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Organization in Special Consultative Status with UN Economic and Social Council since 2015

Key Associate of Kergne Kaikazil Kuiku Mabaig (KKKM) Elders Not-For-Profit Company

Key Sustainable Development Venture Partner with Trikaur Tekman Traders Pty Ltd

Key Advocate/Supporter for Kaurareg Ipkazil Women Group (Unincorporated)

Key Advocate/Supporter of Waibene Human Rights & Social Justice Advocacy Group

26 January 2018	EMRIP Study on Free Prior and Informed Consent	FPIC/01
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Dear EMRIP Colleagues

This submission from the Kaurareg Aboriginal Land Trust is endorsed by our Kaurareg headman, our elders and leaders of Kaurareg Aboriginal first nation peoples. It is presented to the EMRIP panel as Kaurareg's contribution to EMRIP's 2018 study on *free prior and informed consent* (FPIC).

Our submission addresses selected parts of the concept note's report outline to which we added key principles of *Kergne* rule-of-lore for emphasis, alongside Australia's rule-of-law principles of procedural fairness and consultation in good faith. We have taken this liberty since, in our view, both sets of principles legitimately inform the FPIC study. Both are recognized by Australia.

In that regard our submission addresses the peculiar situation where consent is constantly sought by Australia to validate its prior decision to integrate colonized dependent populations, continually resident on their own non-self-governing territory. That decision by Australia was made without our knowledge, without our free prior and informed consent.

While it is clear that Kaurareg is an administered population, we are first a nation of peoples who inhabit our non-self-governing territory seized by the British Crown in an act of colonization.

We appreciate this opportunity to respond to the EMRIP study and note we are silent on certain parts of the study where we do not possess sufficient expertise. With respect, we thank EMRIP.

Yours faithfully

.....
Willie Wigness
Committee Chair

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Harry Seriat
Committee Secretary

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Allen G Reid
Chief Administrative Officer

INTRODUCTION

1. *Two domains of authority underpinning free prior and informed consent (FPIC)*

1.1. Kaurareg peoples observe two domains of authority. Both 24/7. Both in real time.

1.2. In the first domain, Kaurareg observe its ancient rule-of-lore known as *Kergne*. *Kergne* is an active and living lore embodying the cultural mores customs and traditions practiced continually despite colonization. These practices are validated by archaeologists and anthropologists.

1.3. In the second domain, Kaurareg observes Australia's rule-of-law. Australia's rule-of-law has been imposed on Kaurareg since the date their lands and seas were annexed to the Colony of Queensland under the British Crown.

1.4. We note that *Kergne* rule-of-lore continues to survive claims of sovereignty by the British Crown over our territory (hereinafter, the Kaurareg archipelago), and that Kaurareg continue to occupy non-self-governing territory despite two forced-removals from their lands and seas.

1.5. The practice of *Kergne* rule-of-lore continues undiluted despite the relentless and corrosive implementation of Australia's rule-of-law after the decision for "integration with an independent State". A decision by Australia that Kaurareg had no knowledge of, nor exercised FPIC for it.

2. *Our native understanding of FPIC*

2.1. While Kaurareg has general understanding of the English language, despite English being a third and sometimes fourth language spoken on a daily basis, the words "free" "prior" "informed" and "consent" have sufficient meaning to basically understand how they are used.

2.2. While Kaurareg do not have comparable language words for FPIC, their closest language words to FPIC provides them with a clear understanding of their importance to basic human rights, especially the inalienable right for self-determination.

2.3. Therefore, with respect to EMRIP and this FPIC study, an on the basis that "free" "prior" and "informed" reflect *Kergne* norms, Kaurareg will focus on the word "consent". Its etymology is found circa 11th-13th centuries from the cognate languages of French, Latin, and middle-English.

2.4. We find the meaning of consent to include "the voluntary acquiescence to the proposal of another; the act or result of reaching an accord; a concurrence of minds; actual willingness that an act or an infringement of an interest shall occur¹."

¹ Sourced from <http://legal-dictionary.thefreedictionary.com/> on 18 February 2018.

