

Indigenous Business Month Report

October 2022

Indigenous Business Month is an initiative and annual celebration that occurs from 1 to 31 October every year. 2022 marks the eighth year of celebrating Indigenous Business Month. It aims to inspire the next generation of business leaders by recognising the success of Indigenous entrepreneurs and businesses influencing the nation. The Melbourne Business School's MURRA Indigenous Business Master Class Program sees business as a vehicle towards self-determination, a way of providing positive role models for Indigenous Australians and improving quality of life in Indigenous communities.

2022 theme

The 2022 Theme for Indigenous Business Month is:
ACTIONS TODAY. IMPACT TOMORROW.



Indigenous Business Month collectively calls upon First Nations' business owners and their non-Indigenous allies to gather online and in community, to look at your actions today and how they will impact our tomorrow.

The Indigenous business sector has created opportunity and change in many communities across the country and is a testament to the resilience, strength, advocacy and determination of First Nations people. This year's theme acknowledges that the journey for many business owners is not linear, and the stories and experiences we share can play a key role in inspiring the next generation. What we say and do today in our communities could be the spark that inspires our businesses of tomorrow.

United Nations human rights protections

In 2007, the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples*. The Declaration is the most comprehensive international instrument on the rights of Indigenous peoples, establishing a universal framework of minimum standards for the survival, dignity and wellbeing of the world's Indigenous peoples that elaborates on existing human rights standards and fundamental freedoms. The Declaration is significant because Indigenous peoples, including Aboriginal and Torres Strait Islander peoples, were involved in its drafting. Under Article 3, Indigenous peoples have the right to self-determination and to freely pursue their economic, social and cultural development.

Under Principle 1 of the UN Global Compact, businesses should support and respect the protection of internationally proclaimed human rights. At Hall & Wilcox, we help to promote the right of self-determination through supporting First Nations.

How have we assisted Indigenous businesses?

Non-profit organisations such as Supply Nation aim to grow the Aboriginal and Torres Strait Islander business sector by promoting Indigenous businesses and supplier diversity in Australia. Their mission is to shape an inclusive economy and provide the largest national directory and database of Indigenous businesses, bringing together procurement teams of Australia's leading organisations to help them engage and create relationships with Indigenous businesses.

Indigenous businesses are a significant contributor to local, national and international economies. Collectively, Supply Nation registered Indigenous businesses earn more than \$1 billion per year with revenues growing by an average of 12.5% annually. The gross income for the sector in 2018 was \$4.88 billion.

As a firm, Hall & Wilcox joined Supply Nation and we engage in annual reporting to analyse and track the contributions we make in supporting Indigenous businesses.

'Including First Nations owned businesses in our supply chain complements the focus in our Reconciliation Action Plan to be the preferred legal adviser for First Nations owned small businesses'

– Nathan Kennedy

Reviewing Tier 1 (direct) and Tier 2 (third-party) expenditure, Hall & Wilcox has obtained supplies from and supported the following businesses in FY22:

- The Anna Centre Pty Ltd
- Career Trackers Indigenous Internship Programs
- Smoked Garage
- Aboriginal Carbon Foundation
- Aboriginal Employment Strategy
- West to West Indigenous Corporation
- Broome Regional Aboriginal Medical Service
- Cultural Choice
- Wellington Aboriginal Corporation Health
- Bendigo & District Aboriginal Corporation
- Anyinginyi Health Aboriginal Corporation

First Nations businesses Hall & Wilcox has included in our supply chain in FY22:

- Dreamtime Tukka
- SOBAH
- PAWA Catering and Events
- Waddi Spring Water
- Mt Yengo Wines

Client stories

Voice of Hope

Voice of Hope is a business run by four First Nations women. It aims to assist First Nations women who are or have been incarcerated, impacted by domestic violence and substance abuse and addiction, both inside the prison system and after release. Voice of Hope provides access to various economic, social and educational resources, including mentors to inspire healing and rehabilitation.

Some of the resources Voice of Hope provide include:

- enabling access to utilities and housing;
- conducting educational, vocational and networking workshops;
- conducting parenting support programs;
- raising awareness around domestic violence in Aboriginal communities;
- providing access to counselling services;
- conducting cultural programs to assist Aboriginal women to connect to their culture, identity, and family; and
- identifying and addressing issues to reduce recidivism, domestic violence, and addiction of Aboriginal women in the community.

Hall & Wilcox advised and assisted Voice of Hope in registering as a corporation with the Office of the Registrar of Indigenous Corporations (ORIC), pursuant to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). This included advising on pre-registration requirements, membership and directorship requirements and preparation of resolutions. We guided Voice of Hope in drafting their application for registration, Constitution and Rule Book, while taking primary responsibility for correspondence with the ORIC.

Voice of Hope was registered with the ORIC on 25 May 2022.

Indigenous entrepreneurs and businesses face many challenges that the mainstream business sector does not. These challenges include access to:

- equity and capital;
- business networks;
- skilled employees;
- reliable internet;
- reliable infrastructure;
- education and training; and
- resources.

Racial discrimination, alienation from community and language barriers remain primary social boundaries to Indigenous businesses obtaining equity.

