

ANTAR

Submission: Inquiry into economic self-determination and opportunities for First Nations Australians

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ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

About ANTAR

ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy and public education.

ANTAR campaigns for the principles of the Uluru Statement from the Heart, including the establishment of a Makarrata Commission to oversee national agreement-making and truth-telling processes, as well as for the self-determination of First Nations Peoples. We actively support state and territory-based voice, treaty and truth-telling.

ANTAR engages in national advocacy across various policy and social justice issues affecting First Nations communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; child safety, development and wellbeing; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with First Nations communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

“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 Commissioner¹

Introduction

ANTAR welcomes the opportunity to provide commentary and recommendations on the matter of economic self-determination and opportunities for First Nations Australians.

We wish to begin by noting that many robust, detailed and evidence-based recommendations have already been put forward in submissions from First Nations individuals, organisations and agencies to this Inquiry. These recommendations span a vast range of areas from superannuation, improved access to financial services, supporting Black business, pension access, housing, employment and criminal justice right through to reparations as part of treaty making.

They are borne of these organisations’ work in program and service delivery, of their relationships with First Nations individuals and communities, of lived experience and a deep knowledge of place, and of strengths-based expertise that ANTAR urges the Committee, policymakers and the Australian Government more broadly to heed. Aboriginal and Torres Strait Islander Peoples know what is best for their communities, including in the areas of economic independence

¹ Quoted as part of Murru waaruu (On Track) Seminar Series: Seminar Four (16 August 2023)

and self-determination, which is their inherent right. Taken together, many of these submissions point to a comprehensive package of pragmatic solutions, anchored in self-determination, which ANTAR fully supports and wishes to amplify, and which deserve to be resourced, supported and widely implemented.

In what follows, rather than repeating these aforementioned solutions, ANTAR will seek to spotlight and comment on several key issues and foundational structural reforms that we believe to be inextricably linked to and necessary for meaningful economic self-determination for First Nations Peoples, namely:

- ‘Activating’ First Nations self-determination through the meaningful implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its key principle of free, prior and informed consent (FPIC);
- The urgent need for – and potential of – state and territory as well as national treaty making that recognises First Nations sovereignty, addresses the need for reparations and bridges the economic divide caused by dispossession; and
- The centrality of Country and culture to First Nations prosperity, including economic prosperity.

This commentary is intended to sit alongside the more specific and detailed recommendations from the many First Nations-led organisations and Aboriginal Community Controlled Organisations (ACCOs) that have made submissions to this Inquiry, and to point to foundational questions in ways that challenge the settler colonial status quo, for it is colonisation and the settler colonial project above all that has led to and continues to perpetuate the economic (and other) disempowerment of First Nations Peoples.

Recommendations

1. Implement UNDRIP – including the key principle of free, prior and informed consent (FPIC) – through national legislation, and ensure that all Australian legislation is aligned with the rights and principles enshrined in UNDRIP;
2. Design and deliver – negotiated together with First Nations communities through treaty, and in accordance with FPIC – a comprehensive package of reparations as a remedy for past harms, grounded in Article 20(2) and 28(1) of UNDRIP and following on from the recommendations in the 2007 Bringing Them Home report;
3. Set up a national Self Determination Fund to ensure that First Peoples have the resources needed to prepare for and engage in treaty negotiations, as well as to empower First Peoples to build capacity, wealth, and prosperity for current and future generations as part of the Australian State's obligation to ensure continuing improvement of First Nations Peoples' economic and social conditions (UNDRIP Article 21). The Fund should be wholly financed by the Federal Government, and co-designed and led by First Nations Peoples. The Federal Government could use the First Peoples' Assembly of Victoria's Self Determination Fund as a model;
4. Establish a Truth and Justice Commission, or Makaratta Commission, to supervise federal treaty making with First Nations Peoples and to engage in a national truth-telling process. This process would include investigation of systemic injustices perpetrated by the Federal Government, Federal Government bodies and non-government organisations against First Nations Peoples in Australia in ways both historical and ongoing. The Commission should also operate so as to raise public awareness and understanding of the history and experiences of First Nations Peoples in Australia; and
5. Establish a First Nations-led co-design working group to deeply consider and then deliver decisive action on the policy reform options as laid out in

the [Murru waaruu Economic Development Seminar Series Policy Options Working Paper](#) as well as the [Outcomes Report](#).

