Pierre Petit-De Pasquale
Standards Director
Initiative for Responsible Mining Assurance

Via email: pdepasquale@responsiblemining.net

21 October 2025

Dear Mr Petit-De Pasquale,

Standard for Responsible Exploration, Extraction, and Processing of Minerals V2.0

The National Native Title Council (**NNTC**) is pleased to provide the following commentary on the *DRAFT IRMA Standard for Responsible Exploration, Extraction, and Processing of Minerals v2.0* (**Standard v2**).

The NNTC is the peak body for Australian First Nations corporations, representing those First Nations communities with statutory land and cultural rights. It supports and advocates for First Nations people's right to true self-determination, including their rights to:

- speak for and manage their own Country,
- govern their own communities,
- participate fully in decision-making, and
- self-determine their own social, cultural and economic development.

The NNTC works closely with Traditional Owners, government, and industry partners to support and strengthen native title rights by changes to law, policy and best practice. We understand the deep complexities of native title, shaped by a history in which Australia's laws and policies excluded First Nations people from their lands and decision-making. While the native title system has returned some rights and country to First Nations people, much more needs to be done to achieve genuine equity and recognition.

To this end, we are keen to continue to be an active member of the Initiative for Responsible Mining Assurance (**IRMA**), as its *Standard for Responsible Exploration, Extraction, and Processing of Minerals* (**Standard**) requires the highest level of compliance with Free, Prior and Informed Consent (**FPIC**).

Continuing to manage best practice regulation, in March 2025 IRMA published a targeted exploration of FPIC, in the *IRMA Standard for Responsible Mining 1.0 - Supplementary Guidance on Indigenous Peoples and Free, Prior, and Informed Consent (FPIC) Version 1.0* (**FPIC Guidance**). Subsequently, in July it released a Standard v2 for a 90-day consultation period. Relevantly, chapter 3.6 on Cultural Heritage is of critical interest for First Nations communities.

To fully engage with the impact of mining on First Nations communities' rights, this submission will address both the Standard v2 and FPIC Guidance together. In doing so, the full provision for implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (**UNDRIP**)[1] can be explored through the assertion of:

- Collective cultural rights management and decision making,
- Inclusive and representative institutions,
- Appropriate recognition of the principles of free, prior and informed consent,
- Ownership and appropriate management of data and materials.

Consideration of the following commentary will contribute to IRMA realising the highest possible benchmark for acknowledgement First Nations Peoples' rights and responsibilities.

1 Collective Cultural Land and other Natural Resources Rights

First Nations cultural, land and other natural resources rights are, necessarily, collectively owned. A key element of collective rights is the nature of the collectivity.

The UNDRIP utilises the concept of 'collective rights'. These are rights held by 'indigenous communities themselves' and not by 'individuals in community with others'. Throughout UNDRIP, the distinction between the rights of "Indigenous peoples" (collective rights) and "Indigenous individuals" is highlighted.

To take the example of collective cultural rights; individuals can enjoy the culture of their society and contribute to it. However, culture itself can only exist as a community construct. It can be said that only a society (community) can give rise to laws and customs. The same is even more true of culture. Language, dance, and art only have meaning in a social context. Whilst access to culture can be a right held by an individual, the rights inherent in that culture must be held collectively.

In the jurisprudence emanating from Committee on Economic, Social and Cultural Rights (**CESR**), regarding the right of everyone to take part in cultural life, there is reference to the 'community or group'. This supports collective participation and ownership approach to cultural rights detailed in the UNDRIP.

A similar theoretical construct underpins the collective rights of Indigenous Peoples to their traditional lands and other natural resources. Whatever the allocation of rights that takes places within a community of Indigenous Peoples, the international legal recognition of these rights arises through the jurisprudential recognition of the community as that of an Indigenous Peoples, distinct from the dominant nation state.

Now that collective ownership of rights has been established, consultation and decision making on use of those collective rights necessarily is considered.

[1] United Nations, *Declaration on the Rights of Indigenous Peoples* ('UNDRIP'), 2007.

In all contexts the identification of an affected community as (at least a section of) an Indigenous Peoples is an essential initial step in the process of the human rights assessment associated with any project. It is consequent upon this initial step that various subsequent actions flow. Significant amongst these is the identification of the relevant mechanism for a proponent to engage with an identified Indigenous Peoples.

In the case of rights in respect of cultural heritage, an additional step is required subsequent to identification of the mechanism for engagement. This step involves the formation of consensus as to what materials constitute relevant cultural heritage.

