

# Submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples

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Country Visit to Australia (2026)  
Office of the United Nations High Commissioner for Human Rights (OHCHR)

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<sup>1</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Call for Input: Country Visit to Australia.” <https://www.ohchr.org/en/calls-for-input/2026/call-input-country-visit-australia>  
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## 1. Introduction

Treaty Council Worldwide (the Treaty Council), the Gudang/Yadhaykenu Tribal Governing Council Indigenous Corporation (GYTGCIC), and the Baramadagal Darug Tribal Governing Council (BDTGC) welcome the opportunity to provide input to the forthcoming country visit to this continent now known as Australia (Australia) by the United Nations Special Rapporteur on the Rights of Indigenous Peoples. This submission is made in response to the OHCHR call for input, which requests information on the main human rights issues affecting Indigenous Peoples in Australia, including land, governance, culture, climate impacts, child welfare, justice, disability, and language preservation.<sup>2</sup>

Our councils represent Indigenous governance institutions grounded in cultural authority, kinship systems, and the continuing sovereignty of Aboriginal Nations. Collectively, we are concerned with the failure of Australian legal and policy frameworks to recognise Indigenous governance institutions, Indigenous ownership of land and waters, and Indigenous peoples’ full right to self-determination in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

This submission focuses particularly on two distinct but related experiences. The first is the experience of the Gudang and Yadhaykenu peoples in far north Queensland (FNQ), where important land handback and native title milestones have occurred but remain structurally limited. The second is the experience of the Baramadagal Darug people in the Sydney Basin, where the depth of urban dispossession, child removal, and archival subjugation demonstrates how colonial violence can be used against Indigenous Nations while they are still expected to satisfy colonial tests of continuity and recognition.

## 2. The submitting bodies

### 2.1 Treaty Council Worldwide

The Treaty Council works with Indigenous Nations across Australia to advocate for recognition of Indigenous sovereignty, the development of treaty frameworks, and the implementation of

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<sup>2</sup> OHCHR, “Call for Input: Country Visit to Australia”, including deadline 20 March 2026 and visit dates 2–13 November 2026. <https://www.ohchr.org/en/calls-for-input/2026/call-input-country-visit-australia>  
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international human rights standards relating to Indigenous peoples. The Treaty Council supports the establishment of Tribal Governing Councils as governance institutions grounded in cultural authority, kinship systems, and the continuing sovereignty of Indigenous Nations.

As part of this work, the Treaty Council has supported initiatives exploring practical pathways for recognising Indigenous land governance outside colonial property frameworks. These include the Allodial Land Use Registry (ALUR), described publicly as a registry platform for recordings pertaining to allodial land ownership, land use permits, and sub-leases of First Nations,<sup>3</sup> and the Allodial Coin initiative, which publicly presents itself as an attempt to link Indigenous custodianship, environmental stewardship, and new economic mechanisms.<sup>4</sup> We refer to these initiatives not as settled legal substitutes for state systems, but as evidence of Indigenous-led efforts to imagine governance and economic models beyond the limits of colonial title structures.

This submission is also informed by our engagement with international governance and accountability discussions concerning corruption, transparency and institutional integrity. Through Treaty Council networks, we have participated in dialogue with the International Anti-Corruption & Compliance Agency (IACA),<sup>5</sup> an international initiative focused on strengthening integrity and accountability within public institutions and governance systems. This work is Indigenous-led and includes collaboration with international governance and anti-corruption specialist Ken Gamble,<sup>6</sup> whose work in global compliance and financial crime investigations has contributed to strengthening international anti-corruption frameworks.

Our engagement with these international governance discussions reflects a broader concern that many of the structural barriers affecting Indigenous peoples in Australia arise not only from policy gaps, but also from systemic governance risks within public administration, procurement frameworks and land-related decision-making processes. These risks are particularly evident where Indigenous peoples are required to participate in government procurement or advisory processes that concentrate decision-making power within state institutions while limiting Indigenous control over cultural knowledge, intellectual property and decision-making affecting our own lands.

## **2.2 Gudang / Yadhaykenu Tribal Governing Council Indigenous Corporation**

The Gudang / Yadhaykenu Tribal Governing Council Indigenous Corporation represents the Wymarra family of the Gudang / Yadhaykenu peoples, which is the northern Cape York Peninsula. The Gudang and Yadhaykenu peoples are the Traditional Custodians of lands and waters at the northernmost tip of the Australian continent, including areas surrounding the Jardine River and the Torres Strait gateway.

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<sup>3</sup> Land Equity International, “Allodial Land Use Registry (ALUR)”.

<https://www.landequity.com.au/projects/allodial-land-use-registry-alur/> (accessed 15 March 2026).

<sup>4</sup> Allodial Coin, public project site. <https://allodialcoin.com/> (accessed 15 March 2026).

<sup>5</sup> International Anti-Corruption & Compliance Agency (IACA), <https://www.anticorruption.agency/> (accessed 15 March 2026).

<sup>6</sup> IFW Global, *About IFW Global*, <https://ifwglobal.com/> (accessed 15 March 2026). IFW Global is an international investigations and cyber-intelligence organisation specialising in fraud investigation, asset recovery and financial crime intelligence, led by Executive Chairman Ken Gamble.