Policy context

The importance of economic prosperity to the realisation of justice, rights and respect of First Nations Peoples in Australia cannot be overstated. As the Yoorrook Justice Commission has articulated, without full and fair economic participation, justice cannot be achieved, and the human and cultural rights of First Peoples will not be realised.²

First Nations Peoples are much more likely to live in poverty than non-Indigenous Australians, with the University of NSW's Centre for Social Impact finding that severe financial stress is present for half the First Nations population in Australia, compared with one in ten in the broader Australian population.³ Similarly, First Nations Peoples are disproportionately locked out of the housing market and wealth creation through real estate – in 2021, 42% of First Nations people owned a home, compared to 68% of the total population.⁴

Where First Nations Peoples have interests in land under Native Title or statutory land rights, fundamental limitations in legislation and severe underfunding of Prescribed Body Corporates (PBCs) and Aboriginal Land Councils (ALCs) limit their capacity to leverage land-based assets to achieve their cultural, social, environmental and economic aspirations.⁵ In respect of First Nations land planning, PBCs and ALCs face enormous entry barriers when seeking to engage with planning systems. For example, banks do not lend against land held under native title because native title is an inalienable bundle of rights, rather than a form of freehold title that is transferable to the bank in the event that a PBC defaults on a loan. This means that even where First Nations communities hold native title under terms of exclusive possession, they

² Yoorrook Justice Commission [Issues Paper on Economic Prosperity](#) (2024): 1.

³ Weier, M., Dolan, K., Powell, A., Muir, K., & Young, A., [Money Stories: Financial resilience among Aboriginal and Torres Strait Islander Australians](#), Centre for Social Impact, University of NSW (2019)

⁴ Australian Institute of Health and Welfare, [Housing](#) (2021)

⁵ Raelene Webb QC, [The next wicked problem in native title: managing rights to realise their potential](#), Southern Cross University Law Review Volume 18 (2016)

cannot use this to attract capital or commercial loans necessary for economic development.⁶

PBCs and ALCs also face immense regulatory barriers in seeking to engage with planning systems, with complex land use planning laws failing to accommodate the needs of First Nations Native Title and land rights interest holders, at times even working so as to actively cruel major economic development opportunities for First Nations Peoples. In NSW for example, the *Biodiversity Conservation Act 2016* (NSW), in particular the Biodiversity Offset Scheme (BOS), is arguably the single greatest barrier to Local Aboriginal Land Councils (LALCs) achieving their economic development aspirations. Given the narrow conditions under which land can be claimed by LALCs through the *Aboriginal Land Rights Act 1983* (NSW), the stolen lands that are returned to First Nations Peoples in NSW are almost invariably on the urban fringes, fully vegetated and conservation zoned, with little to no infrastructure in place. On the rare occasion that a LALC receives title to a landholding with inherent economic value, extracting that value via a land development pathway is prohibitively expensive, due in large part to the millions of dollars of offset liabilities that the LALC would be required to pay to the NSW Government under the BOS.

These barriers are but two of the many contemporary examples of the ways in which Government policy and legislation are designed to block First Nations Peoples from taking full and proper control of their financial circumstances. Colonial systems of oppression and dispossession continue to undermine First Nations Peoples attempts at closing the resource gap between themselves and non-Indigenous Australians. Australian Governments are yet to successfully implement a major redistributive justice reform that empowers First Nations Peoples to build a financial legacy for their loved ones and community at the same scale as that enjoyed by many non-Indigenous Australians; this is an important part of combating the intergenerational inequality that plagues First Nations communities.