The balance of this submission explores the principles and processes around these steps.

2 Representative Institutions

Article 18 of UNDRIP provides for 'the right to participate in decision making in matter which would affect their rights through representatives chosen by themselves in accordance with their own procedures…'.[2] Therefore, we see that a collectively held right to culture, and therefore ownership of that cultural knowledge, is 'managed' by collectively determined representatives of the Traditional community.

We note that the Standard v2 requires consultation regarding representative and inclusive Indigenous decision-making structures.[3] Whilst existing Australian statute provides clear identification of these structures, it is not always as practicable in other jurisdictions. That said however, it is important to stress that even within an Australian context there will often be those individual community members outside the representative institution system who seek to be involved. Returning to an understanding of cultural rights being collectively owned, they can only legitimately be managed through a representative institution. In Australia, that includes those considered as Traditional Owner Representative Institutions (**TORI**).

Under existing Australian law there is an extensive range of Traditional Owner organisations that satisfy the representative requirements of UNDRIP Article 18. The Prescribed Body Corporates (**PBCs**) and Native Title Representative Bodies (**NTRBs**) established under the *Native Title Act 1993* (Cth) (***NT Act***) are two examples of these. However Traditional Owner organisations established under other legislation, such as the Victorian Registered Aboriginal Parties under the *Aboriginal Heritage Act 2006* (Vic) (***VAH Act***) or Tasmanian Aboriginal Land Council under the *Aboriginal Lands Act 1995* (Tas), provide further examples

Utilisation of the system of recognised TORIs must be a central feature of the proposed legislation. The existence and recognition of TORIs is essential to give effect to the collective rights, including the right self-determination, land rights and the right to protect and enjoy cultural heritage.

[2] Ibid UNDRIP, 15-16.
[3] Ibid Standard v2, 2.2, 172-290.

Where there is no relevant TORI, a mechanism can be developed to provide advice on who the appropriate Traditional Owners are to engage with. Currently, structures for appropriate recognition of collective rights holding institutions, like that described above, are being considered under commonwealth environmental and cultural heritage reforms. Particularly, in regard to a proposed First Nations Engagement and Participation in Decision Making Standard.

The processes around application of these principles in a broader global context, under the IRMA Standard, are considered in section 4 ("competent professionals") below.

2.3 Rightsholders

Concerningly, the definition of First Nations rightsholders (necessarily broadly defined to include Indigenous Peoples and communities across the globe) is not reliant on self-determined and representative decision-making bodies. Whilst it acknowledges Article 33 of UNDRIP,[4] and the right of Indigenous Peoples 'to determine their own identity or membership based on their own customs, traditions, and decision making'; it also provides for other 'characteristics that may be determinant of whether a community or group is Indigenous'. The Guidance identifies that 'formal / government recognition is not a prerequisite nor a limitation', creating confusion as to whether the representative institutions under UNDRIP have equal rights in consultation as individuals.

The Standard v2 specifically undermines this understanding of an UNDRIP representative institution as holding the collective decision-making rights for cultural heritage consent. It does so through the process for scoping and establishment of baseline data requiring:

- identification of any Indigenous Peoples and/or others who may have rights associated with the potentially affected cultural heritage (hereafter collectively referred to as 'rights-holders');
- identification of other stakeholders who may have an interest in the potentially affected cultural heritage; and
- consultations with relevant rights-holders and to inform the identification of cultural heritage and determination of potential risks and impacts to identified cultural heritage.[5]

It is assumed at 1.2.4.4 that the reference only to stakeholder engagement processes means that rightsholders, including Indigenous Peoples, are not included. If this is an erroneous assumption, the processes detailed below contravene UNDRIP article 18.

> When stakeholder engagement processes depend substantially on community representatives speaking for the community:
>
> a. Efforts are made by the ENTITY to confirm whether or not such people represent the views and interests of diverse affected community members including underserved and/or marginalized people, and can be relied upon to reliably communicate relevant information between the community and the ENTITY;

[4] Ibid Guidance, 12.
[5] Ibid Standard v2, 3.6.1.1/2, 386.

b. If either the representatives are not considered to represent the views of the community including underserved and/or marginalized people, or information from the engagement processes are not flowing back to the community, then the ENTITY implements additional engagement processes to enable more meaningful input from and information sharing with the broader community; and
c. These additional engagement processes identify how their effectiveness will be monitored and evaluated.[6]

The identification of the rightsholders' representative institution is the entity with which consultation should occur, not other stakeholders or individual rightsholders. Similarly, Monitoring and Evaluation requires that the proponent 'collaborates with affected rightsholders and stakeholders, and custodians of cultural heritage'.[7]

It is important that such representative institutions are required and articulated throughout both the Standard v2 and the FPIC Guidance.

