



Australian  
Human Rights  
Commission

everyone, everywhere, everyday



NATIONAL CONGRESS  
OF AUSTRALIA'S FIRST PEOPLES

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



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

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### Design and layout:

Gilimbaa Pty Ltd  
An Indigenous creative agency

### Front cover concept and artwork:

Riki Salam  
Creative Director  
Gilimbaa Pty Ltd  
An Indigenous creative agency

**Printing:** Paragon Australasia Group

***Please be aware that this publication may contain the names or images of Aboriginal and Torres Strait Islander people who may now be deceased.***

**Note – Use of the terms ‘Aboriginal and Torres Strait Islander peoples’, ‘Indigenous peoples’ and ‘our peoples’**

The Aboriginal and Torres Strait Islander Social Justice Commissioner recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is not one cultural model that fits all Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

Throughout this guide, Aborigines and Torres Strait Islanders are referred to as **‘peoples’**. This recognises that Aborigines and Torres Strait Islanders have a collective or group, rather than purely individual, dimension to their lives.

At times in this guide, Aboriginal and Torres Strait Islander **peoples** are also referred to as **‘Indigenous peoples’**. The use of the term ‘Indigenous’ has evolved through international law. This reference will generally be done when referring to the situation ‘Indigenous peoples’ across the globe.

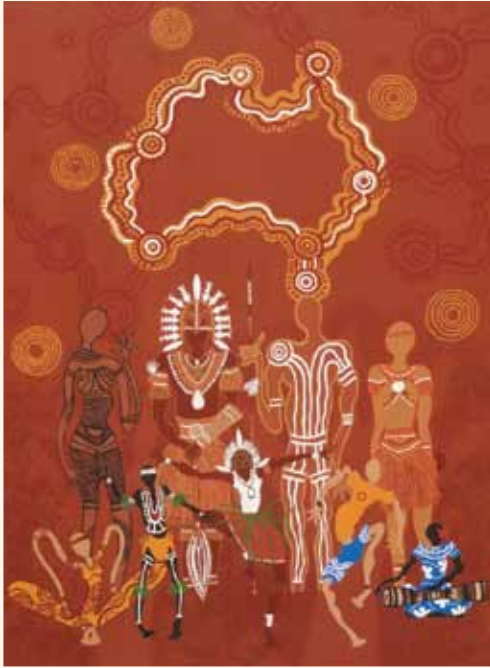
As this guide is written for Aboriginal and Torres Strait Islander peoples it will often use the language of **‘our rights’** and **‘our peoples’**.





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





### “Strong Cultures, Proud People”

This original artwork was produced for the Australian Human Rights Commission by Gilimbaa. Gilimbaa is an Indigenous creative agency.

### “Strong Cultures, Proud People”

Markings, hands on the rock evidence of belonging to this land from time immemorial. The ancestors guide us from the past to present, we pay our respects to those who have come before us. Sharing their knowledge, sharing their culture and sharing their lives, standing strong and proud, guiding us into the future supporting the present generation and passing on the traditional ways in a modern society and a guide on how to live for those to come.

Aboriginal and Torres Strait Islander People are encouraged and are supported by the *United Nations Declaration on the Rights of Indigenous Peoples* and Australia as a Nation, and the International community to choose how they want to live. Aboriginal and Torres Strait Islanders are supported by the people of Australia and also by the International Community, lines of connections are strengthened and reassured by the Declaration.

The Children dance in celebration and recognise the legacy of the generations that have come before them and the sacrifices they have made so that they may enjoy both a traditional and modern day lifestyle.

#### Artwork Description :

A stylised painting of the map of Australia is positioned at the top of the artwork. The map which sits on the rich earthy background represents the land. The hand prints behind both the Elders and the children represents the evidence of the Traditional owners the Ancestors of this land; Australia. The Elders are the holders of the knowledge of culture and traditional ways through song, dance, art, language and ways of living.

Through the Declaration Aboriginal and Torres Strait Islander People are given the freedom to choose how they want to live and are encouraged to do so and supported fully by the Australian and the International communities. To teach their traditional ways and to keep culture strong, to choose to gain an education in mainstream society and live accordingly.

The circles and lines connecting and surrounding the map of Australia represent the International community those countries that support the Declaration. The Children represent the future of Indigenous Australia and their rights and abilities to choose and live with their traditional culture in a modern day society.



### Equality Mural

Under the same sky, stars, moon and sun we shine! On land, sea and through time we have SURVIVED! NO MORE, NO LESS - IT'S OUR RIGHT!

Community artwork completed during Autumn 2010. Project led by Gangari with special thanks to PCYC Glebe, true community minded people who provided the space for the artwork.

#### Participants

**Community artists** – Cassandra Bush (Biripi Language Area NSW), Jiarrah Roberts (Bunjalung/Dungutti Language Area), Taylah Wymarra (Torres Strait Islands community) and Wandinhu Wymarra (Torres Strait Islands community). **Gangari artists** - Kathryn Dodd Farrowell, Kerrie Maguire and Maria Bamford. **Glebe PCYC** - Evan Walsh, Lilley, Sam Alderton, Tara Weldon and Sam Donni. **Glebe Public School** - Grade 5/6, Glebe Public school community and Vicki Pogulis (Principal). **Family and community** - Aunty Joyce Wymerra, Aunty Wendy Buchanan, Anne White (mum), the Dodd Farrowell family.

#### Story

**Eclipse** - The sun and moon represent change.

**Young Aboriginal women and Torres Strait women** - Standing together back to back as mothers for justice. Jiarrah Roberts and Cassie Bush designed and painted the Dolphins. Jiarrah chose this as it represents freedom to her. They move in a continuous circle to symbolise our continuous journey toward equality.

**Scales of justice** – The girls standing together blindfolded reminds us that justice does not discriminate, the scales represent that there needs to be balance in social justice (Equality).

**Purple flowers (the Native Hibiscus)** - In scales and at the feet of the women remembering and respecting all the children of the Stolen Generation.

**The sunflower** - In memory of sunshine Cait Baldwin a gentle and sweet community woman and poet.

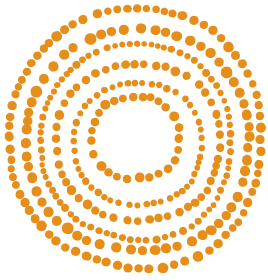
**White bands with wording** - These carry the messages of equality for Aboriginal and Torres Strait Islander people, the first peoples of Australia. Equality in education, employment, health and the importance of consultation to achieve this.

**The profiles** we see painted are of Cassie and Jiarrah representing the coming out of the darkness, recognising the past but also looking forward to the future as young, strong Aboriginal women.

**The golden thread** is the “anchoring” for all social and human rights, especially equality as well as representing Mother Earth and culture, tracking the past and the future.

**The stars** - Each fingerprint is unique to the person reflecting difference and that the stars shine on all of us. Wandinhu and Taylah Wymarra represent the Torres Strait Islander community.

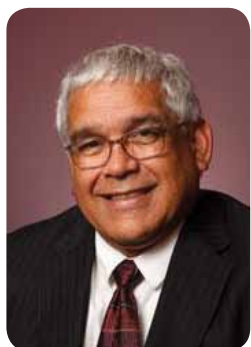
They have symbolised the wealth of the waters and the culture of the Torres Strait Islands through the fish, Dugong, turtle, Stingray in the sea grass, Drum and traditional Dari.



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## Message from the Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda



The *United Nations Declaration on the Rights of Indigenous Peoples* took over 20 years of hard work by people like Lowitja O'Donoghue, Les Malezer, Mick Dodson and Megan Davis to come to fruition.

The adoption of the Declaration is one thing. Now we face the challenge of real implementation. By implementation, I mean making both the intent and spirit of the Declaration real to Aboriginal and Torres Strait Islander peoples.

The Declaration is comprehensive and as you go through this document you will see the 46 articles provide guidance for every aspect of our lives. It is only when we can see these articles being translated from abstract concepts to practical improvements in our lives that the spirit and intent of the Declaration will be realised.

The Declaration is the most comprehensive tool we have available to advance the rights of Indigenous peoples. As Aboriginal and Torres Strait Islander Social Justice Commissioner, I intend to use it as my guide during my tenure in this position. It will become the foundation upon which to build my agenda.

A focus of mine will be resetting the relationships between Aboriginal and Torres Strait Islander peoples and wider Australia, government and finally amongst ourselves.

The Declaration can provide guidance in clarifying, establishing and strengthening these relationships. For example in the preamble to the Declaration it says that the General Assembly is:

*Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples.*

It is easy to miss the significance of this statement. However, the Declaration was overwhelmingly adopted in the General Assembly of the United Nations. The General Assembly is the home of Nation-States and their governments. So it was the governments of the world who stood up together in adopting this Declaration. It was the governments of the world that affirmed that the rights in the Declaration are a road map towards a reconciled nation.

So how do we go about confronting this challenge of implementation? The old adage that information is power is true in many ways. Our first task is providing information to our community and hopefully this guide will be a good starting point.

I urge you to use this guide and accompanying materials in your lobbying and advocacy with governments and within your communities, and to embed the Declaration's concepts in your everyday lives and work.

I cannot close without acknowledging our partners in the development of these materials on the Declaration. The commitment of the Christensen Fund and Oxfam Australia to the implementation of the Declaration is demonstrated in their valuable assistance in the production of the education materials on the Declaration and for that I sincerely thank them.

A handwritten signature in black ink that reads "Mick Gooda". The signature is fluid and cursive.

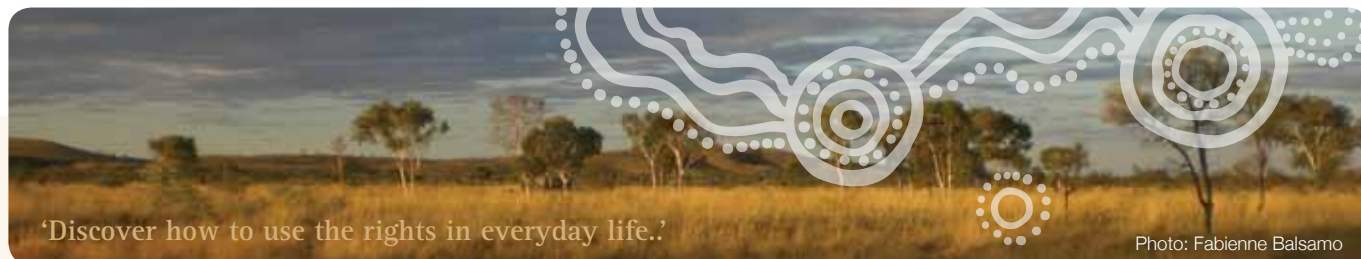
**Mick Gooda**  
Aboriginal and Torres Strait Islander  
Social Justice Commissioner

A large, light brown silhouette of a hand with fingers spread, reaching upwards. In the palm of the hand, there is a circular badge with a dotted orange border. Inside the badge, the text "I use the Declaration as my guide" is written in a serif font, with "I use the" on the first line, "Declaration" on the second line, and "as my guide" on the third line.

'I use the  
Declaration  
as my guide'

## How to use this guide

This guide is designed to assist Aboriginal and Torres Strait Islander people to learn about the *United Nations Declaration on the Rights of Indigenous Peoples* (referred to in this guide as ‘the Declaration’). It will help you to become familiar with the Declaration and to discover how the rights outlined in it can be used in everyday life.



The guide is divided up into parts to reflect the key themes in the Declaration. Within each part a number of rights are outlined. Each right is described in plain English. Each right has a heading in bold text and has the location of that right within the Declaration noted, for example: **Equality and freedom from discrimination (article 2)**

### **glossary**

A **glossary** explains some key terms used in this guide. Terms in the glossary are clearly highlighted. \*

### **text boxes**

Throughout the guide a number of text boxes are used to assist understanding of the Declaration. There are four types of text box:



**Talking rights**

**Talking rights – useful quotes on a specific area.**



**Know your rights**

**Know your rights – provides more detail about the content of a right or an aspect of human rights.**



**Rights in action**

**Rights in action – brief case studies of where a right is currently being used in Australia.**



**Using your rights**

**Using your rights – suggestions of how the Declaration and the rights contained in it could be used to address issues in Aboriginal and Torres Strait Islander communities.**

The case studies and suggestions are examples only and are used to encourage thinking and talking about the Declaration. They are not an exhaustive list. Local communities can use this information to think about how the rights in the Declaration apply to their own circumstances.

### **poster & overview**

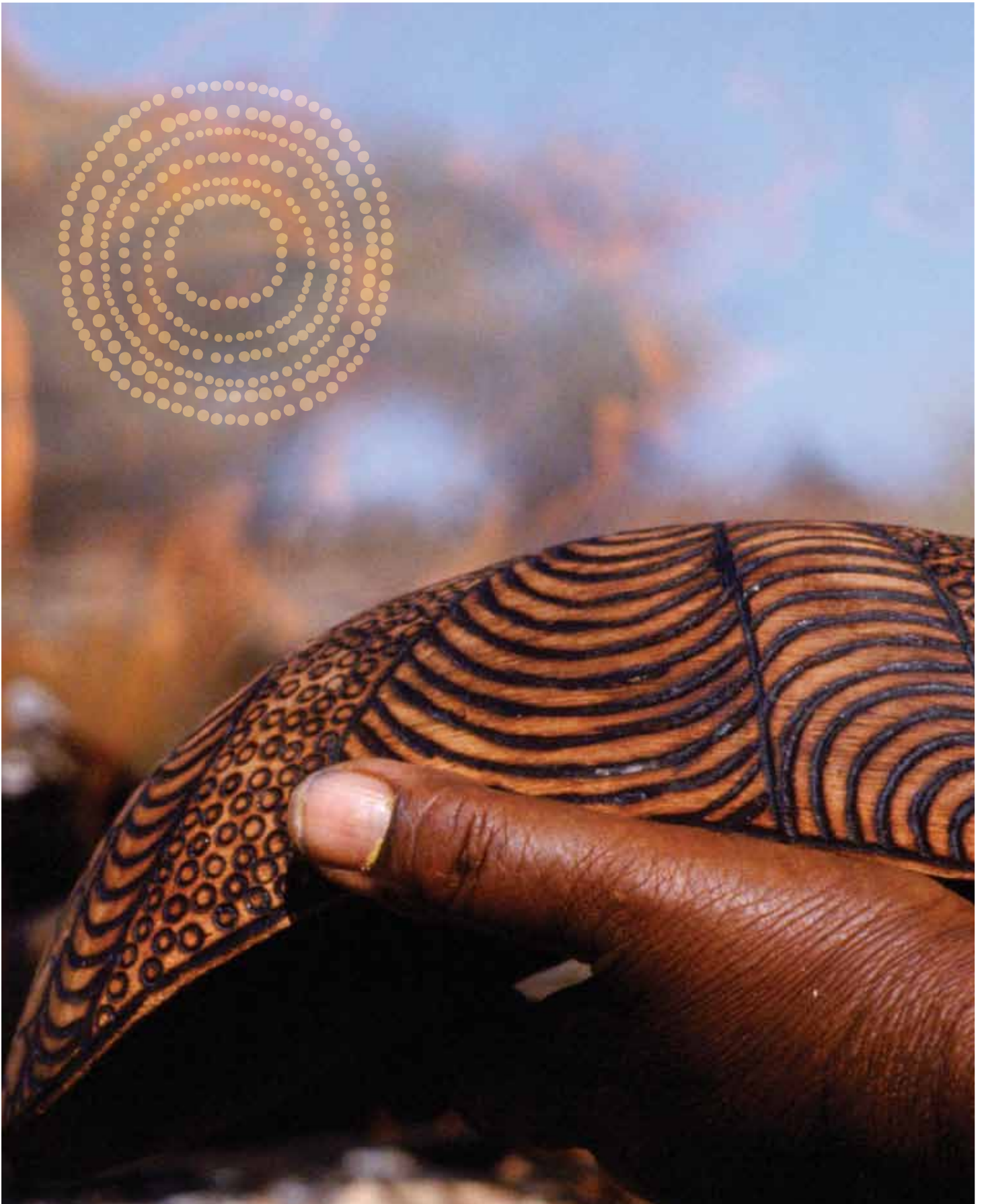
#### **Other Declaration materials**

The Australian Human Rights Commission has also produced a **poster** and an **overview** of the Declaration. These materials use the same thematic groups and headings as used in this guide.

The **poster** provides the actual text of the Declaration. The reverse side of the poster has an artistic interpretation of the Declaration by *Gilimbaa*, an Indigenous design agency.

