

Murru waaruu (On Track) Economic Development Seminar Series

Outcomes Report

May 2024



Australian
National
University



SECURE NGANHIGU BELONGING TO THAT, FOR THAT, (DISTANT IN SPACE, OR IN TIME)
MBABIRRA SHARE OUT, DISTRIBUTE, DIVIDE NGAWA YES WIRAY NO WALAN STRONG
N STRONG, HAVING AUTHORITY, MIGHTY MURRUMURRUGARRA SMILE, SMILING READY
ABINYA, GABINBIRRA BEGIN FIGHTING BULMALINGIDYAL A FIGHT, BATTLE BUMARRA
FIGHT ALL DAY BUMALI TO BEAT, HIT OR FIGHT BUMAYI FOUGHT NGUNGGIYALARRA
OVE, FRIENDSHIP MUMUDHALAY ANGRY, VERY ANGRY, GREATLY ANGERED GUWINDHA
YAMBURRUWALANGIDYAL GOVERNING WAMARRA BUILDING MILBARRA BEAT SOFTLY
STICKS BURDIRRA BEAT THE TIME, AND SING, LIKE THE WOMEN BEATING ON THE
STRIKE THE TIME WITH THE BAYGAN (BOOMERANG), AS THE MEN DO IN SINGING
IDYAL BEGINNING, A BEGINNING, BADNDHA IN THE BEGINNING LONG AGO NGINAGU
GURWALDHAANY DELIVERER, SANG NGULUBUL COUNCIL OR MEETING OF MEN
DEFTER, REPLY MARAMBAL CORRECT, NO, RIGHT QIRRAGIRRABANG COMFORTABLE,
THE ENEMY BAWAMARRA COMMUNICATE, RELATE NEWS YAMADHAANY COMPANION
GILGENT PERS- BALGABGAR GROUP LEADER, LEADING ELDER, RULER, KING
MARRAMARRA GREAT NGINA FOCUS NGIYAWAYGUNHANGIDYAL
RRRANGAL WAMARRA BUILD WAMALALIGITOBUILDAGAINGURAMBANG
NADHADIRRAMBANHI WARRA IN WAR WIDVILANYMALANG VICTORY
LULUYANHA ERECT MALDHAN WORK, WORKMANSHIP
TER, TO HAVE REGARD FOR YIMMAYVILINA
EP YIMMAMANGIDYAL CAREFUL, RESPECT,
ES FOR ANOTHER MAMMAMMA DEFEND
BY GOOD, WE
IVE ALL



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Acknowledgements

Artworks

All artworks and creative designs in this Outcomes Report and other reports that have supported the *Marramarra murru* Economic Development Symposium and *Murru waaruu* Economic Development Seminar Series, were created by Rohit Rao in collaboration with Paul Girrawah House.

Cultural content

The First Nations cultural content that underpinned the *Marramarra murru* Economic Development Symposium, *Murru waaruu* Economic Development Seminar Series, all reports that supported those forums and this Outcomes Report were provided by Paul Girrawah House, Ngambri, Ngunnawal and Wiradyuri Custodian and Senior Engagement Officer with the First Nations Portfolio at the Australian National University.

Marramarra murru and *Murru waaruu* forum participants

The First Nations Portfolio acknowledges the crucial contributions of the 170 participants of the *Marramarra murru* First Nations Economic Development Symposium and the 266 participants of the *Murru waaruu* Seminar Series and presenters and panellists in these forums. Participants' involvement in critical discussions, their wisdom and insights, expertise, perspectives and ideas have been crucial to the development of this Outcomes Report.

The First Nations Portfolio also acknowledges the important contribution expert peer reviewers made to the finalisation of this Report.

Sponsorship



The First Nations Portfolio acknowledges and values its partnership with the National Indigenous Australians Agency and extends its gratitude for their support and assistance to deliver the *Murru waaruu* Economic Development Seminar Series.

First Nations Portfolio Team

Materials that informed the *Marramarra murru* Economic Development Symposium and *Murru waaruu* Economic Development Seminar Series, the dialogues and outcomes from those forums and this Outcomes Report were prepared by staff and associates of the Australian National University First Nations Portfolio (noting particularly the contribution of Hon. Assoc. Professor Russell Barnett who also assisted by facilitating the seminars) led by Professor Peter Yu, Vice-President (First Nations).

Institutional setting

The Australian National University (ANU) is a unique institution in the context of Australian higher education. Founded immediately after the Second World War in 1946, ANU is the only Australian institute of higher education that is the subject of an Act of the Australian Parliament. The University is charged with building world-class research capability in Australia, promoting national unity and identity, and helping the nation improve its understanding of itself and its place in the world. It is also committed to delivering education to the highest standard in fields vital to the nation's future.

The First Nations Portfolio was established in 2020 to enhance the University's nation-building capacity in the context of the relationship between the Australian nation state and First Nations peoples. The First Nations Portfolio is a branch of the University's executive, reporting directly to the Vice-Chancellor, and is responsible for ensuring that ANU makes a leading contribution to national policy in this regard.

The Symposium and Seminar Series were held at ANU on the Country of the Ngambri (Kamberri), and Ngunnawal peoples. The location of ANU has been a meeting place for the traditional custodians of the land and its waters for thousands of years.

Terminology

This report uses the term 'First Nations' or 'First Nations peoples' to refer to Aboriginal and Torres Strait Islander peoples. When referring generally to Indigenous peoples, including from other parts of the world, the term 'Indigenous' is used. We acknowledge that 'First Nations' does not refer to all Indigenous peoples in Canada and is not used to refer to Māori.

Cultural context of *Marramarra murru* and *Murru waaruu*

Marramarra murru is a local Ngambri, Ngunnawal and Wiradyuri term that describes the creation of pathways. The pathways were created by Biyaami, the creator and protector, who gifted and shared them with the ancestors. Passed on from generation to generation, these pathways serve to ensure survival and wellbeing through the maintenance and transfer of knowledge, lore, custom and cultural authority, as well as facilitating trade.

Like these ancient pathways, the *Marramarra murru* First Nations Economic Development Symposium and Wealth Forum identified contemporary pathways to economic self-determination for Australia's First Nations peoples.

We speak to each other in many different ways such as *widyung* (which way?), *widyundhu* (which way you?) or *widyunggandhu* (how you?). First Nation languages can be described as free word order languages which have a different foundational principle from that of English, a fixed word language. In fixed word order European languages such as English, everything is based on one framework or another of continuum (linear) logic. In the free word order of Australian Indigenous languages, it appears that the foundational frame is one of an unchanging (although manipulative) network of relationships. Behind these two different systems of logic is a different basic assumption about the nature of the cosmos.¹

Australian Indigenous people place a very high value on relationships and identity and constantly think about relationships with other people, with the spiritual world, with place, and with the things in the living and spiritual world. The identity of all things (and people) is defined by their relationships with, or to, all 'identities' in the social, spiritual and physical environment.²

Our identity, relationship, actions, focus and transformation help keep our people 'on track'. A Ngambri, Ngunnawal and Wiradyuri term for this is *Murru waaruu*.

Foreshadowed by the *Marramarra murru* Symposium, the *Murru waaruu* First Nations Economic Development Seminar Series, the culmination of which is this Outcomes Report, comprised a series of topic-specific seminars that were designed to bring together leading scholars and practitioners to develop solutions for specific relevant issues, ensuring we remain on track to deliver a compelling, evidence-based case to transition the existing First Nations economic development policy paradigm in Australia to one that supports economic self-determination.

Paul Girrawah House

Senior Community Engagement Officer, First Nations Portfolio
Ngambri, Ngunnawal and Wiradyuri Custodian

¹ Stan Grant. and John Rudder, *A Grammar of Wiradjuri Language* (Restoration House, 2014) 4.

² Ibid.



Paul House, *Marramra Murru* First Nations Economic Development Symposium (21 June 2022)

Foreword

“We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights: to self-determination and self-management, including the freedom to pursue our own economic, social, religious and cultural development...”

This is the opening passage of the 1988 Barunga Statement. In 1963, the Yolngu People of east Arnhem Land presented the Yirrkala Bark Petition to government and in 2017 after a lengthy process of engagement with First Nations communities, 250 leaders met at Uluru to deliver the Uluru Statement from the Heart. Each represents an ongoing call for recognition and a formal settlement of First Nations rights and interests – ‘Makarrata’ – a Yolngu word generally referring to ‘coming together after trouble and living in peace’. These calls have been a historical constant on the journey for a reconciled relationship and a more just Australia. Together, they remind us that the road to self-determination and economic freedom for First Nations peoples has been long and winding. Despite the many efforts of successive governments, we have not yet turned the dial on the economic wellbeing and self-determination of First Nations peoples. This remains the challenge before us.

The *Murru waaruu* Outcomes Report is an attempt to find solutions to that very challenge; to find a path forward for First Nations economic empowerment and self-determination. The culmination of extensive dialogue through an International Symposium and Seminar Series, this report calls for governments to commit to a national economic agenda for First Nations peoples that moves us from a paradigm of managing First Nations welfare, to First Nations peoples managing wealth. We must begin to recognise First Nations communities as capable and competent economic partners with unique knowledge and assets, who are ready to make significant contributions to the Australian economy. Only then will we see change.

Throughout the Seminar Series, I witnessed first-hand First Nations leaders, industry, academics, and policymakers come together to discuss the challenges, and more importantly, the opportunities of a renewed First Nations economic agenda. What became clear is that Australia is at a critical point in its relationship with First Nations peoples. Their economic empowerment can be the common ground that takes us forward.

Finally, I want to thank the many experts, organisations, and community members who generously gave their time and knowledge to participate in the seminars that culminated in this report. My hope is that the ideas and reforms identified within these pages form the basis for a transformative change in the economic lives of First Nations communities. So much so that in seven generations we can look back on this period as a defining moment.

Professor Peter Yu AM

Vice-President (First Nations), First Nations Portfolio, The Australian National University

1. Executive Summary

Over the past two years, the Australian National University First Nations Portfolio (ANU FNP) has undertaken an extensive, deliberative process on the economic empowerment of First Nations people in Australia. Commencing with the *Marramarra murru* First Nations Economic Development Symposium in June 2022, ANU subsequently convened six national seminars on economic development, with the overall process involving close to 300 First Nations organisations and businesses, researchers, Commonwealth officials and industry representatives. These dialogues culminated in the production of this *Murru waaruu* Outcomes Report.

The *Murru waaruu* process calls for a paradigm shift in First Nations economic policy. Governments must move away from a legacy of social policies directed at First Nations welfare and simple mainstream industry participation, to a strategic commitment to policy underpinning sustainable First Nations wealth creation. First Nations peoples must be seen as capable and competent economic partners with unique knowledge and assets, not as passive recipients. At present, First Nations peoples share an identified legal interest in close to 60 per cent of the Australian land mass. On the cusp of great economic shifts across a range of sectors related to, for example, global efforts to decarbonise the economy and restore biodiversity, the challenge before governments and industry is to work in partnership with self-determining First Nations to harness the economic benefits being generated for local communities.

The *Murru waaruu* seminars involved extensive creative dialogue and generated a raft of policy reform ideas, captured in this report as policy proposals. These proposals follow the structure of the *Murru waaruu* First Nations Economic Development Seminar Series (Seminar Series) and are not intended to be a prescriptive blueprint for policy reform. Rather they are presented to inform a genuine engagement between First Nations leaders and the Australian Government to co-design a First Nations economic self-determination policy framework. An important dimension of that framework must be improving Australia's institutional capacity to better support First Nations economic development opportunities. The proposals in this report comprise the following themes:

- 1. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides a useful framework for critical reform.** It should guide policy development and be strategically implemented into Australian laws, including the *Australian Public Service Act 1999* (Cth). Public servants must be educated about UNDRIP and its relevance to good government in Australia.
- 2. Unlocking opportunities relating to land** by promoting cultural mapping and other mechanisms to empower First Nations peoples to better manage and use their Country. Proposals also address fungibility of First Nations land title which can inhibit economic development opportunities and may require legislative reform.

