



## Yidindji Position Paper 2020

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## The Yidindji Nation

The Yidindji Nation and its people form “...a northern-focused, rainforest-based, regional society...”<sup>1</sup> in an area geographically known by the western world as Cairns and Atherton Tablelands of far north Queensland, Australia. (See attachment 1) The Yidindji Nation, being an “...Aboriginal ...tribes were the first sovereign Nations of the Australian continent...”<sup>2</sup> and are a separate and distinct nation and society of people from all other nations and societies including but not limited to the Commonwealth of Australia. The Yidindji Nation live by a “Rule of Law” order based on the Yidindji law and not Australian law “...Yidindji people... who, pursuant to traditional law and custom, were in occupation of the land and water...at the time of first assertion of British sovereignty. Those people formed and form a society, united in and by their acknowledgement and observance of those traditional laws and customs.”<sup>3</sup>

The Yidindji Nation has never been conquered, never ceded sovereignty, nor entered into any formal agreements with any of the colonial powers or the subsequent Commonwealth of Australia. The Yidindji Nation still retains and asserts its continuing pre-colonial sovereignty, observes Yidindji laws, practices Yidindji customs and modernised the Yidindji representative body through the manifestation of the Sovereign Yidindji Government. To comprehend this position taken by the Yidindji Nation, people need to comprehend history, the instruments created by the Commonwealth of Australia and the United Nations. Further, the perspective of the Yidindji Nation must be understood, there are two sides to every story. The Yidindji perspective of history is through the release of these position papers as further information comes to hand.

## Yidindji Sovereignty

There has been neither cession of sovereignty nor cession of territory from the Yidindji Nation to any other party. The Yidindji Nation has never been conquered in war and still retains all its forms of sovereignty. Anything that the Commonwealth of Australia may do with the Australian Constitution will not affect the Yidindji Nation, just as when the British finally left the Australian continent in 1986, it made no difference to the continuing Yidindji Nation.

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<sup>1</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

<sup>2</sup> Uluru Statement from the Heart 2017

<sup>3</sup> Joseph on behalf of the Tableland Yidinji People #3 v State of Queensland [2013] FCA 280

“...changing the Constitution...does not affect how Aboriginal view their own sovereignty. As a result, it does not prevent them from asserting their own independence and the continuing validity of their laws and customs.”<sup>4</sup>

Just as, “...sovereignty [of Australia] rests with the people of Australia<sup>5</sup>, the sovereignty of the Yidindji Nation rests with the people of the Yidindji Nation.

The Commonwealth of Australia can neither grant nor give sovereignty to the Yidindji nation. It is up to the Yidindji Nation to claim “...what reach the Sovereign claims for itself, not what reach the other Sovereign may concede to it.”<sup>6</sup> The Yidindji Nation is claiming the reach of its Sovereignty as it revitalises and develops its political, legal, economic, social and cultural institutions. This is being done through the Sovereign Yidindji Government.

### Sovereign Yidindji Government

The Sovereign Yidindji Government is the “...legal entity having the attributes of a person as a holder of certain rights and obligations and so authorised as the legislator to make constitutional norms for the peace, order and good government within the territory of the Yidindji Nation”<sup>7</sup> and was manifested as an interim democratic government by the Yidindji Nation in January 2013, through numerous Yidindji conventions and consultation processes over the two years proceeding. The original Yidindji Constitution was agreed to by the Yidindji members of the numerous regional areas and finally consented to by the Yidindji Tribal Council of Elders.

The Sovereign Yidindji Government is represented and identified by the Yidindji Coat of Arms and Yidindji National Flag. (See attachments 2 and 3)

The Sovereign Yidindji Government consisting of the Garna Jimurru (Department of the Chief Minister) and numerous other departments with relevant ministers appointed for each departments. (See attachment 4)

The Yidindji Binal (Department of Treasury) is responsible for monetary policy, the Yidindji economy, taxation and other related sectors. (See attachment 5) The currency of the Yidindji Nation is the Yidindji Dollar. (See attachment 6)

The Sovereign Yidindji Government through the Yidindji Minjaani Wungarlji (Department of Foreign Affairs and Trade) issues entry visas for those citizens who wish to enter the territory of the Yidindji Nation. (See attachment 7) The Minister for Foreign Affairs and

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<sup>4</sup> Davis M., Williams G., Everything You Need To Know About The Referendum To Recognise Indigenous Australians.

<sup>5</sup> Jooose v Australian Securities and Investment Commission - [1998] HCA 77

<sup>6</sup> Commonwealth v Yarmirr - [2001] HCA 56

<sup>7</sup> Yidindji Legal Dictionary 1<sup>st</sup> edition

Trade is also responsible for the interactions between the Yidindji Nation and all other foreign or international actors. The Yidindji Binal is responsible for the issuance of the Yidindji passport pursuant to the Yidindji Passport Act 2015. (See attachment 8)

The sovereign Yidindji Government have amount other things released a series of postage stamps pursuant to the Yidindji Postal Act 2018 for the use on Yidindji mail. (See attachment 9)

The Sovereign Yidindji Government is currently developing all the necessary departments and administrative sectors as required.

## Evidence in support of the position

### Australian Instruments

The Native Title Act 1993 was enacted by the Commonwealth of Australia after the Mabo decision. The Native Title Act 1993 "...provides a way in which Aboriginal people can prove traditional ownership of land, which ownership has existed since before European settlement in Australia"<sup>8</sup>and "...the Court does not give you native title. No. The Court determines that native title exists. The Court determines that this is your land. That it is based upon your traditional laws and customs which have always been; and that means that the laws says to all the people of Australia that this is your land and it has always been your land because your laws and customs have said, and say today, that it is your land."<sup>9</sup>

The Native Title Act 1993 appears to be in accord with article 27 of the UNDRIP in that "States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples laws, traditions, customs and land tenure systems..."<sup>10</sup> The Commonwealth of Australia through the numerous Native Title Determinations have made clear that the Commonwealth of Australia know that the laws and customs of the Yidindji Nation still exist, and its peoples exist in their true and correct capacity, not as citizens of the Commonwealth of Australia but as citizens of the Yidindji.

