

The Community Guide to the
UN Declaration
on the Rights of Indigenous Peoples



“Strong Cultures, Proud People”



Australian
Human Rights
Commission

everyone, everywhere, everyday



NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES



The existence of human rights standards is not the source of Indigenous disadvantage. Human rights do not dispossess Indigenous peoples, they do not marginalise them, they do not cause their poverty, and they do not cause gaps in life expectancy and life outcomes. It is the denial of rights that is a large contributor to these things. The value of human rights is not in their existence; it is in their implementation. That is the challenge for the world and for Australia with this Declaration.

(Mick Dodson)¹

Background

In September 2007, after over 20 years of negotiation by governments and Indigenous peoples from around the world, the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration).

The Declaration is significant because Indigenous peoples, including Aboriginal and Torres Strait Islanders, were involved in drafting it.

At the time the United Nations adopted the Declaration, Australia was one of four countries to vote against it, the others being Canada, New Zealand and the United States of America. However, on 3 April 2009, the Australian Government reversed its position to give formal support to the Declaration.

The Declaration is the most significant achievement in the protection of Indigenous peoples' rights at the international level.

It is sourced from existing international human rights and it will inform how these rights apply to Indigenous peoples.

The Declaration is a positive document that maps out a path for Indigenous peoples to be free from discrimination and secure in our identities and life choices.

Resetting relationships

One of the main themes in the Declaration is the importance of resetting the relationships between Indigenous peoples, the broader community and governments. The Declaration provides guidance to achieve this. It maps out the key signposts to create an Australia where our rights and cultural differences are valued, protected and seen as a positive part of Australian culture and society.

Statement to the UN General Assembly: Les Malezer

Les Malezer is a Gubbi Gubbi and Butchulla man from north Queensland. He was the Chair of the Global Indigenous Caucus when the Declaration was adopted by the UN General Assembly. Les had the honour of addressing the General Assembly on behalf of the Indigenous peoples of the world.

This is part of what he said:

The adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations marks a momentous and historic occasion for both Indigenous Peoples and the United Nations... Today's adoption of the Declaration occurs because the United Nations and the Indigenous Peoples have found the common will to achieve this outcome. The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples. It is a Declaration which combines our views and interests and which sets the framework for the future. It is a tool for peace and justice, based upon mutual recognition and mutual respect.²



Les Malezer



What's in the Declaration

As an international instrument, the Declaration provides a blueprint for Indigenous peoples and governments around the world, based on the principles of self-determination and participation, to respect the rights and roles of Indigenous peoples within society. It is the instrument that contains the minimum standards for the survival, dignity and well-being of Indigenous peoples all over the world.

(Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner)³

The Declaration can be divided up into sections that deal with its different themes:

The preamble

The preamble sets the scene for the Declaration. It makes some key points about the purpose of the Declaration:

- The Declaration was created to address the wrongs of the past that continue to affect Indigenous peoples' lives today.
- The United Nations and international law have an important role in protecting the rights of Indigenous peoples.
- Everyone is equally entitled to human rights. Indigenous peoples have not always been able to enjoy human rights.
- The rights in the Declaration should guide the creation of a new relationship with governments based on partnership and mutual respect.

The preamble is clear that the Declaration sets out standards to improve the circumstances of Indigenous peoples and to address disadvantage and discrimination.

Paragraph 18 of the Declaration's preamble.

[The General Assembly of the United Nations is] Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples...



Foundational rights (articles 1–6)



The Declaration's foundational rights confirm that we have both collective rights and rights to be treated equally without discrimination including:

- The right to enjoy all human rights that all other individuals and groups can enjoy.
- The right to self-determination and to determine our political status and our development paths.
- The right to have our own institutions and to have self-government.
- The right to participate in Australian public life and be a citizen of Australia.

Self-determination

Self-determination is a central right of the Declaration. It is a right that distinct groups of people have. All other rights in the Declaration help to achieve self-determination. Self-determination means that as a collective:

1. We should have a **choice** in determining how our lives are governed.
2. We should be able to **participate** in decisions that affect us.
3. We should have **control** over our lives and development.

Exercising the right to self-determination means we have the **freedom to live well and to live according to our values and beliefs.**⁴





The underlying principles of the Declaration are about participation, engagement and consultation. In the absence of a treaty or constitutional recognition, the Declaration will become the primary basis upon which indigenous peoples conduct their affairs with the state – however, it is not a replacement for a treaty or constitutional recognition (Megan Davis).⁵



Life and security (articles 7–10)

These rights protect our basic needs including:

- The right to life, security and liberty.
- The right to be free from genocide, forced assimilation and the destruction of our culture.
- The right to live as a collective in our groups.
- The right to not be forcibly removed from our country without our consent.