The **overview** is a brief snapshot of the Declaration and its main themes.

This guide, the overview and the poster are designed to increase awareness and understanding of the Declaration.



“ We have the right to enjoy all human rights as individuals and as groups. ”



## Glossary

\* Words in text with this symbol appear in the glossary.


<b>Covenant</b>	Used to recognise a <b>Treaty</b> of great importance. See <b>Treaty</b> .
<b>Convention</b>	See <b>Treaty</b> .
<b>Declaration</b>	Statements made by the world's governments. They do not create legally binding obligations but they do carry political weight.
<b>Expert Mechanism on the Rights of Indigenous Peoples</b>	A United Nations body that reports to the Human Rights Council. This body provides expert advice to the Human Rights Council on thematic issues on Indigenous peoples rights. The Human Rights Council reports to the <b>General Assembly</b> on human rights issues.
<b>Free, prior and informed consent</b>	See Part 4 of this guide.
<b>General Assembly</b>	One of the main bodies of the United Nations. It is similar to a world parliament where the governments of the world, who are United Nations members, have equal representation and voting powers.
<b>Instrument</b>	A formal legal document that has been put in writing.
<b>Limitation</b>	Permits actions that do not meet human rights standards without being a violation of human rights. These actions must meet strict criteria (see Part 12 of this guide).
<b>Permanent Forum on Indigenous Issues</b>	A United Nations body that reports to the Economic and Social Council. The Economic and Social Council assists the <b>General Assembly</b> in economic and social matters. The Permanent Forum addresses the full range of concerns that Indigenous peoples have. Indigenous peoples across the world attend Permanent Forum sessions.
<b>Preamble</b>	The introduction of an <b>instrument</b> . It often outlines the reasons for creating the <b>instrument</b> and its aims. It can be used to help interpret the meaning of the <b>instrument</b> if parts of it are unclear.
<b>Protocol</b>	See <b>Treaty</b> .
<b>Special measure</b>	Actions that advance a particular group that is disadvantaged that are not considered discriminatory. See Part 8 of this guide.
<b>Special Rapporteur</b>	An expert appointed by the UN who investigates, monitors and makes recommendations on a specific theme of human rights. This guide makes reference to one of the Special Rapporteurs, the Special Rapporteur on the rights of indigenous peoples.
<b>Territorial integrity</b>	A principle of international law that protects countries and nation-states from being broken up or attacked.
<b>Treaty</b>	A binding agreement made between governments. Treaties create binding legal obligations under international law. Treaties can also be called <b>Covenants</b> , <b>Conventions</b> and <b>Protocols</b> . Treaties can also be made between governments and Indigenous peoples, the Treaty of Waitangi between New Zealand and the Maori is an example.
<b>Charter of the United Nations</b>	The Charter of the United Nations established the United Nations. It is similar to the Constitution in Australia.



1



# We have human rights, now for action



The existence of human rights standards is not the source of Indigenous disadvantage. Human rights do not dispossess Indigenous peoples, they do not marginalise them, they do not cause their poverty, and they do not cause gaps in life expectancy and life outcomes. It is the denial of rights that is a large contributor to these things. The value of human rights is not in their existence; it is in their implementation. That is the challenge for the world and for Australia with this Declaration.

(Mick Dodson)<sup>1</sup>



“ It is using the Declaration that breathes life into it! ”



## Background to the Declaration

After World War II, the international human rights system was developed to prevent nations and governments from violating the rights of people. This began with the *Universal Declaration of Human Rights*. Since then a number of human rights treaties\* have been made.



### Know your rights

#### Declarations and treaties

There are two main types of international legal instrument\*:

- Declarations\* are statements adopted by the world's governments. In most cases they do not create legally binding obligations. However, declarations outline the principles that governments agree to work towards.
- Treaties\* (also known as Conventions\*, Covenants\* or Protocols\*) are binding agreements made by governments. They create legal obligations under international law.

Australia has signed most of the core United Nations (UN) human rights treaties\*. The *United Nations Declaration on the Rights of Indigenous Peoples* (referred to in this guide as 'the Declaration')<sup>2</sup> will inform how these human rights obligations apply to Aboriginal people and Torres Strait Islanders.<sup>3</sup>



### Know your rights

#### Australia's human rights obligations

The human rights treaties\* that Australia has signed include:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CROC)
- Convention on the Rights of Persons with Disability (DisCo)

### The Declaration on the Rights of Indigenous Peoples

For a long time Indigenous peoples, including Aboriginal and Torres Strait Islanders, have used the international human rights system to tackle discrimination and abuses of their rights. Since the 1970's, the UN has increasingly become a place for Indigenous peoples from around the world to voice their concerns.

The adoption of the Declaration is currently the most significant achievement for Indigenous peoples at the international level.<sup>4</sup>

The Declaration took over 20 years of negotiation by Indigenous peoples, governments, and human rights experts. Many Aboriginal and Torres Strait Islanders were heavily involved. They fought for our peoples, our rights and our dignity.



### Talking rights

#### Statement to the UN General Assembly: Les Malezer

Les Malezer is a Gubbi Gubbi and Butchulla man from north Queensland. He was the Chair of the Global Indigenous Caucus when the Declaration was adopted by the UN General Assembly\*. Les had the honour of addressing the General Assembly on behalf of the Indigenous peoples of the world.

This is part of what he said:

The adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations marks a momentous and historic occasion for both Indigenous Peoples and the United Nations... Today's adoption of the Declaration occurs because the United Nations and the Indigenous Peoples have found the common will to achieve this outcome. The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples. It is a Declaration which combines our views and interests and which sets the framework for the future. It is a tool for peace and justice, based upon mutual recognition and mutual respect.<sup>5</sup>



Les Malezer  
Photo: Mathew Syres

As an  
Aboriginal or  
Torres Strait Islander  
these are your rights  
and it's important to  
make them matter!

The Declaration is significant because Indigenous peoples were involved in drafting it. This means the people who hold the rights directly participated in the development of the instrument\* to protect those rights.

The Declaration recognises that we as Indigenous peoples are entitled to all human rights and that we have rights as a collective.

The rights in the Declaration are standards to ensure the survival, dignity and well-being of Indigenous peoples.

As an Aboriginal or Torres Strait Islander these are your rights and it's important to make them matter!

## Using the Declaration

Guidance in applying the Declaration is being developed internationally by the Permanent Forum on Indigenous Issues (Permanent Forum)\*, the Expert Mechanism on the Rights of Indigenous Peoples\* and by the Special Rapporteur\* on the rights of Indigenous peoples.<sup>6</sup>



### Rights in action

#### General comment by the Permanent Forum\*

The Permanent Forum\* has a specific role in the implementation of the Declaration (article 42, see Part 11 of this guide). At its 8th session, the Permanent Forum\* issued a general comment that discussed the legal character of the Declaration and guidance on how to interpret article 42. By issuing this guidance, the Permanent Forum\* is working at an international level to promote the full implementation of the Declaration.

## Four factors confirm the Declaration's influence on the development of international law:

1. The Declaration is **sourced from existing international human rights law**.<sup>8</sup> The Declaration informs understanding of how these existing rights apply to Indigenous peoples.<sup>9</sup>
2. The Declaration was **supported by most countries**, with only 4 voting against it - Canada, United States, New Zealand and Australia.<sup>10</sup> Australia and New Zealand have since given their formal support for the Declaration. At the time of writing, Canada and the United States had indicated they might do the same.
3. The Declaration is the result of a **democratic and open process of negotiation**. Both Indigenous peoples and governments were involved in negotiating the text.<sup>11</sup> The Declaration is evidence of the common ground between Indigenous peoples and the governments of the world.<sup>12</sup>
4. The **language used in the Declaration is similar to that used in a treaty**. It contains obligations and responsibilities for governments to uphold.

These factors give the Declaration legitimacy.<sup>13</sup> They give the Declaration political weight that can be used to influence law and policy reform in Australia. We can refer to these four factors when encouraging governments to take action to implement the Declaration.<sup>14</sup>





## Talking rights

### Australia's change of position on the Declaration

On 3 April 2009 Australia gave formal support for the Declaration. In her speech, Minister for Indigenous Affairs Jenny Macklin said:

Today, Australia changes its position. Today, Australia gives our support to the Declaration. We do this in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australians and building trust... The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians. Australia's existing international obligations are mirrored in the Declaration.<sup>14</sup>



The United Nations during the Permanent Forum on Indigenous Issues. Photo: Tammy Solonec, Aboriginal Legal Service of Western Australia (Inc.)

International law does not create legal rights or obligations in domestic Australian law. The government has to pass legislation or create policy for this to happen. However, human rights standards can and do influence law and policy reform.

The rights contained in the Declaration are most powerful when they become the ordinary way of working with Aboriginal and Torres Strait Islander peoples.

One way we can use the Declaration is by using the language of rights when talking about the issues in our communities. Using this language can influence government policies. These are our rights. It is important we make them matter.

**It is using the Declaration that breathes life into it!**



## Rights in action

### Using the Declaration to influence policy

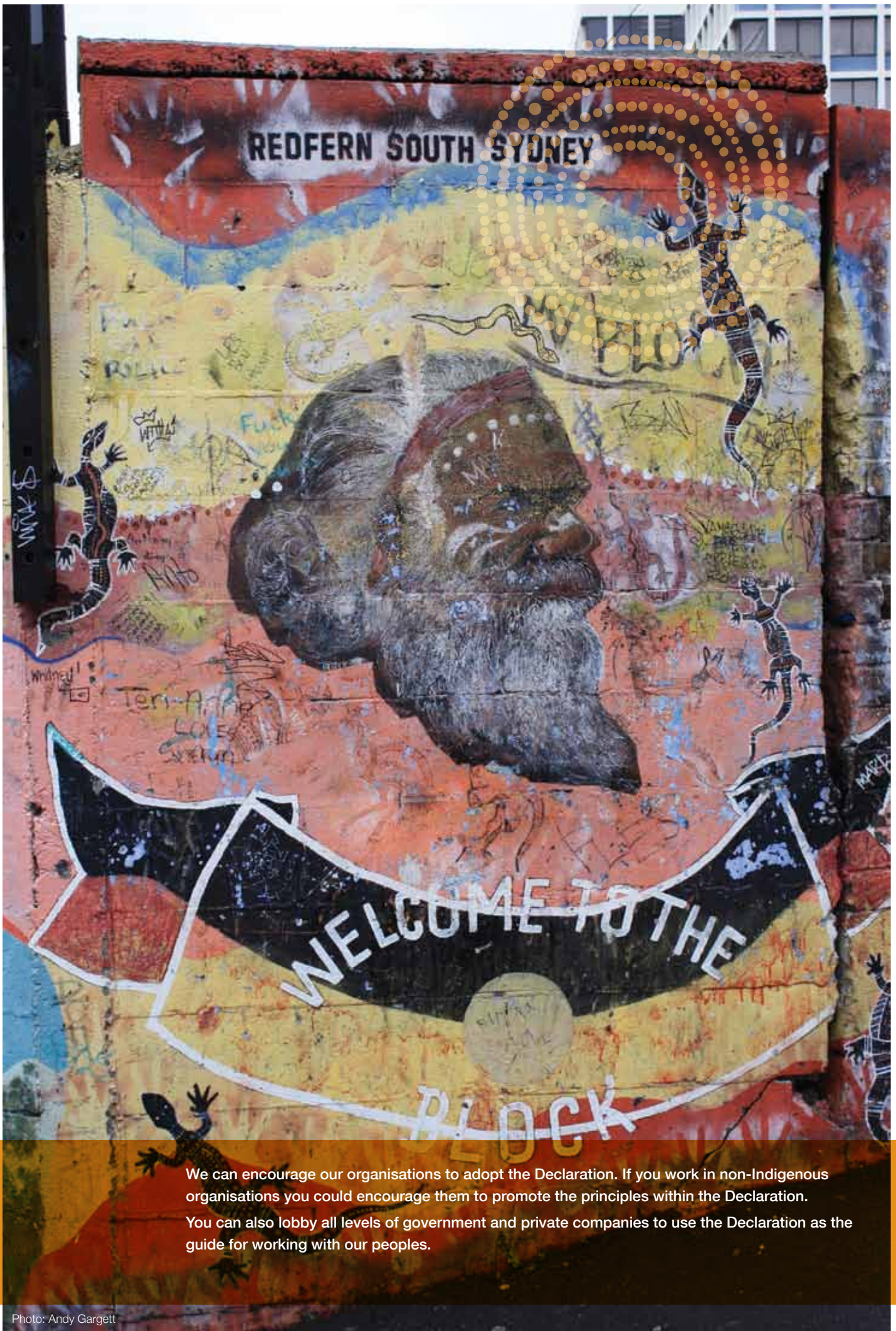
#### Goldfields Land and Sea Council

The Goldfields Land and Sea Council have developed a mining policy that guides the Council's decision-making on mining-related activity. The policy adopts human rights standards including those contained in the Declaration. Importantly, it asserts that the free, prior and informed consent\* of the traditional owners is to be secured before mining related activities are approved.<sup>15</sup>

#### Northern Australian Indigenous Land and Sea Management Alliance

The Northern Australian Indigenous Land and Sea Management Alliance (NAILSMA) have developed a policy statement on water. This statement outlines the terms these Indigenous groups want to be engaged with on issues of water. The policy adopts the standards in the Declaration in regards to decision-making over the cultural, environmental and commercial uses of water by Indigenous peoples.<sup>16</sup>

These policies are putting the Declaration into action.



We can encourage our organisations to adopt the Declaration. If you work in non-Indigenous organisations you could encourage them to promote the principles within the Declaration. You can also lobby all levels of government and private companies to use the Declaration as the guide for working with our peoples.

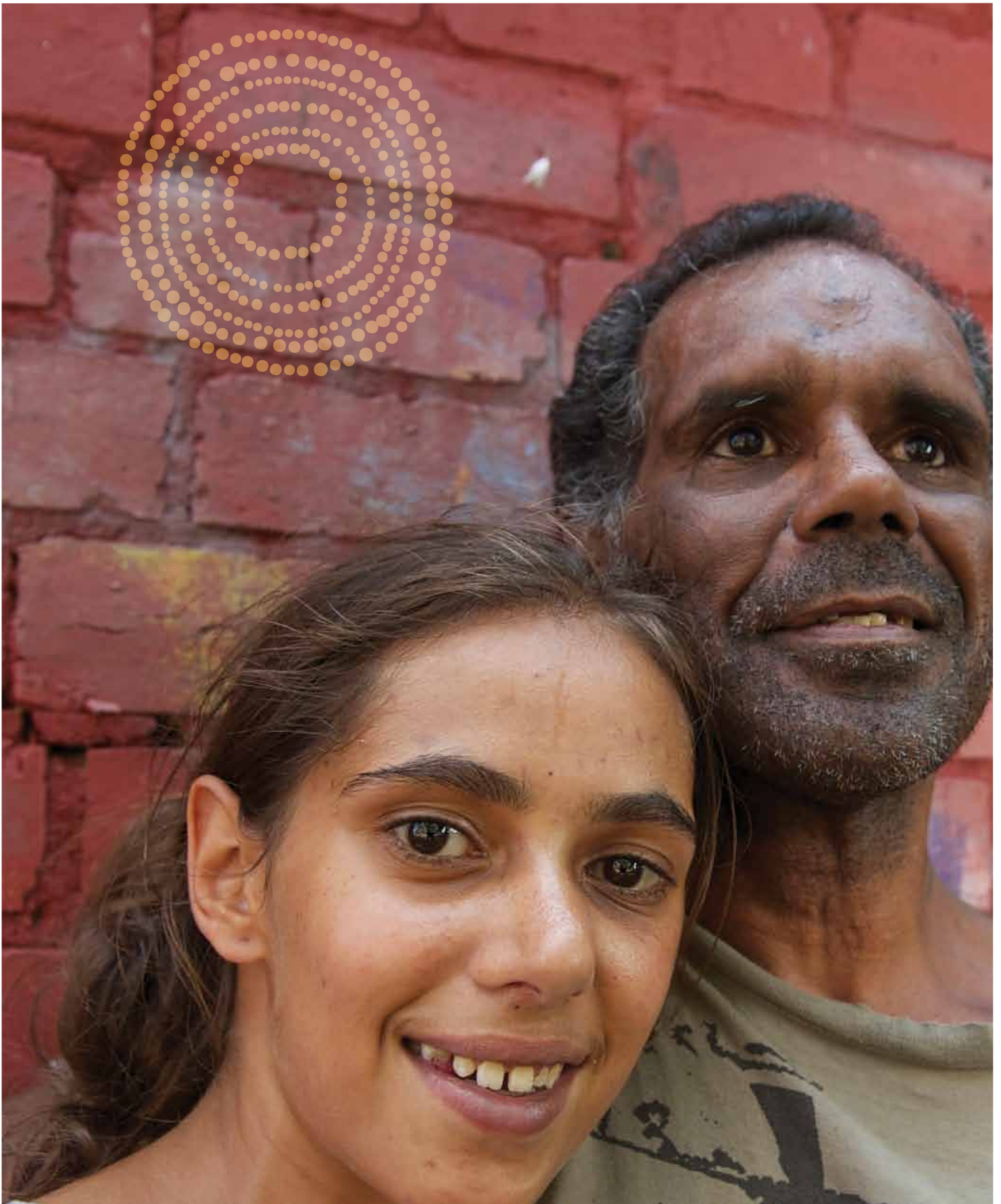


# The preamble: The introduction of the Declaration

The preamble\* of the Declaration sets the scene. It outlines the reasons for having a Declaration and its aims. The preamble\* makes it clear that the Declaration was created to address the wrongs of the past that continue to affect Indigenous peoples' lives today.<sup>17</sup>







“Our challenge for the future is to now cross that bridge and, in doing so, to embrace a new partnership between Indigenous and non-Indigenous Australians...”



