

# The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples

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Global Compact  
Network Australia



UTS  
UNIVERSITY  
OF TECHNOLOGY  
SYDNEY

### Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. We pay our respects to Elders past, present and emerging. Our vision for reconciliation is a future where all Australians are united by our shared past, present, future and humanity.

### Acknowledgements

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## Foreword

# From the Global Compact Network Australia

The reinvigoration of the global Black Lives Matter movement, new Closing the Gap targets and the COVID-19 pandemic have once again shone a spotlight on the inequalities facing marginalised groups globally but, in particular for Australia, the inequities faced by Indigenous Australians.

With the renewed attention comes both a sense of hope for social justice and systematic change, as well as a recognition of the failures that are restricting the obtainment of equal rights for all Indigenous Australians. These are failures that are not just represented in data and reports, but in the lived experiences of Indigenous Australians, including the social and economic disadvantages that they face on a daily basis.

The United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration") recognises the fundamental rights of all Indigenous peoples around the world and provides a universal framework for their protection. Businesses have a crucial role to play in ensuring that they respect Indigenous rights throughout their strategies, operations and business relationships. They not only face increasing expectations from their various stakeholders to do so, but also risk serious consequences, including considerable reputational damage, when they falter. And with a global business landscape that is characterised by movement towards mandatory human rights due diligence, there are likely to be growing expectations on business to have specific policies and processes in place to understand and act on their potential impacts on Indigenous rights.

Businesses that embed the rights of Indigenous Australians into their strategies, operations and interactions with business partners will be well placed to meet these growing external expectations and standards, including demonstrating their responsibility to respect human rights. These standards include the **UN Guiding Principles on Business and Human Rights (UNGPs)**, the **UN Global Compact's Ten Principles** and the **Sustainable Development Goals (SDGs)**. Although implementation has its challenges, businesses can use the frameworks and guidance provided by the UNGPs, the Ten Principles and the SDGs to guide the way that they interact with Indigenous Australians. Aligning business priorities to the Declaration starts with doing no harm, remediating or cooperating in remediating harm where it does occur, and pursuing opportunities to overcome challenges faced by Indigenous Australians through business innovation and collaboration.

Adopted together, these internationally agreed upon frameworks provide a roadmap to a future in which there is no gap between Indigenous and non-Indigenous Australians. A future in which the voices, experiences and teachings of the oldest continuous living culture in the world are heard and listened to so that together we can overcome societal challenges and ensure equality and prosperity for all.

There is no doubt that tackling systemic racism and redressing the history of inequality and discrimination faced by Indigenous Australians will require ambitious action across all sectors, supported by government policies and embedded across societal culture. We hope that this Guide will support Australian companies to drive progress towards a future in which the rights of Indigenous Australians are embedded into the very fabric of our society, including our businesses.



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## Foreword

# From KPMG and the University of Technology Sydney

Australia is home to the world's oldest, continuous living culture. For more than 65,000 years, Aboriginal and Torres Strait Islander peoples have cared for this country, its land and sea.

At the time of writing, Australia and the world are experiencing an unprecedented event with a global pandemic. Globalisation has brought into sharp focus both our collective humanity and vulnerability.

This new appreciation of our interconnectedness has also resonated on other social issues. The Black Lives Matter movement has created a unique moment for society, and for organisations, to consider their role in stopping racism and being more inclusive and less biased. For Australia, our nation's racist treatment of Indigenous Australians is being brought to public attention once again, with public rallies, media commentary and government responses such as the refreshed Closing the Gap targets.

At the same time, some businesses that have traditionally led the charge in regard to Indigenous Australians' rights, have made serious missteps – decisions that have had heartbreaking consequences and rattled the entire business community with regard to its responsibility to do no harm.

Rather than retreat, companies are looking to better understand how and why these issues have occurred and how to prevent future mistakes – and Indigenous communities, society and internal stakeholders are holding business to account.

Endorsed by Indigenous peoples around the world, the United Nations Declaration on the Rights of Indigenous Peoples, provides an international legal framework for how organisations can best engage in ways that respect, protect and promote the rights of Indigenous peoples. At its basis, the Declaration provides a risk management framework for organisations to engage in business with First Nations Peoples. But when adopted and embraced fully, it can be so much more.

The richness that comes from building relationships based on genuine respect and trust, not only provides greater ease in doing business, but a unique opportunity to understand, appreciate and value the rich and significant contribution of our ancient and contemporary Indigenous culture to our nation.

Whether you are at the start of your journey, or more advanced, we hope you find this Guide useful and re-commit to engaging in new and respectful ways with Indigenous Australians, their businesses and communities.



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# How to use this Guide

## Purpose

The purpose of this guide (the "Guide") is to provide practical guidance for business to understand, respect, support the rights of Indigenous Australians, and embed those rights into business practices. It draws upon the **2013 United Nations (UN) Global Compact International Business Reference Guide**<sup>1</sup> (the "International Guide") and is tailored specifically for businesses operating in Australia and embedding a rights-based approach as it relates to Indigenous Australians.

This Guide is not intended to provide a 'one-size-fits-all' approach. Just as the size, scale, context and purpose of businesses in Australia are diverse, Indigenous Australians' cultures, histories and aspirations are not homogenous. Any engagement with Indigenous Australians should be place-based and built on genuine engagement to develop trusted and meaningful relationships that understand cultural safety<sup>2</sup> and Indigenous cultural values.

In this context, the Guide encourages business to engage in meaningful consultation and partnership with Indigenous Australians on a local level and to adapt the principles and practices suggested in this Guide to their distinct situations and contexts. The actions suggested in the Guide are specifically aligned to the rights and aspirations espoused in the **UN Declaration on the Rights of Indigenous Peoples**<sup>3</sup> ("the Declaration"). They should be considered alongside the **UN Guiding Principles on Business and Human Rights (UNGPs)**<sup>4</sup> and a broader set of actions businesses can take to build meaningful relationships with Indigenous Australians and to respect and support the human rights of all people.

## Approach

To develop this Guide, the Global Compact Network Australia ("GCNA"), KPMG Indigenous Services and KPMG Banarra ("KPMG") and the University of Technology Sydney ("UTS") participated in one-on-one interviews with selected GCNA members and other organisations to develop detailed case studies presented in Part Three of this Guide. Gumbaynggirr man, Dr Dean Jarrett led the stakeholder engagements, supported by KPMG and GCNA. KPMG and the GCNA also undertook desktop research and a literature review to inform the suggested actions and examples of action referred to throughout the Guide.

**In the context of this Guide, the term Indigenous refers to Aboriginal and Torres Strait Islander Australians.**

## Structure of the Guide

- **The Introduction** sets the scene for business engagement with Indigenous Australians. It provides the context for the increasing expectation for business to be a vehicle for the promotion and realisation of human rights, and an overview of the business responsibility to respect and support the human rights of Indigenous Australians. It also articulates the business drivers to ensure a rights-based approach in their business and the history and context of the realisation of human rights for Indigenous Australians.
- **Part One** draws on the International Guide to outline key actions business can take in relation to Indigenous Australians' rights, including policy commitment, due diligence, consultation and consent-seeking, grievance mechanisms, mitigation and remediation. Some of these steps are more relevant to specific sectors whose operations and core business have a greater potential to create risks and adversely impact Indigenous Australians. This section also provides foundational actions to support meaningful and trusted relationships when engaging with Indigenous Australians. Although SDG mapping has not been undertaken in this Guide, businesses can also consider how the key business actions outlined in this section intersect with the universal framework provided by the SDGs – a framework that seeks to leave no one behind, including Indigenous Australians.
- **Part Two** provides a description of specific rights in the Declaration, suggests practical actions that business can take to respect and support these rights. Examples are provided to demonstrate how to implement suggested actions, however it is important to note that these examples are provided for learning purposes; the use of any specific company or organisation for the purpose of a case study does not endorse all of the company's actions.
- **Part Three** includes detailed case studies of selected GCNA members and other organisations taking action to respect and support the rights of Indigenous Australians through their business practices. These case studies are based on information from provided by the organisations and once again are provided for learning purposes. The inclusion of these organisations does not endorse all of the organisation's actions. A case study that reflects on the unique intersection between Indigenous Australians, their land and the mining sector is also included. Mapping of the relevant articles under the Declaration that each organisation is supporting and respecting is also provided.
- **Appendix One** provides a compilation of organisations Australian business could engage with on embedding a rights-based approach into business practices impacting Indigenous Australians. It is not intended to be a complete list of all organisations working on these issues in Australia and beyond.

<sup>1</sup> UN, 2013, A Business Reference Guide: UN Declaration on the Rights of Indigenous Peoples, (Accessed at: [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2Fhuman\\_rights%2FIndigenousPeoples%2FBusinessGuide.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf))

<sup>2</sup> For Indigenous Australians, a culturally safe environment is one where they feel safe and secure in their identity, culture and community. Australian Human Rights Commission, 2011, Social Justice Report 2011: Chapter 4, (Accessed at: <https://humanrights.gov.au/our-work/chapter-4-cultural-safety-and-security-tools-address-lateral-violence-social-justice>)

<sup>3</sup> UN Global Compact, 2007, UN Declaration on the Rights of Indigenous Peoples, (Accessed at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>)

<sup>4</sup> UN, 2011, Guiding Principles on Business and Human Rights, (Accessed at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf))

# Introduction



## Introduction

The business and human rights agenda has evolved significantly in recent years; there is now widespread recognition that business can be a vehicle for the promotion and realisation of human rights. The **United Nations Guiding Principles on Business and Human Rights**<sup>5</sup> (UNGPs) outline the responsibility of business to respect human rights including by acting with due diligence to prevent and address adverse human rights impacts related to their business. The human rights principles of the United Nations (UN) Global Compact (**Principles 1 and 2**)<sup>6</sup> are derived from the **Universal Declaration of Human Rights**<sup>7</sup>. Companies that recognise these rights-based principles and focus on cultivating positive relationships with all stakeholders will be taking significant steps towards placing human rights at the centre of their business operations.

When it comes to human rights, Indigenous Australians remain among the most marginalised and vulnerable peoples in the world. Under international law, Indigenous peoples are entitled to both universal human rights belonging to all human beings and additional Indigenous peoples' rights. In recognition of Indigenous peoples' status as culturally distinct and self-determining peoples and the unique challenges they have historically faced, the global community developed the **UN Declaration on the Rights of Indigenous Peoples**<sup>8</sup> ("the Declaration") – an international instrument to recognise Indigenous peoples' individual and collective rights. The adoption of the Declaration in 2007 was a significant milestone internationally in driving progress towards better protection and promotion of the rights of Indigenous peoples globally. The path to the Declaration was long and deliberate, built over 20 years of negotiations between States and Indigenous peoples; it reflects on the historic violence and abuse of Indigenous peoples globally and clarifies expectations regarding their treatment.

While it is a non-legally binding instrument, the Declaration defines the individual and collective rights of Indigenous peoples and provides a universal framework of minimum standards for the survival, dignity and well-being of all Indigenous peoples globally. It provides a blueprint for self-determination for all Indigenous peoples.

After initially voting against its adoption due to concerns over customary law being elevated above national law,<sup>9</sup> Australia pledged its support for the Declaration in April 2009<sup>10</sup>. Although the Declaration is non-binding, Australia has accepted it as a framework for better recognising and protecting the rights of Indigenous Australians.

### The State and Indigenous Australians' Rights

Acknowledging the significance of the Declaration for Australia requires an examination of our shared history since Colonisation.

Indigenous Australian culture and way of life is at least 60,000 years old, making it the oldest living culture on earth. When Australia was declared 'terra nullius' (no-one's land), the culture of Indigenous Australians was threatened and their human rights and status as a nation/people was not recognised. The Colonisation of Australia had a profoundly negative impact on Indigenous Australians, leaving a legacy of intergenerational trauma that is still experienced today. Historically, the Government failed to protect the rights of Indigenous Australians. Oppressive government policies of the past resulted in apartheid measures in parts of the country and forcible removal of Indigenous children from their families and homelands. Paternalistic government policies typified the policy approach for Indigenous Australians. The legacy for Indigenous Australians today is higher rates of poor physical and mental health, addiction, incarceration, domestic violence, self-harm and suicide compared to non-Indigenous Australians.<sup>11</sup>

Since 1967, there has been a gradual realisation of rights for Indigenous Australians, driven in large part by the advocacy, persistence and leadership from Indigenous Australians themselves. An overview of some of the significant achievements in their hard fought attainment is provided later in this introduction.

A grassroots movement urging the Government for a call to action to address the gap in health and social outcomes for Indigenous Australians led to the development of the 'Closing the Gap' mechanism to address this inequality. In 2008, Federal, state and local levels of government agreed to seven key targets to 'Close the Gap.' Ten years on, the failure of this approach has been largely attributed to the lack of a partnership approach and meaningful consultation with Indigenous Australians and a deficit mindset towards progress on Indigenous disadvantage.<sup>12</sup>

<sup>5</sup> UN, 2011, Guiding Principles on Business and Human Rights, (Accessed at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf))

<sup>6</sup> UN Global Compact, The Ten Principles of the UN Global Compact, (Accessed at: <https://www.unglobalcompact.org/what-is-gc/mission/principles>)

<sup>7</sup> UN, 1948, Universal Declaration of Human Rights, (Accessed at: <https://www.un.org/en/universal-declaration-human-rights/>)

<sup>8</sup> UN, 2007, UN Declaration on the Rights of Indigenous Peoples, (Accessed at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>)

<sup>9</sup> Australian Broadcasting Corporation, 2007, PM defends refusal to sign UN Indigenous Bill, (Accessed at: <https://www.abc.net.au/news/2007-09-15/pm-defends-refusal-to-sign-un-indigenous-bill/670644>)

<sup>10</sup> Michael Dodson, 2009, Australian Government announcement on the UN Declaration on the Rights of Indigenous Peoples, (Accessed at: [https://www.un.org/esa/socdev/unpfi/documents/Australia\\_endorsement\\_UNDRIP\\_Michael\\_Dodson\\_statement.pdf](https://www.un.org/esa/socdev/unpfi/documents/Australia_endorsement_UNDRIP_Michael_Dodson_statement.pdf))

<sup>11</sup> Australians Together, 2020, Intergenerational Trauma, (Accessed at: <https://australians.together.org.au/discover/the-wound/intergenerational-trauma/>)

<sup>12</sup> Commonwealth of Australia, 2019, Closing the Gap Retrospective Review, (Accessed at: <https://www.niaa.gov.au/sites/default/files/publications/closing-gap-retrospective-review-accessible.pdf>)

To this end, all levels of Australian government, in meaningful partnership with an Indigenous led 'Coalition of Peaks', agreed to **16 new targets in 2020**.<sup>13</sup> These targets now include a focus on life expectancy, further educational improvements across early childhood to tertiary outcomes, Indigenous land rights and ownership and a reduction in children in out-of-home care. At the time of publication, the new approach had been publicly released and there is a renewed sense of hope for social justice and the obtainment of equal rights for all Indigenous Australians.

### The Business Sector and Indigenous Australians' Rights

Historically, the absence or limited recognition of Indigenous Australians' human rights by the business sector has been similar to that of the Government.

Significant past examples of Indigenous Australians' rights being infringed upon include underpayment and 'stolen wages' by Federal and state governments, church organisations and mission communities<sup>14</sup>, in addition to blackbirding<sup>15</sup> of Indigenous Australians in the pearling, sugar cane and cattle industries. A major step in the recognition and protection of Indigenous peoples' land rights was the introduction of the Native Title Act ("the Act") as a result of the 1992 High Court decision in *Mabo v Queensland (no 2)*<sup>16</sup>. The Act influenced changes across sectors including the extractive industries, with their core business practices needing to be altered as they occurred on, or near land that now recognised native title rights for Indigenous Australians. These rights stem from the continuing spiritual and ancestral connection Indigenous Australians have to their respective lands pre-dating Colonisation by tens of thousands of years.