Language, cultural and spiritual identity (articles 11–13)

Culture is important to our peoples. These rights protect our cultures and identities. This means we have:

- The right to practice and revitalise our cultures and to have our cultural property protected.
- The right to our religious and spiritual traditions.
- The right to our languages, histories and ways of thinking about the world.

Education, information and employment (articles 14–17)

Education, information and employment rights will empower our communities. We have:

- The right to access the same standards of education as all other Australians.
- The right to culturally appropriate education in our own language.
- The right to ensure that media and public information reflects our cultures and our diversity in a dignified way.
- The right to the same employment rights as other Australians.



Participation, development and economic and social rights (articles 18–24)

Participation, development and economic and social rights ensure we can control our future, including:

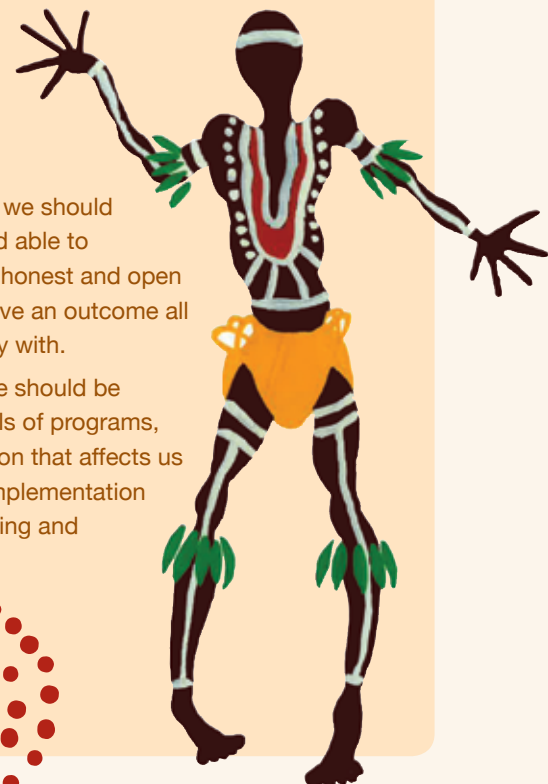
- The right to participate in decisions that affect us. This should be guided by and include the principle of free, prior and informed consent.
- The right to decide how we develop politically, economically and socially.
- The right to improved economic and social conditions, with extra assistance for people who are additionally vulnerable, like elders, women and children.
- The right to the same standard of health as other Australians. We also have the right to use our traditional health practices.

Free, prior and informed consent

Our free, prior, and informed consent is to be given before any major decision is taken that affects us.

- **Free** means no force or bullying.
- **Prior** means that we should be consulted before the activity or project begins.
- **Informed** means we should be given all the information in a manner we understand.
- **Consent** means we should be consulted and able to participate in an honest and open process to achieve an outcome all parties are happy with.

This means that we should be engaged in all levels of programs, policy and legislation that affects us from design and implementation through to monitoring and evaluation.



Rights to country, resources and our knowledge

(articles 25–32)

Rights to country, resources and our knowledge are important to our peoples because they form major parts of our identities and cultures and they are central to our systems of governance. We have:

- Rights to maintain and strengthen our spiritual connection to country.
- Rights to control, own and develop our country.
- The right to ensure that governments develop systems for the legal recognition and protection of our country.
- Where we no longer possess our country, we have the right to have this addressed through some form of compensation.
- Rights to the protection of the environment on our country.
- The right of protection of our cultural heritage and traditional knowledge.
- The right to determine how and if our country is developed.

Self-governance

(articles 33–37)

Self-governance rights expand on how the rights to self-determination and self-government can operate. These include:

- The right to determine our identities, the membership of our groups and our responsibilities to our groups.
- The right to develop and maintain our own institutions, laws and customs.
- The right to maintain relationships with people outside Australia.
- The right to have treaties and agreements respected and recognised.

Implementing the Declaration

(articles 38–42)

The Declaration is clear that action should be taken to make sure that Indigenous peoples can realise the rights in the Declaration.

- Governments should work with our peoples to achieve the goals of the Declaration. They should promote the Declaration and take action to see that these rights are exercised in practice.
- We have a right to assistance to ensure we can enjoy the rights in the Declaration.
- We have a right to the establishment of a fair process to resolve disputes about our rights and provide remedies for violations.
- The international community should promote respect for the Declaration and follow up on its implementation.

Professor James Anaya, the United Nations Special Rapporteur on the rights of Indigenous peoples, visited Australia in August 2009. In his report he noted that despite some recent advances, Australia's legal and policy landscape must be reformed. He recommended:

The Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration.

The Government should pursue constitutional or other effective legal recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples in a manner that would provide long-term security for these rights.⁶

We can lobby all levels of government to implement the recommendations of the Special Rapporteur.