### The preamble

The preamble\* guides understanding of an instrument\*. Where there is doubt as to the meaning of a right, the preamble\* can be used to help interpret what that right actually means.

For example, the Declaration's preamble recognises that Indigenous peoples have suffered because of dispossession from their country.<sup>18</sup> As a result, if there is doubt, the articles on the rights to country are to be interpreted to address the effects of dispossession.

### The preamble\* makes some key points about the purpose of the Declaration:

- **The UN and international law have an important role in protecting the rights of Indigenous peoples.** Governments cannot avoid international scrutiny for the mistreatment of their Indigenous peoples.
- **All people are equally entitled to human rights.** Discrimination and racism are wrong. Being equal to all others, Indigenous peoples have all the human rights that other people and groups have.
- **Equality recognises difference and does not mean assimilation.** Indigenous peoples can practice and enjoy their culture as well as participate in broader society.
- **Indigenous peoples have not always been able to enjoy their human rights.** Colonisation, discrimination and loss of country have prevented Indigenous peoples all over the world from exercising their rights. It is because Indigenous peoples' rights have been and continue to be violated that there is a need for this Declaration.
- **A new relationship.** The Declaration can guide a new relationship between Indigenous peoples and government based on partnership, mutual respect and honesty.



Gangari Community Artwork



## Talking rights

### Political partnership

The National Apology to the Stolen Generations was a respectful acknowledgment of Australia's past made by the Prime Minister on 13 February 2008. It laid the foundations of a new relationship based on respect and trust. The Prime Minister spoke about creating a partnership:

It is not sentiment that makes history. Today's apology, however inadequate, is aimed at righting past wrongs. It is also aimed at building a bridge between Indigenous and non-Indigenous Australians – a bridge based on a real respect... Our challenge for the future is to now cross that bridge and, in doing so, to embrace a new partnership between Indigenous and non-Indigenous Australians... The truth is, a business as usual approach towards Indigenous Australians is not working. Most old approaches are not working. We need a new beginning... a new partnership, on closing the gap with sufficient flexibility not to insist on a one-size fits-all approach for each of the hundreds of remote and regional Indigenous communities across the country, but instead allowing flexible, tailored and local approaches.<sup>19</sup>

**The Declaration maps out a path for a partnership between Aboriginal and Torres Strait Islander peoples and government.**

Sorry. Photo: Ruth Melville

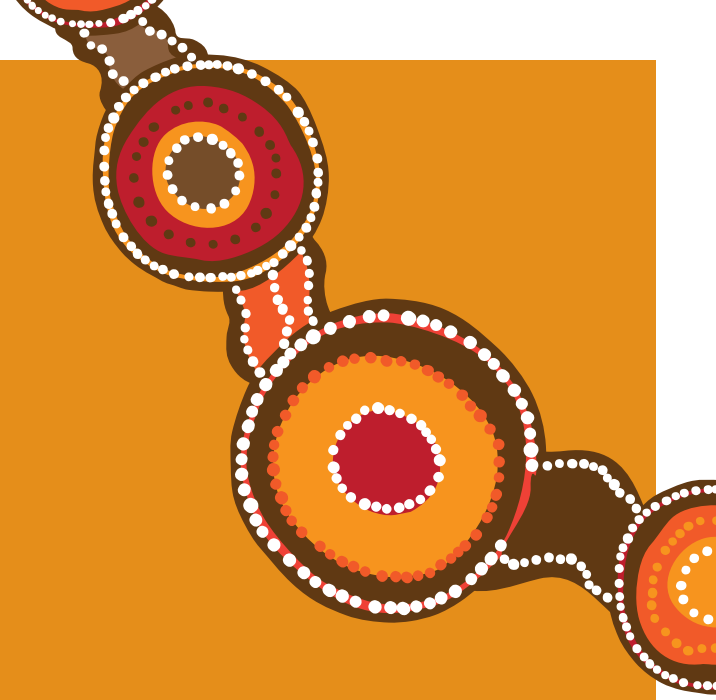
Sharon Minniecon waving Torres Strait Islander and Aboriginal flags. Photo: Ruth Melville

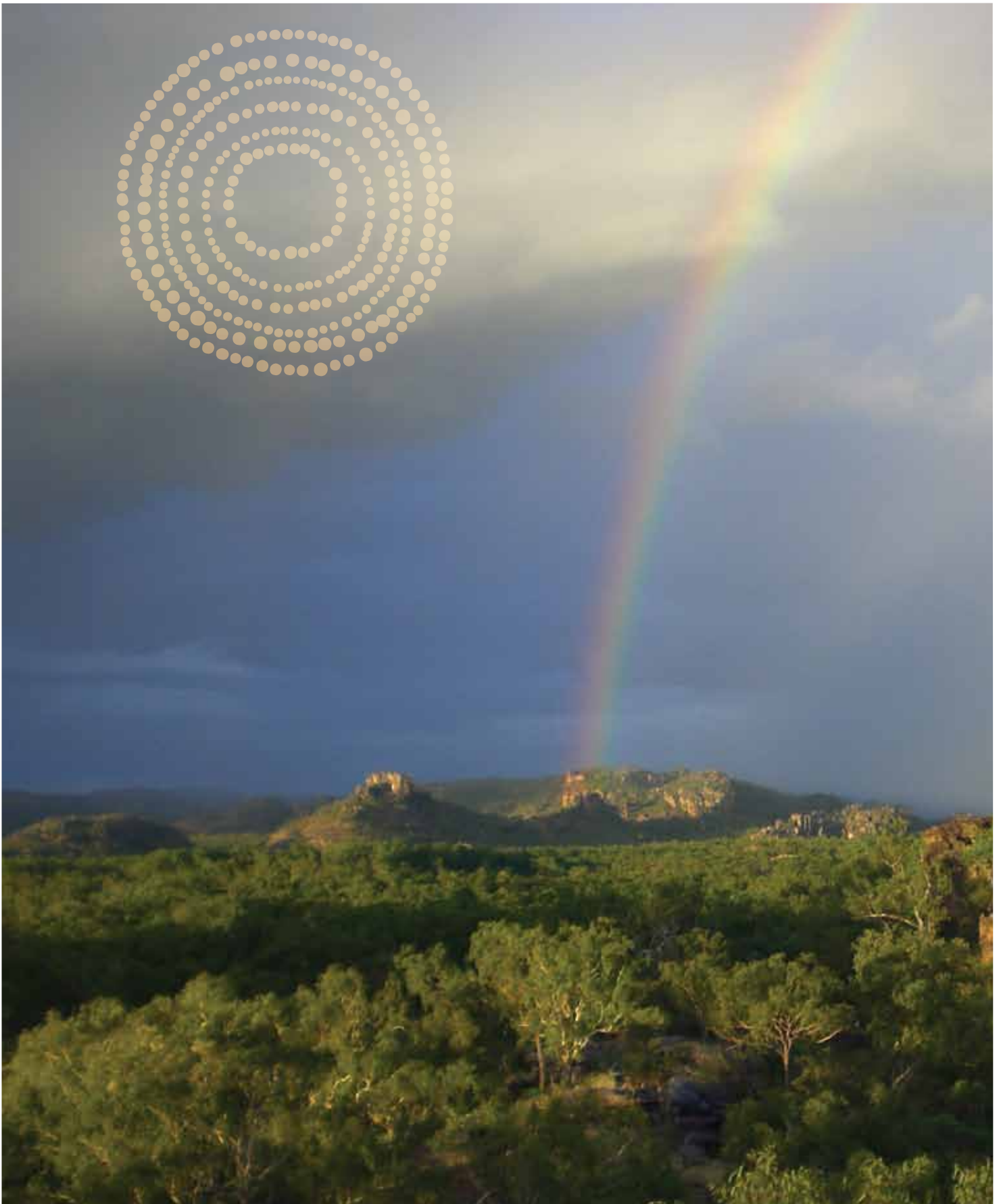


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# Foundational rights

The rights at the beginning of the Declaration are foundational rights. These rights confirm our right to self-determination and to be treated equally without discrimination. These rights are reflected throughout the rest of the Declaration.





“ We have the right to  
enjoy all human rights...” ”

## Collective and individual human rights (article 1)

We have the right to enjoy all human rights as individuals and as groups.



### Know your rights

#### Collective rights

Human rights standards were developed from non-Indigenous thinking and have historically focused on the individual. For example an individual has the right to own property.

Indigenous peoples often organise societies as a group (i.e. clan, nation, family or community) and individual rights are not always suitable.

The Declaration confirms that we have group or collective rights. For example, it acknowledges that we have the right to own country and hold cultural knowledge as a group, and the right to determine what that group looks like.

## Equality and freedom from discrimination (article 2)

We have the right to be free.

We, as individuals, are equal to all other individuals.

We, in our groups, are equal to all other groups of peoples.

Any discrimination is wrong.



Aboriginal activist Greg Eatock.  
Photo: Alex Bainbridge



### Know your rights

#### Equality

International law accepts the idea of substantive equality.<sup>20</sup> This means that equality is not blind to people's differences. All people are not the same and these differences should be recognised and responded to. Instead, we should focus on the equality of outcomes.

#### Self-determination (article 3)

We have the right to self-determination.

We are free to choose our political status and economic, social and cultural development. This important right is discussed in detail in Part 4 of this guide.

#### Self-government and our own institutions (articles 4 and 5)

As part of self-determination we have the right to self-government.

To achieve self-government, we have the right to our own institutions for our political, cultural and social life.

This does not exclude us from participating in the political, economic, social and cultural life of Australia.



### Rights in action

#### The Torres Strait Regional Authority

The Torres Strait Regional Authority (TSRA) is an Australian Government Statutory Authority. The TSRA Board is made up of elected Indigenous people living in the Torres Strait. Its role is to:

- formulate, coordinate and implement programs for Torres Strait Islander and Aboriginal peoples living within the region
- monitor the effectiveness of these programs, including programs conducted by other bodies
- advise the government on matters relating to Torres Strait Islander and Aboriginal peoples' affairs in the Torres Strait
- recognise and maintain the special and unique Ailan Kastom of the Torres Strait Islander people living in the Torres Strait Region.<sup>21</sup>

In undertaking these functions, the TSRA seeks to improve the lives of our people living in the Torres Strait. Because the structure and mandate of the TSRA provides for decision-making by Indigenous people,<sup>22</sup> the TSRA exercises aspects of self-government.



## Know your rights

### Institutions

The Declaration often refers to institutions. This broad term captures all bodies that have an impact on our lives and how we are governed. This includes:

- government (federal, state and local level)
- representative bodies: The National Congress of Australia's First Peoples, national and state/territory level peak bodies
- Aboriginal and Torres Strait Islander organisations, like health or legal services
- Native Title Representative Bodies, Land Councils or prescribed bodies corporate.

Our own institutions represent us and our views. Government institutions should allow us to participate in their functions and to promote our participation in the broader society.



### Nationality (article 6)

All Indigenous people have the right to a nationality.



Gab Titui Cultural Centre.  
Photo: Torres Strait Regional Authority



## Know your rights

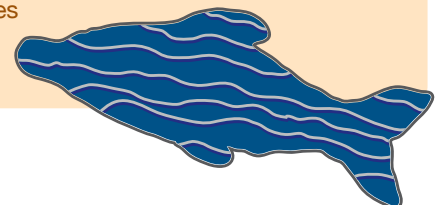
### Nationality

Every Aboriginal or Torres Strait Islander person has the right to be recognised as:

- an Aboriginal or Torres Strait Islander, or both
- a member of our regional groups (for example a Queensland Aboriginal person might identify as a Murri, while people from South Australia might identify as Nungas)
- a member of our language groups
- a member of our clan groups
- a member of our community groups (for example the 'Lapa mob' from La Perouse in South Sydney).

We also have a right to be an Australian citizen. This means you are entitled by right to basic services and rights including:

- the right to vote (if over 18)
- access to health services
- housing
- sewerage facilities
- education.





4

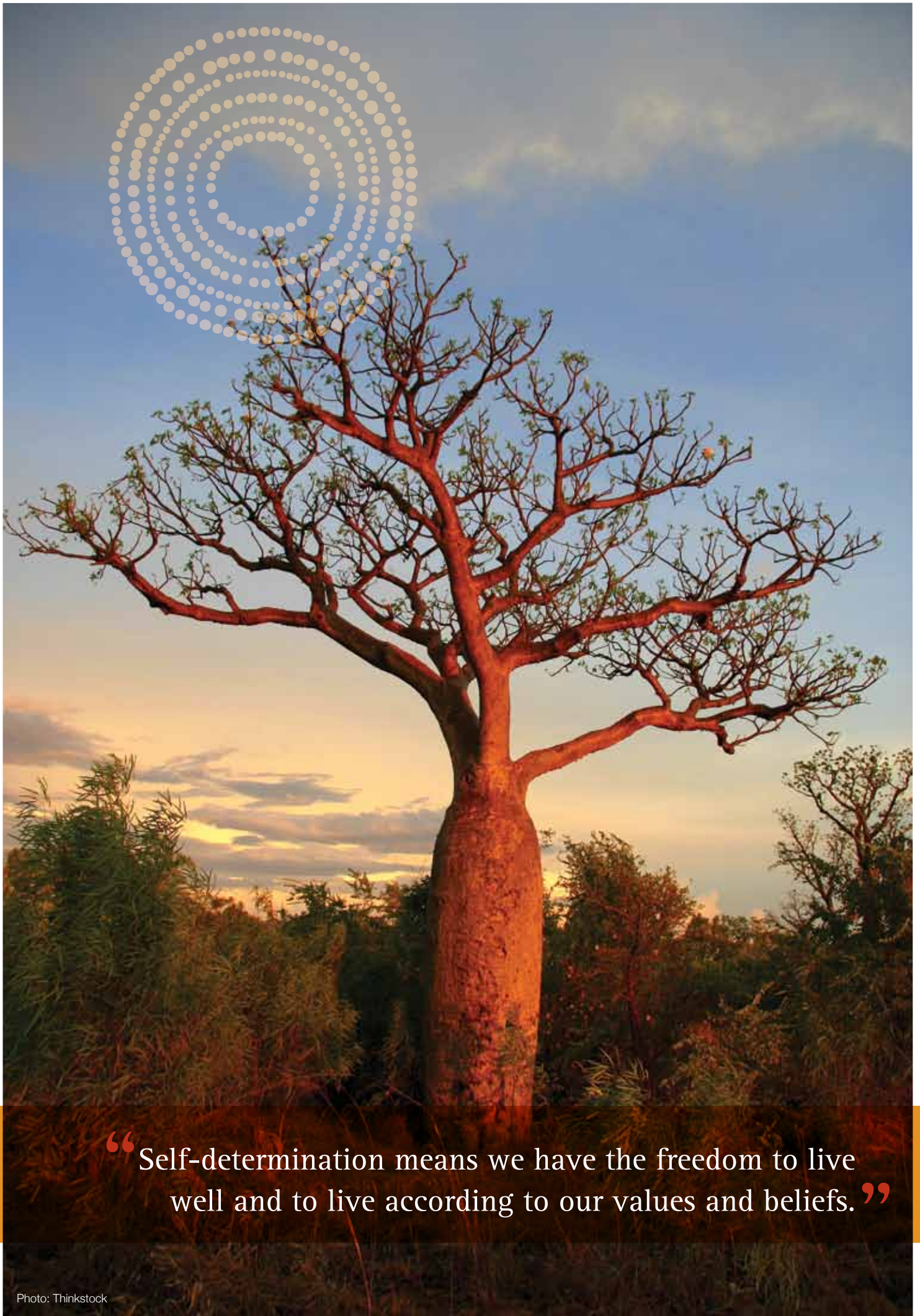


# Self-determination and free prior and informed consent

Self-determination and free, prior and informed consent are crucial to understanding the Declaration and are important in the recognition of our collective rights.







