



Australia's National Institute for Aboriginal  
and Torres Strait Islander Health Research

# Aboriginal and Torres Strait Islander Social Justice Commissioner agenda

Submission to the Australian Human Rights Commission

Lowitja Institute, September 2024

Informing the Agenda consultation  
Australian Human Rights Commission

September 2024

Dear Australian Human Rights Commission,

**Re: Informing the agenda of the Aboriginal and Torres Strait Islander Social Justice Commissioner**

Lowitja Institute is Australia's only Aboriginal and Torres Strait Islander community controlled health research institute, named in honour of our co-patron, the late Dr Lowitja O'Donoghue AC CBE DSG. We produce high-impact research, tools and resources that aim to have positive health outcomes for Aboriginal and Torres Strait Islander peoples. Our research is built on priorities that have been identified by Aboriginal and Torres Strait Islander people.

Lowitja Institute has long advocated for national awareness and action on the social and cultural determinants of health and wellbeing. Significant to implementing cultural determinant driven health policy is the recognition that policy making must be anchored in Aboriginal and Torres Strait Islander ways of knowing, being and doing, and that self-determination is essential for a holistic approach to bettering the health and wellbeing of our communities.

Based on this approach, we welcome the opportunity to provide a submission to Informing the agenda of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Please find our submission attached. We would welcome any opportunities to further discuss our recommendations therein.

Warm regards



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## About Lowitja Institute

Lowitja Institute is Australia's only national Aboriginal and Torres Strait Islander community controlled health research institute, named in honour of its co-patron, the late Dr Lowitja O'Donoghue AC CBE DSG. It is an Aboriginal and Torres Strait Islander organisation working for the health and wellbeing of Australia's First Peoples through high-impact quality research, knowledge exchange and by supporting a new generation of Aboriginal and Torres Strait Islander health researchers.

Established in January 2010, Lowitja Institute operates on key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing and the need for the work to have a clear and positive impact.

At Lowitja Institute, our research is built on priorities identified by Aboriginal and Torres Strait Islander peoples. We aim to produce high-impact research, tools and resources that will have positive health outcomes for Aboriginal and Torres Strait Islander peoples. To guide this, we work by five key principles that underpin our approach to research. These principles are:


1. **Beneficence** – to act for the benefit of Aboriginal and Torres Strait Islander people in the conduct of our research
2. **Leadership** by Aboriginal and Torres Strait Islander people
3. **Engagement of research end users** (Aboriginal and Torres Strait Islander organisations and communities, policymakers, other potential research users)
4. **Development of the Aboriginal and Torres Strait Islander research workforce**
5. **Measurement of impact** in improving Aboriginal and Torres Strait Islander people's health.

## General preamble

As the national institute for Aboriginal and Torres Strait Islander health research, and an Aboriginal community controlled organisation, Aboriginal and Torres Strait Islander decision-making is central to the work Lowitja Institute undertakes. We engage in policy and advocacy work that contributes to a range of key policy debates related to Aboriginal and Torres Strait Islander health and wellbeing. This work is underpinned by our 2022-2025 Policy Priorities<sup>1</sup>, priorities that have been determined alongside Aboriginal and Torres Strait Islander members, organisations,

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<sup>1</sup> Lowitja Institute, 2023, *Policy Priorities 2022-2025*, Lowitja Institute, Melbourne



researchers, and communities, and reflect not only community priorities and needs, but also emerging government policy contexts and topics on which the Aboriginal and Torres Strait Islander health sector is advocating.

Based on this experience we offer the following general comments and responses to the six high-level goals that have been identified to frame the work of the Social Justice Commissioner over her five-year term.

## Submission

### 1. Promote the implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Lowitja Institute has long advocated for national awareness and action on the social and cultural determinants of health and wellbeing. Significant to implementing cultural determinant driven health policy is the recognition that policy making must be anchored in Aboriginal and Torres Strait Islander ways of knowing, being and doing, and that self-determination is essential for a holistic approach to bettering the health and wellbeing of our communities.