Interpreting the Declaration (articles 43–46)

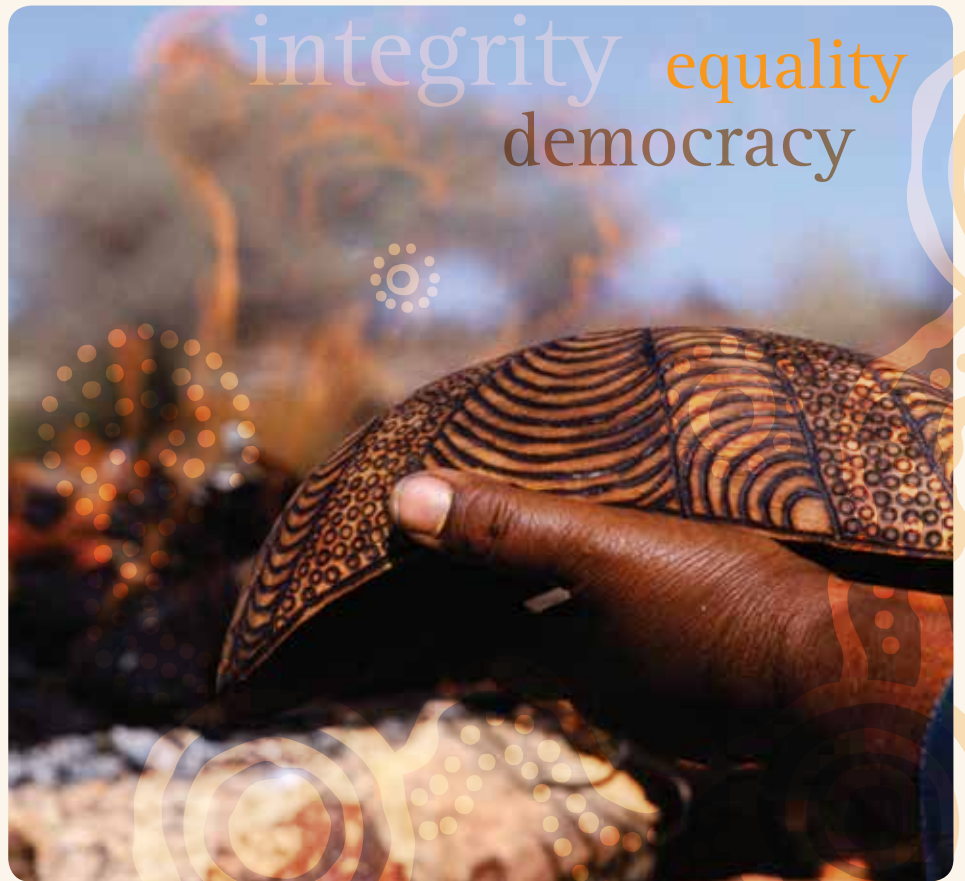
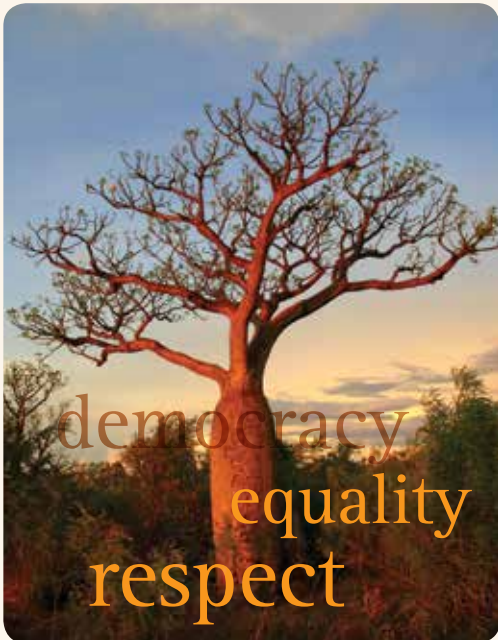
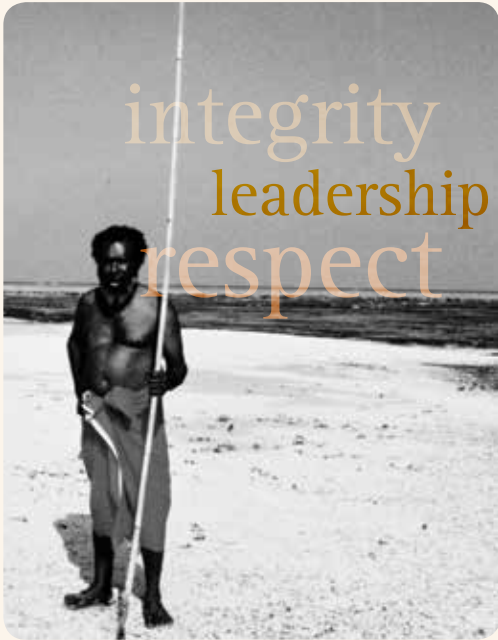
The Declaration provides the following guidance on how the rights contained within it should be interpreted:

- The rights in the Declaration are the minimum standards to ensure the survival, dignity and well-being of our peoples.
- All the rights in the Declaration apply equally to men and women.
- The Declaration is to be interpreted consistently with the Charter of the United Nations.
- In exercising our rights, the rights of all people should be respected.

