-69a7dce06af4>.

434 Australian Human Rights Commission (AHRC), *Advancing human rights in Australia - Australia's Fourth Universal Periodic Review*, AHRC, July 2025 <https://humanrights.gov.au/sites/default/files/2025-09/The%20Commission%27s%20submission%20to%20Australia%27s%20

Fourth%20Universal%20Periodic%20Review_0.pdf>.

435 Australian Human Rights Commission, 'Implementation Matrix Summary: Implementation assessment of recommendations made to during the 2nd cycle of the UPR: listed by country', AHRC, n.d. <https://humanrights.gov.au/sites/default/files/2020-10/AHRC_UPR_Implementation_Matrix_Summary_2020.pdf>.

436 Attorney-General's Department, *Treaty body reporting*, Attorney-General's Department website, n.d.

437 United Nations Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019*, UN Doc CCPR/C/135/D/3624/2019 (18 September 2023) <https://juris.ohchr.org/casedetails/3855/en-US>.

438 United Nations Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3585/2019*, UN Doc CCPR/C/137/D/3585/2019 (13 March 2024) <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjl5InllPCQAxUMaCoJHfxFEiEQFnoECB0QAQ&url=https%3A%2F%2Fdigitallibrary.un.org%2Frecord%2F4041421%2Ffiles%2FCCPR_C_137_D_3585_2019-EN.pdf&usg=AOvVaw3qQvKxx5P8B4WbZB6KaaKa&opi=89978449>.

439 Attorney-General's Department, *Treaty body reporting*, Attorney-General's Department website, n.d.

440 Australian Human Rights Commission (AHRC), *Information for List of Issues – Australia*, AHRC, 2022 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICS%2FAUS%2F47405&Lang=en>.

441 Attorney-General's Department, *Treaty body reporting*, Attorney-General's Department website, n.d.

442 R Maxwell, 'UN slams Queensland laws as a 'flagrant disregard for children's rights'', *NITV*, (2 December 2024) <https://www.sbs.com.au/nitv/article/un-slams-queensland-laws-as-a-flagrant-disregard-for-childrens-rights/4oqyo77xh>.

443 Attorney-General's Department, *Treaty body reporting*, Attorney-General's Department website, n.d.

444 United Nations Committee on the Elimination of Racial Discrimination, *CERD Early Warning/Urgent Action and Follow Up Procedures (EW/UA) Australia*, UN Doc CERD/EWUAP/105th session/2021/CS/ks (3 December 2021) <https://indigenous.arizona.edu/cerd-early-warningurgent-action-and-follow-procedures-ewua-australia>.

445 Australian Government, Department of Climate Change, Energy, the Environment and Water, *Australian Government response to the Joint Standing Committee on Northern Australia's: A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge and Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia - Interim Report*, Department of Climate Change, Energy, the Environment and Water, Commonwealth of Australia, 2022 <https://www.dcceew.gov.au/sites/default/files/documents/australian-response-to-destruction-of-juukan-gorge.pdf>.

446 United Nations Committee on the Elimination of Racial Discrimination, UN Doc CERD/EWUAP/115thsession/2025/CS/BJ/ks (12 May 2025) <https://www.ohchr.org/sites/default/files/documents/hrbodies/cerd/earlywarning/letters/cerd-ewuap-letter-115-australia.pdf>.

447 Australia, *9th periodic report submitted by Australia under article 18 of the Convention, due in 2024: Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/AUS/9 (25 March 2025) <https://digitallibrary.un.org/record/4084365?ln=en&v=pdf>.

448 Attorney-General's Department, *Treaty body reporting*, Attorney-General's Department website, n.d. <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/united-nations-human-rights-reporting/treaty-body-reporting#australias-common-core-document>; Australia, *Combined 2nd and 3rd periodic reports submitted by Australia under article 35 of the Convention, due in 2018: Convention on the Rights of Persons with Disabilities*, UN Doc CRPD/C/AUS/2-3 (5 February 2019) <https://digitallibrary.un.org/record/1663867?ln=en&v=pdf>.

449 Attorney-General's Department, *Treaty body reporting*, Attorney-General's Department website, n.d. <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/united-nations-human-rights-reporting/treaty-body-reporting#australias-common-core-document>.

450 United Nations Expert Mechanisms on the Rights of Indigenous Peoples (UN EMRIP), *Country Engagement Mission Australia*, UN EMRIP, April 2024: 1 <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/emrip/countryengagement/EMRI-Technical-advisory-note-April-2024.pdf>.

451 UN EMRIP, *Country Engagement Mission Australia*: 1-3.

452 UN EMRIP, *Country Engagement Mission Australia*: 1.

453 UN EMRIP, *Country Engagement Mission Australia*: 1-3.

454 UN EMRIP, *Country Engagement Mission Australia*: 2.

455 UN EMRIP, *Country Engagement Mission Australia*: 3.

456 UN EMRIP, *Country Engagement Mission Australia*: 3.

457 K Kiss, 'A Statement by Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss on Item 6', 17th Session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)' (Speech, Australian Human Rights Commission, 9 July 2024) <https://humanrights.gov.au/about/news/speeches/emrip-systemic-failure-support-wellbeing-first-nations-children>.

458 United Nations General Assembly, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum, situation of indigenous peoples in Australia,* 15th sess, UN Doc A/HRC/15/37/Add.4 (1 June 2010) <https://unsr.jamesanaya.org/docs/special/2010_special_australia_en.pdf>; United Nations General Assembly, *Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Australia,* 36th sess, Agenda item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017) <https://docs.un.org/en/A/HRC/36/46/Add.2>.

459 United Nations General Assembly and United Nations Human Rights Council, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya, Addendum – Situation of Indigenous Peoples in Australia,* 15th sess, Agenda Item 3, UN Doc A/HRC/15/37/Add.4, (1 June 2010) <https://uhri.ohchr.org/en/document/11bf063b-c919-43a1-a17c-c90b1ae60ce3>.

460 United Nations Human Rights Council Special Rapporteur on rights of Indigenous Peoples and United Nations Human Rights Council Secretariat, *Report of the Special Rapporteur on the rights of Indigenous Peoples in her visit to Australia,* 36th sess, Agenda Item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017): 46 <https://digitallibrary.un.org/record/1303201?ln=en&v=pdf>.461 United Nations Human Rights Council Special Rapporteur on rights of Indigenous Peoples and United Nations Human Rights Council Secretariat, *Report of the Special Rapporteur on the rights of Indigenous Peoples in her visit to Australia,* 36th sess, Agenda Item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017): 46 <https://digitallibrary.un.org/record/1303201?ln=en&v=pdf>.

462 Australian Human Rights Commission (AHRC), *FREE AND EQUAL A Human Rights Act for Australia,* AHRC, December 2022: 11 <https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf>.

463 AHRC, *FREE AND EQUAL A Human Rights Act for Australia*: 11–12

464 Parliament of Australia (PA), *Inquiry into Australia's Human Rights Framework*, PA website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework>.

465 AHRC, *FREE AND EQUAL A Human Rights Act for Australia*, AHRC, December 2022, Chapters 4–12: 101–293. <https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf>; Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, Parliamentary Joint Committee on Human Rights, Commonwealth of Australia, May 2024) rec 1: 301 [9.11] and see commentary, 301–310 [9.12]-[9.41] <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf>.

466 AHRC, *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report 2023*, AHRC, 2023 <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf>.

467 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 38 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

468 G Christie, Implementation of UNDRIP within Canadian Law: Assessing Challenges, in Braiding Legal Orders, (2023): 274.

469 United Nations Human Rights Council and United Nations Expert Mechanism on the Rights of Indigenous Peoples, *Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration: study / by the Expert Mechanism on the Rights of Indigenous Peoples*, 57th sess, Agenda Items 3 and 5, UN Doc A/HRC/57/62 (2 August 2024): 15 [72] <https://digitallibrary.un.org/record/4060090?ln=en&v=pdf>.

470 J Patzer, cited in N Olivier Wilson, 'A new era for Indigenous rights in Canada', *Vancouver Island Human Rights Coalition* 13 April 2021 <https://vihrc.com/blog/2021/4/13/a-new-era-for-indigenous-rights-in-canada>.

471 Parliament of Australia (PA), *Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, PA website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/UNDRIP>.

472 Parliament of Australia, *Terms of Reference*, PA website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Terms_of_Reference>.

473 Parliament of Australia (PA), *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, PA, Commonwealth of Australia, November 2023: ix. <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/>

toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

474 Parliament of Australia (PA), *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*.

475 Parliament of Australia (PA), *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*: 99.

476 Parliament of Australia (PA), *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*: 101–171.

477 Australian Human Rights Commission (AHRC), *Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, 22 June 2022 <https://www.aph.gov.au/DocumentStore.ashx?id=4221ebd3-dfc7-4a00-86c9-ffa15fea1967&subId=720854>.

478 AHRC, *FREE AND EQUAL A Human Rights Act for Australia*, AHRC, December 2022: 67 <https://humanrights.gov.au/sites/default/files/document/publication/free_equal_hra_2022_-_main_report_rgb_0.pdf>.

479 United Nations Human Rights Council (UN HRC), 'First Meeting – 15 July morning' [video], UN HRC, UN HRC website, 15 July 2024 <https://www.ohchr.org/en/hr-bodies/hrc/1st-intersessional-meeting-participation-indigenous-peoples>.

480 Australian Human Rights Commission (AHRC), *Declaration Dialogue Series*, AHRC website, 3 June 2014 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/declaration-dialogue>; Australian Human Rights Commission (AHRC), *UN Declaration on the Rights of Indigenous Peoples*, AHRC website, 10 September 2021 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/un-declaration-rights>.

CHAPTER 5:

FOSTERING SYSTEMIC INTEGRITY AND ACCOUNTABILITY

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Fostering systemic integrity and accountability

Integrity and accountability are the conditions under which Aboriginal and Torres Strait Islander peoples' rights can be realised in practice. For too long, governments have commissioned inquiries, received reports and made commitments without the follow-through required to build trust and deliver justice. The analysis in this chapter demonstrates that the weakest link in Australia's governance architecture lies not within communities or their organisations, but within government itself.

Reversing this requires a shift from disabling to enabling governance: governments must hold themselves to the same standards of transparency, responsibility and cultural respect that they demand of others. By embedding Indigenous data sovereignty, reforming fiscal governance, strengthening independent oversight and enshrining enforceable human rights protections, governments can create the systemic integrity required for genuine partnership. Only then can commitments move beyond ritual and begin to reshape relationships on equal footing, ensuring that Aboriginal and Torres Strait Islander peoples' voices, priorities and rights are honoured in full.

Eight decades of unanswered calls

There are good intentions and what is described as 'hard work' but without crunching systemic change, there will be no betterment.[481]

For more than eight decades, Aboriginal and Torres Strait Islander peoples have consistently called on Australian governments to transform their relationship with the state.

From the Day of Mourning in 1938, through the Yirrkala Bark Petitions and the 1967 Referendum, to the Barunga Statement and the Uluru Statement from the Heart, First Peoples have pressed for recognition, partnership and genuine self-determination.

These calls have been reinforced through landmark inquiries such as the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and Bringing Them Home. They lie at the core of accountability mechanisms contained in international human rights instruments, including the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Optional Protocol to the Convention Against Torture* (OPCAT).

At times, governments have responded with important steps forward, such as: constitutional change in 1967, the passing of the *Racial Discrimination Act 1975* (Cth), the passing of the *Native Title Act 1993* (Cth) following *Mabo v Queensland (No.2)*, the 2008 National Apology to the Stolen Generations and the 2020 National Agreement on Closing the Gap (CTG).

Yet too often, these advances have been partial or symbolic. They have fallen short of the structural change and accountability needed to reset relationships on an equal footing. The result has been moments of recognition without lasting reform, promises without delivery and commitments without mechanisms to ensure compliance.

Despite this, the persistent message from Aboriginal and Torres Strait Islander peoples across generations remains clear: thriving communities require governments to change themselves, to share power and decision-making, and to honour the right of First Peoples to determine their own futures.

This chapter begins by exploring the principle of systemic integrity – the alignment of words and actions across political cycles, institutions and levels of government. It then considers the mechanisms of accountability, and the persistent failure of governments to hold themselves to the same standards demanded of Aboriginal and Torres Strait Islander communities and organisations. The chapter goes on to examine the disabling role played by governments and the reforms needed to shift towards enabling governance – including the critical role of fiscal governance in sustaining integrity. Finally, it outlines the transformation required to embed accountability and enforce First Peoples' rights.

International obligations

As laid out in Chapter 4: Promoting the full enjoyment of rights by First Peoples, Australia is a party to a number of human rights instruments. Under these instruments, it has pledged not only to respect and protect human rights within its jurisdiction, but also to establish effective mechanisms of accountability to ensure those rights are realised in practice.

These obligations extend to Aboriginal and Torres Strait Islander peoples and are reinforced by UNDRIP. UNDRIP affirms the right of Indigenous peoples to self-determination and to participate fully in decisions affecting their lives, as well as the fundamental principles of non-discrimination and protection of culture.

Meeting these commitments requires integrity in the system of government. In this context, integrity means ensuring consistency between words and actions - and coherence between political commitments and the lived experience of Aboriginal and Torres Strait Islander peoples. Too often, integrity has been undermined by symbolic gestures unaccompanied by structural change, or by policy reversals that erode trust.

Fostering integrity requires transparency, honesty about failures and a willingness to be judged against standards defined not only by government, but by First Peoples. Without integrity, trust cannot be built and accountability risks being reduced to hollow accounting exercises rather than meaningful safeguards that ensure commitments translate into practice. These safeguards include independent oversight, enforceable rights protections and mechanisms for redress.

International human rights law makes clear that governments carry the ultimate responsibility for respecting, protecting and fulfilling the rights of their citizens. For Indigenous peoples, this includes the right to self-determination and to participate in decision-making on matters that affect them – as discussed in Chapter 3: Increasing First Peoples' Participation.

Accountability is the mechanism by which integrity is tested. It is not enough for states to make commitments to address structural inequality. They must also demonstrate, through clear mechanisms of scrutiny and review, that those commitments are effective in practice.

Meeting these obligations requires more than symbolic gestures. It requires integrity in the way governments govern, ensuring consistency between their words and actions.

Chapter 5 Recommendations

9. The Australian Government should provide the Aboriginal and Torres Strait Islander Social Justice Commissioner with formal observer status within Closing the Gap Partnership structures.
10. The Australian Government should work in partnership with First Peoples to design and establish a national framework for expenditure on services for Indigenous communities. This should include replacing short-term funding with needs-based formulas that provide Aboriginal and Torres Strait Islander community-controlled organisations with direct, long-term, sustainable funding (including for monitoring and evaluation capacity).
11. The Australian Government should carry out transparent, independent financial and performance audits of Indigenous-specific and mainstream expenditure to ensure spending delivers on Closing the Gap commitments and community priorities.
12. The Australian Government should implement binding data-sharing and governance agreements across all levels of government that uphold Indigenous data sovereignty principles. The agreements should ensure accountability to Aboriginal and Torres Strait Islander communities through measures informed by, and agreed to by, communities themselves.
13. Australian governments should incorporate into their Cabinet and Parliamentary Handbooks a requirement that all legislative, policy and program proposals align with Australia's human rights obligations to First Peoples, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
14. The Australian Government should accept and implement the National Anti-Racism Framework (NARF).
15. The Australian Government should build rights-based performance requirements into funding agreements with states and territories. Performance indicators should align with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), implementation of the Closing the Gap priority reforms and progress against the Closing the Gap socio-economic targets. Jurisdictional performance reporting should be subject to rigorous independent monitoring and evaluation (in accordance with clause 67 of the National Agreement on Closing the Gap).

Systemic integrity

Systemic integrity is expressed through the way institutions are designed, how decisions are made and how commitments are honoured across time and political cycles. It requires consistency between stated commitments and actual practice, coherence across levels of government and sectors, and a culture of transparency and truth-telling.

Systemic integrity depends on several interlocking features:

- Consistency requires that governments do not simply make commitments but sustain them through changing political leadership and budgetary priorities.
- Coherence means that the multiple arms of government - across portfolios and across federal, state and local levels - work in alignment rather than at cross-purposes.
- Transparency ensures that decision-making is visible, that data is shared and that failures are acknowledged and addressed rather than ignored or hidden.
- Truth-telling anchors systemic integrity in honesty: about history, about structural inequality and about the effectiveness of current policy.

When these elements are absent, systemic integrity is undermined. Broken or symbolic promises, abrupt policy reversals, or contradictory actions between levels of government erode trust and weaken the legitimacy of government institutions. Similarly, when transparency is partial or data is withheld, communities cannot test whether commitments have been met, leaving accountability hollow.

For Aboriginal and Torres Strait Islander peoples, integrity in the relationship with governments has too often been absent.

While communities have long called for recognition, partnership and structural reform, government responses have often taken the form of superficial or short-lived gestures rather than meaningful and sustained change. From the promises following the 1967 Referendum to the undertakings following the *Barunga Statement and the Uluru Statement from the Heart*, governments have recognised the importance of reform – but have rarely delivered the level of structural transformation required to honour those commitments.

Governance and systemic integrity

The *2012 Social Justice Report* emphasised that systemic integrity in Indigenous affairs cannot be understood without reference to governance.[482] It identified three dimensions that must all function well for outcomes to be achieved: community governance, organisational governance and the governance of government. Integrity requires that each of these dimensions reinforce the others:

1. Community governance – communities are supported to exercise cultural authority and self-determination.
2. Organisational governance – ACCOs operate with legitimacy within their communities, are empowered to meet the needs of the community and have the capabilities needed to meet the requirements of the broader governance environment.

3. Governance of government – governments act with consistency, coherence and transparency, create an enabling environment for communities and organisations to thrive and are accountable to Aboriginal and Torres Strait Islander peoples.

At the same time, communities and organisations face their own challenges in governing effectively within the current landscape. Imposed and culturally inappropriate structural arrangements continue to undermine First Peoples' decision-making, creating significant strain on Aboriginal and Torres Strait Islander governance systems.

Effective governance also depends on the availability of a skilled and culturally authorised workforce, without which communities are unable to fully realise their authority or sustain decision-making across the ecosystem. Acknowledging these challenges is critical. Systemic integrity requires not only government reform but also sustained support for First Peoples to govern on their own terms. Where one of these is weak, systemic integrity is compromised and progress stalls.

Figure 5.1: Key elements to ensure good governance and systemic integrity

Community governance is shaped entirely by Aboriginal and Torres Strait Islander peoples and grounded in their laws, customs and values. It is about self-determination – communities defining their priorities, authority structures and decision-making processes.

Organisational governance refers to the governance of Aboriginal and Torres Strait Islander organisations. It balances two worlds: requiring legitimacy within community while also meeting the corporate, legislative and funding requirements of governments and funders.

Finally, because government policies, legislation and administrative practices directly shape whether First Peoples' governance can flourish, the governance of governments is critically important. The *Social Justice Report 2012* highlights that many governance challenges faced by communities and organisations stem from a disabling environment created by government, rather than from any lack of capacity within Indigenous peoples themselves.[483]

For systemic integrity to be realised, these three forms of governance must reinforce one another. Strong community and organisational governance can only go so far if the governance of government remains weak or inconsistent. Where governments fail to honour commitments, or act without transparency, integrity across the system is compromised and opportunities for success are critically undermined.

National Agreement on Closing the Gap

The National Agreement on Closing the Gap (the National Agreement) provides an example of this dynamic. In theory, it was intended to reset relationships between governments and First Peoples, with the governance model outlined above expressed through the CTG Priority Reforms.

Each reform addresses a dimension of governance:

- shared decision-making affirms community governance and participation
- strengthening ACCOs supports organisational governance
- transforming government systems ensures the governance of governments.

Together with Indigenous data sovereignty, which underpins the effectiveness of all the Priority Reforms, the National Agreement creates a pathway for systemic integrity.

In practice, however, these ambitions have been only partially realised.

Communities continue to call for opportunities to contribute, yet participation is often tokenistic or absent. Organisations are caught between meeting community needs and complying with funding agreement requirements that align more closely with government priorities, which at times conflict with community objectives.

The governance of governments also falls short of its stated intent: legislation such as the *Native Title Act 1993* (Cth) (in its current form) constrains community authority, while CTG targets and outcomes have not been met.

These gaps are not incidental. As the Productivity Commission's first review of the National Agreement observed, they reflect deeper systemic problems. Governments continue to control the financial foundations and legislative authority needed to enact change and, in doing so, undermine the integrity and accountability that the National Agreement was designed to uphold.[484]

To restore integrity and accountability, the CTG Priority Reforms cannot be implemented in isolation of one another or treated as standalone initiatives. Their effectiveness relies on being pursued as a coherent and interdependent framework.

The Priority Reforms must be understood and implemented as a coherent, interdependent framework, not as standalone initiatives. Each reform reinforces the others. Genuine shared decision-making (Priority Reform 1) cannot occur without strong, well-resourced ACCOs (Priority Reform 2) and ACCOs cannot thrive if government systems remain unchanged (Priority Reform 3). Finally, partnerships are impossible without transparent, accessible data that communities control and trust (Priority Reform 4). When approached holistically, the Priority Reforms provide a roadmap for rebalancing power, embedding cultural authority and achieving long-term, community-led outcomes, which in turn, will 'close the gap'.[485]

As has been observed in both reviews of the National Agreement,[486] when governments fail to approach the Priority Reforms holistically, the consequences are immediate. Delayed or partial implementation undermines trust and sends a signal that commitments are negotiable. Underfunding or short-term program cycles erode the capacity of ACCOs, forcing them to do more with less while governments avoid the deeper system change required.

Failure to reform government systems leaves communities navigating bureaucratic environments that are inconsistent, opaque and resistant to cultural authority. Without data that communities can access and trust, accountability is weakened and progress cannot be measured in ways that reflect the lived realities of First Peoples.

These accountability gaps compromise systemic integrity.

Instead of embedding power-sharing and cultural authority, governments risk reverting to empty gestures, policy reversals or fragmented initiatives.

The result is a cycle where progress is made locally through the determination of communities and ACCOs, but structural inequality is left unaddressed at the system level.

The promise by government to a new era of investing in community-owned and led approaches is sorely lacking in implementation so far. It must be met by foundational changes to the nature of their relationships with Aboriginal and Torres Strait islander peoples, to establish adequate long-term funding and relinquish control over the nature and pace of change.[487]

There are, nonetheless, opportunities to strengthen CTG while the major supporting pillars are yet to be brought into place. The National Partnership on CTG could:

- engage the human rights framework more rigorously, by drawing explicit and comprehensive linkages between CTG commitments and Australia's international obligations and embedding these in future iterations of the Agreement, jurisdictional plans, evaluation and reporting and independent accountability mechanisms
- prioritise and expedite the establishment of long overdue independent accountability mechanisms to hold all parties to their commitments across jurisdictions (please see 'Transforming government' section below for more on this)
- provide the Social Justice Commissioner with formal and permanent observer status within CTG Partnership structures, helping to guide implementation and reinforce accountability.

Recommendation 9

The Australian Government should provide the Aboriginal and Torres Strait Islander Social Justice Commissioner with formal observer status within Closing the Gap Partnership structures.

Fiscal governance

Fiscal governance is a critical dimension of systemic integrity. Fiscal governance refers to the frameworks through which financial resources are allocated and controlled across different levels of government – from national budget processes to the funding agreements that shape service delivery. For First Peoples, fiscal governance determines how far communities can exercise authority over financial decisions that affect their rights, priorities and wellbeing.

The lack of recognition, and the absence of any policy or legal framework for Indigenous fiscal self-government in Australia has been identified as an important challenge.[488] By contrast, in Canada, the federal government has established fiscal arrangements that support Indigenous self-government, and federal fiscal policy has been recognised as fundamental to the realisation of Aboriginal self-determination.[489]

The absence of a comparable framework in Australia affects not only the service sector but also the ability of First Peoples to exercise greater control over the administration of agreements, contracts and procurement arrangements, including those linked to rights over lands, territories and resources. This is particularly evident in the way funding arrangements are designed and applied.

Indigenous expenditure and accountability

In 2015–16, governments spent an estimated $33.4 billion on Aboriginal and Torres Strait Islander people, representing around 6% of total national expenditure. Of this amount, $6 billion supported Indigenous-specific programs with much of it delivered through non-Indigenous contractors, while $27.4 billion represented the Indigenous share of mainstream programs such as Medicare, social security, education and public safety. This figure also encompasses expenditure on systems like out-of-home care, corrections and other costs associated with managing disadvantage.[490] The Parliamentary Library calculated that Indigenous-specific expenditure across all departments in 2023-2024 would be $5.3 billion, which is 0.77% of the Australian Government's total $684.1 billion budgeted expenditure.[491]

Advocates have raised concerns that the current investment profile does not deliver a justifiable return on investment for communities. Evidence shows that generational disadvantage persists and that rights are not being realised.

The way funding is allocated and reported is of critical importance. The majority of expenditure flows through mainstream agencies and non-Indigenous service providers, with limited transparency about whether it advances Aboriginal and Torres Strait Islander priorities or contributes to CTG outcomes. Calls for audits of Indigenous expenditure have too often targeted cultural practices, such as Welcome to Country ceremonies, rather than interrogating the full bucket of government spending. A meaningful audit would focus on the decisions made within Treasury and Cabinet, assess the return on investment across both Indigenous-specific and mainstream allocations, and ensure that accountability frameworks measure outcomes rather than inputs.

The expenditure profile highlights a wider fiscal governance problem: governments retain financial control while shifting the heaviest accountability burdens onto ACCOs. Without structural reform to move away from target-based and transactional funding cycles, and without robust accountability processes to monitor government decisions, fiscal governance will continue to undermine systemic integrity.

Text box 5.1: Indigenous expenditure and accountability

ACCOs have consistently raised concerns that current funding formulas neither support the realisation of First Peoples' rights and interests, nor the achievement of, agreed targets under the National Agreement on CTG. As reported to the independent review of CTG, the Aboriginal community-controlled sector has, 'demonstrated adaptability, leadership and innovative practice, but are often burdened by bureaucratic processes and short-term, inadequate funding cycles.'[492]

While funding is largely 'target-based', this approach entrenches a system in which governments:

- retain control over decision-making and fail to establish genuine mechanisms for community input into budgeting or program funding decisions – from agency-level commissioning through to treasury, cabinet and parliamentary budgeting processes
- require Aboriginal and Torres Strait Islander organisations and service providers to navigate budget bid cycles designed primarily around government interests, rather than community needs – perpetuating tertiary crisis responses instead of investing in prevention and early intervention

- rely on contractual arrangements and inadequate service delivery models that compel organisations to absorb additional responsibilities without appropriate funding
- rarely provide or sustain monitoring and evaluation funding to assess outcomes and efficacy.

Target-based formulas fail to reflect the lived realities of communities, reinforcing structural inequality. By contrast, a needs-based approach would allocate resources according to actual community circumstances and priorities, creating the conditions for genuine self-determination and fair outcomes.

An additional challenge faced by smaller ACCOs is the considerable administrative capacity and technical expertise required to develop effective proposals. These resources are scarce in many small organisations, which are already stretched to deliver frontline services. The situation then opens the door for larger, mainstream providers to dominate funding rounds, further diverting resources away from Aboriginal and Torres Strait Islander community-led solutions.

The practice of 'black cladding' compounds this. This is where non-Indigenous organisations establish nominal partnerships with Aboriginal and Torres Strait Islander entities, or use superficial branding, to appear Indigenous-led and secure funding intended for First Peoples.

Black cladding not only misdirects resources but undermines the integrity of the funding system itself, perpetuating mistrust and depriving communities of genuine self-determination, often without consequence.

As reported to the independent review of the CTG:

> ***What we're seeing is these non-Indigenous organisations getting their black chairs and getting 51 percent on their board so that they can then hold their funding by transitioning to be an ACCO.***[493]

The lack of needs-based funding, the overstretch of small ACCOs and the opportunism of black cladding are not incidental. They are symptoms of fiscal settings that deny Aboriginal and Torres Strait Islander organisations the stability and authority needed to plan and lead. So long as governments retain financial control while shifting the heaviest accountability burdens onto Aboriginal and Torres Strait Islander organisations, funding reforms risk tinkering at the edges. Without structural reform that transfers fiscal authority, commitments to integrity will remain rhetorical rather than practical.

Robust accountability mechanisms are also essential. Without clear processes to hold governments to account for their fiscal commitments, the cycle of promises without delivery will continue. Accountability is the means of testing whether integrity in fiscal governance is being upheld in practice.

The governance framework outlined in the *Social Justice Report 2012* and the Priority Reforms of the CTG provide a clear picture of what systemic integrity requires. This includes a holistic, interdependent approach in which each dimension of governance is strengthened, and governments themselves are held to the same standards of integrity that are expected of communities and organisations.

Fiscal governance is central to this picture. Without equitable, needs-based arrangements that transfer real decision-making power and resources to First Peoples, commitments to shared decision-making will remain hollow. Until governments act with the same fiscal responsibility, consistency, transparency and good faith that they demand of Aboriginal and Torres Strait Islander communities and organisations, trust will remain eroded and integrity across the system will remain compromised.

Systemic accountability

If integrity is the principle that commitments must align with actions, accountability is the mechanism that ensures this alignment is tested, maintained and enforced.

At a systemic level, accountability refers to the frameworks and practices through which governments and institutions are answerable for the exercise of their power and the consequences that follow when obligations are not met.

Systemic accountability depends on several interlocking features:

- Clarity of responsibility – Roles and obligations must be clearly assigned so that responsibility cannot be shifted or obscured.[494]
- Transparency – Commitments, processes and outcomes must be visible, with sufficient information made public to allow for scrutiny.[495]
- Enforceability – There must be consequences when obligations are not fulfilled; without enforceability, accountability is reduced to aspiration.[496]
- Independence – Oversight must not be controlled by those being scrutinised; independent review and evaluation safeguard against conflicts of interest.[497]
- Reciprocity – Accountability must operate across all parties to an agreement, not solely those with the least power.[498]

When these features are absent, systemic accountability exists in name only. When power is exercised without answerability, scrutiny falls disproportionately on those delivering services rather than those holding authority and communities are left unable to test whether commitments have been honoured.

In such conditions, the term 'accountability' may be invoked, but in practice it typically resembles accounting – a record of activities completed, dollars spent, or outputs delivered – rather than a genuine assessment of whether obligations have been met and outcomes achieved. This narrows accountability to bureaucratic processes, obscuring the deeper purpose of ensuring that governments honour commitments, uphold rights and are answerable for results.

At its strongest, systemic accountability ensures that governments are not only making commitments but are consistently demonstrating, through independent scrutiny, that those commitments are being delivered in practice. It provides assurance to citizens that institutions act in accordance with agreed principles and it creates the conditions in which trust and legitimacy can be rebuilt.

In practice, accountability for First Peoples has rarely reflected this standard. While Aboriginal and Torres Strait Islander organisations are subject to extensive reporting, evaluation and oversight requirements, government performance is far less scrutinised.

This imbalance means that those delivering outcomes on the ground face the heaviest compliance burdens, while those holding the greatest power are least likely to be held to account for their commitments.

The lack of accountability to First Peoples

The Australian federal government carries overarching responsibility for ensuring rights are upheld nationally, including through the National Agreement on CTG. States, territories and local governments are also parties to these initiatives and are obligated to act consistently with their commitments.

Aboriginal and Torres Strait Islander peoples are at the table and in their communities doing the work. Yet, while significant investment goes into evaluating the actions of Aboriginal and Torres Strait Islander organisations, government accountability to its own commitments is far less scrutinised.

Some monitoring and evaluation is built into program design and funding agreements, however these mechanisms are fragmented, episodic and focused largely on technical efficiency or compliance. Systemic evaluation of government performance remains absent. Where internal reporting processes do exist, they are rarely transparent or subject to independent review.[499] This raises the central question: how do we hold governments accountable for their part of the agreement if no effective mechanism exists to do so?

The establishment of Indigenous ombudsman's offices, children's commissioners and productivity commissioners over recent years is a welcome development. They reflect the breadth of human rights issues experienced by Aboriginal and Torres Strait Islander peoples and provide avenues for redress and advocacy that did not previously exist.

For over thirty years, the Social Justice Commissioner role has played a critical monitoring and reporting role, helping to shine light on critical issues, opening doors and acting as an intermediary between the Aboriginal and Torres Strait Islander community and government and influencing change across a wide range of policy areas.

Despite this, while the Social Justice Commissioner's reports are tabled in the Parliament, they seldom receive an official response from the Australian Government and many of their recommendations remain unimplemented.

Despite the importance of these mechanisms, their capacity to be transformative remains limited. The pervasive impact of colonisation, combined with political resistance and laws and policies that do not reflect the aspirations of First Peoples, curtails their effectiveness. In this environment, such accountability mechanisms are vital but insufficient; they operate as guideposts in the absence of a stronger appetite to hold power to account and to elevate the voices and rights of First Peoples.

Aboriginal and Torres Strait Islander peoples have been the subject of countless royal commissions, inquiries, inquests, audits, reviews, frameworks, strategies, policies, action plans, evaluations, consultations and research. This includes follow-up reviews into whether earlier recommendations were ever implemented. As one Informing the Agenda (ITA) participant told us, 'government agencies focus on how they report rather than the actual outcomes for communities'.

Alongside these domestic processes, international human rights committees have also issued recommendations to the Australian Government about its treatment of Aboriginal and Torres Strait Islander peoples, often providing advice and commentary on specific issues. For more detail on this, please refer to Chapter 4: Promoting the full enjoyment of rights.

Over the past three decades, millions of dollars have been spent and governments have received an exhaustive list of recommendations from royal commissions, parliamentary inquiries, law reform commissions, independent reviews and oversight bodies.

These span every aspect of Aboriginal and Torres Strait Islander peoples' lives, from child protection, justice and incarceration to constitutional reform, self-determination, economic participation and cultural rights.

Despite the breadth and urgency of this advice, the overwhelming majority of recommendations remain only partially implemented or unaddressed.

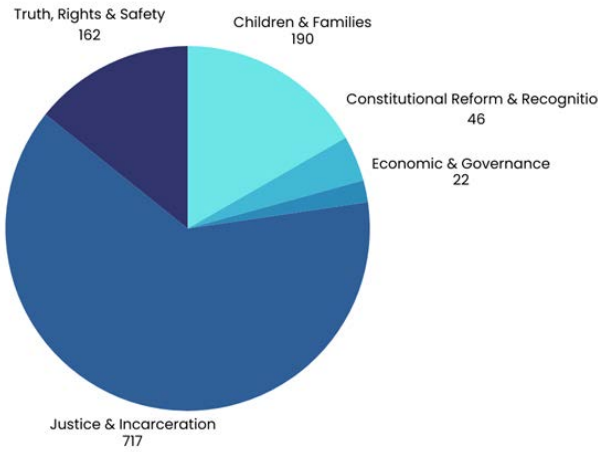


Figure 5.2: Snapshot of the volume and diversity of recommendations by key Indigenous Affairs reports and inquiries since 1989

Across all states and territories, further reviews have been conducted and countless reports have delivered recommendations for change. Many of these were informed by Aboriginal and Torres Strait Islander peoples and remain relevant, even decades later. Yet, large numbers of recommendations have never been acted upon. They sit unimplemented on the shelves of parliaments, departments, agencies, universities, consulting firms, non-government organisations and research institutions.

This highlights a serious lapse of genuine accountability. Royal commissions, inquiries and other investigations are commissioned by governments and funded by public expenditure.

Governments, therefore, carry a duty not only to respond to the reports they commission, but to develop clear implementation plans supported by monitoring, accountability measures and consequences for failure. Where governments do not intend to act on recommendations, accountability and integrity demand a public explanation or justification.

In the lead up to the 2025 federal election, we heard calls for yet another royal commission to audit government spending on First Nations programs. It is ironic that those making these calls in Parliament chose to scrutinise $450,000 spent over an extended period on Welcome to Country ceremonies - practices that instil a sense of belonging and respect for First Peoples. Yet, in the same breath, they proposed to spend at least $50 million on another royal commission to confirm what reviews such as the Report on *Government Services and the Indigenous Expenditure Report* already make clear.[500]

Rather than directing funding into further investigations that repeat what we already know, governments must commit to systematically implementing, across all jurisdictions, the recommendations already on the table.

If we are serious about reducing wasteful expenditure and achieving meaningful outcomes for Aboriginal and Torres Strait Islander peoples, national leadership is required – leadership that drives change at every level of government and refocuses investment on action, not endless review. Such leadership depends on strengthening the governance of governments themselves.

The governance of governments

In a settler colonial society like contemporary Australia, the way governments govern sets the conditions in which all other forms of governance operate. When government policies, legislation and administrative practices fail to recognise or accommodate Aboriginal and Torres Strait Islander systems, they do not merely overlook them, they actively disable them.

The consequences of this disabling environment were highlighted in the *Social Justice Report 2012*, which observed that the capacity problems faced by Aboriginal and Torres Strait Islander communities and organisations often stem not from a lack of governance strength within communities, but from government-created barriers.

> ***The evidence repeatedly demonstrated that it is the entrenched failure of the governance of governments that is the major impediment to Indigenous people developing and sustaining our own governance arrangements.***[501]

This section explores 3 dimensions of that failure: persistent weaknesses in public sector accountability, the control of information through data and the ritual use of rights language without the fulfilment of rights in practice.

Recommendation 10

The Australian Government should work in partnership with First Peoples to design and establish a national framework for expenditure on services for Indigenous communities. This should include replacing short-term funding with needs-based formulas that provide Aboriginal and Torres Strait Islander community-controlled organisations with direct, long-term, sustainable funding (including for monitoring and evaluation capacity).

Recommendation 11

The Australian Government should carry out transparent, independent financial and performance audits of Indigenous-specific and mainstream expenditure to ensure spending delivers on Closing the Gap commitments and community priorities.

Public sector accountability

At the heart of the governance of governments lies the question of public sector accountability – whether the machinery of government itself operates with integrity and responsiveness to the people it serves.

Inquiries into the Australian Public Service, state and territory police services and numerous child safety reform inquiries have all highlighted how institutional practices can perpetuate harm and undermine trust when they are not grounded in integrity and accountability to the people they serve.

The findings of these inquiries show that systemic failures are not confined to political leadership but are embedded within the machinery of government itself.

As the Royal Commission into the Protection and Detention of Children in the Northern Territory starkly observed:

> ***The systemic failures occurred over many years and were ignored at the highest levels....These failures are all the more startling in light of the multiplicity of previous reports and inquiries that have investigated youth detention and child protection systems. The procedures and requirements of the law have simply not been followed in many instances. The systems failed to comply with the basic binding human rights standards in the treatment of children and young people. Government policies and procedures were ignored, systems designed for adults were inappropriately applied to youth, or they simply did not exist.***[502]

Oversight bodies – such as public service commissions, integrity commissions, justice commissions and children's commissions – are designed to safeguard standards and promote integrity across government institutions.

They can provide independent advice, scrutiny and guidance to governments on systemic failures and needed reforms. Yet their mandates and performance frameworks rarely extend to testing whether governments are honouring their commitments to Aboriginal and Torres Strait Islander peoples. Nor do they hold powers of enforcement.

Without the ability to compel change, these bodies risk reinforcing compliance with internal processes rather than ensuring accountability to the communities most affected by government decisions.

Indigenous data sovereignty

True accountability requires more than oversight of government processes; it also depends on who controls the information on which accountability is based. Indigenous data sovereignty highlights that when governments retain authority over the collection, interpretation and release of data, they determine not only what is measured but whose perspectives count. This creates conditions in which Aboriginal and Torres Strait Islander peoples are subjected to monitoring and reporting, while governments themselves escape equivalent scrutiny.

As one participant to the 2025 Independent review of CTG observed, '[m]ost data is sanitised and controlled by white institutions. I have been told not to release data many times because it "doesn't make us look good".[503]

Embedding Indigenous data sovereignty into governance systems is therefore essential to rebalance accountability and enable communities to test whether commitments are being met in practice. As noted in the 2025 Independent review of CTG, Indigenous data sovereignty:

> ***Challenges the long-held assumption that governments alone should define what knowledge matters and how it is used. Instead, IDS asserts the rights of Indigenous peoples to govern the data that affects their lives, in ways that reflect their priorities, values and worldviews...Parity cannot exist while one party controls all the information.***[504]

This shift requires moving from extractive, government-controlled data systems to approaches in which Aboriginal and Torres Strait Islander peoples exercise authority over what information is collected, how it is used and what it means. The Maiam nayri Wingara Indigenous data sovereignty Collective's principles provide important guidance on this topic.[505] These principles emphasise that:

- Indigenous peoples have the right to control data about their peoples, communities, lands and resources
- data should be used in ways that support self-determination and collective wellbeing
- Indigenous peoples must define what data is relevant and how it is interpreted
- access to and use of Indigenous data must be accountable to Indigenous governance structures
- data systems should protect Indigenous cultural and intellectual property.[506]

These principles make clear why data-sharing and governance agreements are critical to ensuring accountability to Aboriginal and Torres Strait Islander communities through measures they themselves define.

The Australian Government has taken a step in this direction through the *Framework for Governance of Indigenous Data*,[507] which requires federal agencies to develop implementation plans guided by principles of partnership and inclusion. While welcome, this framework is policy guidance rather than a binding obligation and does not extend to states, territories, or non-government providers who hold substantial Indigenous data.

Binding agreements will be essential to ensure Indigenous data sovereignty is upheld consistently across jurisdictions and sectors and that accountability is defined by communities themselves.

Mayi Kuwayu Study[508]

Mayi Kuwayu means 'to follow Aboriginal people over time' in Ngiyampaa language. Launched in 2018, the Mayi Kuwayu Study is a large, ongoing national research project led by Aboriginal and Torres Strait Islander researchers at the Australian National University. It is a community-designed, developed and implemented longitudinal study that seeks to understand how Aboriginal and Torres Strait Islander culture relates to health and wellbeing and how this knowledge can be used to inform better services, programs and policies.

The study uses surveys distributed nationally – initially to 20,000 people in the pilot phase and to 180,000 people in 2019 – and is intended to be repeated every few years to track change over time. The surveys explore cultural practices, language, identity, connection to land and community, recognising these as vital components of health and wellbeing beyond physical factors.

Feedback from participants has emphasised the value of being involved in research that respects culture and tells stories on Aboriginal and Torres Strait Islander peoples' own terms. This emphasis on cultural integrity is central to the study's design: it was developed in partnership with communities to ensure cultural values and priorities are upheld.

According to the Australian Institute of Health and Welfare, the study helps address a long-standing gap in large-scale survey data that adequately represents Indigenous experiences, including evidence on cultural practice and expression. It provides information for communities, services and policymakers about the factors that improve Aboriginal and Torres Strait Islander health and wellbeing, including quantifying the contribution of cultural determinants alongside standard health and risk factors.

The Mayi Kuwayu Study continues to build knowledge that supports Indigenous-led approaches to health, highlighting culture as a protective factor and a strength. By strengthening cultural identity and community connections, it provides a foundation for improving outcomes and developing culturally appropriate policies and programs.

Text box 5.2: Mayi Kuwayu Study

Recommendation 12

The Australian Government should implement binding data-sharing and governance agreements across all levels of government that uphold Indigenous data sovereignty principles. The agreements should ensure accountability to Aboriginal and Torres Strait Islander communities through measures informed by, and agreed to by, communities themselves.

Rights ritualism

The dynamics at play with Indigenous data sovereignty reflect a broader pattern in the governance of governments. Control of information is one of the ways that governments sidestep accountability; another is the performance of rights language without the practice of rights.

As touched upon in Chapter 4: Promoting the full enjoyment of rights, rights ritualism is a term used to describe the use of the language and processes of human rights to deflect scrutiny rather than enable it. An eminent scholar and jurist (including as a sitting Judge on the International Court of Justice) has suggested that Australia engages in rights ritualism.

> ***Rights ritualism can be understood as a way of embracing the language of human rights precisely to deflect real human rights scrutiny and to avoid accountability for human rights abuses. Countries are often willing to accept human rights treaty commitments to earn international approval, but they resist the changes that the treaty obligations require.***[509]

This is a frustration regularly expressed by Aboriginal and Torres Strait Islander peoples over an extended period of time. For example, Australia has repeatedly argued at international fora, including as part of its Universal Periodic Review assessment, that 'current federal laws are consistent with the spirit of the Declaration'.

At an international level, consistent concerns have been raised about the resistance to international norms.

> ***The near universal state endorsement of [UNDRIP] and evidence of states' domestic steps to legislate for the international Indigenous rights norms it affirms, coupled with the striking gap in Indigenous rights implementation suggests that ritualism could be a common state response to international Indigenous rights norms and the international human rights system that promotes them.***[510]

A further example is the establishment of First Peoples advisory committees and working groups to provide expertise and advice on government policy and practice.

While this fulfils the responsibility of governments to consult with First Peoples on issues directly impacting them, they often ignore that advice. Many Aboriginal and Torres Strait Islander people and communities participate in these processes in good faith with the hope of achieving positive improvement.

However, as has been demonstrated throughout this report, time, cultural knowledge and capital and finances are wasted on consultations, reports and recommendations that are shelved.

Commissioning governments show little priority or genuine commitment to those engaged or the work conducted. Future governments then ignore what has already been done, reinvent the wheel and produce yet more reports repeating the same advice. Projects focused on reforming the child safety and criminal justice systems are clear examples of this, whereby the same recommendations are provided across generations of governments, only to be ignored.

The consequence of rights ritualism – as has been particularly demonstrated in the areas of child safety and criminal justice, where Aboriginal and Torres Strait Islander people are grossly overrepresented – is that rights are avoided, ignored or denied. The result is that people's suffering is further entrenched, or people die. This promotes a perception that the lives of those impacted are either disposable or, at the very least, not valued.

In late 2024, for example, the Northern Territory Parliament removed the requirement that bills introduced at First Reading be accompanied by a human rights compatibility statement. This decision disarms one of the few accountability safeguards in the NT legislative process and weakens scrutiny of whether new laws are consistent with Australia's international human rights obligations.[511]

This highlights how fragile rights protections remain when left to jurisdictional discretion and reinforces the need for national standards and leadership on human rights compliance to ensure fundamental rights are upheld across the federation.

Taken together, these dynamics reveal that the weakest point in Australia's governance architecture lies within government itself. Bureaucratic practices that perpetuate harm, oversight mechanisms that focus on internal process rather than outcomes, resistance to First Peoples' authority and the ritualistic use of rights language all combine to disable rather than enable Aboriginal and Torres Strait Islander governance.

Without governments holding themselves to the same standards of integrity and accountability that they impose on communities and organisations, commitments will continue to be undermined. Addressing this imbalance requires a shift from disabling to enabling governance. That is, a system in which governments not only refrain from obstruction but actively create the conditions for Aboriginal and Torres Strait Islander governance to thrive.

Enabling governance – Principles to ensure system-effectiveness

If the governance of governments is to shift from disabling to enabling, it must adopt practices that create space for Aboriginal and Torres Strait Islander governance to thrive. Enabling governance is not about relinquishing responsibility but about reframing the role of government: from one that directs and controls to one that actively supports, safeguards and strengthens First Peoples' authority.

For decades, Aboriginal and Torres Strait Islander peoples have highlighted that government systems are designed to protect their own legitimacy, rather than to share decision-making power. This has created an environment where partnership is spoken about but rarely practised and where governments continue to control resources and accountability processes.[512]

Enabling governance involves a set of concrete commitments that ensure governments operate in ways that respect cultural authority, uphold rights and create the conditions in which community leadership can flourish.

Critical to achieving this is building and sustaining a First Nations workforce across government and service sectors. Done properly, this strengthens cultural integrity, embeds accountability and ensures that decision-making and service delivery are grounded in lived knowledge and cultural authority.

The following principles are intended as a guide for governments at every level. They can be used to:

- assess whether governance arrangements are genuinely enabling or remain extractive
- provide a practical checklist for policy design, funding agreements and intergovernmental negotiations
- offer communities a clear reference point to hold governments to account.

Principles intended as a guide for governments

Cultural authority and decision rights – Recognise and resource cultural governance (Elders, Traditional Owners, community-mandated bodies) and align government decision points with those authorities. For a more detailed discussion of cultural governance, see Chapter 6: Rebuilding the village.

Free, Prior and Informed Consent (FPIC) as standard – Build FPIC into legislation, Cabinet processes and funding agreements, not as courtesy consultation but as a decision requirement, as per the recommendation in this chapter. For a more detailed discussion on Australia's human rights obligations and commitments, see Chapter 4: Promoting the full enjoyment of rights.

Decision-making at the right level – Locate decision making with communities wherever possible, supported by clear delegation and adequate resources. This reflects Article 18 of the UNDRIP, which affirms the right of Aboriginal and Torres Strait Islander peoples to participate in decisions through their own institutions. It also reflects what people told us through ITA:

Those experiencing the issues should be designing the solutions to the issues – until we get to having platforms where grassroots people can help to inform, we're not going to see change and the trajectories are going to go in the direction they go because that's what works for mainstream society - Adelaide ITA participant

Participation in decision-making – Guarantee the participation of Aboriginal and Torres Strait Islander peoples in decisions that affect their rights and futures, at every level of government. This includes embedding Aboriginal and Torres Strait Islander voices not only in program design and service delivery, but also in budgeting, policy development and legislative processes. For a more detailed discussion of this, see Chapter 3: Increasing First Peoples' participation.

Risk partnership – Maintain a joint risk register that covers government's risks and the cultural, social and health risks borne by communities and agree to shared mitigation and escalation pathways. As highlighted by both the Productivity Commission and the *Wiyi Yani U Thangani Report*, governments' risk aversion often limits community leadership, while communities disproportionately carry cultural, social and health risks. Genuine partnership requires that risks and responsibilities be shared.[513]

Fit-for-purpose funding – Ensure that Treasury and Budget processes require and facilitate budgeting decisions that align with key policy and legislative requirements, including for example prioritising budget bids that support the achievement of the CTG commitments. This should be coupled with moving away from short-term, project-based funding cycles that create instability and fatigue and, instead, committing to dedicated long-term, flexible, indexed, full-cost-recovery arrangements. As recommended at the beginning of this chapter, funding must be proportionate to need, linked to realistic reporting requirements and designed to sustain the Aboriginal community-controlled sector. Not to undermine it through repeated rounds of 'pilot churn'. Funding allocations should also be explicitly tied to the achievement of agreed targets and outcomes that are compliant with human rights standards, ensuring that investment not only sustains services, but advances equity and accountability.

Shared accountability – This requires shifting the accountability lens onto governments themselves, with transparent reporting that makes clear whether commitments are being met and what corrective action is required. This was highlighted by both the Productivity Commission and the independent review of CTG.[514]

Data sovereignty – Enter binding data-sharing and governance agreements that respect Indigenous data sovereignty and community-defined indicators of success, as recommended at the beginning of this chapter. This enables accountability to communities and ensures that definitions of success are determined by First Peoples themselves.[515]

Cultural safety and capability – Tie senior executive KPIs to outcomes co-defined with communities. Building cultural capability at all levels of government is essential to dismantle systemic barriers and sustain respectful relationships. Further discussion of the transformation of government is set out below.

Timeframes that respect culture – Align timelines with cultural protocols and seasonal realities; avoid crisis-driven decision windows that foreclose consent. Respecting cultural timeframes is critical to genuine partnership and to ensuring communities can participate on their own terms, consistent with articles 18 and 19 of UNDRIP.[516]

Dispute resolution and redress – Establish independent, accessible mechanisms with the power to pause, review and remedy harmful decisions. Without such safeguards, communities are left with limited avenues to challenge government actions that breach rights or cause harm. This principle is explored further in the discussion on independent mechanisms below.

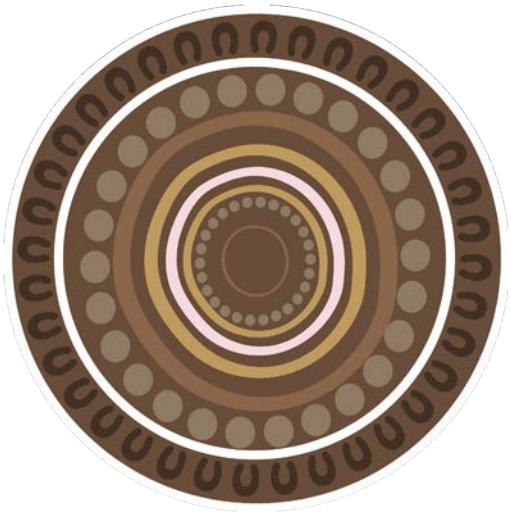
Text box 5.3: Principles intended as a guide for governments

Applying these principles in practice, might look like:

- a program being unable to proceed to approval without a completed FPIC record, a joint risk register signed by partners and a short statement showing how the design enables Indigenous governance
- funding deeds contain 'enabling clauses' on issues such as flexibility, indexation and realistic reporting, and include a parallel schedule assessing government's obligations, reported publicly.

This approach reframes government's role - from directing and controlling to partnering - and measures success by how well it creates the conditions for First Peoples' governance to thrive.

Enabling governance also requires a strong rights-based foundation. As the Commission has observed, if the Commonwealth provides states and territories with grants tied to specific commitments, a federal Human Rights Act would require that any obligations imposed be compliant with human rights standards.[517]



Good practice example: *Path to Treaty Act* and *Public Sector Act*

Good practice examples demonstrate what is possible when government systems embed cultural authority and accountability. The Queensland Government's *Path to Treaty Act 2023* (Qld), together with reforms under the *Public Sector Act 2022* (Qld) that reframed the relationship with First Peoples, offer a tangible model. Through the Path to Treaty Act, the Queensland Government created the statutory First Nations Treaty Institute and the Truth-telling and Healing Inquiry, embedding cultural authority, truth-telling and shared decision-making in law. At the same time, under the Public Sector Act, agencies were required to implement Reframing the Relationship Plans, to ensure cultural capability, shared governance and integration with CTG commitments. These reforms were noted by the Productivity Commission as exemplars of enabling structural change. They demonstrate how governments can move beyond token gestures and enact new structures of integrity and partnership.

In late 2024, however, the Queensland Parliament repealed the Path to Treaty Act without consultation with Aboriginal and Torres Strait Islander communities. This reversal highlights how quickly structural reform can be undone without any consequence to governments. While the repeal was a significant setback, the Public Sector Act remains in force and its requirement for agencies to maintain Reframing the Relationship Plans continues to represent a structural lever for embedding integrity in Queensland's public sector. Together, these developments underscore why transformative governance must be durable and enforceable, not subject to political shifts.

Text box 5.4: Good practice example: *Path to Treaty Act and Public Sector Act*

Transforming government

Following the Voice Referendum, the CTG remains the Australian Government's central framework for action. Yet, without explicit human rights compliance and enforceable accountability, CTG will continue to be compromised and the rights of Aboriginal and Torres Strait Islander peoples will be denied or violated.

It is squarely within the mandate of the Aboriginal and Torres Strait Islander Social Justice Commissioner to monitor and support the delivery of CTG. All parties – including governments – must be held accountable to ensure implementation of the National Agreement is progressed and that parties respect and protect the rights, needs and priorities of Aboriginal and Torres Strait Islander communities.

The very existence of CTG targets is itself evidence of rights not yet realised, or rights already breached. Each target corresponds to a human right and each gap reflects a failure of government to give effect to that right.

While every element of CTG is critical and interconnected, the Priority Reforms are the levers that will determine whether structural change takes hold. Within her 5-year agenda, the Aboriginal and Torres Strait Islander Social Justice Commissioner (the Commissioner) will place particular emphasis on Priority Reform 3: transforming government and addressing systemic and structural racism. Under this reform, governments have committed to:

> *... systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.*[518]

This commitment is not aspirational. It is binding. Government parties, including mainstream government institutions and agencies, have agreed to implement specific transformation elements. These include actions across jurisdictions and shared partnership responsibilities.

Recommendation 13

Australian governments should incorporate into their Cabinet and Parliamentary Handbooks a requirement that all legislative, policy and program proposals align with Australia's human rights obligations to First Peoples, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Transformation elements

Clause 59 of the CTG National Agreement (cl 59) sets out key elements of transformation, underscoring the scale of reform required across government institutions and practices.[519] They include:

- identifying and eliminating racism, embedding and practicing meaningful cultural safety
- delivering services in partnership with First Peoples
- increasing accountability through transparent funding allocations
- supporting Aboriginal and Torres Strait Islander cultures
- improving engagement with First Peoples.

A complete table of the commitments under cl 59 is included below at Text Box 5.5.

The challenge now is not in identifying what needs to change - First Peoples have clearly articulated these priorities for decades. The real challenge lies in acting on them. This persistent gap between words and action has entrenched frustration among Aboriginal and Torres Strait Islander people, who see their advice repeated in reports and consultations only to be ignored or deferred.

Bridging this gap requires more than renewed commitments, it demands a deeper understanding of how transformation actually occurs. Governments must grapple with the theories of change that underpin reform. They include:

- systems change – addressing the rules, structures and incentives that drive outcomes
- capacity development – ensuring institutions and communities have the resources and authority to act
- behavioural change – shifting the cultures, biases and practices that sustain inequality
- collective change, building relationships of trust and shared accountability between governments and First Peoples.

Taken together, these frameworks highlight that transformation is not a single reform or initiative, but an ongoing process of reshaping the conditions under which governance itself operates. Without this, commitments under cl 59 risk becoming another exercise in superficial recognition rather than a genuine catalyst for reform.

Text box 5.5: National Closing the Gap Agreement – Transformation Elements to support Priority Reform Three (PR3) – Transforming Government Organisations

Element	Actions (Jurisdictional/Partnership)
1. Identify and eliminate racism	
Parties are required to: ◎ identify and call out racism, discrimination and unconscious bias ◎ undertake system-focused efforts to address system features that cultivate institutional racism * increase Indigenous employment, identified positions and appointments to boards.	*Jurisdictional:* Government Parties: ◎ in partnership with Aboriginal and Torres Strait Islander people, commit to systemic and structural transformation to ensure government mainstream institutions and agencies are free of institutionalised racism and promote cultural safety ◎ commit to challenge unconscious biases that result in decisions based on stereotypes.
2. Embed and practice meaningful cultural safety	
Parties are required to: ◎ embed high-quality, meaningful approaches to promoting cultural safety ◎ recognise Aboriginal and Torres Strait Islander People's strength in identity as a critical protective factor * make cultural awareness training ongoing for all boards and staff * strengthen the role of Aboriginal and Torres Strait Islander units in promoting and monitoring cultural safety.	*Jurisdictional:* Government parties commit to addressing institutional racism and promoting cultural safety. *Partnership:* ◎ By 2023, Government parties agree to each identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor and report on the transformation of mainstream agencies and institutions. The mechanism/s, will: ➾ support mainstream agencies and institutions to embed transformation elements and monitor progress ➾ be recognisable and culturally safe for Aboriginal and Torres Strait Islander people ➾ engage with Aboriginal and Torres Strait Islander people to listen and respond to concerns about mainstream institutions and agencies ➾ report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions.
3. Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people	
Parties are required to: ◎ enhance the quality and cultural safety of mainstream service delivery through the development of genuine relationships ◎ support agreements between hospitals and local Aboriginal and Torres Strait Islander community-controlled health organisations to deliver outpatient services.	*Partnership:* ◎ Parties to the Agreement will meet in 2025, to consider progress on PR3, make additional partnership actions if needed and amend the National Agreement accordingly.

Element	Actions (Jurisdictional/Partnership)
4. Increase accountability through transparent funding allocations	
Parties are required to: ◎ improve transparency of resource allocation to and distribution by, mainstream institutions in relation to dedicated Aboriginal and Torres Strait Islander service-delivery ◎ include key indicators in funding arrangements ◎ include information about expenditure and the quality-of-service delivery to Aboriginal and Torres Strait Islander people in audits of mainstream agencies.	*Jurisdictional:* Government parties: ⇉ commit to act in accordance with the National Agreement when changing, designing or delivering policies and programs that impact Agreement outcomes ⇉ include information on how they are undertaking and meeting the transformation elements in their annual reports. ◎ Government investment in mainstream institutions and agencies do not come at the expense of investment in Aboriginal and Torres Strait Islander community-controlled services.
5. Support Aboriginal and Torres Strait Islander cultures	
Parties are required to: ◎ ensure government organisations identify their history with Aboriginal and Torres Strait Islander people and facilitate truth-telling to enable reconciliation and active, ongoing healing. Government parties are required to: ◎ build relationships with local Aboriginal and Torres Strait Islander community-controlled organisations to enable them to understand and reflect the history and culture of local communities.	
6. Improve engagement with Aboriginal and Torres Strait Islander people	
Parties are required to: ◎ engage fully and transparently with Aboriginal and Torres Strait Islander people when undertaking significant changes to policy and programs that impact them ◎ enable Aboriginal and Torres Strait Islander people to have a leadership role in the design and conduct of engagement, know the purpose and fully understand what is proposed, know what feedback is provided and how this is taken account of in government decision-making and assessing whether engagements have been fair, transparent and open.	*Jurisdictional:* Government parties commit to: ⇉ share and publish engagement approaches that give effect to the transformation elements ⇉ engaging with Aboriginal and Torres Strait Islander representatives before, during and after emergencies such as natural disasters and pandemics to ensure: • government decisions take account of the impact of those decisions on Aboriginal and Torres Strait Islander people • Aboriginal and Torres Strait Islander people are not disproportionately affected and can recover as quickly as other Australians from social and economic impacts.

* refers to engagement feedback provided for consideration – i.e. not a formal requirement under the National Agreement

Transformation elements in practice

To avoid cl 59 becoming another statement of intent without action, governments must identify concrete mechanisms that embed transformation across their institutions. International and Australian examples point to practical options that could be adapted here.

Identify and eliminate racism

1. *Require all new laws, policies and programs to be assessed for consistency with UNDRIP.*

Drawing on the Canadian model, which is discussed in more detail in Chapter 4: Promoting the full enjoyment of rights, this would require Cabinet submissions, legislative proposals and policy frameworks affecting First Peoples to demonstrate consistency with UNDRIP before they could proceed.[520] Embedding an UNDRIP consistency requirement would transform government practice from discretionary consultation to a rights-based standard. In Canada, this obligation has reframed policy and legislative developments by compelling departments to address potential conflicts with UNDRIP at the outset, rather than treating First peoples' rights as an afterthought, or addressing them only after decisions have been made.

In practice, this could be operationalised through updating the *Cabinet Handbook* and the *Parliamentary Handbook*. The updates would require each submission affecting First Peoples to assess whether the proposal is consistent with UNDRIP standards, including the right to self-determination, free, prior and informed consent and the protection of culture and Country. This would create a preparatory focus on accountability at the Cabinet stage, ensuring that UNDRIP considerations are addressed at the point of policy design.

This preparatory accountability would then be reinforced through the existing parliamentary scrutiny framework, including the requirement under the *Human Rights (Parliamentary Scrutiny) Act 2011* for compatibility statements. Linking the two processes would embed UNDRIP as a consistent standard from Cabinet deliberations through to parliamentary debate. This would close the gap that currently allows rights considerations to be marginalised or delayed.

An UNDRIP consistency requirement must also extend to the design and delivery of universal, mainstream services. Mainstream systems must demonstrate that they are accessible, culturally safe and responsive and appropriately serve the needs of all communities – including Aboriginal and Torres Strait Islander peoples. This would complement the CTG Priority Reforms, which commit governments to work in genuine partnership with First Peoples and to strengthen the community-controlled sector, so it is properly supported to deliver the services needed.

2. *Mandate regular equity and anti-racism audits across all government agencies.*

A model for this has existed in the United States of America, where *Executive Order 13985 (2021)* (the Order) on advancing equity required agencies to conduct equity assessments to identify structural barriers and provide actionable recommendations to create more equitable programs and policies. Although the Order was rescinded in 2025, it provides a useful example of how governments can mandate structured, whole-of-government assessments to uncover and address institutional racism.[521]

Locally, *Australia's National Anti-Racism Framework* similarly calls for systemic monitoring and accountability, including through external audits of institutions, a positive duty to prevent racism under the Racial Discrimination Act and mandatory anti-racism strategies across public sector workplaces.[522]

3. *Introduce a certification system to confirm agencies comply with agreed transformation principles before accessing funding or program approvals.*

In the United States, some executive orders have required agencies to designate officials responsible for certifying that standards have been met before new initiatives can proceed.[523]

A roadmap for eliminating racism

In 2024, the Australian Human Rights Commission released the *National Anti-Racism Framework: A roadmap to eliminating racism in Australia* (NARF).[524] The NARF was developed following extensive consultations with First Peoples and other negatively racialised communities, alongside research and expert advice. It identifies racism as systemic and structural, embedded across health, justice, education, workplaces and media and calls for a coordinated national response.

The NARF sets out 63 recommendations, anchored in principles of self-determination, truth-telling, cultural safety and strong accountability. Key proposals include:

- establishing a National Anti-Racism Taskforce to oversee implementation and monitoring
- enacting a national Human Rights Act and incorporating the UNDRIP into domestic law
- introducing a positive duty under the Racial Discrimination Act to eliminate racial discrimination
- embedding cultural safety standards across health, education, justice and workplace systems
- developing a National Anti-Racism Data Plan that embeds Indigenous data sovereignty and improves national collection on racism.

The NARF provides a blueprint for moving from fragmented, ad hoc responses to racism toward a systemic, whole-of-society approach. For accountability purposes, it emphasises the need for transparent monitoring, evaluation and learning mechanisms led by communities with lived experience of racism.

Text box 5.6: A roadmap for eliminating racism'

Recommendation 14

The Australian Government should accept and implement the National Anti-Racism Framework (NARF).