Our vision aligns with and is supported by the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), which includes self-determination and respect for Indigenous knowledge, cultures and traditional practices as foundational principals. Lowitja Institute's discussion paper, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing*<sup>2</sup> describes the UNDRIP as a "moral force" that can compel Australian governments to support and act towards the empowerment of Aboriginal and Torres Strait Islander peoples.

As Australia is a signatory to all the major United Nations conventions on human rights, including UNDRIP, Australian governments are obliged to uphold the fundamental international legal principles of self-determination and to incorporate it into domestic legislation and policy. Self-determination is a fundamental human right and is outlined in Article 3, 4 and 5 of UNDRIP:

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

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<sup>2</sup> : *Indigenous Nation Building and the Political Determinants of Health and Wellbeing*, Discussion Paper, Lowitja Institute, Melbourne



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

**Article 5:** *Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.<sup>3</sup>*

For Aboriginal and Torres Strait Islander peoples, culture is central to understanding the relationship between self and Country, kin, community and spirituality— all of which are key factors of health and wellbeing.<sup>4</sup> The right to practice culture, traditions and customs, is outlined across a number of Articles included in the UNDRIP and should be affirmed in developing and implementing health policy. The implementation of UNDRIP is also essential in support Aboriginal and Torres Strait Islander people's right to self-determination, right to self-government, and promote Aboriginal and Torres Strait Islander economic self-determination.

Self-determination requires structural shifts which embed and protect Aboriginal and Torres Strait Islander peoples' rights to regain control over the processes and practices through which our affairs are governed.<sup>5</sup> This is central to effective and meaningful policy making that has positive health and wellbeing outcomes for Aboriginal and Torres Strait Islander people.

Addressing the economic determinants of health, alongside the cultural and social determinants, are crucial in closing the gap. Economic disempowerment has impacted and continues to impact our peoples' health outcomes, and the health and wellbeing of future generations.

It is widely acknowledged by Aboriginal and Torres Strait Islander experts and peak health organisations that there are several 'non-medical and behavioural influences on health'.<sup>6</sup> Economic determinants play a significant role in determining health


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<sup>3</sup> United Nations, 2007, *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, pp.8-9

<sup>4</sup> Lowitja Institute 2020, *Culture is Key: Towards cultural determinants-driven health policy – Final Report*, Lowitja Institute, Melbourne. DOI: 10.48455/k9vd-zp46

<sup>5</sup> Lowitja Institute & VACCHO, 2023, *Victorian Aboriginal Authority: An Initial Feasibility Study for Discussion*, Lowitja Institute

<sup>6</sup> Anderson, I., Baum, F. & Bentley, M. (eds), 2004, *Beyond Band-aids: Exploring the Underlying Social Determinants of Aboriginal Health. Papers from the Social Determinants of Aboriginal Health Workshop*, Adelaide, July 2004, Cooperative Research Centre for Aboriginal Health, Darwin, p. x–xi.



outcomes, and central to improving the economic determinants of health and wellbeing is economic self-determination.

Australia's poor track record and limited action in implementing the UNDRIP has consequences for the health and wellbeing of our peoples; it compromises our joint efforts under the *National Agreement on Closing the Gap*; and, through inaction it perpetuates the ongoing legacy of colonisation. As such, Lowitja Institute fully supports this as a priority and recommends that Governments fully implement and monitor the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

## **2. To provide advocacy and guidance on the implementation of the three pillars of the Uluru Statement from the Heart – Voice, Treaty, Truth**

Lowitja Institute remains a fierce advocate of the principles of the Uluru Statement from the Heart and calls on Australian Governments to deliver on the objectives of the Uluru Statement from the Heart by advancing Voice, Treaty and Truth mechanisms.