The rights in the Declaration are to be interpreted based on:

- justice
- democracy
- respect for human rights
- equality and non-discrimination
- good governance
- good faith.





Using the Declaration for Change

Australia's support of the Declaration does not make it law in Australia. However, we can use the Declaration to lobby for reforms to laws, policies and programs to ensure they are consistent with the standards in the Declaration.

Four factors give the Declaration weight in influencing law and policy reform:

1. It is sourced from existing international human rights law.
2. It is widely supported by both governments and Indigenous peoples globally.
3. It is the result of a democratic and open process.
4. The language used is similar to a treaty.

One of the best ways we can use the Declaration is simply by using the language of rights when talking about issues in our communities. Using the Declaration reminds governments at all levels of our rights.

I think people should use the Declaration at every opportunity. If you are writing to government quote articles of the Declaration. If you're involved in health quote the health articles, if you are involved in native title or land rights quote the lands, territories and resources articles, if you are in education quote the articles about education and language. If you are on about political organisation talk about self-determination and our right to be autonomous and govern ourselves. For any aspect of Aboriginal or Torres Strait Islander life there is something in the Declaration that you can use and utilise to reinforce your arguments and what you and your mob are trying to do (Mick Dodson).⁷

We can also use the Declaration in more formal ways, by:

- Using it to guide the development and strengthening of relationships with government, the broader Australian community and within Aboriginal and Torres Strait Islander communities.
- Using it to guide the development and implementation of government policies and programs.
- Adopting the standards in the Declaration in policy statements or guidelines within our own organisations.
- Using it in submissions to government.
- Referring to it in lobbying those who represent us at all levels of government.
- Referring to it in court matters including native title, cultural heritage and issues around access to justice.
- Using it in media campaigns.

As an Aboriginal or Torres Strait Islander person, the rights in the Declaration are your rights, make them matter!

“Using the Declaration will breathe life into it!”



How to make a complaint

Not all of the rights in the Declaration are protected under Australian law and when a right in the Declaration is violated there is not always a remedy available.

If you feel you have been discriminated against or your human rights have been violated, contact the Australian Human Rights Commission. You can call the Commission on **1300 656 419** (cost of a local call) and staff can:

- talk with you about whether what happened to you may be covered by the law
- explain how you can make a complaint about what happened
- explain how we will deal with your complaint and what might happen as a result of your complaint
- give you information about other people that may be able to help you if we can't.

You can also get in touch with the Commission by email complaintsinfo@humanrights.gov.au or by **SMS 0488 744 487 (0488 RIGHTS)**

More information about making a complaint is available at http://www.humanrights.gov.au/complaints_information/index.html.

Other Declaration materials

The Australian Human Rights Commission has also produced a **poster** and a more detailed community guide to the Declaration.

The poster provides the actual text of the Declaration.

The **community guide** is a reference tool with case studies and suggestions to encourage thinking and talking about the Declaration and to help you to use the Declaration to protect your rights.

To obtain these materials see <http://www.humanrights.gov.au>

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Notes

- ¹ M Dodson, 'Foreword' in Amnesty International Australia, *United Nations Declaration on the Rights of Indigenous Peoples* (2010) 3.
- ² L Malezer, *Statement by the Chairman, Global Indigenous Caucus*, (Speech delivered at the 61st Session of the UN General Assembly, New York, 13 September 2007).
- ³ M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Aboriginal and Torres Strait Islander peoples access to services*, (Speech delivered at QCOSS Regional Conference: Building a Better Future, Cairns, 12 August 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100812_access_services.html (viewed 1 September 2010).
- ⁴ E Daes, 'Striving for self-determination for Indigenous peoples' in Y Kly and D Kly (eds), *In pursuit of the right to self-determination* (2000), p 58.
- ⁵ M Davis, 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples' (2008) 9 *Melbourne Journal of International Law* 439, p 470.
- ⁶ Human Rights Council, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Situation of indigenous peoples in Australia UN Doc A/HRC/15/37Add.4 (2010), para 74-75. At <http://unsr.jamesanaya.org/PDFs/Australia%20Report%20EN.pdf> (viewed 1 September 2010).
- ⁷ Interview with Australian Human Rights Commission, 27 May 2010.

