

#ausUPR20

AUSTRALIA'S HUMAN RIGHTS SCORE CARD

FACTSHEET

Aboriginal & Torres Strait Islander Peoples

Background information

Of the 289 UPR recommendations to Australia in 2015, 61 directly applied to Aboriginal and Torres Strait Islander Peoples and a further 133 addressed areas of high relevance. This reflected Aboriginal and Torres Strait Islander Peoples' over-representation across all negative social indicators, as a result of the continuing dispossession, impact of colonisation, marginalisation and racism. The unique historical and political circumstances of Aboriginal and Torres Strait Islander Peoples demands specific strategies that recognise our self-determination.

Democratic Rights and Freedoms

At 3.3% of the population, Australia's Indigenous peoples are not adequately reflected through its democratic representative government processes. Though the Australian Government claimed to promote and protect Aboriginal rights in its voluntary commitment in 2015, it cut funding to the National Congress of Australia's First Peoples, the elected representative Indigenous body, in 2014, which resulted in its winding-up in 2019.

The Australian Government made a voluntary commitment in 2015 to hold a referendum to recognise Aboriginal and Torres Strait Islander Peoples in the Australian Constitution. However, the community consultations, which culminated in the 'Uluru Statement from the Heart' in 2017, rejected symbolic change and called instead for a 'Voice' to Parliament and a treaty developed through an Aboriginal and Torres Strait Islander Makarrata / Truth and Justice Commission'. In response the Government has appointed a Committee to draft the model for the 'Voice'. The model will be put to Government for approval prior to engagement with Aboriginal and Torres

Strait Islander communities. Holding Aboriginal consultations after Government's approval of the model, raises concerns at the capacity of Aboriginal people to determine how the 'Voice' may operate and whether it is formed from elected Aboriginal representatives. Addressing the disparity experienced by Aboriginal communities requires enacting Indigenous self-determination, as a core right endorsed in the United Nations' *Declaration on the Rights of Indigenous Peoples*, through an elected representative Voice to Parliament and the establishment of a Makarrata/Truth and Justice Commission to develop a treaty.

Recommendation

The Australian Government establish an Aboriginal and Torres Strait Islander elected representative Voice to Parliament.

Recommendation

Australia establish a 'Makarrata / Truth and Justice Commission' to develop a treaty with Aboriginal and Torres Strait Islander Peoples within three years.

Domestic Implementation of UN Recommendations

Australia adopted the *Declaration on the Rights of Indigenous Peoples* in 2009, but has failed to incorporate it into domestic law or establish domestic mechanisms to support its implementation. The Declaration is not currently included in the definition of human rights within the Human Rights (Parliamentary Scrutiny) Act of 2011.

The Special Rapporteur on Indigenous Peoples in 2009 recommended Australia endorse ILO 169.

In 2015, recommendation 63 by Ireland called on Australia to ensure everyone enjoys access to the United Nations and its mechanisms. However, in 2014 the Australian Government cut \$100,000 in funding to the Australian Human Rights Commission for the Indigenous Peoples' Organisation's merit-based selection to attend the United Nations. Since then, the Australian Government has chosen who is funded to hold the Government to account on Australia's Indigenous human rights compliance at the United Nations.

Recommendation

Australia must incorporate the *Declaration on the Rights of Indigenous Peoples* into domestic law, establish an independent body to oversee its implementation in consultation with Aboriginal and Torres Strait Islander Peoples, and include the Declaration in the *Human Rights (Parliamentary Scrutiny) Act*.

Recommendation

Australia must ratify ILO 169 on Indigenous and Tribal Peoples.

Recommendation

The Australian Government must re-fund the Indigenous Peoples' Organisation to enable independent Indigenous determined, merit-based participation at relevant United Nations mechanisms.

Discriminatory Indigenous policy approaches

Northern Territory Intervention/Stronger Futures

Australian Governments have enacted a series of punitive and paternalistic policies that racially target Aboriginal communities. In 2007, under the 'Northern Territory Intervention', the Government sent 600 troops into 73 remote Aboriginal communities. The Intervention and its replacement 'Stronger Futures' legislation compulsorily quarantines welfare payments of Aboriginal people, through an Income Management debit card which determines which stores are used and goods purchased, it compulsorily leases Aboriginal lands, removes self-governance, and cut funding to Aboriginal Homeland/Outstation communities to force

Aboriginal people to move to Hub towns. The Special Rapporteur of Indigenous Peoples found the Intervention/Stronger Futures 'overtly discriminates against Aboriginal people, infringes their right to self-determination', stigmatizes the community, required suspension of the Racial Discrimination Act and was incompatible with ICERD, ICCPR and the Declaration on the Rights of Indigenous Peoples.