"They were there when Captain Cook sailed past in 1770...and they are still there today."<sup>11</sup>

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<sup>8</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

<sup>9</sup> Payi Payi on behalf of the Ngurrpa People v the State of Western Australia - [2007] FCA 2113

<sup>10</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>11</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

The lack of inclusion left the members of the continuing pre-colonial Yidindji Nation no other choice but to follow the Yidindji laws and customs within the Yidindji territory that they have always followed and continue to observe. The Yidindji people as members of the Yidindji Nation, were not and still are not outlaws, yet the Yidindji members were not and still are not bound by the laws and customs of the Commonwealth of Australia. Yidindji members are simply bound by laws and customs that are derived from a sovereignty that co-exists and is outside the framework of the Australian Constitution.

“...traditional laws and customs have survived...”<sup>12</sup>

It is the surviving laws and customs acknowledged by the Commonwealth of Australia that cemented the existence of the Yidindji sovereignty, the Yidindji Nation knew they still possessed it, but the Commonwealth of Australia confirmed its existence to all Australian citizens.

The continuing sovereignty of the Yidindji Nation has been utilised to create the Sovereign Yidindji Government as the representative identity for and on behalf of all Yidindji members. The Commonwealth of Australia through various native title determinations has acknowledged the existence of the Yidindji society.

“The laws and customs characteristic of the regional society can be identified...”<sup>13</sup>

It is these laws and customs of a society that came from a time “...before European settlement in Australia”<sup>14</sup>

Further, the Commonwealth of Australia acknowledged the Yidindji Nation possessed “A system of cosmological narratives, credited with the original of the regional laws and customs...A system of land tenure...a system of authority and decision-making...A system of dispute resolution...”<sup>15</sup> The Yidindji laws and customs have “...their roots in ancient times”<sup>16</sup> and not from within the Australian Constitution.

## Recognition

The Sovereign Yidindji Government received official recognition from the Commonwealth of Australia in 2016.

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<sup>12</sup> Johnson on behalf of the Tableland Yidinji People #1 v State of Queensland [2012] FCA 1417

<sup>13</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

<sup>14</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

<sup>15</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

<sup>16</sup> Johnson on behalf of the Tableland Yidinji People #1 v State of Queensland [2012] FCA 1417

“The Indigenous affairs minister, Nigel Scullion, acknowledged the presence of the Yidindji cabinet while speaking to more than 100 delegates at a national development summit in Cairns”<sup>17</sup>

This form of acknowledgement is recognition from the Australian Parliament.

“**Constitutive Theory of Recognition-** theory that a community does not become a state merely by asserting its statehood, but is rather ‘constituted’ by the willingness of other states to deal with it as a new state”<sup>18</sup>

The Sovereign Yidindji Government has met on numerous occasions within the Yidindji Territory with members of the Australian Parliament, and, on one occasion in 2017 attended the Australian Parliament to meet with Australian representatives with regards the establishment of a roadmap to a treaty between the Sovereign Yidindji Government and the Commonwealth of Australia. (See attachment 10)

### Yidindji Instruments

The Sovereign Yidindji Government has been methodically developing its institutions for the peace, order and good governance of the Yidindji territory. In doing so, modern systems of governance have been created, with the world being notified from time to time, by way of public notice from the Yidindji Gazette. All public notices are available online.

### Colonisation

Colonisation occurred gradually in the geographical location known as Australia from a period starting in 1770 through to present day.

“**Colonisation-** The establishment of British colonies in Australia from 1788 Colonisation was justified on the grounds that Australia was *terra nullius*, or unoccupied land in 1788. This was overruled in *Mabo v Queensland (No. 2) (1992)* leading to a statutory recognition of native title by the *Native Title Act 1993*.”<sup>19</sup>

Colonisation in the Yidindji Territory occurred from the mid 1800’s with the expansion of the British in the Colony of Queensland ‘... In the 1870s settlers arrived.’<sup>20</sup>

The United Nations to which the Commonwealth of Australia is a founding member no longer support the acts of colonisation.

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<sup>17</sup> [http://www.theguardian.com/australia-news/2016/feb/17/nigel-scullion-acknowledges-yidindji-cabinet-as-murrumu-pushes-for-treaty?CMP=soc\\_568](http://www.theguardian.com/australia-news/2016/feb/17/nigel-scullion-acknowledges-yidindji-cabinet-as-murrumu-pushes-for-treaty?CMP=soc_568)

<sup>18</sup> Dictionary of International & Comparative Law 3<sup>rd</sup> edition

<sup>19</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

<sup>20</sup> *Mundraby on behalf of the Combined Mandingalbay Yidinji-Gungandji People v State of Queensland* [2012] FCA 1039

“Recognising that the peoples of the world ardently desire the end of colonialism in all its manifestations.

Convinced that all peoples have the inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, solemnly proclaim the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.”<sup>21</sup>

The Yidindji Nation and its territory was colonised by the British and still is colonised by the Commonwealth of Australia. The Commonwealth of Australia was never colonised in the true sense of the word, it was merely a consequence of the colonisation process. This is important to understand in light of the UN resolution 1514.

” **Decolonisation-** the process of granting independence to a territory which has been governed as a Colony.”<sup>22</sup>

It is the Yidindji Nation and its territory that was colonised and it is the Yidindji Nation that must be decolonised and not the Commonwealth of Australia. To date the Yidindji Nation and its territory has not been decolonised in accord with the UN resolution 1514, however, the Yidindji Nation developed its legal representative entity the Sovereign Yidindji Government to assist in the correct decolonisation process.

## Commonwealth of Australia

There are two systems of law and authority in the geographical location that is the Yidindji territory, those are of the Yidindji Nation and of the Commonwealth of Australia. The Yidindji Nation is the continuing pre-colonial nation whose sovereignty was never ceded or extinguished. The Commonwealth of Australia was created pursuant to the Commonwealth of Australia Constitution Act 1901, and being legally born on the 1<sup>st</sup> of January 1901.

“The Constitution creates the space in which all other domestic laws operate in this country. It defines the extent of our legal universe.”<sup>23</sup>

The Australian Constitution vest the authority in the Australian Parliament to make laws for the good government for and on behalf of all Australian citizens.

