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**To:** [RCNDA - Submissions](#)  
**Subject:** RCNDA - Submission - Indigenous Reference Group - extension granted [SEC=OFFICIAL]  
**Date:** Friday, 1 May 2020 4:25:25 PM  
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[IRG Submission - Royal Commission into National Natural Disaster Arrangements Final.pdf](#)

**From:** [REDACTED]  
**Sent:** Thursday, 30 April 2020 2:59 PM  
**To:** RCNDA - Enquiries <[RCNDA.Enquiries@royalcommission.gov.au](mailto:RCNDA.Enquiries@royalcommission.gov.au)>  
**Subject:** RCNDA - Submissions - Indigenous Reference Group [SEC=OFFICIAL]

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OFFICIAL

Hi

I refer you to the below advice providing an extension, to 30 April 2020 to submit a formal submission.

Please find attached the formal submission from the Indigenous Reference Group to the Ministerial Forum on Northern Development. The Indigenous Reference Group agree that their submission be made public.

The Contact for the submission is:

Name: Peter Yu

Position: Chair

Organisation: Indigenous Reference Group to the Ministerial Forum on Northern Development

Contact phone: [REDACTED]

Thank you

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The National Indigenous Australians Agency acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

## Indigenous Reference Group to the Ministerial Forum on Northern Development

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30 April 2020

Royal Commission  
into National Natural Disaster Arrangements  
rcnda.enquiries@royalcommission.gov.au

Dear Sir/Madam

### **Re: Submission to the Royal Commission into National Natural Disaster Arrangements**

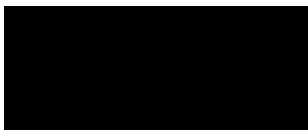
I refer to the abovementioned matter.

The Indigenous Reference Group (the 'IRG') is a formal advisory group to the Ministerial Forum on Northern Development (the 'Ministerial Forum')<sup>1</sup>. Established in August 2017, the IRG has, at the request of the Ministerial Forum, worked closely and intensively with relevant Commonwealth, Western Australian, Northern Territory and Queensland Government agencies, the not-for-profit and private sectors to develop a suite of policy initiatives that are designed to substantially enhance the engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy, thus creating a pathway for Northern Australia to reach its full economic potential (the 'IRG Policy Recommendations').

This submission outlines how the IRG recommends changes to the national approach to natural disasters and response, developing resilience and changing the current paradigm about how fire is viewed, managed and considered. It is of paramount importance that Australia involves the people with the longest and most durable interests in these places - Traditional Owners or First Australians. We believe that Indigenous people have an enormous amount to offer the Australian community in designing and implementing national natural disaster responses and must be involved in every facet of building resilience for our collective futures.

On behalf of the IRG, I would like to thank you for the opportunity to make this submission.

Yours faithfully,



Peter Yu  
Chair  
Indigenous Reference Group to the Ministerial Forum on Northern Development

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<sup>1</sup> Further background on the IRG and Ministerial Forum is provided in the enclosed submission

**INDIGENOUS REFERENCE GROUP TO THE MINISTERIAL FORUM ON  
NORTHERN DEVELOPMENT**

**ROYAL COMMISSION INTO NATIONAL NATURAL DISASTER  
ARRANGEMENTS**

**30 April 2020**

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## 1. Background to IRG

The Indigenous Reference Group was appointed in August 2017, as one of two formal advisory groups. The IRG's purpose is to engage directly with, and provide policy advice to the Ministerial Forum, ensuring Indigenous perspectives are included in its deliberations, contributing to the achievement of tangible and sustainable benefits. In the first instance, the IRG has been tasked with advising on aspirations and barriers relating to developing the Indigenous business sector, growing the capability of Indigenous land owners to engage in development, and supporting Indigenous innovation.

The Ministerial Forum is chaired by the Commonwealth Government Minister for Northern Australia and comprised of the Commonwealth Government Minister for Indigenous Australians, and Ministers from the Western Australian, Northern Territory and Queensland Governments whose portfolio responsibilities intersect with the North's Development Agenda. Its purpose is to provide oversight and direction on the development of Australia's North in accordance with the Northern Australia Strategic Partnership (an agreement between the Northern Australian jurisdictions regarding the development of the North) and more recently, the Northern Australia Indigenous Economic Development Accord.

The IRG is an expertise-based (rather than a representative based) committee comprised of Indigenous leaders across Northern Australia<sup>1</sup> that have broad expertise and significant experience in Indigenous business, community and government leadership in Northern Australia.

### Members of the Northern Australia Indigenous Reference Group

- **Mr Peter Yu (IRG Chair)**, Chief Executive Officer, Nyamba Buru Yawuru Ltd
- **Mr Lawford Benning**, Chair, MG Corporation
- **Dr Donna Odegaard, AM**, Chairperson, Aboriginal Broadcasting Australia
- **Mr Joe Morrison**, Managing Director, Six Seasons Pty Ltd
- **Mr Nigel Browne**, Chief Executive Officer, Larrakia Development Corporation
- **Cr. Vonda Malone**, Mayor, Torres Shire Council
- **Ms Fiona Jose**, Chief Executive Officer, Cape York Partnership
- **A.Prof. Colin Saltmere**, Managing Director, Indjalandji-Dhidhanu Aboriginal Corporation

### 1.1. Focus of IRG

The IRG has maintained a disciplined focus with respect to its advice to the Ministerial Forum. The IRG has focused very specifically on addressing the sources of an evident market failure in the development of Northern Australia, being inadequate activation of the Northern Australian Indigenous economy (see Attachment 2). Indigenous Northern Australians comprise an average of 15 percent of the population of Northern Australia (compared to 2.5 percent in Southern Australia) with much larger Indigenous representation in the populations of northern Western Australia and Northern Territory (approximately 25 to 30 percent), and in populations outside of the main urban centres across Northern Australia (well in excess of 50 percent in many instances). As a result, Indigenous organisations are a key component of the government, industry and non-government-organisation institutional framework in Northern Australia.

Legally recognised Northern Australian Indigenous interests in the land and sea estate are more pronounced than they are in Southern Australia, with Indigenous interests owning or

<sup>1</sup> For the purposes of this Submission, 'Northern Australia' refers to that area of the Australian territory defined as 'Northern Australia' by the NAIF, with the term 'Southern Australia' referring to the remainder of the Australian territory.

exercising some degree of control and property rights over more than 80 percent of the Northern Australian landmass, and considerable areas of sea country, including around 85 percent of the Northern Territory coastline. Very importantly, international conventions and increasingly the Australian judiciary are recognising that Indigenous interests extend beyond cultural rights and rights of occupancy, to rights over natural resources, intellectual property and a right to development.

Trade with and investment from Asian interests are important drivers of the development of Northern Australia and Northern Australian Indigenous interests have a significant heritage with respect to particularly South East Asian trade, having conducted trade for centuries prior to European colonisation of the north. In this environment, Indigenous businesses' products and services are becoming increasingly important components of the trade profiles of many nations.