The rejection of the Aboriginal and Torres Strait Islander Voice by the Australian public at the 2023 referendum has created significant uncertainty around the Australian Government's implementation of the Treaty and Truth elements called for in the Uluru Statement from the Heart, and Treaty processes in some States and Territories are also facing political setbacks. Accordingly, it is essential for governments to undertake truth-telling in the context of their commitments under the National Agreement if genuine progress is to be made on Priority Reform 3.

Lowitja Institute is very supportive of this as a priority. Progressing Voice, Treaty and Truth and the goals of the Uluru Statement from the Heart remain relevant and key to improve outcomes for our peoples. We have called and continue to call for Governments to deliver the objectives of the Uluru Statement from the Heart by advancing Voice, Treaty and Truth mechanisms in their jurisdictions, to review and strengthen commitments to undertaking truth-telling, representation and agreement making and progress cooperation and collaboration between Aboriginal and Torres Strait Islander peoples and governments.<sup>7</sup>

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<sup>7</sup> Lowitja Institute, 2024, *Close the Gap: Voyage to Voice, Treaty, Truth and Beyond*, Close the Gap Campaign Report

### 3. The increase Access to Justice for First Nations communities

Lowitja Institute has long advocated for national awareness and action on the social and cultural determinants of health and wellbeing.

One of the spaces in which this is particularly significant is the justice and child protection sectors. As a national Aboriginal and Torres Strait Islander community controlled organisation and a member of the Partnership for Justice in Health, an alliance of self-determining Aboriginal and Torres Strait Islander academics, legal experts, and national peak health and justice organisations committed to working together to improve Aboriginal and Torres Strait Islander health and justice outcomes, we can speak to how the justice and child protection systems impact adversely on our peoples' health outcomes. This is recognised by Targets 10, 11, and 12 of the *National Agreement on Closing the Gap*, which commits jurisdictional and the Commonwealth governments to work in partnership with the Coalition of Peaks to address overrepresentation across both systems.

This priority is particularly pertinent considering the incoming Northern Territory Chief Ministers' decision to lower the age of criminal responsibility to 10<sup>8</sup>, and the Victorian Government reneging on its promise to raise the age to 14 years old by 2027<sup>9</sup>. This is in spite of the Victorian Chief Commissioner Shane Patton's Statement of Commitment before the Yoorrook Justice Commission on the 8<sup>th</sup> of May 2023, where he issued a formal apology to the Aboriginal community on behalf of Victoria Police for the "significant harm caused by the organisation that directly links to over-representation of Aboriginal people, including children, in the criminal justice system", and committed to transformational change to systems and processes to reduce over-representation of Aboriginal people in the criminal justice system.<sup>10</sup>

The justice and child protection systems are unsafe for our peoples; the discrimination, racism and lack of cultural safety in these environments and systems is clear, and the health impacts just as clear.


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<sup>8</sup> Middleton, K, 2024, 'Country Liberals to lower criminal age to 10 years old in NT as Finocchiaro talks tough on law and order', *The Guardian*, 26 August, [https://www.theguardian.com/australia-news/article/2024/aug/26/country-liberals-to-lower-criminal-age-to-10-years-old-in-nt-as-finocchiaro-talks-tough-on-law-and-order?CMP=share\\_btn\\_url](https://www.theguardian.com/australia-news/article/2024/aug/26/country-liberals-to-lower-criminal-age-to-10-years-old-in-nt-as-finocchiaro-talks-tough-on-law-and-order?CMP=share_btn_url)

<sup>9</sup> Victorian Aboriginal Legal Service (VALS), 2024, 'The Victorian Government's Treachery Will Continue the Overincarceration of Aboriginal Children', August 13, <https://www.vals.org.au/the-victorian-governments-treachery-will-continue-the-overincarceration-of-aboriginal-children/>

<sup>10</sup> Victoria Police, 2024, 'Chief Commissioner's Statement of Commitment', <https://www.police.vic.gov.au/statement-commitment>





More than 30 years after the Royal Commission into Deaths in Custody, our peoples are still dying in custody at a rate ~50 per cent higher than before the RCIADIC.<sup>11</sup> There must be recognition of the health system's role in determining our peoples' health and wellbeing when they are in contact with the justice system. As emphasised in Lowitja Institute's discussion paper, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System*, the fact that this is a health crisis is often concealed by the fact that these deaths happen within the justice system.