3. **Improving economic opportunities relating to water** by reforming First Nations access to and use of freshwater. This should involve the provision of ongoing policy advice, enabling appropriate economic use, strategic resource mapping, agreement making about water interests, and addressing water as integral to First Nations rights to Country.
4. **Unlocking economic opportunities relating to Sea Country** by addressing critical barriers, supporting the strategic use of sea ranger groups, as well as frameworks that advance First Nations participation in the fishing industry, and other offshore opportunities, including in renewable energy. Establishing a First Nations Sea Country peak body should also be a priority.
5. **Improving economic opportunities relating to intellectual property** by drawing on extensive collaborative work between First Nations parties and government. A strategic national approach supporting place-based initiatives is proposed. This approach should be supported by legislation and a national registration system. Australia should ratify the Nagoya Protocol, a commitment which should be supported by a community education program.
6. **Improving opportunities for accessing finance** through a range of proposals including skills development in enterprise, corporate governance, and management, promoting investment opportunities and establishing a special financial vehicle to support investment in First Nations economies.
7. **Treaties and other constructive agreements can provide important opportunities for First Nations economic development.** Public investment in truth-telling could inform the Australian public of the transformative potential of treaties and agreement making for the economic empowerment of First Nations peoples. The public could also be informed of the benefit to the Australian nation in resolving costly litigation concerning a range of historical grievances. A principles-based framework that supports treaties and other constructive agreements across Australia should be advanced as a responsibility of a Makarrata Commission.
8. **Institutional reform** will be necessary to ensure that policy reform supporting First Nations economic development can be carried out and effectively implemented.

2. Introduction

This Outcomes Report highlights key findings and reform proposals to advance meaningful economic opportunities for First Nations peoples in Australia related to their rights and interests in land, freshwater, Sea Country, and cultural and intellectual property, as well as beneficial interests in financial assets.

Insights in this report are the product of over 18 months of critical dialogue and investigation facilitated by ANU FNP. This deliberative process commenced with a historic international *Marramarra murru*³ First Nations Economic Development Symposium and Wealth Forum held in 2022 and was followed by a national six-part *Murru waaruu*⁴ Economic Development Seminar Series. These initiatives involved extensive participation of Indigenous and non-Indigenous practitioners, researchers, industry, and Commonwealth Government officials from across Australia, as well as representatives from overseas. The deliberative process focused on identifying barriers to First Nations economic opportunities and developing proposals for a constructive reform agenda that leverages First Nations rights and interests to better support First Nations economic self-determination in Australia.

There has never been a comprehensive economic policy framework for First Nations people in Australia. The seminar process highlighted that current policy initiatives are limited in their focus, generally ineffective, and at times inhibit economic opportunities for First Nations peoples. To improve the economic wellbeing and related socio-cultural outcomes for First Nations communities, governments must shift policy away from existing approaches based almost exclusively on deficit and mainstream industry training, employment, and procurement, toward new arrangements that foster genuine partnership, equity, and wealth creation.

This paradigm shift must seek to expand the First Nations economy and support First Nations peoples' capacity to generate sustainable wealth based on their existing and evolving legal rights and interests. Such an approach can improve the allocation of government resources, reduce transaction costs, improve socio-cultural outcomes, and ensure that Australia is responding to its human rights obligations to First Nations peoples that exist under the framework of international law.

This report identifies critical areas for developing a policy framework capable of advancing First Nations economic opportunity in Australia. In particular:

- The importance of using a human rights-based framework;
- Developing innovative solutions to barriers to opportunities related to

³ *Marramarra murru* is a Ngambri, Ngunnawal and Wiradyuri term that describes 'creating pathways' and was gifted to the Australian National University First Nations Portfolio for use in the *Marramarra murru* Symposium and Wealth Forum by Ngambri, Ngunnawal and Wiradyuri custodian, Paul Girrawah House.

⁴ *Murru waaruu* is a local Ngambri, Ngunnawal and Wiradyuri term that describes 'keeping on track'.

- statutory and other land related interests;
- Supporting First Nations to develop and leverage freshwater, saltwater and cultural and intellectual property interests;
- Supporting improved capacity and opportunities for accessing finance, and developing investment opportunities for First Nations peoples;
- Establishing appropriate institutions to support First Nations economic opportunity; and
- Developing a constructive framework for agreements involving First Nations peoples.

The report recognises that these issues are complex and multifaceted and are considered in contexts where there have been long-term historical policy failures. Policy approaches by Commonwealth governments have neither prioritised nor sustained commitments to Indigenous self-determination,⁵ and many government interventions have been damaging to First Nations peoples and their interests. These notably include the dismantling of the Aboriginal and Torres Strait Islander Commission in 2005, and the suite of measures implemented under the Northern Territory National Emergency Response in 2007 which undermined First Nations peoples' agency and curtailed important rights and freedoms.⁶

More recently, Commonwealth policy has focused on addressing disadvantage through social policy efforts targeted through the National Agreement on Closing the Gap. Although critically important, this approach has not substantively improved First Nations outcomes.⁷ Policy efforts targeted at First Nations communities over recent decades have regularly been characterised by inconsistency and contradictions, described by a former Commonwealth minister as 'policy incoherence.'⁸ This policy context has contributed to entrenched challenges and so responses and solutions to the many issues outlined in this report are not easily resolved. Some options proposed, however, are achievable in the short term through effective engagement with government and its agencies. Others require investment in transformational change that includes developing new infrastructure and institutions that can ensure medium-to long-term impact. The Seminar Series highlighted that addressing these matters requires a coordinated national economic self-determination policy framework.

⁵ Self-determination was a formal policy endorsed by the Whitlam Government and was an underpinning of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). Through the 1980s and into the 1990s federal governments moved from formal support for self-determination to self-management. See Gough Whitlam, 'Aboriginals and Society' Press Statement No. 74, 6 April 1973. For commentary see also Laura Rademaker and Tim Rowse, 'How shall we write the history of self-determination in Australia?' in Laura Rademaker and Time Rowse (eds) *Indigenous Self-Determination in Australia* (ANU, 2020) 1–31.; Michael Dodson and Sarah Pritchard, 'recent developments in Indigenous Policy: The Abandonment of Self-Determination' (1998) 4(15) *Indigenous Law Bulletin*, 4; Commonwealth of Australia, *Commonwealth Government Response to the Council of Aboriginal Reconciliation Final Report – Reconciliation: Australia's Challenge* (2002) 10.

⁶ These included various legislative measures, and among other things, the suspension of the *Racial Discrimination Act 1975* (Cth), the abolition of Community Development Employment Projects (CDEP), the prohibition of courts considering customary laws in criminal sentencing, and changes to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) system of land title in the NT, including revoking the permit system and empowering the Commonwealth with capacity to hold long-term leases over Aboriginal land.

⁷ See Australian Productivity Commission, *Review of the National Agreement on Closing the Gap* (Study Report, January 2024) 3.

⁸ Fred Chaney, '40 years since the Referendum: Learning from the past, walking into the future' (Vincent Lingiari Memorial Lecture, 11 August 2007).

Finally, the *Murru waaruu* reform proposals should not be understood as an alternative to the National Agreement on Closing the Gap. The Seminar Series revealed that achieving Closing the Gap targets can be accelerated through a distinct but complementary economic self-determination policy framework. This framework clearly extends beyond the social services and training, employment and procurement focus of Closing the Gap, but nonetheless reinforces those efforts. The matters considered in this report should be seen as essential to a shared challenge to improve the lives and livelihoods of First Nations people in Australia.

PART 1: Seminar Series Process

3. Seminar Series process and participation

This section outlines the process and methodology of the Seminar Series and provides a breakdown of the composition of participants.

3.1. Background

In July 2022, ANU FNP hosted the *Marramarra murru* First Nations Economic Development Symposium and Wealth Forum (Symposium). The Symposium brought together 170 Indigenous leaders, policymakers, and entrepreneurs, including from Canada, the United States and Aotearoa New Zealand. The intention of the Symposium was to examine the barriers to First Nations economic opportunities in Australia and to consider public policy reform options. The resounding outcome of the Symposium, expressed in a communique,⁹ was the view that a critical shift in Australian public policy is needed to effectively support the economic development of First Nations peoples in Australia.

Responding to this mandate, ANU FNP (with financial support from the National Indigenous Australians Agency) facilitated the *Murru waaruu* First Nations Economic Development Seminar Series (Seminar Series) over the course of 2023. The Seminar Series comprised six seminars (see Appendix 1) on key topics related to the advancement of First Nations economic opportunity in Australia.

Discussions at the Symposium and Seminar Series highlighted that Australia substantially lags comparative jurisdictions like Canada and Aotearoa New Zealand in progress on Indigenous economic policy. This was especially evident in discussions on land fungibility, access to finance, frameworks for agreement making and capacity building. Whilst recognising that Australian policy approaches are informed by a unique context and history, these comparative international examples confirm Australia must progress a First Nations economic agenda.

3.2. Participation

A total of 266 individuals participated in the Seminar Series. Of these, 106 (40 per cent) were Indigenous and 160 (60 per cent) were non-Indigenous. Overall, there were slightly more male attendees than female (54 per cent vs. 46 per cent).

⁹ First Nations Portfolio, 'The Marramarra Murru Creating Pathways Communique' (Australian National University, 27 June 2022) available at <<https://anufirstnations.com.au/wp-content/uploads/2022/07/The-Marramarra-Murru-Creating-Pathways-communique-003.pdf>>.

Figure 1 provides a breakdown of participants by type of workplace or organisation. More than one quarter were from universities. The next largest group were from the Australian Public Service, followed by First Nations statutory bodies, Land Councils, First Nations businesses, and peak bodies. Industry representatives and foreign diplomats were also present.

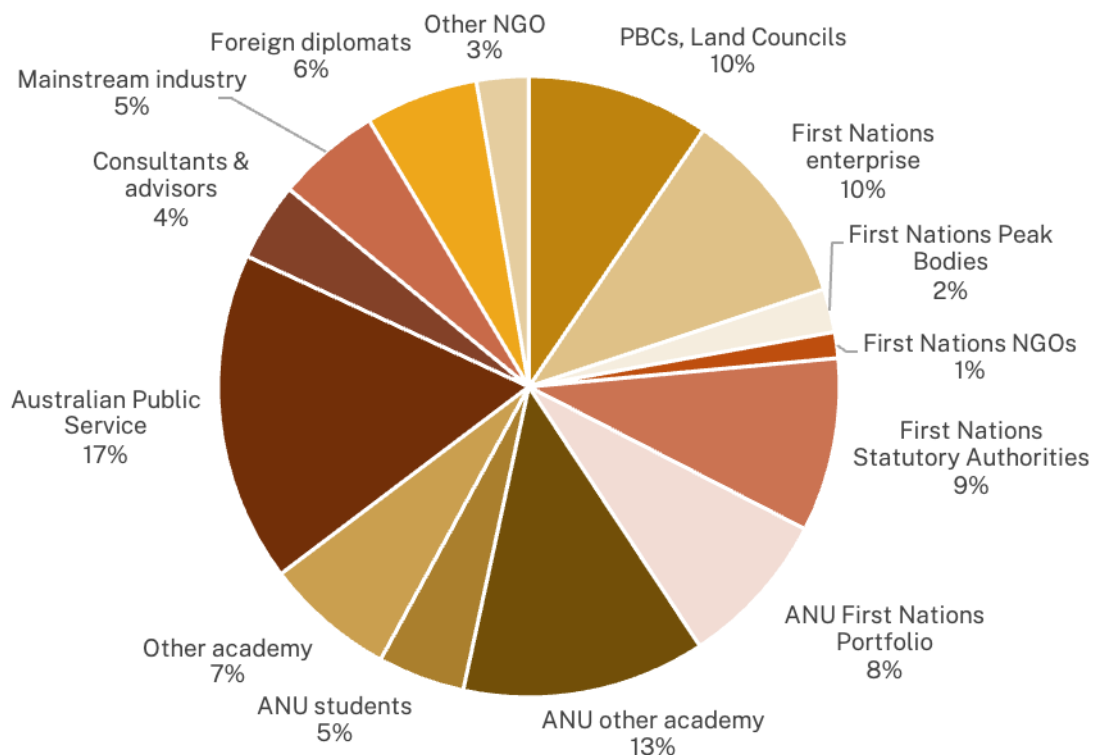


Figure 1–Breakdown of participation at the Seminar Series

3.3. Seminar Series process and background papers

The Seminar Series comprised six distinct dialogues focused on advancing the economic interests and opportunities of First Nations peoples in Australia (see Figure 2). Each seminar involved expert speakers presenting on relevant topics as well as facilitated workshops and discussions on key matters relating to each topic.