Mr Harry Jakamarra Nelson, Warlpiri Elder, asserts, '*We have no say in running our own lives on our own land. It's like we are under occupation by a foreign power*'.

The Cashless Debit Card

The Cashless Debit Card (CDC) is an extension of the NT Intervention's 'Income Management' policy and is also racially discriminatory, with more than 81% of compulsory recipients Aboriginal. The CDC quarantines 80% of cash welfare, it is humiliating and stigmatises Aboriginal people, exacerbating financial hardship and entrenching disempowerment, with independent reviews reporting that it leads to increased violence and crime. A lack of technology, phones and repeated power outages have prevented access to funds and food in remote communities. A Coronial Inquiry into Child Suicide heard the CDC was disempowering and a contributing factor. The Parliamentary Joint Committee on Human Rights considered the CDC limited human rights and was disproportionate. Despite being costly to implement, at \$10,000 per participant, with millions paid to the private company 'Indue' to deliver, it is being extended to other regions with high Aboriginal populations.

The Community Development Program

The Community Development Program (CDP), is also racist in its implementation; of the 35,000 people impacted more than 85% are Aboriginal. It requires remote Aboriginal participants to work for welfare payments, has additional obligations and is more onerous than for urban participants. It has applied financial penalties disproportionately, giving these 35,000 people 350,000 penalties over two years, resulting in cuts to payments and causing hunger.

Mr Yingiya Mark Guyula MLA, claims the NT Intervention, Stronger Futures and CDP brought 'a decline in employment, an increase in court hearings, incarceration rates, increase in child removals and suicides. It is a cultural genocide that has happened! That is why I am fighting for self-determination, for treaty!'

Recommendation

The Stronger Futures, Cashless Debit Card and Community Development Program, must be abolished and welfare entitlements and funding returned to remote communities and Homelands/Outstations within 12 months.

Cultural heritage & land management

Australian land management and cultural heritage legislative and regulatory regimes fail to recognise the intrinsic connection between Indigenous lands and cultural heritage. Current regimes do not uphold the rights of Aboriginal and Torres Strait Islander peoples to 'free, prior and informed consent' or capacity to reject mining and protect our cultural heritage, traditional lands and waters.

Destruction of Juukan Gorge

The destruction of the globally significant 46,000-year-old Juukan Gorge, described as 'the dawning of humanity', highlights the abject failure of Aboriginal cultural protection laws and Native Title. The Rio Tinto mining corporation blasted the sacred site, in the Pilbara region of Western Australia in May 2020, after having received Ministerial consent to destroy through the Western Australian *Aboriginal Heritage Act (1972)*. The archaeologist commissioned by Rio Tinto determined the Juukan Caves were of the 'highest archaeological significance in Australia', reflecting continual occupation that spanned the previous ice age and coincided with the Pleistocene's mega fauna. The site included a human hair band, dated at 4000 years, with direct genetic links to the current Puutu Kuntj Kurrama and Pinikura Traditional Owners. A kangaroo bone sharpened tool, at 28,000 years, was the oldest bone used in Australia. The failure to protect this site confirms the discriminatory nature of legislation to preserve Aboriginal cultural heritage sites and the racially inferior land title provided to Aboriginal people. The

Traditional Owners had been granted Native Title in 2015, but Native Title legislation does not enable Traditional Owners to refuse mining. Juukan Gorge is one of 463 sites in Western Australia granted permission to destroy under section 18 of the *Aboriginal Heritage Protection Act* since 2010, with no applications refused and no requirement to consult Aboriginal Traditional Owners, nor does it provide an appeal process for Aboriginal people.

Recommendation

The Australian Government review and amend the Aboriginal and Torres Strait Islander Heritage Protection Act (1984) and the Environmental Protection and Biodiversity Conservation Act (1999) to confer 'free, prior and informed consent' for Aboriginal and Torres Strait Islander Peoples.