Despite the disruptions caused by colonisation following the establishment of the Somerset settlement in 1864, Gudang and Yadhaykenu families have maintained enduring cultural, spiritual, and genealogical connections to Country. In September 2022, more than 362,000 hectares of land on Cape York Peninsula were formally handed back to Traditional Owners, including land connected to the Gudang/Yadhaykenu, Atambaya, and Angkamuthi peoples.<sup>7</sup> In October 2022, the Federal Court formally recognised the native title rights of the Gudang Yadhaykenu people through the Cape York United #1 determination.<sup>8</sup> In November 2022, a further consent determination recognised native title over extensive land and sea areas in northern Cape York and the Torres Strait involving several northern Nations including the Gudang Yadhaykenu.<sup>9</sup>

These are important milestones in the restoration of Indigenous stewardship. At the same time, they also illustrate the limits of existing Australian frameworks: native title and handback arrangements still fall short of recognising full Indigenous ownership, law-making authority, and sovereignty over land and sea Country.

### **2.3 Baramadagal Darug Tribal Governing Council**

The Baramadagal are one of the clan groups of the Darug-speaking peoples whose Country encompasses Burrumatta / Baramada (Parramatta) and the broader Sydney Basin. Darug-speaking Country includes the river systems, plains, and coastal environments that sustained Darug-speaking families for countless generations prior to the arrival of the British in 1788.

The Baramadagal Darug Tribal Governing Council represents the Reid / Goldspink family group whose presence on Country is documented within archaeological records pre-dating British invasion and within colonial archives from the earliest years of the colony.<sup>10</sup> The Sydney Basin was the earliest site of British colonisation on the Australian continent. As a result, Baramadagal and other Darug-speaking families were among the first Aboriginal peoples to experience the profound impacts of invasion: violent dispossession, confinement, surveillance, attempts to erase identity, child removal, forced labour, and the rapid transformation of cultural landscapes into colonial and later urban property regimes.

Despite these attempts to subjugate and erase Baramadagal presence from the region, Baramadagal and other Darug families have maintained enduring cultural, genealogical, and spiritual connections to Country. Members of the Baramadagal Darug family group are engaged in Aboriginal Owners List processes through the Office of the Registrar of the Aboriginal Land Rights Act (ORALRA) and have taken important steps toward rebuilding Indigenous governance

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<sup>7</sup> Queensland Government, “362,000 hectares returned to Traditional Owners in Australia’s far north”, 7 September 2022. <https://statements.qld.gov.au/statements/96111> (accessed 15 March 2026).

<sup>8</sup> National Native Title Tribunal, “Determination details: QCD2022/011 Gudang Yadhaykenu”. [https://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/Determination\\_details.aspx?NNTT\\_FileNo=QCD2022%2F011](https://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/Determination_details.aspx?NNTT_FileNo=QCD2022%2F011) (accessed 15 March 2026).

<sup>9</sup> Former Minister for Indigenous Australians, “Native title consent determination in Cape York and Torres Strait”, 30 November 2022. <https://ministers.pmc.gov.au/former-ministers/burney/2022/native-title-consent-determination-cape-york-and-torres-strait> (accessed 15 March 2026).

<sup>10</sup> Baramadagal Darug Tribal Governing Council, *Baramada*, <https://baramada.com/> (accessed 15 March 2026).

structures grounded in sovereign nation-rebuilding principles. These efforts include the establishment of the Baramadagal Darug Tribal Governing Council, the release of its Community Constitution, community-led cultural governance work, and national and international advocacy on Indigenous rights.

### **3. Historical context and continuity**

#### **3.1 Gudang Yadhaykenu**

The Gudang Yadhaykenu peoples' contemporary experience illustrates that land return and native title can produce meaningful gains, but within structures that remain tightly constrained by the Crown. The September 2022 handback of more than 362,000 hectares on Cape York Peninsula was a major milestone for Traditional Owners.<sup>11</sup> However, the legal architecture of the handback still sits within state-defined tenure and joint management arrangements. Likewise, the Federal Court's October 2022 native title determination recognised that native title exists in the relevant determination area,<sup>12</sup> but native title remains a limited and contingent form of recognition rather than full restoration of ownership and political authority.

The Gudang/Yadhaykenu experience therefore demonstrates both progress and constraint. It shows that where Country remains less heavily urbanised, legal recognition may be more achievable, yet the resulting recognition remains bounded by a colonial legal order that does not concede true allodial ownership or sovereignty.

#### **3.2 Baramadagal Darug**

The Baramadagal Darug experience is the inverse. Our families are among those whose presence on Country is documented in colonial records from the early years of invasion in the Sydney Basin. We are descendants of those whose continuity to place is documented close to the moment of British invasion itself. At the same time, we descend from some of the earliest child removal practices, child trafficking, child labour exploitation, and forms of state and quasi-state control that would later be formalised in policies and then recognised under the broad rubric of the Stolen Generations.

For Baramadagal Darug families, colonial archives are double-edged. On the one hand, they record our presence and continuity on Country in the earliest years of invasion. On the other hand, they record the very violence that fragmented our families and was later used by the state to diminish our legal standing in colonial laws. This is why we say that we are the descendants of the first stolen generations in an era that still has not been fully apologised for; the descendants of the first enslaved child labour and child trafficking regimes, which remain largely

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<sup>11</sup> Queensland Government, "362,000 hectares returned to Traditional Owners in Australia's far north", 7 September 2022. <https://statements.qld.gov.au/statements/96111> (accessed 15 March 2026).

<sup>12</sup> Former Minister for Indigenous Australians, "Native title consent determination in Cape York and Torres Strait", 30 November 2022. <https://ministers.pmc.gov.au/former-ministers/burney/2022/native-title-consent-determination-cape-york-and-torres-strait> (accessed 15 March 2026).

unacknowledged; and descendants of peoples who still have no reparations and no partnership from the Crown that properly acknowledges our true history and status.