The Seminar Series included:

- Seminar 1-Treaty and Settlement, February 2023
- Seminar 2-Rights and Assets, April 2023
- Seminar 3-The Cost of Past Policies, June 2023
- Seminar 4-Self Determination or the Highway?, August 2023
- Seminar 5-Developing a Policy Framework for Economic Self-Determination, October 2023
- Seminar 6-Institutional Settings for Economic Self-Determination, November 2023

Each seminar was informed by a background paper that set out key issues and context relevant to the discussion. These background papers can be accessed via the links provided in Appendix 1. Speeches, workshop deliberations and other contributions

were recorded and collated during each seminar. These were then summarised and incorporated into materials that inform this report.

Findings and reform proposals were developed throughout the first four seminars, where substantive matters were given most attention. The fifth seminar was an opportunity to examine and prioritise policy reform options, and the final seminar provided a forum to assess institutional implications of a new policy direction. In the later stages of the Seminar Series, and in response to the seminar process, a First Nations Economic Empowerment Alliance (Alliance) was established. Alliance members were drawn from participants and expert speakers including First Nations leaders and subject matter experts from key organisations with an interest in First Nations economic development. This report was subject to peer-review and has been endorsed by the Alliance as an accurate reflection of Seminar Series dialogues.

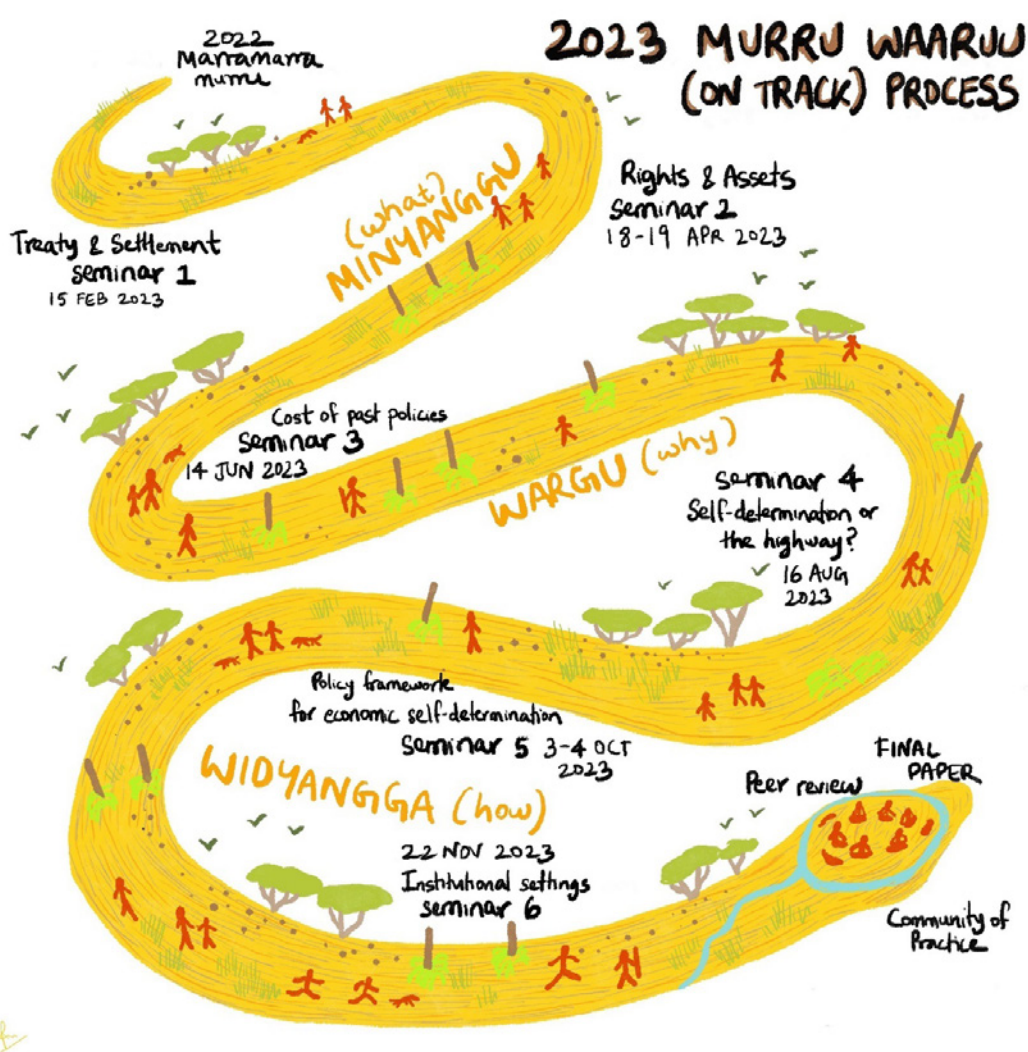


Figure 2 – Murru waaruu Seminar Series process.

PART 2: Outcomes from *Murru waaruu*

4. Context

The Seminar Series revealed that current policy approaches are inadequate in driving significant economic improvements for First Nations communities. Of the 17 Priority Reform targets that comprise the National Agreement on Closing the Gap, only three are on track to be met by 2031. The majority are not on track to be met, and in some areas are worsening, or are currently unable to be measured.¹⁰ The Productivity Commission's review of the National Agreement found that a 'paradigm shift' is needed for any progress to be made.¹¹

During the Seminar Series, participants identified that one such paradigm shift must be a renewed commitment to the self-determination of First Nations peoples, particularly the economic dimension of self-determination. Economic self-determination is used here to refer to the ability of First Nations communities to create economic outcomes of their choosing and timing from their legal rights and interests in land, freshwater, Sea Country, cultural and intellectual property, and other assets.¹²

The economic dimension of self-determination is critical to the broader right of self-determination which is well established at international law, including at Common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹³ The right to self-determination is the backbone of the preeminent international law instrument on the human rights of Indigenous peoples – the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Australia endorsed in 2009. At least 11 of the 46 articles of UNDRIP articulate economic rights and give expression to economic self-determination.¹⁴ UNDRIP must be used as a framework for further consideration of economic initiatives and reforms.

¹⁰ See National Indigenous Australians Agency, *Commonwealth Closing the Gap 2023 Annual Report and 2024 Implementation Plan* (Annual Report, 2024).

¹¹ Productivity Commission, *Review of the National Agreement on Closing the Gap*, n 7.

¹² This is supported by various international human rights instruments including Common Article 1 of the ICCPR, the ICESCR, and generally the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) with particular reference to Article 3, which expresses the right to self-determination in the Indigenous context. For a broader discussion on the premise of economic self-determination see Odette Lienau, 'The multiple selves of economic self-determination' (2020) 129, *The Yale Law Journal*.

¹³ Common Article 1 states that 'all peoples have the right to self-determination' and that by virtue of that right they can 'freely determine their political status and freely pursue their economic, social and cultural development'. Australia has ratified both conventions.

¹⁴ UNDRIP Articles: 3, 4, 5, 8(2), 10, 11(2), 17(3), 20(2), 21, 23, 26(2), 28(1) and 39. For a discussion on the economic dimension of UNDRIP see John Borrows, 'Indigenous Diversities in International Investment and Trade' in John Borrows and Risa Schwartz (eds) *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements* (Cambridge University Press, 2020).



June Oscar, *Murru waaruu* (On Track) Seminar Series: Seminar Four (16 August 2023)

“Economic development is a human right. All peoples have the right to freely express themselves through their social, economic and political forms of self-determination and self-development, and it is fundamental to self-determination.”

*June Oscar (Bunuba) (Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission) *Murru waaruu* (On Track) Seminar Series: Seminar Four (16 August 2023)*

A paradigm shift of this nature is especially important because international experiences reveal measurable links between policy settings that support Indigenous economic self-determination and important socio-economic multipliers.¹⁵ Comparative jurisdictions such as Canada and Aotearoa New Zealand have demonstrated improved benefits to the socio-cultural and economic wellbeing of Indigenous peoples where policies promote and adhere to self-determination.¹⁶ For example, as heard at the Seminar Series, the Canadian federal government worked with First Nations leaders to develop and legislate an innovative framework to support First Nations economic development and tackle structural limitations to First Nations economic opportunities.

¹⁵ Alana Gall et al, 'Wellbeing of Indigenous Peoples in Canada, Aotearoa (New Zealand) and the United States: A Systematic Review (2021) 18 (11) *Environmental Research and Public Health*.

¹⁶ *Ibid.*

The *First Nations Fiscal Management Act (2005)* established bespoke First Nations-led institutions with mandates to work with First Nations to improve their financial governance capacity, revenue raising, and access to effective finance. These institutions are working to improve the opportunities and capabilities of First Nations to engage in local, regional and national economies creating positive social and economic outcomes,¹⁷ including improved financial capacity, higher levels of formal education and improvements in residential housing.¹⁸ This successful approach is underpinned by the principle of self-determination and other rights of Indigenous peoples as articulated in UNDRIP.¹⁹



Figure 3-Drivers of First Nations economic self-determination socio-economic multipliers

Emerging research in Australia also highlights that when First Nations peoples are supported to develop their economies, there are important second order community benefits.²⁰ These include: high levels of employment of and investment in First Nations people;²¹ high rates of procurement from local First Nations businesses and investment in the local community;²² enhanced and more competitive delivery of services for Indigenous customers; improved intergenerational wealth transfer;²³ reconnection to

¹⁷ First Nations Financial Management Board, *Value of the FMA to First Nations* (Research Report, 2022) 3.

¹⁸ *Ibid*, 3–8. See also in relation to benefits correlated to revenue related to education and housing, Shawn Blankinship and Laura Lamb, 'Exploring First Nation Community Well-being in Canada: The Impact of Geographic and Financial Factors' (2022) 21 (2) *Economic Papers*.

¹⁹ *First Nations Fiscal Management Act 2005*, Preamble.

²⁰ Alana Gall et al, n 15.

²¹ Studies suggest that a First Nations business is between 10 and 100 times more likely to employ Indigenous people than other businesses. See C. Eva, K. Bodle, D. Foley, J. Harris, and B. Hunter 'The importance of understanding Indigenous employment in the Indigenous business sector' (2023) 58 (3) *Australian Journal of Social Issues*. B. Hunter, 'Whose business is it to employ Indigenous workers?', (2015) 26 (4) *The Economic and Labour Relations Review*, 631-651.

²² See in relation to this point M. Rola-Rubzen. *The anatomy of the Australian entrepreneur: understanding micro, small and medium business in Australia* (Ninti One, 2011).

²³ PwC's Indigenous Consulting, *The Contribution of the Indigenous Business Sector to Australia's Economy*

Country and culture and other second order benefits such as culturally safe workplaces and local community confidence and pride.²⁴ Policies promoting First Nations economic self-determination, including measures to enhance economic opportunities aligned with Indigenous rights and interests and to ensure equitable access to finance and investment opportunities, are crucial for empowering First Nations communities and improving systemic disadvantage.

Policies which promote First Nations economic self-determination can also help to address critical deficiencies in current public policy arrangements, delivering important benefits to government and taxpayers. These include improving efficiency by reducing the transaction costs and uncertainty often associated with the complexities First Nations rights and interests - arrangements which are complex, subject to significant regulation, and involve many different parties operating with suboptimal information. Appropriately designed policies can also reduce fiscal costs associated with expensive, but generally inefficient, policies directed at addressing First Nations disadvantage.²⁵ This is because appropriately designed policies that support First Nations economic self-determination can help to reduce disadvantage.

(PricewaterhouseCoopers, 2018); Dennis Foley, Indigenous Australian Entrepreneurs: Not all Community Organisations, Not all in the Outback (Discussion Paper, Centre for Aboriginal Economic Policy Research, 2006).

²⁴ C. Eva, K. Bodle, D. Foley, J. Harris, and B. Hunter, n 21; 'K. Sangha, A. Duvert, R. Archer, and J. Russell-Smith 'Unrealised economic opportunities in remote Indigenous communities: case studies from northern Australia', (2020) 2 (1) *Social Sciences and Humanities Open*.