*The coronial Inquests Into the preventable deaths of Aboriginal and Torres Strait Islander peoples in custody since the Royal Commission continue to reveal the ongoing deficiencies of both systems. Whilst conflating the legal and health system in this context is entirely to be expected as a death in custody will give rise to a legal response, such conflation can blur lines of responsibility that serve to confuse accountability. The health system has particularly benefitted in this regard. Coronial inquests examining the preventable deaths of Indigenous peoples attending health care services such as Ms Williams (NSW Courts 2016), combined with over a decade of policy failure to close the gap of health inequality, have highlighted how the health system – independently of the legal system – produces racialized health outcomes (Bond 2020).<sup>12</sup>*

The responsibility that the health system has to prevent deaths in the justice system cannot be ignored. Lowitja Institute supports increase in access to justice as a focus of the incoming Aboriginal and Torres Strait Islander Social Justice Commissioner, and the acknowledgement of the health impacts that these systems have on our peoples. We advocate for an approach that is not siloed, and one that involves greater communication and collaboration between justice and health policy and systems, and an approach that is led by Aboriginal and Torres Strait Islander peoples and community controlled organisations.

#### **4. To support the realisation of First Nations health equality**

Racism within health systems and health research settings continues to generate significant risks to our health. Lowitja Institute has funded research that supports and leads advocacy for a stronger focus on racism within Indigenous health research.<sup>13</sup>


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<sup>11</sup> ANTA, 2023, *Deaths in Custody*, accessed 21 August 2024, [Deaths in custody — ANTA](#)

<sup>12</sup> Watego, C; Singh, D & Macoun, A; 2021, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System*, Discussion Paper, The Lowitja Institute, Melbourne, p.1

<sup>13</sup> Watego, C; Singh, D & Macoun, A; 2021, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System*, Discussion Paper, The Lowitja Institute, Melbourne





The realisation of First Nations health equality requires investment in cultural safety, investment in the Aboriginal community controlled health sector, and investment in Aboriginal and Torres Strait Islander-led research.

Cultural safety must be woven through the design and implementation of health policies, structures and programs that affect Aboriginal and Torres Strait Islander peoples. Embedding cultural safety at the whole-of-government level is an overarching change and is essential to ensuring that changes within government organisations are not isolated activities. Critical to cultural safety training is truth-telling, with the 2023 Referendum only highlighting it's important in bringing to light historical traumas and identifying ways that they continue to manifest in contemporary policies, systems and institutions. This cannot be underestimated.

The Aboriginal community controlled health sector (ACCHS) has a long-standing reputation for providing the communities they serve with holistic, comprehensive, and culturally safe and appropriate health care, and in doing so, consistently supporting the social, emotional, physical, and cultural wellbeing of Aboriginal and Torres Strait Islander peoples, families, and communities. In contrast, mainstream services have consistently failed in their duty of care towards Aboriginal and Torres Strait Islander peoples, which can be seen in the ongoing impacts of racism within the Australian health system, the poor standard of care many Aboriginal and Torres Strait Islander people experience, preventable deaths, and deaths in custody.<sup>14</sup>


The ACCHS plays an important role in providing flexible and responsive services that are tailored to the specific needs of Aboriginal and Torres Strait Islander communities. These services are known to provide cost-effective, equitable, culturally safe, holistic and person-centred primary health care to Aboriginal and Torres Strait Islander peoples<sup>16</sup>. Aboriginal community controlled health organisations (ACCHOs) not only play a vital role in addressing immediate healthcare needs, but frequently support their clients in tackling various social factors, such as racism, housing, income insecurity and employment.<sup>15</sup> Greater investment in the Aboriginal community controlled sector is a necessary step in ensuring First Nations health equity.