⁶ Helen Davidson, [Northern Australia white paper: native title proposals met with distrust](#), The Guardian, 19 June 2015

The entrenched social and economic disadvantages facing First Nations Peoples has been a matter of common knowledge in Australia for many decades. The Australian Government's Bringing Them Home report (1997), released more than 25 years ago, explicitly recognised many of these disadvantages and sought to remedy them through its Recommendation 42: to develop and implement a social justice package for First Nations families and children, and to pursue the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1987-91), which also addresses underlying issues of social disadvantage.⁷

Despite systematic attempts at economic exclusion, First Nations Peoples in Australia continue to build a resilient and impressive economy. According to First Australians Capital, the First Nations business sector comprises more than 12,500 businesses, and revenue is growing at 12.5% per annum.⁸ The small business sector in particular is expanding at a rate between 6 and 12 percent.⁹ This not only contributes materially to the wider Australian economy, but significantly enhances the non-monetary wealth and prosperity of Australia through the sharing of cultural knowledge, business model innovation and mentorship. A recent University of Sydney study on native bush foods, for example, shows that the native bush food industry is currently worth \$80m and could double by 2025.¹⁰ In a non-monetary sense, native bush foods and the cultural knowledge regarding their sustainable harvesting and use can contribute to greater health and wellbeing for the Australian population, reversal of environmental degradation and improved food security and food sovereignty.

Researchers at the University of Melbourne's Dilin Duwa Centre for Indigenous Business Leadership have produced a national longitudinal First Nations business and economic dataset which shows that in the 2021-22 financial year, First Nations businesses and corporations generated \$16.1 billion in revenue,

⁷ [Bringing Them Home Report](#) (1997): 25.

⁸ [The importance of Indigenous Economic Self-Determination within Investment Strategies](#), First Australians Capital, 30 August 2022

⁹ [Indigenous led businesses boosting Australia's economy](#), SBS News, 17 April 2024

¹⁰ Mibenge Nsenduluka, [Push for First Nations growers amid bush food demand](#), National Indigenous Times, 24 April 2023

around the same as the Australian timber industry, and provided jobs for 116,795 employees.¹¹ What these strengths and successes reinforce is that any significant lack of economic self-determination and prosperity that First Nations communities face is in fact a direct result of the discriminatory barriers that are continually imposed on them by the settler colonial project and its structures, as well as the very real intergenerational impacts of invasion and dispossession.

Decolonising the economy

It is important to reflect on what we mean when using terms like economic self-determination, economic justice, economic development and prosperity, particularly where there is significant variance between First Nations and non-Indigenous Australians in their respective understanding of the terms. As stated by Janine Gertz and echoed in the Victorian Aboriginal Legal Service's (VALS) submission to this Inquiry, for many First Nations communities, the goal of economic self-determination is *prosperity*, not necessarily in monetary terms or in the capitalist sense, but rather defined by respective nations' measures of social, cultural, environmental, and economic success and in accordance with their laws and responsibilities to community, culture and Country.¹²

For many First Nations Peoples, economic development and prosperity are more expansive and holistic terms than Western notions of economic well being. For example, the worldview of First Nations Peoples centres on there being a universality or interconnectedness of all things at all times, from the cosmic to the molecular, linking everything that ever was with everything that will be. In line with this, First Nations Peoples seek to adhere to sustainable living practices and systems of reciprocity, drawing strength from their inalienable connection to, and care for, Country – being all land, flora and fauna, waterways and resources. It is the attempted and systematic dispossession of First Nations Peoples from their Country through colonisation – itself ongoing – that is the direct cause of the economic injustices and intergenerational poverty that many First Nations communities face.

¹¹ [Indigenous business Snapshot reveals significant value to Australian economy](#), University of Melbourne, 17 April 2024

¹² Janine Gertz, [Gugu Badhun sovereignty, self-determination, and nationhood](#), PhD Thesis, James Cook University (2022): xxx.