Over the past two decades, one of the most significant drivers of Australian business engagement with Indigenous Australians' rights has been through **Reconciliation Australia (RA)**.<sup>17</sup> RA was established in 2001 by the Federal Government and is the lead body for reconciliation in the nation. RA promotes and facilitates reconciliation by building relationships, respect and trust between the wider Australian community and Indigenous Australians, with the vision to create a just, equitable and reconciled Australia. RA's vision of national reconciliation is based on five critical dimensions: race relations, equality and equity, institutional integrity, unity

and historical acceptance. These five dimensions do not exist in isolation, they are inter-related and RA has highlighted that Australia can only achieve full reconciliation if we make progress in all five areas.

In 2006, RA established a ground-breaking program, Reconciliation Action Plans (RAPs), designed to assist organisations with making commitments and taking action to support reconciliation with Indigenous Australians. The program has been designed to reflect that each organisation may be at a different point of maturity on its progress towards reconciliation. To support this, organisations can develop either a Reflect, Innovate, Stretch or Elevate RAP.<sup>18</sup> Each RAP type provides a framework and sets out the minimum elements required for organisations to build strong relationships with Indigenous Australians and communities, foster and embed respect for Indigenous Australians' rights throughout their business, and develop opportunities to support the improvement of socio-economic outcomes for Indigenous Australians.<sup>19</sup>

Importantly, the implementation framework provided by RA is directly linked to the principles of self-determination and Free, Prior and Informed Consent (FPIC) as outlined in the Declaration through the 'relationships' pillar.<sup>20</sup> FPIC provides a process by which Indigenous Australians are able to conduct their own independent and collective discussions and decision-making and, in doing so, exercise their fundamental right of self-determination to freely pursue their economic, social and cultural development. RAPs therefore can provide a strong avenue for business to begin to align their strategies and operations to the Declaration by making public commitments to respect and promote the rights of Indigenous Australians that are supported and reinforced by tangible actions.

Organisations are then made accountable through annual reporting on their progress. The program now has more than **1200 participating**<sup>21</sup> organisations and includes many of Australia's largest corporations.

In June 2020, RA carried out its first ever suspension of a participant from the RAP program, Rio Tinto, as a result of the destruction of Juukan Gorge.<sup>22</sup> According to RA, as an Elevate RAP holder, this incident represented a disconnect between the aspirations of Rio Tinto's RAP and the company's

conduct, and did not meet the standards RA expects of its RAP partners.<sup>23</sup> An Elevate RAP is the highest level of RAP and is given to organisations that are responsible for taking leadership in reconciliation and are considered pioneers in the reconciliation space.<sup>24</sup> Rio Tinto's suspension from the RAP program and the subsequent departure of the Chief Executive Officer and two senior executives from the company in the wake of the destruction of Juukan Gorge<sup>25</sup> highlights the growing expectations for business to support a rights and principles-based approach to engaging with Indigenous Australians and the consequences of failing to do so.

### The UN Guiding Principles on Business and Human Rights

A catalyst for greater engagement from the business community on the human rights agenda was the UNGPs, which were unanimously endorsed by the UN Human Rights Council in 2011, including support from the Australian Government. The UNGPs clearly articulate the corporate responsibility to respect human rights. They provide an authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. In doing so, they also provide civil society, investors and other stakeholders with a clear framework to hold business to account for their human rights performance.

While States have the primary duty to protect human rights through policy, legislation and regulation and adjudication, this Guide focuses on the corporate responsibility to respect human rights through business operations and relationships, and the related corporate commitment to support human rights as per the Ten Principles of the UN Global Compact. Specifically, Principles 1 and 2 of the UN Global Compact focus on human rights with an emphasis on businesses supporting and respecting internationally proclaimed human rights and ensuring businesses are not complicit in human rights abuses.<sup>26</sup> The UNGPs and UN Global Compact are aligned on the nature and scope of the corporate responsibility to respect human rights.

The purpose of this Guide is to provide practical guidance for businesses operating in Australia on how to implement their human rights responsibilities and commitments with regard to Indigenous Australians as outlined in the Declaration and in line with other core standards including the UNGPs and the Ten Principles of the UN Global Compact.

## Respect and Support Indigenous Peoples' Rights

### The Corporate Responsibility to Respect Human Rights

The UNGPs provide that all businesses have a responsibility to avoid causing or contributing to adverse human rights impacts through their own activities and to address any such impacts when they occur. Business also has a responsibility to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships and suppliers, even if they have not contributed to those impacts. This responsibility applies to all internationally recognised human rights and includes, where circumstances require, paying particular attention to the rights of specific groups or populations such as Indigenous Australians. In these situations, the additional standards provided by the Declaration offer a more detailed framework that can be used alongside the UNGPs to support the corporate responsibility to respect Indigenous Australians' rights.

### The Corporate Commitment to Support

In addition to the corporate responsibility to respect human rights, the UN Global Compact's Ten Principles encourage businesses to take additional actions that seek to promote and advance human rights. This includes Indigenous Australians' rights, whether through core business activities, strategic social investments, philanthropy, advocacy and public policy engagement, and/or partnerships and collective action. Actions to support and champion Indigenous Australians' rights must be in addition to, and not a substitute for, actions taken to respect their rights (which is the minimum expectation for all business enterprises). Such actions should be guided by the core principles of Indigenous peoples' rights, including self-determination and FPIC, as well as full and effective participation in decision-making.

<sup>13</sup> Council of Australian Government, 2020, National Agreement on Closing the Gap (Accessed at: <https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf?q=0720>)

<sup>14</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies (Accessed at: <https://aiatsis.gov.au/exhibitions/remembering-mission-days>)

<sup>15</sup> Blackbirding was the practice of kidnapping, often through coercion or deception, people and forcing them to work as unpaid or very poorly paid labourers. More information can be found at <https://humanrights.gov.au/our-work/race-discrimination/publications/australian-south-sea-islanders-century-race>.

<sup>16</sup> Aurora Education Foundation, 2020, What is Native Title, (Accessed at: <https://www.auroraproject.com.au/what-native-title>)

<sup>17</sup> Reconciliation Australia, 2020, (Accessed at: <https://www.reconciliation.org.au/>)

<sup>18</sup> More information on the different RAP levels and their requirements can be found at <https://www.reconciliation.org.au/reconciliation-action-plans/>

<sup>19</sup> Some businesses choose alternative methods to engaging with the RAP program, instead designing their own frameworks for committing to and taking action to respect and support the rights of Indigenous Australians, including through reconciliation. A case study on Coles is provided in Part Three of this Guide as an example of a business that has chosen a different strategy to the RAP program.

<sup>20</sup> Reconciliation Australia, 2019, Relationships, Respect, Opportunities, (Accessed at: <https://www.reconciliation.org.au/wp-content/uploads/2018/05/relationships-respect-opportunities-1.pdf>)

<sup>21</sup> A full list of the participating organisations can be found at: <https://www.reconciliation.org.au/reconciliation-action-plans/who-has-a-rap/#who-has-rap-results>

<sup>22</sup> Reconciliation Australia, 2020, Statement on Rio Tinto, (Accessed at: <https://www.reconciliation.org.au/statement-on-rio-tinto/>)

<sup>23</sup> Ibid

<sup>24</sup> Reconciliation Australia, 2020, Elevate, (Accessed at: <https://www.reconciliation.org.au/reconciliation-action-plans/#ra-elevate-rap>)

<sup>25</sup> More information on Rio Tinto's response to the events at Juukan Gorge can be found at: <https://www.riotinto.com/news/inquiry-into-juukan-gorge>

<sup>26</sup> Principle 1 and 2 of the Ten Principles of the UN Global Compact relate to human rights.

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights. (Refer to: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-1>)

Principle 2: Businesses should make sure that they are not complicit in human rights abuses. (Refer to: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>)

## A Reflection on the Importance of a Rights-Based Approach

For Indigenous Australians, Colonisation has resulted in dispossession, stolen wages, high unemployment, lack of housing, child removal, low levels of education attainment, unacceptably high incarceration rates and deaths in custody and lateral and family violence. Furthermore, health issues such as diabetes, respiratory and coronary heart disease as well as infant mortality and suicide continue to be complex issues that confront Indigenous communities. I've personally witnessed most of these disparities in my lifetime and it highlights how critical the Declaration is for Indigenous Australians. The Declaration frames our rights to live in dignity, to continue to support our own institutions, cultural values and heritage and to remain focused on self-determination while staying true to our own needs and aspirations. These disparities are today's realities of Colonisation for many Indigenous Australians and highlight the results of human rights abuse of Indigenous peoples in this country.

Hence, the new partnership approach to Closing the Gap recently announced by the Federal Government and its inclusion of economic measures is welcomed. However, in the past, successive governments at all levels, have made attempts to alleviate Indigenous economic inequities and have largely fallen short. One example of this is the Indigenous Procurement Policy which has mandatory minimum requirements. While there has been some success, a report released earlier this year about the mandatory minimum requirements, which are the Federal Government's main mechanism for applying Indigenous participation targets in major procurements, found that the implementation process is ineffective, monitoring of progress is insufficient and compliance is not centralised.<sup>27</sup>

My own research found that challenges, such as the lack of support to scale up, misleading and deceptive conduct by buyer professionals, inconsistency in the way in which corporate and government buyers treat Indigenous

businesses and racism, are contradictory to at least five of the Declaration's articles (2,3, 15, 20 and 21), yet they are all prevalent.<sup>28</sup> It further found that these commercial realities for Indigenous businesses today are often caused by an uneven distribution of power, suboptimum levels of trust and a problematic approach by buyers to culturally safe behaviours. These underpinning factors have, in many cases, undermined the realisation of strong and effective collaboration and meaningful business relationships for Indigenous Australians.

Despite this, in recent years Indigenous businesses have emerged as powerful platforms towards self-determination for Indigenous Australians largely because one of the many things that have survived Colonisation are Indigenous cultural values. These cultural values are now playing out through Indigenous businesses. Values such as reciprocity, communality, familial obligations and growing social capital within Indigenous communities and the Indigenous business sector are interrelated and sometimes inseparable in potential commercial partnerships.

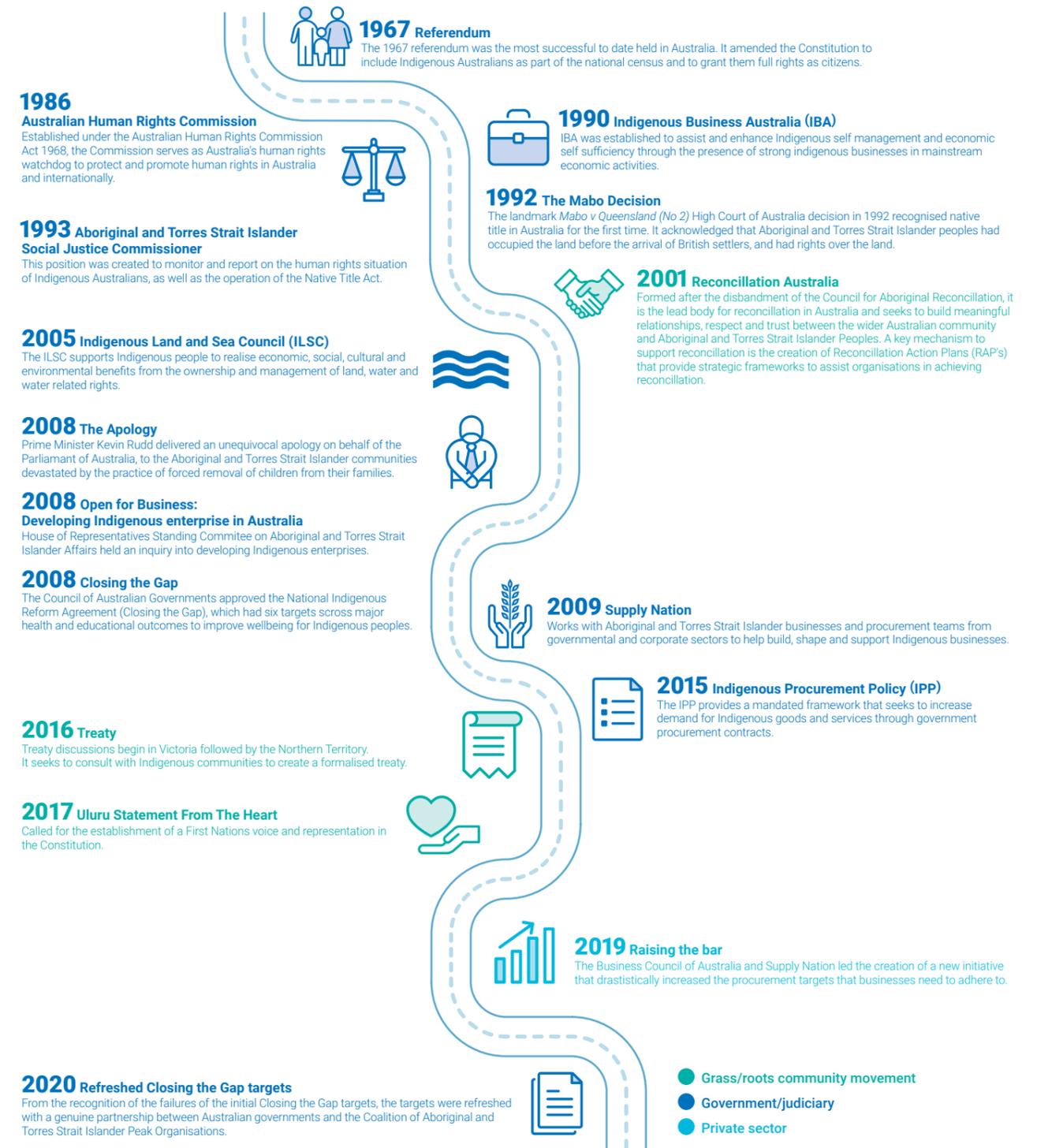
To accommodate Indigenous cultural values in potential commercial relationships and grow the Indigenous business sector, it is important that institutional and governance structures change and adapt. This change requires a rights-based approach which has the potential to decolonise institutional environments and shift the governance of institutions towards protecting the rights of Indigenous peoples to economic self-sufficiency. This Guide details how this can be undertaken in a respectful and commercially viable way for both Indigenous suppliers and their clients.



By Dr Dean Jarrett  
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## History of Seeking a Rights-Based Approach in Australia

The obtainment of full realisation of human rights and social justice for Indigenous Australians is an ongoing and hard fought journey. The image below outlines some significant milestones that have been achieved since the 1967 Referendum, which amended the Australian Constitution to include Indigenous Australians as part of the national census and granted them full rights as citizens.



<sup>27</sup> Australian National Audit Office, 2020, Aboriginal and Torres Strait Islander Participation Targets in Major Procurements

<sup>28</sup> Dean Jarrett, 2019, Managing Commercial Relationships between Indigenous businesses and large purchasing organisations: changing the play and the rules of the game

## Business Drivers

Australian law embeds some but not all of the Declaration's elements. However, the corporate responsibility to respect the human rights of Indigenous Australians in line with the UNGPs and the Declaration creates expectations over and above compliance with national laws and regulations.<sup>29</sup> Respecting the rights of all Indigenous Australians, as articulated in the Declaration, therefore enables businesses to meet relevant international standards and in many cases their own voluntary commitments and core values.