This history matters to current law and policy. It is unjust for a state to impose continuity tests or legitimacy tests on Indigenous peoples where the state itself, through invasion and genocide, was the principal cause of disruption. The 2017 report of the Special Rapporteur on Australia recognised concern about the burden placed on Indigenous peoples by the native title system and continuity requirements.<sup>13</sup> We remain concerned that Australia has not adequately acted on these longstanding concerns.

## **4. Main human rights issues**

### **4.1 Land, territories, and resources, including land rights, native title, and related issues**

We believe this submission already speaks strongly to this category through the contrasted experiences of the Gudang/Yadhaykenu and the Baramadagal Darug peoples. The key point is that both experiences reveal the same structural flaw. Where Country remains less urbanised, native title may be more readily recognised, but it still does not confer true ownership or sovereignty. Where Country has been intensely urbanised, as in Baramada / Burrumatta and the Sydney Basin, native title is rendered largely inaccessible by the very history of colonial dispossession. In neither case does the system recognise Indigenous peoples as holding full ownership of their lands and waters in accordance with UNDRIP.

This creates a perverse legal order in which the most intensively colonised Nations are the least likely to receive meaningful legal recognition, even where continuity is exceptionally well documented. It also means that land return and native title outcomes should not be misunderstood internationally as resolving questions of sovereignty, governance, or restitution.

### **4.2 Self-determination, Indigenous governance, and autonomy**

Our councils are direct evidence that Indigenous peoples continue to organise governance according to cultural authority and kinship systems, even where the state does not adequately recognise those institutions. Tribal Governing Councils provide structures through which Traditional Owner families articulate collective positions on matters affecting Country, culture, identity, and governance. They should be understood as Indigenous representative institutions for the purposes of UNDRIP, not as interest groups or advisory stakeholder bodies.

Yet Australian legal and policy frameworks continue to privilege colonial corporations, state-controlled recognition pathways, or advisory mechanisms that do not reflect Indigenous law and authority. In some jurisdictions, government-created statutory bodies such as Local Aboriginal Land Councils are often treated as the primary Indigenous interlocutors despite not necessarily reflecting Traditional Owner and Custodian governance institutions grounded in kinship and

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<sup>13</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, A/HRC/36/46/Add.2 (2017). RefWorld copy: <https://www.refworld.org/reference/mission/unhrc/2017/en/118746>

place. This undermines Articles 3, 4, 5, and 18 of UNDRIP and leaves Indigenous Nations in the position of having to constantly justify their existence to the institutions that displaced them.

As Prof Gregory Phillips notes, native title can operate as ‘divide and rule masquerading as inclusion and social justice’, illustrating how colonial recognition frameworks often fracture Aboriginal governance rather than restoring it. These systems frequently position the state as the ultimate arbiter of Indigenous identity, authority and land relations, reproducing colonial power rather than enabling genuine self-determination.<sup>14</sup>

#### **4.3 Economic, social and cultural rights, including health, education, housing, employment, and protection of cultural heritage**

Indigenous peoples in Australia continue to face structural barriers in the exercise of economic, social, and cultural rights, particularly in relation to cultural heritage work, public art, and Designing with Country processes occurring on Indigenous lands. While governments increasingly seek the participation of Indigenous cultural practitioners and Traditional Owners and Custodians in these projects, procurement and contracting frameworks used by state agencies often fail to recognise Indigenous Cultural and Intellectual Property (ICIP) rights or the cultural authority of Traditional Owners.

In practice, Indigenous cultural practitioners may be required to sign standardised government contracts that vest ownership of cultural material or creative outputs in commissioning agencies, require broad moral rights consents, or impose blanket consent for the use and modification of cultural knowledge. Where practitioners attempt to negotiate terms that better align with ICIP principles or UNDRIP, they may risk exclusion from the process. While some recent government agreements now acknowledge Indigenous Cultural and Intellectual Property and reference UNDRIP Article 31, other contractual provisions relating to intellectual property ownership, moral rights and consent may still undermine Indigenous control over cultural knowledge in practice. In an EOI process run by a New South Wales Government authority, the response form expressly stated that the authority had a *strong preference for entering consistent terms with all applicants and expected applicants not to seek changes to the draft agreement*; concerns raised in response included State discouraging agency of Indigenous applicants to negotiate fair terms, contract material ownership, moral rights, cultural authority, remuneration, membership termination, and broad consent settings for image and recording use (Attachment 1).

This is not a minor procurement issue. It places Indigenous cultural practitioners and Traditional Owners in a coercive position where participation in cultural work on their own Country may depend on surrendering agency over cultural knowledge or accepting terms that are financially unwise, psychologically harmful and structurally colonial. State procurement systems intended to

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<sup>14</sup> Gregory Phillips, “Patterns, Power and Place—On Whose Terms?”, Meanjin, Spring 2023, <https://meanjin.com.au/essays/patterns-power-and-place-on-whose-terms/>.

facilitate Indigenous participation in cultural projects can instead reproduce colonial power dynamics by requiring Traditional Owners to surrender cultural authority in order to access work on their own Country.