ANTAR notes that whilst the current Inquiry's terms of reference all touch on points that are relevant to the economic empowerment of First Nations Peoples, they do not explicitly name or address the root causes of the entrenched economic participation and prosperity deficit: that is, theft of land, forced removals and dispossession, stolen wages and forced labour, and systematic historical and ongoing attempts at disconnection from Country and culture.

Until and unless these forces are remedied – all of which continually manifest in barriers to prosperity in areas such as housing, employment, health, education, business development and many more – the Federal Government will continue to fail in achieving its stated aim of “fostering economic independence for First Nations communities”. As VALS clearly stated in their Nuther-mooyoop (truth/submission) to the Yoorrook Justice Commission on Economic Prosperity, connection to traditional lands and authority over their use is an essential condition of economic prosperity for all First Nations Peoples.¹³

What is economic self-determination?

ANTAR recognises the good intentions of the Committee to create long term economic prosperity for First Nations Peoples in Australia, certainly insofar as the Federal Government is being encouraged to promote *genuine* economic self-determination for First Nations Peoples. ANTAR does, however, consider the term ‘economic self-determination’ itself to be somewhat of a misnomer. It is perhaps more accurate to speak in terms of economic development as a vehicle for self-determination, or economic empowerment as a necessary precursor for the realisation of genuine self-determination for First Nations Peoples.

In their outcomes report focused on First Nations economic development, the First Nations Portfolio refers to the economic *dimension* of self-determination.¹⁴ This point of clarification is important, not as a matter of semantics, but to bring the very essence of First Nations Peoples’ right to self-determination to the

¹³ [Victorian Aboriginal Legal Service Nuther-mooyoop to the Yoorrook Justice Commission: Economic Prosperity](#) (April 2024): 8.

¹⁴ [Murru waaruu \(On Track\) Economic Development Seminar Series — Outcomes Report](#), First Nations Portfolio, Australian National University (May 2024): 14.

fore: it is an inherent individual and collective right, recognised in international law, which cannot be divided or compartmentalised.

Self-determination, at its core, can be understood as an ongoing process of ensuring that an individual and/or a Peoples possess the ability to exercise choice, to participate fully in matters that affect their lives, and to have meaningful control over such matters.¹⁵ For First Nations Peoples, self-determination has much to do with their ability to live in accordance with values centred around community, culture and Country. Whilst *walang* (money) is not a part of First Nations Peoples' traditional value systems, financial prosperity is nowadays a necessary precondition for First Nations Peoples to achieve many of their cultural, social and environmental aspirations. Still, it is largely meaningless to talk of economic self-determination when the lives of First Nations Peoples in Australia continue to be 'determined' by colonial systems of dispossession and subjugation, and when self-determining freedoms are only afforded to First Nations Peoples on a selective basis by settler colonial governments, who are often acting in ways that are symbolic or performative.

The Federal Government cannot promote genuine economic self-determination without a genuine redistribution of power and funding to ACCOs, without engaging in the kind of shared decision-making that is articulated in Priority Reform Two of the National Agreement on Closing the Gap, without engaging in treaty as a vehicle for self-determination, and without fundamentally recognising the right of Aboriginal and Torres Strait Islander peoples to be sovereign, self-determining nations in control of their decisions, their lives and their futures.

It is difficult to comment on the topic of economic self-determination without acknowledging the resounding nation-wide refusal of the Australian public to recognise the right of First Nations peoples to exercise their self-determination through the creation of a constitutionally enshrined national representative body. This advisory body would have given First Nations Peoples a greater say

¹⁵ [Self-determination and Indigenous peoples](#), Australian Human Rights Commission, 2023.

in the laws and policies created in respect of their communities, including matters of economic self-determination.