In other words, the size of the Indigenous population, importance of Indigenous organisations and extent of Indigenous interests in land, water, sea, natural resources and other intangible assets in Northern Australia, means that Indigenous Northern Australians are paramount stakeholders in the Northern Australian economy. **Unless Indigenous interests in the Northern Australian economy are optimally activated, Northern Australia will fail to develop socially and economically.**

Furthermore, without reform to current fiscal arrangements between States, Territory and the Commonwealth, Northern Australia will not progress sufficiently as it should. Much of Government investment in Indigenous advancement across Northern Australia is premised on Indigenous disadvantage and deficit. Continuation of this will only perpetuate the situation rather than achieve any alternative outcomes for the Northern Australia Indigenous population.

The IRG have made this evident in the past two years of work and recommended to the Ministerial Forum that both attitudinal and fiscal reform based on Indigenous self-determination, knowledge and innovation, and seek a 'fit-for-purpose' approach to Indigenous social and economic development.

Unlike Southern states, all business enterprises across Northern Australia face certain challenges owing to location, distance, seasonal weather conditions, skilled or small work force, tax issues and more. However, Indigenous business enterprises are further exacerbated by historic disruptions to cultural, social and economic livelihood and security.

The result of two centuries of dispossession, dislocation, oppressive and punitive government policies and practices have manifested in generations of disadvantaged, disengaged Indigenous people as opposed to a privileged non-Indigenous Australian population.

Despite being the largest holders of land and resources, Indigenous Northern Australians continue to struggle for housing, everyday living, higher levels of education, better health, economic independence, wealth generation and lack the ability to unlock economic potential of their land and resources for the benefit of their communities, groups and organisations.

**Unless there is fundamental shift toward a genuine self-determination model, a significant section of the Northern Australian economy and society will remain (and likely become increasingly) dependent on financial support from government that is ultimately derived from a taxation base that is located primarily in the Nation's south.**

Indigenous enterprises in Northern Australia face both the same generic structural challenges as all business in Northern Australia, as well as unique structural challenges relating to the particular circumstances and history of Indigenous people and the state. The generic structural challenges faced by all Northern Australian business include small and sparse local markets, remoteness (including limited access during the wet season), poor infrastructure, harsh climate and a degree of political irrelevance that is derived from the electoral imbalance between Northern and Southern Australia.

In addition to these structural challenges, Indigenous business in Northern Australia also faces challenges that are the result of two centuries of discriminatory dispossession, oppressive and punitive policy that has resulted in widespread background of intergenerational socio-economic disadvantage among Indigenous Northern Australians. This manifests itself in many ways, including generally lower levels of education and income, limited inter-generational wealth transfer, relatively limited capacity to engage in the workforce or to own, successfully operate and grow commercial enterprise and to access the necessary networks, resources and support services required to achieve these outcomes.

While well-resourced government funded programs are critical to overcoming Indigenous disadvantage, this places at risk the ability of Indigenous northern Australians to break the cycle of reliance and dependence on government programs, thus resulting in a mass sense of worthlessness, high rates of suicide, major health problems, early death rates and so on.

Policy reform as recommended by IRG identified and addressed these risks and stressed the importance of inserting Indigenous cultural values and knowledge into policy making across Northern Australia. Importantly, this is essential to mitigating Indigenous disadvantage, reducing the high numbers of Indigenous unemployment, homelessness and lack of access to essential services and providing opportunities for business, innovation and decision-making.

The IRG identified 'market failure' as failure to engage Northern Indigenous land owners in the development of Northern Australia. However, market failure can be rectified and indeed achieve greater return on investment across Northern Australia with the inclusion and realisation that collectively; Northern Australian Indigenous knowledge of land and sea management, cultural diversity, cultural practices, experience, creativity and innovation is crucial to unlock the true potential of a Northern Australia economy.

The IRG Policy Recommendations and related initiatives, and the objectives and principles that underpin those recommendations and initiatives emulate world-best-practice for frameworks designed to support and accelerate regional Indigenous economic development. This is evidenced by the policy recommendations of a recent study on international best practice undertaken by the OECD<sup>2</sup> (see Attachment 3).

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2 OECD (2019) *Linking Indigenous Communities with Regional Development*, OECD Publishing, Paris

## 1.2. Consultation and IRG Recommendations

Since early 2018, the IRG has been working closely and intensively with senior officials in Commonwealth, Western Australian, Northern Territory and Queensland Government agencies, whose statutory and policy functions intersect with the Northern Australia Agenda and/or Indigenous economic development (refer to the table below for list of those consulted). This work has focused on establishing a policy framework designed to substantially enhance and accelerate the engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy. The work commenced with a cross-jurisdictional policy assessment and development workshop in March 2018 which delivered 36 specific policy recommendations.

The April 2018 Ministerial Forum endorsed 16 of those specific recommendations for implementation planning and referred the remaining 20 recommendations for further consideration.

### **Northern Australia Indigenous Reference Group Policy Development Consultation**

**Commonwealth Agencies** – Prime Minister & Cabinet; Austrade; Agriculture and Water; Indigenous Business Australia; Indigenous Land Corporation; Office of Northern Australia; CRC for Development of Northern Australia; Northern Australia Infrastructure Facility; CSRIO; and Geoscience Australia.

**Western Australian Government Agencies** – Premier & Cabinet; Primary Industries and Regional Development; Jobs, Tourism, Science and Innovation; Water and Environmental Regulation; Training and Workforce Development; Communities WA; Planning, Land and Heritage; and Kimberly Development Commission.

**Northern Territory Government Agencies** – Chief Minister's Office; Trade, Business & Innovation; Health; Northern Territory Solicitor; Tourism NT; Local Government & Communities; Environment & Natural Resources; and Land Resource Management.

**Queensland Government Agencies** – Premier & Cabinet; State Development; Treasury; Employment & Training; Aboriginal and Torres Strait Islander Partnerships; Transport & Main Roads; Environment & Science; and Fire & Emergency.

The 16 recommendations can be broadly categorised as initiatives designed to:

- 1. Create jobs and foster labour participation, entrepreneurship and business acumen among the Northern Australian Indigenous population;**
- 2. Develop knowledge management systems, decision support tools and commission research and development that is designed to improve the decision-making environment for Indigenous managers and business owners in Northern Australia;**
- 3. Develop infrastructure that supports Indigenous economic development in Northern Australia;**
- 4. Provide improved access to capital and international markets for Indigenous businesses in Northern Australia;**
- 5. Initiatives to activate the economic value of land, water, sea and cultural resource rights and interests of Northern Australian Indigenous people; and**
- 6. Give effect to institutional arrangements that work to activate, accelerate and optimise Indigenous economic development across Northern Australia**



### 1.3. Endorsement by the Ministerial Forum

The implementation plan was endorsed by the November 2018 Ministerial Forum, with six specific implementation actions currently underway. These specific initiatives include the development of a Northern Australian Indigenous Development Accord between the Commonwealth, Western Australian, Northern Territory and Queensland Governments, agreement on which was announced on 12<sup>th</sup> December 2019, as well as co-design work to scope pan-Northern Australian institutional arrangements (Northern Australia Indigenous Economic Development Body and Northern Australia Enterprise and Employment Hub network) to support the specific needs of the Northern Australian Indigenous economy, and the preparation of a Northern Australia Indigenous Commercial Research Roadmap.