We also raise ongoing concerns about racism and vicarious racism in workplaces, cultural institutions, and public sector environments. Current anti-discrimination settings remain heavily complaint-based, placing the burden on Indigenous peoples to identify, prove, and relive discriminatory harm after it occurs. The Australian Human Rights Commission explains that employers can be held responsible for racial discrimination by employees through vicarious liability and that employers should take reasonable steps to prevent racial discrimination.<sup>15</sup> In our view, this remains insufficient. There should be express workplace discrimination laws that more clearly recognise racism and the impacts of vicarious racism and place a positive duty on employers to create racism-free and culturally safe workplaces for Indigenous peoples, similar to relatively recent sexual harassment and abuse in workplace laws that now create a positive duty.<sup>16</sup>

#### **4.4 Impacts of climate change, environmental degradation, and disaster response**

Indigenous peoples continue to experience climate change and environmental degradation not merely as ecological issues, but as violations of obligations to Country, waters, species, and future generations. Our concerns include the treatment of waterways as infrastructure rather than as living cultural landscapes, and the exclusion of Traditional Owners from environmental and disaster governance even where Indigenous knowledge is indispensable to resilience planning.

For the Baramadagal Darug, this is particularly visible in relation to the Parramatta River and broader Burramatta landscapes, where flood planning, urban design, and environmental management often proceed without Indigenous governance institutions being embedded as decision-makers.

For the Gudang / Yadhaykenu peoples, climate resilience and environmental stewardship are inseparable from land and sea governance in FNQ. The vulnerability of Indigenous communities to climate change is particularly visible in the Torres Strait, where rising sea levels, coastal erosion and increasingly severe tidal events are already damaging culturally significant places and threatening the long-term habitability of low-lying islands. These impacts pose a direct risk to the continuation of Torres Strait Islander culture and community life on Country.<sup>17</sup> Initiatives supported through Treaty Council networks, including ALUR,<sup>18</sup> and Allodial Coin,<sup>19</sup> are framed

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<sup>15</sup> Australian Human Rights Commission, “Racial discrimination and the law”. <https://humanrights.gov.au/your-rights/individuals/race-discrimination/racial-discrimination-the-law>

<sup>16</sup> Australian Human Rights Commission, “Racial discrimination”. <https://humanrights.gov.au/our-work/sex-discrimination/racial-discrimination>

<sup>17</sup> Australian Broadcasting Corporation, “Islanders determined to keep hope alive as rising seas threaten Torres Strait culture.” ABC News, 15 December 2024.

<https://www.abc.net.au/news/2024-12-15/rising-ocean-threat-to-island-culture-torres-strait-australia/104613496>

<sup>18</sup> Land Equity International, “Allodial Land Use Registry (ALUR)”.  
<https://www.landequity.com.au/projects/allodial-land-use-registry-alur/>

<sup>19</sup> Allodial Coin, public project site. <https://allodialcoin.com/>

by their proponents as part of a broader Indigenous-led effort to align custodianship, land governance, climate resilience and future economic resilience.

#### 4.5 Indigenous women and girls

The issues raised in this submission have clear gendered dimensions. Indigenous women frequently carry disproportionate responsibilities as carers, cultural practitioners, community organisers and defenders of Country while simultaneously navigating racism, under-remuneration, institutional exclusion and ongoing child welfare threats.

Violence against Indigenous women and girls in Australia must be understood within the broader structural context of colonisation, dispossession and governance failure. Indigenous women are harmed not only by interpersonal violence but also by cumulative forms of institutional harm, including bureaucratic disrespect, exclusion from decision-making processes affecting their lands and communities, and the erosion of Indigenous governance authority.

Recent national attention to the issue of missing and murdered First Nations women and children has highlighted the scale of this crisis. Investigative reporting has identified at least 315 First Nations women who have gone missing or been murdered or killed in suspicious circumstances since 2000, although the true number is likely higher due to gaps in national data and reporting systems.<sup>20</sup>

In response to growing concern from families and advocates, the Australian Parliament established a Senate inquiry into Missing and Murdered First Nations Women and Children, which received numerous submissions from affected families and organisations, including the Baramadagal Darug family group, who were quoted in the final report. It heard evidence from across multiple jurisdictions.<sup>21</sup> The inquiry acknowledged the need for improved investigation practices, better data collection and greater recognition of the systemic factors contributing to violence against Indigenous women and children.<sup>22</sup>

However, legal and community commentators have noted that the final report made relatively limited recommendations and did not fully address issues of institutional accountability for past investigative failures or systemic neglect.<sup>23</sup>

Grassroots initiatives such as The Disappeared Project, a First Nations-led initiative documenting cases of missing and murdered Indigenous people and supporting affected families, have emerged

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<sup>20</sup> [ABC News – The killings and disappearances of Indigenous women that we don't even count](#), Four Corners investigation, 24 October 2022.

<sup>21</sup> [ABC News – A Senate inquiry into missing and murdered First Nations women and children wrapped up this week. Here's what you need to know](#) (Lauren Smith and Tahnee Jash, 18 June 2024), accessed 15 March 2026.

<sup>22</sup> Our Watch, “Report into Missing and Murdered First Nations Women and Children,” 16 August 2024, <https://www.ourwatch.org.au/news/report-into-missing-and-murdered-first-nations-women-and-children> (accessed 15 March 2026).

<sup>23</sup> Chay Brown, Connie Shaw, Kayla Glynn-Braun and Shirleen Campbell, “The report on murdered and missing Indigenous women and children fails to hold anyone to account,” *Law Society Journal*, 19 August 2024, <https://lsj.com.au/articles/the-report-on-murdered-and-missing-indigenous-women-and-children-fails-to-hold-anyone-to-account/> (accessed 15 March 2026).

partly in response to gaps in national data, support systems, and public visibility surrounding these cases.<sup>24</sup>

For many Indigenous communities, the experiences of missing and murdered women are inseparable from broader patterns of structural inequality, including over-policing, misidentifying perpetrators, under-protection, child removal practices and barriers to accessing justice. Research and policy submissions have emphasised that First Nations women and children face heightened vulnerability not only in the community but also within institutions that are intended to provide protection and support.<sup>25</sup>

Recognition of Indigenous governance institutions is therefore also a women's rights issue. Where Indigenous governance authority is marginalised or ignored, Indigenous women are often left to carry the burden of advocating for community safety, cultural continuity and justice without the structural support that self-determination and community governance can provide.