“Self-determination means we have the freedom to live well and to live according to our values and beliefs.”

## Self-determination (article 3)

We have the right to self-determination.

We are free to choose our political status and our economic, social and cultural development.



### Know your rights

#### Self-determination

Self-determination is the central right of the Declaration. All other rights help to achieve self-determination. All Indigenous peoples are entitled to this right.

In recognising that Indigenous peoples have this right, governments are required to recognise our collective/group identities such as our nations, language groups, clans, family alliances or communities.

Self-determination is a process of choice to enable our groups to feel safe and meet our human needs. This means three key things:

1. We have **choice** in determining how our lives are governed and our development paths.
2. We **participate** in decisions that affect our lives.
3. We have **control** over our lives and future including our economic, social and cultural development.<sup>23</sup>

Exercising the right to self-determination means we have the 'freedom to live well and to live according to our values and beliefs'.<sup>24</sup>

There is no predetermined outcome of what self-determination looks like.<sup>25</sup> We are from many different language groups, clans, nations and communities that all have their own views of the world. Self-determination recognises that different groups have different world views. What is good for mainstream Australia might not be good for us. What is good for one Aboriginal or Torres Strait Islander group might not be good for another. Our peoples from remote areas of Australia have different needs from our peoples in urban areas.

Self-determination is the right of a group of peoples to meet the human needs of that group, including the means to preserve that group's identity and culture.<sup>26</sup>

In recognising our group identities and decision-making rights, exercising self-determination also means we can participate in Australian society.



Photo: Fabienne Balsamo



### Using your rights

#### Asserting a right to self-determination

Self-determination requires that governments:

1. recognise that our peoples form distinct groups with their own group identity
2. enter into relationships with these groups based on mutual respect and equality.

A group of peoples exercise the right to self-determination when they can make choices about their lives and feel like they have the power to make these choices. The following are some different examples of what self-determination could look like in practice:

- local self-government through our own community controlled councils
- living on a homeland and choosing how it is to be developed
- a nationally elected Aboriginal and Torres Strait Islander representative body
- the legal recognition of our group identities and rights including through recognition in the Australian Constitution
- control of the provision of basic services (for example health and housing) through our own organisations
- a system that allows us to participate in decisions made about our lives
- the ability to effectively participate in the functions of the UN
- the ability to make a complaint when our rights are denied and to have that complaint heard and addressed without fear of being punished for it.



Warraber Community Garden, Salu Baragud.

Photo: Rebecca Murphy, TSRA

## Free, prior and informed consent (articles 10, 11, 19, 28, 29 and 32)

The standard of free, prior and informed consent is to be met before any of the following actions are taken:

- projects or decisions that affect our country including mining, development and the use of sacred sites
- the use of biological materials, traditional medicines and knowledge, including artwork, dance and song
- making agreements or treaties between government and our peoples
- the creation of laws or policies that affect our peoples
- actions that could lead to the forced removal of our children or from country.



Photo: Andy Gargett



### Using your rights

#### Free, prior and informed consent

Like the Goldfields Land and Sea Council, our organisations can make free, prior and informed consent the standard when negotiating with governments and private companies.



### Know your rights

#### What does free, prior and informed consent mean?

When making policies, laws or undertaking activities that affect our peoples, governments and others should negotiate with us with the aim of obtaining our consent.

This is much stronger than an obligation to just provide information or 'consult'. Governments and companies should not impose their position onto our peoples, without first taking our rights into consideration. The following outlines free, prior and informed consent:

**Free** means no force, bullying or pressure.

**Prior** means that we have been consulted before the activity begins.

**Informed** means we are given all of the available information and informed when that information changes or when there is new information. If our peoples don't understand this information then we have not been informed. An interpreter might need to be provided to assist.

**Consent** means we must be consulted and participate in an honest and open process of negotiation that ensures:

- all parties are equal, neither having more power or strength
- our group decision-making processes are allowed to operate
- our right to choose how we want to live is respected.<sup>27</sup>

This creates a process where governments or companies and our peoples can talk to each other on an equal footing and come to a solution or agreement that all parties can accept. This also means that Aboriginal and Torres Strait Islander peoples are to be involved in the design, development, implementation, monitoring and evaluation of all programs, policies and legislation that affects us.

The greater the impact and damage that a decision or project will have on our peoples lives, cultural integrity and country, the greater the need to reach an outcome that we can agree to. If an action is a direct threat to our survival or cultural integrity then we should be entitled to say 'no' to that action.

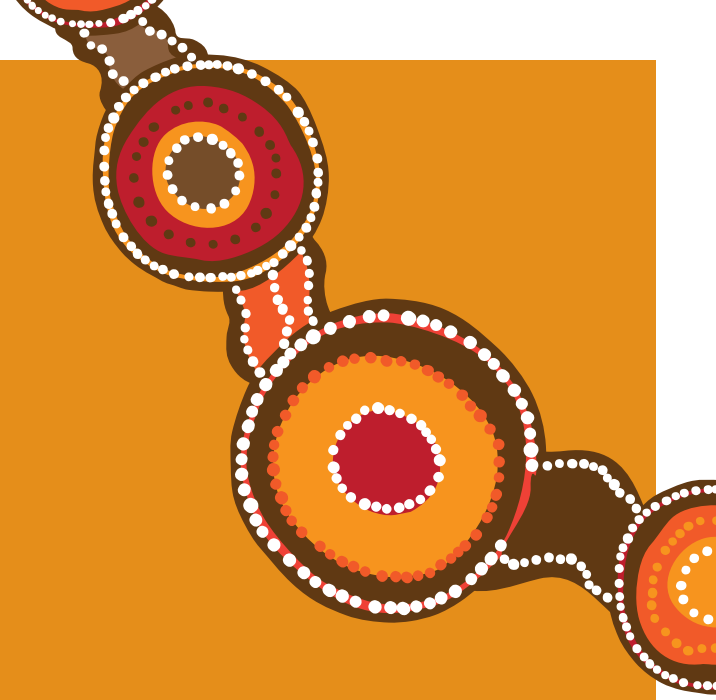


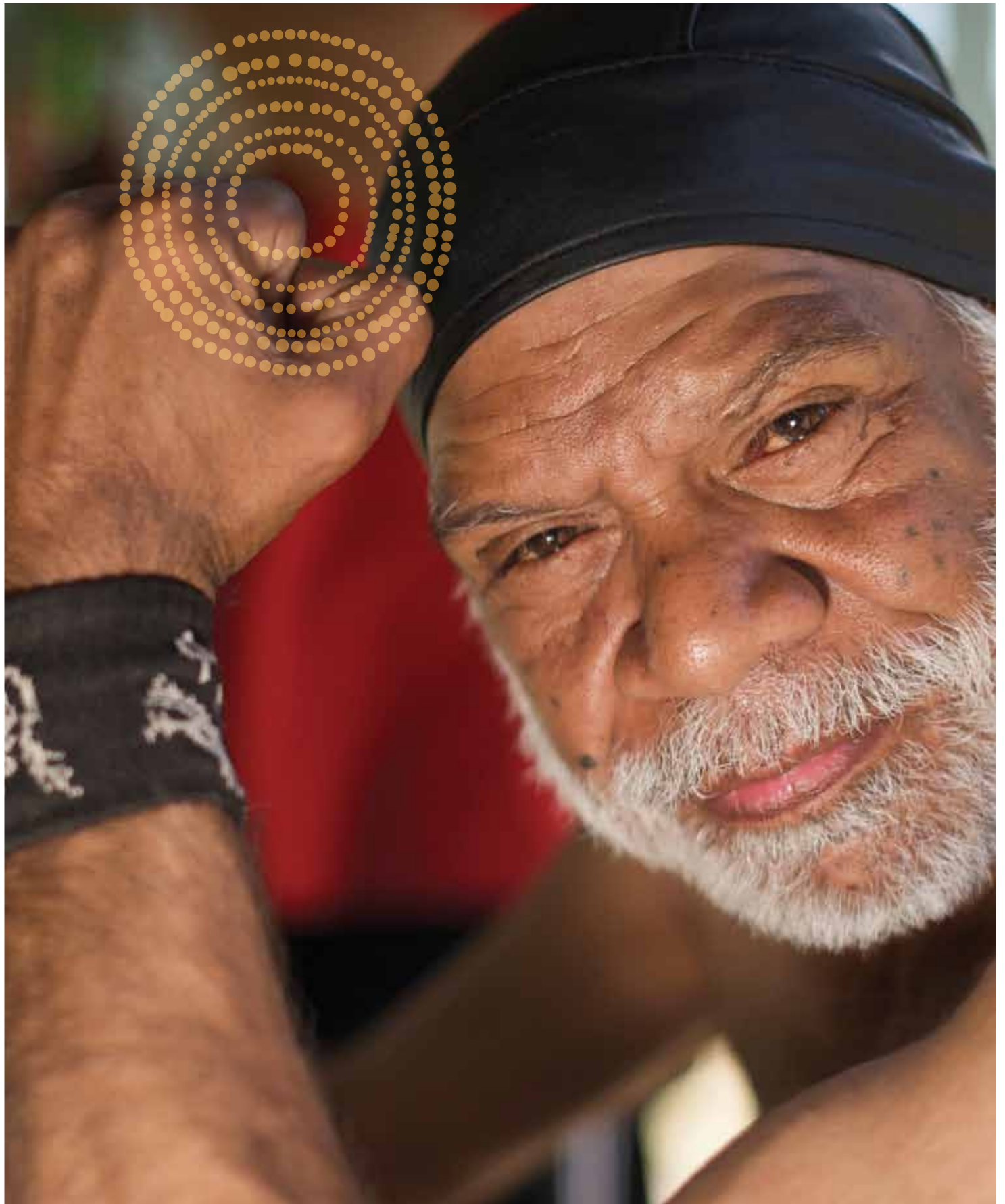


5

# Life and security

The rights to life and security protect our basic needs and allow us to feel safe in who we are.





“ We are not to be forcibly removed  
from our country.”

## Security, freedom from genocide, assimilation and the destruction of our culture

### (articles 7 and 8)

We have the right to life, including the right to live as a distinct group.

These rights are to be enjoyed freely and securely. This includes the protection of our minds and bodies.

We are to be free from forced assimilation, genocide, violence and the destruction of our cultures.

Governments should take steps to prevent:

- actions that take away our cultural values or identities
- actions that dispossess us from our country
- any form of forced assimilation, relocation or removal of our children
- information or stories about us that lead to discrimination against us.

If any of these rights are violated, governments should provide some form of compensation.



## Know your rights

### Deaths in custody

High incarceration of Indigenous people significantly affects our communities' ability to live with freedom and security. This is a human rights issue.

The report of the Royal Commission into Aboriginal Deaths in Custody, released in 1991, first explored why there were high numbers of our people dying in custody. It found that the high number of deaths in custody was a result of over-representation in the criminal justice system.<sup>29</sup> Since that time things have not improved.<sup>30</sup> Indigenous people continue to be over-represented in the criminal justice system and deaths in custody continue to be a concern.

The Royal Commission found that the causes of over-representation are complex but the 'most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society - socially, economically and culturally'.<sup>31</sup>

Most often our people are locked up because of minor public order offences, for example failure to pay fines or breaches of bail.<sup>32</sup>

Indigenous peoples have the right to non-discrimination in their experiences with the justice system.



## Using your rights

### Justice reinvestment

Addressing our over-representation in the criminal justice system as a human rights issue could help move beyond law and order policies to begin addressing the human costs.

Justice reinvestment is one approach to criminal justice that is consistent with human rights standards. It shifts the focus away from imprisonment and on to investing in strengthening communities through programs, services and activities that address the underlying causes of crime. Investing in community programs rather than prisons will help create free and safe communities.<sup>33</sup>

## Communities and nations

### (article 9)

We have the right to live as a community, language group, clan or nation in accordance with cultural traditions.


We have the right to make these choices freely and without discrimination.

## Removal and relocation

### (article 10)

We are not to be forcibly removed from our country.

We are not to be relocated without our free, prior and informed consent\* or without our agreement to just and fair compensation. Where possible we should have the option of returning to country.



We can use the Declaration to remind governments of our rights to live on our lands.



## Using your rights

### Removal and relocation

The survival of Indigenous homeland communities throughout Australia is threatened by inadequate funding. This is a result of government policies that focus funding on larger communities or regional centres. These policies could have the effect of forcibly removing homeland residents from their traditional country.<sup>34</sup>

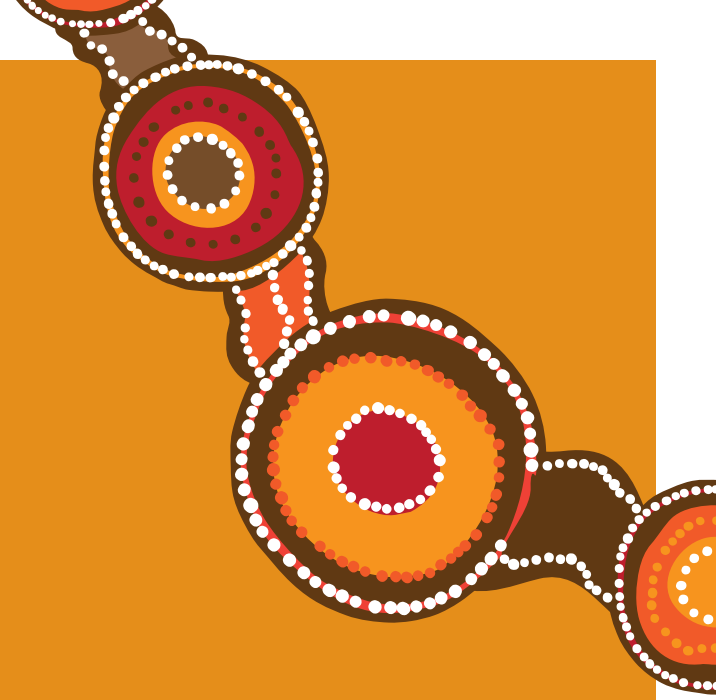
We can use the Declaration to remind governments of our rights to live on our lands. To be consistent with the rights in the Declaration, leaders from homeland communities would be actively involved and participate in the development and implementation of policies that ensured the survival of homeland communities.



6

# Language, cultural and spiritual identity

Indigenous cultures are strong and valuable. For many of us, our culture is the most important part of our life. Rights to language, culture and identity recognise that importance.







“The loss of languages will result  
in the loss of knowledge”

## Culture (article 11)

We have the right to culture. This means we have a right to practice our culture and to make sure our culture survives and grows.



### Rights in action

#### Cultural expression

Our culture is living and has many different forms. Culture can be expressed from a traditional perspective or it can be expressed with modern influence.

For example, the Bangarra Dance Theatre in Sydney, combines traditional and modern dance in powerful expressions of our cultures.<sup>35</sup> Another example is the annual Garma Festival that celebrates Yolngu culture of north-east Arnhem Land.<sup>36</sup>

## Cultural property (articles 11 and 12)

We have the right to maintain, protect and develop cultural property.

The government should work with our people to create a system of protection for our cultural property, including a dispute resolution or complaints process for cultural property



that has been taken or destroyed without free, prior and informed consent.\*

We have the right to have human remains and sacred objects that have been removed returned.



### Know your rights

#### Cultural property

Cultural property includes but is not limited to:

- historical and sacred sites
- artefacts
- designs, paintings and etchings
- knowledge and technologies
- performances, dances and songs
- ceremonies and ceremonial objects
- human remains and DNA.