3 Free, Prior and Informed Consent

As the concept of FPIC is established most comprehensively in UNDRIP, it should be included as a Key Reference.

The Standard v2 Critical Requirement that proponents pursue proposed activities **only if they have obtained the free, prior, and informed consent** of affected Indigenous Peoples[8] is a strong reflection of the UNDRIP principle.

The clear statement of an expectation to fund engagement processes with communities (at 2.2.4.4 of the Standard v2)[9] is welcomed, however should be included across the Standard v2.[10] Ideally, the more explicit requirements pertaining to remedy for impacts from projects without FPIC before June 2018 should be used throughout:

> The ENTITY provides funding to affected Indigenous Peoples, in a manner agreed to by them, to select and hire technical and/or legal advisors of their own choosing to support them during this mutually-agreed remedy process (or equivalent).[11]

Also supported is the critical requirement that, regarding FPIC, that Indigenous Peoples own engagement protocols must be followed.[12]

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[6] IRMA Standard v2, 47.
[7] Ibid Standard v2, 390.
[8] Ibid Standard v2, 2.2.6.3, 191.
[9] 'Design and implement plans, in the manner preferred by Indigenous Peoples, to address any identified capacity, accessibility, and financial needs, including through the provision of funding and/or other financial support to affected Indigenous Peoples in a manner agreed to by them'. Ibid, Standard v2, 187.
[10] Eg. at 1.2.5 Strengthening Capacity to Engage. Ibid, Standard v2, 48.
[11] Ibid, Standard v2, 2.2.5.1, 188.
[12] Ibid, Standard v2, 2.2.4.1, 186.

4 Operationalising the Standard - The Role of "Competent Professionals"

As suggested earlier, the process of identification of relevant Indigenous Peoples is fundamental in the initial human rights mapping and due diligence processes. Similarly, the processes around identification of cultural heritage materials and the rightsholders of these materials are also central to these processes.

To turn first to the processes around identification of Indigenous Peoples. The IRMA materials use a modern and inclusive understanding of "Indigenous". This means that proponents should not limit their effort, engagement, and review, to groups and individuals "officially" or "legally" recognised or self-recognized as "Indigenous Peoples" (i.e. with this terminology). "Indigenous Peoples" can include any group or individual recognized, or self-recognised, as Tribal Peoples, Tribes, First Peoples, First Nations, Aboriginals, Ethnic Groups, Adivasi, Janajati, and any relevant local or national denomination that may be in use.[13]

In the Australian context, a clear definition of rights holders is provided through the *NT Act* and jurisdictional legislation, like the *VAH Act* and Northern Territory *Aboriginal Land Rights Act* (1976).

It is acknowledged however that the IRMA standard and associated guidance are documents of global application and are required to give guidance to proponents in a diverse range of jurisdictions. In many of these, resolution of the question of status as "Indigenous Peoples" may not be as straightforward as under Australian legislative arrangements.

In the revised standard this process is seen as commencing with the steps described at 1.2.1.1. which provides as follows:

> A process has been conducted and documented by competent professionals to identify and map all affected and potentially-affected relevant rights-holders and stakeholders (referred to as "**affected rights-holders and stakeholders**" throughout the Standard) (underlined emphasis added).

Section 1.2.1.1 (at d and e) goes on to make clear this process includes identification of relevant Indigenous Peoples.

Section 1.3.2.2 (within Chapter 1.3 Human Rights Due Diligence) provides further guidance on the human rights identification process as it pertains to Indigenous Peoples. It provides in relevant part as follows:

> Building on Chapter 1.2, a scoping process (or equivalent) is undertaken by competent professionals, at the level of the site, to specifically identify and map the rights of all

[13] Initiative for Responsible Mining Assurance, *IRMA Standard for Responsible Mining 1.0– Supplementary Guidance on Indigenous Peoples and Free, Prior, and Informed Consent (FPIC) (Version 1.0)* ('Guidance'), (Initiative for Responsible Mining Assurance: 2025), 4.