Ngalaya Indigenous Corporation

Ngalaya (*nar-lee-ah*) is the peak training body for First Nations lawyers and law students in New South Wales and the Australian Capital Territory. The business conducts academic research to create and supply employment and workplace programs, alternative entry programs, community events, mentoring and coaching opportunities and Indigenous support service programs to aspiring lawmakers. These resources provide First Nations with the skills and support to pursue a career in law.

Ngalaya came to us seeking guidance regarding hiring a virtual assistant to work for the organisation remotely from the Philippines. Hall & Wilcox provided advice on the options available and risks involved in hiring a virtual assistant. Ngalaya's options were either to engage a virtual assistant directly as a contractor for an initial period of 12 months or engage the virtual assistant indirectly through a labour hire firm. Additionally, we advised Ngalaya on the employment obligations which may arise under Australian law if the virtual assistant is engaged as an independent contractor. This included highlighting the importance of accurately characterising the employment relationship under Australian law, due to the impact different employment relationships have on duties and obligations owed by the parties.

If the business chose to engage a paid employee, we advised on whether the *Fair Work Act 2009* (Cth) applied to Ngalaya, specifically, whether the organisation could fall within the definition of a 'national systems employer'. Finally, we provided insight on the potential reputational risks Ngalaya may face by engaging a worker located in the Philippines rather than Australia. We recommended Ngalaya raise our advice with the Board before progressing further.

Research shows every \$1 generated by an Indigenous-owned business delivers an average social return of \$4.41

The Deaf Indigenous Dance Group

The Deaf Indigenous Dance Group (DIDG) is an organisation that celebrates Aboriginal or Torres Strait Islanders who are deaf or hard of hearing. DIDG provides a safe space for people to come together, learn about and perform traditional and modern dances, explore art and creative industries and enhance communication through the use of sign languages. DIDG are hired to perform at many annual festivals and events in Australia, including NAIDOC Week and Laura Quinkan. They are sponsored by the Deaf Culture Council Queensland and Deaf Connect Australia. In 2021, DIDG partnered with the Pacific Centre for Photographic Arts to facilitate mixed media portraits of DIDG employees and members. The original A3 prints, along with audio interviews from the dancers were acquired by the State Library of Queensland, with all proceeds of the sale going to DIDG.

'First Nations people have a strong cultural connection to language, meaning those with hearing loss often experience high rates of loneliness, especially when they do not have other people around them who can understand and support them' – Sarah

Originally, we were approached by DIDG as they wanted to become an incorporated association in order to be eligible for Deductible Gift Recipient status. After consultations with DIDG, we advised them to instead apply to register as an Indigenous Corporation with the Office of the Registrar of Indigenous Corporations (ORIC). This advice considered commercial prospects for DIDG and broader fundraising considerations relevant to the organisation. To assist DIDG, we advised on the process for registration and drafted the documents required for making an application, including their Rule Book, which is the equivalent of a company constitution for an Indigenous Corporation.

DIDG filed their application with the ORIC in 2022.

Notwithstanding the forced closure of many businesses throughout COVID-19, the changed environment required and enabled many Indigenous organisations to be innovative in delivering products and services in new markets.

Client stories

Muru Mittigar

Muru Mittigar is a Dharug business that strives to make a significant, measurable and lasting difference in advancing Aboriginal culture. It seeks to promote a better understanding of Aboriginal culture in the wider community by creating jobs, developing workplace skills training and increasing employment opportunities for First Nations peoples. The business achieves this by providing quality contracting and consulting services to Government and businesses, in the land management, education and tourism industries.

Muru Mittigar approached us to conduct a review of a minor works contract, given to them by a property management company to complete landscaping works. We reviewed the proposed contract and identified and extensively described provisions which were particularly onerous or of significant risk to Muru Mittigar as the contractor. Additionally, we provided advice on lower order issues and obligations of the contractor.

Australia's First Nations business sector is growing at a pace of around 4% per year. It is fuelled by growing demand, however, many budding First Nations entrepreneurs continue to face substantial barriers in establishing successful businesses. The primary concern: access to financial, social and economic support.

Kirra's story

Kirra is a member of an Indigenous community who shared cultural knowledge with a company for the purpose of the commercialisation of various products and services in accordance with Aboriginal customs. An advisory board consisting of Indigenous community members was established for the purpose of ongoing consultation in relation to the use of the cultural knowledge.

Kirra approached us after the business was subsequently sold. Following the sale of the business, consultation with the advisory board ceased and the cultural knowledge was used in an inappropriate and unapproved manner. Notwithstanding this, the new owner continued to make representations regarding the involvement of the advisory board, which Kirra considered to be false and misleading.

We advised Kirra on potential intellectual property protections, in relation to cultural knowledge and other written materials. This involved providing an overview of the intellectual property landscape and the present shortcomings in the recognition and protection of cultural knowledge. Additionally, we wrote to the new business owner on behalf of Kirra regarding the misleading representations.

Kirra subsequently set up her own business and we assisted her with trade mark searches and intellectual property advice for the new brand.



