



INFORMING THE AGENDA

A dialogue with the
Aboriginal and Torres Strait
Islander Social Justice
Commissioner

Katie Kiss

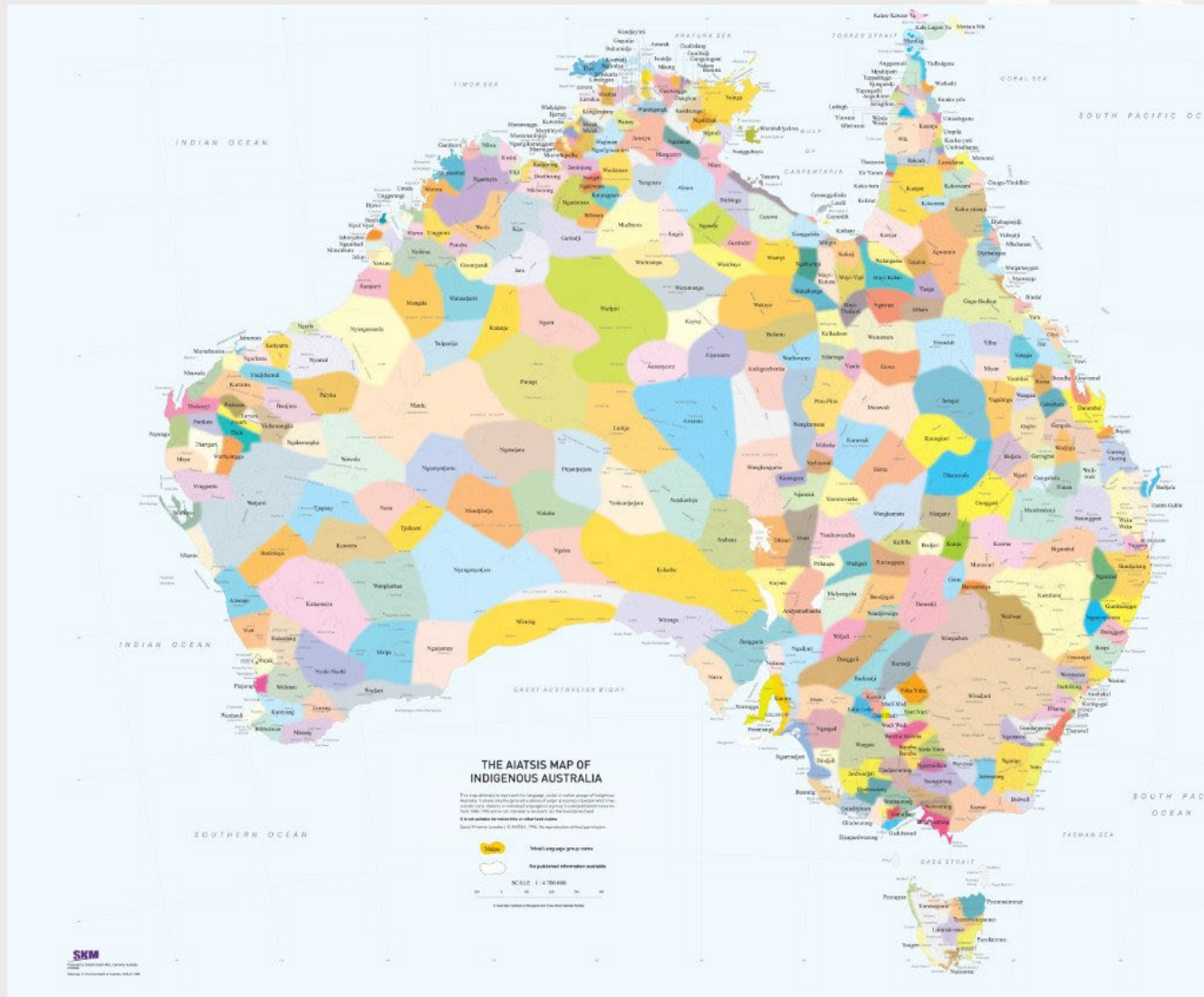


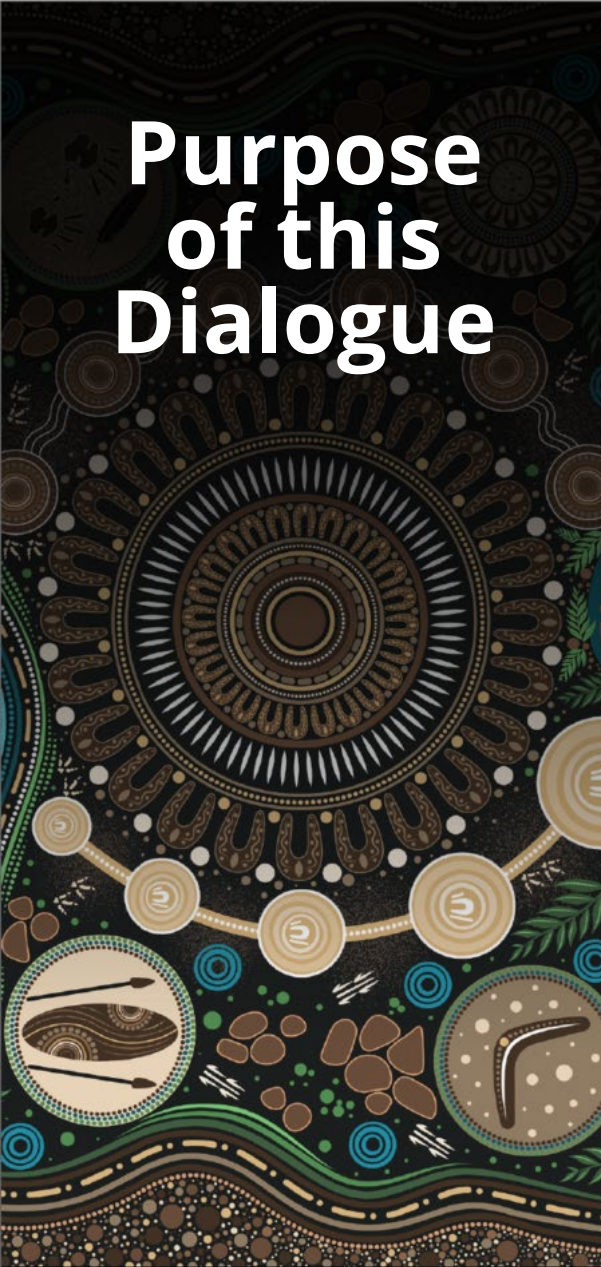
