

# Submission in response to the Senate Inquiry on the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia

June 2022

## Submission by the Responsible Investment Association Australasia

The [Responsible Investment Association Australasia \(RIAA\)](#) welcomes the opportunity to make a submission for the Senate Legal and Constitutional Affairs References Committee inquiry: *Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*. The submission is made by the Responsible Investment Association of Australasia (RIAA), reflecting the work of its members' First Nations Peoples' Rights Working Group.

This submission responds to a number of the TORs of this inquiry, in particular:

- the history of Australia's support for and application of the UNDRIP;
- the potential to enact the UNDRIP in Australia;
- legal issues relevant to ensure compliance with the UNDRIP, with or without enacting it;
- key Australian legislation affected by adherence to the principles of the UNDRIP;
- Australian federal and state government's adherence to the principles of the UNDRIP;
- community and stakeholder efforts to ensure the application of UNDRIP principles in Australia; and
- the current and historical systemic and other aspects to take into consideration regarding the rights of First Nations people in Australia.

RIAA acknowledges the Traditional Owners of the lands on which our offices are located: the Wurundjeri people of the Kulin nation and the Gadigal people of the Eora nation. We recognise their continuing connection to land, waters, species and culture. We acknowledge their ongoing status as the First Peoples of Australia and pay our respects to their Ancestors and Elders past and present.

We make this submission to:

- Highlight and explain why and how leading global and Australian investors support the application of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia;
- Highlight the expectations of leading investors with regard to the principles of self-determination and Free, Prior and Informed Consent (FPIC), in line with the UNDRIP;
- Draw attention to investor-led initiatives focused on strengthening Australia's First Peoples' heritage laws and standards for the private sector to uphold the human rights of First Peoples, in line with the UNDRIP; in particular, the [Dhawura Ngilan Business and Investor Initiative](#).
- Draw attention to investor initiatives that have expressed a commitment to, and have sought solutions from, corporations to support the protection and self-determination of Indigenous consumers and ensure that engagement results in improved outcomes for Indigenous peoples.

We welcome the application of the UNDRIP in Australia, in genuine partnership with our First Nations peoples, and are open to further engagement to provide the investor perspective.

## About RIAA and its members

The Responsible Investment Association Australasia (RIAA) champions responsible investing and a sustainable financial system in Australia and New Zealand. RIAA is dedicated to ensuring capital is aligned with achieving a healthy society, environment and economy.

With almost 500 members managing more than \$40 trillion in assets globally, the [Responsible Investment Association Australasia](#) (RIAA) is the largest and most active network of people and organisations engaged in responsible, ethical and impact investing across Australia and New Zealand. Our membership includes super funds, fund managers, banks, consultants, researchers, brokers, impact investors, property managers, trusts, foundations, faith-based groups, financial advisers and individuals.

In 2020 RIAA established a First Nations Peoples' Rights Working Group, in response to member demand and to deliver to their needs. Reflecting our members' sense of importance, it is one of RIAA's most active member working groups. It includes organisations from across our membership base, including many of Australia's leading finance organisations.

The purpose of RIAA's First Nations Peoples' Rights Working Group is to:

1. **Address and advance the rights** of First Nations peoples and others subjected to systemic racism.
2. **Elevate First Nations peoples' participation** and voices in investment and the Responsible Investment community.
3. **Increase access, scale and impact** of First Nations peoples' related investment activity.

In 2021, led by the First Nations Heritage Protection Alliance and in partnership with the UN Global Compact Network Australia (UNGCNA), RIAA launched a landmark business and investor initiative that brings together First Nations, business and investor communities to strengthen Australia's First People's heritage laws and standards for the private sector to uphold the human rights of First Peoples, in line with the UNDRIP. The [Dhawura Ngilan Business and Investor Initiative](#) sees protecting cultural heritage as the responsibility of all Australians, including the finance and business sectors.

## Why the application of UNDRIP in Australia is important to RIAA and our members

The application of the UNDRIP in Australia requires a set of responses that require commitment from the private sector and government support.

RIAA's First Nations Peoples' Rights Working Group aims to raise the standard of investor engagement with Aboriginal and Torres Strait Islander people. This is to enable participation that ensures principles of self-determination and FPIC are upheld by investors and the companies they are invested in, in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Aboriginal and Torres Strait Islander peoples have cared for Country for thousands of years. However, the process of colonisation resulted in denial of their human rights to life, self-determination, economic development, territory, natural resources, governance, culture, language and family.

Human rights, such as self-determination, FPIC in matters affecting people, rights to family, language and culture, are particularly important to Indigenous peoples and are specifically recognised in the UNDRIP. The rights of Indigenous peoples to self-determination and FPIC in relation to the control of territories and natural resources, economic development and the practice of culture, are critical to achieving Indigenous peoples' autonomy, economic prosperity, cultural integrity and well-being as First Peoples of Country.