Another key factor in supporting the realisation of First Nations health equity is supporting Aboriginal and Torres Strait Islander led health research. Since 1788,

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<sup>14</sup> Watego, C; Singh, D & Macoun, A; 2021, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System*, Discussion Paper, The Lowitja Institute, Melbourne.

<sup>15</sup> Pearson, O; Schwartzkopff, L; Dawson, A; et al. 2020, 'Aboriginal community-controlled health organisations address health equity through action on the social determinants of health of Aboriginal and Torres Strait Islander peoples in Australia', *BMC Public Health*, vol.20, no.1859, pp.1-13



Aboriginal and Torres Strait Islander peoples have been subjected to huge amounts of research. Research was used as a tool of colonial violence; even if well meaning, it has historically been based on non-Indigenous researchers' priorities and presumptions, which did not and do not match the priorities of Aboriginal and Torres Strait Islander peoples. This meant that research often does not benefit Aboriginal and Torres Strait Islander peoples and findings have been – and continue to be – used to support policies and practices that further harm us.<sup>16</sup>

As the national Institute for Aboriginal and Torres Strait Islander health research, and an Aboriginal community controlled organisation, Lowitja Institute consistently advocates through all our work for First Nations health equity. We support this as a priority for the Australian Human Rights Commission, and all action towards progressing Priority Reform 3.

## **5. To provide advocacy and guidance to progress Land Justice Reform**

Advocacy towards Land Justice Reform is central to supporting the health, wellbeing, nation building and self-determination for Aboriginal and Torres Strait Islander peoples. Key to this is advocating for recognition of the impacts of climate change on Aboriginal and Torres Strait Islanders people's ability to access country, practice culture and lore.

Climate justice is land justice; power imbalances enabled through existing land rights legislation have hampered climate action and caring for Country.<sup>17</sup> To restore justice and protect the land and environmental rights of Aboriginal and Torres Strait Islander communities requires land justice reform, to mitigate impacts of climate change and protect our lands and Country for future generations.


Aboriginal and Torres Strait Islander peoples have, to date, not been sufficiently included in national conversations around climate change, environmental and land policy<sup>18</sup>. Connection to country is a key cultural determinant of health, and therefore, land justice is central to improved health and wellbeing for Aboriginal and Torres Strait Islander peoples.

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<sup>16</sup> Lowitja Institute & MTP Connect, 2023, *Targeted Translation Research Accelerator Needs Assessment and Prioritisation Project*, discussion paper, Lowitja Institute

<sup>17</sup> HEAL Network & CRE-STRIDE 2021, *Climate Change and Aboriginal and Torres Strait Islander Health*, Discussion Paper, Lowitja Institute, Melbourne

<sup>18</sup> HEAL Network & CRE-STRIDE 2021, *Climate Change and Aboriginal and Torres Strait Islander Health*, Discussion Paper, Lowitja Institute, Melbourne



There are many varied direct and indirect climate change impacts on the health and wellbeing of Aboriginal and Torres Strait Islander people. Land is intimately connected with health and wellbeing.

Climate change is compounding historical injustices and disrupts cultural and spiritual connections to Country that are central to health and wellbeing. As such, climate change and health is a core policy priority for Lowitja Institute. We understand that climate change will have a wide variety of impacts on the physical, spiritual and mental health and wellbeing of Aboriginal and Torres Strait Islander peoples.

