

15 December 2023

Position Statement

Human Rights



Vision

VACCHO seeks a Victoria, and Australia, where Aboriginal and Torres Strait Islander peoples freely determine their political status and freely pursue their economic, social and cultural development. The adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) into Australian and Victorian law, policy and practice, will help build a nation that truly recognises Indigenous peoples' rights to self-determination, celebrates their participation in decision-making, has a respect for and promotes its First Nations' culture.

The implementation of the rights outlined by UNDRIP would guarantee accountability and afford tangible legal rights to Aboriginal communities thereby delivering tangible and lasting benefits for Aboriginal and Torres Strait Islander people.

Recommendations

RECOMMENDATION 1: The Australian and Victorian Governments must comprehensively and formally adopt the UNDRIP recognising and protecting the rights of Aboriginal and Torres Strait Islander people into legislation, policy frameworks and government practices.

RECOMMENDATION 2: The Australian and Victorian Governments must work with Aboriginal Community Controlled Organisations to develop an implementation and action plan for domestic application of the UNDRIP.

It is integral that implementation of these recommendations is undertaken with reference to Indigenous experiences and self-determination relevant to Australian Aboriginal and Torres Strait Islander people.

Background and evidence

The human rights of Aboriginal and Torres Strait Islander peoples in Australia have historically been undermined and disregarded, with Aboriginal and Torres Strait Islander peoples being subject to colonisation, dispossession, discrimination, marginalisation, and other significant breaches of human rights (Law Council of Australia, 2022). This has been perpetuated by policy frameworks that further marginalise and disempower Aboriginal and Torres Strait Islander communities, resulting in institutionalised racism and ‘gaps’ in economic, cultural and health and wellbeing outcomes, among other key issues.

UNDRIP is the key instrument for the recognition of Indigenous peoples’ rights. Some of the unseverable and unceded rights of Indigenous people recognised in UNDRIP include:

- the enjoyment of all human rights and fundamental freedoms recognised under the UN Charter, Universal Declaration of Human rights and international human rights law (article 1)
- freedom from discrimination (article 2)
- self-determination (article 3-5)
- the right not to be subjected to forced assimilation or destruction of their culture (article 8)
- standards of free, prior and informed consent (article 10, 19)
- traditional medicines and health practices (article 24); and
- maintain, control, protect and develop Indigenous Cultural and Intellectual Property and the intellectual property which incorporates Indigenous Cultural and Intellectual Property (article 31) (UN General Assembly, 2007).

In 2009, Australia endorsed UNDRIP. However, more than a decade later Aboriginal and Torres Strait Islander peoples are still waiting for Governments to formally and comprehensively adopt UNDRIP into law, policy and practice.

VACCHO does recognise that Governments have undertaken some fragmentary work to advance justice and support the self-determination of Aboriginal and Torres Strait Islander peoples. One example of this that aligns with the UNDRIP is the Australian Government’s commitment, under the National Cultural Policy *Revive: a place for every story, a story for every place*, to working with Indigenous people to

establish a stand-alone legislation to recognise and protect Indigenous Cultural and Intellectual Property.

It has been clear for some time that the adoption of UNDRIP is required for co-ordinated action to provide justice to Aboriginal and Torres Strait Islander peoples.

A recent inquiry into the application of UNDRIP in Australia was undertaken by the federal Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs. In November 2023, this Committee published a report calling for all 'Australian governments and civil society to meaningfully engage with the rights of Indigenous peoples through UNDRIP' (Commonwealth of Australia, 2023). Key recommendations from the report also include calls on the Australian Government to:

- Develop a National Action Plan, in consultation with First Peoples, to outline a coordinated approach to implementing UNDRIP across all Australian jurisdictions
- consider the legislative, approaches to implement the United Nations Declaration on the Rights of Indigenous Peoples across all jurisdictions (Commonwealth of Australia, 2023).

VACCHO also recognises the work that has been done in Victoria to progress self-determination and Indigenous rights. The establishment of the First Peoples' Assembly of Victoria (the Assembly), Yoorrook Justice Commission, the Treaty Authority and the continued commitment to the Treaty process exhibit significant steps forward for Aboriginal and Torres Strait Islander peoples in Victoria. While the Assembly are guided by UNDRIP and the principles in the Treaty Act exhibit some overlap, there is yet to be commitment from the Victorian Government on the full implementation of UNDRIP.

Additionally, the Victorian Charter of Human Rights sets out the twenty basic rights, freedoms and responsibilities of all people in Victoria. The Victorian Charter is consistent with some of the rights identified in UNDRIP, including the right to culture (s19), and the right and freedom to express culture (ss 14-15). However, there are pieces of UNDRIP that remain missing. This piecemeal adoption of certain principles under UNDRIP does not provide adequate recognition or protection of the rights of Indigenous peoples in Victoria.

The adoption and implementation of UNDRIP is necessary not only to redress the lack of Indigenous representation in law, but also to use the language and mechanisms of law to counter both the historical and ongoing impacts of colonisation and promote the aspirations and values of Aboriginal and Torres Strait Islander peoples. Legislating UNDRIP is an immediate action Governments can take to fulfil their promises to Aboriginal and Torres Strait Islander peoples' rights.

References

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