

# Joint Committee on Human Rights

Public Hearing – 5 July 2024

## ANSWER TO QUESTION ON NOTICE

Department of Social Services

**Topic:** Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

**Question reference number:** IQ24-000067

**Question asked by:** Lidia Thorpe

**Type of Question:** Written. **Hansard Page/s:** N/A

**Date set by the Committee for the return of answer:** 26 July 2024

### Question:

9. Has the department sought any advice, internal or otherwise around the compatibility of current or future income management schemes with the UNDRIP, including Articles 18 and 19?

### Answer:

The UNDRIP is a resolution of the United Nations General Assembly, which sets out principles in relation to the fundamental human rights of Indigenous peoples for nations to continue to work towards. The key principles of UNDRIP include: self-determination, participation in decision-making, respect for and protection of culture, equality and non-discrimination.

In its report on its inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia, the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (ATSIA Committee) noted that:

*UNDRIP is a non-binding declaration of the UN General Assembly, meaning that it is not legally enforceable on UN Member Countries. UNDRIP does, however, reflect an international consensus on the rights of Indigenous peoples for nation states to adopt in response to legacy issues of their relationship with their First Peoples. (see paragraph 1.48)*

*Therefore, by design, UNDRIP is consistent with, and reinforcing of, existing, universal human rights instruments. The Australian Attorney-General's Department states that 'the Declaration reflects how a number of existing human rights standards under international law apply to the particular situation of Indigenous peoples'. (see paragraph 1.50)*

*The Australian Human Rights Commission notes that UNDRIP does not create new rights for Indigenous peoples, but it 'brings together the pre-existing rights that are relevant to Indigenous peoples into one coherent document'. (see paragraph 1.51)*

While UNDRIP is not legally binding in and of itself, and Australia has not yet implemented it into domestic law, many of its principles reflect, or provide further content to, Australia's existing obligations under international human rights treaties. Since endorsing UNDRIP in 2009, Australia has adopted the UNDRIP principles in its programs and policies and in its approach to engagement and collaboration.

A key part of engaging with the principles set out in the UNDRIP is the commitment to engagement with First Nations Peoples on programs and policies that impact them. Article 18 of the UNDRIP deal with participation by Indigenous peoples in decision-making about matters that affect them while article 19 deals with consultation and cooperation with Indigenous peoples before adopting and implementing legislative or administrative measures that may affect them.

The explanatory memoranda accompanying legislation implementing income management regimes explain the nature of consultation with First Nations communities that occurred in the development of the underlying policy.

In addition, each explanatory memoranda is accompanied by a Statement of Compatibility with Human Rights which details the legislation's human rights implications. These statements specifically consider the rights and freedoms set out in the 7 international instruments detailed in the *Parliamentary Scrutiny (Human Rights) Act 2011*. While the UNDRIP is not one of these instruments, as set out above, it is consistent and reinforcing of the rights enumerated in those instruments. This means that consideration of the rights and freedoms set out in the 7 listed instruments necessarily requires a consideration of the same rights set out in the UNDRIP.

The Department of Social Services (the department) is consulting with communities and stakeholders on the Government's commitment to make Income Management voluntary. The department has partnered with First Nations organisation ETM Perspectives, to lead all consultation in communities. Please refer to DSS SQ24-000584 for more information on consultation activity underway.