> **Indigenous** rights-holders potentially affected by the site and its associated facilities. This process:
>
> a. Builds on the stakeholder scoping process required in Section 1.2.1, to identify and map all distinct groups of Indigenous Peoples whose traditionally owned, occupied, or otherwise used or acquired lands, territories, and resources have been or may be affected directly or indirectly by the site and its associated facilities;
>
> b. Includes consultations with relevant Indigenous Peoples' organizations or bodies, if they exist, and external experts and credible independent sources of information to determine if there are any potentially affected Indigenous Peoples who have not been identified by the ENTITY
>
> (underlined emphasis added).

Clearly in both these identified steps the role of the "competent professionals" is critical. It is the "competent professionals" that undertake the identification process from which the other processes of the Standard are triggered.

Similarly, if one turns to the Cultural Heritage provisions of Chapter 3.6, the role of the "competent professionals" is again fundamental. In section 3.6.1.1 we are advised they undertake and document "a screening process (or equivalent)" …"to identify and understand the cultural heritage context of the operation".

The cultural heritage role of the "competent professionals" extends to identification of the Indigenous Peoples relevant to particular cultural heritage, the impacts of new or amended activities identification of critical and non-critical heritage and (in consultation with affected stake holders) developing mitigation plans. The list of functions continues.

Given the critical centrality of the competent professionals, the nature of the concept as it appears in the IRMA standard is warranted. A first point to note is that at times within the Standard v2 guidance as to the processes to be adopted by "competent professionals" is provided. For example, footnotes 76-78 of Chapter 1.3 provide suggestions as to the sources of information regarding identification of relevant Indigenous peoples. Similarly with respect to footnotes 764 – 768 of Chapter 3.6.

However, it must be accepted that the direction provided in these references is general and 'high-level'. This brings attention to the concept of the "competent professionals". The term is defined in the Standard v2 Glossary as follows:

> In-house staff or external consultants with relevant education, knowledge, proven experience, and necessary skills and training to carry out the required work. Competent professionals would be expected to follow scientifically robust methodologies that would withstand scrutiny by other professionals. Other equivalent terms used may include: competent person, qualified person, qualified professional.

Given the centrality of the concept of "competent professionals" the brevity and generality of the definition, as well as aspects of its content, are notable. Of particular note is that the "competent professionals" may be directly employed by the ENTITY. Irrespective of this apparent inherent conflict of interest, is the more fundamental issue of the need to ensure the veracity of the "competent professionals" processes.

To illustrate this point by again referencing 1.3.2.2., this provides that (in part) "a scoping process (or equivalent) is undertaken by competent professionals, at the level of the site, to specifically identify and map the rights of all **Indigenous** rights-holders potentially affected by the site". The obligation on the ENTITY thus is to have people "relevant education, knowledge, proven experience, and necessary skills and training" to carry out the scoping process upon which rests all of the ENTITY's subsequent obligations to Indigenous Peoples.

It is assumed that, as this is the sole obligation of the ENTITY, the obligation on the subsequent auditor is then to ensure that the ENTITY has performed its obligation. Adherence to the Standard is dependent simply upon engagement of appropriate "competent professionals", not the outcomes of the work of these professionals.

Viewed in this light the fundamental dependence of the operation of the Standard on the concept of "competent professionals" and the limitations around confirming the veracity of the work of the "competent professionals" becomes apparent.

This point goes to both the integrity of the operation of the Standard and its potential inconsistency with aspects of international human rights law. It is the "competent professionals" who are determining who are relevant Indigenous Peoples. It is the "competent professionals" who are determining what are the components of those Indigenous People's cultural heritage and what weight attaches to it. These outcomes are far divorced from the principles of self-determination that IRMA seeks to support.

The fundamental point is that it is the "competent professionals" who determine access to the human rights regime that the Standard seeks to enshrine. The "competent professionals" thus became an arbiter not merely a specialist advisor.

In some mitigation of this conclusion are the terms of the FPIC Guidance. This document provides (at p 8)

> Auditors should consider the documentation and evidence provided by the mine in response to these related requirements; in some cases there will also be an expectation to verify information and experiences directly with Indigenous rightsholders or other knowledgeable stakeholders during the execution of the audit.

This provision of the FPIC Guidance becomes crucial. It suggests that (on occasions) auditors look beyond the **fact** of relevant reports prepared by "competent professionals" to also examine the **content** of the relevant reports. However, this suggestion noted, it is also clear that such examination of content is not mandated. Consideration of "the documentation and evidence provided by the mine" could be satisfied simply by the tabling the relevant report without an auditor forming a view on the comprehensiveness or veracity of that report. The suggestion of verification of the content of the report directly with (presumably asserted) Indigenous rights holders or "knowledgeable stakeholders" (a highly ambiguous term) is important. However, it is clearly stated as an occasional obligation.