Embed and practice meaningful cultural safety

1. *Develop and mandate tools to measure organisational cultural capability across all agencies.*

In Aotearoa New Zealand, resources created by Te Arawhiti (the previous Office for Māori Crown Relations, now the responsibility of Te Puni Kōkiri) provides agencies with assessment tools to evaluate and strengthen their ability to engage effectively with Māori, supporting public sector transformation through measurable cultural capacity benchmarks.[525]

2. *Require boards and executives to complete ongoing cultural safety training, with results publicly reported.*

In Australia, several jurisdictions have mandated cultural safety or cultural awareness training across public service agencies and a national blueprint for embedding cultural safety exists in the NARF. In Western Australia, for example, *[Public Sector] Commissioner's Instruction 29* mandates that all public sector employees – including board members – undertake Aboriginal and Torres Strait Islander cultural awareness training, with compliance monitored and reported annually.[526]

3. *Create independent monitoring bodies with statutory authority to oversee cultural safety across all mainstream agencies.*

In Aotearoa New Zealand, the Waitangi Tribunal provides a statutory mechanism to investigate claims of Crown breaches of the Treaty, report publicly on systemic issues and embed reconciliation requirements into settlement agreements.

Similarly, the Norwegian Sámi Parliament is empowered to review government actions and ensure Sámi cultural perspectives are incorporated into service delivery.

Deliver services in partnership with First Peoples

1. *Resource bilateral or multilateral partnership forums, like Canada's Indigenous Partnership Fund, to support joint priority-setting.*

In Canada, permanent bilateral mechanisms between the federal government and the Assembly of First Nations, Métis National Council and Inuit Tapiriit Kanatami are supported through dedicated funding streams, ensuring First Peoples' representative bodies have the resources and authority to set priorities and hold governments to account.[527]

2. *Require service agreements between ACCOs and mainstream institutions to be standard across jurisdictions.*

A local example of this approach is the resource developed by the Royal Australian College of General Practitioners (RACGP) and the National Aboriginal Community Controlled Health Organisation (NACCHO). The *National Guide to a Preventive Health Assessment for Aboriginal and Torres Strait Islander People*, was designed to improve healthcare delivery and outcomes for First Peoples patients.[528]

This example shows how collaboration can work in the health sector, and the same principle can be applied to other sectors. Embedding formal partnership agreements across service areas such as education, housing, justice and child protection would ensure consistent accountability for cultural safety and responsiveness across mainstream systems.

3. *Move beyond transactional contracting to sustainable, self-determining development models.*

Too often, ACCOs are positioned as service contractors through temporary funding cycles and rigid output measures, while governments retain control as purchasers of services. This creates transactional relationships that entrench dependence and undermine self-determination.

To restore integrity, funding arrangements must devolve power and resources to ACCOs, enabling long-term, community-led development rather than short-term program delivery.

4. *Embed co-decision requirements into funding deeds so services cannot proceed without Aboriginal and Torres Strait Islander partner sign-off.*

In Canada, permanent bilateral mechanisms are supported through framework agreements and resourced by the Indigenous Partnership Fund, ensuring First Peoples' representative bodies set joint priorities and co-determine implementation.[529]

Increase accountability through transparent funding allocations

1. *Require annual Indigenous Expenditure Reports to be produced and tabled in Parliament, with recommendations acted on.*

While the Productivity Commission has produced Indigenous Expenditure Reports[530] at the request of governments, these are not mandated on an ongoing basis. Embedding a statutory requirement would ensure consistent transparency and follow-through. Their findings are also not consistently linked to parliamentary accountability or policy change. Embedding a statutory requirement would ensure consistent transparency and follow-through.

2. *Apply 'value-for-money' evaluation frameworks that incorporate cultural outcomes, not just financial efficiency.*

The Productivity Commission has highlighted that conventional evaluation methods often miss critical measures of effectiveness for Aboriginal and Torres Strait Islander peoples. Embedding cultural outcomes – such as community control, cultural safety and alignment with self-determined priorities – into value-for-money assessments would ensure that investment decisions reflect both economic and cultural accountability.[531]

3. *Publish agency-by-agency reporting on how funding decisions align with CTG outcomes.*

At present, public reporting on expenditure is aggregated and high level, making it difficult to identify which agencies are contributing to progress or perpetuating gaps. The Productivity Commission recommended that every government organisation include CTG reporting in its annual report, covering implementation of Priority Reforms, contributions to outcomes and assessments of effectiveness. Embedding this as a statutory obligation would strengthen accountability and allow communities to track whether investments are delivering on Priority Reform 3.[532] With many actions under the Agreement currently delegated to the National Indigenous Australians Agency (NIAA) to carry forward, this would identify those institutions which are not delivering on their agency-specific responsibilities to CTG, and drive greater accountability across government.

Support Aboriginal and Torres Strait Islander cultures

1. *Institutionalise truth-telling by requiring every department to prepare a history statement of its relationship with First Peoples.*

The Yoorrook Justice Commission in Victoria has demonstrated how truth-telling can surface institutional histories and provide a foundation for reconciliation. Extending this requirement across all departments would embed a culture of transparency and acknowledgement in government practice.[533] The NARF also identifies truth-telling as a critical mechanism to address systemic racism and promote accountability.[534] Extending this requirement across all agencies would embed a culture of transparency and acknowledgement within government.

2. *Require agencies to support dual naming, sacred site protection and cultural protocols in program delivery.*

Across Australia, states and territories have introduced dual naming policies – such as the NSW Geographical Names Board Dual Naming Policy – to recognise Aboriginal languages and heritage. Extending these practices, alongside obligations for sacred site protection and the incorporation of cultural protocols in service design, would embed respect for culture across government institutions.[535]

Tie heritage and cultural initiatives to public service senior executive KPIs to ensure accountability.

Current inclusion and diversity frameworks in the Australian Public Service, such as the Australian Bureau of Statistics (ABS) *ABS Inclusion and Diversity Strategy 2022–26*, demonstrate how linking leadership capability and reporting requirements to diversity outcomes can drive change. In Western Australia, [Public Sector] *Commissioner's Instruction 29* goes further by mandating Aboriginal and Torres Strait Islander cultural awareness training for all public sector employees, including board members, with compliance monitored and reported annually. Together, these approaches show how executive performance measures can be used to drive accountability for cultural safety, truth-telling and heritage protection.[536]

Improve engagement with First Peoples

1. *Adopt Sámi-style consultation procedures that compel agencies to respond to Indigenous concerns and document how input shaped decisions.*

In Norway, the *Procedures for Consultations between State Authorities and the Sámediggi* establish binding requirements for government agencies to consult with the Sámi Parliament and to explain how Sámi perspectives are incorporated into final decisions. A similar model in Australia would create enforceable obligations for transparency in government engagement with Aboriginal and Torres Strait Islander peoples.[537]

2. *Require agencies to co-design engagement frameworks with Aboriginal and Torres Strait Islander representatives, publicly releasing feedback reports.*

Co-design ensures that engagement processes are shaped by communities themselves, rather than imposed by government. Publishing feedback reports that show what input was received and how it influenced decisions would build trust and transparency. This approach draws on international models such as Canada's legally recognised duty to consult First Peoples. This duty requires government agencies to meaningfully engage and demonstrate how consultation has shaped outcomes.[538]

In practice, this could be achieved through a range of mechanisms. For example, the Commonwealth *Cabinet Handbook* could be amended to require every submission to include a statement of consultation with Aboriginal and Torres Strait Islander peoples.

The *Public Governance, Performance and Accountability Act 2013* (Cth) could be amended to require agencies to report on consultation processes in annual performance statements. Sector-specific laws in health, education, environment and child protection could include statutory consultation clauses with ACCOs.

Budget processes could require all new policy proposals to include a certified 'First Peoples Consultation Statement' before proceeding to Cabinet. Finally, consultation obligations could be overseen by the independent mechanism discussed below, ensuring compliance and accountability across government.

3. *Establish permanent Indigenous advisory councils at national and jurisdictional levels, resourced to review policy and legislation before passage.*

Internationally, Canada has institutionalised permanent bilateral mechanisms with the Assembly of First Nations, Métis National Council and Inuit Tapiriit Kanatami, enabling representative bodies to engage directly with government on joint priorities and review policy proposals.[539] Closer to home, the First Peoples' Assembly of Victoria is a democratically elected body representing Traditional Owners and Aboriginal communities, with a mandate to negotiate treaty.[540] An Australian model could establish well-resourced councils of Aboriginal and Torres Strait Islander representatives, empowered to scrutinise legislation and advise governments on systemic impacts before decisions are finalised.

Establishing permanent advisory councils would complement the transformation elements set out in cl 59 by embedding structured, ongoing engagement into the core of government decision-making. Without such standing bodies, consultation risks remaining ad hoc and dependent on political will, rather than a guaranteed part of policy and legislative processes. This underscores the importance of linking engagement reforms with the establishment of independent mechanisms, ensuring that advice from Aboriginal and Torres Strait Islander peoples is not only sought but acted upon before decisions are finalised.

The success in ensuring effective representation and participation in policy and program design using advisory bodies relies on those bodies being genuinely representative, independent and well-resourced. Chapter 3: Increasing First Peoples participation', discusses concerns with appointed advisory councils as they have featured in the Australian landscape to date.

Independent mechanisms

Progress on the transformation elements has stalled in large part because the primary mechanism for driving systemic change – an independent body with authority to oversee and enforce these commitments – has not yet been established.

Cl 67 of the National Agreement commits government parties to each 'identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor and report on the transformation of mainstream agencies and institutions by 2023.[541] These mechanisms are essential to give effect to the transformation elements in cl 59, ensuring that commitments move beyond policy statements and are backed by enforceable oversight, public reporting and culturally safe avenues for accountability.

Cl 67 goes on to state:

The mechanism, or mechanisms, will:

a. support mainstream agencies and institutions to embed transformation elements, as outlined in cl 59 and monitoring their progress
b. be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe
c. engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies
d. report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions.[542]

To date, no jurisdiction has followed through on this commitment.

This is not due to a lack of advocacy or initiative from Aboriginal and Torres Strait Islander leaders. NSW Coalition of Aboriginal Peak Organisations (NSW CAPO), for example, advanced detailed proposals for an independent mechanism in September 2024.[543]

The proposal has not been endorsed by the NSW Government due to a number of policy and operational concerns and there remains ongoing work between NSW CAPO and the NSW Government to further refine the model.

Nevertheless, on 9 September this year, Victoria became the first jurisdiction in Australia to pass treaty legislation in parliament. Part 2 of the Statewide Treaty Act 2025 (Vic) establishes a First Peoples' representative and deliberate body – Gellung Warl. Part 9 of the legislation establishes an independent oversight and accountability mechanism to be known as Nginma Ngainga Wara, as a main arm of Gellung Warl. The mechanism will monitor and evaluate First Peoples-related policies, programs and services and be responsible for 'inquiry into the effectiveness of government administration and expenditure in relation to First Peoples.'[544]

The absence of independent mechanisms (IM) under cl 67 reflects the broader pattern mentioned above: governments commit to accountability in principle but resist taking the necessary action to hold them to account in practice.

Under the National Agreement, each IM is required to perform the following functions in a way that is recognisable to Aboriginal and Torres Strait Islander People and culturally safe:

- monitoring and accountability through public reporting
- supporting agencies to embed transformation elements
- engaging with First Peoples and responding to their concerns.

The functions offer guidance as to the form the IM might take and provide us with ideas about the kinds of powers each IM might need.

Function	Requisite powers
Monitoring and accountability through public reporting on agency progress (accountability function)	
The IM needs to publicly report on agency progress, identifying inaction or inadequacies and opportunities for transformation. Given the interconnected nature of the Priority Reforms, the IM would need a clear line of sight across all four to achieve this. To keep progress under the National Agreement coherent, the national IM would also need to play a coordinating role with regard to the jurisdictional IMs, ensuring that state and territory functions speak to the national IM functions.	Powers might include the ability to: ◎ publicly report on agency progress ◎ identify inaction or inadequacies ◎ highlight opportunities for transformation ◎ coordinate with state and territory IMs ◎ ensure jurisdictional IM functions align with national IM functions ◎ mandate consistent reporting from jurisdictions to support coherent national monitoring.
Supporting agencies to embed transformation elements of the National Agreement (transformation function)	
The transformation elements are outlined in Figure 5.4 above. To achieve this, the IM might: ◎ act in a guiding role for agencies seeking advice on creating transformational change ◎ provide agencies with real time support and advice on their business-as-usual approaches, departmental cultures, politics and programs ◎ convene deep dives into agencies that communities have expressed particular concern about ◎ work with existing CTG structures to embed transformational elements where required ◎ report back to community on how transformation is being implemented in each agency. Scorecards like the European Union Gender Equality Index and the Women's Gender Equality Agency Gender Equality Scorecard provide examples of ways this is being achieved in other spaces.	Powers might include the ability to: ◎ act in a guiding role for agencies on transformational change ◎ provide real-time advice on agency culture, programs and practices ◎ convene deep-dive reviews into agencies of concern ◎ work with CTG structures to embed transformation ◎ publicly report on agency progress ◎ identify and call out institutional racism and discrimination ◎ develop system-focused measures to address disproportionate outcomes ◎ monitor and promote cultural safety across agencies ◎ ensure effectiveness of cultural awareness training and Aboriginal leadership within institutions ◎ mandate genuine partnerships with Aboriginal organisations and communities in service delivery ◎ mandate transparency in funding allocations and performance indicators ◎ support truth-telling and active healing initiatives ◎ ensure government engagement with Aboriginal and Torres Strait Islander peoples is transparent, participatory and accountable.

Function	Requisite powers
Engaging with First peoples and responding to their concerns about mainstream agencies and institutions (engagement function)	
This function requires the IM to act as a bridge between community concerns and government agency responses. It also anticipates that mechanisms are in place to ensure that complaints and concerns about government agencies are responded to.	◎ receive complaints directly from community ◎ investigate complaints and systemic issues ◎ protect complainants from reprisals ◎ mediate between community and government agencies
To achieve this, the IM could utilise its accountability function to review existing complaints mechanisms, identifying effective complaints processes and offering recommendations to ensure they are accessible, culturally appropriate and accountable. It must also be able to hear directly from community and be able to act in a mediatory role between government agencies and community members. Finally, it would need to be able to report back to community on how issues have been responded to and collate information at an agency, regional, or national level to identify systemic issues.	◎ make recommendations to agencies ◎ require agency responses to recommendations ◎ report directly to Parliament ◎ publish findings and responses ◎ provide feedback to communities in accessible forms ◎ collate and analyse complaints across agencies/ regions ◎ initiate own-motion reviews ◎ refer matters to integrity bodies or human rights commissions where non-compliance persists.

Text box 5.7: Functions and powers of IMs under the National Agreement on Closing the Gap

Each IM must have powers that enable it to obtain information, scrutinise government performance and drive systemic transformation - not just to monitor commitments, but enabling the conditions for them to be fulfilled.

The Commissioner's role complements this objective. We must ensure that governments are not only making these commitments on paper but are held accountable for implementing them and delivering them in ways that tangibly enable First Peoples' governance and dismantle systemic racism. To that end, Chapter 2: A fair and just future for First Peoples outlines the organisational structures that could be considered to ensure the IMs' functions are exercised effectively.

Granting the Social Justice Commissioner permanent observer status within CTG Partnership structures would enable her office to link the implementation of CTG with independent human rights monitoring and reporting functions.

Given the central role of CTG in advancing Aboriginal and Torres Strait Islander peoples' rights, observer status will help to uphold human rights standards and ensure that accountability remains central to the process.

The existence of IMs would also provide a safeguard against the instability caused by the absence of bipartisan consensus on Aboriginal and Torres Strait Islander policy.

While political commitment has ebbed and flowed across governments, an IM with statutory authority and reporting obligations can create continuity, ensuring that progress does not depend solely on the priorities of the government of the day. By embedding monitoring, transparency and accountability functions outside the electoral cycle, IMs can help insulate transformation from short-term political shifts and maintain pressure on all parties to uphold commitments made under the National Agreement.

Recommendation 15

The Australian Government should build rights-based performance requirements into funding agreements with states and territories. Performance indicators should align with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), implementation of the Closing the Gap priority reforms and progress against the Closing the Gap socio-economic targets. Jurisdictional performance reporting should be subject to rigorous independent monitoring and evaluation (in accordance with clause 67 of the National Agreement on Closing the Gap).

Endnotes

481 D Bowden, Yothu Yindi Foundation CEO, Garma Festival 2025. <https://www.croakey.org/a-pointed-message-to-governments-from-garma-festival/>.

482 Australian Human Rights Commission (AHRC), *Social Justice Report 2012*, AHRC, Commonwealth of Australia, 2012. Chapter 2. <https://humanrights.gov.au/sites/default/files/document/publication/social_justice_report_2012.pdf>.

483 Australian Human Rights Commission (AHRC), *Social Justice Report 2012*. 113.

484 Productivity Commission (PC), *Review of the National Agreement on Closing the Gap – Study Report, Volume 1*, PC, Australia Government, 2024. 9. <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>.

485 Jumbunna Institute for Indigenous Education and Research, UTS, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

486 Productivity Commission, *Review of the National Agreement on Closing the Gap – Study Report, Volume 1*, PC, Australian Government, 2024. <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>; L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

487 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

488 M Stewart, 'Federal Fiscal Policy for Indigenous Self-Government', in J Tremblay (eds) *The Forum of Federations Handbook of Fiscal Federalism*, Springer Nature, Cham, 2023. 45-51. <https://library.oapen.org/bitstream/handle/20.500.12657/75365/1/978-3-030-97258-5.pdf#page=25>.

489 M Stewart, 'Federal Fiscal Policy for Indigenous Self-Government'. 45-51.

490 Productivity Commission (PC), *2017 Indigenous Expenditure Report*, PC, Commonwealth of Australia, 2017. 8–10. <https://www.pc.gov.au/ongoing/indigenous-expenditure-report/2017/ier-2017-indigenous-expenditure-report.pdf>.

491 J Haughton, S McNicol, Parliament of Australia, Parliamentary Library, *Australian Government Indigenous-specific bodies and budgets: a quick guide*, 17 November 2023. <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Quick_Guides/2023-24/AustralianGovernmentIndigenous-specificbodiesandbudgets#:~:text=Estimated%202023%E2%80%9324%20total%20Australian,For%20example:> That paper notes that 'after 2015–16, most government departments ceased reporting their total Australian Government Indigenous Expenditure. Expenditure from several smaller programs can only be estimated.'

492 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

493 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

494 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC, Australian Government, October 2020. 20–21, 29. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>; Australian Human Rights Commission (AHRC), *Implementing OPCAT in Australia: Options for National Preventive Mechanisms*, AHRC, 2020. 6–7. <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>.

495 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC, Australian Government, October 2020. 18-19. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>.

496 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC, Australian Government, October 2020. 20-21. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>; Australian Human Rights Commission (AHRC), *Implementing OPCAT in Australia: Options for National Preventive Mechanisms*, AHRC, 2020. 12-13. <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>.

497 Australian Human Rights Commission (AHRC), *Implementing OPCAT in Australia: Options for National Preventive Mechanisms*, AHRC, 2020. 9-10. <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>.

498 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (13 September 2007), Arts 18–19. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>; Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC, Australian Government, October 2020. 18-19. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>.

499 Productivity Commission, *Report on Government Services 2025*, Report, 30 January – 11 February 2025 <https://www.pc.gov.au/ongoing/report-on-government-services/2025>.; Productivity Commission (PC), *2017 Indigenous Expenditure Report*, PC, Commonwealth of Australia, 2017. 8–10. <https://www.pc.gov.au/ongoing/indigenous-expenditure-report/2017/ier-2017-indigenous-expenditure-report.pdf>.

500 Productivity Commission, *Report on Government Services 2025*, Report, 30 January – 11 February 2025 <https://www.pc.gov.au/ongoing/report-on-government-services/2025>.; Productivity Commission (PC), *2017 Indigenous Expenditure Report*, PC, Commonwealth of Australia, 2017. 8–10. <https://www.pc.gov.au/ongoing/indigenous-expenditure-report/2017/ier-2017-indigenous-expenditure-report.pdf>; Australian Law Reform

Commission (ALRC), *Cost, formality of Royal Commissions queries in ALRC Review* [media release], ALRC, 6 April 2009 <https://www.alrc.gov.au/news/cost-formality-of-royal-commissions-queried-in-alrc-review/>.

501 Australian Human Rights Commission (AHRC), *Social Justice Report 2012*, AHRC, Commonwealth of Australia, 2012. 113-114. <https://humanrights.gov.au/sites/default/files/document/publication/social_justice_report_2012.pdf>.

502 Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report of the Royal Commission and Board of Inquiry Into the Protection and Detention of Children in the Northern Territory Volume 1*, Commonwealth of Australia, 2017. Volume 1, 9. <https://www.royalcommission.gov.au/system/files/2020-09/Volume%201.pdf>.

503 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. 140. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

504 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*. Key finding 3, 136.

505 Maiam nayri Wingara, *Indigenous Data Sovereignty Principles (Maiam nayri Wingara Communique, Indigenous Data Sovereignty Summit 20 June 2018*, Maiam nayri Wingara website, 2018. <https://www.maiamnayriwingara.org/mnw-principles>.

506 Maiam nayri Wingara, *Indigenous Data Sovereignty Principles (Maiam nayri Wingara Communique, Indigenous Data Sovereignty Summit 20 June 2018*

507 National Indigenous Australians Agency (NIAA), *Framework for Governance of Indigenous Data (GID)*, NIAA website, n.d. <https://www.niaa.gov.au/our-work/data-evaluation-and-research/framework-governance-indigenous-data-gid>.

508 Australian National University (ANU), National Centre for Epidemiology and Population Health, ANU College of Law, Governance and Policy, *Mayi Kuwayu Study: The National Study of Aboriginal and Torres Strait Islander Wellbeing*, ANU National Centre for Epidemiology and Population Health, ANU College of Law, Governance and Policy website, n.d. <https://nceph.anu.edu.au/research/research-projects/mayi-kuwayu-study>; Mayi Kuwayu National Study of Aboriginal and Torres Strait Islander Wellbeing, Mayi Kuwayu National Study of Aboriginal and Torres Strait Islander Wellbeing website, 2025. <https://mkstudy.com.au/>.

509 H Charlesworth, as cited in United Nations Department of Economic and Social Affairs (UNDESA), Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues, *International Expert Group Meeting: Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc PFII/2014/EGM (27–29 January 2015). <https://www.un.org/esa/socdev/unpfii/documents/EGM/2015/Experts-papers/Fleur-Adock.pdf>.

510 United Nations Department of Economic and Social Affairs (UNDESA), Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues, *International Expert Group Meeting: Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc PFII/2014/EGM (27–29 January 2015). <https://www.un.org/esa/socdev/unpfii/documents/EGM/2015/Experts-papers/Fleur-Adock.pdf>.

511 Legislative Assembly of the Northern Territory, Fifteenth Assembly, *Parliamentary Record Debates and Questions – Tuesday 26 November 2024 – Meeting No 7*, pp 559-563. <https://territorystories.nt.gov.au/10070/987146/0/18>

512 L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. 21. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

513 Productivity Commission, *Review of the National Agreement on Closing the Gap – Study Report, Volume 1*, PC, Australian Government, 2024. <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>; Australian Human Rights Commission (AHRC), *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, AHRC, 2020. <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

514 Productivity Commission, *Review of the National Agreement on Closing the Gap – Study Report, Volume 1*, PC, Australian Government, 2024. <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>; L Lavarch, L Coombes, K Gray, C Anthony and S Nolan-Smith, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review*, Jumbunna Institute for Indigenous Education and Research, UTS, June 2025. <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

515 Maiam nayri Wingara, *Indigenous Data Sovereignty Principles (Maiam nayri Wingara Communique, Indigenous Data Sovereignty Summit 20 June 2018*, Maiam nayri Wingara website, 2018. <https://www.maiamnayriwingara.org/mnw-principles>.

516 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (13 September 2007), Arts 18–19. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

517 Parliamentary Joint Committee on Human Rights, *Debates*, 27 September 2023. 67 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commjnt/27320/&sid=0009>.

518 National Agreement on Closing the Gap, *Priority Reform Three: Transforming Government Organisations*, Closing the Gap website, n.d. <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three>.

519 National Agreement on Closing the Gap (2020), clause 59, pp 11-12. <https://www.closingthegap.gov.au/sites/default/files/2021-05/ctg-national-agreement_apr-21.pdf>

520 *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14. <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>.

521 United States, Executive Office of the President, *Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (20 January 2021) <https://www.federalregister.gov/

documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>; United States, Executive Office of the President, *Executive Order 14148: Initial Rescissions of Harmful Executive Orders and Actions* (20 January 2025) <https://www.federalregister.gov/documents/2025/01/28/2025-01901/initial-rescissions-of-harmful-executive-orders-and-actions>.

522 Australian Human Rights Commission (AHRC), *National Anti-Racism Framework*, AHRC, 2024. <https://humanrights.gov.au/sites/default/files/2024-11/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf>.

523 United States, Executive Office of the President, *Executive Order 14008: Tackling the Climate Crisis at Home and Abroad* (27 January 2021) <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>; United States, Executive Office of the President, *Executive Order 14148: Initial Rescissions of Harmful Executive Orders and Actions* (20 January 2025) <https://www.federalregister.gov/documents/2025/01/28/2025-01901/initial-rescissions-of-harmful-executive-orders-and-actions>.

524 Australian Human Rights Commission (AHRC), *National Anti-Racism Framework*, AHRC, 2024. <https://humanrights.gov.au/sites/default/files/2024-11/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf>.

525 Te Puni Kōkiri: Ministry of Māori Development, *Māori Crown relations*, Te Puni Kōkiri: Ministry of Māori Development website, <https://www.tpk.govt.nz/en/a-matou-whakaarotau/maori-crown-relations>.

526 Government of Western Australia *Aboriginal and Torres Strait Islander cultural awareness training*, Government of Western Australia website, 4 April 2024. <https://www.wa.gov.au/service/human-resource-management/training-and-development/aboriginal-and-torres-strait-islander-cultural-awareness-training>.

527 Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Reconciliation*, Government of Canada website, 28 July 2025 <https://www.rcaanc-cirnac.gc.ca/eng/1499711968320/1529105436687>.

528 Royal Australian College of General Practitioners (RACGP) and National Aboriginal Community Controlled Health Organisation (NACCHO), *National Guide to a Preventive Health Assessment for Aboriginal and Torres Strait Islander People: Third edition*, RACGP & NACCHO, 2018. <https://www.racgp.org.au/FSDEDEV/media/documents/Clinical%20Resources/Resources/Evidence-base-to-a-preventive-health-assessment-3rd-edition.pdf>.

529 Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Reconciliation*, Government of Canada website, 28 July 2025 <https://www.rcaanc-cirnac.gc.ca/eng/1499711968320/1529105436687>.

530 Productivity Commission (PC), *2017 Indigenous Expenditure Report*, PC, Commonwealth of Australia, 2017. <https://www.pc.gov.au/ongoing/indigenous-expenditure-report/2017/ier-2017-indigenous-expenditure-report.pdf>.

531 Productivity Commission (PC), *Indigenous Evaluation Strategy*, PC, Australian Government, October 2020. <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/strategy/indigenous-evaluation-strategy.pdf>.

532 Productivity Commission, *Review of the National Agreement on Closing the Gap – Study Report, Volume 1*, PC, Australian Government, 2024. Recommendation 4, action 4.3 in chapter 7, 34. <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>.

533 Yoorrook Justice Commission, *Interim Report,* Yoorook Justice Commission, June 2022. <https://www.yoorrook.org.au/reports-and-recommendations/reports>.

534 Australian Human Rights Commission (AHRC), *National Anti-Racism Framework*, AHRC, 2024. 15. <https://humanrights.gov.au/sites/default/files/2024-11/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf>.

535 New South Wales Government (NSW Government), *Dual Naming*, NSW Government website, n.d. <https://www.nsw.gov.au/about-nsw/place-naming/aboriginal-names/dual>.

536 Australian Bureau of Statistics (ABS), *ABS Inclusion and Diversity Strategy 2022–26,* ABS website, 2022. <https://www.abs.gov.au/about/our-organisation/our-commitments/abs-inclusion-and-diversity-strategy/2022-2026>; Government of Western Australia, Public Sector Commission, *Aboriginal and Torres Strait Islander Cultural Awareness Training: Commissioner's Instruction 29*, Government of Western Australian website, 2021. <https://www.wa.gov.au/system/files/2025-06/commissioners_instruction_29_.pdf>.

537 Government of Norway and Sámi Parliament, *Procedures for Consultations between State Authorities and the Sami Parliament*, Government of Norway website, 2018. <https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/PROCEDURES-FOR-CONSULTATIONS-BETWEEN-STA/id450743/>.

538 *Haida Nation v British Columbia* [2004] 3 SCR 511. <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2189/index.do>.

539 Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Reconciliation*, Government of Canada website, 28 July 2025 <https://www.rcaanc-cirnac.gc.ca/eng/1499711968320/1529105436687>.

540 First Peoples' Assembly of Victoria, *About the Assembly*, First Peoples' Assembly of Victoria website, n.d. <https://www.firstpeoplesvic.org/>.

541 National Agreement on Closing the Gap, *Priority Reform Three: Transforming Government Organisations* <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three>.

542 National Agreement on Closing the Gap, *Priority Reform Three: Transforming Government Organisations*, Closing the Gap website, n.d. <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three>.

543 NSW Coalition of Aboriginal Peak Organisations (NSW CAPO), *NSW Independent Aboriginal-led Government Accountability Mechanism*, NSW CAPO (September 2024) <https://alc.org.au/wp-content/uploads/2024/09/CAPO_IGAM_Report_Accessible.pdf>.

544 First Peoples' Assembly of Victoria Ltd and The State of Victoria, *Statewide Treaty (Negotiated – Pending Assent)*, First Peoples' Assembly of Victoria Ltd and The State of Victoria, 9 September 2025. S9 (a)(i) and (ii), 13. <https://firstpeoplesvic.org/reports-resources/statewide-treaty-pending-assent/>.

CHAPTER 6:

REBUILDING THE VILLAGE

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Rebuilding the village

‘Rebuilding the village’ is both an urgent necessity and a long-term project. It asks us to restore what colonisation tried to dismantle: the cultural authority of Elders, the bonds of kinship, the strength of our laws and languages and the collective responsibility we carry for each other and for Country. It also asks us to adapt, recognising that our peoples live in diverse places and circumstances and that rebuilding must make space for those who cannot return to Country as well as for those who live on it.

The examples included throughout this chapter show that renewal is already underway. From cultural camps and language programs to governance protocols and acts of sovereignty on the national and international stage, our peoples are demonstrating that rebuilding is possible. These actions remind us that thriving villages are not just an aspiration but a reality being lived and created now.

This work cannot rest with Aboriginal and Torres Strait Islander peoples alone. While our communities must continue to lead with self-determination and cultural authority, governments and the wider Australian public also have responsibilities: to listen, to respect, to yield power and to act in solidarity. Rebuilding demands both internal healing and external accountability – truth-telling, systemic reform and meaningful recognition of political and cultural pluralism.

Above all, rebuilding the village is an intergenerational responsibility. It is the gift we inherit from our ancestors and the legacy we pass on to our children. By strengthening our foundations, healing our wounds and asserting our sovereignty, we can ensure that our peoples continue to flourish for generations to come.

I am here because of my village – Katie Kiss, Aboriginal and Torres Strait Islander Social Justice Commissioner

I can personally attest to the strength, influence and critical role that my village has played in my life.

My Aboriginal mother passed away when I was only six years old, leaving myself and my four-year-old sister with my non-Indigenous father, a shearer turned bricklayer with very little understanding of what was required to raise two little Aboriginal girls.

While our Aboriginal family lived in the same town as us – and my Nana and Pop had child rearing responsibility for my three older sisters – my father, with the support of both his and my mother's family, took responsibility for raising us.

In terms of the broader village, my Aboriginal grandfather worked with other community leaders to establish our local health, housing and legal services. He promoted access to education and worked with the local council and Aboriginal and Torres Strait Islander services to ensure that programs were in place to support families.

For example, prior to losing my mother, I recall regular visits to the local Aboriginal Hostel. All the children and their mothers would be picked up by the local council to attend a morning tea where we would receive our children's health checks and immunisations. This provided an opportunity for Aboriginal and Torres Strait Islander mums and their children to come together, to connect on parenting or other challenges they might be facing and to support each other. This allowed children and young people to establish community connections and relationships from a young age.

It also supported cultural values such as knowing who belonged to which families and who were relatives, where people came from (their cultural connections and belonging), their lived experience and who needed extra support.

My sister and I eventually ended up in foster care but were fortunate to be placed with an Aboriginal foster mum who knew our family and us through her role in our school as the Aboriginal Education Officer. She kept us connected – to our family and our community.

Looking back on my upbringing, it is obvious to me that I had community members – many who were not related to me but were familiar with my family and the fact that we had lost our mum – who would look out for me and my sister; ensuring that we knew they were there for us if needed.

Aboriginal community leaders who ran youth programs that enabled safe and supported cultural and community development included me and my sister. We were members of the local softball and touch football teams and wore our Aboriginal colours proudly. They also provided us with opportunities to travel to other communities where we were able to connect with and establish long lasting relationships with family members separated through the Protectionist era.

As I grew into young womanhood and experienced the challenges of relationships and young motherhood, those children I made connections with as a child were there to support me. Elders in the community, my foster mum and my Aboriginal mothers-in-law, supported me to mother my children and in my professional development.

They facilitated access to opportunities that have resulted in my current role, like looking after my children so I could attend university and do community work as part of my job; and ensured that I was prepared to take on the responsibility that I now have back to my community, my village.

The importance of the village

Aboriginal and Torres Strait Islander peoples have lived on these lands for millennia. Through culture and connection to Country, we maintained stable societies and flourishing communities. We survived and thrived with our families through periods of great environmental change and, later, colonisation, grounded in cultural beliefs and practices that prioritised care for ourselves, our kin and our Country. Our ways of knowing, being and doing have always presumed that every member of the family, clan and nation has a role to play in supporting both individual wellbeing and the collective good.

This social fabric is not unique to our peoples but to Indigenous cultures around the world. It is captured in the general Nigerian Igbo saying, 'Oran a azu nwa' or 'it takes a village to raise a child'.

This same spirit of collectivism is found in other cultures, such as that of the Sudanese, who emphasise that 'a child is a child of everyone',[545] as well as that of Native Americans, who stress the importance of the work we do now as a village. The following quote captures this sentiment, one which also anchors the culture and worldviews of Aboriginal and Torres Strait Islander people:

> ***What we create today will shape the work they inherit from us in the future. Our sacred responsibility is to make sure what we place in their hands [is] a world where love and unity prevail. A world that took each of us—together, a village—to create.***[546]

Another way of thinking about this is found in the Torres Strait Islander concept of 'Kaiadth'.

Kaiadth – Our Cultural Anchor – explained by Ben Mitchell[547]

In the language of the Western Torres Strait – Kala Lagaw Ya, the word 'Kaiadth' has dual meaning. This special word means both 'shelter' and 'grandmother'.

It represents more than just a physical space. It is a cultural anchor. A hut or a safe space in the village where one can always return to for protection, nourishment and wisdom.

It also embodies the presence of a grandmother. Someone who provides unconditional love, guidance and strength. These meanings are inseparable and deeply symbolic.

Kaiadth is where culture is lived, respect is taught and truth is held. It is where children learn who they are, where they come from and what values must guide them to where they are going. It reminds us that Werem (children) are not just individuals to be protected. They are the carriers of our culture, our truth and our future.

Our children's rights to safety, love, cultural identity and guidance under the watchful eye of Kaiadth must be upheld. Not only in spirit, but in action – systems, leaders and policies.

These are not abstract ideals. They are rights grounded in Law and culture and they must be protected by those in positions of power.

When we protect our children, we uphold Kaiadth. When we centre culture, respect and truth in our decisions, we honour the teachings of our ancestors and ensure our children, our family and our community continue to grow strong.

We must use the wisdom of our Kaiadth (grandmothers) in all decision-making that affects our children, then in turn these, our rising generations, can make informed choices towards reaching their full potential governed by the lens of culture, walking with steps of respect and equipped with the confidence of truth.

Then we will see that the systems which govern with power begin to recognise the deeper purpose – that we are bringing them home.

Text box 6.1: Kaiadth – Our Cultural Anchor – explained by Ben Mitchell

Kaiadth speaks about the wisdom of our Old People in decision-making, where the strength of our knowledge systems and the transmission of culture have always been an important part of our 'village', helping to guide younger generations through various stages of life. These systems were not simply about knowledge-sharing, they were also about cultural protocols and Law. They ensured that younger generations could carry the knowledge forward that kept our cultures alive.

These are the foundations that are needed to ensure that we, as Aboriginal and Torres Strait Islander peoples, can peacefully co-exist alongside non-Indigenous people, strong in the recognition of our systems and worldviews. They have been the constant in our lives, shaping strong, safe and connected communities – our villages. These cultural and political structures have always guided us through upheaval and adversity, and they will continue to guide our grandchildren's grandchildren.

Today, as the First Peoples of Australia, we again find ourselves at a crossroads. The failure of the Voice Referendum is but the latest reminder of the structural and social inequities that confront us. In this context, the need to reinvigorate our villages is more urgent than ever.

Colonisation and the pressures of modern life have eroded cohesion and deepened relational divides. We may never recreate the exact societies of our Ancestors, but we can draw on their knowledge and strength to adapt once more and to rebuild in ways that meet current realities. As stated in the 2025 Mabo Oration,[548] if we are to progress towards a common purpose – a future that is strengths-based, self-determining and sustainable – we must re-establish ways of working together, re-centre respect for Eldership and cultural authority and commit to rebuilding our villages.

As First Peoples, we have always steadfastly asserted our sovereignty and our inherent rights to exist distinctly as the original inhabitants of this land.

Never have we, or our Old People, intended to have our ways subsumed into the mainstream culture. However, the rights of First Peoples the world over are under attack in an 'invisible war for our survival, dignity and wellbeing'.[549] Combatting this means fighting on a number of fronts to restore, reassert and revitalise our rights and our social structures that have carried us from the before times until now.

The cultural revival of our villages at the local level, grounded in the Law of Country, is fundamental to rebuilding our political collectives and our capabilities for self-governance. Rebuilding also involves reasserting our rights on the broader Australian and international stages.

History has shown us that we cannot simply rely on governments to do the right thing by us. Collective effort is needed. Our efforts must be grounded in the strength of our legacy – in the pride, resilience, cultural authority, Law and governance that have sustained our peoples for more than 65,000 years.

Rebuilt villages must:

- ground our people in culture and obligations to kin and Country
- provide young people with both independence and support when needed
- expose younger generations to the wisdom of Elders, slowly building capacity for future leadership
- connect First Peoples across Australia and the globe to share knowledge and advocate for rights
- instil the resolve to never compromise on our rights.

Achieving these objectives requires villages to strengthen their cultural foundations, where every facet of community life is infused with the protocols of our Law. Affirming our collective identity enables us to rebuild institutions of self-government and reclaim decision-making powers from the settler-colonial state.

By governing ourselves in line with our cultural ways, we embody self-determination. Internationally, this process of restoring governance and authority is known as Indigenous Nation Building.[550] The principles and practices of the Indigenous Nation Building framework will be discussed below and illustrated through examples drawn from the Australian context.

Rebuilding is not an isolated task. Before invasion, diplomacy, cultural protocols and Law ordered how boundaries were set, how neighbours interacted and how resources were shared. Revitalising the village must therefore occur not only locally, but also at regional and national levels. It is cultural, social, economic and political in nature.

Focusing on rebuilding is also a corrective to over-reliance on our resilience. Successive governments have pointed to our capacity to endure, while failing to uphold our inherent rights. Yet it is precisely the strength of the village that has seen us through waves of external pressure, environmental change and systemic disruption. While our peoples retain agency over some impacts, many challenges are beyond our control – and it is here that rebuilding must be coupled with the accountability of others.

The work ahead involves both Aboriginal and Torres Strait Islander peoples and the wider Australian community. After more than two centuries of imposed Western systems and in the wake of the failed Referendum, restoration requires multiple hands. While we cannot rely on governments alone to act in our best interests, true rebuilding demands effort on many fronts – self-determined action within our communities, solidarity from non-Indigenous Australians and systemic change from governments.

Honouring the legacy

Aboriginal and Torres Strait Islander peoples have never ceded Country or sovereignty. As outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), we hold inherent rights as Indigenous Peoples. These rights exist regardless of whether governments acknowledge or respect them. We are not simply another lobby or interest group. Our status is grounded in over 65,000 years of continuous Law, culture and governance.

Our Law, originating in the 'before time', when 'song, stories and law were birthed, as were the ancestors – out of the land'.[551] Law orders relations between people and the environment and between nations themselves.

Our peoples undertook their responsibility to care for Country freely and purposefully. Each nation respected the Law of the land and its peoples. Where Law was broken, giving rise to conflict, established systems of governance enabled resolution.

The continued survival of Aboriginal and Torres Strait Islander people for millennia demonstrates an innate ability to adapt to changes in our lives and environment. Former Prime Minister Paul Keating captured this in his 1992 Redfern Speech:

There is one thing today we cannot imagine. We cannot imagine that the descendants of people whose genius and resilience maintained a culture here through fifty thousand years or more, through cataclysmic changes to the climate and environment and who then survived two centuries of dispossession and abuse, will be denied their place in the modern Australian nation. We cannot imagine that. We cannot imagine that we will fail.[552]

Yet resilience has not been a choice. Since first contact, it has been forced upon us by unrelenting colonisation, systemic racism and institutions designed to undermine and devalue our cultures. Our resilience is real, but it must not be misused as a substitute for government responsibility.

It cannot be the crutch that excuses inaction, nor the scapegoat that hides ongoing violations of our rights.

True change requires governments to uphold their human rights obligations and for broader Australian society to recognise the ongoing legacies of colonisation – from ill health and social disadvantage to fractured governance and cultural harm. Decades of failed or unimplemented policy show why we cannot rely solely on government systems to deliver justice. The failed Referendum has made this even clearer: a modest request for a constitutionally recognised voice in matters affecting us was rejected.

Generations of resilience and resistance form a proud part of our story and have been crucial to our survival, but they also underscore the urgent need to correct course.

Rebuilding the village – restoring cultural authority, cohesion and collective strength – is the path forward. This cultural revival sets a foundation for the interconnected work of culturally legitimate Indigenous nation building – a process that international research demonstrates to be effective as we strive to enact our inherent rights to self-government and self-determination.[553]

Chapter 6 Recommendations

16. All Australian governments should prioritise sustained and long-term funding to support community-led initiatives essential to rebuilding strong and thriving First Peoples communities. These initiatives include:
    - practices that restore cultural authority and promote nation-building, good governance and community-facing accountability
    - restorative justice approaches that promote dispute resolution and peacemaking
    - language revival programs
    - cultural camps and healing forums
    - intergenerational learning on Country and knowledge transfer and mentoring.

Why we need to rebuild

The legacy brought about by colonial disruption, both historic and contemporary, has rippled through the spheres of Aboriginal and Torres Strait Islander family, spirituality, Country and culture. It brought with it a 'profound sense of grief and deep longing to reconnect'[554] with our cultural heritage and identity. The impact of state control over the lives of Aboriginal and Torres Strait Islander people has been such that 'very few people escaped the direct and indirect effects' at cultural, social, economic and psychological levels.[555] This has resulted in significant 'trauma, grief and loss' – issues that have been aggravated by the silencing of these impacts by broader Australian society.[556]

Throughout the Informing the Agenda (ITA) community engagements, Aboriginal and Torres Strait Islander peoples emphasised that the traumatic impacts of colonisation on their ways of knowing, being and doing must be addressed by:

- returning to a state where collective responsibility is taken for the wellbeing of children, families and communities
- Elders are respected as cultural authorities and cared for with love and dignity
- young people are included in decisions that affect their futures and supported to step into leadership
- everyone is recognised as having a role to play and provided with the means to fulfil it.

Some of the critical elements needed to move towards this vision are explored in detail later in this chapter.

Impact of settler-colonialism

Settler-colonialism is a system in which outsiders come to a land, claim it as their own and build a new society by displacing, controlling, or attempting to erase the Indigenous peoples who already live there. Unlike other forms of colonialism, which often focus on extracting resources and then leaving, settler-colonialism is about permanent occupation. The settlers intend to stay, replace Indigenous systems of Law, culture and governance with their own and assert dominance over land and people across generations.[557]

Throughout the world, settler-colonialism has sought to erase Indigenous Peoples. Strategies have included physically eliminating or displacing us, erasing cultural practices, or attempting to 'absorb', 'assimilate' or 'amalgamate' Indigenous people within the wider population. These approaches have created the systemic and entrenched injustice and intergenerational harm experienced by First Peoples throughout the world.[558]

The aspiration of settler-colonialism in countries like Australia, the United States, Canada and Aotearoa New Zealand has been that independent, self-governing and self-determining First Peoples be eliminated or absorbed and that Indigenous individuals be 'incorporated' or 'domesticated' into the dominant society to be treated as minorities, stakeholders, or interest groups.[559]

In Australia, the attempted destruction of Aboriginal and Torres Strait Islander peoples' worldviews has had devastating consequences.

Diverse research and evidence demonstrates that peoples – whether Indigenous or non-Indigenous – experience collective wellbeing when they live according to their own cultural worldviews which provide them with structure, meaning and significance.[560] Conversely, when peoples are prevented from living according to their own systems of interrelated knowledge, practices and social meanings – their worldviews – they experience intergenerational trauma that manifests in negative social and well-being outcomes.[561]

Processes of settler-colonialism

Ongoing settler-colonialism has generated a similar pattern throughout the world and has become entrenched in every aspect of our lives. Beyond the violent displacement of Aboriginal and Torres Strait Islander peoples through the frontier wars of colonial Australia, the laws and policies that soon replaced them were aimed at the erasure of First Peoples' collective identities.[562]

First settler-colonial law justified and sanitised the dispossession of First Peoples[563] – a process has been referred to as 'lawfare'.[564] British law was used to declare Australia as 'terra nullius' and openly dismissed the existence, laws and rights of Aboriginal and Torres Strait Islander peoples[565] The High Court has repeatedly held that it cannot adjudicate on the sovereignty of the nation state as this is the source of the court's power to adjudicate.

For example, in 1975, in the *Seas and Submerged Lands Case* Justice Gibbs said: 'The acquisition of territory by a sovereign state for the first time is an act of state which cannot be challenged, controlled or interfered with by the courts of that state.'[566]

In 1979 in *Coe v Commonwealth* [567] the High Court held that 'disputing the validity of the Crown's proclamations of sovereignty and sovereign possession ... are not matters of municipal law but of the law of nations and are not cognizable in a court exercising jurisdiction under that sovereignty which is sought to be challenged'.[568]

The High Court in *Mabo*[569] reasserted this same position that it could not adjudicate on the question of British acquisition of sovereignty, and Justice Brennan listed a paragraph of references for this principal dating back to 1926.[570]

However, in holding that the land rights of First Peoples could survive the acquisition of British sovereignty, the court in *Mabo* acknowledged that it 'left room for the continued operation of some local laws or customs among the native people'.[571] The existence of local Indigenous laws and customs had been recognised by Justice Blackburn in 1971 in *Milurrpum v Nabalco* (the Gove Land Rights Case).[572] At the time, Counsel for the Yolnu people in that case had considered that finding itself too precious to risk an appeal from the Supreme Court of the Northern Territory and so that case which broadly ruled against the Yolngu's claim for recognition of native title was let to stand for two more decades.[573]

In 2002, the High Court in Y*orta Yorta* narrowly interpreted the definition of 'traditional' laws acknowledged and customs observed, requiring them to have remained substantially uninterrupted since sovereignty,[574] imposing an impossibly high burden of proof on native title claimants.[575] Subsequently, various attempts have been made through the courts at avoiding the more damaging conclusions to which the reasoning in Yorta Yorta led.[576]

This legal position entailing a narrow understanding and recognition of continuous and continuing traditional law and custom and connection to Country, and indeed of the concept of sovereignty itself, was made possible by the cumulative weight of successive government policies, programs and practices since first contact. These sought to entrench settler-colonial 'superiority' and replace First Peoples' institutions, culture and values with those of the settler.[577] Attempts via the courts to re-construct the legal understanding of how two systems of law can co-exist in one area have managed minimal, albeit at times important, advances.

The challenge, when trying to overcome this harm, is that non-Indigenous perspectives and values have become so entrenched. Policymakers may not even be aware how fundamental the suppression of First Peoples' collective identities are to the way that settler institutions and social, political and cultural systems operate.[578]

Assimilationist policy approaches have suppressed the rights of Aboriginal and Torres Strait peoples. The cumulative impact has been to displace the centrality of Aboriginal and Torres Strait Islander ways of knowing, being and doing, most recently through 'mainstreaming' approaches that seek to reproduce the lifestyles of the broader Australian community.[579]

Colonisation has produced a multiplicity of harms for Aboriginal and Torres Strait Islander peoples, touching every aspect of cultural, social and political life. In considering the function of the village, here we focus on five in particular:

- the pervasive harms caused by racism
- the undermining of cohesion
- the undermining of authority
- the fracturing of identities
- the imposition of Western systems and governance.

Impact: The pervasive harms of racism

Racism is a well-established and evidenced risk factor for the social and emotional wellbeing of Aboriginal and Torres Strait Islander peoples. Directly tied to colonisation, discrimination experienced by First Peoples can be extreme, persistent and often intersectional. Exposure to racial discrimination is often exacerbated by other forms of discrimination (gender, age, disability etc). It can also be individual, systemic or structural.

Systemic and structural racism while used interchangeably, are:

> *... forms of racism that are pervasively and deeply embedded in and throughout systems, laws, written or unwritten polices, entrenched practices and established beliefs and attitudes that produce, condone and perpetuate widespread unfair treatment of colour.*[580]

Systemic racism involves whole systems and often all systems, including political, legal, economic, health, education and criminal justice systems; and includes the structures that uphold them. Structural racism is focused on the role of the structures that support systems – laws, policies, practices and norms.[581]

For Aboriginal and Torres Strait Islander people, systemic and structural discrimination – perpetrated through health, child protection and criminal justice systems – is a contributing factor to physical, psychological, social and cultural harm, and has also proven fatal. These experiences of racism compound the harms of colonisation by weakening cultural, community and kinship ties – making the work of rebuilding connection all the more urgent.

As mentioned in other chapters, this is particularly true following the failed Referendum result, which has so negatively impacted our First Peoples, particularly our young people. It is equally evident in the broader public sentiments expressed by politicians and others about the place of Aboriginal and Torres Strait Islander culture in Australian life both in the lead-up to, and following, the Referendum.

As others have argued, the debate about the Constitution 'tapped into a deeper well of historical racism' that has its origins in the early life of Australia and has continued ever since.[582] Major negative events, such as the Referendum outcome compound the impact of the interpersonal, structural and systemic racism our people have faced for more than two centuries. They also heighten the urgent need for a sustained focus on strengthening connections to culture, language and Country. This includes the need for progress against the CTG framework, which aims to address issues of cultural disconnection through both the care and criminal justice settings.[583]

Unhelpful rhetoric from members of the federal Parliament not wanting to stand in front of Aboriginal and Torres Strait Islander flags[584] and petitions to local councils calling for an end to Welcome to Country ceremonies[585] are indications of the broader hostility that Aboriginal and Torres Strait Islander people face. While racism has always been a problem, the discourse surrounding, and outcome of, the Referendum have created an environment where these sentiments are more openly expressed. While such instances are not representative, they do offer a sense of the holistic approach required to address racism within this country. As we rebuild our villages, dismantling racist systems is a critical step in the creation of culturally safe spaces where our peoples can thrive.

Impact: Undermining cohesion in our communities

For over 200 years, Australian governments have systematically marginalised families and communities from one another through official policies of dispossession, separating families based on 'caste', forcible relocation, child removal and even housing policies that separate families from Country and kin. They have imposed governance systems on us, undermined cultural authority and continue to profoundly undermine cohesion and collective identity in our communities.

Research comparing government policy environments in Australia and the United States highlights that, in the Australian setting, government policy causes fragmentation in our communities.[586] One factor that exacerbates this is short term contracts that force Aboriginal Community Controlled Organisations (ACCOs) to compete with each other, and with non-Indigenous organisations, for funding. In contrast, 'through the development of contracting into permanent compacting via block grants', the United States approach 'builds established nodes of Indigenous government and facilitates whole-of-government coherence at the level of the American Indian tribe.'[587] The research shows that the Australian model dampens creativity and hampers Indigenous long-term planning as well as political capacity,[588] with Indigenous organisations rewarded for mastering specific contracting standards rather than solving problems on the ground. In practice, this constrains self-determination.

It is little wonder why lateral violence has become prominent in our communities, where funding scarcity and policy settings drive competition and short-term thinking at the expense of future generations.

It is critical to understand that this violence has not arisen organically within Aboriginal and Torres Strait Islander cultures; it is a symptom of colonisation and its ongoing structures. When kinship systems are fractured, cultural authority is undermined and communities are compelled to compete for resources through government-imposed frameworks; anger and grief are too often redirected inward.

Instead of being channelled toward dismantling the systems that perpetuate dispossession and inequality, frustration manifests as conflict within families, organisations and communities. This displacement of harm is one of the most insidious legacies of colonisation. It divides us, hides the real causes of violence and is weaponised to cast doubt on our capacity to lead our own affairs.

Participants in the ITA process noted that native title has become a tool that separates our peoples and causes lateral violence. In some places in NSW, two different governance structures – Native Title Representative Bodies (and Prescribed Bodies Corporate) and Aboriginal Land Councils – often have competing responsibilities over Country that can lead to conflict. Some described these systems as being put in place by governments to collide, divide and conquer. This has resulted in confusion, frustration and a weakening of our collective strength.

Impact: Undermining of cultural authority

The identity of Aboriginal and Torres Strait Islander peoples is bound up in our relationships to kin and Country. We are born from Country. It is from Country that we derive our bloodlines and our obligations to the land.[589] Both are sources of Law and reflect how we are positioned within our societies. This includes what our totems and languages are and how we are connected within our broader kinship networks.

> ***Our identity as human beings remains tied to our land, to our cultural practices, our systems of authority and social control, our intellectual traditions, our concepts of spirituality and to our systems of resources ownership and exchange. Destroy this relationship and you damage – sometimes irrevocably – individual human beings and their health.***[590]

Being able to identify who you are and where you come from is an important way of placing oneself within a broader context of social relationships. As Eualeyai and Gamillaroi woman Distinguished Professor Larissa Behrendt has emphasised:

> ***Aboriginal people in Australia when they meet you will ask…where you are from as a way of fitting you into our kinship network – which we do by family name, place and nation group. There is power in asserting our place in the natural world and in our kinship network as we introduce each other.***[591]

These systems are complex and set out not just the people we are related to, but our place within a broader 'web of relations'[592] that comes with both responsibilities and obligations. This lets us know not only how we relate to people, totems and Country, but to who and what we have responsibilities for and who has reciprocal obligations to us. It is these systems that give Aboriginal and Torres Strait Islander people our sense of belonging, place and identity.

Attempts to substitute our complex social, cultural and political value systems have fractured cultural identity for many people and communities.

This has created distance from the cultural authority of Elders and knowledge holders[593] and from the traditions that have sustained us across generations. This issue of disconnection from culture and identity, particularly amongst Aboriginal and Torres Strait Islander young people, was frequently raised throughout the ITA engagements.

As cultural authority is increasingly weakened and disregarded, intergenerational bonds are breaking down within family and community structures. This is reflected in rising levels of financial abuse, particularly of Elders.

These practices often leave older people without sufficient funds to meet their basic needs. While financial exploitation is a widespread form of abuse across rural, regional and metropolitan areas, Elders are also experiencing verbal and physical abuse from family members. At the same time, it is important to recognise that many First Nations people – particularly women – carry out substantial amounts of unpaid care work that sustains families and communities, a contribution too often overlooked.[594]

Colonisation and intergenerational trauma negatively influence cultural identity. This is particularly the case where our young people have been removed from their families.[595] We know that removal, in particular, places Aboriginal and Torres Strait Islander young people at greater risk of psychological, health, developmental and educational harms. [596] With rates worsening nationally, as shown in the most recent CTG data, [597] this is a cause for great concern.

As we rebuild our villages according to our own values, norms and Law, questions about how our people and communities rebuild authentic cultural authority will be essential. As stated in the 2025 Mabo Oration:

Our people have learnt how to navigate the two worlds we are now forced to straddle. But I don't believe that is where our Elders – our leaders, our visionaries – saw this path taking us.

I believe that their vision was to ensure that we did not lose who we are in the face of merciless colonial incursion.[598]

Evidence confirms that both stronger connections to culture and Country and safety from harm in workplaces, families and communities, provide Aboriginal and Torres Strait Islander peoples with a better quality of life. These elements support positive engagement within communities and act as protective factors for social and emotional wellbeing (SEWB).[599]

Evidence also confirms that 'factors that lead to unsafe situations include long-term social disadvantage and the ongoing impact of past dispossession and forced child-removal policies... [These factors] result in intergenerational trauma and breakdowns of culture and kinship practices'.[600]

Feeling safe is a critical element of SEWB. Central to feeling safe for Aboriginal and Torres Strait Islander people is being culturally safe. This requires that community and other social (physical and virtual) environments meet the needs of those accessing them and that those with responsibility for ensuring the cultural safety, of those spaces are equipped to deliver. This includes ensuring that spaces are identity-affirming and free from discrimination and harm. Cultural safety is:

An environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience of learning, living and working together with dignity and truly listening.[601]

Denial of cultural wellbeing and security

In the shadow of the 2023 Voice Referendum – a time when protective mechanisms to promote and protect cultural wellbeing and security for First Peoples are so critical – the Government response has been to withdraw from progressive Indigenous Affairs policymaking.

With economic pressure on federal, state and territory budgets, initiatives that promote cultural wellbeing and security are often considered symbolic rather than practical or necessary and are deprioritised in budgeting processes.

This includes funding for First Peoples to participate in decision-making through their representative bodies as well as to support cultural knowledge transfer within native title processes and truth-telling programs.

Despite requiring extensive unpaid labour from First Peoples and the sharing of deeply personal and sometimes sacred cultural knowledge, the native title system in its current form has primarily focused on non-Indigenous priorities such as providing certainty for industry and developers. The well-being of First Peoples has not been a significant consideration in most cases and governments, have not appropriately acknowledged nor responded to the damaging impact these processes themselves have had.[602]

In these systems, we have seen our culture and knowledge most often shared with non-Indigenous government officials, lawyers, anthropologists, mining companies and consultants. They leverage that knowledge to further their own interests, rather than the interests of those whose inherent right it is to receive, protect, manage and benefit from it.

In some instances, meetings of Traditional Owners involved in native title claims or other land processes have provided opportunities for family groups to come together – supporting the development of connection reports with senior Elders, children, and others present.

It is opportunities such as these that enable culture and knowledge sharing. They are not just important for Aboriginal and Torres Strait Islander peoples' cultural maintenance; they are also critical to protecting Australia's national cultural heritage values into the future.

However, for groups with limited resources, this is much more difficult, allowing little opportunity for First Peoples-focused dialogue, planning, knowledge sharing, and cultural caretaking. Where opportunities are funded, they are often on short-term funding contracts, with no ongoing commitment.

In her 2024 Native Title Report, former Aboriginal and Torres Strait Islander Commissioner June Oscar AO highlighted the damage caused to communities by these systemic failings and emphasised the importance of centring the lived experience of First Peoples within the native title system.[603]

Text box 6.2: Denial of cultural wellbeing and security

Impact: Fractured identities

We're moulded to be white. These kids don't identify with this Westernised way of being. They just want to be out on Country. They want to be learning their cultural connections, their identities, but they're not allowed to. Legally, they're not allowed to. So, the loss of culture, over the last 200 years, has probably left us – and me included – feeling quite lost, us feeling quite – what's happening? Where do we identify? Where do we fit? Because on one hand, it's just like, oh, we're part of the oldest living culture in the world, but we have to be white. We can't just be fully this anymore, which is quite upsetting.[604]

Another example of the harm caused by colonisation is evident in the way we, as Aboriginal and Torres Strait Islander peoples, express our collective identities and heal fractured communities.

As explained above, Aboriginal and Torres Strait Islander Law and identity are relational. Before invasion, our identities required no explanation: we knew the boundaries of our Country, our roles and responsibilities to it, our clan or nation and our relationships with neighbours. Today, however, Aboriginal and Torres Strait Islander people grapple with the ongoing impacts of dispossession, forced relocation, child removal and separation from Country and community for education, employment, housing and relationships. Some live with uncertainty about their story as a result of these colonial disruptions. Many of us live with multiple identities and connections to different Country in different ways:

I am a proud Kaanju and Birri/Widi woman from Central Cape York (my grandmother's country) and the Bowen region through my grandfather. I was born and raised in what is now Rockhampton on the lands of the Darumbal People as a result of my family moving there from Woorabinda Aboriginal Reserve after being exempted from the Protection Act. I am a native title rights holder for both areas of connection, but now live on the lands of the Yuggera, Turrubal and Quandamooka Peoples in Magun-dgen (now known as Brisbane). These different identities form who I am and give me different rights and responsibilities across different Countries as a Traditional Owner, a historically connected community member, or a resident. – Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss

Some Aboriginal and Torres Strait Islander people have lived for generations in tight-knit communities but are not Traditional Owners of the land upon which they live (as a result of movement through the Protection era, or moving for education, housing or employment). For others, these impacts mean they have been disconnected from their communities entirely, feel lost, and may find challenges in rebuilding cultural connections.

While these impacts are not of our making, it is ultimately up to us and our communities to rebuild our villages and encourage harmony and sustainability. In doing this, some critical questions we need to consider include:

- How can different groups within our communities – with their varied rights, roles and responsibilities – have respectful and nourishing conversations?

- How do we welcome people to our villages who are seeking to reconnect and support them to understand and take up their cultural responsibilities?
- How do we strengthen and recognise cultural authority in decision-making across our communities and clarify which groups have responsibility for particular issues?
- How do we balance the roles and responsibilities of different community members, including Traditional Owners and those who have long-standing connections through residence and relationships?
- What mechanisms can ensure people remain connected to their own Country and able to speak for it, even when they live elsewhere?
- What dispute mechanisms are needed to deal with these matters that largely arise because of external interference yet must be resolved to avoid conflict and encourage harmony?

Answering these questions is tied up with our right to make decisions about membership of our communities (see Article 33 of the UNDRIP),[605] which is a function of our sovereignty and inherent right to self-determination. Today, this sovereign responsibility is broader and extends to communities being asked to make decisions about whether someone is Indigenous or not based on the claims they make.

As noted in Chapter 1: First Peoples' Voices – Informing the Agenda, even these sovereign rights have been impacted. Non-Indigenous governments and institutions have created criteria for determining Indigeneity and during the listening tour, we also heard examples of non-Indigenous General Practitioners, Pharmacists and church leaders endorsing Aboriginality confirmation without having any evidence or cultural authority to affirm it.

Being a member of an Aboriginal and Torres Strait Islander community involves more than historical or biological connection. Communities are grappling with how to define criteria and processes that address externally imposed challenges while also honouring cultural expectations and responsibilities.

On the one hand, there is shared heartbreak for Aboriginal and Torres Strait Islander people who have been disconnected through removal and other colonial practices.

On the other hand, there is increasing frustration about people claiming identity without meaningful connection to or validation from community and the challenges this poses.

The core issue is not simply connection to Country, but how lived experience as an Aboriginal or Torres Strait Islander person is recognised, validated and supported by community. This is done through identity (how we name ourselves), belonging (how we are accepted and connected in community) and accountability (how we live our responsibilities with integrity).

This raises difficult but necessary questions: How can the harm caused by disconnection and contested identity be addressed? What processes are appropriate for bringing people home? What responsibilities come with reconnecting to community, both for those trying to reconnect and those supporting reconnection? And how might individuals who have experienced disconnection learn about our relational systems and our Laws?

These developments are situated within the broader context of the erosion of cultural norms and have been attributed to the impact of 'intergenerational trauma and the lack of connection to culture, Country and language'.[606] This breakdown in the social structures of Aboriginal and Torres Strait Islander peoples represents a critical area in need of attention. At the same time, it is important to recognise the strength and persistence of our peoples in keeping culture alive, maintaining language, law and ceremony and working tirelessly to mitigate the impacts of colonisation for future generations.

Confirmation of Aboriginality in Victoria

In Victoria, questions of identity and belonging have become a central issue in the State's treaty process. Under legislation to establish Gellung Warl – Victoria's First Nations representative body – this newly created statutory authority will be empowered to set statewide rules, standards and guidelines for confirming Aboriginality.[607]

This reform emerged from concerns raised by the Aboriginal Justice Caucus about inconsistent processes across government departments.[608] The Caucus highlighted serious risks, including reports that confirmation certificates had once been available for purchase online.[609]

The Caucus recommended oversight by an independent Aboriginal-led body with the power to research claims, maintain records and enforce standards. The widely accepted test of Aboriginality has three parts: a person must identify as Aboriginal, they must be Aboriginal and they must be accepted as Aboriginal by Elders or others with cultural authority.

The Caucus called for an end to statutory declarations being used in place of this test and sought penalties under state law for fraudulent claims.

The establishment of Gellung Warl is unprecedented in Australia. It reflects nearly a decade of preparation by traditional owner groups, Aboriginal organisations and the Victorian Government to ensure community voices are embedded in the treaty process. While parliamentary sovereignty is retained, the creation of a centralised and uniform authority marks a significant step in strengthening cultural authority and addressing tensions around identity, belonging and accountability.[610] It also highlights the importance of having structures and processes in place to support communities to work through these challenging issues.