²⁵ While the methodology that has been used in formal efforts to determine the cost incurred by Australian governments (and, therefore, the Australian taxpayer) in servicing the socio-economic disadvantage of First Nations people, has been the subject of some criticism, there is general consensus that the cost is significant. Estimates suggest it is equivalent to the cost of running a medium-sized state of Australia, but servicing no more than 3.5 percent of the national population. See Productivity Commission, *Indigenous Expenditure Report* (Australian Government, 2017).

5. Initiatives and reforms for First Nations economic development and self-determination

This section summarises reform proposals that were developed through the Seminar Series. They relate to complex matters and should be read as a starting point for further development with government and responsible agencies and organisations. The proposals deal with matters for short, medium, and longer-term attention and may be best expressed as distinct proposals to inform the development of a broader policy framework promoting First Nations economic self-determination. They are not intended to be implemented all at once. Attempting to do so would be ineffective, not least because some proposals may require new institutional arrangements to be successful. Implementing these proposals requires strengthening the capability of government and First Nations and their organisations, a consideration in need of urgent further attention.²⁶ Some matters may be addressed relatively simply and could have significant short-term benefit. Participants at the Seminar Series endorsed working with government to further develop and implement the proposals below as part of a First Nations economic self-determination policy framework. This was widely agreed to be the most effective way of ensuring they are appropriately addressed.

5.1. A legislative framework for optimal reform

UNDRIP is a key framework that can inform and guide policy designed to empower First Nations peoples. As an articulation of the human rights of Indigenous peoples, many articles of the UNDRIP can be an important underpinning for policies designed to support First Nations economic self-determination. UNDRIP should therefore be seen as a valuable tool to support the economic self-determination of First Nations peoples.²⁷

Although legislative reform to support First Nations economic self-determination is not required for all proposals in this report, legislative endorsement of UNDRIP, or of particular rights and principles contained in its articles, could provide a statutory environment that better supports First Nations economic self-determination. Using UNDRIP as a legislative basis for the more significant reforms proposed would be particularly effective. This would ensure that reforms that purport to advance the economic and other interests of First Nations peoples draw from and adhere to established human rights standards pertaining to Indigenous peoples.

²⁶ It should be noted that capacity support for First Nations and their enterprises, including Prescribed Body Corporates, is critical. For a discussion on this issue see K. Woods, F. Markham, J. Taylor, D. Smith, B. Burbidge and Y. Dinku, *Toward a Perpetual Funding Model for Native Title Prescribed Bodies Corporate* (Centre for Aboriginal Economic Policy Research, Commissioned Report No. 7).

²⁷ John Borrows and Risa Schwartz, 'Introduction' in John Borrows and Risa Schwartz (eds) *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements* (Cambridge University Press, 2020) 2.

Ensuring key Australian legislation is aligned with the principles and articles of UNDRIP would enable a public policy environment that better supports and advances economic self-determination for First Nations peoples. This is supported by the experience of international jurisdictions working to implement UNDRIP, and consistent with the recommendations of the Australian Parliamentary Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the application of UNDRIP in Australia, tabled in Parliament on 28 November 2023.²⁸ The Seminar Series found that the alignment of government policy with UNDRIP is key to efforts to improve First Nations people’s life outcomes. The Productivity Commission’s Review of the National Agreement on Closing the Gap shares similar findings, particularly in relation to recommendations on the priority of shared decision-making and self-determination.²⁹

The Seminar Series also highlighted that government engagement with UNDRIP requires significant internal government capacity-building. For example, public servants require further education to meaningfully engage with UNDRIP. The findings of the Productivity Commission, such as those relating to cultural capacity, ‘institutional racism, cultural safety, and unconscious bias’,³⁰ are instructive and important to considering how government can effectively engage with UNDRIP as a tool to develop effective laws and policies.

Policy reform proposals: UNDRIP provides a useful framework for critical reform

Proposal 1A

Strategic and targeted integration of UNDRIP into the Australian legislative framework

In collaboration and through consultation with First Nations peoples, strategic and targeted incorporation of key articles and principles of UNDRIP into relevant future legislation, or current legislation subject to reform, should be pursued to give life to UNDRIP and its important principles within the Australian legislative framework.

This should include a process of review and reporting to identify priority areas of reform and to socialise important rights and their substantive meaning, as well as key inconsistencies in legislation that may currently exist in relation to UNDRIP.

Proposal 1B

Requirements for Australian Government public servants to give consideration to UNDRIP in carrying out their duties.

As a complementary part of a process of targeted implementation of UNDRIP, review and subsequent reform to the Code of Conduct contained at Section 13 of the *Public Service Act 1999* (Cth) should be undertaken to ensure that the public service is required to substantively engage with and give due consideration to UNDRIP in carrying out its functions. This should be supported by an education program delivered to all Australian public servants on UNDRIP and its application in the Australian Commonwealth. Although not specifically considered in this report, it follows that complementary measures should be taken by state and territory governments.

²⁸ See, in particular, Recommendations 1–4 and Recommendation 6. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Report, November 2023) xix.

²⁹ See, in particular, Recommendation 1, and discussion on pages 45–49, Australian Productivity Commission, *Review of the National Agreement on Closing the Gap*, above n 7.

³⁰ *Ibid*, 6–8. See also pages 18–14.

5.2. Land rights reform

Over 50 per cent³¹ (increasing to an expected 65 per cent by 2030),³² of the Australian landmass is subject to some form of First Nations legal right or interest. These rights and interests are given effect through 25 separate Commonwealth and state and territory statutory instruments.³³ Such a vast terrestrial estate should present First Nations people with significant economic opportunities across many areas, including primary production, minerals and hydrocarbon production, renewable energy generation and infrastructure, and natural resource management and environmental services. This accumulated land asset base presents critical opportunities for First Nations economic development and wealth creation.

However, it is only in the past 50 years that Australian law has recognised First Nations' land interests. For First Nations peoples wanting to use their lands to pursue economic opportunities, a protracted process of identifying and validating culturally appropriate economic development opportunities of their choosing and timing on their traditional lands is a significant obstacle. The use of Multi-Objective Land Allocation (MOLA) analysis can de-risk and expedite this process. By integrating readily available Geospatial Information System (GIS) data pertaining to land characteristics (such as hydrology, soil condition, planning regimes and infrastructure) with data pertaining to cultural values, First Nations can rapidly identify economic opportunities on their traditional lands. MOLA facilitates planning and management in accordance with cultural values. This evidence-based approach can also assist agreement making underpinned by the principles of free, prior and informed consent.

Even when culturally appropriate development opportunities are identified, the capacity for First Nations to generate significant economic value from land rights and interests is in all cases constrained. Where there is some scope for First Nations land to be used for commercial purposes, such as for development projects, leasing, or collateral for finance or sale, this is subject to legislated conditions and third-party approvals that do not encumber other Australian landholders. The Seminar Series heard that in almost all cases, First Nations landholders do not enjoy the same fungibility and cannot use their land rights and interests as collateral for finance to the same extent as most other Australian landholders.

³¹ Russell Barnett, Bruce Doran, Anna Normyle and Michael Vardon, *Baseline Study – Agricultural Capacity of the Indigenous Estate* (Cooperative Research Centre for Developing Northern Australia, 2021).

³² National Native Title Tribunal, *Native Title Determinations and Claimant Applications* (Map, 2022).

³³ See Ed Wensing, 'Land Justice for Indigenous Australians: How can the two systems of land ownership, use and tenure co-exist with mutual respect based on parity and justice?' (PhD Thesis, Australian National University, 2019).

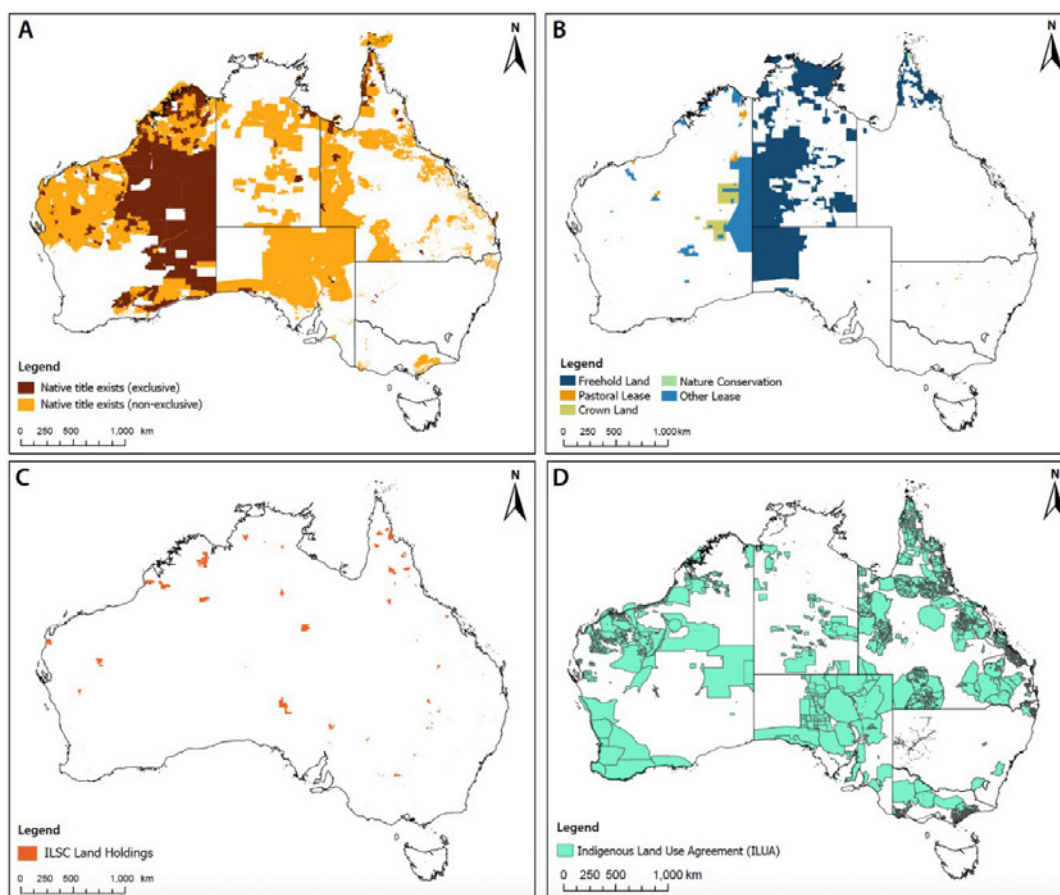


Figure 4 – (A), (B), (C) and (D) – The geographical extent of different forms of First Nations tenure interests that define the Indigenous Estate (source: Jacobsen, Howell & Read 2020; NNTT 2022; Deloitte Access Economics 2021)

While land rights and interests conveyed under the *Native Title Act* provide for the largest geography of rights and interests, they are the most restrictive in terms of economic use. In fact, the *Native Title Act* is one of only four statutory land title regimes that expressly prohibits rights and interests in land being sold, leased, or mortgaged.^{34,35} The *Native Title Act* was not established with a primary purpose of creating economic value for First Nations. However, after three decades and as the native title regime approaches full determination across Australia, options for reform so that native title can become a better instrument for the economic advancement of First Nations must be seriously considered. Reform to better realise economic opportunities for First Nations land holders is relevant not just to the *Native Title Act*, but should be considered across all state, territory and federal laws regulating land rights for First Nations. For example, in the federal context, this should extend to the *Aboriginal Land Rights (Northern Territory) Act (Cth)* ('*ALRA*'). Considering appropriate mechanisms to ensure the *ALRA* effectively supports economic development opportunities for Traditional Owners is complex. Traditional Owners and Land Councils would need to

³⁴ The other statutory regimes that preclude rights in land being sold, leased or mortgaged are *National Parks and Wildlife Act 1974 (NSW)*, *Aboriginal Land Act 1991 (Vic)* and *Traditional Owner Settlement Act 2010 (Vic)*.