2.5. We also find the key word for FPIC is “acquiescence”, a word meaning “conduct recognizing the existence of a transaction and intended to permit the transaction to be carried into effect; a tacit agreement; consent inferred from silence.”¹

2.6. And when we dig deeper we see that in consent “there must be a choice between resistance and acquiescence. If a subjugated people resist to the point where additional resistance would be futile or until their resistance is forcibly overcome, submission thereafter is not consent.”¹

2.7. Digging yet deeper into the meaning of consent, we find there is a vital component of the comprehension-process which leads to “acquiescence”. That vital component is “assent” which is primarily an act of understanding, obviously a key to “acquiescence” and the giving of consent.

2.8. So on the basis of the broadest spectrum of FPIC meanings, applying to colonized and dependent peoples, we note the many ways where the Settler State, Australia strives to gain the consent of natives. Those many ways continue unabated, despite the absence of our assent.

2.9. Furthermore, we particularly note the built-to-design-policies whose architecture “obtains” our consent by stealth, whether we are silent or we resist. Our cultural norms and our humanity are weaponized against us, forcing us to consent to Australia’s decision of integration.

2.10. And finally, we note the meaning of free prior and informed consent is not difficult to grasp. It is not rocket science. We hope then that what looks like FPIC, on closer examination of ground-zero-experiences we suffer 24/7, is exposed as forced submissions of a subjugated population.

3. *Our native experience of FPIC*

3.1. Kaurareg Aboriginal peoples live 24/7 in policy environments established at least since 1960 by successive governments of the Settler State, Australia. We describe these policy environments as engineered to support our “integration with an independent State”.

3.2. We understand that “integration with an independent State” is a UN decolonization term for a legitimate form of self-government, agreed to by the UN General Assembly in res. 1541 (XV) 1960. We understand it applies to native populations living on non-self-governing territory.

3.3. We know that Kaurareg were denied their right to exercise FPIC, itself a pre-requisite for the inalienable right of self-determining one’s future. Kaurareg were denied the inalienable right to self-determine their future because the Settler State, Australia decided it for them.

3.4. Since that decision the Settler State, Australia set about changing its Constitution in 1967, amending its policy environment to gain consent from native populations it administered, who had increasingly become discomfited about their colonized and dependent situation.

3.5. Native populations in the Settler State, Australia are subjugated peoples whose 24/7 life experience is not unlike hardships of global South populations. But this is not their choice. Living without decision making control on their own non-self-governing territory is not their choice.

3.6. With lands and seas taken from them, depriving them of an economic base in the world of commodification, resistance is eroded by policies weaponised against families and communities. The violation of human rights through forced integration is exposed in Australia's colonial history.

3.7. We note in this regard that true expressions of FPIC in a forced-integration environment have been diluted by policies that manage our populations, by relentless measures not applied to non-natives, and by massive waste of public funding. All deny us the true expression of FPIC.

3.8. As noted in item 2.6. "...submission thereafter is not consent..." and is so true for Kaurareg. FPIC is no longer visible in colonized and dependent populations when the substantial might and will of the Settler State, Australia is bent toward forcing their consent.

3.9. When Kaurareg are forced against their will a *Kergne* truism applies and that is a return to the start-point where control or direction was lost. That start, for colonized and dependent native populations, is to return to circa 1945 when FPIC became a missed self-determination opportunity.

3.10. Circa 1945, to UN General Assembly res. 66 (1) 14 December 1946, we find Member States reporting on territories described as non-self-governing after the UN Secretary General requested Members to identify non-self-governing territories under their administrative control.

3.11. We know Australia identified Papua "non-self-governing territory" under its administrative control, for the purposes of Chapter XI of the United Nations Charter. Despite Aboriginal peoples and Torres Strait Islanders adequately fitting the description, Australia did not identify them.

3.12. Circa 1945 Article 73 of the UN Charter² guided Members to report on territories, but further opportunities for natives to be identified came with changes to Australia's Constitution through the 1967 Referendum, and the decision by the High Court on *terra nullius* in 1992 for Mabo.

3.13. However, in the lead up to the historic 1967 Referendum, we did not see nation-wide assent about FPIC amongst native populations. But we did see Australia behave as if it is subject to the reporting guidelines, where decolonization was the real reason for constitutional change.