Strengthening Indigenous governance systems and ensuring genuine participation of Traditional Owners in decision-making processes are therefore essential components of addressing violence and systemic harm experienced by Indigenous women and girls.

#### **4.6 Child welfare systems**

We hold deep concerns as peoples descended from the earliest child removal practices in the colony. For Baramadagal Darug families, child removal is not a discrete twentieth-century policy problem; it is woven into the earliest history of invasion in the Sydney Basin. That historical experience gives particular force to our concern about the ongoing over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

The Productivity Commission's Closing the Gap dashboard records Target 12: by 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.<sup>26</sup> The Family Matters campaign continues to argue that self-determination must be at the centre of all decisions affecting Aboriginal and Torres Strait Islander children and families, and that governments must transfer authority, resources, and responsibility to Aboriginal and Torres Strait Islander peoples and organisations.<sup>27</sup> We support that analysis. The child welfare system cannot be meaningfully reformed while governments continue to disregard Indigenous governance and the rights of children to grow up in family, community, Country, and culture.

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<sup>24</sup> The Disappeared Project, "Home." <https://thedisappearedproject.com/home> (accessed 16 March 2026).

<sup>25</sup> ANTAR and Australian Lawyers Alliance, *Inquiry into Missing and Murdered First Nations Women and Children – Joint Submission to the Senate Legal and Constitutional Affairs References Committee*, February 2023, [https://antar.org.au/wp-content/uploads/2023/02/Inquiry-into-Missing-and-Murdered-First-Nations-Women-and-Children-ANTAR\\_ALA-Submission.pdf](https://antar.org.au/wp-content/uploads/2023/02/Inquiry-into-Missing-and-Murdered-First-Nations-Women-and-Children-ANTAR_ALA-Submission.pdf) (accessed 15 March 2026).

<sup>26</sup> Productivity Commission, Closing the Gap dashboard, Child protection / Outcome area / Target 12. <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/child-protection/>

<sup>27</sup> SNAICC, "Family Matters" campaign and annual report. <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/family-matters/>

## 4.7 Access to justice and incarceration

Across our family lines we hold experiences of incarceration and loss of loved ones as Aboriginal Deaths in Custody. We will not detail those specific experiences in this submission but may welcome the opportunity to speak to them at a later date.

Indigenous peoples remain grossly over-represented in criminal legal systems across Australia. Despite decades of public inquiries, policy commitments and reform agendas, the structural drivers of this over-representation have not been adequately addressed. Aboriginal and Torres Strait Islander peoples continue to be incarcerated at vastly disproportionate rates compared with the non-Indigenous population, reflecting systemic inequality across policing practices, sentencing outcomes, and broader social determinants of justice system contact. Evidence presented by civil society organisations demonstrates that Indigenous incarceration rates have continued to increase in recent years despite repeated commitments by governments to reduce these disparities.<sup>28</sup>

The over-representation of Indigenous peoples in the criminal legal system must be understood within the broader context of colonisation, dispossession, intergenerational trauma and socio-economic exclusion. These conditions are frequently criminalised through policing and legal processes that disproportionately target communities experiencing poverty, housing instability, and the long-term impacts of colonial policies such as child removal. As a result, Indigenous peoples often experience what may be described as a broader justice deficit, in which colonial legal systems simultaneously criminalise the consequences of dispossession while failing to recognise Indigenous governance institutions, cultural authority, and community-based systems of justice.

Recent policy developments in several Australian jurisdictions risk deepening this pattern by expanding punitive approaches to criminal justice. In Queensland, for example, the “Adult Crime, Adult Time” legislative framework has been expanded to include a significantly broader range of offences, enabling harsher sentencing outcomes for young people and increasing the likelihood that Indigenous youth will be drawn further into the criminal justice system.<sup>29</sup> Civil society organisations and legal advocates have raised concerns that these measures prioritise punishment and surveillance over community-based responses that address underlying causes of offending behaviour.

In addition to expanded offence categories and sentencing provisions, governments have also increasingly adopted surveillance-based approaches to justice system management. The growing use of electronic monitoring and other surveillance technologies has been promoted as an alternative to incarceration, but in practice these measures may expand the reach of the criminal justice system into Indigenous communities without addressing the structural conditions that

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<sup>28</sup> ANTAR Queensland, *Indigenous incarceration*, <https://antarqld.org.au/indigenous-encarceration/> (accessed 15 March 2026).

<sup>29</sup> *Adult Crime, Adult Time expands to 45 offences*, <https://static1.squarespace.com/static/68916ada7482c4105cd59265/t/69a7c3935bc4597d946d9e4f/1772602259399/Adult+Crime%2C+Adult+Time+Expands+to+45+Offenses.pdf> (accessed 15 March 2026).

contribute to justice system contact.<sup>30</sup> In some cases, electronic monitoring regimes can operate as an extension of carceral control rather than a pathway toward community-led justice solutions.

These developments must also be considered alongside the broader governance failures identified throughout this submission. Indigenous peoples continue to be subjected to legal systems that do not recognise Indigenous governance institutions, law, or decision-making authority. The absence of meaningful recognition of Indigenous governance structures within justice frameworks limits opportunities for culturally grounded responses to conflict, community safety and accountability.