Display of Berndt Crayon Drawing reproductions collected in 1947 from various Yolngu artists at the entrance to Buku-Larrnggay Mulka Centre's Gapan Gallery at the Garma Festival 2008. Copyright the artists c/o Buku-Larrnggay Mulka Centre. Photo: Cecelia Burgman



### Rights in action

#### The return of human remains

For many years, bones and other human remains of our ancestors were removed without our consent. Many of our peoples and their organisations have campaigned tirelessly for the return of these remains. The Declaration recognises our rights to have these remains returned. This is called repatriation.

The Australian Government runs two programs to assist in the return of remains:

- the International Repatriation Program, which helps our communities seek the return of their ancestors' remains from outside Australia<sup>37</sup>
- the Return of Indigenous Cultural Property Program, which helps return our cultural material from museums in Australia.<sup>38</sup>

Since 2001, the International Repatriation Program has supported our communities to see the return of over 1300 ancestral remains and 1300 sacred objects.

The return of human remains is often a difficult and slow process. The Declaration makes it clear that the return of human remains is a part of our cultural rights as Indigenous peoples. We can use the Declaration to lobby governments to make the return of human remains quicker and less burdensome.

In most cases there is a need to educate overseas governments and institutions that store these remains about their cultural significance.<sup>40</sup> The Declaration can be used to guide this education.

Programs designed to return human remains that are based on our views and aspirations and that facilitate our active role in the return process are consistent with the decision-making rights in the Declaration.<sup>41</sup>

## Spirituality (article 12)

Spiritual and religious traditions and ceremonies are an important part of our culture and identity.

We have the right to have religious and cultural sites and ceremonial objects.

We have the right to privacy in their use.

We have the right to teach our practices and beliefs.

## Our ways of being and knowing (article 13)

We have the right to revitalise, use, develop and pass on to future generations our ways of being and knowing. This includes:

- our histories and our oral traditions
- our languages and ways of communicating
- our ways of thinking about the world
- our names for communities, people and places.

Governments should take steps to make sure this right is protected.

Governments should make sure there is two-way understanding when dealing with our people, including that:

- we are able to understand what is being said by all parts of government
- governments are to make every effort to understand us in that process.

When needed, interpreters are to be used to support this two-way understanding.



## Know your rights

### Privacy

We have the right to privacy in our religious and spiritual activities. Privacy means controlling access and being able to undertake activities such as our ceremonies without interference. As a people we can decide who to share our religions and spirituality with.



Aboriginal Resource and Development Service translator, Bulkanhawuy Dhamarrandji. Photo: Aboriginal Resource and Development Service



## Using your rights

### Our languages

Unless urgent action is taken our languages will die out in the next 10-30 years. The loss of languages will result in the loss of knowledge and will affect on our peoples' culture, health and well-being.<sup>42</sup>

Many of us who live in urban areas have suffered the loss of significant amounts of language. We have the right to revitalise these languages.

The Declaration makes it clear that governments are to take action to protect and develop our languages. The Declaration is an important lobbying tool to promote government investment into protecting and revitalising our languages.



## Using your rights

### The use of interpreters

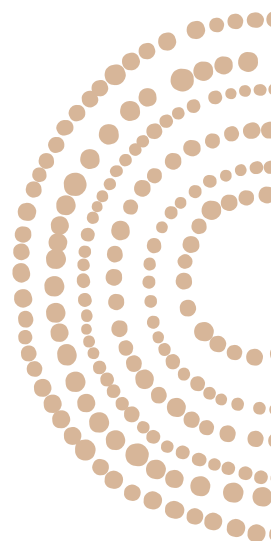
Our peoples are linguistically very diverse:

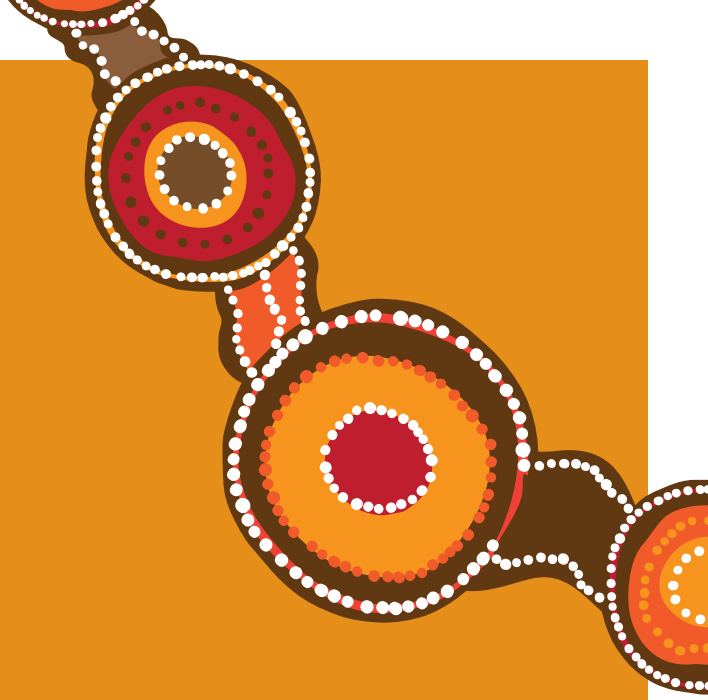
- some of us speak English as a first language
- some of us speak a Creole/Kriol or Aboriginal English as a first language
- some of us speak an Aboriginal or Torres Strait Islander language as a first language.

We all have a right to understand and be understood by governments and others working in our communities.

Being understood in the courtroom is one example of this. However, this requirement exists wherever governments do business with our peoples, including Centrelink, public housing authorities, the police or negotiating native title agreements.

If you cannot understand what is happening when dealing with government officials you can ask for an interpreter to assist you understand them and to help them understand your needs.

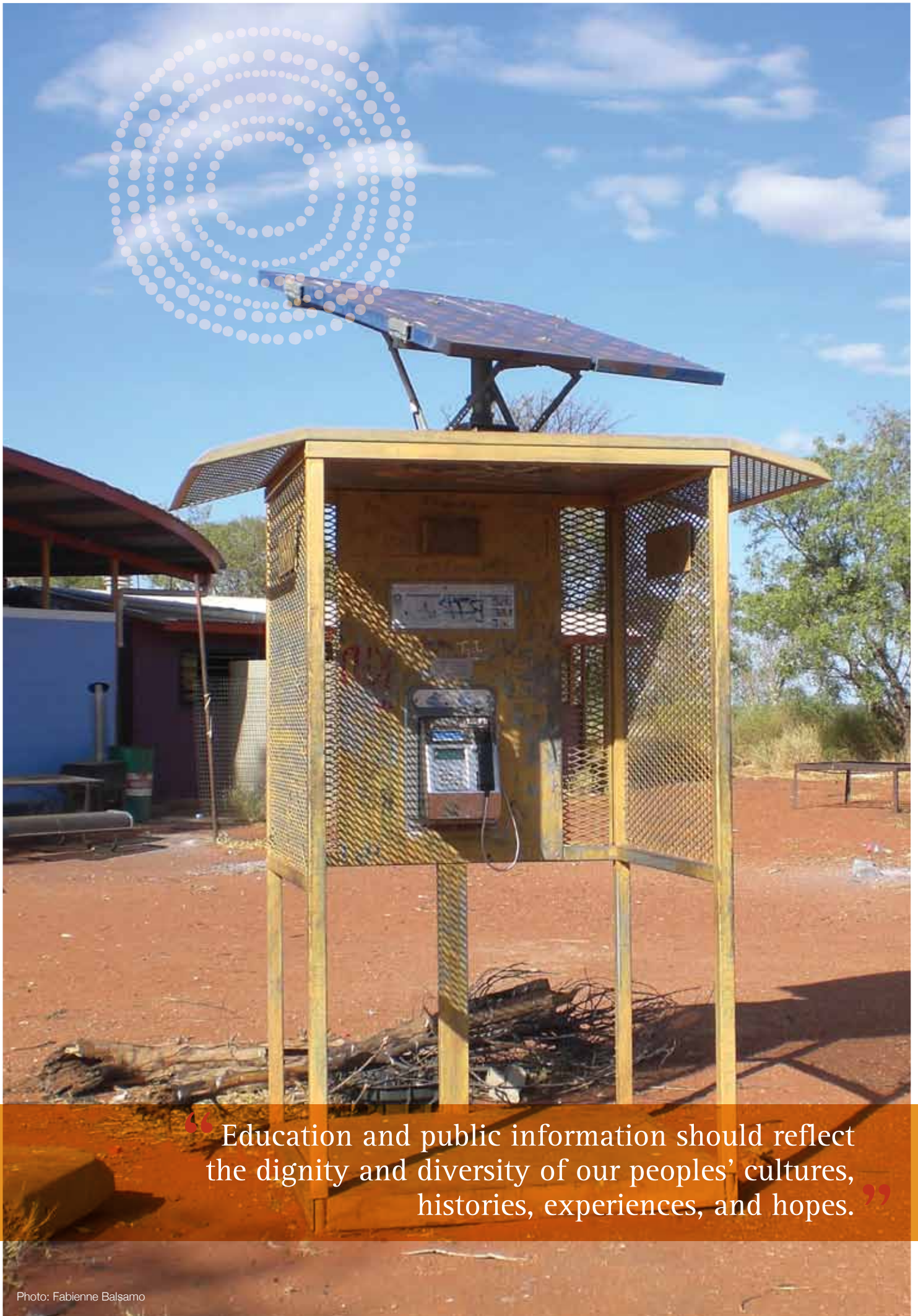




# Education, information & employment

Rights to education, access to information and employment are empowering. The realisation of these rights will strengthen our communities.





Education and public information should reflect the dignity and diversity of our peoples' cultures, histories, experiences, and hopes.

## Education (article 14)

We have the right to access the same standard of education as all other Australians.

We have the right to own and control our schools and educational institutions.

We have the right to teach and learn in our own languages and in a way that is culturally appropriate.

Governments should work with us to help those of us who are living away from their communities to learn culture and language.

The right to education is especially important for children.



### Rights in action

#### Bilingual education

The Declaration makes it clear that we have the right to an appropriate education and, where needed, education in language.

In many of our remote communities English is not spoken as a first language. Research suggests bilingual education is the best method to educate students who do not speak English as a first language. It is also a good way of preserving and promoting the use of Aboriginal and Torres Strait Islander languages.<sup>43</sup> Bilingual education is a great example of putting rights in action, including the right to language and the right to education.

The Northern Territory Government policy on education (2009) made it compulsory for English to be spoken for the first four hours of each day. This policy puts the future of bilingual education in the Northern Territory in doubt.<sup>44</sup> It could be argued this is inconsistent with the rights on education and language in the Declaration.<sup>45</sup>

## Public information (article 15)

Education and public information should reflect the dignity and diversity of our peoples' cultures, histories, experiences, and hopes.

Governments should work with us to combat prejudice and discrimination.

This can be achieved by promoting tolerance, understanding and cooperation between our peoples and the rest of Australian society.



NAIDOC Week. Artwork: Jennifer Hillhouse Photo: David Williams



### Using your rights

#### NAIDOC Week

NAIDOC Week celebrations are held in July each year across the nation. NAIDOC Week is an opportunity for Indigenous and non-Indigenous people to participate in activities that celebrate Aboriginal and Torres Strait Islander communities, achievements, cultures and histories.

Local celebrations are encouraged and are organised by communities, government agencies, local councils and workplaces. The Australian Government supports national NAIDOC celebrations and provides grants to fund local celebrations.<sup>46</sup>

NAIDOC Week gives the broader Australian population the opportunity to learn about us. NAIDOC Week can help strengthen relationships between Indigenous and non-Indigenous communities in Australia and promote reconciliation.



## Rights in action

### Art exhibition showcasing the Declaration

Sydney Institute's Eora College is a vibrant, professional, community focused TAFE NSW education centre for Aboriginal and Torres Strait Islander people in Sydney.<sup>47</sup>

In 2010, the Cultural Arts' students of Eora College, working with Amnesty International, produced a series of artwork based on the Declaration for a public exhibition held at the Boomali Gallery in Sydney.<sup>48</sup>

In addition to forming part of the learning experience for these students, this exhibition had a public education function. It helped the profile and understanding of the Declaration in the community.

### Media and cultural diversity (article 16)

We have the right to make our own radio, video, internet, printed materials and any other form of communication in our own languages.

We have the right to access non-Indigenous media.

Government-owned media should reflect our culture and diversity.

Governments should also encourage privately-owned media to reflect our cultural diversity.

### Employment and working conditions (article 17)

We have the same employment rights as other people in Australia.

We have the right to be free from discriminatory working conditions or hiring policies.

Governments should work with us to prevent our children from being exploited or from doing dangerous or inappropriate work. This includes negative impacts on spiritual and social development.



## Rights in action

### Our media

We are fortunate in Australia that we have a strong network of Indigenous media outlets. We have our own radio stations, newspapers and television station and we also make highly acclaimed films and documentaries. These organisations work hard on limited budgets to keep us informed and entertained in ways that are consistent with our culture.

These organisations are a great example of our human rights in action. They are also important in promoting understanding about our cultures to others in Australia and around the world.



Jai Rose. Photo: Andy Gargett



## Rights in action

### Addressing employment inequality

Under Australian law the Australian Government has a duty to address systemic employment related disadvantage.<sup>49</sup> These duties apply to the Australian Public Service and large organisations created for a public purpose by federal law.

The law requires these organisations and agencies to have 'employment opportunity programs' to eliminate discrimination and promote equality in their workplace. These programs can include having identified positions and targeted scholarships that can only be filled by Aboriginal and Torres Strait Islander people.<sup>50</sup>

Although these duties are limited in what they can achieve, they have increased the number of our people employed in the Australian Public Service. The Australian Public Service now employs more of our people than the private workforce where there are no such requirements.<sup>51</sup>

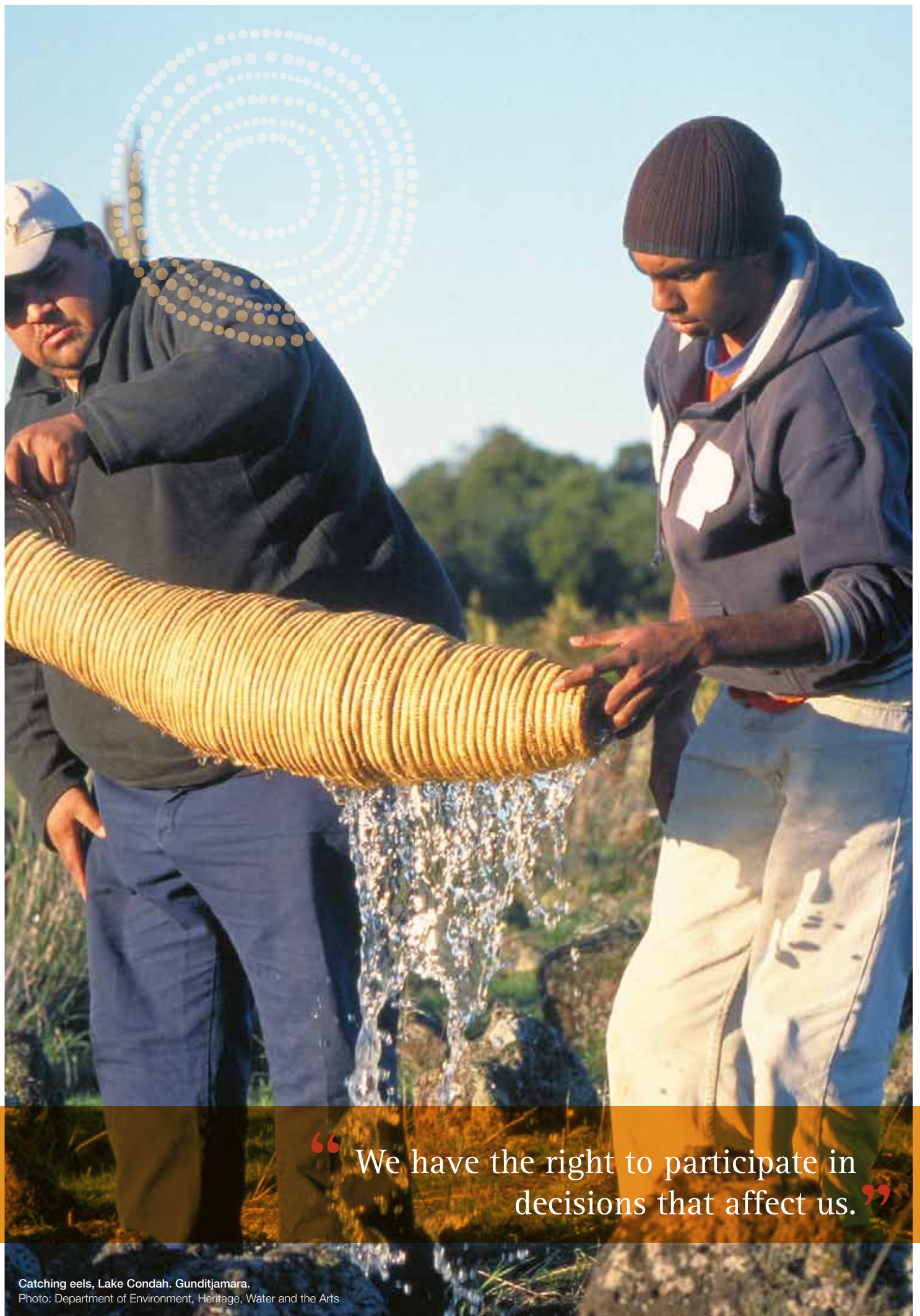


# Participation, development and economic and social rights

Participation, development and economic and social rights ensure we can control our future and how we develop.