² For clarity, Article 73 of the United Nations Charter is found at Appendix 1 at the end of this submission.

3.14. Twenty-five years later at the historic High Court decision on Mabo and enactment of native title legislation, despite another opportunity FPIC again did not enjoy nation-wide assent amongst natives. Sadly, another opportunity was lost when native title legislation replaced *terra nullius*.

3.15. We find Kaurareg were denied assent and FPIC through integration policies of the Settler State, Australia. We consider these denials point to the conclusion that the forced-integration of Kaurareg is not based on FPIC, and consent without assent as its prerequisite, is submission.

3.16. For all these reasons and more Kaurareg view this FPIC study as a means to disclose to the world, Australia's decision to integrate colonized and dependent natives under its administrative control, who continue to suffer ongoing dispossession and disadvantage caused by integration.

3.17. Kaurareg turn now to the outline of the report contained in the (EMRIP) concept note.

KAURAREG RESPONSES TO THE REPORT OUTLINE OF THE EMRIP CONCEPT NOTE ON FPIC

Short overview of different approaches to FPIC

1. Consideration of the main human rights related jurisprudence on free, prior and informed consent, including differences in terminology

1.1. Kaurareg are not equipped to maintain knowledge of the latest iterations of human rights jurisprudence, but concur with observations by the Inter-American Commission on Human Rights (IACHR) that "...property rights of indigenous peoples are not defined exclusively by entitlements within a state's formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition³."

1.2. Notwithstanding the jurisprudence expressed by the above research paper, and on the basis that it approximates the views of native people's rights to manage their lands and seas, Kaurareg are able and willing to lend their full and total support to the IACHR observations.

1.3. However, Kaurareg points to page 14 of the same research paper where "...jurisprudence also clarifies that in 'exceptional circumstances' and where there is 'compelling public interest', the State may seek access to and use of indigenous resources and the resources therein, including water resources." Kaurareg also concurs with the view on page 14 that the "...State must show that the intervention is 'necessary' and has been designed to be the least restrictive from a human rights perspective."

1.4. In regard to this latter view from page 14 Kaurareg points out from direct experience, that it has little faith in sub-national governments who claim sovereignty over Kaurareg's lands and seas, being brought to account by national governments who in turn are held responsible under international law.

1.5. Kaurareg have found that with wide-spread low-level understanding and appreciation of the two levels of domestic governance in Australia, together with their complex intra-and-inter-twining of policies and programs based on integration of native populations, to bring national and/or sub-national governments to account is mostly a futile exercise. This is because human and financial resources needed to prosecute our inalienable right to self-determination are not readily available to us.

1.6. Despite our shortcomings, Kaurareg stands in support of other native tribes in the Settler State, Australia and around the world who seek remedy from injury and harm, caused by forced-integration and acts of colonization they reject. We support their attempts to gain knowledge for matters they face, which are critical to exercising FPIC, and support their opposition against the corrosive techniques of persuasion employed by the State to gain their consent.

³ <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/tfdfpicresearchpapercolchesterhi-res2.pdf> (page 10)

2. *Exploration of different approaches to free, prior and informed consent, including in the private sector, inside and outside the human rights framework*

2.1. Kaurareg have found that private sector interests for resources located on native title lands and seas, over-ride the interests of the traditional owners of same lands and seas. We find that national and sub-national legislation support private sector interests while the interests of native title owners are “weighted with the right of procedural fairness”. To the average native, outcomes of procedural fairness in the courts appear clearly “weighted” in favour of private sector interests and biased against native title owners.

2.2. Kaurareg are aware that legal principles such as “procedural fairness” and “negotiation in good faith” to some extent in practice, act as useful counter-weights against legislative support for private sector interests. Kaurareg are also aware of offshore market forces which affect, and onshore market forces which shape, Australia’s rule-of-law where market forces altogether prevail over *Kergne* rule-of-lore. Under the conditions of forced-integration noted earlier, Kaurareg has no skin in the game where native trade is concerned. And while private sector interests do not appear to be willing to change so as to permit the free expression of *Kergne* rule-of-lore in native trade, private sector interests will continue to enjoy ongoing support of national and sub-national legislation.