“Despite its initial character as a statute of the Imperial Parliament, the Constitution brought into existence a system of representative government for Australia in which

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<sup>21</sup> General Assembly Resolution 1514 (XV) of 14 December 1960

<sup>22</sup> Dictionary of International 7 Comparative Law 3<sup>rd</sup> edition

<sup>23</sup> Chief Justice French, Theories of Everything and Constitutional Interpretation, 19 February 2010



the elected representatives exercise sovereign power on behalf of the Australian people.”<sup>24</sup>

The Commonwealth of Australia is a separate and distinct society of people who “...have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution...”<sup>25</sup> It was “... founded on the will of the people whom it is designed to unite and govern.”<sup>26</sup> Alfred Deakin delivered a speech in Ballarat on the 29<sup>th</sup> of October 1903, “The Commonwealth must be true to itself and to the people who created it. It was established to act for itself, not as a mere collection of states or for them, but, as a unit- a nation.”<sup>27</sup>

The Commonwealth of Australia became a fully independent nation through the enactment of the Australia Act 1986 (Australia) and “...the Australia Act 1986 (U.K.) marked the end of the legal sovereignty of the Imperial Parliament and recognised that ultimate sovereignty resided in the Australian people.”<sup>28</sup>

The Commonwealth of Australia asserts its sovereignty and territory in the geographical location known as continental Australia and its surrounding islands, an assertion that initiated by the assertion of British sovereignty over the Australian continent.

“...the Australian Constitution came into force in 1901. That document created a new nation upon a continent that the British already regarded as their own... This of course represents the position under Australian law, of which the Constitution is the ultimate expression.”<sup>29</sup>

The Commonwealth of Australia is a legal international citizen created by the Australian Constitution to which individual humans can take membership.

## Citizenship is Membership

Citizenship in a legal contract of becoming a member of an international citizen or nation in which a human freely enters into a contract to be bound by the terms and conditions of citizenship of that particular international citizen, nation, or society.

The human is seen legally and politically through the person, and when they participate in the life of a State they are seen legally and politically through the citizen of that State.

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<sup>24</sup> Australian Capital Television Pty Ltd and New South Wales v Commonwealth - [1992] HCA 45

<sup>25</sup> Commonwealth of Australia Constitution Act 1901

<sup>26</sup> Hwang v The Commonwealth; Fu v The Commonwealth - [2005] HCA 66

<sup>27</sup> <http://electionspeeches.moadoph.gov.au/speeches/1903-alfred-deakin>

<sup>28</sup> Australian Capital Television Pty Ltd and New South Wales v Commonwealth - [1992] HCA 45

<sup>29</sup> Davis M., Williams G., Everything You Need To Know About The Referendum To Recognise Indigenous Australians.

“The Parliament recognises that Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians,... The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations...”<sup>30</sup>

This membership was never formally offered to the members of the numerous and continuing pre-colonial Aboriginal and Torres Strait Islander Nations.

**“Member-** One of the individuals of whom an organisation or a deliberative assembly consists, and enjoys the full rights of participating in the organisation.”<sup>31</sup>

Humans are neither the person nor the citizen but merely the holder of that person or citizen. That legal and political identity is created pursuant to the Births, Deaths, and Marriages Acts of the numerous States of the Commonwealth of Australia. Ultimately Australian citizenship is created pursuant to the Australian Constitution and remains the property of the Commonwealth of Australia. The human holds the person or citizen through contractual arrangement.

**“Contract-** A legally binding promise or agreement. A promise or agreement is not legally binding and enforceable as a contract unless the requirements for contract formation are satisfied, including consideration and certainty of agreement...<sup>3</sup> The act of entering into an agreement. <sup>4</sup> The form of document that embodies the terms of an agreement between parties.”<sup>32</sup>

It is the agreement of the contract of citizenship that empowers the parliament to make laws for the society in which citizenship is given.

**“Consensus facit legem-** agreement makes law. The rule that parties to a contract are legally bound to perform the obligations they have undertaken.”<sup>33</sup>

Essential components for any contract is that they are entered into freely, full disclosure given, clearly understood are the main elements of agreement that makes the contract binding and enforceable upon the human that entered into the contract.

**“Agreement-** The stage at which the negotiations between the parties are complete. The foundation of legal relations called ‘contract’ is the agreement of the parties. Conventionally, to establish agreement between the parties requires offer and

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<sup>30</sup> Australian Citizenship Act 2007

<sup>31</sup> Black’s Law Dictionary ninth edition

<sup>32</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

<sup>33</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

acceptance- namely, a clear indication by one party (the offeror) of a willingness to be bound by certain terms, accompanied by a communication by the other party (the offeree) to the offeror of an unqualified assent to that offer.”<sup>34</sup>

At no stage were the members of the Yidindji Nation offered the contractual arrangement to hold Australian citizenship in a manner they understood, full disclosure was never given and they did not enter into Australian citizenship freely. It was usually under duress or forced assimilation.

### Australian citizenship

Australian citizenship has been very clearly defined on many occasions. The High Court of Australia is routinely called upon to clarify this in relation to the Commonwealth of Australia

“The term "citizenship" has a number of diverse meanings, and an exhaustive definition is difficult – maybe impossible – to formulate. But in a legal context, it ordinarily defines the persons who are members of a particular community. It is therefore concerned with the legal status of those persons who are, temporarily or permanently, within that community. In many jurisdictions, citizenship automatically carries with it legal rights, privileges, immunities and duties. The Constitution itself recognises this in s 44(i) when it refers to any person who "is a subject or citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power".”<sup>35</sup>

Australian citizenship is the entry point to becoming a member of the Commonwealth of Australia and as a member of the Commonwealth of Australia the human agrees to be bound by the obligations of that membership.

“As the preamble to the Australian Citizenship Act shows, however, that Act is concerned only with the "formal membership of the community of the Commonwealth of Australia". The Australian Citizenship Act is not itself concerned with creating rights, privileges, immunities or duties. It creates a status upon which other federal legislation, or for that matter State legislation, may operate to confer or deny rights, privileges, immunities or duties.”<sup>36</sup>

All people who hold Australian citizenship are bound to uphold all Australian law and the laws of other Nations that the Commonwealth of Australia has agreements with. Australian citizens are required to protect the Commonwealth of Australia.

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<sup>34</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

<sup>35</sup> Hwang v The Commonwealth; Fu v The Commonwealth - [2005] HCA 66

<sup>36</sup> Hwang v The Commonwealth; Fu v The Commonwealth - [2005] HCA 66

## White Australia

Any society can decide who can become a member of that society based on certain criteria. At the time of creation the Commonwealth of Australia was established with an intention based on race, the 'White Australia'.

"...I laid special stress upon the white Australia policy of the Government... We want all the white people we can get who are fit to colonise."<sup>37</sup>

This policy was maintained for many decades after the federation process, "The Government stands uncompromisingly for the White Australia policy. The overwhelming majority of the people recognise that this policy is the basis of our national life..."<sup>38</sup>

The "White Australia" principle was best summed up by Prime Minister Curtin.