Addressing Indigenous over-representation in the criminal legal system therefore requires more than incremental reform of policing and sentencing practices. It requires structural change that recognises Indigenous peoples' rights to self-determination, governance and participation in justice processes affecting their communities. Without such recognition, justice system reforms risk continuing to reproduce the same patterns of over-criminalisation and institutional harm experienced by Indigenous peoples for generations.

We refer the Special Rapporteur to the supporting materials identified by the submitting parties in this section regarding Indigenous incarceration rates, punitive legislative expansion and the increasing use of electronic monitoring technologies in Queensland, which illustrate the broader justice challenges faced by Indigenous peoples across Australia.

#### **4.8 Business and human rights**

Business and commercial activity continue to proceed on Indigenous lands without proper recognition of Indigenous governance institutions or adherence to the principle of free, prior and informed consent. This includes not only extractive industries but also public art, urban development, place-making, climate adaptation and infrastructure projects. The issue is not simply whether Indigenous people are consulted; it is whether Indigenous governance institutions are recognised as having authority to negotiate terms, protect Indigenous Cultural and Intellectual Property (ICIP), and determine how cultural knowledge relating to Country is used.

A growing concern in this context is the practice sometimes described as “black cladding.” This occurs when corporations or government agencies present projects as Indigenous-supported or culturally endorsed by engaging Indigenous individuals, consultants or organisations in ways that provide the appearance of Indigenous participation while bypassing or undermining the authority of Traditional Owners and Indigenous governance institutions. In such circumstances, Indigenous presence may be used to legitimise commercial or development activity even where the relevant Traditional Owners have not been empowered to negotiate terms, exercise decision-making authority, or protect cultural knowledge relating to their Country.

Importantly, this problem is not limited to corporate behaviour. Government policy frameworks can contribute to these dynamics. Reviews of Indigenous procurement policies have noted that programs designed to increase Indigenous participation in government contracting can create incentives for businesses to structure arrangements that appear Indigenous-associated in order to

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<sup>30</sup> Queensland Government, *Electronic monitoring framework*, <https://static1.squarespace.com/static/68916ada7482c4105cd59265/t/69409b05d496255f9a3231f1/1765841669347/QLD+Gov+Electronic+Monitoring.pdf> (accessed 15 March 2026).

access procurement opportunities, even where decision-making authority and economic benefit remain concentrated outside Indigenous governance structures. This demonstrates that the risks associated with “black cladding” are recognised within government policy analysis itself, not solely within community commentary.

The persistence of such practices demonstrates that many development and cultural engagement frameworks continue to treat Indigenous peoples as stakeholders rather than as Nations possessing governance authority over their lands and cultural knowledge. Addressing these issues requires stronger recognition of Indigenous governance institutions within planning, procurement and commercial decision-making processes affecting Indigenous lands.

Ultimately, the persistence of practices such as “black cladding” illustrates a broader structural problem: many development and procurement frameworks continue to engage Indigenous peoples or people self-identifying as Indigenous as symbolic participants rather than recognising Indigenous Nations as governance authorities with the right to negotiate, consent to, or refuse projects affecting their lands, cultural heritage and knowledge systems. Without structural recognition of Indigenous governance institutions within commercial and planning processes, Indigenous participation risks being reduced to a procedural requirement rather than a meaningful exercise of self-determination.<sup>31</sup>

#### **4.9 Indigenous persons with disabilities**

We raise concerns about Indigenous persons with disabilities and serious illnesses who are subjected to bureaucratic negligence, disbelief, and systemic failure within health, aged care and disability support systems. In our experience, current aged care and disability-related reforms do not reliably produce culturally safe, responsive, and accountable support. We refer particularly to public advocacy concerning failures of the aged care system reforms (Support at Home) to manage disability in relation to Motor Neurone Disease and support carers in their responsibilities [References 23 -27].

These examples are not presented as isolated personal experiences but as case evidence illustrating broader structural barriers faced by many people, including Indigenous families attempting to access disability and aged care supports. They demonstrate how administrative systems can produce delay, distress, and administrative burden even in circumstances involving severe and life-limiting illnesses.

These failures demonstrate how disability, age, remoteness, and Indigeneity intersect. A system can claim to provide packages and care while in practice producing delay, distress, administrative burden, and institutional gaslighting. For Indigenous families already carrying intergenerational trauma and cultural responsibilities, such failures have a compounding effect; they represent a continuation of state neglect in another form.

These experiences must also be understood in the context of broader policy commitments under the Closing the Gap framework, which recognises the need to address disparities in health, disability support, and life expectancy between Indigenous and non-Indigenous Australians.

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<sup>31</sup> National Indigenous Australians Agency, *Indigenous Procurement Policy Reform Consultation Outcomes Report*, 2025. <https://www.niaa.gov.au/resource-centre/indigenous-procurement-policy-ipp-consultations-outcome-report?>

Despite these commitments, implementation gaps remain significant, and many Indigenous families continue to experience systemic barriers when attempting to access basic supports for disability and serious illness.

Taken together, these issues raise serious concerns regarding the effective realisation of Indigenous peoples' rights to health, care, and social support, including those affirmed in Articles 21 and 24 of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>32</sup>

#### **4.10 Preservation of Indigenous languages, cultures, and knowledge systems**

We strongly support language revitalisation and cultural renewal. However, we are concerned that government funding models can create harm where language programs are funded without first resolving questions of governance, cultural authority, and safe pathways for determining identity.