There are also a growing number of commercial drivers for businesses to better understand how the rights of Indigenous Australians intersect with their own practices and to ensure they are respecting them. Businesses that respect the rights of Indigenous peoples and build trusting relationships with peoples and communities are better positioned to anticipate and respond proactively to a range of business risks. These can include:



Emerging regulatory and legal frameworks.



Reputational risk and threats to their social licence to operate from heightened resistance to their operations or activities.



Expectations of their own stakeholders including shareholders, lenders, customers, suppliers, employees, local communities, and civil society organisations.

Stakeholder expectations and associated risks are particularly heightened for companies operating on or near culturally significant Indigenous lands and waters. There are also opportunities to enhance value creation and realise other benefits that can flow from closer relationships and an improved understanding of Indigenous peoples and communities. These can include:



Opportunities to partner with and learn from Indigenous peoples and their skills and knowledge.



Becoming a trusted partner and preferred provider or developer.



Improved access to regional and local workforces, products and services providing greater operational resilience, particularly in remote locations with high Indigenous populations.



Increased employee engagement and morale.

<sup>29</sup> UN Global Compact, 2013, A Business Reference Guide: UN Declaration on the Rights of Indigenous Peoples, (Accessed at: [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2FHuman\\_rights%2FIndigenousPeoples%2FBusinessGuide.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FHuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf))

# Part One: Key Business Actions

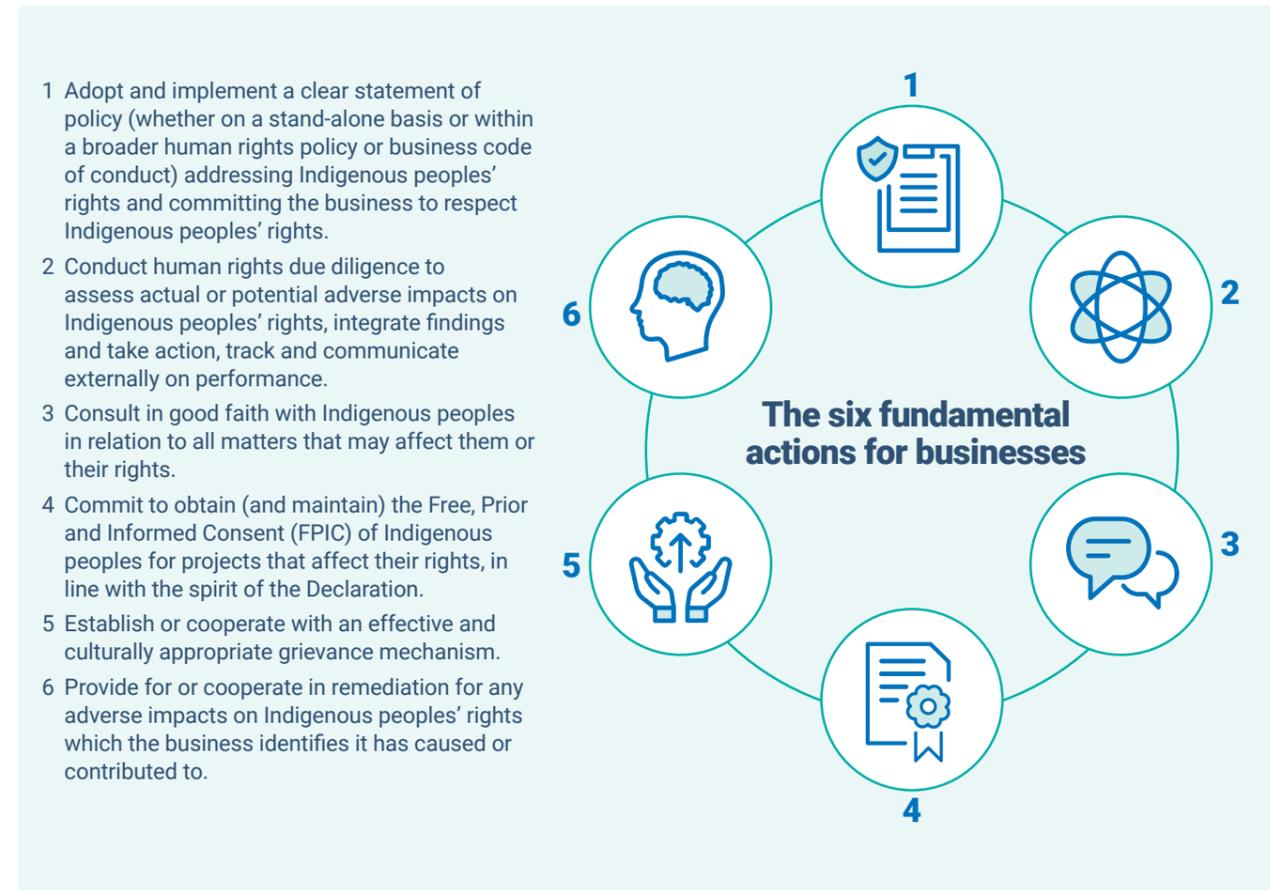


## Key Business Actions

### Fundamental Actions for Businesses to Respect

The six key actions described below are drawn from the *International Guide*<sup>30</sup> and provide businesses with practical steps to implement suitable policies and structures to support, promote and protect Indigenous Australians' rights.

Together, these six actions provide a foundation for respecting the rights of Indigenous Australians as laid out in the Declaration. Each organisation will first need to consider the likelihood of their own activities and business relationships adversely impacting Indigenous Australians' rights in order to adopt a proportional approach to implementing each action.



A more detailed overview of each of the fundamental business actions is provided in the next section. Practical steps are provided to support businesses in the implementation of these actions, business benefits are articulated and where relevant, illustrative good practice examples are provided to show how Australian companies are implementing these actions.

<sup>30</sup> UN Global Compact, 2013, A Business Reference Guide: UN Declaration on the Rights of Indigenous Peoples, (Accessed at: [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2Fhuman\\_rights%2FIndigenousPeoples%2FBusinessGuide.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf))

## Foundational Actions for Engaging with Indigenous Australians

Complementing the key business actions described in this section, below are recommendations to reflect on to support building meaningful and trusted relationships with Indigenous Australians.

- 

Develop an awareness and understanding of the cultural and social context for Indigenous Australians, such as land dispossession and intergenerational trauma, and use this to inform appropriate engagement approaches.
- 

Form enduring relationships based on trust, respect and honesty by ensuring ongoing and accessible communication and information.
- 

Provide meaningful opportunities for participation in business decision making and outcomes. Consider specific employment opportunities, leadership pathways and procurement opportunities with majority Indigenous owned businesses.
- 

Listen frequently to Indigenous Australians with an understanding of cultural protocols. Approach discussions with introspection, an open mind and willingness to change approaches.
- 

Acknowledge the inherent power imbalances and work with Indigenous Australians to address this, including through more meaningful and equal participation in decision making processes.
- 

Formulate a timely, transparent and culturally respectful process for responding to feedback from Indigenous Australians about business actions or outcomes. Provide opportunities for regular feedback to effect real change in the business.

## 1. Policy Commitment



**ACTION:** Adopt and implement a clear statement of policy (whether on a stand-alone basis or within a broader human rights policy or business code of conduct) addressing Indigenous Australians' rights and committing the business to respect the rights of Indigenous Australians.

### Why it's Needed

Creation, adoption and implementation of a clear statement of policy is a public statement of a business' commitment to respecting Indigenous rights. It is a key element to ensure that businesses formally recognise Indigenous Australians' rights and provide suitable commitments that they should adhere to in the manner in which the organisation operates internally and externally.

A clear statement of policy helps businesses:

- Understand and identify where their operations and business relationships pose a risk of causing, contributing or being directly linked to adverse effects on Indigenous Australians' rights.
- Develop processes for mitigating risks and methods of addressing any infringements if they do occur.

### Business Benefits

- Publicly confirms the business' commitment to meeting its responsibility to respect the rights of Indigenous Australians.
- Provides a consistent policy to guide all business managers and employees.
- Assists in the identification of business policy gaps and risks.
- Acts as an advantage by being a key business differentiator.
- Builds trust and provides an avenue for communication with external stakeholders including investors, shareholders, consumers and governments.

### Examples of Action

SA Water uses its Stretch<sup>31</sup> Reconciliation Action Plan (RAP) 2020-2023 to communicate a policy commitment internally and externally to respecting the rights of Indigenous Australians. The RAP recognises the international framework provided by the Declaration and commits to working in partnership with Indigenous Australian communities across South Australia in alignment with the Declaration.<sup>32</sup> In its current RAP, SA Water notes the importance of understanding, respecting, listening, learning and working within the context

of local Indigenous communities.<sup>33</sup> The policy commitment also incorporates steps around accountability and leadership, continuous efforts towards increasing cultural awareness and learning, and working to embed commitments throughout operations, policies, procedures, plans and daily activities.<sup>34</sup> SA Water's RAP also acknowledges the interlinkages between Indigenous Australians' rights and the SDGs, including aligning its RAP to the specific SDGs it supports. A more detailed case study of SA Water can be found in Part Three of this Guide.

### How to Do It

The statement of policy can be a part of an existing or new human rights policy or business code of conduct, or a new stand-alone policy on Indigenous rights. To successfully implement a clear statement of policy on Indigenous Australians' rights there are several actions that can assist businesses. These include:

- Ensure that the statement is endorsed and supported by the business' highest governing levels.
- Have the policy and its implementation driven and reviewed by senior management.
- Map and study existing internal policies to understand existing Indigenous rights coverage.
- Involve all relevant parts of the business, including Indigenous employees.
- Involve external stakeholders, especially Indigenous peoples who have worked with, or may work with, the business or have been impacted by the business in another way.
- Continuously assess current impacts on Indigenous Australians by the business including through its business relationships.
- Embed the statement throughout business operations.
- Communicate the statement widely including to relevant Indigenous Australians with a connection to the business.

### Good Practice Actions

- ✓ **Involve internal and external stakeholders, especially impacted Indigenous peoples.**
- ✓ **Embed the policy throughout business operations and at all levels.**
- ✓ **Ensure opportunities for statement of policy revision to maintain suitability.**

<sup>31</sup> A Stretch RAP is focused on implementing longer-term strategies and working towards defined measurable targets and goals. A Stretch RAP requires organisations to embed reconciliation initiatives into business strategies to become 'business as usual'. More information can be found at: [www.reconciliation.org.au/reconciliation-action-plans](http://www.reconciliation.org.au/reconciliation-action-plans).

<sup>32</sup> SA Water, 2020, Stretch Reconciliation Action Plan 2020-2023, (Accessed at: [https://www.sawater.com.au/\\_data/assets/pdf\\_file/0006/496491/SA-Water\\_Stretch-Reconciliation-Action-Plan-2020.pdf](https://www.sawater.com.au/_data/assets/pdf_file/0006/496491/SA-Water_Stretch-Reconciliation-Action-Plan-2020.pdf))

<sup>33</sup> Ibid

<sup>34</sup> Ibid

## 2. Human Rights Due Diligence



**ACTION:** Conduct human rights due diligence to assess actual or potential adverse impacts on Indigenous Australians' rights, integrate findings and take appropriate action, track and communicate externally on performance.

### Why it's Needed

Conducting human rights due diligence is necessary for businesses to ensure that they are able to identify and understand how their activities could impact Indigenous Australians' rights. There are also challenges and limitations to using generic environmental, social and health assessments, without any specific consideration of human rights integrated into those assessments, to accurately identify impacts on the human rights of Indigenous Australians. Conducting due diligence is a key component of the UNGPs to support businesses in the identification, prevention, mitigation and accountability of adverse human rights impacts on Indigenous Australians. Further, it assists businesses in implementing any statements of policy regarding Indigenous peoples' rights.

### Business Benefits

- More effectively identify impacts of business operations on Indigenous Australians.
- Avoid negative outcomes from business operations by understanding relevant Indigenous stakeholders and policies.
- Help the business implement and embed any statement of policy regarding Indigenous Australians' rights throughout operations.
- Provide an avenue for meaningful engagement with Indigenous Australians.
- Support business to better respond to emerging trends on mandatory human rights due diligence at a global level, which could also have implications for the corporate responsibility to respect Indigenous rights, including those of Indigenous Australians<sup>35</sup>.

### Examples of Action

Newmont states that it embeds the due diligence requirements of the UNGPs into the way the company operates.<sup>36</sup> Newmont explains in its public reporting that this commitment is underpinned by a combination of internal standards and policies, including a **Human Rights Standard**<sup>37</sup> and an **Indigenous Peoples Standard**.<sup>38</sup> Newmont reports that the Indigenous Peoples Standard is designed to define the "minimum requirements to engage with Indigenous Peoples, come to agreement around project development, assess and manage potential impacts, and report [its] progress".<sup>39</sup> The company further elaborates that the Standard's application includes understanding, acknowledging and respecting the legal rights, interests and perspectives of Indigenous Peoples, even when there is no formal recognition of these rights by the host country.<sup>40</sup> In the Standard, Newmont reports that it adheres to the International Council on Mining and Metals (ICMM) Indigenous People and Mining Position Statement **Indigenous People and Mining Position Statement**,<sup>41</sup> which acknowledges the Declaration as one of two key international instruments relating to Indigenous peoples' individual and collective rights (the second instrument being the **International Labour Organisation Convention No. 169**)<sup>42</sup>.

Using the Declaration to identify the rights of Indigenous peoples, including Indigenous Australians, can support companies to balance the often varied recognition of Indigenous rights in national laws and meet international standards.

### How to Do It

- Conduct human rights due diligence that identifies and manages risks to Indigenous Australians in addition to risks to the business and ensures that due diligence is ongoing.
- Consider how best to undertake human rights due diligence in order for it to be most effective, whether this be by integrating human rights considerations into existing assessments or undertaking stand-alone human rights due diligence; noting that integrated assessments are more meaningful.
- In alignment with the UNGPs, hold meaningful and culturally appropriate consultation and collaborate with local Indigenous communities.
- Identify national laws and practices relating to land and water title.

<sup>35</sup> For more information on emerging trends on mandatory human rights due diligence, see for example the 'UN Human Rights "Issues Paper" on legislative proposals for mandatory human rights due diligence by companies' from the Office of the High Commissioner for Human Rights (OHCHR) (Accessed at: [https://www.ohchr.org/Documents/Issues/Business/MandatoryHR\\_Due\\_Diligence\\_Issues\\_Paper.pdf](https://www.ohchr.org/Documents/Issues/Business/MandatoryHR_Due_Diligence_Issues_Paper.pdf)) or the Business and Human Rights Resource Centre's blog 'Towards Mandatory Human Rights Due Diligence' (available at: [https://www.business-humanrights.org/en/blog/?opinion\\_series=3&backdate\\_after=&backdate\\_before=&query=](https://www.business-humanrights.org/en/blog/?opinion_series=3&backdate_after=&backdate_before=&query=))

<sup>36</sup> Newmont Corporation, 2020, Respecting Human Rights: Our Approach, (Accessed at: [https://s24.q4cdn.com/382246808/files/doc\\_downloads/2020/05/Newmont\\_HR-Approach\\_2020.pdf](https://s24.q4cdn.com/382246808/files/doc_downloads/2020/05/Newmont_HR-Approach_2020.pdf))

<sup>37</sup> Newmont Corporation, 2020, Human Rights Standard, (Accessed at: [https://s24.q4cdn.com/382246808/files/doc\\_downloads/2020/03/Human-Rights-Standard.pdf](https://s24.q4cdn.com/382246808/files/doc_downloads/2020/03/Human-Rights-Standard.pdf))

<sup>38</sup> Newmont Corporation, 2020, Indigenous Peoples Standard, (Accessed at: [https://s24.q4cdn.com/382246808/files/doc\\_downloads/2020/03/Indigenous-Peoples-Standard.pdf](https://s24.q4cdn.com/382246808/files/doc_downloads/2020/03/Indigenous-Peoples-Standard.pdf))

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> ILO, 1989, Indigenous and Tribal Peoples Convention, (Accessed at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C169))

<sup>43</sup> International Council on Mining and Metals, 2013, Indigenous Peoples and Mining Position Statement, (Accessed at: <https://www.icmm.com/website/publications/pdfs/mining-principles/position-statements.indigenous-peoples.pdf>)

- Engage with Indigenous organisations, government authorities and other relevant civil society organisations at all stages of a project's life-cycle and across a business' whole range of activities to ensure all key stakeholders are informed throughout the process.
- Conduct desktop research to identify relevant policies, reports, treaties and baseline data.
- Embed and implement a human rights due diligence process aligned to the UNGPs. This includes identifying, preventing, mitigating and accounting for adverse human rights impacts through the following key steps:
  - Assess actual and potential human rights impacts on Indigenous Australians and specific at risk or vulnerable groups within Indigenous communities.
  - Integrate and act on the findings.
  - Track responses.
  - Communicate about how impacts are addressed.<sup>44</sup>
- Utilise quantifiable measurements for impact assessments.
- Communicate performance to external stakeholders, including how the concerns of Indigenous Australians that are impacted by business operations are responded to.