"Prime Minister John Curtin reinforced the philosophy of the 'White Australia' policy, saying 'This country shall remain forever the home of the descendants of those people who came here in peace in order to establish in the South Seas an outpost of the British race'."<sup>39</sup>

Australian Citizenship was denied to the Yidindji Nation from the outset of the Commonwealth of Australia, the members of the Yidindji Nation were considered neither white enough nor intelligent enough to be considered suitable to be a member of the Commonwealth of Australia. The members of the Yidindji Nation were never afforded the ability to accept or decline the offer of citizenship in their true and correct capacity as members of another separate and distinct society.

## Yidindji citizenship

The members of the Yidindji tribal society have through the creation of the Sovereign Yidindji Government enable its members to hold citizenship that is equivalent to that of the member states of the United Nations of which the Commonwealth of Australia is a member state. The enactment of the Yidindji Citizenship Act 2014 brought modern citizenship to the Yidindji Nation. For the original Yidindji tribal members to obtain citizenship by birth they require a Yidindji birth certificate pursuant to the Births, Deaths and Marriages Act 2014.

**"Oath of Allegiance-** Attestation of the inhabitants of a territory to be faithful and obedient to their sovereign or government. When territory is occupied by a

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<sup>37</sup> <http://electionspeches.moadoph.gov.au/speeches/1903-alfred-deakin>

<sup>38</sup> <http://electionspeches.moadoph.gov.au/speeches/1928-stanley-bruce>

<sup>39</sup> <https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/08abolition>

belligerent, the authority of the occupant is not sovereignty and the inhabitants do not owe it allegiance and may not be compelled to pledge allegiance to it”<sup>40</sup>

Yidindji citizens do not owe allegiance to the Commonwealth of Australia until there is some form of formal agreement or treaty granting the Commonwealth of Australia consent to be within the territory of the Yidindji Nation.

## Exclusion

The Yidindji nation was excluded from the very outset of the colonisation process, and this was further reinforced with the creation of the Commonwealth of Australia. The people were included in the preamble of the 1897 draft Australian Constitution, as an expression of its creators’ democratic ideals, however, “The ‘people’ referred to in the Australian Constitution of 1900 did not include Aboriginal and Torres Strait Islander people.”<sup>41</sup>.

“Even when Australia became a federation, Indigenous peoples were excluded from this moment of nation building... The Constitution as enacted was imbued with the belief that Aboriginal people were a dying race and that governments should be able to make laws restricting the rights of certain racial groups within the community.”<sup>42</sup>

This exclusion is brought about through legislation, for this reflects the ideals of a particular community which empower their parliamentary representatives.

The Commonwealth of Australia is no different from any other community or international citizen.

“...every sovereign country has the undoubted right to determine who shall enter the country and who shall constitute the political membership of the community of that country. That is to say, within the limits of its constitutional powers, every sovereign country has the right to determine who are its citizens and to declare by legislation what are the rights, privileges, immunities and duties of members of that community.”<sup>43</sup>

The Commonwealth of Australia actively excluded the members of the numerous Aboriginal Nations “No aboriginal native of Australia... shall be entitled to have his name placed on an Electoral Roll...”<sup>44</sup> due to the belief that Aboriginal people “Isaac Isaacs...have not the

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<sup>40</sup> Dictionary of International & Comparative Law 3<sup>rd</sup> edition

<sup>41</sup> Constitution for a Nation, National Archives of Australia

<sup>42</sup> Brennan S., Behrendt L., Strelein L., Williams G., Treaty

<sup>43</sup> Hwang v The Commonwealth; Fu v The Commonwealth - [2005] HCA 66

<sup>44</sup> Commonwealth Franchise Act 1902

intelligence, interest or capacity to vote; and H.B. Higgins, who thought it utterly inappropriate to ask them to exercise an intelligent vote.”<sup>45</sup>

The 1967 referendum remove the word ‘aboriginal’ from the Australian Constitution, however, “...the amendments deleted text from the Constitution without inserting anything in its place. They therefore left the Constitution silent with respect to Aboriginal people.”<sup>46</sup>

There have been attempts for Constitutional change to recognise the Aboriginal and Torres Strait Islander peoples. The enactment of the Aboriginal and Torres Strait Islander Peoples recognition Act 2013 further bolstered the position that the Aboriginal and Torres Strait Islander Peoples were excluded from the Commonwealth of Australia.

“The Parliament is committed to placing before the Australian people at a referendum a proposal for the constitutional recognition of Aboriginal and Torres Strait Islander peoples.”<sup>47</sup>

This meant that the Aboriginal and Torres Strait Islander peoples were not and still are not recognised in the Australian Constitution. Had the Aboriginal and Torres Strait Islander people’s nations, of which the Yidindji Nation is one, have been included from the beginning of the Commonwealth of Australia at federation this act would not need be enacted in 2013.

“The invisibility in Australian law of Indigenous legal systems persisted for seventy years after Federation...”<sup>48</sup>

This invisibility was best summed up by Prime Minister Turnbull “Recognising Indigenous Australians in the constitution will help a ‘great wrong’...A mistake when our constitution was framed over a century ago, that there was no acknowledgement ...of the Aboriginal history, of Australia”<sup>49</sup> The invisibility was due to the lack of a formal agreement or treaty and the exclusion of people based on race and colour.

The exclusion left multiple sovereignties within the same geographical location that the Commonwealth of Australia was claiming as its territory. The Hon Tony Abbott MHR in his speech to Parliament stated “We only have to look across the Tasman to see how it could have been done better. Thanks to the Treaty of Waitangi in New Zealand two peoples became one nation”<sup>50</sup> infers that the Commonwealth of Australia was not the unified singular nation

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<sup>45</sup> Williams G., Brennan S., Lynch A., Australian Constitutional Law and Theory 6<sup>th</sup> edition

<sup>46</sup> Williams G., Brennan S., Lynch A., Australian Constitutional Law and Theory 6<sup>th</sup> edition

<sup>47</sup> Aboriginal and Torres Strait Islander Peoples Recognition Act 2013

<sup>48</sup> Saunders C., Stone A., The Oxford Handbook of The Australian Constitution

<sup>49</sup> <http://www.theguardian.com/australia-news/2015/dec/14/ignoring-indigenous-australians-a-big-error-turnbull-tells-referendum-council>

<sup>50</sup> <http://www.liberal.org.au/latest-news/2013/02/13/tony-abbott-transcript-second-reading-speech-parliament-house>

present upon the so-called territory of the Commonwealth of Australia. This position of multiple sovereignties was clearly supported in 2017, "...sovereignty... co-exists with the sovereignty of the Crown"<sup>51</sup> with the release of the Uluru Statement from the Heart.