Recommendation

The Australian Government ensure that all sacred items removed from Juukan Gorge by Rio Tinto be returned to the Traditional Owners and Traditional Owners be funded to establish an appropriate keeping place.

Native Title

The *Native Title Act 1993 (Cth)* ("NTA") has fundamental flaws that favour mining interests over Aboriginal peoples' rights which are inconsistent with the principle of equality before the law. Amendments to the NTA have further eroded common law rights to procedural fairness and reduced the 'right to negotiate' over the exploitation of Native Title lands, in contravention of UNDRIP Articles 8, 18, 19 & 20. Under the NTA Traditional Owners do not have rights to refuse mining. Only when mining is agreed can they negotiate an Indigenous Land Use Agreement (ILUA), where the terms are usually kept secret. Native Title rights provide substantially less rights than other property rights, privileging mining that dominate the private negotiations of ILUAs, providing no leverage or capacity to refuse mining for Traditional Owners.

1. The NTA denies Indigenous people 'free prior and informed consent' on the approval of mines affecting Native Title lands.
2. Where there is no agreement the tribunal can approve mining without awarding royalties;

3. The NTA inserts a default decision making mechanism in Indigenous land use agreements that is inconsistent with the right of self-determination;
4. The NTA allows for compulsory acquisition of Native Title land for third party benefit,
5. The NTA provides for extinguishment of Native Title.

In August 2019, the Queensland Government extinguished the native title of the Wangan and Jagalingou people from over 1,385 hectares of their traditional lands to make way for the Adani coalmine.

Recommendation

Australia must: amend the Native Title Act to enact free, prior and informed consent; remove powers to compulsorily acquire native title lands and extinguish native title rights; and include compensation regardless of date of extinguishment.

Jubilee Downs Station

The Yi-Martuwarra Traditional Owners raised \$25 million to purchase Jubilee Downs Station, where they held native title over their traditional lands, however, they were outbid by mining magnate Andrew Forrest. The Traditional Owners' business plan outlined critical employment initiatives and conservation management plans to protect the many sacred sites over the 221,408 hectares and the Fitzroy River. However, the Traditional Owners could not compete with a buyer, wealthy from exploiting resources from Aboriginal lands, who was prepared to pay more than the working value of the property. Yet Andrew Forrest's Fortescue Metals has been provided millions of designated Government funding to address Aboriginal disadvantage for Aboriginal employment and activities that provide social benefits from the use of their land.

Recommendation

The Australian Government must instigate strategies to support Aboriginal people to purchase their traditional lands.

Climate Change

Climate change has a detrimental and inequitable impact on Aboriginal communities with searing temperatures in central Australia, with 55 days in 2019 over 40C/104F. Indigenous stakeholders

have not been included in the National Water Initiative or regional water and land management strategies. The commercial sale of water has left Aboriginal communities dry, with serious health impacts due to sub-standard water quality in remote and regional Aboriginal communities. Traditional Owners have also voiced serious concerns about hydraulic fracking, resulting in contaminated and depleted ground water. The Torres Strait Island communities are some of the most vulnerable to climate change due to rising sea levels, which poses an immediate and acute threat to Indigenous peoples.

Recommendation

Australia must provide financial support for Aboriginal and Torres Strait Islander communities to develop and implement climate change mitigation and adaptation strategies and facilitate Indigenous decision making into regulatory water and land management bodies.

Compensation for the Stolen Generations

The forced removal of Aboriginal and Torres Strait Islander children from their families was official government policy from 1909 to 1969. Once in care, high proportions were psychologically, physically and sexually abused. Consequently, substance abuse, depression, anxiety, posttraumatic stress and suicide are commonplace. Not all Australian jurisdictions have compensation schemes for members of the Stolen Generations.

Recommendation

Australia must urgently compensate all members of the Stolen Generations, as recommended by the Bringing Them Home Report.

Further information and key contacts

The **UPR NGO Coalition Report** is available at <https://www.hrlc.org.au/universal-periodic-review>.

The key contact for this factsheet is Cathryn Eatock, Indigenous Peoples' Organisation-Australia (IPO), ipo.australia1@gmail.com.