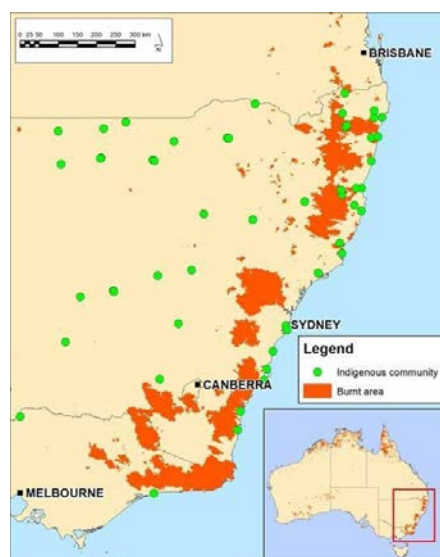
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## 2. Introduction

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According to the United Nations, there are 370 million Indigenous peoples worldwide across 90 countries. While Indigenous peoples comprise approximately 5% of the world's population, they make up 15% of the world's extreme poor and 33% of the rural poor. They comprise the majority of the world's cultural and linguistic diversity and are stewards of the vast majority of the planet's biodiversity, the largest carbon stocks, intact freshwater systems and marine expanses.

In the bushfire affected area (Figure 1), Indigenous people residing in 22 discrete communities were among those most affected by the 2019-2020 bushfires in south eastern Australia. It is estimated that well over 84,000 Indigenous people live in the entire fire affected area comprising 5.4% of the total population, which to date has received little attention in the post bushfire response<sup>3</sup>, other than as 'stakeholders'. What is not appreciated, is that Indigenous people in the area have very different relationships with the natural environment to most non-Indigenous people and therefore have different legal rights and interests throughout the area.



*Figure 1. Fire Affected are of the 2019/2020 Bushfires and Indigenous communities.*

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<sup>3</sup>Williamson, Markham & Weir (2020), *Aboriginal peoples and the response to the 2019–2020 bushfires*, Working Paper No. 134/2020, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.

Legal interests for Indigenous people in the fire affected area include the *Native Title Act 1993* (Cwth), *Aboriginal Land Rights Act 1983* (NSW), *Aboriginal Heritage Act 2006* (Vic), *Traditional Owners Settlement Act 2010* (Vic), Schedule 14 of the *National Parks and Wildlife Act 1974* (NSW), communal land ownings held by the Indigenous Land & Sea Corporation and other Aboriginal Corporations, Indigenous Protected Areas and other forms of conservation estates.

The relationships between First Peoples and their lands and waters are not only a matter of legal rights and interests, but also form a critical and largely unrecognised part of their social, cultural and political life. Unfortunately, in past enquiries and royal commissions, Indigenous people have been ignored but there are some compelling reasons why this must change:

- Aboriginal people have experienced land dispossession and other forms of colonisation;
- Indigenous people form a minority of the population, but have the most to lose from unmitigated and mismanaged natural disasters;
- Indigenous people in the bushfire-affected area are younger than the rest of the population – they are future managers of the national estate;
- Indigenous people are more likely to suffer from the effects of bushfires including, trauma, health, and access to education and housing on top of their existing poor state of health and socio-economic circumstances; and
- In some bushfire-affected towns – such as discrete Indigenous communities – Indigenous people form a substantial part of the population, sometimes 100% of the residents.

Whilst the IRG's focus is on Indigenous Northern Australia, where Indigenous fire management practice is readily accepted as a legitimate land management tool, the context is different to the area that this royal commission covers but nonetheless informative (Figure 2).

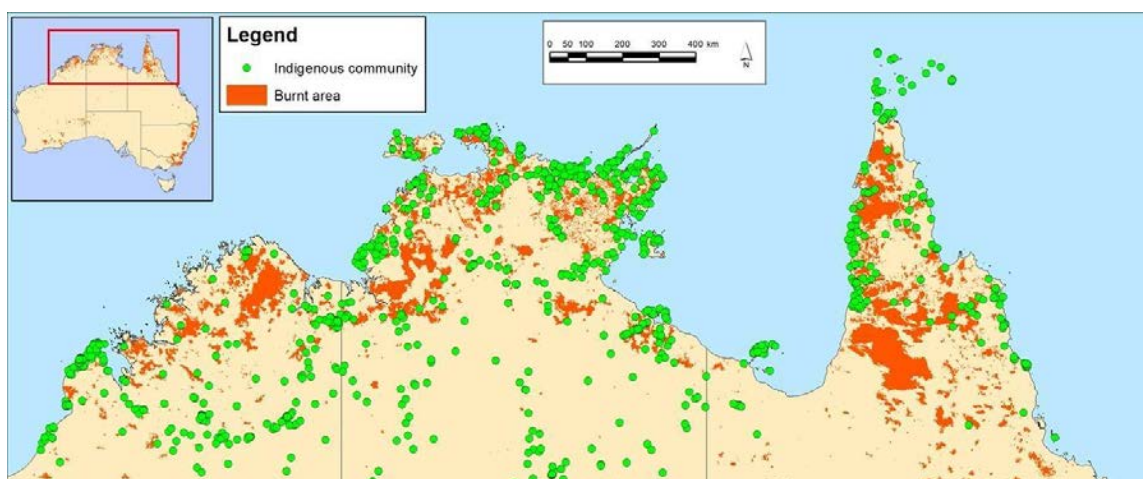


Figure 2. Fire and Indigenous communities in north Australia

In northern Australia:

- Indigenous people comprise 15 percent of the total population of the region with substantially more of the population outside of the main regional centres of Cairns, Townsville and Darwin;
- 50 percent of the working age population will be Indigenous by 2050;
- Indigenous people have legal rights to around 80 percent of Northern Australia; and
- As a result, Indigenous people and their institutions perform profoundly important roles in the management and future sustainability of this region.

Northern Australia holds some of the most biodiverse, unique and fire prone landscapes in Australia. They are also home to Indigenous people that have lived within and managed these landscapes for at least 65,000 years. These include the world's most intact tropical savannas, extensive wetlands and sandstone plateau's of Arnhem land and the Kimberley with Kakadu, Uluru-Kata Juta, Purnululu, Wet Tropics and the Great Barrier Reef World heritage listed National Parks. The region has 65% of the nation's freshwater runoff from relatively intact rivers.

