



## WATCHING BRIEF 24-1: THE RIGHTS OF INDIGENOUS PEOPLE

*As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government, we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.*

February 2024

*This Brief covers the moves being made in Australia to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).*

### **Background**

In October 2023, Australians voted to reject a proposal for an Indigenous Voice to Parliament to be included in the Australian Constitution. This followed months of a divisive public debate, confusion about the nature of the proposal, and a sense of great disappointment for many First Nations people. There is now a move to build momentum for the full implementation within Australia's legal and political system of the principles of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). There is a feeling that this approach may help embed the vision that was in the original Statement from the Heart which led to the Referendum proposal.

### **The Declaration**

It took 20 years of intense negotiation to achieve the Declaration's approval by the General Assembly in 2007. Several Australian Indigenous leaders played an important role in this process – Les Malezer (Gubbi Gubbi/Butchulla), Mick Dodson (Yarawu), and Megan Davis (Cobble Cobble). The Declaration lists human rights that Indigenous peoples have under international law, including self-determination, rights to language, culture and lands, and non-discrimination. The vote for the Declaration was 143 in favour, 11 abstentions, and 4 rejections (including Australia, Canada, New Zealand and the US). Australia finally endorsed the Declaration in 2009 during the Labor Government's term. However no steps have been taken to include the principles in legislation, despite strong support among Indigenous communities.

## Parliamentary Action

The Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs has worked over several years to find a way forward. In November 2023, its report was released. It examined the methods used by Canada and New Zealand in implementing the Declaration, and explored legislative and non-legislative options. The Chair of the Committee, Senator Pat Dodson, introduced the report and drew attention to the commitment made by signatories to UNDRIP to adopt the Declaration in a spirit of partnership and mutual respect, engaging meaningfully with the rights of Indigenous Australians. He explained that this could be done by incorporating UNDRIP in Australia's human rights scrutiny legislation, through a national action plan, and greater education about history. He spoke of the report as representing a vehicle for navigating Indigenous issues in the wake of the Referendum result.

Wayne Atkinson and Kevin Bell (*The Conversation*, 15 January 2024) have analysed the report and made the following points:

- The majority of members of the Committee (ALP, Greens, Independents) supported implementation of the Declaration, and the minority from the Coalition dissented. Senator Lidia Thorpe supported the majority but went further, seeking the enshrinement of the Declaration in legislation (a position rejected by Parliament).
- The Committee sees its recommendations being positive for business, land rights, social services and culture. They should also assist truth-telling and treaty-making.
- The report adopts a flexible approach, emphasizing the value of negotiation between Indigenous Australians and government on the basis of self-determination as a basic principle. Report goes beyond The Voice by addressing housing, health, work and freedom from discrimination.

**See the Appendix below for the list of recommendations from the report.**

The Law Council of Australia had previously supported moves to enshrine UNDRIP. In a media release on 8 July 2022 the Council said:

“Aboriginal and Torres Strait Islander peoples have been subject to colonisation, dispossession, discrimination, marginalisation, and significant breaches of human rights across multiple areas, historically and in contemporary Australia, not least in the protection of cultural heritage and land rights and in the treatment of persons in contact with the criminal justice and child protection systems. The practices and impacts of colonisation continue in the present day. The Law Council considers the UNDRIP as foundational to addressing this state of affairs”.

June Oscar, Social Justice Commissioner in the Australian Human Rights Commission, wrote on 13 September 21:

Under the declaration, our rights to education, health, housing and other basic needs essential to a life well lived are understood as inextricable from our rights to self-determination, participation in decision-making, respect for and protection of culture, and equality and non-discrimination. The declaration affirms our rights to make our own decisions, to control our own organisations, to put in place governance bodies grounded in our culture, and to restore our societal and cultural structures, practices and knowledge systems, to emancipate ourselves from the inequalities

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On July 24, 2017, almost a decade after the adoption of the declaration by the UN General Assembly, Australia put forward an ultimately successful bid for a seat on the Human Rights Council for a three-year term. In this statement, the Australian government pledged to "support the Declaration on the Rights of Indigenous Peoples in both word and deed, including the promotion of the declaration's principles through national engagement", which would "draw connections between national activity and the principles of the declaration". While the declaration was mentioned only once up to 2017, and only once again since, in any of our prime ministers' Closing the Gap reports, it is pleasing to see that with the new Partnership Agreement on Closing the Gap coming into force, the declaration is covered in detail in some state Closing the Gap Implementation Plans.

This is a welcome development, but it is merely a starting point. While all four countries who voted against the declaration in 2007 have been more or less inert with respect to implementation over the past decade, this is now changing rapidly. (Canada and New Zealand have moved to develop action plans). Incorporating UNDRIP into the structures of this nation - its laws, policies and institutions - would be a strong commitment from all Australian governments to working in genuine partnership with First Nations people to respond to our needs and aspirations.

Like the Uluru Statement, like the calls from First Nations women and girls in my *Wiyi Yani U Thangani (Women's Voices)* report, the declaration is a beacon that can guide us on our way to reconciliation and to a better and fairer future. Together, we can become that Australia. The first step would be for the Australian government to commit to a co-design process with First Nations people to progress implementation of the declaration in Australia.

## **Possible Action**

**The tabling of the Joint Committee report provides an opportunity for Friends to urge MPs and Senators to support the recommendations** for positive steps to incorporate UNDRIP into Australia's legal and political system. Friends can use the information in this Brief to let their own political representatives know the value and importance of making this change.

Canberra, January 2024

## Appendix: List of recommendations

### [Recommendation 1](#)

4.100The Committee recommends that the Commonwealth Government ensure its approach to developing legislation and policy on matters relating to Aboriginal and Torres Strait Islander people (including, but not limited to, Closing the Gap initiatives) be consistent with the Articles outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

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## [Recommendation 2](#)

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4.101 The Committee recommends development of a National Action Plan, in consultation with Aboriginal and Torres Strait Islander peoples, that outlines the approach to implementing the United Nations Declaration on the Rights of Indigenous Peoples in Australia.

## [Recommendation 3](#)

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4.102 The Committee recommends that any National Action Plan should consider the legislative, policy, and other approaches to implement, and assess compliance with, the United Nations Declaration on the Rights of Indigenous Peoples across all jurisdictions and should seek to include coordination agreements with all levels of government to maximise success.

## [Recommendation 4](#)

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4.103 The Committee recommends that the Commonwealth Government establish an independent process of truth-telling and agreement making, as requested by Aboriginal and Torres Strait Islander peoples, as a mechanism to support healing and assist implementation of the United Nations Declaration on the Rights of Indigenous Peoples (particularly Articles 3, 8, 11, 28, 32, and 37).

## [Recommendation 5](#)

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4.104 The Committee recommends that the Commonwealth Government work with State and Territory Governments and non-government education institutions to develop and adopt content for all levels of education, including for new citizens, in order to enhance awareness of:

Australia's human rights framework, including the relationship between the United Nations Declaration on the Rights of Indigenous Peoples and human rights covenants,

Australian history in respect to the relevance of the legal fiction of 'terra nullius' in facilitating the colonisation and settlement of Australia, and its impact on Aboriginal and Torres Strait Islander peoples, and

General civics awareness, including the functions and operations of Australian political and legal institutions.

## [Recommendation 6](#)

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4.105 The Committee recommends that the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) be amended to include the United Nations Declaration on the Rights of Indigenous Peoples in the definition of 'human rights', so that it be formally considered by the Parliamentary Joint Committee on Human Rights when scrutinising legislation.