Text box 6.3: Confirmation of Aboriginality in Victoria

Impact: Imposition of Western systems and governance

Although we are many nations and live according to different rules and values, there are many similarities among Aboriginal and Torres Strait Islander values, norms and Law. A common characteristic is that our Law is underpinned by the principles of relationality and collectivism. Aboriginal and Torres Strait Islander decision making is a clan-based system that has existed at the local level for many generations.

This has been usurped by foreign laws that have applied a one-size-fits-all approach at local, state, territory and federal levels.

These government laws, policies, practices and programs that entrench individualism and promote self-interest, competition, capitalism and consumerism, destabilise our relational systems and cause harm to the foundations of the Aboriginal and Torres Strait Islander village. As with the displacement of the role of Elders (identified earlier in this chapter), Western laws and forms of decision-making have diluted Aboriginal and Torres Strait Islander governance and thrown these systems into disarray.

Even our attempts to restore the traditional role of Aboriginal and Torres Strait Islander Elders and decision makers within a broader kinship network continue to be disrupted by settler-colonial governments.

The forced amalgamation of local shire/community councils into 'super shires' at the time of the Northern Territory Emergency Response (NTER) is a key example of this. As former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda said at the time:

> *People feel totally disempowered by it and if we don't do something about getting...governance structures back into the communities, the outcome of this amalgamation will be probably worse than the Northern Territory Intervention ... It is so important it has been raised with me everywhere I go, the amalgamation of shires and the total detrimental effect it has had on these communities.*[611]

This marginalisation is also evident in schools, parliaments and courtrooms, where the rules applied and the knowledge produced are predominantly framed from a non-Indigenous perspective. While parts of the education curriculum may include some Indigenous histories and perspectives, they remain marginal within the broader educational experience.

Bilingual education – which integrates both First Peoples' languages and culture alongside English – is almost always hard-won and remains the exception to the standard model of schooling. For example, Yirrkala School in north-east Arnhem Land just celebrated its 50th anniversary of bilingual both-ways education. It resisted a 2008 state policy mandating English-only instruction for the first 4 hours of the day and today teaches around 14 Yolŋu Matha languages alongside English, embodying a powerful model of integrated cultural and academic learning.[612]

Similarly, Areyonga School in the Northern Territory (NT) has sustained a Pitjantjatjara–English bilingual program for 50 years, combining cultural education with language learning and local ecological knowledge, including in STEM through a program called 'Two-way Science.'[613]

Creating the conditions for thriving villages

If we accept the evidence described above that peoples flourish when they live according to their own cultural worldviews – and we understand the ongoing undermining of Aboriginal and Torres Strait Islander collectivism by settler-colonialism – it becomes very clear why 'rebuilding the village' is an urgent priority.

This task cannot simply be about recreating the villages of the past. Colonisation, migration and now rapid changes such as artificial intelligence, social media and the mobility of our peoples across the country and internationally, have created significant intergenerational differences. Securing cultural foundations while also adapting to these changing realities is essential if our villages are to thrive into the future.

One expression of this adaptation can be seen in some communities where First Peoples' sovereign movements are setting up structures which establish their own governance alongside those of the State. This is a form of pluralism in action, where pluralism refers to systems in which more than one form of authority or governance operates side by side, recognising the coexistence of different laws, institutions and worldviews within the same country.

Of course, not all peoples are pursuing sovereignty in the same way or at the same pace. Healing from past and ongoing harms – including through truth-telling, which is discussed later in this chapter – is an essential step in this process. It ensures that communities engage in this work from a place of strength. Approaches to village-rebuilding must, therefore, cater to communities at different stages of the self-determination process, enabling people to participate in ways that feel possible for them. Otherwise, we risk repeating the very harms of colonisation – imposing values and requiring conformity, rather than supporting diversity and choice.

With these realities in mind, the question becomes: what will it take for village rebuilding to succeed?

The process must be grounded in collective human rights and multifaceted. While the primary focus should be on Aboriginal and Torres Strait Islander people, we must also look more broadly to see what role governments and non-Indigenous people need to play in this village-rebuilding. This will be addressed in the next section.

Here we discuss some of the inter-related conditions that Aboriginal and Torres Strait Islander peoples need to create for thriving villages to exist:

- self-determination in accordance with our cultural ways of being
- rebuilding connection to Country, to each other and to community
- managing conflict through Indigenous Law and conceptions of justice
- Indigenous nation building to reclaim self-governance (necessary for enacting self-determination).

Self-determination

Self-determination – an inherent right emerging from our existence as sovereign peoples – is detailed in common Article 1 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Said to be the 'most fundamental of all human rights',[614] self-determination is a collective right which goes beyond the individual, family or local community level, and is grounded in the idea that peoples are entitled to control their own destinies. For First Peoples, self-determination means our right to live according to our own cultural ways and achieve our self-defined aspirations.

Bandarran Marra'Gu – Gathering Strength Summit

On 19–20 May 2025, the Bandarran Marra'Gu: Gathering Strength Summit was held at the State Library of Queensland in Magan-djin (Brisbane).[615] The Summit brought together Aboriginal and Torres Strait Islander community members of all ages from across Queensland to share knowledge, lived experiences and strategies for change.

Guided by UNDRIP, its objectives were to:

- provide a safe environment for dialogue
- identify key priorities and forward directions
- foster collaboration across sectors, mobs and perspectives
- share practical tools for promoting human rights and self-determination.

The end-of-gathering statement delivered a clear and powerful message: our rights are not negotiable. Participants affirmed that self-determination, cultural integrity, equality and non-discrimination and participation in decision-making are fundamental rights, not privileges. A strong priority focus emerged on protecting First Nations children and young people from structural and systemic discrimination and institutional violence.[616]

By centring First Nations voices, including young people, the Summit demonstrated how collective governance and human rights frameworks can strengthen pathways towards self-determination and a better future for all generations.

Text box 6.4: Bandarran Marra'Gu – Gathering Strength Summit

As a signatory to key United Nations (UN) human rights treaties, Australia has a responsibility to codify and uphold the core international legal principle of self-determination.[617] If Australian governments genuinely wish to address disadvantage for Aboriginal and Torres Strait Islander people, measures to enable self-determination must be put in place. It is self-determination that supports First Peoples to reverse the intergenerational harm caused by settler-colonialism. As will be discussed below, decades of research demonstrates that it is a prerequisite for First Peoples to thrive.[618]

Considering the scale of structural injustice experienced by First Peoples, there is an urgent need to restore and rebuild self-determination in our communities. This requires action at both an individual and collective level to restore positive cultural and social determinants known to be essential for Indigenous health and wellbeing.[619]

Social determinants of health and wellbeing 'are the circumstances in which people grow, live, work and age.'[620] Cultural determinants are the protective factors that promote and support good health and wellbeing for First Peoples.[621] They include factors such as cultural identity, family and kinship, access to and caring for Country, knowledge and beliefs, and participation in cultural activities including access to or learning language.

Social determinants of health	Cultural determinants of health
poverty, food security, education and early childhood development, employment and income, housing	kinship and connection to country
community and family safety, law and justice	language, knowledge and beliefs
racism	self-determination
interactions with government systems and services	identity and cultural expression.
experiences with alcohol, tobacco and other drugs.	

Text box 6.5: Social and Cultural Determinants of health

For Indigenous Australians... determinants [of social health and wellbeing] start with factors such as cultural identity, family, participation in cultural activities and access to traditional lands and then moves to include income, education, employment and levels of social support and social inclusion.[622]

Through increased engagement with First Peoples communities and the community-controlled sector, including through CTG, it appears that governments are beginning to develop a better understanding of the social and cultural determinants of Indigenous health.

This includes the integral and supportive role culture plays and how social factors such as education, employment, justice, income and housing impact on the health and wellbeing of Aboriginal and Torres Strait Islander people, at each stage of their life.[623] It also includes the intergenerational impacts of colonisation, structural disadvantage and racism and their influence on the social, cultural and economic determinants of health for First Peoples.

Mayi Kawayu* – Ngiyampaa language - *'To follow Aboriginal people over time'

Launched in 2018, Mayi Kuwayu – a National Study of Aboriginal and Torres Strait Islander Wellbeing, is a community designed, developed and implemented longitudinal study. It seeks to understand how Aboriginal and Torres Strait Islander culture relates to health and wellbeing; and how this information can be used to inform better services, programs and policies.

The study, conducted via a survey, is led by Aboriginal and Torres Strait Islander researchers at the Australian National University (ANU).

The pilot survey was initially distributed to 20,000 Aboriginal and Torres Strait Islander people nationally. Subsequently, in February 2019, it was distributed to 180,000 people. In order to measure change over time, it is intended that the survey will be distributed every few years.

According to the Australian Institute of Health and Welfare (AIHW):

> ***This research is helping address a gap in large-scale survey data that adequately represent the experiences of Indigenous Australians, including evidence on cultural practice and expression. The study will provide information for community, services and policy makers about things that improve Indigenous Australians' health and wellbeing … including quantifying the contribution of cultural factors to wellbeing, alongside standard elements of health and risk.***[624]

Text box 6.6: Mayi Kawayu – Ngiyampaa language - 'To follow Aboriginal people over time'

What we also know is that to restore our social and cultural determinants, we need to rebuild our political determinants.[625] In other words, we need to rebuild our decision-making systems and processes and our legal and judicial systems based on our Law, norms and values, using structures and processes that resonate with the values of our communities.

While we know what needs to be done, rebuilding our villages after almost 250 years of settler-colonialism will be difficult and complex. Undoing the deliberate attempts to eradicate us as distinct, sovereign peoples will take conscious renewal of our collective worldviews.

To create healthy collectives that can come together as villages, Aboriginal and Torres Strait Islander people will need support to heal from the trauma caused by the settler-colonial system and the racism inflicted on our peoples, cultures, communities and societies. A starting point for rebuilding the wellbeing of our villages is to rebuild connection to Country, to each other and to community.

Rebuilding connection to Country, to each other and to community

Rebuilding our villages begins with strengthening the foundations that have always sustained us: Country, kinship, culture and community. Healing from colonisation requires returning to these sources of strength as a living practice that sees us moving forward with resilience and clarity.

> *Connections to community are an important source of resilience for Indigenous Australians… connection to community provides opportunities for individuals to connect with each other, support each other and work together.*[626]

This rebuilding rests not only on reconnecting to Country, but also on revitalising language, deepening social and cultural participation and respecting the differences that enrich our nations. It requires us to reinvigorate and reinforce our ways of knowing, being and doing and anchor in our strengths so that we can navigate two worlds from a secure cultural base.

Community connection is about feeling accepted within the communities in which we live, connected to our families and supported and safe in our cultural identities. However, as articulated in the preamble to the Gayaa Dhuwi (Proud Spirit) Declaration:

> *Aboriginal and Torres Strait Islander peoples are subject to the profound impacts of colonisation, racism, social exclusion and other negative history and social determinants on their wellbeing and mental health.*[627]

The impact of disconnection is perhaps most clearly seen in the experiences of the Stolen Generations. Forced removals severed ties to Country, family and culture, leaving wounds that continue to affect descendants today. Rebuilding these connections requires both individual and collective healing.

Priorities for Stolen Generations healing

The Healing Foundation identified 4 urgent actions that prioritise healing for Stolen Generations survivors and their descendants:[628]

1. **Redress** – including a survivor-informed and co-designed redress scheme for living and deceased survivors and their descendants, and the establishment of a funding stream that invests in healing programs and support services for survivors and their families.
2. **Meeting the complex needs of survivors** – including survivor-informed and co-designed holistic programs which address their specific needs, prioritising aged care, disability, health, mental health and housing needs.
3. **Healing intergenerational trauma and preventing new harm** – including through a national intergenerational healing strategy that provides an enabling environment and policy and program responses that support truth-telling, self-determination, healing through culture and systems reform.
4. **Sustainable and robust monitoring and accountability** – including a properly resourced national accountability framework to monitor and report on progress towards achieving better outcomes for Stolen Generations survivors and their descendants.

Text box 6.7: Priorities for Stolen Generations healing

While reconnection to Country and community is central to rebuilding our villages, we must also acknowledge that, for many Stolen Generations survivors, this may never be fully possible. Forced removal has left some permanently disconnected from Country and community. Rebuilding the village must therefore make space for diverse pathways to belonging and connection.

Connection to Country

Returning to, and caring for, Country renews the bonds between people, place and culture which colonisation has sought to sever. It also produces tangible benefits for people's health and wellbeing. When travelling from major urban or regional centres onto traditional lands, many Indigenous people – including senior Elders being actively treated for multiple diagnoses of chronic disease – often express feeling better when they are on Country because:

- they feel more connected culturally and spiritually
- where they have access to traditional food sources, they eat differently
- they have increased access to traditional medicines
- their stress levels are reduced and their ability to overcome trauma is increased
- their exposure to racism is reduced
- their sense of belonging is reinforced without question.

This all has a positive effect on their perception of their personal health and wellbeing and, in many instances, manifests in physical and mental health improvements.[629]

Across Australia, communities are leading initiatives that restore relationships to Country. They include land and sea management programs, ranger groups, cultural camps, on-Country healing initiatives and intergenerational learning. These are not simply environmental or employment programs; they are expressions of sovereignty and cultural continuity. They enable Elders to pass knowledge to young people, ensure that sacred sites and ecosystems are cared for and provide a grounding from which individuals and communities can thrive.

The Indigenous Rangers Program is a significant initiative reconnecting community to Country across Australia.[630] Established in 2007, the Program employs more than 2,600 Aboriginal and Torres Strait Islander people to manage over 40% of Australia's land mass and extensive sea Country. Rangers undertake cultural burning, biodiversity monitoring, weed and feral animal control, protection of sacred sites and marine conservation.

The Program delivers environmental outcomes while creating employment opportunities, often in remote areas where employment is scarce. It provides a pathway for young people to learn from Elders, ensuring that cultural knowledge – stories, songs, ecological practices and languages – is passed on in practical, lived ways.

Ranger Program groups include (but are not limited to):

- the Bardi Jawi Rangers in the Kimberley who care for sea Country, monitoring turtles and dugong while protecting reefs and cultural sites
- the Nyul Nyul Rangers who have reintroduced cultural burning practices to restore biodiversity and cultural knowledge on their Country
- the Tjuwanpa Women Rangers who combine ecological management with cultural teaching, strengthening women's leadership and intergenerational learning
- in the Torres Strait, ranger groups who work across islands to protect fisheries, reefs and sacred places that sustain both livelihoods and identity.

Research has shown that the benefits of the Program ripple far beyond conservation: it reduces welfare dependence, improves health and wellbeing, strengthens identity and rebuilds the social fabric of communities.[631] By working on Country, rangers are not only caring for land and sea but also restoring the bonds between people, place and culture that colonisation has sought to sever. The Program demonstrates how rebuilding our villages begins in practice: on Country, in culture and in the relationships that sustain us. These activities not only build thriving First Peoples communities, they contribute to keeping Country healthy for all Australians.

Language revitalisation

> ***Language is more than just a means to communicate; it is what makes us unique and plays a central role in our sense of identity. Language also carries meaning beyond the words themselves. It is a platform which allows us to pass on cultural knowledge and heritage. Speaking and learning [F]irst [L]anguages provides a sense of belonging and empowerment.[632]***

Our communities hold deep reservoirs of cultural knowledge and strength. Rebuilding involves centring these strengths through language revitalisation, cultural practice, ceremony and story. Language reminds us of our ways of knowing and being. Its revitalisation reconnects us with our Ancestors and sustains future generations. When communities participate in cultural life together, we re-weave the social fabric that colonisation sought to unravel.

At the time of European colonisation, there were at least 250 distinct Aboriginal and Torres Strait Islander languages spoken across the continent with around 800 dialects. In 2020, it was estimated that at least 123 of these languages were in use, with just 12 of those being spoken fluently by all generations within a community.[633]

The number of Aboriginal and Torres Strait Islander people speaking an Aboriginal and Torres Strait Islander language is rising but not quite at the rate of the increase in the total population identifying as Indigenous. The Australian Bureau of Statistics (ABS) found that 76,978 (9.5%) Indigenous people reported speaking an Aboriginal or Torres Strait Islander language in 2021, compared to 63,754 (9.8%) in 2016.[634]

While some languages have made gains, others have continued to reduce in the number of speakers and are at imminent risk. In 2009, former Aboriginal and Torres Strait Islander Social Justice Commissioner, Professor Tom Calma AM highlighted the 'perilous state of Indigenous languages in Australia'. Despite all jurisdictions having a policy or program concerning or impacting Indigenous languages, Commissioner Calma found that Indigenous languages were at a critical stage of endangerment in Australia and that more needed to be done to stop language decline.[635]

These findings were consistent with global concerns about the survival of Indigenous languages. The UN General Assembly proclaimed the International Decade of Indigenous Languages for the period 2022–2032 to 'draw global attention on the critical situation of Indigenous languages.'[636]

Under CTG, there is a focus on ensuring that Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing. Governments have agreed to work towards achieving a sustained increase in the number and strength of Aboriginal and Torres Strait Islander languages being spoken by 2031 (Target 16).

Language groups across the country are working to revitalise their languages where they have been dormant or less actively spoken and to preserve and maintain languages where they are intact and actively spoken.

Recognising that First Languages are a critically endangered element of Australia's cultural heritage; this work is being supported by most jurisdictions through government-funded language programs.

First Nations Languages Education Program[637]

First Languages Australia (FLA) is the national peak body established as a company limited by guarantee and is led by an Aboriginal and Torres Strait Islander Management Committee.

FLA is focused on strengthening First Languages and supporting the network of language centres, community programs and industry partners across Australia.

The Australian Government Department of Education has partnered with FLA to design a national grant program to support language education. With $11m allocated funding for the program, the grants will support projects that will:

- deliver intensive community language learning activities
- support community language learners to develop teaching skills and build or extend community-led partnerships toward teaching languages in schools.

FLA have also prepared *Gambay*, the first interactive map showcasing over 780 traditional languages across the country.

Text box 6.8: First Nations Languages Education Program

Despite investment into First Languages in all jurisdictions, funding is insufficient to support the number of groups seeking support.

Further, those attending the ITA consultations, particularly in remote communities across the far north, raised a lack of support for bilingual education. They advised that the limited access to bilingual education has meant that critical supports such as interpreter services in remote communities are not able to be adequately maintained to meet the needs of individuals and communities engaging with mainstream systems.

As reported by former Commissioner, Professor Tom Calma AM:

> ***Being taught to learn in one's own language is one way to avoid the stress of acculturation to a new language environment. This is what the bilingual education model seeks to provide. Bilingual approaches allow students to develop their first literacy in their mother tongue while gradually introducing English into the learning environment.***[638]

As highlighted in the 2009 Social Justice Report, students in north-east Arnhem Land explained the challenges of learning in English and the need to support bilingual education. They said:

> ***We don't retain information – we hear teaching, especially in English and feel that we don't grasp what is being taught and so it disappears. We go to school, hear something, go home and teaching is gone. We feel hopeless. Is there something wrong with our heads because this English just does not work for us? We want to learn English words, but the teachers cannot communicate with us to teach us.***[639]

Professor Calma has continued to engage in, and advocate for, Indigenous Language programs which preserve, revitalise and teach Indigenous languages. He is currently the Chair of the Living First Language Platform, which harnesses technology to empower First Language speakers to work with their own language to support their communities' needs.

Living First Language Platform[640]

Supported by the Australian Literacy & Numeracy Foundation (ALNF), the Living First Language Platform (LFLP) is Chaired by an Aboriginal-led Board.

The LFLP uses innovative technology that supports those with limited digital literacy, through collaboration and integration. It is easily scaled to other communities and languages and promotes the safety and security of community language components added to the platform. This may include, for example, words, syllables, letters and sounds, photos and games.

It is an interactive platform, an app, that is designed specifically for remote communities with online and offline access capability and adaptable to any device. It is being used across the country and supports onsite Elder and youth camps, as well as fostering teaching and learning in the school and community settings.

Muurrbay Aboriginal Language and Culture Co-operative

The Muurrbay Aboriginal Language and Culture Co-operative is located on the mid-north coast of NSW.[641] Muurrbay has been central to the revival of Gumbaynggirr and other regional languages, producing dictionaries and grammar guides, running community classes and training new generations of language teachers. Their work equips people with the tools to speak, teach and share language in daily life, strengthening identity, reconnecting generations and renewing relationships with Country.

***palawa kani* Language Project**

Through the palawa kani language project, developed by the Tasmanian Aboriginal Centre,[642] First Peoples have reconstructed a language from the fragments, place names and records of multiple Tasmanian languages. Palawa kani is now visible in signage, education and cultural programs and increasingly spoken in community and public life. This revitalisation process reconnects people to heritage, affirms a shared sense of place and history and makes Aboriginal presence in Tasmania visible in everyday ways.

Text box 6.9: Community-led language revitalisation projects

Reinvigorating our ways of knowing, being and doing

Reinvigorating Indigenous ways of knowing, being and doing means creating more opportunities for knowledge to be shared in circles, on Country, in ceremony and through story.

> ***For us, story is not decoration. It is methodology. It is evidence. It is pedagogy. It is accountability. Story teaches us how to walk alongside children and families with respect, courage and truth. Story also strengthens our oversight. It allows us to see beyond data and compliance, to recognise lived experience as evidence and to hold systems accountable to the voices and truths of our children, young people and communities. Our Story and our Journey is who we are. It is how we work.***[643]

These practices help to restore balance, build trust and enable decisions that reflect collective wisdom rather than individual agendas. They reconnect us to the relational accountability that sits at the heart of our cultures.

In many communities, this is taking shape through yarning circles in schools, cultural governance meetings held on Country and the use of ceremony to guide collective decision-making. Such practices ensure that Elders can pass law, language and cultural responsibilities to younger generations, embedding intergenerational leadership into community life.

On Noongar Country in WA, the Nowanup Bush Campus has become a centre for reinvigorating Indigenous ways of knowing, being and doing. Led by Noongar Elders and supported by local communities, the campus hosts cultural camps where knowledge is shared through story, ceremony, language and ecological practice. Circles on Country are used to teach young people about Noongar law, kinship and responsibility, while also providing opportunities for non-Indigenous people to learn respectfully from Noongar culture.

Nowanup demonstrates how cultural authority is exercised in practice: decisions are made collectively, knowledge is transferred intergenerationally and relationships with Country are renewed. For participants, these experiences restore balance, rebuild trust and strengthen the social fabric of the community.[644]

Just as Nowanup shows how cultural authority is renewed through story, ceremony and learning on Country, the Yule River and Yamatji On-Country meetings demonstrate how that authority is exercised in collective governance.

The Yule River (Pilbara region) Bush meeting and the Yamatji (Mid-West, Murchison and Gascoyne regions) On-Country meetings are community forums led by Working Groups, with coordination supported by the Yamatji Marlpa Aboriginal Corporation (YMAC).[645] The meetings enable Aboriginal people from across the Yamatji and Pilbara regions of WA to gather each year to discuss their priorities and develop agreed strategies and pathways forward. Held on Country and led by community, they are living examples of cultural authority, self-determination and the rebuilding of the village in practice. Government attends at the invitation of First Peoples.

Elders, leaders, families and young people sit together, share concerns and agree on the issues that matter most, including health, education, land, housing and justice. Everyone has the opportunity to contribute, ensuring decisions reflect the voices of the community.

The meeting is also a space for collective decision-making. Once priorities are agreed upon, they are presented as a united community position. Speaking with one strong voice reinforces unity and puts pressure on governments to listen and respond.

A key feature of these meetings is their 'Calls to Action'. These are clear, practical requests or recommendations to governments, service providers and other decision-makers. Each Call to Action comes directly from the community and reflects their agreed priorities, ensuring that participation leads to concrete steps rather than just discussion.

Governments are invited on day 2 of the 2-day event, to listen and respond to these Calls to Action. This shifts the usual power balance – rather than governments telling communities what will happen, the Yule River meeting holds them accountable to community-set priorities.

The On-Country meetings show how rebuilding our villages involves restoring places of cultural authority where people can gather, deliberate and act together. They demonstrate the strength of Aboriginal-led decision-making and the power of unity, proving that when communities lead – and governments take their lead – better outcomes are possible.

The recent National Gathering in Port Douglas (15–17 September 2025) provides another example of renewal in practice.[646] The National Gathering brought together more than 300 delegates representing 150 Traditional Owner bodies from across the continent.

Its purpose was to provide a space for delegates to set shared strategic priorities, explore governance options grounded in First Nations values and consider the formation of a new national body capable of providing a unified voice while respecting the independence of each nation.

Such circles, summits and gatherings – when conducted on our own terms and in the footsteps of our Elders – revitalise cultural authority, strengthen unity and re-establish the foundations of our villages.

Rebuilding connection to Country, to each other and to community requires more than programs or policies; it calls for a return to the cultural practices that have always sustained our peoples. Whether through language revitalisation, on-Country initiatives, community healing processes, or the reinvigoration of our ways of knowing, being and doing, these efforts strengthen identity, restore relationships and embed intergenerational continuity. By respecting difference, grounding decision-making in culture and practicing collective governance, we can ensure that our villages are rebuilt on foundations of trust, resilience and collective wisdom.

Managing conflict

As this chapter makes clear, ongoing settler-colonialism and the imposition of non-Indigenous perspectives, values and norms has had a profound impact on us as Aboriginal and Torres Strait Islander peoples and communities. The dislocation of, and imposed competition within, our communities has led to societal fracturing, disconnection, discord and lateral violence. To heal these divisions, Aboriginal and Torres Strait Islander peoples and communities require our own culturally-based dispute resolution and peace-making processes. These processes help us rebuild our villages according to our own values and not further tear our communities apart. Respecting our differences offers a clear starting point.

Respecting difference

The strength of our peoples lies in recognising the diversity of our nations, languages, traditions, worldviews and lived experience. We must find ways to work collectively without erasing that diversity. Respecting and even celebrating, difference also means resolving tensions in culturally safe ways – engaging face to face, listening deeply and using Indigenous processes for conflict resolution.

It means strengthening community bonds rather than seeking voice and validation outside of mob.

Safe spaces must be created where difficult conversations can be had without fear, where Elders guide processes of reconciliation and where accountability is grounded in cultural norms rather than punitive systems. This strengthens trust, reduces the hold of colonisation's divisions and allows our diversity to be celebrated as a source of resilience.

Good practice examples

Yolŋgu leaders

In Arnhem Land, Yolŋgu leaders have long used traditional processes to resolve disputes within and between clans.[647] These involve Elders convening meetings on Country, guided by ceremony, kinship rules and Yolŋgu Law. Disputes are worked through collectively, with emphasis placed on restoring balance and maintaining ongoing relationships rather than on punishment. Adapted into contemporary community-led mediation initiatives, these processes have enabled families and communities to address tensions such as disputes, violence and lateral conflict in culturally safe ways.

Darwin Town Leadership Group

A similar approach is reflected in healing initiatives supported by the Healing Foundation. For the Healing Foundation, community healing involves working with local Aboriginal and Torres Strait Islander organisations to design and deliver programs that meet the needs of their communities. In December 2014, the Healing Foundation supported Aboriginal men from the Darwin Town Communities to come together for the first time to discuss how harmony and balance could be restored in their communities. [648] With ongoing support, the men established a leadership group that now advocates for their communities. These kinds of culturally grounded healing programs show how conflict can be addressed in ways that strengthen community cohesion and restore balance.

Deadly Inspiring Youth Doing Good (DIYDG)

DIYDG – based in Cairns, Queensland – is a young people-led initiative which empowers Aboriginal and Torres Strait Islander young people to create positive change in their communities. The program develops leadership skills, strengthens cultural identity and nurtures a sense of pride and purpose among participants.

A key focus of DIYDG is addressing lateral violence. Through workshops, mentoring and peer support, DIYDG encourages young people to recognise and challenge these behaviours, replacing conflict with understanding, respect and shared responsibility.

DIYDG also promotes community cohesion by engaging young people in projects that bring people together. From cultural events and clean-up initiatives to mentoring younger children and collaborating with local Elders, the program helps participants see the value of working collectively. This strengthens intergenerational connections and fosters a supportive, inclusive environment where everyone's voice is heard.

Participants report feeling more confident, connected to their culture and committed to supporting one another. Communities involved with DIYDG have noticed increased collaboration, reduced conflict among young people and a stronger sense of pride and belonging. DIYDG demonstrates how empowering young people, addressing internal challenges like lateral violence and building cohesion can contribute to the broader goal of rebuilding the village.

Text box 6.10: Good practice examples of managing conflict in communities

Resolving disputes within our communities requires culturally grounded systems which apply our own concepts of justice, guided by our laws, values and norms. As things stand, we are often forced to use the Australian legal system, which can exacerbate tensions. In its modern form, the legal system claims to apply justice through 'neutral' rules, administered in an 'objective' and 'impartial' way. The problem with this is that it applies concepts of justice that are, in many respects, foreign to First Peoples' understandings of justice. Beyond this, settler-colonial systems actively undermine the authority of Law, norms and values recognised within our communities.

Settler-colonial law, courts, governments and authorities have impeded the role that would ordinarily be undertaken in group settings amongst Aboriginal and Torres Strait Islander people, including Elders. Dispute resolution and other forms of decision-making would not be the purview of any one individual but rather negotiated by the cultural group with the aim of restoring balance while adhering to individual and collective obligations.[649]

Indigenous conceptions of justice

Despite the very large number of First Peoples across the globe and the vast distances between them, there are remarkable similarities in the principles that underpin many Indigenous justice and dispute resolution systems.[650] For example, First Peoples in Australia, Aotearoa New Zealand, Canada and the United States describe the purpose of their justice systems in similar terms. The purpose being to restore harmony and re-establish balance for all individuals affected by the 'crime' (victim and perpetrator) and for the community.

Unlike settler-colonial conceptions of justice, although the wrongdoer is expected to accept responsibility for their actions, Indigenous concepts of justice consider that wrongdoing cannot be isolated to that individual.

In an Indigenous worldview, relationships sit at the centre – people see themselves as part of a community of relatedness.[651] It follows that, within an Indigenous justice paradigm, the underlying philosophy is that 'crime' or wrongdoing harms the community itself and that while there must be accountability by those causing harm, it is the community which must be healed.

Some justice systems also see the cause of the wrongdoing as being a community responsibility.[652] Rather than place emphasis on the specific events of the wrong, restorative processes identify how the harmony of the group is disrupted and how it might be restored.[653] For example, the Navajo Peacemaker Court and Tsuu T'ina First Nations Court do not attach blame to the person but instead focus on mending the act.[654]

Given the centrality of restoration, repair, healing, balance and harmony to Indigenous concepts of justice, it is unsurprising that numerous First Peoples use peacemaker or restorative systems either as elements of their standalone justice systems or as elements of hybrid systems at the interface of Indigenous and settler-colonial justice systems.

Peacemaker systems are holistic, designed to be restorative processes of mending personal and communal relationships.[655] In general, they engage the physical, emotional, mental and spiritual aspects of self and investigate, not only what must occur to restore the victim to well-being, but also how the offender might make amends to restore their dignity and the trust of the community.[656] For example, the Navajo believe that reintegrating the offender into the community is more important than punishment.[657] An important goal is for the offender to develop greater self-understanding so that they will not repeat the wrongdoing.[658]

An example of an Australian peace-making program that has had outstanding results is the Anindilyakwa Groote Peacemaker Program that arose out of tragic circumstances but is now teaching other communities about its processes in the hope that the healing can be shared.

Anindilyakwa Groote Peacemaker Program

The dispossession of land and the establishment of missions as places where multiple dispossessed clans and nations have been forced to live together has caused conflict between families and clan groups, sometimes resulting in death.[659] One such tragic conflict on Groote Eylandt in the NT led to community conversations about what was needed to make sure something like this wouldn't happen again.[660]

These discussions identified a lack of formal community involvement in dispute resolution and a lack of support for those community members who sought to resolve community disputes on an informal basis.[661] The result was an alternative and community-led approach to justice which includes the Anindilyakwa Groote Peacemaker Program. The Peacemaker Program melds cultural legitimacy with nationally recognised training frameworks and accreditation to 'try and solve problems between different people and groups within the communities before they become big problems.'[662]

Peacemakers do not impose solutions but 'stay in the middle'[663] and, in effect, undertake the traditional role that community members have always played in seeking to defuse tensions rather than exacerbate them.[664] The men and women who provide mediation seek to provide a safe, calm environment for the disputing parties to discuss the issues at the heart of the problem and decide how to approach resolution.[665] The result has been a dramatic decline in offending on Groote Eylandt (from 1,041 offences in 2019 to 130 offences in the 12 months to July 2025) due to the adoption of alternative, community-led approaches to justice, including the Peacemaker Program.[666]

Internal and external relationships are critical to the success of the Peacemaker Program. Peacemakers may become aware of growing tensions through family connections or as residents of the community or may be contacted by community members seeking their help.[667] The program also has relationships with other service providers who operate in the same space; such as police, the judiciary and the Department of Corrections, supporting peacemakers to intervene before tensions escalate.[668]

Text box 6.11: Anindilyakwa Groote Peacemaker Program

Indigenous peace-making systems in North America have been so successful in some instances that provincial and state justice systems are collaborating with Indigenous nations to provide alternatives to the non-Indigenous system. One example is the Tsuut'ina First Nation Court (FNA), Alberta, Canada, where wrongdoers who face charges in an Alberta provincial court and who are prepared to accept responsibility for their actions, have the option of being diverted to Tsuut'ina peacemaker processes.[669] Such processes apply traditional dispute resolution mechanisms. If an action plan is agreed, it is referred to the prosecutor who may agree to drop the charges in the non-Indigenous system.

In a variation of the Tsuut'ina First Nation Court, the Leech Lake Band of Ojibwe (Joint Jurisdiction) Court, Minnesota, United States,[670] has developed joint jurisdiction wellness courts in partnership with the Minnesota County Courts. The collaboration emphasises rehabilitation rather than punishment and is open to qualifying volunteers (Indigenous and non-Indigenous) who have been sentenced in the state system. Rather than complete their sentence, they opt to participate in the program. Services and support from both systems can be drawn upon, including substance counselling from the state system and spiritual healing programs from Leech Lake, to help participants make cultural connections and deal with historical trauma.

Such hybrid collaborations have tended to emerge when state or provincial justice systems recognise that their approaches are failing and that the province or state has a mutual interest with the Indigenous nation in solving a problem. To date, in Australia, Aboriginal and Torres Strait Islander people's engagement in settler-colonial legal systems occurs primarily through sentencing courts such as Koori Courts. However, hybrid North American systems may prove to be a useful guide to defining and negotiating jurisdictional responsibility between First Peoples and governments.

Indigenous Nation Building

For millennia before invasion, Indigenous Peoples governed through legal structures and cultural traditions designed to guide interactions between individuals, families and groups within our villages. This sustained our collective wellbeing and peaceful coexistence. Capacity for self-governance is vital as we work to reclaim our inherent collective political right to self-government, and rebuild our thriving societies.

These collective political rights are just as fundamental to Indigenous collective health and wellbeing as the socioeconomic rights that underlie the social and cultural determinants of thriving village life. As the *2014 Social Justice Report* outlined, interdisciplinary research in North America and Australia demonstrates that effective and culturally legitimate First Peoples self-government enables self-determination (de facto sovereignty) and decision-making control.[671] It is the precursor to Indigenous Peoples' collective prosperity and wellbeing.[672]

Almost 40 years of research from the Harvard Project on Indigenous Governance and Development (formerly the Harvard Project on American Indian Economic Development)[673] demonstrated that the defining characteristic common to thriving North American First Nations is stable political governance.[674] Research in Australia shows similar findings.[675] Aboriginal and Torres Strait Islander peoples who have applied a strategic focus to the redevelopment and strengthening of their political capacities and operations, enjoy significantly improved outcomes and relations negotiated with settler state governments.

Five Indigenous Nation Building principles

The research referenced above shows that there are 5 characteristics common to First Peoples who are realising their aspirations:

1. **Self-determination:** Decisions about the issues that are important to First Peoples are made by them.
2. **Effective and efficient decision-making:** They create decision-making structures and processes that are fair and transparent, apply known Law and have the processes that can implement the decisions that are made.
3. **Contemporary cultural legitimacy:** Decision-making structures and processes have cultural legitimacy with the community as it exists today. Decisions are made according to contemporary cultural norms using culturally-based processes.
4. **Long-term strategic planning:** Indigenous Peoples throughout the world are aware of ongoing and consistent threats to our very existence. Therefore, our decision-making must consider the generations that are yet to come (sometimes called 'seven generation' thinking). Indigenous Peoples cannot afford to exist in short term decision-making cycles.
5. **Culturally-based, community-spirited leadership:** Leadership is made for the benefit of the community as a whole, not just for an organisation or family.

Text box: 6.12: Five Indigenous Nation Building principles

The key lesson of this Indigenous Nation Building research is that collective self-determination is manifest in Indigenous communities or nations having decision-making control over their internal affairs. In Australia, this process has been described as exercising 'political jurisdiction.'[676] Given that building political jurisdiction is critical for improving the wellbeing of Aboriginal and Torres Strait Islander people, this kind of collective empowerment is critical to the work of rebuilding our villages and should be supported by Australian government policy.

An Indigenous Nation Building framework

While it is useful to know what the 5 common characteristics that 'successful' First Peoples share, the obvious next question is: how did they get there?

Research reveals the processes First Peoples used to create their self-governing systems. This series of processes has been summarised into an Indigenous Nation Building framework, where the processes are interdependent and operate in feedback loops based on the IPOA process:

- I - identifying
- P – (knowing) purpose
- O - organising
- A – acting as a nation.[677]

Identify as a nation

Collective self-determination and self-government assume a collective 'self': a community that seeks to control its own future and holds the right to make decisions for itself. The first stage in this process is to articulate a collective identity: a grouping that encompasses and expresses the values, norms, lore and Law of its people and allows them to project their existence as distinct from others.[678]

Some Aboriginal and Torres Strait Islander peoples can easily express their contemporary collective identity through unbroken association with their pre-invasion identity.[679]

However, other groups have experienced dislocation and dispossession and a collective self may not be so easy to identify or decide upon. Many peoples can draw a number of boundaries that represent 'us' and may wish to create a collective identity that is entirely new.

First Nations academics, Stephen Cornell and Daryle Rigney, describe the types of questions to be answered by First Peoples in determining a collective identity:

- What are the boundaries of our group, physically and culturally?
- Who is the 'we' or 'us'?
- What is our nation's Law/lore, values and norms? What holds us together?

A crucial Indigenous Nation Building strategy shared by individuals and groups from the Gugu Badhun, Gunditjmara, Ngarrindjeri and Wiradyuri Nations has been to control the narrative about their nationhood – telling stories of sovereign identity and asserting an inherent right to self-determination. The following outlines some of the ways they have done this.

Teaching and cultural transmission

The Graduate Certificate in Wiradyuri Language, Culture and History at Charles Sturt University embeds Wiradyuri pedagogy and principles such as Yindyamarra to build understandings of Wiradyuri citizenship and worldviews.[680]

Furthermore, the annual Gugu Badhun culture camps bring Gugu Badhun citizens together on Country for camping, fishing, storytelling and language learning.[681]

Sharing sovereign histories

The Gugu Badhun and Gunditjmara Nations have written books detailing their respective sovereign histories told from their perspective, including T*he Gunditjmara Land Justice Story,*[682] *The People of Budj Bim*[683] and *Gugu Badhun: People of the Valley of Lagoons.*[684]

Protocols and research governance

The Gunditjmara Consultation and Negotiation Protocols[685] set out the Gunditjmara's standards and expectations for consultation on Gunditjmara Mirring (Country) and form the basis for any agreement. The Protocols seek to foster proponents' understanding of the Gunditjmara's relationship to their Mirring and their responsibilities and obligations to protect and care for their Mirring. The Gunditjmara Research Principles and Guidelines provide similar direction about Gunditjmara requirements for potential research partners.[686]

Planning and asserting responsibility for Country

The Gugu Badhun Nation has created a research approvals process overseen by its own research committee, the Djiman Research Centre. It is responsible for coordinating all Gugu Badhun research activities, including engagement, strategy, methods, ethics and protocols, and is responsible for the governance and decision-making regarding the Centre's research activities.[687]

The Gugu Badhun, Gunditjmara and Ngarrindjeri Nations have laid out their responsibility for Country (in Ngarrindjeri terms – speaking as Country) in comprehensive planning documents.[688] These allow them to proactively influence settler-colonial government planning processes.[689]

Symbols of nationhood

One way that the Ngarrindjeri Nation has expressed its identity as a sovereign nation is through the creation of a Ngarrindjeri Nation flag. Designed by Ngarrindjeri Elder Matt Rigney (deceased) to represent the Ngarrindjeri people's distinct national identity, the flag was first flown on Kumarangk (Hindmarsh Island) on 21 November 1999 during construction of the Hindmarsh Island bridge to assert its interest as a sovereign nation and not another stakeholder.[690]

These diverse strategies – from education and cultural practice, writing and protocols, to planning and symbolism – all serve to make nationhood visible, credible and enduring. They show that identifying as a nation is not a single act but an ongoing process of cultural affirmation, narrative control and practical governance. Together, they illustrate how First Peoples continue to define, express and strengthen their collective selves as the foundation of self-determination.

Know your purpose as a nation

The next two steps in the IPOA process – purpose and organisation – are closely linked. How you organise yourselves depends, in part, on your purpose and goals.[691]

A government is not an end in itself; it is a set of tools designed to serve a particular purpose. The technology of governing – laws, structure and process – matter. But before focusing on the 'how', you must first determine the 'why': What are we governing for?

In determining collective purpose, Cornell and Rigney ask:[692]

- What is your aim, objective, vision? Is it shared? Can it be sustained?
- What are the values that the group shares? What are the kinds of group aspirations that embody those values?

Across the globe, First Peoples have articulated their purpose in ways that reflect both cultural continuity and future aspirations. For example:

- **Ngarrindjeri Regional Authority (South Australia):**
  - The Ngarrindjeri Regional Authority's (NRA) priorities are guided by 3 key principles: 'Building Our Nation;' 'Securing Our Future'; and 'Caring for Our People, Lands, Waters and all living things - A responsibility that underpins all efforts'.
  - Its goals include: 'Strong Culture'; 'Sovereign First; 'Secure Future'; 'Healthy Country'; 'Confident People'; 'Creative Economy'; and 'Regional Leader'.
  - Its unifying vision is: 'Working together for a strong, healthy and sovereign Ngarrindjeri nation by Honouring our People'.[693]
- **Council of the Haida Nation (Canada):**

> ***The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to ensure that our heritage is passed on to following generations. On these islands our ancestors lived and died and here too, we will make our homes until called away to join them in the great beyond.***[694]

These examples illustrate that purpose statements are more than slogans; they ground collective identity, guide governance arrangements and sustain intergenerational responsibility.

To pursue, implement or achieve purpose, requires governance structures that are fit for that purpose. This is where organisation comes in – the deliberate design of institutions, roles and processes that enable a nation to govern in alignment with its chosen purpose.

Organise as a nation

First Peoples need to organise through collective decision-making structures, processes, or other mechanisms. These must be both effective and robust and they must have cultural match with the community, so they can represent a diverse citizenry with multiple goals.[695] First Peoples have shown enormous initiative in using a range of vehicles to exercise their capacities for self-governance and become self-determining. Such bodies include structures formed under settler law such as peak bodies, or native title representative bodies, to pursue their Indigenous Nation Building ends.[696]

Cornell and Rigney describe the types of questions to be answered by First Peoples wishing to organise as political collectives:[697]

- What are the issues over which a nation seeks to exercise authority/ responsibility?
- What matters need to be taken into account to make decisions in the proper way?
- Who or which bodies have the proper authority to make decisions for the nation?
- What structures will support collective action?
- What processes of decision-making are appropriate for the nation? Consensus? Majority? By experts? By elected citizens?

The following examples illustrate some of the ways First Peoples are organising as nations.

Adapting settler-legal structures to cultural protocols: Gugu Badhun Nation

Gugu Badhun Nation is utilising its Prescribed Body Corporate (PBC) – which has been adapted to suit cultural protocols – to undertake collective decision-making about nation business using the 5 Gugu Badhun family groups as the basis for its structure.[698] The nation is ultimately working towards an institution of self-government that exists outside of settler structures.[699]

Embedding traditional governance in new institutions: Southern West Yiradyuri Clans

Southern West Yiradyuri Clans Land, Water and Sky Country Aboriginal Corporation is an inclusive organisation. Underpinned by Yiradyuri lore, Law, values and expectations, it is responsible for the protection of Gunhi Dhaagun (Mother Earth) and ensuring that 'we make good decisions that will have a positive impact on future'.

The Corporation has been designed using traditional Yiradyuri governance principles. While it is a Traditional Owner organisation, it understands its responsibilities for all Aboriginal and Torres Strait Islander people who live on its Country and invites them to join as Kinship Members and contribute to decision-making.[700]

Collective forums for decision-making: Gunditjmara Full Group

From 2003 to 2018, the vehicle for Gunditjmara nationwide decision-making (i.e. self-governance) was a monthly community-wide forum called the Gunditjmara Full Group. Auspiced by the PBC – Gunditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC) – the Full Group made decisions for all issues affecting the Gunditjmara People. GMTOAC then implemented those decisions as the incorporated organisation capable of holding land, resources, entering into contracts and engaging with external parties.[701] While the Full Group no longer meets on a monthly basis, the principles that shaped its operation can provide valuable learning for other nations.

These examples show that there is no single model for organising as a nation. Some peoples adapt settler legal vehicles like PBCs to cultural protocols; others embed ancestral Law into newly formed organisations; and still others rely on collective forums to deliberate and decide. What unites these approaches is the commitment to culturally grounded, inclusive governance that can represent

diverse voices and meet the challenges of self-determination.

Together, they demonstrate the creativity, resilience and pragmatism with which First Peoples are building institutions of nationhood.

Act as a nation

In the context of continued settler-colonialism and lack of formal recognition of their sovereignty, many Aboriginal and Torres Strait Islander peoples undertake deliberate action to demonstrate their nationhood. In this way, they act as nations. Acting as a nation involves:

- the assertion of jurisdiction wherever possible on matters of strategic importance or purpose for the community (frequently over Country) and the implementation of long-term strategic planning to extend jurisdiction and authority
- the use of law (whether settler or Indigenous nation) to further the nation's own interests and rights
- the enacting of government-to-government relationships with outside bodies, through continued assertion of sovereignty.[702]

The following examples illustrate different expressions of what it means to act as a nation.

Strategic use of international recognition

The Gunditjmara People's most high-profile achievement was securing UNESCO World Heritage listing for the Budj Bim Cultural Landscape (BBCL), a goal conceived in the 1980s and realised in 2019. Although nominations to UNESCO must be lodged by Member States, the Gunditjmara controlled the process from start to finish – defining the scope, gathering data and leading the analysis. When it appeared that the Australian Government might not support the nomination, they were prepared to assert their sovereignty by lodging it themselves.[703]

Formal declarations of sovereignty

In December 1999, Ngarrindjeri leaders presented a public Proclamation of Ngarrindjeri Dominium to the Governor of South Australia, affirming that Ngarrindjeri Country 'is now and always has been occupied by Ngarrindjeri.' The Proclamation declared that the 1836 Letters Patent[704] had guaranteed Aboriginal proprietary rights and that subsequent Crown and government occupation was an illegal taking of their lands and waters.[705]

Participation in diplomatic protocols

In 2003, when Victor Harbour planned to commemorate the 1802 Baudin–Flinders meeting with a flag exchange between French and British diplomats, the Ngarrindjeri insisted on taking part. Ultimately, the Australian flag was not exchanged, but Ngarrindjeri leaders joined the ceremony with the Ngarrindjeri, British and French flags - asserting their presence as a sovereign nation.[706]

Global alliances and treaties

Discussions between nations on matters of common interest allow First Nations to share information and strategies that assist us to learn from each other, create a united front on issues and resolve potential differences. In 2007, Ngarrindjeri – represented by the Ngarrindjeri Regional Authority (NRA) – entered into a multi-party treaty with Indigenous nations from the United States, Canada and Aotearoa New Zealand, forming the United League of Indigenous Nations. This alliance was created to strengthen self-governance, advocate for land rights, promote cultural exchange, foster trade and address global issues such as climate change.[707]

Innovative governance frameworks

For Ngarrindjeri, what non-Indigenous people call 'natural resource management' is part of Ngarrindjeri cultural responsibility to Speak as Country (Yannarumi).[708] Understanding that the health of Ngarrindjeri Country and Ngarrindjeri people depended on them taking control of what happens on Country, Ngarrindjeri leaders and their allies developed the Yannarumi assessment framework.[709] The framework supports Elders and leaders to judge whether projects, partnerships or activities are healthy, lawful and aligned with Ngarrindjeri wellbeing. This framework grounds decision-making in cultural principles handed down by Ancestors.[710]

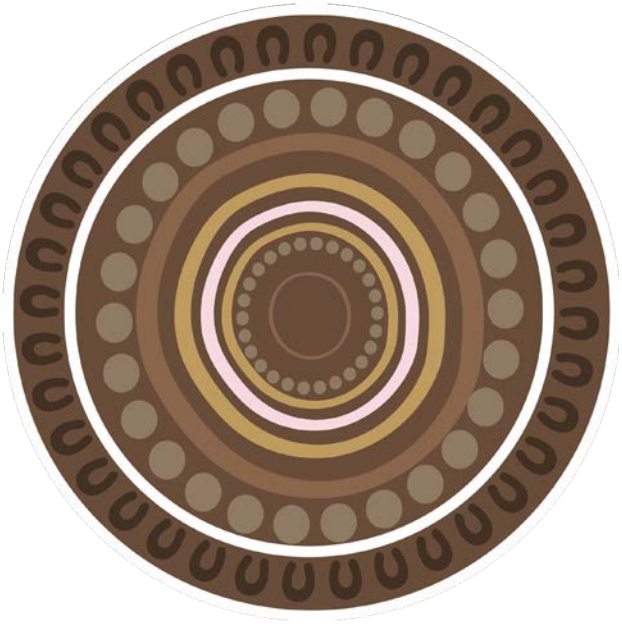
Together, these examples show that acting as a nation is not confined to one pathway. Whether through international recognition, sovereign declarations, cultural diplomacy, alliances with other Indigenous nations, or frameworks grounded in ancestral Law, each initiative demonstrates practical expressions of Indigenous authority and responsibility. They also highlight the diversity of strategies available to First Peoples as they rebuild their political and cultural institutions. With these already in place, they also demonstrate that applying Indigenous governance models alongside mainstream models of governance is possible.

Australian and international Indigenous Nation Building research findings have profound significance. They challenge foundational settler-colonial approaches to 'success' and 'development' in First Peoples communities. Further, they suggest that it is First Peoples' action, rather than settler states' action, that precedes the futures to which many Aboriginal and Torres Strait Islander peoples aspire.

The first clear implication of this research is that First Peoples should commence or continue the work of creating collective decision-making institutions that are effective, culturally appropriate and which enable them to exercise collective self-determination.

While the evidence is straightforward, the extreme challenge for First Peoples worldwide is that Indigenous self-government and Indigenous self-determination are precisely what settler-colonialism has sought to dismantle. It continues to target initiatives that promote or realise self-determination. This impacts Indigenous Peoples' capacity to be self-governing. Ongoing settler-colonialism is antithetical to thriving First Peoples whose wellbeing is enabled by Indigenous self-government.[711]

The second implication of this research is that settler governments should support (but not interfere with) First Peoples' efforts to increase their capacity for self-determination. This includes closing the gap so that Aboriginal and Torres Strait Islander citizens of Australia enjoy equal access to fundamental socioeconomic rights such as health, education, justice and meaningful employment. At the same time, international evidence shows that sustained improvements in wellbeing arise when these rights are supported by political rights to self-determination and self-government. Cultural, social, economic and political rights are all critical ingredients for success. However, without the recognition and respect of political rights, progress in other areas is fragile and incomplete.



Political rights are a major concern of the UNDRIP. They concern our unceded sovereignty, reflecting the fundamental wish of First Peoples to live and govern themselves according to their own distinct traditions. Article 46 of the UNDRIP[712] reads as follows:

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

The exercise of political self-determination by First Peoples therefore necessitates the renegotiation of governmental, legal and policy arrangements with the settler-colonial state.

Such a renegotiation would require the Australian Government to commit to a formal process of resetting political relations with Aboriginal and Torres Strait Islander peoples on a new footing – one that formally acknowledges and respects our sovereign status as peoples and our fundamental collective rights to self-determination and self-governance.

At the heart of the Australian settler-colonial state – reflected in its law, policy and institutions – lies a fundamental disconnection.

On the one hand, there is the reality of legal and political plurality, evident in the persistence of multiple Aboriginal and Torres Strait Islander peoples, each with their own distinct and sovereign legal traditions.

As articulated in the Uluru Statement from the Heart:

> ***This sovereignty is a spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished and co-exists with the sovereignty of the Crown.***

Acknowledging the ongoing reality of legal and political pluralism is the first necessary step toward advancing justice for our peoples. When settler-colonial governments accept this reality, they create the conditions for collectives – whether Indigenous or non-Indigenous – to live in legal and political environments consistent with their cultural worldviews. Accepting pluralism also opens the way to reset political relations: moving away from hostile and destructive colonial engagements that deny Indigenous sovereign authority and towards building new social institutions grounded in mutual respect and recognition of rights.

This raises a pressing question for Australian political society: how can two radically different social and legal systems co-exist, moving forward together in ways that sustain and strengthen one another?[713]

Some First Peoples are using the concept of 'ex-colonialism' or 'exit from colonisation', as a framework for understanding and enacting responses to these crucial questions.[714] First theorised in 2014 to address ongoing systematic settler-colonial injustices in Australia, ex-colonialism is, in simple terms, about breaking free from entrenched colonial habits and creating new ways of relating. These new relationships need to be supported by institutions capable of reflecting more than one cultural perspective – whether that means drawing on both Indigenous and settler traditions, bringing different cultures together, or developing shared approaches across cultures.[715]

This process of decolonisation is designed specifically for settler-colonial situations, where First Peoples seek to reclaim self-governance and self-determination by overhauling our relationships with colonial powers which have imposed foreign legal, social and political systems upon us.

Exiting colonisation calls for a politics of partnership that allows for disagreement and enables differences to persist. Colonisation aimed to reconcile or assimilate diverse societies for the sake of unity or uniformity. Conversely, exiting from colonisation requires interacting sovereigns to understand each-other as fundamentally complex, diverse and irreconcilable in many respects.

This perspective helps us understand that sovereign powers are not single, uniform structures in the way nation-states are often imagined, but are instead multifaceted. When two radically diverse sovereign systems come into contact, they do not have to confront one another as competitors seeking to 'win' a negotiation. Instead, they can choose to connect in specific ways – where their interests align – while remaining distinct in other areas.[716]

Furthermore, sovereign negotiations should be ongoing, recognising that political interests shift over time. At times, Indigenous and non-Indigenous interests will align. At other times, they will diverge. Agreements should therefore be managed in ways that create a shared middle ground, not in ways that force First Peoples into the framework of the dominant system.[717]

Ngarrindjeri Taskforce

While –with the exception of Victoria which has now signed a treaty with First Peoples – settler-colonial governments in Australia currently lack the formal structures needed for consistent, sovereign-to-sovereign engagement with First Peoples, there are historical examples that show such collaboration is possible. One notable case occurred in South Australia (SA) after the damaging Hindmarsh Island Bridge disputes of the 1990s. In response, the Ngarrindjeri people reaffirmed their collective political identity by establishing the Ngarrindjeri Regional Authority (NRA). With the sovereign authority they vested in the NRA, the Ngarrindjeri Nation initiated a process of agreement-making with the South Australian Government. This led to the creation of the 'Kungun Ngarrindjeri Yunnan Agreements' (KNYAs) – meaning 'Listen to Ngarrindjeri Speaking as Country') – which were formal legal contracts binding both parties.

These agreements uniquely combined elements of Ngarrindjeri Law – such as the duty to 'Speak as Country' – with aspects of settler law, including contract and tort principles. A key outcome of the KNYAs was a significant improvement in the relationship between the Ngarrindjeri and the SA Government. This fostered better cooperation in governance, particularly in co-managing the natural resources and fragile ecologies of Ngarrindjeri Country.

In 2009, the NRA used a whole-of-government KNYA to establish regular meetings between leaders from both governments to collaboratively develop policies on issues important to the Ngarrindjeri Nation. This initiative, known as the 'KNYA Taskforce', was a pioneering model of intergovernmental cooperation based on shared sovereign interests and joint decision-making. Although negotiations were often challenging and at times required compromise, this sovereign-to-sovereign engagement was essential in creating a sense of justice and empowerment for the Ngarrindjeri people. This period in SA politics represented a meaningful shift away from colonial practices of exclusion and domination, pointing toward a more just and respectful form of governance.

However, changes in state government leadership and policy as a consequence of election cycles disrupted this progress. The Taskforce did not survive subsequent political transitions and the momentum toward decolonial transformation was lost. Still, the Taskforce remains a valuable example for other Australian settler governments seeking to engage with First Peoples in ways that respect shared sovereignty and overlapping jurisdictions.[718]

Text box 6.13: Ngarrindjeri Taskforce

By enacting these kinds of piecemeal and selective sovereign-to-sovereign partnerships in their strategic negotiations with Australian governments, Indigenous nation builders in Australia are already presenting new possibilities for pluralist coexistence.[719]

As some Australian states move towards treaties, there is an urgent need to develop new ex-colonial ways of understanding sovereignty. Sovereign identities and relationships are complex, shaped by diverse political, legal, cultural and environmental realities. Without this understanding, future treaties risk repeating the same colonial patterns of governance. The challenge for the settler-colonial state is to recognise the new possibilities being opened by Indigenous sovereigns and to begin its own process of reform. Only then can the state start to accommodate the political, legal and cultural pluralism that First Peoples have always observed and upheld.

While this section began by emphasising the need for Australian governments to acknowledge and respect First Peoples' rights as fundamental to a just co-existence, it is inspiring that First Nations rebuilding work continues without waiting for formal recognition of our sovereign status by the state. Rather than Aboriginal and Torres Strait Islander peoples waiting for formal recognition of our rights, rebuilding our villages sees us taking charge of our own affairs and, in so doing, creating the conditions under which our inherent sovereign rights can materialise in practices of self-governance.[720]

Building understanding

While resetting political relations between settler-colonial governments and First Peoples in Australia is essential, there is also an ongoing need to facilitate new forms of social relationship to address the pervasive problems of racism and cultural ignorance that negatively impact our peoples and have such a destructive effect on the fabric of Australian life. In this respect, the collective work of truth-telling is vital.

Truth and healing

As noted in Chapter 1: First Peoples Voices – Informing the Agenda, throughout the ITA process, people consistently emphasised that truth-telling is fundamental to a fair and just future. They described it as a pillar of reconciliation, healing and accountability and as essential to bringing all Australians together to understand our shared history and move forward with respect. Communities told the Commission that truth-telling must lead to lasting change. They pointed to numerous inquiries which exposed immense pain, the recommendations of which remain largely unimplemented and warned that continued inaction in the face of systemic injustice now feels deliberate and impossible to ignore. Thus, real accountability must be integral to any truth telling processes.

Experiences from similar truth-telling processes in countries such as Canada, Timor Leste and South Africa point towards the role that these can play in the broader life of a nation. In Canada, the Truth and Reconciliation Commission created a national record of the harms of residential schools and issued Calls to Action that continue to shape public debate.[721] In Timor Leste, the Commission for Reception, Truth and Reconciliation focused on documenting human rights abuses during the Indonesian occupation, helping to restore dignity to victims and survivors.[722] South Africa's Truth and Reconciliation Commission exposed the violence of apartheid and placed reconciliation and human rights at the centre of the nation's rebuilding.[723]

Now that Australia's first formal truth-telling commission in Victoria has completed its investigation and issued its report, Aboriginal and Torres Strait Islander people are eagerly waiting to see how the Victorian Government responds and how its impact will be measured over time.

Yoorrook Justice Commission[724]

As mentioned in Chapter 3: Increasing First Peoples' participation, the Yoorrook Justice Commission is Australia's first formal truth-telling process. Independent of government and led by First Peoples, Yoorrook was designed to uncover the extent and impact of systemic injustice against First Peoples in Victoria and recommend pathways for redress.

The Yoorrook Commission prioritised First Peoples' voices and experiences, engaging with more than 9,000 people across Victoria and receiving over 1,300 submissions.

Five key themes emerged:

- the past is the present - acknowledging that the legacies of colonisation continue to shape inequities today
- sovereignty - recognising that First Peoples were, and remain, sovereign and that treaty-making is vital to reconciling contested sovereignties
- self-determination - affirming that decision-making power, authority and resources must rest with First Peoples
- rights - grounding rebuilding in the recognition and protection of inherent rights, aligned with the UNDRIP
- accountability - establishing mechanisms to hold governments to account and restore trust.

Through this work, Yoorrook demonstrates how truth-telling processes can create the foundations for healing, systemic reform and self-determined futures – all critical aspects of rebuilding the village.

Text box 6.14: Yoorrook Justice Commission

Non-Indigenous advocacy and allyship

Rebuilding the village demands the restoration of cultural, social and political foundations rooted in self-determination, kinship and Country. Non-Indigenous people and organisations have a critical role: not by speaking for First Peoples, but by respectfully yielding power and resources to support our resurgence.

A compelling example is Greening Australia's Queensland Indigenous Land Conservation Project (QILCP).

This initiative is a multi-year partnership involving Greening Australia, the BHP Mitsubishi Alliance and Traditional Owner groups, focused on co-designing and co-delivering on-Country restoration projects. These include improving water quality flowing to the Great Barrier Reef, restoring wetlands and eroding gullies, creating employment pathways and reviving cultural knowledge and wellbeing – all guided and endorsed by Aboriginal communities.[725]

Under this model, decision-making, land management and economic benefits are returned to community hands.

This represents a realisation of sovereignty and an act of rebuilding the village through the healing of Country and people together.

Corporate and philanthropic allyship also has a distinct role to play in rebuilding the village. When undertaken with integrity, these relationships can redistribute resources, amplify community priorities and create enabling conditions for self-determination. The Empowered Communities initiative demonstrates this approach. It brings together First Peoples leaders with governments, corporates and philanthropists to support locally designed and led agendas. Rather than imposing external priorities, Empowered Communities works from the principle that decisions are best made at the community level and that external partners can contribute by resourcing, backing and aligning with those priorities.[726]

Similarly, Jawun has created a model in which corporate and philanthropic partners send skilled employees on secondments to Aboriginal and Torres Strait Islander organisations. This temporary transfer of capacity strengthens local governance and service delivery while respecting community authority. By enabling knowledge exchange, relationship-building and practical support, Jawun illustrates how allyship can be enacted without displacing community leadership. Importantly, the benefits flow both ways: secondees return to their workplaces with deeper cultural awareness and transformed understandings of shared responsibility.[727]

Such acts of allyship demonstrate how reconciliation can move beyond words to practice. a Queensland Aboriginal activists group expressed in the 1970s:

> *If you have come to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together.*[728]

This sentiment goes to the heart of rebuilding the village: liberation and justice are collective tasks. When non-Indigenous advocacy is grounded in this principle – recognising that our futures are intertwined – it becomes a practical contribution to restoring strong, connected and self-determining First Peoples communities.

The role of allies in combatting racism

As discussed earlier in this chapter, racism continues to undermine the wellbeing of our peoples and the cohesion of our communities. Its persistence makes clear that dismantling racism cannot be left to Aboriginal and Torres Strait Islander peoples alone. Rebuilding the village requires the active participation of non-Indigenous Australians in challenging racism wherever it appears and in supporting the creation of culturally safe spaces. It is in this context that the role of non-Indigenous advocacy and allyship becomes critical.

Many Australians, including those who voted 'Yes' in the Voice Referendum, have shown their commitment to walking alongside us.[729] Growing this allyship is crucial to ensure Aboriginal and Torres Strait Islander peoples do not have to shoulder the burden of addressing racism alone. Allies also play a vital role in setting social standards – modelling anti-racism, calling out prejudice and influencing the broader community to embrace respect and inclusion.

The need for greater efforts to address racism is discussed in Chapter 5: Fostering systemic integrity and accountability, as a clear objective of CTG Priority Reform 3. While not a panacea, the National Anti-Racism Framework (NARF) also presents an important opportunity to promote and create the conditions for greater social cohesion and equality for all people who call Australia home. We must call on the allyship of non-Aboriginal people to grow their awareness of racism and to continue to stand up for, and alongside, Aboriginal and Torres Strait Islander people. This is a crucial part of rebuilding the village that means Aboriginal and Torres Strait Islander people do not have to do this work alone.

The global Indigenous village

As First Peoples continue the work of rebuilding our villages across the continent, we also recognise that the struggle for justice sometimes takes us across the globe. When governments fail to honour their commitments or to uphold international obligations, our peoples have carried their voices into global arenas. By building networks of solidarity across continents, First Peoples have created the capacity to act collectively on the international stage – not only to hold UN Member States to account, but also to shape the development of international human rights standards. In this way, the rebuilding of our villages extends outward, connecting our communities to one another and to global movements, strengthening both our advocacy and our healing. This section explores why international advocacy is necessary, how First Peoples have built a human rights network across borders and the ways this collective power continues to strengthen our communities.