Typical orthodox western approaches deal with complex systems by breaking them into silo's and treating them separately, whilst Indigenous people continue to articulate the completeness, or wholeness, and the need to include all aspects into dealing with the special relationship between people, country and the spiritual world.

The IRG believes this orthodox approach, including to national and natural disasters is one of the fundamental challenges facing the future sustainability of Australia's unique environment, growth and economic prosperity.

These matters have been raised here, as part of this submission because the IRG believes that there is a misguided understanding that what happens in the north cannot occur in the south, that is, Indigenous proactive management of land and sea, including the management of fire, as our ancestors had done for 65,000 years. In the context of the fire affected area of the 2019/2020 Bushfires, Indigenous people can substantially contribute to developing strategies for the management and mitigation including developing resilience throughout the broader community by being included, involved and empowered.

## 2.1. General Remarks

### **Inclusion of Indigenous people – UNDRIP**

The United Nations Declaration on the Rights of Indigenous People<sup>4</sup> (UNDRIP) can provide meaningful guidance on the reasons why, and the process to adopt to ensure that Indigenous people are included into the design of strategies relating to natural disasters. There are existing Indigenous agencies around Australia that have been established with consultation processes as one of their core objectives and utilise the Free, Prior and Informed Consent articles as a means of guidance.

Further, Native Title Prescribed Bodies Corporate (Corporations) can be a source of great wealth and capacity at local and regional levels for engaging with Indigenous people.

***The IRG Recommends the adoption of UNDRIP's articles of Free, Prior and Informed Consent as a guide to inclusion of Indigenous people into developing a comprehensive national strategy.***

### **Development of a Indigenous Experts Working Group to consider Indigenous specific issues and develop detailed recommendations.**

The establishment of a Working Group would provide enhanced capacity to (a) understand the specific needs of the Indigenous community, (b) identify potential leaders that could contribute to a comprehensive national strategy and (c) develop interconnected solutions for Indigenous communities.

At present, there is a lack of inclusion into the design and implementation of national strategies that disproportionately affect Indigenous people due to their inherent connection, legal rights and interest as well the on-going trauma that certain events have on Indigenous people. The working group could develop Indigenous specific recommendations that will improve the resilience of Indigenous communities but also break down silos enabling a holistic approach to be created in partnership with the community.

### **Indigenous input into development, especially where recognised Native Title exist – disjuncture between Indigenous rights, tenure and planning.**

A fundamental disjuncture of planning in Australia, is the inclusion of Native Title holders or claimants in developing inclusive planning frameworks. Native Title provides specific rights and interests as legal recognition of their prior ownership.

It would be essential for planning regulations and laws to be amended to include Native Title Holders and registered claimants' consent of development guidelines and to include a representative into statutory Boards considering planning consent.

Equivalent arrangements could occur in the Northern Territory with the *Aboriginal Land Rights (Northern Territory) Act 1976*, having Indigenous representatives on the Development Consent Authority and other jurisdictions whereby other forms of legal recognition are in place (see Introduction above).

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<sup>4</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

***The IRG recommends planning laws be amended to include Indigenous legal rights and interest holders into statutory planning and consent processes.***

**Diversifying regional economies to be less reliant on high risk industries, and to include options for Indigenous economic development.**

In many places where the greatest impact of threat of natural disasters occur, economies are over-reliant on too few industries. Tourism is heavily impacted, and in places where Indigenous people or communities occur, there is a case to re-examine regional economies on the basis of resilience from further natural disasters and climate change with a focus on developing resilience in vulnerable communities and sectors.

**Transparency of funding – for disaster management (community preparedness, response and recovery) and from donations for recovery.**

The IRG believes that there could be greater transparency of public sector funding allocated for National Natural Disasters and Resilience and Recovery. This is important to ensure that vulnerable communities are in a position to respond, as well as to plan and adapt to changes that may occur in the event of a disaster.

Further, the IRG also thinks transparency should also be applied to the substantial donations received for the bushfire recovery, including for wildlife. It is a reminder of the generosity of humanity, but if we as a nation are better prepared through inclusive planning, recognition of Indigenous rights and interests as well as better plan and diversify our economy then much of the need for donations can be averted.

## 2.2. Response to the Letters Patent

**The Letters Patent require and authorises the Royal Commission to (amongst other matters) inquire into the following matters:**

- (a) the responsibilities of, and coordination between, the Commonwealth and State, Territory and local Governments relating to preparedness for, response to, resilience to, and recovery from, natural disasters, and what should be done to improve these arrangements, including with respect to resource sharing;**

The IRG believes that the Commonwealth has an over-riding role to provide national leadership on matters relating to Indigenous Affairs as well as the preparedness for, response to, resilience to, and recovery from, natural disasters. Combining Indigenous affairs and the question posed here is designed to amplify and enable a national leadership to, work with state, territory counterparts to ensure that both Indigenous people are not disproportionately affected as well as to ensure that clarity around the various roles of responsibility do not create a lack of progress.

The IRG is acutely aware that there may be constraints in the constitution as to how that role may be limited, therefore it is important that the Commonwealth, states, territories and local governments urgently convene to clarify these roles including the sharing of resources and develop a national plan.

We believe that current arrangements are not clear, lack transparency and involvement with the Indigenous community and do little to consider the unique role that Indigenous people play in managing Australia's unique natural and cultural assets as well as responding to national natural disasters.

Therefore, the Commonwealth must improve its capacity to provide the required leadership especially relating to the engagement of Indigenous people in national approaches.

***The IRG recommends that the Commonwealth assume a leadership role and in collaboration with the states and territories strengthens the federations preparations and responses, development of resilience and recovery from natural disasters including resourcing with specific attention to Indigenous people's unique needs, role and legal rights and interests.***

**(b) Australia's arrangements for improving resilience and adapting to changing climatic conditions, what actions should be taken to mitigate the impacts of natural disasters, and whether accountability for natural disaster risk management, preparedness, resilience and recovery should be enhanced, including through a nationally consistent accountability and reporting framework and national standards;**

It is estimated that over 6,500 000ha were burnt by fires of greater than 250ha in size across Victoria and NSW between July 1, 2019 and January 23, 2020. This occurred across seven regions - NSW North Coast from Foster to the Queensland border; from the NSW Central Coast to the Blue Mountains; southwest of Sydney to the Southern Highlands; much of the South Coast of NSW to Bega; the Snowy Mountains; East Gippsland; and the alpine region of Victoria south of Mount Buffalo<sup>5</sup>.

The size, frequency and intensity of these fires suggest that much more needs to be done to ensure that the nation can have the tools and capacity to be proactive and respond to circumstances of national disasters.