³⁵ *Native Title Act 1993* Section 56(5): '...native title rights and interests held by the body corporate are not able to be (a) assigned, restrained, garnished, seized or sold; or (b) made subject to any charge or interest; or (c) otherwise affected...as a result of; (d) the incurring, creation or enforcement of any debt or other liability by the body corporate; or (e) any act done by the body corporate.' For discussion see Ed Wensing, *The Commonwealth's Indigenous land tenure reform agenda: Whose aspirations and for what outcomes?* (AIATSIS Research Publication, AIATSIS, 2016).

be engaged on critical questions related to any reform, considering the scope of leasing opportunities and other matters such as the role and utility of the Executive Director of Township Leasing. Despite the importance of the *ALRA*, the Seminar Series determined that given its national scope, and critical limitations, the reform priority should be the *Native Title Act*.

It was clearly expressed throughout the Seminar Series that any reform to the *Native Title Act* concerning First Nations economic development must be made on the basis that First Nations common law rights are not compromised or threatened. Proposals for reform to statutory land rights and native title regimes discussed in the Seminar Series do not advocate for the dismantling of communal title regimes. These proposals focus on how to unlock economic opportunity without compromising critical underlying recognition and other hard-fought rights and interests given protection under various laws around Australia.

Policy reform proposals: unlocking opportunities relating to land

Proposal 2A
National MOLA
assessment of the
First Nations estate

A program should be established to support First Nations to undertake a MOLA analysis of their traditional lands to identify and plan for culturally aligned development opportunities or opportunities that can co-exist with cultural values.

This will include establishing data sovereignty frameworks for First Nations cultural data based on free, prior and informed consent (including for cultural data that is shared among multiple First Nations), developing data capabilities within First Nations organisations, rendering government datasets more accessible and user friendly, promoting the integration of cultural mapping into mainstream planning processes, trial programs and cost benefit analyses prior to a national roll-out on an opt-in basis.

Proposal 2B
Native Title Act
Reform

A review of the suitability of tenure created under the *Native Title Act* as an asset for economic self-determination should be undertaken with a view to reform. This may focus on reducing the commercial constraints provided for under Section 56(5), the future acts regime under Division 3 such that the right to negotiate reflected in Section 31 is extended to other non-mining future acts, and express provision for equity as a compensation pathway in the Act. Reform must be complementary to and not adversely interfere with underlying native title rights and interests.

The review and reform process should be undertaken in collaboration with native title holders, but also include a ground-truthing exercise with land users, financiers, and the states (for the purposes of establishing simple pathways to long-term leases over Native Title lands), as well as a public and stakeholder (particularly finance sector) awareness and education campaign. As noted above, similar processes may be contemplated for other land title schemes.

5.3. Freshwater reform

In terms of volume, First Nations legal rights and interests in Australian freshwater resources are the inverse of land –equivalent to between 0.1 and 0.2 per cent of the total volume of freshwater allocations across Australia.^{36,37} First Nations legal rights and interests in freshwater are, however, broadly similar to their rights and interests in land with respect to economic utility. Most of this already minimal allocation is in the form of what are termed ‘cultural flows’, where use of the allocated water for economic purposes is legally prohibited. Numerous factors have resulted in this situation, including government recognition of most First Nations rights and interests in land being decoupled from rights in licensed water allocations, limited involvement of First Nations in freshwater governance, the fully or over-allocated nature of some Australian freshwater resources, and in instances where water resources are not fully allocated, an absence of regulator capacity to allocate and invest in access and distribution infrastructure.

Dramatically increasing First Nations access to water allocations licensed for economic purposes is vital to activate the opportunities associated with land rights and interests as discussed in Section 5.2, particularly in relation to primary production. They are also important for activating opportunities for fishing, aquaculture, and management of the inland water estate.

Policy reform proposals: improving economic opportunities relating to water

Proposal 3A

Stand-up the proposed First Nations Water Working Group

As proposed by the Australian National University First Nations Water Roundtable (May 2023), a National First Nations Water Working Group should be stood up. The Working Group would be endorsed and recognised by the Commonwealth and state and territory governments and have Terms of Reference that authorise it to engage at the highest level of dialogue across all aspects of planning and managing the freshwater estate and allocating water resources. It would be comprised of members who are collectively highly regarded in relation to freshwater, cultural, technical and economic perspectives.

This First Nations Water Working Group should incorporate a subcommittee that focuses exclusively on developing solutions that result in First Nations being able to access economic water allocations from both fully allocated and unallocated freshwater catchments, particularly for the purpose of activating the First Nations land estate.

³⁶ S. Jackson, and M. Langton, ‘Trends in the recognition of Indigenous water needs in Australian water reform: the limitations of cultural entitlements in achieving water equity’ (2011) 22 (2) *Journal of Water Law*, 109-123.

³⁷ L. Hartwig, S. Jackson, and N. Osborne, ‘Trends in Aboriginal water ownership in New South Wales, Australia: the continuities between colonial and neoliberal forms of dispossession’ (2020) 99 *Land Use Policy*.

<p>Proposal 3B</p> <p>Reform to the National Water Initiative</p>	<p>The Commonwealth should lead a significant reset of the National Water Initiative (NWI) that results in improved coordination of water policy across all jurisdictions and with a specific and express focus on the meaningful incorporation of First Nations interests in the governance of freshwater resources across the nation.</p> <p>The Working Group established under Proposal 3A should be a key component of the reform of the NWI. It should go beyond simple First Nations advisory structures to First Nations performing an integral function in water policy, usage, infrastructure and allocation decisions throughout the machinery of Commonwealth and state and territory governments that regulate freshwater resources in Australia. It should also address water allocations and governance as components of government-First Nations agreement making and potential reparations considerations (see below).</p>
<p>Proposal 3C</p> <p>Mapping of First Nations demand for water for economic use</p>	<p>As a basis for designing and prioritising economic water access initiatives that are the subject of Proposals 3D and 3F, a demand study and mapping exercise should be undertaken that identifies the location and nature of First Nations land activation and other opportunities that require access to freshwater. It should also identify available and potentially available sources of freshwater and map the required volume and water quality requirements for those opportunities to the identified sources.</p> <p>This demand study and mapping exercise should identify possible sourcing from both fully allocated and unallocated water resources.</p>
<p>Proposal 3D</p> <p>First Nations economic water entitlements acquisition fund</p>	<p>Building on the existing Commonwealth initiative (Murray-Darling Basin Aboriginal Water Entitlements Program) the Commonwealth Government should establish a national fund informed by the Proposal 3C study to acquire economic water entitlements and licenses First Nations can use to activate land and other opportunities.</p>
<p>Proposal 3E</p> <p>Identifying alternative sources of freshwater for economic use</p>	<p>As a result of over-allocation, commercial competition and climate change, in some instances the acquisition of freshwater entitlements and economic licenses will be uneconomic, if not impossible. As such, a study should be undertaken to identify emerging alternative sources of freshwater, such as recycled wastewater and seawater desalination, and to explore opportunities for securing First Nations economic entitlements from such sources.</p>
<p>Proposal 3F</p> <p>Acquisition of knowledge required to allocate resource from unallocated water resources</p>	<p>Drawing on the outcomes of the demand study in Proposal 3C, investment in the activation of yet to be allocated freshwater resources should be prioritised based on demand for economic use from First Nations and the pre-existence of knowledge pertaining to the associated unallocated water resource. Protocols for developing the conventional and traditional scientific knowledge that is required to make competent water allocation decisions for priority resources should be developed together with a knowledge acquisition plan that identifies priority knowledge gaps and capabilities that can be utilised to address those gaps. Once developed, this plan should be resourced and implemented.</p>

5.4. Sea Country Reform

Sea Country, and particularly fishing from Sea Country, has been a significant enabler of economic self-determination in North America³⁸ and Aotearoa New Zealand,³⁹ and there is growing interest in Australia.

First Nations rights over Sea Country are a relatively new development in Australia. Rights to Sea Country remain limited, with the exception of rights of inalienable freehold to over 85 percent of the Northern Territory coastline, which includes the intertidal zone, pursuant to the *ALRA* and certain associated rights of control recognised by the Australian High Court in the *Blue Mud Bay Case*;⁴⁰ special rights afforded to First Nations in the *Torres Strait*;⁴¹ and certain associated trading rights recognised in the *Akiba* High Court determination.⁴² Native title rights over Sea Country have only been recognised since 2001,⁴³ and to date there are only 37 determinations that include significant areas of Sea Country.⁴⁴

Further complicating the use of rights and interests in Sea Country for economic purposes is the disparate approach to fisheries management across Australian jurisdictions. This is particularly pronounced in the role First Nations groups perform in resource management and decision-making, total fishery resource allocation policy, and approaches to First Nations participation in the commercial fishing sector. While some nascent sectors of the Blue Economy⁴⁵ present significant opportunity, many are principally offshore, raising questions as to how First Nations can capitalise on these emerging opportunities.

Policy reform proposals: unlocking economic opportunities relating to Sea Country

Proposal 4A A national framework for the elevated Sea Ranger function	A national framework for elevating resource management functions of Sea Ranger Groups should be developed and implemented. This should map the research, conservation and resource management activities, and decision-making and compliance functions that could be delegated to Sea Ranger Groups from state and territory governments on a fee-for-service basis; identify capacity building requirements; develop solutions for building capacity; and an accreditation program.
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³⁸ For example, Section 2.3 of the *Canadian Fisheries Act* 1985 and the Supreme Court cases of *R. v Marshall* (1999) 3 SCR 456 and 533 led to several programs implemented by Fisheries and Oceans Canada to enhance Indigenous fishing for economic benefit. As of 2020, 174 Indigenous communities across Canada were participating in the Integrated Commercial Fisheries Initiative. See, Government of Canada, *Evaluation of the Indigenous Commercial Fishing Program* (Final Report, Project number 96420, March 2021).

³⁹ For example, Māori rights to fisheries are affirmed in Article 2 of the Treaty of Waitangi. Whilst the interpretation of those rights and their management instruments and institutions have varied since 1840, it is now estimated that Māori interests presently control around 50 percent of the total wild-catch fishery production, with three of the five largest seafood companies in Aotearoa New Zealand being Māori-owned or-controlled. See Office of the Prime Minister's Chief Science Advisor, *The Future of Commercial Fishing in Aotearoa New Zealand*, (New Zealand Government, 2021).

⁴⁰ *Northern Territory v Arnhem Land Aboriginal Land Trust* (2008) CLR 24.

⁴¹ *Aboriginal and Torres Strait Islander Act 2005* (Cth).

⁴² *Akiba on behalf of the Torres Strait Regional Sea Claims Group v Commonwealth* (2013) 250 CLR 209.

⁴³ *Commonwealth v Yarmirr* (2001) 208 CLR 1.

⁴⁴ National Native Title Tribunal, 'Native Title Vision' (Web page) <<http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx>>.

⁴⁵ The term 'Blue Economy' refers to the sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem. See World Bank, 'MENA Blue Program' (Web page) <<https://www>>.

<p>Proposal 4B</p> <p>Clear and consistent pathways for First Nations to acquire commercial fishing quota and licenses</p>	<p>A framework for increasing First Nations participation in the commercial fishing industry should be developed. This should incorporate a consistent national framework for allocating commercial fishing rights to First Nations from fisheries that are not fully allocated, or from new fisheries. In the case of fully allocated fisheries, the Commonwealth should establish a fund that can be drawn on by First Nations to acquire quota and licenses in the market.</p>
<p>Proposal 4C</p> <p>First Nations fishing and aquaculture peak body</p>	<p>The Commonwealth should support efforts by the First Nations fishing sector to establish a national First Nations Fishing and Aquaculture Peak Body. The Peak Body should have adequate expertise, be linked to jurisdictions, First Nations fishing communities and businesses, and Sea Ranger groups, and should be adequately funded to advocate on the First Nations fishing and aquaculture sector's behalf.</p>
<p>Proposal 4D</p> <p>Assessment of emerging offshore opportunities</p>	<p>The Commonwealth should support a series of studies that provide an evidence-based assessment of opportunities and constraints related to offshore renewable energy, marine carbon abatement and subsea mining, and the trajectory of those sectors on a regional scale. It should have a specific focus on the opportunities and challenges each sector presents to First Nations and identify pathways for First Nations participation.</p>



Leah Armstrong, Murru waaruu (On Track) Seminar Series: Seminar Five (4 October 2023)

"I think we're actually about two decades behind Canada and New Zealand and the US in terms of where we need to be for a First Nations-led economy."