The necessity of international action

Despite the strength of our communities, rebuilding our villages within domestic systems has consistently been constrained by state authority. Successive Australian Governments have failed to implement inquiry recommendations and uphold the rights they have pledged to protect under international law. The gap between rhetoric and reality is wide: governments commit to human rights standards on paper, yet too often fail to translate them into lived change for First Peoples.

This practice of rights ritualism – where governments pay lip service to human rights without making substantive change – is discussed in more detail in Chapter 4: Promoting the full enjoyment of rights by First Peoples and Chapter 5: Fostering systemic integrity and accountability.

In this space of unfulfilled obligations, international advocacy becomes essential. Turning to the UN and other global fora has provided First Peoples with avenues to seek recognition, accountability and redress when domestic remedies are absent, blocked or ineffective. International law offers a framework through which governments can be held to account, but more importantly, it provides a platform where First Peoples speak with one another, build alliances across borders and act collectively to press for the protection of our rights.

Building the human rights network

In Australia, the necessity of international action is sharpened by the fact that there has never been a national treaty process with First Peoples. Without treaties to provide a formal foundation for our rights and authority and with governments repeatedly failing to implement recommendations of inquiries and commissions, international fora have become critical spaces for advocacy and accountability.

Over decades, Aboriginal and Torres Strait Islander peoples have built connections with First Peoples globally, creating a human rights network that operates both within and beyond state borders. These networks have enabled our voices to be carried into international bodies.

Through shadow reporting, petitions and direct testimony, our peoples have highlighted the gap between Australia's international obligations and its domestic practices.

The international sphere has also provided a place for First Peoples to strengthen one another: sharing strategies, developing leadership and standing in solidarity. This collective presence has been instrumental in shaping global standards such as the UNDRIP and in reminding governments that our authority endures regardless of state recognition.

Strong domestic human rights networks are the foundation for this work. They build the capability of Aboriginal and Torres Strait Islander peoples to advocate, to challenge breaches of rights and to hold governments accountable. These networks sustain leadership, nurture future generations of advocates and ensure that communities are equipped to assert their rights at home.

When this foundation is in place, international advocacy becomes stronger and more impactful. Delegations are better prepared, national positions are informed by community experience and lessons from international fora can be translated into change on the ground. Strong domestic networks also ensure First Peoples can inform and influence international standard-setting and contribute to the collective understanding of rights globally.

Without investment in this domestic infrastructure, the burden of advancing rights continues to fall on individuals and under-resourced organisations, weakening both equity and impact. Building a strong national human rights network is not optional. It is the bedrock of both effective domestic advocacy and meaningful international engagement.

Collective power in practice

The strength of our human rights networks is seen clearly in the ways First Peoples have acted collectively to bring Australian governments before the international community. Aboriginal and Torres Strait Islander organisations regularly prepare shadow reports to treaty bodies, ensuring that international scrutiny is informed by community voices.[730] These reports have drawn attention to issues such as over-incarceration, child removal, racial discrimination and the lack of constitutional or treaty recognition.

As mentioned in Chapter 8: Land justice, the Torres Strait 8 demonstrated the power of international advocacy by lodging a complaint with the Human Rights Committee, arguing that Australia's failure to act on climate change violated their rights under the International Covenant on Civil and Political Rights (ICCPR). In 2022, the Committee upheld their claim[731] – a landmark finding that not only affirmed the rights of Torres Strait Islanders but also set a global precedent linking climate inaction to human rights breaches.

International advocacy is not a last resort but an essential dimension of rebuilding our villages. Acting together on the world stage amplifies our voices, pressures states to honour their obligations and allows us to return home with renewed strength, solidarity and pathways for change.

Strengthening the human rights network

For this international advocacy to remain effective, the human rights network itself must be nurtured and expanded. Strengthening the network means:

- resourcing participation – ensuring that Aboriginal and Torres Strait Islander peoples have sustained funding and support to attend international forums, prepare submissions and engage with treaty bodies
- building knowledge and capacity – providing training and mentoring so that emerging leaders can navigate complex domestic and international UN processes while remaining accountable to community priorities
- deepening alliances – strengthening ties with First Peoples globally, including through the UN Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Indigenous caucuses and regional groupings, to share strategies and amplify collective demands
- linking international and local advocacy – creating pathways for information to flow back into communities so that domestic and global developments are accessible and local struggles can inform international campaigns
- embedding continuity – treating international advocacy not as ad hoc interventions but as part of the long-term rebuilding of our villages, ensuring intergenerational leadership and sustained presence in global spaces.

Healing and continuity

Carrying our voices into international arenas is not only a strategy of resistance; it is also a practice of healing and renewal. By standing together across nations, First Peoples affirm that our struggles are not isolated, but shared. International advocacy becomes an extension of the village: a circle that expands to include our kin across the world. When we return from these fora, we bring with us recognition, solidarity and the affirmation that our rights and cultures are part of a global struggle for justice. This strengthens our capacity to continue rebuilding at home, grounded in the knowledge that we are neither alone nor invisible.

Endnotes

545 Infosys, *Racial equity and inclusion*, Infosys website, n.d. <https://www.infosys.com/about/diversity-inclusion/racial-equity-inclusion.html>.

546 D Fiddler Jr, 'Native American Family: It takes a village', *Native Hope*, *An outreach of St Joseph's Indian School*, 11 March 2021. <https://blog.nativehope.org/native-american-family-it-takes-a-village>.

547 B G Mitchell, LinkedIn Public Post, 17 May 2025. <https://www.linkedin.com/posts/benjamin-g-mitchell-7ba47a125_gatheringstrength-childrights-selfdetermination-activity-7329246383616458752-N_ad?utm_source=share&utm_medium=member_desktop&rcm=ACoAAA051JgBcD9v7B5Wx6ENqfRrYie0Ozszptg>.

548 K Kiss, 'Mabo Oration 2025: One Land – Two Laws – It's Black and White', Aboriginal and Torres Strait Islander Social Justice Commissioner, Cairns Performing Arts Centre, 30 May 2025. <https://humanrights.gov.au/about/news/speeches/mabo-oration-2025-one-land-two-laws-its-black-and-white>.

549 K Kiss, 'Mabo Oration 2025: One Land – Two Laws – It's Black and White'.

550 S Cornell and JP Kalt, 'Two Approaches to the Development of Native Nations: One Works, the Other Doesn't', in M Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development*, University of Arizona Press, Tucson, 2007. <https://static1.squarespace.com/static/5859aae1ff7c503bc4a5a155/t/6436d5d573a4cc58de669f6a/1681315285727/RNN+Chpt+1+Copyedited--Two+Approaches.pdf>; M Jorgensen, A Vivian, A Compton, D Murray, D Evans and J Gertz, 'Yes, The Time Is Now: Indigenous Nation Policy Making for Self-determined Futures' in N Moodie and S Maddison (eds), *Public Policy and Indigenous Futures*, Springer, Singapore, 2023. <https://link.springer.com/book/10.1007/978-981-19-9319-0#bibliographic-information>.

551 I Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law*, Routledge, Oxford, 2015, 11. <https://library.oapen.org/bitstream/handle/20.500.12657/100961/9781317938378.pdf>.

552 The Hon P Keating, *Australian Launch of the International Year for the World's Indigenous People,* Speech, Redfern, 10 December 1992.<https://pmtranscripts.pmc.gov.au/sites/default/files/original/00008765.pdf>.

553 This research is discussed further in this chapter, particularly in the section titled 'Self-determination', within 'Creating the conditions for thriving villages.' See for example D Rigney, S Bignall, A Vivian and S Hemming, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing Discussion Paper*, Lowitja Institute, August 2022.<https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>.

554 P Dudgeon and R Walker, 'Decolonising Australian Psychology: Discourses, Strategies and Practice', *Journal of Social and Political Psychology*, 2015, Vol. 3(1)276–297. <https://jspp.psychopen.eu/index.php/jspp/article/view/4857/4857.html>; J. Atkinson, J. Nelson, R. Brooks, C. Atkinson and K. Ryan, 'Addressing individual and community transgenerational trauma', in P Dudgeon, H Milroy and R. Walker (eds) *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, Telethon Institute for Child Health Research/Kulunga Research Network, Commonwealth of Australia, Canberra, 2014.<https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>

555 P Dudgeon and R Walker, 'Decolonising Australian Psychology: Discourses, Strategies and Practice', 277.

556 R Wanganeen, 'Seven phases to integrating loss and grief', in P Dudgeon, H Milroy and R Walker (eds), *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, Telethon Institute for Child Health Research/Kulunga Research Network, Commonwealth of Australia, Canberra, 2014. <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>.

557 P Wolfe, 'Settler colonialism and the elimination of the native', *Journal of Genocide Research*, 2006, 8(4):387–409. <https://doi.org/10.1080/14623520601056240>; L Veracini, 'Introducing: settler colonial studies', *Settler Colonial Studies*, 2011, 1(1):1–12. <https://doi.org/10.1080/2201473X.2011.10648799>; L Veracini, 'Containment, elimination, settler colonialism', *Arena Journal*, 2018, 51/52:18–39. <https://search.informit.org/doi/10.3316/informit.103698189868469>.

558 A Vivian and M Halloran, 'Dynamics of the policy environment and trauma in relations between Aboriginal and Torres Strait Islander peoples and the settler-colonial state', *Critical Social Policy*, 2021, *42*(4):626–647. <https://doi.org/10.1177/02610183211065701>.

559 J Tully, 'The struggles of Indigenous peoples for and of freedom' in D Ivison, P Patton and W Sanders (eds) *Political Theory and the Rights of Indigenous* Peoples, Cambridge University Press, Melbourne, 2000. p. 36. <http://www.columbia.edu/itc/polisci/juviler/pdfs/tully.pdf>.

560 A Vivian and M Halloran, 'Dynamics of the policy environment and trauma in relations between Aboriginal and Torres Strait Islander peoples and the settler-colonial state', *Critical Social Policy*, 2021, *42*(4):626–647. <https://doi.org/10.1177/02610183211065701>.

561 A Vivian and M Halloran, 'Dynamics of the policy environment and trauma in relations between Aboriginal and Torres Strait Islander peoples and the settler-colonial state'; S Hemming, D Rigney, M Sumner, L Trevorrow, L Rankin Jr and C Wilson, 'Returning to Yarluwar-Ruwe: Repatriation as a Sovereign Act of Healing' in C Fforde, C.T. McKeown and H Keeler (eds), *The Routledge Companion to Indigenous Repatriation: Return, Reconcile, Renew*, Routledge, Oxon, 2020. p. 796. <https://doi.org/10.4324/9780203730966-51>.

562 P Wolfe, 'Settler colonialism and the elimination of the native', *Journal of Genocide Research*, 2006, 8(4):387–409. <https://doi.org/10.1080/14623520601056240>.

563 RA Williams, *Like a Loaded Weapon: The Rehnquist Court, Indian Rights and the Legal History of Racism in America*, 1st edn, University of Minnesota Press, Minneapolis, 2005. <https://doi.org/10.1093/acprof:oso/9780198252481.001.0001>.

564 PG McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty*, Status and Self-Determination, Oxford University Press, Oxford, 2004. <https://doi.org/10.1093/acprof:oso/9780198252481.001.0001>.

565 B Buchan and M Heath, 'Savagery and civilization: From terra nullius to the "tide of history."', *Ethnicities*, 2006, 6(1):5–26. <https://doi.org/10.1177/1468796806061077>.

566 *New South Wales v. The Commonwealth* (1975) 135 CLR, at 388.

567 Coe v Commonwealth [1979] HCA 68; (1979) 24 ALR 118.

568 Coe v Commonwealth [1979] HCA 68; (1979) 24 ALR 118. Jacobs J at 132.

569 *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1.

570 *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1, at 31

571 *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1, Deane and Gaudron JJ at 79.

572 Millirpum v Nabalco Pty Ltd (1971) 17 FLR 141, at 267.

573 A E Woodward, *Three Wigs and Five Hats* (Northern Territory Library Service, 1990) 6, cited in N Graham and D A Pittavino, 'Bauxite and boundaries: 50 years since *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141', (2021) 29 *Australian Property Law Journal* 335, 339.

574 *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) HCA 58, Gleeson CJ. Gummow and Hayne JJ, 87-89.

575 See, for example, discussion in R Bartlett, 'An Obsession with Traditional Laws and Customs Creates Difficulty Establishing Native Title Claims in the South: *Yorta Yorta*,' (2003) 31 *Western Australian Law Review* 35.

576 See discussion in, for example, R Bartlett, 'Outstanding Matters of Proof and Extinguishment Left Over From *Ward* and *Yorta Yorta*: *De Rose* in the Full Federal Court,' (2005) 24(2) *Australian Resources and Energy Law Journal* 219, 223-4.

577 L Veracini, 'Containment, elimination, settler-colonialism', *Arena Journal*, 2018, 51/52:18-39.; P Wolfe, 'Settler-colonialism and the elimination of the native', *Journal of Genocide Research*, 2006, 8(4):387-409. <https://doi.org/10.1080/14623520601056240>; P Wolfe, *Traces of History: Elementary Structures of Race*, 1st edn, Verso, London, 2016.

578 A Whittaker, 'Not My Problem: On The Colonial Fantasy', *Sydney Review of Books*, 8 November 2019. <https://sydneyreviewofbooks.com/reviews/not-my-problem-on-the-colonial-fantasy>; E Strakosch, 'The Technical Is Political: Settler Colonialism and the Australian Indigenous Policy System', *Australian journal of political science*, 2019, 54(1):114–130. <https://doi.org/10.1080/10361146.2018.1555230>.

579 P Sullivan, 'Disenchantment, Normalisation and Public Value: Taking the Long View in Australian Indigenous Affairs', *The Asia Pacific Journal of Anthropology*, 2013, 14(4):353-369. <https://doi.org/10.1080/14442213.2013.804871>; C Eatock 'Resisting the ascendancy of an emboldened colonialism' in D Howard-Wagner, M Bargh and I Altamirano-Jimenez (eds), *The Neoliberal State, Recognition and Indigenous Rights*. Australian National University Press, Canberra, 2018. <https://www.jstor.org/stable/j.ctv5cgbkm>.

580 PA Braveman, E Arkin, D Proctor, T Kauh and N Holm, 'Systemic And Structural Racism: Definitions, Examples, Health Damages and Approaches to Dismantling', *Health Affairs*, 2022, 41(2):171-178. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01394#:~:text=4-,Systemic%20and%20structural%20racism%20are%20forms%20of%20racism%20that%20are,treatment%20of%20people%20of%20color>.

581 PA Braveman, E Arkin, D Proctor, T Kauh and N Holm, 'Systemic And Structural Racism: Definitions, Examples, Health Damages and Approaches to Dismantling'.

582 I Anderson, Y Paradies, M Langton, R Lovett and T Calma, 'Racism and the 2023 Australian constitutional Referendum', *The Lancet (British edition)*, 2023, 402(10411):1400-1403. <https://doi.org/10.1016/S0140-6736(23)01954-2>.

583 Closing the Gap, *Closing the Gap Target and Outcomes*, Closing the Gap website, n.d. <https://www.closingthegap.gov.au/national-agreement/targets>.

584 B Charles, 'Peter Dutton says he'll never stand in front of an Aboriginal flag if prime minister', *NITV*, 10 December 2024 <https://www.sbs.com.au/nitv/article/peter-dutton-pledges-to-remove-aboriginal-and-torres-strait-islander-flag-from-press-conferences-if-elected/kzf4qindg>; P Potts, 'Senator Pauline Hanson calls for removal of Aboriginal, Torres Strait Islander and rainbow flags in Palriament House', *Sky News online*, 5 August 2025. <https://www.skynews.com.au/australia-news/politics/senator-pauline-hanson-calls-for-removal-of-aboriginal-torres-strait-islander-and-rainbow-flags-in-parliament-house/news-story/63316f48d6ca4c8888e2220be7bc60f6>.

585 Manningham Council, *Mayor Message: Response to petition regarding Aboriginal and Torres Strait Islander flags and Welcome to Country*, Manningham Council website, 27 March 2025. <https://www.manningham.vic.gov.au/news/mayor-message-response-petition-regarding-aboriginal-and-torres-strait-islander-flags>.

586 BA Hendrix, D Delaney, RC Witmer, M Moran, W Sanders and E Ganter, 'Building capacity in Indigenous governance: Comparing the Australian and American experiences', *Australian Journal of Public Administration*, 2020, 79(1):26-40. <https://doi.org/10.1111/1467-8500.12403>.

587 BA Hendrix, D Delaney, RC Witmer, M Moran, W Sanders and E Ganter, 'Building capacity in Indigenous governance: Comparing the Australian and American experiences', *Australian Journal of Public Administration*, 2020, 79(1):26-40. <https://doi.org/10.1111/1467-8500.12403>.

588 BA Hendrix, D Delaney, RC Witmer, M Moran, W Sanders and E Ganter, 'Building capacity in Indigenous governance: Comparing the Australian and American experiences', *Australian Journal of Public Administration*, 2020, 79(1):26-40. <https://doi.org/10.1111/1467-8500.12403>.

589 BA Hendrix, D Delaney, RC Witmer, M Moran, W Sanders and E Ganter, 'Building capacity in Indigenous governance: Comparing the Australian and American experiences', *Australian Journal of Public Administration*, 2020, 79(1):26-40. <https://doi.org/10.1111/1467-8500.12403>.

590 P Anderson, 'Priorities in Aboriginal health. Aboriginal health, social and cultural transitions', *Ngoonjook Journal of Australian Indigenous Issues*, 1995, (12):80-89. <https://search.informit.org/doi/10.3316/informit.034473552842546>.

591 L Behrendt, 'Indigenous Storytelling: Decolonizing Institutions and Assertive Self-Determination: Implications for Legal Practice', in Jo-Ann Archibald, Q'um Q'um Xiem, J 176. <https://opus.lib.uts.edu.au/handle/10453/164573>.

592 A Kwaymullina, 'Seeing the Light: Aboriginal Law, Learning and Sustainable Living in Country', *Indigenous Law Bulletin*, 2005, 6(11):12-15. <https://classic.austlii.edu.au/au/journals/IndigLawB/2005/27.html>.

593 K Roe and E O'Hara, *Research into the mistreatment of Older Aboriginal Australians: 2022 Report*, IPS Management Consultants, 2022, 10 <https://www.wa.gov.au/system/files/2023-09/mistreatement_of_older_aboriginal_people_report.pdf#:~:text=Abuse%20is%20so%20common%20in%20some%20areas%2C,is%20rarely%20(if%20ever)%20reported%20to%20the>; Department of Communities, *WA Strategy to Respond to the Abuse of Older People (Elder Abuse) 2019-2029*, Department of Communities, Government of Western Australia, 23 April 2021. <https://www.wa.gov.au/government/publications/wa-strategy-respond-the-abuse-of-older-people-elder-abuse-2019-2029>.

594 Wiyi Yani U Thangani Institute, *Submission to the Inquiry into Economic Self-determination and Opportunities for First Nations Australians*: In Collaboration with the Australian National University Crawford School of Public Policy and Centre for Indigenous Policy Research, Wiyi Yani U Thangani Institute, Australian National University, August 2024. <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjKs8DO2qeQAxXC2DgGHVcrKowQ-tANegQIFhAC&url=https%3A%2F%2Fwww.aph.gov.au%2FDocumentStore.ashx%3Fid%3D4c9d9454-0fa8-4f0d-a983-10fc70505b6d%26subId%3D762484%23%3A~%3Atext%3DThe%2520ANU%2520research%2520was%2520conducted%2520in%2520partnership%2CChange%2520Agenda%2520for%2520First%2520Nations%2520Gender%2520!&usg=AOvVaw3jcnzmHfodsBUjOezTLG20&opi=89978449>.

595 Australian Institute of Health and Welfare (AIHW), *Intergenerational Trauma and Mental Health: Summary Paper*, AIHW Summary Paper, 2024. <https://www.aihw.gov.au/getmedia/af8b304a-528f-4471-b59a-211edc976ccb/aihw-imh-intergenerational-trauma-and-mental-health-summary-paper.pdf>.

596 Queensland Government (QLD Government), Specific needs of Aboriginal and Torres Strait Islander young people, QLD Government website, 9 January 2023. <https://cspm.csyw.qld.gov.au/practice-kits/transition-to-adulthood/working-with-atsi-young-people-and-families/seeing-and-understanding/specific-needs-of-aboriginal-and-torres-strait-isl#Aboriginal_and_Torres_Strait_Islander_young_people__shared_cultural_grief>.

597 Productivity Commission, Closing *the Gap: Annual Data Compilation Report July 2025*, PC, Commonwealth of Australia, 2025, Foreword, 6, 10 <https://www.pc.gov.au/closing-the-gap-data/annual-data-report/2025/>.

598 K Kiss, 'Mabo Oration 2025: One Land – Two Laws – It's Black and White', Speech, 30 May 2025. <https://humanrights.gov.au/about/news/speeches/mabo-oration-2025-one-land-two-laws-its-black-and-white>.

599 Australian Institute of Health and Welfare (AIHW), *Safety and justice for First Nations people*, AIHW website, 16 October 2025.<https://www.aihw.gov.au/reports/australias-welfare/indigenous-community-safety>

.600 Australian Institute of Health and Welfare (AIHW), *Safety and justice for First Nations people*.

601 R Williams, 'Cultural Safety – what does it mean for our work practice?', *Australian and New Zealand Journal of Public Health,* 1999, 23(2):213–214 <https://doi.org/10.1111/j.1467-842X.1999.tb01240.x> as cited by M Gooda, *Social Justice Report 2011,* Australian Human Rights Commission, 123, <https://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport11/pdf/sjr2011.pdf>.

602 For a discussion on the damage caused to communities, families and individuals, see Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO, *Native Title Report 2024: Women in Native Title* (2024). <https://humanrights.gov.au/__data/assets/file/0027/47295/2403_Native-Title-Report-2024_final_optimised_0.pdf>.

603 Aboriginal and Torres Strait Islander Commissioner June Oscar AO, *Women in Native Title: Native Title Report 2024* (2024) <https://humanrights.gov.au/__data/assets/file/0027/47295/2403_Native-Title-Report-2024_final_optimised_0.pdf>, see particularly chapter 10 'Combined voices: centring lived experience', and chapter 12, especially recommendation 6(f) and 12.4 'Recommendations derived from the contributions of First Nations women to this report'.

604 R Smallwood, 'Expressions of identity by Aboriginal young peoples' stories about historical trauma and colonisation within the Gamilaroi Nation', AlterNative: An International Journal of Indigenous Peoples, 2023, 19(1):3–12, <https://yumi-sabe.aiatsis.gov.au/sites/default/files/outputs/2024-02/smallwood-2023-expressions-of-identity-by-aboriginal-young-peoples-stories-about-historical-trauma-and-colonisation.pdf>.

605 United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, UN Doc A/RES/61/295 (13 September 2007) art 33. <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

606 M Gooda, 'Elder Abuse and Neglect Conference', Speech, Canberra: Australian Human Rights Commission, 5 September 2012. <https://humanrights.gov.au/about/news/speeches/aag-elder-abuse-and-neglect-conference#fn13>; K Roe and E O'Hara, *Research into the mistreatment of Older Aboriginal Australians: 2022 Report*, iPS Management Consultants, 2022, 10. <https://www.wa.gov.au/system/files/2023-09/mistreatement_of_older_aboriginal_people_report.pdf>.

607 Section 32, *Statewide Treaty Act 2005* (Vic). <https://content.legislation.vic.gov.au/sites/default/files/2025-11/25-45aa001-authorised.pdf>.

608 Aboriginal Justice Caucus, 'Confirmation of Aboriginality, Nuther-Mooyoop to the Yoorrook Justice Commission,' Organisational Submission, 22 November 2024. <https://www.yoorrook.org.au/submissions/submission-aboriginal-justice-caucus-confirmation-of-aboriginality>

609 Aboriginal Justice Caucus, 'Confirmation of Aboriginality, Nuther-Mooyoop to the Yoorrook Justice Commission,' Organisational Submission, 22 November 2024,12. <https://www.yoorrook.org.au/submissions/submission-aboriginal-justice-caucus-confirmation-of-aboriginality>.

610 Ngaweeyan Maar-oo Closing the Gap Victoria, *Post about Gellung Warl and confirmation of Aboriginality*, Facebook, 9 September 2025. <https://www.facebook.com/story.php?story_fbid=pfbid0Y7foiP5cv7urEMgj3hgzrJLMoTeusPnYEtgZToEVPA7GSufrnxWLE9YK8pAgFFoel&id=61557700434361&__rdr>.

611 A Horn, 'Super shires condemned as worse than Intervention', *ABC News Online*, 31 January 2012. <https://www.abc.net.au/news/2012-01-31/20120131-mick-gooda-on-super-shires/3802586>.

612 S Spina-Matthews, 'Fifty years after starting a bilingual education program, Areyonga School looks to the future of 'both-ways' learning, *ABC News*, 26 August 2023. <https://www.abc.net.au/news/2023-08-26/nt-bilingual-education-features/102749508>.

613 CSIROpedia, *2018 Indigenous STEM Award winners and finalists*, CSIROPedia website, 25 July 2024. <https://csiropedia.csiro.au/2018-indigenous-stem-award-winners-and-finalists/>.

614 J Anaya, Indigenous Peoples in International Law, 2nd edn, Oxford University Press, New York, 2004, 98.

615 Queensland Human Rights Commission, 'News: Bandarran Marra'Gu – Gathering Strength First Nations Summit'. <https://www.qhrc.qld.gov.au/about-us/news/news-gathering-strength-first-nations-summit>

616 Bandarran Marra'Gu: Gathering Strength - First Nations Summit, Statement, 20 May 2025. <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf>

617 For example, *International Covenant on Civil and Political Rights* (ICCPR) (adopted 19 December 1966, entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976).

618 For example, see D Rigney, S Bignall, A Vivian and S Hemming, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing Discussion Paper*, Lowitja Institute, August 2022. <https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>

619 B Carson, T Dunbar, R Chenhall & R Bailie, *Social Determinants of Indigenous Health*, 1st edn, Routledge, London, 16 July 2020. <https://doi.org/10.4324/9781003117247>; Lowitja Institute, *Culture is Key: Towards Cultural Determinants-driven Health Policy*, Lowitja Institute, 2021<https://www.lowitja.org.au/resource/culture-is-key-towards-cultural-determinants-driven-health-policy/>; D Rigney, S Bignall, A Vivian and S Hemming, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing: Discussion Paper*, Lowitja Institute, August 2022. <https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>

620 World Health Organization (WHO), *Social determinants of health*, WHO website, n.d. <https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1>.

621 Lowitja Institute, *Culture is Key: Towards Cultural Determinants-driven Health Policy,* Policy Brief, February 2021. <https://www.lowitja.org.au/wp-content/uploads/2023/05/Lowitja_PolicyBrief_CulturalDeterminants_FINAL_APRIL21.pdf>

622 Aboriginal and Torres Strait Islander Health Performance Framework, *Tier 1 - Health status and outcomes: 1.17 Perceived health status*, Aboriginal and Torres Strait Islander Health Performance Framework website, 21 May 2024. <https://www.indigenoushpf.gov.au/measures/1-17-perceived-health-status>

623 Australian Institute of Health and Welfare (AIHW), *Determinants of health for First Nations people*, AIHW website, 2 July 2024. <https://www.aihw.gov.au/reports/australias-health/social-determinants-and-indigenous-health>

624 Australian Institute of Health and Welfare (AIHW) & National Indigenous Australians Agency (NIAA), Aboriginal and Torres Strait Islander Health Performance Framework, Tier 1 - Health status and outcomes: 1.17 Perceived health status, Aboriginal and Torres Strait Islander Health Performance Framework website, 21 May 2024. <https://www.indigenoushpf.gov.au/measures/1-17-perceived-health-status>

625 D Rigney, S Bignall, A Vivian and S Hemming, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing Discussion Paper*, Lowitja Institute, August 2022. <https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>

626 Australian Institute of Health and Welfare (AIHW), *Connection to community: Summary paper*, AIHW, Australian Government, 2024. <https://www.aihw.gov.au/getmedia/a0041f83-b80e-4fc2-9262-4da4872b4d5e/aihw-imh-connection-to-community-summary-paper.pdf>; Australian Institute of Health and Welfare (AIHW), Indigenous Mental Health and Suicide Prevention Clearinghouse, AIHW website, 29 July 2025. <https://www.indigenousmhspc.gov.au/getattachment/c98dfa69-c137-4f9b-9d55-bc012de2d4d7/aihw-ihw-connection-to-community-summary-paper.pdf?v=1518>

627 Gayaa Dhuwi (Proud Spirit) Australia, *Gayaa Dhuwi (Proud Spirit) Declaration*, Gayaa Dhuwi (Proud Spirit) Australia, n.d. <https://www.gayaadhuwi.org.au/gayaa-dhuwi-declaration>.

628 The Healing Foundation, *Make Healing Happen: It's Time to Act*, The Healing Foundation, May 2021. <https://healingfoundation.org.au/search/?q=make%20healing%20happen>.

629 Y Fatima, Y Liu, A Cleary, J Dean, V Smith, S King and S Solomon, 'Connecting the health of country with the health of people: application of "caring for country" in improving the social and emotional well-being of Indigenous people in Australia and New Zealand', *The Lancet Regional Health- Western Pacific*, 31:100648, February 2023. <https://www.thelancet.com/journals/lanwpc/article/PIIS2666-6065(22)00263-2/fulltext> as cited in B Brady, 'Practising culture on Country can improve Aboriginal people's health and wellbeing', *The Conversation*, 11 November 2024. <https://theconversation.com/practising-culture-on-country-can-improve-aboriginal-peoples-health-and-wellbeing-241564#:~:text=Participants%20say%20camps%20improve%20their,other%20people%20(Mob)%20and%20Ancestors>.

630 National Indigenous Australians Agency (NIAA), *Indigenous Rangers Program (IRP)*, NIAA website, n.d. <https://www.niaa.gov.au/our-work/environment-and-land/indigenous-rangers-program-irp>; National Indigenous Australians Agency (NIAA), *Indigenous Rangers Program Review*, NIAA website, n.d. <https://www.niaa.gov.au/our-work/evaluations-and-evidence/indigenous-advancement-strategy-ias-evaluation-work-plan/indigenous-rangers-program-review>; Kimberley Land Council and Bardi Jawi Niimidiman Aboriginal Corporation RNTBC, 'Bardi Jawi Indigenous Protected Area Management Plan 2013-2023', Kimberley Land Council and Bardi Jawi Niimidiman Aboriginal Corporation RNTBC, 2013. <https://static1.squarespace.com/static/59fecece017db2ab70aa1874/t/5a7bdb8471c1

0b9941e9f4b9/1518066605569/bardi-jawi-healthy-country-plan.pdf>; North Australian Indigenous Land and Sea Management Alliance (NAILSMA), Bardi Jawi Rangers, NAILSMA website, n.d. <https://nailsma.org.au/national-practitioner-network/land-sea-managers-map/bardi-jawi-rangers>;Government of Western Australia, Department of Biodiversity, Conservation and Attractions, Aboriginal Ranger Program Evaluation, Government of Western Australia, Department of Biodiversity, Conservation and Attractions, 2021. <https://www.dbca.wa.gov.au/sites/default/files/2022-12/Aboriginal%20Ranger%20Program%20Evaluation%20Jan%202021.pdf>; Pew Charitable Trusts & Country Needs People, *Working for Our Country: A Review of the Indigenous Ranger and Indigenous Protected Area Programs*, Synergies Economic Consulting (Synergies), 2015. <https://www.pew.org/~/media/post-launch-images/2015/11/economicandsocialbenefitsindigenouslandwhitepaper.pdf>.

631 Kimberley Land Council and Bardi Jawi Niimidiman Aboriginal Corporation RNTBC, 'Bardi Jawi Indigenous Protected Area Management Plan 2013-2023', Kimberley Land Council and Bardi Jawi Niimidiman Aboriginal Corporation RNTBC, 2013. <https://static1.squarespace.com/static/59fecece017db2ab70aa1874/t/5a7bdb8471c10b9941e9f4b9/1518066605569/bardi-jawi-healthy-country-plan.pdf>; Government of Western Australia, Department of Biodiversity, Conservation and Attractions, Aboriginal Ranger Program Evaluation, Government of Western Australia, Department of Biodiversity, Conservation and Attractions, 2021. <https://www.dbca.wa.gov.au/sites/default/files/2022-12/Aboriginal%20Ranger%20Program%20Evaluation%20Jan%202021.pdf>; Pew Charitable Trusts & Country Needs People, Working for Our Country: A Review of the Indigenous Ranger and Indigenous Protected Area Programs, Synergies Economic Consulting (Synergies), 2015. <https://www.pew.org/~/media/post-launch-images/2015/11/economicandsocialbenefitsindigenouslandwhitepaper.pdf>.

632 Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS), *Languages alive*, AIATSIS website, n.d. <https://aiatsis.gov.au/explore/languages-alive>.

633 Australian Institute for Aboriginal and Torres Strait Islander Studies, Languages alive; Department of Infrastructure, Transport, Regional Development and Communications (Cth), Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Australian National University (ANU), N*ational Indigenous Languages Report*, Department of Infrastructure, Transport, Regional Development and Communications (Cth), AIATSIS, ANU, Commonwealth of Australia, 2020, chapter 3. <https://www.arts.gov.au/what-we-do/indigenous-arts-and-languages/indigenous-languages-and-arts-program/national-indigenous-languages-report>.

634 Australian Bureau of Statistics, *Language Statistics for Aboriginal and Torres Strait Islander Peoples*, ABS website, 25 October 2022. <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/language-statistics-aboriginal-and-torres-strait-islander-peoples/2021>.

635 T Calma, Australian Human Rights Commission (AHRC), *Social Justice Report 2009,* 'The perilous state of Indigenous languages in Australia', Chapter 3, AHRC, 2009. <https://humanrights.gov.au/our-work/projects/chapter-3-introduction-social-justice-report-2009#s3_5>.

636 UNESCO, *Indigenous Languages Decade (2022-2032)*, UNSECO website, n.d. <https://www.unesco.org/en/decades/indigenous-languages>.

637 First Languages Australia, *First Nations Languages Education Program*, First Languages Australia website <https://www.firstlanguages.org.au/fnle>.

638 T Calma, Australian Human Rights Commission (AHRC), *Social Justice Report 2009,* 'The perilous state of Indigenous languages in Australia', Chapter 3, AHRC, 2009. <https://humanrights.gov.au/our-work/projects/chapter-3-introduction-social-justice-report-2009#s3_5>.

639 P Anderson, R Wild, *Ampe Akelyernemane Meke Mekarle Little Children are Sacred Report*, Northern Territory Government, 2007. Pp. 147. <https://humanrights.gov.au/sites/default/files/57.4%20%E2%80%9CLittle%20Children%20are%20Sacred%E2%80%9D%20report.pdf>; as quoted in T Calma, Australian Human Rights Commission (AHRC), *Social Justice Report 2009,* 'The perilous state of Indigenous languages in Australia', Chapter 3, AHRC, 2009. <https://humanrights.gov.au/our-work/projects/chapter-3-introduction-social-justice-report-2009#s3_5>.

640 Living First Language Platform, *Leaders in literacy, language and learning*, Living First Language Platform website, n.d. <https://www.livingfirstlanguage.org/who-we-are>.

641 Muurrbay Aboriginal Language and Culture Co-operative, *Languages*, Muurrbay Aboriginal Language and Culture Co-operative website, n.d. <https://muurrbay.org.au/languages/gumbaynggirr/>.

642 Tasmanian Aboriginal Centre, *palawa kani Language Program*, Tasmanian Aboriginal Centre website, n.d. <https://tacinc.com.au/programs/palawa-kani/>.

643 N Lewis, Aboriginal and Torres Strait Islander Children's Commissioner, Queensland Family and Child Commissioner [Linked in], 13 September 2025. <https://www.linkedin.com/posts/natalie-lewis-9647b470_oatsicc-our-journey-and-our-story-activity-7372373450906251264-MsMI?utm_source=share&utm_medium=member_desktop&rcm=ACoAAC-6E84BN_3F3VXydMc5oM3stb6UG2kJSiU>.

644 Gondwana Link Ltd, *Nowanup Boodja Healing Country: Healing People*, Gondwana Link Ltd website, n.d. <https://nowanup.com.au/>; Nowanup, Nowanup Caretakers, Nowanup website, n.d. <https://nowanup.com.au/caretakers/>.

645 Yamatji Marlpa Aboriginal Corporation (YMAC), *2025 10th Annual On-Country Bush Meeting at Yule River,* YMAC website, n.d. <https://www.ymac.org.au/events/yule-river/>.

646 The National Gathering, The National Gathering was held in Port Douglas on 15-17 September 2025, The National Gathering website, n.d. <https://thenationalgathering.au/.>.

647 M Langton, *The Wentworth Lecture: Aborigines and Policing: Aboriginal Solutions from Northern Territory Communities*, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1992. <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj209T4-qmQAxXzT2wGHfMZMCgQFnoECBwQAQ&url=https%3A%2F%2Faiatsis.gov.au%2Fsites%2Fdefault%2Ffiles%2Fresearch_pub%2F1992-wentworth-langton-aborigines-policing-solutions.rtf&usg=AOvVaw2-IDH1fvjTusl7WBuihX3h&opi=89978449>.

648 The Healing Foundation, *Strong Men, Strong Communities: Darwin town communities developmental evaluation*, Healing Foundation, 2017. <https://healingfoundation.org.au/resources/resource-hub/?category=Trauma+and+Healing&type=Reports&q=&page=1>.

649 A Kwaymullina, 'Seeing the light: Aboriginal law, learning and sustainable living in country', *Indigenous Law Bulletin*, 2005, *6*(11):12–15.

650 CA Hand, J Hankes and T House, 'Restorative justice: the indigenous justice system', *Contemporary Justice Review*, 2012, 15(4):449–467. <https://doi.org/10.1080/10282580.2012.734576>; B Jacobs, 'Indigenous Justice in Oceania and North America', *Oxford Research Encyclopedia of Criminology and Criminal Justice*, Oxford University Press, 2021. <https://doi.org/10.1093/acrefore/9780190264079.013.627>.

651 CA Hand, J Hankes and T House, 'Restorative justice: the indigenous justice system', *Contemporary Justice Review*, 2012, 15(4):449–467. <https://doi.org/10.1080/10282580.2012.734576>.

652 M Berlin, 'Restorative justice practices for Aboriginal offenders: Developing an expectation-led definition for reform', *Appeal, Review of Current Law and Law* Reform, 2016, Appeal 21(3):3-20. <https://journals.uvic.ca/index.php/appeal/article/view/15664>.

653 CA Hand, J Hankes and T House, 'Restorative justice: the indigenous justice system', *Contemporary Justice Review*, 2012, 15(4):449–467. <https://doi.org/10.1080/10282580.2012.734576>.654 MO Nielsen, 'Navajo Nation Courts, Peacemaking and Restorative Justice Issues', *Journal of Legal Pluralism and Unofficial Law*, 31(44):105-126. <https://doi.org/10.1080/07329113.1999.10756539>; N Large, 'Healing Justice: The Tsuu T'ina First Nation's Peacemaker Court throws out punitive justice and restores the ancient tradition of...talking', Alberta Views, 1 May 2001. <https://albertaviews.ca/healing-justice/>

655 AP Melton, 'Indigenous justice systems and tribal society', *Judicature*, 1995, 79(3):126–133. <https://www.tribal-institute.org/articles/melton1.htm>.

656 AP Melton, 'Indigenous justice systems and tribal society'.

657 CA Hand, J Hankes and T House, 'Restorative justice: the indigenous justice system', *Contemporary Justice Review*, 2012, 15(4):449–467. <https://doi.org/10.1080/10282580.2012.734576>.

658 CA Hand, J Hankes and T House, 'Restorative justice: the indigenous justice system', (2012) 15(4) *Issues in Criminal, Social, and Restorative Justice* 449-467.

659 N Wurramarra, R Mamarika, L Mamarika, E Mamarika, H Bland, N Espie and M Derrig, 'Standing in the Middle: Aboriginal Peacemakers hold the key to reducing police interventions in Australia's Northern Territory', *International Network of Civil Liberties Organisations*, 2024. P. 5 <https://inclo.net/wp-content/uploads/2024/03/INCLO-In-Our-Hands-AUSTRALIA-Standing-in-the-middle-EN.pdf>.

660 N Wurramarra, R Mamarika, L Mamarika, E Mamarika, H Bland, N Espie and M Derrig, 'Standing in the Middle: Aboriginal Peacemakers hold the key to reducing police interventions in Australia's Northern Territory' p. 5.

661 Anindilyakwa Land Council, *The Peacemaker Program*, Anindilyakwa Land Council website, n.d. <https://anindilyakwa.com.au/preserving-culture/anthropology/the-peacemaker-program/>.

662 N Wurramarra, R Mamarika, L Mamarika, E Mamarika, H Bland, N Espie and M Derrig, 'Standing in the Middle: Aboriginal Peacemakers hold the key to reducing police interventions in Australia's Northern Territory', *International Network of Civil Liberties Organisations*, 2024. P. 5 <https://inclo.net/wp-content/uploads/2024/03/INCLO-In-Our-Hands-AUSTRALIA-Standing-in-the-middle-EN.pdf>.

663 N Wurramarra, R Mamarika, L Mamarika, E Mamarika, H Bland, N Espie and M Derrig, 'Standing in the Middle: Aboriginal Peacemakers hold the key to reducing police interventions in Australia's Northern Territory' p. 6.

664 N Wurramarra, R Mamarika, L Mamarika, E Mamarika, H Bland, N Espie and M Derrig, 'Standing in the Middle: Aboriginal Peacemakers hold the key to reducing police interventions in Australia's Northern Territory' p. 6.

665 Anindilyakwa Land Council, *The Peacemaker Program*, Anindilyakwa Land Council website, n.d. <https://anindilyakwa.com.au/preserving-culture/anthropology/the-peacemaker-program/>.

666 Anindilyakwa Land Council, 'Stories from Groote Stories: Edition 13', Anindilyakwa Land Council, 10 July 2025. <https://anindilyakwa.com.au/wp-content/uploads/2025/07/ALC_NewsletterEdition13_V0.4_250710_ZM.pdf>.

667 N Wurramarra, R Mamarika, L Mamarika, E Mamarika, H Bland, N Espie and M Derrig, 'Standing in the Middle: Aboriginal Peacemakers hold the key to reducing police interventions in Australia's Northern Territory', *International Network of Civil Liberties Organisations*, 2024. Pp. 7-8 <https://inclo.net/wp-content/uploads/2024/03/INCLO-In-Our-Hands-AUSTRALIA-Standing-in-the-middle-EN.pdf>.

668 Anindilyakwa Land Council, *The Peacemaker Program*, Anindilyakwa Land Council website, n.d. <https://anindilyakwa.com.au/preserving-culture/anthropology/the-peacemaker-program/>.

669 S Johnson, 'Developing First Nations Courts in Canada: Elders as foundational to Indigenous therapeutic jurisprudence', *Journal of Indigenous Social Development*, 2014, 3(2):1-14. <https://journalhosting.ucalgary.ca/index.php/jisd/article/view/63062>; N Large, 'Healing Justice: The Tsuu T'ina First Nation's Peacemaker Court throws out punitive justice and restores the ancient tradition of...talking', Alberta Views, 1 May 2001. <https://albertaviews.ca/healing-justice/>; L Parker, 'Tsuu T'ina Peacemaking Justice in Canada' (2004) *Restorative Justice Online*, Article No 4733. <https://restorativejustice.org/rj-archive/tsuu-tina-peacemaking-justice-in-canada/>.

670 K Wahwassuck, 'The New Face of Justice: Joint Tribal-State Jurisdiction', *Washburn Law Journal*, 2008. 47(3):733-755. <https://wellnesscourts.org/wp-content/uploads/2024/05/Joint-Powers-Agreement-LReview-Article-by-Judge-Korey-wahwassuck.pdf>; C Goldberg and D Champagne, *Promising Strategies: Tribal–State Court Relations*, Tribal Law and Policy Institute, March 2013, updated August 2013. Pp. 13-14. <https://walkingoncommonground.org/wp-content/uploads/2024/05/TLPI-Promising-Strategies-Tribal-State-Court-Relations_FINAL_Updated-8-15-13.pdf>.

671 Aboriginal and Torres Strait Islander Social Justice Commission Mick Gooda, *Social Justice Report 2014* (2014), Chapter 5. <https://humanrights.gov.au/resource-hub/by-resource-type/publications/social-justice-and-0>

672 D Rigney, S Bignall, A Vivian and S Hemming, *Indigenous Nation Building and the Political*

Determinants of Health and Wellbeing Discussion Paper, Lowitja Institute, August 2022. <https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>.

673 A Adams, M Begay, S Cornell, J Flies-Away, C Garrow, K Grant, J Kalt, S Kastelic, A Lee, M Lipsky, N Pryor, I Record, K Spilde, J Taylor, J Timeche and M Jorgensen, *Rebuilding Native Nations: Strategies for Governance and Development*, University of Arizona Press, Tucson, 2007. <https://www.researchgate.net/publication/326066084_Rebuilding_Native_Nations_Strategies_for_Governance_and_Development>; JP Kalt, E Henson, J Taylor, C Curtis, S Cornell, K Grant, M Jorgensen, A Lee and H Nelson, *The State of the Native Nations: Conditions Under US Policies of Self-Determination*, Oxford University Press, New York, 2008. <https://www.researchgate.net/publication/325320734_The_State_of_the_Native_Nations_Conditions_Under_US_Policies_of_Self-Determination>.

674 S Cornell and JP Kalt, 'Two Approaches to the Development of Native Nations: One Works, the Other Doesn't', in M Jorgensen (eds), *Rebuilding Native Nations: Strategies for Governance and Development*, University of Arizona Press, Tucson, 2007. <https://static1.squarespace.com/static/5859aae1ff7c503bc4a5a155/t/6436d5d573a4cc58de669f6a/1681315285727/RNN+Chpt+1+Copyedited--Two+Approaches.pdf>.

675 D Rigney, S Bignall, A Vivian and S Hemming, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing Discussion Paper*, Lowitja Institute, August 2022. <https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>; M Jorgensen, A Vivian, A Compton, D Murray, D Evans and J Gertz, 'Yes, The Time Is Now: Indigenous Nation Policy Making for Self-determined Futures' in N Moodie and S Maddison (eds), *Public Policy and Indigenous Futures*, Springer, Singapore, 2023. <https://link.springer.com/chapter/10.1007/978-981-19-9319-0_8>; T Rowse, J Green, D Rigney, D Rose, A Vivian, M Jorgensen, S Hemming and S Berg, 'Indigenous Governance' in P Cane, L Ford and M McMillan (eds), *The Cambridge Legal History of Australia*, Cambridge University Press, 2022. <https://doi.org/10.1017/9781108633949>; A Compton, D Murray and A Vivian, 'The Indigenous self-government landscape in Australia: A descriptive and conceptual model', *Journal of Australian Indigenous Issues*, 2024, *27*(3–4):63–81. <https://opus.lib.uts.edu.au/handle/10453/183298>.

676 M Dodson and DE Smith, 'Governance for sustainable development: Strategic issues and principles for Indigenous Australian communities', Discussion Paper No 250, Centre for Aboriginal Economic Policy Research, Australian National University, 2003. P. 9. <https://openresearch-repository.anu.edu.au/items/f2bb7e16-c1cf-4ff5-bd84-60a420d7612f>.

677 S Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government', *International Indigenous Policy Journal*, 2015, 6(4): Article 4. <https://www.researchgate.net/publication/283282537_Processes_of_Native_Nationhood_The_Indigenous_Politics_of_Self-Government>.

678 S Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government'.

679 S Cornell and D Rigney, *Comparative Indigenous Governance*, Presented at 'January in Tucson', 2025.

680 D Murray and D Evans, 'Culturally Centred, Community Led: Wiradjuri Nation Rebuilding through Honouring the Wiradjuri Way' in D Smith, A Wighton, S Cornell & AV Delaney (eds), *Developing Governance and Governing Development: International Case Studies of Indigenous Futures*, Rowman & Littlefield, 2021. P. 165. <http://dx.doi.org/10.5040/9798881814731.ch-8>.

681 TL Petray and J Gertz, 'Building an economy and building a nation: Gugu Badhun self-determination as prefigurative resistance', *Global Media Journal*, 2018, 12(1). <https://www.hca.westernsydney.edu.au/gmjau/wp-content/uploads/2018/10/GMJAU-Building-an-economy-and-buildin...ermination-as-prefigurative-resistance.pdf.pdf>.

682 J Weir, *The Gunditjmara Land Justice Story*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009. <https://aiatsis.gov.au/publication/35418>.

683 The Gunditjmara People with Gib Wettenhall, *The People of Budj Bim: Engineers of Aquaculture, Builders of Stone House Settlements and Warriors Defending Country* (emPRESS Publishing for the Gunditj Mirring Traditional Owners Corporation, 2010, 2nd ed, 2022).

684 Y Cadet-James, RA James, S McGinty and R McGregor, *Gugu Badhun People of the Valley of Lagoons*, AIATSIS Research Publications, Canberra, 2017. <https://aiatsis.gov.au/publication/35010>.

685 Gunditj Mirring Traditional Owners Aboriginal Corporation RNTBC (GMTOAC), *Gunditjmara Consultation and Negotiation Protocols*, GMTOAC document, 2024. <https://www.gunditjmirring.com/_files/ugd/b5965f_37e622bd23f745e7a12b6087a747cb0f.pdf>.

686 Gunditj Mirring Traditional Owners Aboriginal Corporation RNTBC (GMTOAC), *Gunditjmara Research Principles and Guidelines*, GMTOAC document, 2022. <https://www.gunditjmirring.com/_files/ugd/b5965f_fe940e2b85974548a7a9c3924deea62d.pdf>.

687 Gugu Badhun Aboriginal Corporation RNBTC, *About Djiman Research Centre*, Gugu Badhun Aboriginal Corporation RNBTC website, n.d. <https://www.gugubadhun.com/about-djiman-research-centre>.

688 The Budj Bim Cultural Landscape, *Budj Bim: Cultural Landscape Masterplan 2022-2030*, The Budj Bim Cultural Landscape document, n.d. <https://contentedninja-media.s3-ap-southeast-2.amazonaws.com/budjbim/docs/pdfs/budj-bim-master-plan-2022-2030.pdf>; Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee, NGARRINDJERI NATION SEA COUNTRY PLAN Caring for Ngarrindjeri Country and Culture, Plan document, 2006. <https://www.mdba.gov.au/sites/default/files/publications/sa-ngarrindjeri-nation-yarluwar-ruwe-plan-2006-rs.pdf>; Gugu Badhun Aboriginal Corporation, *Gugu Badhun Aboriginal Corporation Strategic Plan 2020-2025: Summary*, Gugu Badhun Aboriginal Organisation, 2020. <https://static1.squarespace.com/static/58114a0fbebafb2c8ab2e28f/t/5ef0555e1611f52157d477bc/1592808813340/GBAC+Strategic+Plan+Summary+Plan+C+30+April+2020.pdf>.

689 Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee, NGARRINDJERI NATION SEA COUNTRY PLAN Caring for Ngarrindjeri Country and Culture, Plan document, 2006. <https://www.mdba.gov.au/sites/default/files/publications/sa-ngarrindjeri-nation-yarluwar-ruwe-plan-2006-rs.pdf>; Parks Victoria, *Ngootyoong*

Gunditj Ngootyoong Mara South West Management Plan: May 2015, Parks Victoria, Department of Environment, Land, Water and Planning, and Gunditj Mirring Traditional Owners Aboriginal Corporation, 2015. <https://www.parks.vic.gov.au/-/media/project/pv/main/parks/documents/management-plans/resource-library/ngootyoong-gunditj-ngootyoong-mara---south-west---management-plan---2015.pdf?rev=9c6ee90a366f4fc3a65c089bce04e3b8>.

690 Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee, NGARRINDJERI NATION SEA COUNTRY PLAN Caring for Ngarrindjeri Country and Culture, Plan document, 2006. <https://www.mdba.gov.au/sites/default/files/publications/sa-ngarrindjeri-nation-yarluwar-ruwe-plan-2006-rs.pdf>.

691 S Cornell and D Rigney, *Comparative Indigenous Governance*, Presented at 'January in Tucson', 2025.

692 S Cornell and D Rigney, *Comparative Indigenous Governance*, Presented at 'January in Tucson', 2025.

693 Ngarrindjeri Nation, *Our Approach*, Ngarrindjeri Nation website, n.d. <https://www.ngarrindjeri.org.au/our-approach>.

694 Council of the Haida Nation. *Haida Constitution.* Adopted at the Haida House of Assembly, 18 October 2023. Council of the Haida Nation, October 2023. <https://www.haidanation.ca/about/haida-constitution>.

695 S Cornell and JP Kalt, 'Two Approaches to the Development of Native Nations: One Works, the Other Doesn't', in M Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development*, University of Arizona Press, Tucson, 2007, 28-29. <https://static1.squarespace.com/static/5859aae1ff7c503bc4a5a155/t/6436d5d573a4cc58de669f6a/1681315285727/RNN+Chpt+1+Copyedited--Two+Approaches.pdf>.

696 A Compton, A Vivian, T Petray, M Walsh and S Hemming, 'Native title and Indigenous Nation Building: Strategic Uses of a Fraught Settler-Colonial Regime', *Settler Colonial Studies*, 2023, 14(2):160-179. <https://doi.org/10.1080/2201473X.2023.2267409>; H Norman, T Apolonio and M Parker, 'Mapping local and regional governance: Reimagining the New South Wales Aboriginal sector', *Cosmopolitan Civil Societies*, 2021, 13(1):1–14. <https://doi.org/10.5130/ccs.v13.i1.7644>.

697 S Cornell and D Rigney, *Comparative Indigenous Governance*, Presented at 'January in Tucson', 2025.

698 TL Petray and J Gertz, 'Building an economy and building a nation: Gugu Badhun self-determination as prefigurative resistance', *Global Media Journal*, 2018, 12(1). <https://www.hca.westernsydney.edu.au/gmjau/wp-content/uploads/2018/10/GMJAU-Building-an-economy-and-buildin...ermination-as-prefigurative-resistance.pdf.pdf>; J Gertz, *Gugu Badhun Sovereignty, Self-Determination and Nationhood* [PhD Thesis] James Cook University, 2022. <https://researchonline.jcu.edu.au/77294/>.

699 J Gertz, *Gugu Badhun Sovereignty, Self-Determination and Nationhood* [PhD Thesis] James Cook University, 2022. <https://researchonline.jcu.edu.au/77294/>.

700 Southern West Yiradyuri Clans Land, Water and Sky Country Aboriginal Corporation, *Home*, Southern West Yiradyuri Clans Land, Water and Sky Country Aboriginal Corporation website, n.d. <https://yiradyuri.au/>

701 D Rigney, D Bell, M Jorgensen, A Vivian, S Hemming, S Cornell and L Behrendt, *Indigenous Nation Building in Australia*, Bloomsbury Academic, In Press.

702 S Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government', *International Indigenous Policy Journal,* 2015, 6(4): Article 4. Pp. 16-18 <https://www.researchgate.net/publication/283282537_Processes_of_Native_Nationhood_The_Indigenous_Politics_of_Self-Government>.

703 T Rowse, J Green, D Rigney, D Rose, A Vivian, M Jorgensen, S Hemming and S Berg, 'Indigenous Governance' in P Cane, L Ford and M McMillan (eds), *The Cambridge Legal History of Australia*, Cambridge University Press, 2022.

704 S Berg, *Coming to Terms: Aboriginal Title in South Australia*. Adelaide: Wakefield Press, 2010D Rigney, S Hemming and S Berg, 'Letters Patent, Native Title and the Crown in South Australia' in M Hinton, D Rigney and E Johnston (eds) *Indigenous Australians and the Law*, Routledge, New York, 2008. <https://doi.org/10.4324/9780203927960>; Ngarrindjeri People and M Rigney, 'Proclamation of Ngarrindjeri Dominium', *Indigenous Law Bulletin*, 2000, 4(26) <https://classic.austlii.edu.au/au/journals/IndigLawB/2000/3.html>.

705 Ngarrindjeri Tendi, Ngarrindjeri Heritage Committee and Ngarrindjeri Native Title Management Committee, NGARRINDJERI NATION SEA COUNTRY PLAN Caring for Ngarrindjeri Country and Culture, Plan document, 2006. pp. 14-15. <https://www.mdba.gov.au/sites/default/files/publications/sa-ngarrindjeri-nation-yarluwar-ruwe-plan-2006-rs.pdf>.

706 S Hemming and D Rigney, 'Encountering the common knobby club rush: reconciliation, public art and whiteness' In *Something Rich & Strange: Sea Changes, Beaches and the Littoral in the* Antipodes, Wakefield Press, 2009.

707 D Rigney, D Bell, M Jorgensen, A Vivian, S Hemming, S Cornell and L Behrendt, *Indigenous Nation Building in Australia*, Bloomsbury Academic, In Press.

708 S Hemming and D Rigney, *Restoring Murray Futures: Incorporating Indigenous knowledge, values and interests into environmental water planning in the Coorong and Lakes Alexandrina and Albert Ramsar Wetland*, Goyder Institute for Water Research, 2016.

709 S Hemming, D Rigney, S Berg, C Rigney, G Rigney and L Trevorrow, 'Speaking as Country: A Ngarrindjeri Methodology of Transformative Engagement', *Ngiya: Talk the Law*, 5:22-46. <https://opus.lib.uts.edu.au/bitstream/10453/158705/2/Pages%20from%20Journal%20Size%20v2%2004APR17.pdf>; S Hemming and D Rigney, *Restoring Murray Futures: Incorporating Indigenous knowledge, values and interests into environmental water planning in the Coorong and Lakes Alexandrina and Albert Ramsar Wetland*, Goyder Institute for Water Research, 2016. <https://data.environment.sa.gov.au/Content/Publications/Hemming%20and%20Rigney%202016.pdf>.

710 S Hemming and D Rigney, *Restoring Murray Futures: Incorporating Indigenous knowledge, values and interests into environmental water planning in the Coorong and Lakes Alexandrina and Albert Ramsar Wetland*, Goyder Institute for Water Research, 2016. <https://data.environment.sa.gov.au/Content/Publications/Hemming%20and%20Rigney%202016.pdf>.

711 D Rigney, S Bignall, A Vivian and S Hemming, Indigenous Nation building and the Political Determinants of Health and Wellbeing, Lowitja Institute, 2022. <https://www.lowitja.org.au/resource/indigenous-nation-building-and-the-political-determinants-of-health-and-wellbeing-discussion-paper/>; MJ Chandler and CE Lalonde, 'Cultural Continuity as a Moderator

of Suicide Risk Among Canada's First Nations' in Laurence Kirmayer and Gail Valaskakis (eds) Healing Traditions: The Mental Health of Aboriginal Peoples in Canada, University of British Columbia Press, 2008, 221. <https://www.researchgate.net/publication/241607902_Cultural_continuity_as_a_moderator_of_suicide_risk_among_Canada%27s_First_Nations>.

712 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007), [Arts 46] <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

713 K Kiss, 'Mabo Oration 2025: One Land – Two Laws – It's Black and White', Aboriginal and Torres Strait Islander Social Justice Commissioner, Cairns Performing Arts Centre, 30 May 2025. <https://humanrights.gov.au/about/news/speeches/mabo-oration-2025-one-land-two-laws-its-black-and-white>.

714 S Bignall, "The Collaborative Struggle for Ex-colonialism", *Settler Colonial Studies*, 2014 4(4):340-356. <https://doi.org/10.1080/2201473X.2014.911651>.

715 S Bignall, 'Colonial Fascism: Redemption, Forgiveness and Ex-colonialism', in R. Dolphijn and R. Braidotti (eds), *Deleuze and Guattari and Fascism*, 1st edn, Edinburgh University Press, 2022, 159-185. <https://doi.org/10.1515/9781399505246>.

716 S Bignall, "The Collaborative Struggle for Ex-colonialism", *Settler Colonial Studies*, 2014 4(4):340-356. <https://doi.org/10.1080/2201473X.2014.911651>; S Bignall, 'Colonial Fascism: Redemption, Forgiveness and Ex-colonialism', in R. Dolphijn and R. Braidotti (eds), *Deleuze and Guattari and Fascism*, 1st edn, Edinburgh University Press, 2022, 159-185. <https://doi.org/10.1515/9781399505246>.

717 M Brigg and M Graham. 'The relevance of Aboriginal political concepts (7): Autonomous regard', *ABC Religion and Ethics*, 28 July 2021. <https://www.abc.net.au/religion/aboriginal-political-concepts-autonomous-regard/13472098>; M Brigg and M Graham, 'The relevance of Aboriginal political concepts (8): the relationalist ethos for managing survivalism', *ABC Religion and Ethics*, 26 October 2021. <https://www.abc.net.au/religion/mary-graham-morgan-brigg-relationalist-ethos/13604298>

718 D Rigney, S Bignall and S Hemming, 'Negotiating indigenous modernity: Kungun Ngarrindjeri Yunnan - listen to Ngarrindjeri speak', *AlterNative : An International Journal of Indigenous Peoples*, 11(4):334–349. <https://doi.org/10.1177/117718011501100402>; Ngarrindjeri Regional Authority (NRA) and Government of South Australia, *Kungun Ngarrindjeri Yunnan Agreement (KNYA): Listening to Ngarrindjeri People Talking Report 2014 and 2015*, NRA and Department of Environment, Water and Natural Resources, 2016. <https://cdn.environment.sa.gov.au/environment/docs/knya-taskforce-2014-15-rep.pdf>; S Hemming, D Rigney, S Bignall, S Berg and G Rigney, 'Indigenous Nation Building for Environmental Futures: Murrundi Flows Through Ngarrindjeri Country', *Australasian Journal of Environmental Management*, 2019, 26(3):216-235. <https://doi.org/10.1080/14486563.2019.1651227>.

719 S Hemming, D Rigney, S Bignall, S Berg and G Rigney, 'Indigenous Nation Building for Environmental Futures: Murrundi Flows Through Ngarrindjeri Country' *Australasian Journal of Environmental Management*, 2019, 26(3):216-235. <https://doi.org/10.1080/14486563.2019.1651227>.

720 S Cornell, 'From Rights to Governance and Back: Indigenous Political Transformations in the CANZUS States', in W Nikolakis, S Cornell & H Nelson (eds), *Reclaiming Indigenous Governance,* University of Arizona Press, Tucson, 2019, 15-37.

721 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, Truth and Reconciliation Commission of Canada, 2015. <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf>.

722 Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), *Chega!: Final Report of the Commission for Reception, Truth and Reconciliation (CAVR)*, CAVR, 2005. <https://chegareport.org/Chega%20All%20Volumes.pdf>.

723 Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report*, Truth and Reconciliation Commission of South Africa, 1998. <https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2019/01/SouthAfrica.TRC_.Report-FULL.pdf>.

724 Yoorrook Justice Commission, *Yoorrook for Transformation: Summary Report*, Yoorrook Justice Commission, 2024. <https://www.yoorrook.org.au/reports-and-recommendations/reports>.

725 Greening Australia, *Queensland Indigenous Land Conservation Project (QILCP)*, Greening Australia website, n.d. <https://www.greeningaustralia.org.au/projects/queensland-indigenous-land-conservation-project/>.

726 Empowered Communities, *Empowered Communities: Leading Change. Empowering People,* Empowering Communities website, n.d. <https://empoweredcommunities.org.au/>.

727 Jawun, *Our Story*, Jawun website, n.d. <https://www.jawun.org.au/our-story>.

728 Queensland Aboriginal activists, quoted in A Pattel-Gray (ed), *Aboriginal Spirituality: Past, Present, Future*, HarperCollins, Melbourne, 1996, 13. <https://www.austlit.edu.au/austlit/page/7490164?mainTabTemplate=workTableOfContents&embId=7509303>.

729 Australian Electoral Commission (AEC), *Tally Room 2023 Referendum: National Results*, AEC website, 2 November 2023. <https://results.aec.gov.au/29581/Website/ReferendumNationalResults-29581.htm>.

730 United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Human Rights Treaty Bodies*, UN OHCHR website, n.d. <https://www.ohchr.org/en/treaty-bodies>; Australian NGO Coalition, *Australia's Compliance with the International Covenant on Civil and Political Rights*, Australian NGO Coalition, 2017. <https://yla.org.au/wp-content/uploads/2018/09/18623-PUBICCPRReportforHRLC2017WEB.pdf>.

731 United Nations Human Rights Committee, *Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019* UN Doc CCPR/C/135/D/3624/2019 (22 September 2022). <https://ccprcentre.org/files/decisions/CCPR_C_135_D_3624_2019_34335_E.pdf>.

Part 3

Delivering justice for our peoples

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CHAPTER 7:

JUSTICE FOR FIRST PEOPLES

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Warning: Aboriginal and Torres Strait Islander readers are advised that this chapter contains names of people who have passed away. We acknowledge the sorrow this may cause and pay our respects to the families and communities of those who have passed.

Justice for First Peoples

I believe that the great things about Australian social democracy reflect a fundamental belief in justice...

We simply cannot sweep injustice aside. Even if our own conscience allowed us to, I am sure, that in due course, the world and the people of our region would not...

Imagine if we had suffered the injustice and then were blamed for it. It seems to me that if we can imagine the injustice, we can imagine its opposite. And we can have justice.[732]

This chapter considers justice in its broadest sense. It goes beyond courts, prisons and punishment – where Aboriginal and Torres Strait Islander people are over-represented – to the many ways our people interact with governments in daily life.

In this framing, access to justice is the foundation for realising the rights articulated in international human rights standards. These standards include those articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The chapter starts by examining what access to justice means. It considers the experience of Aboriginal and Torres Strait Islander peoples in their contact with the criminal justice system. It particularly focuses on the care to prison pipeline and youth justice.