It is also difficult to discuss economic self-determination without acknowledging the widespread failure of resource companies like Santos to adopt the principle of free, prior and informed consent (FPIC) in the development of their billion-dollar projects on First Nations lands and waters in Australia. If all resource extraction and development planning processes were to adhere to the FPIC principle, Traditional Owners could decide to what extent they might wish to be involved in resource development and, if so, to negotiate profit sharing agreements that might better reflect the aspirations of their communities.

These public, corporate and government-led policy failures cannot and should not be divorced from discussions of economic self-determination.

In its hearing on land, skies and waters from 24 April 2024, the Yoorrook Justice Commission heard from the Victorian Minister for Water, the Hon Harriet Shing MP, that despite the Victorian Government receiving \$83 billion in water revenue over the past decade, none of that wealth has been passed on to Traditional Owners. On top of this, Traditional Owners hold less than 0.18% of water entitlements across the state.¹⁶ Similarly, Minister for Climate Action, Energy and Resources, the Hon. Lily D'Ambrosio MP told Commissioners that:

“To date, more than 2,400 tonnes [of gold] has been extracted in Victoria, beginning from 1851. The value of that in today’s terms, based on weight to the current spot price of gold is about \$287.4 billion.”¹⁷

Minister for Environment, Hon. Steve Dimopoulos MP admitted that between 2010-2023, the Victorian government received over \$1.89 billion in revenue from grazing, forestry and public land licenses – but not a single dollar was distributed to traditional owners.¹⁸

¹⁶ Yoorrook Justice Commission, [‘What Yoorrook heard about land, sky and waters’](#), May 16 2024

¹⁷ *ibid*

¹⁸ *ibid*

The evident truth is this: billions of dollars of profits have flowed from resources developed on or extracted from stolen First Nations Country, with none of this benefit shared with the traditional custodians of these lands and waters. With respect to the Inquiry's second term of reference regarding impediments to building the economic and social infrastructure required to support economic prosperity of First Nations Peoples in the long term, AN TAR believes the aforementioned examples sum it up.

Self-determination through UNDRIP and Treaty

UNDRIP

The right of First Nations Peoples in Australia to self-determination, including as expressed through economic development, is codified in international law through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP is a human rights instrument which the Federal Government endorsed in 2009, but is yet to translate into domestic law. The right of First Nations Peoples' to self-determination is also established in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

At least 11 of the 46 articles of UNDRIP articulate economic rights and give expression to the economic dimension of self-determination, with Articles 3–5 and 20–21 being of particular note.

Article 3 of UNDRIP states that "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹⁹

Article 4 states that "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."²⁰

¹⁹ [United Nations Declaration on the Rights of Indigenous Peoples](#), United Nations, 2007.

²⁰ *ibid*

Article 5 states that “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”²¹

Extensive work has been done by the First Nations Portfolio at the Australian National University on developing a framework for economic self-determination for Australia’s First Nations through their [Murru waaruu Economic Development Seminar Series](#), building on the *Marramarra murru* First Nations Economic Development Symposium and Wealth Forum. This framework for policy reform includes a proposed legislative framework together with policy proposals on reform for land water and Sea Country rights, cultural and intellectual property rights, rights in financial assets and a framework for treaties and other constructive agreements.

The *Murru waaruu* outcomes report recommends that UNDRIP should guide policy development and be strategically implemented into Australian law. The report highlights that legislative endorsement of UNDRIP could provide a statutory environment more conducive to promoting First Nations economic self-determination.²² It further argues that ensuring key Australian legislation is aligned with the principles and articles of UNDRIP, in collaboration with First Nations Peoples and in accordance with the principle of FPIC, is an important step toward supporting economic self-determination for First Nations Peoples.

ANTAR is in full support of this recommendation, and notes that it is 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.²³ A compelling example of how UNDRIP might be meaningfully implemented through legislation at both a federal and state/territory level can be found in the Canadian case, in which the federal government passed The UN Declaration on the Rights of Indigenous Peoples

²¹ *ibid*

²² ‘Murru waaruu’, 6.