2.3. Recent conversations about strategies to overcome the bias against *Kergne* rule-of-lore saw options of entering the market as native traders in sustainable development projects, through native trade activities that compete with activities of non-native traders. These strategies include showing the market that *Kergne* rule-of-lore is the defining force that shapes and polices native trade activities. But since Kaurareg territory was taken from us, and despite the opportunities that visited us in the 1967 Referendum and Mabo decision, without our territories with which to generate economic activity, Kaurareg and all other natives under the administrative control and management of the Settler State, Australia will continue to suffer in the disadvantage gap created by forced integration without our FPIC.

2.4. Native title has not helped us to enter the market and is highly unlikely to help us. Evidence about that is found in amendments to native title law since its enactment in 1992, watering down the options for return of our lands and seas to our sovereign control. We do not view changes to native title law as constituting sound jurisprudence. This is because we see devolutions of native title law calibrating us to policies that force changes to our humanity, within the constraints of forced-integration in a time period of less than sixty years at this date. While it has been alleged that natives in Australia were regarded as fauna and flora before historic changes to Australia’s Constitution, we regard as discriminatory and racist the notion that Aboriginal peoples and Torres Strait Islanders are likened to bonsai trees planted in a seed bed of forced-integration and shaped by rule-of-law policies.

3. *Exploring various forms that free, prior and informed consent has taken*

3.1. Kaurareg can only comment on the forms of FPIC it is, and has been, exposed to. In the Settler State, Australia where the decision was made to integrate Aboriginal peoples and Torres Strait Islanders, the key objective is to obtain our consent by overt and covert means. When we examine these means, we find the policy language and programs of persuasion to gain our consent are “wiped clean” of clues pointing back to Australia’s decision to integrate us without our consent. They are for the most part cunningly engineered so that our known cultural norms of silence are interpreted by non-native rules of debate and majority votes, duly registered as our agreement. Despite our cultural norms of silence being well-known to the social sciences, where our silence indicates respect and/or disagreement and/or matters of discomfort, our silence is turned against us and used to indicate our consent.

3.2. For these reasons it is regarded as a pointless exercise by Kaurareg, one based on personal experience, to identify positive forms of FPIC exercised by natives that are of benefit to natives. Because there are so few of them they are not recorded in our history. But it would be useful to point to the “Closing the Gap” report on disadvantage suffered by Aboriginal peoples and Torres Strait Islanders, announced recently by Australia’s Prime Minister. The report has been described by national print-media (The Australian) as a shame and ongoing disgrace, and worse still as the Prime Minister’s annual statement of failure. The report contains details of the billions of dollars spent on “Closing the Gap” to reduce Indigenous disadvantage. Massive spending of public funds that has delivered little in the way of outcomes.

3.3. A so-called two-day “refresh” of the government commitment to close the gap, using hand-picked natives before the Prime Minister delivered the annual 2018 Closing the Gap Report, was described by Referendum Council Member Megan Davis as “The refresh is like putting lipstick on a pig”. Many natives saw the refresh as a poorly disguised artifice of FPIC, as evidence of failed policies arising from Australia’s decades-long decision for forced integration. Natives also saw it as a blatant disregard of the words by Referendum Council Co-Chair Mark Liebler “The critical thing is you’ve got to have more involvement on the part of Aboriginal and Torres Strait Islander peoples in government thinking.”

3.4. But in regard to “government thinking” it is now known the orbit of government thinking is restricted to forced-integration, and that any satellite of native thinking and language within that orbit that does not conform to integration, is duly ejected from that orbit and exiled to the margins of dispossession and disadvantage. For these reasons the forms free prior and informed consent have taken in the Settler State, Australia are not acceptable to natives who are aware of the fact they were denied FPIC and the right to self-determine their future. We point to item 2.6., under the heading *Our native understanding of FPIC*, where forced submission is the offspring of forced integration. Submission is not, nor can it ever be, free prior and informed consent.