“ We have the right to participate in decisions that affect us. ”

## Decision-making (article 18)

We have the right to participate in decisions that affect us.

This participation can be achieved through our own institutions and organisations.



### Rights in action

#### Representative bodies

There are many Aboriginal and Torres Strait Islander organisations that represent our interests across the country. For example there are over 2700 Indigenous corporations registered with the Office of the Registrar of Indigenous Corporations.<sup>52</sup>

The National Congress of Australia's First Peoples (the Congress) was established to facilitate our right to participate in decision-making at the national level across all areas of policy. Through the Congress, our peoples will be able to have a national voice.

As well as the Congress, there are a number of different types of representative bodies that we can participate in, including:

- local government and community councils
- community controlled health or housing services and Aboriginal and Torres Strait Islander legal services
- prescribed bodies corporate.

These bodies could all adopt the Declaration in their constitutions to strengthen their ability to enable our peoples to participate in decision-making processes.



### Using your rights

#### Participation in decision-making

The Australian Government has committed to resetting the relationship with our peoples. Active participation in decision-making that affects our peoples is a key part of resetting the relationship.

In practice, our participation in decision-making is limited. To meet human rights standards we should be involved in all major decisions affecting us, including on issues around land, development, culture, housing, health, education, employment, child welfare, social services and criminal justice.

Active participation in decision-making through our own institutions is reflected in the Declaration and we can lobby the government at all levels to establish a system to ensure this happens.

Photo: Andy Gargett

## Consent and partnership (article 19)

Governments should work with our peoples through a representative body to obtain our free, prior and informed consent\* before making laws or policies that affect us.



### Talking rights

#### Consultation and good governance

The Special Rapporteur\* has noted that involving us in decision-making creates better projects and programs:

Without the buy-in of indigenous peoples, through consultation, at the earliest stages of the development of Government initiatives, the effectiveness of Government programmes, even those that are intended to specifically benefit indigenous peoples, can be crippled at the outset. Invariably, it appears that a lack of adequate consultation leads to conflictive situations, with indigenous expressions of anger and mistrust, which, in some cases, have spiralled into violence.<sup>53</sup>



### Know your rights

#### Economic development and our priorities

The non-Indigenous idea of development is often focused on economic advancement and 'modernisation'. Across the world this has led to the destruction of many Indigenous peoples' cultural, political, economic and social structures.<sup>55</sup>

The Declaration is clear that as part of our right to self-determination we have the right to determine our own development priorities. This includes the development of political, social and cultural programs as well as economic development.

In developing economic opportunities we have the right to choose what economic activities to undertake. For example, we are able to engage in the contemporary market economy whilst fostering our culture through contracting out services in areas such as cultural heritage, cultural awareness training and land and sea management activities.

Development as set out in the Declaration is broader than creating individual wealth and economic markets. It is about empowering a group of people to be free to decide how to develop, including creating culturally appropriate economic activities.

## Development (article 20 and 23)

We have the right to decide our development priorities. This includes maintaining and developing political, economic and social institutions.

We have the right to choose our basic needs for survival.

We have the right to pursue our own economic activities. This includes both traditional and modern economic activity.

We have the right to participate in the development and implementation of health, housing, economic and social programs.

As far as possible development programs are to be controlled and administered by our own organisations.

Where our peoples are deprived of this right they should be fairly compensated.



### Know your rights

#### Development

Exercising our rights to development would mean we are actively involved in the design, development, implementation, monitoring and evaluation of all areas of policy that affects us. Our involvement acknowledges that we are the best people to decide how to address the issues faced by our communities.<sup>54</sup>





## Rights in action

### Commercial fishing rights

Gunditjmara people have been farming eels for food and trade for almost 8000 years in the far southwest of Victoria.

In 2007, the Gunditjmara people and the Victorian Government agreed to a native title consent determination which included the Gunditjmara's right to use the natural resources of their country, including the use of fish and eels. The only limitation in the use of these resources is that it is done so consistently with Australian law.<sup>56</sup>

The Gunditjmara people have the opportunity to develop economic industries that are consistent with their traditional rights and ownership.

Importantly, this economic development is chosen by the Gunditjmara people. The Gunditjmara have started to develop these economic opportunities through tourism and fishing industries.

This is an example of how economic development can reinforce the cultural identity of an Aboriginal or Torres Strait Islander clan or nation. This economic development also facilitates the Gunditjmara's ability to undertake their cultural responsibilities to their country.<sup>57</sup>



Basket weaving, Salu Baragud.  
Photo: Rebecca Murphy, TSRA

### Improved living conditions (article 21)

We have the right to the improvement of our economic and social conditions without discrimination. This includes improved standards of education, employment, housing, basic services (i.e. sanitation), health and social security.

The government is to take steps to make sure this happens. This may include requiring the government to take special measures.\*



## Know your rights

### Special measures\*

A special measure\* is an action that gives members of a disadvantaged group access to a benefit that is intended to promote equality. Some groups do not enjoy human rights equally with others. Special measures\* allow such groups to be treated differently for the purpose of their advancement.<sup>58</sup>

To be a special measure\* under the *International Convention on the Elimination of All Forms of Racial Discrimination* an action must meet all of the following criteria. It must:

1. provide a **benefit** to some or all of the members of a group of people
2. have the **sole purpose** of helping that group of people enjoy their rights without discrimination
3. be **necessary** to achieve the purpose
4. **stop** as soon as the purpose has been achieved.<sup>59</sup>

If a special measure\* is rights limiting it should be consistent with the principle of free prior and informed consent.<sup>\*60</sup>

Many of our peoples live in disadvantaged conditions. Governments have obligations to take special measures\* to address this disadvantage. If the actions by governments do not meet the criteria set out above they cannot be a special measure.\*

Alcohol restrictions can be a special measure.\* To do so, they must meet the above criteria and be designed on a case-by-case basis considering the wishes and needs of the relevant community. Blanket alcohol bans across a state or territory would not be considered a special measure.\*<sup>61</sup>



## Special needs (articles 21 and 22)

Some members of our communities will require extra support to have their rights realised and needs met. This includes elders, women, children and people with disabilities.

The government is to work with us to ensure that women and children are protected against all violence and discrimination.



### Know your rights

#### Discrimination and the protection of women and children

Violence against our women and children is an issue of concern to Aboriginal and Torres Strait Islander communities.

Governments have obligations to take actions to prevent and protect our women and children from violence and discrimination.

Laws and policies developed to protect women and children should not at the same time discriminate against Aboriginal and Torres Strait Islander peoples. That is why governments must work with us in meeting these obligations.



### Using your rights

#### Health and the homelands

Many homeland communities do not have access to adequate health care services. However, research shows that living on homeland communities can result in better health outcomes for our people as a result of:

- increased physical activity
- better diet and reduced availability of alcohol
- connection to culture and country
- being in control of life through self-determination practices.<sup>62</sup>

Research in the homeland community of Utopia has shown significant health benefits for these residents compared to other Aboriginal people in Central Australia living in centralised communities. These benefits include having lower mortality rates and lower incidents of diabetes, heart disease and hospitalisation.<sup>63</sup>

Our homelands need government investment in basic infrastructure like housing, electricity, water, sanitation and health services. The health benefits from living on our homelands are being undermined by a lack of investment in these facilities.

We have the right to the same level of health care and health infrastructure as other people in Australia regardless of where we live. Health care should build upon the benefits associated with living on homelands. We can lobby the government to provide adequate investment into our homelands as part of our right to health.<sup>64</sup>

## Health and traditional medicines (article 24)

We have the right to our traditional medicines and health practices. The plants, animals and other resources used in health practices are to be protected.

We have the right to access the same standard of physical and mental health and social services, as other people in Australia.

Steps are to be taken by the government to see this happen.



### Rights in action

#### Close The Gap<sup>65</sup>

In 2005, the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Social Justice Report* called on Australian governments to commit to achieving health and life expectation equality between our people and non-Indigenous Australians within a generation. This was based on our right to health and our right to enjoy the same opportunities to be as healthy as other Australians.<sup>66</sup>

This led to the formation of a coalition of more than 40 Aboriginal and Torres Strait Islander and non-Indigenous peak health bodies and non-government organisations to progress what became known as the Close the Gap Campaign for Indigenous health equality. This was the first time these organisations have worked together to achieve Aboriginal and Torres Strait Islander health equality. The work of this coalition involves setting health equality targets, raising awareness and lobbying government to achieve that end.

In 2008, the Australian Government, the federal opposition, the main Indigenous and non-Indigenous peak health bodies and the Social Justice Commissioner signed the 'Close the Gap Statement of Intent' which committed all parties to a national plan for achieving health equality by 2030 supported by a partnership between Australian governments and our peoples.

This was the first time the Australian Government had made a commitment to achieve health equality for our people in a specified time frame. It also committed the parties to ensuring our peoples could fully participate in all aspects of their health needs. The Prime Minister committed to reporting to Parliament on the Australian Government's progress against these commitments each year.

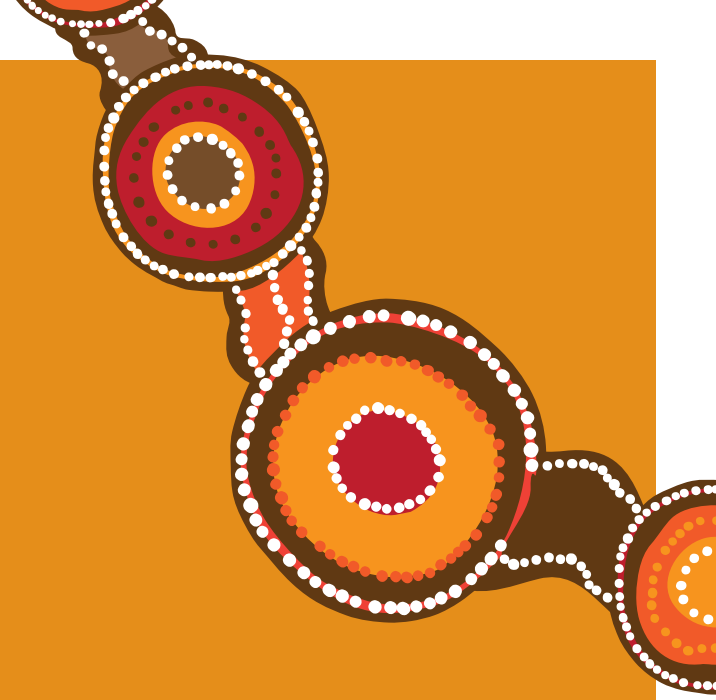
The Close the Gap campaign is a great example of how a human rights-based approach to a problem can influence government policy. However, work still needs to be done. The challenge is to build on this commitment and develop a national plan for our health that is developed in partnership with our peoples and ultimately to achieve health equality within the set timeframe.<sup>67</sup>



9

# Rights to country, resources and our knowledge

Rights to country, resources and to our knowledge are important to our peoples because they form major parts of our identities and cultures.





“ The land is my backbone... I only stand straight, happy, proud and not ashamed about my colour because I still have land. I can paint, dance, create and sing as my ancestors did before me.

I think of land as the history of my nation. It tells of how we came into being and what system we must live. My great ancestors who live in the times of history, planned everything that we practise now. The law of history says that we must not take land, fight over land, steal land, give land and so on. My land is mine only because I came in spirit from that land, and so did my ancestors of the same land ... My land, is my foundation (Galarrwuy Yunupingu).<sup>68</sup>

”



## Know your rights

### Rights to country

The Declaration recognises and protects our rights to country. This includes rights to:

- lands and territories
- waters and coastal seas
- resources of the lands, territories and waters (including animals, vegetation, minerals, etc).

Any reference to our rights to country in this guide incorporates all of these aspects of country.

### Rights to country (articles 25 and 26)

We have rights to country that we have traditionally owned, occupied or otherwise used or acquired. This includes:

- rights to maintain and strengthen our spiritual relationship with country
- rights to uphold our responsibilities to our future generations
- rights to control, own, develop and use our country that we possess
- other rights to country.



## Rights in action

### Recognition of land rights

For many years, leaders from all parts of Australia have been involved in the struggle to see our rights to country recognised.

As a result of this movement, we now have land rights legislation in all states and territories of Australia, except Western Australia.<sup>69</sup> In 1992, the High Court of Australia recognised the native title rights of the Meriam people of the Torres Strait.<sup>70</sup> In 1993 the federal parliament passed native title legislation.

These forms of legal recognition give some effect to our rights to country. This shows when the right systems are in place, you can put your rights into action.





## Know your rights

### Connection to country

Human rights law protects the right to property. It also protects the right to be free from discrimination. This means that our connection to country, under our laws, is to be protected even though we might not think about our country in the same way that non-Indigenous people think about rights to property.

The non-Indigenous view is that individuals own property. This doesn't always reflect our relationship to country. For example, many Indigenous peoples are connected to their country as a group (such as a nation, language group or community), and not as individuals. Our connection to country also goes beyond a physical or economic connection. It includes a spiritual connection. The right to be free from discrimination means that our rights to property, under our laws, should be protected.

### Recognising our rights to country (articles 26 and 27)

Governments should recognise and legally protect our rights to country.

Governments should establish a process to decide our claims to country and to recognise our rights. The process should:

- be fair, open, independent and unbiased
- give due recognition to our laws, traditions, customs and connection to country.

We have the right to participate in the development and operation of this process.



Photo: Katie Kiss



## Know your rights

### 'Occupied or otherwise used or acquired'

Our rights to country extend to country that we have 'otherwise used or acquired'. This may include country that we have rights in due to land grants or land rights laws or lands that have been purchased by the Indigenous Land Corporation. This may also recognise traditional law and custom about the shared access and use of country by neighbouring groups.



Eddie Mabo on Mer Island.  
Photo: National Archives of Australia: A6180,9/3/94/23

**Our connection to country also goes beyond a physical or economic connection. It includes a spiritual connection.**



## Using your rights

### Recognition of our rights to country

The native title system is a process set up by the Australian Government to recognise our rights to country.

The Special Rapporteur\* is concerned about the operation of this system. For example, he noted that the strict requirement of continuous connection is inconsistent with the Declaration. The Special Rapporteur\* suggested the native title system be reviewed to align it with international standards.<sup>71</sup>

The standards in the Declaration can be used to guide any reform of the native title system to ensure that it operates in a fair manner, gives due recognition to our laws, customs, connection to country and adequately acknowledges the impacts of dispossession.

## Setting things right - compensation (article 28)

Where our peoples no longer possess their country because it was taken without free, prior and informed consent\* they have the right to be compensated. This could mean:

- where possible, the return of traditionally owned country
- alternatively, fair compensation including other lands, money, development opportunities such as employment or other benefits that are agreed to.

## Caring for country and the environment (article 29)

Our peoples have the right to the conservation and protection of the environment on their country.

Governments should help to protect the environment.



### Using your rights

#### Compensation for lost country

Under the *Native Title Act 1993* (Cth), traditional owners may be entitled to compensation when a government act affects or extinguishes native title.

This system is complicated and has many problems. The Special Rapporteur\* raised concerns that 'compensation to indigenous peoples whose rights have been extinguished is extremely difficult' under the native title system. This is a particular problem in some urban areas where native title has largely been extinguished. The Special Rapporteur\* also said that 'the extinguishment of indigenous rights in land by unilateral uncompensated acts' is 'incompatible with the Declaration, as well as with other international instruments\*'.<sup>72</sup>

We can use the rights affirmed in the Declaration to lobby for a system that works to ensure all of our people who have lost their lands without their free, prior and informed consent\* are in some way fairly compensated.