Australian
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National Listening Tour

Acknowledgement of Country

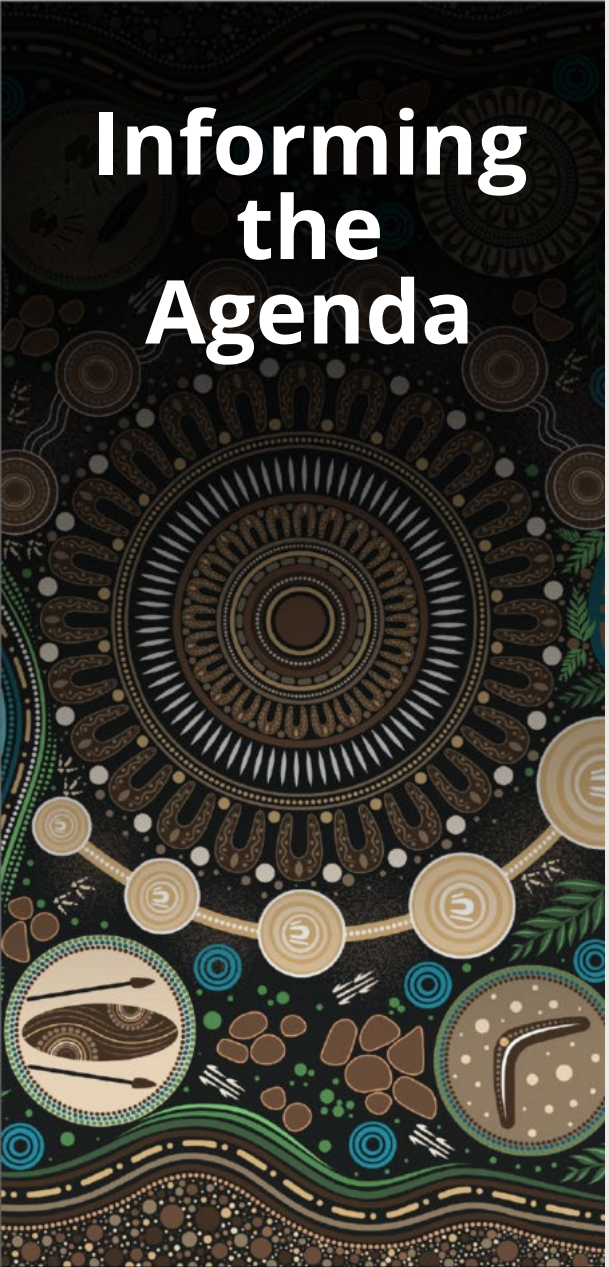




Purpose of this Dialogue

Three key focus areas:

1. Key challenges First Nations Peoples consider worthwhile pursuing over my five-year term
2. The critical elements that are producing positive outcomes in the present
3. How to work together to drive transformative change for First Nations communities across the policy and legislative landscape



Informing the Agenda

Introduction

Section 1: The agenda of the Aboriginal and Torres Strait Islander Social Justice Commissioner

Section 2: Embedding Aboriginal and Torres Strait Islander rights

Section 3: Achievements and aspirations

Section 4: Rebuilding the village

Introduction

The Role of the AHRC

The AHRC is Australia's National Human Rights Institution – established by the *Australian Human Rights Commission Act 1986*

- An independent statutory body established in accordance with the Paris Principles
- The Australian Human Rights Commission is currently an “A status” National Human Rights Institute (NHRI)
- The role of the AHRC is to:
 - investigate complaints about discrimination and human rights breaches
 - examine and provide advice to government on legislation, policy and practice to ensure they are consistent with, or contrary to, Australia's international human rights obligations
 - report to the Minister the results of these examinations
 - promote public awareness, understanding and acceptance of human rights
 - act as ‘a friend of the Court’ – appear as amicus curae to provide specialist advice



The AHRC consists of:



Hugh de Kretser
President



Katie Kiss
Aboriginal and Torres
Strait Islander Social
Justice Commissioner



Robert Fitzgerald AM
Age Discrimination
Commissioner



Anne Hollonds
National Children's
Commissioner



Rosemary Kayess
Disability Discrimination
Commissioner



Lorraine Finlay
Human Rights
Commissioner



Giridharan Sivaraman
Race Discrimination
Commissioner



Dr Anna Cody
Sex Discrimination
Commissioner



The Aboriginal and Torres Strait Islander Social Justice Commissioner

1. The role of the Social Justice Commissioner was created in 1992, in response to the findings of the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into Racist Violence



Mick Dodson
1993 - 1998



Dr William Jonas AM
1999 - 2004



Tom Calma
2004 - 2010

2. There have been six Commissioners appointed since its inception



Mick Gooda
2010 - 2016

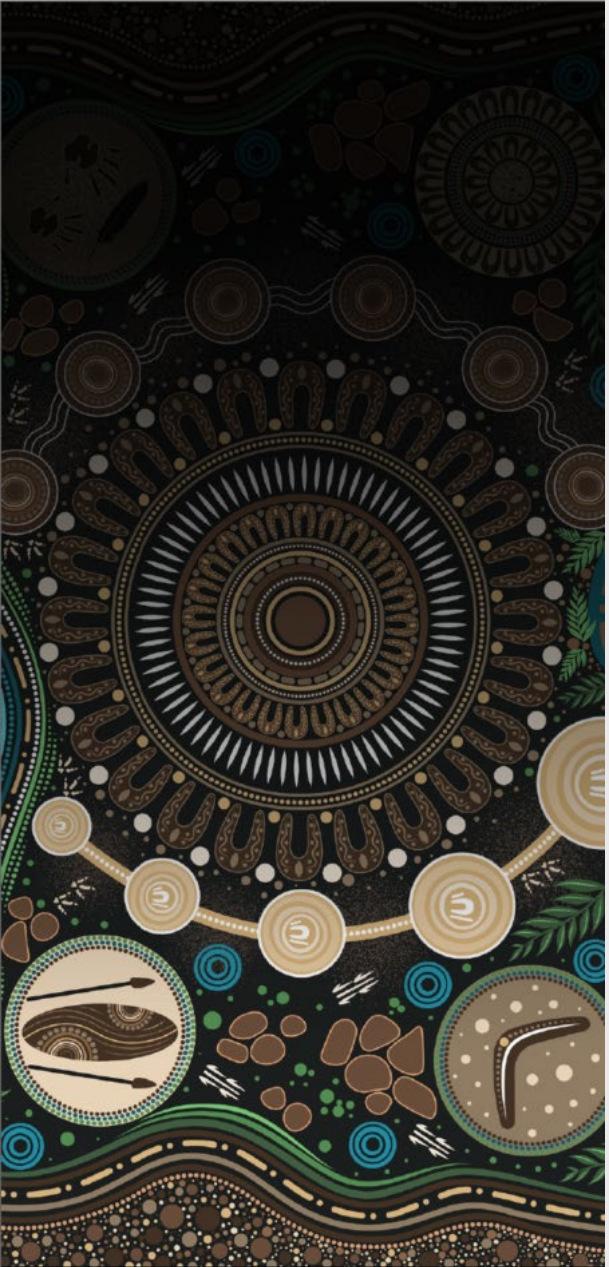


June Oscar AO
2017 - 2024



Katie Kiss
2024 - 2029

3. The Social Justice Commissioner is appointed by the Governor-General of Australia



The functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner

In accordance with s46B of the AHRC Act, the functions of the Social Justice Commissioner are to:

- monitor the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander people
- promote discussion, awareness and respect for the rights of Aboriginal and Torres Strait Islander people
- examine policy and legislation to see whether they recognise and protect the rights of Aboriginal and Torres Strait Islander peoples.