The science community have long argued that climate change or changing climatic conditions is occurring at a rapid pace. These changes disproportionately affect Indigenous communities due to their socio-economic status<sup>6</sup> and reliance on natural ecosystems for spiritual and food sustenance. Indigenous people are especially attuned to climate change and believe it is real for them<sup>7</sup>.

Unfortunately, in Australia the development of policy that links natural disasters and coordinated responses to climate change are misaligned and have allowed Australia to lag in responding to climate change, developing effective responses and to improve our collective preparedness and resilience.

<sup>5</sup>Williamson, Markham & Weir (2020), *Aboriginal peoples and the response to the 2019–2020 bushfires*, Working Paper No. 134/2020, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.

<sup>6</sup>Green D, S Jackson and J Morrison, 2009, *Risks from Climate Change to Indigenous Communities in the Tropical North of Australia*. Department of Climate Change and Energy Efficiency: Canberra.

<sup>7</sup>Memmott, P, Reser, J, Head, B, Davidson, J, Nash, D, O'Rourke, T, Gamage, H, Suliman, S, Lowry, A & Marshall, K 2013, *Aboriginal responses to climate change in arid zone Australia: Regional understandings and capacity building for adaptation*, National Climate Change Adaptation Research Facility, Gold Coast, 288 pp.

In addition, Australia is a signatory to numerous international conventions that speak to Traditional, Indigenous or Local knowledge, experience and contributions to sustain biodiversity such as the Convention on Biological Diversity (CBD) Article's 8(j) and 10(c) specifically relating to Traditional Knowledge.

The current National Disaster Risk Reduction Framework is Australia's response to the 'Sendai Framework Outcome 2030', a United Nations roadmap for Disaster Risk Reduction 2015-2030. In light of the 2019/2020 Bushfires and COVID 19, it would be timely to review this framework, especially in light of Commonwealth and State/Territory coordination as well as the engagement of Indigenous people into the review. This is an example of the disjuncture between overlapping agreements and approaches that should be consolidated.

The IRG believes that the framework lacks comprehension in how unique and distinct groups, such as Indigenous people with distinct legal rights are not adequately considered in the design and implementation of these national frameworks.

*The IRG recommends that the Commonwealth review all of its National Disaster Frameworks and international instruments to ensure consistency with Indigenous people's rights, aspirations and to ensure they are engaged and resourced to contribute to future national strategies and actions.*

- (c) **whether changes are needed to Australia's legal framework for the involvement of the Commonwealth in responding to national emergencies, including in relation to the following:**
  - (d) **thresholds for, and any obstacles to, State or Territory requests for Commonwealth assistance;**

As alluded to above regarding constitutional issues, there should be nationally consistent guidelines as to the support required for states and territories relating to requests for assistance. The state of underdevelopment across northern Australia will require special consideration, especially the Northern Territory given its population, demographic makeup, remoteness and economy. In the bushfire zone, special consideration should be given to Indigenous communities (of which there are numerous) due to their unique needs.

*The IRG recommends that there should be no changes to legislation that affect human rights, Native Title or other forms of legal recognition, protection and empowerment of Indigenous people without the full, prior and informed consent to do so.*

- (e) **whether the Commonwealth Government should have the power to declare a state of national emergency;**

There are many considerations in responding to such a question, but in circumstances relating to Indigenous people, the IRG believes that the Commonwealth must be able to declare a state of national emergency, regardless of the geographic location of impact or effect. But how it does this, and the manner in which it does will require considering: why



this is required, when is it required and what the consequences, both intended and unintended may be from making such a declaration.

This is a very delicate issue requiring considerable policy and implementation planning.

***The IRG recommends that the Commonwealth, State and Territories develop consistent and agreed mechanisms, reporting and resourcing arrangements for declarations of national emergencies.***

**(f) how any such national declaration would interact with State and Territory emergency management frameworks;**

It would be critical for the State, Territory and the Commonwealth Governments to agree on such processes through the Council of Australian Governments to ensure that certain triggers to mobilise State and Territory resources as well as the Commonwealth are continued. In these unlikely circumstances, debates between the Commonwealth, State and Territory are unhelpful and can detract from saving lives. In developing such mechanisms for making declarations, consideration should be given on creating unfavourable outcomes that may impact Indigenous people such as disturbing sacred or heritage sites.

Such declarations would require Commonwealth resources to be available. The convening of regular National Cabinet meetings during COVID 19 has proven to be a useful governance mechanism.

**(g) whether, in the circumstances of such a national declaration, the Commonwealth Government should have clearer authority to take action (including, but without limitation, through the deployment of the Australian Defence Force) in the national interest;**

There have been many situations whereby the Commonwealth has mobilised the Australian Defence Force and used its other resources that can create adverse outcomes for Indigenous people as well as the broader community (e.g. NT Emergency Response). Such action should be by agreements as outlined in (e) above.

The inclusion of Indigenous people in the design and resourcing of a revised National Natural Disaster Management Plan through detailed consultation would expose the shortfalls in these approaches, but the establishment of a dedicated Expert Indigenous working group could find solutions.

(h) any relevant matter reasonably incidental to a matter referred to in paragraphs (a) to (c).

AND for the purposes of the inquiry and recommendations, to have regard to the following matters:

- (i) **the findings and recommendations (including any assessment of the adequacy and extent of their implementation) of other reports and inquiries that are relevant, including any available State or Territory inquiries relating to the 2019-2020 bushfire season, to avoid duplication wherever possible;**

The IRG has made recommendations to the *Environmental Protection and Biodiversity Conservation Act 1999* review that has some relevance to this enquiry due to the nature of this Royal Commission on National Natural Disasters intersecting in matters of national significance, the environment and the rights and interests of Indigenous people. The relevant recommendations are outlined here and can be read with relevance to this enquiry:

***The IRG recommends that the Commonwealth take a leadership role and in collaboration with the states and territories enter into new bilateral arrangements to ensure the EPBCA is strengthened, particularly with respect to Indigenous people and their unique role in managing Australia's environment.***

***The IRG recommends that Ecologically Sustainable Development include articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>8</sup> that support Indigenous decision making processes and protocols.***

***The IRG recommends a reframing of the EPBCA objects to:***

- ***more clearly determine the fundamental federal role, emphasising leadership and the maintenance of standards;***
- ***commit to protection and good management of the full array of values (social, cultural, economic and environmental) of concern to all elements of Australian society, including Indigenous people;***
- ***develop and promote national guidelines for environmental monitoring and reporting, emphasising transparency; and***
- ***set out other principles that bound the need for federal engagement and help identify effective mechanisms for enabling an appropriate federal role.***

***The IRG recommends that matters of significance to Indigenous people feature strongly and explicitly in any meaningful set of Matters of National Environmental Significance not only because they are required in international law, but because proper recognition of and response to Indigenous interests is essential in many other areas of national social policy. In many circumstances of northern Australia, customary law plays a substantial role in***