Extreme weather events like extreme heat, floods, storms, droughts and bushfires, place increasing pressure on health services and infrastructure, and impact access to care for treatment of chronic and acute conditions. Increasing temperatures make it difficult for people to keep cool during extreme heat and to store medications.<sup>19</sup> This is compounded by inadequate housing and energy insecurity.<sup>20</sup>

Changes in weather patterns threaten the security and quality of water and bush food sources and ecosystems, with rising sea levels also contributing to loss of lands and further dispossession for communities. Loss of connection to country through environmental degradation can cause significant trauma for individuals and communities. Sacred sites, animals and landscapes are intertwined with self for many Aboriginal and Torres Strait Islander people, and their loss through severe weather patterns and natural disasters can compound preexisting trauma caused by historical dispossession.<sup>21</sup>

## **6. To build the capacity of the First Nations Human Rights Network**


Lowitja Institute supports building the capacity of the First Nations Human Rights Network. This complements efforts towards implementing the UNDRIP and provides Aboriginal and Torres Strait Islander opportunities to seek support, guidance and partnership from the international community.

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<sup>19</sup> HEAL Network & CRE-STRIDE 2021, Climate Change and Aboriginal and Torres Strait Islander Health, Discussion Paper, Lowitja Institute, Melbourne

<sup>20</sup> Lowitja Institute, 2024, *Close the Gap: Voyage to Voice, Treaty, Truth and Beyond*, Close the Gap Campaign Report

<sup>21</sup> Lowitja Institute 2020, *Culture is Key: Towards cultural determinants-driven health policy – Final Report*, Lowitja Institute, Melbourne



Building the capacity of Aboriginal and Torres Strait Islander communities to work towards self-determination, nation building and self-government, as well as collaborating and drawing on the international Indigenous community, is essential to achieving health and justice goals. Towards climate change, for example, enabling Aboriginal and Torres Strait Islander peoples to mobilise and connect is a mechanism through which Aboriginal and Torres Strait Islander communities can seek redress and empowerment to lead in climate action planning.

Aboriginal and Torres Strait Islander peoples contribute the least to climate change, and yet we are impacted the most. Climate change is a direct result of colonisation and has caused distribution to our lands, sacred sites and ways of life, and threaten our cultural heritage and traditional knowledge. To address these wounds, there must be historical truth telling, decolonisation and action to address systemic and structural racism.

Policy making and climate action has been consistently exclusive of Aboriginal and Torres Strait Islander peoples voices, perspectives and knowledge. As a result, policy making to address climate change continues to harm our peoples' health and wellbeing, as our peoples' priorities are not being heard or implemented in an effective way. This is an issue at the local, national, and international level.


Lowitja Institute has advocated for the establishment of an Aboriginal and Torres Strait Islander Coalition of Climate and Health. This collective advocacy mechanism would offer: an independent collective and strong voice that has its own table to invite government to sit at, and representatives that can also sit at the table of government to advise. A Coalition could work with government as a partner in developing effective and meaningful policy on climate and health.<sup>22</sup>

Aboriginal and Torres Strait Islander peoples and organisations are under-resourced to effectively respond to the impacts of climate change, and there is no key national Aboriginal and Torres Strait Islander body that is resourced to adequately engage with the international community on climate and health. A Coalition or similar governance structure would enable Aboriginal and Torres Strait Islander stakeholders, including community representatives, experts, researchers, and organisations, to come together to share knowledge, advise government policy, drive solutions and decision-making, and have a platform for collective advocacy.<sup>23</sup>

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<sup>22</sup> Lowitja Institute, 2023, Let's walk together, work together, we'll be stronger together: The need for an Aboriginal and Torres Strait Islander Coalition on Climate and Health, Policy position paper

<sup>23</sup> Lowitja Institute, 2023, Let's walk together, work together, we'll be stronger together: The need for an Aboriginal and Torres Strait Islander Coalition on Climate and Health, Policy position paper



Lowitja Institute supports this priority, not only in how it may support climate change advocacy, how it complements Lowitja Institute's proposition for an Aboriginal and Torres Strait Islander Coalition on Climate and Health, and supports the development of national mechanisms to support climate justice, but also in that it may support Aboriginal and Torres Strait Islander peoples in drawing on, and effectively utilising international human rights frameworks to progress collective advocacy and self-determination.