## UNDRIP

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was supported by the Commonwealth of Australia in April 2009. The Yidindji Nation were never party to the UNDRIP, but the Yidindji acknowledge that the Commonwealth of Australia accepted this document as the minimum standard to what the Indigenous Nations can do within their territories.

The UNDRIP was produced by the member states of the United Nations as the minimum standards for the member states when interacting with the indigenous peoples and indigenous nations. When reading the UNDRIP, it becomes clear that there are more societies than just those societies of the member states of the United Nations. This is none more evident than article 5 "...Indigenous peoples have...their...institutions, while retaining their right to participate fully, if they so choose, in the ...life of the State."<sup>52</sup> There is a very clear choice the indigenous people can make, their Nation or the member state of the United Nations. The Yidindji Nation are using the UNDRIP as a guide to establish the necessary institutions required for the peace, order and good governance of the Yidindji Territory and the necessary institutions to interact with the member states of the United Nations. The indigenous people has never been clearly defined by the United Nations, however the United Nations has developed a modern understanding of this term. Some of the key points are:

“Self-identification...and accepted by the community as their member.  
Historical continuity with pre-colonial and/ or pre-settler societies  
Resolve to maintain and reproduce their ancestors’ environments and systems as distinctive peoples and communities”<sup>53</sup>

The Yidindji Nation in accord with articles 3 "...self-determination..."<sup>54</sup>, 4 "...autonomy or self-government..."<sup>55</sup> and 5 "...strengthen their distinct political, legal, economic, social and cultural institutions..."<sup>56</sup> manifested and brought to life the Sovereign Yidindji Government.

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<sup>51</sup> Uluru Statement from the Heart 2017

<sup>52</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>53</sup> United Nations Permanent Forum on Indigenous Issues Fact Sheet "Who are indigenous peoples?"

<sup>54</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>55</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>56</sup> United Nations Declaration on the Rights of Indigenous Peoples

The interim government is building all the necessary departments of a modern democratic system of governance to interface with the Commonwealth of Australia and all other United Nation member states along with other indigenous nations.

The Yidindji Nation has a "...right to participate fully, if they so choose... in the life of the State"<sup>57</sup> in accord with article 5, it must be noted that there is a choice that can be made, and what would the situation be if the Yidindji Nation chooses not to participate in the life of the Commonwealth of Australia? The Commonwealth of Australia cannot force the Yidindji Nation to participate in the life of the Commonwealth of Australia as this would be forced assimilation, when article 8 states clearly "Indigenous peoples have the right not be subjected to forced assimilation..."<sup>58</sup>

The Yidindji Nation in accord with article 33 "...determine their own identity or membership..."<sup>59</sup> manifested and developed the Sovereign Yidindji Government to interface with the modern world, the Commonwealth of Australia and other member states of the United Nations. In doing so the Sovereign Yidindji Government developed the procedures of citizenship enabling tribal inhabitants to become members of the democratic Yidindji Nation subject to the Yidindji Constitution Act 2013.

## Uluru

The Uluru Statement from the Heart (the Uluru Statement) was released in May 2017 after a number of years of work by a Prime Ministerial handpicked panel of Australian constitutional and indigenous law experts.

The Uluru Statement made very clear that the Aboriginal and Torres Strait Islander peoples were nations in their own right, "...Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands..."<sup>60</sup>. It made very clear that those nations have been in occupation of the geographical location from a time that is far earlier than that of the Commonwealth of Australia, "...according to the common law from 'time immemorial', and according to science more than 60,000 years..."<sup>61</sup> It also makes clear that the Aboriginal and Torres Strait Islander Nations owned it under laws and customs that were neither British or Australian, "...possessed it under our own laws and customs."<sup>62</sup>

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<sup>57</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>58</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>59</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>60</sup> Uluru Statement from the Heart

<sup>61</sup> Uluru Statement from the Heart

<sup>62</sup> Uluru Statement from the Heart



However, and most importantly, it made very clear that the Aboriginal and Torres Strait Islander Nations possessed systems of law and custom that is recognised as sovereignty, and that sovereignty still exists, "...the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown."<sup>63</sup>

To understand the Uluru Statement a number of key words need to be comprehended, and the Yidindji Nation simply utilises the legal dictionaries of the modern western world, especially from Australian and the United States of America, to explain these words and its position. The Commonwealth of Australia utilises a number of maxims of law to maintain its authority in the geographical location, but when utilised by the Yidindji Nation, seriously undermines that Australian position, especially in light of what the Commonwealth of Australia commissioned by the best legal minds it could muster in the necessary fields of Australian constitutional and indigenous law.

The concept of sovereignty is normally elusive in the complex modern world, but it must be remembered that the Yidindji Nation is not Australian, it was excluded from participating in the life of the Commonwealth of Australia, and thus, the Yidindji Nation still retained its sovereignty.

**“Sovereignty-** The independence of a state; freedom from external interference in the conduct of a state’s affairs. Sovereignty is an attribute of statehood from which all the political powers of a state emanate. In law, it implies that there is no legally authorised human authority that is competent to regulate the state’s affairs.”<sup>64</sup>

It is this continuing sovereignty of the Yidindji Nation that has been acknowledged as having never been ceded or extinguished that empowered the Yidindji Nation to make laws for the peace, order and good governance in the territory of the Yidindji Nation. It is the very fact that the Yidindji Nation now know that the Commonwealth of Australia knows and recognises that the sovereignty of the Yidindji Nation is still there that has enabled the Yidindji Nation to move forward in advancing its assertion of sovereignty.

As a nation the Yidindji Nation is effectively a ‘sovereign state’ and through the manifestation of the Sovereign Yidindji Government in accord with modern practices is representing the Yidindji members in all affairs foreign to the Yidindji Nation.

