

United Nations Declaration on the Rights of Indigenous Peoples

Instrument Details

Category	It is an instrument of less than treaty status
Objective	
Obligations	The Declaration, which was adopted by the United Nations General Assembly (UNGA) during its 61st session on 13 September 2007, is not legally binding on states.
(Multilat): why necessary for Australia to become a party	While Australia voted against the Declaration in 2007 under the previous Government, the Rudd Government has committed to supporting the Declaration. The only procedure for adoption of the Declaration is by consensus or vote at the UNGA, which has already occurred meaning Australia is now not able to 'sign on to' or 'ratify' the Declaration. States can, however, indicate their post-vote support for the Declaration.
(Multilat): Coordinating Institution/ web address	The Department of Families, Housing, Community Services and Indigenous Affairs is the lead Commonwealth agency on the Declaration and coordinated Australia's negotiations, and is coordinating domestic consultations, on the Declaration.
	Reports and documents from the Working Group on the Declaration, (the principal negotiating forum) can be found at: http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm

Status and Timing

- The Declaration was adopted at the First Session (29 June 2006) of the United Nations Human Rights Council (HRC), and subsequently adopted on 13 September 2007, during the UNGA's 61st session by a vote of: 143 for – 4 against (Australia, US, Canada and NZ) – and 11 abstentions.

Negotiation Details

- The UN Working Group on the Declaration was established in 1995 to compose a Draft Declaration (based on a draft prepared by the Working Group on Indigenous Populations) for consideration and adoption by the UNGA during the First International Decade of the World's Indigenous People (which ended in 2004). Eleven meetings were held up until 2005, to reach agreement on a text. Following the last session of the Working Group the Chair issued a revised text (the Chair's text).
- On 29 June 2006, the UN Human Rights Council adopted the Chair's text. Comprehensive detail, including the text of the declaration as adopted, is available at:
<http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm>

- Australia is not a member of the Human Rights Council and was unable to vote on the adoption of the text. However, a joint statement, expressing concern about the adoption of the text, was tabled by Australia, New Zealand and the US and is available at: <http://www.geneva.mission.gov.au/gene/statements.html>
- In October and November 2006, the Draft Declaration was debated in the UNGA's Third Committee. The Government of New Zealand delivered a statement outlining the concerns of New Zealand, Australia and the US. The General Assembly, by vote, agreed to the need for further consultations before the Draft Declaration's final consideration, to take place before the end of the General Assembly's 61st session (September 2007).
- In early June 2007, the Philippines Permanent Representative to the United Nations in New York was appointed Moderator of further consultations on the Draft Declaration, to conclude by mid-July 2007. The Moderator conducted regional group and plenary consultations with interested states, and also met with the Indigenous Caucus. In mid-July the Moderator reported to the President of the General Assembly (PGA), recommending a limited re-opening of the Draft Declaration text, to allow states' key concerns to be addressed, with a view to achieving its adoption by consensus at UNGA. The PGA however, did not pursue this recommendation.
- The Declaration was finally put to a vote during the Plenary of the 61st session of the UNGA on 13 September 2007 and voted through, although not by consensus (see above under 'status and timing').
-

Consultation with states and territories

- After the Rudd Government committed to supporting the Declaration in late 2007, the Australian Government proceeded to consult the states and territories on the implications of Australia's support for the Declaration, on jurisdictions' existing legislation and government policy. This was facilitated through the SCOT channel, with the first request for feedback sent to all states and territories in March 2008. The deadline for responses has passed and to date we have received responses from seven states and territories with that from the Northern Territory still outstanding.
- In addition the Commonwealth has consulted with the States and Territories in the past, through meetings and workshops, through the Standing Committee of Attorneys-General, as well as through the SCOT process. Representatives from WA and the NT have also been involved and have attended many Working Group meetings as part of the Australian delegation.

Issues arising from Negotiations

- Australia has had in the past some concern for certain aspects

contained in articles of the Declaration. Key concerns include the use of the concepts of 'self-determination'; and 'free, prior and informed consent'; and the articles dealing with lands and resources and intellectual property rights. Concerns along these lines have been expressed by some States in the recent round of consultations and will be taken into account in the Australian Government consideration of its statement of support for the Declaration.

Impacts/Implementation Issues

- While non-binding at international law, adoption of the text by the Human Rights Council and ultimately by UNGA in September 2007 enhances the status of the Declaration, and Australia can expect aspects of the Declaration to begin to be used in countries' domestic policy agendas. There are already examples of its use in litigation, thereby emphasizing the need for a carefully worded interpretive statement which outlines how Australia will read and interpret the Declaration domestically.
- The timing and circumstances of an Australian statement are yet to be determined.

Commonwealth Agency Contact(s)

Mr Greg Roche, Branch Manager, Portfolio Governance Branch, Department of Families, Housing, Community Services and Indigenous Affairs,
Ph: (02) 6121 4630, Email: greg.roche@fahcsia.gov.au

DATE: 8 October 2008