In accordance with s209 of the Native Title Act, the Social Justice Commissioner is also required to:

- report to the Federal Minister on the effect of the NTA on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders



Informing the Agenda Project: Surveys and submissions

- The Informing the Agenda Project opened 1 August 2024
- Surveys closed 23 September 2024
- Submissions closed 30 September 2024

Total number of surveys **721**

Total number of submissions **27**



Section 1

**The agenda of the
Aboriginal and Torres
Strait Islander Social
Justice Commissioner**



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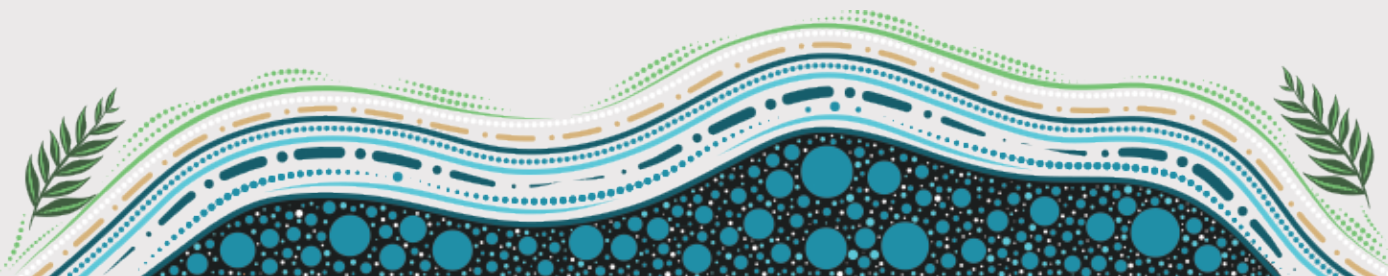
The Social Justice Commissioner Agenda

Six identified priorities

1. Increase access to justice for First Nations communities
2. Promote the implementation of the United Nations Declaration on the Rights of Indigenous Peoples
3. Provide advocacy and guidance on the implementation of the three pillars of the Uluru Statement from the Heart—Voice, Treaty, Truth
4. Support the realisation of First Nations health equality
5. Provide advocacy and guidance to progress land justice reform
6. Build the capacity of the First Nations Human Rights Network

Guiding discussion questions:

1. Do you think the six-high level areas discussed are consistent with the functions of the Social Justice Commissioner?
2. What mechanisms and ways of working are necessary to enable First Nations Peoples to inform the work of the Social Justice Commissioner?
3. How do you think the Social Justice Commissioner could engage with government, the private and civil society sector to achieve this agenda?



Section 2

Embedding Aboriginal and Torres Strait Islander rights



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The Community Guide to the
UN Declaration
on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples

The United Nations Declaration of the Rights of Indigenous Peoples is one of the most comprehensive international instruments on understanding and promoting the rights of Indigenous Peoples.



