

1 October 2024

Ms Katie Kiss
Aboriginal and Torres Strait Islander Social Justice Commissioner
GPO Box 5218
SYDNEY NSW 2001

By email: informingtheagenda@humanrights.gov.au

Dear Commissioner Kiss

Call for Submissions—Setting the Agenda

1. The Law Council appreciates the opportunity to contribute to this consultation. Our President, Greg McIntyre SC, was also pleased to meet with you in Western Australia recently to discuss our shared concerns on youth justice matters.
2. We understand that the intention of this call for submissions is to directly seek out the views of Aboriginal and/or Torres Strait Islander individuals or from organisations and groups that are First Nations owned, led and/or operated.
3. While the Law Council is not a First Nations organisation, this submission draws upon the views of First Nations lawyers on our Indigenous Legal Issues Committee (**ILIC**), and particular First Nations lawyers who are members of our Constituent Bodies. We are grateful to the Victorian Bar's Indigenous Justice Committee for providing their views.
4. As a preliminary comment, First Nations legal practitioners responding to this inquiry are supportive of the high-level goals set out in the call for submissions, and we have highlighted targeted areas for further advocacy and collaboration under each of those goals. The work of the Social Justice Commissioner is inherently intersectional and plays an important role in drawing together disparate or siloed areas of government to facilitate a concerted approach to First Nations empowerment.

Promoting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples

5. We urge the Government to domestically implement the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).¹ As a matter of priority, the Government should develop a national approach to incorporate UNDRIP,² including through a review of national policy and legislation to ensure its consistency with the Articles outlined in UNDRIP.³
6. The Law Council also supports the Social Justice Commissioner's intention to engage governments in line with Recommendation 2 to progress a National Plan for the implementation of the principles of UNDRIP as soon as possible.⁴
7. Furthermore, we agree with the proposal to engage all levels of government on their commitments to implement the principles of UNDRIP. The importance of collaboration between federal, state and territory governments to produce a consistent approach to supporting First Nations rights cannot be overstated, especially in the context of the Justice Policy Partnership (**JPP**) and other integrative policy initiatives, which are addressed below. Feedback we have received suggests that this is crucial to building trusted relationships between First Nations community and government stakeholders—and therefore building longer-lasting and workable reforms to support First Nations rights.
8. We welcome the Social Justice Commissioner's advocacy, particularly on fostering economic empowerment and independence as a form of engendering self-determination.⁵ Promoting and educating communities and businesses about Free, Prior and Informed Consent (**FPIC**)⁶ and enhancing and protecting intellectual and cultural property rights of First Nations communities are the cornerstones of building Indigenous economic empowerment. We also encourage a review of the Closing the Gap Agreement against UNDRIP for alignment.
9. The measurement of Indigenous justice measures needs to be supported by focused advocacy on improved and increased national data collection. Cohesive data will support effective monitoring of the implementation of UNDRIP and the design of effective solutions to challenges faced under the Closing the Gap Agreement framework. Defining metrics of success during the planning stage, collecting and analysing data against those metrics through implementation, and strengthening a public reporting mechanism are all important to ensuring a National Action Plan is effective in practice.⁷

¹ [United Nations Declaration on the Rights of Indigenous Peoples](#) GA Res 61/295, UN Doc A/RES/61/295 (adopted 13 September 2007) (accessed 6 September 2024) ('UNDRIP').

² Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Report, November 2023), Recommendation 1.

³ Law Council of Australia, Submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples* (24 June 2022).

⁴ Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (n 2) Recommendation 2.

⁵ [United Nations Declaration on the Rights of Indigenous Peoples](#) (n 1) Art 3.

⁶ *Ibid* Art 10.

⁷ Law Council of Australia, Submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, [Inquiry into Economic Self-Determination and Opportunities for First Nations Australians](#) (12 July 2024) 6.

Enhancement and protection of cultural rights of First Nations communities

10. We suggest that the Social Justice Commissioner prioritise advocacy for increased First Nations cultural education and cultural safety across all sectors. We understand the Australian Human Rights Commission is currently consulting publicly to develop a National Anti-Racism Framework.⁸ This framework can help to educate all levels of Government, peak bodies, human rights agencies, and community organisations, and to support them in delivering First Nations cultural education and safety awareness materials and training to other areas of Australian society.