²³ [Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia — Report](#), Parliament of Australia, November 2023

Act in 2021 along with a roadmap for its implementation in 2023. In 2019, the province of British Columbia adopted the Declaration on the Rights of Indigenous Peoples Act (DRIPA), thus enshrining UNDRIP into its provincial law and requiring that all provincial laws (both existing and future) are consistent with UNDRIP.²⁴

Treaty making

Treaty can and must bridge the economic divide caused by dispossession.²⁵

The Uluru Statement from the Heart calls for agreement making at the national level in the form of a Makarrata Commission to supervise a process of agreement making between governments and First Nations and truth-telling about our shared history.

It is AN TAR's view that the full implementation of the Uluru Statement from the Heart, including the ability of First Nations communities to negotiate treaties and other constructive agreements that include compensation and reparations to address past harms – including native title settlements – is a crucial element to improving the economic circumstances of First Nations Peoples, thereby increasing their capacity for self-determination. In particular, treaties and other agreements that are First Nations-led and developed in alignment with FPIC principles can facilitate the transfer of monetary and other assets to First Nations communities in ways that can properly enable and contribute to economic self-determination.

An example of how economic self-determination can be facilitated through treaty making can be found in the Self Determination Fund set up by the First Peoples' Assembly of Victoria – the representative body for First Nations Peoples in Victoria – in partnership with the State. The Fund is a new financial resource designed by and for First Peoples to support First Peoples' economic self-determination by empowering First Peoples to freely pursue their

²⁴ [2019 - UNDRIP Legislation Enacted](#), Legislative Assembly of British Columbia

²⁵ [Self determination fund](#), First Peoples Assembly Victoria, nd.

economic, social and cultural development in exercise of First Peoples' inherent right to self-determination.²⁶ The Fund has two main purposes:

1. To support First Peoples to negotiate Treaties on a more level playing field with the State, recognising the imbalance of financial resources and power between First Peoples and government. The Fund aims to ensure that First Peoples have the resources needed to prepare for and engage in Treaty negotiations.
2. To empower First Peoples to build capacity, wealth, and prosperity for current and future generations.

Using this model as a guide for what's possible, ANTAR recommends that a national-level Self Determination Fund is established, to be funded by the Australian State and controlled and managed by First Nations Peoples through their respective representative bodies. Such a fund would be critical for getting First Nations Peoples to a point of national 'treaty readiness' and to ensure continuing improvement of First Nations Peoples' economic and social conditions.

This recommendation is grounded in Article 21 of UNDRIP which states that:

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security; and
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

In light of Australia's commitment to UNDRIP, ANTAR considers the establishment of a national Self Determination Fund to be an appropriate and necessary 'special measure' to ensure the continuing improvement of First Nations Peoples economic and social conditions.

²⁶ [Self-determination fund fact sheet](#), First Peoples Assembly Victoria, May 2023.

Compensation and reparations

In ANTAR's view, one key element of treaty and agreement making is the development of a framework to address the monetary and other compensation that should be payable by the Federal Government to First Nations Peoples in Australia. This includes reparations and the specific call for land return, which will be addressed in more detail in the last section of this submission.

The importance of reparations to economic self-determination has been well established by VALS in their [Nuther-mooyoop to the Yoorrook Justice Commission on Economic Prosperity](#).²⁷

In their Nuther-mooyoop (truth/submission), VALS outlines four main recommendations with respect to reparations which ANTAR is in full support of. They are:

- Recommendation 1. Reparations must be part of Treaty;
- Recommendation 2. Reparations must include greater access to, and authority over, traditional lands;
- Recommendation 3. Reparations should reflect the real cost of the impacts of colonisation on Aboriginal people, including calculations for inflation, opportunity cost, and non-economic losses must form part of the calculation of reparations; and
- Recommendation 4. Reparations should include the expansion of programs that increase Aboriginal home ownership.