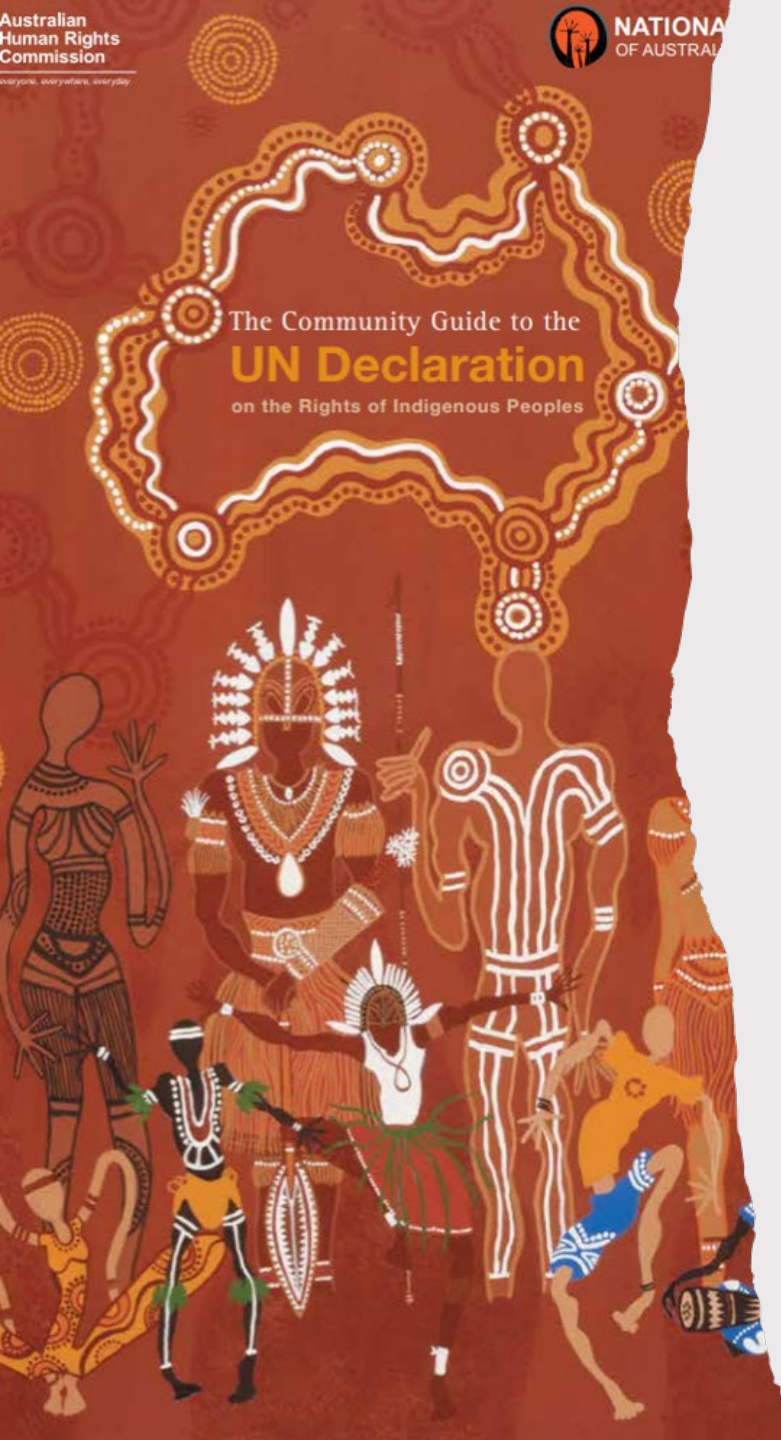
Tom Calma, 1 October 2008,
Expert Mechanism on the Rights
of Indigenous Peoples,
United Nations, Geneva



Mick Gooda, Katie Kiss and Les
Malezer - Expert Mechanism on the
Rights of Indigenous Peoples,
United Nations, Geneva



“The UN Declaration of the Rights of Indigenous Peoples also elaborates a clear role for national institutions. Of most relevance are articles 38 (relating to the taking of appropriate measures to implement the Declaration) and Article 40 (which relates to access to conflict resolution procedures and the provision of effective remedies).”