Human rights frameworks can support dispute resolution processes

11. There are opportunities to strengthen the protection of First Nations cultural rights in dispute resolution processes by enhancing existing legislation across Australian jurisdictions.
12. The Queensland case of *Waratah Coal Pty Ltd v Youth Verdict Ltd (No 5)* ('*Waratah*')⁹ is illustrative of the tangible benefits of human rights legislation in harmonising the traditional laws and customs with the mainstream legal system to ensure that First Nations cultural rights are respected and adhered to.
13. In *Waratah*, Youth Verdict Pty Ltd and The Bimblebox Alliance (**the Complainants**) sought orders from the Land Court of Queensland. They requested the Court to allow the taking of evidence from First Nations witnesses on country, who were arguing that their human rights would be impacted by a thermal coal mine proposed by Waratah Coal Pty Ltd for development. The Complainants had drafted a First Nations Protocol (**the Protocol**) that detailed how evidence could be taken on country consistent with traditional laws and customs.
14. The Court granted the Complainants the order to take evidence on country in the manner set out in the Protocol. The Court reasoned that refusing the witnesses' request to have their evidence taken in a culturally sensitive way would limit their right and ability to enjoy and maintain their cultural heritage, specifically about how traditional knowledge is imparted, under section 28(2)(a) of the *Human Rights Act 2019* (Qld).¹⁰
15. The judgment also referenced *Northern Territory v Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7 (**Ngaliwurru**), where it noted 'the High Court has long accepted the communal nature of the rights, and recently recognised as a compensable loss a group's sense of failed responsibility, under the traditional laws and customs, to have cared for and looked after land'.¹¹
16. A federal human rights framework would be a valuable addition in this context, bringing Australia into line with comparable democracies, and supporting First Nations peoples seeking to vindicate their human rights before the courts, consistent with UNDRIP. The Law Council continues to be a strong advocate for a federal Human Rights Act,¹² which

⁸ Australian Human Rights Commission, '[National Anti-Racism Framework](#)' (online, 24 December 2021).

⁹ *Waratah Coal Pty Ltd v Youth Verdict Ltd (No 5)* [2022] QLC 4.

¹⁰ *Ibid* [18]-[22], [40] and [44].

¹¹ *Ibid* [36]; *Northern Territory v Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7 [225]. *Ngaliwurru* concerned a claim made by the Ngaliwurru and Nungali Peoples of Timber Creek, who were recognised in 2007 as native title holders of the land in and around Timber Creek, seeking compensation for the impacts of governmental acts on their native title. The High Court rejected the Northern Territory's arguments against the \$1.3 million award of non-economic cultural loss damages and upheld the primary judge's determination of the quantum for cultural loss. The High Court's findings in *Ngaliwurru* are now precedent which must be followed by all Australian jurisdictions in native title matters.

¹² See Law Council of Australia, Submission to the Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (Submission, 3 July 2023).

would include cultural rights, and there is a high degree of correlation between the models proposed by the Law Council in its Charter Policy¹³ and by the Australian Human Rights Commission in its own model Human Rights Act.¹⁴ The Law Council continues to support the AHRC's work in advocating for a federal human rights framework.

17. There may also be a role for the Social Justice Commissioner to work with courts across various jurisdictions on how cultural rights and sensitivity to traditional laws and customs can benefit the pursuit of justice for all parties.
18. There has been positive progress across different levels of the Australian courts system on implementing policies that support First Nations people's access to dispute resolution processes. The Law Council's Justice Project Final Report chapter on courts and tribunals highlighted what was working well, including the use of Benchbooks which were publicly available, and the leadership of the Judicial Council on Cultural Diversity to drive best practice inclusion policies for all court users and publications.¹⁵
19. However, there remain challenges with which the Social Justice Commissioner may be well-placed to assist. For example, measures might be adopted to overcome both explicit and implicit bias in the justice system and persistent advocacy from across civil society are paramount to seeing these changes made.¹⁶ The Australian Law Reform Commission's 2022 report into judicial impartiality may be informative for the Social Justice Commissioner in addressing access to justice through judicial mechanisms.¹⁷
20. First Nations legal practitioners also encourage the Social Justice Commissioner to investigate approaches that facilitate access to justice in New Zealand, adopted by the New Zealand courts, Crown solicitors and counsel, and the wider legal profession, to see whether those approaches can be adopted in Australia (e.g. the Court being opened in language, and counsel announcing appearances in language).