#### Good Practice Actions

- ✓ Engage with and hold meaningful and culturally appropriate consultations with Indigenous communities and organisations in the development of a due diligence approach.
- ✓ Identify actual and potential adverse impacts on Indigenous Australians.
- ✓ Integrate findings and take appropriate action.

<sup>44</sup> UN, 2011, Guiding Principles on Business and Human Rights, (Accessed at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf))

## 3. Consultation



**ACTION:** Consult in good faith with Indigenous Australians in relation to all matters that may affect their rights. This is foundational to all aspects of business' responsibility to respect the rights of Indigenous Australians.

#### Why it's Needed

Consultation, participation and engagement with Indigenous peoples are crucial for businesses to respect the rights of Indigenous Australians. Consultation is a necessary part of all responsibilities and actions to respect Indigenous peoples. It enables businesses to understand and learn from important Indigenous perspectives on how business operations could affect them. Furthermore, it serves to build and enhance trust and respect between businesses and Indigenous Australians.

The Declaration contains more than 20 provisions that stipulate the right of Indigenous peoples to participate in discussions and decision-making.

#### Business Benefits

- Ensures that operations do not negatively impact Indigenous Australians by supporting a better understanding of local contexts and potential for harm.
- Provides opportunities to build relationships with Indigenous communities to support current and future projects.
- Assists in placing the business as a conduit for beneficial change for Indigenous Australians based on their needs and interests.
- Supports the implementation of statements of policy regarding the rights of Indigenous Australians.

#### Examples of Action

Coles has a commitment to ensure that prior to new sites being built or projects commencing in areas with Indigenous communities that they engage in substantive consultations with the local Indigenous community. Coles' approach is to listen and adapt their plans where suitable to ensure communities feel culturally safe and are not adversely affected by their operations.<sup>45</sup> A more detailed case study of Coles can be found in Part Three of this Guide.

<sup>45</sup> Coles case study interview excerpt for the Guide, 2020.

#### How to Do It

- Undertake pre-engagement analysis to identify the relevant impacted Indigenous Australians.
- Understand the relationships between and within Indigenous groups – including between Elders and younger generations.
- Undertake consultation in good faith and with a rights-based approach with the goal of ensuring mutually beneficial outcomes.
- Be sensitive to potential barriers to consultation including time, language or visual preferences.
- Consider the perspectives of Indigenous women or other at risk or vulnerable groups or disadvantaged individuals (i.e. those with accessibility or disability challenges) within the community that may face additional barriers to participating in discussions.
- Engage with as broad a range of Indigenous Australians as feasible and understand the uniqueness of each community.
- Remain external to Indigenous governance processes to ensure that undue influence is not applied to the decision-making processes of Indigenous Australians.
- Ensure consultation continues even after consent to a specific project has been provided.

#### Good Practice Actions

- ✓ Undertake a pre-engagement analysis to identify relevant impacted Indigenous peoples.
- ✓ Be sensitive to potential communication barriers.
- ✓ Extend consultation beyond the provision of consent for a particular project to proceed.

## 4. Free, Prior and Informed Consent



**ACTION:** Commit to obtain (and maintain) the Free, Prior and Informed Consent (FPIC) of Indigenous Australians for projects that affect their rights, in line with the spirit of the Declaration.

### Why it's Needed

The right to FPIC is a key component that when applied alongside meaningful consultation, safeguards substantive human rights of Indigenous peoples, including the right to self-determination.

In line with the international standard set by the Declaration, the principle of FPIC provides an avenue for Indigenous peoples to withhold or provide consent, or agree to a modified version of a project that will impact upon their rights. An ongoing challenge facing companies in adhering to the principle of FPIC is the variation of interpretations and applications of FPIC throughout international and domestic standards and laws. Importantly, many fall short of the standards enshrined in the Declaration, with some interpretations tending more towards consultation than consent. Recognising the varied interpretations of FPIC in the global business landscape,<sup>46</sup> the discussion of FPIC throughout this Guide is based on the principle of FPIC as outlined in the Declaration and defined in more detail in the International Guide. Although there is no one-size-fits-all approach to ensuring business meets the principle of FPIC, companies that meet all of the components of FPIC as outlined in this Guide will be better positioned to align their strategies and operations to the universal standards set by the Declaration.

### Components of FPIC

**Free:** freedom from coercion, intimidation, manipulation or undue influence or pressure, including freedom from conduct deemed inappropriate as a result of unequal power.

**Prior:** consent is sought in advance of any authorisation and commencement of activities, including the issuance of licences or concessions that impact Indigenous peoples' rights, and in a manner that respects the time requirements of Indigenous consultation/consensus processes.

**Informed:** information is provided that covers a range of aspects including the nature, size, pace and duration of a proposed project or project, as well as potential positive and negative impacts. The information is provided in a culturally appropriate and accessible format for the relevant Indigenous peoples, with sufficient time for their consideration.

**Consent:** incorporates the right to give or withhold consent, including in a manner that is unfettered by significant procedural conditions. In some instances, consent may be revoked if, for example, the consent was given without the benefit of all the available information.

In an Australian context, implementing FPIC is complex and has been limited under domestic legislation. It is an important principle in Australia given the many activities and developments that are conducted on or near Indigenous land. Under Federal legislation, Native Title does not provide any veto rights to Indigenous Australians.<sup>48</sup> Comparatively, the Aboriginal Lands Right Act in the Northern Territory provides Traditional Owners<sup>49</sup> with the limited right to veto possible mining activities on their land, however this is subject to being overruled in the national interest.<sup>50</sup> Recognising the current legislative environment, **Indigenous Land Use Agreements**<sup>51</sup> entered into with Indigenous Australian communities and companies may therefore contain provisions more consistent with the principles of FPIC enshrined in the Declaration, though also have challenges in this regard.<sup>52</sup> The complexity of FPIC is explored in further detail using a case study of the mining industry in Part Three of the Guide.

### Business Benefits of Applying FPIC

- Ensures that business respects the rights of Indigenous Australians that are enshrined in international standards.
- Enables business to operate in a respectful, transparent and culturally appropriate way when engaging with Indigenous Australians that sets the foundation for sustainable partnerships.
- Enables re-evaluation of projects to achieve outcomes that are mutually beneficial.
- Avoids significant financing, operational, and reputational risks and, in some cases, legal risks.

### The Growing Awareness of FPIC

The International Council on Mining and Metals (ICMM) has a detailed position statement on Indigenous Peoples and Mining that lays out the approach that all ICMM members<sup>53</sup> should have when engaging with Indigenous peoples.<sup>54</sup> In particular, the statement focuses on the importance of FPIC to support the development of constructive relationships between mining and metal companies and Indigenous peoples that are based on mutual respect, meaningful engagement, trust and mutual benefit.

For ICMM, FPIC comprises a process and an outcome. Through this process, ICMM states that Indigenous peoples should be able to make decisions free from coercion, intimidation or manipulation, be given sufficient time to be involved in project decision-making prior to any key decisions are made or impacts occur, and be fully informed about the business activity and its potential impacts and benefits. The statement recognises that Indigenous peoples can provide or withhold their consent, and that this should be done in a manner that strives to be consistent with their traditional decision-making processes and in line with the international standards set by the UNGPs. The statement recognises the international instruments that are key to the individual and collective rights of Indigenous peoples as the Declaration and ILO Convention No. 169. ICMM acknowledges in the statement that in many countries, Indigenous peoples' right to veto development projects that affect them is not explicitly enshrined in national or sub-national laws and suggests that "FPIC should be a principle to be respected to the greatest extent possible in activity planning and implementation". However, the ICMM statement also highlights the right for States to make decisions on development of resources according to applicable national laws.

The complex relationship between FPIC and its application by governments demonstrates the ongoing challenge for companies navigating the often varied recognition of Indigenous rights and FPIC in national and sub national laws, including in Australia. Companies that meet the principle of FPIC as outlined in this Guide will be well positioned to meet the international standards on FPIC set by the Declaration, as well as any national or sub-national requirements.

### How to Do It

- Obtain FPIC in line with the Declaration whenever there is an impact on Indigenous Australians' substantive rights.
- Ensure it's an ongoing process that is required across the lifecycle of business projects, including taking into account generational change.
- Undertake regular engagement with Indigenous stakeholders to ensure that consent remains throughout the life of a project and as new information becomes available to either party.
- Consider the broader context and political environment that Indigenous Australians are facing.
- Understand and avoid power imbalances between the business and Indigenous Australians.
- Provide all necessary information to Indigenous Australians impacted and consult with them on the information they need.
- Document the agreed-upon negotiation process and outcome and ensure that this process itself uses a rights-based approach.
- Ensure there is visibility and accountability at the highest levels of the business around obtaining and maintaining FPIC.
- Consider providing independent support in consultation with the community to strengthen the capacity of the Indigenous community's decision-making processes.

### Good Practice Actions

- ✓ Undertake regular, meaningful engagement with Indigenous stakeholders.
- ✓ Understand and avoid power imbalances between the business and Indigenous Australians.
- ✓ Consider providing independent support to strengthen the capacity of the Indigenous community's decision-making processes.

<sup>46</sup> Related business standards that include reference to the principle of FPIC from Indigenous peoples include the International Finance Corporation's Performance Standard 7, the 2013 Equator Principles and the Indigenous Peoples and Mining Position Statement from the International Council on Mining and Metals.

<sup>47</sup> UN Global Compact, 2013, A Business Reference Guide: UN Declaration on the Rights of Indigenous Peoples, (Accessed at: [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2Fhuman\\_rights%2FIndigenousPeoples%2FBusinessGuide.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf))

<sup>48</sup> Australian Trade and Investment Commission, 2020, Indigenous Land Use Agreements, (Accessed at: <https://www.austrade.gov.au/land-tenure/Native-title/indigenous-land-use-agreements>)

<sup>49</sup> The definition of a Traditional Owner is complex and varies in accordance with different Australian legislation. In this Guide, we refer to the term in a broad sense to encompass any Indigenous Australian who is a member of a local descent group having certain rights and responsibilities in relation to a tract of land or area of sea or water.

<sup>50</sup> Aboriginal Land Rights (Northern Territory) Act, 1976, Section 40(b) and Section 43, (Accessed at: <https://www.legislation.gov.au/Details/C2016C00111>)

<sup>51</sup> Commonwealth of Australia, 2014, About Indigenous Land Use Agreements, (Accessed at: <http://www.nntt.gov.au/Information%20Publications/1.About%20Indigenous%20Land%20Use%20Agreements.pdf>)

<sup>52</sup> At the time of publication, a live debate was ongoing around the introduction of the right for Traditional Owners to appeal decisions on land use after they have been made. The West Australian Government was reviewing its Aboriginal Heritage Act and had released a draft of its Aboriginal Cultural Heritage Bill 2020 for consultation (available at: <https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/09/Final-consultation-on-modern-Aboriginal-Cultural-Heritage-Bill-begins.aspx>)

<sup>53</sup> At the time of publication, the following companies were members of ICMM and therefore required to implement the Indigenous Peoples and Mining Position Statement: African Rainbow Minerals, Alcoa, AngloAmerican, Anglo Gold Ashanti, Antofagasta Minerals Barrick, BHP, Codelco, Freeport-McMoRan, Glencore, Gold Fields, Hydro, JX Nippon Mining and Metals, Minera San Cristobal, Minsur, Mitsubishi Minerals, MMG, Newcrest Mining Limited, Newmont, Orano, Polyus, Rio Tinto, Sibanye-Stillwater, South32, Sumitomo Metal Mining, Teck, Vale.

<sup>54</sup> International Council on Mining and Metals, 2013, Indigenous Peoples and Mining Position Statement, (Accessed at: [https://www.icmm.com/website/publications/pdfs/mining-principles/position-statements\\_indigenous-peoples.pdf](https://www.icmm.com/website/publications/pdfs/mining-principles/position-statements_indigenous-peoples.pdf))

## 5. Grievance Mechanism



**ACTION:** Establish or cooperate in an effective and culturally responsive and safe grievance mechanism.

### Why it's Needed

Establishing a company level or collective business-led grievance mechanism provides legitimate, non-judicial channels for Indigenous Australians to report any perceived infringements of their rights due to actions related to the business, including in some instances by third parties working for the business or the business itself.

Grievance mechanisms provide early recourse to identify and help to resolve the concerns of directly impacted Indigenous Australians. Grievance mechanisms, including those established by the company or through collective initiatives, can be effective instruments for enabling remediation and as such are an important part of meeting the corporate responsibility to respect the human rights of Indigenous peoples. The UNGPs expect businesses to establish or participate in effective operational-level grievance mechanisms for individuals or communities who may be adversely impacted by the business.<sup>55</sup>

### Business Benefits

- Stop activities from further adversely impacting Indigenous Australians' rights by helping to address complaints and avoid systemic issues.
- Support the development of stronger relationships with Indigenous Australians and communities.
- Avoid escalation of issues by ensuring a remedy pathway is publicly known and available.

### How to Do It

- Create a mechanism that is legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning in line with UNGP Principle 31.<sup>56</sup>
- In collaboration with the relevant Indigenous community, create a mechanism that focuses on consultation with stakeholder groups and creating an appropriate dialogue for resolution.
- Consider the Indigenous community's existing ways of resolving disputes when developing a grievance mechanism.
- Formalise and document the grievance mechanism and assign accountability, ensuring that any remedy that is provided must then operationalised by other relevant functions in the company.
- Communicate how to access the grievance mechanism widely.
- Review grievances on a regular basis to improve company processes and ensure that the grievance mechanism is a source of continuous learning on the ways in which

business activities might impact the rights of Indigenous Australians.

- Ensure safeguards are in place to protect complainants against retaliation.

### Other Non-Judicial Grievance Mechanisms

There is a diversity of grievance mechanisms that exist in addition to company level or collective business-led grievance mechanisms, including State-based non-judicial mechanisms. These do not act as a replacement for operational level grievance mechanisms, but rather as an additional avenue through which grievances concerning business-related human rights abuses can be raised and remedy sought.