Rights holders and scope of the right to free, prior and informed consent

1. *Consideration of whether communities other than indigenous peoples enjoy the right to free, prior and informed consent*

1.1. Kaurareg hold the view the legal principle of “procedural fairness” can and should apply to before and after the decision by the State on matters impacting natives, such that the principles of FPIC can inform natives about the State’s decision and empower natives to monitor outcomes. *Kergne* rule-of-lore contains principles of natural justice approximating to Australia’s principle of “procedural fairness” and there are parallels between the principles and their outcomes. In that regard it is no coincidence that Kaurareg can easily conceive of support for, and consideration of, other communities enjoying the right to free prior and informed consent.

2. *Examining the nature of FPIC as right: mere procedural right? A substantive right in itself?*

2.1. Kaurareg humbly submit its belief that FPIC should be accounted the status of a substantive right. While Kaurareg does not have the legal expertise to validate its belief, given FPICs complex componentry lending themselves to comprehension and assent, Kaurareg is confident about giving its full support to elevating the status of FPIC to a substantive right.

2.2. Kaurareg understands the critical role that assent and consent has to critical matters noted in the Preamble of the United Nations Charter. And despite the limited understanding Kaurareg has of Australia’s rule-of-law, we believe that both domains of authority (in *Kergne* and Australia) support the Preamble. Furthermore, Kaurareg believes the respective elements of the domains, where they are common in supporting the Preamble, can both be understood as being compatible to the other.

2.3. On these grounds Kaurareg believe they hold sufficient reason to elevate the status of FPIC to that of a substantive right.

3. *Exploring whether there are pre-conditions for an effective free, prior and informed consent*

3.1. Kaurareg can only comment on the 24/7 circumstances it faces, and the experiences it has, because of forced-integration as described in earlier parts of this submission. For these reasons and more, a singular pre-condition for Kaurareg to enjoy effective free prior and informed consent is to remove the constraints of forced-integration. Kaurareg believe that only then will FPIC be permitted the truest and fullest expression.

3.2. For Kaurareg this will mean exercising *Kergne* rule-of-lore, which takes us back to the start of our plight when the opportunity was missed of our being identified as a colonized and dependent population, continually resident on non-self-governing territory, while under the administration of the Settler State, Australia.

3.3. For States who are subject to the requirements of GA res. 1541 (XV) of 15 December 1960, “Principles which should guide Members in determining whether or not an obligation exists to

transmit the information called for under Article 73e of the Charter” their requirements are spelt out in its Annex. When an analysis of Australia’s administration of colonized and dependent native populations are compared to the principles and requirements of transmitting information described in the Annex, they reveal Australia has engaged in activities that parallel the Annex requirements.

3.4. Analysis of the parallels in Australia’s administrative activities to the Annex to GA res. 1541 (XV) noted above, is not considered by Kaurareg to be rocket science. We are of the view they are clearly seen by even the most pedestrian of analysis and examination.

Situations when the receipt of free, prior and informed consent, is required

1. Consideration of the meaning of the common language of articles 10 and 29 (UN DRIP)

1.1. Kaurareg hold the view that native populations who are continuously resident on their own non-self-governing territories possess the inalienable human right to self-determine their futures. To Kaurareg the common language of articles 10 and 29 are clear in their intent and we are unsure about adding any new or useful perspectives to their stated intent, or to clarify uncertainties.

Situations where consent should be the objective of the consultation

1. Guidance on representative institutions or decision-making processes

1.1. In the case of Kaurareg and native populations in the region known as the Torres Strait in the Settler State, Australia where governance structures and arrangements have been established by Australia and are populated by native decision makers, where the same native decision makers decide on the quality of lifestyle of other natives and their local environments, the decisions made are measured by and calibrated to national and sub-national government policies and programs that support forced integration.

1.2. Under such circumstances native decision makers who claim to represent and act on behalf of Australia at fora not their own, do not obtain favour or benefit from native populations they claim to represent. The governance structures and arrangements are a third wave of colonization, where native decision makers are deployed against other natives from their own tribe, clan group, and family. For native tribes in the Torres Strait region, the second wave of colonization saw the annexation of lands and seas to the Colony of Queensland, while the first wave was the claim of sovereignty by the British Crown over lands and seas under the fiction of *terra nullius*.