Increasing access to justice for First Nations communities

21. As a general remark, the Law Council has received feedback from First Nations legal practitioners that there is a lack of coherence between the Indigenous justice measures in the National Agreement on Closing the Gap and the level and character of engagement with the goals by state and territory governments, particularly with respect to outcomes under the JPP. As the Productivity Commission noted in its Review of the Agreement on Closing the Gap (**the Review**), there are 'questions about whether governments have fully grasped the scale of change required to their systems, operations and ways of working to deliver the unprecedented shift they have committed to'.¹⁸ If governments are taking business-as-usual approaches to the JPP, then the policy partnership will not have its intended impact.

Justice Policy Partnership

22. The JPP is the first of five formal policy partnerships established under Priority Reform One of the National Agreement on Closing the Gap. It is comprised of members representing federal, state and territory governments, Aboriginal and Torres Strait

¹³ Law Council of Australia, [Federal Human Rights Charter](#) (17 November 2020).

¹⁴ See the Full Report at Australian Human Rights Commission, *Revitalising Australia's Commitment to Human Rights* (online, 7 December 2023).

¹⁵ Law Council of Australia, *The Justice Report* (Final Report, 2018) [Chapter on Courts and Tribunals](#), 46-47, 54.

¹⁶ See the recommendations made by the Law Council: Law Council of Australia, Submission to the Australian Law Reform Commission, [Judicial Impartiality: Consultation Paper](#) (8 July 2021) 22-36.

¹⁷ Australia Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (ALRC Report 138, 2 August 2022) Final Report.

¹⁸ Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (January 2024) Study Report, Volume 1, 3.

Islander community-controlled organisations, and Aboriginal and Torres Strait Islander justice experts (**the Joint Council**).¹⁹ The Joint Council was established to create a joined-up policy approach to:

- (a) social justice (adult and youth incarceration);
- (b) social and emotional wellbeing (mental health);
- (c) housing;
- (d) early childhood care and development; and
- (e) Aboriginal and Torres Strait Islander languages.²⁰

23. Since its establishment in 2021, the Law Council has received feedback from First Nations members who participate in the JPP who say that it is not being effectively used by state and territory government participants, particularly with respect to social justice and the underpinning criminal law reform developments. Broader discussions nationally about youth justice appear to be occurring in parallel and separate to JPP discussions, notwithstanding the overwhelming evidence of the overincarceration of Indigenous children and young people. This concern was also echoed in the Productivity Commission's Review.²¹
24. One of the main challenges identified in the Review is a significant imbalance in the time and resources required for Aboriginal and Torres Strait Islander independent members and member organisations to participate in the JPP. First Nations participants appear to routinely be given short periods of time to consider or review lengthy documents and policy proposals, which limits their ability to provide meaningful feedback.²² The Review also noted that other key issues raised by communities included:
- (a) there are not enough Aboriginal and Torres Strait Islander participants on the JPP with lived experience in the justice system and of certain groups that represent jurisdictional or regional issues, and
 - (b) governance structures that fail to coordinate government actions or to enhance accountability, particularly for actions that contradict the objective of the JPP, such as the introduction of stronger bail laws in some jurisdictions.²³
25. While the JPP has been operating for several years, the current public debate appears to be turning away from evidence-based recommendations as to policy and law reforms in the justice arena.²⁴ The disproportionate overrepresentation of Indigenous children and adults in custodial settings is one of the primary focal points of the JPP,²⁵ and yet the Productivity Commission has not only said that some governments are 'ignoring'

¹⁹ Attorney-General's Department, '[Justice Policy Partnership](#)' (online).

²⁰ Attorney-General's Department, '[Justice Policy Partnership Terms of Reference](#)' (Updated March 2024) 1.

²¹ Productivity Commission (n 18) 44.

²² Ibid.

²³ Ibid.

²⁴ Dan Butler, '[Incoming NT Chief Minister says age of criminal responsibility to be lowered to 10 years old](#)' (NITV, 26 August 2024); On 23 August 2024, the Australian Medical Association and the Law Council of Australia published a joint media statement welcoming the findings and recommendations of the Australian Human Rights Commission's report into Youth Justice, including to raise the minimum age of criminal responsibility from 10 to 14 years: Australian Medical Association and Law Council of Australia, '[Recommendation to raise minimum age of criminal responsibility welcomed](#)' (Media Release, 23 August 2024).