As mentioned earlier, the 1997 Bringing Them Home report focused on the need for a comprehensive package of reparations to the Stolen Generations, finding that "...the forcible removal of Indigenous children was a gross violation of their human rights" as well as "...an act of genocide contrary to the Convention on Genocide ratified by Australia in 1949".²⁸ Importantly, the report detailed that reparations were owed not just to the individuals who were removed but also to

²⁷ [Victorian Aboriginal Legal Service Nuther-mooyoop to the Yoorrook Justice Commission: Economic Prosperity](#) (April 2024): 11.

²⁸ [Community Guide](#): A community guide to the findings and recommendations of the National Inquiry into the separation of Aboriginal and Torres Strait Islander Children From Their Families, Human Rights and Equal Opportunity Commission (2007): 10.

First Nations communities “which, as a result of the forcible removal of children, suffered cultural and community disintegration” as well as “descendants of those forcibly removed who, as a result, have been deprived of community ties, culture and language, and links with and entitlements to their traditional land”.²⁹

The recommendations of the Bringing Them Home Report regarding reparations included monetary compensation through a national compensation fund and the delivery of social justice packages (along with other measures) as redress. More than 20 years later, these reparations have only been partly made.³⁰

It is AN TAR’s view that the delivery of a comprehensive package of reparations as a remedy for past harms, negotiated through treaty, would be a significant and necessary first step in supporting First Nations prosperity. This right to reparations is grounded in Article 20(2) of UNDRIP which states that “Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress”.³¹

It is also grounded in Article 28(1) which sets out “...the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”³²

Whilst it is necessary to invest in First Nations economic self-determination through the development of novel and new initiatives that address disparities in employment, training, business development, capital and intellectual property – as set out in this Inquiry’s terms of reference – AN TAR notes that many of the solutions to the problems that the Federal Government aims to ‘solve’ through repeated Inquiries and reports are already in the Government’s purview. Landmark processes such as the National Inquiry into the Separation of

²⁹ [Bringing Them Home Report: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families](#), Australian Human Rights Commission (2007): 246.

³⁰ [Bringing Them Home 20 years on: an action plan for healing](#), Aboriginal and Torres Strait Islander Healing Foundation (2017): 27.

³¹ [United Nations Declaration on the Rights of Indigenous Peoples](#), United Nations, 2007.

³² [United Nations Declaration on the Rights of Indigenous Peoples](#), United Nations, 2007.

Aboriginal and Torres Strait Islander Children from Their Families and the Royal Commission into Aboriginal Deaths in Custody have culminated in comprehensive reports and recommendations that continue to be ignored, or at best, only partially implemented.

In light of this, ANTAR urges the Federal Government – in seeking to effect socio-economic uplift for First Nations Peoples – to begin by reflecting on and honouring the solutions that have been long articulated by First Nations Peoples, and by committing to the full and proper implementation of recommendations through substantive structural reforms.

Caring for Country: key to economic prosperity

Connection to traditional lands and waters, along with custodianship and authority over their use, is essential to First Nations self-determination and economic prosperity.³³ First Nations Peoples have a profound and unwavering belief that if they care for Country, it will care for them. Prior to invasion, First Nations Peoples had an uninterrupted, deep, and interconnected relationship to their lands, waterways, and seas that ensured optimum health, and cultural, spiritual, social, and emotional wellbeing.³⁴ While this relationship with Country remains unbroken, the ability of First Nations Peoples in Australia to make self-determining decisions about how to Care for Country, including for the purposes of economic prosperity, is threatened by the continuing impacts of colonisation, by climate change, and by legislative failures that continue to disempower First Nations Peoples.

Whilst the First Nations Estate which grants ‘ownership’ or legal interests to First Nations Peoples is significant, the current barriers to First Nations Peoples’ ability to use, protect and make decisions about these lands and waters – including, notably, the lack of FPIC processes when development projects are planned, approved and carried out – is severely limiting the ability of this estate

³³ [Victorian Aboriginal Legal Service Nuther-mooyoop to the Yoorrook Justice Commission: Economic Prosperity](#) (April 2024): 8.