In some communities, corporations and self-identifiers are able to obtain funding to work on a language that is not, in a cultural sense, their own. Traditional Owners may then be precluded from applying for support in relation to the very language group to which they belong through proven genealogy, responsibility to Country and ongoing connection.

This means language rejuvenation can, in some cases, be weaponised against Traditional Owners and Custodians rather than strengthening their authority. Government support for language must therefore be linked to nation-rebuilding, cultural safety, and accurate governance pathways. Otherwise, funding designed to protect language may deepen conflict, dispossession, and misrecognition.

#### **4.11 Any other relevant information**

We remain concerned that Australia has not adequately acted on the recommendations made following the 2017 Special Rapporteur's visit regarding the burdens created by current legal frameworks for land recognition and continuity.<sup>33</sup> In our view, the continued use of rigid continuity definition and requirements within native title jurisprudence fails to account for the very impacts of genocide, child removal, forced labour, institutionalisation, and urban dispossession caused by the colonial state. This is a fundamental human rights problem that goes beyond doctrinal land law. It concerns whether the state is willing to recognise Indigenous peoples as surviving political communities despite the violence inflicted upon them.

### **5. Recommendations**

1. Recognise Indigenous governance institutions, including Tribal Governing Councils grounded in cultural authority and kinship systems, as legitimate representative institutions for engagement and decision-making.

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<sup>32</sup> Productivity Commission, Closing the Gap Dashboard – Child Protection and Wellbeing Indicators, <https://www.pc.gov.au/closing-the-gap-data/dashboard>

<sup>33</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, A/HRC/36/46/Add.2 (2017). RefWorld copy: <https://www.refworld.org/reference/mission/unhrc/2017/en/118746>

2. Reform Australian land rights frameworks so that they no longer treat the effects of colonisation as reasons to deny recognition to Indigenous peoples whose continuity was disrupted by state violence.
3. Review the native title system, including continuity requirements, in light of the impacts of invasion, genocide, child removal, and urban dispossession, and specifically in light of the concerns raised in the 2017 Special Rapporteur report.
4. Ensure that land hand back, joint management, and native title outcomes are not treated as complete substitutes for recognition of Indigenous sovereignty, governance, and ownership.
5. Embed free, prior and informed consent and ICIP protections in procurement, cultural heritage, public art, and Designing with Country processes, including by permitting genuine negotiation of contractual terms.
6. Introduce stronger workplace protections that recognise racism and vicarious racism and impose a positive duty on employers to create racism-free and culturally safe workplaces for Aboriginal and Torres Strait Islander peoples.
7. Transfer greater authority, resources, and decision-making power to Aboriginal and Torres Strait Islander peoples and organisations in child welfare systems, consistent with the Family Matters approach.
8. Address justice and incarceration issues through community-led, culturally grounded approaches rather than punitive expansion and intensified surveillance.
9. Ensure disability, aged care, and serious illness support systems are culturally safe, timely, and accountable for Indigenous peoples and families.
10. Design language and cultural funding pathways that privilege Traditional Owner authority, safe identity processes, and nation-rebuilding rather than project outputs.

We would welcome the opportunity to meet with you on your upcoming visit to Australia to discuss the issues affecting our peoples in further detail.

Yours sincerely,

*Alex Wymarra*



**Alex Wymarra**

Chairman - Treaty Council ATSIIC  
Gudang/Yadhaykenu Tribal Governing  
Council Indigenous Corporation

**0410 716 617**

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*Julie Christian*

**Julie Christian**

Director, Baramadagal Darug Tribal Governing Council  
Treaty Council, Elders Council Member

**0407 466 377**

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## 6. Attachments and references

### Attachment 1

Bradfield Development Authority, Koori Perspectives Circle – BDA EOI Response Form:

OFFICIAL

Bradfield Development Authority



### Part B – EOI Response Form

General Information	
Procurement Name	Koori Perspectives Circle
Procurement Registration Number	BDA001114
Issue Date	2/10/2025
Closing Date and Time	11/11/25 at 3.00pm AEDT
Lodgment (delete irrelevant options)	
Enquiries	via email <a href="mailto:procurement@bda.nsw.gov.au">procurement@bda.nsw.gov.au</a> (with the Procurement Registration Number and Nominated Contact Person(s) name in the subject line)
Lodgment Method	via email <a href="mailto:procurement@bda.nsw.gov.au">procurement@bda.nsw.gov.au</a>
Nominated Contact Person	
Contact Name	██████████
Email	<a href="mailto:procurement@bda.nsw.gov.au">procurement@bda.nsw.gov.au</a>
Documentation Structure	
Part A	EOI Document
Part B	EOI Response Form (to be submitted by Applicants)
Additional Documents	Koori Perspectives Circle – BDA Membership Agreement ( <a href="#">Attachment A</a> ) Terms of Reference ( <a href="#">Attachment B</a> ) KPC Consent Form ( <a href="#">Attachment C</a> )

## General Information for Applicants

- Applicants must complete Part B as this forms the Response form
- All questions in this Part B must be fully addressed. Provide attachments where necessary, clearly labelled and cross-referenced.