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<sup>8</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

*decision making processes that take into consideration a broad range of issues, questions and possible impacts.*

*The IRG recommends use of environmental standards to inform decision-making processes, under the following conditions:*

- a properly funded program and process to consult, develop, apply and refine a national set of standards;*
- formal recognition that standards must evolve and so cannot offer the illusion of certainty demanded by some in industry, but provide an orderly process for continual review, refinement and change;*
- obligation to include targets identified by Indigenous interests and informed in design and application by Indigenous knowledge and practice;*
- emphasising standards for rehabilitation of damaged lands (habitats); and*
- consideration of the Native Title Act and Aboriginal Land Rights (Northern Territory) Act.*

*The IRG recommends that relevant sets of provisions in the EPBCA should contain the following elements:*

- Incentivising landowners, industry, state and territory government agencies to participate in Strategic Environmental Assessment (SEA) and Bioregional Planning (BP);*
- Ensuring restoration and rehabilitation in all SEA and BP mandatory;*
- Ensuring restoration and rehabilitation options in all EIA through legislated offset provisions, including preference for offsets provided locally and demonstrably rehabilitating similar environments are mandatory;*
- Dedicated resources for Indigenous landholders and managers to participate in SEA, BRP and development planning, including technical and language support to match their respective plans;*
- Mandate incorporation of Indigenous views in all SEA and BRP; and*
- Ensure the meeting of goals to be mandatory for all SEA, BRP and offsets arrangements.*

*The IRG recommends that enterprise development be recognised as a mechanism to secure sustainable management practice, enhance skills and customary values, all of which would boost confidence within a community.*

- (j) ways in which Australia could achieve greater national coordination and accountability — through common national standards, rule-making, reporting and data-sharing — with respect to key preparedness and resilience responsibilities, including for the following:**
  - i. land management, including hazard reduction measures;**

By improving engagement, employment and enterprise for Indigenous people in areas that are fire prone and have the potential to threaten infrastructure and lives, Indigenous people can contribute substantially as community based rangers. Experience in northern Australia and now emerging in southern Australia illustrates that building the capacity of local Indigenous people, their organisations and utilising their knowledge can have lasting effects

that substantially improve management and agency for Indigenous people, as well as build resilience within the community itself, whilst achieving enormous environmental outcomes on behalf of the nation<sup>10</sup>.

The IRG believes that Australia's management of bushfires should embrace Indigenous ways and means of managing our environment. The Australian environment is highly flammable and has been managed with fire for millennia.

***The IRG recommends national approaches to land management include:***

- ***Developing national education standards improving knowledge and understanding about Indigenous land and sea management practices;***
- ***Fully complying with international obligations to which Australia is a signatory, such as the Convention on Biological Diversity, RAMSAR and World Heritage;***
- ***Expansion of the Indigenous Protected Areas and Ranger Programs;***
- ***Developing guidelines for infrastructure development in close proximity to natural hazards;***
- ***Establishment of a National Indigenous Commissioner for National Natural Resources to consider the unique needs and requirements of Indigenous people and ensure adequate coordination, reporting and alignment alongside other Commonwealth and State and Territory leaders.***
- ***Conducting fire reduction activities on a regular and on-going basis***
- ***Develop nationally consistent communication strategies covering cultural and linguistic diversity***

**ii. wildlife management and species conservation, including biodiversity, habitat protection and restoration;**

Our response to wildlife, species conservation, including biodiversity, habitat protection and restoration are covered in other areas of this submission. There is a lack of strategic indigenous input into these matters and the adoption of the 'Commissioner' position mentioned above would allow for greater involvement, accountability, transparency and coordination when National Natural Disasters occur.

**iii. land-use planning, zoning and development approval (including building standards), urban safety, construction of public infrastructure, and the incorporation of natural disaster considerations;**

As alluded to above in our 'General Remarks' section, land use planning including development consent must include Indigenous people who hold legally recognised rights and interests.

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<sup>9</sup> Consolidated report on Indigenous Protected Areas following Social Return on Investment analyses , [https://www.niaa.gov.au/sites/default/files/publications/SROI-Consolidated-Report-IPA\\_1.pdf](https://www.niaa.gov.au/sites/default/files/publications/SROI-Consolidated-Report-IPA_1.pdf)

**(k) any ways in which the traditional land and fire management practices of Indigenous Australians could improve Australia’s resilience to natural disasters.**

Indigenous Australians have managed fire for thousands of years for cultural, customary, economic and spiritual reasons. In parts of Australia where fire dependent collectively held territories are maintained by Indigenous people, development of community-based approaches and technologies have evolved to improve management of wildfires, including reinvigorating traditional knowledge and practice, understanding the role that fire plays in a climate change context, measuring the impacts and carbon emissions from wildfires and reducing the health impacts on humans. Fire and life are interconnected and therefore closely managing fire leads to improved environmental and human physical and psychological health.

Indigenous fire management is different to mainstream fire management practice because it comes from a different worldview starting with fire being seen as a ‘positive’ or ‘necessary’ part of the environment and economy, not ‘bad’ or to be ‘avoided’ as is the case in much of southern Australia. Indigenous people use fire as a primary tool to interact with their country, and also with their spiritual and religious obligations to their ancestral estates.

The first project to use Indigenous Fire Management (IFM) to generate carbon credits was the Western Arnhem Land Fire Agreement (WALFA) that started in 2006. This project like many in Arnhem Land at the time, were focused on reinstating management of collectively held territories with ancient knowledge and wisdom including fire regimes that were in place prior to disruption from early settlers. Many senior Indigenous leaders realised that an opportunity to create a culture-based-economy that was consistent with collectively held land management aspirations presented an opportunity to create unique employment and enterprise options.

The images below (Figure 3) for Western Arnhem Land illustrate the impact of the reintroduction of Indigenous fire management practises, with late dry season fire extent and impact on vegetation illustrated on the left, and the shift to earlier traditional burning on the right.

**Global Context:**

Globally, wildfires annually burn a total land area of between 3.5 and 4.5 million km<sup>2</sup>, and affect every region of the world, particularly Africa, which accounts for more than 70% of all wildfire emissions. Wildfire smoke alone is estimated to kill around 340,000 people annually. In 2017, insured losses from wildfires totalled USD14 billion. Wildfires have been estimated by the Economics of Ecosystems and Biodiversity (TEEB) to destroy ecosystem services in the range of US\$146–US\$191 billion per year. Wildfires are a major driver of forest degradation and desertification.

Fire dependant ecosystems such as tropical dry forests and savannas cover around one-sixth of the global land surface and much of these landscapes are inhabited by Indigenous people.