³⁴ Dr Alana Gall and Dr Luke Williams, [Submission 13 to the Inquiry into economic self-determination and opportunities for First Nations Australians](#), Parliament of Australia (May 2024): 3.

to translate to economic empowerment through culturally aligned development projects.

As the *Murru waaruu* policy options working paper makes clear, the First Nations estate is fundamentally structurally constrained as an instrument for facilitating economic self-determination.³⁵ In their submission to this Inquiry, the Indigenous Land and Sea Corporation (ILSC) point out that Native Title rights and interests are generally limited to “the purpose of satisfying their personal, domestic or non-commercial communal needs”.³⁶ Likewise, First Nations interests in water are presently between 1 and 2 percent of the total volume of allocations and even where interests are held, they are principally in the form of ‘cultural flows’ which prevent those allocations being used for economic purposes.³⁷

The ILSC go on to recommend that the *Native Title Act 1993* (Cth) undergo fundamental and significant reform, with sections of the Act that bar Native Title interests and rights being used for commercial purposes needing to be amended or repealed. Furthermore, ILSC insist reforms should “enable Native Title holders to continue to hold their native title rights in perpetuity, but to create appropriate fungible rights in Native Title lands under their own terms and in co-existence with other land users that may apply to those lands”.³⁸

A range of policy reform options to address these and other limitations with respect to the First Nations estate and the role of Prescribed Bodies Corporate (PBCs) and Traditional Owner Representative Institutions (TORIs) as a vehicle for economic self-determination have been presented in the *Murru waaruu* policy options working paper as well as in the National Native Title Council’s submission to this Inquiry, both of which ANTAR recommends the Government consider in developing their action.³⁹

³⁵ [Murru waaruu Economic Development Seminar Series Policy Options Working Paper](#), First Nations Portfolio, Australian National University (2023): 11.

³⁶ Indigenous Land and Sea Corporation Submission for Inquiry into economic self-determination and opportunities for First Nations Australians (June 2024): 4.

³⁷ [Murru waaruu Economic Development Seminar Series Policy Options Working Paper](#), First Nations Portfolio, Australian National University (2023): 26.

³⁸ ILSC Submission, 5.

³⁹ See National Native Title Council submission 62 (June 2024): 15 for a summary of policy recommendations

Conclusion

ANTAR thanks the Committee for the opportunity to comment on the economic dimension of First Nations self-determination.

Ultimately, we have made the case that genuine self-determination – particularly as it is laid out in UNDRIP and articulated in the Uluru Statement from the Heart – needs to be at the heart of any framework or model for First Nations economic development. While the path to self-determination will differ according to community and context, self-determination remains the fundamental and inalienable right of First Nations Peoples and it is incumbent upon Australian governments at all levels to create the necessary structural change in order to enable the expression of this right. The deliberate perpetuation of settler colonial systems aimed at the dispossession and disconnection of First Nations Peoples from their Country and from decision-making over their own affairs has significantly hindered their ability to exercise their inherent right to self-determination, and remains the root cause of the social, political, cultural and economic challenges which Inquiries like this one often seek to remedy.

In our submission, we have sought to draw attention to three major structural reforms that are both urgent and overdue, and which underscore and give expression to First Nations self-determination: implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its key principle of free, prior and informed consent (FPIC), the advancement of treaty making at both state and territory and at a national level as part of the full implementation of the Uluru Statement from the Heart, and legislative and policy reform to enable First Nations Peoples to access, use, protect and make decisions around Caring for Country in ways that will contribute to their prosperity.

Finally, ANTAR urges the Federal Government to make good on its commitments to implementing the recommendations from its own 1997 Bringing Them Home report, as well as the recommendations from the Royal Commission into

Aboriginal Deaths in Custody, both of which address underlying causes of social disadvantage that exacerbate the economic exclusion experienced by First Nations Peoples in Australia.

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