²⁵ Attorney-General's Department, '[Justice Policy Partnership Terms of Reference](#)' (Updated March 2024) 1.

their commitments under the Closing the Gap Agreement, but are 'actively putting the truck in reverse'.²⁶

26. Forums such as the JPP exist for the very purpose of communicating between First Nations peoples and policy makers about what laws and policies are and are not working for the community. Based on the challenges identified by the Review, the Social Justice Commissioner may wish to consider whether to advocate for the JPP to take up procedural settings to broaden the participation of First Nations individuals and groups. This could be done through introducing minimum periods of consultation for new policy proposals. There may also be a gap in the partnership insofar as the JPP does not explicitly account for changes in Government and there may be an opportunity outside of the JPP for the Social Justice Commissioner to work with opposition parties or independents—who are not involved in JPP consultations—to assist in informing the policy platforms across the political spectrum.
27. Members of our ILIC encourage the Social Justice Commissioner to continue to meet with state and territory counterparts and governments to advocate for considered policy and law reform that is supported by the evidence detailed in many reports, and recommendations on access to justice issues for First Nations peoples. They observe that, instead, kneejerk reactions to policymaking are occurring.

Increasing access to justice

28. Increasing access to justice does not only mean more or better representation within the current system, but also promoting alternatives to mainstream frameworks that are better suited to the individual needs of First Nations peoples and communities.
29. Our First Nations members are keen for the Social Justice Commissioner to focus efforts on promoting the following alternative forms of access to justice, with an emphasis on First Nations-led mechanisms such as:
 - specialist courts such as Drug Courts and Koori Courts, especially in regional, rural and remote areas of Australia,
 - mediated justice,
 - restorative justice,
 - therapeutic justice,
 - supporting the development of Justice Reinvestment initiatives, and
 - justice for victims of crime and their families.
30. The Law Council is highly concerned by the ongoing instability of funding channels for legal assistance and requests that the Social Justice Commissioner work with courts, legal aid commissions, community legal centres and First Nations peak bodies, to establish:
 - (a) what additional funding and resources are required from the Federal, State and Territory Governments to ensure that every First Nations person appearing before a court in Australia, without the means to privately fund legal services, is able to access meaningful and quality legal representation prior to, during, and subsequent to that appearance, such that the inequality caused by First Nations persons having no legal representation, or inadequate legal representation, is overcome;

²⁶ Natalie Siegel-Brown and Selwyn Button, '[A criminal reversal on commitment to Closing the Gap](#)', *The Australian* (online, 16 September 2024).

- (b) to design funding mechanisms that would meet that funding level on a long term; and
 - (c) to advocate for and secure such funding.
31. The recent funding announcements for the legal assistance sector under the National Access to Justice Partnership made by the Australian Government²⁷ are welcome but are simply not enough to address critical unmet legal need amongst First Nations persons. In this regard, the Law Council draws particular attention to the media release issued on 6 September 2024²⁸ by the National Aboriginal and Torres Strait Islander Legal Services, highlighting that the funding quantum announced for Aboriginal and Torres Strait Islander Legal Services in relation to the National Access to Justice Partnership means no new services or representation will be possible.
32. Another pressing and ongoing issue is in the unavailability of access to appropriate Aboriginal and Torres Strait Islander language interpreters in a judicial context. Interpreters play an essential role at every stage of the justice process, ensuring access to justice and equality before the law in a culturally safe way, supporting informed decision-making within legal process and effective engagement with the justice system when the need arises.²⁹ They also play a core role in procedural fairness in the civil justice system, noting that the right to access an interpreter in that context is enshrined in the *Evidence Act 1995* (Cth), the *Administrative Review Tribunal Act 2024* (Cth) and the *Native Title Act 1993* (Cth).³⁰ Aboriginal language services are chronically underfunded³¹ and the Social Justice Commissioner's advocacy on establishing a National Justice Interpreter scheme³² that has consistent funding would be welcome.

Violence against women and children

33. The recent Senate Legal and Constitutional Affairs References Committee Inquiry report into missing and murdered First Nations women and children,³³ as well as media reporting,³⁴ illustrates that legal justice mechanisms are not serving First Nations women and children. The Senate Inquiry found that there has been little, if any, justice for these women and their loved ones and, in too many instances, the suspected perpetrator has never been held to account.³⁵

²⁷ The Hon Anthony Albanese MP and the Hon Mark Dreyfus KC MP, '[National Access to Justice Partnership](#)' (Media Release, 6 September 2024).