It is submitted that to overcome the identified potential deficiency in the Standard, regarding ensuring the veracity of the work of "competent professionals", the provisions of the FPIC Guidance should be made obligatory in all cases. In all cases, the auditor should be required to review and express a view of the adequacy of relevant reports of "competent professionals". This view should be supported by direct engagement with all identified Indigenous Peoples (whether ultimately designated "affected" or not). Clearly, this additional obligation will involve additional cost. However, in current circumstances, this cost is a necessary aspect of ensuring the integrity of the Standard.

In the future development of the processes of the Standard, as it applies to Indigenous Peoples, the NNTC would submit that the IRMA board consider the establishment of an ongoing Indigenous Peoples' mechanism within IRMA that would facilitate the development of Indigenous led processes of assurance verification

5 Data Sovereignty

The Standard v2 identifies the requirements for stakeholder mapping and analysis more broadly. Such mapping includes Indigenous Peoples, and stakeholders and rightsholders. As such, the provisions at 1.2.1.2 for analysis of community and stakeholder dynamics includes Indigenous communities. Such analysis of these communities is both continuing the damage of colonial ownership of Indigenous peoples' whole lives and offensive to their rights to autonomy. This is due to the intrusive nature of the process that:

a. Has analyzed the relative interests and influence of each category/group of affected rightsholders and stakeholders with regard to the site and its associated facilities;
b. Has analyzed gendered roles and power dynamics within households and communities;
c. Has analyzed the implications of these relative interests, influence, gendered roles, and power dynamics for inclusive engagement; and
d. Included evaluation of pre-existing community dynamics, to understand if other natural resource-related projects/operations have created oppositions, tensions, and/or divisions, and if the ENTITY's activities may create, or has created, intra-community, inter-community or interpersonal tensions, divisions or conflicts that warrant special engagement strategies.[14]

Regarding collection and distribution of information provided by First Nations representative institutions, it is essential that they retain control of this Traditional Knowledge. Article 31 of UNDRIP protects Fist Nations Peoples rights to maintain, control, protect and develop their Traditional Knowledge. Contrary to this, the Strategy v2 requires that a proponent,

> makes and maintains publicly accessible, and proactively shares with affected rightsholders and stakeholders:
>
> a. Summary versions and key findings of cultural heritage scoping, damage assessment, and risk and impact assessment processes;
> b. Summary versions and key findings of cultural heritage management plan, including specific measures for cultural heritage of Indigenous Peoples (if

[14] Ibid Standard v2, 1.2.1.2, 44.

applicable), and an annual update on the progress made to implement the plan; and

c. Information on the cultural heritage features within the project/operation's area of influence and any significant new understanding is proactively shared with stakeholders and the general public to raise awareness about, and appreciation of, the value of these features.[15]

Consideration of the rights of First Nations Peoples to their Traditional Knowledge - its management, storage and reproduction; is critical.

Conclusion

We commend IRMA for the Standard v2 and, not previously addressed, the inclusion of:

- requirement for contemporary remediation of previously undertaken and unsatisfactory remediation regarding cultural heritage,
- critical requirements for FPIC, regarding impacted cultural heritage,
- requirement for mutual agreement on the fair and equitable sharing of benefits, and
- introduction of a new aspirational and forward-looking IRMA+ category.

The NNTC believes the suggestions contained in this submission regarding the processes of verification of the work of "competent professionals" would constitute a significant improvement in the operationalisation of the Standard. They would also serve as a valuable foundation for the ongoing development of IRMA and affected Indigenous communities globally.

The NNTC are committed to supporting IRMA maintain a robust Standard, with protection of First Nations Peoples' rights and responsibilities at its heart. To realise this, we have commented on a number of areas that should be strengthened to implement UNDRIP, including:

- Collective cultural rights management and decision making,
- Inclusive and representative institutions,
- Appropriate recognition of the principles of free, prior and informed consent,
- Ownership and appropriate management of data and materials.

It is important that these conversations continue. The NNTC looks forward to continuing to work with IRMA on the Standard, it's Guidelines and subsequent materials.

Regards,

Jamie Lowe
CEO

[15] Ibid Standard v2, 3.6.8.1 390.

19B/513 Hay Street
Subiaco WA 6008
info@nntc.com.au
nntc.com.au