1.3. Native elders and leaders regard the claims of representation by native decision makers in governance structures and arrangements as “cultural fraud”. Native elders and leaders totally reject the claims of native decision makers in governance structures and arrangements, that they represent the interests of all natives in their governance footprint.

1.4. Similar to the sentiment expressed in item 3.2., under the heading *Exploring various forms that free, prior and informed consent has taken*, Kaurareg deems it a pointless exercise to support the position of decision making by representative natives, even if the decision contains benefit to

other natives. Kaurareg believe any benefit will be short-term unless and until Kaurareg's domain of authority enjoys equivalence to Australia's domain of authority, equivalence for the validation of standards references or benchmarks, and equivalence to monitoring and policing of appropriate and acceptable decisions by representative natives.

1.5. The explanation given by the Settler State, Australia of its decision to integrate Aboriginal peoples and Torres Strait Islanders, is that it is sufficient in and of itself to cater to requirements for achieving a quality of lifestyle comparable to non-native Australians and the protection of local environments. Kaurareg do not believe this explanation to be true and reasonable, and point to annual announcements of the Closing the Gap Report on disadvantage as evidence.

1.6. Kaurareg believes the solution is to go back to the start, to circa 1960, and to give natives the right to decide for themselves which legitimate form of self-government best suits them. This should start with nation-wide assent of the choices available to them, followed by their free prior and informed consent to choose which legitimate form of self-government best suits them.

Relationship between free, prior and informed consent and corollary rights in the UNDRIP

1. *The relationship between the principles of consultation and free, prior, and informed consent (e.g under ILO 169) and other rights including:*

1.1. Kaurareg believe that FPIC and its pre-requisite of nation-wide assent are keys for natives to exercise their inalienable human right to self-determine their futures. Kaurareg also believe the guidelines in the Annex to GA res. 1541 (XV) could adequately apply to assist Member States to identify those colonized and dependent populations under their administration, previously not identified, but are still seen to fit the description of non-self-governing territories.

1.2. Kaurareg also believe that *participation by natives in decision making* is best served if there is first nation-wide assent about the processes involved, to which they are engaged or bound to.

1.3. Kaurareg believe that *cultural integrity* is best served, in the case of native representation, when natives observe a hybrid form of rule-of-lore and rule-of-law so that requirements of both sets of rules are satisfied. This requires legitimacy and validation by Member States of the norms of cultural rule-of-lore practiced by colonized and dependent populations, as having equivalence to Member States' rule-of-law. Anything less than equivalence is biased in favour of the State. Furthermore, where there is less than equivalence, natives elected or appointed to decision making positions who are constrained to follow rule-of-law governance parameters which exclude or deny inalienable human rights and principles of FPIC, are exposed to accusations of cultural fraud in their representation of fellow natives.

1.4. Kaurareg believe that equivalence between the two domains of authority ensures *equality* is met. Especially since norms of equality can be obtained from a hybrid form of the two which in turn becomes the standard by which conduct and behaviour is measured. The present norm of equality in western civilizations is configured around liberty of the individual, and any expression of that norm denies the norms of the collective which is common to autochthonous peoples. The essential difference between the individual and the collective can only be harmonized if the two

norms enjoy equivalence, when a hybrid form of the two norms is identified, then selected for implementation. It is noted that Kaurareg Aboriginal first nation peoples in Australia, along with colonized and dependent populations who also live in bicultural environments of the administering State, live a de facto hybrid life. Living a de facto hybrid life is not by choice. It is by the need to survive.

1.5. Kaurareg believe that the principles of FPIC in relation to *property*, its use and ownership, includes the rights to territory as expressed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In the case of native title rights in Australia, the reach and expression of their rights and interests in lands and seas are constrained by the bounds of their integration. Property rights of first nation colonized and dependent populations in Australia, at this time in history, do not enjoy free consent. That is because “free” now means freedom to choose the degree of their subordination to integration with an independent State.