Any genuine pathway forward in these areas must incorporate into our national thinking and policy-making an embodiment of justice in its fullest sense. This includes social, climate and land justice and justice for those at the intersection of compounding inequalities and discrimination. A sense of justice, if fulfilled, would necessitate a fundamental transformation of the structures that oppress us. These structures drive the hugely disproportionate statistics we see in the headlines. They also bring about the very real and deeply felt tragedies in our lives.

Hand-in-hand with this conceptual shift, we must introduce the architecture and the instruments to give effect to justice. Without infrastructure which guarantees equal human rights and effective accountability mechanisms, inclusive justice will forever remain elusive justice.

This chapter provides detailed analysis of discriminatory systems and structures that limit or deny access to justice for Aboriginal and Torres Strait Islander peoples. Further, it demonstrates a derogation of duty by all governments to ensure compliance with nationally adopted international human rights standards and basic principles of justice and democracy. All Australians are entitled to these rights.

Governments' ongoing failure to reform continues 30 years on from when the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) provided detailed recommendations which, if implemented, would have prevented many of the negative outcomes we see today.

While these violations are occurring at the state and territory levels, the Australian Government has a responsibility to exercise its powers in a way that ensures the 'peace, order and good government of the Commonwealth'. This includes by challenging acts and omissions in state and territory jurisdictions which are in breach of Australia's human rights obligations and by putting in place consequences when jurisdictions fail to comply.[733]

Despite national commitments to achieve better outcomes for Aboriginal and Torres Strait Islander people, Australian governments are continuing to administer justice through a tunnel-visioned approach which ignores evidence and continues to perpetuate harms.

Chapter 7 Recommendations

17. The Australian Government should enable access to Medicare and Pharmaceutical Benefits Scheme-subsidised medicines for people in custody.

18. The Australian Government should provide national leadership on the establishment and implementation of appropriate standards and protections concerning child safety and youth justice interventions, through:

    a. expediting the full implementation of the Optional Protocol to the Convention Against Torture (OPCAT), including through legislative reform to establish and give effect to enforceable national standards for the treatment of people in detention

    b. implementing the recommendations of Help Way Earlier! including amending the Crimes Act 1914 (Cth) to set the age of criminal responsibility at a minimum of 14 years, ban the use of solitary confinement for children and implement nationally consistent monitoring of child detention facilities

    c. sustained needs-based investment in community-led prevention and early intervention programs operated by Aboriginal and Torres Strait Islander community-controlled organisations to address the structural drivers of First Peoples' over-representation in the justice system

    d. establishing and resourcing an independent oversight function to monitor, report on and encourage compliance with Royal Commission into Aboriginal Deaths in Custody recommendations and Closing the Gap commitments.

19. The Australian Government should refer to the Australian Law Reform Commission (ALRC) an inquiry into the conduct of police and coronial investigations into Indigenous deaths and critical incidents in custody across Australia to identify a best practice approach. As part of the inquiry, the ALRC should consider:
    a. best practice international approaches to investigations into Indigenous deaths and critical incidents in custody
    b. whether the establishment of national minimum standards for investigations of Indigenous deaths and critical incidents in custody would be beneficial and the content of such standards, drawing on international guidance such as the International Committee of the Red Cross 'Guidelines for Investigating Deaths in Custody'
    c. whether and, if so, what, legislative, policy and practice reforms are necessary to ensure best practice police and coronial investigations that are compliant with any proposed national minimum standards and Australia's international human rights obligations
    d. the benefits and feasibility of establishing a national, harmonised approach, including the establishment of a national investigatory mechanism; and the options for federal authorities to be tasked with conducting independent investigations, particularly where a state or territory police or custodial officer has been involved in the death or critical incident
    e. appropriate independent complaint processes for the families of victims of deaths in custody.
20. The Australian Minister for Communications should work in partnership with First Nations Media Australia, the Australian Communications and Media Authority, the Australian Press Council, the Media, Entertainment and Arts Alliance and the e-Safety Commissioner to develop and introduce measures to strengthen media accountability and promote accurate reporting of youth justice issues, including:
    a. a dedicated Youth Justice Media Code of Practice
    b. mandatory training on compliance with the Youth Justice Media Code of Practice for journalists covering youth justice stories.

Access to justice

Access to justice and human rights

Access to justice is both a core tenet of democracy and fundamental to enabling access to the full range of human rights Australia has committed to. It depends on our democracy working effectively. Systems and structures must support equal access to those rights and the freedom to exercise and enjoy them.

The application of justice is predominantly administered through 'the system of laws in a country that judges and punishes people'.[734] However, access to justice, underpinned by the standards contained within the International Covenants on Economic, Social and Cultural Rights (ICESCR) and Civil and Political Rights (ICCPR), has been defined as:

> *The right of individuals to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable.*[735]

The concept of justice exemplifies fairness in the way people are dealt with, reinforced by the quality or condition of being morally correct, fair, and right. A United Nations thematic summary explains:

> *In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision makers accountable … [governments are required to take] all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all.*[736]

In this regard, governments have legally binding obligations to respect, protect and fulfil the right of access to justice and human rights more broadly.[737]

In the context of the protection and promotion of all human rights, access to justice intersects with, and impacts on, our lives across all areas. These include:

- the right to life and liberty, including freedom from slavery and torture
- the right to develop, implement, maintain and practice Indigenous legal and justice systems
- self-determination and self-governance
- the right to participate in decisions that directly affect our lives
- access to natural justice, equality and non-discrimination
- protection of intellectual property and knowledge, including data sovereignty
- access to services, including health, housing, education, employment, social security and service delivery
- recognition as First Peoples, including in the nation's Constitution
- access to lands, territories and resources, including land rights, native title, cultural heritage, water rights

- appropriate remuneration for work undertaken to engage and comply with land management regimes.
- protection from the impacts of climate change, including threats to Country, culture, health, housing and livelihoods
- recognition of, and compliance with, customary law
- equality before the law, including: within the criminal and youth justice systems, access to a fair trial, victims' compensation, fair and honourable policing and police complaints processes
- child protection and freedom from family and domestic violence
- access to remedies – including compensation – for Stolen Generations, stolen wages and stolen lands and territories
- ensuring First Peoples have access to fair and culturally appropriate wills and estate processes
- protecting First Peoples' rights in case of accident and injury
- safeguarding First Peoples from unfair treatment in credit, debt and other consumer issues
- guaranteeing fair and equitable treatment of First Peoples' taxation and superannuation.[738]

Non-Indigenous structures, institutions and decision-makers almost exclusively determine the extent to which Aboriginal and Torres Strait Islander peoples can access and enjoy just outcomes. These structures primarily privilege Western values, knowledge systems and outcomes.[739] Access to just outcomes is largely impacted by:

- our contemporary and intergenerational experiences of colonisation
- our ability to maintain a connection to our cultures and Country
- our socio-economic status
- our engagement in political and public life
- our access to universal and secondary support systems – not just tertiary systems that intervene once harm or injustice has already occurred.[740]

Our access to justice is determined by our ability to fully participate in accordance with our juridical systems, our own governance structures, and whether the state decides to uphold, protect and provide accountability for Indigenous rights. As such, access to justice should be understood as a holistic concept that shifts beyond the common limited understandings of justice.

Inclusive justice depends on our ability to navigate and live within 2 worldviews successfully: the Aboriginal and Torres Strait Islander worldview and the Western worldview. These worldviews often intersect and overlap, but they also regularly conflict with each other.

First Peoples' access to justice

Colonisation has entrenched the denial of access to justice for First Peoples. The state has sanctioned the dismantling of Indigenous governance and cultural authority, legal systems, kinship structures and connections to Country, culture, language, family and community.[741] The imposed, dominant Western justice system is unable to accommodate the distinct needs and realities of Aboriginal and Torres Strait Islander peoples. This has resulted in marginalisation from both justice and democracy.

The Yoorrook Justice Commission in Victoria observed that:

> ***Since colonisation, the State has sought to control the lives of Victoria's First Peoples – forcing clans off their respective countries, detaining people on missions and reserves, and in children's institutions and prisons, separating families and controlling reproduction via restrictions on marriages. First Peoples have been criminalised and imprisoned for resisting State intervention, for maintaining their sovereign rights to country and culture and not complying with imposed Western laws. These actions and policies involved gross violations of human and cultural rights and were based on complete rejection of the equal dignity and humanity of First Peoples.***[742]

The legal framework imposed through the federated system of government (state and federal laws and institutions) has marginalised Indigenous laws. Non-Indigenous institutions have largely imposed First Peoples' engagement with the legal system. These institutions are grounded in non-Indigenous peoples' values, beliefs, aspirations and histories. Access to justice is on their terms, determined by them as a majority population.

A core component of the operation of this structure is the privileging of non-Indigenous knowledge systems. These knowledge systems are embedded as the status quo within legal institutions and processes, situating non-Indigenous structures as the legitimate system which claims to be 'objective', 'neutral' and 'impartial'.[743]

This has ensured the development and continuation of justice as conceptualised through predominantly, and almost exclusively, non-Indigenous perspectives.

Today, the State dictates, controls and rations access to justice. The Law Council of Australia notes:

> ***All Australians have, under the law, the right to seek justice. But this right doesn't count for much if it cannot be exercised.***[744]

Successive governments have introduced extensive domestic legislation, policies, programs and strategies designed to improve outcomes and promote access to justice for the First Peoples of Australia. Still, the lived experience of First Peoples' access to justice is at best limited and at worst systematically denied.

Even when Aboriginal and Torres Strait Islander representatives are elected to the Parliament, for example, their numbers within parliamentary caucuses constrain their capacity to influence outcomes.

As highlighted by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), access to justice is essential for the protection and promotion of all human rights. Access to justice requires an ability to:

> ***... seek and obtain remedies for wrongs through institutions of justice, formal or informal, in conformity with human rights standards.***[745]

Article 2 of the UNDRIP declares:

> ***Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity***[746]

While Aboriginal and Torres Strait Islander peoples are, under international law, 'free and equal to all other peoples', our access to justice remains elusive.

The systems imposed since colonisation have, for the most part, delivered injustice. The collective harms inflicted are intergenerational, historical and ongoing for Aboriginal and Torres Strait Islander communities and families. As observed by former Prime Minister, the Hon Paul Keating, 'the past lives on in inequality, racism and injustice.'[747]

Barriers to access to justice for First Peoples

Across Australia, Aboriginal and Torres Strait Islander peoples continue to report critical issues that hinder our access to justice. These urgent issues can be understood through the 4 foundational rights articulated in the UNDRIP:

- self-determination
- participation in decisions that affect us
- respect for and protection of culture
- equality and non-discrimination.

Self-determination

Self-determination remains constrained by the ongoing imposition of laws and systems that effectively limit Indigenous governance and law. Australia's social and legal structures have consistently failed to recognise, implement and embed the distinct rights of Aboriginal and Torres Strait Islander peoples as Indigenous peoples.

Governments are failing to invest in community-led justice solutions. This heavily influences the chronic under-resourcing of Aboriginal and Torres Strait Islander–specific social support and legal advocacy services. At the same time, governments continue to direct significant funding into punitive mainstream systems, such as family and community policing and institutions of detention. The effect is to undermine Indigenous authority and self-determination while sustaining systems that have consistently failed to deliver just outcomes.

Participation in decisions that affect us

Governments and institutions consistently fail to listen to, or act on, the lived experience of Aboriginal and Torres Strait Islander peoples. Independent oversight and accountability complaint mechanisms – including those promised under the *National Agreement on Closing the Gap* (CTG) and within justice systems – are often not delivered. Where these mechanisms do exist, they are largely culturally inappropriate, inaccessible or ineffective.

Governments have still not fully implemented the recommendations of historical landmark reports such as the RCIADIC and *Bringing Them Home.* This is despite governments commissioning the reports and First Peoples informing the findings and recommendations.

More recently, the Commonwealth Government has not responded to, nor actioned, the report of the parliamentary inquiry into the application of the UNDRIP in Australia (finalised in November 2023).[748]

This highlights the ongoing lack of action to embed the UNDRIP into Australian law and policy – even though Australia announced its support for the UNDRIP 16 years ago.

Participation in decisions that affect us is often limited to 'tick-a-box', disingenuous engagement mechanisms. Where there is no legislative foundation, governments are not obliged to engage with First Peoples. Even when engagement does occur, too often governments disregard our proposals with little transparency or accountability to our communities.

We are seeing increasing First Nations representation in parliaments and government agencies. Industry partners are making more commitments to increase Aboriginal and Torres Strait Islander employment outcomes through Reconciliation Action Plans and Indigenous employment strategies, particularly for roles that inform Indigenous outcomes. However, Aboriginal and Torres Strait Islander peoples are still under-represented in critical positions of influence across political, legal and justice institutions.

Respect for, and protection of, culture

Respect for, and protection of, culture continues to be denied through the extensive and permanent removal of Aboriginal and Torres Strait Islander children and young people from their families, communities and Country. This includes the permanent placement of Aboriginal and Torres Strait Islander children into non-Indigenous care. This practice severs – and sometimes permanently breaks – connections and denies those impacted with access to their cultural identity.

Governments introduced legal processes such as native title and land rights regimes with the stated intention to 'rectify the consequences of past injustices' and advance the rights of First Peoples – including the right to culture.[749]

Instead, these regimes have often further entrenched the impacts of colonisation, fractured communities and privileged non-Indigenous knowledge systems, limiting the exercise of Aboriginal and Torres Strait Islander legal rights. In many instances, laws and policies restrict people's access to and enjoyment of culture and Country. Land justice claims are often resisted or undermined by interrelated legislation, policies and practices that fail to uphold human rights – and Indigenous rights specifically (see Chapter 8: Land Justice).

International standards and domestic legislation require respect for, and protection, of culture and cultural heritage. However, there is limited accountability to these laws by governments or mainstream stakeholders. This is demonstrated by ongoing (and in some instances state sanctioned) damage to, and destruction of, cultural heritage and sites of significance.

Equality and non-discrimination

Aboriginal and Torres Strait Islander people experience inequality and are disproportionately discriminated against across all intersecting areas of their lives. This includes individual and collective experiences of race, sex, disability and age discrimination and individual prejudice within social settings (physical and virtual). First Peoples also experience structural and systemic discrimination, resulting in unfair treatment embedded in, and maintained by, societal and legal institutions, laws, policies and practices.

The CTG agenda, for example, illustrates both the scale of unmet rights and the limits of such approaches to justice. These approaches leave the underlying inequities largely unaddressed.

Prior to 2008, government approaches to addressing First Peoples' inequality focused almost entirely on measuring how much money was being spent. There were no commitments or targets for action. It was a system totally lacking accountability. Indeed, references to record levels of expenditure often served to build resentment against First Peoples.[750]

Since 2008, Australian governments have sought to address disadvantage through CTG. The framework signals the existence of entrenched inequality and sets benchmarks for addressing it. However, it has also been critiqued for reinforcing deficit-based views of Aboriginal and Torres Strait Islander communities and for limiting First Peoples' self-determination.

Each CTG target – whether life expectancy, school attendance or housing – points to a breach of basic human rights. In most cases, the existence of a target is itself evidence of a failure to uphold rights already guaranteed under international law. These are rights which the vast majority of non-Indigenous Australians enjoy. The CTG process therefore exposes systemic failures and provides a benchmark against which governments can remedy violations and be held accountable for meeting their human rights obligations.

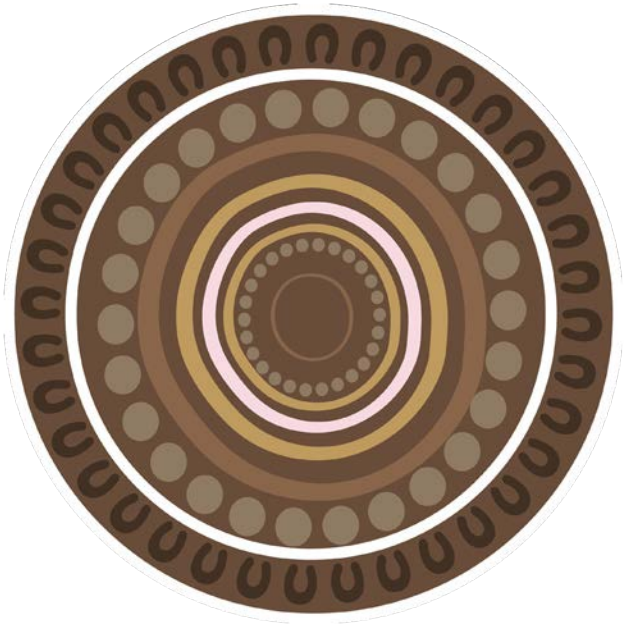
Reports such as *Wiyi Yani U Thangani* and *Help Way Earlier* highlight the challenges faced by Aboriginal and Torres Strait Islander women and children, including higher rates of experiencing family and domestic violence and incarceration.[751] Various coronial inquests and the parliamentary Inquiry into Murdered and Missing Aboriginal and Torres Strait Islander Women and Children have highlighted the rate and severity of the violence experienced by Aboriginal and Torres Strait Islander women.[752]Change the Record has documented the disproportionate criminalisation of First Peoples with disability. This is often linked to systemic failures in disability support services.[753]

Aboriginal and Torres Strait Islander led initiatives – such as community-controlled family violence services, specialist Aboriginal and Torres Strait Islander women's legal services, justice reinvestment schemes and disability justice programs – show that intersectional approaches can succeed when designed and governed by our communities.[754]

An intersectional perspective, therefore, demands that justice responses be both culturally safe and attentive to the multiple realities shaping access to justice. For example, the *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Family Safety Plan* was co-designed by Government and First Peoples.[755]

One of the most pressing areas which reveals these intersecting disadvantages is the criminal justice system. Here, structural racism has been documented for decades, yet reforms remain partial and unimplemented.

The criminal justice system is one of the most visible sites where injustice against Aboriginal and Torres Strait Islander peoples is perpetuated. The impacts of child removal, the care to prison pipeline, over-incarceration, and deaths in custody are examined further below and throughout this report.



The care-to-prison pipeline

The criminal justice system

Proportionately, we are the most incarcerated people on the planet. We are not an innately criminal people...Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them...And our youth languish in detention in obscene numbers. They should be our hope for the future.[756]

The exposure of Aboriginal and Torres Strait Islander people to the criminal justice system is at crisis point in Australia. On a population basis:

... they have contact with the criminal justice system – as both offenders and victims – at much higher rates than non-Indigenous Australians[757]

Despite the extreme over-representation in these systems, it is important to acknowledge that the majority of First People have never been imprisoned.

Over-representation occurs at every stage of the system. This is deeply problematic because it increases the likelihood of incarceration. Initial contact – often through over-policing – leads to higher charging rates, greater likelihood of being denied bail and increased time spent on remand.

Each stage compounds the next. What begins as disproportionate exposure to the system results in disproportionate incarceration. Systemic racism compounds disproportionate incarceration rates.

This takes the form of racial profiling, discriminatory policing practices and bias in charging, bail and sentencing decisions. This has resulted in Aboriginal and Torres Strait Islander people becoming the most imprisoned people in the world.[758]

First Peoples' experience of the criminal justice system

While only 3% of the Australian population, Aboriginal and Torres Strait Islander people represent over 35% of the total adult prison population as of 30 June 2024.[759] As at 30 June 2024, 2,304 out of every 100,000 Aboriginal and Torres Strait Islander adults were in prison nationally. This represents a rise from 2,042 per 100,000 in 2023, and from 1,906 per 100,000 in 2019.[760]

In some Australian jurisdictions, such as the Northern Territory, it is estimated that Aboriginal and Torres Strait Islander adults represent over 88% of the prison population[761] In Western Australia, Aboriginal and Torres Strait Islander people represent over 44% of the total prison population.[762]

A significant proportion of Aboriginal and Torres Strait Islander adults in custody are held on remand, awaiting trial or sentencing. Nationally, approximately 44% of First Peoples in prison are unsentenced.[763]

Poverty and housing instability further entrench remand rates because individuals who cannot demonstrate secure accommodation or afford bail are more likely to be detained before trial, regardless of guilt. Experts highlight that the housing crisis has significantly affected the numbers of people on remand.

The total number of people in jail on remand has nearly doubled across Australia over the past decade, while the nation's sentenced prison population has increased just 1.5%... Indigenous Australians made up 61% of the rise in unsentenced prisoner numbers.[764]

Many Aboriginal and Torres Strait Islander people on remand ultimately receive non-custodial outcomes or sentences that essentially amount to time already served.[765] The cumulative effect is both harmful and indicative of deeper structural failures in the justice system's handling of First Peoples.

Contact with the criminal justice system is marked not only by disproportionate criminalisation and harm, but also by a lack of effective rehabilitation and reintegration supports.

Aboriginal and Torres Strait Islander people leaving prison often face barriers to housing, employment, healthcare and community connection. This increases the risk of reoffending and reincarceration.[766]

For women, children, people with disability and LGBTIQA+ people, these barriers are compounded by gendered violence, trauma, systemic racism, ableism and queerphobia. The absence of sustained investment in culturally safe, community-led rehabilitation pathways perpetuates cycles of incarceration and undermines opportunities for healing, justice and long-term safety.

Women's experiences

Aboriginal and Torres Strait Islander women are the 'fastest growing prison population' in Australia.[767] First Peoples women are estimated to be up to 25 times more likely to be incarcerated than non-Indigenous women.[768]

Many Aboriginal and Torres Strait Islander women criminalised within the legal system are mothers, grandmothers, sisters and aunties. They are also leaders in their communities and primary caregivers in their families.

They embody instrumental roles in supporting and nurturing the collective social and emotional wellbeing of children and whole communities.[769] As the 2017 Human Rights Law Centre Report states:

Prison is a stressful and traumatic experience for many Aboriginal and Torres Strait Islander women, most of whom have significant histories of trauma. It disconnects women from children, family, community and country. The unnecessary imprisonment of a growing number of Aboriginal and Torres Strait Islander women contributes to the dislocation and fragmentation of families and communities, when action to strengthen communities is needed.[770]

These harms are compounded by the increasing number of Aboriginal and Torres Strait Islander women dying in custody. Many of these women die in police watchhouses or during arrest.[771] This underscores the urgent need not only to reduce First Peoples women's imprisonment, but also to address the systemic failures in policing, custody, and healthcare that place Aboriginal and Torres Strait Islander women at heightened risk of death once incarcerated.

Children and young people

Within the current political, legal, cultural and social context, Aboriginal and Torres Strait Islander children and young people are exposed to the criminal justice system at disproportionate rates through several pathways. These intersecting pathways are referred to as the 'care-to-prison pipeline'.

Even before Aboriginal and Torres Strait Islander children and young people have reached the minimum age of legal responsibility (10 to 14 years of age), those who come from disadvantaged, vulnerable families and communities are more likely to be exposed to the child safety (and/or child 'protection', 'welfare') system through what is referred to as 'family policing'.

Family policing reflects the excessive surveillance and intervention into certain families by child protection authorities.[772] Family policing, in turn, increases the likelihood of children and young people becoming engaged with the criminal justice system.

As Sisters Inside noted in their submission to the Informing the Agenda (ITA) Project:

> ***The surveillance of First Nations families, and particularly criminalised mothers, by the family policing system, and the high rates of subsequent child theft, contributes to long term harm and trauma, and places children on the trajectory to criminalisation and incarceration.[773]***

People with Disability

Evidence also highlights that a high proportion of criminalised Aboriginal and Torres Strait people have disability, including cognitive and intellectual disability.[774] The impact of incarceration can be lifelong and devastating, as described by an ITA Project participant:

> ***They've been sentenced and then during their sentence, they're...then placed there for life. There's no way out. They're stuck. They're living in a cell for the rest of their life and not a single Aboriginal person is sitting there assessing the person.***

These practices highlight the systemic failure to provide appropriate disability supports. Authorities too often use incarceration as a default response to disability rather than investing in therapeutic, community-based care and diversionary pathways.[775]

The Disability Royal Commission confirmed what Aboriginal and Torres Strait Islander people have long described: people with disability, particularly cognitive disability, are significantly over-represented at every stage of the criminal justice system. This is especially acute for Aboriginal and Torres Strait Islander people with cognitive disability; the Royal Commission described their over-representation in custody – particularly in youth detention – as a 'largely hidden national crisis'.[776] The Royal Commission found this is not the result of disability itself, but of systemic disadvantage, including poverty, unstable housing, violence and a lack of culturally safe disability supports.[777]

The Disability Royal Commission recommended urgent reforms, including:

- repealing laws that allow indefinite detention
- prohibiting solitary confinement of children with disability
- improving disability screening and support in prisons and youth detention
- strengthening culturally safe, community-based services led by Aboriginal Community Controlled Organisations.

LGBTIQA+ People

Historical injustices toward LGBTIQA+ communities – including violence, misgendering and delayed (or non-existent) police response to hate crimes – continue to shape the relationship between those communities and the justice system. Research has highlighted that lesbian, gay, bisexual, trans and gender-diverse people are over-represented in prison populations. They experience higher levels of discrimination, violence and trauma than non-LGBTIQA+ prisoners.[778]

Correctional policies have been slow to address these challenges. The absence of enforceable protections means that many LGBTIQA+ prisoners remain exposed to unsafe environments and inadequate healthcare.[779] For trans and gender-diverse people in particular, criminalisation intersects with systemic ignorance and hostility within police, courts, and correctional environments. These intersections compound their vulnerability and denied access to culturally safe justice.[780]

The compounded experience of Aboriginal and Torres Strait Islander LGBTIQA+ people illustrates the particularly devastating impact of intersecting oppressions. As one study notes:

> ***When conjoined, intersecting identities reveal how racism and queer phobia affect well-being, negating the right to health and resulting in devastating impacts on people's social, cultural, and emotional well-being.***[781]

This intersection underscores the need for culturally safe and queer-affirming justice responses that account for both systemic racism and queerphobia.

Royal Commission into Aboriginal Deaths in Custody

Of critical concern is the lack of investment into preventing Aboriginal and Torres Strait Islander people's exposure to the criminal justice system. Most critical is the continuation of Aboriginal and Torres Strait Islander people dying in custodial settings. Since the RCIADIC in 1991, more than 600 First Peoples nationally have died in custody.[782] No one has ever been held criminally responsible for those deaths, and there is no end in sight for this unacceptable ongoing injustice.

The RCIADIC made 339 recommendations and observed that, in relation to Aboriginal deaths in custody:

> ***... this occurs not because Aboriginal people in custody are more likely to die than others in custody but because the Aboriginal population is grossly over-represented in custody. Too many Aboriginal people are in custody too often.***[783]

Further, the RCIADIC found that:

> ***... there appeared to be little appreciation of and less dedication to the duty of care owed by custodial authorities and their officers to persons in custody. We found many system defects in relation to care, and many failures to exercise proper care and in general a poor standard of care.***[784]

Responding to the Royal Commission into Aboriginal Deaths in Custody

The RCIADIC highlighted the horrific and permanent impacts of Aboriginal and Torres Strait Islander people's over-representation in prison. Despite the urgency of the RCIADIC findings, many recommendations have not been implemented.[785] Aboriginal and Torres Strait Islander imprisonment rates continue to climb, especially among First Peoples children, young people and women.[786]

Over 3 decades on, successive reviews have confirmed the widespread failure to give effect to the RCIADIC's intent. Efforts to ensure nationally coordinated, focused approaches to implementation have fallen away in the decades since the RCIADIC reported in 1991. The structural transformation required to ensure accountability and compliance has been lost.

Key challenges since the RCIADIC include:

- The absence of independent investigation mechanisms, particularly for the conduct and actions of police relating to deaths in custody and critical incidents. Coronial inquests play an important accountability mechanism after a death has occurred and they have identified a range of systemic issues that require addressing. These processes would benefit from independent investigations. Such processes would build community confidence that authorities take inappropriate conduct of police seriously when it occurs and collect key information at the time of such misconduct.
- A lack of structural and legislative reform. While national standards have been developed in some areas – such as out-of-home care, juvenile justice and for people found unfit to plead or subject to indefinite detention – these are inconsistently adopted, lack enforceability and do not amount to a comprehensive framework for custody. There is also no legislative backing to give effect to the Optional Protocol to the Convention Against Torture (OPCAT). This leaves a clear gap in enforceable national standards for the treatment of people in detention.
- Practical gaps in implementation. Where authorities have made commitments but not embedded them across systems, Aboriginal and Torres Strait Islander peoples are exposed to ongoing risks.
- A lack of First Peoples' representation in justice processes. Non-Indigenous juries and judges decide on the criminality and sentencing of First Peoples. Non-Indigenous judges rule on those responsible for deaths in custody, with no person or agency ever held criminally responsible for an Aboriginal or Torres Strait Islander person's death in a custodial setting.

Aboriginal and Torres Strait Islander people are dying in these systems. Little is being done to stop this, and nobody is taking responsibility for it. To address these long-standing failings, national leadership must extend beyond piecemeal reforms toward a coordinated, structural response.

Independent monitoring and oversight are critical to ensuring transparency and accountability in relation to deaths in custody and the implementation of reform commitments. Equally important is a clear national driver for change – one that promotes reform, pushes governments to embed international human rights standards (such as the Mandela Rules – see below), and ensures consistency across jurisdictions.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)[787]

The United Nations Standard Minimum Rules for the Treatment of Prisoners – named the Mandela Rules after Nelson Mandela – sets out minimum standards to protect the dignity and human rights of people in prison. Adopted by the UN General Assembly in 2015, the 122 rules cover areas such as prison management, fair treatment, and non-discrimination based on sex, gender, religion, political opinion, race, colour or nationality.[788] Although not legally binding, the Rules reinforce existing obligations under international human rights law.[789]

Australia has not incorporated the Mandela Rules into federal, state or territory law. State and territory governments, which run Australia's prison and youth justice centres, sometimes reference the Mandela Rules. However, there are no mechanisms to ensure their compliance. Furthermore, jurisdictions often introduce laws and policies that are inconsistent with the Rules. This failure has a particularly serious impact on First Peoples, who make up 36% of prisoners despite being only 3.8% of the population.

Australia's ratification of OPCAT in 2017 was meant to strengthen oversight of prisons through independent inspections. National Preventive Mechanisms (NPMs) are national independent bodies established to monitor places of deprivation of liberty. NPMs rely on the Mandela Rules to guide monitoring. However, Australia has not yet fully implemented OPCAT. States including New South Wales, Queensland and Victoria have failed to designate NPMs.

The UN has raised concerns about the ongoing use of solitary confinement in breach of international standards. The Mandela Rules define solitary confinement as locking a person in a cell for 22 hours or more per day without meaningful human contact. The Rules prohibit solitary confinement for children, people with disability or mothers with children. Solitary confinement should only be used in exceptional cases, for as short a time as possible and only as a last resort.

Nevertheless, youth detention centres in every state and territory use solitary confinement. Just as Indigenous young people are disproportionately represented in detention, they are also, subsequently, over-exposed to practices such as solitary confinement. This puts them at risk of negative health and wellbeing consequences, such as extreme anxiety or worse.

In Australia, the power to isolate a child is subject to statutory limitations. However, these protections vary by jurisdiction, and no jurisdiction prohibits the solitary confinement of children. States such as Western Australia have weak oversight and accountability to protect young people in solitary confinement. For example, in 2023 the Supreme Court of Western Australia found that 3 young people were unlawfully isolated in their cells for a combined, prolonged period of 167 days.[790] Other cases have led to fatal self-harm. The United Nations Committee against Torture has expressed concern over particular detention centres and their use of solitary confinement in ways that contravene the Mandela Rules.[791]

To address these gaps, it is critical that Australia introduces federal legislation to enforce the Mandela Rules and establish clear accountability for practices such as solitary confinement. In addition, all jurisdictions need to fully fund and operate their NPMs without delay and adopt the recommendations in the Commission's Road Map to OPCAT Compliance.[792] These reforms would help uphold human rights in detention, reduce the risk of abuse and address the disproportionate harms faced by First Peoples in the justice system.

Text box 7.1: The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Experience has shown the value of dedicated mechanisms to track progress and promote systemic reform. Without such independent capacity, governments have repeatedly failed to follow through on the RCIADIC's intent. This has left Aboriginal and Torres Strait Islander people exposed to ongoing risk and injustice.

For example, Recommendation 165 of the RCIADIC was to eliminate or reduce the potential for harm from hanging points in police and prison cells in order to prevent deaths in custody.[793] While many institutions have reportedly addressed this within their facilities, hanging points within cells remain an ongoing concern. Hanging deaths of Aboriginal and Torres Strait Islander people in custody continue to occur.

At its most extreme, within a 12-month period (2023–2024), we have seen the tragic deaths in custody of 2 Aboriginal children, both in Western Australian youth detention facilities. At the time of his death, the first child was held at Unit 18, a block within Casuarina Adult Prison gazetted as a Juvenile Security Facility to 'temporarily house disruptive male detainees'. The second child was detained at the Banksia Hill Youth Detention Facility at the time of his death (he had also spent time at Unit 18). Banksia Hill is a maximum-security facility that holds sentenced and unsentenced boys and girls aged between 10-17 years of age from across WA. It is the only youth facility in the state.[794]

Concerns have been raised about both facilities over many years, along with pressure to close Unit 18. The Australian Human Rights Commission (the Commission) gave evidence before the United Nations Committee Against Torture in 2022 regarding the Banksia Hill Facility.[795]

In addition to hanging points within these facilities, further concerns have been raised about the impact of lockdowns. These often happen due to limited staffing availability. Lockdowns result in delayed responses to calls for assistance, limit children's access to appropriate out-of-cell time and prevent opportunities to conduct repairs to facilities/cells.

The WA Government is in the process of building a new youth detention facility. They have advised that until it is finalised (currently scheduled for 2028), they have no alternative options to the current arrangements.[796]

Denial of health rights in prison

Another urgent issue that continues to place Aboriginal and Torres Strait Islander people at risk of death in custody is prisoners' structural exclusion from the public health system. Unlike the broader community, people in prison cannot access Medicare or the PBS. This separation entrenches a 2-tiered health system which denies Aboriginal and Torres Strait Islander people – already grossly over-represented in custody – access to culturally safe and equivalent health care. Coronial inquiries, including into the death of Veronica Nelson (discussed in more detail below), have found that this inequity contributes directly to preventable deaths.

The Commission heard calls through the ITA process for urgent reform, including the need for a Ministerial exemption to allow people in prison to access Medicare and PBS-subsidised medicines.[797] Such measures would ensure parity of care with the broader community, strengthen continuity of treatment and reduce the risks of preventable deaths in custody. Without such systemic reform, Aboriginal and Torres Strait Islander peoples will remain exposed to avoidable harms and preventable deaths while incarcerated.

Recommendation 17

The Australian Government should enable access to Medicare and Pharmaceutical Benefits Scheme-subsidised medicines for people in custody.

Factors influencing incarceration

As the Independent Review into the Over-representation of First Nations People in the ACT Criminal Justice System acknowledged:

> *... the over-representation of First Nations people in correctional systems cannot be understood in isolation of the systemic racism that has been endemic across other statutory systems, including child protection'.*[798]

Despite formal equality before the law, Aboriginal and Torres Strait Islander peoples continue to face systemic injustice. Discriminatory practices remain embedded in policing, child protection, welfare and judicial systems, ensuring that the legacies of colonisation are reproduced in contemporary form. Rates of incarceration, deaths in custody, child removal, and discriminatory policing all point to the failure of governments to achieve substantive equality.

Core contributors to the criminalisation of Aboriginal and Torres Strait Islander peoples include:

- the ongoing systemic discrimination and institutional racism which prevents access to justice
- the ongoing failure to invest in Indigenous-led preventative, early intervention justice-based solutions and supports
- laws and policies that promote criminalisation and over-incarceration.[799]

In 2023, Ruth McCausland and Eileen Baldry analysed data sets of 2,731 people incarcerated in NSW. They found 8 'social determinants of justice' that increase the risk of incarceration:

- having been in out-of-home (foster) care
- receiving a poor school education
- being Indigenous
- having early contact with police
- having unsupported mental health and cognitive disability
- engaging in problematic alcohol and other drug use
- experiencing homelessness or unstable housing
- coming from or living in a disadvantaged location.[800]

Structural practices in the legal system, such as 'tough on crime' policies, bail restrictions and the low age of criminal responsibility (well below international standards), promote the incarceration of Aboriginal and Torres Strait Islander peoples. There is a lack of trauma-informed and culturally competent decision-makers across courts, policing and corrections. At the same time, governments have consistently failed to invest in culturally relevant early intervention and preventative supports that holistically strengthen individual and collective social and emotional well-being.

This lack of investment entrenches cycles of disadvantage and funnels people into the justice system, rather than supporting communities to thrive.

Harmful policing and welfare practices continue to disproportionately target Aboriginal and Torres Strait Islander families and communities. Neglectful and dangerous conditions in custodial settings – including the use of spit hoods, overcrowding and lack of access to services – undermine dignity and safety. Support for reintegration after incarceration is inadequate. Systems also do not effectively address specific vulnerabilities, including those experienced by Aboriginal and Torres Strait Islander women and girls, LGBTIQA+ community members and people with disability.

Removal of children and exposure to harm

Punitive approaches towards Aboriginal and Torres Strait Islander communities fail to recognise the ongoing impacts of colonisation and intergenerational and collective trauma experienced by individuals and communities. For example, statistics about Stolen Generations survivors and their descendants show they are more likely to be incarcerated than other Aboriginal and Torres Strait Islander community members.[801]

Bringing Them Home Report

The ongoing impact of Australia's legal system on First Peoples has been repeatedly investigated. In 1997, the Commission released *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. The inquiry investigated the nature and impact of the violent and harmful policies and practices during the twentieth century which saw Aboriginal and Torres Strait Islander children forcibly removed from their families. Authorities placed many of these children in the 'care' of non-Indigenous institutions and households.

Within these institutions and households many children experienced horrific sexual, mental, emotional, cultural and physical abuse. The survivors of these policies are referred to as the Stolen Generations.

First Peoples communities continue to feel and experience the impacts of these policies and practices today. These impacts produce intergenerational, individual and collective trauma for families and communities.[802] The *Bringing Them Home Report* found that:

> ***... the removal of Indigenous children by compulsion, duress or undue influence was usually authorised by law, but that those laws violated fundamental common law rights which Indigenous Australians should have enjoyed equally with all other Australians. As subjects of the British Crown, Indigenous people should have been accorded these common law liberties and protections as fundamental constitutional rights.***[803]

Further, it found that:

> ***... from about 1950 the continuation of separate laws for Indigenous children breached the international prohibition of racial discrimination. Also racially discriminatory were practices which disadvantaged Indigenous families because the standards imposed were standards which they could not meet either because of their particular cultural values or because of imposed poverty and dependence.***

Finally, from 1946 laws and practices which, with the purpose of eliminating Indigenous cultures, promoted the removal of Indigenous children for rearing in non-Indigenous institutions and households were in breach of the international prohibition of genocide. From this period many Indigenous Australians were victims of gross violations of human rights.[804]

For survivors of the Stolen Generations, access to justice has not been abstract but bound up with their lived experience of legal systems. These systems authorised their removal, denied them protection and enabled gross human rights violations. In this context, the pursuit of justice has centred on reparations – seeking redress, recognition and healing for harms that continue to reverberate across generations.

Efforts to deliver reparations have developed across many jurisdictions: Victoria, New South Wales, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory have each established compensation or redress schemes. The schemes have different eligibility rules, payment levels and forms of healing support. Queensland remains the only jurisdiction yet to provide formal reparations.

Contemporary child removal practices

Today, state welfare agencies are removing Aboriginal and Torres Strait Islander children at higher rates than the period investigated in the *Bringing Them Home Report*.[805] This highlights ongoing racially discriminatory practices that violate Aboriginal and Torres Strait Islander peoples' human rights. Further, research has found that the Stolen Generations survivors and their descendants are more likely to be criminalised within the legal system and incarcerated.[806]

Growing research also evidences a 'care-to-prison pipeline', commonly referred to as 'crossover kids', that exists between state child removal and increased likelihood of incarceration.[807]

This speaks starkly to the impacts of child removal on access to justice, particularly through criminalisation and institutionalisation. Aboriginal and Torres Strait Islander children are removed permanently from our communities, perpetuating the disconnection from family, culture and Country. These removal practices entrench cycles of criminalisation and institutionalisation that undermine both justice and healing for Aboriginal and Torres Strait Islander peoples.

Too often, welfare agencies misclassify the poverty experienced by First Nations peoples as neglect. Leading researchers in the field have stated:

Currently, child protection services often punish and blame individuals for their 'dysfunction' or risk. Genuine support, with a focus on addressing the drivers of child protection involvement, remains lacking.

For First Nations families, these drivers include poverty, housing issues, racism, trauma, mental health concerns, domestic and family violence, and alcohol and other drugs abuse.

Rather than offering support to First Nations families who are in dire circumstances – such as financial support – the response of child protection systems remains coercive, controlling, and punitive.

For example, reasons for emotional abuse substantiations can include children witnessing domestic and family violence. Rather than providing ways for victim-survivors of domestic and family violence (often women and children) to stay together, child removal often occurs.

There is no focus on the structures driving these problems. Instead, blame is placed on the affected individual[s].[808]

Families are penalised for conditions of hardship rather than supported to meet their children's needs. Welfare agencies interpret issues such as overcrowded housing, lack of access to nutritious food, inadequate clothing or missed medical appointments as parental failure. In reality, these are the predictable consequences of systemic poverty and structural disadvantage.

This makes poverty a key driver of the 'care-to-prison pipeline': economic disadvantage leads to substantiations against Aboriginal and Torres Strait Islander families at far higher rates than for non-Indigenous families.

Rather than addressing housing shortages, family violence, trauma, employment discrimination and economic disadvantage, child protection responses continue to be coercive and punitive. Both the *Family Matters Report* and the *Safe and Supported National Framework for Protecting Australia's Children* outline a clear path to achieving safety and wellbeing for our children, young people and families.[809]

As the Family Matters Report finds:

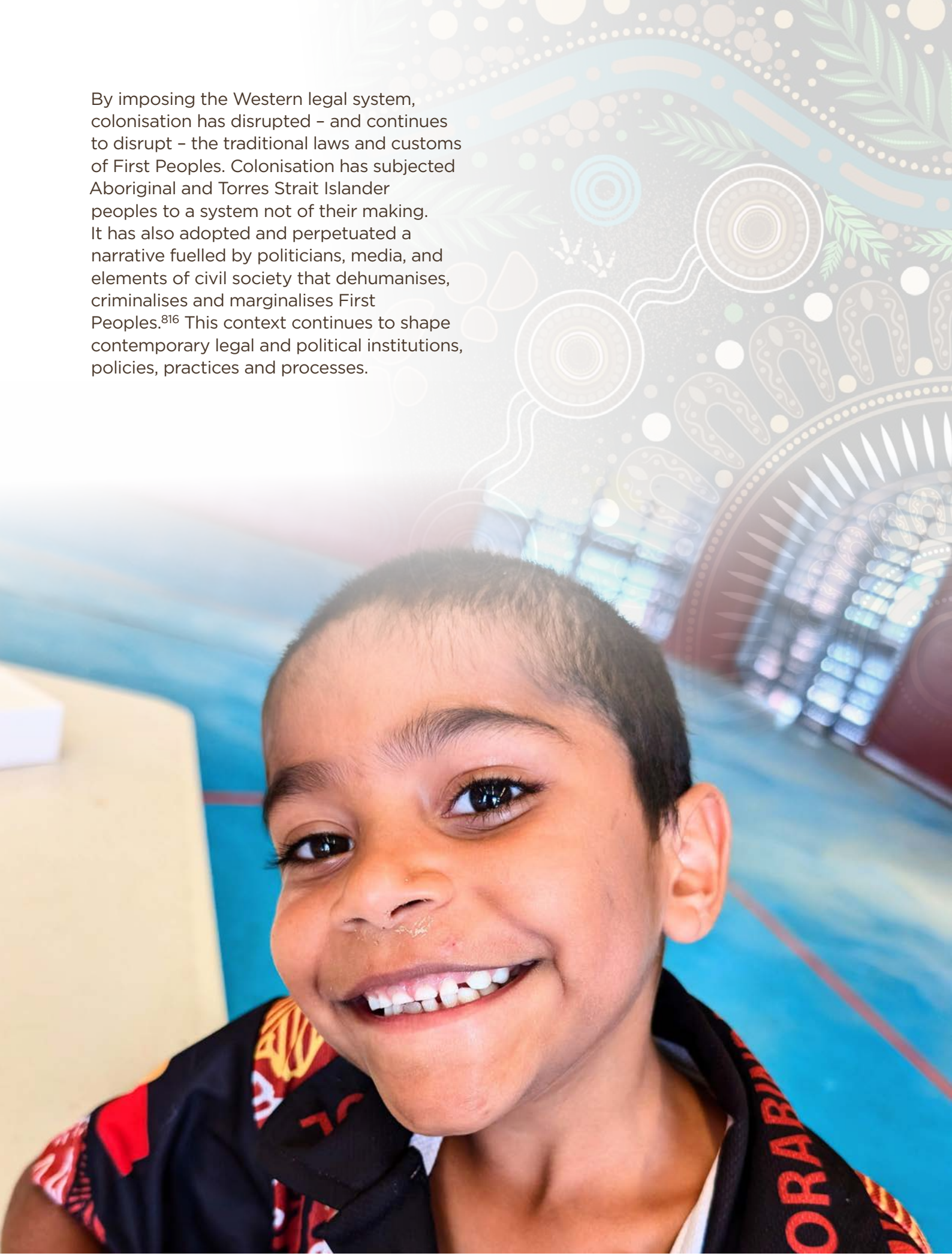
Economic disadvantage is a significant driver of child protection substantiations for Aboriginal and Torres Strait Islander children, with 28.6% of substantiations in 2022–23 being primarily due to neglect (compared to 16.8% of substantiations for non-Indigenous children) (AIHW 2024a). This reflects the significant barriers our families face in accessing the resources and supports they need to provide safe and appropriate care for their children.[810]

Within state and territory child protection systems, Aboriginal and Torres Strait Islander children and families continue to be subjected to surveillance and control, leading to over-representation.[811] In 2024, 50 out of every 1,000 Aboriginal and Torres Strait Islander children aged 0–17 years were living in out-of-home care, compared with 4.8 out of every 1,000 non-Indigenous children.[812] This means that Aboriginal and Torres Strait Islander children were just over 10 times more likely to be living in out-of-home care.

Despite decades of community advocacy in this space, Aboriginal and Torres Strait Islander children and young people continue to be removed and placed permanently with non-Indigenous people. These removals disconnect Aboriginal and Torres Strait Islander children from their cultures, families and communities.[813]

This directly contravenes state-based legislative requirements and guidelines, including the Aboriginal and Torres Strait Islander Child Placement Principle.[814] Further, the tendency to treat poverty as neglect fails to critically comprehend the ongoing impacts of policies which imposed laws and practices of dispossession, segregation, exclusion and assimilation.[815]

By imposing the Western legal system, colonisation has disrupted – and continues to disrupt – the traditional laws and customs of First Peoples. Colonisation has subjected Aboriginal and Torres Strait Islander peoples to a system not of their making. It has also adopted and perpetuated a narrative fuelled by politicians, media, and elements of civil society that dehumanises, criminalises and marginalises First Peoples.[816] This context continues to shape contemporary legal and political institutions, policies, practices and processes.



The criminalisation of Aboriginal and Torres Strait Islander children

The hyper-incarceration of Aboriginal and Torres Strait Islander children and young people

Putting children into cells...that is child abuse.[817]

The youth justice system is the set of processes and practices for managing children and young people who have committed, or allegedly committed, an offence. In Australia, it deals primarily with young people aged 10–17 at the time of the offence. A major component of the system is the supervision of young people in the community or in detention.[818]

Aboriginal and Torres Strait Islander children and young people are over-represented within the youth detention population. Evidence reveals that the most vulnerable members of our young people are criminalised at high rates. This particularly affects children and young people with experiences of trauma, those from lower socio-economic backgrounds, those with a history of removal into out-of-home care and those with disability.[819]

In 2023–2024, an average of 26 out of every 10,000 Aboriginal and Torres Strait Islander young people aged 10–17 years were in detention on any given day.[820]

By contrast, the rate for non-Indigenous young people in the same age group was just 1 per 10,000, making Aboriginal and Torres Strait Islander youth approximately 26 times more likely to be detained.[821]

In 2024, nationwide there were 845 children and young people held in detention on an average night in the June quarter period, with Aboriginal and Torres Strait Islander youth representing 60%.[822] It is estimated that 74% of children and young people in detention are unsentenced and on remand.[823] In some states and territories this figure is higher, such as 90% in Queensland and 99% in the Northern Territory.[824]

These statistics reveal the failings of the legal system to provide access to justice for our most vulnerable community members. They also show the catastrophic consequences for the wellbeing of our children when there is a persistent reliance on punitive measures rather than holistic, early intervention, preventative, trauma-informed and culturally relevant supports for our children, their families and communities.[825]

Factors contributing to the criminalisation and hyper-incarceration of Aboriginal and Torres Strait Islander children and young people

Systemic and structural racism

Ongoing colonisation has embedded systemic and structural racism into state and federal laws, policies, processes and practices. Systemic and structural racism ensures the ongoing exclusion, criminalisation, marginalisation and pathologisation of Aboriginal and Torres Strait Islander peoples and communities.

This has enabled both direct and indirect racism across the nexus of institutions within society, including but not limited to: education, law, justice, health, environment, politics, research and employment. Ultimately, this has affected all aspects of public life, especially justice institutions.

As the Lowitja Institute states in its submission to the Yoorrook Commission:

The justice system and child protection systems are unsafe for our people; both grew from imported colonial penal systems and they are both sites in which colonisation lives on. These punitive and paternalistic systems have been designed to disempower our people; they are based on the presumption that they know what is better for our people than we do. They are based on coercion and control. The discrimination, racism and lack of cultural safety in these environments and systems is clear. The health impacts are just as clear. This must be countered with anti-racist decolonising efforts and system transformation, or new systems.[826]

Further, the Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System report observes:

In short, the greater the level of inequality in a society, the more contact there is with the criminal legal system. Thus, unequal societies generate 'crime problems'. As we have argued elsewhere in relation to First Nations people, poverty and disadvantage did not 'fall from the sky'. It is the result of colonial processes over centuries which have targeted and continue to keep Aboriginal and Torres Strait Islander people in a particular unequal social and economic position. Understanding the link between the outcomes of colonialism and contemporary systemic racism is imperative.[827]

Child safety authorities are responsible for ensuring the best interests of vulnerable children and families. Yet, evidence from leading scholars highlights the ways in which dominant child safety (protection/welfare) systems continue to intervene into Aboriginal and Torres Strait Islander families and communities to remove children. Child safety systems adopt and apply dominant notions, tools and concepts of child 'welfare' and 'safety' that are embedded with, and privilege, non-Indigenous values, concepts and perspectives.[828] As the 2024 Family Matters Report observes:

Tools widely used by child safety departments, such as Structured Decision Making (SDM), have been found to perpetuate inequality, relying heavily on factors correlated with race, and demonstrating lower accuracy for Aboriginal and Torres Strait Islander children (Jenkins and Tilbury 2024).

Indeed, child protection legislation and policy in Australia are broadly based on non-Indigenous concepts of family and child-rearing, which typically emphasise nuclear family structures and individual responsibility. These frameworks often overlook the collective and community-oriented approaches common in Aboriginal and Torres Strait Islander cultures. As a result, Indigenous parenting practices are being misunderstood and undervalued, leading to disproportionate intervention and removal of Indigenous children from their families (Wright et al. 2024).[829]

Being subjected to the youth justice system increases the likelihood of exposure to the adult justice system, creating a trajectory of lifelong incarceration. As the Australian Law Reform Commission (ALRC) has recognised:

...contact with the child protection system and the youth justice system are both risk factors for adult incarceration.[830]

While acknowledging that the majority of Aboriginal and Torres Strait Islander young people have never been under criminal or youth justice supervision, the Australian Institute of Health and Wellbeing (AIHW) reported the following for the 2022-2023 period:

- Aboriginal and Torres Strait Islander young people were over-represented in the criminal justice system, including those under youth justice supervision in every state and territory.[831]
- Aboriginal and Torres Strait Islander young people aged 10–17 were about 23 times as likely as their non-Indigenous counterparts to be under supervision on an average day.[832]
- More than half (approximately 57%) of the young people aged 10–17 under supervision on an average day were Aboriginal and Torres Strait Islander.[833]
- 2,423 Aboriginal and Torres Strait Islander young people were under youth justice supervision and 4,625 were supervised at some time during the year.[834]

More recent CTG data provides further detail about the nature of this supervision. According to available data, on an average night in the June quarter of 2023–2024, the majority of Aboriginal and Torres Strait Islander young people in detention were unsentenced, with proportions ranging from 55.7 to 100%.[835] Nationally, more than one-third (34.7%) of Aboriginal and Torres Strait Islander young people in detention during 2023–2024 were aged just 10-13 years when they entered youth detention for the first time.[836]

In 1991 the RCIADIC foresaw the disaster we are currently observing in youth justice. Recommendation 62 of the RCIADIC stated:

That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.[837]

Despite this critical finding, current statistics and policies evidence an ongoing failure by governments to work effectively with Aboriginal and Torres Strait Islander communities. They instead prefer to continue with policies and practices that contribute to hyper-incarceration. Very little has changed in the last 30 years, with Aboriginal and Torres Strait Islander peoples continuing to experience over-representation in the carceral system.

Media, political campaigns and legislative changes

Australia is currently confronting a human rights emergency in relation to youth justice. Over the last 18 months, many states and territories have introduced drastic, punitive policies and legislative amendments under 'tough on crime' agendas. Governments have imposed harsher penalties for youth offending that favour criminalisation and incarceration. Political and media discourse which frames youth crime as a worsening crisis has shaped these shifts.

Despite statistical analysis challenging the accuracy of such claims,[838] media outlets continue to disproportionately report on young people committing offences. They often report on break-ins of cars and homes, fuelling community fear and moral panic.

A group of Queensland researchers undertook a study investigating figurations of young people in the media. Researchers analysed 173 articles published between the period 1 January and 31 March 2023 and observed the following:

Overwhelmingly, the 173 selected articles published between 1 January and 31 March 2023 took the stance that not enough was being done to repress and punish, with scant attention given to dissenting and alternative perspectives. Importantly, the voices of youth who are caught up in the youth justice system were absent from the coverage, and indeed, the voices of youth in general were largely unheard.

> ***The excerpts from the selected news media reports above highlight how the media, politicians and other moral entrepreneurs work to generate a sense of moral indignation and collective grievance in service of political and economic ends. The sustained campaign to generate figurations of youth as dangerous and delinquent involved the use of affective and effective 'rhetorical devices to obfuscate social and economic problems'.[839] In other words, it is much easier to blame youth for antisocial and criminal activities than it is to address the deep-seated underlying systemic and structural issues of socioeconomic disadvantage, intergenerational trauma and the ongoing effects of settler-colonialism in Australia.[840]***

This 'tough on crime' narrative drives political action that reduces access to justice. Legislative amendments have narrowed the circumstances in which young people can access bail and increased the rate at which young Aboriginal and Torres Strait Islander people are remanded in custody. Recent changes in some jurisdictions also impose approaches to sentencing that treat children as adults (under slogans such as 'adult time for adult crime').[841] This narrative has resulted in jurisdictions maintaining ages of criminal responsibility at ages that are comparably low internationally. Governments have also committed to ongoing investment in new detention centres as the primary response to youth crime. This will expand the capacity to incarcerate and punish youth, with less emphasis on diversionary and non-custodial options.

Within the 7-month period from September 2024 to March 2025, 2 states and 2 territories (Northern Territory, Queensland, Australian Capital Territory, and Western Australia) held elections. With the exception of the Australian Capital Territory – where the focus was on raising the age of criminal responsibility and justice reinvestment – all other jurisdictions saw youth crime feature prominently in 'tough on crime' campaigns.[842]

In the lead up to the Queensland election, the Liberal National Party (LNP) campaigned on the slogan 'Adult Crime, Adult Time' to promote an initiative under the Making our Community Safer Plan.

This slogan targets the most at-risk children, presenting a public narrative that dehumanises and criminalises children. It further marginalises them from their families, communities and all those with a responsibility to ensure their positive development and their physical, social, emotional, and cultural wellbeing. Finally, it secures destinies of institutionalisation and incarceration.

This initiative will result in minors being tried as adults and issued adult sentences. The policy targets youth offenders who commit serious crimes such as murder and manslaughter but also includes breaking and entering and car theft.

As part of the Making our Community Safer Plan, the Queensland Government has amended the *Youth Justice Act 1992* (Qld) to remove 'detention as a last resort' and to reframe the system as prioritising victims' rights.[843]

In introducing the reforms, the Queensland Government tabled a Statement of Compatibility under the *Human Rights Act 2019* (Qld) which expressly acknowledged that the legislation is incompatible with children's rights.[844] The Government justified this by arguing that any limitation on rights was reasonable and demonstrably justified to address community safety. In doing so, it proceeded with full knowledge that the measures breach the rights of children, including the right to protection in their best interests and to detention only as a measure of last resort.

We need to take action to address crime and protect people's right to safety. First Peoples are more likely to be victims of crime.[845] We need the best of law enforcement and criminal justice policies, and yet we often receive the worst. It is essential that governments listen to the evidence and do what is proven to work to address crime, rather than adopting ineffective, harmful and often counterproductive measures. Early intervention and prevention measures that support families and communities and improve access to health care and education have been shown to be effective at reducing crime. These promote, rather than breach, children's rights.

The newly elected Queensland Government moved quickly to install its new policy approach. The Government passed the *Making Queensland Safer Act 2024* (Qld) in the first sitting of the newly constituted Queensland Parliament on 12 December 2024. Within just 3 weeks of the new law coming into force, it announced that '227 children have been arrested and charged with 484 offences'.[846] By mid-2025, reporting indicated that the number of arrests had risen to around 1,250. These figures illustrate the rapid escalation of children being drawn into the justice system under the new regime.[847]

Likewise, in NSW, politicians have campaigned for 'tough on crime' approaches towards youth offending. This has resulted in amendments to the *Bail and Crimes Amendment Act 2024 No 18* (NSW) to make bail less accessible for children and young people. Karly Warner, the Chair of the National Aboriginal and Torres Strait Islander Legal Services and the CEO of the Aboriginal Legal Service (NSW/ACT), argues that:

...these are cruel, tragic and dangerous laws. When you lock children up, you lock them into a life of crime.[848]

Similarly, in the NT, key reforms have been enacted. These include amendments to the *Youth Justice Act 2005* (NT) which restore the use of spit hoods in youth detention and eliminate the 'detention as a last resort' principle.[849] The age of criminal responsibility has been lowered from 12 to 10 and bail laws have been reformed so that children accused of serious violent offences are now subject to the same presumption against bail as adults.[850] In relation to youth justice, the Northern Australian Aboriginal Justice Agency (NAAJA) observes:

Youth detention centres are not the place to protect and rehabilitate children, particularly while multiple reports about the state of youth detention in the Northern Territory have not been addressed.

At the core of the problem is continuing poverty, disadvantage, trauma and homelessness in Aboriginal communities as well as embedded institutional racism and a 'tough on crime' response by authorities. The new legislation... in the NT does nothing to address these underlying issues and [is] targeted to Aboriginal people.[851]

NT Victims of Crime advocates have joined with community organisations to voice concerns about the current 'untenable' approach to addressing youth crime. They are calling for the NT government to adopt 'evidence-based, community led initiatives that honour our collective social responsibility to reduce the social determinants of crime...in the long-term'.[852]

Media and political rhetoric have had devastating and detrimental impacts on children and young people across Australia, particularly for Aboriginal and Torres Strait Islander children and young people. Before these legislative reforms, our children and young people already experienced over-incarceration and disproportionate exposure to the legal system. This was fuelled by systemic discrimination and ongoing failures of the legal system and wider society to respond to their distinct needs and human rights. These new legislative frameworks have further exacerbated this hyper-incarceration, further constraining and preventing access to justice.

Governments continue to struggle to balance public pressure for community safety and to hold young offenders accountable, while also meeting the basic needs of children, young people and their families.

The dominant discourse on youth crime often fails to acknowledge that it is not just non-Indigenous communities who are unsafe. Aboriginal and Torres Strait Islander children and young people are also unsafe and are made less safe with the implementation of such policies. They have been denied safety in their homes, their communities, in out-of-home care settings and in youth jails. At every turn, those with the responsibility to ensure they are safe have failed these children and young people. Indeed, some have been unsafe for the majority of their lives. The focus must shift from criminalising and jailing children and young people to addressing the source of this crisis: failed systems.

The age of criminal responsibility

The minimum age of criminal responsibility recommended by the United Nation Committee on the Rights of the Child (the Committee) is currently 14 years. This takes into consideration the 'defining state of human development' during adolescence, which is:

> ***... characterised by rapid brain development...[that] affects risk taking, certain kinds of decision-making and the ability to control impulses.***[853]

The Committee also advises that, in accordance with Article 41 of the CRC,[854] under no circumstances should States reduce the age of criminal responsibility.

Despite this recommendation and the leading evidence base in relation to brain development, in Australia the minimum age of criminal responsibility for almost all states and territories is currently under 14 years. The one exception is the ACT, where the minimum age of criminal responsibility is 14 years old.[855]

Below is an outline of the current age of criminal responsibility by state and territory:

- Queensland: 10 years.[856] The Queensland Government's cabinet provided 'in-principle' support to work towards raising the age from 10 to 12 years in November 2021,[857] but the current government has not progressed this.
- NSW: 10 years.[858]
- Victoria: The age of criminal responsibility was recently increased to 12 years. The Government has reneged on a previous commitment to raise it to 14 by 2027.[859]
- SA: The government is considering raising the age of criminal responsibility from 10 to 12 years.[860]
- WA: 10 years.[861]
- Tasmania: 10 years. The Tasmanian government has committed to raising the age to 14 years and to raising the minimum age of detention to 16 by 2029.[862]
- ACT: The age of criminal responsibility recently increased from 12 to 14 years.[863] There are exceptions for 12 and 13-year-olds who commit 'serious' and 'intentionally violent' offences.[864]
- NT: Raised the age of criminal responsibility to 12 in August 2023, but the newly elected County Liberal Party (CLP) Government reversed this decision in October 2024, legislating to reduce it back to 10 years.[865]

Under the common law, there is a principle called *doli incapax* (literally 'incapable of crime') which applies to children aged 10 to 13. Under this principle, there is a presumption that a child under 14 is incapable of having criminal intent. A child under 14 can only be held criminally responsible if the prosecution proves that they understood their behaviour was seriously wrong. The High Court in *RP v The Queen* (2016) confirmed that this presumption is a significant safeguard and must be applied rigorously, requiring case-specific evidence of the child's capacity.

Despite this safeguard, the New South Wales Government is currently reviewing the operation of *doli incapax*.[866] If this review weakens the principle, more children aged 10 to 13 years old could be imprisoned. Notably, this review is not even considering raising the minimum age of criminal responsibility, despite consistent calls from international human rights bodies.

The Tasmanian Liberal Party, as part of their youth justice policy platform, has also proposed reversing the current *doli incapax* presumption. This would shift the burden of proof from prosecution to defence – meaning a child aged between 10 and 14 would be presumed to know that their actions were seriously wrong unless they could prove otherwise.

Proposals to raise the age elsewhere in Australia also maintain exceptions for serious offending, such as murder. This means that authorities would deal with minor offences in more appropriate ways outside the criminal justice system.

The absence of a national child rights framework that includes a consistent minimum age of criminal responsibility means that children as young as 10, most of whom have already had contact with, or are engaged in the child protection system, are being imprisoned. They are being held in unacceptable conditions that breach their basic human rights and governments offer them no hope or pathway to a life of opportunity.

Under-investment in evidence-based solutions

Despite the extensive body of evidence, governments across Australia continue to invest heavily in punitive responses, particularly youth detention, as the primary approach to youth offending. Research shows that detention is costly and ineffective at rehabilitation, with little impact on reducing offending.[867]

Aboriginal and Torres Strait Islander children and young people bear the brunt of these policies. Lived experience accounts and official data highlight their over-representation and the damage detention does to their social and emotional wellbeing.[868]

This persistent reliance on detention reflects not only an unwillingness to be led by the evidence, but a failure of political will to implement early intervention and prevention strategies that are proven to work and meet justice-related CTG targets.

Further, the 2009 Inquiry into the High Level of Involvement of Indigenous Juveniles and Youth Adults in the Criminal Justice System examined this issue extensively. Coinciding with the 20-year anniversary of the RCIADIC, the 2011 *Doing Time – Time for Doing Inquiry Report* provided extensive evidence supporting reform.

It set out systemic, evidence-based recommendations to reduce Aboriginal and Torres Strait Islander children and young people's exposure to the justice system and to address their hyper-incarceration.[869]

The youth justice and incarceration system was again the focus of parliamentary inquiry in 2024 when the Senate referred this matter to the Legal and Constitutional Affairs References Committee. An interim report was tabled in February 2025. However, with the 47th Parliament prorogued on 28 March 2025, this inquiry was unable to be completed. The Committee recommended that the Inquiry be re-referred in the 48th Parliament.[870]

Rather than implementing the well-documented solutions that prioritise prevention and human rights, governments have adopted punitive approaches that perpetuate harm. In speaking about challenges in the Northern Territory, Catherine Liddle, the CEO of the Secretariat of National Aboriginal and Islander Child Care (SNAICC), argues:

> ***What we're looking at has not happened overnight. It hasn't happened in the election cycle before that. It has been happening to us for decades and decades and decades. We keep coming up with the same responses and expecting a different outcome.***[871]

The Royal Commission into the Protection and Detention of Children in the NT set out a tripartite community-based approach to addressing youth justice. It was centred on government, service providers and Aboriginal communities working in partnership. Despite this clear framework, successive governments failed to adopt it and the Territory is once again reverting to punitive responses.