## Applicant's Information

General	
Name	[Insert]
Australian Business Number (ABN)	[Insert]
Address (of Registered Office, if applicable)	[Insert]
Phone Number	
Email Address	
Your availability to attend onsite meetings located at Bradfield City's First Building site, located at 215 Badgerys Creek Road, Badgerys Creek	Yes/No
Your availability to attend online meetings via MS Teams	Yes/No
Your preferred days for meetings eg: Monday – Friday and times within standard working hours (note that meeting days will be scheduled on an ad-hoc, themes basis)	[Insert]

## Response to Evaluation Criteria

The EOI will be evaluated in accordance with the criteria set out below, and such other criteria as BDA, in its absolute discretion, considers appropriate. The criteria are not listed in any special order, may not be accorded equal or any weight and are not exhaustive.

You may include as much detail as you like outlining your expertise, knowledge or interest in joining the Koori Perspectives Circle, provided the page limit is adhered to.

Please answer the six questions below or provide an attachment with your response in a Word document or PDF in a maximum three-page submission.

### Question 1

Confirm that you meet the three-part definition of Aboriginal (descent, self-identification and community recognition). Please outline which mob/s you identify with and parts of Country you are connected to.

Question 1 Response

### Question 2

Describe how you are connected to Country, or the Aboriginal community in the Western Parkland City(Dharug/Darug, Dharawal/Tharawal, Gundungurra/Gundungara or Darkinjung Country), or both. You may wish to provide details about whether

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you are from the area, you live in the area, work in the area, who you are connected to locally, and types of knowledge you hold about the area and community.

Question 2 Response

**Question 3**

Describe your relationships and connections to Aboriginal communities in the Western Parkland City (Dharug/Darug, Dharawal/Tharawal, Gundungurra/Gundungara or Darkinjung Country) and outline any active roles you have within any groups or organisations you work with in Western Sydney as an elder, a leader or aspiring leader.

Question 3 Response

**Question 4**

Describe any previous experience in projects where you have worked in a group to provide advice as an Aboriginal person and community member to an organisation.

Question 4 Response

**Question 5**

Outline how you will make a positive contribution to the Koori Perspectives Circle and why you are interested in being involved.

Question 5 Response

**Question 6**

From the six themes listed, what is your nominated area of interest or expertise and why (min. of two)?

1. Designing with Country
2. Caring for Country and Climate Resilience
3. Culture, Heritage and Arts
4. Business Opportunities
5. Employment, Education, Training and Youth
6. Tourism and Visitor Economy.

Question 6 Response

Compliance with the Agreement in Attachment A	Yes	No
If the BDA accepts your offer, do you agree to be subject to the attached Koori Perspectives Circle – BDA Membership Agreement? BDA has a strong preference for entering into consistent terms with all Applicants in the form of the Draft Agreement in Attachment A. BDA expects that Applicants will NOT seek any changes to the Agreement that BDA		

prepares. Applicants must clearly identify in their Proposal if they are unable to comply with this requirement.			
<p><b>If No, the Applicant should specify in the table below the clause number of the Draft Contract that they do not comply with, the reasons for non-compliance or partial compliance and (if applicable) provide alternative wording for that clause.</b></p> <p><b>These terms have the following meanings:</b></p>			
<b>Agree</b>	means that the Applicant will comply without amendment		
<b>Does not comply</b>	means that the Applicant will not comply without amendment		
<b>Partially complies</b>	means that the Applicant will comply partially and that some amendment is required		
<b>Compliance with the Agreement in Attachment A</b>			
[Clause Number]	[Insert reasons for non-compliance or partial compliance]	[Insert Alternative wording (if applicable)]	
<p>BDA reserves the right to accept, reject or negotiate any proposed variations to the draft Agreement in its sole discretion. <b>BDA will not consider any proposed variations to the draft Agreement requested by an Applicant after their Proposal has been submitted.</b></p>			

**Submission Statement**

- I certify that this submission is made without prior understanding, agreement or connection with any corporation, firm or person providing a submission, and is in all respects fair and without collusion or fraud. I agree to abide by all the conditions of this EOI process, and certify that I am the duly authorised person to sign this submission.
- I certify that myself and (if applicable) the company’s directors, shareholders, officers and employees are not in any way connected with and do not have any actual or potential conflict of interest with any BDA Officer or Staff Member (whether employed on a permanent, casual or contractual basis), except as disclosed hereunder:

--

- I agree to abide by and hold firm all of the terms in this offer for a period of ninety (90) calendar days from the expiration of the closing date for submissions and these terms will remain binding upon the Applicant and may be accepted at any time by BDA before the expiration of that period.

The agreement contained in this paragraph is made in consideration of the administrative time and expense to BDA in evaluating the Applicant's offer.

**Signed by the Applicant’s authorised representative who warrants that they have the authority to submit on behalf of the Applicant:**

<b>Name</b>	
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Signature	
Date	

### Attachment A – Draft Agreement

The Proposed Agreement is the Koori Perspectives Circle – BDA Membership Agreement

The engagement with the successful Applicant will be governed by the terms and conditions of the Draft Agreement Koori Perspectives Circle – BDA Membership Agreement which is provided as Attachment A:

## References

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[7] National Native Title Tribunal, **Determination Details: QCD2022/011 Gudang Yadhaykenu.** [https://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/Determination\\_details.aspx?NTT\\_Fileno=QCD2022%2F011](https://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/Determination_details.aspx?NTT_Fileno=QCD2022%2F011)

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- [15] ANTA Queensland, **Indigenous Incarceration.** <https://antarqld.org.au/indigenous-encarceration/>
- [16] Queensland Government, “**Adult Crime, Adult Time expands to 45 offences.**” <https://static1.squarespace.com/static/68916ada7482c4105cd59265/t/69a7c3935bc4597d946d9e4f/1772602259399/Adult+Crime%2C+Adult+Time+Expands+to+45+Offenses.pdf>
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