One such example of a State-based non-judicial grievance mechanism in Australia is the Australian National Contact Point (AusNCP), established in 2000-2001 to meet Australia's responsibilities under the **OECD Guidelines for Multinational Enterprises**<sup>57</sup> (the OECD Guidelines). Housed within the Commonwealth Treasury, the AusNCP is responsible for promoting the OECD Guidelines, which include a human rights chapter based on the UNGPs, and providing grievance services to contribute to the resolution of issues relating to their implementation. This includes receiving complaints of breaches of the OECD Guidelines by Australian companies in Australia or abroad. It is important to note that the OECD Guidelines are not legally binding, but rather supplement domestic law,<sup>58</sup> and further that national contact points are non-judicial mechanisms. The AusNCP therefore cannot impose penalties or legally compel companies to participate in mediation or provide remediation. However, the AusNCP can publicly criticise companies for not cooperating which can have significant reputational consequences. Complaints are managed by an AusNCP Independent Examiner, who is supported by a Secretariat that sits within the Department of Treasury, and a Governance and Advisory Board which includes representatives from government and non-government organisations. Details on how to submit a complaint can be found at <https://ausncp.gov.au/>

### Good Practice Actions

- ✓ Create a mechanism that is legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning.
- ✓ Develop grievance mechanism in collaboration with the relevant Indigenous community.
- ✓ Formalise and document the grievance mechanism and assign accountability.

<sup>55</sup> UN, 2011, Guiding Principles on Business and Human Rights, (Accessed at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf))

<sup>56</sup> The accessibility of a grievance mechanism should take into account the potential barriers that may exist for members of Indigenous communities, including those experienced by people with accessibility or disability challenges. A more detailed explanation of the effectiveness criteria of non-judicial grievance mechanisms can be found on p.33 of the UNGPs (Accessed at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)). More information on grievance mechanisms can also be found in 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (Accessed at: [https://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf)).

<sup>57</sup> OECD, 2011, OECD Guidelines for Multinational Enterprises, (Accessed at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>)

<sup>58</sup> AusNCP, 2020, OECD Guidelines (Accessed at: <https://ausncp.gov.au/oecd-guidelines>)

## 6. Remediation



**ACTION:** Provide for or cooperate in remediation for any adverse impacts on Indigenous peoples' rights which the business identifies it has caused or contributed to.

### Why it's Needed

As a necessary element of addressing business-related human rights abuses, there is a need for effective remediation through judicial, administrative, legislative or other appropriate means. In line with the UNGPs, business should provide for or cooperate in remediation through legitimate processes if they have identified that they have caused or contributed to an adverse impact on Indigenous Australians' rights. They may also take a role in doing so for adverse impacts directly linked to their operations, products or services by a business relationship even where they have not caused or contributed to the harm.

Remediation will support and help to restore Indigenous Australians' rights if there has been an adverse impact caused by or contributed to by business activities.

### Business Benefits

- Avoids the escalation of issues by remedying any adverse impacts on Indigenous Australians' rights.
- Supports the development and maintenance of respectful and trust-based relationships between business and Indigenous Australians and their communities.
- Supports the altering of business activities to reduce potential adverse impacts on Indigenous Australians' rights by informing and raising awareness amongst all parts of the company around the need to remediate in the wake of adverse impacts.

### How to Do It

- Ensure a commitment to remediation in any policies pertaining to Indigenous Australians' rights.
- Ensure that where there are allegations that the business has caused or contributed to adverse impacts that the business meaningfully investigates those impacts in consultation with the impacted individuals or communities and, if it finds it has caused or contributed to them, provides for or cooperates in remediation.
- Acknowledge and incorporate Indigenous Australians' customary laws and values into existing remediation processes.
- Ensure respective Indigenous Australians are consulted, participate in and agree to the design of a remediation process.
- Develop remediation processes that best suit the needs of a particular Indigenous Australian group or community.
- Act according to the highest remediation standards whether they be local, national or international.

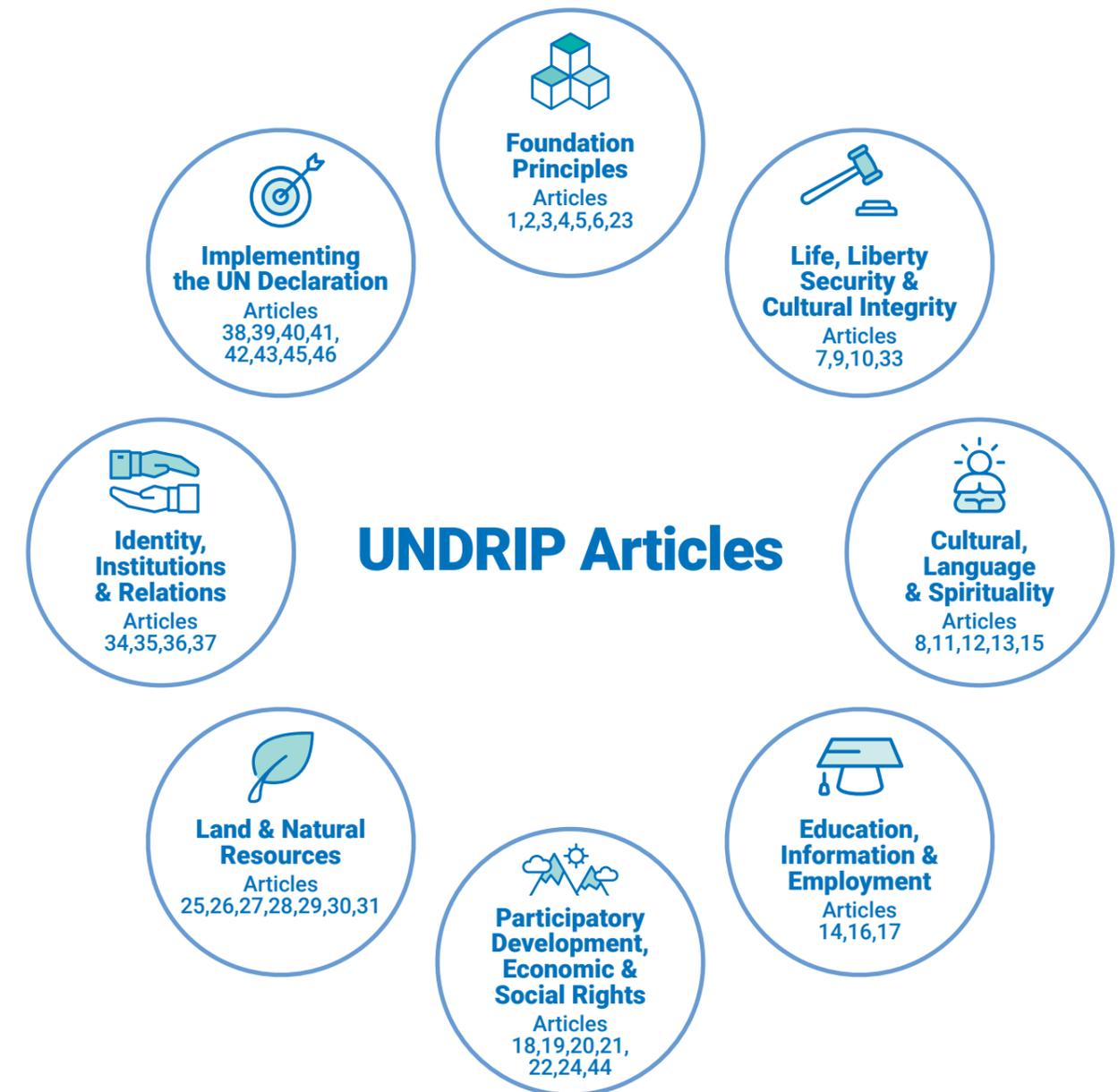
### Good Practice Actions

- ✓ Acknowledge and incorporate Indigenous Australians' customary laws and existing grievance mechanisms.
- ✓ Meaningfully investigate allegations of adverse impacts and provide for or cooperate in remediation where the business has caused or contributed to them.
- ✓ Act according to the highest remediation standards whether they be local, national or international.

# Part Two: Business Practices Mapped to the Declaration Articles

## Business Practices Mapped to the Declaration Articles

The diagram below maps the 46 separate Articles of the Declaration to their key themes or principles.<sup>59</sup> The pages that follow in Part Two of this Guide draw on the International Guide to provide a description of specific rights in the Declaration, suggest practical actions that business can take to respect and support these rights, and provide case study examples of how organisations are working to implement these suggested actions.



<sup>59</sup> A full list of the Articles as outlined in the Declaration is available at: [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

## Equality and Freedom from Discrimination



### Articles 1 and 2

#### The Rights

Indigenous peoples, including Indigenous Australians, are entitled to all universal human rights and fundamental freedoms. These include, but are not limited to:

- The rights to life, liberty, security of person.
- Recognition as a person before the law.
- Equality, nationality, ownership of property.
- Freedom of thought and conscience.
- Religion, freedom of opinion and expression.
- Work, health and education, among others.

Article 1 expands on these individualistic concepts to include collective human rights for Indigenous peoples. This is an important recognition that Indigenous peoples' individual identities, including those of Indigenous Australians, are often closely entwined with their identity as a member of their community or kin.

Collective rights protect Indigenous Australians on a collective basis and allow them to maintain their cultures, rights of self-determination and survival as distinct social and cultural groups.

Article 2 of the Declaration affirms that Indigenous peoples are entitled to be treated equally to all other people and not be subjected to any form of discrimination. In the Australian context, this entails that Indigenous Australians must be treated with respect and be able to exercise their fundamental human rights, including those based on their Indigenous ancestry or identity.

#### Steps You Can Take:

##### Respect

- Conduct Indigenous cultural competency training to unpack cultural biases, identify unconscious biases, promote equality, and avoid discrimination.
- Within supply chains, include a requirement that suppliers have measures in place to respect the rights of Indigenous Australians, including through employment and procurement opportunities.
- Do not enter into commercial agreements that violate, or have the clear potential to violate, Indigenous Australians' rights.

#### Support

- Advocate for public policies in support of the aspirations and human rights of Indigenous Australians.
- Develop and implement an Indigenous procurement policy that includes measurable targets to ensure certified Indigenous Australian businesses are included in business supply chains and address bias or discrimination in procurement.
- Develop an Indigenous employment strategy and pathway programs in collaboration with Indigenous Australians to promote equal opportunities for employment and promotion to leadership positions.

### Case Study

#### Uluru Statement from the Heart

The Uluru Statement from the Heart was the result of an unprecedented consultation process with more than 1200 Indigenous Australian representatives over a six month period. It outlines the path forward for recognising Indigenous Australians in our Nation's Constitution with a Constitutionally enshrined Indigenous voice to parliament and a Makarrata Commission for Truth Telling about our shared history.<sup>60</sup> On May 26, 2017, the Uluru Statement from the Heart was endorsed with a standing ovation by a gathering of 250 Indigenous Australian leaders. Five months later, it was rejected by then Prime Minister, Malcolm Turnbull.<sup>61</sup> In 2018, the Prime Minister Scott Morrison also rejected the Statement's call for a Voice to Parliament enshrined in the Constitution.<sup>62</sup>

In 2019, a coalition of 14 organisations<sup>63</sup> with Elevate level Reconciliation Action Plans across academia, aviation, construction, energy, engineering, insurance, legal, professional services, sport and resources pledged their support for the Uluru Statement from the Heart and accepted the Statement's invitation to walk the path to reconciliation with First Nations peoples.<sup>64</sup>

<sup>60</sup> The Uluru Statement from the Heart, 2017, (Accessed at: <https://ulurustatement.org/the-statement>)

<sup>61</sup> Commonwealth of Australia, 2017, Response to Referendum Council's report on Constitutional Recognition, (Accessed at: [https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/5596294/upload\\_binary/5596294.pdf;fileType=application%2Fpdf#search=%22media/pressrel/5596294%22](https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/5596294/upload_binary/5596294.pdf;fileType=application%2Fpdf#search=%22media/pressrel/5596294%22))

<sup>62</sup> Paul Karp, 2020, Ken Wyatt concedes referendum on Indigenous recognition unlikely before election, The Guardian, (Accessed at: <https://www.theguardian.com/australia-news/2020/may/29/ken-wyatt-concedes-referendum-on-indigenous-recognition-unlikely-before-election>)

<sup>63</sup> The 14 organisations were from a range of sectors and included BHP, Curtin University, Herbert Smith Freehills, IAG, KPMG, Lendlease, National Rugby League, PwC Australia, PwC's Indigenous Consulting, Qantas, Richmond Football Club, Rio Tinto, Swinburne University of Technology and Woodside.

<sup>64</sup> Julie Power, 2011, 'Gift to the nation': 14 organisations support referendum and reconciliation, The Sydney Morning Herald, (Accessed at: <https://www.smh.com.au/national/gift-to-the-nation-14-organisations-support-referendum-and-reconciliation-20190528-p51s2f.html>)

## Self-determination, Self-governance and Nationality



### Articles 3, 4, 5, 6 and 23

#### The Rights

Under the Declaration, Indigenous peoples, including Indigenous Australians, have the right to self-determination, autonomy, and to maintain their distinct political, legal, economic, social and cultural institutions. Indigenous peoples are also entitled to a nationality. These rights are about giving Indigenous peoples, including Indigenous Australians, control over their own lives and futures, and their community's place in the world, free from outside coercion. In the Australian context, these rights also cover Indigenous Australians' freedom to govern their own local affairs.

Indigenous Australians have the right to participate in decision-making in matters that affect their rights, through self-appointed representatives and in accordance with their own customs and traditions (Article 18). However, these rights do not exclude Indigenous peoples from participating in the broader political, economic, social and cultural life of the country.

The right to self-determination is a central pillar of the Declaration and is fundamental to the ability of Indigenous Australians to preserve their unique identities and cultures, and to be in control of their own lives.

In exercising their right to self-determination, the Declaration provides that Indigenous peoples have the right to govern themselves in matters that relate to internal or local affairs, as well as how to finance their autonomous functions (Article 4).

Indigenous Australians' governance systems that have existed for millennia have been negatively impacted and influenced since Colonisation. This may make it difficult for communities to meaningfully negotiate with business about the use of their cultural knowledge or land, which may also jeopardise their ability to realise (their right to/the principle of) FPIC, especially if adequate decision-making mechanisms are not in place. In such cases, business may consider providing independent support to communities to enhance their self-governance structures and build their negotiating capacities.

#### Steps You Can Take:

##### Respect

- Identify and consult with the Traditional Owners in any proposed development-related activities to ensure alignment with their own priorities and strategies and in line with FPIC as contained within the Declaration.
- Ensure business operations are compliant with Indigenous governance structures in the areas where the business operates, even when governments have not done so. This includes understanding and respecting the perspectives and objectives of the relevant Indigenous Australians, their governance structures, customs, laws and dispute resolution practices.
- Understand and respect the perspectives and objectives of relevant Indigenous Australians and ensure their cultural intellectual property is protected in any relevant business activities.

##### Support

- Initiate development projects in genuine partnership where the respective Indigenous community has an equal say in the decision-making process as to what economic, social and cultural development will be undertaken throughout the partnership.

## Maintenance and Dignity of Culture, Language and Spirituality



### Articles 8, 11, 12, 13 and 15

#### The Rights

These articles focus on cultural self-determination by providing the rights to control and protect heritage, ways of life and legacies. They also set out certain Government obligations that can guide business activities that have the potential to impact Indigenous Australians. For example, Article 8, the right to not be subjected to forced assimilation or cultural destruction. Business should ensure their activities do not take any actions that could cause, contribute to, or encourage forced assimilation or cultural destruction, including spiritually significant practices and places such as sacred sites (Article 12). Instead, business should proactively look for opportunities to support cultural preservation. Article 11 provides the right to practise and revitalise Indigenous cultural traditions and customs, including manifestations of culture such as sacred sites, significant objects and intellectual property of various forms.