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<sup>63</sup> Uluru Statement from the Heart

<sup>64</sup> Lexis Nexis Concise Australian Legal Dictionary 4<sup>th</sup> edition

**“Sovereign state-** An entity which has acquired the attributes of statehood under the *Montevideo Convention on the Rights and Duties of States 1933*: namely a defined territory, permanent population, an effective government, and the ability to enter into international relations”<sup>65</sup>

The Yidindji Nation was never a signatory to the Montevideo Convention, however, it utilises the convention as the required standards of a Nation and to enter into international relations. The Yidindji Nation has a defined territory that the Uluru Statement and numerous native title determinations acknowledges as being owned by a permanent Yidindji population that is governed by Yidindji laws and customs, the interim Sovereign Yidindji Government as its source of democratic governance for the peace order and good governance of the territory of the Yidindji Nation. Through the appointment of the Minister for Foreign Affairs and Trade, the Yidindji Nation has actively engaged the Commonwealth of Australia and other member states of the United Nations.

The Yidindji Nation has never ceded its sovereignty, for cession to take place there needs to have been concrete steps taken by both the Yidindji Nation and either the British Empire or the Commonwealth of Australia.

**“Cession-** Any transfer of sovereignty over territory or property from one state or government to another. For cession to be effective it must be carried out under treaty and there must be actual physical transfer and a taking possession by the recipient state.”<sup>66</sup>

There is no point in time that the British Empire or the Commonwealth of Australia can demonstrate where there has been a physical transfer of sovereignty from the Yidindji Nation with the free, prior, and informed consent of the Yidindji Nation.

The sovereignty of the Yidindji Nation was never extinguished by either the British Empire or the Commonwealth of Australia.

**“Extinguish-** To bring contractual rights or obligations to an end. Extinguishment may occur by the act of one or both of the parties concerned or by operation of law.”<sup>67</sup>

For extinguishment to occur there would have to have been a formal agreement or treaty in place, this simply never took place.

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<sup>65</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

<sup>66</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

<sup>67</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

“There has never been a moment in Australia’s history where a formal agreement has been made with Aboriginal and Torres Strait Islander peoples.”<sup>68</sup>

There was nothing between the British Empire, the Commonwealth of Australia and the Yidindji Nation to extinguish. The lack of a treaty is a fundamental flaw in the establishment of the Commonwealth of Australia. This flaw can only be remedied by the Aboriginal and Torres Strait Islander Nations.

The Uluru Statement describe the sovereignty of the Aboriginal and Torres Strait Islander nations as ‘co-existing’.

“**Co-exist-** to exist at the same time.”<sup>69</sup>

The sovereignty of the Commonwealth of Australia does not co-exist with itself, it co-exists with the sovereignty of the numerous Aboriginal and Torres Strait Islander Nations. For sovereignties to co-exist, the sovereignty of the Aboriginal and Torres Strait Islander Nations must be a similar nature to, if not equal to, the sovereignty of the Commonwealth of Australia. The sovereignty of the Yidindji Nation is equal to if not better than that of the Commonwealth of Australia and still exists.

This position of co-existing sovereignties without some form of power sharing or formal agreement leaves the Commonwealth of Australia in an untenable position. The Yidindji Nation has been acknowledged by the Commonwealth of Australia as being the true and correct owners of certain territory, what will the Commonwealth of Australia use to justify its position? The sovereignty of the Yidindji Nation still exists in all jurisdictions from Yidindji law through common law to Australian law.

“**Quod prius est verius, et quod prius est tempore potius est jure-** What is earlier is more genuine, and what is earlier in time is preferred in law”<sup>70</sup>

This is one maxim of law that the Commonwealth of Australia utilise against other possible societies that may want to govern within the Australian geographical location. The Uluru Statement confirmed that the Aboriginal and Torres Strait Islander Nations were in occupation well before the British colonies settled in their respective territories. This would mean that the laws and customs of the Aboriginal and Torres Strait Islander Nations, to which the Yidindji Nation is one of, would be the system of law and customs that are preferred in law. And, if this is the case, of which it is, then there is another maxim of law that the

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<sup>68</sup> Brennan S., Behrendt L., Strelein L., Williams G., Treaty

<sup>69</sup> Webster’s New Dictionary

<sup>70</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

Commonwealth of Australia utilise against incoming foreign nationals who do not hold the correct entry documents.

**“Qui in territorio meo est, etiam meus subditus est-** that which is in my territory is my subject; old rule of a state’s authority over persons and things found within its territory”<sup>71</sup>

This would make the citizens of the Commonwealth of Australia in the Yidindji Territory ‘boat people’.

**“Boat people-** An informal term used to refer to people arriving in Australia by boat without valid visas. The Migration Act 1958 use the terms ‘designated persons’, ‘offshore entry persons’ and ‘unlawful non-citizens’ for such people; as they are liable to detention and removal from Australia”<sup>72</sup>

This position was confirmed in an open letter from the Australian Greens Party to the Prime Minister in 2016 stating, “Aboriginal and Torres Strait Islander peoples were the first inhabitants, and they have an ongoing and unbroken connection and traditional ownership of this country. No treaty was ever made between Aboriginal and Torres Strait Islander peoples and European settlers, or as many people would call them, invaders. Sovereignty was never ceded.”<sup>73</sup>

Under the Yidindji Migration Act 2019 the citizens of the Commonwealth of Australia are unlawful non-citizens.

## Invitation or lack of

The authority that the Australian Constitution vests in the Australian Parliament, the Australian Government and all sectors of the Australian and State administrations cannot be forced upon nations, societies or peoples who were not and or still are not members of the Commonwealth of Australia, without their free, prior and informed consent. The Commonwealth of Australia and its citizens are foreign to the Yidindji Nation.

**“Pacta tertiis nec nocent nec prosunt-** agreements neither harm nor benefit third parties.”<sup>74</sup>

The parties to the agreement to federate and form the Commonwealth of Australia were the peoples mentioned in the preamble of the Commonwealth of Australia Act 1900, the Yidindji

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<sup>71</sup> Dictionary of International & Comparative Law 3<sup>rd</sup> edition

<sup>72</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

<sup>73</sup> Siewert R., Open Letter, February 2016

<sup>74</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

Nation was never one of those parties. The Yidindji Nation was never invited to participate in federation. The Yidindji Nation did not cede any of its sovereignty or authority.

As this is the case the members of the Yidindji Nation who are being seen legally and politically through the Yidindji citizen are not subject to or bound by the laws of the Commonwealth of Australia.

**“Extra territorium jus dicenti impune non paretur-** One who gives a judgment outside his jurisdiction is disobeyed with impunity. There is no punishment for disobeying.”<sup>75</sup>

The exclusion from participating in the life of the Commonwealth of Australia brought about the situation in which peoples within a particular location of the geographical continent Australia are not subject to the laws and authority of the Commonwealth of Australia can only be remedied through invitation.