²⁸ National Aboriginal and Torres Strait Islander Legal Services, 'Insufficient funding for Aboriginal and Torres Strait Islander Legal Services will fail to close gap between need and help available', (Media Release, 6 September 2024).

²⁹ *International Covenant on Civil and Political Rights*, GA Res 2200A, UN Doc A/RES/2200A (23 March 1976, adopted 16 December 1966) Art 14. Article 14 provides that all individuals have a right to a fair trial; Dr Warren Mundy, *Independent Review of the National legal Assistance Partnership Final Report* (2024) 96-97.

³⁰ Judicial Council of Cultural Diversity, *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (2017) 96-97; *Evidence Act 1995* (Cth) s 30; *Administrative Review Tribunal Act 2024* (Cth) s 68; *Native Title Act 1993* (Cth) s 158.

³¹ Productivity Commission, *Review of the National Agreement on Closing the Gap* (2024) Recommendation 22.3; Mundy Report (n 27) 97.

³² The Law Council has previously made this recommendation as a result of the Law Council's national inquiry into how Australia can improve access to justice: Law Council of Australia, *The Justice Report* (Final Report, 2018) Part 1, Chapter on Aboriginal and Torres Strait Islander People, 98 and Part 2, Chapter on Critical Support Services, 4.

³³ Senate Legal and Constitutional Affairs References Committee, [Inquiry into Missing and Murdered First Nations Women and Children](#) (Report, August 2024).

³⁴ ABC News, '[The killings and disappearances of Indigenous women across Australia is a crisis hidden in plain sight - ABC News](#)' (Four Corners, 24 October 2022).

³⁵ Senate Legal and Constitutional Affairs References Committee (n 33) 171-175.

34. Legal practitioners consider that the Social Justice Commissioner has an important role to play in elevating the voices of First Nations women, children and their families. There is more to be done to collect adequate national data on missing and murdered First Nations women and children to support effective monitoring and the design of effective solutions. The role of the Social Justice Commissioner as a lynchpin for centralising or coordinating this type of data collection would also support the call for domestic implementation of UNDRIP and truth-telling.

Supporting the realisation of First Nations health equality

35. From the perspective of First Nations legal practitioners, health equality overlaps with pursuits of and access to justice. Access to health ought to include greater support, access to preventative measures, and treatment in health/justice health for neuro-cognitive development disorders, including foetal alcohol syndrome disorder (FASD), early childhood trauma and intergenerational trauma.
36. The level of health care for First Nations in custodial settings is a discrete issue that the Social Justice Commissioner can advocate on immediately. One of the challenges faced by those in custodial settings who rely on the public health system to access medical treatment is that they may not be able to access Medicare nor are they allowed to receive medicines subsidised by the Pharmaceutical Benefits Scheme while incarcerated.
37. This is because subsection 19(2) of the *Health Insurance Act 1973* (Cth) precludes Medicare benefits from being payable in respect of professional services that have been rendered by, or on behalf of, or under an arrangement with any level of Australian government or law unless exempted by the Minister for Health and Aged Care.
38. Noting the state of prison health services in Australia, the Social Justice Commissioner would be in a prime position to advocate for the Minister to grant an exemption to be made for healthcare in custodial settings. It would provide those incarcerated with stability of healthcare, could reduce recidivism and therefore promote community safety,³⁶ and provide better outcomes for prisoners while incarcerated.³⁷

Advocacy and guidance to progress land justice reform

39. There are many avenues to pursue in advocating and guiding progress in land justice reform. Our First Nations members are keen for work to be progressed on:
- (a) cultural heritage reform and Indigenous cultural and intellectual property (ICIP) stand-alone legislation;
 - (b) native title reform to support secure tenure for First Nations title holders;
 - (c) fungibility of native title;
 - (d) equitable sharing of economic benefits from native title;

³⁶ Josiah D Rich et al, 'How health care reform can transform the health of criminal justice-involved individuals' (March 2014) 33 *Health Affairs* 3, <<https://doi.org/10.1377/hlthaff.2013.1133>> 462-467; Dale E McNiel and Renee L Binder, 'Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence' (2007) 164(9) *American Journal of Psychiatry*; Samantha Battams et al, 'Reducing Incarceration Rates in Australia through Primary, Secondary, and Tertiary Crime Prevention' (19 May 2021, online) 32(6) *Criminal Justice Policy Review* <<https://doi.org/10.1177/0887403420979178>>.