In a number of jurisdictions, the default position is to jail without bail. Where bail is refused, a child is placed in custody on remand (unsentenced).

Nationally, on an average night in the March quarter of 2023, 77% of young people in detention were on remand.[872]

As a result, both the adult incarceration and the youth detention systems are so overburdened they are incapable of providing appropriate responses – either punitive or preventative. Across Australia, the response is to build more jails, with significant government investment being allocated to build new youth prisons and more police and corrections capacity to facilitate locking up children.

The Western Australia Government has confirmed the building of a new facility 'to house the State's higher-risk youth detainees'.[873] It will be located alongside the Banksia Hill Youth Detention Centre. The planning process alone will cost $11.5 million, with a further $29.1 million for the construction of an 8-bed Crisis Care Unit (CCU) within Banksia Hill for children experiencing mental health crises who cannot 'be safely housed at Banksia Hill'.[874] While this new facility will reportedly enable the Western Australian Government to close Unit 18 (as referred to above) and care for the specific needs of 'high-risk' children, this will not address offending or reduce child incarceration.

Similarly, in Queensland there is a commitment to build youth detention facilities in Cairns and Woodford. Estimated costs for the Woodford facility are up to $627.61 million.[875] Although proponents claim that the facility will have 'therapeutic design elements' and will be 'aimed at supporting the rehabilitation of young people',[876] the leading evidence indicates this is an irresponsible and flawed approach.

If the funds allocated to build these facilities were invested in prevention, early intervention and diversion, and family support and community development, they would – if implemented effectively – reduce youth offending and youth incarceration. If these funds were invested to address youth offending and support their positive development, the need for these additional youth jails would become obsolete.

The evidence demonstrates that locking up more children does not deliver safer communities. The Law Council of Australia advises that:

> ***The plethora of reports and inquiries into youth justice consistently find that the best way to lower youth incarceration rates, particularly for First Nations children, is to invest in services designed to strengthen families and communities so that children are given the best chance of a life without any contact with the criminal justice system, or are diverted to therapeutic responses – including health, disability, education, housing, substance abuse and broader supports – if they do come into contact with that system.***[877]

Young people with lived experience in the criminal justice system powerfully observe in the Mounty Yarns project:

> ***As Aboriginal young people we can tell you that the 'Justice System' is not working and is actually having a devastating effect...Nothing improves by locking up kids. When you do, you take us away from everything we value – our family, our culture, our country.***[878]

Human rights concerns about 'youth justice' reforms

We know that locking up children in these kinds of facilities has serious health and mental health impacts…I am ashamed of the way Australia is treating our most vulnerable children.

Governments must be accountable for protecting children from harm when they are in their care.[879]

Harmful conditions of youth detention

An analysis of youth detention data confirms that every state and territory jurisdiction is experiencing systemic pressure. The situation is increasingly becoming unmanageable and critically dangerous – to those subject to the system, and to those working within it. This speaks to a youth justice system that is in crisis.

The previous National Children's Commissioner, Anne Hollonds, has warned that under the current arrangements:

We are failing to protect our children. Frequent breaches of their human rights are inexcusable and a national shame.[880]

Research highlights that once children enter the justice system, they may face further breaches of their rights, and that the conditions of detention increase their exposure to harm.[881] The *UN Global Study on Children Deprived of Liberty* documents how conditions of detention impair children's health, development and rights.[882] The UN Committee Against Torture has formally urged Australia to end solitary confinement of children, expressing serious concern over youth detention practices in centres such as Don Dale (NT), Banksia Hill (WA) and Ashley (Tasmania).[883]

The Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System made similar findings:

Community stakeholders spoke at length about the harmful impacts of detention at Bimberi [Youth Justice Centre] for First Nations children…the criminogenic nature of youth detention particularly for younger children, compounded by an absence of culturally appropriate supports that contribute to cultural disconnection, and are exacerbated by the absence of First Nations staff that can support children's connection to culture.[884]

In youth detention facilities across the continent, conditions are appalling. Children and young people are being subjected to harsh conditions including:

- over-crowded facilities and increased lockdowns[885]
- solitary confinement – being confined to their cells for up to 23 hours per day, with little to no access to natural light, fresh air, contact with staff or other detainees[886]
- reduced privileges
- limited contact or visitation access, due to staff shortages and lack of capacity.

In Queensland, the lack of capacity to accommodate children and young people in youth detention centres has led to them being held for extended periods in police watchhouses with adult offenders.[887]

As outlined above, the NT Government has re-introduced spit hoods to restrain young people and children in prisons, overturning a recent ban on their use.

This ban was a recommendation of the 2017 *Royal Commission into the Protection and Detention of Children in the Northern Territory* (the NT Royal Commission).[888] Prominent Indigenous researcher Latoya Rule, whose brother died in custody in 2016 while restrained in a spit hood, argues that:

> ***This amounts to child abuse, this amounts to torture – spit hoods are condemned by the United Nations subcommittee for the prevention of torture.***[889]

The ongoing use of unsafe and harmful practices highlights the absence of effective monitoring and accountability. Despite Australia's ratification of OPCAT, there are ineffective or non-existent independent oversight mechanisms for places of detention.

Need for greater focus on early intervention and prevention

Preventative approaches and supportive early intervention are consistently shown to reduce offending and improve long-term outcomes for children.[890] The Commission's *Help Way Earlier!* report stresses that reforms will continue to fail unless governments shift from punitive responses to prevention and early intervention in child justice and child protection systems.[891]

Similarly, the ALRC's *Pathways to Justice* inquiry found that the major drivers of Aboriginal and Torres Strait Islander incarceration lie outside the justice system: in poverty, family violence, housing instability, disengagement from school and health inequities. *Pathways to Justice* recommended justice reinvestment strategies to address these social determinants.[892]

The NT Royal Commission went further, calling explicitly for 'a paradigm shift in youth justice to increase diversion and therapeutic approaches'.[893] These approaches include stronger early intervention family support programs.

Detention, by contrast, is repeatedly found to damage children's mental health and increase the likelihood of further offending and disadvantage.[894]

Community-led diversionary initiatives, particularly those designed and delivered by Aboriginal and Torres Strait Islander organisations, have proven successful in keeping young people connected to culture, family and education.[895] For example, the Jumbunna's *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System* and the Maranguka Justice Reinvestment project in Bourke both highlight the importance of culturally grounded, holistic supports that build safety and wellbeing rather than perpetuating cycles of incarceration.[896] These examples underscore the urgency of shifting investment away from punitive models of youth justice towards prevention and early support.

Egregious breaches of international law

Recent youth justice reforms in Queensland and the NT have drawn sharp criticism from United Nations bodies, human rights experts and Aboriginal and Torres Strait Islander leaders. These groups warn that the justice reforms represent egregious breaches of international law. The reforms are unfolding in a context where Aboriginal and Torres Strait Islander children are already vastly overrepresented in detention.

In October 2024, Ann Skelton, Chair of the United Nations Committee on the Rights of the Child, condemned the NT's decision to lower the age of criminal responsibility from 12 to 10. She stated that:

> ***... once a state has committed itself and has actually set a minimum age, this idea of going back is, I would say, in contravention of the Convention.***[897]

Just 2 months later, she criticised Queensland's 'Making Queensland Safer' laws, passed in November 2024, for their 'flagrant disregard for children's rights'.[898]

The laws allow for longer and harsher sentences.

The Queensland Attorney–General's own Statement of Compatibility with human rights conceded that they would disproportionately impact Aboriginal and Torres Strait Islander children, place limitations on the protection from cruel and degrading treatment and impose punishments 'more punitive than necessary to achieve community safety'.[899]

Political leaders dismissed these warnings. Queensland Premier, David Crisafulli, declared that his government would be accountable to Queenslanders, not 'United Nations boffins'.[900] He criticised the UN for interfering, saying 'this place will govern its laws', while also ignoring local voices. The Queensland Human Rights Commission's *Bandarran-MarraGu: Gathering Strength Summit* (May 2025) warned that the new laws resembled 'past Queensland Government policies and practices separating children and families' and risked acts 'committed by the State with the intent to destroy our First Nations by forcibly transferring our children'.[901]

Equally, the Australian Human Rights Commission has consistently argued for reforms aligned with international standards: raising the minimum age of criminal responsibility to 14, ensuring detention is a last resort, and establishing independent oversight of police and youth detention practices.[902] Aboriginal and Torres Strait Islander leaders and community organisations have long emphasised that punitive measures perpetuate cycles of trauma and repeat the harms documented in the RCIADC and the *Bringing Them Home Report*.[903]

In March 2025, Associate Professor Hannah McGlade and Professor Megan Davis lodged an urgent complaint with the UN Committee on the Elimination of Racial Discrimination (CERD).

The complaint argues that the reforms in Queensland and the Northern Territory constitute racial discrimination under international law, disproportionately targeting Aboriginal and Torres Strait Islander children.

If CERD determines the complaint is well-founded, it will stand as a powerful moral indictment of Australia's treatment of Indigenous children. It will also add to the growing record of adverse UN findings against Australia, some of which are outlined in detail in Chapter 4: Promoting the full enjoyment of rights by First Peoples.

As noted above, these developments also raise serious questions under the *Criminal Code Act 1995* (Cth), which incorporates Australia's obligations under the *Convention on the Prevention and Punishment of the Crime of Genocide* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. In addition, OPCAT provides a framework for the independent inspection of places of detention to prevent torture and ill-treatment. Despite this, Australia's systems for youth detention continue to operate in ways that risk breaching these commitments.

Structural accountability gaps

As discussed in Chapter 4: Promoting the full enjoyment of rights by First Peoples, Australia's dualist legal system means that international treaties such as the CRC have no direct effect domestically unless implemented by legislation.[904]

Australia has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC). In the absence of clear domestic complaints mechanisms, OPIC provides a crucial international mechanism for children to seek justice and hold governments accountable for protecting their rights.[905] The absence of a national Human Rights Act further entrenches this gap.

While governments make commitments in international forums, they routinely fail to embed obligations in domestic law. This leaves international complaints as the only recourse for Indigenous peoples.[906] Australia's credibility would be far better served by embedding these protections at home. This would ensure that breaches can be addressed within our own legal and political system.

The recent youth justice reforms in Queensland and the NT exemplify the dangers of ignoring international obligations and First Peoples' voices. The reforms not only undermine children's rights, they also deepen structural discrimination against Aboriginal and Torres Strait Islander peoples.

The response from UN bodies, human rights organisations and Indigenous leaders is clear: Australia must reverse regressive reforms, raise the age of criminal responsibility, embed international obligations into domestic law and treat First Peoples as rights-holders, not interest groups. Without such changes, the cycle of dispossession and punitive state control will continue, undermining the nation's claims to human rights leadership.

Strengthening accountability and enforceability

Australia has made commitments on multiple fronts: internationally, through instruments such as the UNDRIP, and domestically,[907] through frameworks such as CTG.[908] Yet, there are few effective mechanisms to hold governments accountable to these obligations and commitments. Despite multiple inquiries and repeated recommendations, including the landmark RCIADIC, progress in fulfilling both international and domestic commitments remains limited and inconsistent across jurisdictions.[909]

State and territory jurisdictions with human rights Acts – Victoria, the ACT and Queensland – require a statement of compatibility with human rights to accompany legislation. Parliaments in these jurisdictions can choose to pass laws overriding their respective Human Rights Acts.

At the federal level, the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) requires all Bills and disallowable instruments to be accompanied by a statement of compatibility. The law also established the Parliamentary Joint Committee on Human Rights to review legislation against human rights standards.

None of these mechanisms require governments to systematically assess the rights of Indigenous Peoples against UNDRIP standards when making policy or legislative decisions. The Commission has consistently expressed concern that statements of compatibility are often of insufficient quality, and that the absence of explicit consideration of the UNDRIP further weakens attention to Indigenous-specific rights.

In *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report*, the Commission states, 'Australia can, and should, do better in protecting human rights'.[910] The report recommends a new National Human Rights Framework, including establishing a Human Rights Act, a human rights indicator index, annual statements to Parliament and education programs to ensure better accountability, awareness and access to justice.

A national Human Rights Act has long been identified as an effective way to embed human rights accountability across government. Unlike statements of compatibility or committee scrutiny, a Human Rights Act would require Australian Government agencies and public servants to properly consider and act compatibly with human rights when they develop policy, make decisions and deliver services. It would give people in Australia the power to take action if their rights were breached, ensuring that rights are enforceable.

A Human Rights Act would:

- embed a culture of rights-based decision making across the Australian Government
- require transparent justification when rights are limited, fostering more rigorous and consistent policy development
- provide courts with a supervisory role. This would facilitate consistent interpretation of laws with human rights standards, while preserving parliamentary sovereignty

- deliver practical benefits for everyday Australians, particularly those most at risk of rights violations. These include Aboriginal and Torres Strait Islander peoples, people in detention and children in the youth justice system.

As the Commission explained:

> ***The Human Rights Act would embed these values into public life in Australia by making the government accountable for protecting our rights – no matter who is in power.***
>
> ***A Human Rights Act would mean that all of us, no matter who we are, will have a better understanding of our human rights. We will be empowered to stand up for ourselves and our communities and take action to get justice when someone in the government tries to violate our rights.***[911]

Independent monitoring of RCIADIC recommendations

Independent oversight is a critical safeguard to ensure accountability and transparency in the justice system. Without it, governments and agencies have repeatedly failed to act on longstanding recommendations, leaving systemic issues unaddressed and communities without recourse.

Responsibility has largely been devolved to states and territories, with little federal oversight or consequence for inaction. In the absence of a systemic mechanism to provide long-term monitoring, independent reporting, rights-based guidance, and escalation of non-compliance, visibility into progress is minimal. Furthermore, the lack of a systemic monitoring mechanism severely constrains the possibility of sustained, progressive reform.[912]

A national independent monitoring mechanism could undertake regular audits, issue independent public reports, and escalate non-compliance through parliamentary processes or other accountability levers. It could also play a key role in supporting governments to act on RCIADIC and coronial recommendations, rather than leaving them unimplemented.

Recommendation 18

The Australian Government should provide national leadership on the establishment and implementation of appropriate standards and protections concerning child safety and youth justice interventions, through:

a. expediting the full implementation of the Optional Protocol to the Convention Against Torture (OPCAT), including through legislative reform to establish and give effect to enforceable national standards for the treatment of people in detention

b. implementing the recommendations of Help Way Earlier! including amending the Crimes Act 1914 (Cth) to set the age of criminal responsibility at a minimum of 14 years, ban the use of solitary confinement for children and implement nationally consistent monitoring of child detention facilities

c. sustained needs-based investment in community-led prevention and early intervention programs operated by Aboriginal and Torres Strait Islander community-controlled organisations to address the structural drivers of First Peoples' over-representation in the justice system

d. establishing and resourcing an independent oversight function to monitor, report on and encourage compliance with Royal Commission into Aboriginal Deaths in Custody recommendations and Closing the Gap commitments.

Independent investigations into deaths in custody

Alongside long-term monitoring of RCIADIC implementation, a complementary reform is required to ensure accountability in the most serious cases of system failure: deaths in custody and other critical incidents.

There is a need to build community confidence that authorities will investigate all deaths in custody independently and swiftly. The loss of every single life must be treated as a matter of utmost importance. This is particularly important where the death has occurred in a custodial setting or during interactions with police.

Consideration should be given to outlining what constitutes best practice approach to investigations into Indigenous deaths and critical incidents in custody. This could establish national minimum standards for investigation to ensure an appropriate level of independence and impartiality and to address the lack of community confidence in current arrangements. First Peoples communities particularly lack faith in the ability of police to investigate alleged or potential misconduct of their members.

The recent inquest into the death of Kumanjayi Walker in the NT provides compelling reasons for independent investigations. That inquest heard evidence of profound racism in the operation of the NT Police. Racism undermines the confidence and trust that Aboriginal communities have in police and their ability to robustly investigate the circumstances surrounding a death in custody.[913]

One option is the establishment of a national investigatory mechanism which could provide federal authorities with jurisdiction to conduct investigations where state and territory officers were involved in a death or critical incident. There is legal precedent for the Commonwealth to undertake such responsibilities. For example, the NTER introduced significant powers in 2007.

Schedule II of the NTER's legislation extended the mandate of the Australian Crime Commission (as it was then known) to allow it to investigate child sexual abuse in the NT. It also authorised Australian Federal Police (AFP) to be deployed as 'special constables' to the NT police force.

Constitutionally, the Commonwealth Government did this using the territories power in the Australian Constitution. Governments would need to give consideration to like arrangements in states.

It is recommended that the Australian Government commission an inquiry into the conduct of police and coronial investigations into Indigenous deaths and critical incidents in custody across Australia to identify a best practice approach. An agency such as the Australian Law Reform Commission may be an appropriate existing agency to conduct such an inquiry.

There are some international models that could be considered to progress this. For example:

- Ireland's Office of the Inspector of Prisons was established in 2007 to inspect prisons, hear directly from prisoners, and conduct investigations, including into deaths in custody.[914]
- Northern Ireland's Office of the Police Ombudsman was established in 2000 as a 'system of independent, impartial, civilian oversight of policing.'[915]

Guidelines for Investigating Deaths in Custody, published in 2013 by the International Committee of the Red Cross, set out the criteria which underpin an independent investigation. These guidelines should inform any investigation process:

- All deaths in custody must be investigated promptly by an independent and impartial body regardless of whether the relatives of the deceased request it.

- The main purpose of the investigation is to clarify the circumstances surrounding the death. The investigation may also contribute to:
  - reducing trauma and providing an effective remedy for the next of kin
  - prosecuting and punishing those responsible
  - preventing the recurrence of deaths in custody.
- The investigation should be thorough. This implies that it must seek, at the least, to:
  - obtain and preserve physical and documentary evidence in connection with the death
  - identify possible witnesses and record their statements
  - identify the deceased
  - determine the extent of involvement of all those implicated in the death
  - establish the cause, manner, place and time of death, as well as any pattern or practice that may have caused it
  - differentiate between natural death, accidental death, suicide and homicide.
- The scene of death should be regarded as potentially a crime scene, especially if the death was unexpected.
- A thorough autopsy, by a trained medical officer, is a must – especially where death was unexpected.
- The next of kin should be immediately informed of their relative's death and kept abreast of the progress and findings of the investigation.
- A complete death certificate should be issued to the next of kin as soon as possible after the death.
- On completion of all post-mortem examinations essential to the investigation, the body should be returned to the next of kin in a manner that is fully respectful of the dignity of the deceased.[916]

Recent Australian cases illustrate the urgency of reform:

- In the instance of the death of Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, Veronica Nelson, the coroner found her death to be preventable. The care she received fell drastically short of basic standards. Prison healthcare staff failed to respond appropriately to clear warning signs and did not transfer her to the hospital. Significantly, the coroner highlighted that if RCIADIC recommendations had been implemented, it could have prevented her death.[917]
- In WA, the coroner found the death of Ngarlawangga Yamatji Martu woman, referred to as JC for cultural reasons, to be preventable. A police officer shot JC 17 seconds after he arrived at the scene. The officer made no meaningful attempts to de-escalate the situation or to maintain a safe distance, as required under police use-of-force protocols. The coroner found that officers lacked adequate training, particularly in communication, de-escalation, use-of-force and cultural awareness. On the last point, officers did not have an adequate understanding of intergenerational trauma and the potential impacts of Fetal Alcohol Spectrum Disorder (FASD).[918]
- The coroner also found the 2021 death in custody of Heather Calgaret to be preventable. The coroner identified serious failures in prison healthcare and recommended the integration of Aboriginal health organisations into prison health services to ensure culturally safety.[919]

- In the NT, the inquest into the death of Kumanjayi Walker uncovered systemic failings in police oversight and recommended comprehensive reforms. These included anti-racism measures, improved complaint handling and greater investment in youth and community services.[920]

Taken together, these findings underscore the critical need for mechanisms that compel governments and agencies to adopt and implement coronial recommendations, rather than allowing governments to disregard them.

Recommendation 19

The Australian Government should refer to the Australian Law Reform Commission (ALRC) an inquiry into the conduct of police and coronial investigations into Indigenous deaths and critical incidents in custody across Australia to identify a best practice approach. As part of the inquiry, the ALRC should consider:

a. abest practice international approaches to investigations into Indigenous deaths and critical incidents in custody

b. whether the establishment of national minimum standards for investigations of Indigenous deaths and critical incidents in custody would be beneficial and the content of such standards, drawing on international guidance such as the International Committee of the Red Cross 'Guidelines for Investigating Deaths in Custody'

c. whether and, if so, what, legislative, policy and practice reforms are necessary to ensure best practice police and coronial investigations that are compliant with any proposed national minimum standards and Australia's international human rights obligations

d. the benefits and feasibility of establishing a national, harmonised approach, including the establishment of a national investigatory mechanism; and the options for federal authorities to be tasked with conducting independent investigations, particularly where a state or territory police or custodial officer has been involved in the death or critical incident

e. appropriate independent complaint processes for the families of victims of deaths in custody.

Incentives and Penalties

Accountability requires both incentives for compliance and penalties for breaches. Reputational accountability – through public reporting on state and territory compliance with CTG and RCIADIC obligations – can provide some pressure. Still, experience shows the limitations of reputational accountability.

Governments have frequently managed reputational risk by filling reports with activities already underway rather than demonstrating genuine, strategic, and co-designed action. As noted in the June 2025 *Independent Aboriginal and Torres Strait Islander Review of Closing the Gap*:

Despite... repeated efforts at calling out government inaction...there is no accountability by state and federal governments to change how they operate.

Governments' implementation plans and annual reports include long lists of actions but often do not explain how they will improve outcomes.[921]

These practices reduce the effectiveness of public reporting as a lever for change. For this reason, reputational accountability alone is insufficient. Stronger enforcement mechanisms are needed, including funding consequences and legal remedies.

Accountability also requires that funding allocations align with human rights commitments. At present, significant public resources are directed to punitive responses – such as more police and expanding detention facilities. Evidence has shown these punitive responses to contravene best practice and to entrench cycles of incarceration.

Guidelines produced by the International Red Cross emphasise that systemic failures, such as inadequate health care and lack of culturally appropriate services in detention, constitute breaches of human rights. Governments cannot address these systemic failures through piecemeal funding or policy tweaks.[922]

Embedding accountability would mean requiring state and territory jurisdictions to show, as a condition of Commonwealth funding, that they are applying expenditure to meeting the CTG justice targets by reducing incarceration rates and strengthening culturally safe, community-based alternatives to detention. Accountability mechanisms should inform the work of the Justice Policy Partnership (JPP).

This was established under the CTG framework to promote cross-government collaboration on reducing the over-incarceration of First Peoples and the numbers of Aboriginal and Torres Strait Islander people dying in custody.[923]

Regular independent audits could provide assurance that governments direct expenditure towards fulfilling, rather than undermining, human rights obligations. Where policies increase incarceration, or otherwise undermine these targets, federal funding could be reduced, redirected or made conditional on remedial action. There could also be a restriction or prohibition on the allocation of Commonwealth funds for initiatives that compromise or contradict existing commitments or that undermine human rights. Conversely, jurisdictions that demonstrate measurable progress could receive additional resources to support best practice reforms and sustainability.

People and communities affected by breaches should also be able to seek legal remedies through independent complaints processes and courts. These remedies should include compensation or injunctions to prevent further harm.[924] Incorporating such mechanisms into the domestic framework would reduce reliance on UN complaints procedures and ensure that Australia's own legal system addresses rights.

Embedding both funding and legal accountability alongside public reporting would create a stronger enforcement framework – one that closes the gap between rhetorical commitments and genuine reform.

European Convention on Human Rights (ECHR) – Positive obligations on States to appropriately investigate breaches of the Convention[925]

The ECHR protects core rights including the right to life (Article 2) and the prohibition of torture and inhuman treatment (Article 3). The European Court of Human Rights enforces these rights through its case law. The Court holds states responsible not only for preventing violations, but also for effectively investigating breaches. States therefore carry procedural obligations to conduct investigations that are independent, adequate, prompt, open to public scrutiny and inclusive of victims.

Case law has highlighted both progress and shortcomings. In *Gramada v Romania, Salman v Turkey* and *McCann v United Kingdom*, the Court awarded compensation for failures to protect life or prevent ill-treatment. Yet, holding state agents accountable has been difficult. In *Salman v Turkey*, the state was found responsible for a death in custody and for failing to investigate, but the police officers involved were acquitted. In *Alder v United Kingdom*, despite evidence of neglect and racism, prosecutions did not follow. However, this case did prompt the UK to strengthen independent investigations, introduce reforms and increase transparency.

To guide consistency, the Council of Europe's Commissioner for Human Rights issued a 2009 opinion on effective investigations, outlining 5 essential principles: independence, adequacy, promptness, public scrutiny and victim involvement. Many European states have created independent police complaints bodies in response. In 2011 the Independent Police Complaints Authority Network was established to encourage best practice across 25 member states, though standards vary widely.

This European experience demonstrates the complexity of ensuring accountability across different jurisdictions. It also underscores the need for Australia to establish a federally led independent investigatory mechanism, supported by a national Human Rights Act, rather than relying on fragmented state and territory systems. Such an approach would provide clearer accountability and consistency in protecting human rights.

Text box 7.2: European Convention on Human Rights (ECHR) – Positive obligations on States to appropriately investigate breaches of the Convention

A system of care and protection – not control and harm

We need to create a justice system that listens to our young people, one that understands their experiences, their trauma, and their aspirations. Only then can we begin to break the cycle of incarceration.[926]

Addressing the needs of children and young people should come from a place that promotes healthy life outcomes and social and emotional well-being. This should happen within a family and community environment that centres children and young people's best interests, and is nurturing, caring, educational and developing.

Aboriginal and Torres Strait Islander children are almost guaranteed to be exposed to broken systems through:

- systemic and structural racism
- criminalisation and racial profiling of families and individuals, including children and young people
- social and familial challenges
- poverty and disadvantage.

To move beyond punitive and harmful responses, it is essential to focus on approaches that genuinely uphold the best interests of children and young people, particularly Aboriginal and Torres Strait Islander children. This means investing in evidence-based alternatives to incarceration that foster safety, belonging and opportunity.

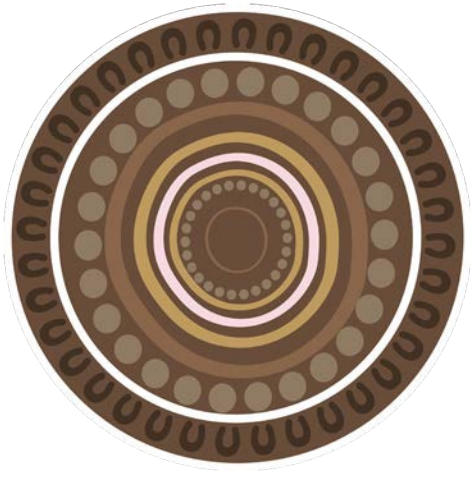
A critical part of moving beyond punitive and harmful responses is ensuring that systems properly identify and respond to the health and developmental needs of children and young people. Early and ongoing assessments for cognitive impairment, brain injury, and intellectual disability – including FASD – are essential.

Building on successful community-led models such as that developed with the Fitzroy Crossing community,[927] these assessments should occur from birth and throughout childhood. Coordinated responses should follow the young person across services.

Courts, police and corrections must be required to take these health assessments into account. For courts, this means ensuring that health records are available and considered as a matter of course when determining guilt and sentencing. For police and corrections, it means being aware of a young person's health status so that appropriate care, supervision and support are provided while in custody. Without this, children and young people with significant impairments continue to be funnelled into punitive systems that compound their disadvantage. Instead, they should be provided with care and support that would best serve their interests.

Turning around the damage

Although Australia continues to invest in prisons as a response to youth offending, there are several policies and programs that are successfully and effectively supporting Aboriginal and Torres Strait Islander young people. These programs are turning around the damage caused by the dominant justice approach. The 2 leading initiatives that will be briefly explored are justice reinvestment and alternatives to custody.



Justice Reinvestment

> ***The current punitive approach to criminal justice and youth offending is clearly not working. The way the criminal justice system and the systems feeding it are currently set up prioritises locking up a 10-year-old rather than addressing the underlying drivers of offending. To change this, real investment in Aboriginal young people is needed and Aboriginal young people with lived experience must be involved in decision making. Governments need to start looking at young Aboriginal people as the solution, rather than as the problem.***[928]

The Justice Reinvestment Network explains Justice Reinvestment as:

> ***...a way of working that shifts power and decision making to First Nations communities to self-determine the best way to improve justice outcomes in their community. It works by bringing together local First Nations people to share data, evidence, their lived experiences and expertise to design and develop a holistic justice response that is unique to their local community.***[929]

The Australin Government is currently funding 28 out of 30 community-led justice reinvestment initiatives in First Peoples communities across Australia under the National Justice Reinvestment Program. The Justice Reinvestment in the Central Australia Program has also funded place-based justice reinvestment partnerships in Central Australia.[930]

The $79 million federal funding package supports First Peoples communities to develop and implement initiatives aimed at improving community safety, reducing First Peoples' contact with the criminal justice system and preventing crime.[931]

While it is too early to tell if the majority of projects are having an impact, one example that has been profiled for several years is the Maranguka Justice Reinvestment Project.

Maranguka Justice Reinvestment project

In the NSW town of Bourke, Justice Reinvestment has proven to be an effective Indigenous-led initiative. Through Maranguka Ltd, which focuses on, 'addressing the root causes of crime rather than its symptoms',[932] Bourke has seen a 38% 'reduction in charges across the top five juvenile offence categories'.[933] In place since 2013, the Maranguka Justice Reinvestment Project adopts a holistic, strength-based, trauma-informed, culturally grounded and collaborative approach led by the local Aboriginal community.

By the end of 2018, the program was estimated to have achieved a $3.1 million impact. Two-thirds of this estimate relates to the justice system and one-third is broader regional economic impact. This represents an outcome approximately 5 times greater than the cost of program operations in that year. The Impact Assessment of the project further noted that, should Bourke sustain just half of the results achieved in 2017, it could deliver an additional gross impact of $7 million over the next 5 years[934] (a subsequent collective impact assessment has not yet been undertaken).

KPMG's 2018 Impact Assessment illustrated the Life Course approach as follows:[935]

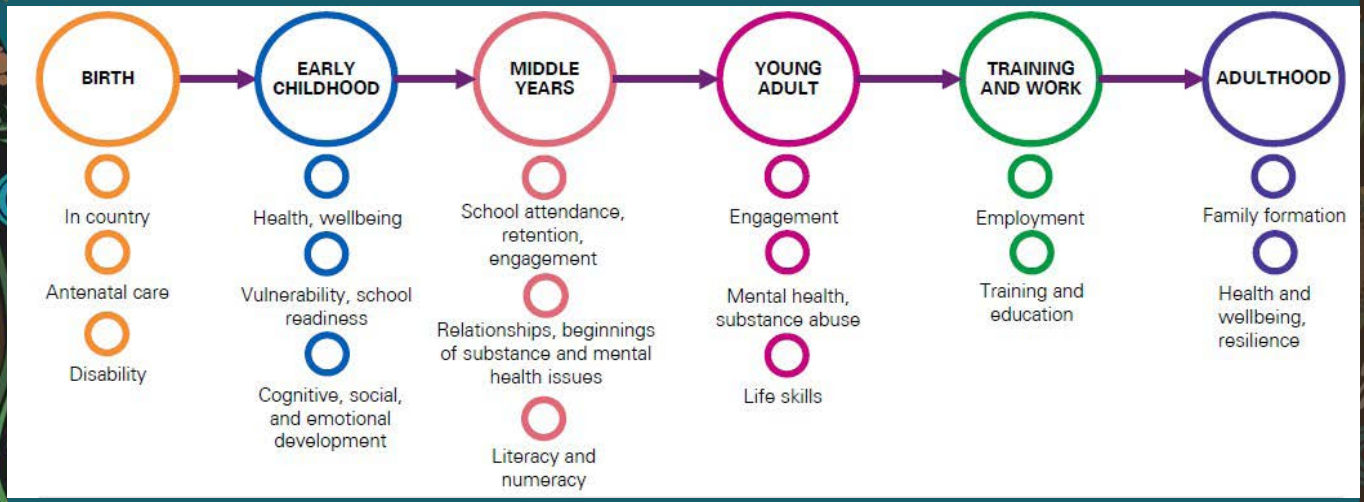


Figure 7.1: KPMG's 2018 Impact Assessment Life Course approach

Maranguka Ltd, Executive Director, Alister Ferguson, stated in their submission to the 2024 Inquiry into Community Safety in Regional and Rural Communities:

> ***Addressing youth crime requires a multifaceted approach that tackles the underlying socio-economic, family, and systemic issues. The Maranguka initiative in Bourke provides a model for how community-led, justice reinvestment approaches can create meaningful change, with a focus on a strengths-based approach instead of the traditional deficit-based mindset...***
>
> ***Maranguka's approach to addressing youth crime in Bourke and surrounding regions offers a powerful model for other communities facing similar challenges. By focusing on the drivers of youth crime, enhancing economic opportunities, and providing consistent, culturally appropriate support, we can address the root causes of criminal behaviour and create safer, more resilient communities.***
>
> ***Key to this approach is the integration of strong partnerships between community members, local organisations, and law enforcement. The importance of these collaborations is evident in the positive outcomes seen in Bourke, including the reduction in certain youth crime categories and improved community-police relations. Expanding this model to other regional and rural areas can help replicate these successes.***[936]

Text box 7.3: Maranguka Justice Reinvestment project

Alternatives to custody

A more recent example, partly funded through the Justice Reinvestment Program, is the Anindilyakwa Healing Centre. The Anindilyakwa Royalties Aboriginal Corporation on Groote Eylandt in the NT coordinates this program.

Early performance data is showing positive signs of success. This project is a demonstration of the self-determination of an Aboriginal community determined to address the disproportionate and devastating impacts of incarceration on their people.

The Anindilyakwa Healing Centre – Groote Eylandt

The Anindilyakwa Healing Centre is an initiative of the Anindilyakwa Traditional Owners of the Groote Archipelago. They established a culturally safe rehabilitation and alternative to custody program on the remote islands of the Groote Archipelago.

For many years the disconnect between Western and customary law has further entrenched a disconnect with the community at large. The new on-Country alternative to custody facility (the Anindilyakwa Healing Centre) is designed to break the cycle of criminal behaviour and high incarceration rates amongst Anindilyakwa men by providing an alternative option to imprisonment. The new 32-bed facility offers a tailored 6-month therapeutic residential program for Aboriginal men aged 17 to 25 who have experienced, or are at risk of experiencing, interactions with the justice system. Alongside on-Country rehabilitation and healing activities, these young men have access to employment and training opportunities designed to prevent further contact with the criminal justice system.

Drug and Alcohol Services Australia (DASA) have been engaged to deliver the Alternative to Custody program at the Healing Centre. DASA are working closely with Groote Eylandt's community justice group and other local service providers to establish the Anindilyakwa Healing Centre program and upskill local people. The goal is eventually to transition management to a locally led body.

Traditional Owners funded the construction of the Anindilyakwa Healing Centre through the Anindilyakwa Royalties Aboriginal Corporation alongside funding contributions from the National Indigenous Australians Agency, the Paul Ramsay Foundation and the NT Government. Traditional Owners, the NT Government and the Commonwealth Attorney General's Department's Justice Reinvestment program are funding ongoing centre operations.

The Anindilyakwa Healing Centre is just one of several key initiatives being driven by Anindilyakwa leaders to reduce offending and imprisonment of Anindilyakwa people. Through the NT's Aboriginal Justice Agreement, Anindilyakwa leaders have worked to establish the NT's first Community Court and local Law and Justice Group. This group is designed to work alongside the NT's justice system and improve outcomes for their people.

Another program in the region is the Groote Eylandt Bickerton Island Enterprises' Groote Archipelago Next Generation (GEBIE GANG). This program engages young Anindilyakwa people through an employment focused youth mentoring program. GEBIE GANG and the Andindilyakwa Healing Centre have contributed to a 95% reduction in the number of youth crime offences from 346 recorded in 2018/19 to 17 in 2021/22.

Other key examples of the work undertaken by community leaders include the Peacemakers community mediation program and Spotters program designed to identify and support at-risk youth and their families. Anindilyakwa leaders – through their strategic investments, partnerships with government and community led actions – have demonstrated that real improvement in justice outcomes is possible.

Text box 7.4: The Anindilyakwa Healing Centre – Groote Eylandt

These approaches respond to the distinct individual and collective needs of Aboriginal and Torres Strait Islander children and their communities. The programs are an evidence-based approach informed by their distinct social, cultural, historical, economic and environmental contexts. They provide an opportunity for community-based and Indigenous-led solutions that ensure that justice responses meet the rights of Indigenous children and young people. Further, they provide a cost-effective justice response that does not rely on the removal and isolation of children and young people from their families, communities, culture and Country.

Together, these reforms and community-led initiatives highlight the pathway towards a justice system that is accountable, rights-based, and centred on care rather than control. Embedding legal and funding accountability at the systemic level must be matched by investments in community-driven solutions. Such solutions can nurture children and young people, address the drivers of offending and uphold the best interests of Aboriginal and Torres Strait Islander children. Justice reinvestment and alternatives to custody demonstrate that when communities are resourced and trusted to lead, outcomes improve not only for young people, but for families and society as a whole. These models point the way forward for a justice system that genuinely breaks the cycle of incarceration and creates safer, more resilient communities.

Promoting accuracy in language and media reporting

A system that truly cares for and protects children cannot be built on fear, sensationalism or misinformation. Accurate language and responsible media reporting are essential to creating a justice environment that prioritises care and protection rather than control and harm.

The very term 'youth justice system' is a contradiction. Its title suggests a system designed to deliver justice for children and young people. In reality, it provides the community with a false sense of security that authorities have dealt with and punished so-called 'problem children'. It locks children away – out of sight, out of mind – rather than addressing underlying issues.

Media narratives reinforce this distortion. Media reports often portray children involved in offending as criminal masterminds. In reality, children as young as 10 are not developmentally capable of making sound decisions.

The media also racialises the issue, portraying it as an Indigenous problem. It is not. Youth offending is an issue across all communities. The principal driver of children and young people's involvement in the criminal justice system is structural inequality and the disadvantage it perpetuates (i.e. family violence, substance abuse and disconnection from the education system). Aboriginal and Torres Strait Islander children are more likely to be seen in child protection and justice systems because of the effects of long-term disadvantage and unfair treatment. Racial profiling and over-policing heighten the impact.[937]

Rather than fuelling talk of 'crisis', there needs to be a sustained focus on what all families and communities require: supports to raise their children into confident, independent young people and to guide them away from harmful choices.

Many children and young people who come into contact with the justice system do so from highly disadvantaged circumstances. They may live in unstable homes, be in state care, or be excluded from school due to behavioural, cognitive or developmental challenges. Their contact with state systems makes them more vulnerable; they are more likely to be known to police and child protection services, and often subject to supervision or surveillance.

Finally, media reporting on 'youth crime crises' often omits critical data that would help reduce community fear. For example, in some jurisdictions, youth crime and recidivism are falling, and a small cohort of repeat offenders accounts for much of the offending. These children require intensive and targeted intervention and support, not sensationalised headlines and reporting which promote blunt, harmful and often counterproductive policies.

Reframing public narratives through accurate reporting is therefore more than a communication exercise. It is a structural solution – one that helps dismantle systems of control and harm and instead builds community support for approaches grounded in care, protection and genuine opportunity for children and young people.[938]

Recommendation 20

The Australian Minister for Communications should work in partnership with First Nations Media Australia, the Australian Communications and Media Authority, the Australian Press Council, the Media, Entertainment and Arts Alliance and the e-Safety Commissioner to develop and introduce measures to strengthen media accountability and promote accurate reporting of youth justice issues, including:

a. a dedicated Youth Justice Media Code of Practice

b. mandatory training on compliance with the Youth Justice Media Code of Practice for journalists covering youth justice stories.

Endnotes

732 P Keating, 'Redfern Speech' (Speech, Redfern Park, 10 December 1992) <https://australianpolitics.com/1992/12/10/paul-keatings-redfern-speech.html>.

733 *Australian Constitution*, s 51.

734 Cambridge Dictionary, *justice*, Cambridge Dictionary website, n.d. <https://dictionary.cambridge.org/dictionary/english/justice>.

735 Justice C Kajimanga, *Enhancing Access to Justice Through Alternative Dispute Resolution Mechanisms – the Zambian Experience,* presentation to the Annual Regional Conference on Enhancing Access to Justice, Nairobi, Kenya (2013), 2, in Clavel Sianondo, *Arbitration practice in Zambia: The process and its legal impediments* [master's dissertation], University of Cape Town, February 2016 <https://open.uct.ac.za/server/api/core/bitstreams/e32a466a-2f8c-47f4-aa8b-7c8ffb6faad3/content>.

736 United Nations (UN), *Access to Justice*, United Nations and the Rule of Law <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>.

737 United Nations (UN), *Universal Declaration of Human Rights – The Foundation of International Human Rights Law*, United Nations <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

738 T Solonec and K Kiss, 'Access to Justice in Australia – Aboriginal and Torres Strait Islander People's Experience', in W Littlechild and E Stamatopoulou (eds), *Indigenous Peoples' Access to Justice, Including Truth and Reconciliation Processes*, Institute for the Study of Human Rights, Columbia University, New York, 2014: 51-52 <https://www.academia.edu/92019528/Indigenous_Peoples_Access_to_Justice_Including_Truth_and_Reconciliation_Processes>.

739 N Watson and H Douglas, *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making*, 1st edn, Routledge (2021) <https://www.routledge.com/Indigenous-Legal-Judgments-Bringing-Indigenous-Voices-into-Judicial-Decision-Making/Watson-Douglas/p/book/9780367467456?srsltid=AfmBOooH24lJmocT1JZmkNALlqTjqtYr0iEE5u9aBMhxTbgLoU4UeESW>; L Behrendt, C Cunneen and T Libesman, *Indigenous legal relations in Australia*, Oxford University Press, New York, 2009 <https://researchonline.jcu.edu.au/15442/6/15442_Behrendt_et_al_2008_front_pages_.pdf>; Yoorrook Justice Commission, *Yoorrook For Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 4 September 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>.

740 Australian Institute of Health and Welfare, *3.14 Access to Services Compared with Need – Aboriginal and Torres Strait Islander Health Performance Framework* (Web Page, 2025) <https://www.indigenoushpf.gov.au/measures/3-14-access-to-services-compared-with-need>.

741 Yoorrook Justice Commission, *Yoorrook For Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 4 September 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>; I Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law*, 1st edn, Routledge, London, 2014 <https://doi.org/10.4324/9781315858999>; K Menzies, 'Understanding the Australian Aboriginal experience of collective, historical and intergenerational trauma', *International Social Work*, 2019, 62(6): 1522–1534 <https://doi.org/10.1177/0020872819870585>; Human Rights and Equal Opportunity Commission, *Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Commonwealth of Australia, 1997 <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

742 Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 4 September 2023, 47 <https://www.yoorrook.org.au/reports-and-recommendations/reports>.

743 N Watson and H Douglas, *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making*, 1st edn, Routledge (2021) <https://www.routledge.com/Indigenous-Legal-Judgments-Bringing-Indigenous-Voices-into-Judicial-Decision-Making/Watson-Douglas/p/book/9780367467456?srsltid=AfmBOooH24lJmocT1JZmkNALlqTjqtYr0iEE5u9aBMhxTbgLoU4UeESW>.

744 Law Council of Australia, *Access to Justice, The Justice Project*, Law Council of Australia website, 22 August 2018 <https://lawcouncil.au/justice-project/access-to-justice>.

745 United Nations Human Rights Council and Expert Mechanism on the Rights of Indigenous Peoples, *Access to justice in the promotion and protection of the rights of Indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children youth, and persons with disabilities,* UN Doc A/HRC/27/65 (7 August 2014): 3-4 <https://digitallibrary.un.org/record/778006?ln=en&v=pdf>.

746 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 2. <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

747 P Keating, 'Redfern Speech' (Speech, Redfern Park, 10 December 1992) <https://australianpolitics.com/1992/12/10/paul-keatings-redfern-speech.html>.

748 Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia, Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, November 2023. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Report>.

749 *Native Title Act, 1993* (Cth), preamble <https://www.legislation.gov.au/C2004A04665/asmade/text>.

750 Human Rights and Equal Opportunity Commission, *Social Justice Report 2005*, HREOC, 2005 <https://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport05/pdf/SocialJustice2005.pdf>.

751 Australian Human Rights Commission (AHRC), *Wiyi Yani U Thangani (Women's Voices): Securing our rights, securing our future* (Report, 2020) <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf>; Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.

752 See Commonwealth of Australia, The Senate Legal and Constitutional Affairs References Committee, *Missing and Murdered First Nations Women and Children* (Final Report, August 2024): 171 <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000085/toc_pdf/MissingandmurderedFirstNationswomenandchildren.pdf>; and coroners reports, for example Coroners Court of the Northern Territory, *Inquests Into the Deaths of Miss Yunipingu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood NTLC 14: Findings of Territory Coroner Elisabeth Armitage in the Coroners Court of the Northern Territory,* (25 November 2024) <https://justice.nt.gov.au/__data/assets/pdf_file/0010/1463707/74c7ad06daceae11bd2c0534cdc274fe6e61b06e.pdf>; Coroners Court of New South Wales, *Inquest Into the Death of Mona Lisa and Jacinta Smith,* [2022/209698; 2022/209975] (23 April 2024) <https://coroners.nsw.gov.au/documents/findings/2024/Inquest_into_the_deaths_of_Mona_Lisa_and_Jacinta_Smith_.pdf>; Coroners Court of the Northern Territory, *Inquest into the Death of Kumanjayi Walker: Findings of Territory Coroner Elizabeth Armitage in the Coroners Court of the Northern Territory* [2025] NTLC 8 (7 July 2025) <https://agd.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjayi-walker/files-exhibits-and-media/Inquest-into-the-death-of-Kumanjayi-Walker-2025-NTLC-8.pdf>;

753 Change the Record, *About Us*, Change the Record website, 2025 <https://www.changetherecord.org.au/about>.

754 ANTAR, *Alternative Approaches to Justice*, ANTAR website, 29 November 2024 <https://antar.org.au/issues/justice/alternative-approaches/>.

755 SNAICC – National Voice for our Children, *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander family safety plan,* (Web page, 2025) <https://www.snaicc.org.au/our-work/our-ways-strong-ways-our-voices/>.

756 First Nations National Constitutional Convention, *Uluru Statement from the Heart*, Uluru Statement website, 26 May 2017 <https://ulurustatement.org/the-statement/view-the-statement/>.

757 Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework – Justice*, Aboriginal and Torres Strait Islander Health Performance Framework website, 22 May 2025 <https://www.indigenoushpf.gov.au/report-overview/overview/summary-report/5-tier-2-%E2%80%93-determinants-of-health/justice>.

758 T Anthony and K Wilson, 'First Nations Imprisonment Is at a Record High', *University of Technology Sydney*, 8 May 2024 <https://www.uts.edu.au/news/2024/05/first-nations-imprisonment-record-high>.

759 Productivity Commission (PC), *Table CtG10A.2: Imprisonment numbers, state and territory and Australia, by Indigenous status (a)* [data set], PC, 2025. <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/criminal-justice/>.

760 Productivity Commission (PC), *Closing the Gap Information Repository: Socio-economic outcome area 10-Aboriginal and Torres Strait Islander adults are not overrepresented in the criminal justice system*,PC website, 2024 <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area10>.

761 Productivity Commission (PC), *Table CtG10A.2: Imprisonment numbers, state and territory and Australia, by Indigenous status (a)* [data set], PC, 2025. <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/criminal-justice/>.

762 Productivity Commission (PC), *Table CtG10A.2: Imprisonment numbers, state and territory and Australia, by Indigenous status (a)* [data set].

763 Productivity Commission (PC), *Table SE10d.1: Prisoner legal status, state and territory and Australia, by Indigenous status (a)* [data set], PC, 2025. <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/criminal-justice/>.

764 E Gillespie, 'Always a bed in prison: Australia's housing crisis blamed for rise in unsentenced prisoners', *The Guardian*, 4 February 2024 <https://www.theguardian.com/australia-news/2024/feb/04/always-a-bed-in-prison-australias-housing-crisis-blamed-for-rise-in-unsentenced-prisoners>.

765 Australian Law Reform Commission (ALRC), *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, Commonwealth of Australia, 2017 <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

766 Australian Law Reform Commission (ALRC), *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, Commonwealth of Australia, 2017 <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

767 Australian Human Rights Commission (AHRC), *Statistics about Aboriginal and Torres Strait Islander Women and Girls*, Australian Human Rights Commission, 2024 <https://humanrights.gov.au/education/stats-facts/statistics-about-aboriginal-and-torres-strait-islander-women-and-girls>.

768 Productivity Commission (PC), *Table CtG10A.3: Imprisonment, state and territory and Australia, by Indigenous status, by sex (a)* [data set], PC, 2025. <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/criminal-justice/>.

769 Human Rights Law Centre & Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment,* Human Rights Law Centre & Change the Record, 2017 <https://www.hrlc.org.au/app/uploads/2025/04/OverRepresented_online.pdf>; T Anthony and G Sentance, 'The system doesn't care about our Aboriginal children: First Nations mothers in prison', *Precedent Australian Lawyers Alliance*, 2020, 44(159): 22–27 <https://www5.austlii.edu.au/au/journals/PrecedentAULA/2020/44.html>; T Anthony, G Sentance and L Behrendt, 'We're Not Being Treated Like Mothers: Listening to the Stories of First Nations Mothers in Prison', *Laws*, 2021, 10(3): 1-18 <https://www.mdpi.com/2075-471X/10/3/74>; Australian Law Reform Commission (ALRC), *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, Commonwealth of Australia, 2017<https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

770 Human Rights Law Centre & Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing*

over-imprisonment, Human Rights Law Centre & Change the Record, 2017: 13 <https://www.hrlc.org.au/app/uploads/2025/04/OverRepresented_online.pdf>.

771 T Anthony and L Behrendt, 'No One Wins When First Nations Mothers Are Jailed', *University of Technology Sydney*, 2024 <https://www.uts.edu.au/case-studies/no-one-wins-when-first-nations-mothers-are-jailed>.

772 SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 21, 28, 48 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>; Megan Davis, *Family Is culture: independent review into Aboriginal children and young people in out-of-home-care in NSW*, DCJ, NSW Government, October 2019: 186 <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>; Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice System*s, Yoorrook Justice Commission, Parliament of Victoria, 2023: 51, 57 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>.

773 Sisters Inside Inc, *Submission to the Australian Human Rights Commission, Informing the Agenda Project* (2024) [submission 19].

774 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 8, Criminal justice and people with disability*, Commonwealth of Australia, 29 September 2023 <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>; First Peoples Disability Network, *The overrepresentation of First Nations People with cognitive disability in the criminal justice system warrants own Disability Royal Commission Hearin*g [media release], FPDN, 16 February 2021 <https://fpdn.org.au/media-release-the-overrepresentation-of-first-nations-people-with-cognitive-disability-in-the-criminal-justice-system-warrants-own-disability-royal-commission-hearing/>.

775 Human Rights Watch, *I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia*, Human Rights Watch, 6 February 2018 <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>.

776 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Executive Summary, Our Vision for an inclusive Australia and Recommendations*, Commonwealth of Australia, 29 September 2023, 123 <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>.

777 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Executive Summary, Our Vision for an inclusive Australia and Recommendations*, Commonwealth of Australia, 29 September 2023, 123 <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>.

778 R Walters, D Antojado, M Maycock and L Bartels, 'LGBT people in prison in Australia and human rights: a critical reflection', Alternative Law Journal, 2024, 49 (1): 40-46 <https://acuresearchbank.acu.edu.au/item/9062w/LGBTQIA+-people-in-prison-in-australia-and-human rights-a-critical-reflection>.

779 R Walters, D Antojado, M Maycock and L Bartels, 'LGBT people in prison in Australia and human rights: a critical reflection', *Alternative Law Journal*, 2024, 49 (1): 40-46 <https://acuresearchbank.acu.edu.au/item/9062w/LGBTQIA+-people-in-prison-in-australia-and-human-rights-a-critical-reflection>.

780 Australian Institute of Criminology, *Transgender inmates in Australia: An introduction to issues of risk and care*, *Trends and Issues in Crime and Criminal Justice*, No. 168, 1999 <https://www.aic.gov.au/sites/default/files/2020-05/tandi168.pdf>.

781 N Sullivan, K Spurway, J Leha, W Trewlynn and K Soldatić, 'Reclaiming Health: The Human Rights of Young LGBTQIA+ Indigenous People in Australia', *Health and Human Rights Journal*, 2022, 24(1):35-47. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9212827/>.

782 Australian Institute of Criminology (AIC), *Deaths in Custody in Australia*, AIC website, <https://www.aic.gov.au/statistics/deaths-custody-australia>.

783 Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody: National Report*, vol. 1, 1991: 1.3.3 <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/12.html>.

784 Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody: National Report*, vol. 1, 1991: 1.2.3 <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/9.html>.

785 T Anthony, K Jordan, T Walsh, F Markham and M Williams, *30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented*, Centre for Aboriginal Economic Policy Research, Australian National University, Working Paper No. 140/2021, 2021 <https://cipr.cass.anu.edu.au/files/docs/2025/6/WP_140_Anthony_et_al_2021_0.pdf>.

786 Australian Bureau of Statistics (ABS), *Prisoners in Australia*, ABS website, 19 December 2024 <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2024#aboriginal-and-torres-strait-islander-prisoners>; Australian Institute of Health and Welfare (AIHW), *Youth detention population in Australia 2024*, AIHW website, 13 December 2024 <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/summary/first-nations-young-people-in-detention>; Australian Human Rights Commission (AHRC), *Statistics about Aboriginal and Torres Strait Islander Women and Girls*, AHRC website, 9 October 2024 <https://humanrights.gov.au/education/stats-facts/statistics-about-aboriginal-and-torres-strait-islander-women-and-girls>.

787 United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, UN Doc A/RES/70/175 (17 December 2015) <https://docs.un.org/en/A/RES/70/175>; Matthew McRae, *The Story of Nelson Mandela*, Canadian Museum for Human Rights website, 2018 <https://humanrights.ca/story/story-nelson-mandela#:~:text=Nelson%20Mandela%20spent%2027%20years,achieve%20equality%20for%20all%20people>; United Nations Office on Drugs and Crime, *UNODC Infographic: The Nelson Mandela Rules*, United Nations website,

n.d. <https://www.un.org/en/events/mandeladay/assets/pdf/16-00403_Mandela_rules_infographic.pdf>; A Mackay, 'The relevance of the United Nations Mandela Rules for Australian prisons', *Alternative Law Journal*, 2017, 42(4): 279–285. <https://doi.org/10.1177/1037969X17732706>; A Mackay, 'Preventing torture and other cruel, inhuman or degrading treatment of children in detention in Australia', *Alternative Law Journal*, 2023, 48(2):90-96 <https://doi.org/10.1177/1037969X231157811>; C Boffa and A Mackay, 'Hyperincarceration and human rights abuses of First Nations children in juvenile detention in Queensland and the Northern Territory', *Current Issues in Criminal Justice*, 2025, 37(1):58-74 <https://doi.org/10.1080/10345329.2023.2293317>; Closing the Gap, *Commonwealth 2024 Annual Report*, Australia Government, 2024 <https://www.niaa.gov.au/sites/default/files/documents/2025-02/NIAA%20CTG%20Combined%20Report.pdf>; Australian Bureau of Statistics (ABS), *Prisoners in Australia*, ABS website, 2024 <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#:~:text=The%20age%2Dstandardised%20imprisonment%20rate,had%20experienced%20prior%20adult%20imprisonment>.

788 United Nations, *United Nations Minimum Rules for the Treatment of Prisoners: the Nelson Mandela Rules*, UNODC <https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf>.

789 United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, UN Doc A/RES/70/175 (17 December 2015) <https://docs.un.org/en/A/RES/70/175>.

790 WA Justice Association (WAJA), *The Supreme Court's Decision on Solitary Confinement*, WAJA website, 24 July 2023 <https://wajustice.org.au/news/solitaryconfinement>.

791 J Foulds, S Shalev, E Monasterio, A Campbell, RR Shuttleworth and SA Kinner, 'Public Reporting on Solitary Confinement in Australian and New Zealand Prisons and Youth Detention Facilities', *Health and Human Rights*, 2025, 27(1):19-26 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC12282874/>.

792 Australian Human Rights Commission (AHRC), Road Map to OPCAT Compliance, AHRC, 17 October 2022. <https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf>.

793 Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody: National Report*, Volume 5, 1991, 'Recommendations'. <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html>.

794 Office of the Inspector of Custodial Services, 'Banksia Hill Juvenile Detention Centre' <https://www.oics.wa.gov.au/facilities/banksia-hill-juvenile-detention-centre/; 'Unit 18 Juvenile Security Facility at Casuarina Prison' < https://www.oics.wa.gov.au/facilities/melaleuca-remand-and-reintegration-facility-repurposed/>.

795 Australian Human Rights Commission, *Call for urgent child justice reforms following death of teenager in WA youth detention centre*, [media release], AHRC, 30 August 2024 <https://humanrights.gov.au/about/news/media-releases/call-urgent-child-justice-reforms-following-death-teenager-wa-youth>.

796 ABC News, 'New WA youth detention centre likely three years away, documents show', *ABC News,* 17 September 2025 <https://www.abc.net.au/news/2025-09-17/new-wa-youth-detention-centre-is-years-away/105782632>.

797 National Indigenous Health Leadership Alliance (NIHLA), *Submission to the Australian Human Rights Commission, Informing the Agenda Project*, [submission 13], September 2024; Law Council of Australia, *Submission to the Australian Human Rights Commission, Informing the Agenda Project*, [submission 21], 2024.

798 Jumbunna Institute for Indigenous Education and Research, I*ndependent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System, Final Report, Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System*, Jumbunna, 2025: 150 <https://www.act.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>.

799 Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice System*s, Yoorrook Justice Commission, Parliament of Victoria, 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>; Jumbunna Institute for Indigenous Education and Research, *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System, Final Report, Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System*, Jumbunna, 2025: 150 <https://www.act.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>; Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody: National Report*, vol. 1, 1991. <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/>; Human Rights Law Centre & Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment,* Human Rights Law Centre & Change the Record, 2017 <https://www.hrlc.org.au/app/uploads/2025/04/OverRepresented_online.pdf>.

800 R McCausland and E Baldry, 'The social determinants of justice: 8 factors that increase your risk of imprisonment', *The Conversation* (2023) <https://theconversation.com/the-social-determinants-of-justice-8-factors-that-increase-your-risk-of-imprisonment-203661>.

801 Australian Institute of Health and Welfare (AIHW), *Aboriginal and Torres Strait Islander Stolen Generations and descendants, Number, demographics characteristics and selected outcomes,* AIHW, Australian Government, 2018 <https://www.aihw.gov.au/getmedia/a6c077c3-e1af-40de-847f-e8a3e3456c44/aihw-ihw-195.pdf?v=20230605181455&inline=true>; The Healing Foundation, *Make Healing Happen, It's Time to Act*, Healing Foundation website, 2021 <https://healingfoundation.org.au/make-healing-happen/>.

802 The Healing Foundation, *Make Healing Happen, It's Time to Act*, Healing Foundation website, 2021 <https://healingfoundation.org.au/make-healing-happen/>; K Menzies, 'Understanding the Australian Aboriginal experience of collective,

historical and intergenerational trauma', *International Social Work*, 2019, 62(6): 1522–1534 <https://doi.org/10.1177/0020872819870585>; N Tujague and K Ryan, 'Cultural Safety in Trauma-Informed Practice from a First Nations Perspective, Billabongs of Knowledge', 1st edn, Palgrave Macmillan, Switzerland, 2023 <https://doi.org/10.1007/978-3-031-13138-7>.

803 Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Commonwealth of Australia, 1997: 241 <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

804 Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Commonwealth of Australia, 1997: 241 <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

805 SNAICC, *The Issue*, SNAICC website, n.d. <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/family-matters/the-issue/>.

806 Australian Institute of Health and Welfare (AIHW), *Aboriginal and Torres Strait Islander Stolen Generations and descendants, Number, demographics characteristics and selected outcomes* (Report, 2018) <https://www.aihw.gov.au/getmedia/a6c077c3-e1af-40de-847f-e8a3e3456c44/aihw-ihw-195.pdf?v=20230605181455&inline=true>; The Healing Foundation, *Making Healing Happen, It's Time to Act* (2021) <https://healingfoundation.org.au/make-healing-happen/>.

807 Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 2023: 317 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>; Megan Davis, *Family Is culture: independent review into Aboriginal children and young people in out-of-home-care in NSW*, DCJ, NSW Government, October 2019 <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>; SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 60-61 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

808 J Krakouer, A Bhathal, C Chamberlain, J Beaufils, P Gray and T Corrales, 'First Nations children are still being removed at disproportionate rates. Cultural assumptions about parenting need to change', *The Conversation*, 26 November 2021 <https://theconversation.com/first-nations-children-are-still-being-removed-at-disproportionate-rates-cultural-assumptions-about-parenting-need-to-change-169090>.

809 Department of Social Services, *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031*, Department of Social Services, Commonwealth of Australia, 2021 <https://www.dss.gov.au/system/files/documents/2024-10/dess5016-national-framework-protecting-childrenaccessible.pdf>.

810 SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 55 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

811 SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

812 Productivity Commission (PC), *Closing the Gap Information Repository: Outcome area 12 – Children in out-of-home care*, PC website, 2024 <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area12>; Australian Institute of Health and Welfare (AIHW), *Aboriginal and Torres Strait Islander Health Performance Framework: Measure 2.12 – Child protection*, AIHW website, 2022 <https://www.indigenoushpf.gov.au/measures/2-12-child-protection>.

813 J Krakouer, S Wise and M Connolly, 'We Live and Breathe Through Culture: Conceptualising Cultural Connection for Indigenous Australian Children in Out-of-Home Care', *Australian Social Work*, 2018, 71(3): 265-276 <https://doi.org/10.1080/0312407X.2018.1454485>; SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 55 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>; Megan Davis, *Family Is culture: independent review into Aboriginal children and young people in out-of-home-care in NSW*, DCJ, NSW Government, October 2019 <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>; Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>.

814 SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

815 J Krakouer, S Wise and M Connolly, 'We Live and Breathe Through Culture: Conceptualising Cultural Connection for Indigenous Australian Children in Out-of-Home Care', *Australian Social Work*, 2018, 71(3): 265-276 <https://doi.org/10.1080/0312407X.2018.1454485>; SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 55 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>; Megan Davis, *Family Is culture: independent review into Aboriginal children and young people in out-of-home-care in NSW*, DCJ, NSW Government, October 2019 <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>; Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament

of Victoria, 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>.

816 W Fogarty, H Bulloch, S McDonnell and M Davis, *Deficit Discourse and Indigenous Health*, The Lowitja Institute & National Centre for Indigenous Studies, Australian Government, 2018 <https://www.lowitja.org.au/resource/deficit-discourse-and-indigenous-health/>.

817 C Peach, cited in AAP, 'Age of criminal responsibility lowered to 10 in Northern Territory', *SBS News*, 18 October 2024 <https://www.sbs.com.au/news/article/age-of-criminal-responsibility-lowered-to-10-in-northern-territory/49135w7sn>.

818 Australian Institute of Health and Welfare (AIHW), *Youth Justice*, AIHW website, 28 March 2025 <https://www.aihw.gov.au/reports-data/health-welfare-services/youth-justice/overview>.

819 Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>; R McCausland and E Baldry, 'The social determinants of justice: 8 factors that increase your risk of imprisonment', *The Conversation*, 2023 <https://theconversation.com/the-social-determinants-of-justice-8-factors-that-increase-your-risk-of-imprisonment-203661>; National Legal Aid, *Inquiry into Australia's Youth Justice and Incarceration System*, Submission to the Senate Standing Committees on Legal and Constitutional Affairs, 2024 <https://nla-production-assets.s3.ap-southeast-2.amazonaws.com/public/Submissions/nla-submission-to-inquiry-into-australias-youth-justice-and-incarceration-system-14.10.24.pdf>.

820 Productivity Commission (PC), *Closing the Gap Information Repository: Outcome area 11 – Youth detention*, PC website <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area11>.

821 Productivity Commission (PC), *Closing the Gap Information Repository: Outcome area 11 – Youth detention*.

822 Australian Institute of Health and Welfare (AIHW), *Youth detention population in Australia 2024*, AIHW website, 2024 <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/summary/the-number-of-young-people-in-detention>.

823 Justice Reform Initiative, *Majority of children in detention are unsentenced, new data reveals* [media release], Justice Reform Initiative, 2025 <https://www.justicereforminitiative.org.au/media_release_majority_of_children_in_detention_are_unsentenced_new_data_reveals>.

824 Justice Reform Initiative, *Majority of children in detention are unsentenced, new data reveals* [media release], Justice Reform Initiative, 2025 <https://www.justicereforminitiative.org.au/media_release_majority_of_children_in_detention_are_unsentenced_new_data_reveals>.