By working to support the achievement of FPIC, supporting self-determination, and more broadly respecting First Nations peoples, RIAA's members increasingly view this as consistent with and supportive of better investment outcomes from the businesses and assets they are invested in. This belief is based on an observation that companies who support better outcomes for First Nations Peoples make better investments, face fewer risks, gain more support from the communities in which they are based, and therefore have better operational outcomes.

To prepare for a sustainable future, our members understand that capital needs to be re-orientated to where it will be needed to support a thriving Australian society, a healthy environment and a strong and prosperous economy. This means focusing on where capital is lent, what can be insured and where money is invested. The key aim is to support and build value today while strengthening the economic, natural and social assets that underpin our long-term prosperity. It means ensuring finance is mobilised and connected to a sustainable future where all Australians can feel confident.

Australians need financial security, a resilient environment in which to live, and a system that is fair and provides the opportunity for everyone to thrive and prosper. Our members recognise the important role that the financial system can play in building this future. The financial system can be a force for good and prosperity that serves everyone.

## Key points

- **Across the finance sector, investors have expressed support for the principles of self-determination and FPIC, in line with the UNDRIP. Investors increasingly understand that legislative frameworks and international agreements, such as the UN Sustainable Development Goals (SDGs) and the UNDRIP, can provide an important baseline to support these principles, as well as reduce risks and uncertainty for investors.**
  - **Australian Sustainable Finance Initiative (ASFI) Roadmap:** A commitment to Free, Prior and Informed consent is firmly captured in the ASFI Roadmap. The Roadmap, launched in December 2020, is a collaborative effort bringing together more than 140 participants from over 80 organisations across Australia's financial system, including financial institutions, civil society, academia, regulators and government. The Roadmap is an industry-driven plan for aligning Australia's financial system with a sustainable, resilient and prosperous future for all Australians. The Roadmap includes several recommendations specifically related to First Peoples' self-determination, in line with UNDRIP, including:
    - the establishment of an Indigenous-led First Peoples Financial Services Office to facilitate financial system engagement with Indigenous communities and organisations on a range of issues related to the inclusive design and delivery of financial services; and codifying the principles of FPIC into investment decision-making.
  - **RIAA Submission in response to the Interim Voice Co-Design Report:** [this submission](#) outlines the finance sector's support for the Uluru Statement from the Heart, and the finance sector's position on ensuring that First Nations' voices are present in critical decision-making positions. Many of RIAA's members have pledged their support for the Uluru Statement from the Heart and its call for the establishment of a First Nations voice in the constitution.

- **RIAA Submission in response for the Inquiry into and Report on Best Practice Indigenous Engagement by Corporations (May 2022):** RIAA made this submission to reinforce the importance of ensuring a genuine partnership with First Nations peoples, and that First Nations cultural heritage reform must be First Nations-led and uphold the human rights of First Peoples to self-determination and Free, Prior and Informed Consent, in line with the UN Declaration on the Rights of Indigenous Peoples and community expectations.
- **Leading global and Australian investors have reiterated the importance of robust cultural heritage protection laws that are First Nations-led (see the [Dhawura Ngilan \(Remembering Country\)](#) vision), in line with UNDRIP and community expectations, and consistent nationally:**
  - **[Investor response to the WA Aboriginal Cultural Heritage Bill 2021:](#)** A number of [large Australian investor and business groups including RIAA have expressed concern](#) that the draft WA Aboriginal Cultural Heritage Bill is insufficient and will fail to make meaningful change in cultural heritage protection. Concerns have been raised by a number of Investor groups through a joint statement release by the Dhawura Ngilan Business and Investor Initiative - led by the First Nations Heritage Protection Alliance in partnership with Global Compact Network Australia (GCNA), and the Responsible Investment Association Australasia (RIAA) – together with the Australian Council of Superannuation Investors (ACSI).
  - **[Investor input into the Commonwealth cultural heritage legislative reform process:](#)** RIAA and its members have been consulted on the above in 2022. During consultations, our members reiterated the importance of:
    - **First Nations-led:** This includes a genuine partnership model of co-design. This includes recognising and addressing power imbalances (such as resources and support). Our members referred to Dhawura Ngilan for setting out a First Nations-led vision and best practice standards for legislative reform, in line with First Nations aspirations, UNDRIP and community expectations.
    - **Consistent over-arching national reforms that provide clarity and certainty:** our members referred to this recommendation of the Juukan Gorge Inquiry. One national framework that upholds UNDRIP, to which state frameworks are aligned, is required for long-term business certainty.

## **Dhawura Ngilan Business and Investor Initiative: Landmark First Nations, business and investor initiative to improve cultural heritage protection in Australia in line with UNDRIP**

A landmark business and investor initiative was launched in October 2021 – bringing together First Nations, business and investor communities – focused on strengthening Australia’s First People’s heritage laws and standards for the private sector to uphold the human rights of First Peoples, in line with the UNDRIP.