³⁷ Aleix Rowlandson, et al, 'The cost-effectiveness of mental health interventions amongst prison populations: a systematic review (research letter to the editor)' (10 May 2024) 35(4) *Journal of Forensic Psychiatry and Psychology* 622-628.

- (e) ownership of natural resources on land subject to native title;
- (f) integration in planning frameworks in states and territories; and
- (g) respect for First Nations rights in resource management and regulation.

First Nations title holders and claims

40. Native title law is notoriously difficult to traverse. First Nations practitioners would like to see the Social Justice Commissioner work with the legal profession to ascertain how native title legal services can be made more readily accessible, and adequately funded, to ensure claimants have quality legal services and experts available to them to properly advance claims to completion.
41. The Law Council holds particularly strong concern for the fact that the civil law needs—which include native title—of First Nations communities and individuals are going unmet. This is especially evident as the basis for many of the recommendations made in the Independent Review of the National Legal Assistance Partnership Final Report recently published by Dr Mundy and referred to above.³⁸ We recommend that the Social Justice Commissioner review the recommendations made by Dr Mundy to inform the work on improving social justice for native title holders and claimants.

Standalone cultural heritage legislation

42. First Nations legal practitioners consider that some of these concerns could be addressed by advocating for national heritage legislation consistent with the findings of the Senate Inquiry into the destruction of the caves at Juukan Gorge in the Pilbara region of Western Australia (**Juukan Gorge Inquiry**).³⁹ The Law Council provided two significant submissions to this inquiry and appeared before it.⁴⁰ It considers that the bipartisan recommendations made by the Joint Standing Committee on Northern Australia remain an important foundation for future reform in this area.
43. We understand that the Department of Climate Change, Environment, Energy and Water (**DCCEEW**) is undertaking work to improve First Nations engagement and participation in environmental decision making under the Nature Positive reforms, which are currently in Stage 3 of the consultation process.⁴¹ DCCEEW notes that '[o]ther reforms are also being advanced that will interact with the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) reforms, including in relation to First Nations' cultural heritage'.⁴²
44. While these reforms are welcome, we encourage the Social Justice Commissioner to join in advocating for new standalone legislation that provides effective protection to First Nations cultural heritage to replace the current *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth). Our submission to the Juukan Gorge Inquiry

³⁸ Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) viii-xxi

³⁹ Joint Standing Committee on Northern Australia, Parliament of Australia, [Inquiry into the Destruction of 46,000 Year Old Caves at the Juukan Gorge in the Pilbara Region of Western Australia](#) (Final Report, October 2021) xxv-xxix.

⁴⁰ See Law Council of Australia, Submission to the Joint Standing Committee on Northern Australia, [Inquiry into the Destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia](#) (Submission, 21 August 2020) and Law Council of Australia, Supplementary Submission to the Joint Standing Committee on Northern Australia, [Inquiry into the Destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara Region of Western Australia](#) (Supplementary Submission, 22 October 2020).

⁴¹ Department of Climate Change, Energy, the Environment and Water, 'EPBC Act reform - DCCEEW' (online).

⁴² *Ibid.*

outlined in detail key defects in this Act, both in terms of its design and its implementation.⁴³

Alternative models of 'land justice'

45. First Nations members of the Victorian Bar have also suggested that alternative models of land justice could be investigated and considered, e.g. the process of traditional owner settlements in Victoria under the *Traditional Owner Settlement Act 2010* (Vic), and through the Treaty process in Victoria.⁴⁴
46. The Social Justice Commissioner may wish to work with First Nations organisations and persons to consider whether similar alternative models to land justice should be developed alongside and complimentary to native title.

Building the capacity of the First Nations Human Rights network

47. While our members are not able to comment extensively on this aspect of the Social Justice Commissioner's high-level goals, they are supportive of a First Nation Human Rights Network and consider that it would support the advocacy efforts to have UNDRIP implemented domestically.

Contact

48. Thank you again for the opportunity to contribute to this consultation. Please contact Jessica Neal, Senior Policy Lawyer, [REDACTED] should you wish to discuss any aspect of this submission.

Yours sincerely



Juliana Warner
President-elect

⁴³ Law Council of Australia, Submission to the Joint Standing Committee on Northern Australia, [Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia](#) (Submission, 21 August 2020) 73-77.

⁴⁴ Victorian Government, '[Traditional Owner settlements | firstpeoplesrelations.vic.gov.au](#)' (online).