Leah Armstrong (Torres Strait Islander) (Co-Chairperson & Managing Director, First Australians Capital), Murru waaruu (On Track) Seminar Series: Seminar Five (4 October 2023)

worldbank.org/en/programs/mena-blue-program/overview.

5.5. Cultural and intellectual property rights reform

First Nations peoples' cultures and knowledge, developed through observation, experimentation and deductive reasoning in societies that have evolved over the course of 65,000 years, have significant economic value. This is demonstrated in markets such as arts and crafts, and tourism; in application in primary industries such as regenerative agriculture, traditional produce, fishing and aquaculture practice and terrestrial and marine environmental management; as a source of brand and product differentiation; and in the potential commercialisation of genetic resources.

However, because of the various harms of colonisation, some cultural and intellectual property has been lost or is at risk of being lost. With the exception of very limited protections over cultural expression that can be achieved through copyright laws, the Australian intellectual property regulatory framework does not afford adequate protection for First Nations people, communities or enterprises over cultural and intellectual property. This leaves cultural and intellectual property vulnerable to misappropriation and limits its use as an asset for economic opportunities and wealth creation. In the case of traditional knowledge pertaining to genetic resources, this situation is exacerbated by Australia's failure to ratify the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation.

Policy reform proposals: improving economic opportunities relating to intellectual property

Proposal 5A Place-based processes for preservation and transfer	A national framework for place-based funding initiatives that support reviving, storing and transferring First Nations culture and knowledge should be co-designed with First Nations applicants. Initiatives could support ceremonies and their components, heritage surveys, art and language centres, co-designed school curricula, men's sheds, cultural tourism, revegetation and land care programs. This would help to ensure appropriate revitalising, preserving and transferring of culture is an express and adequately resourced key measurable deliverable for such projects.
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Proposal 5B Place-based processes for identification, description and registration	<p>So that First Nations' cultural and intellectual property can be adequately protected under the legislation proposed in Proposal 5C, place-based processes for describing and registering First Nations cultural and intellectual property will be necessary. These should be co-designed so that they cater for a range of cultural sensitivities and non-disclosure requirements, as well as being adequately robust for the purposes of legal protection and enforcement of rights.</p> <p>The registration framework should be underpinned by a co-designed national First Nations Registered Cultural and Intellectual Property database and information service that operates on the principles of free, prior and informed consent and that can be made available to First Nations organisations, intellectual property advisers and the legal profession.</p> <p>This database should not be accessible by third parties until the regulations proposed in Proposal 5C and 5D have force of law.</p>
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Proposal 5C
First Nations cultural and intellectual property legislation

Drawing on the work already undertaken by IP Australia with respect to a proposed Indigenous Knowledge Right and National Indigenous Knowledge Authority, these important conceptual frameworks should be the subject of further ground-truthing with a wider cross section of First Nations cultural and intellectual property holders and against the International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources - as proposed by the World Intellectual Property Organisation Intergovernmental Committee.

Subject to this further validation, the IP Australia reform process should be accelerated to implementation, particularly with respect to the proposed Indigenous Knowledge Right and an institutional framework that supports its establishment, administration and enforcement.

Proposal 5D
Ratification of the Nagoya Protocol

More than a decade has passed since the Nagoya Protocol was adopted by the Convention on Biological Diversity in October 2011, and it is likely that public and stakeholder education on its purpose and implications will be required prior to successful ratification by the Australian Parliament. This education process should commence immediately, followed by the introduction of legislation to the Australian Parliament that gives effect to the Protocol's ratification.

5.6. Reform to rights in financial assets

Due to the legacy of colonisation, First Nations people have less access to financial resources than non-First Nations people. However, because of settlements, compensation arrangements, and land access agreements, many First Nations people and groups across Australia have secured beneficial interests in trusts, statutory and other structures that hold significant financial resources for their benefit. If First Nations were able to access the equity in these funds in the pursuit of activating their rights and interests in land, freshwater, Sea Country and cultural and intellectual property, these financial assets would present a significant resource for the purpose of economic development, particularly where they can be leveraged against private (particularly social impact) investment and other public funds for this purpose (see Figure 5).

“It is not viable to ask Aboriginal people to continually do things with no resources. Access to capital becomes critical. Capacity to negotiate and determine requires the freedom to choose and value or provide our own value for what it is... it's not just about money. Economic self-determination includes all those non-financial values as well. Social returns, social capital...”

Oral McGuire (Noongar) (Director, GundiRMEM Engineering), Murru waaruu (On Track) Seminar Series: Seminar One (15 February 2023)

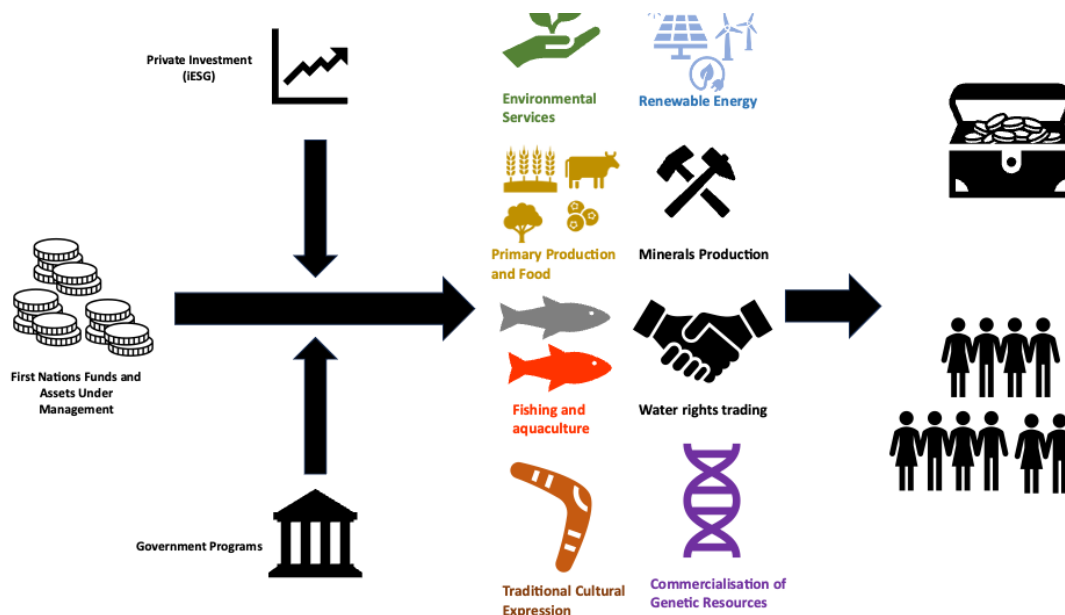


Figure 5 – Using the equity in First Nations financial assets to unlock opportunities for economic self-determination.

Funds held for the benefit of First Nations are typically managed by third parties with their use highly prescribed and, for the most, invested in unitised managed investment products rather than specific First Nations assets and ventures that can facilitate economic self-determination. Activating funds to which First Nations are beneficiaries for this purpose will be key to driving an optimal First Nations self-determined economy. This requires various initiatives to increase private and other investment in the First Nations sector as a source of co-investment and to facilitate First Nations having greater control over the investment of funds to which they are beneficiaries. It also requires improving the attractiveness of investing in First Nations enterprise by building growth pathways into business models – for example, by providing access to international markets, as well as promoting investment opportunities to the global investment market.⁴⁶ As in other places, such as Canada and Aotearoa New Zealand,⁴⁷ supporting First Nations interests in trade and investment agreements could enhance a policy framework geared to advance First Nations economic opportunities.⁴⁸

⁴⁶ Recent Asia-Pacific Economic Cooperation (APEC) and Indo-Pacific Economic Framework (IPEF) agreements are instructive in relation to this point.

⁴⁷ See for discussion on these arrangements, Amokura Kawharu, 'The Treaty of Waitangi Exception in New Zealand's Free Trade Agreements' in John Borrows and Risa Schwartz (eds) *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements* (Cambridge University Press, 2020) 274 – 294.

⁴⁸ On this point it was noted during the Seminar Series that the Australian Government's Indigenous Diplomacy Agenda is a positive early step, although further steps are clearly required to substantively address limited opportunities for First Nations groups and enterprises to engage in the global economy. See Australian Government, Department of Foreign Affairs and Trade, 'Indigenous Diplomacy Agenda' (Web page) <<https://www.dfat.gov.au/publications/indigenous-diplomacy-agenda>>. For a critical discussion on Indigenous interests in global markets see Brenda Gunn, 'International Investment Agreements and Indigenous Peoples' Rights' in John Borrows and Risa Schwartz (eds) *Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements* (Cambridge University Press, 2020) 194 – 2016.

Policy reform proposals: improving opportunities for accessing finance

Proposal 6A

Improving enterprise development and growth management capacity

On a selective basis, the landscape of existing First Nations business advisory and support services should be enhanced so that these programs better transfer enterprise development, growth and capital attraction skills and capabilities, such as domestic and international markets, to First Nations entrepreneurs. This will serve to improve the deal-flow of First Nations ventures that are able to provide investor returns, rendering them viable investments for First Nations capital and better able to attract private and other co-investment.

Proposal 6B

Improving investment management and governance capability

A panel comprised of First Nations community, business and finance leaders, as well as mainstream fund managers, private equity investors, debt financiers and business school academics should be convened to develop a program that transfers both legal compliance and investment skills to existing and aspiring First Nations trustees and fund managers.

Subject to understanding the market for such a program, its design should consider multiple program entry points ranging from individuals with limited business or financial literacy through to First Nations professionals working in the funds management, investment or legal sectors.

Proposal 6C

Creating investment opportunity awareness and marketplace

Utilising the MOLA assessment proposed in Proposal 2A, a series of case studies targeting the professional investment industry of the Australian First Nations economy and the Indigenous economies of Canada and Aotearoa New Zealand, should be prepared.

These case studies should be detailed and include, for purposes of illustration, investment returns modelling, risk assessment and socio-economic impact modelling. They should form the basis for a national and international investment market showcase that targets responsible investment, particularly to support First Nations-led social impact analysis, as is best practice in the Indigenous economies of Canada and Aotearoa New Zealand.

The creation of a marketplace to connect investment and financing opportunities in First Nations ventures with sources of capital should also be developed.

Proposal 6D

Special Investment Vehicle

Based on a set of sensible public policy principles and designed in collaboration with First Nations and the investment and finance sector, the Commonwealth Government should establish a special investment vehicle that uses the Commonwealth's balance sheet to de-risk and lower the hurdle rate for private investors, conventional state and Commonwealth First Nations financing organisations, and other Commonwealth funded special investment vehicles (e.g. Northern Australia Infrastructure Facility, Clean Energy Finance Corporation). This would be used for investments in First Nations ventures to support economic self-determination.

5.7. Framework for treaties and other constructive agreements

The Seminar Series highlighted a strong view that opportunities for First Nations to negotiate treaties and other constructive agreements with compensation and reparations dimensions, including native title settlements, will increase as Australia approaches a status of full determination under the native title regime, and as pressure and engagement on the question of agreement making and potential compensation for past harms continues. The structure and terms of treaties and other constructive agreements between governments and First Nations, and financial and other assets that may be transferred to First Nations under any such agreements, could become important enablers for economic self-determination. In Canada, evidence supports this claim.⁴⁹

The Seminar Series was finalised against the backdrop of the failed referendum to establish a constitutionally enshrined First Nations advisory body. In the shadow of that outcome and considering the general political discourse that has percolated after the result, it appears there may be, at least in the short- to medium-term, some resistance within the Australian electorate, media, and in major political factions, to substantially advance an agreement-making framework. Although the agreement making and truth-telling components of the Uluru Statement were not part of the referendum question, investment in education may be an important step to build awareness for the need for these initiatives.

The importance of advancing agreement making and truth-telling is clearly on the radar of the Parliament. The recent Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the application of UNDRIP in Australia recommended that ‘the Commonwealth Government establish an independent process of truth-telling and agreement making, as requested by Aboriginal and Torres Strait Islander peoples’.⁵⁰ To mitigate against the risk that progress toward agreement making is derailed, it is likely a higher level of public support will be needed. This will require building support for treaties and other constructive agreements and ensuring that any framework that underpins or enables the negotiation of any such agreements supports realising First Nations goals and aspirations for economic self-determination.