The members of the Commonwealth of Australia must gauge whether they would like to allow the members of the Yidindji Nation to participate in the life of the Commonwealth of Australia, if they so choose’. Once they have determined that they would like to extend to the Yidindji Nation the offer to participate in the life of the Commonwealth of Australia, an official invitation must be offered to the Sovereign Yidindji Government. The Sovereign Yidindji Government will then place before all the Yidindji citizens, at a poll, if the offer should be accepted. Terms and conditions in that participation in the life of the Commonwealth of Australia will be determined should the Yidindji Nation choose to participate in the life of the Commonwealth of Australia.

## Treaty the remedy

The Commonwealth of Australia cannot cure the mistake it made in 1901. The Commonwealth of Australia “...recognises this land and its waters were settled as colonies without treaty or consent.”<sup>76</sup> The British Colonies were and the Commonwealth of Australia still is, intruders on the territories of the numerous Aboriginal and Torres Strait Islander Nations and that included the territory of the Yidindji Nation.

By simply including the Aboriginal people into the Commonwealth of Australia will not cure the mistake of the British or of the Commonwealth of Australia in 1901. There will always be some point in time where a descendant of one of the Aboriginal and Torres Strait Islander

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<sup>75</sup> Black’s Law Dictionary ninth edition

<sup>76</sup> Prime Minister John Howard, media release 11 May 2000

Nations will question the validity of the Commonwealth of Australia to make laws for the peace, order and good governance of the geographical location known as Australia.

The Federal Court of Australia has made it clear through numerous native title determinations that the Yidindji Nation possess "...traditional ownership of land, which ownership has existed since before European settlement..."<sup>77</sup> This infers that the Commonwealth of Australia possess neither ownership of the land nor the right convey rights and interests in that land.

**“Ownership-** The bundle of rights, allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable”<sup>78</sup>

The position of conveying land to Australian citizens is not justiciable if the Yidindji Nation possesses ownership of the land pursuant to a co-existing sovereignty to that of the Commonwealth of Australia.

**“Nemo dat quod non habet-** no person gives what he or she does not possess. A person cannot assign a greater interest than the interest possessed.”<sup>79</sup>

This raises the position of who is upon whose territory. Is the Yidindji Nation upon the territory of the Commonwealth of Australia or is it the Commonwealth of Australia that is upon the territory of the Yidindji Nation?

From a position in time and a combination of the consequences of colonialism and the ‘White Australia’ policy, it is the Commonwealth of Australia that are the intruders on the territory of the Yidindji Nation. Thus, the Commonwealth of Australia did not possess the necessities to convey interests in land to other persons. However, there are three remedies to the current situation, the first, and most beneficial to all citizens within the territory of the Yidindji Nation and especially so for the Australian citizens is through a formal agreement or treaty with the continuing pre-colonial Yidindji Nation. It is not the Commonwealth of Australia that can offer the formal agreement or treaty, it has to come from the continuing pre-colonial Yidindji Nation and all other continuing pre-colonial Aboriginal and Torres Strait Islander Nations of the geographical location known as Australia and surrounding islands.

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<sup>77</sup> Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039

<sup>78</sup> Black’s Law Dictionary ninth edition

<sup>79</sup> Lexis Nexus Concise Australian Legal Dictionary 4<sup>th</sup> edition

Secondly, if what is being negotiated through a treaty process is not satisfactory to the Commonwealth of Australia, the Commonwealth of Australia can decolonise and return along with its citizens to its homeland wherever that may be. Thirdly, the Commonwealth of Australia can in accordance with article 28, make "...redress, by means that can include restitution or, when that is not possible, just fair and equitable compensation, for the lands, territories and resources"<sup>80</sup> that were owned or occupied or used by the pre-colonial Yidindji Nation and which "...have been confiscated, taken, occupied, used or damaged without free, prior and informed consent"<sup>81</sup> of the Yidindji Nation. Should the Commonwealth of Australia choose the third option "...compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress."<sup>82</sup> The Commonwealth of Australia cannot give land of equal quality and size as it does not have anything of its own, and the Commonwealth of Australia cannot make monetary compensation with its fiat currency as it is of no value to the Yidindji Nation, and if it was of value is there enough money of long lasting value available to compensate all the pre-colonial Aboriginal and Torres Strait Islander Nations for what has been taken from them. The other point to consider in this option is one of who owns the territories at present. As the Federal Court of Australia through the numerous native title determinations stated, the Yidindji Nation are still the owners pursuant to the continuing pre-colonial Yidindji laws and customs, and as such have not lost its lands and territories. The Yidindji Nation is still the holder of the supreme sovereignty since a time before European colonisation. The only real and most suitable remedy for what has occurred, is a formal agreement or treaty between the Yidindji Nation and the Commonwealth of Australia, of which the Sovereign Yidindji Government has offered to the Commonwealth of Australia in August 2017, a memorandum of understanding for the initiation of joint development of a treaty.

### Treaty in capacity

A treaty appears to be the only solution to remedy the mistake that the Commonwealth of Australia made in 1901, however, for a treaty to be long lasting it has to be concluded between parties in the correct capacity.

**“Treaty-** An agreement formally signed, ratified, or adhered to between two nations or sovereigns; an international agreement concluded between two or more states”<sup>83</sup>

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<sup>80</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>81</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>82</sup> United Nations Declaration on the Rights of Indigenous Peoples

<sup>83</sup> Black's Law Dictionary ninth edition

The Sovereign Yidindji Government was created in part to be the representative body in the correct capacity for such negotiations. There has been much talk about ‘State based treaties’ within the Commonwealth of Australia, but these so-called treaties will be between a State of the Commonwealth of Australia and the citizens of that State.

“...state governments were free to use whatever term they liked...there status at law would not be that of treaties...were also free to refer to Aboriginal communities as nation but the mere use of those terms won’t make them treaties or a nation...state governments would never be able to make an instrument like a treaty...”<sup>84</sup>

For “These are treaties that do not bind, nations that in law will not exist and sovereignty that carries no authority.”<sup>85</sup>

State based treaties will not be between the co-existing sovereignties referred to in the Uluru Statement. The only way an Aboriginal or Torres Strait Islander Nation can enter into a treaty with the Commonwealth of Australia that is truly a treaty at law is by revitalising their pre-colonial nation similar to that of the Yidindji Nation through the sovereignty that was never ceded or extinguished and co-exists with that of the Commonwealth of Australia. It is through this sovereignty that the Commonwealth of Australia acknowledged the Yidindji Nation as possessing the ownership of land and resources in the territory of the Yidindji Nation.