Article 13 focuses on the rights to maintain languages (in written and spoken form), which are important expressions of Indigenous cultures. Article 15 aims to address discrimination and intolerance by affirming the right of Indigenous peoples to the dignity and diversity of their cultures, traditions, histories and aspirations, and to have these accurately and appropriately reflected in educational curriculums and public information. Respecting these rights and acknowledging the destruction that has occurred to Indigenous Australians' cultures since Colonisation is a key step towards building trust with Indigenous Australian communities.

#### Steps You Can Take:

##### Respect

- Develop a process for seeking consent for the use of photographs, video footage, artwork or any culturally significant representation.
- In line with the Declaration standard on FPIC, engage with Traditional Owners to ensure that any business activities are not harmful to sacred and culturally significant places.
- Conduct ongoing engagement to account for any new information about sacred or culturally significant places prior to conducting or continuing any development on, or near, Indigenous lands.

#### Support

- Support projects that celebrate and preserve Indigenous Australians' cultural customs. For example, the preservation of languages.
- Consider how to incorporate Indigenous Australians' knowledge systems and styles of learning to strengthen business practices.
- Display symbols of cultural significance in the workplace, like the Aboriginal and Torres Strait Islander flags.
- Embed marks of cultural respect such as inviting culturally-authorized people to conduct a 'Welcome to Country' at significant events and ensuring personnel conduct an 'Acknowledgement of Country' before important meetings.

### Case Study

#### Maranguka Justice Reinvestment project

The Maranguka Justice Reinvestment project is a community-led initiative that involves a coalition of more than 25 organisations, including the private sector, philanthropic organisations and the Federal and NSW State governments that have come together to address the significant over-representation of Indigenous peoples in custody in the town of Bourke, NSW.<sup>65</sup>

Working groups bring stakeholders together, including representatives of the corporate sector such as law firms Gilbert + Tolbin and Herbert Smith Freehills, to deliver the community-developed strategy to meet the collective aspiration for Bourke's Indigenous youth to have access to pathways for better life outcomes and to avoid incarceration. The strategic working groups were formed around the priorities recognised in the 'Growing our Kids Up Safe, Smart and Strong' strategy. It included early childhood and parenting, eight to 18 year-olds, the role of men, and service sector reform. The working groups incorporated stakeholders from government, non-government agencies, service providers and Bourke Community members. An impact assessment of the Maranguka Project found that by formulating preventative, diversionary and community development initiatives, the Maranguka project was able to create real impact in reducing Indigenous youth representation in the justice system.<sup>66</sup>

Maranguka is directed and guided by the aspirations and wishes of the Bourke Tribal Council who advocate on behalf of the Bourke Aboriginal Community so that Indigenous Australians are making decisions about their own families and children. The project espouses the rights of self-determination, having a significant impact on making the Bourke community stronger and safer.<sup>67</sup>

### Case Study

#### Yerrabingin and Mirvac – Indigenous Rooftop Farm

Yerrabingin is an Indigenous-owned business that was created in partnership with Mirvac, an Australian property group. Yerrabingin's first project was Australia's first Indigenous rooftop farm, launched in April 2019 at Mirvac's new technology and innovation hub in South Eveleigh, NSW. The partnership has brought to life an authentic cultural heritage experience that celebrates South Eveleigh's rich Indigenous Australian history. The Yerrabingin Indigenous rooftop farm is one element of a wide range of engaging and educational experiences at the precinct including tours of the farm and workshops on Indigenous Australian culture, native permaculture, environmental sustainability, physical and mental health at the rooftop facility. Mirvac is also working to establish the South Eveleigh Aboriginal Cultural Landscape Garden, which will grow native and medicinal plant species and bush food.

<sup>65</sup> At the time of publication, the following organisations were members of Just Reinvest NSW: Aboriginal Child, Family and Community Care State Secretariat (NSW), Aboriginal Education Council (NSW) Inc, Aboriginal Medical Service Cooperative Limited, Amnesty International, ANTaR, Ashurst, Australian Indigenous Alpine Sports Foundation, Australian Red Cross, Community Legal Centres NSW, First Hand Solutions, Gilbert + Tobin, Herbert Smith Freehills, Kingsford Legal Centre, Legal Aid New South Wales, Lifestyle Solutions, Network of Alcohol and other Drug Agencies, Oxfam, Public Interest Advocacy Centre, Reconciliation NSW, Save the Children, Shopfront Youth Legal Service, Show Me the Way, Uniting Care NSW ACT, Weave, Whitelion, Youth Action, and Youth Justice Coalition.

<sup>66</sup> KPMG Australia, 2018, Maranguka Justice Reinvestment Project Impact Assessment, (Accessed at: <https://www.justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>)

<sup>67</sup> Justice Reinvest NSW, 2018 (Accessed at: <https://www.justreinvest.org.au/justice-reinvestment-in-bourke/>)

## Education, Labour Rights and Employment



### Articles 14 and 17

#### The Rights

Educational and employment attainment for Indigenous Australians is significantly behind that of non-Indigenous Australians.

Article 14 seeks to address education gaps faced by many Indigenous communities globally by affirming the right of Indigenous peoples, including Indigenous Australians, to establish and control their own educational systems and institutions, and to provide education in language and in a manner appropriate to their culture. Indigenous peoples also have the right to access government education without discrimination.

Business can promote the rights in Article 14 by supporting culturally appropriate educational opportunities for Indigenous Australian children and adults.

Article 17 affirms the right to enjoy all labour rights under domestic and international law, and to be free from economic exploitation – including through the provision of appropriate and adequate remuneration for services performed. Article 17 also aims to specifically protect Indigenous children from dangerous work that is likely to threaten not only their health but their life potential through an adverse impact on participation in education or recreational activities. Providing meaningful employment opportunities can provide pathways to economic empowerment for Indigenous Australians from which they have been historically excluded.

#### Steps You Can Take:

##### Respect

- As part of due diligence or impact assessment processes, ensure that company activities do not limit Indigenous Australians' access to educational facilities. For example, projects that cause significant physical disruption in Indigenous Australian communities may have the potential to limit access to educational facilities. In such cases, it is important to engage with affected Indigenous Australians in order to determine how best to ensure continued access to schools and education facilities.
- Implement selection criteria for suppliers and contractors that require compliance with international standards, including on human rights and labour practices in business operations and throughout supply chains. This should include protections against modern slavery and child labour. Reporting entities under the Australian Modern Slavery Act may consider specifically reporting on any policies or practices to ensure that they are managing modern slavery risks relating to Indigenous peoples.

#### Support

- Partner with Indigenous Australian education and scholarship providers to enable culturally-centred support and pathways to meaningful post-school outcomes for Indigenous Australian youth.
- Support Indigenous Australian led initiatives which involve Indigenous cultural research, preservation, and repatriation and documentation in line with cultural protocols.
- Develop an Indigenous Australian employment policy in collaboration with Indigenous Australian personnel to provide meaningful career and managerial pathways. Where a workplace does not have Indigenous personnel, consult Indigenous Australians external to the organisation.
- Develop an Indigenous Australian procurement policy and targets to provide opportunities to certified Indigenous Australian businesses throughout supply chains.
- Ensure the workplace is culturally safe for Indigenous Australian employees by providing tailored support and mentoring to help with retention and professional attainment.
- Ensure ongoing cultural competency training is provided to all employees to encourage deeper cross-cultural understanding and respect to support a more inclusive and diverse workplace.

#### Case Study

##### Business Council of Australia: Raising the Bar Initiative

In 2019, the Business Council of Australia (BCA) in collaboration with its members and Indigenous supplier diversity organisation Supply Nation<sup>68</sup>, launched the 'Raising the Bar' initiative – a pledge by the private sector to spend more than A\$3 billion over five years to accelerate Indigenous business growth.<sup>69</sup> Supporting opportunities for economic development aligns with the principle of self-determination and affirms the rights and aspirations contained in Article 17 in respect to labour and employment. The initiative provides a strong framework for BCA members to set Indigenous procurement targets, along with policies and procedures to embed accountability to further grow engagement and contracts with Indigenous businesses.<sup>70</sup>

<sup>68</sup> Supply Nation, 2020, (Accessed at: <https://supplynation.org.au/about-us/>)

<sup>69</sup> BCA, 2019, \$3 billion boost for Indigenous businesses, (Accessed at: [https://www.bca.com.au/\\_3\\_billion\\_boost\\_for\\_indigenous\\_businesses](https://www.bca.com.au/_3_billion_boost_for_indigenous_businesses))

<sup>70</sup> More information on BCA's Indigenous Engagement can be found at [https://www.bca.com.au/indigenous\\_engagement](https://www.bca.com.au/indigenous_engagement)

## Development, Political, Economic and Social Activities



### Articles 20 and 21

#### The Rights

Article 20 affirms the right of Indigenous peoples, including Indigenous Australians, to their political, social and economic institutions and their own way of life and means of development, each of which is fundamental to the survival of Indigenous cultures. In addition to the rights of Indigenous peoples to continue their way of life, Article 21 recognises the right to improve their social and economic conditions, including in relation to health, education, employment, training and housing.

In recognising and committing to the standards set by the Declaration, Australia must allow Indigenous Australians to pursue their own means of economic development and ensure that they are appropriately included in nation-wide development efforts.

Indigenous institutions can take many forms and may be formal (such as physical institutions or legally constituted organisations) or informal (such as moral values or culturally accepted norms). In either case, when engaging with Indigenous Australians, business should seek to understand and respect such institutions, and should consider participating in social and community activities with Indigenous groups when invited.

#### Steps You Can Take:

##### Respect

- Work with Indigenous owned and/or controlled organisations where Indigenous Australians are empowered to realise their ideas and priorities related to economic, social and cultural development.
- Seek to understand Indigenous Australians' ways of life and ensure that business operations do not negatively impact Indigenous Australians, particularly at risk or vulnerable groups such as Indigenous women, Elders, youth, children and those with disabilities (discussed further under Article 22).

##### Support

- Understand that balanced, co-created partnerships with Indigenous owned businesses promoting mutual economic benefits will likely have equal, if not greater, impact than philanthropic initiatives.
- Where possible, support existing development, political, economic and social institutions (rather than establishing new ones) provided this is in line with the Indigenous community's wishes.
- Partner with or support existing Indigenous led projects.
- Establish development plans in collaboration with Indigenous Australians that allow for Indigenous Australians themselves to make the decisions as to what development will be undertaken (with the business' guidance).

- Partner with Indigenous Australian organisations to achieve mutually beneficial outcomes that are consistent with the respective objectives of both parties – the goals of the Indigenous organisation and the purpose of the business that they are partnering with (e.g. the provision of products or services).

#### Case Study

##### Telstra and First Nations Media Australia: inDigiMOB

Telstra's inDigiMOB program, a community digital capability program, assists in growing Indigenous participation in digital society.

The program is delivered in partnership with First Nations Media Australia, the peak body for First Nations not-for-profit broadcasting, media and communications. It features a culturally appropriate framework and model for the transfer of digital skills and cyber-safety awareness, and helps to develop locally-relevant training resources, tools and content with, and for, the community. inDigiMOB emphasises a process of informal, peer-to-peer learning that values the experiences and knowledge of Indigenous Australians and is responsive to community wishes.

The program identified four key obstacles to the take up and use of communications technologies in remote Indigenous Australian communities, which it reports are:

- Accessibility of internet services including knowledge of internet services available in remote communities and blackspot issues.
- Awareness of community members of the potential of the internet and managing likely issues including limited digital training, on-ground support and mentors, and Cyber Safety issues.
- Appropriateness of internet take-up programs including lack of language-based training, lack of culturally appropriate training spaces and delivery modes.

inDigiMOB seeks to overcome these barriers and address the digital divide that can significantly impact Indigenous Australians' engagement with economic opportunities.

The program continues to expand and currently services 20 locations with more than 10,000 participants in the program's activities. To find out more visit [indigimob.com.au](https://indigimob.com.au)

<sup>71</sup> inDigiMOB, 2019, About inDigiMOB, (Accessed at: <https://indigimob.com.au/about/>)

## Cultural Heritage and Traditional Knowledge



### Article 31

#### The Right

Article 31 grants Indigenous peoples, including Indigenous Australians, the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and cultural expressions (sometimes referred to as 'cultural and intellectual property'). This right protects a broad range of matters, including expressions of traditional culture (e.g. writings, oral traditions, games and artworks) and inherited scientific knowledge, technology and natural resources (e.g. human remains, artefacts, landscapes and ecosystems, traditional medicines and other knowledge of plants and animals). The breadth of concepts included in this right means that existing, mainstream forms of legal protection of intellectual property, such as copyright and patents, are not only inadequate for the protection of this right, but can be inherently unsuitable. For example, Indigenous Australians' cultural intellectual property rights are often collective and passed down orally by Elders from generation to generation.

In Australia, Indigenous land and water management techniques effectively managed natural resources before Colonisation and are based on a deep understanding of local conditions, seasonally driven and included controlled burnings for regeneration. The knowledge and traditional practices of Indigenous Australians have been fragmented and disrupted by Colonisation, in addition to historically being largely overlooked by successive governments and businesses. However, business can play a key role in partnering with Indigenous Australians to support the reaffirmation of their cultural and scientific knowledge and ensure that it plays a key role in land and water management techniques.

There is a growing recognition that Indigenous Australian traditional knowledge, including land and water management techniques, can play a critical role in driving progress towards a more sustainable Australia. Most recently, in response to the extreme bushfire season of 2019-2020, the Federal Government announced a Royal Commission into National Natural Disaster Arrangements. At the time of writing, this included consideration of 'any ways in which the traditional land and fire management practices of Indigenous Australians could improve Australia's resilience to natural disasters'.<sup>72</sup>

The destruction of Juukan Gorge by mining company Rio Tinto in Western Australia in May 2020 has further fuelled an increasing debate in Australia around how best to manage and protect Indigenous cultural heritage. Submissions to a consequent inquiry on the destruction of Juukan Gorge by the Federal Parliamentary Joint Standing Committee on Northern Australia have highlighted the ongoing challenges around the management of cultural heritage in Australia, including around the principle of FPIC, outdated Aboriginal heritage protection regimes, including at the state level, and calls for more consistent Federal approaches and the need to consider the multitude of values that Indigenous cultural heritage sites bring, both to Indigenous Australians and the wider community.<sup>73</sup>

#### Steps You Can Take:

##### Respect

- Avoid the destruction of cultural heritage sites as a result of any business operations. Ensure that where business operations may destroy or disturb Indigenous Australian cultural heritage sites, the principle of FPIC is applied to ensure that the rights of Indigenous Australians are respected, and that adequate remediation is provided through legitimate processes if damage or destruction occurs.
- Ensure that there are appropriately resourced internal teams in place who have the necessary deep subject matter expertise and awareness of Indigenous Australian rights and cultural heritage to identify and act on risks to these rights. Where these teams are not in place internally, partner with an appropriate external Indigenous organisation to ensure this knowledge is provided and integrated into decision-making.
- Obtain consent before using any cultural or intellectual property of Indigenous Australians. Do not apply for patents or assert copyright based on Indigenous heritage materials without consent.
- Ensure that fair payment or an equitable interest in the form of a licencing agreement or royalties is provided for the use of cultural or intellectual property. As with FPIC, business should ensure that consent obtained is also meaningfully informed, and freely obtained before steps are taken to use cultural or intellectual property.
- Obtain consent before using images or names of Indigenous Australians or the names of past Indigenous leaders as part of logos, trademarks, trade names or in other company materials. Follow the respective community's cultural protocols, in particular, in respect to any deceased community members. Do not use images or names that may be interpreted as disparaging or that promote stereotypes.