### Rights in action

#### Caring for country and the environment

The Declaration is clear that our peoples have the right to the conservation and protection of the environment on our country.

One way that we can participate in caring for country is through the joint management agreements of National Parks. The Booderee National Park and Botanic Gardens in Jervis Bay is jointly managed by the Wreck Bay Aboriginal Community Council and the federal Department of the Environment, Water, Heritage and the Arts. Decisions about the area are made by a Board of Management which is mainly made up of traditional owners. The Wreck Bay Aboriginal Community and the Australian Government work together cooperatively to promote caring for the country, traditional knowledge and skills.<sup>73</sup>



Photo: Andy Gargett



### Using your rights

#### Torres Strait and climate change<sup>74</sup>

All communities across Australia's different climatic zones, from the tropical to arid regions, will be affected by climate change. Climate change is of particular concern for the people of the Torres Strait Islands.

The Torres Strait Islands were the focus of the first court case that recognised native title in Australia. This case found that Australia was not an empty land (*terra nullius*) at the time of colonisation.<sup>75</sup> Yet these hard-fought rights to land are at risk because of climate change. The Intergovernmental Panel on Climate Change predicts that rising sea levels will place small islands at risk.<sup>76</sup> This may threaten the lives and cultures of Torres Strait Islander people.

Governments should address the immediate effects of climate change on Torres Strait Islander people. And, importantly, Aboriginal and Torres Strait Islander peoples should be able to be involved in the development of policies and laws that respond to the threat of climate change. Our people can use the Declaration as a tool to put pressure on governments to recognise our rights to participate in making decisions about these issues.



Saibai Island.  
Photos: David Hanslow

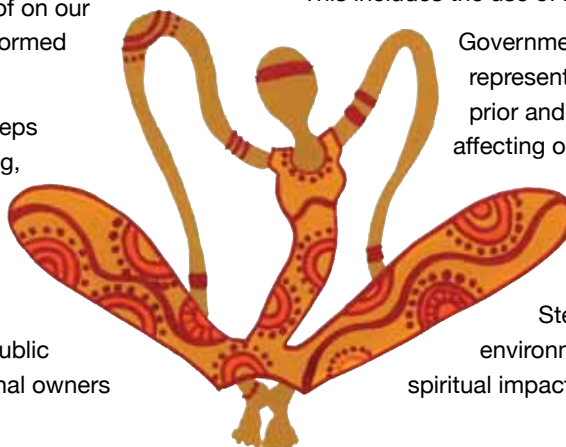
## Hazardous materials and military activities (articles 29 and 30)

Governments should take steps to ensure that hazardous materials are not stored or disposed of on our country without our free, prior and informed consent.\*

Governments should take effective steps to ensure that programs for monitoring, maintaining and restoring the health of people affected by hazardous materials are in place.

Military activities are not to be carried out on our country unless there is a public interest to justify them, or the traditional owners freely agree to it or request it.

Governments should consult with us before these activities take place.



## Development of country (article 32)

We have the right to determine how our country is to be developed and to set the priorities for any development. This includes the use of resources.

Governments should work with our representative bodies to obtain our free, prior and informed consent\* before projects affecting our country are started.

A fair process that provides for compensation for projects on our country should be established.

Steps should be taken to reduce the environmental, economic, social, cultural or spiritual impact of projects on our country.



## Using your rights

### Community development

Many of our communities are in desperate need of funding for housing and infrastructure. To obtain access to these funds some of these communities are required to sign long-term leases (of at least 40 years) over their lands to the Australian Government. These leases remove some of our decision-making power over our country.<sup>77</sup>

The Declaration maps out an alternative way of providing services whilst ensuring that our peoples retain decision-making powers. To be consistent with the Declaration the following criteria must be met:

- our relationship to country is to be respected
- economic social and cultural development should be in the manner chosen by the affected community
- we are to be involved in every stage of any proposal or project
- we are to be provided with detailed and clear information about these projects
- we are to retain control and decision-making powers over our country.

This could be achieved by negotiating agreements, such as Indigenous Land Use Agreements provided for under the *Native Title Act 1993* (Cth). To reach such an agreement traditional owners negotiate with governments and others about the use and management of their country.



Photo: Fabienne Balsamo

## Cultural heritage and traditional knowledge (article 31)

We have the right to maintain, control, protect and develop our cultural heritage, traditional knowledge, sciences and technologies.

This includes:

- resources like human materials or seeds and medicines
- knowledge of plants and animals, oral traditions, literatures, designs, traditional sports, and visual and performing arts
- sacred sites and cultural artefacts.

The government should work with us to develop measures that ensure these rights are recognised and protected.



## Using your rights

### Cultural heritage and traditional knowledge

Under Australian law, our cultural heritage and traditional knowledge are partly protected by various legal regimes including intellectual property, native title, cultural heritage and environmental laws. These regimes try to fit our systems of knowledge and understanding into Western legal concepts. This results in a partial and inadequate protection of our cultural heritage and traditional knowledge.<sup>78</sup>

We can lobby governments to work with us to develop a legal framework that adequately protects our heritage and knowledge.<sup>79</sup> These laws should protect and control the use of our heritage and knowledge and be consistent with the principle of free, prior and informed consent.\*





## Rights in action

### Preserving traditional knowledge

We can take our own action to ensure our communities can protect their heritage and knowledge.

For example, traditional owners in Cape York have created the Traditional Knowledge Revival Pathways program.<sup>80</sup> This program has been developed at a local level to record, preserve and develop cultural heritage and traditional knowledge. The project includes:

- passing on knowledge from elders to youth through traditional methods
- digitally recording traditional knowledge
- incorporating traditional knowledge into land management practices.

At a national level, the National Indigenous Knowledge Centre is currently being set up to strengthen and support culture and cultural knowledge.<sup>81</sup>



## Using your rights

### Access to biological resources

Each government in Australia has its own regime to manage access to biological resources that are in its jurisdiction.<sup>82</sup> Our peoples have a limited role in this process and no real decision-making powers. Our traditional knowledge is directly linked to the management and protection of biological resources.

We can lobby governments to work with us to develop new access and benefit-sharing regimes to biological and other resources. To be consistent with the Declaration, we would play an active role in the development of a regime that recognises our rights over natural, biological and genetic resources and our traditional knowledge about them. Recognition would include our rights to determine who can use these resources and under what conditions (consistent with the principle of free, prior and informed consent)\*.



Photo: Fabienne Balsamo



# 10

## Self- governance

Self-governance expands on how the rights to self-determination and self-government operate.





“We have the right to have treaties and agreements that have been made with governments respected and recognised.”

## Determining our identities (article 33)

As a group we have the right to decide our own identities.

We have the right to determine the membership and structure of our groups and organisations.

This does not mean that you cannot also be an Australian citizen.



### Rights in action

#### Determining our membership

The Declaration recognises that we have the right to control the membership of our groups. This means that we are able to determine the requirements to identify as an Aboriginal or Torres Strait Islander.

In Australia, the accepted process for establishing Aboriginal or Torres Strait Islander identity is that a person has to:

- be of Aboriginal or Torres Strait Islander descent
- identify as an Aboriginal or Torres Strait Islander
- be recognised and accepted by the relevant Aboriginal and Torres Strait Islander community as an Aboriginal or Torres Strait Islander.

## Our laws, customs and traditions (article 34)

We have the right to develop and practice our own laws, legal systems, customs and traditions.

This must be in accordance with international human rights standards.



### Know your rights

#### International human rights standards

The phrase 'in accordance with international human rights standards' means that in exercising your rights you cannot violate another person's human rights. This recognises that all rights are related and equal and no right is more important than another.



### Know your rights

#### The freedom to choose

We have the right to choose how we identify ourselves. Part of that right means the freedom to express our group identity. We are not excluded from mainstream society because we embrace our cultural identities. We also have the right to have multiple identities.

For example, if I identify with my mother's traditional owner group for a native title claim, this should not exclude me from also identifying with my father's people more generally. We can also identify as an Aboriginal or Torres Strait Islander person as well as identifying as an Australian citizen.



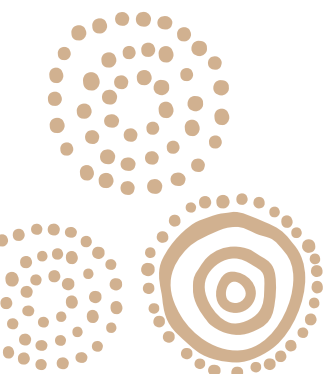
The Australian delegation to the Permanent Forum on Indigenous Issues, 9th Session, 2010.



### Using your rights

#### Customary law

In many parts of Australia, Aboriginal people still exercise customary law and Torres Strait Islanders still exercise Ailan Kastom. Many of us juggle the obligations of customary law and traditions with the non-Indigenous legal system and society. The interaction of these legal systems with the Australian legal system has been debated for years.<sup>83</sup> The Declaration can be used to guide the recognition and application of our customary law.





## Responsibilities (article 35)

As a group, our communities can determine the responsibilities of individuals within that community and what those responsibilities are to their communities.

## Beyond borders (article 36)

Indigenous peoples have the right to maintain relationships and undertake activities with members of their own communities as well as with members from other communities.

This right is particularly important for Indigenous peoples separated by international borders.

Governments should work with Indigenous peoples to implement this right.



## Rights in action

### International participation at the UN

Each year the Australian Government helps fund a small number of Aboriginal and Torres Strait Islander people to participate in UN meetings that relate to us (specifically the Permanent Forum on Indigenous Issues\* and the Expert Mechanism on the Rights of Indigenous Peoples).\*

Participating in these meetings helps our people to advance our causes in the international arena. They also provide an opportunity to develop relationships and learn from the experiences of other Indigenous peoples.

## Treaties and agreements (article 37)

We have the right to have treaties\* and agreements that have been made with governments respected and recognised.

The Declaration can be used to strengthen our rights, but cannot take away our rights that are set out in other treaties\* or agreements.



## Using your rights

### Treaties\* and agreements

Australia was colonised without the signing of any treaties\* and our lands were occupied without our consent. This has damaged the recognition of our group identities, culture and law. For many years our peoples have called on the Australian Government to enter into a treaty\* with us.<sup>84</sup>

The Declaration has again opened the debate about true reconciliation between our peoples and the wider Australian public. The signing of treaties\* and other agreements between our peoples and governments could form part of a new relationship based on mutual respect and equality. Agreement-making is one way that the rights contained in the Declaration can be implemented.

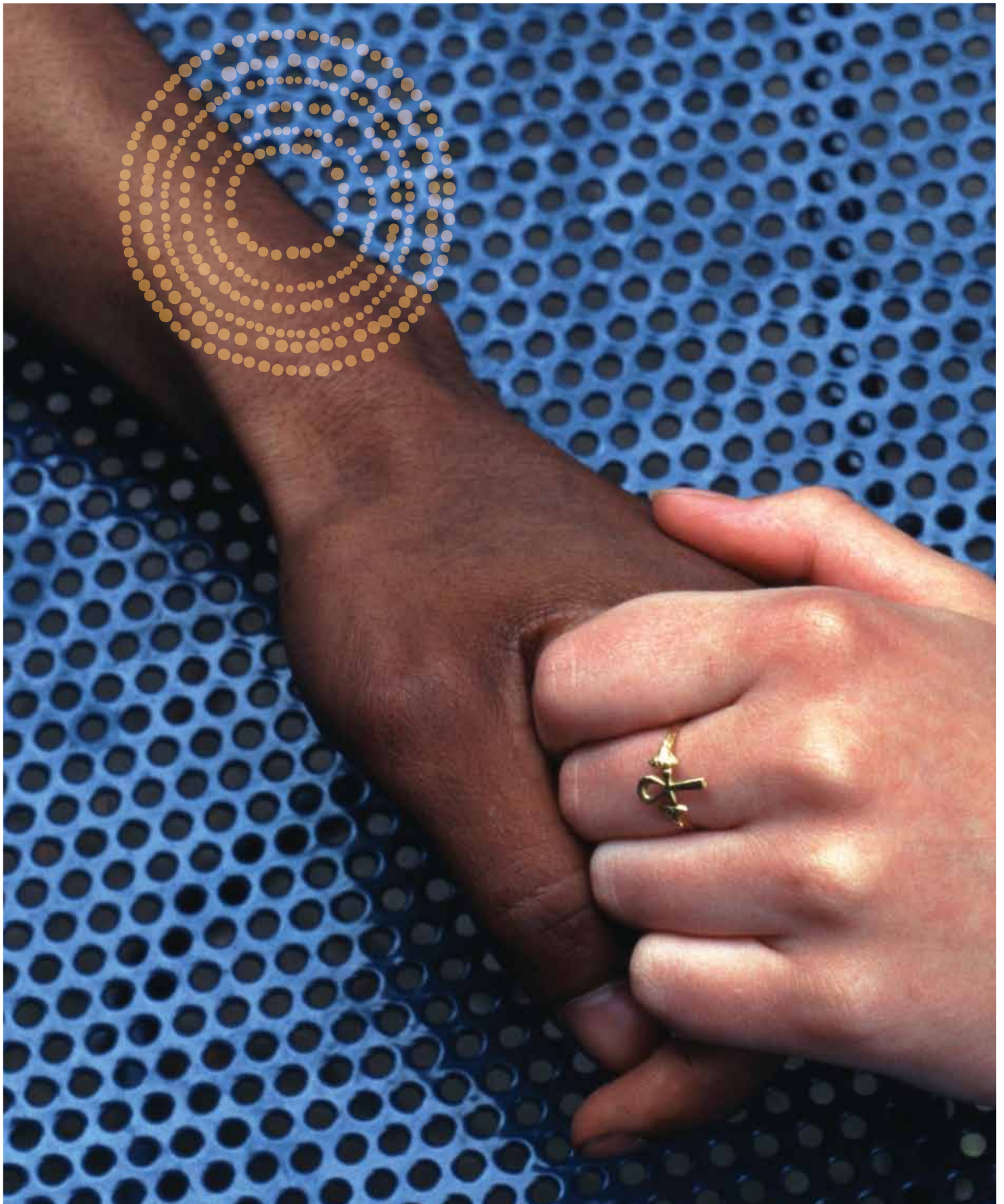


# 11

# Implementing the Declaration

Indigenous peoples played an active role in the drafting and adoption of the Declaration. Indigenous peoples are now critical to ensure the Declaration is implemented into domestic law and policy.

The more that Indigenous peoples use the Declaration and work with governments to apply these standards, the more the standards will become the normal way of working with Indigenous communities.



“The Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration.”  
Special Rapporteur



## Rights in action

### Indigenous Human Rights Network Australia

The Indigenous Human Rights Network Australia (IHRNA) is a network of people who advocate and promote the awareness of Indigenous human rights in Australia. Members come together to facilitate access to information, expert advice and the sharing of best practice solutions for Indigenous peoples from a human rights approach.

Becoming a member of IHRNA and sharing information and experiences is a practical way of putting rights into action. IHRNA can provide members with the information, skills and support to more effectively undertake human rights advocacy work.

For more information on IHRNA and membership see <http://www.ihrna.info/> or contact [coordinator@ihrna.info](mailto:coordinator@ihrna.info).



## Using your rights

### The Declaration and Australia

The reality for many Aboriginal and Torres Strait Islander people is that there is a gap between human rights standards and their daily experiences. This gap can only be addressed through a program of action.

Articles 38 and 42 use strong language that commits governments to promote respect for the rights in the Declaration. These articles also oblige governments to take all necessary steps, including changing the law, to seek the full realisation of these rights.

Australia is a signatory to 7 core human rights treaties\* (see Part 1 of this guide). The Declaration should inform how the rights in these treaties\* apply to Aboriginal and Torres Strait Islander peoples.<sup>87</sup>

### National measures (articles 38 and 42)

Governments should work with our peoples to take steps, including through law reform, to achieve the goals of the Declaration.

Governments should promote the Declaration and the full application of all of the rights in the Declaration.

Governments should take action to make sure that these rights are exercised in practice.



## Talking rights

### Review of laws and policies

The Special Rapporteur\* visited Australia in August 2009. He reported that despite some recent advances, Australia's legal and policy landscape must be reformed. He recommended:

The Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration.