⁴⁹ Treaty agreements negotiated in British Columbia unlock First Nations economic potential through enabling access to financing to support First Nation businesses, investment in infrastructure, housing and commercial activity and development that benefits broader regional economies. Positive outcomes are both quantitative and qualitative and include measures such as decreased income inequality. See Deloitte, *Socio-economic Benefits of Modern Treaties in BC* (Report, 2016). In relation to Canada more generally see also Krishna Pendakur and Ravi Pendakur, ‘The Impact of Self-Government, Comprehensive Land Claims, and Opt-In Arrangements on Income Inequality in Indigenous Communities in Canada’ (2021) 47 (2) *Canadian Public Policy*.

⁵⁰ Recommendation 4, Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, n 28, xix.

Policy reform proposals: treaties and other constructive agreements can provide important opportunities for First Nations economic development

Proposal 7A

Establishing the enabling conditions

A public and key thought-leader awareness and education program should be implemented that explains the nature and context of treaties and other constructive agreements. Such a program could focus on truth-telling, the rationale underpinning potential compensation and reparations, the scope and importance of the human rights of First Nations peoples, and what is meant by First Nations 'sovereignty' within the Australian federation. This could be part of a truth-telling mandate undertaken by the proposed Makarrata Commission, which is envisaged as having responsibilities for overseeing truth-telling and agreement making, or it could be pursued as a preliminary measure that supports a commitment to establishing a Makarrata Commission.

In any event, negotiating treaties and other constructive agreements can provide an important framework to settle past wrongs and address compensation, reparations and other outstanding claims and thereby give effect to a more constructive relationship between First Nations peoples and the Australian state and move Australia forward as a nation. Those agreements can also be important to First Nations economic development. Anticipating the importance of such a process, the Commonwealth should begin to quarantine funds in a future fund to resource potential costs that may be associated with future treaties and other constructive agreements.

Proposal 7B

National principles for treaty-like agreements

An early role for the Makarrata Commission should be to establish a principles-based framework for national agreement making. That framework may incorporate, among other things, statements that explain the circumstances of agreement making and the relevant historical context, and articles that go to critical issues, such as the recognition and role of UNDRIP, power sharing and self-government, service delivery arrangements, compensation and reparations, periodic agreement review and transfer of assets.

Consideration should also be given to the jurisdiction that governs agreements, with jurisdictions that provide the strongest security and capacity for First Nations independence preferable.

6. Institutional support for First Nations economic self-determination

The Seminar Series highlighted that a key barrier to advancing reforms that support substantive economic self-determination for First Nations is the capacity of institutions to carry out and implement critical reforms. Which agencies and institutions would be best placed take responsibility for implementing the findings and proposals set out in this report, and to engaging in the implementation of a broader First Nations economic self-determination policy framework? Given the complex and multifaceted nature of many of the matters advanced in this report, and the broad application of the proposed First Nations economic policy focus across government, the coordination of a whole-of-government response, led by central agencies, may be the most effective way to address questions of institutional capacity and implementation. Since the proposed reforms in this report vary in complexity, some questions about institutional responsibility and capacity may need to be addressed over the longer term.

The National Indigenous Australians Agency (NIAA) is the principal Commonwealth agency responsible for First Nations affairs. With a staff of approximately 1,300⁵¹ and annual operating budget in the vicinity of \$2.6 billion,⁵² NIAA has responsibility for a number of key areas of Australian Government First Nations policy, including Closing the Gap, Employment, Empowered Communities, and Economic Development. Economic development initiatives are funded within NIAA's Indigenous Advancement Strategy which, among other things, supports a network of Indigenous Business and Employment Hubs and community grants for business development. However, from the perspective of creating and implementing policy that is conducive to and supports First Nations economic self-determination, numerous Commonwealth agencies and instrumentalities have important roles to play.

Below, the current institutional capacity of key institutions is evaluated against the proposals developed throughout the Seminar Series and more broadly to their capacity to advance a First Nations economic self-determination agenda.

- **First Nations specific development instrumentalities:** With distinctly different histories, the two Commonwealth instrumentalities now operating under the *Aboriginal and Torres Strait Islander Act 2005* (Cth) – Indigenous Business Australia (IBA) and Indigenous Land and Sea Corporation (ILSC) – perform key roles in supporting First Nations economic development. This is primarily through the

⁵¹ National Indigenous Australians Agency, 'Our Business' (Web page) <<https://www.niaa.gov.au/our-business>>.

⁵² Sally McNicol and James Houghton, 'Indigenous Affairs: Budget Resources' (Research Paper, Parliamentary Library, Parliament of Australia, May 2023).

provision of advice, providing access to concessionary and mainstream finance, and supporting the acquisition of land, freshwater and Sea Country related to economic rights. However, the capacity of ILSC and IBA to engage more fully in supporting the economic aspirations of First Nations peoples is constrained by statutory restrictions, limited resourcing, and the broad and various responsibilities of these organisations.

For IBA, for example, Sections 183 and 184 of the *Aboriginal and Torres Strait Islander Act 2005* restrict the ability of IBA to borrow or raise capital. This means that for the purposes of its investment activities, including those that may support First Nations economies, its only source of capital is surplus generated from its business and investment activities, recycled internal capital, and contributions from the Commonwealth. This constraint does not apply to other Commonwealth investment agencies such as Export Finance Australia (EFA), Northern Territory Aboriginal Investment Corporation (NTAIC), Clean Energy Finance Corporation (CEFC), or Northern Australia Infrastructure Facility (NAIF). It fundamentally limits IBA's ability to leverage capital for co-investment arrangements. If IBA was able to directly borrow or raise capital for the purposes of investing in First Nations ventures, it could deploy a significantly greater amount of finance and investment.

For ILSC, limitations in the size and capacity to draw down from funds in the Aboriginal and Torres Strait Islander Land and Sea Future Fund (ATSILSFF) – ILSC's perpetual income stream – impair ILSC's capacity to meet First Nations aspirations in ownership, management, development, and care of Country. The ATSILSFF is the smallest of the Commonwealth Future Funds and could be bolstered to enable the ILSC to more effectively advance economic and other opportunities for First Nations.

A third Commonwealth entity, the Office of the Registrar of Indigenous Corporations (ORIC), has administrative functions in relation to the support and regulation of Aboriginal and Torres Strait Islander Corporations established in accordance with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) ('CATSI'). While ORIC does provide some governance support to corporations registered under the *CATSI* Act, its role could be elevated and expanded to support a policy framework of First Nations economic self-determination by providing advanced governance and capacity development support to First Nations corporations.

- **Central agencies:** The central Commonwealth agencies – Departments of Prime Minister and Cabinet, Treasury, and Finance – have significant influence over the whole of Commonwealth response to First Nations affairs, as well as some indirect influence on the response of the states and territories through forums like National Cabinet. Considering the potentially broad application of the findings and proposals set out in this report across government, it is critical that central agencies would drive and coordinate the development and implementation of a First Nations economic self-determination policy framework. A centralised approach would

ensure more effective sharing of responsibilities across government agencies according to relevance and subject matter.

- **Development agencies:** Development agencies develop and implement policy in industry areas. Development agencies include the Department of Agriculture, Forestry and Fisheries; the Department of Industry Science and Resources; and the Department of Climate Change, Energy, the Environment and Water. Each of these agencies has responsibilities over various matters relevant to proposals in this Outcomes Report.
- **Administrative agencies:** Administrative agencies have responsibilities for various rights and interests of First Nations that may have an economic dimension. These agencies include, with respect to cultural and intellectual property rights, IP Australia, and with respect to native title, the Attorney General's Department.
- **Mainstream program delivery instrumentalities:** Commonwealth economic development policy is in several instances supported by instrumentalities that are established at arms-length from government to manage the investment of Commonwealth funds in pursuit of economic development policy objectives. These include the Clean Energy Finance Corporation (CEFC) and Northern Australia Infrastructure Facility (NAIF). Such funds could be better accessed by First Nations to pursue economic opportunities.
- **Capability instrumentalities:** There are also several Commonwealth instrumentalities that possess various capabilities which could be leveraged to support efforts to realise a self-determined First Nations economy. These include Commonwealth Scientific and Industrial Research Organisation (CSIRO), Geoscience Australia, the suite of Rural Research and Development Corporations and others. Engagement with the banking and financial sector would also be seen in this category as an important opportunity.

Efforts to further develop and implement the reform proposals set out in this report require an institutional response. It is in the interests of public sector efficiency to use existing institutions for the implementation of new policies and initiatives where their remit, structure, strategy, capacity and culture enable them to deliver those initiatives without unduly compromising the delivery of outcomes. Where existing arrangements are not capable of performing necessary roles or functions, or where there are gaps in Australia's institutional framework, new institutions may be required. Another critical consideration is the capacity of First Nations communities and enterprises to engage meaningfully in their economic development. Funding and capacity support is therefore a fundamental consideration to designing an appropriate policy framework that supports First Nations economic self-determination.

Should the Australian Government decide to advance the proposals presented in this Outcomes Report, a review of the institutional framework relating to First Nations economic development policy would be prudent. Despite our distinct

historical and legal contexts, the institutional structures for First Nations affairs in Canada should be considered instructive.

Leaders from the First Nations Financial Management Board (FMB) in Canada presented at both the Symposium in 2022 and the Seminar Series the following year. They provided important insights about the institutional arrangements established under Canada's *First Nations Fiscal Management Act 2005 (FMA)*. These could help to inform institutional arrangements in Australia. The *FMA* aims to enable First Nations to build their wealth through capacity building, creating development opportunities, providing administration support, access to capital markets, and financing for infrastructure and economic development. The four organisations established under the *FMA* - FMB, First Nations Tax Commission, First Nations Finance Authority, and the First Nations Infrastructure Institute - work collaboratively to support First Nations to realise aspirations for economic self-determination. A total of 364 First Nations have chosen to participate in this opt-in program and more are seeking to be added.⁵³ Although tailored to the Canadian context, which recognises jurisdiction for First Nations in various matters, including taxation,⁵⁴ the principles underpinning the *FMA* framework are instructive for institutional reform in Australia.

The critical lesson shared by FMB leaders in the Symposium and Seminar Series is that innovative institutional and policy arrangements that are focused on financial and economic development, designed in collaboration with First Nations peoples, and that respond to critical failings in existing arrangements, are achievable and can deliver significant benefits. Australia must develop its own policy settings and institutional arrangements suitable to the Australian context, and it must do it in a way that shifts the focus towards genuine partnership, equity, empowerment, and opportunity of First Nations peoples.

Designing and implementing effective public institutions is the purview of government and the professional public service. Table 1 at the Appendix of this report sets out each of the proposals from the Seminar Series and identifies existing institutions that may have primary responsibility for the proposal. Where a suitable existing institution is not identified, a new institution is proposed. This is provided to aid in the consideration of institutional arrangements and potential responsibilities in relation First Nations economic self-determination policy framework.

⁵³ Government of Canada, 'First Nations fiscal management', (Web page) <<https://rcaanc-cirnac.gc.ca/eng/1393512745390/1673637750506>>. Further information was provided by the First Nations Financial Management Board.

⁵⁴ Noting that the proposals included in this report do not relate to the question of First Nation taxation powers.



Working group, Murru waaruu (On Track) Seminar Series: Seminar Two (19 April 2023)

“Do we have the right level of capital and the right vehicles? The short answer – and certainly feedback from customers and partners who we co-invest with – is no, not yet.”

Kia Dowell (Gija) (Executive Director – Strategy & Innovation, Indigenous Business Australia), Murru waaruu (On Track) Seminar Series: Seminar Two (19 April 2023)



Harold Calla, Geordie Hungerford, Melanie Assiniwe, Robert South
Marramarra Murru First Nations Economic Development Symposium (21-22 June 2022)

“Change is needed because the Indigenous communities around the globe are in such dire straits and governments have not recognised the need to address those issues.... It’s about systemic change... it’s the only way that the Indigenous communities are going to survive. Economic reconciliation is the key ingredient of the overall reconciliation movement.”