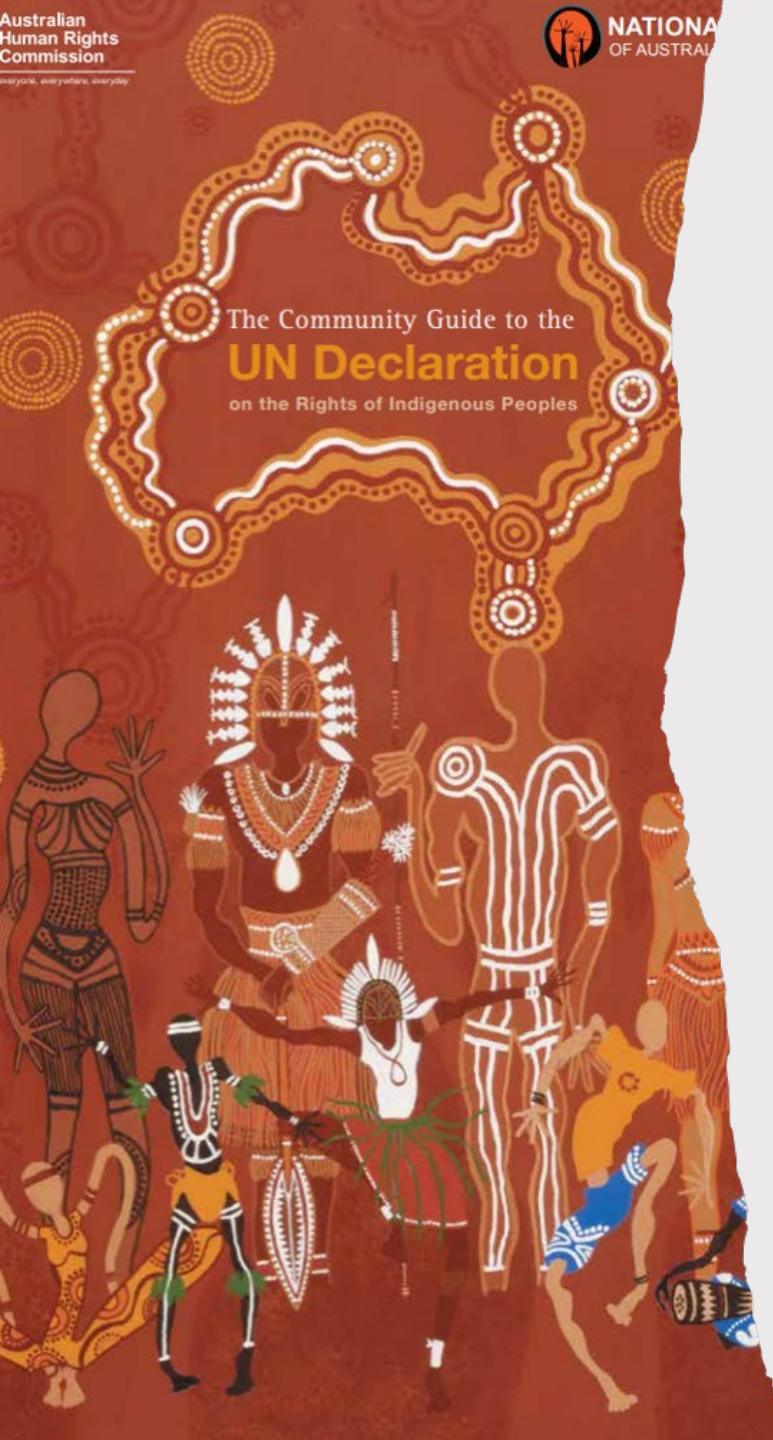


The Declaration background

The Declaration and Australia

- After more than 20 years of negotiations between Indigenous peoples, governments and human rights experts, the Declaration was adopted by the United Nations General Assembly on 13 September 2007 – 4 countries voted against its adoption – Australia, New Zealand, Canada, US
- Australia endorsed the Declaration in 2009, and since then Australia has committed to take actions to implement the Declaration and promote Indigenous peoples' enjoyment of rights on an equal basis – however the Australian Government has not taken sufficient steps to achieve this
- The Closing the Gap Strategy is currently the key policy platform to give effect to the Declaration





The Declaration and Australia

- In November 2023, the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, released their Parliamentary Inquiry Report into the application of the UN Declaration on the Rights of Indigenous Peoples in Australia. Key recommendations included:
 - The development of a National Action Plan to support implementation and compliance
 - The establishment of an independent process of truth-telling and agreement making
 - Amendment to the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) to include the Declaration in the definition of human rights to enable the Parliamentary Joint Committee on Human Rights (PJCHR) to consider the Declaration
- In May 2024, the PJCHR released their report on the Inquiry into Australia's Human Rights Framework – reiterated the recommendations above

Embedding the Declaration

The Social Justice Commissioner undertakes work to advocate and build education and understanding on the Declaration and its implementation.

"to raise awareness of the Declaration on the Rights of Indigenous Peoples and draw connections between national activity and the principles of the Declaration."

Advocacy and education work from the Commission →



United Nations
Declaration
Booklet



Wiyi Yani U Thangani
Project



National Anti-Racism
Framework

International examples

Bolivia

Approved the Declaration by Law in 2007 and launched a Framework Law on Autonomies in 2010