#### Support

- Partner with or support Indigenous-led projects to protect and promote Indigenous Australians' cultural heritage as part of corporate social responsibility initiatives. If no such projects exist in the relevant area, consider ways to support the capacity of Indigenous Australians to protect and develop their cultural heritage and traditional knowledge.
- Support Indigenous communities to establish programs (for example, research partnerships) that share and preserve traditional ecological, cultural and heritage knowledge.

### Case Study

#### KPMG and Terri Janke and Company

Terri Janke specialises in the protection of Indigenous Cultural Intellectual Property (ICIP) which is the right that Indigenous Australians have to protect their traditional art and culture. ICIP is based on the idea of self-determination and includes Traditional knowledge, cultural practices, spiritual knowledge, ancestral material and languages. ICIP rights are collective in that the cultural expression and knowledge originate from a clan group and are passed on from generation to generation. Due to the continuing nature of Indigenous cultures, ICIP also includes items created based on Indigenous cultural heritage. As ICIP rights are based on customary laws not recognised by Australia's legal system, ICIP rights are unprotected and open to exploitation. Terri Janke has created protocols to protect ICIP in areas where the current law falls short.

As part of KPMG's commitment to respectfully embed Indigenous Australian cultures and protocols across the business, they engaged Terri Janke and Company to follow a human rights-based approach to this process. Consistent with the Declaration, KPMG recognises and respects Indigenous peoples' rights to maintain, control, protect and develop their cultural heritage, including oral traditions. KPMG is committed to properly acknowledging Indigenous Australians as the First Australians, not just through events but by incorporating Indigenous Australian themes throughout their offices.

A number of meeting rooms in KPMG's offices across the country are named after Indigenous Australian words, places, and important historical figures. Digital signage in each room is also used to engage staff and clients with Indigenous Australians' cultures and heritage. KPMG engaged Terri Janke and Company to ensure correct protocols are followed and ICIP protected in the naming of meeting rooms and digital signage. This involved consultation with the respective local Indigenous Australian community groups on the appropriateness and meaning of each word, and obtainment of FPIC to use these names.

<sup>72</sup> Royal Commission into National Natural Disasters Arrangements, 2020, Commonwealth Letters Patent, (Accessed at: <https://naturaldisaster.royalcommission.gov.au/publications/commonwealth-letters-patent-20-february-2020>)

<sup>73</sup> A full list of the submissions received by the Joint Standing Committee on Northern Australia on the Juukan Gorge inquiry can be found at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Northern\\_Australia/CavesatJuukanGorge/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/CavesatJuukanGorge/Submissions)

# Part Three: Case Studies

The following case studies have been developed via interviews undertaken with the profiled organisations to highlight how Australian organisations are taking action to respect and support the rights of Indigenous Australians. These case studies are intended as a learning resource and their inclusion does not represent the endorsement of the Global Compact Network Australia, KPMG Australia or UTS for the organisation or its actions.



## Case Study 1: SA Water



**Engagement is relational rather than transactional – the quality of relationships outweighs the quantity of engagement.**

SA Water provides water and wastewater services to more than 1.7 million South Australian customers. This includes providing safe, clean drinking water to communities across South Australia, and once this water has been used, removing and treating the waste to ensure high quality outcomes for their customers' health, and to reduce environmental impact.

### Cultural Engagement

SA Water explained that taking time to build relationships and getting to know people in the community is a part of the organisation's DNA, and it helps build authentic relationships with the communities with whom they work.

In addition to engaging with Indigenous communities and through its Reconciliation Action Plan (RAP) steering committee, which includes a number of community leaders, SA Water described how attending community events outside their standard business operating requirements, working with different landholding bodies in South Australia including the Aboriginal Lands Trust, the Aangu Pitjantjatjara Yankunytjatjara (APY) Board and native title holders, has helped SA Water build direct relationships with Indigenous Australian communities. One avenue the organisation identified for building cultural engagement was supporting language survival through naming of key water assets, which has become a reconciliation priority.

### Local Businesses

SA Water has focused its Stretch RAPs on initiatives related to engagement and partnerships with local businesses. It reports that it has developed a policy to ensure Indigenous organisations are front and centre in its supply chain and engage in community and commercial partnerships including:

- Partnering with the Kurna community and a local Kurna landscaping and horticulture business to create and maintain the Bush Tukker Garden at the Adelaide desalination plant which is part of the site tour for school and community groups.
- Undertaking cultural heritage management and civil works projects with RAW Recruitment Services, the business arm of the Kurna community.
- Commissioning artists to paint water infrastructure to share messages of reconciliation, which has led to global art and design opportunities for emerging Indigenous Australian artists.
- Investing in working on country projects where Indigenous Australian community groups work on caring for and managing environmental and heritage projects, engaging in land management outcomes and employment opportunities.

### Notable Initiatives

#### Water Wisdom Video Series

SA Water emphasised the importance of recognising that the organisation and its employees are working on Indigenous Australian lands and waters. The Water Wisdom documentary video series was developed with five South Australian

Aboriginal communities to capture and share their knowledge about and connection to water.

SA Water described how through this community-controlled project, five eight-minute videos were prepared to build understanding and appreciation of the significant innovations and technologies related to water and water management that were developed and used by Indigenous Australians for thousands of years. They will be used within the communities to share knowledge with future generations, and with the broader community.

### Amata Oval – A Green Oasis in a Red Landscape

South Australia is home to some of the most remote Indigenous Australian communities in Australia where provision of infrastructure is an ongoing challenge. SA Water stated that it looks for innovative solutions to this challenge. The first green oval in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands – the Amata oval – is an example of this. SA Water captured excess wastewater within the community which was treated and recycle to support the creation of this new recreational facility.

### DIY Plumbing

Working with members of the Anangu community, SA Water highlighted that the organisation delivers a plumbing course that empowers community members to fix water leaks, and provides education on water and sustainability. The course provides the practical benefit of reducing water loss in the region by teaching skills to fix a leaky tap or toilet. In a remote area like the APY Lands, this is valuable when a plumber is not simply a phone call away. SA Water reported that this program also enables two-way learning where SA Water workers return with a wealth of cultural knowledge and are sharing it across the business, helping to embed a culture of reconciliation.

#### Relevant Rights in the Declaration

##### Culture, language and spirituality:

- Articles 8, 11, 12, 13 and 15 – Maintenance of culture, language and spirituality

##### Education, information and employment:

- Article 14 – Education
- Article 17 – Labour rights

##### Participatory development, economic and social rights:

- Articles 18 and 19 – Participation in decision-making
- Articles 20 and 21 – Development, political, economic and social activities

##### Land and natural resources:

- Article 25 – Land and natural resources – spiritual basis
- Article 31 – Cultural heritage and traditional knowledge

## Case Study 2: Coles



Ten years ago Coles had 65 team members who identified as Aboriginal or Torres Strait Islander that number has now grown to over 4,700.

Coles is one of Australia's largest retailers with over 2,500 stores nationally and more than 120,000 team members serving 21 million customers each week.

### Customer and Community Engagement

Coles explained that the company places importance on forming partnerships with local Indigenous organisations to support its local community engagement efforts. One of the biggest challenges for an organisation as large as Coles is maintaining these relationships with small partner organisations at a local level:

*"...the job is never done so to speak... it's not like we can put something up on the wall and say 'hey there's an acknowledgement plaque, job well done'... we have to keep investing particularly in cultural learning."*

Russell James, Head of Indigenous Affairs

To manage this, Coles described adopting a simple approach to customer and community engagement, which focuses on listening to communities and learning about what they are trying to achieve – and how Coles can help with this – beyond their commonly understood role as a supermarket.

### Alternative Strategies to a RAP

Instead of a RAP, Coles has an Aboriginal and Torres Strait Islander Plan, covering three key areas – employment, supplier diversity and community. Coles illustrated how this allowed them to create a tailored framework and approach which everyone in the business can buy into and clearly understand their role in helping to drive these initiatives.

### Cultural Competency

Coles explained that their strategy is underpinned by cultural learning and cultural capacity principles which have been essential to achieving their Indigenous employment goals. Stating that the company has used the same cultural awareness providers for 10 years, Coles highlighted how these strong relationships enabled them to develop a tailored and effective program relevant to Coles and their business units. Coles noted that this includes intensive cultural awareness training, delivered annually throughout the store network, with specific sessions delivered to specialised units (such as procurement and recruitment). Local cultural immersion experiences are also delivered to store teams to provide local context.

### Suppliers

Coles further advised that they seek to provide opportunities for Indigenous businesses throughout their supply chain, including both 'goods for resale' and 'goods not for resale'. They take a strategic approach to identifying any commercial gaps and opportunities that Indigenous businesses can fulfil:

*"A lot of our focus is on strategically identifying commercially where we think the gaps and opportunities are. We then assess the Indigenous business marketplace in a more targeted fashion and try and find the sweet spot or where those entry points are. It's applying business principles to our approach but with a really solid understanding of what that Indigenous business segment looks like."*

Russell James, Head of Indigenous Affairs

Coles recounted how they have been supporting Indigenous suppliers since 2001. The Indigenous businesses that work with Coles on an ongoing basis have been noted to provide unique commercial offerings and deliver products to a standard over and above any of their competitors:

*"The partnership has got to work commercially otherwise you're never going to have the sustainability in those relationships."*

Russell James, Head of Indigenous Affairs

### Notable Initiatives:

#### Largest Private Sector Employer for Indigenous Australians

Coles reported that in 2010, only 65 Coles team members identified as Aboriginal or Torres Strait Islander. At the end of the 2019/2020 financial year, Coles had approximately 4,700 team members who identified as Aboriginal or Torres Strait Islander; this equates to 3.8 per cent of the total workforce. By 2023, Coles aims to increase this to 5 per cent of the total workforce and 3 per cent of trade and leadership roles.

Coles explained that they partner with local foundations such as MEEDAC Aboriginal Corporation and Wunan Foundation in Western Australia to better understand the job seeker marketplace and provide more opportunities locally for individuals as they know traditional recruitment methods may not be as effective in remote Indigenous Australia communities.

#### Relevant Rights in the Declaration

##### Foundational principles:

- Articles 1 and 2 – Equality and freedom from discrimination

##### Culture, language and spirituality:

- Articles 8, 11, 12, 13 and 15 – Maintenance of culture, language and spirituality

##### Education, information and employment:

- Article 17 – Labour rights

## Case Study 3: Gilimbaa



It takes multiple perspectives to solve a problem and deliver valuable, culturally appropriate solutions.

Gilimbaa's three founders started the business because they saw a "missing link" in the creative field for culturally informed graphic design. Two weeks after Gilimbaa started, then Prime Minister Kevin Rudd delivered the National Apology which gave significant momentum to corporate engagement with Indigenous communities and priorities:

*"We found ourselves at this junction and there was this important spot for people who could sit in the middle and try and bring cultural understanding, cultural governance and bring that into the corporate sector..."*

Amanda Lear, Co-Founder and Managing Director

Gilimbaa is now a full-service creative agency specialising in strategic and connected communication. They work collaboratively with a range of clients to service both the private and public sector with creative processes and designs.

### Open to Learning Mindset

Gilimbaa has a mix of Indigenous and non-Indigenous team members who hold the belief they are always students and they are always able to continue learning. Gilimbaa spoke of the importance of listening, understanding, and learning from community members so that they are able to build strong relationships and effective collaboration.

### Community Engagement

Ensuring that community and cultural perspectives are brought into everything that they do is an aspect of Gilimbaa's values that they discuss publicly. Gilimbaa spoke of the need to spend a lot of time building relationships within the communities with whom they work. Gilimbaa commented that the business ensures that, where appropriate, communications are delivered in the community's first language as receiving communications in their first language is part of the right to freedom of expression.

Gilimbaa reported that their engagement strategy ensures projects are responsive to the needs of Indigenous people and their perspectives. Gilimbaa highlighted that their facilitators pride themselves on ensuring the right community representatives are able to be in the room, have an honest dialogue and be heard appropriately to ensure the personal history and context is understood. In some cases this may mean delaying projects until all voices are heard.

### Community Controlled Projects

Gilimbaa believes that solutions need to come from community. When they engage with a community they outlined how they inform the community of their process and aim to involve each generation, to ensure issues are discussed and truly understood. The community is then able to drive solutions and Gilimbaa is able to create campaigns around these community-led solutions to help them succeed.

Elders are central to the approach. Gilimbaa emphasized that their work with Elders and the community is to ensure that local and fundamental cultural protocols, governance and values are all incorporated into the governance of a project from start to finish. Gilimbaa reported that this assists with amplifying existing efforts to ensure communities are strong and looked after for the next generation.

Gilimbaa also underscored that in working alongside Elders in the creative process, messages and themes, they can ensure these are locally relevant and resonate with community members. This is central to both public facing elements of campaigns but also to the underlying governance and operation of projects themselves.

### Notable Initiatives:

#### Fish Trap Framework

Gilimbaa explained that the Fish Trap Model consists of four phases: (a) explore, (b) gather, (c) create, (d) connect. The Fish Trap model was created as Gilimbaa identified that they were receiving creative briefs that lacked cultural understanding, knowledge and perspectives. Gilimbaa conveyed how this gave them the ability to identify when they needed to stop a project and re-shift the focus back to the intended solution that is the best outcome for both the communities and organisations, together.

By creating the Fish Trap framework, Gilimbaa described how they have been able to use it as a tool to help educate clients around the impact of Colonisation, the Stolen Generation and other important historical events.

The Fish Trap framework has, at its centre, a daily mechanism for reflection which covers:

- Is there trust?
- Is there respect?
- Are there relationships?

#### Relevant Rights in the Declaration

##### Culture, language and spirituality

- Articles 8, 11, 12, 13 and 15 – Maintenance of culture, language and spirituality

##### Education, information and employment:

- Article 17 – Labour rights

##### Participatory development, economic and social rights:

- Articles 18 and 19 – Participation in decision-making
- Articles 20 and 21 – Development, political, economic and social activities
- Articles 22 and 44 – Indigenous women, Elders, youth, children and persons with disabilities

##### Land and natural resources:

- Article 31 – Cultural heritage and traditional knowledge

## Case Study 4: Transurban



Reconciliation Action Plans need to integrate into everyday business, they are not a bespoke project on their own.

Transurban is one of the world's largest toll-road operators. Their business includes designing and building new roads and researching new vehicle and road safety technology. Transurban is looking to work more with Indigenous communities across Australia in implementing its latest RAP.

### RAP Implementation Challenges

Transurban has recently published its second Innovate RAP, the first was published in 2017. Transurban discussed how the initial RAP did not achieve all the results the business was aiming for and the detailed review they undertook to identify areas to improve the approach. The RAP Working Group was redesigned, led by the RAP Champion to be more action-oriented:

*"We went out to all the people within the group and said what are your reasons for being here? What can you contribute? What are you getting out of it? You know, really make people stop and think: Am I the right person? Because what we were finding was there was a lot of good intention but very little action."*

Krystin Dudley, Social Investment Manager, Transurban.

Transurban highlighted that the involvement of senior Transurban executives in both leading and sponsoring the new Working Group helped to further embed the actions and strengthen accountability for their success.

Transurban emphasised that a clear line of accountability was one of the key ingredients that was missed in the last RAP and has proved important to the success of the new one. It was also important to ensure that Working Group members were senior enough to allow effective decision-making and help steer the Group towards the right outcomes.