Poor fire regimes are a significant issue resulting in the prevalence of large destructive fires that emit more greenhouse gases than well-managed areas. The net carbon emissions from wildfires between 1997 and 2014 – due to destructive wild fire, deforestation and fire in tropical peatlands – which is a measure of the poor fire regime was  $2\text{Gt CO}_2\text{e y}^{-1}$ . Many of these fire-dependent landscapes are closely linked with tropical rainforests, with poor fire regimes in savannas having a significant impact on rainforests.

The Intergovernmental Panel on Climate Change (IPCC) predicts that it is highly likely that global fire activity will increase as a result of climate change. NASA predict that wildfire could increase by as much as 35% by 2100 and that most of these increases will take place in these fire dependent landscapes. The wildfires in Brazil, Bolivia, California and Australia over the last 6 months highlight that we are already experiencing this impact of climate change.

The history of fire dependant landscapes around the world is remarkably similar. These landscapes were dominated by fire regimes that were actively managed by Indigenous people by lighting low-intensity, early dry season fires to create mosaics and prevent the build-up of fuel, which minimised later dry season destructive wildfires. With colonisation by Europeans of these people and landscapes the fire management activities of Indigenous people were suppressed.

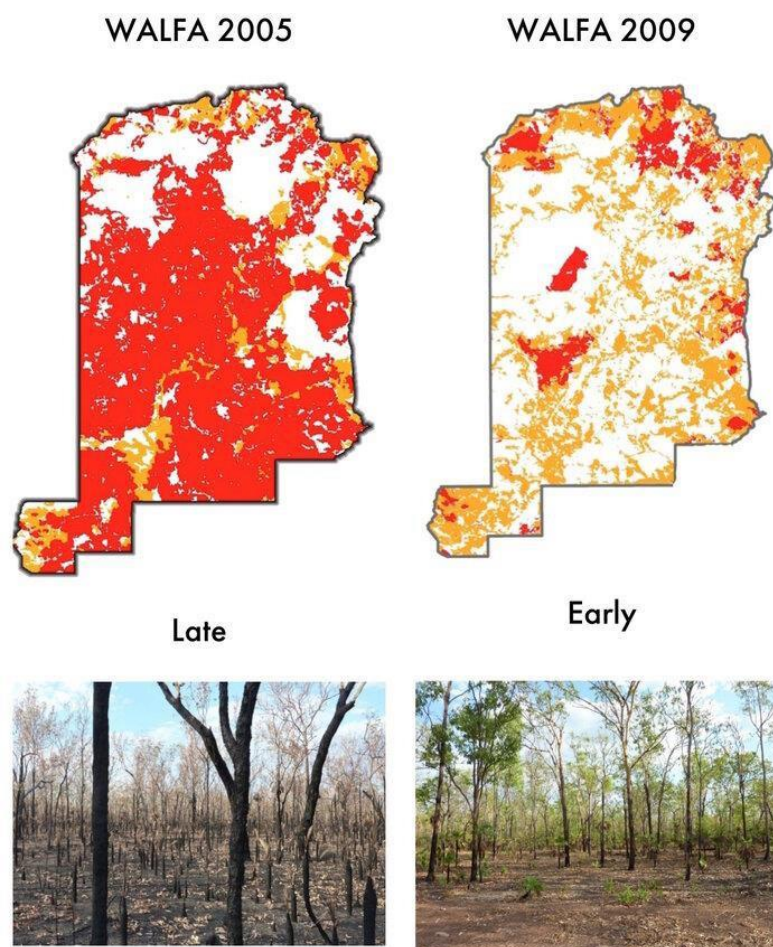


Figure 3. Contrast of late, uncontrolled fire (left) and managed fire (left) in the WALFA Area, Northern Territory.

Indigenous fire management, using a combined community development and methodology-based approach, has been successfully proven in northern Australia to reduce emissions from fire by up to half, while supporting adaptation to climate change, protecting biodiversity and creating employment, community income and other co-benefits in remote Indigenous communities. A feasibility study conducted by the International Savanna Fire Management Initiative and proof of concept activities in Botswana have identified the applicability of the approach trialed and proven successful in northern Australia, across several prospective nations. Pilot sites interested in learning from the northern Australia experience are illustrated below as yellow dots.

Fire management in northern Australia, largely led by Indigenous people, means that large conflagrations such as what occurred in south eastern Australia does not occur. The below image prepared by the Darwin Centre for Bushfire Research, shows that sustained fire management by Indigenous rangers from 2013 has resulted in less late dry season fires (361,400km<sup>2</sup> – the destructive fires) and a total area of 340,400km<sup>2</sup> of land not burnt.

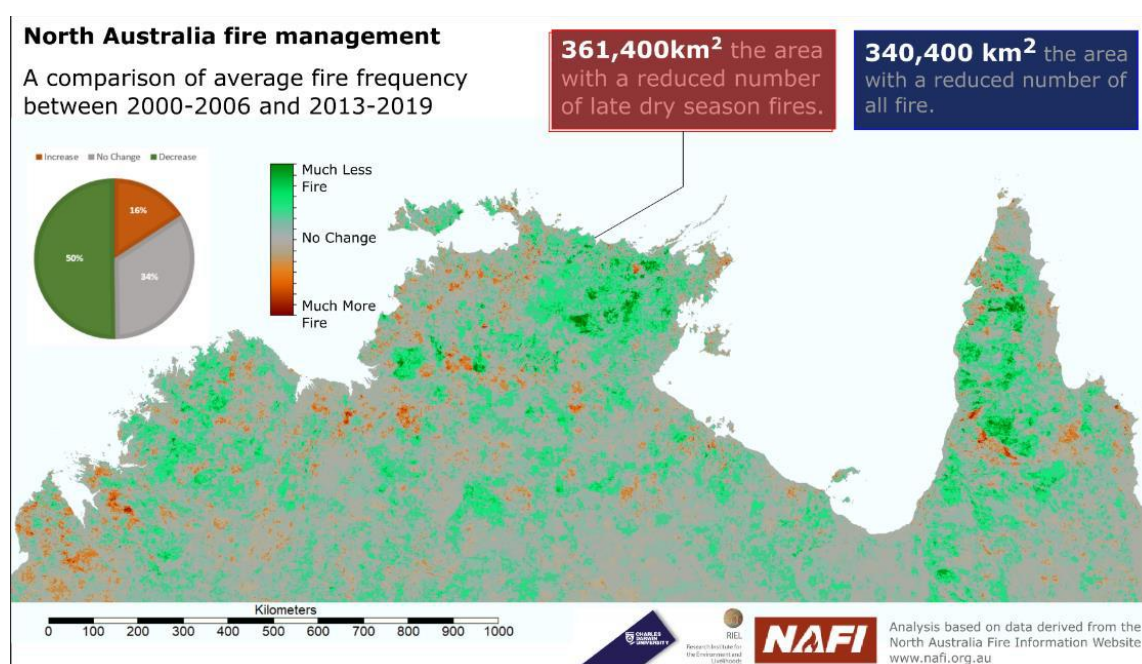


Figure 4: A comparison of average fire frequency between 2000 – 2006 and 2013 – 2019.  
Source: Darwin Centre for Bushfire Research

The fire management example from northern Australia is not exactly transferable to the south, there are important factors to consider; (a) the recognition and involvement of Indigenous people in fire management, (b) development of new economies based on Indigenous employment can contribute to building a more resilient society and (c) regular burning at the right time should be on-going.