Led by the First Nations Heritage Protection Alliance in partnership with the UN Global Compact Network Australia (UNGCNA), and the Responsible Investment Association Australasia (RIAA), the Dhawura Ngilan Business and Investor Initiative sees protecting cultural heritage as the responsibility of all Australians, including the finance and business sectors.

As a conduit, the Dhawura Ngilan Business and Investor Initiative brings together First Nations, investor and business communities to create a shared vision for strengthening Australia’s Aboriginal heritage laws and standards for the private sector that uphold the human rights of First Peoples, in line with international agreements, such as the UNDRIP, and community expectations.

The enterprise aims to build partnerships and deliver resources to enable investors and business to engage with First Nations Peoples more respectfully and effectively, and support heritage protection that upholds the human rights of First Peoples to self-determination and free, prior and informed consent (FPIC).

- **RIAA’s member First Nations Peoples’ Rights Working Group is engaging with First Nations peoples and business leaders to ensure engagement between investors and indigenous communities is active and ongoing and ensures First Nations Peoples’ representation at all levels of decision-making, in line with UNDRIP.** Besides the many activities mentioned in this submission, this working group is collaborating with First Nations peoples to increase their voices in responsible investment and sustainable finance. This includes bi-annual leaders’ meetings with the First Nations Heritage Protection Alliance, which brings together First Nations leaders from across Australia representing Aboriginal Land Councils, Native Title Representative Bodies and Aboriginal and Torres Strait Islander Community Controlled Organisations and leaders in responsible investment such as HESTA, abrdn and Regnan. We also host First Nations keynote and expert panels at RIAA’s Responsible Investment conference - the largest conference of responsible investors in Australia. Previous speakers include: Kado Muir, Chair at the First Nations Heritage Protection Alliance and the National Native Title Council (NNTC), Jamie Lowe, CEO at NNTC, and Cath Brokenbrough, Executive Lead First Nations Engagement at Lendlease.
- **Investors are increasingly concerned that companies they are invested in do not cause harm to Indigenous land and property, and want to ensure that Indigenous land rights, cultural heritage and intellectual property are protected for**

future generations, in line with UNDRIP. The case for doing so is overwhelmingly moral and fundamentally financial. The following are examples of practical efforts that investors are making to ensure the appropriate management of cultural heritage.

- **RIAA's Investor Toolkit: An Investor Focus on Indigenous Peoples' Rights and Cultural Heritage Protection:** This investor guide prepared by the RIAA Human Rights Working Group and the First Nations Peoples' Rights Working Group includes [guidance to assist investors](#) to identify key aspects of corporate disclosure and engagement and assess how well companies manage cultural heritage and relationships with Indigenous partners.
- **Clean Energy Finance Corporation: First Nations Investment Screening Approach:** CEFC developed this approach to First Nations investment screening to better inform its investment decision-making framework with respect to Aboriginal and Torres Strait Islander people. CEFC also seeks to positively influence the investment decisions of those it works with.
- **RIAA's members are increasingly willing to engage with the companies they're invested in on the issue of engagement with First Nations people, in particular, in relation to cultural heritage protection. A number of RIAA members have expressed a commitment to, and have sought solutions from, corporations to support the protection and self-determination of Indigenous consumers and ensure that engagement results in improved outcomes for Indigenous peoples.**
  - **Investor Response to Woolworths - Milford Asset Management:** Milford raised concerns with Woolworths' governance and approval processes in relation to the proposed Dan Murphy's store in the Northern Territory, concerned with the lack of genuine consultation with community members by Woolworths ahead of the development. Milford recommended the terms of reference of the Independent Panel Review be extended to give the Panel the power to recommend Endeavour did not proceed with the proposed store, as when the Review was announced by the company, the Panel did not have this power. In April 2021, Woolworths announced that the Dan Murphy's development in Darwin would not go ahead, in line with the final recommendation of the independent review panel.
  - **Investor Response to Rio Tinto - HESTA:** HESTA [led an engagement](#) effort, supported by a group of Australian, UK and European investors, that sought key transparency commitments aimed at giving investors' confidence the company was making progress on managing cultural heritage and fostering respectful partnerships with Indigenous communities. Investors put forward very clear requests around what disclosure and governance arrangements were required to ensure that the tragic heritage destruction at Juukan Gorge never happens again. As a result of the engagement, Rio announced it would support increased transparency around its approach to cultural heritage with additional regular disclosure on its activities.

RIAA provides these examples of engagement by investors to reinforce the importance of ensuring a genuine partnership with First Nations Peoples and upholding the human rights of First Peoples to self-determination and FPIC in Australia, in line with the UNDRIP.

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