Canada

Governor General of Canada gave Royal Assent to the Declaration

Republic of Congo

Promotion and Protection of the Rights of the Indigenous Pygmy Peoples

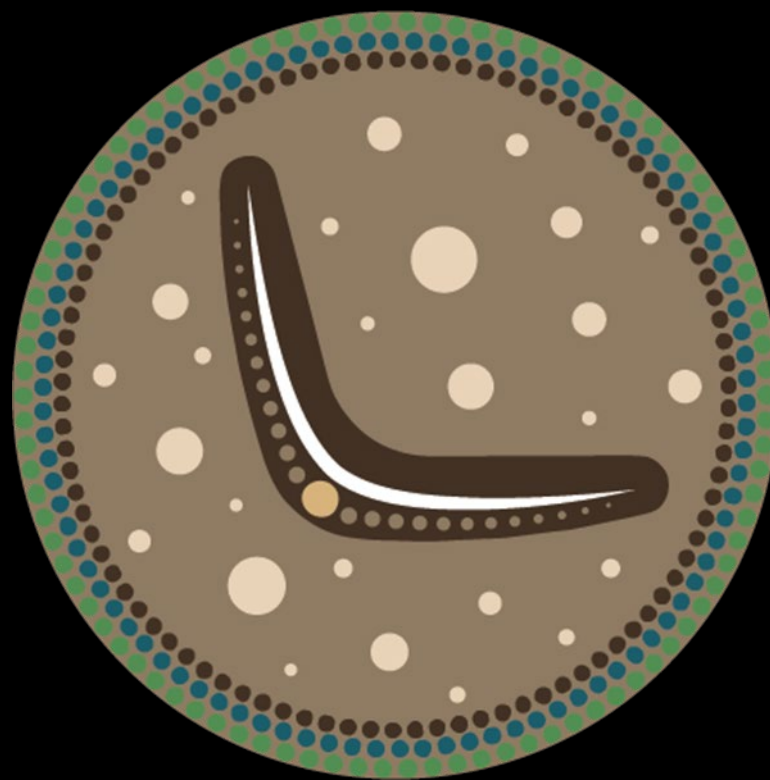


Guiding discussion questions:

- Should the monitoring and reporting on the implementation of the Declaration be a key priority and how you think this could be achieved?
- What mechanisms and processes are required to support a greater integration of the Declaration into policy and law making at all levels (federal, state and local) and to the realisation of First Nations rights and interests?
- How could the Social Justice Commissioner promote and raise awareness of the Declaration across Australia?

Section 3

Achievements and aspirations

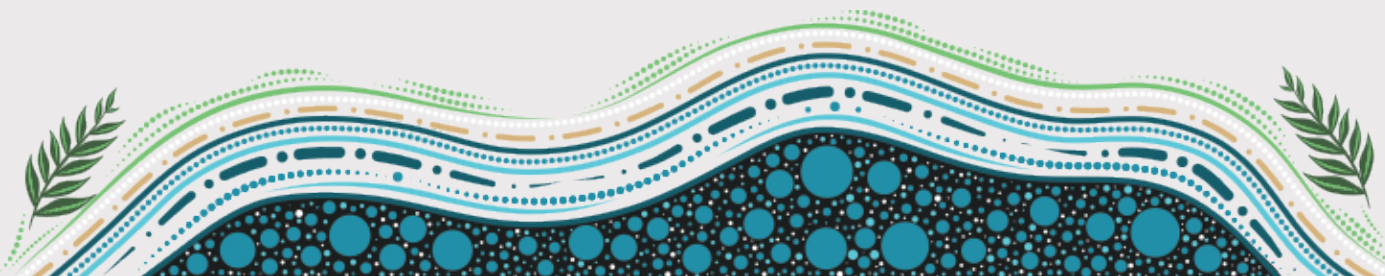


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Four Guiding Principles of the Declaration

1. Self-determination
2. Participation in decision-making underpinned by free, prior and informed consent and good faith
3. Respect for and protection of culture
4. Equality and non-discrimination



Initiatives incorporating the Declaration

Community initiative:

Maiam nayri Wingara Indigenous Data Sovereignty Principles

1. Exercise control of the data ecosystem including creation, development, stewardship, analysis, dissemination and infrastructure
2. Data that are contextual and disaggregated (available and accessible at individual and First Nations Levels)
3. Data that are relevant and empowers sustainable self-determination and effective self-governance
4. Data structures that are accountable to First Nations Peoples
5. Data that are protective and respects our individual and collective interests

**INDIGENOUS DATA
SOVEREIGNTY
EVERYWHERE...
ALL THE TIME.**

© Maiam nayri Wingara



Legislative initiative:

Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 (1 July 2021)

In accordance with articles 8 – 13 of the Declaration, this legislation recognises Torres Strait Islander lore in Western Law

The purpose of the Act is to:

- recognise Ailan Kastom child rearing practice
- establish a process for making applications for, and decisions about, the legal recognition of the cultural practice
- establishes the role of the Commissioner – to consider and decide applications for culture recognition orders, promote community awareness and understanding



Initiatives incorporating the Declaration



Community-led state initiative: *Path to Treaty Act 2023*

- The Path to Treaty Bill was passed by the Queensland Parliament on 10 May 2023, with full bipartisan support (since its passage and the Voice Referendum, bipartisan support has been withdrawn)
- Co-designed by the ITTB (with input from Queenslanders), and the Queensland Government, this Act is the first of its kind
- The Acts objectives are to establish a First Nations Treaty Institute (responsible for designing the Treaty-making framework and facilitating treaty-making); and a Truth-telling and Healing Inquiry – to inquire into the effects of colonisation on First Nations peoples

Initiatives incorporating the Declaration

Preamble: The colonisation of Queensland occurred without the consent of Aboriginal peoples and Torres Strait Islander peoples and often against their active resistance...Aboriginal and Torres Strait Islander peoples assert they have never ceded their sovereignty over their lands, seas, waters, air and resources...

