



Inquiry into the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

ACTU Submission, 18 August 2023
ACTU D. No 37/2023

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Introduction

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTU has heeded the call from Aboriginal & Torres Strait Islander peoples for the union movement's support for a Voice to Parliament. Australian Unions support the Uluru Statement from the Heart (hereafter, 'Uluru Statement'), and Voice is the next step in that process. The implementation of the Uluru Statement is key to supporting the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia.

UNDRIP

UNDRIP was adopted by the UN General Assembly in 2007 and was formally endorsed by Australia in 2009. UNDRIP is the most comprehensive international instrument on the rights of Indigenous peoples. It is particularly significant because Indigenous peoples, including Aboriginal and Torres Strait Islander peoples, were involved in its drafting. UNDRIP is based on the principle of self-determination for First Nations peoples, which is the concept that indigenous peoples should have control over the decisions that are made about their lives. UNDRIP establishes a framework of minimum standards for the survival, dignity and wellbeing of Indigenous peoples. Although Australia has endorsed UNDRIP, the rights set out in UNDRIP have not been comprehensively adopted in national law and practice.

The Uluru Statement from the Heart and UNDRIP

The Uluru Statement was made at the First Nations National Constitutional Convention in May 2017. This started the movement for Voice, Treaty and Truth, aiming for "the establishment of a First Nations Voice enshrined in the Constitution", and a "Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about First Nations history."¹ The Uluru Statement makes it clear that Australia is failing to meet the standards set out in UNDRIP.

¹ *Uluru Statement from the Heart*, <https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>

The Uluru Statement calls for the establishment of a Voice to Parliament to be enshrined in the Constitution, which would provide First Nations peoples with a mechanism to have a say on matters that impact them. Enshrining the Voice in the constitution would move Australia closer to the standards in UNDRIP, for instance Article 18 states that Indigenous peoples have the right to participate in decision-making matters which would affect their rights and to strengthen their own decision-making structures, and Article 19 entails the general duty for States consult with Indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.²

Recognising Aboriginal and Torres Strait Islander peoples and enshrining a Voice to Parliament in the Australian Constitution would be the first step in realising the right to self-determination – which is a fundamental principle of UNDRIP. The Voice would enable Aboriginal and Torres Strait Islander peoples to have a greater role in discussions that impact their communities, which would support better health, education, and employment outcomes and Australia’s other obligations under UNDRIP.

After the Voice is established, the Australian Government should give priority to developing a national action plan in consultation with Aboriginal and Torres Strait Islander peoples to comprehensively implementing UNDRIP, and consideration should be given to ratification of ILO Convention 169, as a key international standard on indigenous peoples’ rights in the world of work.

Recommendation 1: Australia implement the Uluru Statement from the Heart to support the application of UNDRIP.

ILO Indigenous and Tribal Peoples Convention (No. 169)

ILO Convention 169 on Indigenous and Tribal Peoples was adopted in 1989 and is the only legally binding international instrument dealing explicitly with Indigenous peoples’ rights. The Convention

² *United Nations Declaration on the Rights of Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

represents the consensus view of the ILO's tripartite constituents: governments, employers, and workers representatives. The Convention sets out the rights of Indigenous and Tribal peoples and the responsibilities of governments to protect these rights, and its provisions complement UNDRIP. Consultation and participation are cornerstones of Convention 169 and are reflected in many of its provisions – although it does not go as far as UNDRIP in additionally calling for 'free, prior, and informed consent'. The Convention covers a wide range of issues pertaining to Indigenous peoples, including employment and vocational training, education, health and social security, customary law, traditional institutions, languages, religious beliefs and cross-border cooperation.

Unlike UNDRIP, ILO Convention 169 is an international treaty that becomes legally binding on States through ratification. Ratifying States have an obligation to implement the Convention in both law and practice and ensure that Indigenous peoples are consulted and can participate in the process. ILO Conventions are backed by a supervisory system that is unique at the international level that helps to ensure countries implement the conventions they ratify. The ILO regularly examines the application of International Labour Standards in ILO Member States and observations in this regard by employer and worker organisations and points out where they can be better applied.

Australia has not ratified the ILO Convention 169; the ACTU recommends the Australian Government ratify the Convention as a complementary measure to implementing UNDRIP.

Recommendation 2: Australia ratify ILO Convention 169 on Indigenous and Tribal Peoples.

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