A key initiative of Transurban's refreshed RAP, as identified by the business, is to address the low number of team members who identify as Aboriginal and Torres Strait Islander through the development of Transurban's first Indigenous Talent and Recruitment Strategy. Transurban reported that the strategy focuses on increasing Aboriginal and Torres Strait Islander applicants for available positions and working with local Indigenous employment agencies to recruit Aboriginal and Torres Strait Islander people into the business.

### Internal Engagement and Awareness

Two Indigenous staff members joined the Working Group and Transurban described that they have been instrumental in running engagement sessions and sharing information with the business to help people better understand the issues and challenges from an Indigenous perspective.

*"In contemplating the kind of content the group was looking to share with the business about Aboriginal and Torres Strait Islander peoples... they were really able to provide some content that I or someone else may have found too challenging or too risky or too probing... They were able to say, no this is important, and this is information that people need to know, and this sets the scene and these are the stories... so it was really refreshing and helpful to be able to have them to provide the content that they think should be put out for employees to see and to engage with."*

Krystin Dudley, Social Investment Manager, Transurban.

Transurban reported that this allowed the Working Group to provide relevant information to the business to help start a conversation and further enhance reconciliation in the workplace.

### Notable Initiatives:

#### Local Partnerships, Australia-wide

Transurban spoke about how as a national company, they aim to create national partnerships in local communities. The organisation further noted that their Innovate RAP focuses on education outcomes for Indigenous Australians, as well as investigating mobility challenges faced by those within the community. Transurban explained that they partner with organisations such as Clontarf in NSW and MITS in Victoria to help support Indigenous education with the aim to remove employment barriers for Indigenous Australians.

#### Relevant Rights in the Declaration

##### Foundational principles:

- Articles 1 and 2 – Equality and freedom from discrimination

##### Education, information and employment:

- Article 17 – Labour rights

##### Participatory development, economic and social rights:

- Articles 18 and 19 – Participation in decision-making
- Articles 41 and 42 – Promotion of the rights



## Case Study 5: The University of Melbourne

The importance of Indigenous led initiatives and embedding Indigenous knowledge.

The University of Melbourne was established in 1853 and has been engaging with Indigenous Australians for over a century across the breadth of its academic mission. The University spoke of its extensive engagement with Indigenous Australians and communities through its research, teaching and learning and engagement programs. The University reported that is currently developing an Indigenous engagement management system that will provide a current, accurate, comprehensive and readily accessible repository of information on the large and growing number of established and emerging partnerships and relationships across each of the University's domains.

### Authentic Relationships

The University noted that throughout its engagement with Indigenous Australians, there have been some missteps along the way. However, the University has made a commitment to undertake a process of truth-telling and to use these lessons to develop a path forward that builds trust and recognises when mistakes are made and acknowledge this openly. When working on projects that involve engagement with Indigenous communities and individuals, the University seeks to engage with them as early as possible to build strong reciprocal and collaborative relationships and, wherever possible, ensure these engagements, initiatives and projects are Indigenous led. The University stressed that it takes time to create culturally safe spaces and build trust, and that they are cognisant of the importance of employing culturally respectful approaches to engagement through a genuine desire to understand and celebrate Indigenous knowledge systems and practices.

### Attracting Indigenous Students and Staff and Embedding Indigenous Knowledge in the Curriculum

The University advised that they engage with hundreds of Indigenous school students each year through the University's outreach programs and culturally appropriate recruitment activities primarily organised through their Indigenous Support Units, Murrup Barak Melbourne Institute for Indigenous Development and the Wilin Centre for Indigenous Arts and Cultural Development. These programs aim to inform students about the benefits of higher education. They further reported that at the beginning of 2020 they had:

- 420 Indigenous students.
- 169 Indigenous staff.
- 51 subjects within the University that have an Indigenous focus with more than 2500 enrolments.
- More than 500 students undertaking studies in Indigenous communities.

The University stated that Indigenous students are attracted to their institution from across the country, with 50 per cent of their Indigenous students coming from outside of Victoria, for a number of reasons outlined as follows:

- Having dedicated pathway programs for Indigenous Australians.
- Providing tailored, culturally appropriate, Indigenous student support.
- Having Indigenous academic staff with national and international profiles.
- Through the range of Indigenous research units making significant contributions to Indigenous health, education and well-being.
- Through offering engagement with subject matter that is culturally appropriate.
- By ensuring the University's campuses are welcoming and culturally safe for all.

The University launched the Melbourne Indigenous Knowledge Institute at the 2019 Garma Festival. They explained the Institute will support research and educational priorities that:

- Documents, curates, preserves and disseminates Indigenous knowledge in partnership with Indigenous communities.
- Recognises and respects Indigenous knowledge systems as living, dynamic and innovative, and to engage with them to address global and local challenges.
- Create avenues to learn from and work with Indigenous knowledge systems and knowledge holders in ways that bring mutual scholarly, community and practical benefits.

### Cultural Safety

The University of Melbourne described how through its partnership with Jawun, they place University staff into Indigenous organisations to work on initiatives that:

- Build the capacity of, and support for, Indigenous individuals and organisations to achieve their goals.
- Assist Indigenous people to access mainstream economic and educational opportunities.
- Provide opportunities for non-Indigenous secondees to strengthen their cultural awareness
- Support Indigenous people to bring about health and social reform.
- The University recounted how this provided a valuable opportunity for staff to be immersed in culture and gain a deeper level of cultural awareness.

Additionally, the University spoke of their work around cultural safety which has included the development of Indigenous design guidelines for capital works projects along with Indigenous campus narratives. The University reported that

<sup>74</sup> The University of Melbourne's pathway programs for Indigenous students support Indigenous Australians to access particular undergraduate degrees (Bachelor of Arts [Extended] and Bachelor of Science [Extended]) for which they do not have the required results for a direct entry.

in conducting this work they have, from the outset, worked alongside Traditional Owners to ensure that their voices are heard and feedback is incorporated into all elements of capital projects.

#### Notable Initiatives:

##### Indigenous Engagement in Campus Design – Reconciliation at Scale

The University described a major strategic development called the New Student Precinct. Through the Precinct project the University has sought to raise the bar for Indigenous-led design and engagement by interrogating the question of how Indigenous culture can be embedded as part of the core aspects of a major capital works program. This unique approach includes cross-cultural visioning and strategy, and genuine Indigenous led culturally responsive co-creation with Indigenous communities.

The University also described a new project underway the Atlantic Fellows for Social Change Hub which will provide a new home for an Indigenous Executive Leadership Program. The development and design of this space will be Indigenous led and will also seek to, wherever possible, engage Indigenous suppliers in the building and delivery of the project. The University stated that they recognise the importance of working with Indigenous suppliers to develop their skills in the event that they may not initially meet the University design standards and procurement guidelines.

#### Relevant Rights in the Declaration

##### Foundational principles

- Articles 3, 4, 5, 6 and 23 – Self-determination, self-governance and nationality

##### Culture, language and spirituality:

- Articles 8, 11, 12, 13 and 15 – Maintenance of culture, language and spirituality

##### Participatory development, economic and social rights:

- Articles 18 and 19 – Participation in decision-making
- Articles 20 and 21 – Development, political, economic and social activities

##### Education, information and employment:

- Articles 14 and 17 – Education, labour rights and employment

## Case Study 6: The Mining Sector and Indigenous Australians

**The challenges faced by the mining sector in upholding the rights of Indigenous Australians are complex and offer insights for businesses from other sectors operating on or in proximity to Indigenous Australians' land.**

At the heart of the relationship between Indigenous Australians and the mining industry are access and rights to land. Increasing recognition of Indigenous peoples' land rights in Australia, and around the world, has required fundamental changes to the mining sector's core business practices and operating models, as mining activities often occur on or in close proximity to Indigenous peoples' lands. The Declaration has further raised the bar, in some instances highlighting the gap between what is 'legal' and what is needed to fulfil societal expectations and international standards.

Among the principles enshrined in the Declaration is the principle of FPIC, as discussed in detail in Part One of this Guide. Under current legislation in Australia, the Northern Territory protects Indigenous land rights by providing a limited right to refusal of development.<sup>75</sup> In other locations, Indigenous Australians do not have the right to veto a mining development or activity on their land.<sup>76</sup> Agreements negotiated between Traditional Owners and mining companies may help Indigenous communities receive compensation for the use of their land, negotiate future benefits, safeguard cultural heritage and create partnerships driving Indigenous employment and business opportunities. However, they may still be agreed to in a context where the Traditional Owners do not have the legal option of saying no to the mining operation. In some cases, Traditional Owners may also sign these agreements without having access to all available information or independent advice, or there may be pressure to accept unsatisfactory outcomes for economic reasons.

The recent destruction of the 46,000 year-old Juukan Gorge rock shelters by Rio Tinto has firmly placed the intersection between Indigenous cultural heritage and the interests of the mining sector into the spotlight, including calls for systemic and legislative change. It is hoped that the increased dialogue following this incident will lead to closer alignment between the Declaration, Australia's legislative and regulatory frameworks and mining sector practices with regard to the protection of Indigenous cultural heritage and land rights more generally.

Complex questions around FPIC in the Australian context prompted by the Juukan Gorge incident will likely include:

- How and when consent is obtained and how it is maintained over the course of a mining project or other activity occurring on Indigenous land.
- How to deal with new information arising as a project develops that may change Traditional Owners' positions in relation to consent where an agreement is already in place between the company and Traditional Owners.
- The implications for FPIC where a site may have broader cultural significance for all Indigenous Australians and indeed, the wider Australian community.

Australian businesses outside the mining sector are also likely to face greater expectations to comply not just with Federal or state law but with international standards like the Declaration and the UNGPs when it comes to accessing Indigenous land and impacting cultural heritage sites, as well as remediation where rights are adversely impacted. Looking ahead, there will be an expectation on companies to give greater attention to how business practices might infringe on the rights of Indigenous Australians to self-determination, including control over their land and livelihoods. Building this understanding can only be effectively achieved through ongoing, meaningful consultation with relevant Indigenous communities to ensure their rights are respected. Detailed guidance on the importance of ongoing consultation is provided throughout this Guide with key business actions to consider outlined in Part One. As part of this process, businesses can improve practices by ensuring that they have the necessary knowledge, awareness and internal teams in place when operating on or in proximity to Indigenous Australians' land. Importantly, ongoing consultation should be complemented by well-resourced internal teams with deep subject matter expertise on Indigenous Australians' rights. Where this is not possible, companies can engage external expertise in addition to gaining knowledge through consultation with community representatives. Processes should also exist and be used to promptly inform senior leadership of any significant impacts on Indigenous Australians' rights that may arise from business operations – this should include potential impacts being included in relevant risk registers as well as real time information being provided about potential or actual impacts, with escalation protocols as appropriate.

#### Relevant Rights in the Declaration

##### Foundational principles

- Articles 3, 4, 5, 6 and 23 – Self-determination, self-governance and nationality

##### Culture, language and spirituality:

- Articles 8, 11, 12, 13 and 15 – Maintenance of culture, language and spirituality

##### Participatory development, economic and social rights:

- Articles 18 and 19 – Participation in decision-making
- Articles 20 and 21 – Development, political, economic and social activities

##### Education, information and employment:

- Articles 14 and 17 – Education, labour rights and employment

<sup>75</sup> Aboriginal Land Rights (Northern Territory) Act, 1976, Section 40(b) and Section 43, (Accessed at: <https://www.legislation.gov.au/Details/C2016C00111>)

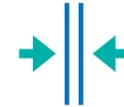
<sup>76</sup> Australian Trade and Investment Commission, 2020, Indigenous Land Use Agreements, (Accessed at: <https://www.austrade.gov.au/land-tenure/Native-title/indigenous-land-use-agreements>)

# Part Four: Appendices

## Indigenous Australian Organisations

When looking to embed a rights based approach, it is important to understand that there are many organisations that can provide valuable advice and guidance.

Details of Indigenous Australian organisations that advocate on specific rights and aspirations are provided below\* :



### Closing the Gap:

Organisations that look to eliminate the gap between Indigenous and non-Indigenous Australians by focusing on better health, education and outcomes for Indigenous Australians.

**Coalition of Peaks:** <https://coalitionofpeaks.org.au/>

**National Aboriginal Community Controlled Health Organisation (NACCHO):** <https://www.naccho.org.au/>

**Lowitja Institute:** <https://www.lowitja.org.au/>

**National Congress of Australia's First Peoples:**  
<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/national-congress-australias>

**Secretariat of National Aboriginal and Islander Child Care (SNAICC) – National Voice for Our Children:**  
<https://www.snaicc.org.au/>



### Cultural Knowledge:

Cultural knowledge is important for Indigenous Australians including Elders and these organisations are often run by Indigenous Australians and Elders themselves.

**NSW Aboriginal Land Council network:** <https://alc.org.au/>

**Aboriginal Liaison Officers in Local Councils**

**Australian Institute of Aboriginal and Torres Strait Islander Studies:** <https://aiatsis.gov.au/>

**Northern Land Council:** <https://www.nlc.org.au/>

**Central Land Council:** <https://www.clc.org.au/>



### Reconciliation:

Reconciliation organisations focus on strengthening understanding and relationships between Indigenous and non-Indigenous people, for the benefit of all Australians. Reconciliation organisations focus on equality and equity, institutional integrity, unity, historical acceptance and race relations.

**Reconciliation Australia:** <https://www.reconciliation.org.au/>

**The Healing Foundation:** <https://healingfoundation.org.au/>

**Centre For Cultural Competence Australia:**  
<https://www.ccca.com.au/>



### Land Rights:

Organisations working to support Indigenous Australians to have an ongoing connection to their land which is essential to the continued cultural survival of Indigenous Australians, as well as their economic and social development.

**National Native Title Council:** <https://nntc.com.au/>

**Aboriginal Land Council Networks**

**Prescribed Body Corporates** (a corporation responsible for managing and protecting the native title rights and interests of the nominated native title holders)

**NSW Aboriginal Land Council:** <https://alc.org.au/>

**Traditional Owner Entities**

**Indigenous Land and Sea Corporation:**  
<https://www.ilsc.gov.au/>



### Other:

**Indigenous Business Australia:** <https://www.iba.gov.au/>

**Supply Nation:** <https://supplynation.org.au/>

**Indigenous Investment Principles:** [https://www.iba.gov.au/wp-content/uploads/IB7158\\_IPP-brochure\\_FA4.pdf](https://www.iba.gov.au/wp-content/uploads/IB7158_IPP-brochure_FA4.pdf)

\* Please note that this list is not exhaustive, nor does it reflect the endorsement of the authors, including that of KPMG, UTS and the GCNA.

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In consideration for the use of these images, a donation has been made to the Yirrkala Arts Centre.

**Page 2:**

Aboriginal art palette: view from above of four Aboriginal art colours used traditionally from natural materials.

EA Given, Getty Images

**Page 8:**

Indigenous men dancing in cultural ceremony, Queensland.

Chameleons Eye, Shutterstock

**Page 15:**

Young Aboriginal students studying together outdoors in the sun, Western Australia.

SolStock, Getty Images

**Page 26:**

Aerial photo of streams, Northern Territory.

Paige Mattson, Getty Images

**Page 36:**

Aerial view of Amata Oval, Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.

Provided by SA Water

**Page 44:**

Aerial shot of Red Bluff Beach at Lake Tyers, Victoria.

Tracie Louise, Getty Images

**Page 47:**

An autumn sunset over the twisting Werribee River, Victoria.

Troy Longson, Getty Images



# Thank you

The Global Compact Network Australia (GCNA) welcomes feedback and suggestions about ways to improve future versions of this Guide.

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