825 Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody: National Report*, vol. 1, 1991: 1.3.3 <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/12.html>; Royal Commission into the Protection and Detention of Children in the Northern Territory, *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Royal Commission into the Protection and Detention of Children in the Northern Territory, Commonwealth of Australia, 2017 <https://www.royalcommission.gov.au/child-detention/final-report>; Lowitja Institute, *Yoorrook Inquiry into Systemic Justice in the Criminal Justice System and the Child Protection System*, Submission to the Yoorrook Justice Commission, 2022 <https://www.lowitja.org.au/wp-content/uploads/2024/04/YoorrookSubmission_Lowitja-Insitute_Nov2022.pdf>; L Allam and L Murphy-Oates, 'Australia's anguish: the Indigenous kids trapped behind bars', *The Guardian*, 18 January 2021 <https://www.theguardian.com/australia-news/2021/jan/18/australias-anguish-the-indigenous-kids-trapped-behind-bars>; Australian Institute of Health & Welfare (AIHW), *Closing the Gap targets: key findings and implications*, AIHW, Australian Government, 2025 <https://www.aihw.gov.au/getmedia/f88a5ccb-0e3c-448c-b014-ca53773d5337/aihw-ihw-294.pdf?v=20250305115500&inline=true>.

826 Lowitja Institute, *Yoorrook Inquiry into Systemic Justice in the Criminal Justice System and the Child Protection System*, Submission to the Yoorrook Justice Commission, 2022: 2 <https://www.lowitja.org.au/wp-content/uploads/2024/04/YoorrookSubmission_Lowitja-Insitute_Nov2022.pdf>.

827 Jumbunna Institute for Indigenous Education and Research, *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System, Final Report, Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System*, Jumbunna, 2025: 28-29 <https://www.act.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>.

828 A Wright, P Gray, B Selkirk, C Hunt and R Wright, 'Attachment and the (mis)apprehension of Aboriginal children: epistemic violence in child welfare interventions, Psychiatry', *Psychology and Law*, 2024, 32(2): 175–199 <https://doi.org/10.1080/13218719.2023.2280537>; B Q Jenkins, and C Tilbury, 'An evaluation of the racial equity of the actuarial Family risk assessment instrument used in Queensland, Australia', *Children and Youth Services Review*, 2024, 164: 1-12 <https://doi.org/10.1016/j.childyouth.2024.107891>; SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>; Megan Davis, *Family Is culture: independent review into Aboriginal children and young people in out-of-home-care in NSW*, DCJ, NSW Government, October 2019 <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>; Yoorrook Justice Commission, *Yoorrook For Justice, Report into Victoria's Child Protection and Criminal Justice Systems*, Yoorrook Justice Commission, Parliament of Victoria, 2023 <https://www.parliament.vic.gov.au/4a2933/globalassets/tabled-paper-documents/tabled-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>.

829 SNAICC – National Voice for our Children, National Family Matters Leadership Group and Monash University, Health and Social Care Unit, *Family Matters Report 2024*, SNAICC, 2024: 16 <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>.

830 Australian Law Reform Commission (ALRC), *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, Commonwealth of Australia, 2017 <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

831 Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2022-23*, AIHW, Australian Government, 28 March 2024 <https://www.aihw.gov.au/getmedia/b1d09f98-08b5-438b-ab8c-a9148de606ef/youth-justice-in-australia-2022-23.pdf?v=20240531130652&inline=true>.

832 Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2022-23*, AIHW, Australian Government, 28 March 2024 <https://www.aihw.gov.au/getmedia/b1d09f98-08b5-438b-ab8c-a9148de606ef/youth-justice-in-australia-2022-23.pdf?v=20240531130652&inline=true>.

833 Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2022-23*, AIHW, Australian Government, 28 March 2024 <https://www.aihw.gov.au/getmedia/b1d09f98-08b5-438b-ab8c-a9148de606ef/youth-justice-in-australia-2022-23.pdf?v=20240531130652&inline=true>.

834 Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2022-23*, AIHW, Australian Government, 28 March 2024 AIHW, *Youth justice in Australia 2022-23.*

835 Productivity Commission (PC), *Closing the Gap Information Repository: Outcome area 11 – Youth detention, supplementary indicator* SE11a.1, PC website, 2024 <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area11/unsentenced-detention>.

836 Productivity Commission (PC), *Closing the Gap Information Repository: Outcome area 11 – Youth detention, supplementary indicator*, SE11h.1, PC website, 2024 <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area11/young-people-first-coming-into-youth-justice-system-aged-10-13>.

837 Indigenous Law Resources: Reconciliation and Social Justice Library, *Recommendations*, Australasian Legal Information Institute website, n.d.: 62 <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html>.

838 K Sato, 'Criminologists debunk claims of 'youth crime crisis' as data shows dramatic declines', *ABC News*, 13 October 2024 <https://www.abc.net.au/news/2024-10-13/criminologists-debunk-youth-crime-crisis-claims/104445432>; E Brancatisano, 'They've always been scapegoats': Behind Australia's crackdown on youth crime', *SBS News*, 6 April 2025 <https://www.sbs.com.au/news/article/australias-crackdown-on-youth-crime-labelled-cruel/0e7g4im7u>.

839 S Riddle, A Hickey, C Pocock, A McKee, D Skye and R Wallis, 'Moving beyond deficit media figurations of young people: troubling the contemporary 'youth crime crisis', *Journal of Media & Cultural Studies*, 2024, 37(6): 756-769 <https://doi.org/10.1080/10304312.2024.2313565>.

840 S Riddle, A Hickey, C Pocock, A McKee, D Skye and R Wallis, 'Moving Beyond Deficit Media Figurations of Young People: Troubling the Contemporary "Youth Crime Crisis"', *Continuum: Journal of Media & Cultural Studies*, (2023) 37(6): 756<https://doi.org/10.1080/10304312.2024.2313565>.

841 Australian Human Rights Commission, '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>; A Hollands, 'Australia is failing its children. A 'tough on crime' approach to youth justice puts politics before prevention', *The Guardian*, 4 September 2024 <https://humanrights.gov.au/about/news/opinions/australia-failing-its-children-tough-crime-approach-youth-justice-puts-politics>.

842 N Bucci, 'New NT government moves quickly to lower age of criminal responsibility after 'crime crisis' election campaign', *The Guardian*, 16 October 2024 <https://www.theguardian.com/australia-news/2024/oct/16/nt-government-clp-criminal-responsibility-age-chief-minister-lia-finocchiaro>; R Stewart and S Richards, 'Tough youth justice law changes pass Queensland parliament, which will see juveniles sentenced as adults', *ABC News*, 12 December 2024 <https://www.abc.net.au/news/2024-12-12/youth-justice-laws-pass-queensland-parliament/104716652>; L MacLennan, 'Is South Australia facing a 'youth crime crisis', and how should it manage young offenders?, *ABC News*, 2 March 2025 <https://www.abc.net.au/news/2025-03-02/sa-opposition-claims-youth-crime-crisis/104993348>; K Bourke, 'WA is facing a 'tough-on-crime' election. Will it make the state safer?', *ABC News*, 14 January 2025 <https://www.abc.net.au/news/2025-01-14/tough-on-crime-political-agendas-head-of-wa-march-election/104811804>; ACT Government, *Raising the minimum age of criminal responsibility,* ACT Government website, n.d.<https://yoursayconversations.act.gov.au/raising-minimum-age-criminal-responsibility>.

843 B Smee, 'Queensland Labor publicly criticised the LNP's unprecedented youth laws. So why did it wave them through?', *The Guardian*, 14 December 2024 <https://www.theguardian.com/australia-news/2024/dec/14/queensland-labor-publicly-criticised-the-lnps-unprecedented-youth-laws-so-why-did-it-wave-them-through>.

844 Queensland Government, 'Justice and Other Legislation Amendment Bill 2023, Statement of Compatibility', 21 March 2023 <https://documents.parliament.qld.gov.au/bills/2023/3130/Strengthening-Community-Safety-Bill-2023---Statement-of-Compatibility-249b.pdf>.

845 Australian Institute of Health and Welfare (AIHW), *2.10 Community Safety – Aboriginal and Torres Strait Islander Health Performance Framework*, AIHW website, 2025 <https://www.indigenoushpf.gov.au/measures/2-10-community-safety>.

846 S Bulloch and S Scott, 'Explained: Qld's youth crime crisis laid bare', *The Courier Mail*, 29 July 2025 <https://www.couriermail.com.au/truecrimeaustralia/police-courts-qld/explained-qlds-youth-crime-crisis-laid-bare/news-story/c1589812a1c9c96798763b0d46afced7>.

847 Dechlan Brennan, 'More than 1,250 children charged under Queensland's "Adult Crime, Adult Time" laws', *National Indigenous Times*, 5 August 2025 <https://nit.com.au/05-08-2025/19463/more-than-1250-children-charged-under-queenslands-adult-crime-adult-time-laws>.

848 Aboriginal Legal Service (NSW/ACT Limited) (ALS), *Bail Fail: Report card exposes shocking truths about NSW Government's bail reforms* [media release], ALS, 9 May 2025 <https://www.alsnswact.org.au/bail-fail-report-card>.

849 ABC News, 'Youth Justice Act amendments pass NT parliament, bringing back spit hoods and tougher laws for young offenders', *ABC News*, 31 July 2025 <https://www.abc.net.au/news/2025-07-31/youth-justice-act-amendments-bill-passes-nt-parliament/105585210>.

850 G Atta, 'NT age of criminal responsibility lowered to 10 – bail changes explained', *ABC News*, 18 October 2024 <https://www.abc.net.au/news/2024-10-18/nt-parliament-lowers-age-of-criminal-responsibility-to-10-law/104480034>.

851 The North Australian Aboriginal Justice Agency (NAAJA), *Keep Aboriginal children out of jail,* NAAJA website, 16 October 2024 <https://www.naaja.org.au/keep-aboriginal-children-out-of-jail/>.

852 C Walsh, 'Community groups, unions and Victims of Crime oppose CLP's 'alarming' crime policies in open letter', *NT Independent*, 28 August 2025 <https://ntindependent.com.au/community-groups-unions-and-victims-of-crime-oppose-clps-alarming-crime-policies-in-open-letter/>.

853 United Nations, Committee on the Rights of the Child, *Convention on the Rights of the Child: General Comment No. 24 (2019) on children's rights in the child justice* system, UN Doc CRC/C/GC/24 (18 September 2019), 6 <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=oTprmYtOr8GObAAJFNTBh15ATRf%2FcquoKoqOymEklzYSh%2FyZwsqxARGrJagQG2dH49KWR%2BsXQ2skQXUPRHi8kQ%3D%3D>.%3D>.

854 United Nations, Office of the High Commissioner, *Convention on the Rights of the Child*, GA Res 44/25, adopted 20 November 1989 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

855 Human Rights Law Centre (HRLC), *Landmark win as Tasmania commits to raising the age of criminal responsibility to 14*, HRLC website, 6 December 2023 <https://www.hrlc.org.au/news/2023-12-6-tas-raise-the-age/>; J Abbondanza, 'As ACT lifts the age of criminal responsibility to 14, where does the rest of Australia stand?', *SBS News*, 2025 <https://www.sbs.com.au/news/article/the-age-of-criminal-responsibility-around-australia/uktrq1o9c>.

856 *Criminal Code Act 1899*. Chapter 5, S29 <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009#sch.1-sec.29>.

857 Queensland Government, *Queensland's Position on Minimum Age of Criminal Responsibility*, November 2021 <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fcabinet.qld.gov.au%2Fdocuments%2F20...>.

858 T Drabsch, *Age of criminal responsibility*, NSW Parliament website, March 2022 <https://www.parliament.nsw.gov.au/researchpapers/Documents/Age%20of%20criminal%20responsibility%20-%20Final.pdf>.

859 *Youth Justice Act 2024* (VIC), 1.2, S 10 <https://content.legislation.vic.gov.au/sites/default/files/2025-04/24-32aa004-authorised.pdf>. See Human Rights Law Centre, 'Premier Allan to continue to locking up children after breaking promise to #RaiseTheAge', HRLC <https://www.hrlc.org.au/news/2024-08-12-raise-age-vic/>.

860 Government of South Australia, Attorney-General's Department, *Minimum age of criminal responsibility*, Attorney-General's Department website, n.d. <https://www.agd.sa.gov.au/law-and-justice/consultation/minimum-age-of-criminal-responsibility>.

861 Legal Aid Western Australia (LAWA), *Age of criminal responsibility*, LAWA website, n.d. <https://www.legalaid.wa.gov.au/find-legal-answers/young-people/police-and-courts/age-criminal-responsibility#:~:text=The%20age%20of%20criminal%20responsibility,were%20doing%20the%20wrong%20thing>.

862 Tasmanian Government, Department for Education, Children and Young People, *Youth Justice Blueprint 2024-2034*, Tasmanian Government, Department for Education, Children and Young People, December 2023 <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Youth-Justice-Blueprint.pdf>.

863 Australian Capital Territory Government, *Support for children with serious harmful behaviour,* ACT Government website, n.d. <https://www.act.gov.au/community/child-protection-and-youth-justice/support-for-children-with-serious-harmful-behaviour>.

864 Australian Capital Territory Government, 'Raising the age of criminal responsibility <https://www.act.gov.au/law-and-justice/law-reforms/raising-the-age-of-criminal-responsibility>.

865 Northern Territory Government, *Reduce crime – new laws introduced*, NT Government website, 25 October 2024 <https://nt.gov.au/news/2024/reduce-crime-new-laws-introduced>.

866 Department of Communities and Justice (NSW), *Review of Operation of Doli Incapax in NSW for Children under 14* (Web Page, 16 June 2025) <https://dcj.nsw.gov.au/legal-and-justice/laws-and-legislation/review-of-operation-of-doli-incapax-in-nsw-for-children-under-14.html>.

867 C Cunneen, F Allison and J C Beaufils, *Locking up young people doesn't work*, University of Technology Sydney website, 3 September 2024 <https://www.uts.edu.au/news/2024/09/locking-young-people-doesnt-work>.

868 S M Finlay, E P Chang, J Collova and P Dudgeon, *Locking up kids has serious mental health impacts and contributes to further reoffending*, University of Wollongong Australia website, 18 November 2022 <https://www.uow.edu.au/media/2022/locking-up-kids-has-serious-mental-health-impacts-and-contributes-to-further-reoffending.php>.

869 Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, House of Representatives, 2011: ch 1 <https://www.aph.gov.au/Parliamentary_Business/Committees/Committees_Exposed/atsia/sentencing/report/chapter1>.

870 Legal and Constitutional Affairs References Committee, *Australia's youth justice and incarceration system*, The Senate, Commonwealth of Australia, June 2025 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Incarceration47/Report/Chapter_1_-_Final_report>.

871 D James and Guest C Liddle on "How to solve the youth crime crisis in Alice Springs", *7am Podcast* (18 December 2024), 7:58-8:20. <https://7ampodcast.com.au/episodes/how-to-solve-the-youth-crime-crisis-in-alice-springs>.

872 Australian Institute of Health and Welfare (AIHW), *Youth detention population in Australia 2023*, AIHW, The Australian Government, 13 December 2023. <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/summary>.

873 The Hon P Papalia, *New youth detention facility to adjoin Banksia Hil*l [media release], Government of Western Australia, 26 September 2024. <https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/New-youth-detention-facility-to-adjoin-Banksia-Hill-20240926#:~:text=Replacing%20the%20Unit%2018%20youth,people's%20behaviours%20and%20complex%20needs>.

874 The Hon P Papalia, *New youth detention facility to adjoin Banksia Hill*.

875 The Hon S Miles and The Hon D Farmer, *Joint Statement on Construction starts on youth detention facility at Woodford*, The Queensland Cabinet and Ministerial Directory, Queensland Government (27 February 2024). <https://statements.qld.gov.au/statements/99792>.

876 The Hon S Miles and The Hon D Farmer, *Joint Statement on Construction starts on youth detention facility at Woodford*, The Queensland Cabinet and Ministerial Directory, Queensland Government (27 February 2024). <https://statements.qld.gov.au/statements/99792>.

877 Law Council of Australia (LCA), *Australia's youth justice and incarceration system*, Senate Legal and Constitutional Affairs References Committee, 22 October 2024. <https://lawcouncil.au/publicassets/d2f05c83-b895-ef11-94ab-005056be13b5/4609%20-%20S%20-%20Australias%20youth%20justice%20and%20incarceration%20system.pdf>.

878 Just Reinvest, *Mounty Yarns, Lives Experiences of Aboriginal young people in Mt Druitt*, Just Reinvest website, n.d., 7 <https://www.justreinvest.org.au/community/mt-druitt/>.

879 Australian Human Rights Commission, *Call for Urgent Child Justice Following Death of Teenager in Youth Detention Centre*, [media release], AHRC, 30 August 2024 <https://humanrights.gov.au/about/news/media-releases/call-urgent-child-justice-reforms-following-death-teenager-wa-youth>.

880 Australian Human Rights Commission (AHRC), *Australia is failing its children. A 'tough on crime' approach to youth justice puts politics before prevention,* AHRC website, 8 July 2024 <https://humanrights.gov.au/about/news/opinions/australia-failing-its-children-tough-crime-approach-youth-justice-puts-politics>.

881 Australian Human Rights Commission, *Submission to Senate inquiry into Australia's youth justice and incarceration system*, AHRC, 10 October 2024 <https://humanrights.gov.au/our-work/legal/submission/submission-inquiry-australias-youth-justice-and-incarceration-system>.

882 United Nations, *Global Study on Children Deprived of Liberty*, UN Office of the High Commissioner for Human Rights (OHCHR), 2019 <https://www.ohchr.org/en/documents/tools-and-resources/a74136-un-global-study-children-deprived-liberty>.

883 P Karp, 'Australia must end solitary confinement of children, UN committee against torture says', *The Guardian*, 28 November 2022 <https://www.theguardian.com/australia-news/2022/nov/28/australia-must-end-solitary-confinement-of-children-un-committee-against-torture-says>.

884 Jumbunna Institute for Indigenous Education and Research, I*ndependent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System, Final Report, Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System*, Jumbunna, 2025: 203 <https://www.act.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>.

885 S Meacham, 'Kids being kept in cells with adults for weeks', *ABC News*, 17 February 2025; National Justice Project and Jumbunna Institute of Indigenous Education and Research, *Submission into Inquiry into Australia's youth justice and incarceration system,* 2024; The Northern Territory Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017; M Garrick, 'NT government prepares to move children from Don Dale Youth Detention Centre to new youth prison', *Nine News*, 28 October 2024.886 T Walsh and H Barber, *Solitary Confinement and Prisoners' Human Rights*: 222-225 <https://www8.austlii.edu.au/au/journals/MonashULawRw/2023/7.pdf>; United Nations Office on Drugs and Crime, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly resolution 70/175, annex, adopted on 17 December 2015; United Nations, UN Special Rapporteur on torture calls for the prohibition of solitary confinement, Solitary confinement, 2011 <https://www.ohchr.org/en/press-releases/2011/10/un-special-rapporteur-torture-calls-prohibition-solitary-confinement>; Penal Reform International, *Solitary confinement*, n.d. <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>; United Nations General Assembly, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, A/66/268; Australian Human Rights Commission, '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>; Human Rights Law Centre, Explainer: *Solitary Confinement of people in prison*, n.d. <https://www.hrlc.org.au/explainers/2020-9-15-explainer-solitary-confinement-of-people-in-prison/>.

887 Australian Human Rights Commission, '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024): 75 <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>; B Smee, 'Sick and suicidal children held in Queensland police watch houses for weeks without healthcare, watchdog reveals', *The Guardian*, 11 September 2024 <https://www.theguardian.com/australia-news/article/2024/sep/11/queensland-children-police-watch-houses-watchdog-report>; A Messenger, 'Number of children under 14 in adult watch houses in Queensland rises 50% in 12 months', *The Guardian*, 8 January 2025 <https://www.theguardian.com/australia-news/2025/jan/08/queensland-adult-watch-houses-children-under-14-number-rises-ntwnfb#:~:text=The%20statistics%20%E2%80%93%20which%20were%20included,23%2C%E2%80%9D%20the%20report%20read>; Queensland Family and Child Commission (QFCC), '*Who's responsible: Understanding why young people are being held for longer in Queensland watch houses*', QFCC, Queensland Government November 2023 <https://www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf>.

888 The Northern Territory Royal Commission into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* (2017) 30.

889 A Pillarisetty, 'Youth justice advocates condemn NT government proposal to reverse ban on using spit hoods on children', *SBS News*, 2017 <https://www.abc.net.au/news/2024-09-07/nt-spit-hoods-clp-policy-youth-justice-advocates-warning/104308508>.890 Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>; Jumbunna Institute for Indigenous Education and Research, *Independent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System, Final Report, Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System*, Jumbunna, 2025: 150 <https://www.act.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>.

891 Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing,* (Report, 2024) <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.

892 Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* Report 133, Commonwealth of Australia, 2017 <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

893 Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* [media release], 17 November 2017.

894 E Baldry and C Cunneen, '*Locking up kids damages their mental health and leads to more disadvantage. Is this what we want?*', UNSW Newsroom, 21 June 2019; S M Finlay, E P Chang, J Collova and P Dudgeon, *Locking up kids has serious mental health impacts and contributes to further reoffending*, University of Wollongong, 18 November 2022.

895 C Bowley, *Proven pathways to preventing youth crime*, Griffith University, 24 October 2024.

896 Jumbunna Institute for Indigenous Education and Research, I*ndependent Review into the Over-Representation of First Nations People in the ACT Criminal Justice System, Final Report, Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System*, Jumbunna, 2025, <https://www.act.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>;

897 ABC, 'UN Rights of the Child committee chair says NT government's lowering of criminal age 'contravened' global treaty obligations, 18 October 2024 <'https://www.abc.net.au/news/2024-10-18/un-committee-chair-condemns-nt-lowering-criminal-age-law/104490784>.

898 NITV, 'UN slams Queensland laws as a 'flagrant disregard for children's rights', *SBS,* 2 December 2024 <https://www.sbs.com.au/nitv/article/un-slams-queensland-laws-as-a-flagrant-disregard-for-childrens-rights/4oqyo77xh>.

899 D Frecklington MP, Queensland Attorney-General, *Statement of Compatibility, Making Queensland Safer Bill 2024*: 5 <https://documents.parliament.qld.gov.au/bills/2024/3232/Making-Queensland-Safer-Bill-2024---Statement-of-Compatibility-c348.pdf>

900 A Messenger, 'LNP's youth crime legislation condemned by UN as 'incompatible with basic child rights', *The Guardian*, 20 May 2025 <https://www.theguardian.com/australia-news/2025/may/20/lnp-qld-youth-crime-legislation-un-incompatible-with-child-rights-ntwnfb>.

901 Queensland Human Rights Commission, *Bandarran-MarraGu: Gathering Strength Summit Statement* (May 2025). <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/53977/Bandarran-MarraGu-Gathering-Strength-Summit-Statement-Updated.pdf>

902 Australian Human Rights Commission (AHRC), *National Anti-Racism Framework,* AHRC website, n.d. <https://humanrights.gov.au/anti-racism-framework#:~:text=Developed%20by%20the%20Australian%20Human,forms%20of%20racism%20in%20Australia>; Australian Human Rights Commission, *Discussion paper: A model for positive human rights reform* <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/discussion-paper-model-positive-human-rights-reform>.

903 Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, HREOC, 1997: Part 4 Reparation <https://humanrights.gov.au/our-work/projects/bringing-them-home-chapter-13>.

904 Rule of Law Education Centre, *Human Rights Treaties and International Law in Australia* (Web Page, 2024) <https://www.ruleoflaw.org.au/education/human-rights/treaties/>.

905 Optional Protocol on a Communications Procedure, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)*, Optional Protocol on a Communications Procedure website, n.d. <https://opic.childrightsconnect.org/what-is-opic/>.

906 Australian Human Rights Commission, *UN Human Rights Commissioner speaks out,* AHRC website, 8 October 2019 <https://humanrights.gov.au/about/news/speeches/un-human-rights-commissioner-speaks-out>; Australian Human Rights Commission, *Discussion paper: A model for positive human rights reform,* AHRC website, August 2019 <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/discussion-paper-model-positive-human-rights-reform>.

907 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, (13 September 2007) <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

908 Closing the Gap, *National Agreement on Closing the Gap,* Commonwealth of Australia, 2020 <https://www.closingthegap.gov.au/national-agreementhttps://www.closingthegap.gov.au/national-agreement>.

909 Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody: National Report*, 1991. <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/>.

910 Australian Human Rights Commission, *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report,6,* AHRC website, 7 December 2023 <https://humanrights.gov.au/Revitalising-

Australia%E2%80%99s-commitment-to-human-rights>.

911 Australian Human Rights Commission, *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report* 49. AHRC website, 7 December 2023 <https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights>.

912 T Anthony and E Cubillo, 'More than 30 years after the Royal Commission, why are Indigenous Australians still dying in custody?', *The Guardian*, 16 June 2025 <https://www.theguardian.com/australia-news/2025/jun/16/more-than-30-years-after-the-royal-commission-why-are-indigenous-australians-still-dying-in-custody>.

913 Coroners Court of the Northern Territory, *Inquest into the Death of Kumanjayi Walker* [2025] NTLC 8 (10 June 2025) <https://agd.nt.gov.au/__data/assets/pdf_file/0010/2892799/Final-Report-Independent-Review-into-the-Over-Representation-of-First-Nations-People-in-the-ACT-Criminal-Justice-System.pdf>.

914 Office of the Inspector of Prisons, *What We Do*, Office of the Inspector of Prisons, Ireland <https://www.oip.ie/what-we-do/>.

915 Police Ombudsman for Northern Ireland, *Investigating complaints about the police*, Police Ombudsman for Northern Ireland website https://www.policeombudsman.org/.

916 International Committee of the Red Cross, *Guidelines for Investigating Deaths in Custody* (2013) ICRC: Geneva <https://www.icrc.org/en/publication/4024-guidelines-investigating-deaths-custody>.

917 S Johnson and J Dunstan, 'Victorian coroner tells Veronica Nelson inquest he backs changes to 'disaster' bail laws', *ABC News*, 30 January 2023 <https://www.abc.net.au/news/2023-01-30/veronica-nelson-coronial-inquest-findings-vic-bail-law-prison/101880548>.

918 S Convery, 'WA police who shot dead Aboriginal woman did not make meaningful attempts to de-escalate, coroner find' *The Guardian,* 3 July 2025 <https://www.theguardian.com/australia-news/2025/jul/03/wa-police-who-shot-dead-aboriginal-woman-jc-geraldton-coroner-inquest-ntwnfb>.

919 J Dunstan, 'Victoria urged to act on coroner's death in custody recommendations', *ABC News*, 29 July 2025 <https://www.abc.net.au/news/2025-07-29/heather-calgaret-death-in-custody-coroner-findings/105583096>.

920 The Courier-Mail, 'Unpacked: The Kumanjayi Walker coronial inquest findings', *Courier Mail*, 22 July 2025 <https://www.couriermail.com.au/news/northern-territory/unpacking-the-12-chapter-683page-findings-from-the-kumanjayi-walker-coronial-inquest/news-story/5980192a3c75e491e88cde78bd2594b5>.

921 Jumbunna Institute for Indigenous Education and Research, *Independent, Aboriginal and Torres Strait Islander Review of the National Agreement on Closing the Gap,* June 2025: 118 <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>.

922 International Committee of the Red Cross, *Guidelines on Monitoring and Preventing Deaths in Custody* <https://www.icrc.org/en/publication/4126-guidelines-investigating-deaths-custody>.

923 Attorney-General's Department, *Justice Policy Partnership - Terms of Reference*, AGD website 11 July 2024 <https://www.ag.gov.au/legal-system/publications/justice-policy-partnership-terms-reference>.

924 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia Factsheet*, AHRC website, 2023 <https://humanrights.gov.au/human-rights-act-for-australia>.

925 European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) <https://treaties.un.org/pages/showDetails.aspx?objid=080000028014a40b>; European Court of Human Rights, *Guide on Article 2 of the European Convention on Human Rights: Right to Life* (Council of Europe, updated 28 February 2025) <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng>; European Court of Human Rights, 'The Court finds against the Romanian authorities for exempting a police officer from all criminal liability without effective judicial investigation' (Press Release, ECHR 040, 11 February 2014) <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4665767-5654323&filename=Judgment%20Gramada%20v.%20Romania%20-%20police%20officer%20exempted%20from%20all%20criminal%20liability%20without%20effective%20investigation%20.pdf>; *Salman v Turkey* (European Court of Human Rights, App No 21986/93, 27 June 2000) <https://hudoc.echr.coe.int/eng?i=001-58735>; *McCann v United Kingdom* (European Court of Human Rights, App No 18984/91, 27 September 1995) <https://hudoc.echr.coe.int/eng?i=001-57943>.; *Alder v United Kingdom* (European Court of Human Rights, App No 42078/98, 22 November 2011) <https://hudoc.echr.coe.int/fre?i=001-107510>; Council of Europe Commissioner for Human Rights, *Opinion of the Commissioner For Human Rights Concerning Independent and Effective Determination of Complaints Against the Police*, CECHR website, 12 March 2009 <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>; Independent Police Complaints Authorities' Network (IPCAN), *About IPCAN,* IPCAN website, 2023 <https://ipcan.org>; Australian Human Rights Commission, *Free and Equal: A National Human Rights Act for Australia* (Report, 2023) <https://humanrights.gov.au/sites/default/files/document/publication/free_equal_hra_2022_-_main_report_rgb_0.pdf>.

926 M Gooda, former Aboriginal and Torres Strait Islander Social Justice Commissioner, discussion with Aboriginal and Torres Strait Islander Social Justice Commissioner, 2025.

927 JP Fitzpatrick, EJ Elliott, J Latimer, M Carter, J Oscar, M Ferreira, H Carmichael Olson, B Lucas, R Doney, C Salter, E Peadon, G Hawkes, M Hand, 'The Lililwan Project: study protocol for a population-based active case ascertainment study of the prevalence of fetal alcohol spectrum disorders (FASD) in remote Australian Aboriginal communities', *BMJ Open*, 2012, 2(3): e000968 <https://doi.org/10.1136/bmjopen-2012-000968>.

928 Just Reinvest, *Mounty Yarns, Lives Experiences of Aboriginal young people in Mt Druitt*, Just Reinvest website, n.d.: 35 <https://www.justreinvest.org.au/community/mt-druitt/>.

929 Justice Reinvestment Network Australia, *Justice Reinvestment,* JR website, 2025 <https://justicereinvestment.net.au/>.

930 Prime Minister and Cabinet Portfolio, Senator the Hon Malarndirri McCarthy, *Central Australia Justice Reinvestment initiative announced,* [media release],

PM&C, 17 July 2025 <https://ministers.pmc.gov.au/mccarthy/2025/central-australia-justice-reinvestment-initiative-announced>.

931 Prime Minister and Cabinet Portfolio, Senator the Hon Malarndirri McCarthy, *New Justice Reinvestment initiatives announced*, [media release], PM&C, 30 September 2024 <https://ministers.pmc.gov.au/mccarthy/2024/new-justice-reinvestment-initiatives-announced#:~:text=As%20part%20of%20the%20First,justice%20reinvestment%20initiative%20in%20Victoria>.

932 A Ferguson, *Maranguka's Submission: Inquiry into Community Safety in Regional and Rural Communities,* Maranguka Community Hub, 2024 <https://www.parliament.nsw.gov.au/ladocs/submissions/86264/Submission%20162%20-%20Maranguka%20Ltd.pdf>.

933 A Ferguson, *Maranguka's Submission: Inquiry into Community Safety in Regional and Rural Communities*: 6.

934 KPMG, *Maranguka Justice Reinvestment Project: Impact Assessment* [Final Report], Indigenous Justice Clearinghouse, 27 November 2018 <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf>.

935 KPMG, *Maranguka Justice Reinvestment Project: Impact Assessment* [Final Report], Indigenous Justice Clearinghouse, 27 November 2018 <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf>.

936 A Ferguson, *Maranguka's Submission: Inquiry into Community Safety in Regional and Rural Communities*, Maranguka Community Hub, 2024 <https://www.parliament.nsw.gov.au/ladocs/submissions/86264/Submission%20162%20-%20Maranguka%20Ltd.pdf>.

937 Australian Institute of Health and Welfare, *Community Safety for First Nations People*, AIHW website, 7 September 2023 <https://www.aihw.gov.au/reports/australias-welfare/indigenous-community-safety>.

CHAPTER 8:

LAND JUSTICE

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Land justice

For First Peoples, justice is inseparable from Country. Country is the foundation of identity, Law, governance, culture and spirituality. Connection to Country underpins social and emotional wellbeing and shapes kinship, responsibilities and collective identity.

The Aboriginal and Torres Strait Islander Social and Emotional Wellbeing Framework identifies 7 interrelated domains of wellbeing:

- body and behaviours
- mind and emotions
- family and kinship
- community
- culture
- spirituality
- Country.[938]

SEWB Diagram adapted from Gee et al., (2014)

Figure 8.1: Domains critical to the Social and Emotional Wellbeing of First Peoples.[939]

This framework makes clear that connection to Country is not peripheral but central to health and collective flourishing.

As Irene Watson explains in *Aboriginal Peoples, Colonialism and International Law*: Raw Law, Indigenous Law emerges from, and is sustained through, Country.

This contrasts with colonial systems which treat land as a commodity and sever land from Law and people.[940]

International human rights standards affirm the relationality between Law and Country. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) recognises First Peoples' rights to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, territories and waters. It also affirms First Peoples' right to uphold their responsibilities to future generations.

Colonisation disrupted these relationships through the legal fiction of *terra nullius* and the violent dispossession of First Peoples of their lands. Colonial laws and policies sanctioned removal, displacement and attempted erasure of culture. Colonisation therefore undermined the very systems of governance and law that sustained collective life for First Peoples.

This chapter talks to land justice. It considers legislative reforms across connected regimes such as native title, land rights and cultural heritage. The chapter:

- highlights the ongoing challenges of engaging with the native title system and intersecting legislative and policy regimes
- demonstrates the need to rethink the current implementation of laws and policies designed to 'rectify the consequences of past injustices' so Aboriginal and Torres Strait Islander peoples 'receive the full recognition

and status within the Australian nation to which history, their prior rights and interests and their rich and diverse culture fully entitle them to aspire'.[941]

Reform processes are underway across a number of these systems in many instances (i.e. native title, cultural heritage, water rights and climate change). Furthermore, this is not the first time these systems have been called into question.

Aboriginal and Torres Strait Islander Peoples have been at negotiation tables, fully engaged and committed to achieving a fairer system for all. However, governments of all persuasions have consistently responded by disregarding the recommendations provided many times through many reviews and inquiries. First Peoples are then continuously left to navigate broken systems ill-equipped to uphold their rights.

Chapter 8 Recommendations

21. The Australian Government should amend the Native Title Act 1993 to ensure consistency with Australia's international human rights obligations and address longstanding concerns about the Act, including by:
    a. establishing a presumption of continuity in the acknowledgment and observance of traditional Law and custom of the relevant native title claimant society
    b. shifting the burden of proof to the respondent once the native title applicant has met the relevant threshold requirements in the registration test
    c. extending the amendments allowing historical extinguishment of native title to be disregarded to marine parks and reserves
    d. accounting for the impacts that future acts may have on native title rights and interests in areas outside of the immediate footprint of a future act, including waterways and rights and interests associated with water
    e. strengthening procedural rights, including by:
        i. reviewing time limits under the right to negotiate
        ii. shifting the onus of proof onto the proponents of development.
22. The Australian Government should ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169).
23. The Australian Government should ensure that Prescribed Bodies Corporate (PBCs) are appropriately supported to meet their responsibilities by:
    a. allocating sufficient ongoing funding to an independent PBC Operating Fund to guarantee PBC funding in perpetuity
    b. providing resources to enable PBCs to fulfill the community healing and empowerment roles needed to address the harms caused by the native title system.
24. The Australian Government should establish a specifically resourced First Peoples advisory group to advise on reform and support reform implementation with respect to the Native Title Act 1993 and intersecting legislative regimes.

25. The Australian Government should strengthen cultural heritage protections by:

    a. amending federal cultural heritage and environmental protection and biodiversity conservation legislation to set national minimum standards which are consistent with Australia's international human rights obligations, including through:

        i. enshrining the principle of self-determination and enabling Traditional Owners to determine which areas and values are significant and worthy of protection

        ii. enshrining the principle of free, prior and informed consent (FPIC) and enabling the appeal and overturning of decisions where this standard is not upheld

        iii. prohibiting agreements that restrict Traditional Owners from publicly raising concerns about heritage protection or exercising their rights under heritage legislation

        iv. establishing enforceable and meaningful penalties for breaches

    b. commissioning, in collaboration with state and territory governments, a national mapping and truth-telling project in relation to cultural heritage that has been damaged or destroyed.

Land justice is a human right

The failure to secure land justice cannot be viewed solely as a matter of property or resource management. Instead, it represents a breach of fundamental human rights. The UNDRIP affirms First Peoples' rights to maintain their spiritual relationship with their lands, territories and waters, and to exercise free, prior and informed consent in relation to development affecting them (articles 25–32). Yet, in Australia these rights remain unevenly implemented. This leaves First Peoples communities vulnerable to decisions that prioritise economic or political expediency over cultural survival and wellbeing.

Secure land rights are foundational for access to justice more broadly. Without them, the enjoyment of other rights – including health, housing, education and the practice of culture – is undermined. Dispossession and exclusion from decision-making perpetuate intergenerational harm. In contrast, recognition and restoration of land rights provide a pathway to healing, cultural maintenance, sustainability and empowerment.

Achieving land justice in this country means that Aboriginal and Torres Strait Islander people have access to a fair, coordinated system that is grounded in human rights. The system must provide a sustainable settlement which recognises their experiences since colonisation. This means, consistent with the 1992 High Court decision in M*abo and others v Queensland (No. 2)* (Mabo), the system must be rebalanced in favour of rights and opportunities for Aboriginal and Torres Strait Islander peoples, rather than government and third parties.

Current legal frameworks fall short of meeting these obligations. Native title, which many argue does not amount to nor deliver 'land rights',[942] is limited in scope and subject to extinguishment. Compensation is inadequate or absent, with the embedded access to compensation only activated recently through the Timber Creek High Court decision. Finally, the presumption of Crown ownership continues to underpin all land relations. These systemic gaps demonstrate why land justice must be treated not as a discretionary policy choice, but as an urgent human rights imperative.

Land rights regimes can deliver outcomes such as granting freehold title and creating financial mechanisms to support ongoing restitution. For example:

- In New South Wales the *Aboriginal Land Rights Act 1983* (NSW) enables freehold grants to successful claims to Crown land. It also establishes access to land tax revenue through the Land Council system.
- The A*boriginal Land Rights (Northern Territory) Act 1976* (Cth) provides inalienable freehold title through Aboriginal land trusts. The Aboriginals Benefit Account (ABA) supports communities from mining royalties.
- In South Australia, the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) and *Maralinga Tjarutja Land Rights Act 1984* (SA) grant inalienable freehold title. The *Aboriginal Lands Trust Act 1966* (SA), modernised in 2013, continues to hold land in trust for Aboriginal communities.

Yet, the promise of restitution is not fully realised unless First Peoples direct the wealth generated from these arrangements. As Nigel Browne, CEO of Aboriginal Investment NT, recently noted:

Aboriginal Traditional Owners from the Northern Territory have long fought for economic control over the wealth generated from our lands. The Aboriginal[s] Benefits Account (ABA), born out of the Aboriginal Land Rights Act (1976), holds over $1 billion that is currently held in abeyance from the very people it is meant to benefit, Aboriginal Territorians.[943]

He reminds governments that at a time when they are imposing ongoing austerity on Aboriginal organisations and communities in the NT:

... unless (the funds are) managed by the right hands, it will not uplift our communities at a pace necessary to bring parity to the NT's population as a whole. In short, our hands are the right hands.[944]

In contrast to land rights regimes, native title has been reduced to the recognition of pre-existing and ongoing rights to use, occupy and access (and in limited cases exclusive possession of) lands and waters in accordance with traditional Law and custom. Native title does not grant land ownership in the same way as land rights regimes.

For some communities, efforts to engage effectively with both native title and land rights regimes have resulted in significant conflict and deep divisions. This is also an issue, for example, when cultural heritage regimes that appoint cultural heritage bodies intersect with separate PBCs responsible for managing native title rights and interests. National Park joint management regimes in Queensland, for example, appoint grantees in accordance with trusteeship arrangements under state law.

The native title system

The High Court's Mabo decision (1992) overturned the legal doctrine of *terra nullius* which justified colonisation of Australia.[945] In doing so, the High Court recognised the pre-existing and continuing native title rights and interests of Aboriginal and Torres Strait Islander peoples to their lands, territories, resources and waters.

This decision resulted in Aboriginal and Torres Strait Islander peoples being recognised at common law (by the Western legal system) as the Traditional Owners and Custodians of all lands and waters across Australia. More specifically it:

- fundamentally rejected the notion that First Nations were 'without a settled law'
- confirmed that our traditional Law and customs survived the imposition of British law
- recognised traditional Law and custom not only as a 'coherent system', but as 'additional sources of law in Australia that [do] not derive from the Crown'.[946]

Mabo No.2 underpinned the subsequent establishment of the native title system, administered by the *Native Title Act 1993* (Cth) (the Native Title Act).

The Native Title Act reflects the High Court's decision in Mabo by affirming that:

The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement.

They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands.[947]

The preamble to the Native Title Act also clearly articulates the intended response of the Commonwealth Government to address this impact. It states that:

The people of Australia intend:

a. to rectify the consequences of past injustices by the special measure contained in this Act... for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and

b. to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture fully entitle them to aspire.[948]

However, while there have been some significant developments, this landmark Act has not provided the access to justice envisioned by the High Court in Mabo nor in the preamble to the Act.

The native title system is an extremely complex, imperfect, expensive and slow way of achieving justice. Aboriginal and Torres Strait Islander peoples have consistently had to challenge the efficacy of the native title system. They have done this through litigation and through long, drawn-out, adversarial negotiations that prioritise non-Indigenous interests over the rights and entitlements of First Peoples (identified through the Native Title Act's preamble). The Yamatji Marlpa Aboriginal Corporation (YMAC) observes:

> ***While the NTA [Native Title Act] has gone a long way to addressing the historical land injustice in Australia, in relation to Traditional Owners, there is more work to be done in the area of capacity building so that Traditional Owners are in a position to assert and actively protect these rights.***[949]

Native title has caused division and destruction for our families and communities. They are caught in a constant battle for power and a seat at the negotiation table. This even happens after a determination has been made and rights have been secured. As an extension of the colonial harm caused to our people, there is much healing needed from our engagement in the native title process and our efforts to secure our rightful entitlements as Traditional Owners and custodians of this place. This is the result of the capitalist ecosystem in which native title operates.

Much of Australia's economic growth – including the successful pastoral industry and the resource industry driving fossil fuel, mineral and gas extraction – has been at the expense of First Peoples' sacred lands and waters. First Peoples have often had little choice but to enter into Indigenous Land Use Agreements (ILUAs) with governments, pastoralists and extractive industries. This has been necessary to maintain some involvement in decisions that impact their lands, waters and resources. They must enter these agreements when they desire to inform and influence practices that damage Country and harm humanity.

With a contemporary focus on economic empowerment, the commodification of our rights and interests is in direct conflict with traditional Law and customs which view land and connection to Country as a familial relationship. Care and management are a responsibility. Country is not an asset to be leveraged for political and financial gain.

The imposed system requires us to put a monetary value on so many aspects of who we are: our lands and territories, our relationships and responsibilities for our lands and territories, and our access to the benefits secured. Despite these notions, barriers prevent Traditional Owners from successfully leveraging the economic potential of native title (i.e. problems accessing capital).[950]

This limits their ability to pursue economic development opportunities that are aligned with their interests and aspirations.

We acknowledge that the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSIA) has emphasised the need to 'strengthen existing, and develop new, instruments to enhance and fast track Aboriginal and Torres Strait Islander people's access to finance and capital'.[951] This would put First Peoples communities in a position to better pursue their economic self-determination now and into the future. Recently established institutions such as the Mabo Centre, launched on 4 March 2025 in Perth and hosted by the University of Melbourne, will be critical to advancing these considerations.

The Mabo Centre[952]

The recently established Mabo Centre seeks to unlock the economic potential of the Indigenous land estate and support genuine self-determination through participation of First Nations in the Australian and global economies.

The Mabo Centre is co-Chaired by Jamie Lowe, CEO of the National Native Title Council (NNTC), and Professor Marcia Langton, Associate Provost, University of Melbourne. The new centre enacts a unique Indigenous-led partnership between the NNTC as the peak body for native title and other Traditional Owner bodies, and a leading Australian academic institution, the University of Melbourne.

Since the landmark Mabo decision in 1992, we have seen Indigenous rights recognised in more than 50% of the Australian land mass and the establishment of almost 300 Indigenous corporations to support the exercise of these rights. Nonetheless, the Centre co-chairs argue that 'obvious reforms' that 'unleash the potential' for future economic development remain elusive and are long overdue. This is despite our contributions to industry and other sectors such as resource extraction, renewable energy, tourism, biodiversity protection and environmental management and higher education.

The Centre aims to 'work in this nexus between policy and people, providing resources and support for Traditional Owner groups and Indigenous corporations, to enable better economic outcomes through [the] realisation of their land and sea rights'. Ways the Centre will achieve these outcomes include:

- creating a forum for industry and First Nations Traditional Owner groups to develop mutually beneficial strategies and approaches to doing business
- supporting industry through evidence-based best-practice approaches that demonstrate success, improve outcomes and show how Indigenous rights can create nationwide benefits
- providing research, training and support to Traditional Owner representative institutions.

An article authored by Co-Chairs of the Mabo Centre, Marcia Langton and Jamie Lowe states:

> ***We are at an important crossroads for such reform, where the needs of traditional owners and the economy meet. Key industry sectors have an urgent need for resources in areas owned by Aboriginal traditional owners or subject to native title negotiating rights… Negotiating in good faith with Indigenous Australians will be essential to an efficient and socially responsible business climate'.***[953]

Text box 8.1 – The Mabo Centre

Recognition of relationship to land and waters in the National Agreement on Closing the Gap

Including the relationship between Aboriginal and Torres Strait Islander peoples to land and waters in the National Agreement has been an important addition to the CTG framework.

Targets 15a and b seek to increase our legal rights and interests in relation to land and sea. These targets acknowledge the intrinsic connection between our people and their ancestral, spiritual and cultural connections to land and resources. The targets also recognise the importance of this connection to the broader health and wellbeing of Aboriginal and Torres Strait Islander people.

Collectively, the Target 15 indicators focus on:

- the ways Aboriginal and Torres Strait Islander peoples control and own land through exclusive rights (15a)
- sea mass subject to Aboriginal and Torres Strait Islander peoples' rights and interests (15b).

It is positive to see that these targets, which seek a 15% increase in our legal rights and interests, are on track to be achieved by 2030. According to information provided by the Productivity Commission, these targets show good improvement. Currently 4,314,744 square kilometres of land and 11,517 square kilometres of sea country are subject to the interests of Aboriginal and Torres Strait Islander peoples.[954]

First Peoples' experiences of the native title system

As established above, the path to realising the rights of Aboriginal and Torres Strait Islander peoples to our lands, territories and resources has been challenging.

Despite the legal recognition of our rights in the Mabo case, the legacy provided by that decision remains elusive.

The non-Indigenous system of Law, imposed upon us, has constrained the legal pathway of native title. This has brought with it wins and losses. The 1998 amendments to the Native Title Act had devastating impacts which diminished our interests in a system that was already inherently complex, expensive and time consuming.

Many of these features contribute to perceptions that the native title system is unjust and ultimately promotes ongoing 'dispossession'.[955] Aboriginal and Torres Strait Islander people who participated in the Informing the Agenda (ITA) national listening tour (see Chapter 1: First Peoples' Voices – Informing the Agenda) emphasised that the current system of native title causes community conflict and divisions. The system is also incongruent with our cultural, spiritual and community connections to Country and does not enable economic empowerment or the realisation of our human rights.

These views persist despite the fact that as of November 2024, Aboriginal and Torres Strait Islander peoples' native title covers approximately 44% of Australia's land and waters.[956]

In noting this figure, it is critical to acknowledge that in most cases, native title rights are recognised as non-exclusive rights, such as the right to hunt, fish, camp or conduct ceremonies. These rights must coexist with other tenures and are routinely subordinated to regimes governing pastoral leases, mining and development.

For example, pastoral leases cover nearly half the Australian continent. In these areas, native title holders cannot exercise rights that would interfere with the leaseholder's use, leaving cultural authority and responsibility heavily circumscribed. In comparison, exclusive possession – which gives native title rights closer to full ownership, including the ability to control access – is rarely recognised.

Exclusive possession is usually only granted when there are no conflicting interests.

One challenge facing native title holders is the future acts regime. The NNTT defines a future act as 'a proposal to deal with land in a way that affects native title rights and interests.'[957] The Native Title Act outlines procedures governments must undertake when there are proposed future acts. Future acts could occur through things such as tourism, mining or the compulsory acquisition of land.

Reforms to the future acts regime – the subject of an open Australian Law Reform Commission (ALRC) inquiry – offer an opportunity to achieve a more just native title system. The ALRC's proposed reforms promote better alignment with the stated intent of the Native Title Act and Australia's international human rights obligations. These include ensuring that all future amendments are consistent with the *Racial Discrimination Act 1975* (Cth).

However, there are broader issues that impact the effectiveness of the native title system and limit its potential to fully realise the rights of Aboriginal and Torres Strait Islander peoples.

The NNTC, Australia's national peak body for the native title sector, has identified several key actions to better align native title with the UNDRIP. These include:

- reform the future acts regime regarding the application of free, prior and informed consent (FPIC) to agreement making under the Native Title Act (UNDRIP Article 32)
- reform the Native Title Act to include a presumption of continuity of culture. This would mean the onus is not on First Peoples to 'prove' their ongoing connection (UNDRIP Article 11)
- amend the Native Title Act to enshrine the FPIC principle within the future acts regime (UNDRIP Article 32)
- reform the *Native Title Act and Native Title (Prescribed Bodies Corporate) Regulations 1999* to allow native title holders to determine their own governance structure (UNDRIP Article 18)
- reform the Native Title Act sections on compensation by embedding procedural and administrative measures to streamline processes and allow native title holders to define their own negotiation processes according to their customs (UNDRIP Article 28(1))
- embed the inland right to water in the Native Title Act (UNDRIP Articles 25 and 32)
- retrospectively apply 'the right to take for any purpose' under the Native Title Act (UNDRIP Article 31). This refers to native title holders' right to take resources for any reason, including both commercial and non-commercial uses
- continue reform of state, territory and Commonwealth cultural heritage legislation (UNDRIP Articles 11 and 32).[958]

These proposed reforms are also consistent with those expressed by YMAC in their submission to the ITA Project:

> ***Both native title claims and compensation claims require extensive resources in the dedication of Traditional Owners to engage in lengthy proceedings and negotiations, often without payment for their time, bearing the burden of proof against the State and other far more resourced companies and parties…in addition to entrenching FPIC into land dealings with Traditional Owners more widely and consistently, the adoption of UNDRIP may also assist in shifting the burden of proof from Traditional Owners to the State.***[959]

Recommendation 21

The Australian Government should amend the Native Title Act 1993 to ensure consistency with Australia's international human rights obligations and address longstanding concerns about the Act, including by:

a. establishing a presumption of continuity in the acknowledgment and observance of traditional Law and custom of the relevant native title claimant society

b. shifting the burden of proof to the respondent once the native title applicant has met the relevant threshold requirements in the registration test

c. extending the amendments allowing historical extinguishment of native title to be disregarded to marine parks and reserves

d. accounting for the impacts that future acts may have on native title rights and interests in areas outside of the immediate footprint of a future act, including waterways and rights and interests associated with water

e. strengthening procedural rights, including by:

   i. reviewing time limits under the right to negotiate

   ii. shifting the onus of proof onto the proponents of development.

Recent developments in native title

The following section explores the recent developments and outcomes achieved in relation to native title during the period from 1 July 2024 to 30 June 2025. This includes an overview of determined native title claims, agreements reached, legislative reform, domestic case law and international findings.

Native title determinations

While the Federal Court of Australia is responsible for the determination of native title outcomes, the NNTT supports parties to access the native title system. The NNTT plays multiple roles. It:

- facilitates the native title application and registration process
- assists with the negotiation of ILUAs
- determines future act applications
- provides mediation and assistance with dispute resolution and resolving objections
- manages the Native Title and ILUA Registers
- conducts reviews and special inquiries (under Ministerial direction).[960]

According to information provided by the NNTT, there were 652 native title determinations on the register as of 30 June 2025.[961] This includes 124 matters where native title was determined not to exist. This is compared to a total of 616 registered determinations, including 114 that were determined not to exist, in the year prior.[962]

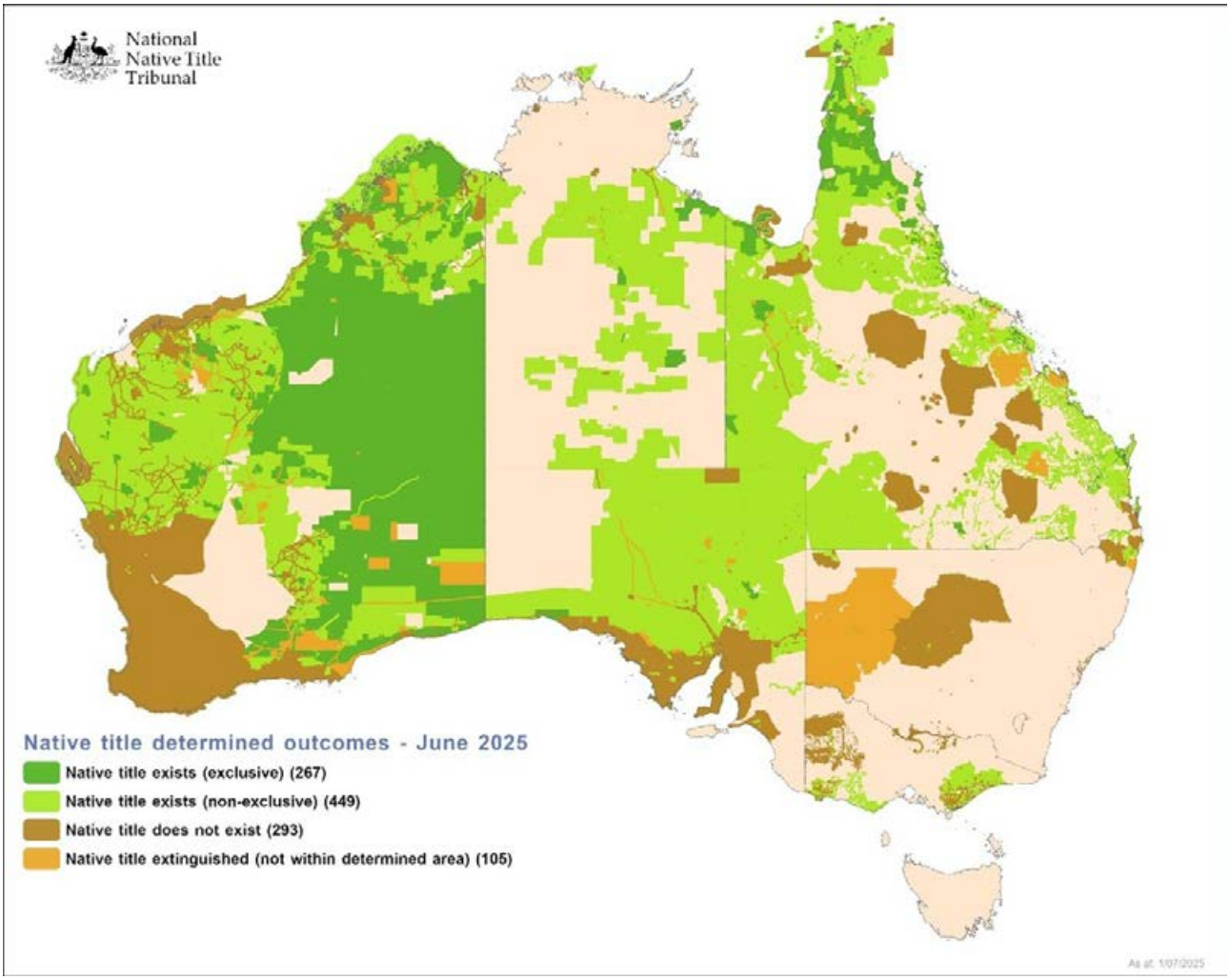


Figure 8.2: Native title determined outcomes – June 2025. Source: National Native Title Tribunal

Native title determinations for the period 1 July 2024 to 30 June 2025	
Native title consent determinations	25
Litigated native title determinations	1
Unopposed native title determinations (where native title does not exist)	9

Text box 8.2 – Native title determinations for the period 1 July 2024 to 30 June 2025

Indigenous Land Use Agreements (ILUAs)

An ILUA is a voluntary agreement between native title parties and others about the use and management of areas of land and water. Parties can make ILUAs when:

- native title has been determined to exist in whole or part
- a native title claim has been made
- no native title claim has been made.[963]

There are 3 types of ILUAs: area agreements, body corporate and alternative procedure agreements. These generally cover matters such as allowing and validating future acts, dealing with native title or compensation applications and the relationship between native title rights and other interests.[964]

As of 30 June 2025, a total of 1,520 ILUAs were registered.[965] This is an increase from 1,487 registered ILUAs in the previous reporting period. [966] The NNTT reported a slight decrease from the previous year in the number of ILUAs received. The majority are body corporate ILUAs and are based in Queensland.[967] Body corporate ILUAs are agreements about native title matters between the Registered Native Title Body Corporate (RNTBC) and other parties when a native title determination has been made.[968]

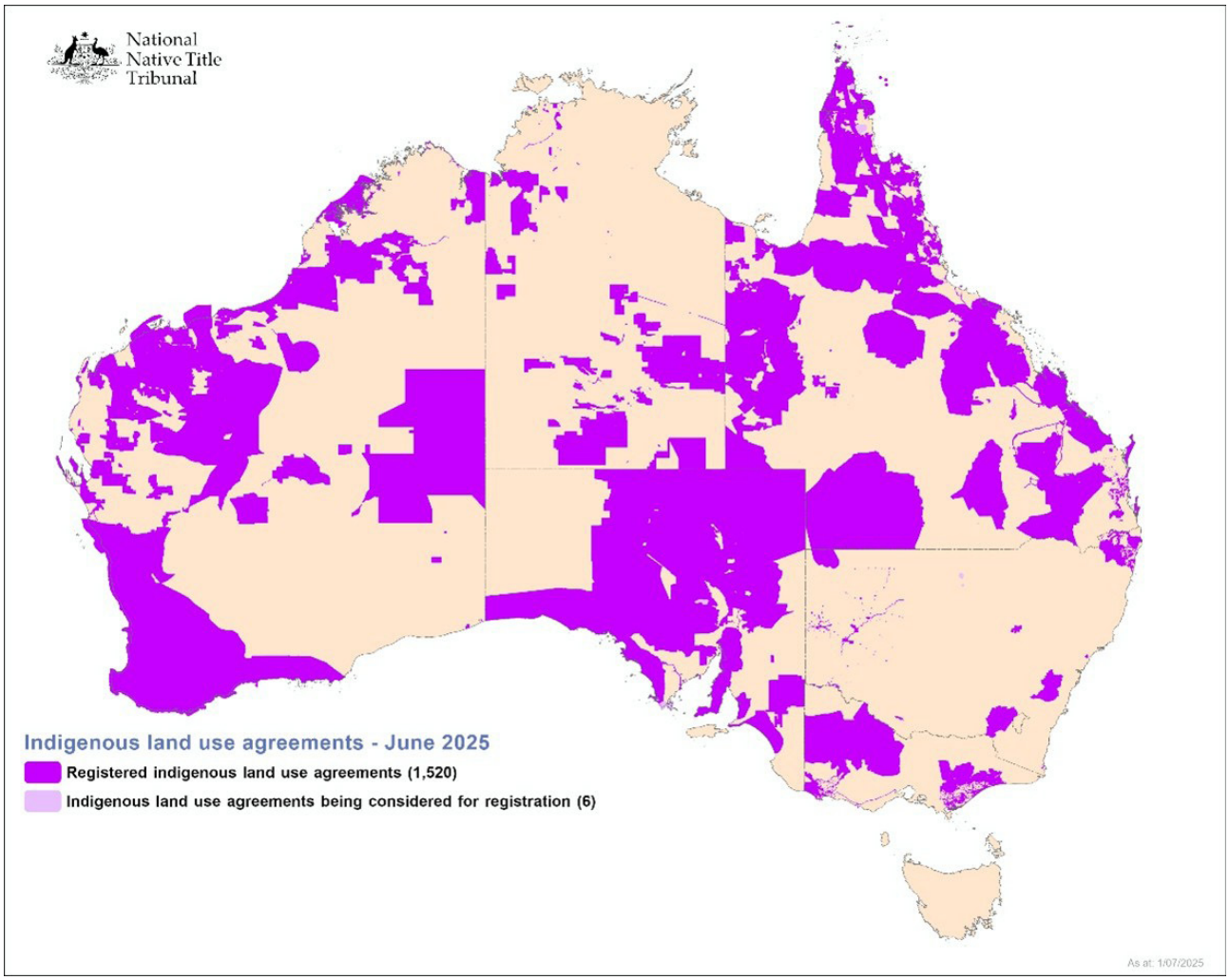


Figure 8.3: Indigenous Land Use Agreements – June 2025. Source: National Native Title Tribunal

The NNTT highlighted that surpassing 1,500 registered ILUAs amounted to a milestone for the native title space.[969] The NNTT attributed this to the 'spread of native title across the country', including through the increasing number of body corporate ILUAs registered since 2017.[970]

Future act applications

A key function of the NNTT is to resolve future act applications on land where native title has been determined to exist.[971] There was an increase in the number of applications lodged this year compared to the 2024 reporting period.

Future Act Application	NSW	NT	QLD	WA	Total
Future acts notified under s29	30	90	199	1,926	2,245
Objections to expedited procedure		20	86	1,336	1,442
Future act determination applications		1	6	14	21
Requests to assist in negotiations (s31 mediations)		1	1	26	28

Text box 8.3: Future act applications lodged with the NNTT in 2024-25[972]

Case law

Despite a well-established process to progress determinations of native title, First Peoples continue to pursue their native title rights and interests through litigation.

There have been several key native title matters litigated across the country. These include the High Court determination in the matter of the *Commonwealth v Yunupingu* [2025] HCA 6. This determination built on the 2019 Timber Creek High Court decision to address compensation in the Northern Territory. This is discussed in detail below. Other developments across the country include the ongoing litigation of the Gomeroi people of New South Wales versus Santos regarding the mining of coal seam gas in the Pilliga,[973] and the matter of First Peoples of the Millewa-Mallee of far northwest Victoria in the Federal Court.[974]

On 19 May 2025 the NNTT decided in the matter of *Santos NSW Pty Ltd and Another v Gomeroi People and Anor* that future acts may be done subject to conditions.[975] The Gomeroi people have since appealed the case to the Federal Court, which is yet to make orders regarding next steps.[976]

The Millewa-Mallee people received formal recognition of their native title rights before the Federal Court on 18 July 2025. The determination application was officially lodged 10 years ago and is an important resolution for the Latji Latji, Ngintait and Nyeri Nyeri peoples. They have been seeking recognition of their native title since the 1990s.[977] The case is historic because it marks the first time in the state of Victoria that First Peoples will have the right to control access to parts of their Country.[978]

At the international level, in 2019 the Wunna Nyiyaparli people submitted a complaint to the United Nations Human Rights Committee (UNHRC) under the International Covenant on Civil and Political Rights (ICCPR). The complaint concerned the effective participation of Indigenous Peoples in mechanisms for the determination of their rights to traditional territory.

Importantly, this was the first decision by the Committee concerning Australia's native title system.

It was also the first decision concerning States' due process obligations when determining the legal rights of Indigenous peoples to their traditional lands.

Specifically, the complaint related to the lack of domestic remedies in relation to:

- the dismissal of the Wunna Nyiyaparli native title claim of 2012. The Wunna Niyaparli People argued that they were wrongly excluded from the wider Nyiyaparli claim in 2010 following the publication of anthropological research which suggested their ancestor was not a Nyiyaparli person.
- concerns by the Wunna Nyiyaparli that the right people were not in place to speak for Country in accordance with traditional Law and customs.

The Committee found that Australia has an obligation to provide due process guarantees to the Wunna Nyiyaparli people in their claim for native title rights and interests.[979]

In October 2024, the Australian Government responded by rejecting the Committee's findings and asserting:

- there was no violation of the ICCPR in relation to the Wunna Nyiyaparli
- the Wunna Nyiyaparli were 'entitled to participate throughout all stages of the proceedings' and were given a total of six opportunities to participate in those proceedings.[980]

The Human Rights Committee is yet to comment on the Government's response and the further correspondence submitted by the Wunna Nyiyaparli.

Compensation and native title

When the Native Title Act was first introduced in 1993, it was anticipated that there would be a significant focus on compensation for native title that had been extinguished by so called 'past acts'. The Native Title Act provides at s23J(i) that:

> ***...native title holders are entitled to compensation in accordance with Division 5 for any extinguishment under this Division of their native title rights and interests by any act, but only to the extent (if any) that the native title rights and interests were not extinguished otherwise than under this act.***[981]

Section 51 of the Native Title Act further provides that native title holders can claim compensation on just terms for acts that have extinguished or impaired native title. The Act requires that compensation be in monetary terms, unless claimants request non-monetary terms.[982]

Although the capacity to secure compensation for loss and dispossession is available through the Native Title Act, this measure has been under-utilised and has under-delivered. Recently, there have been important cases that demonstrate the significance of these provisions.