Substantial evidence of Indigenous fire management in southern Australia has been gathered by Historian Mr Bill Gammage in his book *'The Biggest Estate on Earth: how Aborigines made Australia'* which not only documents that fire and disaster management was in place at the time of settler contact around 1788, but also that it was frequent with varying intensity depending on the geography, climate and weather patterns – it was sophisticated and essential.

***The IRG recommends that the Commonwealth, States and Territories:***

- ***Engage immediately with Indigenous Australians to develop local, regional and national natural disaster arrangements;***
- ***Establish on-going resources for the employment of Indigenous Australians in national approaches that align with the above arrangements;***
- ***Create curriculum for primary and secondary education to improve understanding of Indigenous fire management and appreciation of fire in general;***
- ***Develop nationally consistent reporting and audit arrangements to ensure delivery of recommendations in above arrangements;***
- ***Support Indigenous led innovation and economic development aligned with the above arrangements.***



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### 3. Recommendations

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The following are all recommendations including those from the IRG's previous submission to the review of the Environmental Protection and Biodiversity Conservation Act 1999.

1. *The IRG Recommends the adoption of UNDRIP's articles of Free, Prior and Informed Consent as a guide to inclusion of Indigenous people into developing a comprehensive national strategy.*
2. *The IRG recommends planning laws be amended to include Indigenous legal rights and interest holders into statutory planning and consent processes.*
3. *The IRG recommends that the Commonwealth assume a leadership role and in collaboration with the states and territories strengthens the federations preparations and responses, development of resilience and recovery from natural disasters including resourcing with specific attention to Indigenous people's unique needs, role and legal rights and interests.*
4. *The IRG recommends that the Commonwealth review all of its National Disaster Frameworks and international instruments to ensure consistency with Indigenous people's rights, aspirations and to ensure they are engaged and resourced to contribute to future national strategies and actions.*
5. *The IRG recommends that there should be no changes to legislation that affect human rights, Native Title or other forms of legal recognition, protection and empowerment of Indigenous people without the full, prior and informed consent to do so.*
6. *The IRG recommends that the Commonwealth, State and Territories develop consistent and agreed mechanisms, reporting and resourcing arrangements for declarations of national emergencies.*
7. *The IRG recommends that the Commonwealth take a leadership role and in collaboration with the states and territories enter into new bilateral arrangements to ensure the EPBCA is strengthened, particularly with respect to Indigenous people and their unique role in managing Australia's environment.*
8. *The IRG recommends that Ecologically Sustainable Development include articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) <sup>11</sup>that support Indigenous decision making processes and protocols.*
9. *The IRG recommends a reframing of the EPBCA objects to:*

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<sup>10</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

- 10. more clearly determine the fundamental federal role, emphasising leadership and the maintenance of standards;*
- 11. commit to protection and good management of the full array of values (social, cultural, economic and environmental) of concern to all elements of Australian society, including Indigenous people;*
- 12. develop and promote national guidelines for environmental monitoring and reporting, emphasising transparency; and*
- 13. set out other principles that bound the need for federal engagement and help identify effective mechanisms for enabling an appropriate federal role.*
  
- 14. The IRG recommends that matters of significance to Indigenous people feature strongly and explicitly in any meaningful set of Matters of National Environmental Significance not only because they are required in international law, but because proper recognition of and response to Indigenous interests is essential in many other areas of national social policy. In many circumstances of northern Australia, customary law plays a substantial role in decision making processes that take into consideration a broad range of issues, questions and possible impacts.*
  
- 15. The IRG recommends use of environmental standards to inform decision-making processes, under the following conditions:*
- 16. a properly funded program and process to consult, develop, apply and refine a national set of standards;*
- 17. formal recognition that standards must evolve and so cannot offer the illusion of certainty demanded by some in industry, but provide an orderly process for continual review, refinement and change;*
- 18. obligation to include targets identified by Indigenous interests and informed in design and application by Indigenous knowledge and practice;*
- 19. emphasising standards for rehabilitation of damaged lands (habitats); and*
- 20. consideration of the Native Title Act and Aboriginal Land Rights (Northern Territory) Act.*
- 21. The IRG recommends that relevant sets of provisions in the EPBCA should contain the following elements:*
- 22. Incentivising landowners, industry, state and territory government agencies to participate in Strategic Environmental Assessment (SEA) and Bioregional Planning (BP);*
- 23. Ensuring restoration and rehabilitation in all SEA and BP mandatory;*
- 24. Ensuring restoration and rehabilitation options in all EIA through legislated offset provisions, including preference for offsets provided locally and demonstrably rehabilitating similar environments are mandatory;*

25. *Dedicated resources for Indigenous landholders and managers to participate in SEA, BRP and development planning, including technical and language support to match their respective plans;*
26. *Mandate incorporation of Indigenous views in all SEA and BRP; and*
27. *Ensure the meeting of goals to be mandatory for all SEA, BRP and offsets arrangements.*
28. *The IRG recommends that enterprise development be recognised as a mechanism to secure sustainable management practice, enhance skills and customary values, all of which would boost confidence within a community.*
  
29. *The IRG recommends national approaches to land management include:*
  30. *Developing national education standards improving knowledge and understanding about Indigenous land and sea management practices;*
  31. *Fully complying with international obligations to which Australia is a signatory, such as the Convention on Biological Diversity, RAMSAR and World Heritage;*
  32. *Expansion of the Indigenous Protected Areas and Ranger Programs;*
  33. *Developing guidelines for infrastructure development in close proximity to natural hazards;*
  34. *Establishment of a National Indigenous Commissioner for National Natural Resources to consider the unique needs and requirements of Indigenous people and ensure adequate coordination, reporting and alignment alongside other Commonwealth and State and Territory leaders.*
  35. *Conducting fire reduction activities on a regular and on-going basis*
  36. *Develop nationally consistent communication strategies covering cultural and linguistic diversity*
  37. *The IRG recommends that the Commonwealth, States and Territories:*
  38. *Engage immediately with Indigenous Australians to develop local, regional and national natural disaster arrangements;*
  39. *Establish on-going resources for the employment of Indigenous Australians in national approaches that align with the above arrangements;*
  40. *Create curriculum for primary and secondary education to improve understanding of Indigenous fire management and appreciation of fire in general;*
  41. *Develop nationally consistent reporting and audit arrangements to ensure delivery of recommendations in above arrangements;*
  42. *Support Indigenous led innovation and economic development aligned with the above arrangements.*