Harold Calla (Squamish Nation) (Executive Chair, First Nations Financial Management Board), Marramarra murru (creating pathways) First Nations Economic Development Symposium (21-22 June 2022)

7. Conclusion

The marginalisation of First Nations communities from the Australian economy is a significant cost, not only to those communities, but to the nation. The policy response to address this national challenge should not be relegated to specific programs and initiatives within an isolated Indigenous Affairs portfolio. The policy proposals which have emerged from the *Murru waaruu* seminars call for a paradigm shift to an integrated developmental approach in First Nations public policy.

Whilst tackling the historical and structural issues that continue to impede First Nations' capacity to generate sustainable wealth from an extensive asset base may appear daunting, the dialogue throughout the Seminar Series showed that this national challenge is by no means insurmountable.

For too long, the economic and social condition of First Nations peoples has been understood through a deficit lens. The Seminar Series took a strengths-based approach to seemingly entrenched problems and has proposed positive policy ideas that are within the capacity of government to consider and pursue in partnership with First Nations communities. These policy proposals should not be treated as separate or isolated initiatives but are presented as mutually supportive and linked within a framework approach.

The Seminar Series drew from an economic understanding of the multiplier impact of investing in First Nations economic opportunities and from experience in comparable jurisdictions, particularly Canada, to show that a strategic economic self-determination policy framework can produce significant economic and social benefits for First Nations people throughout Australia. The strengths-based spirit of the Seminar Series was reinforced by the entrepreneurial energy and resilience of many First Nations enterprises from around Australia that participated in the Seminar Series. First Nations businesses in the areas of mining, horticulture, fishing, aquaculture, tourism, land management, arts, carbon abatement and renewable energy provided valuable insights about the challenges they face and pointed to the potential for First Nations wealth creation if supported by appropriate policy and institutional settings.

The paradigm shift envisaged by the Seminar Series proposals is intended to change the current transactional relationship that First Nations peoples have with governments and industry to one of genuine partnership involving an equity stake in economic projects. This vision underpinned the Seminar Series with an understanding that developing and implementing economic self-determination policy is a long-term approach and is complementary to the National Agreement on Closing the Gap. The question of capacity was ever-present throughout the Seminar Series and although not specifically addressed on its own in this report, must underpin any framework that seeks to improve economic development opportunities for First Nations peoples

Ultimately, this Outcomes Report argues that an economic self-determination agenda

is about providing First Nations communities and enterprises with opportunities to engage in the Australian economy and to share in wealth creation opportunities on their own terms. On this basis, as discussed throughout the Seminar Series, the approach should be framed by the human rights of Indigenous peoples as articulated in UNDRIP. A coordinated approach is required to reform policy and institutional arrangements to support First Nations economic development in relation to land and Sea Country, freshwater, intellectual property, and access to finance.

8. Appendix

Table 1: Institutional reform considerations

Initiative or reform proposal	Key institutional functions	Primary Institutional Responsibility	Other relevant government and non-government institutions
1A Strategic and targeted integration of UNDRIP into the Australian legislative framework.	<ul style="list-style-type: none"> Stakeholder and public education and engagement Consider recommendations from Joint Standing Committee Inquiry Expert review of existing legislation and recommendations for reform (prioritisation and substance of reform) 	Attorney-General's Department	Australian Law Reform Commission
1B Requirement for public servants to give consideration to UNDRIP in advice and legislation.	<ul style="list-style-type: none"> Review and reform to the Code of Conduct in the <i>Public Service Act 1999</i> (Cth) Public sector education program 	Attorney-General's Department	Australian Public Service Commission
2A National MOLA assessment of the First Nations estate.	<ul style="list-style-type: none"> Establish a data sovereignty framework Develop data capabilities within First Nations organisations Make government data more accessible Promote integration of cultural mapping into mainstream planning processes Conduct trials and cost-benefit analysis Roll-out national program 	Indigenous Land and Sea Corporation	<ul style="list-style-type: none"> CSIRO Geoscience Australia Bureau of Meteorology State Departments of Primary Industries
2B Native Title Act reform	<ul style="list-style-type: none"> Ground-truthing with land users, financiers and jurisdictions Awareness and education program Design and implementation of specific reform 	Department of Prime Minister and Cabinet Attorney-General's Department National Indigenous Australians Agency	<ul style="list-style-type: none"> Australian Law Reform Commission National Cabinet/COAG National Native Title Council
3A Stand-up the proposed First Nations Water Working Group	<ul style="list-style-type: none"> Form and implement the proposed Group and its Licensed Economic Water Allocations Sub Committee 	Department of Climate Change, Energy and Water	Indigenous Land and Sea Corporation
3B Reform to the National Water Initiative	<ul style="list-style-type: none"> Major reset of the National Water Initiative incorporating the Group established under Proposal 3A 	Department of Climate Change, Energy and Water	<ul style="list-style-type: none"> Murray-Darling Basin Authority Australian Competition and Consumer Commission National Cabinet/COAG Department of Agriculture, Forestry and Fisheries Commonwealth Environmental Water Holder

3C Mapping of First Nations demand for water for economic use	<ul style="list-style-type: none"> Working with current and aspiring First Nations landholders and other First Nations industry to identify water needs 	Indigenous Land and Sea Corporation	<ul style="list-style-type: none"> Department of Agriculture, Fisheries and Forestry
3D First Nations economic water entitlements acquisition fund	<ul style="list-style-type: none"> Management of a large fund (estimated at c. \$1.0 billion) to acquire water entitlements and licenses in the market Hold and divest water licenses 	Indigenous Land and Sea Corporation	<ul style="list-style-type: none"> Commonwealth Environmental Water Holder
3E Identifying alternative sources of freshwater for economic use	<ul style="list-style-type: none"> Identifying and engaging with sources of manufactured freshwater to acquire entitlements for First Nations economic use 	Department of Climate Change, Energy and Water	
3F Acquisition of knowledge required to allocate resource from unallocated water resources	<ul style="list-style-type: none"> Identify knowledge acquisition priorities Develop protocols and frameworks for knowledge acquisition Resource and manage knowledge acquisition 	Department of Climate Change, Energy and Water	
4A A national framework for elevated Sea Ranger function	<ul style="list-style-type: none"> Mapping of regulatory and research functions that could be undertaken by Sea Ranger Groups National study into the enhancement of Sea Ranger Functions 	National Indigenous Australians Agency	<ul style="list-style-type: none"> Department of Climate Change, Energy and Water National Cabinet/COAG
4B Clear and consistent pathways for First Nations to acquire commercial fishing quota and licenses	<ul style="list-style-type: none"> Identification of pathways for activation of First Nations commercial quota Standardisation for allocation of new and not fully allocated fisheries Funding for acquisition of licences and quota in fully allocated fisheries 	Department of Agriculture, Fisheries and Forestry	<ul style="list-style-type: none"> National Cabinet/COAG
4C First Nations fishing and aquaculture peak body	<ul style="list-style-type: none"> Work with First Nations leaders to ensure representation and expertise is optimal Ensure adequate resourcing 	Department of Agriculture, Fisheries and Forestry	
4D Assessment of emerging offshore opportunities	<ul style="list-style-type: none"> Commission, project manage and communicate outcomes from studies. 	Department of Industry, Science and Resources	<ul style="list-style-type: none"> Department of Climate Change, Energy and Water
5A Place-based processes for preservation and transfer	<ul style="list-style-type: none"> Develop framework for place-based approach Cross program implementation 	IP Australia	
5B Place-based processes for identification, description and registration	<ul style="list-style-type: none"> Co-design of a description and registration framework Design of a national registration framework 	IP Australia	
5C First Nations cultural and intellectual property legislation	<ul style="list-style-type: none"> Ground-truthing of the proposed Indigenous Knowledge Right and Authority Implementation 	IP Australia Attorney-Generals Department	<ul style="list-style-type: none"> Department of Foreign Affairs and Trade
5D Ratification of Nagoya Protocol	<ul style="list-style-type: none"> Engagement and communications Ratification 	IP Australia Attorney-Generals Department	<ul style="list-style-type: none"> Department of Foreign Affairs and Trade

6A Improving enterprise development and growth management capacity	<ul style="list-style-type: none"> ▪ National review of First Nations business and entrepreneur support programs ▪ Co-design of a First Nations business growth program ▪ First Nations business growth program implementation 	Dilin Duwa Centre for Indigenous Leadership and Melbourne Business School	<ul style="list-style-type: none"> ▪ First Australians Capital
6B Improving investment management and governance capability	<ul style="list-style-type: none"> ▪ Co-design of a First Nations Trustee and Funds Management Program 	Australian Prudential Regulation Authority	<ul style="list-style-type: none"> ▪ Australian Institute of Company Directors ▪ ORIC ▪ Dilin Duwa Centre for Indigenous Leadership and Melbourne Business School ▪ First Australians Capital
6C Creating investment opportunity awareness	<ul style="list-style-type: none"> ▪ Preparation of prospectus and case studies ▪ Investment roadshow 	Responsible Investment Association Australasia	<ul style="list-style-type: none"> ▪ Indigenous Business Australia ▪ First Nations Clean Energy Network
6D Using the Commonwealth balance sheet to de-risk and lower the hurdle rate for private and other investment	<ul style="list-style-type: none"> ▪ Establish a clear principles framework ▪ Study into mobilising private and public capital into First Nations enterprise ▪ Program design summit ▪ Program implementation 	Stand-up a Special Investment Vehicle at arms-length from a central agency	<ul style="list-style-type: none"> ▪ Department of Treasury ▪ Indigenous Business Australia ▪ First Australians Capital
7A Establishing the enabling conditions	<ul style="list-style-type: none"> ▪ Public and stakeholder engagement: truth telling, reparations and 'sovereignty' ▪ Stand-up the Makarrata Commission ▪ Quarantine funds for reparations 	Department of Prime Minister and Cabinet	<ul style="list-style-type: none"> ▪ Department of Treasury ▪ Attorney-General's Department
7B National principles for treaty-like agreements	<ul style="list-style-type: none"> ▪ Co-design framework 	Department of Prime Minister and Cabinet	<ul style="list-style-type: none"> ▪ Attorney-General's Department

Table 2: Research supporting the *Murru waaruu* Seminar Series

<i>Murru waaruu</i> Phase	Date	Seminar	Literature	Participation
Reform to optimise the tools for economic self-determination	15 Feb 2023	Seminar 1: Treaty & settlement With some treaty-like arrangements in place with State Governments, and as we approach a period of post-determination and the prospect of a Makarrata Commission, what should a national treaty and settlement framework look like from the perspective of optimising conditions for economic self-determination?	← Background paper (FNP-Background-Paper-Seminar-One-2023.pdf (anufirstnations.com.au))	53
	18-19 Apr 2023	Seminar 2: Activating the rights and assets What reform is required across First Nations land, water, Sea Country and cultural and intellectual property rights and rights over financial assets to render them optimal tools for economic self-determination?	← Background paper (Seminar2_UsingTheAcquiredAssets.pdf (anufirstnations.com.au))	78
The case for change in First Nations economic development policy	14 June 2023	Seminar 3: What has been the cost of the past 235 years of policy? What has been the price paid by First Nations for exclusion from the economic participation and inept First Nations economic development policy? What has been the price paid by Australian Governments in servicing the socio-economic disadvantage that is a result of that exclusion? What is the ongoing productivity penalty incurred by the Australian economy that is a result of the transactional relationship between First Nations and third party developers that is a result constrained First Nations rights?	← Background paper (2306_Seminar3_WhatHasBeenTheCost_06.pdf (anufirstnations.com.au))	67
	16 Aug 2023	Seminar 4: Self-determination or the highway? Empirical and observational evidence that economic self-determination models produce superior economic, social, cultural and environment outcomes for First Nations communities.	← Background paper (2308_Seminar4_SelfDeterminationOrTheHighway_07.pdf (anufirstnations.com.au))	93
The policy position paper and implementation framework	03-04 Oct 2023	Seminar 5: A policy framework for economic self-determination Interrogating, stress testing and prioritising the policy options that have been developed in Seminars 1 and 2 and the case developed in Seminars 3 and 4.	← Policy options and preliminary draft framework (2309_Seminar5_PolicyOptions_03.pdf (anufirstnations.com.au))	102
	22 Nov 2023	Seminar 6: Institutional settings for economic self-determination Exploring the suitability of the current institutional framework that supports First Nations economic development and proposals for adjustments.	← Draft framework and institutional options.	

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