The Government should pursue constitutional or other effective legal recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples in a manner that would provide long-term security for these rights.<sup>85</sup>

The Special Rapporteur\* also recommended to the Expert Mechanism on the Rights of Indigenous Peoples\* that:

States should engage in comprehensive reviews of their existing legislation and administrative programs to identify where they may be incompatible with the Declaration. This would include a review of all laws and programs touching upon indigenous peoples' rights and interests, including those related to natural resource development, land, education, administration of justice and other areas. On the basis of such review necessary legal and programmatic reforms should be developed and implemented, in consultation with indigenous peoples.<sup>86</sup>

We can lobby all levels of government to implement the recommendations of the Special Rapporteur\*, and the Indigenous-specific UN bodies.



Special Rapporteur James Anaya visiting Yuendumu.  
Photo: Maia Campbell

### Access to funding and other assistance (article 39)

We have the right to financial and technical assistance from governments, and through international cooperation, to ensure we can enjoy the rights set out in the Declaration.



## Using your rights

### Adequate funding for our organisations

Aboriginal and Torres Strait Islander Legal Services play a key role in helping us realise our rights. However, these bodies are significantly underfunded.<sup>88</sup> This underfunding means that often our people cannot access adequate legal services. For example, the Aboriginal Legal Service of Western Australia (Inc.) has noted some of their lawyers are seeing up to 90 clients per day.<sup>89</sup>

In campaigning to have these bodies properly funded, we can highlight to governments that this underfunding has human rights implications and action must be taken to address it. The Aboriginal Legal Rights Movement Inc has also actively lobbied governments to increase funding for Aboriginal and Torres Strait Islander Legal Services, and using human rights as a lobbying tool.<sup>90</sup>

Many of the programs delivered across Australia that help us realise our rights are funded on short-term or one-off funding grants. Without sustainable funding these programs will disappear. One way to achieve the goals of the Declaration is for governments to work with our people to create flexible and sustainable funding processes.

### Dispute resolution and effective remedies (article 40)

Indigenous peoples have the right to a fair process to resolve disputes and to provide effective remedies for violations of their rights.

This process should consider our customs and legal systems and international human rights law.



## Rights in action

### Australian Human Rights Commission and the Aboriginal and Torres Strait Islander Social Justice Commissioner

The Australian Human Rights (Commission) and the state and territory anti-discrimination bodies play an important role in protecting and promoting the rights of all people in Australia.

The Commission's work includes investigating and conciliating complaints of discrimination and breaches of human rights.

The Aboriginal and Torres Strait Islander Social Justice Commissioner is a member of the Commission. The Social Justice Commissioner advocates for the recognition and protection of Indigenous peoples' rights in Australia. As part of this role, the Social Justice

Commissioner monitors and reports to Parliament annually on the exercise and enjoyment of human rights of Aboriginal and Torres Strait Islander peoples.

The Special Rapporteur\* considers the Social Justice Commissioner to be 'an exceptional model' for advancing the rights of Indigenous peoples.<sup>91</sup>



## Using your rights

### A national implementation strategy

To give full effect to the Declaration, the Australian Government should work with Aboriginal and Torres Strait Islander peoples to develop a national implementation strategy on the Declaration. This may include a protocol that ensures our active participation in decision-making on all programs, policies and legislation that affect us and a framework to address disputes over our rights and the consequences of past wrongs.

An implementation strategy is crucial to a positive relationship based on mutual respect and trust between our peoples and the Australian Government.

### International cooperation and promotion of the Declaration (articles 41 and 42)

The UN and other international bodies are to provide financial and other assistance to give effect to the rights in the Declaration.

UN bodies are to promote respect for the Declaration and follow up on its implementation. The Permanent Forum on Indigenous Issues\* and other specialised agencies like the Expert Mechanism on the Rights of Indigenous Peoples\* have a special role to play.

The UN is to set up ways for Indigenous peoples to participate in issues affecting them.



## Rights in action

### The United Nations and Indigenous peoples

For many years Indigenous peoples were excluded from the UN. Since the 1970s this has changed.

There are now a number of different bodies that Indigenous peoples across the globe can participate in that deal with issues that affect Indigenous peoples.

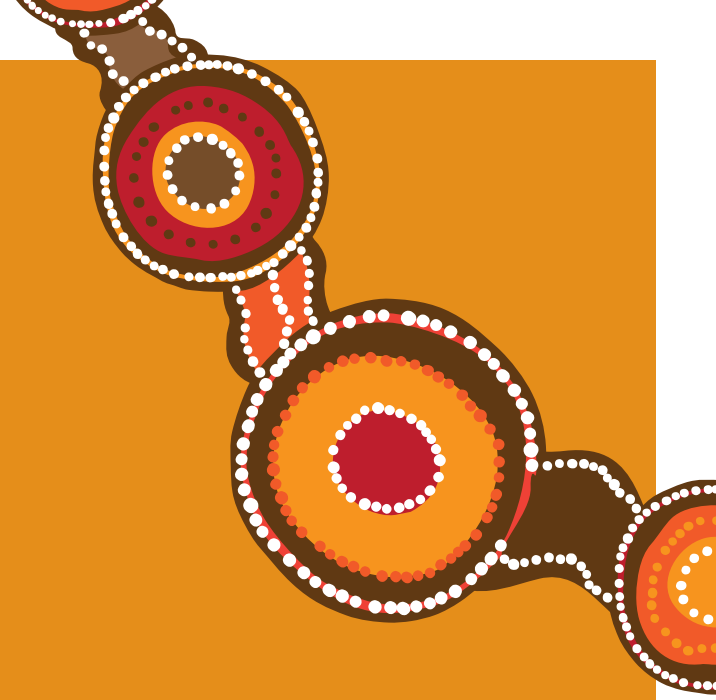
These bodies ensure that Indigenous peoples have a global voice to raise concerns and issues about human rights. They also serve to put political pressure on the governments of the world to meet the standards of the Declaration.

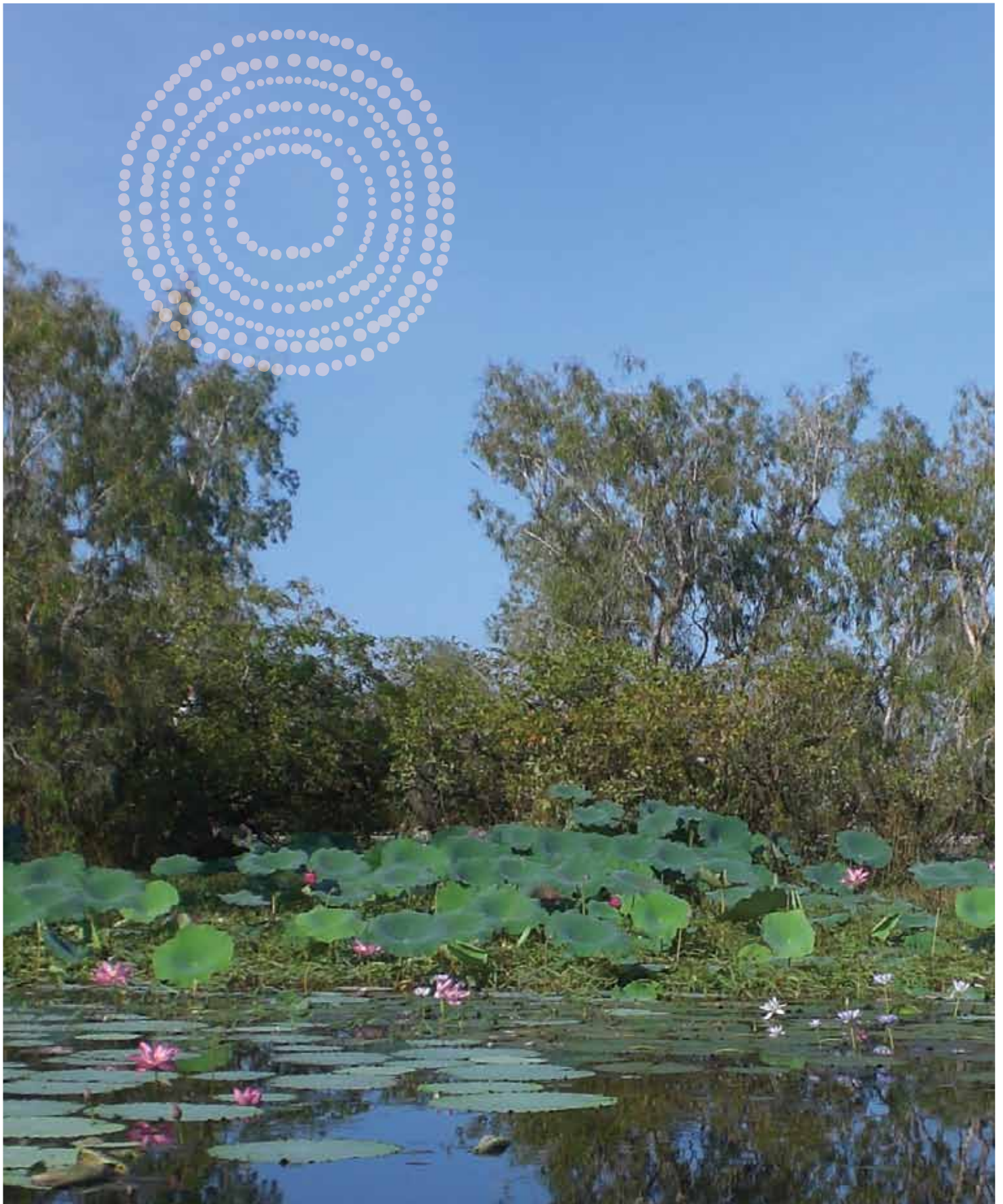


# 12

# Interpreting the Declaration

The Declaration is a positive document that maps out a path for Indigenous peoples to be free from discrimination and secure in their identities and life choices.





“ Create an Australia where our rights and cultural differences are valued...” ”

## Survival, dignity and well-being (article 43)

The rights in the Declaration are the minimum standards to ensure the survival, dignity and well-being of Indigenous peoples.



### Using your rights

#### The standards

The Declaration was adopted by most of the world's governments. By supporting the Declaration, governments have publicly acknowledged that the rights in the Declaration are the minimum standards that must be met to ensure the continued survival, dignity and well-being of Indigenous peoples.

When lobbying for the recognition of any right contained in the Declaration, or for the implementation of the Declaration itself, we can increase the political pressure by referring to article 43.

## Other rights are not diminished (article 45)

Nothing in the Declaration affects other rights that Indigenous people have either now or in the future.

## How to interpret the Declaration (article 46)

Nothing in the Declaration allows actions that are against the Charter of the UN.\*

Nothing in the Declaration, allows or encourages any action that might damage the territorial integrity\* or political unity of countries.

In exercising the rights in the Declaration, the human rights of all people should be respected.

The rights in the Declaration can only be limited\* by a law that meets international human rights standards. The law should be non-discriminatory, necessary to secure the rights of others and help ensure the basic features of a democratic society.

All of the  
rights in the  
Declaration  
apply equally  
to men and  
women.

## Men and women are equal (article 44)

All of the rights in the Declaration apply equally to men and women.



### Rights in action

#### National Congress of Australia's First Peoples

The national representative body, the National Congress of Australia's First Peoples, puts gender equality into action. The Congress is structured to ensure equal representation of men and women on the National Executive and the Ethics Council.<sup>92</sup> In 2010, the Sex Discrimination Commissioner said the National Congress 'sets a new benchmark for any public organisation in the country'.<sup>93</sup>



### Know your rights

#### Territorial integrity\*

Territorial integrity\* protects countries and governments from political division that could lead to the creation of new countries.<sup>94</sup> The reference to territorial integrity\* was inserted into the Declaration in the final stages of negotiation to address concerns that self-determination might break up countries and create political division.<sup>95</sup>

It is clear that the Declaration, in affirming Indigenous peoples collective right to self-determination, is not an instrument\* of division. Rather, the Declaration sets the standards needed for Indigenous peoples to be able to effectively engage in a relationship with governments based on mutual respect.



Gangari Community Artwork - close up.





## Know your rights

### Limitations\*

Article 46 of the Declaration acknowledges that the rights contained within it can be limited.\* However, any limitation\* must meet all of the following criteria:

1. be clearly stated in law
2. the law should meet international human rights standards
3. be non-discriminatory
4. be necessary to ensure other people can realise their rights
5. must help ensure the basic features of a democratic society.

These criteria set a high threshold for a limitation\* of a right. One of the few examples of where a limitation\* is permitted is where a government proclaims a public emergency which threatens the life of the nation.<sup>96</sup>

### The interpretation of the rights in the Declaration are to be based on:

- justice (fairness)
- democracy (equality, inclusion and participation)
- respect for human rights
- equality and non-discrimination
- good governance (leadership, accountability and transparency)
- good faith (honesty and integrity).



Aboriginal Resource and Development Service translators, Bulkanhawuy Dhamarrandji and Marilyn McLellan. Photo: Aboriginal Resource and Development Service



## Using your rights

### A cooperative relationship

The Declaration is a positive document that maps out a path for Indigenous peoples to be free from discrimination and secure in their identities and life choices. Interpreting the Declaration in accordance with principles like justice, democracy and non-discrimination will ensure that the realisation of the rights in the Declaration contribute to a harmonious Australia.

The Declaration provides guidance for better relationships between our peoples, governments and the wider Australian population. It maps out the key signposts to create an Australia where our rights and cultural differences are valued, protected and seen as a positive aspect to Australian culture and society.





13

# Using the Declaration for change





“ I think people should use the Declaration at every opportunity. If you are writing to government quote articles of the Declaration. If you’re involved in health quote the health articles, if you are involved in native title or land rights quote the lands, territories and resources articles, if you are in education quote the articles about education and language. If you are on about political organisation talk about self-determination and our right to be autonomous and govern ourselves. For any aspect of Aboriginal or Torres Strait Islander life there is something in the Declaration that you can use and utilise to reinforce your arguments and what you and your mob are trying to do (Mick Dodson).<sup>97</sup> ”

## Using the Declaration for Change

Using and promoting the Declaration can help bring about positive change. One of the best ways to do this is by using the language of rights when talking about the issues in our communities. Using the Declaration reminds governments at all levels of the rights we are entitled to. We can also use the Declaration in other ways, including:

- our organisations can adopt the standards in the Declaration in policy statements or guidelines
- it can be used in law reform submissions to governments
- it can be referred in letters to those who represent us in all levels of government and to government officials
- it can be referred to in court matters
- it can be used in media campaigns
- it can be used to strengthen and guide campaigns about issues reflected in the Declaration
- to campaign for constitutional recognition of our rights – both at the national level, and also in recognising the Declaration in the constitutions of our institutions and organisations.



## How to make a complaint

Not all of the rights in the Declaration are protected under Australian law. When a right in the Declaration is violated, there is not always a remedy available.

If you feel you have been discriminated against, or your human rights have been violated, contact the Australian Human Rights Commission. You can call the Commission on **1300 656 419** (cost of a local call) and staff can:

- talk with you about whether what happened to you may be covered by the law
- explain how you can make a complaint about what happened
- explain how we will deal with your complaint and what might happen as a result of your complaint
- give you information about other people that may be able to help you if we cannot.

You can also get in touch with the Commission by email [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au) or by **SMS 0488 744 487 (0488 RIGHTS)**

**More information about making a complaint is available at [http://www.humanrights.gov.au/complaints\\_information/index.html](http://www.humanrights.gov.au/complaints_information/index.html).**



## Using your rights

### Referring to the Declaration

We can use the Declaration in any work we are doing. When writing submissions, letters or in the media the best way to refer to the Declaration is to quote the relevant article. The following is an example:

*Article 18 of the UN Declaration on the Rights of Indigenous Peoples outlines the right of Aboriginal and Torres Strait Islander peoples to actively participate in decisions about matters that affect them. It states:*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

To ensure consistency with this standard, an effective system must be established to actively engage Aboriginal and Torres Strait Islander peoples in the decision-making process.

## Indigenous Peoples' Organisations Network of Australia

The Indigenous Peoples' Organisations Network of Australia (IPO) is an affiliation of organisations and individuals who are involved in the human rights protection of Aboriginal and Torres Strait Islander peoples at the international level. The IPO Network provides an opportunity to address local and domestic concerns through the international human rights system.

**For more information, or to join the IPO Network, contact the Social Justice Unit at the Australian Human Rights Commission at [socialjustice@humanrights.gov.au](mailto:socialjustice@humanrights.gov.au).**



## Notes

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