The first of these involved the case of Timber Creek, heard before the High Court in the matter of the *Northern Territory v Griffiths on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7 (the Timber Creek decision).[983]

The Timber Creek decision tested:

- the criteria for assessing compensation of extinguished native title due to compulsory acquisition
- the scope of 'just terms' compensation provided for under the Native Title Act.

This was the first determination by the High Court on native title compensation. The High Court found that:

- the Native Title Act limited the amount of compensation for extinguishment of exclusive possession native title. It must be equivalent to the amount payable for the compulsory acquisition of a freehold estate in the land

- non-exclusive possession of native title is a lesser right to land. As such, the High Court applied a 50% discount from the freehold value of the land
- the compensation scheme under the Native Title Act was not discriminatory
- compensation must be assessed on a case-by-case, lot-by-lot basis. Each case must take into account:
  - the nature of the extinguishing act and its timing
  - the identity of the claimants
  - claimants' connection to Country
  - the particular impacts of the extinguishing acts on the native title rights and interests.
- compensation is subject to a 'just terms top up' under sections 51 and 53 of the Native Title Act.

There is still uncertainty about other impacts on native title. For instance, it is not clear how this ruling would apply to mining projects and other land uses on land subject to native title.[984]

Regarded as one of the most significant cases since the 1992 Mabo decision,[985] the High Court awarded compensation for the economic, cultural and spiritual losses associated with the extinguishment of native title by past acts. The Court granted $2.5 million in damages, including $1.3 million for cultural loss to the native title holders in the remote NT town of Timber Creek. This cultural loss came about through the development of roads and other infrastructure by the government in the 1980s and 1990s.

Importantly, the Timber Creek decision determined 3 grounds for loss: economic loss, simple interest on economic loss and cultural (including spiritual) loss. While this decision provided guidance on the formula for calculating economic loss and simple interest, it did not provide guidance to jurisdictions on the formula for measuring and calculating cultural loss. The High Court applied a financial figure determined on a per-square-kilometre basis.

Reflecting on the importance of this landmark decision, former Co-Chair of the National Congress of Australia's First Peoples, Dr Jackie Huggins, commented:

> ***While no amount of money can adequately compensate for cultural loss and its consequences, the High Court's recognition of the implications caused by incursions and infringements on the fundamentals of our cultures are of some comfort.***[986]

In March 2025 the High Court delivered the second important decision regarding compensation in the matter of the *Commonwealth v Yunupingu* [2025] HCA 6. That decision involved a claim made by the late Dr Yunupingu AM, on behalf of the Gumatj, one of the clans of the Yolnju people in northeast Arnhem Land. The land in question involved the Gove Peninsula. The Gumatj were seeking compensation for the extinguishment of their native title rights arising from legislative and executive acts of the Commonwealth between 1911–1978. The Commonwealth used the 'territories power' under the Australian Constitution to enact laws and grant mining and other leases during this time. The Gumatj argued that the 'past acts' of the Commonwealth constituted an infringement on their non-exclusive native title rights, for which they were entitled to 'just compensation'.

The High Court rejected several of the arguments made by the Commonwealth Government. Namely, the High Court rejected the notion that native title claimants' rights were 'inherently fragile' and not entitled to just terms compensation by acts of the Commonwealth. The High Court also dismissed the argument that the Commonwealth was not liable for compensation for property taken in the Northern Territory.

This finding upheld the idea that the constitutional provision of 'just terms' applies to acts occurring in all states and territories and is not limited to native title.[987]

The High Court ruling in this case confirmed:

- that the 'just terms' principle applies equally to everyone in Australia
- that native title is a property right like any other property right; if the Commonwealth removes that property right, native title holders are entitled to 'just terms' compensation
- the Commonwealth was responsible for making laws in the Northern Territory between 1911–1978 and is subject to the provision of 'just terms' compensation for the removal of native title property in the Northern Territory during that period.[988]

The Gumatj are currently in the Federal Court pursuing a claim for $700 million in compensation for historical acts that have adversely affected their native title rights in north-east Arnhem Land.

Figure 8.4 provides an overview of native title compensation claims currently in progress and determinations made.

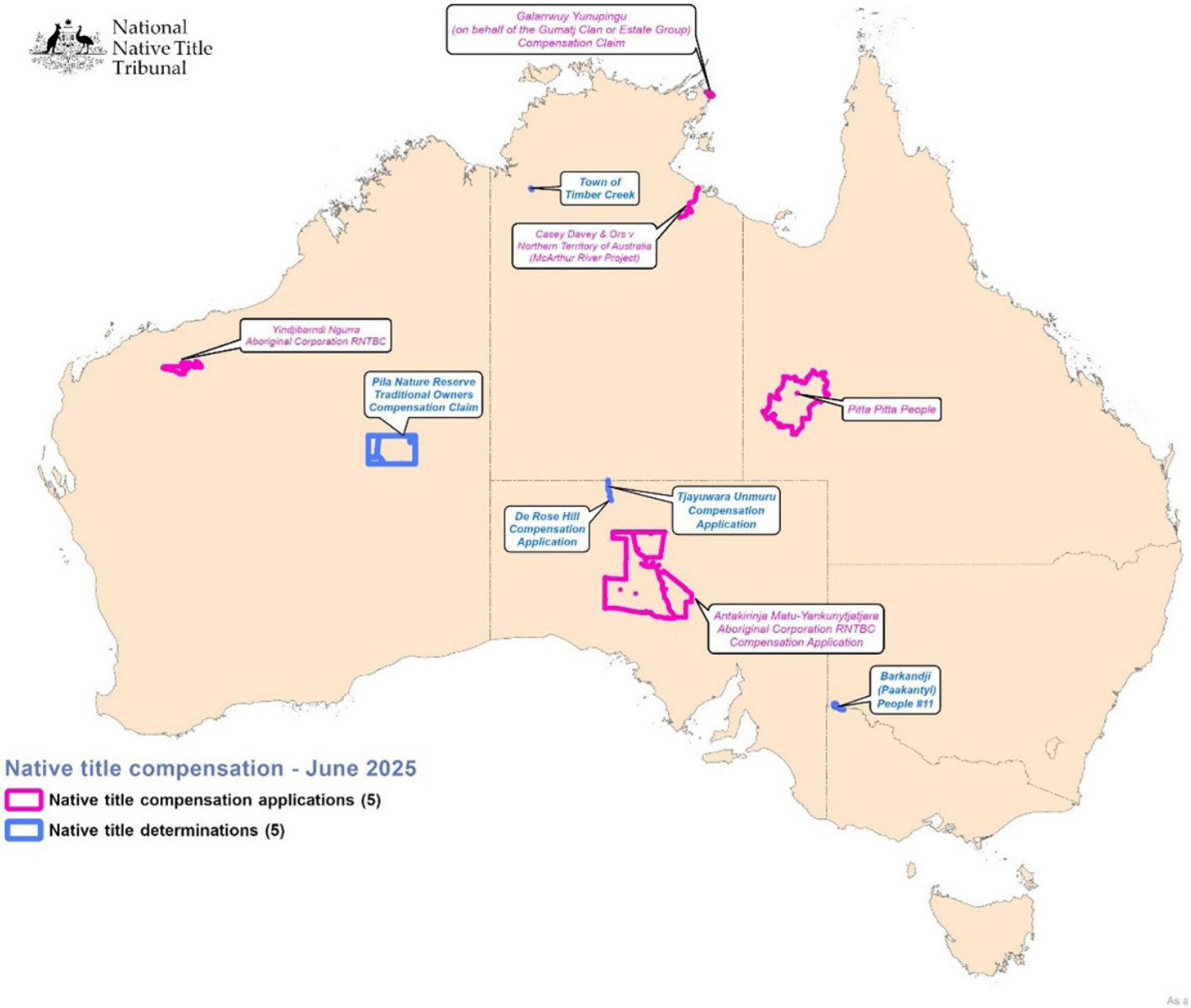


Figure 8.4: Native Title Compensation. Source: National Native Title Tribunal

A national approach to native title compensation

The Native Title Act stipulates that the Commonwealth and state and territory jurisdictions will each be responsible for their compensation liabilities. As such, each jurisdiction will be required to establish approaches to resolve claims for native title compensation.

The Commonwealth, states and territories are engaging with the NNTC, as the national native title peak body, to develop a national native title compensation framework.[989]

This is also an opportunity for jurisdictions to work with native title holders and their representative bodies, including the NNTC, to establish jurisdictional processes that are consistent with a national framework to progress native title compensation outcomes. This must include an agreed (guiding) formula for measuring and calculating loss against the 3 grounds identified through the Timber Creek decision. The NNTT submission to ITA noted:

> ***There is agreement among stakeholders that negotiated compensation settlements are preferable to litigated outcomes. Negotiated outcomes ensure that resources are not wasted on litigation and instead focus resources on agreements critical for securing economic development, independence and positive social outcomes for Indigenous people.[990]***

In October 2021 ministers responsible for native title endorsed in-principle the *National Guidelines for Native Title Compensation Agreement Making*.[991] Key principles in the National Guidelines include the following:

1. Native title compensation claims will be resolved through negotiation and agreement, wherever possible.
2. Negotiations will be conducted in good faith and founded on mutual trust, respect and understanding. Parties recognise the importance of appropriate resourcing to support the parity and equity of negotiation positions.
3. Governments will work to ensure, where possible, there is consistency within and across jurisdictions and with national best practice in approaches to assessing, valuing and resolving native title compensation.
4. The conduct of negotiations between the parties will be transparent, while ensuring material is handled appropriately and with sensitivity.
5. All efforts will be made to ensure the negotiation and agreement-making process will be robust, efficient and timely.
6. Agreements should represent a full, fair and just settlement for native title holders.
7. Agreements should be negotiated and agreed with the free, prior and informed consent of all native title parties to the settlement.
8. The aspirations of native title parties will inform agreement making, including resolving compensation through non-financial benefits. With the agreement of native title parties, regional responsiveness may also be appropriate and opportunities for whole-of-country or regional settlement agreements can be explored.
9. For future compensable acts, where practicable governments should consider options that may reduce the extent to which acts affect native title.
10. Negotiated compensation agreements will provide certainty for governments and native title parties as far as is reasonably practicable. Agreement benefits will be provided without unreasonable delay.[992]

In addition to these guiding principles, key considerations in developing a national approach to native title compensation include that it:

- is underpinned by the intent of the Native Title Act, and the rights outlined within the UNDRIP
- incorporates key principles, including to provide compensation on 'just terms' through good faith negotiated settlements that promote reconciliation and a reframed relationship which supports and advances self-determination and empowerment
- promotes a non-adversarial approach to negotiating compensation for all compensable acts across the 3 identified areas of loss – including ensuring that settlement requirements provide for:
  - understood and accumulated liability to the present day
  - compensation to be paid at the time the act is done (as is standard)
  - compensation for ongoing future acts as they arise.
- prevents the involvement of unethical legal practitioners, or practitioners who are not experienced in native title or compensation law
- provides an appropriate methodology for measuring and calculating financial compensation for cultural loss that accounts for the impact of dispossession. This includes considering differing views on the value in sites of significance (for example, a scar tree as compared to a massacre site, birthing site or burial ground) and the capacity and knowledge of native title holders to determine a financial value. A national approach may need to consider methodological options to support the diversity of impact experienced across the country, such as:
  - a full assessment requiring expert and anthropological evidence supported by site visits to inform the cultural loss assessment
  - affidavit or other evidence provided to support claims where the Eldership and key knowledge holders may not be alive or able to support a full assessment
  - a proportional payment, as applied in Timber Creek, to support those who have experienced significant impact and may not have access to the knowledge needed to support a full assessment.

Governments will be required to prepare financially to meet their liabilities. In this regard, consideration should be given to the establishment of a Compensation Fund to enable timely settlement.

Governments also hold the majority of the records and documents that will be necessary to support compensation claims. These records and documents are not just held within state archives. Many are in relevant departments and agencies. Governments should actively work to ensure processes are in place to facilitate access and provision in a timely and efficient manner, and to avoid unnecessarily delaying the claims process.

Native title compensation should be included as a standing item on the agenda for the Standing Council of Attorneys-General that meets up to twice per year, Native Title Ministers' Meetings (which last met on 17 November 2023) and national meetings of Treasurers.

Review of the future acts regime

The ALRC, in May 2025, released their report on their Review of the Future Acts Regime in the Native Title Act.[993]

The Review was prompted by the destruction of the caves at Juukan Gorge in Western Australia in 2020 and the calls by the Joint Standing Committee on Northern Australia to look at 'addressing inequalities in the negotiating position of Aboriginal and Torres Strait Islander peoples in the context of the future act regime'.[994]

The Australian Human Rights Commission (the Commission) has provided submissions to the Review in support of the ALRC proposals to reform the Native Title Act. This includes by bringing the Act into line with its original intent of addressing the consequences of past injustices and ensuring that Aboriginal and Torres Strait Islander peoples achieve full recognition and status that is consistent with their prior rights and interests.[995]

Our submission to the ALRC Review discussion paper identified several matters to achieve lasting reform to the future acts scheme.

Human rights-based approach

There is a need to ensure that the Native Title Act, and future acts regime more broadly, are consistent with Australia's human rights obligations, particularly under the UNDRIP. Each proposal put forward by ALRC's Discussion Paper must give full effect to the rights articulated in the UNDRIP.[996] This includes recommending that the Australian Government ratify ILO Convention 169 to ensure binding standards across the native title system (also recommended in Australia's Universal Periodic Review (UPR)).

Recommendation 22

The Australian Government should ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Adequate resourcing and supports to PBCs

The Commission supports the proposals set out in the ALRC's Discussion Paper and the submissions by many native title stakeholders who suggest that greater financial and capacity-building support should be provided. Such support would enable PBCs to effectively participate in the native title process. PBCs would have automatic access to registered agreements, ensuring that they are not disadvantaged and can access all information pertaining to their areas. Having access to this information can affect PBCs' ability to monitor, conduct negotiations and enforce terms.[997]

There is a general need to ensure that PBCs are adequately resourced. Proposal 14 of the ALRC's Discussion Paper, for example, proposes resourcing PBCs through a perpetual capital fund or other means.[998] This proposal acknowledges the constant burden placed on PBCs to enable ongoing participation of Traditional Owners in the native title system. The Commission's position is that the burden of facilitating effective engagement must lie with those responsible for administering the system (governments). Traditional Owners should not be required to use royalties, compensation and future act payments to fund future engagement in the system.[999]

Such funding is important to realise the numerous worthy reforms proposed in the Review. These include the development of native title management plans (NTMPs) without adding to the costs and existing workload of PBCs.

Recommendation 23

The Australian Government should ensure that Prescribed Bodies Corporate (PBCs) are appropriately supported to meet their responsibilities by:

a. allocating sufficient ongoing funding to an independent PBC Operating Fund to guarantee PBC funding in perpetuity

b. providing resources to enable PBCs to fulfill the community healing and empowerment roles needed to address the harms caused by the native title system.

Future acts compensation and compliance

The Commission supports the application of a 'future act payment' to parties for specific acts either before or at the same time as a future act takes place. Decisions regarding the method and amount of such payments need to be consistent with the rights of parties under the UNDRIP.[1000]

The Commission also acknowledges the lack of consequences for non-compliance with statutory processes regarding future acts. The Commission agrees that the Native Title Act should be amended to require compliance by governments and other parties.[1001]

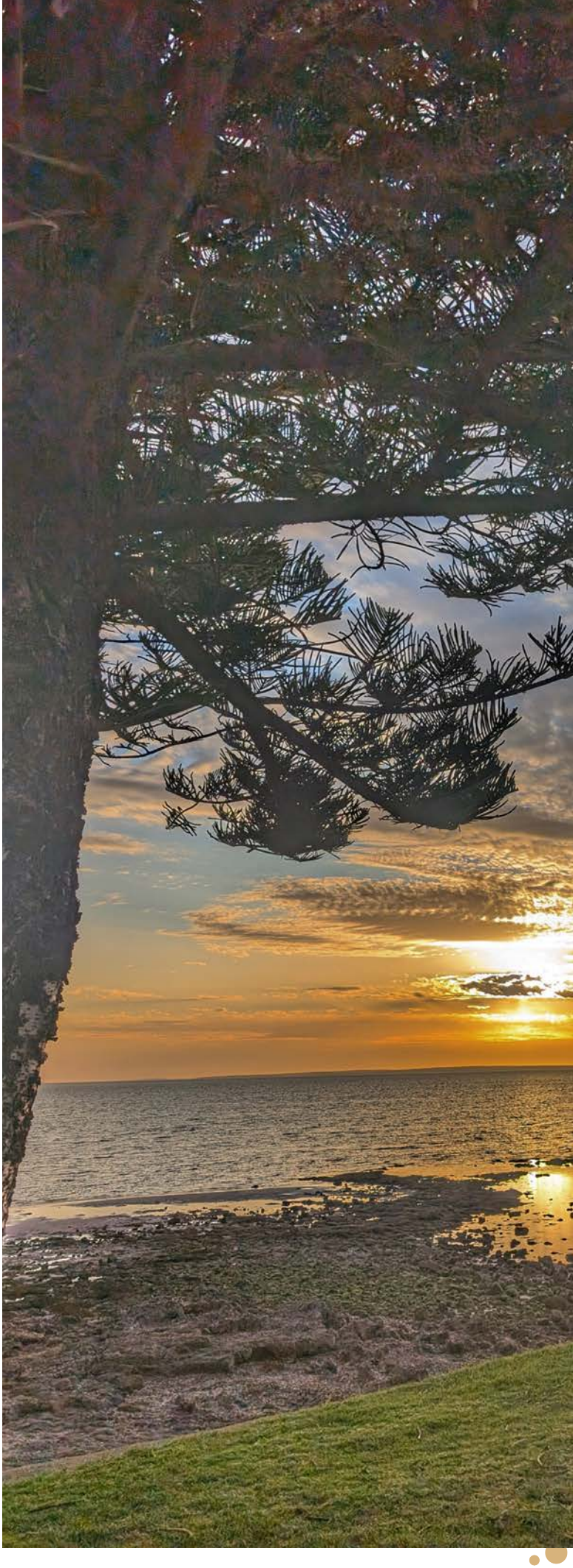
Adequate resourcing of the NNTT

The Commission emphasised the importance of properly resourcing the NNTT in line with Proposal 16 of the ALRC's Discussion Paper.[1002] Under this proposal, the NNTT would have an enhanced role to provide greater support to those engaged with the native title system.[1003] This is particularly important considering the ALRC Discussion Paper proposes making the use of NNTT services mandatory in several circumstances.[1004] Ensuring that the NNTT is adequately funded and resourced will ensure that parties can seek timely resolutions and relief.

Cultural heritage

The ALRC Review recognises the need to harmonise the existing cultural heritage and native title legislative regimes to manage the impact of future acts. Current work being undertaken at the federal level provides an important opportunity to align the cultural heritage system with native title, environmental protection and biodiversity conservation regimes.[1005]

The Commission highlights the state of flux nationally regarding cultural heritage legislation. The Commission emphasises the need to resolve this as a matter of priority to secure the rights and interests of Aboriginal and Torres Strait Islander peoples.



Intersecting regimes

For First Peoples, land cannot be separated from water, language, Law, kinship and spirituality. These are interconnected and form the foundations of culture, identity and governance. Over this holistic system sits a series of colonial legal and policy regimes – native title, land rights statutes, heritage laws, environmental and planning frameworks and resource development regimes. These regimes not only intersect with First Peoples' systems but also with each other, often in fragmented, conflicting and overlapping ways.

Instead of supporting or respecting Indigenous interconnections, these systems constrain First Peoples' authority and perpetuate patterns of dispossession. They have limited and, in some instances, completely severed the capacity for First Peoples to access their lands, waters and territories and to be accountable for their responsibilities. These responsibilities include the capacity for senior Elders and knowledge holders to protect and promote culture, as well as to transfer knowledge and responsibility to the next generations in accordance with culture and Law.

This disconnection has had a devastating impact on the health and well-being of First Peoples, both individually and collectively – as well as on the health and well-being of Country.

Dispossession has also disrupted the transmission of languages, cultural practices and the custodianship of ancestral remains and sacred objects. Revitalisation of languages and the repatriation of Ancestors and cultural heritage are therefore inseparable from land justice.

Languages and repatriation restore authority, knowledge and spiritual continuity to Country, strengthening Indigenous governance and cultural Law. In this way, language and repatriation initiatives are not peripheral but part of the same work of repairing relationships with Country harmed by colonisation.

Native title is one element of the patchwork of legal and policy regimes that govern land, waters and resources in Australia. These regimes intersect with, and often override, the recognition of Indigenous rights. The cumulative effect is a complex system in which the recognition of native title rarely translates into genuine authority over Country.

Reform to each of these intersecting regimes is needed. To deliver real benefits, the reform process must be carefully coordinated and informed by First Peoples throughout.

Recommendation 24

The Australian Government should establish a specifically resourced First Peoples advisory group to advise on reform and support reform implementation with respect to the Native Title Act 1993 and intersecting legislative regimes.

Land rights, native title and co-management

The interaction between statutory land rights regimes and native title illustrates the unevenness of land justice across jurisdictions. Operating under 2 separate legal frameworks, and across multiple jurisdictions, land rights schemes – such as those in the Northern Territory, South Australia, and New South Wales – provide different bases for recognition.[1006] Often these regimes offer greater security than native title. This is because land rights legislation (state/territory based) generally grants a form of inalienable freehold title. In contrast, native title (federal jurisdiction) remains vulnerable to extinguishment and subordination to other legal interests. Nevertheless, coverage by land rights regimes is patchy and limited.

In some cases, land rights regimes and native title operate concurrently, producing inconsistency and uncertainty. These frameworks can also pit First Peoples against one another. Communities may be forced to compete for recognition under restrictive statutory processes instead of exercising authority collectively. They lack the authority to effectively manage any conflicts arising under their own laws.

The cumulative effect is a hierarchy of land tenure in which First Peoples' rights are consistently placed at the bottom. The lack of harmonisation across states and territories exacerbates these inequalities. Recognition and enjoyment of land rights depend heavily on the jurisdiction in which First Peoples are located.

Co-management arrangements for national parks, for example, tend to be strongest where there are statutory land rights schemes and/or where significant national parks have been returned under settlement arrangements. These arrangements have created important opportunities for joint decision-making, but they remain constrained by government frameworks that limit the scope of Indigenous authority. These arrangements also provide limited economic opportunities and prioritise conservation or tourism over cultural governance.[1007]

This uneven landscape of recognition and authority across land rights, native title and co-management is mirrored in the heritage protection regime. Government priorities and economic interests similarly constrain the safeguarding of sacred sites and cultural landscapes, and systems of governance are not aligned across regimes.

Heritage protection regimes

When we speak of Country, we do not just refer to the physical land. It includes the lands, territories, waterways, seas, skies and winds, all land formations and animals. Country is not a commodity to be leveraged for commercial or capitalist gain. All elements are living and connected, including to the extent that they are considered family – integral to our ways of knowing, being and doing. We have responsibilities under our law to protect and manage our cultural heritage. This includes both the tangible (i.e. physical and visible objects, artefacts, cultural landscapes, places and sites of significance) and intangible elements (i.e. spiritual, living expressions, knowledges, skills, oral traditions, social practices and traditional craftsmanship). This responsibility also includes protecting and maintaining our knowledges and intellectual property.

At the federal level, Aboriginal and Torres Strait Islander cultural heritage is protected under 3 main laws:

- *The Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act) – allows the Australian Government, upon request from an Aboriginal or Torres Strait Islander person, to protect areas and objects of significance to First Peoples under immediate threat of injury or desecration, where states and territories have not provided effective protection.
- *The Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) – imposes penalties for action taken that has, or will have, a significant impact on the national heritage values of a place. An Indigenous Advisory Committee informs the operation of the EPBC Act.
- *The Protection of Movable Cultural Heritage Act 1986* – regulates the exporting of an object that has been determined as an Australian protected object. To be able to export these objects, a permit or certificate must be obtained. As part of determining an Australian protected object, the object must be considered of cultural significance to Australia by both the Minister responsible and the National Cultural Heritage Committee. This includes items that are of significance to Aboriginal and Torres Strait Islander peoples.[1008]

Heritage laws should safeguard the full extent of Aboriginal and Torres Strait Islander cultural heritage. In practice, they often provide inadequate protection. Both federal and state and territory heritage regimes are subject to ministerial discretion. This allows governments to prioritise economic development over cultural preservation.

For many communities, the promise of heritage legislation is undermined by weak enforcement, limited veto powers and consultation processes that fall short of meeting the standard of FPIC.

Where native title holders seek to protect Country, they often find themselves reliant on heritage regimes that privilege development approvals that have not complied with due diligence requirements relevant to cultural heritage protection. The laws provide little recourse when decisions are made against native title holders' interests.

These shortcomings are not just about the physical protection of places. They extend to cultural survival, including safeguarding intangible cultural heritage: knowledges and intellectual property, languages, songlines and ancestral connections embedded in the landscapes.

Further detail below on the destruction of Juukan Gorge in the Pilbara region of Western Australia and the review of Queensland's cultural heritage laws highlight the fragility of the native title rights and interests of First Peoples. These examples also highlight the urgency of cultural heritage reform nationally.

Recommendation 25

The Australian Government should strengthen cultural heritage protections by:

a. amending federal cultural heritage and environmental protection and biodiversity conservation legislation to set national minimum standards which are consistent with Australia's international human rights obligations, including through:
   i. enshrining the principle of self-determination and enabling Traditional Owners to determine which areas and values are significant and worthy of protection
   ii. enshrining the principle of free, prior and informed consent (FPIC) and enabling the appeal and overturning of decisions where this standard is not upheld
   iii. prohibiting agreements that restrict Traditional Owners from publicly raising concerns about heritage protection or exercising their rights under heritage legislation
   iv. establishing enforceable and meaningful penalties for breaches
b. commissioning, in collaboration with state and territory governments, a national mapping and truth-telling project in relation to cultural heritage that has been damaged or destroyed.

Juukan Gorge and the urgency of cultural heritage reform

The Juukan Gorge disaster is a tragedy not only for our people. It is also a tragedy for the heritage of all Australians and indeed humanity as a whole.[1009]

The destruction of the 46,000-year-old caves at Juukan Gorge by Rio Tinto in 2020 brought the issue of cultural heritage reform firmly into view. The WA Government-authorised destruction of the caves has irrevocably damaged sites of great cultural and spiritual significance to the Puutu Kunti Kurrama and Pinikura Peoples (PKKP).

The caves were understood to have 'a high frequency of flaked stone artefacts, rare abundance of faunal remains, unique stone tools, preserved human hair, and sediment containing a pollen record charting thousands of years of environmental changes.'[1010] A Traditional Owner of this area explained that Juukan Gorge:

... is known to be a place where the spirits of our relatives who have passed away, even recently, have come to rest. It is a place that the very, very old people still occupy...It is in the ancient blood of our people and contains their DNA. It houses history and the spirits of ancestors, and it anchors the people to this country.[1011]

International human rights scrutiny

In 2021, 5 Aboriginal leaders from Western Australia – Clayton Lewis, Dr Hannah McGlade, Kado Muir, Slim Parker and Dr Anne Poelina – submitted a formal complaint to the United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) under its early warning and urgent action procedure. They lodged the complaint in response to the destruction of Juukan Gorge and broader concerns about cultural heritage legislation in WA.

The complaint raised serious issues with both current and proposed legislation. One proposal was to reinstate the former *Aboriginal Heritage Act 1972* (WA) without consultation or consent from Aboriginal Peoples. Key concerns in the complaint included:

- ongoing permission for the alteration or destruction of Aboriginal cultural heritage
- failure to uphold the principles of self-determination and FPIC
- prioritisation of state economic interests over cultural protection
- limited legal redress and lack of recognition of international standards under the UNDRIP, International Covenant on Civil and Political Rights (ICCPR, International Covenant on Economic, Cultural and Social Rights (ICESCR) and CERD.

Following its review, CERD found that the Australian and WA Governments had:

- failed to seek FPIC from Indigenous Peoples in reforms to cultural heritage legislation
- failed to adequately protect Aboriginal cultural heritage
- potentially breached the International Convention on the Elimination of All Forms of Racial Discrimination.

The Committee called for:

- an immediate halt to all work negatively impacting Aboriginal cultural heritage in WA
- a review or revocation of all permits issued under section 18 of the *Aboriginal Cultural Heritage Act* (WA) since November 2023
- engagement with the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to strengthen legislation
- submission of Australia's long-overdue periodic reports, including measures taken to protect Aboriginal heritage.

At the time of publication of this report, the WA and Australian Governments have not responded. The issues raised remain unresolved.

Domestic reform efforts

In parallel to the above developments, the Joint Standing Committee on Northern Australia conducted an inquiry into the destruction of Juukan Gorge. It made 8 recommendations in its *A Way Forward: Final Report*. The Australian Government's responses to the 8 recommendations of *A Way Forward: Final Report* were the following:

Recommendation	Government response[1012]
Recommendation 1: Amend the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and the *EPBC Act 1999* to make the Minister for Indigenous Australians responsible for cultural heritage matters and prohibit restrictive clauses in agreements.	Noted.
Recommendation 2: Ratify the *Convention for the Safeguarding of the Intangible Cultural Heritage 2003*.	Agreed in principle.
Recommendation 3: Legislate a new national framework for cultural heritage protection, co-designed with First Nations peoples, setting minimum standards for state and territory protections, with clear processes and enforcement.	Agreed.
Recommendation 4: Review the *Native Title Act 1993* to address inequalities in the future act regime, prohibit gag clauses, and clarify the roles of PBCs and Representative Bodies.	Agreed in principle.
Recommendation 5: Endorse and commit to implementing Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia.	Agreed in principle.
Recommendation 6: Develop a model for a cultural heritage truth-telling process.	Agreed.
Recommendation 7: Establish an independent fund for PBCs, with contributions from governments and proponents.	Agreed in principle.
Recommendation 8: Increase transparency and accountability requirements on PBCs and Native Title Representative Bodies to ensure adequate consultation with local communities.	Agreed in principle.

Text box 8.4: Australian Government's responses to the 8 recommendations of A Way Forward: Final Report

The anticipation of these federal reforms has stalled progress in other jurisdictions across the country. For instance, in Queensland cultural heritage laws have been under review since 2019. Further information on this is provided below.

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Reshaping Queensland's cultural heritage laws

In 2019 Queensland's then Minister for Aboriginal and Torres Strait Islander Partnerships launched the review of Queensland's cultural heritage laws. The review was in response to the 2017 Supreme Court decision in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC321 (Nuga Nuga).

The Nuga Nuga decision challenged the 'last claim standing rule' under s34(1)(b)(i)(C) of the *Aboriginal Cultural Heritage Act 2003* (and the *Torres Strait Islander Cultural Heritage Act 2003* (collectively known as CHAs). Under that rule, the most recently registered native title claimant for an area was treated as the 'Aboriginal party' with responsibility for cultural heritage matters.

The Court found this interpretation was incorrect. Instead, 'native title holder' should mean either:

- a common law holder of native title, or
- group formally recognised by the Federal Court under the *Native Title Act 1993* (Cth).

This decision effectively overturned the 'last claim standing' rule. As a result, there was uncertainty about:

- who qualified as an 'Aboriginal party'
- the progress of cultural heritage processes already underway
- the validity of cultural heritage management plans and agreements based on the old rule.

The Queensland Government subsequently amended the CHAs (through the *Revenue and Other Legislation Amendment Act 2018* (Qld)) to validate past acts undertaken prior to Nuga Nuga.

To address the integrity of the CHAs more broadly, the Queensland Government commenced the review in 2019 with the release of a Consultation Paper.[1013] The purpose of the review 'is to ensure the Cultural Heritage Acts continue to protect and conserve Queensland's Aboriginal and Torres Strait Islander cultural heritage, while enabling business and development activity'. The Queensland Government has yet to complete the review of the CHAs.

Text box 8.5: Reshaping Queensland's cultural heritage laws

Given the protection of Aboriginal and Torres Strait Islander cultural heritage is inadequate under current legislative arrangements, cultural heritage is at risk of damage, disturbance and destruction.

The Australian Government is working in partnership with the First Nations Heritage Protection Alliance (the Alliance) on reform options.

The First Nations Heritage Protection Alliance

The laws to protect First Nations Cultural Heritage in Australia are broken – urgent reforms are required.

After the destruction of Juukan Gorge, Aboriginal and Torres Strait Islander people from across the nation came together to pursue national reforms to prevent this from happening again. These representatives came from Aboriginal Land Councils, Native Title Representative Bodies and Service Providers and Community Controlled Organisations.

They committed to strengthen and modernise Cultural Heritage laws and to create industry reforms that ensure Indigenous Cultural Heritage is valued and protected into the future.

On 16 September 2020, 2 documents informed by Aboriginal and Torres Strait Islander people and relevant peak bodies were launched. The documents focused on improving the management and protection of cultural heritage in Australia. They are the *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia* and the *Best Practice Standards in Indigenous cultural heritage management and legislation*. The principles affirmed within the UNDRIP inform both documents. These principles include self-determination, FPIC, respect for and protection of culture and equality and non-discrimination.

Attendees at the Ministerial Indigenous Heritage Roundtable held on 21 September 2020 discussed these documents. Although they did not formally adopt the documents, they still present key standards used to guide discussions and reforms.

The Australian Government is working with the Alliance to develop options to reform First Nations cultural heritage protections. The Minister for Environment and Water affirmed a Partnership Agreement with the Alliance on 24 November 2022.

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) have advised that proposed reforms:

- are based on the principle that early and genuine engagement with Traditional Owners is the best way to protect cultural heritage and give certainty and confidence to businesses planning and financing projects
- focus on modernising the existing standalone Commonwealth legislation – the ATSIHP Act – and ensuring it is fit for purpose
- include an approach to provide clarity about who speaks for Country – called the 'Traditional Owner representative institutions' (TORI) model – and is based on the principles of the UNDRIP
- will not take over or duplicate state and territory laws, and each jurisdiction will continue to have primary responsibility for day-to-day matters relating to environment and heritage protection.

Text box 8.6: The First Nations Heritage Protection Alliance

Amendments to the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)

On 15 May 2025, the NT Government made changes to the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (the Act).[1014] The Act provides that those seeking to conduct projects in the vicinity of sacred sites are required to obtain approval and comply with conditions to protect such areas.

The amendments allow for the transfer of certificates, the registration of additional parties to a project and the provision of undertakings to address contraventions to the Act.

While the Aboriginal Areas Protection Authority expressed support for the intent of the changes, it also highlighted the lack of consultation with Aboriginal groups – a concern shared by the Central Land Council (CLC).[1015]

The CLC has emphasised that the changes regarding certificates are 'often preferred' by all parties and would streamline the development process.[1016] However, they highlighted the ambiguity around the transfer of certificates where the 'work' or 'use of the land' is the same. In the event of mining, this could pose significantly different conditions for the protection of sacred sites.[1017]

The CLC also expressed disappointment about the lack of sign-off from all land councils in the Northern Territory. They were also disappointed that the changes do not include a role for Traditional Owners in the enforcement of undertakings.[1018]

Environmental and planning laws

Environmental and planning frameworks are other key areas where First Peoples' rights are compromised. While these regimes are intended to manage land, water and biodiversity, they frequently exclude Indigenous governance systems or reduce them to token consultation.

Water management laws, for example, generally prioritise agricultural and industrial use.

There is only limited recognition of cultural flows or Indigenous water rights. Planning regimes often treat Indigenous objections as one of many competing interests. The regimes do not recognise First Peoples' unique status as Traditional Custodians with cultural authority. As outlined above, the NNTC has called for amendments to the Native Title Act to recognise and incorporate First Peoples' rights to inland waters.

These frameworks also create regulatory silos. Authorities may grant environmental approvals without regard to heritage protections or native title processes. This leaves communities to navigate multiple overlapping regimes with different thresholds, timelines and decision-makers. In turn, these regimes weaken opportunities to embed Indigenous knowledge – often carried in language and oral traditions – into environmental governance.

Resource development and economic regimes

Perhaps the most powerful intersecting regimes are those which govern mining, petroleum, forestry and pastoral leases. The doctrine of coexistence under the Native Title Act typically privileges non-Indigenous interests. This means that native title is frequently subordinated to pastoral leaseholders and extractive industries.

Negotiations over ILUAs often happen under conditions of structural inequality. Communities face pressure to accept agreements to secure minimal benefits. The alternative is compulsory acquisition or exclusion from decision-making altogether. Power asymmetries – in resources, expertise and political influence – leave many communities with limited bargaining strength. Meanwhile, governments and corporations retain decisive control.

Pastoral leases, which cover nearly half of the Australian continent, present another persistent barrier.

While the Wik High Court decision confirmed pastoral leases do not extinguish native title, in practice they generally override native title rights and interests. This severely limits Indigenous peoples' ability to exercise full custodianship over vast areas of their traditional Country. The consequences extend beyond land management; they contribute to the erosion of cultural practices and languages tied to those places.

Human rights and international standards

The fragmentation across regimes stands in stark contrast to international human rights standards. The UNDRIP affirms the rights of Indigenous peoples to lands, territories and resources. It also affirms the requirement for FPIC before development occurs and at all stages once development has commenced. Yet, Australian law continues to fall short of these commitments.

Other international instruments – including the ICCPR and the CERD – also underscore the obligation to respect Indigenous peoples' rights to equality and self-determination. In practice, however, domestic frameworks prioritise extractive industries and economic development over these obligations, resulting in systemic discrimination.

Consequences of fragmentation

The intersection of multiple regimes produces a legal and policy environment that is both fragmented and stacked against First Peoples. Communities face overlapping and sometimes conflicting rules, lengthy delays and high transaction costs in asserting their rights. Non-Indigenous participants in these processes are often paid to engage through their employment or as part of their business operations.

First Peoples must take time away from their daily duties and jobs to engage in these mechanisms. They are often required to take leave from their jobs and forego salary for a reduced sitting fee. Jurisdictional inconsistencies further erode certainty, leaving First Peoples with less protection and security than other landholders.

Crucially, this fragmentation enables governments and corporations to exploit gaps and inconsistencies. Governments and corporations effectively 'forum shop' for the regime most convenient to their objectives. The result is a system which continually constrains, conditions and undermines First Peoples' authority. This profoundly impacts on cultural survival and the ability of communities to sustain relationships with Country.

Taken together, these intersecting regimes show that land justice cannot be reduced to questions of tenure or title alone. It is inseparable from the survival of languages, Law, cultural practices and spiritual responsibilities to Country. Colonial frameworks continue to undermine all of these vital parts of First Peoples' cultural life.

Climate change

Climate change presents a further layer of complexity for the native title system and related cultural heritage and land management regimes. Among the core issues raised by Aboriginal and Torres Strait Islander people during the ITA discussions around land justice was the impact of climate change on the ongoing use and enjoyment of their human rights.

Aboriginal and Torres Strait Islander peoples have long emphasised that, despite having Australia's smallest carbon footprint, they will bear some of the greatest consequences of human-induced climate change. This compounds existing inequities. For at least one-third of the Aboriginal and Torres Strait Islander population, life above the poverty line remains out of reach.[1019]

The impacts of climate change will only exacerbate this disadvantage.

Environmental changes – such as rising sea levels, coastal erosion and altered ecosystems – directly affect Country and the exercise of native title rights. Communities in the Torres Strait are already witnessing the submergence of homes, burial grounds and cultural sites. Inland communities are experiencing long-term drought that threatens food and water security.

These dynamics expose limitations to existing legal frameworks, which were not designed to account for climate-driven shifts in land and water use. The Intergovernmental Panel on Climate Change has observed that Indigenous peoples are disproportionately impacted by climate change. We face heightened risks of dispossession, cultural loss and marginalisation.[1020]

Much of Australia's economic growth from fossil fuel, mineral and gas extraction has come at the expense of First Peoples' sacred lands and waters. Native title processes have often given communities little choice but to enter into ILUAs with extractive industries. This allows communities to maintain some influence over decisions that impact their Country and enables them to try to mitigate practices that cause irreversible harm.

Addressing these implications will require more than just adaptation of statutory regimes. It also requires the development of coherent frameworks that safeguard First Peoples' authority, culture and rights in the face of both extractive pressures and climate change. The gap between statutory protections and lived realities is now being tested in both international and domestic legal forums, as communities seek recognition of their rights in the face of climate change.

Daniel Billy and others v Australia (Torres Strait Islanders Petition)

The 2019 complaint *Daniel Billy and others v Australia (Torres Strait Islanders Petition)* came from Torres Strait Islander inhabitants of four small low-lying islands in the Torres Strait (Zenadth Kes): Boigu, Poruma, Warraber and Masig. They complained to the UNHRC that Australia had failed to adapt to climate change, upgrade seawalls or reduce greenhouse gas emissions. These failures meant the Australian Government violated Torres Strait Islanders' rights to culture and to be free from arbitrary interference with their private life, family and home, as protected under the ICCPR.

This complaint marked the first climate change litigation brought against the Australian Government based on human rights. It was also the first legal action globally brought by those living on low-lying islands against a nation state. The group bringing the complaint (who are also known as the Torres Strait 8) also launched a petition – Our Islands, Our Home – to garner support for their cause.[1021]

In October 2022, the UNHRC ruled that the Australian Government had violated its positive obligation to take appropriate action on climate change. These violations included failing to adequately protect Torres Strait Islanders against the adverse impacts of climate change. The UNHRC recommended local inhabitants be compensated for the Australian Government's inaction.[1022]

This was the first decision made by a United Nations body about a nation state violating its international human rights obligations through inadequate climate policy. It was also the first time that the UN determined that Indigenous peoples' right to culture was at risk from climate impacts.

Subsequent to the UNHRC's ruling, the Torres Strait 8 demanded that the Australian Government:

- fund adaptation programs that will allow Zenadth Kes communities to adapt to climate impacts
- commit to 100% renewables in Australia in the next 10 years
- support Zenadth Kes communities to build community-owned renewable energy
- transition away from fossil fuels as rapidly as possible through a just transition for workers
- push the world to increase global ambition and keep warming to less than 1.5 degrees Celsius.

The Australian Government confirmed that it agrees that climate change is impacting lives and cultural practices. Yet, it did not accept the recommendation to award compensation to the claimants. In July 2025, the Federal Court handed down its judgement for P*abai v Commonwealth*. Judge Michael Wigney found that:

- although the Australian Government's emissions targets were not based on a consideration of the best available science, emissions policy is a matter for the Government to determine, not the courts
- under Australian law the Australian Government does not owe a duty of care to protect its citizens from the impacts of climate change or to fund adaptation measures
- there is no provision in Australian law under which the Australian Government could be found negligent and ordered to pay compensation for matters of government policy.

Endnotes

938 G Gee, P Dudgeon, C Schultz, A Hart and K Kelly, *Social and emotional wellbeing and mental health: An Aboriginal perspective* in P Dudgeon, H Milroy and R Walker (eds), *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, 2nd ed., Commonwealth of Australia, Canberra, 2014. <https://www.thekids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>.

939 Australian Institute of Health and Welfare, Indigenous Mental Health & Suicide Prevention Clearinghouse, 'Social and emotional wellbeing' <https://www.indigenousmhspc.gov.au/topics/social-emotional-wellbeing#aboutthistopic>.

940 I Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law*, 1st edn, Routledge-Cavendish, Abingdon, 2015 <https://www.routledge.com/Aboriginal-Peoples-Colonialism-and-International-Law-Raw-Law/Watson/p/book/9781138685963?srsltid=AfmBOooN1aD38biLh1jluqhQiVZnw60xl6LHkFF5_4uqfCvT8-NLojaN>.

941 *Native Title Act 1993* (Cth), preamble <https://www.legislation.gov.au/C2004A04665/asmade/text>.

942 NSW Aboriginal Land Council, *Native Title Fact Sheet 2: Interaction Between Native Title and Land Rights*, Fact Sheet, NSWALC website, March 2014 <https://alc.org.au/wp-content/uploads/2020/04/140306-native-title-fact-sheet-2-interaction-between-native-title-and-land-rights-updated.pdf>.

943 N Browne, 'The $1 Billion Question: Who Controls Aboriginal Futures', *National Indigenous Times,* 26 August 2025 <https://nit.com.au/26-08-2025/19877/the-1-billion-question-who-controls-aboriginal-futures>.

944 N Browne, 'The $1 Billion Question: Who Controls Aboriginal Futures' *National Indigenous Times,* 26 August 2025 <https://nit.com.au/26-08-2025/19877/the-1-billion-question-who-controls-aboriginal-futures>.

945 *Mabo v Queensland* [No 2] (1992) 175 CLR 1, at 42 (Brennan J).

946 Australian Law Reform Commission (ALRC), *The framework: Mabo [No.2],* ALRC, 22 May 2015: paras 2.39, 2.40 and 2.44 <https://www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc report-126/2-framework-for-review-historical-and-international-perspectives/the-framework-mabo-no-2/>.

947 *Native Title Act 1993* (Cth), preamble <https://www.legislation.gov.au/C2004A04665/asmade/text>.

948 *Native Title Act 1993* (Cth), preamble <https://www.legislation.gov.au/C2004A04665/asmade/text>.

949 Yamatji Marlpa Aboriginal Corporation, *Submission to the Australian Human Rights Commission Informing the Agenda Project* (2024) [submission 26].

950 Productivity Commission, 'Unlocking the economic potential of native title', *Submission to Future Acts Regime,* 2025, 5, 8.

951 Joint Standing Committee on Aboriginal and Torres Strait islander Affairs, *Inquiry into economic self-determination and opportunities for First Nations Australians,* 2024, 156, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Report>. Joint Standing Committee on Aboriginal and Torres Strait islander Affairs, *Inquiry into economic self-determination and opportunities for First Nations Australians,* 2024, 156. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Report>.

952 The Mabo Centre, *Indigenous-led centre launched, continuing Mabo legacy*, Mabo Centre website, 4 March 2025 <https://mabocentre.com/2025/03/04/indigenous-led-centre-launched-continuing-mabo-legacy/>.

953 M Langton and J Lowe, Indigenous interest and industry strike new compact, *The Mabo Centre*, 4 March 2025. <https://mabocentre.com/2025/03/04/indigenous-interest-and-industry-strike-new-compact/>; The Mabo Centre, Our Story, The Mabo Centre website, n.d. <https://mabocentre.com/our-story/>.

954 Productivity Commission, *Closing the Gap Information Repository – Outcome Area 15: Land and Water Ownership,* 2024 <https://www.pc.gov.au/closing-the-gap-data/admin/embargo-storage/2024/outcome-area15/land-and-water-ownership>.

955 NITV, 'Native Title is not 'land rights', *NITV*, 22 June 2017 <https://www.sbs.com.au/nitv/article/native-title-is-not-land-rights/d4i7nfp6v>.

956 Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Native Title Newsletter: Issue 1 2025, *AIATSIS*, 26 May 2025. <https://aiatsis.gov.au/publication/118638>.

957 National Native Title Tribunal, *About Future Acts*, NNTT website, n.d. <https://www.nntt.gov.au/futureacts/Pages/default.aspx>.

958 National Native Title Council, S*ubmission to the Australian Human Rights Commissions Informing the Agenda Project (*27 September 2024) [submission 18]: 3-4.

959 Yamatji Marlpa Aboriginal Corporation, *Submission to the Australian Human Rights Commission Informing the Agenda Project* (8 October 2024) [submission 26].

960 National Native Title Tribunal (NNTT), *Overview of the NNTT,* NNTT website, n.d.<https://www.nntt.gov.au/aboutus/Pages/default.aspx>.

961 National Native Title Tribunal (NNTT), *Report of the National Native Title Tribunal*, NNTT, 2025, 8.

962 Federal Court of Australia (FCA), *Annual Report 2023-24*: Section 5: Native Title, FCA, 2024, 106 <https://www.fedcourt.gov.au/digital-law-library/annual-reports/annual-report-2023-2024/pdf/FCA-Entity-Annual-Report-2023-24.pdf>.

963 National Native Title Tribunal (NNTT), *About Indigenous Land Use Agreements (ILUAS),* NNTT website, n.d. <https://www.nntt.gov.au/ILUAS/Pages/default.aspx>.

964 National Native Title Tribunal (NNTT), *About Indigenous Land Use Agreements (ILUAS),* NNTT website, n.d. <https://www.nntt.gov.au/ILUAS/Pages/default.aspx>.

965 National Native Title Tribunal (NNTT) *Report of the National Native Title Tribunal*, NNTT, 2025, 9.

966 Federal Court of Australia (FCA), *Annual Report 2023-24*: Section 5: Native Title, FCA 2024, 106 <https://www.fedcourt.gov.au/digital-law-library/annual-reports/annual-report-2023-2024/pdf/FCA-Entity-Annual-Report-2023-24.pdf>.

967 National Native Title Tribunal (NNTT), *Report of the National Native Title Tribunal*, NNTT, 2025, 9.

968 National Native Title Tribunal (NNTT), *Making a Body Corporate Agreement and applying for registration: Fact sheet 2; A guide to the Native Title Act and regulations,* NNTT website, n.d.<https://nativetitle.org.au/sites/default/files/2020-11/Factsheet%202%20-%20Making%20a%20Body%20Corporate%20Agreement%20and%20applying%20for%20registration.pdf>.

969 National Native Title Tribunal (NNTT), *Making a Body Corporate Agreement and applying for registration: Fact sheet 2; A guide to the Native Title Act and regulations,* NNTT website, n.d. <https://nativetitle.org.au/sites/default/files/2020-11/Factsheet%202%20-%20Making%20a%20Body%20Corporate%20Agreement%20and%20applying%20for%20registration.pdf>.

970 National Native Title Tribunal (NNTT), *Making a Body Corporate Agreement and applying for registration: Fact sheet 2; A guide to the Native Title Act and regulations,* NNTT website, n.d. <https://nativetitle.org.au/sites/default/files/2020-11/Factsheet%202%20-%20Making%20a%20Body%20Corporate%20Agreement%20and%20applying%20for%20registration.pdf>.

971 *Native Title Act* (Cth) 1993, ss 29 and 30.

972 National Native Title Tribunal (NNTT), *Report of the National Native Title Tribunal* (NNTT, 2025), Table 4, 11.

973 Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into economic self-determination and opportunities for First Nations Australians* 2024, 57 <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Economicself-determinati/Report>.

974 First Peoples State Relations (FPSR), *First Peoples of the Millewa-Mallee Native Tittle Determination,* FPSR website, n.d. <https://www.firstpeoplesrelations.vic.gov.au/first-peoples-millewa-mallee-native-title-determination>.

975 *Santos NSW Pty Ltd and Another vs Gomeroi People and Anor* [2025] NNTTA 12.

976 Notice of Filing and Hearing, *Gomeroi People v Santos NSW Pty Ltd ad SANTAS NSW* (Narrabri Gas) Pty Ltd, 16 June 2025, online <https://www.fedcourt.gov.au/__data/assets/pdf_file/0007/564388/2025-06-16_Notice-of-Appeal.pdf>.

977 First Nations Legal and Research Services, *Victorian first native title determination for the First Peoples of the Millewa-Mallee* [media release], FNLRS, n.d. <https://www.fnlrs.com.au/victorian-first-native-title-determination-for-the-first-peoples-of-the-millewa-mallee/>.

978 T Dalton and T Clark, 'Millewa-Mallee native title win gives traditional owners exclusive rights', *ABC News,* 18 July 2025 <https://www.abc.net.au/news/2025-07-18/millewa-mallee-native-title-determination-exclusive-rights/105537510>.

979 United Nations International Covenant on Civil and Political Rights, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning*, UN Doc CCPR/C/137/D/3585/2019 (13 March 2024). communication<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F137%2FD%2F3585%2F2019&Lang=en>.

980 C Mills, 'WA's Wunna Nyiyaparli take Roy Hill native title battle to United Nations', *ABC News*, 12 November 2025. <https://www.abc.net.au/news/2024-11-12/wunna-nyiyaparli-native-title-battle-goes-to-united-nations/104498450>; N Hodge, 'Indigenous rights: Australia faces criticism after rejecting UNHRC ruling', *International Bar Association*, 21 August 2025. <https://www.ibanet.org/Indigenous-rights-Australia-faces-criticism-after-rejecting-UNHRC-ruling>.

981 *Native Title Act 1993* (Cth) s 23J (1).

982 *Native Title Act 1993* (Cth) s 51.

983 *Northern Territory v Griffiths (Deceased) on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7.

984 Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *Timber Creek compensation case,* AIATSIS website, n.d. <https://aiatsis.gov.au/explore/timber-creek-compensation-case>.

985 R Abraham and William Isdale, 'Timber Creek: the most significant native title decision since Mabo', MinterEllison, 20 March 2019 <https://www.minterellison.com/articles/timber-creek>.

986 J Huggins, Business Acumen Magazine Australia, 'National Congress hails Timber Creek decision on native title', *Business Acumen Magazine Australia*, 15 March 2019 <https://www.businessacumen.biz/index.php/news/3872-national-congress-hails-timber-creek-decision-on-native-title>.

987 Australian Human Rights Commission, *Explainer: Commonwealth v Yunupingu and compensation for native title,* AHRC website <https://humanrights.gov.au/about/news/explainer-commonwealth-v-yunupingu-and-compensation-native-title>.

988 K Kiss, Australian Human Rights Commission, *2025 AIATSIS Summit: Voices of Empowerment Strengthening our Future,* speech delivered at AIATSIS Conference 2025 (5 June 2025) <https://humanrights.gov.au/about/news/speeches/2025-aiatsis-summit-voices-empowerment-strengthening-our-future>.

989 National Native Title Council, *Submission to the Australian Human Rights Commission Informing the Agenda Project* (27 September 2024) [submission 18], 5-6.

990 National Native Title Council, *Submission to the Human Rights Commission Informing the Agenda Project* (27 September 2024) [submission 18].

991 Attorney-General's Department, 'National Guiding Principles For Native Title Compensation Agreement Making', Attorney-General's Department, 2021. <https://www.ag.gov.au/legal-system/publications/native-title-ministers-meetings-documents>.

992 Attorney-General's Department, 'National Guiding Principles For Native Title Compensation Agreement Making', Attorney-General's Department, 2021. <https://www.ag.gov.au/legal-system/publications/native-title-ministers-meetings-documents>.

993 Australian Law Reform Commission (ALRC), Review of the Future Acts Regime: Discussion Paper, ALRC, Commonwealth of Australia, May 2025. <https://www.alrc.gov.au/publication/review-of-the-future-acts-regime-discussion-paper-2025/>.

994 Parliament of Australia, *Inquiry into the destruction of the 46,000-year-old caves at the Juukan Gorge in the Pilbara Region of Western Australia*, Recommendation 4 [7.89], Parliament of Australia website, n.d. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Northern_Australia_46P/CavesatJuukanGorge/Report/section?id=committees%2freportjnt%2f024757%2f77701>.

995 *Native Title Act 1993* (Cth), preamble <https://www.legislation.gov.au/C2004A04665/asmade/text>.

996 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, AHRC, 17 April 2025, 5. <https://humanrights.gov.au/our-work/legal/submission/review-future-acts-regime>.

997 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, 7.

998 Australian Law Reform Commission (ALRC), *Review of the Future Acts Regime: Discussion Paper*, ALRC, Commonwealth of Australia, May 2025. <https://www.alrc.gov.au/publication/review-of-the-future-acts-regime-discussion-paper-2025/>.

999 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, AHRC, 17 April 2025, 10. <https://humanrights.gov.au/our-work/legal/submission/review-future-acts-regime>.

1000 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, 18.

1001 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, 19.

1002 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission;* Australian Law Reform Commission (ALRC), *Review of the Future Acts Regime: Discussion Paper*, ALRC, Commonwealth of Australia, May 2025. <https://www.alrc.gov.au/publication/review-of-the-future-acts-regime-discussion-paper-2025/>.

1003 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, AHRC, 17 April 2025, 18. <https://humanrights.gov.au/our-work/legal/submission/review-future-acts-regime>.

1004 Australian Law Reform Commission (ALRC), *Review of the Future Acts Regime: Discussion Paper*, ALRC, Commonwealth of Australia, May 2025. <https://www.alrc.gov.au/publication/review-of-the-future-acts-regime-discussion-paper-2025/>.

1005 Australian Human Rights Commission (AHRC), *Review of the Future Acts Regime: Australian Human Rights Commission: Submission to the Australian Law Reform Commission*, AHRC, 17 April 2025: 20. <https://humanrights.gov.au/our-work/legal/submission/review-future-acts-regime>.

1006 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) <https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/alrta1976444/>; *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)* <https://www.legislation.sa.gov.au/lz?path=/c/a/anangu%20pitjantjatjara%20yankunytjatjara%20land%20rights%20act%201981>; *Maralinga Tjarutja Land Rights Act 1984* (SA) <https://www.legislation.sa.gov.au/lz?path=/c/a/maralinga%20tjarutja%20land%20rights%20act%201984>; *Aboriginal Lands Trust Act 1966* (SA) <https://www.legislation.sa.gov.au/lz?path=/c/a/aboriginal%20lands%20trust%20act%201966>; *Aboriginal Lands Trust Act 2013* (SA) <https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FAboriginal%20Lands%20Trust%20Act%202013>; *Aboriginal Land Rights Act 1983* (NSW) <https://www.nsw.gov.au/living-in-nsw/aboriginal-outcomes/land-rights/land-rights-act>.

1007 D Smyth, *Prospects for Co-management in Australia*, Centre for Resource and Environmental Studies, Australian National University, Canberra, 1994; Native Title Research Unit, *Prospects for Co-management in Australia*, AIATSIS, Canberra, 1994; Parks SA, *Co-management of Parks*, Department for Environment and Heritage, Adelaide, 2003; G Leaman, *Innovative New Arrangements for Co-management of Parks in South Australia*, AIATSIS, Canberra, 2010; G Leaman, *Innovative New Arrangements for Co-management of Parks in South Australia*, in *The George Wright Forum*, 2010 27(2); NSW Department of Environment and Heritage, *Aboriginal Ownership and Lease-back Agreements*, NSW Department of Environment and Heritage, NSW Government, 2023 <https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/park-management/aboriginal-joint-management/how-aboriginal-joint-management-works/aboriginal-ownership-and-lease-back-agreements#:~:text=Under%20these%20joint%20management%20agreements,leased%20back%20to%20the%20government>.

1008 Department of Climate Change, Energy, the Environment and Water (DCCEEW), *First Nations heritage,* DCCEEW website, Last last updated 12 September 2025. <https://www.dcceew.gov.au/parks-heritage/heritage/about/indigenous-heritage>; *Protection of Movable Cultural Heritage Act 1986*, (Cth). <https://www.legislation.gov.au/C2004A03252/latest/text>.

1009 Australian Government, *Australian Government response to the Joint Standing Committee on Northern Australia's: A Way Forward: Final report into the destruction of Indigenous heritage sites as Juukan Gorge; and Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia – Interim Report*, November 2022 <https://www.dcceew.gov.au/sites/default/files/documents/australian-response-to-destruction-of-juukan-gorge.pdf>.

1010 G Borschmann, 'Report reveals Rio Tinto knew the significance of 46,000-year-old rock caves six years before it blasted them', *ABC News,* 5 June 2020 <https://www.abc.net.au/news/2020-06-05/rio-tinto-knew-6-years-ago-about-46000yo-rock-caves-it-blasted/12319334>.

1011 Australians for Native Title and Reconciliation (ANTAR), *Rio Tinto's destruction of Juukan Gorge,* ANTAR website, last updated 22 May 2025 <https://antar.org.au/issues/cultural-heritage/the-destruction-of-juukan-gorge/>.

1012 Department of Climate Change, Energy, the Environment, and Water (DCEEW), *Australian Government response to the destruction of Juukan Gorge,* DCCEEW website, last updated 24 November 2022 <https://www.dcceew.gov.au/about/reporting/obligations/government-responses/destruction-of-juukan-gorge>.

1013 Department of Aboriginal and Torres Strait Islander Partnerships, *Consultation Paper: Review of the Cultural Heritage Acts*, Queensland Government, Brisbane, 2019 <https://cabinet.qld.gov.au/documents/2019/May/RevCultLeg/Attachments/Paper.PDF>.

1014 Northern Territory Aboriginal Sacred Sites Legislation Amendment Bill 2025; *Significant reforms proposed to cultural heritage protections in the NT,* Allens [website] 8 July 2025, <https://www.allens.com.au/insights-news/insights/2025/04/significant-reforms-made-to-cultural-heritage-protections-in-the-northern-territory/>.

1015 J Hislop, 'Changes to NT sacred site laws pass parliament to opposition criticism', *ABC News*, 16 May 2025 <https://www.abc.net.au/news/2025-05-16/nt-sacred-site-law-changes-pass-parliament/105297308>.

1016 G Torre, 'Central Land Council urges minister to embrace sacred sites law reforms, come to the table with Traditional Owners', *National Indigenous Times*, 15 May 2025 <https://nit.com.au/15-05-2025/17965/central-land-council-urges-minister-to-embrace-reforms-come-to-the-table-with-traditional-owners>.

1017 G Torre, 'Central Land Council urges minister to embrace sacred sites law reforms, come to the table with Traditional Owners', *National Indigenous Times*, 15 May 2025 <https://nit.com.au/15-05-2025/17965/central-land-council-urges-minister-to-embrace-reforms-come-to-the-table-with-traditional-owners>.

1018 G Torre, 'Central Land Council urges minister to embrace sacred sites law reforms, come to the table with Traditional Owners', *National Indigenous Times*, 15 May 2025 <https://nit.com.au/15-05-2025/17965/central-land-council-urges-minister-to-embrace-reforms-come-to-the-table-with-traditional-owners>.

1019 Senate Community Affairs References Committee, *Inquiry into the Extent and Nature of Poverty in Australia* (2024), ch 13 <https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2002-04/poverty/report/c13>.

1020 Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the IPCC,* Cambridge University Press: ch 18, 2612–2613, IPCC 2022 <https://www.ipcc.ch/report/ar6/wg2/>.

1021 *Our Islands Our Home,* Our Islands Our Home website, 23 September 2022 <https://ourislandsourhome.com.au/about-the-campaign/>.

1022 United Nations Office of the High Commissioner (OHCHR), *Billy and others v. Australia*, CCPR/C/135/D/3624/2019 <https://juris.ohchr.org/casedetails/3855/en-US>.

Acronyms and abbreviations

(Alphabetical list)

ABS	Australian Bureau of Statistics
ACCHOs	Aboriginal Community Controlled Health Organisations
ACLO	Aboriginal Community Liaison Officer
AJC	Aboriginal Justice Caucus
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
AHURI	Australian Housing and Urban Research Institute
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIHW	Australian Institute of Health and Welfare
ALSWA	Aboriginal Legal Service of Western Australia Limited
ANU	Australian National University
ATSIC	Aboriginal and Torres Strait Islander Commission
CATSINaM	Congress of Aboriginal and Torres Strait Islander Nurses and Midwives
CCC	Corruption and Crime Commission
CESCR	Committee on Economic, Social and Cultural Rights
CoP	Conference of Parties
CSIRO	Commonwealth Scientific and Industrial Research Organisa-tion
CTG	Closing the Gap
DFV	Domestic and Family Violence
DYHS	Derbarl Yerrigan Health Service
ECOSOC	United Nations Economic and Social Council
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FAIRA	Foundation of Aboriginal and Islander Research Action
FASD	Fetal Alcohol Spectrum Disorder
FIFO	Fly-In Fly-Out
FPIC	Free, Prior and Informed Consent
HASL	Hedland Aboriginal Strong Leaders
HRC	Human Rights Council
HREOC	Human Rights and Equal Opportunity Commission
IAHA	Indigenous Allied Health Australia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFLO	Indigenous Family Liaison Officer
ILIC	Indigenous Legal Issues Committee
ILO	International Labour Organization
ITA	Informing the Agenda
KALACC	Kimberley Aboriginal Law and Culture Centre
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Questioning and Asexual
MMEICAC	Minjerribah Moorgumpin Elders-In-Council Aboriginal Corporation
NACCHO	National Aboriginal Community Controlled Health Organisation
NAPLAN	National Assessment Program – Literacy and Numeracy
NARF	National Anti-Racism Framework
NDIS	National Disability Insurance Scheme
NIAA	National Indigenous Australians Agency
NIHLA	National Indigenous Health Leadership Alliance
NGO	Non-Governmental Organisation
NHLF	National Health Leadership Forum
NHRI	National Human Rights Institution
NIYEC	National Indigenous Youth Education Coalition
NNTC	National Native Title Council
NNTT	National Native Title Tribunal
NPA	Northern Peninsula Area
NT	Northern Territory
NTA	Native Title Act
OHCHR	Office of the High Commissioner for Human Rights
OOHC	Out-of-home Care
OPCAT	Optional Protocol to the Convention Against Torture
PLO	Police Liaison Officer

RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SAASTA	South Australian Aboriginal Secondary Training Academy
SDGs	Sustainable Development Goals
SILs	Specialist Indigenous Lists
SJC	Social Justice Commissioner
SRRIP	Special Rapporteur on the Rights of Indigenous Peoples
STEM	Science, Technology, Engineering, and Mathematics
TO	Traditional Owner
TSRA	Torres Strait Regional Authority
TSIRC	Torres Strait Island Regional Council
UN	United Nations
UNDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNPFII	United Nations Permanent Forum on Indigenous Issues
UPR	Universal Periodic Review
VAHS	Victorian Aboriginal Health Service
WCIP	World Conference on Indigenous Peoples
WYUT	Wiyi Yani U Thangani

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