1.6. Kaurareg believe that the term *religion* is better described as “belief-systems” since most common descriptions for the practices of religion and/or belief-systems occupies the full spectrum of external expressions at one end of the spectrum, to inner experiences at the other end. With all practices, FPIC must be involved. While some countries do not permit the practice of certain belief-systems and where FPIC is restricted, Kaurareg reside in territory where Christian practices are merged with belief systems that connect the practitioner to “country”. This hybrid practice is greater than just syncretism and is commonly referred to as “dreamtime”. In the multi-cultural environment of the region known as Torres Strait, Australia, a broad collection of belief-systems are practiced and exist harmoniously side-by-side.

1.7. Kaurareg believe discrimination is a blight on a free and enlightened society and only serves to harm or injure lasting peace and well-being that are so honoured and treasured by many. FPIC obviously plays a role in *non-discrimination* but in cases of colonized and dependent populations, non-discrimination is often the exception rather than being the rule. This is because colonized and dependent populations are managed differently to non-colonized non-dependent populations. While the governance of colonized and dependent populations can rightfully be argued as being “positive” discrimination, the measure of positive outcomes from such discrimination is only made by reference to arrangements and conditions pursuant to the form of self-government applying to their place and position in society. In the case of natives in Australia, the form of self-government applying to them is integration with an independent State. But if integration does/did not include FPIC, then the decision for self-government for them can only be “negative” discrimination. As noted in this submission Kaurareg’s solution is to go back and revisit the start-requirements, and apply FPIC from the start so decisions about the future are acceptable rather than discriminatory.

1.8. Kaurareg believe that the denial of FPIC and the absence of assent, in policy environments of forced-integration, have a corrosive effect on the *health and physical well-being* of the natives who are colonized and dependent on the administrations of a State. But if forced-integration is the chosen foundation for administration of colonized and dependent populations, then health and physical well-being of the dependent population will inevitably deteriorate. Australia has routinely denied substantive involvement by Aboriginal peoples and Torres Strait Islanders in their policy formation and their decision making. The effects of that denial are routinely announced as failures

in the annual Closing the Gap Report on disadvantage. Despite the billions of public funding governments spend on trying to close the gap, the unacceptable condition of health and physical well-being of native populations in Australia will not change while they are forced to integrate.

1.9. Kaurareg believe *the right of indigenous peoples to set their own priorities for development, including with respect to natural resources* is a no-brainer. But obtaining the right is a different story with a sorry ending. As noted in earlier parts of this submission, despite national and sub-national legislation providing remedies for protection against developments taken without FPIC, the courts are overburdened by claims and litigations. A solution progressed in an earlier part of this submission is for natives in Australia to restore native trade activities and routes they once enjoyed, before restrictions on movements and access to country was imposed. The likelihood of a restoration of trade is not high, given that most economic development is contingent on assets and collateral. Assets and collateral for natives are inextricably linked to lands and seas, both of which were taken by an act of colonization. Both of which are granted to natives for their limited use in the context of forced-integration. Both of which can be taken by title extinguishment and compulsory acquisition.

1.10. Kaurareg believe that *the rights of Indigenous Peoples Human Rights Defenders* should be held in the respect deserving of their commitment and occupation. Human rights defenders are generally more astute in their dealings with colonial governments, and better equipped in dealing with the acts of violations and breaches of rights by governments. For that reason, Kaurareg are of the view that FPIC is more critical for their enjoyment, and more important in their work of defending the rights of others. In the case of Kaurareg Aboriginal first nation peoples, Australia has not made it easy to defend the rights of first nation peoples. The decommissioning of then Aboriginal & Torres Strait Islander Commission (ATSIC) and refusal to establish a formal voice in houses of parliament to speak for and on behalf of Aboriginal peoples and Torres Strait Islanders just one of many examples. While the winding back of the support of and compliance with human rights by Australia can be assessed against international standards and obligations, the return of non-self-governing territory to the first nation peoples from whom it was taken without their FPIC must be seen as a priority for peace and well-being.

APPENDIX 1

(Extract) United Nations Charter: Chapter XI, Articles 73 and 74

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and wellbeing of the rest of the world, in social, economic, and commercial matters.