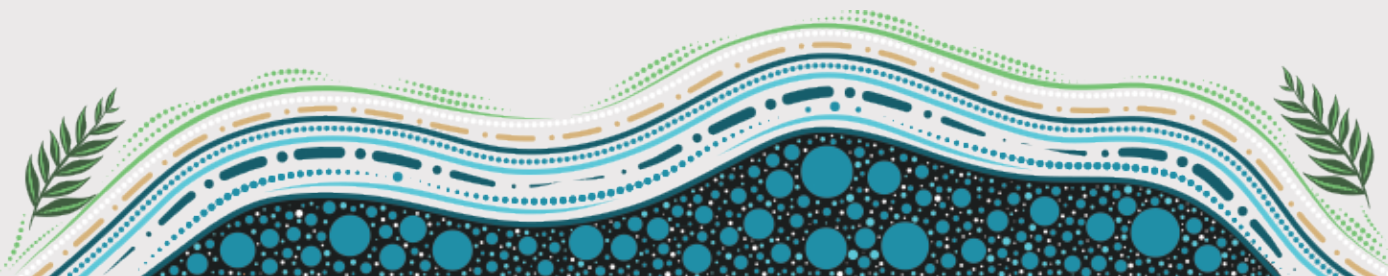
S6 requires the Act be administered in accordance with the Declaration on the Rights of Indigenous Peoples, and its four key principles:

- Self-determination
- Free, Prior and informed consent and good faith
- Respect for and protection of culture
- Equality and non-discrimination



Guiding discussion questions:

- What challenges or barriers has your community faced when exercising or trying to exercise your human rights?
- What type of issues should be addressed through special measures and what process should be followed to ensure that these are beneficial for you and other groups concerned?
- What has your community done to help support and recognise your rights?
- How could you apply the Declaration, for example the four principles outlined earlier, in organisational, advocacy or community activities?
- How do you want the Social Justice Commissioner to engage with you in future to support you in achieving your aspirations?



Section 4

Building the capacity of
First Nations Human
Rights Network -
Rebuilding the village



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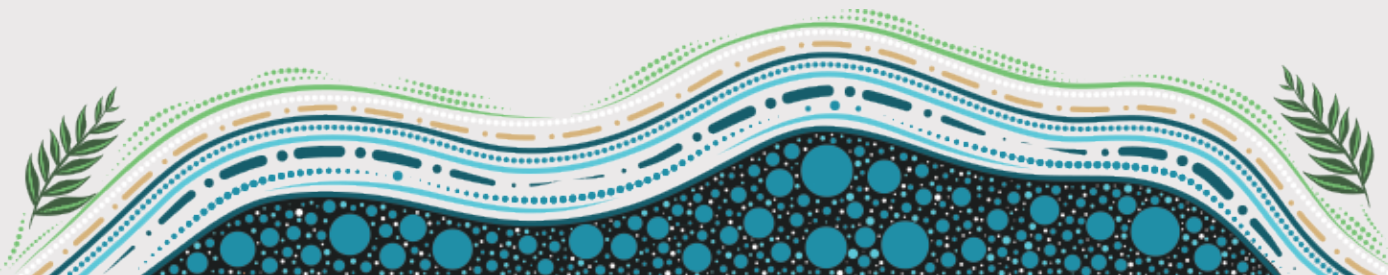
Building the capacity of the First Nations Human Rights Network

- First Nations - Ways of being, knowing and doing
- Working with young people, and our senior experienced people to build a connected and future focused leadership capability
- Learning from our Elders
- Increasing our advocates' knowledge of human rights to effectively use the international human rights framework to progress and realise our rights here at home



Guiding discussion questions:

- What needs to happen for your and your communities' rights to be realised?
- How could the Social Justice Commissioner promote greater engagements across Australia for a reframed, respectful and reconciled relationship?
- What existing leadership and governance capability does your community have and how could it be leveraged for a more coordinated approach to progressing First Nations rights?
- How does your community generate young persons' involvement to develop capabilities of human rights knowledge?
- Does your community have any experience with international human rights mechanisms or events relating to First Nations Peoples?



**The Aboriginal
and Torres
Strait Islander
Social Justice
Commissioner**

**Thank you
for your
contribution**

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