It is paramount for the Commonwealth of Australia that the pre-colonial Aboriginal and Torres Strait Islander Nation treaty in the true and correct capacity.

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<sup>84</sup> <http://www.theaustralian.com.au/national-affairs/indigenous/indigenous-treaties-just-playing-games-with-words/news-story/434a6b8491935cf4e87c8677e93fb686>

<sup>85</sup> <http://www.theaustralian.com.au/opinion/columnists/greg-craven/false-promise-of-indigenous-treaty-could-derail-recognition/news-story/a831cb624f4e3f8dfa0c2c33cacd0530>



## Attachments

1



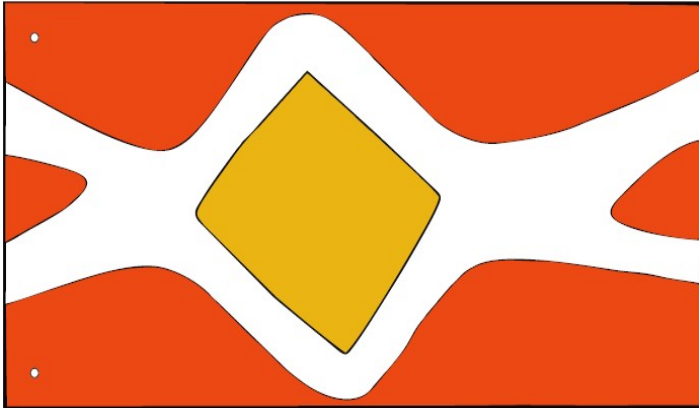
Territorial Map of the Yidindji Nation

2



The Sovereign Yidindji Government Coat of Arms

3



The Sovereign Yidindji Government Official Flag

4



Office of the Chief Minister

Sovereign Yidindji Government Department of Chief Minister Identifier

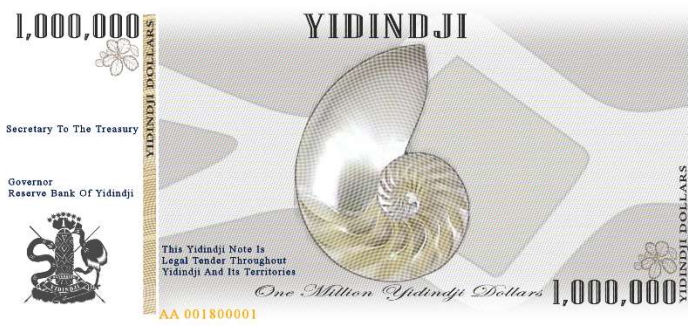


Sovereign Yidindji Government Department of Treasury Identifier



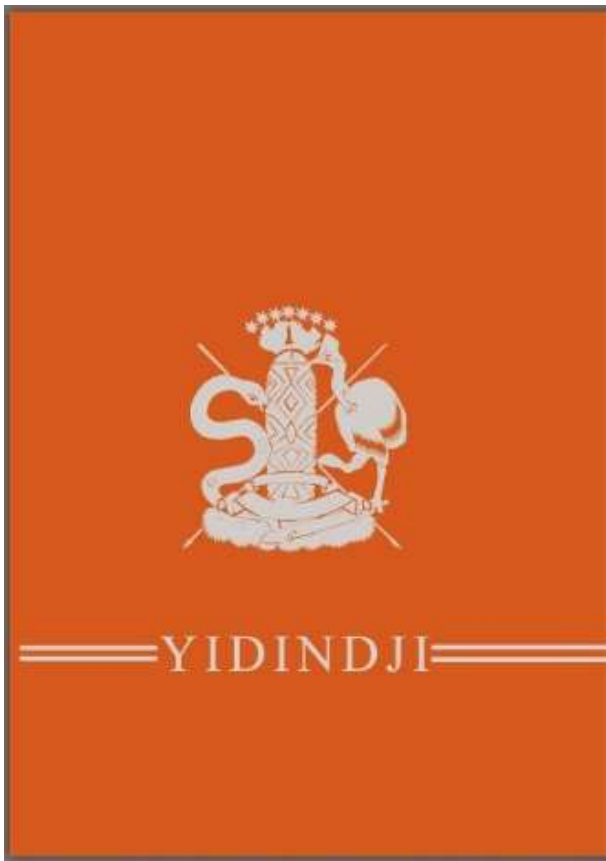
Sovereign Yidindji Government Department of Foreign Affairs and Trade Identifier

7



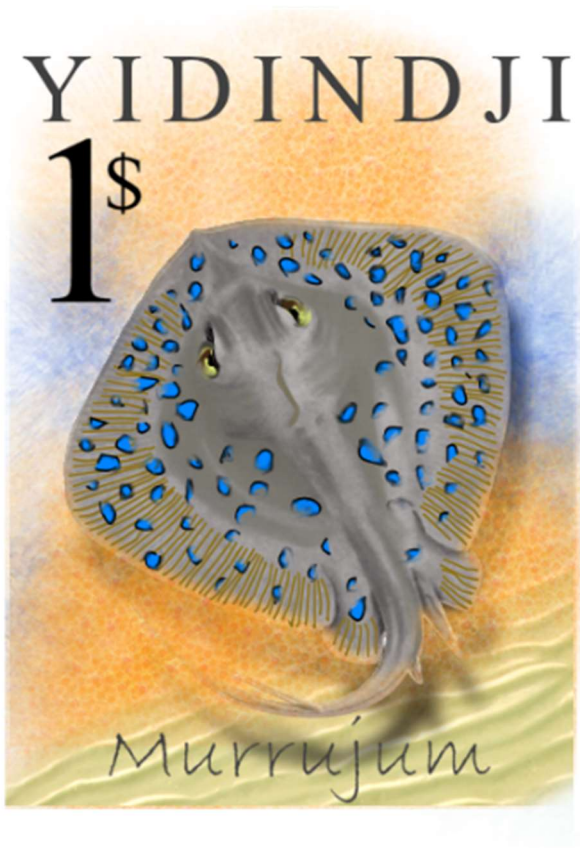
Legal Tender Note of the Sovereign Yidindji Government

8



Sovereign Yidindji Government Passport front cover design 1

9



Postal Stamp of the Sovereign Yidindji Government

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### Treaty- The Yidindji Way

Settling the Past, Securing the Future

The Basics

